

Legal Pluralism as a Conflict Resolution Alternative of Law State and Local Wisdom in Water Resources Management Based on Social Justice (Case Study: in the Community of Water User Farmers the Regency of Lumajang East Java Province)

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Abstract

The Era of New Order arrangements of the institutional based on the laws of the state (state base) occurs legal centralism that all state law should be uniform as mandated by Law No. 11 of 1974 the Government established a receptacle of the institutional management of the single water using farmers in the form of water user associations (P3A) Ulu-ulu as part of the technical set up irrigation systems. This means that the existing local institutional hereditary is not recognized. Management of water resources based on the state (state-based resources control and management) make people's position is not aligned with the government as an authority provider of state.

The problem is the use of authority in the country that carries certain consequences, including in matters of state law enforcement for the people. Consequently it is when the state has a positivistic perspective and places the position of the state law superior to local laws that exist as inferior law.

Implementable level in the reform era that uses Law No.7 of 2004 institutional of the Association of Water User Farmer (HIPPA) in East Java, which is set in the East Java Provincial Regulation No. 3 of 2009 on Irrigation in East Java is expressed as a container of water user farmers democratically formed as decision makers and main perpetrators in the management of irrigation water which is his responsible, here does not explicitly admit the existence of the ulu-ulu. This is to deny the existence of legal pluralism as defined in Article 18 B paragraph (2) the 1945 Constitution of the Republic of Indonesia. Legal pluralism of water resources legal management which is social justice needed to accommodate the differences of local wisdom through the ulu-ulu so HIPPA is able to work well.

Keywords: Legal Pluralism of Water Resources Management, Conflict Resolution Alternative, The Community of Water User Farmers, Principles of Social Justice.

Introduction

The Association of Water User Farmer (HIPPA) is an irrigation management organization which is formed by the government (*top-down approach*) as a replacement of traditional irrigation management organization by Ulu-Ulu. The principle of participation in the formation of institutional management of irrigation water is not done, because in the East Java Governor Decree No. 77 of 1995 on the Formation and Development of HIPPA East Java Province, in principle admits and legalize the existence of the Ulu-ulu by being placed as the technical implementer, by state law is considered as form of harmonization of the laws despite the existence of HIPPA simply pay attention to the management of existing traditional water.

Currently legal pluralism, directly or indirectly, has become part of a local political identity that plays a role in generating the workings of the local social system. It can be seen from how the people who have the local system put the position resistant on the interpretation of state power over the territory of the local authority, both in the race for environmental resources and access to local politics.

These conditions can lead to conflict and undermine the traditional irrigation system. For example Regional Regulation of Lumajang Regency No. 10 Year 1997 on the Establishment and Development of HIPPA in Lumajang Regency and Local Regulations of Lumajang Regency No. 10 year 1999 on Irrigation in Lumajang adopt East Java Governor Decree No. 77 of 1995 in which the formation of HIPPA should be formalized as a social organization not personal.²

A nation that upholds the values of justice, the government hopes to accommodate local wisdom of management of irrigation water in the context of regional autonomy in accordance with constitutional mandate of Article 33 (3) jo. Article 28 A, Article 28 paragraph (1) and paragraph (3), Article 28 H, and Article 18 B (2)

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² Regional Regulation of Lumajang Regency No. 10 of 1997 and Governor Decree of East Java No. 77 of 1995 declared the establishment of HIPPA must meet the following requirements: 1) was formed by and for water user farmers (owners, tenants, penyakap fish pond or ponds or business entities that receive irrigation services, 2) have Statutes and Bylaws (AD / ART), 3) legal entity status, and 4) defined by the Decree of the Regent.

the 1945 Constitution of NRI and Law No.7 Year 2004. This is as a consequence that the government has a strong authority in the management of natural resources including water. However, it cannot be released in the context of the politics of law and the time legislation was made.

Research Method

This research is a *sociological/empirical legal research*. Empirical legal research is started by the comprehension of normative aspect in relation of legal application practically.

The use of socio-legal approach in this study is intended to obtain an explanation of the behavior of the public law based on the dynamics of institutional law of HIPPA in accordance with socio-cultural of farmers then forwarded by finding a description and explanations at once related to its influence in the realm of empirical associated with institutional implementation of HIPPA got resistance from the ulu-ulu and neglect justice. Research with this legal anthropology approach is locality with a focus location in Lumajang and Subak Regency in Bali as a comparison.

Traced data, as in the study of law in general is kind of primary data and secondary data. Primary data includes data obtained directly from the first source (key informants) relating to: (a) institutional resistance of HIPPA in management of irrigation water, (b) institutional relations of HIPPA and the *ulu-ulu* in realizing justice and participation in the management of irrigation water, and c) find the concept of institutional arrangements of HIPPA based on justice and participation. In this case, researchers will explore the fact that the management of irrigation water conducted by institutions of HIPPA and local knowledge as the primary data and secondary data in the form of legal materials.

Discussion

1. Political Configuration and Institutional Role of HIPPA

As a society with a culture of Pandalungan are full of Islamic nuance. It happens because in this region clerics and kyai are not only as a role model, but also the character who has strong roots in some political forces. Pandalungan cultural of community in Madura and Java in principle affect the understanding of both formal and non-formal organizations as well as the level of cultural understanding as illustrated in the following table:

Table of Basic Understanding and Peoples Characteristics Based on Java and Madura Culture

Basic Understanding of Society	Peoples Characteristic Based on Culture	
	Madura	Java
<i>Main Character</i>	Kyai as role models	Formal officials as role models
	Hardworking or ductile	Hardworking or ductile
	Temperamental	Gentle and humble
	Very strong kinship	Strong kinship
	Holding and uphold the pride	More to be succumbing
	The livelihoods are merchants and some farmers	Teachers, farmers and merchants
Meaning of Religion and Culture	Obedience to Kyai	Obedience to the formal structure
	Religion as a role model	Religion as a role model
	Religion are not separated from culture	Religion are not separated from culture

Category "Institutional" of HIPPA in the perspective of local wisdom are dimensions such as conflict resolution, communication, mobilization of resources and decision-making. Clusters of activity "Water Control Building" seen efforts of engineering, construction, operation, and maintenance. Meanwhile, in a series of "Water Using" includes tasks procurement, allocation, distribution, and disposal of water. All of these tasks require technological and social roles to utilize of these technologies. Therefore, irrigation can be considered as a process of "socio-technical."

The existence of law in the perspective of anthropology studied as a *social control* system to create a *social order* and maintain order in the common life (*legal order*).

*Antropologist have similarly concentrated on what they regards as law – typically the most formal and dramatic aspects of social control in tribal and other simple societies- although this often includes nongovernmental as well as governmental process.*¹

Law in its function as a means of social control is one of the objectives of the law in society, in line with the demands of the development of society, especially in a society that is increasingly complex and modern, purpose and function of the law is more directed and enhanced as an instrument for social engineering (*law as a*

¹Benda-Beckmann, Keebet, The Context of Law, xiii th international Congress of the International Commission on Folk Law and Legal Pluralism.; Legal Pluralism and Unofficial Law in Social, Economic and Political development, Chiang Mai, April 2002, Page 20-25.

tool of social engineering), or to make social changes by using the instruments of law (*social engineering by law*) which is intended to achieve certain social conditions desired by the government.¹

Law development paradigm patterned *legal centralism* as intended above, consciously or not, in turn, became the trigger for *conflict of values* and *conflict of norms* in the implementation of national development.

With the transforms of traditional institutions in water management such as ulu-ulu or tuwawa converted into the institutional of HIPPA, it turns out the level of practice as a new institution experienced difficulty in dealing with farmers because the farmers were under the coordination of ulu-ulu before still follow the rules of ulu-ulu. Ulu-ulu / Parts Engineering of HIPPA and administrators of HIPPA in the district of Lumajang and Sukodono occurred resistance resulting in a conflict when state law committ cooptation of local wisdom.

The effort creating of legal harmonization to align with the PP No. 77 of 2001 and the interior minister's decision (*Kepmendagri*) No. 50 of 2001 jo. *Kepmendagri* No. 22 of 2003, therefore, in East Java issued in Provincial Regulation of East Java No. 3 of 2009 (amending Provincial Regulation of East Java No. 6 of 2003) still held by institutional of The Association of Water User Farmer (HIPPA)² and should be incorporated³ showing the concept of interaction between law that lead cooptation where the state law get advantaged, the law in view of the Progressive Law Theory should be an institution that aims to deliver man to life fair, prosperous and make people happy. Legal pro-people and pro-justice.⁴

2. Restore the Conflict of Water Resources Management: Values, Views, Farmer's Attitude, Local Wisdom as a Result of Co-optation of State Law in Institutional of HIPPA.

During this time HIPPA in the district of Sukodono and Lumajang inclined when resolving conflicts among farmers in the distribution of irrigation water by, first, the choice of the dispute settlement action by avoidance (*avoidande*). Avoidance is a way of dispute settlement by social restrictions or termination by either party against the opposition. Second, the choice of dispute settlement action by just letting go (*lumping it*). This is apparent even though HIPPA said since its establishment until now less running well marked by fluently changing of the stewardship as ineffective, while the Technical Section (*ulu-ulu / tuwawa*) still manage that ulu-ulu / tuwawa that existed previously.

By looking at the reality of the farming community of water user in a factual still in the ulu-ulu system and then when looking at the development of law in Law No. 17 of 2007 aimed at increasingly the realization of a stable national legal systems based on Pancasila and the 1945 Constitution. The Legal reforms with regard to the plurality of the prevailing legal order. For example, Law No. 7 of 2004 and Law No. 17 of 2007 on the legal options messo political level there is national political consistency of the local wisdom in the management of irrigation water as Subak in Bali, Ulu-ulu in Java etc.

The horizontal synchronization of the both law mentioned above equally sourced from the vertical sync that is the provisions of Article 33 (3) the 1945 Constitution that there is no conflict with each other. The existence of principles-that is appropriate with a political of macro law even support each other in contribution of achieving a fair and prosperous society as mandated by the constitution.⁵

Therefore, the adherence of legal centralism paradigm in the development of national laws became contradiction with the fact of legal pluralism in multiculture society, nation and country. In this regard, to realize the adherence of legal development paradigm nuanced legal pluralism as mentioned above, then, it becomes inevitable for incumbent governments to reorient and reform the legal development paradigm by promoting state legal regulations that explicitly gave recognition and intact and intrinsic protection (*geniune recognition and protection*) of the legal systems besides *state law*, *customary law* and *religious law*, including mechanisms of local regulation (*inner-order mechanism*) which empirically exist and live and operated more effectively in society.

¹*Ibid.*

² Article 1 paragraph 9. Article 4 paragraph (1) Provincial Regulation of East Java No. 3 of 2009 stated that "HIPPA as irrigation water management as a container of water user farmers formed a democratic manner as decision makers and main perpretators in the management of irrigation water which become its responsible." According to researchers HIPPA clearly does not include the ulu-ulu as a way to accommodate the local institutional as mandated by Government Regulation No. 77 Year 2001 and Government Regulation No. 20 of 2006.

³ Provincial Regulation of East Java No. 3 of 2009 (Provincial Gazette of East Java year 2009 No. 4) which revoked the Provincial Regulation of East Java No. 6 of 2003 (Provincial Gazette Of East Java year 2003 No. 2 Series E) states that the water user farmers formed HIPPA democratically in each area of service / tertiary or village and then to be able to participate / carry out the construction work on an irrigation network, thus, HIPPA must be incorporated.

⁴ Romli Atmasasmita, *Teori Hukum Integratif: Rekonstruksi Terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif*, Yogyakarta: Genta publishing, 2012, p. 88-89.

⁵See Article 4 letter c MPR Decree No. IX / MPR / 2001 reads to respect the supremacy of law by accommodating the diversity in the legal unification.

The implication, the values, the legal principles, legal institutions and the legal traditions of the people (*folk law / customary law / adat law*) must be responded to, accommodated and integrated into the national legal system. Furthermore, it is poured concretely into the rules of *state law* in its form as legislation that regulate aspects of peoples life that figured multicultural.

If traced the meaning of social justice values¹ with other Pancasila basic values, then the values of social justice is one of the values that serve the purpose of a system of values. For Indonesia, the values of Pancasila, even placed as a legal political paradigm. Pancasila has basic values that are universal and permanent.

The values were arranged in a hierarchical and pyramidal. The substance of the basic values of Pancasila which consists of the value of divinity, humanity, unity, democracy and social justice is a value system. The basic principle that contain such certain qualities, represents the ideals and expectations or the things will be achieved by the Indonesian that will translate into concrete reality both in the life of society, nation and state.²

When viewed from the stratification³ of the basic values of Pancasila, the value of social justice is the peak value of the pyramid of the value system of Pancasila. According to Notonegoro, the values of Pancasila including spiritual value, but the value of spirituality that recognizes the value of the material and vital values. The value of the first principle, it is God as its base and social justice as its goal.⁴

Actually, Indonesia has had guidance on how to implement social justice, particularly the principle of *Social Justice For All People of Indonesia*. Meaning of "justice" in the fifth principle of Pancasila has a sense of economic meaning which are sharper than the justice in second principle which is more spiritual. At the time of formulating the 1945 Constitution of NRI, *founding fathers* have laid the meaning of social justice one of those are by making in detail in Article 33 of the 1945 Constitution of NRI.

3. Legal Pluralism as a Conflict Resolution Alternative of water resources management in the community of water user farmer based on the principle of social justice in the future in East Java

3.1. Pancasila and Prosperous Country

According to Yudi Latif, it is said that by re-exploring the idea of the nation establisher, conclude that the state in accordance with Pancasila is the active state in the efforts of prosperous of its citizens and protect the individual interest all at once (private). The Nation establishers according to Yudi since beginning want to place economic and justice system balance ideal point between State role (social) and individual role (private), terms and obligations, as well as the fulfillment of civil and political rights with economic rights.⁵ Furthermore, when outlining the principle of social justice Sukarno declared that Indonesia not only pursue democratization in politics (as stipulated in the fourth precept of Pancasila), but also the economic democratization (the fifth precepts). By developing equations in the economic field.

In such a situation, then the approach of legal pluralism in completing how to solve the problems that occur in the local community become relevant. This legal pluralism approach is critical does not just look at the law (local) as reality, or the law as a social reality.⁶ This approach believes with the existance of the process of creation or formation, so that the existence of relations between legal products with the constituent. The

¹Value or Valere means: strong, good, worthwhile. Value involves judging. The value of a thing is determined by the result of the interaction between the assessing subject and the assessed object. See, Bambang Daroeso, *Dasar dan Konsep Pendidikan Moral Pancasila* (Basic and Concept of Pancasila Moral Education), Semarang: Aneka Ilmu, 1989, p.19. Constructs value does not get consensus on its definition because the construct of value is more abstract and higher level than the attitude and therefore more difficult to be clearly conceived. See, Danniell J. Muller, *Mengukur Sikap-sikap Sosial* (Measuring Social Attitudes), Interpreting by Cecelia Syarifuddin et al, New York: University Press Publisher FISIP Sundanese Bandung, 1990, p. 5

²Kaelan, *Pendidikan Pancasila* (Pancasila education), Yogyakarta: Paradigma, 2003, p.70-71

³Max Scheler argued that the exist value has not the same virtuous and high. According to the high and low of values can be classified into four levels, namely (1) The value of pleasure (close to the human senses); (2) The value of life (e.g. health); (3) The value of psychosis (truth, beauty); and (4) Value of spirituality (moral personal values) See, Driyarkara, *Sprinkling of Philosophy*, National Development, Jakarta 1978. Meanwhile, according to Notonagoro, the value is divided into three kinds, namely: (1) The value of the material (for human physical); (2) value of vital (for activity; health) and spiritual value which consists of four levels; the first value of the truth, second value of beauty, third value of goodness and fourth values of religious. See, Notonegoro, *Pancasila in Popular scientific*, Jakarta Seven Showers, 1975. See also in Kaelan, *Philosophy of Pancasila*, Nations Worldview, Paradigm, London: 2002, p.124-125

⁴See Darji Darmodiharjo, *Santiaji Pancasila*, Jakarta: Jakarta National Bussiness, 1979.

⁵Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas dan Aktualitas Pancasila*Jakarta: PT. Gramedia Pustaka Utama, 2011, p. 580

⁶Kleinhans, Martha-Marie & Roderick A. MacDonald, *What's Critical Legal Pluralism?*, Canadian Journal of Law, Volume 12 No. 2, 1997, p. 25-46

establishment of peoples law (or local law)¹, which is based on the life and experience of social interaction at the local level, would be closer psychologically and culturally than the laws (state) in which they are not involved in the forming.

3.2. The Concept of Water Resources Management Regulation

The water user farmers are all farmers who get benefit directly from the water management and irrigation networks, including irrigation pumps which include land owners, rice cultivators, rice hirer, fish pond owners who receive irrigation water, and the agriculture business entities which use irrigation. Institutional of water user farmer is an organization of water user farmers that are socio-economic and environmentally sound culture and is based on mutual cooperation. In some areas of irrigation management institutions are using different names or terms, such as in East Java with HIPPA, in Bali with Subak, in West Java with Partner Cai and so on.

HIPPA formation is the process of forming a container of water user farmers democratically in the development and management of irrigation systems in the working area. In a container of organization HIPPA, GHIPPA, and IHIPPA shall prepare the statutes (AD) and the bylaws (ART). Statutes and bylaws drafted by the ability of farmers and signed by the chairman and secretary. Furthermore, known by village and subdistrict heads and approved by the regent / mayor.

From the above contradictory when the state law with the display of formal law while farmers tend to use local wisdom through the ulu-ulu role in the management of irrigation water. Which became the center of attention and interest is how to capture such reality, is the idea of revitalizing the study of legal pluralism, which is actually more on efforts to circumvent in the model of social movements to achieve change and the widespread of the social justice realization. This is where the often disregarded, if not to say forgotten, to demonstrate the superiority of the central role and state monopolistic with the interpretation of power and imperialism laws (positive).²

For comparison the effectiveness of institutional of Subak in Bali which managed by village, the pakraman tradition have been learned to draw public attention on the importance of traditional irrigation systems. In a study to be a part of the society of Subak that to prove the effectiveness of Subak and the importance of irrigation water management system. Even Subak can block the action of the government if paddy soil used to give permission for the other side as opposed to the Spatial Plan (RTRW).

The society of Bali brings the concept of Tri Hita Karana (THK) which has a reciprocal relationship among the Parahyangan, the harmonious relationship between the members or karma Subak with God Almighty, Pawongan, the harmonious relationship among the Subak members which called Karma Subak, Kalemahan, the harmonious relationships between subak members with the neighborhood or area of the Subak irrigation.

Theoretically conflict among members of the organization of subak as well as conflicts between Subak related in one irrigation system that is incorporated in a container of coordination as in Jembrana, Badungakan can be avoided. The linkage among all the subsystems will enable the emergence of harmony and unity in the management of irrigation water in the irrigation system of the subak. It can happen because of the possibility of a policy to accept a certain deviation as tolerance by Subak members (for example, there is a transition system, and mutual loans system of irrigation water). Subak is an irrigation system that based on farmers (farmer-based irrigation system) and independent institution (self government irrigation institution) that is managed in the customary law system of Pakraman.

Observing that occurred in Bali above, associated with the presence of the HIPPA with state law that still puts the ulu-ulu as a manifestation of local wisdom by recourse to values, attitudes and views of the farming community, so when dealing with unification by imposing one kind of law, it only applies one kind of certain laws, and does not apply various laws.

With the reality of the diversity of customary law in Indonesia, including in Lumajang then it is time to respect and fully acknowledge the existence of local wisdom. The diversity of law (legal pluralism) is; impose various (more than one) of specific legal to all peoples of a particular country. Secondly it is both unification and pluralism seem to be irreconcilable because, each containing contradictory things.

In the context of Indonesia, which has a folk or local laws should be strengthened in the context of transforming the wider values of justice and human rights, including an effort of nature conservation as life part of local community. The operation of local legal pluralism and the role of institutions that maintain the local

¹ Keebet in one of his written wrote the definition of *costumary law, indigeneous law, 'adat' law, flok law, dan local law*, and analyzing the comparison, and in the end he chose to use *local law* as the most appropriate definition, because looking at the law are in the local area irrespective of where he came from. See, Keebet von Benda-Beckmann, "Legal Pluralism" in *Tai Culture, International Review on Tai Cultural Studies*, Vol VI No. 1 and 2, SEACOM, Berlin, 2001, Page 20.

²R. Herlambang Perdana & Bernard Stenly, *Makalah Gagasan Pluralisme Hukum*, diakses bulan Nopember 2013, hal. 5-10.

political social system, does not need to be brought into the debate ethnocentrism.¹

Conclusion

Local wisdom in the management of irrigation water that committed by The *ulu-ulu / tuwawa* against with state law as a form of co-optation of the state through the presence of the Association of Water User Farmer (HIPPA) based on Local Regulation No. 10 of 1997 and its Statutes (AD) / Bylaws (ART) from HIPPA of Lumajang Regency had not reflected the values of social justice. HIPPA tended to marginalize the farming communities who have irrigation water management based on local wisdom that is based on the attitudes, expectations and values that exist in society, it is not in accordance with Law No. 7 of 2004. The conflict in irrigation water management resolved by HIPPA in Lumajang Regency but in fact it just committed by local wisdom through the role of *ulu-ulu*. The approach to build a social order that is more social justice based on local wisdom on the rights and lives of local communities. In the future, local legislation encouraged to respect, protect and fulfill the rights of local communities through local wisdom in accordance with constitutional mandated. Local Government must provide a space guarantee for local wisdom of irrigation water management that is based on the principle of social justice to resolve the conflicts by its alternative mechanisms.

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