

Recognition the Role of Traditional Villages in Tourism Development from The Legal Pluralism Perspective

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ABSTRAK

Pengelolaan keanekaragaman tradisi dan budaya di setiap daerah di Nusantara lahir dari kemajemukan masyarakat dengan ciri khas berbagai sistem hukum adat yang berbeda dengan hukum nasional yang justru dapat memperkaya khasanah hukum nasional Indonesia. Urgensi kajian artikel ini adalah perlu adanya integrasi kebijakan pembentukan regulasi dan pengelolaan di bidang kearifan lokal seperti adat dan tradisi yang terdapat di setiap daerah di Indonesia. Masalah yang dikaji adalah: pertama, mengkaji kebijakan pengembangan adat dan tradisi dalam konteks pluralisme hukum dan kedua, menganalisis konsep hukum sebagai integrator dalam kebijakan adat dan tradisi dalam konteks pluralisme hukum Indonesia. Hasil penelitian menunjukkan bahwa pertama, perkembangan adat dan tradisi dalam konteks pluralisme hukum selama ini, hukum negara berada pada posisi ordinarat dan kearifan lokal berada pada posisi subordinat, sedangkan telah terjadi marginalisasi kelompok masyarakat hukum adat di Indonesia. Kebijakan pengembangan adat dan tradisi; dan kedua, konsep hukum dapat berfungsi sebagai integrator antara kepentingan subsistem dalam kebijakan pengembangan adat dan tradisi dalam konteks pluralisme hukum di Indonesia.

ABSTRACT

The management of the diversity of traditions and culture in each region in the archipelago was born by the plurality of society with the characteristics of the various customary law systems as different from national law which can actually enrich the repertoire of Indonesian national law. The urgency of this article study is that there is a need for an integration of policies for the formation of regulations and management in the field of local wisdom such as customs and traditions found in each region in Indonesia. The problems studied are: first, to examine the policy of developing customs and traditions in the context of legal pluralism and second, to analyze the concept of law as an integrator in the policy of customs and traditions in the context of Indonesian legal pluralism. The results show that first, the development of customs and traditions in the context of legal pluralism so far, state law has been in an ordinate position and local wisdom has been in a subordinate position, while there has been marginalization of customary law community groups in the policy of developing customs and traditions; and second, the concept of law can function as an integrator between the interests of the sub-system in the policy of developing customs and traditions in the context of legal pluralism in Indonesia.

1. INTRODUCTION

The plurality of the Indonesian people as the nation's cultural identity in interacting with fellow community members and the government in one system, greatly influences both in policy making and the implementation of policies and laws and regulations that are based on the constitutionality of the 1945 Constitution of the Republic of Indonesia (UUD 1945) (Nuryadi, 2020; Perdana et al., 2019). Natural resources, as well as the existence of indigenous peoples, along with the rights inherent in them (Gutti et al., 2012; Nugroho, 2020). With regard to the policy of establishing regulations in the field of protection of national identity as part of the wealth of customs and traditions which are elements of Indonesian culture, it is influenced by the plurality of local communities who have different legal systems from national laws. Furthermore, the de jure acknowledgment of the existence of indigenous peoples is also recognized and ratified in Article 28 I paragraph (3) of the 1945 Constitution which states that, "Cultural identity and rights of traditional communities are respected in line with the development of the times and civilization".

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Recognition of the existence of indigenous peoples' rights does not only stop at the constitution, but more than that it is also operationalized in Law Number 39 of 1999 concerning Human Rights, especially Article 6 (Artatik et al., 2019). Diversity on the one hand affects the establishment of integration, on the other hand, if it cannot be minimized, it is feared that exploitation will occur (Aeni & Astuti, 2020; Surahman, 2010). An integration of policies for the formation of regulations in the field of cultural identity survival with the rights of indigenous peoples to local resources is needed so that they can be processed into various traditional objects, such as handicrafts with distinctive ornaments from each region, management patterns, and local wisdom of the community. In the management of potential resources, such as customs that can become commercial objects so that they can bring in income of economic value but still consider environmental sustainability, in order to realize a balance in the economic, social and cultural and ecological fields in the midst of a pluralistic society, the legal system with all elements The elements in it are preserved.

The protection of the social, cultural, political and economic rights of indigenous peoples in independent countries has been stipulated in Article 1 letter a of the 1989 ILO (International Labor Organization) convention (Abidin, 2014). This momentum indicates that the aspirations of indigenous peoples have been accommodated through international law institutions to fight for rights with the characteristics of local wisdom to achieve their goals. The 1989 ILO Convention No. 169 has not been ratified by the Government of Indonesia (Sukirno, 2013). As a distinct society according to the characteristics of Kingsbury (R.H. Barnes, 1995). Based on the reality and international legal instruments that have been signed by the Government of the Republic of Indonesia, the government should not impose its will by limiting but giving freedom, so that indigenous peoples can develop naturally and naturally. There are rights attached to human dignity with institutional facilities in the state (Adnyani et al., 2021). Local wisdom is a legacy of our ancestors in the values of life that are integrated in the form of religion, culture and customs (Indrawan et al., 2020; Kurniasari & Rahardi, 2019). In its development, the community adapts to its environment by developing a wisdom in the form of knowledge or ideas, equipment, combined with customary norms, cultural values, activities to manage the environment to meet their needs. Recognition of local wisdom, such as indigenous groups, which are still very limited in scope, due to geographical and territorial factors. These two factors greatly determine the role in the position of local wisdom in each region of Indonesia. Where regional customs have their own characteristics that are not affected by circumstances outside the group members. The specificity of each local wisdom as a pattern, symbol of the customary law community concerned can be seen in daily social life whether in terms of art, clothing, food, celebration parties, crafts, character life pattern skills and nature tourism.

The politics of legal pluralism is a policy approach as a middle ground or intersection in solving the problem of differences in the construction of the ideal model of setting the recognition of local wisdom and customs in each region in Indonesia, both from state law in the form of regional regulations on spatial and provincial spatial plans and laws (Benda-Beckmann & Turner, 2018; Wibawa, 2018). Some of these indicators have become part of the characteristics of customary law community units that inhabit certain territorial areas, the existence of customary norms, customary leadership and Indonesian assets. The theory used as an analytical knife is the theory of legal law, as well as the theory of legal pluralism. The principle of managing water resources, especially agricultural irrigation water through local institutions, is in accordance with Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the obligation of local governments to recognize and respect the unity of customary law communities and their communities by taking into account various traditional rights. Shifts in the legal paradigm of local wisdom, such as the management of water resources, especially irrigation water, have occurred in Indonesia since the Old Order, the New Order and the Reformation Order until the enactment of Law no. 17 of 2019 was greatly influenced by the political law adopted. At the legislative level there is always a relationship between the Local Government Law and the Water Resources Law and the influence of the community's legal culture (Nugroho, 2020; Suntana, 2021). In particular, the Indonesian people, who are still very strong and whose existence has been embedded from the past until now, have become a guide in activities in people's lives which are closely related to the laws that apply within the territory of the Unitary State of the Republic of Indonesia, namely Positive Law.

Traditional wisdom that is local in accordance with their respective regions is one of the cultural heritages that exist in Indonesian society and has been passed down from generation to generation by the concerned community groups, explaining that from an environmental point of view the existence of traditional local wisdom is very beneficial because directly or indirectly in maintaining the environment and preventing environmental damage (Salim, 2016; Sukaatmadja et al., 2015). Local wisdom as a collective product of society, is functioned to prevent human arrogance and greed in exploiting natural resources without destroying the sustainability of life (Relin et al., 2018; Sofyan et al., 2019). Improving

the quality of environmental management requires the ethical commitment of local communities with stakeholders in adaptive behavior in utilizing natural resources supported by pro-environmental development policies.

Relevant to this, works of art will certainly be able to provide inspiration for art connoisseurs, especially people in various regions in Indonesia. These values can not only be a reference for the behavior of society in general. For example, aesthetic value is the value of beauty that can be enjoyed through exhibitions, craft shows and others. Where aesthetic value is a reference as a craftsman in his work behavior, what is contained in every work of art is economic value. The economic value of handicrafts as souvenir products in each region can be seen in the efforts to develop a work ethic. The work ethic here, which is related to the existence of handicrafts, can create enthusiasm for weaving craftsmen and job opportunities for the perpetrators. In addition to this, social values also cannot be ignored because social values are closely related to the level of public acceptance in accepting the work of the nation's children. Social values will also provide behavioral guidelines for the association of craftsmen so that it continues, as well as provide awareness for the community about the importance of togetherness and the shortcomings in every social unit. Based on the above background, the study of this article is an acknowledgment of local wisdom in the form of handicrafts as the actualization of legal protection for work products in the perspective of legal pluralism. This research is a legal research (doctrinal research) which aims to provide a systematic exposition of a rule of law regarding the recognition of local wisdom in the form of handicrafts as the actualization of legal protection for work products in the perspective of legal pluralism (Arliman, 2018b).

2. METHODS

This study uses a statutory approach and a conceptual approach. The approach to the legislation is also looking for the ratio legist and the basis of the ontology of the birth of laws and regulations so that they can understand the philosophical content behind the law (Marzuki, 2005). The concept of law is a constructive and systematic concept that is used to understand a rule (Sidharta, 2008). This research is to examine the doctrines, principles, and concepts in legal science related to legal issues which are the main issues that the researchers examine. The understanding of these doctrines and views becomes a guide for researchers in building a legal argument in solving the legal issues they face. After all legal materials have been collected that are relevant to the problem, all legal materials, both primary legal materials, secondary legal materials and non-legal materials are carried out an inventory, identification and classification to find the law in accordance with the problems studied (Syamsudin, 2007). Analysis of legal materials with legal hermeneutic techniques. Furthermore, it is illustrated using descriptive analytical techniques through a qualitative approach to legal materials by abstracting existing laws and regulations in order to find the legal norms contained in each legislation related to the problem of recognizing customary villages in the perspective of national legal instruments. The elaboration of the legal material that has been collected is then analyzed according to its nature, starting from descriptive, evaluative and prescriptive with regard to the focus of the problem and seeking a solutionst.

3. RESULTS AND DISCUSSIONS

Results

Policy on the Development of Customs and Traditions in the Context of Legal Pluralism

Indonesia's environmental conditions produce a diversity of ecosystems and natural resources, giving birth to Indonesian people who are closely related to natural conditions in carrying out various activities to support their survival. Indonesian people view natural resources as teachers who guide people's lifestyles, which are born in the form of habits. Natural customs that are poured into life customs that are oriented to the nature of nature that develop according to their existence. Traditional wisdom that is local in accordance with their respective regions is one of the cultural heritages that exist in Indonesian society and has been passed down from generation to generation by the community groups concerned, one of which is the typical Tegalalang wooden wall hanging craft which is a hereditary heritage that has been continuously preserved until now. Improving the quality of rural creative industry management as a legacy of ancestral traditions requires an ethical commitment of local communities with stakeholders in adaptive behavior utilizing natural resources supported by pro-environmental development policies because business operations require arbesia wood raw materials from local village forests.

There are still many forms of customary customs from the Indigenous Regions that exist in the remote archipelago, displaying the characteristics of each of them that are of high value and quality both

from the handicrafts of the nation's children scattered in the Indigenous Regions which are in indigenous groups. This cannot be detailed in detail because of the many different forms, patterns, and types, whether in the form of food, typical clothing, handicraft production, celebration parties, arts, or natural attractions for recreation which each Customary Region maintains as a regional specialty, and can be promoted as local wisdom for the region concerned. As time goes by, the government protects and gives full attention to the phenomenon of people's lives to regulate regularly and peacefully in society, then gradually the government issues regulations that regulate according to the needs and wishes of the community, such as the issuance of Law No. 32 of 2009 concerning Protection and Management Environment Article 1 paragraph 30 explains about local wisdom, namely noble values that apply in the life of the community, including protecting and managing the environment in a sustainable manner and paragraph 31 describes customary law communities, namely groups of people who have lived in certain geographic areas for generations. Because of ties to ancestral origins, a strong relationship with the environment, and a value system that determines economic, political, social and legal institutions.

In line with that regulation in environmental management, economic aspects are things that really support the progress of a nation. The economic aspect is an adaptation aspect in which the nation's economic development is closely related to the correct pattern of legal regulation so that in its implementation an ideal development will be created as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia. Therefore, countries must recognize and fully support their entities, cultures and interests and provide opportunities to actively participate in achieving sustainable development. The existence of customary law communities is recognized by the state in Article 18B paragraph (2) of the 1945 Constitution which reads "The state recognizes and respects customary law community units and their traditional rights". Furthermore, this provision also provides limitations as a condition for recognition and respect, namely as long as the customary law community is still alive and in accordance with the continuous development of the community (Matuankotta, 2019).

The development process gave rise to a lot of knowledge and customary law is still alive and in accordance with the continuous development of society. This development process gives rise to a lot of knowledge and traditional values resulting from the process of adaptation to the environment. In accordance with basic human needs, one form of traditional knowledge that develops is knowledge in land use, both as a place to live and a place to find or produce food ingredients (Kosmaryandi, 2005). Its relevance to efforts to empower indigenous peoples through economic development based on legal norms and local wisdom, the utilization, use and management of natural resources through the routine of the creative industry of wood crafts made from albasia wood has supported environmental sustainability, these indigenous peoples with their local knowledge, with the power to hold their customary law, his spiritual abilities, and his religion.

Discussion

Legal pluralism is everywhere. This expression emphasizes that in the social area (Tamanaha, 2004), diversity of normative systems is a necessity (Colchester & Chao, 2012). Legal pluralism is referred to as weak legal pluralism when the state recognizes the presence of elements of other legal systems outside of state law, but these non-state legal systems are subject to enforcement under state law. Meanwhile, strong legal pluralism exists when the state recognizes the existence of non-state law and the legal system has the same enforcement capacity as state law. In line with that, the rule of law in the community always goes according to where and where the community develops in a sustainable manner (Ulil, 2019). Various diversity in the life that exists in society (Societal Law) which is not a product of state law (State Law) is what Jawahir Tontowi intended as Living Law. This is a learning material that the existing rules, habits, values grow, develop and are maintained in all community life activities. What is claimed to be community law is a sign that there is legal heterogeneity in society (legal plurality). As time goes by, the government protects and gives full attention to the phenomenon of people's lives to regulate regularly and peacefully in society, then gradually the government issues regulations that regulate according to the needs and wishes of the community, such as the issuance of Law No. 32 of 2009 concerning Protection and Management Environment Article 1 paragraph 30 explains about local wisdom, namely noble values that apply in the life of the community, including protecting and managing the environment in a sustainable manner and paragraph 31 describes customary law communities, namely groups of people who have lived in certain geographic areas for generations. Because of ties to ancestral origins, a strong relationship with the environment, and a value system that determines economic, political, social and legal institutions (Adnyani et al., 2021).

Law enforcement is a social sub-system, so its enforcement is influenced by a very complex environment such as political, economic, social, cultural developments, defence and security, science and technology, education and so on (Nurudin, 2016). In line with that regulation in environmental

management, economic aspects are things that really support the progress of a nation. The economic aspect is an adaptation aspect in which the nation's economic development is closely related to the correct pattern of legal regulation (Nurbani, 2014), so that in its implementation an ideal development will be created as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia. Therefore, the state must fully recognize and support their entities, cultures and interests. and provide opportunities to actively participate in achieving sustainable development. The existence of customary law communities is recognized by the state in Article 18B paragraph (2) of the 1945 Constitution which reads "The state recognizes and respects customary law community units and their traditional rights". Furthermore, this provision also provides limitations as a condition for recognition and respect, namely as long as the customary law community is still alive and in accordance with the continuous development of the community (Matuankotta, 2019).

William argues that law includes regulations, administration and case law as an important and legal source (Falah, 2018). Of course, as an ethical guideline for a person, it is manifested in moral awareness which contains beliefs as to whether something is right or not, the feeling that arises that he will be wrong to do something he believes is not right departs from moral norms and self-respect. The Concept of Law as an Integrator of Customary Policies and Traditions in the Context of Indonesian Legal Pluralism Brian Z. Tamanaha in Marcus and Sophie (Colchester & Chao, 2012), legal pluralism is everywhere. This expression emphasizes that in the social area, diversity of normative systems is a necessity. Legal pluralism is referred to as weak legal pluralism when the state recognizes the presence of elements of other legal systems outside of state law, but these non-state legal systems are subject to enforcement under state law. Meanwhile, strong legal pluralism exists when the state recognizes the existence of non-state law and the legal system has the same enforcement capacity as state law.

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Spatial violations in Indonesia also caused by law enforcement weak, government policies are judged inconsistent and changing, there are indications on spatial planning which is very pragmatic, the result is nothing legal certainty (Yustia, R. D. A., & Fatimah, 2020). The finding that the function of spatial planning in maintaining environmental sustainability has experienced various The first problem is conflict between sectors and regions.(Imran, 2013) The purpose of the spatial arrangement is to achieve the use of space quality ones (Jazuli, 2017). Furthermore, permission serves to control any activity or behavior person or entity that is preventive in nature (Ridwan, M. H., & Mudiono, 2017). Inappropriate use of space with spatial plans, utilization permits or permit requirements issued by the competent authority including blocking access for public interest constitutes a violation of spatial planning (Waskito, 2017).

Building and defending a nation on materials Such a plurality basis requires extraordinary hard work (Parwata & Wijaya, 2018), the right facilities and infrastructure and a good and strong will of statesmanship from state administrators. as well as management models (political, legal, social, cultural, economic, cultural systems) that are in accordance with the conditions and development of this nation in the future as well as the Pancasila ideology that made of material (Causa Material) from the Indonesian people themselves. These various supporting factors are constitutionally juridically contained and accommodated in Pancasila and the 1945 Constitution of the Republic of Indonesia. Empowerment construction society has been adopted as a strategy of social, economic development and culture implemented in tourism development design framework centered on people who have the goal is not only to grow and develop economic added value, but also social added value culture (Arliman, 2018a), Tourism is built for the sake of together in creating prosperity evenly (Muljadi, A. J., Warman, 2014).

Strengthening and protecting the plurality of society with the basis and instruments of the constitution, the right model and approach, as well as by organizers who have a commitment to statesmanship (who only think and act to put the interests of the nation and state above the interests of individuals, groups) using strong political lines and the law as mandated in Pancasila and the constitution will guarantee the strengthening of the integration of the Indonesian people in living and managing the

country in the future among other nations in the world in this current atmosphere of globalization. The provisions of Article 6 of Law no. 12 of 2011 mandates that the legal politics of the material for the formation of national laws and regulations must be formed based on values the plurality of the components of the content of the Indonesian nation. Therefore, the products of laws and regulations (national and regional/local) must aim and guarantee the integration of the nation both territorially and ideologically.

The traditional village is an element of integration builder, the Traditional Village must meet the requirements as a unit of customary law community and their traditional rights which are actually still alive with territorial or genealogical or functional ties. Traditional villages are synonymous with local wisdom, for example, it is stated in the routines of the creative industries of each indigenous village community. One simple example of the value of Indonesian local wisdom in terms of culture that has been owned and developed since the past until now is the culture of gotong royong. This culture, contains values togetherness and kinship with mutual cooperation, an implementation of activities can be completed effectively and efficiently, hence the culture of gotong royong is often referred to as national culture.

4. CONCLUSION

The potential for handicrafts made from albasia wood is sufficient This prospective will be more and can contribute to the national economy, such as increasing welfare and environmental carrying capacity. Strengthening and protecting the plurality of society. Local wisdom of indigenous peoples becomes the capital and model management and protection of the environment at the regional and national levels. The political and legal lines as mandated in Pancasila and the constitution will ensure the strengthening of the integration of the Indonesian nation. Integration between sub-system interests in the policy of developing customs and traditions in the context of legal pluralism in Indonesia. Through academic scientific forums, input is accommodated in improving the national legal system and maintaining the stability of legal pluralism. Empowerment of customary law communities through economic development based on local wisdom, the utilization, use and management of natural resources and environmental sustainability, these indigenous peoples with their local knowledge with the power to hold their customary law, the ability to spirituality and religion.

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