

Sociological Studies from Indigenous Peoples Adat Law in Indonesia

DR. SURIANSYAH MURHAINI, SH.MH.

Lecturer at the Faculty of Social and Political Sciences, University of Palangkaraya, Doctor of Social Sciences
Alumnus Merdeka University Malang

Abstract

Basically people who local wisdom Adat Law are legally authorized to manage the natural resources that exist in the region, respectively. Management carried out by traditional institutions. Based on the authority of traditional institutions, indirectly existence of indigenous people (in this case the owner of the original autonomy) will contribute to the national development efforts, especially in processing, maintenance, and environmental protection as part of which will be enjoyed by future generations. For the local berkearifan that rules are basically intended to regulate all natural potential, in the region of the country, both in its own territory and outside the area, which is then integrated into the local community on the basis of local knowledge. In this connection the role of Local Government or the Central Government must accommodate local wisdom as part of social life in the community. For this role should continue to appreciate, conserve, improve and pay attention to the existence of society Adat Law with traditional rights held in accordance with the constitutional recognition in the Constitution of the Republic of Indonesia Year 1945 so there is no conflict of laws and regulations in force and the rules of the Adat Law that local wisdom.

Keywords: Local wisdom , Indigenous Peoples, Adat Law

1. Introduction

Many people argue that Adat Law is the law of relics of the past that is always oriented to the past or ancient, making it less suited to modern life as it is today, which is entering the era of globalization. This idea is not entirely wrong but also not entirely correct. Said to be true, because it is recognized that traditional Adat Law, while life in the modern era / globalization requires everything that is modern. Not entirely true, because it turns out there is some form of legislation, which is influenced by Adat Law. in addition, also Adat Law is dynamic and plastic, evolving over time to adjust to the dynamics of human embrace the Adat Law. The existence of Adat Law were not codified. The rules are written armpits scattered everywhere, with diversification or the differences are very high.

The difference is always maintained, and this is what is referred to as local wisdom. Adat Law are values that live and thrive in a local community. though largely unwritten Adat Law, but he has a strong holding capacity in the community. Application of Adat Law in everyday life is maintained and run by the community where it is located Adat Law.

In the judicial perspective, when a judge faces a case and he can not find in the written law, he should be able to find legal within the rules of living in society. In this case the concrete is Adat Law as the law that continue to live and continue to develop dynamically in the community.

Adat Law because it is not in writing, between the environmental community compound one another. Sekaitan with local wisdom, evident that the existence of complementary with Adat Law. It needs to be studied for its development so as to find a point has to do that is konkret. This understanding will be known whether Adat Law is still alive, and theta as a local knowledge maintained or has already changed, and in what direction the change.

Therefore the study of Adat Law relating to local wisdom in assessing the development of Adat Law throughout its development in a society, need to be critically, objectively and analytically. In addition to studying the development of Adat Law seen as a natural law that comes from the mind and ideals of the society, also in a positive sense as a social aspect, on the basis of local social life of local wisdom.

The development of national law in a positive way means recognition of Adat Law will be seen in public in the doctrine, legislation, jurisprudence and in community life daily. Conversely developments negatively how Adat Law disregarded and displaced or completely invalid by the positive law represented by the state both in legislation and in the judgment.

In another perspective, that Indonesia is one of the island nation has many regions that lie around it. This led to the diversity of ethnicity, customs and culture of each tribe in every region. It is really very amazing in this because even though Indonesia has a lot of territory, a different tribe, but all can live in harmony with each other. Complementary each other in a common mission to maintain social unity and peace of the community.

2. Adat Law, Law Not Written

Unwritten law is also Adat Law, one example of the unwritten law is Indonesian Indigenous. According to R. Supomo, Adat Law is an unwritten law that includes rules of life is not determined by the authorities, but adhered to the community based on the belief that these regulations have the force of law. Custom or tradition is the oldest source of law, the sources of which are known or can be extracted as part of the law outside the law, where people can find or dig laws.

The development of written and unwritten law as a source of law in a legal order, continues to grow rapidly as more dynamic social life and the development of human civilization. The judge must examine and decide the case even if the law is unclear or incomplete. This means that he is not bound to the Act, so that in this case the habit has an important role in the association law.

Thus in Indonesia this exists Adat Law is an important source of law. In this regard Adat Law in question is a local *berkearifan*. This serves as a basis for the establishment of the basic rules of the operationalization as law enforcement. Particularly applicable in the courts should *smendasarkan* paad written law and Adat Law when the written law itself can not accommodate. This is the role that customary or local law.

Adat Law is actually interlocking with a society that still live in the traditional stage. Traditionality which continue to be maintained as a sub system in the social system. Thus *adaa* suitability for modern life as it is today. Modernity is in its development is heavily influenced by political law adopted by the State. For that Adat Law must constantly adapt with the community developments, in particular national political law.

Adat Law because it is not in writing, between the environmental pluralistic society with one another, it is necessary to study the development and understanding. This understanding will be known whether Adat Law is still alive, what has changed, and in which direction the change, and whether it is able to adapt to conditions evolving pluralistic society.

In another perspective, it is understood that the Adat Law is not a part of the codified law and live and grow in the soul of the community. Characters are constantly changing society, forms the basis of the property kept changing the fabric of society, changed precisely the Adat Law. Thus Adat Law is said to be dynamic. Every great changes in society, change is also customary. Changes in the composition of the community can be caused by several social factors contained within the community itself and can also come from outside.

The growth of the village into the city is just one example of the changes due to social factors contained in the community itself. Changes that naturally occur and will continue to occur throughout the turnaround time. Modernity is always constantly changing society and local wisdoms of Indigenous peoples also must keep abreast of developments and changes.

Adat Law is a scientific technical term, which shows the rules prevailing custom among people who are not shaped laws and regulations established by governmental authorities. Existence continues to grow dynamically follow and in line with the development of society in general.

Some definitions of Adat Law proposed legal experts, among others, as follows:

- a. Prof. Van Vallenhoven, the first mention of Adat Law provides a definition of Adat Law as: "The set of rules of conduct that apply to native and foreign orientals on the parties sanctions (because it is the law) and the other party is in a state do not codified (for adat). Thus asserted formulation Van Vallenhoven referred to is suitable to describe what is called Adat Recht in that age not to Adat Law in the present.
- b. Prof. Supomo, formulate Adat Law: Adat Law is synonymim of an unwritten law in the regulation of legislative (statuary law), the law of life as a convention on the legal entities of State (Parliament, Provincial Council and so on), the law of life as regulations customs which is maintained in social life, both in cities and in the village.
- c. Suroyo Wignjodipuro: Adat Law is a complex of norms derived from a sense of justice for what the people are always evolving and covering legislation, human behavior in everyday life in the community, largely unwritten, because it has legal consequences (sanctions).
- d. Ceminary on Adat Law and National Law coaching: Adat Law is defined as the original Indonesian law is not written in the form of legislation of the Republic of Indonesia, which contains elements of religion, here and there.

Furthermore, in understanding the development of Adat Law in society, Prof. Van Vallenhoven formulate: If from above (ruler) has decided to maintain the Adat Law when that law is dead, then the determination will be futile. Conversely had been decided from the above that Adat Law should be changed, whereas in the villages, in the fields and in the markets of the law was still strong and sturdy, the judge-would be futile. In other words, understanding the Adat Law should be done dynamically, and harmony between the upper (decide) and bottom (that use) in order to know and understand its development.

According Supomo, Adat Law is a law of life because he embodies the feeling of real law of the people. In various seminars, it develops later laws that live in the community (living law) that are commonly used for, showing a wide range of legal grow and develop themselves in society. Existly with Satjipto Raharjo that according to Adat Law it will remain as the completeness of national law. The mention of Adat Law to the

unwritten law do not diminish its role in providing distribution of habits, interests which can not be uttered in the written law.

The style and relevance of Adat Law in the Era of Globalization Supomo said: The style or pattern - a specific pattern in the Adat Law of the structure which is embodiment psychiatric and certain ways of thinking.

Therefore, the elements of Adat Law are:

1. Having a strong community nature. That is, according to the Adat Law Man, a creature in a close community ties, a sense of community which includes a field Adat Law.
2. Have a magical religious complexion, which is associated with the view Indonesian natural life;
3. The legal system was overwhelmed by the thought of all-concrete, meaning very concerned Adat Law and over and over he repeated many relationships concrete life. Adat Law systems use concrete relationships earlier in regulating social life.

In the perspective of local wisdom, that all know that the applicable law The connection in Indonesia until now is still a lot of Dutch inheritance law or are still influenced by Dutch law. In its application by law enforcement was not as in his native country, who prefer the appreciation and respect for the rights of individuals (this is not tantamount to selfish) as well as more rational thinking.

Therefore, that the application of the law in Indonesia, applied by law enforcement with the mindset of the people of Indonesia. In other words, using traditional mindset, as well as the people of Indonesia as a receiver, most still with emphasis on togetherness or communal and religio-magical. This has become a hallmark of ke-Indonesiaan the basis of Adat Law accommodation into national law.

The above conditions have contributed to the chaos of law, discriminatory and unfair. When it should be a good law, according to legal experts need to meet three conditions, namely: the philosophical, juridical and sociological, and even may be required to be entrenched and rooted in the culture of the nation itself.

Diversity applicable law in Indonesia is a legal requirement of a pluralistic society. Facts show that pretty much rules in practice less or not accepted by society. So the national laws must be accepted by all parties, then it needs to be formulated in the formulation of a general nature. Things that are operational must be submitted a handling or settlement based on Adat Law applicable to each tribe located in Indonesia. To each tribe should be given the authority to elaborate further what is stipulated in the general provisions of the national character.

Adat Law that need not be feared would hinder or oppose the development of national societies towards life in accordance with the demands of the times. The reasons can be evidenced by the properties of Adat Law is dynamic, flexibility provisions, as well as the principle of universal principles. Adat Law is becoming increasingly important role in the formation of national law. The reason that the Adat Law according MPRS 1960 is a cornerstone of the national legal order, provided that in accordance with the development of consciousness of the people of Indonesia and does not hinder the creation of a just and prosperous society. Thus it was no judicial protection and guarantees against its existence and development in the future.

In the perspective of the law of agrarian particular, it is stated in Article 5 of Agrarian Law (UUPA), that the Agrarian Law which applies to the earth, water and air space is Adat Law, to the extent not contrary to the national interests and the state, which basically on national unity, with Indonesian socialism and regulations set forth in this law and other laws, everything with regard to elements that rely on religious law.

According Boedi Harsono (1974: 157), that is intended by the UUPA with Adat Law is the law of the original class of indigenous people, which is the law of life in the form of unwritten and contains elements of national original, namely the nature of society and the family, which the principle balance and overwhelmed by the religious atmosphere.

If the orientation is about globalization, then indeed what happens is when a man has mastered and is able to apply science and technology in the field of telecommunications, information, transportation and tourism. Globalization is also going to happen in the economy. In this hal, how will it affect the development of our national law, and the hal what should we pay attention to it in order to face the globalization of our nation maintain national identity in the eyes of the world.

According Sunaryati Hartono (1991: 64), a formal framework for the development of System of National Law should be based on Pancasila and the 1945 Constitution, so that every area of law that will form part of the legal system of the National, which consists of a number of laws and regulations, case law, or common law, shall be based on Pancasila and the 1945 Constitution.

Therefore, legal pluralism is no longer to be maintained, then the elements of Adat Law and Religion Law transformed or become part of the areas of law in the National Law System, which will thrive in their respective fields. This forms the basis of life and the development of sectoral laws inspired by Adat Law which is based on local wisdom.

Thus the Adat Law derived from the awareness and culture of the nation, will play an important role in the national law. With globalization, Adat Law that should not be shifted as one of the sources of law are important in the formation of national law. Only Adat Law needs to adjust to circumstances far different than

before, but its principles will remain the coloring of each establishment and application of national law.

4. The legal status of this indigenous Later Today

On this issue Prof. Supomo in speech Anniversary at Gajah Mada University in Yogyakarta on March 17, 1947 affirmed as follows:

- a. Whereas in the field of family life, Adat Law still be mastering the Indonesian people.
- b. That the criminal law of a country shall be in accordance with the pattern and nature or community nation itself. Therefore, the criminal Adat Law will provide materials that are valuable in the formation of a new Criminal Code for our country.
- c. That the Adat Law as an unwritten Adat Law will remain menjadi source of new laws in matters that have not been / is not defined by the Act.

It is essentially within the Indonesian legal state of justice and truth to be addressed by the law shall be the truth and the justice that is reflected by a sense of justice, and truth alive in people's conscience. Noting this, then presumably indigenous people principle ever arise, develop and live in the community itself, which is the only source of a new law that can meet people's needs.

Thus the assertion Prof. Nasrun remember this, then surely it's customary one indicator of the nation's identity. Therefore, the materials that will provide the foundation and soul Indonesiaan native to the state of the Republic of Indonesia is not possible can the government official from materials that have been owned by the nation itself.

For a long time the discussion of Indigenous Law has not held the renewal and reobservasi. Society is not static, it will always have changed and dynamic process. Someone who does not have time to examine the composition and the lives of villagers in Indonesia, for example, would argue that society is static, not forward, and not changed. Such statements are based on the view that a second, less deep, and only stopped at one point.

Therefore, there is not a society that stop at one particular point of all time. Moreover, the changes taking place in today's society is running normally and spread quickly thanks to the development of modern science and technology. Therefore, there is no reason for immediate reconstruction and studies or research on the concept of local wisdom in Adat Law in Indonesia.

Adat Law is an unwritten rule that indigenous people living in an area and will remain alive as long as people still meet the Adat Law that has been passed down to them from their ancestors before them. Therefore, the existence of Adat Law and its position in the national legal order can not be denied even though Adat Law is unwritten and based on the principle of legality is the law invalid. Adat Law will always be there and live in the community.

From the above presentation, it can be concluded that Adat Law is still needed in answering the demands of the complexity of the problems of globalization. Because of Adat Law are values (truth and justice) who live in the midst of society. And the demands of society actually is the truth and justice and not the rule of law procedurally.

In Indonesian law there is a mechanism in terms of respect for Indigenous Peoples. That is intended to award is to accommodation which wisdom of Adat Law. The laws of life and continue to grow and be maintained by the people of Indonesia's social existence.

Seen from the eyes of a jurist who holds fast to the Book of the Law Adat Law contextuality interpret this that the whole law in Indonesia continues to grow regularly. Dynamic legal existence and adapt to the changing times. Law that continues to flow and fully developed and consistent. In connection with this, if they truly deepen his knowledge of Adat Law, not only with the mind but with feeling as well, will be seen that the Adat Law of life and develop naturally on the basis of the relevant legal sources. Source awesome, customs past and present, living customs, which can develop and rhythmic.

5. Perspectives Local Wisdom of Indigenous Peoples

Local knowledge is the legacy of our ancestors in order nilai kehidupan fused in the form of religion, culture and customs. In the development community to adapt to the environment by developing a wisdom that intangible knowledge or ideas, tools, combined with traditional norms, cultural values, the activity of managing the environment in order to make ends meet.

If you look at the evolution of man's relationship with nature in the past have formed a harmonious relationship called pan cosmism which men seek to live in harmony with nature. In the view of people at that time, it was a great and sacred nature because it must be maintained so that no damage to nature and have negative consequences for the man himself. In the realization of the idea of man creating pamali-pamali or ethics of how to act and behave towards nature. Most of the ethnicities in this country to have the rules in question are referred to as environmental wisdom.

Traditional knowledge that is local in accordance with their respective regions is one of the cultural heritage in the community and generations secaraturun implemented by community groups concerned. For

example, in the perspective of environmental law that in terms of environmental law where local knowledge is traditionally very profitable because it is directly or indirectly in maintaining environment and prevent environmental damage.

Within this understanding that one of the issues considered at the time current and future needs regarding the quality of management Environmentalists through the renewal of local knowledge in community empowerment. Local knowledge as a product of the collective society, functioned to prevent snoberry and human greed in exploiting natural resources without damaging environmental sustainability.

In the context of this reality are needed to improve the quality of environmental management requires ethical commitment of local communities together stakeholders in adaptive behavior exploit natural resources there. In the development should be supported by policies that lead to the development of pro-environment.

Therefore, in a development that since the life of the New Order era to the present, one of which is considered as a potential obstacle is that berkearifan local Adat Law. Strategic potential is in the agrarian sector. As is the juridical basis of the UUPA. Therefore UUPA embrace the concept that aims to weaken the customary rights of the setting or the concept of property rights of the State; and the material or the concept of conditional recognition of customary rights.

Conceptually the basis of accommodation on UUPA is the customary rights perspective. Here it takes a certainty, within the framework of achieving national unity or unification law. As reasoning developed by UUPA, Forestry Act, Mining Act, Water Act and the Fisheries Law also considers that the presence of 'the right to control the country' consequences on arrangements regarding the ownership rights.

Although the formulation of the sentence explanation not identical to the UUPA, but the fourth editor of the legislation is similar to the charge UUPA charged. It is said that the natural resources in Indonesia is belongs or belonged to the people of Indonesia who have been merged into an organization called the power of the State. Therefore, the utilization of the natural wealth or prosperity must prosper as much as the people of Indonesia.

In communal society itself has to have those rights and has been attached to long, it means there is a waiver of Adat Law. From this it is expected that future policy decisions can come together to create a format that is more directed to the indigenous community. This became the basis for the regional development of various aspects of a good impact as the region's defense also base the growth of other natural resources which should be elaborated proportionally

However, despite the customary rule is already in force in the community, but until now the existence of Adat Law has not been recognized by formal laws exist in Indonesia. With such position is not rare when indigenous peoples will conduct penalties against violators of the Adat Law. They are often faced with the formal laws and regulations. In fact, as we know, the existence of customary rights have to be accommodated as a basic to management of the natural resources that exist.

In the principles of the application of customary rights in the community can have a positive impact for the government and the environment, because it is supported by a planning model that is participatory and bottom-up. In addition to monitoring and control, land rights are very effective for indigenous peoples or local ownership and responsibility for the future of resources.

Observing the indigenous peoples, that the management of existing natural potential is generally done traditionally known by indigenous peoples' rights and individual rights protected Adat Law. In this case, the reflection of this right has been going on for generations and respected by indigenous peoples. Therefore the positive law actually serves as a sort of complement to the Adat Law dimensional local wisdom.

The real mastery over traditional by indigenous peoples is strongly associated with relationships or relationships that they do to meet their needs over the area. It basically is something that is passed down from ancestors. Within this region is actually a *de jure*, there is the authority of tribal communities. Privileges are intended related to the management and utilization of natural resources, according to the principles of Adat Law to the particularities of each.

Thus it can be said that the rights refer to the indigenous dimension in the perspective of local knowledge is a set of rules or management practices or management of regional programs, in particular the agrarian sector and the resource was based on the customs of indigenous peoples that is based on local wisdom.

The National Commission on Human Rights Sub-Committee on Economic, Social and cultural mentioned that the rights of Adat Law communities consist of:

1. Individual rights as citizens, ie, as a citizen, Adat Law citizens have the same rights as other citizens;
2. Collective Rights as Adat Law society that is a community, the legal community has a collective, who needed both to preserve the existence and identity of cultures naupun to build and develop the human potential of its citizens.
3. Right to Development, which consists of various rights.

therefore, it turns out that the Adat Law is very effective in keeping the marine environment, especially because people are not willing to take the natural resources before it is clear whether the rights of a collective nature, personal rights and the rights reserved for future generations.

6. Cover Note

That basically people who berkearifan local Adat Law are legally authorized to manage the natural resources that exist in the region, respectively. Based on the authority of traditional institutions, indirectly existence of indigenous people (in this case the owner of the original autonomy) will contribute to the national development efforts, especially in processing, maintenance, and environmental protection as part of which will be enjoyed by future generations.

Local wisdoms rules that basically aims to regulate all natural potential, in the region of the country, both in its own territory and outside the area, which is then integrated into the local community on the basis of local knowledge. In this case the role of Local Government or the Central Government must accommodate local wisdom as part of social life in the community. For it is precisely the role of government is to continue to appreciate, conserve, improve and pay attention to the existence of society Adat Law with traditional rights held in accordance with the constitutional recognition in the Constitution of the Republic of Indonesia Year 1945 so there is no clash between the laws and regulations that apply to the rules of society Adat Law that local wisdoms.

BIBLIOGRAPHY

- Arianto, H. dan Sapiah Talaohu. 2009. *Peranan Lembaga Peradatan Negeri dalam Penyelesaian Sengketa Tanah di Kecamatan Amahai, Maluku Tengah*. Lex Jurnalica, Volume 6, Nomor 3.
- Badan Pengelola Kapet Seram. 2011. *Hak Ulayat dalam Perspektif Pengelolaan Wilayah Pesisir dan Pulau-pulau Kecil*. Seram: Pemerintah Kabupaten.
- Harsono. Boedi. 1974. *Ketentuan dalam Hukum Agraria Indonesia*. Jakarta: Penerbit Djambatan.
- Hartono, Sunaryati. 1991. *Politik Hukum Menuju Sistem Hukum Nasional*. Bandung: Alumni.
- Kartohadiprodjo, soediman. 1967. *Pengantar Hukum Adat*. Bandung: Pantjuran Tujuh.
- Santiyono. 1994., *Hukum Adat*, Pengantar Menuju Hukum Nasional. Surabaya: Bina Ilmu.
- Soepomo. 1966. *Bab-bab Tentang Hukum Adat*. Jakarta : Penerbitan Universitas Indonesia.
- Soepomo. 1997. *Sistem Hukum di Indonesia, Sebelum Perang Dunia II*. Jakarta : Pradnja Paramita.
- Sudiyat, Iman. 2010. *Asas-asas Hukum Adat Bekal Pengantar*. Yogyakarta : Liberty.
- Tjiptabudy, Jantje. 2012. *Hak-Hak Konstitusional Masyarakat Adat Atas Sumberdaya Alam di Wilayah Laut dan Pesisir*
- Vallenhoven, Van. 1983. *Orientasi Dalam Hukum Adat Indonesia*. Jakarta : Jambatan.
- Wignjodipuro Surojo, 1968. *Pengantar Dan Asas-Asas Hukum Adat*, Jakarta: Gunung Agung