

## THE LEGAL ASPECTS OF BOTI'S TRIBE: "WHEN THE NATIONAL LAW IS NOT REQUIRED"

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### ABSTRACT

*Some tribes in the province of East Nusa Tenggara, Indonesia, still maintain their cultural originality from outside cultural exposure, including the national legal system that applies to all regions in Indonesia. These tribes are for example: Marapu, Lamaholot, and Boti. Boti tribe communities in South Central Timor District choose to keep their own customary law. This paper discusses the reasons behind the inner attitude of the Boti Dalam tribe community, thus rejecting the national law in solving their problems. The method of research in this paper is descriptive-qualitative method of describing the meaning behind the inner attitude of society Boti Dalam tribe. The results of the study indicate that the society considers penal sanction as pain and misery applied to perpetrators, not to empower the perpetrator so that he does not repeat his actions. This is in contrast to the sanctions imposed by the King (Usif) of the Boti Dalam Tribe in order to impose sanctions on the villains, the king and the elders of Boti Dalam strongly uphold the values of their customs and belief that crime should not be avenged with evil. Their philosophy is not to treat others who are already in difficulties. In solving the theft case, the perpetrator seems to be "benefited." The perpetrator is even given a double asset by Usif according to the type of stolen item. For example, if someone steals a chicken, then the king and community of the Boti Dalam tribe will give some chickens to the thief. Usif and residents of Boti Dalam tribe will work together to plant bananas in the yard of the house's thieves. This Usif policy has a positive impact that instills a sense of caring among others and cause a deterrent effect for the perpetrators of crime. However, the other impact is that national law is not "useful" in the Boti Dalam tribe community because Usif policy is considered more appropriate and teaches the good and helps others. Experience proves that the offender does not repeat the crime. If the policy is not implemented then there will be violations of the law such as theft and other crimes will arise and the more happening, maintenance of solidarity and balance in social life will be chaotic. The 'Boti Law' policy needs to be an example for law enforcement in every region to reduce the burden of national law, because by giving space to the region to take care of its own affairs automatically the burden of national law will be reduced.*

Keywords: Inner attitude, national law, customs, culture outside.

### A. INTRODUCTION

Since thousands of years ago when people inhabited the earth, their lives were still on the scale and format of the local, homogeneous and exclusive - which is therefore more suitable for the "community" than "society" or "Political state" - the so-called "law" is generally not written and existed as the general principles in the minds of the community, treated for generations as a tradition believed from ancestors.<sup>4</sup> This community has been living and widespread as indigenous people in Indonesia. The presence of human beings in the form of communities has existed and sustained community social activities from generation to generation.

The true human have the desire to stay in touch with other human beings, whose aspiration is manifested in the process of social interaction.<sup>5</sup> The pattern of social interaction<sup>6</sup> among members of the community is growing and can threaten the independence or existence of the sovereignty of the community itself. Facing the situation of change due to the pattern of social interaction it requires organizing so that political, economic and legal functions can run as a pillar of independence

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<sup>4</sup> This is what is called the traditions or morals of the life of a community, often called "people's law", "custom law" or "customary law". Soetandyo Wignjosoebroto, *Law In Society*, 2nd Edition, Graha Ilmu Publisher, Yogyakarta, 2013, p. 1-2

<sup>5</sup> Soerjono Soekanto, Mustafa Abdullah, *Sociology of Law in Society*, Publisher CV. Rajawali, Jakarta, 1982, p. 47

<sup>6</sup> The social interaction referred to here is at the core of the social process and as a process of mutual relationships between various fields of life and between human beings as individuals, between community groups and between individuals and community groups. The process forms patterns of social interaction in society. *Ibid*, p. 50

or sovereignty. These functions are still local,<sup>7</sup> governed and controlled by an organization that was built and agreed upon by the community through a social contract or agreement through deliberation which was originally a result of customary institutions within a community group called the Indigenous Peoples. In a community of indigenous communities there are autonomous individuals with a variety of interests that must be met so that there is a need for a social contract<sup>8</sup> that is based on the foundation of the democratic soul so as to ensure the democratization and public interest of society. Therefore, the deliberation in indigenous or community groups is a pillar of democracy which at the same time regulates the survival of the community itself in the face of various threats and developments in which the development results in a change in society.<sup>9</sup>

The pluralism of Indonesia appears to be institutionalized in various communities since Indonesia's independence. The attitude of maintaining original values is still evident in the living order of indigenous groups living in their respective areas such as the Dayaks, Bedouin, Dani and others. In addition to culture, the system of government and the 'law' adopted is still with the royal system led by a Head of the Tribe who is recognized as King (in relation to culture also has a very close component in a traditional system of government). East Nusa Tenggara Province is also one of the areas in Indonesia that still maintains a very strong cultural origin, but over time there are some visible changes in the system.<sup>10</sup> Certainly there are changing areas but some still survive and reject these changes and choose to form their own system. There are several tribes in East Nusa Tenggara, which try to resist the thought of outside systems that include: (1) Marapu tribe in East Sumba,<sup>11</sup> (2) Lamaholot tribe in East Flores,<sup>12</sup> and (3) Boti tribe in South Central Timor.<sup>13</sup>

The rejection of the community or the so-called resistance always refers to the position of an attitude to survive, to endure, or to oppose the opposition<sup>14</sup> in accepting the foreign law or system that will enter. The community and some of the above areas choose to stay afloat and refuse the presence of state law which is considered to be an alien. This behavior by Zaltman and Duncan<sup>15</sup> is said to be resistance or as a behavior that serves to maintain the status quo in the face of pressure to change the status quo.

Boti tribe is a group of indigenous people located on Timor Island, especially in South Central Timor District. The Boti tribe consists of the inner Boti Tribe and the Boti of the Outside. Still maintaining the authenticity of the culture, custom rituals and the system of government is the Boti Tribe. This tribe embraces a system of royal rule led by a King who is also the Head of the Tribe/Usif. The Boti Inn community, one of the minority groups of the Dawanese/A'Toin Meto who still upholds the existence and the original beliefs of their tribe, is called by the Boti tribe outside the tribe of *Halaika* (kafir).

The life of the Boti tribe itself, in fact almost the same as the other tribes, but there is one phenomenon that is quite different from this tribe in view of the law, namely in terms of the level of violation of law or crime is very low / minimal and in terms of rules and sanctions. In Boti Dalam tribe itself in the period 2010-2015 did not find any cases of violation of law or crime cases reported to the police, this can be proven with data CT and CC Police Sector (Polsek) Ki'e sub-District.

<sup>7</sup> This concept means that politics, economy and law are still at the local level or level, at a micro level both territorially, socially and administratively. Abd. Halim, *Local Politics; Patterns, Actors and the Dramatic Flow (Perspective of Powercube Theory, Capital and Stage)*, LP2B Publisher, Yogyakarta, 2014, p. 5

<sup>8</sup> The understanding of the idea of social contract holds to the theoretical view that law is a medium of order and security, because the faced are autonomous individuals. Bernard L. Tanya, et al, *The Theory of Law: The Orderly Strategy of Men Crossing Space and Generation*, Genta Publishing, Yogyakarta, 2013, p.3

<sup>9</sup> It is a fact that a society during its life will experience changes in various aspects of life, because it takes the pillars of democracy to guard the continuity of the change. Otje Salman and Anthon F. Susanto, *Some Aspects of Legal Sociology*, Publisher PT. ALUMNI, Bandung, 2012, p. 11

<sup>10</sup> According to Rogers and Shoemaker (in Poerwanto, 2006: 170) divides the sources of change that comes from within (immanent) and that comes from outside (contact). Immanent change occurs when new ideas are created and developed by citizens without any influence from outside parties. Conversely, contact change occurs as a 'inter-system' phenomenon, that is, new ideas come from outside the social system of a society. There are two contact changes that are selective and directed. Dharmaputra T. Palekahelu, "*Marapu: The Power Behind Drought*", Salatiga, 2010, p. 34

<sup>11</sup> Related to the Marapu tribe in East Sumba, it can be read in a dissertation from Dharmaputra T. Palekahelu under the title *Marapu: The Power Behind the Drought*, see Portrait of Wunga Community of East Sumba Regency of East Nusa Tenggara Province, Salatiga.

<sup>12</sup> Related Lamaholot tribe in East Flores, can be read in the writings Dissertation of Karolus Kopong Medan.

<sup>13</sup> The above three tribes can be seen in Yunus M. Melalatoa, 1995, *Encyclopedia of Indonesian Tribes*.

<sup>14</sup> [Http://ruliantosjahputra.blogspot.com/2014/02/Resistance-to-change.html](http://ruliantosjahputra.blogspot.com/2014/02/Resistance-to-change.html) accessed on July 27, 2017, at 21:50 WIB

<sup>15</sup> G. Zaltman, dan R. Duncan, *Strategies for Planned Change*. New York: Wiley, 1977, p. 63

Table 1. Data of CT and CC of Police Sector (Polsek) Ki'e sub-District  
South Central Timor District

No	Year	Number of Police Reports	SELRA		Village Boti/ Tribe "Boti Dalam"
			P21	NON JUST	
1.	Year 2010	86	16	24	0
2.	Year 2011	89	11	56	0
3.	Year 2012	79	14	64	0
4.	Year 2013	65	14	25	0
5.	Year 2014	45	17	26	0
6.	Year 2015	59	18	12	0
7.	Year 2016	36	12	16	0
Amount		459	102	223	0

Source: Polres TTS

The data shown above shows that the degree of violation of law or crime has never occurred in the Boti Dalam tribe although many tribes in the surrounding villages whose life is not much different from the people of Boti Dalam. In Ki'e districts there are 13 villages and various tribes that live with clans such as clan or family name Nuban, Nubatonis, Tennis, Asbanu, Benu, and large tribes and other clans, but based on data only 12 villages are recorded violation of law or crime in Police Sector Ki'e sub-District through reports that go to Police Sector, whereas Boti village and more specifically Boti Dalam tribe people never reported violation of law or crime case to Polsek. The Boti Dalam tribe shows the ideal model of community life, a life of mutual respect, help and mutual cooperation in doing things, they are also very obedient and obedient to the king/ Usif so that all Usif's words are always heard and obeyed.

The Boti Dalam tribe itself to solve a case or issue does not use the applicable national law in Indonesia or can be said with a slightly extreme language that "is not subject to the application of national law". In terms of sanctions from Usif for those who violate customary rules, especially stealing in the Tribe Boti Dalam is very different with social sanctions. Sanctions were granted to the perpetrators of theft by the King and indigenous elders of the Boti Dalam tribe by profoundly upholding the customary rules and teachings of their belief that crime should not be avenged by crime. In the settlement of the crime of theft case, it is the culprit who is very "benefited". The perpetrator is even given a double asset by Usif according to the type of goods or property taken by the perpetrator. For example, if a person steals a chicken, then the king and the community of the Boti Dalam tribe, each head of the family will give a chicken to the culprit or for the theft of banana, Usif and Boti Dalam people work together to grow banana seedlings in the perpetrator's back yard. So it can provide a deterrent effect for the theft.<sup>16</sup> This indicates that the Boti tribe has its own legal culture, since it involves the attitudes or values of the people they observe will determine the operation of the legal system involved, the legal culture as well as the actualization of society and the thought of the law will change according to changes in behavior, and perceived value by community members.<sup>17</sup>

If you look at it then in the authors' view that the Boti Dalam community/tribe has found and made their own law (true law) and does not seem to 'need' the national law in the settlement of the case or problems that occur and this is an ideal condition of society law because Running without coercion,<sup>18</sup> this condition shows resistance to national law considered as foreign law by society, from this perspective writer want to study the reason behind attitude of tribe of boti which do not 'need' national law.

## B. PROBLEMS

Based on the description of the background then the author draws a fundamental question, namely: What is the reason behind the attitude of the Tribe Boti Dalam who do not seem to 'need' national law in solving cases/problems that occur in society?

<sup>16</sup> Detji K.E.R. Nuban, et al, The results of PKM DIKTI 2010 research titled Empowerment of Traditional House Lopo Orang Dawan (A'Toin Meto) As Distribution of Legal System and Alternative Court in South Central Timor District.

<sup>17</sup> International Journal of Business, Economics and Law, Vol. 7, Issue 4 (Aug.) 2015, ISSN 2289-1552, p. 31

<sup>18</sup> In this context, Bernard L. Tanya declares that we must see the reality of the 'as it is' law as it is in reality (society), that society sees the national law as a burden, so that when it should be applied there will be cultural clash with national law . Bernard L. Tanya, *Law In The Social Space*. Yogyakarta.

**C. OBJECTIVES**

To know the reasons behind the attitude of the Boti Dalam tribe people who do not seem to 'need' the national law in solving the problems/problems that occur in society.

**D. RESEARCH METHODS**

This research is a non-doctrinal legal research, especially in the fifth legal concept that law is a manifestation of symbolic meanings to social actors as seen in interaction among citizens.<sup>19</sup> The approach used is interactional approach (micro) with qualitative analysis. The research method used in this research is descriptive qualitative.<sup>20</sup> The use of this qualitative research seeks to describe or describe clearly and in detail the meanings behind the reality of the Law of Boti Dalam.

**E. DISCUSSION**

**1. Cultural System of Indigenous Peoples of Boti Dalam**

Culture is a precipitate of human activity and work, van Peursen's opinion.<sup>21</sup> According to him all human actions, such as the way he lived death and make ceremonies welcome the event, birth, sexuality, ways to process food, courtesy meal, agriculture, hunting, the way he makes tools, shards, clothes, Ways to decorate the house, and its body, it's all inclusive of culture.<sup>22</sup>

Boti Dalam tribe is one group of people who still maintain cultural unity such as Peursen opinion, namely Boti culture. This is seen from custom ceremonies such as marriage customs, entering in demand, ceremonies to welcome births, ceremonies of death, and ceremony of the harvest. In addition, their house building is still traditional (some are already switching to the zinc roof), where the design of the house is still like the old time that still nuanced Timor called ume kbubu (round house) and lopo (semi round house used to sit together).<sup>23</sup> The building material of the house is made of wood, grass of weeds as roof, forest ropes, and palm leaves which are all local materials. Lopo seems to be a symbol for the people of Timor and Boti. Lopo is where the birth of custom decisions and social relationships are established, Lopo is a symbol of openness of Timorese and Boti to the outside world.<sup>24</sup>

**2. Religious System of Indigenous Peoples of Boti Dalam Tribe**

Man (as an individual) in his journey certainly encountered various processes both happiness and suffering which then formed the conscious instinct that as good as anything he must have control of all events in the universe he inhabited. The instinct is then represented in a belief system that is still heavily contaminated by the common mindset prevailing in a particular society.<sup>25</sup>

Indigenous peoples of Boti Dalam actually embrace the primitive belief system<sup>26</sup> of animism which in essence recognize even believe that life is governed by three forces namely Uis neno (Lord of heaven), Uis pah (Lord of the earth) and Nitu (spirit of ancestral spirits). They consider that Uis neno as the father who protects his children.<sup>27</sup> His

<sup>19</sup> The law here is not conceived as rules but as regularities that occur in everyday life or in the realm of experience. Law is the behavior or actions and interactions of man in actual and potential will be patterned. Since each behavior or action is a social reality occurring in the realm of sensory and empirical experience, any research that base or conceptualize law as behavior or behavior and action can be called social research (law), empirical research, or non-research doctrinal. Soetandyo Wignjosoebroto in Setiono, *Understanding of Legal Research Methodology*, Textbook for Doctoral Program of Law Science, Postgraduate of Sebelas Maret University, Surakarta, 2010, p. 20.

<sup>20</sup> This method of studying social problems in a natural environment in the "natural setting" as it is in reality. Nasution, *Naturalistic-Qualitative Research Method*, Bandung, 1996, p. 31

<sup>21</sup> Peursen says that the essence of culture is almost the same as the essence of man, that 'when man appears under the heavens, then shortly thereafter, also cultural phenomena' appear, this is the basis of his expression. C. A. van Peursen, *Cultural Strategy*, Yogyakarta, 1988, p.9

<sup>22</sup> *Ibid*, p. 10-11

<sup>23</sup> DR. Eben Nuban Timo, *Preacher of the Word of Cultural Lovers ....*, Op.cit, p.57

<sup>24</sup> *Ibid*, p.63

<sup>25</sup> Burhanuddin Daya, Dialogical Religion; *Crochet Dialectika Reality Interreligious Relations*, Yogyakarta, Minang Lintas Budaya, 2004, p.13

<sup>26</sup> Primitive societies in the Encyclopedia of Religion and Ethnic (ERE) are referred to as noncivilized people tend to save things, and assume objects that give meaning to life and help them complete daily work have power and are considered God. James Hasting (ed), *Encyclopedia of Religion and Ethnic*, New York, Charles Scriber's Sons, Vol.I, p.63

<sup>27</sup> Uis Neno is also a title to the Divine/Almighty God but in the context of the 'visible' inherited by the ancestors from generation to generation among the Atoin Meto tribe. The phrase Monit fua Uis Neno, Monit fua nitu and Monit moe alekot means that in this life, human beings are required to worship God Almighty, honor spirit

role as the father manifested in lowering rain water to the earth. While Uis pah is considered as mother. Uis pah is considered to raise and feed the human (naive man hao mansian). Belief in Uis pah is found in the occult of earth/nature, while nitu is the spirit spirit of their ancestors/ancestors respectively. Boti Dalam tribe people who are still firm with the teachings of his ancestors always guided by the head of his/Usif tribe to always do good to others, to the environment by maintaining, preserving and preserving the forest all of which is a gift to Uis neno and Uis pah. They are convinced that by doing so they will gain a reward of blessing, protection and salvation, or on the contrary to get wrath if they do evil.

### 3. The Original Boti Tribe Governance and 'Law' System

#### A. Original Tribal Governance System

A system is a unit that operates with certain limits,<sup>28</sup> as well as a system of government which is a unity consisting of various parts that are interdependent and cooperate with each other to realize the objectives with its limitations. The system of government usually refers to a power.<sup>29</sup> The power of indigenous peoples of Boti Dalam tribe is not directly elected by society as in modern government but the division of authority is hereditary so that the position of Usif/King is the inheritance of the father to his son from generation to generation.

The giving of Usif is not entirely given to the female descendants (feot nai) of the king. The Boti Dalam people assume that women are the children in the house/help the mother in the business of preparing food and drink (kitchen affairs) so that they do not get the position of king/Usif. Similarly, the other positions are Meo, Amaf and roles in the affairs of traditional rituals/onen pah and economic affairs. The system of government and power is entirely governed by the king, but in leading the reign of the Usif power lies in nature so that if any society breaks the customary rules then he himself will be affected.

#### B. "Original Law" of Boti Tribes

Humans are social beings who always interact and have interests with other human beings, therefore it takes the rules of law that can bridge the interests, through the back of the law, people can understand what the rights and obligations. Under the lawless conditions, there will be a law of the jungle, where the strong will overcome the weak as happens in the animal world that relies on instinctual powers, not intellect, therefore law must be a basic human need.<sup>30</sup> Actually the definition of law itself is quite different among the jurists. Leon August (in Jum Anggriani) says that the law is the rules of conduct of the members of society, the rules whose power of use at a certain time are ignored by a society as a guarantee of common interests which, if violated, will result in a joint reaction to the person committing the offense. E. Utrecht argues that the law is a set of rules (orders and restrictions) that take care of the order of a society and therefore must be obeyed by that society.<sup>31</sup>

If moving from the view of Leon and Utrecht it can be concluded that the law is actually made solely as a guarantee for the creation of a condition that is safe, comfortable, orderly, and full of harmony.<sup>32</sup> For Boti Dalam tribe people, they do not know and do not understand the legal concepts and theories formulated by the jurists but they understand how to create safe, comfortable, orderly, and harmonious conditions. Boti Dalam tribe people always solve the problems that occur in accordance with the applicable 'Boti Law' and the noble values that live in the society from generation to generation and form them into an 'ideal' society. Living in harmony with the norms of society is already an obligation for the Boti Dalam tribe.

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spirit of ancestors as intermediary human relationship with God Almighty and do good things for Fellow and its environment.

<sup>28</sup> The system can be mechanical, organic, or social. The human body, the pinball machine, and the Roman Catholic Church are all systems, but the system itself has its limits. Lawrence M. Friedman, *Legal System; Social Science Perspectives*, 2013, p.6

<sup>29</sup> In the indigenous governance system, the pattern of government power sharing does not refer to formal juridical formalism. The power sharing system adopted by indigenous peoples is more easily identified through a pattern of power sharing vertically and horizontally. Seprianus Ardiles Noke, *The Original Governance System (Study on the pattern of government authority sharing in indigenous Boti Dalam tribes in South Central Timor district)*, 2013, p.13

<sup>30</sup> In this context, Thomas Hobbes sees law as a basic need for individual security. Amid the wild prey, law is an important tool for the creation of a safe and peaceful society. Law is a conscious choice of humans to secure their own lives against the attacks of others. Bernard L. Tanya, 2013, *Legal Theory: People's Ordered Strategy across Space and Generation*, p. 61-62

<sup>31</sup> Jum Anggriani, *Law of State Administration*, 2012, p.4

<sup>32</sup> But it is undeniable that in punishment in Indonesia, we still hold that law is a law (without regard to public upheaval) so it is more inclined there is no commitment and morality to build an ideal justice law in addition to professional non-transactional professionalism. Sabian Uthman, *Towards Responsive Law Enforcement*, 2010, p.6

Handling a problem that occurs in the tribe Boti Dalam always use the approach of LOVE that also emphasizes on building a harmonious relationship with fellow concept Generosity. Generosity means the willingness to share with others.<sup>33</sup> For example in the case of theft, regarding sanctions from Usif for those who violate customary rules, especially stealing in Boti Dalam tribe is very different with social sanctions. They will be given direction and a way out by Usif so that the future does not repeat the same thing. In giving sanctions against violators of the rules seen from the violations made. Therefore, one of the means of meaningful social control for local wisdom in the Boti Dalam community is the sanction imposed on a person who commits an offense such as theft of livestock, garden products or other property, then the sanction is not by corporal punishment let alone processed by law With the original law of Boti learned from his relationship with God, his relationship with himself, his relationship with others, and his relationship with nature. If faced with the current law enforcement conditions in Indonesia then the authors argue that the Law of Boti is likened to 'Oase in the middle of the desert'.

#### 4. National Law As Foreign Law

In local communities whose lives are still strong with the original cultural bandage, certainly in accepting the various rules of national law required by the state will be difficult because it is considered something foreign and new. This is regarded as "the validity of the cultural passport" by Bernard L. Tanya, according to him, he said the validity of the cultural passport because the presence of something from outside (including state law) in a local culture, is never only seen as something that remains acceptable but also how to accept it . Something outside (including state law) is always evaluated, whether it will be accepted or left as something "foreign".<sup>34</sup> Local people live with various values that are embraced and guide the behavior of society, values that live in society are always regarded as a rule that must be obeyed.

The Boti Dalam Tribe Society has its own rules or the so-called original law, which contains various values and norms that are born from the community, which is adhered to from generation to generation. The rules or applicable laws are very capable of creating an orderly, safe, and comfortable living conditions of society, so that with the presence of state law in the midst of a society which already has its own laws it will be difficult to be well accepted and even considered as something foreign. The local community is not an empty "vessel", they have a sort of ordering belief framework that binds its members to the order of the common rules, namely the abstract classification of local values, norms, teritior, leadership and conflict management, which in many respects Still functional to answer the needs of the community<sup>35</sup> of the Boti Dalam tribe, hence the presence of national law is considered as something foreign to be approached, followed or obeyed by the community.

#### 5. The Reason Behind the Attitudes of Boti Society Who Do not 'Need' the National Law

Indonesia is a State of law. State law requires that law be enforced, that must be respected and obeyed by anyone also without exception either by citizens or by the authorities (government).<sup>36</sup> The law must also be well understood, in terms of its form differentiated into written law (legislation) and unwritten law (customary law). In this connection, Satjipto Rahardjo classified the law into a written law on the one hand and an unwritten law on the other. Written law becomes the hallmark of modern law that governs and serves modern life. The use of written law does not necessarily eliminate the operation of unwritten laws such as traditions, customs, and certain practices. Therefore, the two forms of order must go hand-in-hand with a written form and an unwritten form.<sup>37</sup>

As a State of law, it is certainly a national law in the form of a written law (legislation)<sup>38</sup> containing its own objectives and ideals. In the theory of punishment we can see also the purpose of punishment. The beginning of this theory namely (1) the theory of retributive view or negative views. This view emphasizes punishment as a negative reward for deviant behavior perpetrated by citizens so that it is seen as retaliation against wrongs committed on the basis of their moral responsibilities. (2) a utilitarian or teleological theory that emphasizes the usefulness or usefulness of which it sees is the situation or circumstance that it wants to generate with the imposition of the criminal. On the one hand, punishment is intended to improve the conduct or behavior of the convicted person and on the other is intended to prevent others from the possibility of committing a similar act. This theoretical view is forward-looking and has deterrence. (3) retributive-teleological theory which sees that the purpose of punishment is plural because it

<sup>33</sup> Armada Riyanto, Izak Resubun, et al., *Local Wisdom of Pancasila: Grains of Indonesian Philosophy*, 2015, Publisher PT Kanisius, Yogyakarta, p. 49

<sup>34</sup> Bernard L. Tanya, *Laws in ...*, Op.cit., p. 150

<sup>35</sup> *Ibid*, p. 159

<sup>36</sup> According to H.L.A.Hart, in his book *Concept of Law*, The Concept of Law states that "in a modern State it is usually understood that, without any special indication of extension or class constriction, the law generally includes all those within its territorial boundaries" 2013, p.34

<sup>37</sup> Satjipto Rahardjo, *Law Science*, 2006, p.71-72

<sup>38</sup> The law of the law is a national law. It is said that because this kind of law is applied as a standard for the central referral of all citizen behavior which has obtained status as a citizen. Soetandyo Wignjosoebroto, *Law In Society*, 2013, 2nd edition, Yogyakarta, p.19

combines teleological (objective) and retributive principles as a whole. This view integrates retributive and utilitarian in which prevention and rehabilitation are seen as targets to be achieved by a criminal plan.

If we look at the theory of the purpose of punishment and put in the case of theft in articles 362-367 Chapter XXII of the Criminal Code, clearly contains the imposition of criminal sanctions imprisonment and fine, then our national legal system is in the theory of retributive view or A negative view that emphasizes retaliation, because in fact in the author's understanding, criminal law should be the ultimatum remedium or the last weapon in handling the case. While 'Boti' law is in retributive-teleological theory which prevention and rehabilitation is seen as a target to be achieved, making it more effective in general and special prevention and protection of society.

Based on the above analysis, the authors assume that in national law, sanction/punishment only focuses on how to criminalize a person or create a sorrow, not on how to empower people and make the person want to change to be good and will not repeat his actions again.

This is clearly different from the sanctions imposed by the king/Usif Boti tribe. In terms of sanctioning the perpetrators of theft, kings and indigenous elders of Boti Dalam strongly uphold the value of customary rules and teaches their belief that crime should not be avenged by crime.<sup>39</sup> So there is a close connection between the attitudes/behavior of society towards the law with the values of their belief teachings.<sup>40</sup> In solving the crime of theft case, the perpetrator is very "benefited". The perpetrator is even given a double asset by Usif according to the type of goods or property taken by the perpetrator. For example, if someone steals a chicken, then the king and the community of the Boti Tribe In each head of the family will give some chickens to the culprit or for those who do the theft of bananas, then usif and residents of Boti Dalam tribe together to plant banana seedlings in the perpetrator's garden so can provide a sense of mutual care and the deterrent effect for the theft.<sup>41</sup> According to the understanding of the Tribe of Boti Dalam people according to the customary rules and belief that the crime should not be recompensed with the crime, in the sense that if a person makes a violation because of forced and not from the intention of the perpetrator then can not be given customary penalty sanction or fine as customary in tribal custom Others.

The philosophy is not to treat others who are already in trouble becomes more difficult.<sup>42</sup> New beliefs and passions should be given so that the culprit can meet his own needs and not repeat the wrong actions. On the basis of that experience, up to now good people from Boti Dalam and those from outside the Boti Dalam tribe are deterrent and never again commit theft,<sup>43</sup> this has an impact on the maintenance of community solidarity and the existence of life balance.

Indeed, according to the author's thought that to see the legal phenomena that occur in the life of the Boti Tribe In fact there is a Savigny theory that there is an organic relationship between the law with the character or character of a society. Law is only a reflection of the volkgeist. Therefore, the 'customary law' which grows and develops in the womb of the volkgeist, should be regarded as the law of true life. The true law, not made, it must be found.<sup>44</sup>

What is done by Boti Dalam tribe society actually shows that digging and applying pearl of legal value in the life of its people. They do not form the principle and doctrine artificially but discover, recognize, and understand the values of the true law in their lives, what they do is penetrate the essence of the people's own soul.<sup>45</sup>

The rules that are in the Boti Dalam tribe are customary and unwritten but they are always obedient and never violate. This is because their souls are united with the rules of nature created and the conviction and spirit form the basis of the rule of law, it is this factor that makes them obedient and obedient to the rules that apply, and as a whole, the authors hold that 'Is Peace (vertical and horizontal relationship) and Harmony (self-adjustment)'.

## F. CLOSING

<sup>39</sup> In relation to the granting of sanctions, I Nyoman Serikat Putra stated that the role of adat sanction is very important in solving cases that occur because customary sanctions have a function and a great role to restore the balance between the world of birth and the unseen world. I Dewa Made Suartha, Dissertation Dissemination of Ad Sanction in Achieving Objectives of Criminalization in the Framework of Criminal Law Renewal, 2013, p.17

<sup>40</sup> Ibnu Qoyim, *Religion and Life View, Study of 'Local Religion' in some parts of Indonesia*, 2003, p. 185

<sup>41</sup> Interview with Usif Namah Benu, October 2014 in Boti Village

<sup>42</sup> *Ibid.*

<sup>43</sup> <https://Small-sunda-tour-variant.blogspot.co.id/2010/05/Customs-and-culture-of-boti-tribe.html>

<sup>44</sup> Volkgeist by Savigny is formulated as general consciousness of the people or spirit of the people. Bernard L. Tanya, 2013, *Legal Theory: .....*, p.94

<sup>45</sup> In the savigny concept of thought, the soul of the people, is not something decadent and static. It is a mosaic constructed from the historical process, and will continue to proceed historically. It is therefore necessary to complete the cultural and historical method. *Ibid*, p.95

## 1. Conclusion

The reason behind the attitude of the Boti Dalam tribe people who do not 'need' the national law in solving the problems/problems that occur in the community namely:

- A. Boti tribe people have a 'Boti Law' which is interpreted as a form of embodiment of customs values and beliefs that can keep harmonization.
- B. The philosophy based on LOVE "do not treat fellow who is already in trouble gets more difficult" by emphasizing the concept of generosity or willingness to share.
- C. Based on the theory of punishment, 'Boti's Law' lies in a retributive-teleological theory in which prevention and rehabilitation are seen as targets to be achieved, making them more effective in the prevention and protection of society and the maintenance of solidarity and equilibrium.

## 2. Suggestions

'Boti Law' needs to be an example for law enforcement in every region to reduce the burden of national law, because by giving space to the region to take care of its own affairs automatically the burden of national law will be reduced.

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