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## Analysis of Positive Legal Sources on the Implementation Bugis Customary Sanctions of Makassar for *Silariang* Actor

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**Abstract.** *In this study, the researchers analysed the phenomenon of Silariang (embarrassed) practice in the life of the Bugis Makassar society, which was considered unsuitable with the values of traditional life. This research aims to find out the form of Silariang according to Makassar Bugis customary law and implement a customary penalty for Silariang perpetrators. The research method used is juridical-normative with a statutory approach and a conceptual approach. The results of this study indicate that, according to Makassar Bugis customary law, Silariang or elopement is found in the Makassar community and can be found in other ethnic traditions outside Makassar. What makes them different is the punishment applied to the two perpetrators. For other ethnic groups, the penalty is usually not so severe. However, for the Makassarese, it usually ends with the murder of the perpetrator. The implementation of this customary law punishment is in the form of humiliation or persecution, expulsion from the village, and even the death penalty if the violation is very serious. The only one who can carry out the punishment is the family who does the Silariang. Also, the results of other studies illustrate that the embodiment of customary law principles as part of a positive legal source in Indonesia is highly recommended. Moreover, in the context of upholding morality, cultural nobility, honesty, and justice, it should avoid legal dilemmas to enforce the law against the law. After that, all decisions of legal action are aimed at creating public order, balance, and peace. Legal decisions based on the paradigm of customary law in the Silariang can cause feelings of shame, hurt, and revenge, ending in revenge efforts.*

*Keywords: Silariang (Embarrassed), Customary Penalty, Bugis Makassar*

### 1. INTRODUCTION

The diversity of ethnic groups in Indonesia is very influential on the marriage system in society. Likewise, in the order of their traditional life, the Bugis Makassar community upholds the *Siri'* culture (self-respect, reputation, and honor that must be maintained and enforced in daily life.<sup>1</sup> For other ethnicities, the penalty is usually not so severe, but in Makassar ethnic, it usually ends in the death penalty for the perpetrator.

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<sup>1</sup>Ana Rahmayanti. (2017). Tinjauan Yuridis Tentang Silariang Menurut HukumAdat (Case Study in Takalar District) [Juridical Overview of Silariang According to Customary Law (Case Study in Takalar District)], *Legal Opinion*, Vol. 5, No. 4, 2017

Meanwhile, the implementation of this customary law sanction is in the form of humiliation or persecution, expulsion from the village, and even the death penalty if the violation is very serious. One of the social realities that are most closely related to the *Siri'* problem is marriage.<sup>2</sup> The Bugis Makassar customs strongly influence the marriage system in South Sulawesi. It is known as one of the complex marriage systems because it has a very long procession series and very strict conditions and cannot be separated from the *Siri'* that applies to the Bugis Makassar community.<sup>3</sup> The problem in marriage, which is considered a very disgraceful act, is the *Silariang* marriage (elopement). *Silariang* is a form of marriage that is not blessed by either the couple's family but is carried out at the will of both parties (man and woman). Elopement often occurs because there is no formal marriage proposal. It usually happens intending to avoid the various complicated requirements in traditional Bugis Makassar marriages. Besides, it is also due to not get blessed between either couple's parents or the parents of one party, even though they both love each other. The types of despicable marriage are *Silariang* (both man and woman commit elopement), *Nilariang* (man carries the woman by his will), and *Erang Kale* (woman brings herself to the man to commit elopement).<sup>4</sup> This type of marriage usually happens due to the desire of two people who love each other to get married is hard to do, however, something is holding them back.

In several cases of *Silariang* practices in South Sulawesi, such as the case in Gowa Regency, the perpetrators of *silariang* were reported by women's parents and imposed by the country's law with articles 332 about criminal act of kidnapping.<sup>5-8</sup> There was also a case in Bulukumba Regency; the groom was stabbed to death by the woman's family. The man's family who was angry with the incident took revenge by burning three houses belonging to the family of the woman's side [4]. Based on these problems, it is important to discuss further the impact of *Silariang* from the traditional order of Bugis Makassar life in this study. Therefore, the researchers will discuss and examine problems that focus on how the form of *Silariang* practice according to Bugis

<sup>1</sup> Israpil. (2015). *Silariang Dalam Perspektif Budaya Siri' Pada Suku Makassar* [Silariang in the Siri' Cultural Perspective on the Makassar Tribe], *Jurnal Pustaka*, Vol. 2, No. 2, 2015

<sup>2</sup> Alham Abbas, Marten Bunga, Salmawati Salmawati, Nurson Petta Puji, Hardianto Djanggih. (2018). Hak Penguasaan Istri Terhadap Mahar Sompak Perkawinan Adat Bugis Makassar [Wife's Right of Control Against Mahar Sompak Makassar Bugis Traditional Marriage] (Kajian Putusan Pa Bulukumba Number 25/Pdt.P/2011/Pablk), *Kanun Jurnal Ilmu Hukum*, Vol. 20, No. 1, 2018

<sup>4</sup> Asnawin Aminuddin. (2013). *Kasus Silariang: Satu Tewas, Tiga Rumah Dibakar* [Silariang Case: One Killed, Three Houses Burned], online pada fajar.com.id, Posting tanggal 2 Agustus 2013

<sup>5</sup> Aurora, Oka. (2017). *Silariang Cinta Yang (Tak) Direstui* [Silariang Love That (Not) Approved]. Depok: Coconut Book.

<sup>6</sup> Subri. (2016). Kajian Rekonstruksi "Budaya Siri" Bugis Ditinjau Dari Pendidikan Islam [Reconstruction Study of Bugis "Siri Culture" From Islamic Education], *Jurnal Studi Pendidikan*, Vol. 15, No. 2, 2016

<sup>7</sup> Natzir Said. (2005). *Silariang Siri' Orang Makassar. Cet. II. Makassar* [Silariang Siri' Makassar people. cet. II. Makassar]: Pustaka Refleksi

<sup>8</sup> Merna Asvani Kasmad. (2018). Silariang (Case Study of the Poor in Balang Baru, Makassar) [Silariang (Case Study of the Poor in Balang Baru, Makassar)], *Phinisi Integration Review*. Vol 1, No 1, 2018

<sup>9</sup> Andi Zainal Abidin Farid. (1983). *Persepsi Orang Bugis Makassar Tentang Hukum dan Dunia Luar* [Makassar Bugis Perceptions About Law and the Outside World], Alumni: Bandung,

<sup>10</sup>Trusto Subekti. 2010. Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Ditinjau dari Hukum Perjanjian, *Jurnal Dinamika Hukum*, Vol. 10, No. 3.

Makassar Customary Law and how the implementation of customary penalty for *Silariang* perpetrators.<sup>9-10</sup>

## 2. METHODS

The research method used in this study is a normative juridical research method with a statutory approach and a conceptual approach

## 3. RESULTS AND DISCUSSION

### 3.1. The form of *Silariang* according to Makassar Bugis Customary Law

*Silariang* or elopement is found in the Makassar community and can be found in other ethnic traditions outside Makassar. What makes them different is the punishment applied to the two perpetrators. For other ethnic groups, the penalty is usually not so severe. However, for the Makassarese, it usually ends with the death penalty to the perpetrator. Customary law experts argue that *Silariang* is the act when a woman with a man leaves home without the family's blessing or consent and then they get married.<sup>8</sup> Chabot continued saying that both of them still cause *Siri* 'whether it's a mutual will or not. This elopement usually happens because one of the families does not approve of the love affair of the two couples.<sup>6,7</sup> It is probably because of the differences in social status or because the woman was already pregnant before marriage, so they took a shortcut called *Silariang*. Even though the couple realized that this elopement practice is full of risks, they believe this is the best way to unite with their loved ones. Elopement is a violation of customary law that greatly disturbs the balance of society. The embarrassed party, called *Tomasiri*, feels more *Plincht* or *Reshttsplicht* to get a balance by taking revenge to cover up *Siri*', which arises due to customary violations. The party that causes embarrassment, called *Tomannyala*, also has the obligation to pay a fine to restore balance in society. Fines in Makassar society are called *Pappasala*, some call it *Kasalang*, and some call it *Tongkosiri*. Finally, the marriage can cause a *Siri'* (*Tomannyala*) and the shamed party (*Tomasiri*).

*Silariang* usually occurs for several reasons.<sup>83</sup>, including:

- a. The poverty that makes the traditional Makassar wedding culture which costs a lot of money, unaffordable, and makes it difficult for prospective couples who want to get married in this Balang Baru village.
- b. With the existing conditions of poverty, for man, a high amount of *Panaik* or dowry becomes an obstacle in making proposals, which is a mandatory requirement according to the custom, so they prefer to do *Anyyala* or *Silariang*. This is an affordable way to get married because the poor conditions make it impossible for them to get married properly.

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<sup>6</sup> Subri. (2016). Kajian Rekonstruksi "Budaya Siri" Bugis Ditinjau Dari Pendidikan Islam [Reconstruction Study of Bugis "Siri Culture" From Islamic Education], *Jurnal Studi Pendidikan*, Vol. 15, No. 2, 2016

<sup>7</sup> Natzir Said. (2005). *Silariang Siri' Orang Makassar. Cet. II. Makassar [Silariang Siri' Makassar people. cet. II. Makassar]:* Pustaka Refleksi

<sup>8</sup> Merna Asvani Kasmad. (2018). *Silariang (Case Study of the Poor in Balang Baru, Makassar) [Silariang (Case Study of the Poor in Balang Baru, Makassar)], Phinisi Integration Review. Vol 1, No.1, 2018*

- c. The number of children dropping out of school and a lot of unemployment in this area make it difficult for parents to permit their daughters to marry because parents want a better life for their children.
- d. Lack of parental control and supervision of their children since most of their time is used to earn a living. Meanwhile, with the condition of dropping out of school and becoming unemployed, they are free to do uncontrollable things.
- e. There is no longer any social control in the environment; hegemonic and individual characteristics of the urban make this social capital non-existent. Interviews conducted with key informants showed that there was no critical public response to the *Silariang* cases. Thus, it becomes something contagious. Besides that, the punishment from this incident is not almost non-existent by law, nor do they have a deterrent effect.
- f. The low level of education makes access to information that uses technology become very limited

### 3.2. Views and Causes of *Silariang* Cases

According to Ter Haar in his book, Said Natzir<sup>6</sup>, the marriage that causes *Siri'* is a marriage that violates customary norms because it gives rise to the Tomasi'ri party and the *Tomanyala* party. Since the occurrence of a violation of marriage customs or sexual relations, *Siri'* arises by the person who violates the marriage. The customary sanctions aimed at siliang perpetrators are indeed cruel, namely murder or serious injury may occur and even the family considers it dead (*Nimateyangi*). Tomannyala's side must always be aware of the possibility of saving his life from death threats from *Tomasiri's* side as long as peace has not been made.

Based on the results of community interviews in the Bugis Makassar tribe, it is clear that the community views that *Silariang's* actions are contrary to social norms, religious law and customary law. This is by informants how they view the many acts of crossbreeding in the Bugis Makassar tribe that the behavior of *Silariang* is not good because it is an act that tarnishes the good name of the family and makes us ashamed, whose name *Silariang* does not exist at all in the eyes of the people, because this includes disgrace in society. In the end, various marriages gave rise to two parties, namely the party that gave rise to *Siri'-Tomannyala* and the party who was subject to *shame-Tomasiri*, who did not attack *Tomanyala* (which caused it) with customary sanctions.

The views of *Silariang's* sanctions are: a). Tomasiri's party considers Siri to be killed or seriously injured since the occurrence of Silariang, so there is an obligation to take revenge by killing or defeating Tomanyala, if they are found. Because if Tomasiri sees

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<sup>6</sup> Subri. (2016). Kajian Rekonstruksi "Budaya Siri" Bugis Ditinjau Dari Pendidikan Islam [Reconstruction Study of Bugis "Siri Culture" From Islamic Education], *Jurnal Studi Pendidikan*, Vol. 15, No. 2, 2016

<sup>7</sup> Natzir Said. (2005). *Silariang Siri' Orang Makassar. Cet. II. Makassar [Silariang Siri' Makassar people. cet. II. Makassar]:* Pustaka Refleksi

<sup>8</sup> Merna Asvani Kasmad. (2018). Silariang (Case Study of the Poor in Balang Baru, Makassar) [Silariang (Case Study of the Poor in Balang Baru, Makassar)], *Phinisi Integration Review*. Vol 1, No.1, 2018

Tomanyala (a martial artist) out there before the process of returning home is good and then left alone, and does not attack *Tomanyala* then *Tomasiri* will be despised and called *Matesiri'* (deadly shame) or *Tena Siri'na* (already done). There is no shame), then *Tomanyala* who are the targets of retaliation are young boys (*Burane Annyala*) and young girls (*Baine Annyala*); b). *Nimateyangi* (presumed dead). Another way to avoid sanctions is the killing of *Tumanyala*, if there is a statement from the parents to cut ties with their child or *Nimateyangi* (his child is considered dead). If there is a statement from *Nimateanggi's* parents for their child, according to Haris Ngasa in his book *Zainuddin Tika*, then the child is considered someone else, because the family cannot do anything, because it is considered by others. Bugis Makassar, in addition to acts of violence, murder or serious injuries, are given to the perpetrators of *siliang*, namely if there is a statement from the parents to break the friendship with their child or *Nimateanggi* (the child is considered dead).

There are several factors that researchers found when conducting research in the Bugis Makassar tribe, namely as follows:

a. No Blessing from Parents

If you want to get married, of course, the blessing of your parents is very influential. *Silariang* in the Bugis Makassar tribe usually occurs because one of the families does not approve of the romantic relationship of the two partners, the reason being the difference in social status. For example, the family from the female side is a descendant of Blue blood (nobles), while the family from the male side is just ordinary people who are not of Blue blood descent (no nobility). In this case, families of blue blood descendants (nobles) are very prestigious and consider it disproportionate if their children are married to non-blue blood descendants (non-aristocrats). Some did not get the blessing of their parents because they had different customs. Differences in customs also affect the parents' disapproval of their child's relationship because of concerns about the seriousness of the man, namely the issue of a small amount of money. There is also the condition of the family's economic condition that is in the position of a poor family or a rich family.

b. Against Forced Arranged Marriage

The occurrence of crossbreeding in the Bugis Makassar tribe is due to the attitude of parents who are too imposing their will regardless of the rights of their children to choose what their life choices are. The habit of some parents, in finding a mate for their children, is always looking for close relatives, be it cousins once, twice and three times. The goal is that his inheritance does not fall out. But in the course of his life, it turns out that children do not always want to follow the choices of their parents, they also have their own choices for married life. The deep love of these two couples makes them developers of their parents' choices. They do not want to marry a young man chosen by their parents. This is because they both remain in their stance, where the child does crossbreeding in response to the attitude of his parents.

c. Panai Money Problem

The Makassar people's marriage process is basically carried out normatively according to the provisions of religious law and customary law that regulate the perception of marriage, for example, the two parties who are getting married carry out the *Assuro* or Proposal or Proposal stages. In this case, the normative process of marriage is sometimes violated by residents due to several reasons behind it,

either because their relationship is not approved by their parents or family or because the determination of the panai money is too high, resulting in crossbreeding. The implementation of marriages varies greatly in terms and processes as well as the role of customs and religion which greatly influences the implementation of the marriage, including the Bugis Makassar community. The marriage system in society is very thick with Bugis Makassar customs which cannot be separated from the prevailing culture of shame which is called *Siri'* Culture. *Siri'* culture at the wedding of the Bugis Makassar people is closely related to how much *Doe' Panai'* (*doe' shopping*) is the amount of money (*Uang Panai'*) that will be fulfilled or paid by the man to the woman before stepping into the procession of marriage. The bigger the panai' given by the man, the greater the prestige of the woman's family.

### 3.3. The implementation of customary punishment for *Silariang* perpetrators

The traditional Makassarese people think that customary law is not just a habit, but also a personal part of their culture. Moreover, customary law is a way of life for the traditional Makassar community. As a way of life and personal value, customary law for Makassar people is similar to the requirements of human life. The position of customary law in the life of the Makassarese is believed consciously, that every human being is bound directly or indirectly in a system that regulates leadership patterns, regulates social interaction between humans, regulates responsibility to the community, regulates social justice in society, and guides humans so that they do not doubt in the power of God Almighty, and regulate social sanctions and customary sanctions against those who violate the customary laws.

In the *Siri'* tradition, men are considered defenders of honor and women as the medium of honor. An important element in the *Siri'* tradition is that women's honor includes chastity, virginity, and the ability to care for their husbands after marriage. The Makassarese people believe that taking care of girls is not an easy job. Then came the expression, herding a hundred buffaloes is easier than taking care of a girl. This *Silariang* practice is a form of marriage that is not justified by Makassar custom. That is why the perpetrators of *Silariang* are called *Tumannyalu*, which means people whose marriages violate the proper rules or customs.

Likewise, the *Siri'* problem in the *Silariang* case for the Makassar tribe. Prof. Andi Zainal Abidin Farid, in his book "*Perceptions of the Bugis Makassar people on Law and the Outside World*," suggests that killing a man who has kidnapped the relatives can be justified according to old customary law, even considered as a moral obligation.<sup>95</sup> According to Makassar customary law, the murder because of *Siri'* in the *Silariang* case is considered a moral obligation that must be carried out by the family of a woman called *Tumasiri'*. Thus, it can be understandable that *Siri'* is an act of retaliation, in the form of sanctions from parties who have violated their *Siri'* (*Tumasiri'*) and only sees *Siri'* in terms of violating marriage customs or cases of decency such as the *Silariang* case. Apart from the opinion of the cultural experts, the term of *Siri'* has also raised various responses from the public. Some people think *Siri'* means being shy (in

<sup>9</sup> Andi Zainal Abidin Farid. (1983). *Persepsi Orang Bugis Makassar Tentang Hukum dan Dunia Luar [Makassar Bugis Perceptions About Law and the Outside World]*, Alumni: Bandung,

<sup>10</sup>Trusto Subekti. 2010. Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Ditinjau dari Hukum Perjanjian, *Jurnal Dinamika Hukum*, Vol. 10, No. 3.

Makassar it is called *Siri'-siri'*). Some interpret *Siri'* as self-respect, dignity, or honor. Even some people associate it with the crime. This last opinion is so wrong. This opinion also builds a paradigm of people's thinking by merely looking at *Siri'* in terms of its consequences, which is what causes the frequent occurrence of murders. Because only by killing people, people can they enforce *Siri'*.

The form of sanctions or punishments imposed on the perpetrators of *Silariang* is humiliation or persecution and expulsion from the village, or even death penalty if the violation is very serious. The sanction is only implemented if those who practice *Silariang* step their feet into the land where they came from before *Akbaji* (going home to legalise the bond/relationship). According to custom, the criminal sanctions can be imposed on them. This is in line with the statement of one of the *Silariang* perpetrators, Anita Dg. Rannu, "...because my actions violated *Siri'*, that's why I was expelled from the village. If I set foot in this land again, I will be beaten and even killed."

Suppose those who commit *Silariang* set foot back into their home or land where they came from without good intention to carry out or intending to return home to legalise their ties/relationships, known as *Amminro Baji'* (good return). In that case, customary sanctions will be imposed on them when they meet the family.

In addition, *Silariang* sanctions are imposed only if the *Silariang* perpetrators, both man and woman, are seen by their families. The customary criminal penalty can be applied if there is an agreement between the families who commit *Silariang*, assuming that what the *Silariang* perpetrators do is shameful (*Appakasiri'*) causing *Siri'*. Because *Siri'* is considered where men are defenders of women's honor as a place of honor. Meanwhile, to defend and enforce *Siri'* family members risked everything, even with blood and life. So implementing one of the customary criminal sanctions is one of the efforts to enforce *Siri'* or improve the family's good reputation

Therefore, it can be seen that sometimes in people's lives, crossbreeding events carried out by relatives will become the subject of quarrels with the surrounding community which leads to killing each other. This quarrel is a form of initial symptom that gives birth to hatred and hostility among the Makassar tribal community. The Makassarese admit that *silariang* can be interpreted as a social disaster in society because it can affect social relations in kinship. *Silariang* can not only cause the death of the perpetrator, but more than that, it can separate the relationship between families within a certain time limit and even beyond. If *silariang* is done outside of relatives, it does not cause deep tension, but if it occurs between family members or relatives, there will be very strong tension. Kinship relations are re-established when *Siri* ends where peace has been reached. After reaching peace between *Tomasiri'* and *Tonyala*. So ended *Siri* 'has ended. The parties who take care of the return of the perpetrators of *silariang* are the local government, the men and the local community.

#### 4. CLOSING

It can be concluded from the results that the form of *Silariang* customary punishment of Bugis Makassar people is very different from other ethnic groups. In other tribes, the sanctions are usually not so severe, but in Bugis Makassar tribe, it usually ends with the murder of the perpetrator. The form of application of this customary law sanction is humiliation, torture, expulsion from the village, and even murder if the violation is very serious. Therefore, it is necessary to realize customary



law principles as part of a source of positive law in Indonesia, which is highly recommended. Especially in upholding morality, cultural nobility, honesty, and justice, however, legal dilemmas must be avoided where enforcing the law is against the law.

Furthermore, the implementation of traditional sanctions from Bugis Makassar tribe to *Silariang* perpetrators for both males and females seen by their families only applies if there is an agreement between the couple's parents who commit *Silariang*. Assuming that what the *Silariang* perpetrators do is shameful (*Appakasiri'*) and causing *Siria'*. It is because *Siria'* is considered where men are defenders of women's honor as a place of honor.

Meanwhile, to defend and enforce *Siria'* family members risked everything, even with blood and life. So the application of one of the customary criminal sanctions is one of the efforts to enforce *Siria'* or improve the family's good name. In the end, decisions from legal actions aim to create public order, balance, and peace. Legal decisions based on the paradigm of customary law in the *Silariang* incident will cause feelings of shame, hurt, and revenge, which may result in revenge efforts.

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