

POLICY OF LOCAL GOVERNMENT IN PROTECTING CULTURAL LEGAL COMMUNITY TRADITIONAL IDENTITIES AND RIGHTS BATANG HARI DISTRICT

Firmansyah Putra & Citra Darminto

Universitas Jambi, Indonesia

firmsyahputra@unja.ac.id; darmintocitra2014@gmail.com

Abstract

In this study, the author uses a qualitative approach as a research method based on the philosophy of postpositivism, used to examine the natural conditions of objects where researchers are as a key instrument to look for problems related to local government policies and then analyze the causes of these problems then find solutions and anticipate the problem reappeared. The differences in ethnicity, culture and customs of a nation is a social cultural reality of Indonesia, and this shows how the existence of primordial awareness in the life of the Indonesian nation, besides being a natural condition to be grateful and admired, must also be wary because it has a high enough conflict intensity. Culture gives shape to people's attitudes, people's mental attitudes, and people's daily life patterns. Instead, attitudes and patterns of life also give shape to culture. Culture is learned and the culture adapts and develops. Regional culture has a long history and has its own wisdom and superiority. In each of them, the culture contains elements that our founding fathers extract in the Pancasila. Customs and sociocultural values of society are one of the social capital that can be utilized in the context of implementing development. Preservation and development of customs and socio-cultural values of the community was built by prioritizing three main pillars, namely the pillar of community economic development, the preservation pillar and the pillar of the independence of the community. In the end, a local government policy is needed to protect Cultural Identities and Traditional Rights of the Community is a must.

Keywords: Local Government, Cultural Identity and Traditional Rights of Customary Law Communities.

Introduction

The term Customary Law Community is a translation of the term *rechtsgemeenschappen*. This term was first discovered in Mr. B. Ter Haar Bzn. entitled "Beginselen en Stelsel van Hat Indigenous Recht".¹ In the second amendment to the 1945 Constitution of the Republic of Indonesia, specifically in the provisions of Article 18 B Paragraph 2. Regulations concerning the Customary Law Community are placed as part of the regulations on Regional Governments. The term used in this Article is the customary law community units. In Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, specifically in Article 2 Paragraph (4) which regulates that "The controlling right of the State above its implementation can be authorized to the Autonomous Regions and customary law communities, merely necessary and not contrary to national interests, according to the provisions of Government Regulations"

Grammatically, the word "society" in the Indonesian dictionary is defined as a number of people in its broadest sense and bound by a culture that they consider to be the same.² "Adah" or "custom" means a habit which is the behavior of the people that is always present in the daily life of the people. Thus the customary law is customary law.³ According to Maria SW Sumardjono, some of the fundamental features of the customary law community are that they are a human group, have their own wealth apart from their individual wealth, have certain boundaries and have certain authority.⁴

¹ Mr. B. Ter Haar Bzn translated K. Ng. Soebakti Poesponoto, *Principles and Structure of Customary Law (Beginselen en Stelsel van Hat Adat Recht)*, nineteenth print, PT.Pradnya Paramita, Jakarta: 1987, p. 6

² <https://kbbi.web.id/masyarakat>.

³ Tolib Setiady, *Essence of Indonesian Traditional Law*, Alfabeta, Bandung, 2009, p. 5

⁴ Maria. S. W. Sumardjono, *Land Policy Between Regulation and Implementation*, Kompas Book Publisher, Jakarta, 1996, p. 56

The potential of multiple interpretations, for example, can be seen from the aspects of who belongs to the Customary Law Community. This has led to debate about the personal identity of individuals who are in the Customary Law Community group, relating to the recognition of the relationship of the group (Customary Law Community) with individuals as members in a unit of the Customary Law Community.

Arrangements regarding traditional rights are also contained in Article 28 I Paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that, "Cultural identity and traditional community rights are respected in accordance with the development of time and civilization". If we look closely then there are differences in terms used in Article 18 B Paragraph (2) and Article 28 I Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the terms "customary law community" and "traditional rights" whereas Article 28 I Paragraph (3) of the 1945 Constitution of the Republic of Indonesia uses the term traditional community rights". In the translation of the 1989 Indigenous Law Community Convention it was stated that, "Indigenous and tribal peoples" was translated into Indigenous and Peoples Legal Community in accordance with the terms used by the National Human Rights Commission and the Constitutional Court. Other translations commonly used are indigenous peoples and traditional communities". Thus both the terms "customary law community" and "traditional society" in Article 18 B Paragraph (2) and Article 28 I Paragraph (2) of the 1945 Constitution of the Republic of Indonesia can be considered to have the same meaning / meaning. Moreover, both articles are equally the result of the second amendment to the 1945 Constitution in 2000.

Based on the explanation of Article 6 Paragraph (1) of Law Number 39 Year 1999 states that:

Customary rights that are actually still valid and upheld in the environment of customary law communities must be respected and protected in the context of the protection and enforcement of human rights in the community concerned by taking into account laws and regulations.

Further explanation of Article 6 Paragraph (2) states that:

In the context of upholding human rights, the national cultural identity of indigenous and tribal peoples, customary rights that are still clearly upheld by the local customary law community, are still respected and protected as long as they do not conflict with the principles of the rule of law with the principle of justice and people's welfare.

The treatment of discrimination can be seen from the various policies present that still do not uphold the protection and respect for the rights of indigenous and tribal peoples. The problems that occur are often due to the development efforts carried out by the government based solely on unilateral policies and never involve indigenous and tribal peoples in each stage of the policy making. As a result, indigenous and tribal peoples are only considered as objects in each policy resulting in oppression, violence, criminalization and even deprivation of the rights of indigenous and tribal peoples.

Along with the implementation of the regional autonomy policy, the active role of the region becomes strategic to carry out efforts to promote the welfare of the community which in essence is a state goal that has been mandated by the constitution. One of them is by making efforts to protect, respect and empower indigenous peoples and customary institutions in the regions. The implementation of regional government according to the principle of autonomy means that the regional government has the rights, authority and obligations of the autonomous region to regulate and manage their own Government Affairs and the interests of the local community in the system of the Unitary Republic of Indonesia. Whereas what is meant by the implementation of regional government affairs according to the task of assistance is the assignment of the Central Government to an autonomous region to carry out part of the Government Affairs which are the authority of the Central Government or from the Provincial Government to the regency/city Region to carry out a portion of Government Affairs which is the authority of the Provincial Region.

Protection and respect for the cultural identity and traditional rights of indigenous and tribal peoples will only be carried out if there is a role of the regional government to push a policy through a policy that is aligned to the regional development programs and activities in each sector of the existing regional apparatus organization. This will be possible if the regional government makes it in the form of a regional legal product namely the Regional Regulation in which there is recognition, protection, respect and empowerment of the customary law community itself. Legislation is expected to be one of the instruments to realize the idealized

National Law system. Legislation can be said to be good (good legislation), if it is legal according to the law (legal validity) and is effective because it can be accepted by the public fairly and is valid for a long time.

Based on the description above, the authors are interested in conducting scientific research with the title “Policy Of Local Government In Protecting Cultural Legal Community Traditional Identities And Rights Batang Hari District”.

Research Method

This type of research is a qualitative research with purposive sampling technique, namely by interviewing people who know the problem under study and study of secondary data from various references and search sites that contain research results that are the object of study.

Discuss

a. State recognition of the Cultural Identity and Traditional Rights of Customary Law Communities

The 1945 Constitution of the Republic of Indonesia places the state in the position to recognize and respect each of the traditional rights of indigenous and tribal peoples who are still alive and preserved to this day. With the inclusion of recognition and respect for a traditional right, adat which is part of the traditional right is a constitutional right which is also a human right. In the constitution of the traditional rights of the customary law community is regulated in Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that, “The State recognizes and respects the customary law community units along with their traditional rights as long as they are alive and in accordance with the development of the community and principles Unitary State of the Republic of Indonesia, regulated in law”. Based on the formulation of the Article, it can be explained that:

1. that the state recognizes the existence of indigenous peoples' customary unity indeed existed before the Unitary State of the Republic of Indonesia was established and the 1945 Constitution was ratified;
2. the recognized customary law community unit must be proven alive;
3. that recognition can change dynamically following the development of society in the sense of the development of an age in which humanitarian feelings and the level of civilization grow and develop such that recognition of the existence of indigenous peoples and their traditional rights must also be adjusted to the needs according to the dynamic space and time;
4. that confession also cannot contradict the principles and interests of the Unitary State of the Republic of Indonesia, for example, in border areas this recognition should not have a negative impact on the spirit of national unity and territorial integrity of the Unitary Republic of Indonesia because the relevant customary law territory exceeds the territorial boundaries of the Unitary Republic of Indonesia; and
5. that the terms and procedures for recognizing indigenous peoples and their traditional rights must be regulated by law or in other relevant laws.⁵

b. Form of Cultural Identity and Traditional Rights of the customary law of Batang Hari District

Batanghari District has eight districts. The government is trying to bring back the existing culture and art traditions with how to identify and research and explore the cultural potential that exists in each district. In this case to appreciate the culture that has been re-presented in society government especially the culture and education department Batang Hari conducts the festival art which is held routinely once a year. Not only held a festival but also held a competition which later this race is not intended to find a win or lose but only to appreciate an art and introduce it to wide community.

Support given by the government in this activity in the context of cultural development, by providing funds to go directly to the community. Many culture in the community, one area that still maintains its

⁵ Jimly Asshiddiqie, Village Community Constitution (Charter of Responsibilities and Human Rights of Villagers), Faculty of Law, University of Indonesia, Depok, 2015, p. 2

culture is in Rambutan Masam sub-district where the culture is very guarded. Muara bulian sub-district and muara Tembesi sub-district have the most studios. Community response in response to efforts the preservation of this culture is quite positive because so many people report it its culture should be developed because it is almost lost to the ages.

c. Policy Of Local Government In Protecting Cultural Legal Community Traditional Identities And customary law of Batang Hari District

Culture is the nation's cultural wealth as a form of thought and behavior of human life that is important for the understanding and development of history, science, and culture in the life of society, nation and state so that it needs to be preserved and managed appropriately through efforts to protect, develop and utilize in order to advance the national culture for the maximum welfare of the people.

To preserve customs and culture, the State is responsible for the protection, development and utilization arrangements that need to be managed by the government and regional government by increasing the participation of the community to protect, develop and utilize cultural preservation by changing the paradigm of preserving customs and culture, balance of ideological, academic, ecological and economic aspects is needed in order to improve people's welfare.

The characteristics of customs and traditions between regencies / cities in Jambi Province, basically have similarities, but in their application in each region is somewhat different, so that customs and culture tends to be distinguished according to the characteristics of each region.

Currently the Batang Hari Regency Government already has Regional Regulation No. 12 of 2018 concerning the Batang Hari Regional Identity. The issue of existing policy formulations was not welcomed with the lack of implementing regulations for the Regional Regulation.

In the preservation and development of customs and social and cultural values on Earth simultaneously the Regam is intended to strengthen the identity of individuals and communities in the form of preservation of Regional Identity. In this case, the policy has not been well socialized to all stakeholders regarding the cultural identity and traditional rights of the adat law community in Batang Hari Regency.

Conclusion

Preservation of customs and culture as a regional identity in this policy is intended so that: the cultural heritage contained in Batang Hari District can be preserved, enhance the dignity and cultural dignity of the region through preservation of customs and culture, strengthen the personality of the nation; and improve people's welfare.

Along with the implementation of the regional autonomy policy, the active role of the region becomes strategic to carry out efforts to promote the welfare of the community which in essence is a state goal that has been mandated by the constitution. One of them is by making efforts to protect, respect and empower indigenous peoples and customary institutions in the regions. The implementation of regional government according to the principle of autonomy means that the regional government has the rights, authority and obligations of the autonomous region to regulate and manage their own Government Affairs and the interests of the local community in the system of the Unitary Republic of Indonesia.

Based on the description above, the results of this paper can be put forward suggestions as follows:

Protection and respect for the cultural identity and traditional rights of indigenous and tribal peoples will only be carried out if there is a role of the regional government to push a policy through a policy that is aligned to the regional development programs and activities in each sector of the existing regional apparatus organization. This will be possible if the regional government makes it in the form of a regional legal product namely the Regional Regulation in which there is recognition, protection, respect and empowerment of the customary law community itself.

REFERENCES

- Bungin, Burhan, 2013, *Social and Economic Research Methodology*, Kencana Prenada Media Group, Jakarta.
- Duwi, Priyanto. 2008. *Mandiri Learning SPSS*, MediaKom, Yogyakarta.
- I Gde Pantja Astawa and Suprin Na'a. 2008. *The Dynamics of Law and Legislation in Indonesia*, Alumni, Bandung.
- Jimly Asshiddiqie. 2015. *The Constitution of the Village Community (Charter of Responsibilities and Human Rights of Villagers)*, Faculty of Law, University of Indonesia.
- Maria. S. W. Sumard jono. 1996. *Land Policy Between Regulation and Implementation*, Kompas Book Publisher, Jakarta.
- Mr. B. Ter Haar Bzn and K. Ng. Soebakti Poesponoto. 1987. *Principles and Structure of Customary Law (Beginselen en Stelsel van Hat Adat Recht)*, PT.Pradnya Paramita, Jakarta.
- Muhammad Tahir Azhary. 1992. *Rule of Law: A Study of Its Principles. Judging from the aspect of Islamic law, its implementation in the Medina State Period and the Present*, Dissertation, Crescent Star, Jakarta.
- Ni'matul Huda. 2006. *Constitutional Law*, Rajagrafindo, Jakarta.
- Nurcholis. 2005. *Theory and Practice of Government and Regional Autonomy*, Grasindo, Jakarta.
- Sugiyono, 2014, *Understanding Qualitative Research*, Alfabeta, Bandung.
- Tolib Setiady. 2009. *Highlights of Indonesian Customary Law*, Alfabeta, Bandung.