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From Criminal Law to Customary Law: Incest as a Sexual Crime

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Abstract

This study analyses several aspects of incest as a sexual crime, as well as its law enforcement, by comparing criminal law and Bugis customary law. This normative study was conducted by examining primary and secondary legal materials, which were then analysed qualitatively and descriptively. The findings indicate that incest can occur in the form of sexual violence caused by internal and external factors, such as psychological and family condition. Incest also has a very serious impact on victims, especially children. In terms of criminal law, the regulation of incest is spread across several laws such as obscenity in Criminal Code (KUHP); sexual intercourse with children in the Child Protection Law; and sexual violence against a family member in the PKDRT Law. However, in the Bugis customary law, incest is a sexual deviation against dignity and honour (siri'). On that basis, incest is determined as the most severe customary offense (malaweng) and is punishable by the death penalty. In principle, the criminal law and Bugis customary law both consider incest a prohibited sexual deviation. Although there are differences regarding the severity of sanctions against perpetrators, both legal routes have proven to be complementary and can be applied in court.

Keywords: Incest; Sexual Crime; Criminal Law; Customary Law.

Introduction

Many people have blood-related marriage, also known as incest, which remains a phenomenon in modern times. The most common definition of incest is “sexual intercourse between people with blood relations where marriage is prohibited by law”.¹ This is considered taboo in Indonesia because it contradicts a number of existing social norms of religion, culture and decency. However, the shift in socio-cultural values that occurs in society frequently results in the weak

¹ Tamta Sajaia, ‘Criminalization of Voluntary Incest Among Adults in Comparative Perspective’ (2018) 14 *European Scientific Journal*, ESJ.[271].

role of values that can influence citizens' behavior, causing symptoms of deviation to emerge, including in the community's sexual life.²

Sexual deviation in the form of sexual crimes not only occurs in a common environment but also in the family or home, which should be the safest place for family members to seek refuge. Incest is one of the sexual crimes that must be dealt with seriously,³ because these crimes are generally preceded by other sexual violence such as rape or sexual abuse between family members. Numerous studies have also found that perpetrators of incest are dominated not only by the victim's biological father or stepfather but also by the victim's grandfather or uncle, or someone who is the victim's closest relative.⁴

Indonesia itself is in a state of emergency due to sexual violence. Data from the Women and Children Information System (Simphoni PPA) for the period 01 January–30 June, 2021 show that there were 2,319 cases of violence against adult women, with 2,347 victims; and 3,314 cases of violence against children, with 3,683 victims,⁵ where the number of sexual assaults is always the highest.⁶ The number of data collections for handling cases in the context of incest crime is still very low, which has implications for the lack of data availability to measure this crime.

On the one hand, this is understandable given that incest crimes are generally committed repeatedly over a long period of time and only stop when the victim overcomes their fear of confessing or when the act becomes known to others. Such circumstances make it difficult for public and law enforcement officers to detect incest cases, especially if the victim is under threat and control of the

² Jeki Alang and Ahkam Jayadi, 'Analisis Putusan Hakim Mengenai Hubungan Seksual Incest (Studi Kasus Pengadilan Negeri Palopo)' (2022) 4 *Alauddin Law Development Journal (ALDEV)* [65].

³ Jessica Mindlin, 'Child Sexual Abuse and Criminal Statutes of Limitation: A Model for Reform' (1990) 65 *Washington Law Review*. [189].

⁴ Amanda Amanda and Hetty Krisnani, 'Analisis Kasus Anak Perempuan Korban Pemerkosaan Inses' (2019) 2 *Focus : Jurnal Pekerjaan Sosial*. [120].

⁵ Kemen PPPA, 'Sebanyak 3.683 Anak Menjadi Korban Kekerasan Selama Januari Hingga Juni 2021' (PAUDPEDIA, 2021).

⁶ Ilham Pratama Putra, 'Kemen PPPA Terima 3.122 Laporan Kekerasan Terhadap Anak Sepanjang 2021 - Medcom.Id'.

perpetrator, or for other reasons such as the need to hide the family's disgrace.⁷

The disclosure of a number of incest cases in various regions of Indonesia has highlighted the fact that many children are victims of sexual crimes committed by family members, including incest. However, many obstacles remain in law enforcement efforts to combat the crime of incest, one of which is the legal substance or product of legal regulations.⁸ The regulation of the crime of incest is currently dispersed over a number of laws in the criminal law sector. Incest is also against the law that exists in society (living law) in the form of customary law, in addition to positive law. Every act contrary to customary norms is considered illegal in the eyes of customary law, and it is obligatory to make efforts to restore the violated law.⁹

Incest is a taboo subject for the Bugis-Makassar people, meaning that certain sanctions can be imposed based on the applicable customary law. In this regard, it is interesting to compare the criminal law and customary law in the Bugis tribe in order to analyse the regulation and law enforcement against incest. Based on these issues, this article seeks to address two specific questions: first, what are the forms, causes and effects of incest as a sexual crime? Second, how is the crime of incest regulated and enforced under both criminal law and customary law in the Bugis-Makassar tribe?

The Forms, Causes and Effects of Incest as a Sexual Crime

The precise origins of the term "incest" are still unknown. According to one etymological interpretation, the word "incest" derives from the Latin phrases "castus" (pure or chaste) and "incestus" (impure and immodest). Nonetheless, by the

⁷ Studies have shown that children are reluctant to report incidents due to their shame, that children depend on predators in terms of their basic needs, and that children are afraid to speak up. The final factor is that children do not have the proper resources or channels for them to report incidents of violent crime against them. See, Maladevi Kaliapan and Saralah Devi Mariamdarani Chethiyar, 'Factors of Children Not Reporting for Incredible Crimes in Kuala Muda, Kedah, Malaysia' (2022) 3 *Annals of Social Sciences and Perspective*. [263].

⁸ Murdiyanto and Tri Gutomo, 'Penyebab, Dampak, Dan Pencegahan Inses' (2019) 43 *Jurnal Media Informasi Penelitian Kesejahteraan Sosial*. [55].

⁹ R. Soepomo, *Bab-Bab Tentang Hukum Adat* (PT Pradnya Paramita 2007).

medieval period, “incestus” had come to mean both immodesty with blood relatives or maidens and adultery.¹⁰ The Oxford Dictionary of Public Health defines incest as: “Sexual intimacy between close blood relations; i.e., siblings, parent and child, uncle-niece, aunt-nephew”.¹¹ A similar understanding is proposed by Carter, who defines incest as sexual relations between persons who are too closely related by blood to marry. Similarly, Sadarjoen regards incest as a sexual relationship carried out by a mate with strong family ties.¹²

According to Choate and Sharan’s research, there are two types of incest. Incest in its most basic form involves sexual acts between parents, stepchildren, adoptive parents or guardians, and minors. This is a subcategory of sexual crimes against children, which encompasses both intra- and extra-family offenders. The most usual form is father–daughter incest, followed by brother-to-sister incest. Second, incest can also take the form of sexual activity between adult family members who are unmarried (e.g. husband and wife). It can also include adult children, close relatives and blood relatives. In general, all forms of incest involve intra-family perpetrators, including those related by blood and those related by family ties.

Agung and Poetri further explain that incest can occur in two ways. The first is incest without the use of violence, coercion or seduction. This is referred to as voluntary incest (sexual intercourse without coercion) or consensual sexual intercourse. The second form is incest in the form of sexual violence against children, families and others. This is not incest in the strictest sense, but because there is a blood or family relationship behind the sexual violence, it is sometimes referred to as an incest practice involving sexual violence, both physical and non-physical violence, or deception and misdirection.¹³

¹⁰ Alberto C Serrano and David W Gunzburger, ‘An Historical Perspective of Incest’ (1983) 5 International Journal of Family Therapy.[70].

¹¹ Peter Choate and Radha Sharan, ‘The Need to Act: Incest as a Crime given Low Priority—a View with India as an Example’ (2021) 10 Social Sciences.

¹² Anak Agung and Sagung Poetri, ‘Incest in the Dimension of Sexual Violence Against Children’ (2020) 21 South East Asia Journal of Contemporary Business, Economics and Law.[232].

¹³ Supriyadi Widodo Eddyono, ‘Merekonstruksi Ulang Kejahatan Inses Di Indonesia’ (2010) 7 Legislasi Indonesia.[302].

The causes of incest are still debated among researchers. Soetji Andari, for example, explains that the factors that lead to incestuous sexual violence do not occur in isolation but rather as a result of the accumulation of various problems, such as poverty, a lack of knowledge (particularly religious knowledge), the preservation of aristocratic lines and family assets, and isolation from the community.¹⁴ An intriguing finding from the studies of Alder and Schutz is that 92% of incest offenders had a history of physical abuse from one or both parents. This accords with O'Brien's (1991) finding that 61 percent of his sample of sibling incest offenders experienced physical abuse in their families, although it was not conclusive if the offenders had been primary victims.¹⁵

Research by Setiawan and Purwanto on children in incest families in Bali finds that the occurrence of sexual violence against children in the family environment, such as incest, was motivated by two factors, namely internal and external ones. Internal factors include the psychological factors, biological factors, and moral factors of the perpetrator, whereas the external factors include economic factors, social media factors and environmental factors.¹⁶ Family conditions are also a factor that supports the occurrence of incest. According to Lustig, there are five family conditions that allow incest: 1) the pinched condition, in which the daughter becomes the female figure; 2) sexual difficulties in the parents, where the father is unable to control his sexual desires; 3) The father's inability to find a sexual partner outside the home; 4) the mother's fear of family breakdown; and 5) covert sanctions against her for not participating in the demands of her sexual role as a wife.¹⁷

The effects of incest on the victim are severe and include bodily harm, mental distress, unintended pregnancy and disarray in kinship relations. Incest can cause

¹⁴ Soetji Andari, 'Dampak Sosial Dan Psikologi Korban Inses' (2017) 11 *Publiciana*. [184].

¹⁵ Naomi A Adler and Joseph Schutz, 'Sibling Incest Offenders' (1995) 19 *Child Abuse and Neglect*. [817].

¹⁶ I Putu Agus Setiawan and I Wayan Novy Purwanto, 'Kekerasan Seksual Terhadap Anak Dalam Lingkup Keluarga (Incest) (Studi Di Polda Bali)' (2019) 8 *Kertha Wicara : Journal Ilmu Hukum* 1. [14].

¹⁷ Pravistania Rhemadiara Putri, Agung Wahyu Prasetyo and Jamaluddin Lendang, 'Description Of The Factors Related To Incest : The Characteristics Of The Person – A Case Study Of' (2020) 3 *European Journal of Public Health Studies*. [34].

psychological disruptions or trauma, which can lead to the victim losing their ability to trust others, feeling anxious and fearful of having sex; feeling depressed; wanting to commit suicide; engaging in other self-destructive activities; possessing low self-worth; feeling low, guilty, irate and distant; and being unable to interact with others. Another impact that victims frequently feel is being held accountable and earning a bad reputation in society.¹⁸ This is supported by a study from Kaliapan and Chethiyar on incestuous children, which identifies several main effects of incest on children, such as decreased self-confidence; scepticism and trauma due to the experiences they have had; and personality disorders from an early age. Eventually, children also develop scepticism or distrust of others in their lives.¹⁹

Women and girls make up a large portion of incest victims, and threats, compulsion, and violence are frequently present during the sexual encounter. As a result of this violence, women may feel unworthy and inferior, hate men (the perpetrators), become sexually confused, experience anxiety or a lack of sense of security at home, and suffer long-lasting trauma, not to mention visible physical damage such as blood or bruising.²⁰

Regulation and Law Enforcement Against Incest According to Criminal Law Provisions

Criminal law is a very dynamic reality in society. With the transition of society into the contemporary era, many issues are becoming more complex and prevalent.²¹ However, from a normative juridical perspective, there is no rule that constructively regulates the prohibition of incest. The Marriage Law in Law No. 1 of 1974, for example, only regulates incest as a prohibition on forms of marriage that are carried out because of blood and marital ties. Likewise, the Civil Code (BW) regulates

¹⁸ La Ode Bariun, Rahman Hasima and Rizki Ramadani, 'Incest in the Intersection Between Criminal Law and Bugis Custom' (2022) 02 64.

¹⁹ Kaliapan and Chethiyar (n 7).

²⁰ Dwi Hapsari Retnaningrum, 'Incest Sebagai Bentuk Manifestasi Kekerasan Terhadap Perempuan' (2009) 9 Jurnal Dinamika Hukum.[20].

²¹ Hijriani and Herman, 'The Value of Siri ' Na Pacce as an Alternative to Settle Persecution' (2018) 3 Padjajaran Jurnal Ilmu Hukum (Journal of Law).[564].

incest as a marriage that is prohibited between those who are related to the family in a straight line up and down, either because of a legal birth, or illegitimate, or because of marriage, and in a straight line, sideways, between brothers and sisters, legal or illegitimate.

The same issue occurs in the field of criminal law, where there is no article that specifically and explicitly regulates incest as a specific sexual crime.²² The construction of the law used to criminalise incest perpetrators still uses alternative articles sourced from many laws and regulations in order to prevent a legal vacuum. This means that there is no single rule or article that can consistently be imposed specifically on incest perpetrators.²³ The Indonesian Criminal Code (KUHP) does not contain the word “incest” itself. However, it qualifies the practice of incest via two types of adultery: 1) as an immoral act because of a forced sexual relationship committed against a victim who has a relationship (blood-marriage) where the victim is not yet an adult; and 2) as an immoral act because of a forced sexual relationship committed against a victim who has a relationship (blood-marriage) where the perpetrator is a fellow adult or old enough.

Obscene activities between people related to one another are also mentioned in the Criminal Code in Article 294 paragraph (1) of the KUHP. A sexual abuse in a relationship between a person and his child, stepson, adopted child; a child under his supervision who is not yet an adult; or with a juvenile whose care, education, or care is delegated to him is subject to penalty under Article 294 paragraph (1).²⁴ Because there is a specific relationship between the criminal and the victim, Article 294’s formulation of the offense is considered unique. Both familial (such as marriage or blood relationships) and non-familial relationships that the offender is legally required to uphold or maintain are included in this category. On the basis of this formulation, it is clear that the Criminal Code also regulates acts of incest

²² Rahmad Dwi Putra Santosa, ‘Analisis Yuridis Tindak Pidana Inses/Incest Menurut Peraturan Perundang-Undangan Nasional’ (2020) 26 Ilmiah ilmu Hukum.[895].

²³ *ibid.*

²⁴ Fresdy A Wotulo, ‘Kedudukan Delik Inses (Incest) Dalam Sistem Hukum Pidana Indonesia’ (2017) 6 Nomor 4 Lex Crimen.[38].

under the category of sexual offenses (sexual crimes) as well as decency violations such as adultery between people of the same blood and obscene acts against people related to one another by blood and those who are under their control.

Incest can also be related to the context of domestic violence. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) explains that domestic violence is any act against a person, especially a woman, which results in physical, sexual or psychological misery, or suffering within the household.²⁵ This is extremely pertinent to the crime of incest, which typically occurs in a domestic or familial environment. In Article 8, which defines sexual violence as “forced sexual intercourse conducted against people who live in the household environment”, violence of a sexual character is particularly prohibited. In this clause, “sexual violence” is defined as any act that involves forced sexual contact or contact that is unnatural or unwanted.

Based on this, even if incest still falls under the category of domestic violence, the PKDRT Law’s criminal act regulation can be applied to penalise the perpetrator. Subsequently, under Article 46, there are criminal penalties that can be either a fine of up to Rp 36,000,000.00 or a maximum 12-year prison sentence. The offender faces a minimum sentence of five years in prison and a maximum sentence of twenty years in prison, or a fine of at least Rp. 25,000,000 (twenty five million rupiah) and a maximum of Rp. 500,000,000 (five hundred million rupiah) if the act causes the victim to suffer injuries that have no chance of healing, mental or mental disorders, the death of the foetus in the womb, or malfunctioning reproductive organs.

Regulations regarding incest can also refer to Law 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (PA Law), if the victim of crime is a child or minor. If viewed from the perspective of criminal law policies against incest, this law can be considered the most powerful legal instrument. It contains criminal provisions against any person who intentionally commits a trick, a series of lies, or persuades a child to have “intercourse” with

²⁵ Lilik Purwastuti Yudaningsih, ‘Pengaturan Tindak Pidana Inses Dalam Perspektif Kebijakan Hukum Pidana’ (2014) VII Inovatif.[96].

him or her, or with other people. In the event that the crime is committed by a parent, guardian, child caretaker, educator or educational staff member, the penalty is added to one third of the existing criminal threat. The criminal threat for sexual intercourse with a child is imprisonment for a minimum of 5 years and a maximum of 15 years, with a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). Based on the formulation of the regulation, incest can be categorised as an element of the crime of sexual intercourse against children committed by parents, where the criminal threat given is quite high with the addition of one third of the sentence.

Regulation and Law Enforcement against Incest According to the Provisions of Bugis Customary Law

Communities that still adhere to customary rules or norms, or what are commonly termed “customary law communities”, still exist and have become an inseparable part of the Indonesian nation. Historically, customary law communities have existed for a long time, even before the formation of the Unitary State of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia obliges the state to recognise and respect the traditional rights of indigenous peoples who are still alive and recognised today (Article 18 B Paragraph (2), Article 28 I Paragraph (3) and Article 32 Paragraph (1)). With the inclusion of recognition and respect for the rights of indigenous peoples, these traditional rights are automatically included as constitutional rights.²⁶ These rights include the rights of indigenous peoples to regulate their lives based on local customary law.

The term “customary law” was first used by Snouck Hurgronje in 1983 in his book *De Atjehnese*. In it, he introduces the term *Adatrecht* (customary law), which is the law that applied to the land of the sons (original Indonesians) and foreign easterners during the Dutch East Indies period. Customary law has a new

²⁶ Frichy Ndaumanu, ‘Kebijakan Pemerintah Daerah Terhadap Upaya Perlindungan Dan Penghormatan Masyarakat Hukum Adat Di Kabupaten Alor Provinsi Nusa Tenggara Timur’ (2018) 9 Jurnal HAM.[38].

technical juridical meaning after C. Van Vollenhoven published his book entitled *Adatrecht*.²⁷ Customary law's function as "living law" refers to the idea of a legal system developed from the practical experience of earlier societies, which is thought to be just and has been given legitimacy by customary authorities so that it must be followed. Soerjono Soekanto asserts that this conformity results from people's innate conviction in the natural rules that have been in force since their birth, which can lead to peaceful interpersonal relationships.²⁸

Regarding criminal acts or offenses, Van Vollenhoven, as quoted by Setiady, writes that customary law contains a classification of offenses based on the severity of the error committed.²⁹ Included in the category of the most severe offenses are violations of the balance between the external world and the unseen world, such as betrayal, i.e. revealing public secrets or allying with enemies, including blood-related sexual relationships or incest. In customary law criminal arrangements, sexual acts are frequently divided into four categories: 1) sexual relations between two people who are prohibited from getting married by customary law due to exogamy violations; 2) violation of blood relations that are too close according to customary punishment; 3) a sexual relationship among two people of different castes, for example a Brahmin girl and a Sudra (Balinese) youth; and 4) discordant marriage.

The Pangadareng (*Pangadakkang/Makassar*) system of norms and customary rules, which is holy and sacred, still governs the daily lives of Bugis people, particularly those who reside outside the city. The five components of Pangadareng are: 1) *Ade* (*Ade/Makassar*); 2) *bicara*; 3) *Slim*; 4) *Wari*; and 5) *Sarah*. In the world of thought, feeling and social identity known as *siri'*, these five components are intertwined to form an organic unity.³⁰

²⁷ Putri Azzahra Maghfiroh, 'Peraturan Hukum Adat Baduy Dan Hierarki Menurut Undang Undang Yang Berlaku' (2021) 6 Jurnal Panorama Hukum.[32].

²⁸ Soerjono Soekanto, *Masa Depan Hukum Adat Di Indonesia, Makalah Pada Seminar Penelaahan Pembaharuan Hukum Nasional* (BPHN 1982).

²⁹ Tolib Setiady, *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)* (Alfabeta 2008).

³⁰ Mattulada, *Bugis-Makassar, Manusia Dan Kebudayaan* (Fak Sastra UI).

In the stratified Bugis Makassar society, the position and function of women are very important in maintaining the *siri*’ and the blood of their family and relatives. Adat for Bugis people does not mean just habits (*gewooten*), but is a key concept in understanding Bugis Makassar people. The name of their culture is Adat, but it is more than just a culture to the Bugis Makassar people; it is a way of life. For them, traditional culture is regarded as equivalent to the necessities of human life as a way of life and as something personal.³¹

In the Bugis Makassar tribe’s customary law, sexual interactions or marriages between blood relatives are considered the most severe category of moral offense because they upset the harmony between the natural world and the supernatural. Incest is threatened with the same harsh punishment as it is the most serious customary offense. The death sentence is the harshest punishment, whereas exclusion from public life is the least severe sanction. It makes sense that incest carries such a harsh penalty under Bugis Makassar customary law as breaking the male–female relationship is regarded as a grave *siri*’ breach that brings bad luck.³² Women are crucial in the *siri*’ cultural value system for preserving the honour (*siri*’) of their kin. To maintain their honour and self-respect, women frequently place their position, status and dignity in jeopardy.

To promote a living environment of *sipakalebbi* and *sipakaraja* (mutual respect), men and women’s relationships are structured in a notion known as *malaweng* (violation) (mutual respect). If women and men engage in sexual activity outside of what is considered “*malaweng*”, it is morally repugnant. *Malaweng*’s acts violate “*siri*” and present significant challenges for parents and relatives (particularly on the female side). The most serious and abhorrent *malaweng* offense under Bugis traditional law is incest. Even animals are compared in this act (*pangkaukeng olok* “*kolok*”). This kind of behavior is punishable by death via drowning in the sea (*ri labu*) or being pushed from a cliff.

³¹ APU H. Ahmad Ubbe, ‘Laporan Akhir Penelitian Hukum Tentang Perkembangan Hukum Adat Di Propinsi Sulawesi Selatan’ (2005).

³² *ibid.*

Legal Integration Against Incest: From Criminal Law to Customary Law

A customary law, in principle, only binds its adherents and is valid within the boundaries of the customary area (jurisdiction). When customary law is violated on the grounds of the Bugis community of customary law, state taboo must be resolved through customary courts using the relevant customary law (*Sapa ri tana, sapa wisesa*). Because they are believed to have occurred beyond the jurisdiction of the customary court or *swapraja*, infractions that occur outside the scope of Bugis customary law are not required to be addressed in accordance with such law.

However, in a Makassar City incest case, the community's demands led the Makassar District Court to adopt traditional criminal law when deciding incest cases. Due to this issue, courts have found it necessary to apply incest-related customary law norms, even though Makassar itself is not a Bugis customary territory but rather the territory of the Gowa kingdom, which was handed over by Sultan Hasanuddin to Admiraall Speelman in accordance with the Bungaya Agreement in 1667.

The integration of state criminal law addressing incest with Bugis customary law began in the 1950s. The Emergency Law No. 1 of 1951's Article 5 paragraph 3 sub (b) governs the resolution of moral offenses that have no equivalent in the Criminal Code, whereas the Criminal Code's provisions govern the resolution of customary offenses that do have an equivalent. The following instances show a variety of cases that were decided using Law No. 1 Emergency 1951's Article 5 paragraph 3 sub (b): 1) Sexual intercourse between a woman-in-law and her daughter-in-law is qualified as an offense against "sumbang starch" (bloedschande, incest); 2) Sexual intercourse between a man and his mother's sister is qualified as "*melaweng 'i sapa' tana*"; and 3) Sexual intercourse between a father and his daughter is qualified as *sapa' ri tana*. Based on the above arrangement, the Bugis customary law regarding incest (*sapa 'ri tana*) has been accommodated as an official source of law for judges who try customary offenses that have not been regulated in the Criminal Code, namely through the application of Article 5 paragraph 3 sub (b) of the Emergency Law No.1 in 1951.

Regarding law enforcement, each of the criminals in the case of sexual activity between two siblings received a sentence of six years and six months in jail. In the case of father–daughter incest, the father received a ten-year prison term while the daughter received a three-year term. Despite the relatively severe punishments inflicted in these three cases, there is still a discrepancy between the punishments acknowledged by society through customary law and those enforced by official law. In general, the court no longer imposes the death penalty in accordance with the rules of customary law. For instance, incest against minors, which is punishable by death under customary law, is only classified as an obscenity under Article 294 of the Criminal Code and carries a seven-year prison penalty under the positive criminal law system. This is regarded as not in keeping with the Bugis community’s “concept of decency”. Despite differences in the severity of the penalties for incest, the findings indicate that Bugis Customary Law and Criminal Law are complementary.

Conclusion

Incest is a phenomenon that is considered taboo yet still common in modern society. It can occur in the form of sexual violence, caused by a number of internal factors such as the individual’s psychological condition, or external factors such as economic conditions and relationships within family members. Like sexual violence, incest also has a very serious impact on victims, especially children. Regarding positive criminal law, the regulation of incest is spread across a number of laws and regulations so that there is no specific formula that can be consistently applied to incest perpetrators. There are criminal rules regarding incest, among others, in the Criminal Code related to adultery and obscenity involving blood family members; criminal acts of sexual intercourse with children in the Child Protection Law; and sexual violence against family members in the PKDRT Law. Meanwhile, in the customary law of the Bugis community, incest is considered a sexual deviation that is animalistic and threatens the dignity and honour of the family. On that basis, incest is determined as the most severe customary offense (*malaweng*) and is punishable by the death penalty, specifically being pushed from a cliff (*ri pumpkin*). In principle,

the criminal law and Bugis customary law both assess incest as a prohibited sexual deviation. Although there are differences regarding the severity of sanctions against incest perpetrators, both have proven to be complementary and can be integrated and applied in court.

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