



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



IMAM AS SYAFEI BUILDING
 Faculty of Law, Sultan Agung Islamic University
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

UNISSULA PRESS

ISBN. 978-602-1145-67-8

September



2017

The 3rd PROCEEDING

“Legal Development in Various Countries”

IMAM AS SYAFEI BUILDING

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :
UNISSULA PRESS

ISBN. 978-602-1145-67-8

The 3rd PROCEEDING

“Legal Development in Various Countries”

Reviewer:

Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Prof. Henning Glaser

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM

Prof. Shimada Yuzuru

Prof. Associate Dr. Dr. Ahmad Zaharudin Sani

Editor:

Dr. Amin Purnawan., S.H., CN., M.Hum

Dr. Hj. Widayati., S.H., M.H

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. H. Ahmad Khisni., S.H., M.H

M. Abdul Hadi., SE

Hak Cipta © 2016, pada penulis

Hak Publikasi pada penerbit UNISSULA PRESS

Dilarang memperbanyak, memperbanyak sebagian atau seluruh isi dari buku ini dalam bentuk apapun, tanpa izin tertulis pada penerbit.

Hal i-x, 1-391

Cetakan Pertama Tahun 2017

Penerbit UNISSULA PRESS

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

ISBN. 978-602-1145-67-8

INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

Welcome to Participants on International Conference

"LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

SPEAKERS :

1. Prof. Shimada Yuzuru
Nagoya University, Japan
2. Prof. Dr. Ruzian Markom
Universitas Kebangsaan Malaysia, Malaysia
3. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M
Sebelas Maret University, Indonesia
4. Assoc Prof. Dr. Ahmad Zaharuddin S.
Universitas Utara Malaysia, Malaysia
5. Dr. Anis Mashdurohatus, S.H., M.Hum
Sultas Agung Islamic University, Indonesia

Indonesia, September 05th 2017

WORLD ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

International Conference

"Legal Development In Various Countries"

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

IMAM AS SYAFEI BUILDING, Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : **Faculty of Law UNISSULA**
Semarang-Indonesia

5
September
2017

FACULTY OF LAW
Sultan Agung Islamic University

SPEAKERS :

1. Prof. Shimada Yuzuru
Nagoya University, Japan
2. Dr. Hilaire Tegnau, LL.M.
Faculty of Law, Sorbonne University
3. Prof. Dr. Ruzian Markom
Universitas Kebangsaan Malaysia, Malaysia
4. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M
Sebelas Maret University, Indonesia
5. Assoc Prof. Dr. Ahmad Zaharuddin S.
Universitas Utara Malaysia, Malaysia
6. Dr. Anis Mashdurohatus, S.H., M.Hum
Sultan Agung Islamic University, Indonesia

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584 Fax.(024)6582455
Semarang 50112

**COMMITTEE OF THE 3rd INTERNATIONAL CONFERENCE
AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

Responsible Person	: Prof. Dr. H. Gunarto.,S.H.,SE.,Akt.,M.Hum	(Dean)
Advisory	: Dr. Hj. Widayati.,S.H.,MH Arpangi.,S.H.,M.H Dr. Hj. AnisMashdurohatun,S.H,M.Hum Dr. H. Ahmad Khisni.,S.H.,M.H Dr.H. Umar Ma'ruf, SH.,Sp.N.,M.Hum Kami Hartono.,S.H.,M.H	(Vice Dean I) (Vice Dean II) (Head of PDIH) (Head of M.Kn) (Head of MIH) (Head of S1)
Chairwoman	: Dr. Hj. AnisMashdurohatun,S.H,M.Hum	(Head of PDIH)
Secretary	: Dr. Hj. Sri Endah Wahyuningsih,S.H,M.Hum	(Secretary of PDIH)
Treasurer	: Dr. Hj. Sri Kusriyah.,S.H.,M.Hum	(Secretary of MIH)
Drafting Team	: Dr. H. Amin Purnawan.,SH.,CN.,M.HumH Denny Suwondo.,S.H.,M FaisolAzhari.,S.H.,M.Hum Hj. AryaniWitasari.,S.H.,M.H	
Event Division	: Anita.,S.S.,M.H	
Secretariat and Supplies Division		
Coordinator	: M. Abdul Hadi.,SE	
Member	: Slamet Ariyanto Dyan Teguh Aryanto, Amd M. Ngaziz.,S.H.,M.H Hendro Widodo.,S.H.,M.H NailulMokorobin.,S.Psi AgusPrayoga	
Publication and Documentation Division	: Ikrom.,S.H	
Member	Ahmad Mutohar.,S.H Achmad Arifullah.,S.H.,M.H	
Consumption Division	: Shinta Pratiwi	
Member	Latifah Rosdiyati.,S.E Siti Pardiyah Laili Rohmah.,S.E Laila Najihah.,S.H	
Receptionist	: Riftia Anggita W.S.,S.H Auliana	
General Assistant	: Riswanto NurAlamsyah Rofiq	
Security	: Rohmani Arif	
Driver Irwanto	: Ismail	

PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

TABLE OF CONTENTS

Front Page	i
Information of the International Seminar	ii
Committee Composition	iii
Preface	iv
Greeting From The Dean Faculty of Law	vi
THE IMPACT OF ARTICLE 3(1) OF MALAYSIAN CONSTITUTION TOWARDS JUDGMENT MADE IN CIVIL COURT	
Ahmad Zaharuddin Sani Sabri	1
INTANGIBLES INTELLECTUAL PROPERTY DEVELOPMENT CONCEPTS AS BANKING PRINCIPLES IN INDONESIA	
Anis Mashdurohatun	11
THE HISTORICAL DEVELOPMENT OF THE FRENCH LEGAL SYSTEM	
Hilaire Tegnau	23
JAPANESE CONSTITUTION AND STATE SYSTEM	
Shimada Yuzuru	29
POWER AND PROCESSES UNDER THE THAI CONSTITUTION 2017”	
Henning Glaser	38
JURIDICAL NORMATIVE REVIEW OF DIFFERENT RELIGIOUS MARRIAGE	
Doni Adi Supriyo	38
THE IMPLEMENTATION OF ROLES AND FUNCTIONS OF REGIONAL HOUSE OF REPRESENTATIVES (DPRD) BASED ON LAW STATE FRAMEWORK TO ACHIEVE GOOD GOVERNANCE	
Agus Sukadi	65
OPTIMALIZATION OF THE ROLE OF THE DPRD (Regional House of Representative) IN THE PREPARATION OF REGIONAL REGULATIONS	
Budi Alimudin	81
THE PROGRESSIVE LEGAL THEORY IN THE IMPLEMENTATION OF LAW ENFORCEMENT BY THE LAW ENFORCER (POLICE, PROSECUTOR, JUDGE)	
Teguh Santoso	99

CRIMINAL POLICIES IN LEGAL ACCOUNTABILITY AGAINST FACILITATION OF HEALTH SERVICES AND HEALTH PERSONNEL IN DISTRIBUTION AND SALES OF HARD DRUGS FOR SALE WITHOUT PRESCRIPTION DOCTORS Teguh Santoso	99
CRIMINAL POLICIES IN LEGAL ACCOUNTABILITY AGAINST FACILITATION OF HEALTH SERVICES AND HEALTH PERSONNEL IN DISTRIBUTION AND SALES OF HARD DRUGS FOR SALE WITHOUT PRESCRIPTION DOCTORS Yadi Supriyadi.....	111
RECONSTRUCTION OF PATIENT LEGAL PROTECTION HOSPITAL IN USE OF X-RAY IN THE HEALTH BASED FIELD OF JUSTICE Andhika Yuli Rimbawan.....	127
CORRUPTION ASSET RECOVERY THROUGH STATE CIVIL LAWSUIT Sujono.....	139
THE EFFECTIVENESS OF GUIDANCE OF CHILD PRISONERS IN ADULT PRISON Wilsa	147
URGENCY OF VOTERS PARTICIPATION ON THE REGIONAL HEAD ELECTION IN THE STATE OF DEMOCRACY (Study: Voters Participation On Governor and Vice Governor Election in Indonesia in2015) Dewi Haryanti	152
COMPARATIVE RULES ON DETENTION IN SOME COUNTRIES Dewi Haryanti	158
THE DEVELOPMENT OF LAW OF BUYING AND SELLING LAND IN INDONESIA Lilik Warsito	169
INDONESIAN LEGAL DEVELOPMENT PROGRESSIVE LAW APPROACH TO BUILD THE LAW IN INDONESIAN SENSE Wendra Yunaldi	179
REMOTE SENSING TO THE INDONESIAN SURFACE OF THE FOREIGN SATELLITE AND THE SOVEREIGNTY OF INDONESIA Ruman Sudradjat.....	186
THE CONSTRUCTION OF THE RAHN SYARIAH LAW IN THE LEGAL SYSTEM OF WARRANTIES OF INDONESIA Suryati	194
THE DEVELOPMENT OF ISLAMIC LAW IN THE LEGAL SYSTEM IN INDONESIA Sumarwoto	194

CONTRACT ABOLITION DUE TO UNDUE INFLUENCE (LAW RECONSTRUCTION OF OBLIGATION THE CIVIL CODE IN INDONESIA) Bahmid	210
FIDUCIARY GUARANTEE PROBLEMATIC WITH OBJECTS INVENTORY IN CREDIT AGREEMENT LathifahHanim and MS.Noorman	214
LEGAL POLICY OF INVESTIGATOR IN CASE SETTLEMENT CRIMINAL VIOLENCE IN THE HOUSEHOLD Anwar Sanusi Simanjuntak.....	222
INDUSTRIAL RELATIONS COURT’S VERDICT IN THE CASE OF CERTAIN TIME WORKING AGREEMENT (PKWT) BECOME UNCERTAIN TIME WORKING AGREEMENT (PKWTT) (Analysis of Industrial Relations Court’s Verdict Number : 37/G/2011/PHI.Mdn) MangarajaManurung	222
DOMESTIC COMPANY LAW "PMDN" AFTER SHARE PURCHASED (ACQUIRED) BY FOREIGN CITIZENS OR FOREIGN LEGAL AGENCIES M. IrfanIslamiRambe	245
GUARANTEE OF RICE FARMS HAVE NOT YET BEEN HARVESTED IN SIMALUNGUN REGENCY RiduanManik.....	245
LEGAL PROTECTION OF CONSUMERS IN CONSUMER FINANCING AGREEMENTS Imelda Mardayanti	267
THE AUTHORITY OF PERFORMING A DEATH PENALTY ACCORDING TO THE DOCTRINE OF LOVE OF JESUS CHRIST IN THE BIBLE Dame Pandiangan.....	278
CRIMINAL ACCIDENT OF NARCOTICS, APPLICATION OF LAW NUMBER 35 YEAR 2009 AND JUDICIAL DECISIONS IN THE COURT COUNTRY KISARAN Muhammad SalimFauziLubis	283
ISLAMIC LAW STUDY ABOUT DAM TAMATU' HAJJ FOR INDONESIAN JAMAAH HAJJ FOR PEOPLE’S CONSULTATION Muthoam	290
IS RICH AND POOR UNIFORM IN PATENT LAW AbdThalib.....	299

PREVENT VIOLENT ONLINE VIDEO GAMES THROUGH LEGAL CONSTRUCTION Yenny AS, Charlyna S. Purba, Hendrik	309
COMMUNITY PARTICIPATION IN THE FORMATION OF LOCAL REGULATION BASED ON JUSTICE (Analysis of Political Interaction and Law) NursidWarsonoSetiawan	314
THE ROLE OF POLITICAL PARTIES IN RECRUITMENT OF CANDIDATES FOR REGIONAL HEAD AND DEPUTY REGIONAL HEADS BASED ON LAW NO. 32 YEAR 2004 (CASE STUDY IN PURBALINGGA AND CILACAP) Anton Budiarto	324
THE BASICS AND THE FUNCTIONS OF FINGERPRINTS OF MURDER PERPETRATORS AchmadSulchan, Annisa	343
RECONSTRUCTION OF DIFFERENT TYPES OF MENS REA TO PROVE CORRUPTIONBASED ON JUSTICE VALUES ArifAwaludin	349
PRINCIPLES OF FAIR LAND REGISTRATION (STUDY OF PUBLIC SERVICE OF LAND REGISTRATION IN INDONESIA) Shalman	355
INDEPENDENCY AND IMPARTIALITY OF AD HOC JUDGE INDUSTRIAL RELATIONS COURT (PHI) IN RESOLVING DISPUTES ResyDesifaNasution	378
CONSTRUCTION WORK CONTRACT IN GOVERNMENT BASED VALUE OF BENEFIT MokhamadHilman.....	387
SHARIA ECONOMICS DISPUTE RESOLUTION IN RELIGIOUS COURT INSTITUTIONS Amanah	400
WOMEN PROTECTION POLICY FROM PHYSICAL VIOLENCE BASED ON JUSTICE VALUES HadjarHandokojati	417
LEGAL ANALYSIS ON THE IMPLEMENTATION OF DIRECT APPOINTMENT OF PROCUREMENT SERVICESOF GOVERNMENT’S PROJECT HumalaSitinjak.....	424
RECONSTRUCTION ON CORRUPTION ACT AND SHIFTING BURDEN OF PROOF ON THE SETTLEMENT OF CORRUPTION IN INDONESIA IbnuHadjar.....	434

COMPARATIVE RELIGIOUS APPROACH IN THE DEVELOPMENT OF NATIONAL CRIMINAL LAW SYSTEM Sri EndahWahyuningsih.....	443
LEGAL STUDY OF DECISIONSSUPREME COURTS NUMBER: 85 K / Pid.Sus / 2012Contract Abolition Due to Undue Influence (Law Reconstruction of Obligation the Civil Code in Indonesia) Ismail.....	449
THE EXISTENCE AND RECONSTRUCTION OF SALE AND PURCHASE FIQH MADHAB SYAFI'I IN GLOBALIZATION ERA (Sale and Purchase Practice Study in PondokPesantrenTahfidzul Qur'an Al-Asy'ariyahWonosobo Central Java and PondokPesantren Al-Munawir Krapyak Jogjakarta) Machfudz.....	457
RECONSTRUCTION OF LEGAL SANCTIONS ON BUILDING FAILURE IN LAW NO.2 YEAR 2017 ON CONSTRUCTION SERVICES BASED ON THE VALUE OF BENEFIT SubhanSyarief	466
THE CONSTRUCTION OF RESIDENTIAL SERVICES AND CIVIL REGISTRATION BY THE GOVERNMENT OF PEMATANGSIANTAR CITY IN PERSPECTIVE OF PUBLIC SERVICES LAW NO: 25 2009 PandapotanDamanik.....	485
CRIMINAL RESPONSIBILITY AND CIVIL RESPONSIBILITY ACCORDING TO COMMON LAW FOR A MAN WHO HAS SEXUAL INTERCOURSE BEFORE LEGAL MARRIAGE MangembangPandiangan	485
INTERNATIONAL SEMINAR PHOTOS	512

CRIMINAL RESPONSIBILITY AND CIVIL RESPONSIBILITY ACCORDING TO COMMON LAW FOR A MAN WHO HAS SEXUAL INTERCOURSE BEFORE LEGAL MARRIAGE

Mangembang Pandiangan

mangembangpandiangan@yahoo.com

Student of Doctoral Program in Law Science, UNISSULA

ABSTRACT

In State Law, the law should be in the life of nation, so that a person or society cannot do something arbitral acts that violate the human rights.

There are many cases of intercourse between a man and an adult woman outside marriage the legal for a variety of reason/but then the man subject of the intercourse does not want account for his actions so intercourse is experience torture physical and mental because the act a man intercourse cannot be prosecuted by criminal law.

If there are cases of intercourse if at love between a man and woman outside marriage lawful reported to the police, then the police will refuse to accept the report and the complaint, on the grounds that the criminal law is not set, so that such actions will became cannot be legal.

And the man as a subject of intercourse cannot be had Responsibility for his actions, there is nothing until now the existence of legal certainty, where incidents of sexual intercourse with adult woman outside marriages are common and such acts cannot be prosecuted according to the law if the man of intercourse is not accountable for his actions with marrying a woman who is a victim of sexual intercourse outside of the legal marriage because the rule of law invitations set it.

Keyword : Responsibility criminal,civil ,customary law, of sexual Intercourse outside marriage.

A. INTRODUCTION.

Indonesia is a constitutional state, as stated in the constitution in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. As a constitutional state, Indonesia in carrying out its various activities is always based on law. Indonesian law is the overall rules and principles based on justice governing human relationships in the current society in Indonesia, As a State of Law, it should be the rule of the game (Rule of Game) in the life of nation and state, so that a person or society cannot do something of an arbitrary act that violates the human rights of others.

There are many cases of sexual intercourse between an adult man and woman outside legal marriage with a variety of reasons (motive). However, the man does not want to account

for his actions, so the victim of sexual intercourse is experiencing physical and mental torment because of the act of the man cannot be prosecuted under Criminal Law.

If there is a sexual intercourse case (the man and the woman did it under the love reason) outside the legal marriage is reported to the police, the police will refuse to receive such reports and complaints. There is no regulation that rules it, so that the act cannot be punished.

The issue of violence against women is not separated from the issue of discrimination against women, so efforts to eliminate violence against women must be related to end discrimination against women.

The Government of the Republic of Indonesia has endeavored the violence against women to end immediately with the enactment of Law Number 23 Year 2004 regarding the abolition of domestic violence (KDRT) issued on 22 September 2004. The Government has also launched a National Action Plan to eliminate violence against women and Zero Tolerance/no tolerance for violence against women.

Although the Government of the Republic of Indonesia has attempted to tackle violence against women by establishing legislation, but the rules on the prevention and prosecution of a man's conduct sexual intercourse with a woman outside the legal marriage (the man does not take responsibility to the woman) does not exist until now. Whereas there are many incidents of intercourse with adult women outside legal marriage occur, but the act cannot be punished. The man should marry the woman as a consequence of having sex before marriage. However, there is no regulation which regulates this issue so far.

B. DISCUSSION

1. DEFINITION OF LEGAL RESPONSIBILITY

According to Big Indonesian Dictionary (KBBI), responsibility is the obligation to bear everything if anything happens may be prosecuted, blamed, and held. In the dictionary of the law, responsibility is a necessity for a person to carry out what has been obliged to him.¹ According to the law, responsibility is a consequence of a person's freedom regarding his actions which are related to ethics or morals in doing an act.² Furthermore, according to the

¹ Andi Hamzah, Kamus Hukum, Ghalia Indonesia, 2005.

² Soekidjo Notoatmojo, Etika dan Hukum Kesehatan, Rineka Cipta, Jakarta, 2010, hlm.

Titik Triwulan, responsibility must have a basic philosophy, that is the cause of the legal right for a person to prosecute other people as well as in the form of the birth of legal obligations of others to give accountability.³

According to the basic civil law, responsibility is divided into two kinds, namely mistakes and risks. Thus, it is known as liability based on fault and liability without fault known as risk liability or absolute liability (strict liability).⁴

The basic principle of liability on the basis of mistake implies that a person must be responsible because he/she made a mistake because it harms others. On the other hand, the principle of risk responsibility is that the plaintiff's consumer is no longer required but the defendant's producer is directly responsible as a risk to his business.

2. THEORY OF LIABILITY

According to Abdul kadir Muhammad, theory of responsibility in tort liability is divided into several theories, namely:⁵

- a. Responsibility due to an unlawful act (intentional tort liability), the defendant must have committed the act in such a way as to disadvantage the plaintiff or know that what the defendant did will result in a loss.
- b. The responsibility for negligence tort liability is based on the concept of fault associated with morally and intertwined laws (interminglend).
- c. Absolute responsibility due to unlawful conduct without questioning sticks liability, based on his actions either intentionally or unintentionally, meaning that although not his fault remains responsible for the harm caused by his actions.

.RESPONSIBILITY ACCORDING TO CRIMINAL LAW

Accountability is an act that is deplorable by society and it is accounted by the maker. For the existence of criminal responsibility, it must be clear in advance who can be accounted for, this means must first be confirmed as declared as a maker of a crime.

³ Titik Triwulan dan Shinta Febrian, *Perlindungan Hukum bagi Pasien*, Prestasi Pustaka, Jakarta, 2010, hlm 48.

⁴ Ibid. hlm. 49

⁵ Abdulkadir Muhammad, *Hukum Perusahaan Indonesia*, Citra Aditya Bakti, 2010, hlm.503.

Criminal liability in foreign terms is also referred to as teorekenbaardheid or criminal responsibility that leads to action-seeking in order to determine whether a defendant or suspect is accountable for a criminal act that occurred or not.⁶

Criminal liability is the accountability of a person against a criminal offense committed. Strictly, the person responsible is the crime he committed. Thus, the occurrence of criminal liability is caused by a crime committed by a person.⁷

Criminal liability is defined as the continuation of objective condemnation of a criminal act and subjectively available to be eligible to be punished for doing so. The basis of a criminal act is the principle of legality, whereas the basis of the punishable by the maker is mistake. This means that the criminal offender will only be convicted if he/she has a mistake in committing the crime. Someone is said to have mistaken regarding a criminal liability.⁸

In the criminal law the concept of "Accountability" is a central concept known as the doctrine of mistake in Latin, the doctrine of mistake is known as mens rea. The doctrine of mens rea based on an act does not result in a person guilty unless the person's mind is evil. In English the doctrine is formulated with an act does not make a person guilty, unless the mind is legally blameworthy. Based on these principles, there are two conditions that must be met to be able to convict a person, that is, there is an outward act of forbidden/criminal acts (actus reus), and there is an attitude of the evil / interrupted (mens rea). An act does not result in a person guilty unless the person's mind is evil. In English the doctrine is formulated with an act does not make a person guilty, unless the mind is legally blameworthy. Based on these principles, there are two conditions that must be met to be able to convict a person, that is, there is an outward act of forbidden/criminal acts (actus reus), and there is an evil / interrupted attitude (mens rea).

Mistake is a very important thing to convict someone. Without mistake, criminal liability will never exist. Therefore the penal law recognizes the principle of "no crime without error" (geen straf zander schuld). This principle of mistake is a fundamental principle in criminal law, the fundamental principle of which is so pervasive and echoed in almost all the important teachings of the criminal law.

⁶ Saefudien, Bunga Rampai Kebijakan Hukum Pidana ,2001 . Bandung : Citra Aditya Bakti ,hal.76

⁷ Chairul Huda, Tiada Pidana tanpa kesalahan hal. 70-71

⁸ Roeslan Saleh, Perbuatan Pidana dan Pertanggungjawaban Pidana, Jakarta: Bina Aksara. Hal.

Criminal liability can only occur if a person has previously committed a crime. Moeljato said, "one cannot be held accountable (sentenced) if he does not commit a crime."⁹

Responsibility is an element of error, so to prove the mistake of the element must be proven again.

It is difficult to prove and takes a long time, the element of responsible ability is thought to be secretly always available because in general every normal person is inner and capable of being responsible, unless there are signs indicating that the defendant may be an abnormal soul. In this case, the judge ordered a special examination of the circumstances of the defendant's soul even if not requested by the defendant.

If the results still doubt the judge, it means that the responsible ability does not stop, so the mistake does not exist and the criminal cannot be imposed based on the principle of not being punished if there is no sameness. In the Criminal Code the problem of responsible ability is contained in Article 44 paragraph 1 which reads: "he who performs acts that cannot be accounted for him because his soul is flawed in growth or disturbed by defect, not be punished".¹⁰

Responsibility to be discussed is related to criminal acts that are generally formulated by the legislator for the criminal acts concerned. But in reality, to make sure who the author is not easy because to determine who is guilty must be in accordance with the existing process, namely the criminal justice system based on the Criminal Code.

3. RESPONSIBILITY ACCORDING TO CIVIL LAW

Civil Accountability of the agreement between men and women outside of marriage, then the man who cannot account for the act of intercourse outside the Legal Marriage according to the Law can then be categorized as having committed the Unlawful Act over the woman who was intercourse.

The term of action against the law is derived from the Dutch language termed *onrechmatige daad* or in English called *tort*. The word 'tort' develops in such a way that it means a civil mistake that is not from a contractual default. The word *tort* comes from the

⁹ Moeljato, *Asas-Asas Hukum Pidana*, Jakarta : Bina Aksara, 1887, hal 155

¹⁰ Saefudien, *Op.cit* hal 76

Latin *orquer* or *tortus* in French, as the word *wrong* comes from the French *wrung* meaning *injury*.

In principle, the objective of the establishment of a legal system which became known as the *unlawful bondage* was to be achieved as the Latin quote, *ie praecepta sunt haec honeste vivere juris, non-leadere alterum, suum cuque tribune* means that the slogan of the law is *life honest, do not harm others and give others their rights*.

Before 1919 the meaning of *unlawful acts* was an act that violated written rules. But since 1919 based on *Arrest HR January 31, 1919* in the case of *Cohen against Lindenbaum*, then what is meant *unlawful acts* are acts that violate the rights of others, written law and unwritten law, legal obligations and propriety and decency received in the community.¹¹

Unlawful acts (onrechmatige daad) are regulated in *Book III of the Civil Code*. The formulation of the act against the law is contained in *Article 1365 of the Civil Code* namely:

"Any act that is unlawful, which carries harm to another person obliges the person who due to his mistake to issue the loss, compensates for the loss"

According to *Article 1365 of the Civil Code*, what is meant by *unlawful acts* is *unlawful acts committed by a person who because of his harm has caused harm to others*. In the science of law is known 3 (three) categories of acts against the law, namely as follows:¹²

- a. *Unlawful acts of intent*.
- b. *Unlawful acts without errors (no element of deliberate or negligent)*.
- c. *Unlawful acts due to negligence*.

If it is reviewed from the *Indonesian Civil Code's regulation of unlawful acts*, as well as the *Civil Code in the Continental European state system*, the model of legal liability is as follows:¹³

- a. *Responsibility with elements of mistake (intentional and negligent), as regulated in Article 1365 of the Civil Code*.

¹¹ Abdulkadir Muhammad, *Hukum Perusahaan Indonesia*, Citra Aditya Bakti, 2010, hlm. 511.

¹² Munir Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, Citra Aditya Bakti, Bandung, 2010, hlm. 3

¹³ *Ibid* hlm.3

- b. Responsibility with elements of error, especially the element of negligence, as provided for in Article 1366 of the Civil Code.
- c. Absolute responsibility (without error) in a very limited sense as set forth in Article 1367 of the Civil Code.

4. RESPONSIBILITY BY ADAT LAW

Hazairin provides a relatively long description of indigenous and tribal peoples as civic units which have the means to stand alone that is to have the unity of law, the unity of the ruler and the unity of the environment based on the common right of land and water for all its members.¹⁴

The structure of indigenous and tribal peoples are based on male lineages, patrilineal or customary law communities, as well as indigenous and tribal peoples whose structures are based on hereditary ties according to the female line of indigenous or matrilineal law communities.¹⁵

Some of the basic characteristics of indigenous and tribal peoples are they are a group of people who have their own wealth regardless of personal wealth and have certain territorial boundaries and certain powers. Thus, ulayat land rights show the legal relationship between the legal community or the subject of rights and land or a particular area or rights of object.

To provide a more complete picture of the criminal offense, the following restrictions or understandings of criminal acts are found in accordance with customary law. Serving in this context is seen as very important, especially if it is realized that the idea or idea of living law begins to be in line with the efforts of national criminal law reform that want to place customary law as a source of national criminal law. Starting from such thoughts, the stoning of the limits/understanding of criminal acts according to customary law becomes a necessity.

The order of law in the Society, the small legal community see the mistake (*delichht*) is any one-sidedness (*eenzijdig*) to equilibrium and every collision in terms of one on the material goods of life and immaterial of the individual,. Or the person-person who constitute a whole (group of people) of such action give rise to a reaction of its nature and to the extent set by customary law is a custom reaction (*adatreactie*) because of the reaction whereby the

¹⁴ Soerjono Soekanto, *Hukum Adat Indonesia*, Raja Grafindo Persada, Jakarta, 2005, h. 95

¹⁵ Muhammad Bushar, *Asas-asas Hukum Adat Suatu Pengantar*, Pradnya Paramita, Jakarta, 2006, h. 19

affluence can and should be restored (mostly by way of payment of offenses in the form of goods or money).

It has been argued earlier that the possibility of people to be able to describe in a society where relationships brought human, supernatural powers, land, goods and others who reside in this world, which relationship in the minds of society in the community is considered as normal), and as an absolute requirement for a happy and harmonious life. Also which relationship is called "Balance" (Evenwicht). Therefore, both mankind, and society are the center of the relationship. So that one can say the circle of human life (levenskring) or the environment of society then the normal condition is a state of equilibrium.

Any indecent offense, even improper conversation, of the life cycle and what is associated with it, the reaction of man is that he is then embarrassed and willing to remove his embarrassment (or the causes the shame). From the above explanation, it suggests earlier that what are the subjects of the relationships by the minds of the people is raised up, so that there is value that can be equated with other values. Therefore the material object and immaterial object can be replaced one with another for the restoration of the desired balance.

What is meant by the mind of society is the alloy rather than the "pairs of mind" (participierend) experienced and the intellectual mind (analyserend). It is in every society controlling the general assumption of the representation collectives.

With the existence of a consciousness in self-defense, it is not only a possibility, but also a necessity. If the life cycle is violated, it should be replaced in the same way (reprociteitsidee).

In the prosecution of payment for the offense (delictsbetalingen), it has been included as a duty to restore the balance (kosmisch) which in the living community is certainly of course must be determined. So the balance depends on the happiness of humankind and mankind. Permanent disorder can be weakened and it is not only the objects that are violated, but over the whole society. Therefore from the payment of the offense if that is violated objects rather than the "Magisch" relationship which is very closely related to the payment for "deed of cash". The first in recovering, while the latter explains to prevent event-offs, and the payment of the offense is partially related to the payment of credit deeds (crediethandeling) which may cause the giving to take away and restore part of the process of health counterpart. The word

infringement (Delicht) refers to a one-sided act which the other party does not justify giving, taking and returning as a part of the equilibrium process.

As for reasons for balance disorders (objectively) and recovering that equilibrium when violation occurs, and explored by a very personal element whose properties are shame elements or elements alluded to their feelings, an element of guilty, anger or revenge rather than people affected on one side and the next is neglect and intentional intentions rather than the offender of the party dialect. Disputes, hostility and resentment between two fellow members of society who can weaken the gang, and good relationships must be restored. The vengeance must be eliminated in the interest of the people, so that the offended demand compensation. The personal reasons and the reasons for society are intermingled with one another and merge into one, its basic form, the law of violation is the same. Homogeneous with the customary law of the other parts, because of the difference in the judgment of material goods and the immaterial and the difference in the balance the balance of each other, then the law of violation is various.

Honor and courtesy, the lives of family members and relatives, their own bodies, the health and conditions of life "magisch" belonging to the goods of relationships with children and wife. All of them include in the circle of individual life that must be protected. Breaking the rule means causing a disturbance of balance, causing shame, anger and resentment and weakening the individual, his family and the community.

Interfaces have their own names, often including a number of actions that are similar to each other, such as making a variety of thefts, although the native's name rather than the offense may contain stretchable intentions which result in the holder's engagement -The power-holders of the Asat against the deeds that are considered bad.

The payment of the offenses has a peculiarly unexplainable relationship and what has been violated, among other things: three plates for offense, ordinary contempt must serve three dishes and a pig for severe humiliation, ten plates of violation against a people's and an example others, among others, violations and payments that have been drawn from thousands and thousands of others who cannot be explained like the example above.

Payments for violations often negate the "Magicsh" nature that evidences of curiosity would mention the names of goods that should be given as payment by the slaves (eg: cows, slaves) and the fact that they are nonexistent his objection granted him and that the

merchandise which had been carried by the violation was in fact replaced by money. The payment of the offense is in the same way with a certain amount of money this morning. In fact, in the legal order in the Community. The small legal community is considered to be a delict is any one-sided disturbance (eenzijdig) to the equilibrium of the collisions in terms of one on the material goods and immaterial life of a person, or of the multitudes which constitute a whole (swarm) of such actions give rise to a reaction of its nature and to the extent determined by customary law is custom reaction (adatreactie) because of which reaction can and should be restored (mostly by way of payment of violations in the form of goods or money).

Any indecent offense, even improper conversation, of the life cycle and what is associated with it, then the reaction of man is that he is then embarrassed and willing to remove his embarrassment (or the causes rather than the shame) The above description suggests earlier that what are the subjects of the relations by the minds of people is raised high, so that there is value that can be equated with other values, therefore the material and immaterial can be replaced with one the other for the restoration of the desired balance. What is meant by the mind of society is an alloy rather than a "participierend" mindedness and the mind-set of intellect (analyserend) as it is in every society controlling the general assumption of hordes of mankind (representations collectives).

With the existence of a consciousness in self-defense is not only a possibility, but also a necessity, if the life cycle is violated and to replace the violated value in the same way (reprociteitsidee).

The prosecution of payment payments for a violation (delictsbetalingen) has been included as a duty to restore the balance (kosmisch) which in the living community is certainly of course must be determined, so which balance depends on the happiness of humankind and mankind, permanent disturbance rather than the balance can weaken and not only the objects are violated, but over the whole society, therefore from the payment of the offense if the object is violated rather than the "Magisch" relationship which is closely related to the payment for "cash deed".

In recovering, the latter explains preventing event-offsetting, and the payment of the offense is partly related to the payment for credit deeds (crediethandeling) which can cause the giving to take away and restore part of the balance process.

The word of offense (delicht) refers to a one-sided act which the other party does not justify giving, taking and returning as a balance, as for reasons for balance disorders (objective) and restoration of that balance also in the event of a Violation, and is exploited by a very personal element whose properties are shame-shaped elements or alluded to their feelings so as to be embarrassed, elements of discomfort, anger or revenge rather than those affected by one party and the elements the next is negligence and intentional intentions rather than the offending party. disputes, accusations and hatred between two fellow members of society (offenders and offenders who can weaken the gang, and good relationships must be restored, vengeance must be eliminated for the sake of the community, so that the offended demand compensation, the reasons for personal and the reasons people mix with each other and merge into one.

The basic form is that the law of transgression is the same, homogeneous with the customary law of other parts, because of the difference in the judgment of material and immaterial goods and the differences in the balance of each other, the law of violation is in the same manner the honor and modesty, the lives of family members and relatives, their own bodies, the health and conditions of life "magisch" belonging to the relation of the children and of the chicks, all of which include the circle of individual life that must be protected against the offense , the offense against it causes a disturbance of balance, causing shame, anger and resentment and weaken the individual, his family and the community.

Interfaces have their own names, often including a number of actions that are similar to each other, such as making a variety of thefts, although the native's name rather than the offense may contain stretchable intentions which result in the holder's engagement -The power-holders of the Asat against the deeds that are considered bad.

The payment of the offenses has a peculiarly unexplainable relationship and what has been violated, among other things: three plates for offense, ordinary contempt of three dishes and a pig for severe humiliation, ten plates of violation against a people's and an example others, among others, violations and payments that have been drawn from thousands and thousands of others who cannot be explained like the example above.

The payments for the offenses often impose its "Magicsh" character which evidently from the cruelty will mention the names that should be given as payment by the slaves (eg: cows, slaves) and it turns out from those things with nothing his objection granted him and

that the merchandise which had been carried by the eunuchs was in fact replaced by money or with some money. That the payment of the offense is in the same manner as the money this morning, in fact, the payments of such offenses in some legal environments contain special bearers, for example BOSI ELEGEN HEAD OF TAJAU (West Borneo) with its essence: A pot for 10 stacks of bowls and 12 bowls regardless of which payment of the offense is set instead of making a breach of any kind but of making a collection of various violations, the Toraja tribe discriminates against offenses by using the mouth it is subject to payment by using a chicken as a basis and a violation or a crime resulting from the use of hand then the payment due to the crime is a goat and then a violation with the agency, the payment for the crime using an Ox as the basis of payment, in payment of the offense depends on the weight of the crime that has been done then the payment of offense the real one is for example: a chicken plus three things, or a lot of mistakes punished with money objects.

That each legal environment has a map of its violations and its typical reactions and has a general pattern that for the case of theft of payment the offense is twice or several times the price of the stolen item.

That if the victim of the offense and perpetrator of the offense are the same as the community, then the happiness of the community demands a settlement, either only at the request of the sacrifice because of shame or regardless of it, it can move towards the restoration of the weakening of the society by preventing the catastrophe and preventing its complete destruction.

That in the order of law in the Society The small legal community apparently a delegation is every disturbing (eenzijdig) to equilibrium and each of the collisions in terms of one on the goods of material life and immaterial one, or from the multitudes which constitute a whole group of such actions give rise to a reaction of its nature and to the extent determined by customary law (adatreactie) because of the reaction whereby the affluence may and should be restored (mostly by way of payment of offenses in the form of goods, goods or money).

The prosecution of payment for the violation (delictsbetalingen) has been included as a duty to restore the balance (kosmich) which in the living community is certainly a matter of course must be determined, so which balance depends on human happiness and humanity.

That the constant disruption of the balance can weaken and not only the objects are violated, but over the whole society, hence on the payment of the offense if that is violated

objects rather than the "Magisch" relationship which is closely related to the payment for "the act of cash "The first in recovering, while the latter explains preventing event-offsetting, and the payment of the offense is partly related to the payment for credited deeds which may cause the giving to take and recover part of the balance process, delich) means a one-sided act which the other party does not justify giving, taking and returning as a balance of equilibrium.

As for reasons for balance disorders (objective) and restoration of balance also when there is a Violation, and explored by a very personal element whose properties are shame elements alluded to his feelings so as to become embarrassed (in shame embarrassment complexity, anger or revenge of the affected persons on one side and the next is neglect and intentional intention of the offender of the party, disagreement, hostility and hatred among two fellow members of society (offenders and which can weaken the gang, and good relationships must be restored, the sense of resentment must be eliminated for the sake of the community, so that the offended demand compensation, then the reasons for individual and the reasons people mixed with each other and merged into one.

The basic form is that the law of transgression is the same, homogeneous with the customary law of other parts, because of the difference in the judgment of material and immaterial goods and the differences in the balance of each other, the law of violation is in the same manner the honor and modesty, the lives of family members and relatives, their own bodies, the health and conditions of life "magisch" belonging to the relation of the children and of the chicks, all of which include the circle of individual life that must be protected against the offense , the offense against it causes a disturbance of balance, causing shame, anger and resentment and weaken the individual, his family and the community.

Payments for violations often negate the "Magicsh" nature that evidences of nursing will mention the names of goods that should be given as payment by the slaves (for example: cows, slaves) and the fact that they are nonexistent his objection granted him and that the merchandise which had been carried by the violation that was in fact replaced by money or with some money. That the payment of the offense is in the same manner as the money this morning, in fact, the payments of such offenses in some legal environments contain special bearers, for example BOSI ELEGEN HEAD OF TAJAU (West Borneo) whose essence: A pot for 10 stacks of bowls and 12 bowls regardless of which payment of the offense is set instead of making a breach of any kind but of making a collection of various violations, the Toraja tribe discriminates against offenses by using the mouth it is subject to payment by

using a chicken as a basis and a violation or a crime resulting from the use of hand then the payment for the crime is a goat and subsequent violation with the agency then payment for the crime using an Ox as the basis of payment, payment of the offense depends on the weight or not of the crime that has been done then payment of the offense s In fact, for example: a chicken plus three things, or a lot of mistakes are punished with money objects.

Each legal environment has a map of its offense and its distinctive reactions and has a general pattern that for the case of theft of payment the offense is twice or several times the price of a stolen item.

If the victims of the offense and perpetrators of the offense are the same people, the happiness of the community demands a settlement, either solely on the request of the sacrifice due to shame or regardless of it. The village chief can move towards restoring the weakening of society by preventing calamity and preventing destruction full.

the actions of fellow community members who violate the values of Immaterial and Materiel from the community itself with no offense to others For example: Sexual intercourse among people whose marriage to each other will be able to disrupt the order of structure than the community, giving birth to children with no marriage first , violating the pieces of old land (beschikkingrecht) which is intended for the interests of society, does not come in a collection, the payment of the offense in some legal environments contained a special body, for example BOSI ELEGEN HEAD OF TAJAU (West Borneo) with its essence: A pot for 10 stacks of bowls and 12 loose bowls, which payment of the offense was set instead of making a breach but made various tribes of violations, Torajan tribe discriminates against offenses by using the mouth it is subject to payment by using a chicken as a base and a violation or a crime resulting from the use of a hand then the payment of the crime is a goat and then a violation with the agency then the payment for the crime of using an Ox as a basis for payment.

5. THE PERSONNEL INTERESTS

According to the common conceptions known to the Society as well as in the Indonesian dictionary, the definition of Zina or intercourse includes any form of sexual intercourse outside the legal marriage, whether committed by an unmarried (Fornication) or married (overspel/adultery).

According to Criminal Code, zina is only identified with Overspal. This can be seen from the provisions of Article 284 of the Criminal Code which means: a. Intercourse is done by married people only, b. Unmarried partners are only considered as participants of the perpetrator, c. the intercourse is not approved by the husband or the wife in question.¹⁶

First, they are sentenced to nine months imprisonment: 1st: a. The married man, who commits adultery, is known, that the Article of the Civil Code (Civil Code) applies to him; b. The married woman, who commits adultery; 2nd: a. The man who commits adultery, is known, that the guilty, already married; b. The unmarried woman, who commits adultery, is known that the guilty is married and Article 27 of the Civil Code applies to him.

Secondly, no prosecution, except for the complaint of a disgraced husband and wife and, in the case of a spouse, applies Article 27 of the Civil Code if within three months after this complaint he enters a lawsuit to divorce or to be exempt from the obligation to dwell together because of that also. Third, on this complaint does not apply Article 72, 73, and Article 75 of the Criminal Code. Fourth, This Complaint can be withdrawn while the court hearing has not yet begun. Fifth, if the husband / wife apply Article 27 of the Civil Code, then the complaint is ignored before the marriage is decided because of divorce or before the decision that freed them from the obligation to settle together becomes fixed.¹⁷

The definition of adultery (zina) according to Article 284 of the Criminal Code which is hinted at must be married men or women, based on Dutch thought that adultery as a marriage deny, which is different according to customary law which is based on desecration of holiness values rather than copulation/intercourse.

According to the principles applicable in the Penal Code, Elements of offense (criminal acts) are the conditions for determining to the extent that a human's conduct may be subject to Penalty / Penalty, which includes human acts which comply with the formulation of the Law and are unlawful as well as elements of the person or the perpetrator that is a mistake in the perpetrator.¹⁸

If the couple agrees to secretly become husband and wife, marpadan-padan (dating Dark) is also called MARMANAN (prostitution) and marlangka pilit (take the path astray),

¹⁶ Ahmad Bahiej, Tinjauan Yuridis atas delik Perzinahan (ovespel) dalam hukum pidana Indonesia, h. 6

¹⁷ . P.A.F.Lamintang/Cdjisman Samosir , Hukum pldana Indonesia h.121.

¹⁸ Ibid. h.7.

then the marriage should be implemented immediately after it is known. The young couple may also be ordered to admit the mistake, Manopoti, in front of the elders and parents of both parties. Such acts are determined by circumstances and relationships if the Youth leaves the woman he or she has abused in this way or if the parents do not want the marriage, the punishment will be more severe. The man is obliged to pay the cost of Pangurasian (washing) and soften the heart of Parboru (the Woman) by giving piso. Living together openly and unlawfully as husband and wife (marbagas roha-roha) is not known among young people and is not in tune with the girl's relationship with Parboru (female parents). However, this is also the case of the discipline of law and custom. The tradition is weak, ie among the elderly and married people this is a violation of customary law, wrong against custom, and deserves to be prosecuted and punished by the Government.¹⁹

6. CONCLUSION

Conclusion

Based on the description of legal issues in the above discussion, the conclusions that can be obtained from the author of the analysis is intercourse outside the marriage is legal according to law both under criminal law and Civil law and customary law have the same view where intercourse is considered to be unlawful and worthy to be given sanction of Criminal Law, Civil Law Sanction, and Customary Sanction for the violation. However, customary law in the concept of male sexual intercourse outside the legitimate Wedding can only be imposed Sanction Whether or fined by paying by goods or money and the application of customary sanctions varying according to the classification of the type of adultery which has been committed in this case the more severe the qualification of the offense is done then the consequences of criminal punishment are getting worse too.

Recommendation

1. First, Recognition of customary law can minimize the occurrence of legal vacuum in Indonesian positive law. And Secondly, There is a guarantee of legal protection against victims of the crime of adultery by acknowledging the enactment of customary law in Indonesian Positive Law.

¹⁹ . J.C Vergouwen . Masyarakat dan Hukum adat Toba Batak Toba tahun 1986 h. 189.

2. The existence of protection for women as victims of sexual intercourse between men and women outside legal marriage under the law, both in Criminal Law, civil law both in customary law.
3. In giving the Decision on the Irresponsible Man to a Woman who is Fucked outside a Legal Marriage, the Panel of Judges examining the case may be considered Customary Law applicable to the Male's residence in the award of the Final Decision so as to achieve Certainty The Law on Male Liability for Sexual Intercourse with Legal Officers.

REFERENCES

a. Regulation

- Kitab Undang-Undang Hukum Pidana.
- Kitab Undang-Undang Hukum Perdata.

b. Books

- Andi Hamzah, Kamus Hukum, Ghalia Indonesia, 2005.
- Abdulkadir Muhammad, Hukum Perusahaan Indonesia, Citra Aditya Bakti, 2010
- Ahmad Bahiej, Tinjauan Yuridis atas delik Perzinahan (ovespel) dalam hukum pidana Indonesia.
- Chairul Huda, Tiada Pidana tanpa kesalahan
- J.C Vergouwen . Masyarakat dan Hukum adat Toba Batak Toba tahun 1986
- Moeljatno, Asas-Asas Hukum Pidana , Jakarta : Bina Aksara
- Munir Fuady, Perbuatan Melawan Hukum Pendekatan Kontemporer, Citra Aditya Bakti, Bandung, 2010
- Muhammad Bushar, Asas-asas Hukum Adat SuatuPengantar, Pradnya Paramita, Jakarta, 2006
- P.A.F.Lamintang/Cdjisman Samosir , Hukum pidana Indonesia
- Roeslan Saleh, Perbuatan Pidana dan Pertanggungjawaban Pidana, Jakarta: Bina Aksara
- Soekidjo Notoatmojo, Etika dan Hukum Kesehatan, Rineka Cipta, Jakarta, 2010
- Saefudien, Bunga Rampai Kebijakan Hukum Pidana ,2001 . Bandung : Citra Aditya Bakti
- Soerjono Soekanto, Hukum Adat Indonesia, Raja Grafindo Persada, Jakarta, 2005
- Titik Triwulan dan Shinta Febrian, Perlindungan Hukum bagi Pasien, Prestasi Pustaka,Jakarta, 2010