

**ORIGINAL ARTICLE****ARTICLE ACCEPTED DATE-29th Sep, 2020****TITLE****Empowerment of Customary Law Community in Economic Development
Based On Local Wisdom****AUTHOR'S INTRODUCTION****^aAdonia Ivonne Laturette,****Lecturer at the Faculty of Law, Pattimura University Ambon****Email Correspondence: laturettedony@gmail.com****ARTICLE
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ABSTRACT

Culture and local wisdom are very closely related to the community. It means that everything contained in the community is influenced by the culture owned by the community itself. Local wisdom can be used by empowering customary law community as the main strategy for future economic improvement, especially sustainable economics. Customary law community can find out more about what needs to be done and needed in carrying out economic activities in accordance with the potential in the region. This research is a normative juridical research, using the statue approach, conceptual approach, case approach with regard to the laws and regulations relating to the existence of customary law community in relation to local wisdom-based economic development). The results of this study indicate that economic development will run well and support economic development because through the law, community directed to do certain things to achieve the desired economic goals through efforts to empower customary law community, through economic development based on local wisdom in the utilization, use and management of natural resource.



I. INTRODUCTION

I.1. Background

Development as a process is essentially a planned renewal and in a relatively fast tempo. It is undeniable that development has brought us to the advancement of science and technology, economic growth, increased sophistication of communication facilities and so on. On the other hand, development which is only combined by economic and security considerations which in reality creates and enhances the welfare of a part of the whole of people's lives, has also created a wide gap between sophistication and backwardness.¹

Law becomes one of cultural products that is inseparable from other cultural aspects, such as politics, economic structure and social organization, ideology, and religion, and so on. To show the development of the concept of legal pluralism with other aspects of culture, it is interesting to express law as a system (the legal system) that have 3 (three) elements² in essence, namely:

- a. The structure of the legal system, which consists of legislative bodies, the judiciary with its structure, the prosecutor's body with its structure, the State police agency, which functions as a law enforcement apparatus;
- b. The substance of the legal system in the form of legal norms, legal regulations, including patterns of community behavior that are behind the legal system; and
- c. Legal culture of society such as values, ideas, hopes and beliefs that are manifested in people's behavior in perceiving the law.

Law Number 6 of 2014 concerning Villages places the customary village Institution as an institution that carries out the customs function and forms part of the original arrangement of villages that grows and develops on the initiative of the village community. The existence of a Customary Institution in the village in this case does not automatically cause the village to change its status to become a customary village. Specific provisions as stipulated in the Village Law explain that the Customary Villages must fulfill the requirements as the unity of customary law communities and their traditional rights that are actually still alive with territorial or genealogical or functional ties. As the unity of customary law community, customary village fulfills the elements:

1. Territories / Customary *ulayat*;^[1]

¹ Adonia Ivonne Laturette, *Active Role of Customary Law Communities in Economic Development*. Jurnal Sasi Vol.22 No.1 January - July 2016

² Lawrence M. Friedman, *Law and Society An Introduction*, New Jersey: Prentice Hall Inc, 1977, page 6-7



2. Community groups with a bond of shared feelings;
3. customary government institutions;
4. wealth and or custom objects;
5. Customary law norms and their traditional rights are still developing and in accordance with principles of The Unitary State of the Republic of Indonesia.

In contrast to Adat Villages, Desa Adat Agencies are organizations that are located as community organizations that are partners with the Village Government in empowering, preserving and developing local customs that support governance, community and development. The existence of the Village Customary Institution also serves to protect and preserve the values, social systems and material objects of the local culture.

Empowerment is intended to strengthen the function and role of the customary Village Institution as a forum as well as a facilitator of village development management with reference to values, norms, traditions, culture and local wisdom. Preservation is intended to keep the values, customs and habits that have grown, lived and developed in a cultural practice, remain sustainable and not disappear. Values, traditions, customs and culture that grow in a society basically also become an important asset or social capital in the framework of empowering the community in order to realize the quality of life and welfare.

Customary law is a law that is built based on paradigms or values: harmony, harmony, wholeness determines the style, nature, character of customary law. Kluckhohn argues: value is "a conception of desirable". Then the values are several levels, i.e.:

1. Primary Values are a life value for a society, abstract and permanent such as: honesty, fairness, nobility, togetherness and others.
2. The value of the subsidiary is related to the usability, because it talks more about things that are concrete. Therefore, the law is more aimed at secondary values, namely values that are useful for solving concrete problems that are being faced by society, or sanctioned by primary values. Secondary values can change in accordance with the needs and developments and respond to existing problems in society. Law including customary law is actually also based on primary values, but based on secondary values, the nature is more real and understood.³

Economic and security considerations, which in fact have improved the welfare of a part of the overall life of society, have also created a wide gap between sophistication and backwardness. Culture can be seen as something passed down from one

³ Soepomo, Chapters on Customary Law. Pradnya Paramita, Jakarta.



generation to another, which is then referred to as superorganic. Local wisdom is an informal institution that regulates the relationship to the processing of resources in a community. Culture and local wisdom are very closely related to the community, meaning that everything in the community is influenced by the culture owned by the community itself. Culture can be seen as something hereditary.

One example is the community in the Aru Islands is a society that has an ecocentric civilization, this is reflected in the use of coastal and marine resources as its main livelihood coupled with knowledge and local wisdom about knowledge of coastal and island ecosystems. In May-October, or what is known as the Eastern Season, Aru people will usually work in gardens and make starch made from sago, they can also hunt deer and wild boar in savannah areas and forests and can collect several types of mollusks, crabs and sea cucumbers around the beach. Whereas, in November-April or the Western Season, the Aru community will be fully focused on finding and utilizing resources from the sea. In relation to their belief in their ancestors, the Aru people still hold very strong what their ancestors taught them. Especially the relationship between humans and nature, the beliefs they profess are powerful instruments in maintaining harmony in their relationship with nature.

Local wisdom is the real power and potential in the community owned by an area as a regional asset that encourages regional development and development. Furthermore, in the effort to develop the area, it is necessary to empower local culture and local wisdom that supports the preparation of cultural strategies or the formulation of plans for cultural activities in the region as a regional foundation in the field of culture.

Using local wisdom as the main strategy in future economic improvement, especially sustainable economy is precise because people can find out more about what needs to be done and needed in carrying out economic activities in accordance with the potential of an area. A simple example of the value of local wisdom of the Indonesian nation in terms of culture that is owned and developed from the past until now is the culture of mutual cooperation. This culture contains the values of togetherness and kinship with mutual cooperation.

Among the phenomena or forms of local wisdom, which form a core part of culture are basic values and concepts that provide direction for various actions. Exploring and reinvesting local wisdom internally can be said to be a movement back on



the basis of the cultural values of the region itself as part of efforts to build the identity of a region, which has a correlation creating strategic and tangible steps in empowering and developing potential (social, cultural, economic, political and security) of the area optimally as well as a filter in selecting various cultural influences from outside

1.2. Problem

How does Empowerment of Customary Law Communities in Economic Development Based on Local Wisdom influences culture from outside?

II. DISCUSSION

II. 1. Local Norm and Law Wisdom-Based Economic Development

Indonesia as a developing country has extraordinary potential to become the most developed and prosperous country. We can see this potential from the abundant natural wealth that is spread throughout the archipelago. This large potential will be more and can contribute to the world if supported by reliable and innovative human resources in developing ideas that can make Indonesia as a world-recognized country.

Economic aspects are things that really support the advancement of a nation. Economic aspects are aspects of adaptation aspects in which national economic development is closely related to the correct pattern of legal regulation so that in its implementation an ideal development will be created as stipulated in Article 33 paragraph (1) of the 1945 Constitution which reads:

"The economy is structured as a joint effort based on the principle of kinship, paragraph (2) Production branches which are important for the state and control the livelihoods of many people are controlled by the State., Paragraph (3) Earth and water and natural resources contained therein are controlled by the state and is used



for the greatest prosperity of the people." If this is the case then a synchronous legal regulation pattern is needed and can regulate specifically the Indonesian economy as a form of popular economic development so that it does not overlap as a result of the policies that were born.

Economic development is carried out to achieve equitable prosperity for all Indonesian people. In this way, it is necessary to create laws that play a role in regulating the economy by providing certain restrictions to strong parties and providing opportunities to weak parties in order to achieve justice. The existence of legal regulations in economic activities can prevent arbitrary actions from strong parties against weak parties. Thus, it is expected that economic development will run fairly and support economic development because the community is directed to do or not do certain things to achieve the desired economic goals through the law.

Maman Djumantri stated that generally, it can be said that "development is the process of managing natural resources and the environment to meet human needs so that they live in physical and spiritual prosperity". Regardless of how the process and how to implement it, the ultimate goal of development is social welfare (physically and mentally) for all the people of Indonesia. If development is aimed at all the people (nation) of Indonesia, it should also include layers of traditional society or indigenous peoples who are scattered, remote and marginal.⁴

The development of culture-based law has actually begun since the Dutch colonial era. In 1925, van Vollenhoven conducted a research to map the distribution of customary law in Indonesia. The research succeeded in analyzing the special features of customary law found in communities in areas of customary law environment and producing 19 customary law environments in Indonesia. Thanks to his struggle, the state laws that were applied (by the judicial bodies of the colonial government) did not deviate much from the law that lived in the midst of society.⁵

The existence of customary law in Indonesia to date has been recognized constitutionally, as stated in Article 18B paragraph (2) of the 1945 Constitution which states that "the State recognizes and respects the integrity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development and principles of the Republic of Indonesia as stipulated in the law "hereinafter in Article 28I paragraph (3) of the 1945 Constitution, it is stated that the

⁴ H.Maman Djumantri, *Space for Traditional Local Communities (Indigenous Peoples are increasingly marginalized)*, Yogyakarta, 2008. hal 1

⁵ Soetandyo Wignjosoebroto, 70th Anniversary Collection of Prof Soetandyo Wignjosoebroto's 70th Anniversary Writing, Pustaka Pelajar, Jakarta



cultural identity and rights of traditional communities are respected in harmony with the development of the times and civilization.

According to Van Apeldoorn, customary words are merely rules of behavior, rules that place obligations.⁶ The code of behavior said by Van Apeldoorn as customs adopted by the village community or referred to by another name bequeathed by the ancestors or progenitors who have formed the village community to be used as an example of life for their descendants.

To meet the needs of life, human will utilize what is available around them for that humans will try to adapt to give birth to balance and order in society. One of them is the implementation of social control systems in the form of legal norms (customs), which are the products of these communities. In the traditional Indonesian community group or known as the customary law community and the norms / laws that apply in this traditional society are known as customary law.<sup>[L]
[SEP]</sup>

If explored further, customary law in practice contains local wisdom that is currently emerging, because its capacity has proven useful as an approach in various aspects of life. As legally formal, local wisdom has been introduced in Article 1 paragraph (3) of Law Number 32 In 2009 which stated "local wisdom is noble values that apply in the life order of the community to among others protect and manage the environment in a sustainable manner"

In this law, the principle of local wisdom in environmental management in Indonesia is also introduced, namely we must pay attention to the noble values that apply in the life of the community in efforts to protect and manage the environment. Thus, it can be said that what is meant by local wisdom are the values, norms, laws and knowledge formed by religious teachings, beliefs, traditional values and experiences inherited from ancestors which ultimately form local knowledge systems that ultimately used to solve everyday problems by the community.<sup>[L]
[SEP]</sup>

II.2. Efforts to Increase the Role of Customary Law Communities in Local Wisdom-Based Economic Development

Economic development that is not rooted in the joints of national life has proven to have failed to carry out its role. Local cultures deprived of their roots in the name of development, have also clearly caused us to lose our national identity. Therefore, the most fundamental problem awaited by society is economic empowerment, not

⁶ Van Apeldoorn, *Introduction to Legal Studies*, Pradya Paramita, 1978, Jakarta, hal. 42



just growth. The paradigm of economic development during the New Order era that promoted growth rather than empowerment and equity, proved to have given birth to inequality in many aspects.

From the aspect of language, wisdom has meaning as a person's ability to use their minds to respond to an event, object or situation. Whereas local, refers to the space of interaction in which the event or situation occurs. Substantively, local wisdom is the values and norms that apply in a society that is believed to be truthful and becomes a reference in daily actions and behavior.

In relation to efforts to empower customary law community through economic development based on legal norms and local wisdom, it is found that the utilization, use and preservation of the environment of customary law community with their local knowledge (indigenous knowledge), by the power of holding their customary laws, their spiritual abilities, and their religious adhered to are wiser than other people.⁷ Local knowledge known as local wisdom grows and develops in the community as knowledge passed down from generation to generation as part of adaptation to the environment.

According to **Soepomo**, customary law is a living law because it embodies the real law of the community, it continues to grow and develop like life itself and customary law is entrenched in traditional culture.⁸ Thus, customary law is a living and developing law in indigenous people because it cannot be separated from the existence and dynamics of indigenous people. According to Hazairin, customary law communities are community units that have the means to be able to stand on their own, namely to have the unity of law, authority and environment based on common rights to land and water for all members, form of family law (patrilineal, matrilineal, or bilateral), and all members are equal in their rights and obligations.⁹

One important event related to the recognition and strengthening of customary law community departed from the results of the Earth Summit in Rio de Janeiro in 1992 with the issuance of the Rio Declaration on Environment and Development (1992). In the 22nd Principle it is stated that customary law community have an important role in environmental management and development because of their tra-

⁷ H. Maman Djumantri, *op cit*, hal 2

⁸ Soepomo, *Chapters on Customary Law, Pradya Paramitha*, Jakarta, hal 8

⁹ Soejono Soekanto, *Indonesian Customary Law*, Rajawali Press, Jakarta 2012, hal 93



ditional knowledge and practices. Therefore, the state must fully recognize and support its entities, cultures and interests and provide opportunities to actively participate in achieving sustainable development. The existence of indigenous people is recognized by the state in Article 18B Paragraph (2) of the 1945 Constitution which reads "The State recognizes and respects the units of customary law communities 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 ongoing development of the community.

The wealth of knowledge of indigenous people in Indonesia has developed over a long period of time in line with the development of human civilization. The process of development gave rise to a lot of traditional knowledge and values resulting from the process of adaptation to the environment. In accordance with basic human needs, one form of traditional knowledge that is developing is knowledge in land use, both as a place to live and a place to find or produce food.

The indigenous people of Maluku with their local wisdom as part of the state government structure must be positioned as an integral part of the development process. It means that the active participation of the community must be responded positively by the government. Customary law communities must be given the freedom to create according to their potential, so there is a balance. Development policies must be integrated by depending on customary law community who have laws as part of a national legal system that deserves recognition. The social and cultural life of the people of Maluku is inseparable from the customary law used in the effort to manage natural resources in order to fulfill their living needs as an effort to preserve their biological resources and ecosystems.

Sasi is the practices of management and protection of natural resources carried out by the people of Maluku. It is considered in line with the principles of sustainable living environment management. *Sasi* is also supported by customary policies as local knowledge which for generations have arranged that the management and use of nature must pay attention to the preservation of natural resources and the environment. *Sasi* as a custom institution contains a binding legal force for the customary law community because in the implementation of *Sasi*, it contains provisions governing prohibition and permissibility for the community in environmental management and protection. Legal enforcement in *Sasi* recognizes time restrictions based on the type of natural resource that it regulates. The application of *sasi* is applied to natural resources at sea and on land. On land, *Sasi* is applied to plants and fruits which



are forbidden to be harvested at any time.

The prohibition in *sasi* law came into force since the existence of the "closed *sasi*" traditional ceremony and the end of the *sasi* law when "open *sasi*" was carried out. With the stipulation of *Sasi* on species and in certain areas by *Kewang*, anyone has no right to take the species. This provision allows the breeding and enlargement of the *lompa* fish, before is is harvested when *sasi* is opened¹⁰.

Seeing the form of environmental management and protection of the Maluku people in the empowerment of customary law community, it can be said that the main purpose of *Sasi* in Maluku is the manifestation of local indigenous people's awareness and wisdom in the management and protection and preservation of the environment as a basic capital for the empowerment of customary law community through the development of the economy. By the existence of *sasi*, customary law community members do not manage their natural resources carelessly so that the available natural resources can be efficient and sustainable for the interests and welfare of the community.

The existence of customary law community as part of the unitary state of the Republic of Indonesia is recognized by their customary rights and legal systems, including natural resources in their territory. For this reason, customary law communities need to be given the opportunity to manage and utilize natural resources in their areas in accordance with their local wisdom. *Sasi* as the local wisdom of the Maluku customary law community is the capital and model of environmental management and protection at the regional level, especially in Maluku and National, where natural resource development must be harmonious and balanced with environmental functions. As a consequence, development policies, plans and/or programs must be imbued with the obligation to conserve the environment and realize the development objectives of the empowerment of customary law community through economic and sustainable development.

¹⁰ Sandra Moniaga, Rights of Indigenous Peoples and Problems and Environmental Sustainability of Indonesia, Media Pemajuan Hak Asasi Manusia, No. 10/tahun II/12 Juni 2002, Jakarta diakses pada <http://www.huma.or.id>



III. COCNLUSION

The customary law communities are wiser and more responsible than other people in processing their natural resources through economic development based on local wisdom in the utilization, use, and management of natural resources and environmental sustainability with their local knowledge (indegenuis knoeledge), the power to hold their customary laws, spiritual abilities, and religions. This large potential will be more and be able to contribute to the world if supported by reliable human resources. The existence of legal regulations in economic activities can prevent arbitrary actions from strong parties against weak parties. Thus, the customary law community can take responsibility and participate in economic development in order to achieve the desired economic goals fairly.

III.1. Suggestions

It is expected that the participation of customary law community take responsibility in enhancing economic development based on localism, so that the utilization, use, management of natural resources and environmental preservation of customary law community is more elevated, since the local wisdom of customary law community is a legacy inheritance that needs to be developed and maintained. Therefore, it is hoped that the Central and Regional Governments can make regulations related to the local wisdom of the local customary law community.

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