



Law Enforcement on Carok Actor's Criminal Act

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Abstract

Carok is a tradition in Madurese people in the form of fight for a certain, extreme reason concerning individual's self-esteem, followed with group fight with the use of weapons, and carok implementation may cause death. In the context of formal law, carok is the manifestation of the actors' bravery in violating the rules designated in the Criminal Code, thus they must undergo years of criminal imprisonment as actors of serious criminal act. On this basis, this research explored factors causing carok actor's criminal act and the constraints the police faced in the law enforcement effort on carok actor's criminal act. The normative law or literature research approach method employed in this research emphasized on criminal law literatures, prevailing laws and regulations, court decisions, legal theories, scholars' opinions and interviews. This research took descriptive analysis form based on the approach of carok case that caused death in Decision Number 182/Pid.B/2013/PN.Bkl. From the perspective of criminal law, Carok indicates a crime that may be qualified as criminal acts of physical abuse and murder since it contains a certain period or tempo from the start to the implementation of problem, in which the actors have calmly considered any possibilities and consequences of their actions. In general, the reasons of carok actor's criminal acts are individual or group's self-esteem abuse, vengeance, inheritance distribution conflict, etc. The author expected that appropriate law enforcement will minimize Carok occurrences, such as through making of special regulation for carok actors and imposition of serious criminal sanction (imprisonment) on carok actors and improved education, especially primary education.

Keywords: *Criminal Act; Actor; Carok*

I. Introduction

A. Background of the Problem

Madura Island is inhabited by the Madurese ethnic group. Many of them go out of Madura Island and gain success in other islands. Madurese people are commonly known to be as is, brave and hard workers. Self-esteem is the most important thing to the Madurese people's life. They have a philosophy of *ka-tembheng pote mata, angok pote tolang*, that death is better than living in shame.¹ In the philosophy,

¹ Samsul Ma'arif, *The History of Madura*, Frist Printing, Araska, Yogyakarta, 2015, pp.45-46

Madurese people are under the principle that they cannot bear their self-esteem getting abused since they get easily offended and angry, from which violence conflicts arise in Madurese people.

Violence conflicts by Madurese people are always derived from the feeling *malo* or getting offended that their self-esteem is abused by others. Self-esteem abuse is equal to personal capacity abuse. To the Madurese people, not respecting and not acknowledging or denying one's social status and role are equal to treating him/her as a *tada' ajhina* (useless) person, eventually leading to the feeling *malo*.² In Madurese language, there are terms *malo* and *todus*. These two words are always translated into Indonesian language as shame. In the context of Madurese social-cultural life, however, *malo* and *todus* bears quite different definitions. *Malo* is another form of the expression *todus*. *Todus* is basically more of an expression of reluctance (non-willingness) of doing something because of some social-cultural constraints.

To Madurese people, *carok* is an act of defending their self-esteem because of serious insult, impoliteness, and wife snatch or affair. The important thing is that *carok* is not performed without family's approval, and even *carok* must be performed under special ritual like *remo* and joint praying activity with family. Therefore, *carok* actor is respected by the people. However, if within 40 days the one whose self-esteem is offended (especially in affair case) does not perform *carok*, it is deemed a disgrace and he will be scorned by surrounding people. Among the crimes existing in the society, especially in Bangkalan Regency, Madura is a criminal act of murder generally known as *carok*, with consequences including violence and death of others. Criminal acts of murder through *carok* often cause death as the result of existing tensions or conflicts in the social structure.

Carok is a relatively worrying phenomenon, especially with regard to the negative impacts it causes. The people feel worried, anxious and concerned. From the perspective of criminal law, on the other hand, regardless of anything it is based on, *carok* is a criminal act. *Carok* is not defined as a criminal act in the Criminal Code (KUHP), but is basically the embodiment of its actor's bravery in violating the rules set forth in the Criminal Code (KUHP).

According to the applicable norms in Madurese people, when someone is harassed or offended by another, the harasser must be replied with a challenge *carok* and this cannot be tolerated. *Carok* (either caused by offense, jealousy, seizure of inheritance, etc.) is included in the category of crime which may cause a person's death, thus for the existing *carok* cases all this time in Bangkalan, the actors are subject to Article 338, Article 340 and Article 351. In regard with anything described in the background of the problem above, the author was interested to choose the title "**PENEGAKAN HUKUM TERHADAP TINDAK PIDANA PELAKU CAROK (Studi Kasus Putusan Nomor 182/Pid.B/2013/PN.Bkl)** [LAW ENFORCEMENT ON CAROK ACTOR'S CRIMINAL ACT (A Case Study on Decision Number 182/Pid.B/2013/PN.Bkl)]".

B. Problem Formulation

Based on the background explained above, the problems in this research were:

1. What are factors that cause *carok* actor's criminal act?
2. What constraints are faced by the police in law enforcement effort on *carok* actor's criminal act?

II. Research Method

The method used in this research was normative law or literature research which emphasized on criminal law literatures, prevailing laws and regulations, court decisions, legal theories, scholars' opinions and interviews.³ This legal research used the approach of *Carok* cases that caused death and was a

² Latief Wiyata, *Mencari Madura* [Searching for Madura], First Printing, Bidik Phronesis Publishing, Jakarta, 2013, p.97

³ Zainuddin Ali, *Metode Penelitian Hukum* [Legal Research Method], Jakarta, Sinar Grafika, Fourth Printing 2013, p.25

descriptive analysis. The materials or data related to final project's main problems were obtained from books, relevant laws and regulations, magazines and newspapers to describe and analyze them appropriately. The research's sources of data were primary legal materials, including Criminal Code, Law of Criminal Procedure and Decision Number 182/Pid.B/2013/PN.Bkl.

III. Discussion

A. Factors Causing *Carok* Actor's Criminal Act

Carok is a fight for a certain, quite extreme reason concerning someone's self-esteem, followed with inter-group fight with the use of weapons. There is no official regulation in such a fight, since *Carok* is a negative and criminal act in violation of the Indonesian law. Madurese people, however, maintain their self-esteem and "escape" from bitter problem through such a way. The emergence of *carok* culture in Madura Island started from the Dutch colonial era in the 18th century, after Sakera got caught and hanged in Pasuruan, East Java,⁴ that any problems, such as affair, land seizure, etc. would always be solved through *Carok*, on the reason of maintaining one's self-esteem.⁵ The factor to cause *carok* is someone or a group's self-esteem abuse, including:⁶

1) Wife Harassment or Affair Factor

Madurese people assume that any wife harassment is deemed man's (husband) self-esteem abuse that is quite painful and causes him to feel incurable *malo* except killing the one who does it. In case of wife harassment, there are 2 ways of settlement according to Madurese people: First, killing the harasser, and second, killing the harasser and the wife (the harassed). This wife harassment is the main factor to cause *carok* and often occurs.

2) Vengeance Factor

This is a pure grudge arising from *carok* actor to avenge previous *carok*. It is difficult to dismiss *carok* actor's urge to take vengeance considering that Madurese people are stubborn and preferring frontier justice, leading to *carok* occurrences.

3) Village Head Election Factor

In the life of Madurese people, there is Village Head election once every 5 years. In this occasion, Madurese people compete to have their respective candidate winning by betting on even tens of millions Rupiahs. Conflict occurs between two parties after election, commonly caused by loser's supporters that their candidate loses and do *carok* against winner's supporters. As the result of disappointment, they do *carok* and one of the parties, either of the winning or losing candidate, becomes *carok* victim.

4) Inheritance Distribution Factor

From the perspective of Madurese people's brave and straightforward talking characteristics, in case of injustice in inheritance distribution, family member who feel such injustice will challenge and do *carok* until one of them died as *carok* victim.

⁴ *Carok*, <http://id.wikipedia.org>, retrieved on Friday, 18 November 2016, at 6.32 p.m. Western Indonesian Time

⁵ *Carok Asal-Usul* [Origin of Carok], <https://singalodaya.wordpress.com>, retrieved on Tuesday, 22 November 2016, at 3.12 p.m. Western Indonesian Time

⁶ Interview with Marzuki, Head of Manunggal Village, Bangkalan, Madura, 21 December 2016

5) Impolite Behavior Factor

In case of impolite behavior factor, Madurese people talk and behave differently, that even something trivial can make someone or a group get offended and feel their self-esteem abused.

According to Denkers, Madurese people who perform *Carok* are commonly male, which means a man challenges another man, instead of a man challenging a woman or a woman challenging another. Murder or violence by a man over a woman or by a woman over another woman is not called *Carok*, but *atokar* (fight) or *mate'e oreng* (common murder). Therefore, to Madurese people, *Carok* is men's affair only, but not women's affair. This is confirmed by the expression *oreng lake' mate acarok, orang bene' mate arembi*, that a man dies because of *Carok*, a woman dies because of giving birth.⁷

After a *Carok* ends, it is common that the winning actor directly goes to local Police Station, aiming for protection from any possible counterattack by victim's family. It is at that time that the actor also reports what he has done. In the context of formal law, *carok* is the manifestation of its actor's bravery in violating the rules set forth in the Criminal Code, making them undergo years of criminal imprisonment as an actor of serious criminal act. In accordance with the Criminal Code, they are subject to criminal sanction in the form of imprisonment maximally death penalty, life imprisonment or maximally twenty years of imprisonment. In practice, however, these legal sanctions tend to be applied inconsistently and even quite lightly, since *carok* actors commonly undergo less than ten years of imprisonment.

Besides, "*Carok*" can be classified into a criminal act on a person's life or body, and even qualified into planned murder that it meets the elements of article 340 of the Criminal Code. Murder means intentionally taking another's life, that the criminal Code defines "an actor must do something or a series of acts that results in another's death, provided that the actor's intention must be directed to the death of the other person".⁸ From the perspective of criminal law, *Carok* indicates a crime that can be classified into criminal act of physical abuse and murder since it contains a certain period or tempo from the start to the implementation, in which the actors have calmly considered any possibilities and consequences of their acts. It is as if *Carok* actors want to show their bravery of acting and taking responsibility. They usually, frankly confess what they have done without pressure by surrendering to local police officer.⁹

B. Constraints Faced by the Police in Law Enforcement Effort on Carok Actor's Criminal Act

In the life of the state, the Indonesian National Police is the state instrument serving to maintain security and order in the society, enforce the law, and provide protection and service to the society for domestic security. For effective and efficient implementation of its functions and roles throughout the territory of the Republic of Indonesia or those deemed to be under the territory of the Republic of Indonesia, the Indonesian territory is divided into jurisdictions pursuant to the purpose of the Indonesian national Police's duties implementation.¹⁰

According to the interview with AKBP Supriyadi on Wednesday, 7 December 2016, law must be enforced indiscriminately and perform approach through legal counseling with Babinkamtibmas and society figures such as ulama/kyai. Dealing with *Carok* cases now is conducted differently from the past, that actors surrender by coming to police station, that when the actor surrender, he will be punished more

⁷ Huub De Jonge, *Garam Kekerasan dan Aduan Sapi* [Salt, Violence and Bull Fighting], First Printing, LKIS, Yogyakarta, 2011, p.199-200

⁸ P.A.F. Lamintang and Theo Lamintang, *Delik-Delik Kejahatan terhadap Nyawa, Tubuh &Kesehatan* [Criminal Acts on Life, Body &Health], 2nd Printing, Sinar Grafika, 2012, p.1

⁹ *Carok vs Hukum Pidana Indonesia (Proses Transformasi Budaya Madura kedalam Sistem Hukum Indonesia)* [Carok vs Indonesian Criminal Law (Process of Madurese Cultural Transformation into Indonesian Legal System)], <http://ejournal.stainpamekasan.ac.id/index.php/karsa/article/view/141>, retrieved on 2 December 2016, at 00:43 Western Indonesian Time

¹⁰ "*Tugas dan Wewenang Polri*" [The Indonesian National Police's Duties and Authorities], <https://pospolisi.wordpress.com>, retrieved on Friday, 23 December 2016, at 12.05 p.m. Western Indonesian Time

safely, but when he is outside, he will be find and killed by victim's family since *Carok* cases are always grudge based. The constraints often faced by investigators in dealing with *Carok* cases are:¹¹

- 1) Witnesses are not willing to testify for concern about their own safety.
- 2) Evidences are usually disposed of if not caught red-handed.
- 3) Suspect is protected by his family or escape abroad (to Malaysia).

According to the interview with Mr. Marzuki, Head of Manunggal Village, Bangkalan, Madura on Wednesday, 21 December 2016 there is lack of law enforcement or lack of serious law enforcement for *carok* actors. Imposed with death penalty or imprisonment, the number of *carok* actors will decrease 70 percent.¹² Someone killed by a *Carok* actor is definitely the victim of the *Carok*, and he must enforce the law on the murderer since *Carok* will not cease indefinitely. The law enforcement on *carok* actors are pursuant to the Justice Theories that study and analyze indiscrimination, justice or non-arbitrariness and institution or individual against other society or individual in law enforcement process.¹³

The people need legal protection, both from the government's acts and among themselves as citizens. Therefore, the people and law enforcers' legal awareness is the absolute condition for realizing the ideal of nation of laws in practice. In order to realize law enforcer's performance that will respond to the people's demand for changes and development in the reform era in any fields, the biggest and main demands, especially ones faced, are human resource and professionalism that are capable of containing and realizing people's demand and aspiration, thus law enforcers will be authoritative and loved by the people, attached to and thick with the people's expectation fulfillment values. Law enforcers are closely related to the people, thus there is a meme that where there is a society there is law (*ubi ius ubi societas*). Therefore, criminal act must be prevented and handled intensively by law enforcers.¹⁴

Law enforcement is the center of legal life activities from law planning, law formation, law enforcement and law evaluation. Law enforcement is basically interaction between various human behaviors that represent different interests in the frame of mutually agreed rules. Therefore, law enforcement is not merely deemed as a process of law application as the legalists have opinion of. However, law enforcement process has wider dimension than the opinion, since law enforcement will involve human behavior dimension. With such understanding, we will know that the legal problems that will always stand out are the problems of "law in action" instead of "law in the books".¹⁵

According to Wayne La-Favre, Law Enforcement as a process is basically the application of discretion regarding decision making that is not strictly regulated by legal principles, but with personal assessment element.¹⁶ In this case, law enforcement is a mutual endeavor and the responsibility of each member of the society pursuant to their respective capability that must be worked on in various fields of life for people's welfare and upholding justice is harmony in inter-human relationship in the society pursuant to prevailing morality in the society.¹⁷ Law 11 of 2009 on Social Welfare states:¹⁸

¹¹ Interview with AKBP Supriyadi, Kabag Ops Polres Pamekasan-Madura, on 07 December 2016.

¹² Interview with Marzuki, Head of Manunggal Head, Bangkalan, Madura, on 21 December 2016

¹³ Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi* [The Application of Legal Theories to Thesis and Dissertation Researches], First Printing, RajaGrafindo Persada, Jakarta, 2014, p. 25

¹⁴ A, Latief Wiyata, *CAROK Konflik Kekerasan dan Harga Diri Orang Madura* [CAROK Conflict, Violence and Self-esteem of Madurese People], First Printing, LKIS, 2002, p. 201

¹⁵ "Penegakan Hukum Dan Kepercayaan Masyarakat Terhadap Institusi Kepolisian [Law Enforcement and People's Trust in the Police Institution]," <http://www.tribatanewspoldasulawesiutara.com>, retrieved on Friday, 23 December 2016, at 12.14 p.m. Western Indonesian Time.

¹⁶ Soerjono Soekanto, *Faktor – Faktor yang Mempengaruhi Penegakan Hukum* [Factors to Affect Law Enforcement], 11th Printing, Rajawali Press, Jakarta, 2012, p.7

¹⁷ Umar, Sholehudin. *Hukum & Keadilan Masyarakat* [Law & People's Justice], Setara Press, 2011, pp. 41-44

¹⁸ "Ketentuan-Ketentuan Pokok Kesejahteraan Sosial [Main Terms of Social Welfare]", www.hukumonline.com, retrieved on Friday, 20 January 2017, at 3.12 p.m. Western Indonesian Time.

- 1) That the struggle of the Indonesian aims at achieving the Indonesians that are just and prosperous, from the material and healthy spiritual perspectives, that uphold human dignity, rights and obligations pursuant to Pancasila, and can be achieved only if the people and the Nation are at the best, comprehensive and evenly distributed level of social welfare.
- 2) Must be mutually undertaken by all people and the government based on the basis of kinship.
- 3) Must be an integral part of the national development efforts towards enhancing the level of all people's life.

Conclusion and Suggestion

A. Conclusion

Based on the study on the discussion, the author concludes that the factors to cause *carok* actor's criminal acts are:

- 1) Individual or group's self-esteem abuse that falls into wife harassment or affair category, is Madurese people's view that any harassment on someone's wife is deemed to abuse the man's (husband) self-esteem that is quite painful and causes the feeling *malo* that cannot be cured except by killing the one that does it.
- 2) Vengeance, is a grudge arising purely from *carok* actor to avenge previous *carok*.
- 3) Village Head Election, is one held in the Madurese people's life once every 5 years. In such occasion, Madurese people compete to support their respective candidate by betting on up to tens of millions of Rupiahs.
- 4) Inheritance distribution, occurs in case of injustice distribution of inheritance by a family member and another member feels such injustice and fight the former in *carok* until one of them dies as *carok* victim.
- 5) Impolite behavior, in this case is impoliteness factor of Madurese people in talking and behaving with different characteristics, that even trivial matter may have a person or group offended and felt their self-esteem abused.

The constraints faced by the police in law enforcement effort on *carok* actor's criminal act are that *carok* cases in the past were dealt differently from those now, that in the past the actors come to and surrender to police station, but they now escape, that when the actors surrender, they will be punished more safely, but outside, they will be hunted and killed by victim's family, since *carok* cases are always based on vengeance. The other constraints the investigators face in dealing with *carok* cases are that the witnesses are not willing to testify for their own safety, evidences are usually disposed of in not caught red-handed or escaping abroad (to Malaysia).

B. Suggestion

Based on the conclusions above, the author proposes the following suggestions:

- 1) Factors to cause *carok* actor's criminal act are expected to be mitigated, law enforcers should make special regulation for *carok* actors and imposing serious criminal sanction (criminal imprisonment) to *carok* actor and it is necessary to instill awareness into Madurese people who do *carok*, especially in rural areas which are prone to this violence, to prioritize expression of desire through courtesy when facing any forms of conflict, especially derived from self-esteem abuse. Considering

that Madurese people uphold society figures and ulama, society figures and ulama are expected to be mediator, to deliver message that *carok* is a crime that may cause death.

- 2) In effort to enforce law on *carok* actors' criminal acts, law enforcers must issue strict policy in dealing with *carok* cases. Revitalization is needed to reconfirm the state's authority, especially in controlling sources of violence in order to protect the people and enforce the sense of justice.

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D. Interviews

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Interview with Marzuki, Head of Manunggal Village, Bangkalan, Madura, 21 December 2016.

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