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Givu as Criminal Sanctions *Tau Taa Wana* Indigenous People and its Relevance to The National Criminal Justice Reform

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Abstract
Givu are implemented in traditional law society Tau Taa Wana is customary reaction in order to create balance and harmony between the living world and the unseen world, between human groups and individuals, as well as the fellowship (community) and society at large. Givu is a nature of mind of the basis traditional and customary law community legal awareness Tau Taa Wana. Such ceremonies clean village (village) with the aim to restore balance and perceived disruptive magical powers such rituals in the criminal justice system palampa customary Tau Taa Wana. The basic ideas of the customary criminal sanctions have not been studied in depth and accommodated to the maximum in the national legislation. Indigenous groups implement criminal sanctions customary law is not merely to uphold the image of the customary criminal law and maintain social harmony, but also to show, that the indigenous peoples still exist with cultural pluralism, in particular legal pluralism.
Keywords : Customary Law, Indigenous People, Givu, Tau Taa Wana, the National Criminal Justice Reform.

1 . INTRODUCTION

Philosopher Cicero called the "*ubi Societas, Ibi ius",* where there are people, there is a law. Society requires the rule of law, to have his life in order and no one is treated unfairly.[5] This opinion suggests, that to organize and country life, we need a rule. This rule is useful to achieve public order, including customary law.[6]

Customary law and its relationship indigenous communities have a strong correlation, integral and inseparable even commonly expressed in the form *petatah - petatih* [7] In paragraph B of Article 18 (2) of the Constitution of the Republic of Indonesia 1945 (Constitution NRI 1945), stated emphatically that:

> "The State recognizes and respects the unity of indigenous communities and their traditional rights all still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law".

Although the development of the law has been implemented and has gained a lot of progress but there are still challenges, among them there are approximately 400 pieces of colonial legal system and a number of national law needs to be improved.[8] Legal values and sense of justice are alive and recognized by a particular community, it is referred to as customs and habits. If the rules that have a sanctions so-called customary law. While the essence of customary law is the law that live and recognized in the community is mostly made up of customary law.[9]

In implementing the law reform, it must be understood and be equipped with the knowledge of law, legal theory and philosophy of law. Laws should not be read simply as a normative (seen only), but the law should be understood deeper, wider, and further ahead. If it is not done there caused disintegration tendencies in the legal understanding of ontology, epistemology and axiology.[10]

United Nations congresses on *"The preventions of Crime and the Treatment of Offenders",* outlined, that the criminal justice system has been in several countries, which often comes from (*imported*) from foreign law during the colonial era had largely outdated and unfair (*obsolete and Unjust*) and is outdated and does not correspond to reality (*outmoded and unreal*) because it is not rooted in cultural values and there is even a

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[5] Chaidir, http://drh.chaidir.net/kolom/167-Ubi-Societas-Ibi-Ius--Dimana-ada-masyarakat,-di-situ- ada-hukum.html, akses 15 September 2013.
[6] R. Soepomo, *Bab-Bab Tentang Hukum Adat*, (Jakarta: Pradnya Paramita, 1998), hlm. 11.
[7] Mohd. Din, *Aspek Hukum Eksistensi Hukum Pidana Adat di Indonesia,* Makalah Penelitian Eksistensi Hukum Pidana Adat di Indonesia: *Pengkajian Asas, Teori, Norma, Praktik dan Prosedurnya* di Banda Aceh, tanggal 27-29 Juni 2010, hlm. 5.
[8] Mahkamah Agung RI, *Rencana Kerja Bidang Hukum*, (Jakarta, Puslitbang, 1995), hlm. 22.
[9] R. Soepomo, *Bab-Bab Tentang Hukum Adat*, (Jakarta: Pradnya Paramita, 1998), hlm. 11.
[10] Sugijanto Darmaji, *Kedudukan Hukum dalam Ilmu dan Filsafat,* (Jakarta: Mandar Maju, 1998), hlm. 22-23.

'*discrepancy* ' with the aspirations of the community as well as '*non-responsive*' to the social needs of the present.[1]

One of the principal forms of legal recognition of the concept of living in the community is the adoption of the customary system of criminal sanctions in the national legal system. Recognition and protection of customary criminal sanctions become an essential in the life of indigenous peoples, because the sanction (*reaction*) then custom create balance (*evenwicht*) and harmonization of the minds of traditional Indonesian nation.

The existence of indigenous communities *Tau Taa Wana* is one of the legal environment on the island of Sulawesi (Central Sulawesi) is internally very strong still applies and obeyed in their customary law. It is very important for the development of criminal law, especially customary criminal sanctions, which are a source of national wealth criminal law. Wealth of national law is needed in the formation and renewal of the Indonesian criminal law, so that the Indonesian people can find all their Indonesian law.

Based on the description above, this study is one effort to elevate the values of indigenous communities living in the *Tau Taa Wana* as one ingredient in efforts to establish law and national criminal law reforms, which focused on the application of customary criminal sanctions.

Based on this background, it formulated the following issues : (1) How does the meaning of *Givu* as criminal sanctions in the customary laws of indigenous communities *Tau Taa Wana*? and (2) How relevant a *Givu* as criminal sanctions in the customary laws of indigenous communities *Tau Taa Wana* with the philosophy of the Indonesian nation? (3) How contributory *Givu* as criminal sanctions customs of indigenous peoples *Tau Taa Wana* to national criminal law reform?

2. RESEARCH METHODS

This type of research is used juridical empirical research (socio-legal).[2] Socio-legal studies is a generic term to mention all the social sciences which learn about law. Inside there are a number of socio-legal social sciences such as sociology of law, legal anthropology, legal history, law and political law psychology. In another language, socio-legal is also regarded as a generic term for any social perspective approach to the law. Socio-legal depart from the assumption that the law is a social phenomenon which is located in the social space and with it cannot be separated from the social context. Law is not an entirely separate entity and not a part of other social elements. Law would not be possible to rely on his own ability to work with even if he comes with the principles, norms and institutions.[3]

To complement these studies, it is necessary to also study related to the concepts and regulations relating to the recognition and protection of the state against the application of a sanction *Givu* indigenous customary law in society *Tau Taa Wana*, which will contribute to the renewal of national law, which aims to study one or some of the symptoms of certain laws by way of analyzing it.[4] The study did not appear in a pure form, but exhibits a leaning towards one form of research.[5]

The research was carried out in the sub-watershed (Watershed) Bongka within the administrative area of District Ampana Tete Tojo Una-una Province of Central Sulawesi. Regional positions upstream sub-watershed (Watershed) Bongka, viewed from an ecological perspective, a buffer zone as well as endemic wildlife corridor trajectory of 3 main conservation area in the eastern peninsula of Sulawesi Island, which Morowali Nature Reserve in the southwestern part, Reserves Tanjung Api Nature in the north, as well as Bangkiriang Wildlife Reserve in the southeast. In addition, because it is located in the upper, of course, also serves as *catcment area*.[6] This study uses qualitative data consisting of primary data and secondary data, the two are complementary and supportive. Sources of data, obtained from the primary data source and secondary data source.

Informants of this research is indigenous peoples *Tau Taa Wana* consisting of *tau tua*, *tau tua lipu*,*tau pamplengko* and *tau boros* residing in 11 residential units *(Lipu / opot),* the *Lipu Mpoa-Tikore, Ue Viau, Vatutana, Lengkasa, Twists Layo, Ratuvoli, Kanaso, Kapoya, Kablenga, Salumangge, Sakoi* [7] including

[1] Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakkan dan Pengembangan Hukum Pidana,* (Bandung: PT. Citra Aditya Bakti, 1998), hlm. 103
[2] Ronny Hanitijo Soemitro, ***Metodologi Penelitian Hukum***, (Jakarta: Ghalia Indonesia, Cetakan Pertama, 1983), hlm. 15.
[3] Rikardo Simarmata, ***Socio-Legal Studies Dan Gerakan Pembaharuan Hukum***, (Digest Law, Society And Development, Jurnal Volume I Desember 2006 s.d. Maret 2007), hlm. 8.
[4] Soerjono Soekanto, ***Pengantar Penelitian Hukum***, (Jakarta: UI Press, 2004), hlm. 52.
[5] Sunaryati Hartono, ***Penelitian Hukum Di Indonesia Pada Akhir Abad Ke-20***, (Bandung: Alumni, 1994), hlm. 120.
[6] Sub DAS (Daerah Aliran Sungai) Bongka merupakan Sub DAS dengan *catcment area* terluas di kawasan DAS Bongka-Malik, bahkan di Sulawesi Tengah. Luasnya 327.500 Ha atau 38 % dari total luas DAS Bongka Malik.
[7] Dari 11 satuan pemukiman tersebut, 5 diantaranya relatif telah menetap, yakni Mpoa, Tikore, Vatutana, Lengkasa, dan Ratuvoli. Sedangkan 6 lainnya masih cenderung berpindah karena faktor kepercayaan atas kematian. Jika ada yang meninggal, kampung ditinggalkan, pindah ke lokasi lain atau bergabung dengan satuan pemukiman lainnya. Oleh karenanya,

residential units (*opot*) which have not been recorded, as in *Lengko Bae* and *Ngoyo*.

With analytical descriptive specification, namely a study attempted to describe the legal issues, the legal system, and studying it or analyze it according to the needs of the research[1] or can also have the meaning as research that is intended to provide data about the human as precisely as possible, the state or other symptoms.[2] So even though this study has a specification/type of descriptive analysis,[3] this study will explore, investigate, seek to describe and analyze *Givu Tau Taa Wana* as customary criminal sanctions and seek the values that would be adopted to reform the criminal law. This research-based approach anthropological study of law,[4] also pay attention and examine the phenomenon of legal pluralism (legal pluralism) in the community as well as the cases of disputes in society.

The technique consists of collecting data from the literature study, observations (observation), interview (interview), interview guides (interview guide) and fieldnotes[5] as an support instrument. In this study, the data collection techniques used were in-depth interviews (indept interview)[6] to the speakers and literature study. Furthermore, the data analysis conducted in this study conducted qualitatively. In such analysis, in addition to the analysis refers to the empirical data, as well as comparative, because it is not possible to vary the data collected, there should compare each other. The method used is the inductive method.

3 . RESULTS AND DISCUSSION

3.1. The Meaning of *Givu* as Criminal Sanctions in *Tau Taa Wana* Indigenous Peoples

Of the many communities of indigenous communities that exist in Central Sulawesi, there is one ethnic group is more pleased ethnological or entholinguistic identified himself as "*Tau Taa"*. Most people know them as "*To Wana*", because based social image, they are positioned as community forest dwellers. *To Wana* means "*forest"*. The word is derived from the *Mori* language used by *Mori* ethnic groups.

Indigenous communities *Tau Taa Wana* make customary law as a means to create balance between live and soul, which oriented protected by the presence of sanctions (criminal) any custom actions that against traditional norms of governance. Criminal sanctions in indigenous custom known as *Givu*. *Givu* believed by indigenous peoples *Tau Taa Wana* as means to restore a magical peace between the natural and the supernatural, as well as negate or neutralize an unlucky situation (*Kapali* or *Pamali*) caused by an act in violation of customary norms.

Recognized by one of the chief customs, that "*... givu se sompo ada (raika damangkampa ada) supaya katuvu mosprayang re lino galo ahera, res kita mansia sampria galo ngakiyo,seja galo mja'i galo tau boros. Mangpakmonsoka pambuk lengko kita reraya mangpakkore ka ada Tau Taa Wana"*,[7] or "*Givu* a custom response (custom disabilities or caring way) in order to create life balance and harmonization (synchronized) between the worldly and the unseen world, between groups of people and individuals, as well as between federal (community) and the wider community that are the basis of the traditional realm of mind and consciousness customary law society *Tau Ta Wana"*.

It shows, that *Givu* for indigenous *Tau Ta Wana* regarded as the norm or order of life that always live in order to create life balance (*lempa Dua*) between the worldly and the unseen world, the community (*Tau Boros*) with individual members of *opot,* between *Tau Boros Lipu* with *Lipu* in the other subregions and *Tau Boros Lipu* with the wider community outside the jurisdiction of customary *Tau Ta Wana*, until all actions upset the balance of life (*lempa Dua)* is an act against the law of custom (*ntau tua*) and *Tau Tua Ada* it should take the actions set *givu* (law enforcement) to the performer in order to restore the balance of life with principles indiscriminately including the *Tau Tua Lipu* or *Tua Tua Ada* if doing unsavory deeds, even its *Givu* give twice more if that does

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data tentang nama lokasi dan jumlah satuan pemukiman pun biasanya cenderung berganti, bertambah atau berkurang pada beberapa laporan atau publikasi, meskipun subjek komunitas yang dilaporkan/dipublikasikan sama.

[1] Buku Peraturan Akademik dan Pedoman Penyusunan Tesis Magister Ilmu Hukum Universitas Diponegoro, Semarang, 2008, hlm. 5.

[2] Buku Peraturan Akademik dan Pedoman Penyusunan Tesis Magister Ilmu Hukum Universitas Diponegoro (2008) mengategorikan spesifikasi/tipe penelitian ke dalam tiga spesifikasi/tipe: deskriptif, deskriptif analisis, dan inferensial.

[3] Buku Peraturan Akademik dan Pedoman Penyusunan Tesis Magister Ilmu Hukum Universitas Diponegoro (2008) mengategorikan spesifikasi/tipe penelitian ke dalam tiga spesifikasi/tipe: deskriptif, deskriptif analisis, dan inferensial.

[4] I Nyoman Nurjaya, ***Antropologi Hukum, Perkembangan Tema, Kajian, Metodologi Dan Model Penggunaannya Untuk Memahami Fenomena Hukum Di Indonesia***, Makalah dipresentasikan dalam seminar *Hukum Dan Pelatihan Pluralisme Hukum* yang diselenggarakan Perkumpulan Untuk Pembaruan Hukum Berbasis Masyarakat Dan Ekologis (Huma), Pada Tanggal 28-30 Agustus 2003 Di Hotel Rudian, Cisarua Bogor, hlm. 1. Lihat Laura Nader (Fadjar-alih bahasa), ***Studi Antropologis Tentang Hukum***, (Solo: Penerbit Rhamadani, 1984), hlm. 13.

[5] Lexy J. Moeleong, ***Metodologi Penelitian Kualitatif***, (Bandung: Penerbit PT. Remaja Rosdakarya, Cet. XVII, 2002), hlm. 153.

[6] Ronny Hanitijo Soemitro, ***Metodologi Penelitian Hukum dan Jurimetri***, (Jakarta: Ghalia Indonesia, 1994), hlm. 51.

[7] Hasil wawancara mendalam (*indept Interview*) dengan Apa Jodo (Tau Tua Adat Lipu Mpoa), pada tanggal 13 September 2010.

by *Tau Tua Lipu* or *Tau Tua Ada*.[1]

Traditional criminal sanctions (*givu)* based on common law conception of *Tau Taa Wana* aims to ensure and to return the cosmic balance, where the balance of the world is focused on the life and magic, in order to bring a sense of peace between fellow citizens of indigenous peoples (*tau boros*) and other people outside the region customary.

In addition to the goal of sentencing traditional criminal law (*givu* application) is to satisfy the justice, meaning that criminal justice is implemented in order to be felt either by the inmate, the victim and the community, so the disruption, imbalance or conflict inflicted tarnish the tradition going back to normal life balance (*Lempa dua*).

Tau Taa Wana indigenous peoples as peoples have a distinctive character and style is open and dynamic, as well as other indigenous people in Indonesia. Openness *Tau Taa Wana* characterized as indigenous peoples with the applicable compensation as a form of sanction this time. *Givu* previously as a means to restore cosmic harmony of life in the life of indigenous peoples *Tau Taa Wana* to impose the death penalty on any traditional crime happened. As a result of interacting with people outside their traditional territory, it felt too heavy, which is then replaced with strike sanctions at the latter is also perceived as a sanction that should be carefully applied to all customs offenses.

Implementation sanction compensation to all customs offenses occurring, is felt to be more humane by indigenous peoples *Tau Taa Wana*, because it is based on the principle of the balance of life (*lempa dua*). Although not the only sanction (*givu*) were applied. Sanctions compensation in *Tau Taa* language is *givu ada bayar*. *Givu ada bayar* previously in the form of rice and animals but in its development turned into plates and fabrics consisting of gloves, clothing and metal goods such as knives, machetes and tray.

According to Jane Monnig Atkinson,[2] in the past, before *Tau Taa* interact with coastal areas, objects that should be accomplished by *givu* offender is rice and animals. When *Tau Taa Wana* indigenous peoples have known the glassware, fabric, and metal goods, then the object *givu* also began to change, meaning that people no longer pay with rice and animals, but with a kind of glassware and porcelain plates, or with a cloth, gloves, or metal items such as trays, knives and machetes.

The act that producing custom criminal sanction is a reaction to the violation of customary criminal law, as describe by Soepomo, which suggested that the correction actions for violations of criminal law customary in many circles law.

Shape and type of criminal sanctions in the traditional or indigenous *givu Tau Taa Wana* as follows: *Givu Ada bayar* (fines), *Givu Vintasi* (indemnity), *Mawali Watua* (voluntary work), *Sakimpuli* (death penalty), *Palampa* (ritual tulak bala), *Kruntu Mata* (eye reality), *Pencabutan Adat* (to take custom off), *Sambaa Mapua dua kungu* (sanctions be doubled), (*Tau Tua Ada* and *Tau Tua Lipu*) for committing an unlawful act or misappropriation customary. *Givu* who instituted the indigenous stakeholders (*tau tua ada* or *tau tua lipu*) be doubled because the perpetrator is a role model for society that should not be worth committing a crime or fraud custom, because the indigenous stakeholders (*tau tua ada* or *tau tua lipu*) is considered the most clear and understood by the system of customary law.

Givu as traditional criminal sanctions, which is still alive and in *Tau Taa Wana* indigenous peoples did not distinguish the type of position or criminal sanctions to the principal and additional criminal, and so on, as it exists in moderend criminal law (KUHP). All types of traditional criminal sanctions (*givu*) applies in indigenous *Tau Taa Wana* be applied as a principal penalty (sanction principal). Although sanctions (*givu*) is an additional criminal disenfranchisement but under certain conditions can be transformed into the principal criminal. Application of criminal sanctions *givu* as indigenous customary in applied not just like that, but still through the judicial process called customary courts or customary disscussion. Customary courts interpreted not merely as an institution or agency to prosecute, but as a public forum within the meaning of the abstract, which is a vehicle to deliver or meet justice. In conjunction with the court, according to Lon L. Fuller argued the term *adjudication*, and outlines his opinion as below : " *... or adjudication as a social process of decision Characterized by the peculiar form of partisipation it accords to the affected party, that of presenting proofs and arguments for a decition in his favor."*[3]

3.2. *Givu* Relevance as criminal sanctions of *Tau Taa Wana* indigenous peoples with the philosophy of the Indonesian nation

Pancasila is the philosophy of the Indonesian nation, in which there are high values of the Indonesian nation. The great value of this of course does not stop there, however, shall be applied in the development,

[1] Data dihimpun dan diolah dari hasil wawancara bersama *Apa Ninjang* (Rusli) tau tua ada di wilayah Lipu Bae Wananga Bulang tepatnya di Lipu Lengkasa pada tanggal 24 Desember 2010.
[2] Data dihimpun dan diolah dari hasil wawancara terfokus (indep interview) bersama Jane Monnig Atkinso di Palu pada tanggal 6 Desember 2010.
[3] Lon L. Fuller, ***Adjudication and Rule of Law***, (USA: Foceding of the American Society of International Law, 1960), hlm. 727.

including the development and renewal in the field of law. The founders of this nation have agreed, that the Pancasila is the values, ideals, principles, and the rule of law and basic norms of the highest state, which span the 'hierarchy as in the preamble of the 1945 Constitution.[1]

Pembukaan UUD 1945 is the embodiment of the philosophy of Pancasila which gave exist to the philosophy of law. This philosophy then determines the legal ideals (Rechtsidee) that should be embraced and lived. According Moch. Koesnoe, that, Rechtsidee constructed from the basic laws of our country. As a basic law, asserted that it is necessary to distinguish between the unwritten basic law and the basis law that a written.[2]

Pancasila which contains values, ideals, principles and norms is essentially a way of life, consciousness, ideals of law and lofty moral ideals which include psychological atmosphere and character of the Indonesian nation. Pancasila is an idea that should be realized in society or the fact that limits the possibility of an idea. As such, it is dependent on where the current position is occupied by the Pancasila, whether it is an idea that must be realized or social reality that limits the implementation of an idea. [3]

According Muladi that, Pancasila put a man on the sublime dignity as a creature of the Almighty God, both as individuals and as being a social creature. Pancasila is round and full and gave the people of Indonesia, that happiness will be achieved when based on harmony and balance, both in human life as a private in the human relationship with the community, the human relationship with nature, in conjunction with other nations, the relationship man with God, and the pursuit of physical progress and spiritual happiness. [4]

Balance and harmony in the basic norms or ideals of Pancasila law can lead to a life that is equitable prosperity in the life of the nation. According to Barda Nawari Arief that, the values of Pancasila philosophy should be oriented towards the development of the science of criminal law, which is the embodiment of the equilibrium values of Pancasila, consisting of : the values of the deity (religious), human values (humanistic), value-societal values consisting of democratic values, the value of unity (nationalistic) and the value of social justice. Pancasila values is a source of our basic legal principles are: the values of the deity (religious), gave to the principle of justice is based on the Belief in God Almighty, which consists of principles, namely: non-discriminatory, objective, *non - favoritism* and as impartial (no siding) or fairness. Human values (humanistic), gave to the principle of law, among others: the principle of personal (individual liability), culpabilits principle (the principle of fault), humanist principle and the principle of equality (equality before the law). While the communal values consisting of democratic values, the value of unity (nationalistic) and the values of social justice, gave to the principle of law, among others: the principle of fairness (justice) and the principles of democracy.[5]

Pancasila as the basic norms and ideals laws of Indonesia, is the basic idea that should be realized in the reality of life, which is the embodiment of the wisdom of our indigenous peoples, which is manifested in customary law as the law of life (living law in people).

Tau Taa Wana indigenous peoples as a portrait of one of the indigenous peoples in the archipelago, has a customary criminal law and criminal sanctions customary system (*givu*) who lived and obeyed as a form of public awareness building. The existence of *givu* in indigenous peoples *Tau Taa Wana* as customary criminal sanctions cannot be separated from the nation 's philosophy values and ideals of the of Pancasila law, because each of indigenous sanctions or givu are implemented consistently and egalitarian.

If you understand the fundamental ideas or basic idea of the application forms and types givu, then *givu* indigenous *Tau Taa Wana* is set out the process of returning the cosmic balance, respect and adherence to *ntau tua* as ancestors, respect for human values, and form imploring sorry offender and the family of the perpetrator to the victim and the victim's family, to the community (*tau boros*) and to *ntau tua*, who is vice of *pue* in the world.

If payment of a fine or *Givu Ada Bayar* been paid, then this indicates that the process has been ongoing mutual forgiveness and the return of balance and tranquility religious - magic has returned to normal, as well as *palampa* rituals (ceremonies *ruwatan bumi* or *tulak bala*). This reflects that the indigenous peoples *Tau Taa Wana* believed about the existence of a greater power and omnipotent, who co- regulate and control the life of the world is God Almighty, which in *Taa* called *pue*. The faith and devotion of Indigenous people *Tau Taa Wana* on power of *pue*, deeply imbued with the first principle of Pancasila, the divinity values or religious morality.

The spirit is also evident in the application of all types and forms *givu* include the value of a just and civilized humanity. This means that the application *givu* is not oriented retaliation, but on moral responsibility

[1] M. Sholehuddin, *op.cit.*, Hlm. 24. Lihat juga A. Hamid S. Attamimi, *op.cit.*, hlm. 308.
[2] Moch. Koesnoe, *Hukum Dasar Kita Dan Hukum Tak Tertulis*, Bunga Rampai Pembangunan Hukum Indonesia (Bandung, PT. Eresco, 1995), hlm. 169.
[3] Satjipto Rahardjo, *Hukum Dan Perubahan Sosial*, (Bandung, Alumni, 1983), hlm. 124.
[4] Muladi, *Proyeksi Hukum Pidana Materil Indonesia di Masa Datang*, Pidato Pengukuhan Guru Besar (Semarang, Universitas Diponegoro, 24/2/1990), hlm. 9.
[5] Barda Nawawi Arief, *Bahan Kuliah Pembaharuan Hukum Pidana : Asas-asas Hukum Pidana*, Program Magister Ilmu Hukum (Semarang, Universitas Diponegoro, 2005), hlm. 4-7.

are realized with fines (material), which *givu ada bayar*, *vintasi* or compensation, *Mawali Watu* or voluntary work, P*enbangunaka Nuada* or revive customary and revocation rights of the offender both community members and indigenous stakeholders or *tau tua ada* and community leaders or *tau tua lipu*. Similarly, the application of *Givu kruntu mata* for example, the actors are no longer asked who first seduce, but it was committed jointly and together accounted for anyway. Accountability is not only required for his actions, but also responsible for the community (tau boros) and the cosmic balance between the outer and inner world. This is, among others, into a form of accountability that is consistent with the philosophy of the nation.

The spirit of adhering to the principles of justice and also based on the Belief in God Almighty, which consists of the principles are: non-discrimination, applies an objective, non - favoritism and as impartial (no siding) or enforce fairness.

In addition, the commission of crimes which occur due regard, the reasons for the perpetrator committed the crime, as a shape of human values (humanistic), but on the other hand the principle of personal (individual liability), culpability principle (the principle of fault), humanist principle and the principle of equality (equality before the law), must be a concern. *Givu sakimpuli* as the death penalty is applied carefully and the final attempt. If you look at the inner attitude of actors who have a nasty attitude, then being put forward is that societal values consists of the value of democracy, the value of unity (nationalistic) and the values of social justice, thus giving to be born the principle of law, among others: the principle of fairness (justice) and the principle of democracy (in line with the philosophy of the nation).

3.3. *Givu* Contributions As Customary Criminal Sanctions On Tau Taa Wana Indigenous People in the National Criminal Justice Reform

In the Kitab Undang Undang Hukum Pidana (KUHP) year 2008, especially Book I of the general provisions that recognize customary criminal offenses as offenses can be imprisoned, the customary law which is the reality of law that living in a society (living law in people), is one of the sources of law to satisfy the justice of the people who live in Indonesia.

Reality in the community showed, that in some parts of the country, there are legal provisions that are not written, and living in an area recognized as the law is concerned, which determines that a violation of the law should be subject to criminal penalties, one of which is *Tau Taa Wana* indigenous people located in the east of the island of Sulawesi.

The reality of life is pluralistic Indonesian society is footing the legal capacity to understand the position and the structure of society, which is rational and objective, when applicable, legal pluralism. It is relevant to Hoebel view : *We must have a look at society and culture at large in order to find the palace of law within the total structure. We must have same idea of how society works before we can have a full conception af what law is and how it works.* [1]

Construction of customary criminal sanctions diverse as implemented by indigenous *Tau Taa Wana* and the difference with the application of *givu* in several other indigenous peoples, is to show the reality of legal pluralism.

With the offense, the judge may set a sanction of "Fulfillment of Obligations Indigenous" to be implemented by local crime makers. This implies, that the standards, values and norms that live in the local community remains protected to better satisfy the justice that lives in certain indigenous peoples, such as the indigenous and tribal peoples *Tau Taa Wana* example.

Legal recognition of living in the community will not be deterred and still ensure the implementation of the principle of legality and the prohibition of analogy adopted in the draft Kitab Undang Undang Hukum Pidana (KUHP) year 2008.

According Sudarto, [2] that Book I is very important to the overall functioning of the criminal law, because there are principles which form the basis of the application of criminal law that is not only contained in the KUHP, but also outside of the KUHP. So in carrying out the present political criminal law should be sought and used to set the principles of criminal law that is suitable to bring the people of Indonesia and the Indonesian people in the legal aspirations.

The same thing also expressed by Muladi, said that, the orientation (values and principles) cannot be separated, both from the national ideology, the human condition, nature and traditions of the nation, as well as from international developments that are recognized by civilized society. This is called the balance of interests of sound principle of Pancasila as a manifestation of the principle of Asas Hukum Pidana Nosional (AHPN).[3] Any change in general cannot be separated from environmental factors or the public. Establishment or renewal of any

[1] E. Adamson Hoebel, *The Law of Premitive Man, A Study in Comparartive Legal Dynamics*, (Cambridge, Massachusetts, Harvard University Press, 1954), p. 5.
[2] Sudarto, *Suatu Dilemma Dalam Pembaharuan Sistem Pidana Indonesia*, Pidato Pengukuhan Guru Besar, (Semarang, Fakultas Hukum Universitas Diponegoro, 1979), hlm. 19;
[3] Muladi, *Asas-asas Hukum Pidana : Ke Arah Hukum Pidana Berwawasan Hak Asasi*, dalam Kapita Selekta Hukum Sistem Peradilan Pidana, (Semarang, Badan Penerbit Universitas Diponegoro, 1995), hlm. 49;

such law, legal means are formed or changed because of social, economic, politicall, cultural, and ideological are created.

Roelan Saleh[1] expressed his opinion that the starting point of the opinion that Paul Scholten, that the principles of law are basic thoughts that exist within and behind every legal system, which has got the form of a statutory regulations and judicial decisions, the provisions and the decision can be viewed as elaboration by naming three (3) characteristics of the legal principles as follows:

1) First of all, he pointed out that the law is a fundamental principle of the legal system, because he is the basic thoughts of the legal system;
2) Furthermore, he suggests that the principles of law is more general than the statutory provisions and judicial decisions because of the provisions of law and judicial decisions is the translation of the principles of law;
3) Finally, this definition suggests that some legal principles were the basis of the legal system; few more behind him, though thus have an influence on the legal system.

Based on the above description, it can be some of the general principles of law that exist in the criminal system in the building of indigenous customary criminal law *Tau Taa Wana* should be considered as a contribution to Indonesian criminal law reform, particularly the RUU KUHP year 2008. General principles of law that exist in the criminal system in criminal law customary indigenous Tau Taa Wana, as follows:

1. *The balance principle*, this principle is known by indigenous peoples *Tau Taa Wana*, the principle *Lempa dua* terms, namely that the introduction or enactment of criminal penalties or *givu* customary in proceedings/hearings or *mogombo* by the leader of customary or *tau tua ada*, which implies that customary criminal sanctions or *givu* can affect the balance or stabilizers between the worldly and the inner world (religious - magical) and between material and immaterial, to bring harmony of life.
2. *Equation principle,* that the enforcement of the criminal law and sentencing customary *givu* as custom or application of criminal sanctions in indigenous customary *Tau Taa Wana*, the elderly indigenous stakeholders or *tau tua ada* treat equal in the law and not discriminate to indigenous peoples (*tau boros*). All members of indigenous peoples have equal rights and obligations to obey any customs regulations. For *tau tua ada* or stakeholder indigenous may be subject to *givu* or criminal custom sanctions, if not do their job properly, such as the application of *Kamea givu Ntambale* (embarrassed in public).
3. *The principle of protection*, which is meant, is the principle of the protection of women and children, especially children who are born outside of marriage. To organized crime (offense) customs related to morality (violation of good manners association of men and women, including women harassing conduct), the system of punishment in the criminal law of indigenous customary *Tau Taa Wana,* like *Kae Bone, Koronsala, Kotu Mpapoemba, Tudu Mpale Sala, Sala Mpale Vavolemba, and Sala Riada,* the nature or essence is to provide protection to women from barbaric and irresponsible acts committed by men.
4. *The principle of accountability is communal* (communal responsibility). The principle is actually sourced or rooted in the values that already exist in the Indonesian society. In indigenous *Tau Taa Wana*, in the event of criminal acts or acts against indigenous customary provisions (an illegal act), there will be a number or a wide range of casualties or damage. Casualties or loss is the impact of the crime committed by the perpetrator, not just felt by individual victims, but also perceived by the public (*tau boros*) as actions that bring bad luck or *bala*. Unlucky circumstances or reinforcements can be felt by the community in the form of such frequent crop failures, outbreaks of certain diseases (such as malaria, and so on), earthquakes, landslides and overflowing rivers or floods, which accumulates as the curse of *Pue* (God) or *ntau tua* (the ancestors *Tau Taa Wana*). The occurrence of reinforcements or unlucky circumstances are not the responsibility of the individual or individuals, rather it is the responsibility of communal or collective responsibility (communal responsibility).
5. *Principles of Peace and Conflict Resolution*, which means that any criminal offense which occurs custom is basically a disturbance to the balance of life and harmony of life (*Lempa dua*) people. As a result of the imbalance, childbirth punishment in the form of reaction or criminal custom customary or indigenous terms *Tau Taa Wana*, called *givu*. If *givu* have been met or have been carried out, then tossing the recovery process that occurs or the balance of nature and magic has returned to normal disturbed.
6. *The principle of flexibility or elasticity*, in the customary punishment or criminal sanctions customary (*givu*) in the implementation of customary justice (*mogombo ada*) in indigenous *Tau Taa Wana*, using the formulation of customary criminal sanctions singly. But to some criminal acts defined as criminal acts alternatively murder. While the formulation of customary criminal sanctions cumulatively applied to the crime of belonging to a criminal offense relating to the safety of life, morality and property.

[1] Roeslan Saleh, *Pembinaan Cita Hukum Dan Asas-asas Hukum Nasional*, Makalah pada Seminar Tentang Temu Kenal Cita Hukum Dan Penerapan Asas-Asas Hukum Nasional, (Jakarta, BPHN, 22-24/5/1995), hlm. 19.

7. *Principle of Humanity/Humanistic (Humanitarian principle)* is the main principle in *Tau taa wana*..customary law.

Based on the description, if understand *givu* the laws of life as a criminal sanction indigenous customary law communities *Tau Taa Wana*, then it is true opinions of Friendrich Carl Von Savigny,[1] as a recognized authority on the history of the school of law, which states that "*the law is the expression of the soul of the nation and the law was not made, but he's alive and growing with the soul nation, or Das wird nicht recht gemacht, und es wird ist dem Volke ".*

Customary criminal sanctions have a function to restore a balance between the worldly and the world unseen, at the indigenous peoples known as *givu*, whose function is to maintain the balance of life or *Lempa dua*. Thus, the purpose of punishment is to repair the damage to the individual and social (individual and social damages) caused by a criminal act.[2]

In the essence the criminal is society and safeguard against retaliation for tort. Ruslan Saleh argued, that the criminal is expected as something that will bring harmony and criminal is an educational process to make people be accepted in the community.[3]

Thus it can be identified several objectives of sentencing of the application of criminal sanctions givu as customary in the criminal justice system of indigenous peoples Tau Taa Wana as follows:

1. Recovering (normalization/neutralization) life balance[4] (evenwicht) in indigenous communities both physically (the real world and the inner (unseen world), religious-magical (eliminating the curse of the fathers/ancestors) and cosmic (universe).
2. Ensuring the public sense of justice, especially for the victims and their families from loss due to customs fraud and misconduct.
3. Bring a sense of peace and creating harmony within the community.
4. Settlement or eliminate the conflict between the individual and the individual, between individuals and groups (families), between the family and society and between indigenous peoples and the wider community.
5. Liberate guilt and sin on criminals, where people will accept convicted persons as members of indigenous peoples as usual, as a form of forgiveness.
6. Improving compliance and attitudes of inner (moral and moral) good in the community especially as the perpetrators of violations of customary norms and rules of the order must be upheld, as a form of consciousness law (*adat*).
7. Guarantee public order and tranquility of life aimed at ensuring the needs of immaterial as tranquility (*koelte*), happiness (*Welvaar*t) and fertility (*vruchtbaarheid*) of magical events.

The identification results, indicating that indigenous peoples *Tau Taa Wana* in applying criminal sanctions is very customary to adjust the ideals to be achieved after sanctions or *givu* decided by the parents know there is a customary stakeholders, so that the end result of applied criminal sanctions is the realization of the purpose of the customary criminal law standed.

When it is observed closely, there are some points that have not been accommodated in the national RUU KUHP, whereas the pointers have been set and explicitly formulated in various KUHP in several countries. As revealed by Barda Nawawi Arief about some interesting things to note as a matter of comparison, the formulation of objectives regarding the existence of a criminal/penal law in several foreign KUHP, which is not formulated explicitly in the Indonesian KUHP Concepts.[5]

From the description above it is clear that the purpose of punishment in the application system *givu* as criminal sanctions in criminal law customary communities of *Tau Taa Wana*, is a necessity of life that is immaterial. The need of the immaterial life always required to be maintained and guaranteed by the *Tau Tua Ada* and *Tau Tua Lipu* as rulers and indigenous stakeholders, even in the broader context, the Republic of Indonesia shall provide such guarantees as a form of execution of the mandate contained in the UUD 1945 (droit constitutionelle).

Criminal law reform of Indonesia based on Pancasila or should not leave the human values and society in the interests of the nation and the state, is the main basis when forming bodies of legislation doing this activity.

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[1] O. Notohamidjojo, *Pengantar Kedalam Filsafat Hukum*, (Salatiga, Universitas Kristen Satya Wacana, tanpa tahun), hlm. 12.
[2] Muladi, *Lembaga Pidana Bersyarat*, (Bandung, Alumni, 1985), hlm. 61.
[3] Roeslan Saleh, Roeslan Saleh, *Suatu Reorientasi Dalam Hukum Pidana*, (Jakarta, Aksara Baru, 1978), hlm. 25.
[4] Keseimbangan hidup yang dalam bahasa *Taa* disebut *Lempa Dua* merupakan falsafah serba berpasangan (*participerend denken*), dimana beralam pikiran tradisional yang *integaral-harmonis* dengan alam semesta dan mendambakan suasana yang selaras, serasi dan seimbang dalam kehidupan masyarakat adat *Tau Taa Wana*.
[5] Barda Nawawi Arief, *Tujuan Dan Pedoman Pemidanaan Dalam Konsep RUU KUHP*, disusun untuk penerbitan Buku Kenangan/Peringatan Ulang Tahun ke 70 Prof. H. Mardjono Reksodiputro, SH., MA., salah seorang mantan Ketua Tim Penyusunan Konsep RUU KUHP, (Semarang, 2006), hlm. 12;

According to Barda Nawawi Arief that, criminal law reform is essentially implies an attempt to reorient and reform criminal laws in accordance with the central values of the socio-political, socio-cultural and socio-philosophic Indonesian society that underlie social policy, criminal policy and policy enforcement in Indonesia. [1] Barda's view is understandable, that he thinks the criminal law reform is not done by adopting laws and regulations of the society, nation, or other countries, but sourced from the central values of the socio-political, socio-cultural and socio- philosophic Indonesian society. One of the conditions of Indonesian society, including the social and cultural conditions are pluralistic, so logically if the reality of the criminal law is customary law reflects pluralism.

In line with the ideals of renewal and the establishment of Indonesian law is based on the spirit of Pancasila or the law of life in the community, Sunaryati Hartono argues , " ... that national laws should be set up with this must be rooted in common law, customary law is recognized that this is now portrayed as a "ground plane", on which it should be built or developed "building" the national law. The building should be a national law firm building strong, made of stone, concrete and so on, is not a "*gubug*" that is easily moved place to place only (ie soil) to another. The building is called the national law should be a building that is very closely related to the ground where he established customary law, so that the land and the building was not separated from each other and become one, as modern buildings are solid not easily separated from buildings or land where was established as well as the homes we in the past".[2]

4 . CLOSING

4.1 Conclusion

Relying on the results of research and analysis, the following conclusions can be drawn :

1. Meaning *Givu* is customary criminal sanctions that are part of the criminal justice custom system have a elementary logic or implementation reason, principles derived from the culture and beliefs of indigenous societies *Tau Taa Wana*, and serves as an unwritten norm that is alive and animated, and maintained communal represented by *tau tua ada* (authoritative indegenous people), and binding, especially on who among the members of the indigenous peoples who commit criminal acts customs.
2. *Givu* relevance as criminal sanctions customs of indigenous peoples *Tau Taa Wana* with the philosophy of the Indonesian nation, is *Givu* which located as sanctions derived from the values or the soul of society. There is relevance between the application givu the ideals of community protection from interference or any form of threat actions intended to create social disharmony. Criminal law and criminal sanctions indigenous customary laws of indigenous communities *Tau Taa Wana* as part of the cultural richness of Indonesia or philosophy, so it is relevant to the material used in the RUU KUHP reform bill.
3. Criminal system of indigenous peoples *Tau Taa Wana* have contributed the RUU KUHP as a concrete manifestation of the Indonesian criminal law reform in the area of sentencing purposes as stated in Pasal 54 of the KUHP, has contributed in the purposes of the application of criminal sanctions givu as customary laws of indigenous communities *Tau Taa Wana* and in the context of the basic idea that contributed in the national RUU KUHP.

4.2 . Recomandation

Based on the results of research and analysis and conclusions as described above , then formulated the suggestions as follows :

1. Special arrangements need to existence of indigenous communities *Tau Taa Wana* in the form of local regulation (Government) which essence about the recognition and protection of indigenous and tribal peoples *Tau Taa Wana* that the wealth of society or a nation called cultural and legal pluralism, sustainability is maintained or protected.
2. Needed socialization and more in-depth review of the existence and dynamics of some givu as a criminal sanction of customary laws of indigenous communities such as the Tau Taa *Wana kruntu mata, palampa, penbangunaka Nuada* (revive the custom) to set specific in Draft chapters of the RUU KUHP.
3. Reformulations or reidentification goals (idealism) of the national RUU KUHP sentencing on a bill that has been formulated, in order to be fitted because there are still some things that have not been accommodated, while indigenous *Tau Taa Wana* and tribal peoples have made *givu* purpose *givu* application, as well as its principles.

[1] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Bandung, PT.Citra Aditya Bakti, 1996), hlm. 30-31.
[2] Sunaryati Hartono, *Dari Hukum Antar Golongan Ke Hukum Antar Adat*, (Bandung, Alumni, 1979), hlm. 16.

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