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Legal Reconstruction of Criminal Sanctions for Criminal Acts of Sexual Violence Based on Nias Custom Value of Justice

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Abstract

This research is motivated by the regulation of criminal sanctions against criminal acts of sexual violence based on the value of sexual justice based on the value of customary justice in Nias. Indonesia based on Article 18B of the Constitution of the Unitary State of the Republic of Indonesia recognizes and respects customary law units along with their traditional rights as long as they are still alive and by the development of society and the principles of the unitary state of the Republic. Indonesia, for this reason, in cases of criminal acts of sexual violence that occurred in Nias, justice must also be paid attention to, which originates from Nias customary law. This study aims to analyze and find the main points of regulation of criminal sanctions against crimes of sexual violence, which originate from the value of sexual justice on Nias customary justice values. This research is normative juridical research with statutory and conceptual approaches. The results of this study indicate the current weaknesses in the regulation of criminal acts of sexual violence, so it is necessary to update them. In addition, it cannot also let go of the role of society and culture in this matter. These two things play a role in shaping the public's view of cases of sexual violence. Reconstruction of regulations on sanctions for crimes of sexual violence stems from the justice values of Pancasila concerning customary law in Nias.

Keywords: Legal Reconstruction, Customary Crime, Sexual Violence.

INTRODUCTION

Every country including Indonesia has a set of general laws to regulate its administration. Laws are guidelines or habits that are authoritatively seen as restrictions imposed by authorities or governments. Indonesia is an established country as regulated in the 1945 Constitution of the Unitary State of the Republic of Indonesia, specifically in Article (1) paragraph (3). That is, all parts of the life of this nation are represented by law and order.

In public activities, law and society are two things that cannot be separated. Customary law, including standard criminal law, is the basic law that has existed and existed in the public sphere in the archipelago for a long time. The term standard law was then described by van Vollenhoven as special law for indigenous associations spread throughout the archipelago (Arief & Tharifi, 2019).

Standard criminal law is*"the living law"* which is permeated with a strict and mystical familial nature, where the need is not a single sense of justice; but rather a sense of family justice, so the arrangement is a quiet settlement that brings agreement (harmony). Term*living law* was first put forward by Eugen Ehrlich, not the state (law made by the state / good law). Eugen Ehrlich reveals that the living law is only the law that governs life even though the fact is not remembered for valid advice (Hadi, 2017).

Customary criminal law is a tendency that emerges, is followed, and is obeyed continuously and from time to time by the standard law of the local area concerned. The existence of customary criminal law in each region varies according to the customary law contained in that area with codified or unwritten characteristics. The settlement of customary criminal cases is often dissatisfied with formal court decisions, especially in terms of justice in deciding criminal cases that have a customary law dimension. Indigenous peoples feel dissatisfied because the court's decision has not been able to restore the magical balance that arises as a result of committing customary violations.

Customary criminal law is not intended to indicate what law and punishment must be imposed in the event of a violation, but it aims to restore a law that has been paralyzed by the violation (Dani, 2016). Article 18B of the 1945 Constitution of the Unitary State of the Republic of Indonesia states that the State recognizes and respects customary law community units along with their traditional rights as long as they are still alive and by the development of society and the principles of the unitary Republic of the Republic. Indonesia which is regulated by law and then strengthened by the provisions of Article 281 paragraph (3) of the 1945 Constitution that cultural identity and traditional society are respected in line with the times and civilization.

The focus of research related to customary law this time is related to Nias customs which are located in North Sumatra Province. One of the customary laws of Nias, known as 'Fonrak', was formed to regulate the life of the Nias people with sanctions in the form of insults for those who violate them. Fondrakõ is a forum for deliberation, determination, and ratification of customs and laws. Those who adhere to the Fondrak will receive blessings and those who disobey will receive curses and sanctions. Just as the myth about the origin of the Nias people is said to be descended "*nidada*" from the sky "*Tetehöli Ana'a*", so Fondrakõ was handed down along with Hia Walangi Sinada in the Gomo area (South Nias).

Along with the increasing population of Nias, the kings, and traditional elders agreed to update existing regulations according to the conditions and needs of each community (Harefa & Beniarmoni, 2017). Fondrakõ has lakhömi (power) so that it is obeyed and obeyed by all the people, but it is not a rigid customary law instrument but rather a more flexible nature that lives and develops in harmony with the social dynamics of the supporting community (Harefa, 2013).

The example that will be discussed in this study is related to sexual violence that occurred in Tuindrao Village, Amandraya District, South Nias Regency relation to the crime of sexual violence was resolved according to customary law occurred in 2014 committed by residents on behalf of FL (Perpetrator) aged 45 and SB (Victim) aged 21 years. This Sexual Violence Crime began when FL (Perpetrator) went to farm his rice field, suddenly SB (Victim) passed by the perpetrator's rice field, and at that time the perpetrator called the victim to tell a story related to his family problems to SB (Victim). After about 2 (two) hours of talking, the perpetrator suddenly asked the victim to kiss, but because of the perpetrator's request, the victim immediately became angry and wanted to leave the perpetrator's place, so the perpetrator pulled the victim's hand and carried out his immoral acts on the victim. After his actions were carried out on the victim, he threatened the victim not to tell his parents and also the people of Tuindrao Village so that the perpetrators would not be subject to the laws that apply in Tuindrao Village.

Legally, the crime of sexual violence is currently regulated by Law Number 12 of 2022 concerning Crimes of Sexual Violence. Article 1 point 1 of the TPKS Law stipulates that the Crime of Sexual Violence is any act that fulfills the elements of a crime as regulated in this Law and other acts of sexual violence as regulated in the Law as long as it is not specified in this Law. Sexual Violence Law regulates 9 (nine) types of sexual violence crimes, which consist of non-physical sexual harassment, physical sexual harassment, forced contraception; forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence.

However, in the context of customary law, a crime in this case, sexual violence is not only based on the positive law in force but also upholds the law, for this reason, there is a need for justice related to sexual violence in Nias through Nias customary justice values, namely *Fondrakö* includes 3 (three) angles, namely first, huku sifakhai ba moto niha (law on government assistance to the human body). Second, *huku sifakhai ba gokhöta niha* (law on guaranteeing human property rights). Third, *huku zifakhai ba rorogöfö zumange niha* (law of human honor).

In the fondrakö also set *Ogauta* (sanction). The Ogauta standard size was changed according to the size/approximate size of most of the materials in Nias. The types of estimation used were: *Afore* (size of pig), *Lauru* (size of paddy/rice), and *Fali'era* (scale). *Ogauta* Control (sanction): *Fanagö* (robbery, from light robbery to major robbery). *Fasöndrata* (battle, going from light fighting/torture to killing). *Fangosiwawoi ira'alawe* (Abuse). Nias standard laws that appear as *oguta* (sanctions) in *fondrakö* have existed in Nias for quite a long time. Nonetheless, standard law gives the impression of being more adaptable, relying on understanding encounters and figures relying on *Ogauta*'s direction. Nonetheless, remembering the value of the agreement and maintaining a balance are embodiments of standard law (Bambowo, 1975).

Based on the explanation above, a study was conducted with the title *"*Reconstruction of Regulations on Criminal Sanctions Against Crimes of Sexual Violence Based on Nias Indigenous Values of Justice*"*.

This problem is what the author urges to study further in research with the following issues:

1. What are the weaknesses of the current Sexual Violence Sanctions Regulations?
2. How Does the Reconstruction of Regulations on Sanctions for Sexual Violence Derived from the Pancasila Value of Justice?

METHOD OF RESEARCH

This study uses a legal research approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivism paradigm, the social reality observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of the:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Legislation relating to the practice of medicine and health.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Regarding secondary data, the search for general truths will be carried out using deductive logic, especially during the initial analysis (the use of theories), but it is also possible to carry out an analysis using inductive logic for cases of election dispute resolution after the election and vote counting. has been documented in the form of study results, records, and research results. And in this study, the researchers used deductive and inductive analysis so that the data obtained could be processed optimally (Hardiyanti *et al.*, 2022).

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

Weaknesses of the Current Sexual Violence Criminal Sanction Regulations

Digital technology adds space for the emergence of sexual violence, one of which is what is often referred to as "*Sextortion"*. Sextortion, which is a combination of "*sexual"* (sexual) and "extortion" (extortion), is a form of blackmail that includes threats to hurt, humiliate, or harm victims if they do not comply with the perpetrator's sexual demands. The perpetrator may also threaten to share private sexual content belonging to the victim to extort money or other sexual demands from them. This mode, for example, can start from a consensual relationship accompanied by intimate content which is then abused by the perpetrator, catfishing (using a false identity), to hacking.

The laws of several countries, such as the United States, include sextortion as a category of cybercrime. However, the legal umbrella for this crime in these countries is still not optimal. In the US, for example, research shows that there are still many gaps in the legal handling of sextortion. between the federal and state levels.

In Indonesia, unfortunately, no research reviews the condition of the legal umbrella for sextortion. For example, various existing regulations – from the Criminal Code, and the Information and Electronic Transactions Law, to the Sexual Violence Act – have not been able to properly become a legal basis to protect citizens from acts of sextortion.

Sextortion cases are one of the most widespread forms of online sexual violence in Indonesia. The methods vary, ranging from cyber sexual extortion using the video call sex (VCS) mode, such as the case in Medan, to the threat of spreading recordings of sexual relations taken without the knowledge of the victim after meeting through a dating application.

Actually, in general (lex general), the legal framework for acts of extortion in Indonesia is regulated in the Criminal Code. Meanwhile, extortion that is carried out using electronic technology or information, specifically (lex specialis) is regulated in the Electronic Information and Transaction Law. According to Article 368 paragraph (1) of the Criminal Code, extortion is a crime against property. How extortion occurs in the Criminal Code is violence or threats of violence.

Referring to the definition in the Criminal Code, sextortion cannot be categorized as extortion because it does not always involve assets. The size of the threat of violence referred to in the Criminal Code is to cause a person to faint or become helpless, while the form of threat in sextortion is different. Perpetrators usually intentionally harass victims through intimate content belonging to victims they have and use it as threatening material to disseminate and force victims to fulfill the perpetrator's wishes.

Research shows that besides wanting goods in the form of money or additional intimate content, extortionists also often demand that the victim have sexual intercourse. Unfortunately, requests for sexual relations are not included in the "goods" element in

Article 368 paragraph (1) of the Criminal Code. Apart from that, there is another loophole in the Criminal Code, namely Article 369 paragraph (1) regarding threats of defamation and threats to reveal secrets. The defamation referred to in this article consists of defamation, defamation by letters, minor insults, false or minor complaints, and acts of slander. However, threats of defamation and threats of spreading secrets of this kind are not a form of sextortion.

Meanwhile, there is the Information Technology and Electronic Transaction Law which regulates the crime of extortion using electronic systems. However, Article 27 paragraph (4) of the Law on Information Technology and Electronic Transactions has not sufficiently criminalized sextortion. The concept of electronic information or documents only includes extortion and threats in general, not using intimate content.

Article 29 of the Law on Information Technology and Electronic Transactions describes the forms of threats, namely in the form of violence involving physical, psychological, or economic losses, as well as actions to frighten someone. However, this article is also not enough, because the nature of 'sextortion' is not a physical or psychological threat or frightening the victim, but rather extortion with the risk of spreading intimate content which then creates an imbalance of power relations between the perpetrator and the victim.

The things above show that the Electronic Information and Transaction Law is still relatively ignorant of the motives behind an action, and lacks a gender perspective. As a result, obstacles often occur in determining articles to prosecute various forms of Cyber Gender-Based Violence.

As an illustration, in the decisions of the District Courts in Sleman in 2018 and Makassar in 2019, the focus of the indictment of the Public Prosecutor and the decisions of the Panel of Judges was limited to the dissemination of infringing content, not the act of sexual extortion itself.

In the case of Sleman, for example, the judge sentenced the perpetrator based on Article 29 of the Pornography Law (for distributing pornographic materials) and Article 45B of the Electronic Information and Transactions Law (for threats of violence and intimidation). In the case of Makassar, the judge sentenced the perpetrator based on Article 27 paragraph (1) of the Electronic Information and Transaction Law (dissemination of immoral material).

The existence of Sexual Violence Act regulates various types of sexual violence crimes. Article 14 paragraph (1) of the Sexual Violence Crime Law relating to electronic-based sexual violence has regulated extortion in various forms.

First, involving recordings, images, or screenshots of sexual content against the will or without the consent of the subject in the content (point a). Second, it involves transmitting sexually charged electronic information and/or documents against the will of the recipient (letter b). Third, involve stalking and/or tracking using electronic systems (letter c).

In the Sexual Violence Act, the scope of extortion has expanded and recognizes that extortion with a sexual nature involves various forms of threats. The expansion has opened up space to accommodate sextortion cases.

However, the Law on Sexual Violence is also not without flaws. This rule does not regulate the activities of sextortion itself and still creates a gray area, because it does not contain an explanation of what is classified as electronic information and electronic documents with sexual content. The Law on Sexual Violence also raises another ambiguity because it does not explain whether extortion or threats refer to the meaning in the Criminal Code as a lex general provision or not.

With the current status quo, law enforcement officials can only use very general and ambiguous articles – such as the content dissemination article in the Electronic Information and Transaction Law – in deciding sextortion cases. To improve the legal construction in sextortion cases, the authorities should specifically consider acts of sexual extortion by the perpetrators. The presence of the Law on Sexual Violence this year is a good momentum for eradicating sexual violence. However, this rule still needs refinement and explanation regarding the elements of the article in it, as well as the addition of the principal offense of sextortion, to fill the legal void.

2. Reconstruction of Regulations on Sanctions for Sexual Violence Crimes Sourced from the Pancasila Value of Justice

Law enforcement is an issue that has been widely heard as one of the ways to deal with the rampant crime and sexual violence targeting women and children, women and children occupy a weak position under men who have so far been considered superior and more powerful than men. women and children, men are considered to be human beings who occupy the highest position when viewed from the physique and the role of men who play a large role in everyday life.

Pancasila is the source of all legal sources that apply in Indonesia, Pancasila is the source of positive law in Indonesia and Pancasila is used as a guideline for making laws and regulations in Indonesia. Law

enforcement against sexual violence involving children and women as victims in Indonesia has so far been felt to be still weak when viewed with the increasing prevalence of these crimes which are becoming more and more common among the people in Indonesia. Cases of sexual violence against children cause the most difficulties in their resolution, both at the stages of the investigation, and prosecution and at the stage of dispensing with decisions. In addition to the difficulties within the limits above, there are also difficulties in proving, for example, rape or obscene acts which are generally carried out without the presence of other people (Leden, 1996).

Currently, in Indonesia, the problem is the existing legal system, namely where in Indonesia the values of justice are not implemented in which there is an element of morality and this applies universally and results in the non-implementation of the values of justice and morality, this is marked by the no longer the people's trust in the realization of positive law in Indonesia, especially in the enforcement of positive law itself, the perpetrators of sexual crimes seem not to be afraid of legal threats that will be charged to the perpetrators of sexual crimes.

Law enforcement is a step that must be taken to create a sense of justice for society, according to history, the relationship between justice and law began in mainland Europe, legal thinking first of all leads to an envisioned rule that has been drafted in the form of a law, by the existence of a dichotomy, so that two terms appear to signify the law, namely:

a. The law in the sense of justice (iustitia) or ius/recht (from regere = to lead). So here the law signifies fair regulations regarding community life, as aspired to.
b. The law in the sense of law or lex or wet. The obligatory rules are seen as a means to realize these fair rules (Hujibers, 1995).

In the view put forward by Theo Huijbers above explaining the difference between the two terms, namely the term law contains demands for justice because the existence of the law itself is certainly intended to obtain justice. Justice is a concept that indicates a sense of fairness in treatment (*justice or fair treatment*) (Nurrachman & Nani, 2004).

A legal system will not only refer to a rule (codes of rules) and regulations (regulations) but basically will also cover a wide range of fields, including structures, institutions, and processes (procedures) that contain them and are related to the law that lives in society (living law) and legal culture (legal structure). According to the well-known opinion of Lawrence Friedman, the elements of the legal system consist of legal structure, legal substance, and legal culture (Friedman, 1984).

Conceptually, the essence and meaning of law enforcement lie in the activity of harmonizing the relationship of values that are spelled out in solid principles and attitudes as a series of final stages of value translation, to create, give birth to and maintain social peace (Soekanto, 2012). Law enforcement itself must be interpreted within the framework of three concepts, namely as follows:

a. The concept of law enforcement is total (total enforcement concept) which demands that all values behind these legal norms be upheld without exception.
b. The full enforcement concept realizes that the total concept needs to be limited by procedural law and so on for the protection of individual interests.
c. The concept of actual law enforcement emerged after it was believed that there is discretion in law enforcement due to limitations, both related to infrastructure, quality of human resources, quality of legislation, and lack of community participation.

Law enforcement does not merely mean the implementation of legislation, even though in reality in Indonesia the tendency is this way so the notion of law enforcement is very popular in Indonesia. In addition, there is another tendency that interprets law enforcement as the implementation of a judge's decisions.

However, such opinions have weaknesses if the implementation of the law or the judge's decision disturbs the peace in social life. Based on this explanation, it can be concluded that the essence of law enforcement lies in the factors that influence it, these factors have a neutral meaning so the positive and negative impacts lie in the contents of these factors. The factors that influence law enforcement are:

a) The legal factor itself.
b) Law enforcement factor.
c) Facility factors or facilities that support law enforcement.
d) The community factor is the environment in which the law applies and is applied.
e) Cultural factors, namely as a result of work, creativity, and feelings based on humanity in social life.

From what has been stated above it is clear that the concept of law enforcement in Indonesia is to demand justice even though justice is substantive, justice will not find certainty in terms of the results, justice demanded by victims will never be in line and the same as justice. demanded by an actor, then true justice can be interpreted if justice meets the values and norms that should underlie the law and is reflected in the sense of justice, so that fair law enforcement will be felt by both victims and perpetrators, even though this

justice it will be difficult to match the perception, but at least it will be close to true justice.

The large number of cases of sexual violence experienced by women and children in Indonesia is a clear example of the weakness of legal protection and law enforcement which certainly does not create the justice that women and children should receive, in the context of protection, legal protection should be obtained by women and children to avoid sexual violence that they may experience in their daily lives, sexual violence against women and children is currently lurking wherever women and children are.

Elements of law enforcement, especially in making legal decisions that must be considered are the law itself, the issue of the measure of justice, and also the punishment given to the perpetrators of the law. Another opinion about justice is also in the view of John Rawls who states that justice is fairness, and justice is fairness. Rawls states that I consider justice only as a virtue of social institutions, or what I shall call the practice. This practice by Rawls is more explained by the existence of a moral person inspired by Immanuel Kant, where there are two types of abilities of a moral person, namely:

a. The ability to understand and act based on a sense of justice and thereby also be encouraged to continue to strive for social cooperation; And
b. The ability to form, revise, and rationally strive for the realization of a good concept, encourages everyone to strive to fulfill the values of primary benefits for themselves.

Furthermore, According to John Rawls, the principles that must exist in justice are: First, freedom is placed parallel to other values, and with that also the general concept of justice does not give a special place to freedom. Second, justice does not always mean that everyone should always get the same amount of something. The implications of these two principles make a fair formula for Rawls (Andre Ata, 2001):

a. Everyone must have an equal right to the most extensive basic liberties, as wide as the same liberties for all;
b. Social and economic inequalities must be regulated in such a way that it is expected to benefit everyone and open office to everyone.

The State of Indonesia has noble ideals as reflected in the opening of the 1945 Constitution in the fourth paragraph, which contains the sentence: "*then than that to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice*"

In the fourth paragraph it is reflected that the State provides maximum protection to Indonesian citizens without discrimination, Umar Kayam stated that Indonesian people have been embedded with the nature of Pancasila. He is a creature of God, (2) point II, growing awareness that he is a civilized human being and has a sense of justice, (3) point III, growing awareness as a social being of a sense of solidarity with other people, to unite in the nation and state, (4) point IV, based on the ability to objectify, awareness grows for deliberation, communication supported by language skills, (5) based on awareness from precepts I to IV, there is a growing desire to be fair to fellow human beings.

Pancasila guarantees justice and guarantees law enforcement that fulfills a sense of justice in it, Pancasila offers maximum protection to every citizen to anyone and regardless of the circumstances of the citizen, Pancasila provides protection, including women and children who are at risk of being exposed to sexual crimes, Pancasila also provides protection especially in the laws and regulations that are made, even though these laws and regulations are still far from fulfilling the sense of justice expected by Pancasila.

The basis of the concept of the Indonesian rule of law is that it cannot be separated from the existence of Pancasila as the basis of the state and the source of all sources of law and the spirit of the nation (volksgeist) of Indonesia, in other words that Pancasila animates all the life of the Indonesian legal state, the concept of the Pancasila legal state is the concept of a legal state that developed and implemented in Indonesia which is based on the Pancasila legal system, the concept of a Pancasila legal state has characteristics found in the philosophy of the Indonesian nation and state, namely Pancasila (Gunawan & Kristian, 2015).

Padmo Wahjono expressed his thoughts on the rule of law of Indonesia about the influence of the rechtsstaat concept as stated in the elucidation of the 1945 Constitution, as follows (Efendy, 2014):

"*Indonesia is a country based on law, with the formulation of rechtsstaat, among others, with the assumption that the pattern adopted does not deviate from the notion of a rule of law state in general (genus begrip), adapted to conditions in Indonesia, used with the size of our view of life and views of our nation*"

Concerning the rule of law in Indonesia, Muhammad Yamin expressed his thoughts as follows (Prasetyo, 2014):

> "*The power exercised by the government of the Republic of Indonesia is only based on and derived from the law and is never based on the power of arms, arbitrary power or the belief that the power of the body can decide all disputes in the country. The Republic of Indonesia is a state of law (rechtsstaat / government under law) where written justice*

applies; is not a police state or a military state, nor is it a state of power (machtss taat). The Republic of Indonesia is a country that implements justice written in law. Citizens are ruled and treated by the laws of justice made by the people themselves"

Oemar Senoadji argued that the Pancasila legal state has Indonesian characteristics by using Pancasila as the main basis and source of law. The main feature of the Pancasila rule of law state is the guarantee of freedom of religion or freedom of religion which has a positive connotation that there is no place for atheism or anti-religious propaganda. The next characteristic is that there is no rigid and absolute separation between state and religion which are in a harmonious relationship, in contrast to secular countries like the United States which adheres to the doctrine of separation of religion and state (Azhary, 2005).

According to Soepomo, the meaning of the principle of kinship contained in the Pancasila legal state means that (Prasetyo, 2014):

a. The system contained in the 1945 Constitution of the Republic of Indonesia is the family system. Thus, the Pancasila legal state must be based on and guided by the familial school of thought. Based on the principle of kinship, the flow that is accepted is the notion of a unified state. In this unitary state, it is desirable to have protection that covers the entire nation and the people of Indonesia. The Pancasila legal state is a family state of the Indonesian nation that overcomes all groups, overcomes all group understandings, and overcomes all individual understandings.
b. Based on this principle of kinship, the Pancasila legal state adheres to the ideology of people's sovereignty which is based on democracy and representative deliberations which are embodied in an institution called the People's Consultative Assembly and the People's Representative Council.
c. Based on the principle of kinship, then the Pancasila state of the law is based on omniscient divinity according to the principles of fair and civilized humanity.

CONCLUSION

Based on the discussion of the problems above, it can be concluded that:

1. Weaknesses in the regulation on sanctions for criminal acts of sexual violence at this time need to be reformed which includes three things, namely first renewal of the types of criminal acts of sexual violence which include non-physical sexual violence, and physical sexual violence. Second, the renewal of the provisions on the qualifications of investigators, public prosecutors, and judges authorized to deal with crimes of sexual violence. Third, the reform of the provisions on evidence of crimes of sexual violence allows one witness to be a victim as a basis for ensnaring the perpetrator, supported by expert testimony, witnesses who are not sworn in/witnesses who obtain information from other persons. other.
2. Reconstruction of regulations on sanctions for criminal acts of sexual violence stems from the justice values of Pancasila in law enforcement must be more oriented towards fulfilling victim-based protection and justice because in Pancasila it has been clearly explained and also contained in the 1945 Constitution of the Republic of Indonesia which regulates justice. just and civilized humanity, united justice, and social justice to all.

REFERENCES

- Arief, T. (2019). *Penerapan Pidana Adat (TULOU) Dalam Kasus Pelecehan Seksual Di Sikakap Kabupaten Kepulauan Mentawai.* Diploma Tesis, Universitas Andalas.
- Hadi, S. (2017). Hukum Positif Dan The Living Law (Eksistensi dan Keberlakuannya dalam Masyarakat). *DiH: Jurnal Ilmu Hukum*.
- Danil, E. (2016). Konstitusionalitas Penerapan Hukum Adat dalam Penyelesaian Perkara Pidana. *Jurnal Konstitusi*, 9(3), 583-596.
- Beniarmoni Harefa. (2017). *Peradilan Adat Nias dan keadilan Restoratif*. Jurnal Komunikasi Hukum (JKH).
- Harefa, A. (2013). EKSISTENSI" FONDRAKÕ" Dalam Hukum Adat Nias. DIDAKTIK, 2013, 7(1), 1026-1039.
- Bambowo, L. (1975). *Pemahaman Sendisendi Masyarakat Nias Guna Usaha Pembangunan*, Pidato Ilmiah, IKIP Gunungsitoli, 29 November 1975.
- Hardiyanti, M., Pratama, P. A., Saputra, A. D., & Sholehah, M. M. A. (2022). Urgensi Sistem E-Voting Dan Sirekap Dalam Penyelenggaraan Pemilu 2024. *Journal Equitable*, *7*(2), 249-271. https://doi.org/10.37859/jeq.v7i2.4257, P.
- Leden, M. (1996). *Kejahatan Terhadap Kesusilaan Dan Masalah Prevensinya*. Jakarta: Sinar Grafika, 1996, p. 81.
- Theo, H. (1995). *Filsafat Hukum*. Yogyakarta: Kanisius, p. 49.
- Nani, N. (2004). *Keadilan dalam Perspektif Psiko-Sosial dalam buku Keadilan Sosial: Upaya Mencari Makna Kesejahteraan Bersama di Indonesia*. Jakarta: Kompas, p.13.
- Lawrence Friedman. (1984). *American Law*, London, W.W. Norton & Company, p. 6
- Ujan Andre, A. (2001). *Keadilan dan Demokrasi (Telaah Filsafat Politik John Rawls)*, Yogyakarta: Kanisius, Pp. 72-73.
- Yopi Gunawan dan Kristian. (2015). *Perkembangan Konsep Negara Hukum & Negara Hukum Pancasila*. Bandung: Refika Aditama, p. 92.

- Marwan, E. (2014). *Teori Hukum Dari Perspektif Kebijakan, Perbandingan, dan Harmonisasi Hukum Pidana*. Jakarta, Referensi, p. 55.
- Teguh, P., & Arie, P. (2014). *Membangun Hukum Berdasarkan Pancasila*, Bandung: Nusa Media, pp. 40-41.
- Muh. Tahir Azhary. (2005). *Negara Hukum ; Suatu studi tentang prinsipprinsipnya dilihat dari segi hukum Islam, Implementasinya pada periode Negara Madinah dan masa kini*, Jakarta: Kencana, Pp. 93-94
- Muh. Tahir Azhary. (2005). *Negara Hukum; Suatu studi tentang prinsip prinsipnya dilihat dari segi hukum Islam, Implementasinya pada periode Negara Madinah dan masa kini*, Jakarta: Kencana, Pp. 93-94.