

Aspects of Indigenous Law as the Spearhead of Law Implementation in the Environmental Field

Maria Francisca M¹

Abstract

Local wisdom is a content of customary law and a valuable and ingrained heritage in every society, by continuing to preserve customary norms, and cultural values, which are passed down in the form of environmental management activities. Communities that still uphold local wisdom gain balance and live alongside nature. By upholding customary law, nature is given benefits by providing comfort in obtaining life materials from the environment because in that society they maintain the environment and prevent environmental damage. The advancement of technology has caused the loss of local wisdom resulting in barren forests and automatically killing springs, in addition to the river environment which has become dirty and unmaintained. This research is descriptive analytical and exploratory, to obtain an overview of customary law in local wisdom that can protect water sources and the river environment. As normative research, data is obtained through tracing legal documents. Return elements of customary law in community life to develop local wisdom. The principle of local wisdom is to synergize with nature so that the use of water resources is used sufficiently, not excessively, and provides prohibitions that aim to maintain the sustainability of water sources. By using sufficient water, the use of natural resources will also be used sufficiently by paying attention to prohibitions that aim to preserve the environment, in this case not clearing forests for plantations or settlements will automatically create sustainable forests and water sources will be maintained.

Keywords: Environmental Sustainability, Indigenous Law.

Abstrak

Kearifan lokal merupakan muatan dari hukum adat dan sebuah warisan yang berharga dan mendarah daging di setiap masyarakatnya. Dengan tetap melestarikan norma adat, nilai budaya, yang diturunkan dalam bentuk aktivitas mengelola lingkungan. Masyarakat yang masih menjunjung tinggi kearifan lokal dalam hidupnya memperoleh keseimbangan dan hidup berdampingan dengan alam. Dengan menjunjung hukum adat diberikan keuntungan oleh alam dengan diberikannya kenyamanan mendapatkan bahan kehidupan dari lingkungan karena dalam masyarakat tersebut memelihara lingkungan serta mencegah terjadinya kerusakan lingkungan. Dengan kemajuan teknologi telah menyebabkan hilangnya kearifan lokal berakibat tandusnya butan dan secara otomatis mematikan mata air, selain itu pula lingkungan sungai yang menjadi kotor dan tidak terjaga. Penelitian ini bersifat deskriptif analitis dan eksploratif, dengan tujuan untuk memperoleh gambaran mengenai hukum adat dalam kearifan lokal dapat memberikan perlindungan pada sumber mata air dan lingkungan sungai. Sebagai penelitian normatif, data diperoleh melalui penelusuran dokumen-dokumen hukum. Dengan mengembalikan unsur hukum adat dalam kehidupan dimasyarakat untuk menumbuh kembangkan kearifan lokal. Prinsip kearifan lokal adalah bersinergi dengan alam, sehingga penggunaan sumber daya air dipergunakan secukupnya tidak berlebihan dan memberikan larangan yang bertujuan untuk menjaga kelestarian sumber mata air. Dengan menggunakan air secukupnya maka penggunaan sumber daya alam pun akan dipergunakan secukupnya dengan memperhatikan larangan-larangan yang bertujuan untuk melestarikan lingkungan, dalam hal ini tidak membuka butan untuk lahan perkebunan ataupun permukiman akan membuat butan lestari otomatis sumber mata air akan terjaga.

Kata Kunci: Hukum Adat, Keberlanjutan Lingkungan.

Introduction

Local wisdom as part of Indigenous Law is still respected and firmly implemented in society, from the word emphasizes that Indigenous Law is the best spearhead in enforcing a regulation. Many national laws are still not implemented properly by the community because they are considered not to represent local Indigenous Law. National law is only noticed or feared if a mistake is made but with the perception that if caught violating it will be given a punishment that the community thinks is light or a fine, after being punished it will return to its original state, in contrast to Indigenous Law, the punishment is considered heavier and becomes a mental burden and is subject to social sanctions, the most obvious example is maintaining the environment in the River Basin Area (hereinafter referred to as RBA) which

¹ Maria Francisca M, President University, Email: m_francisca@president.ac.id

until now there are still many people who do not care and even participate in polluting the RBA. Whereas in Article 25 of Law No. 32 Year 2009 about Environmental Protection and Management (hereinafter referred to as Regulation of Environmental/RoE), the central government has the authority to regional heads to issue government cooperation to prevent and end violations, to overcome the consequences and to take rescue, mitigation and recovery actions. Releasing government coercion, another effort that can be made by the government is through environmental audits. Environmental audit is an important instrument for those in charge of businesses and/or activities to improve the efficiency of their activities and performance in complying with environmental requirements that have been set by laws and regulations. Environmental audits are made voluntarily to verify compliance with applicable environmental regulations, as well as with policies and standards applied internally by those in charge of the business or activities concerned, this article should be able to provide sufficient power for local governments to act against environmental polluters throughout the watershed.

Therefore, to preserve Environmental Law, it must be enforced in watershed maintenance, although Environmental law enforcement is the last link in the cycle of environmental policy planning arrangements in the following order:²

- a. Legislation,
- b. determination of standards,
- c. Granting permits,
- d. implementation,
- e. Law enforcement.

Environmental law enforcement itself was once conveyed by Mas Achmad Santosa, stating that environmental law enforcement in an administrative manner will strategically provide several strategic benefits compared to other law enforcement tools because:

- a. Environmental law enforcement can be optimized as a prevention tool.
- b. Administrative environmental law enforcement is more efficient in terms of financing when compared to civil and criminal law enforcement. Funding for administrative law enforcement only includes funding for field supervision and laboratory testing.
- c. Administrative environmental law enforcement has more ability to invite public participation starting from the licensing process, monitoring, compliance/supervision, and public participation in filing objections to request state administrative officials to enforce administrative sanctions.³

I took the title Aspect of Indigenous Law as the Spearhead of Law Implementation in the Environmental Sector, with the idea that there are still laws and regulations that have not been implemented by the community because they do not have any influence, in contrast to local wisdom (customs) which makes people not dare and are ashamed to violate them. In my opinion, if local wisdom (customs) can be aligned with laws and regulations, then it becomes the spearhead of law enforcement in the environmental sector so that the sustainability of the environment is implemented to achieve a blue economy and green economy.

² Hamzah, Andi, *Environmental Law Enforcement*, Jakarta: Sinar Graphic, 2005, Jakarta: Sinar Graphic, 2005, p 52

³ Edoorita, Widia *the Role of Environmental Impact Analysis in Environmental Law Enforcement in Indonesia and Comparison with Several Southeast Asian Countries*, Jakarta: 2007, p 45

Problem Formulation

Starting from the background description, the limitation of the problem is how Indigenous Law in the form of local wisdom can be harmonized with national law as the spearhead of environmental law enforcement.

Methodology

The approach method in this research is normative juridical, namely examining laws relating to Indigenous Law and Environmental Law, and is based on the depreciation of legal documents. These legal documents can be primary legal materials or secondary legal materials. This approach is combined with traditional and cultural approaches adopted as the local culture of a community so that the environment remains sustainable for children and grandchildren. The specifications of this research are descriptive analytical and exploratory because this research describes how the Indigenous Law of a region can have an impact on its people to protect and preserve the environment, one of which is springs and rivers as a source of life. Sources and Techniques for collecting data from normative research, data obtained through searching legal documents in the form of primary legal documents and secondary legal documents. These documents can be primary, secondary, and tertiary legal materials. Regarding the data that has been collected, both secondary data and primary data, then the data is processed, and data classification is made on all data and will be analyzed based on qualitative analysis using legal interpretation.

Discussion and Results

Local wisdom is more feared and implemented by the community, one of which is to protect the RBA environment, including water, in the RBA currently there is a lot of pollution from both individuals and companies, and the most polluting thing in the water is domestic waste. Where people still use river water for bathing, washing, and even cooking. On the other hand, RBA is also used by residents as a place to throw away rubbish. Household waste such as plastic wrap and human waste that is thrown away haphazardly in the RBA not only pollutes the environment but can also be a source of disease for the surrounding community.

I took a sample in 1 (one) area where the people were obedient to protect the RBA because they adhered to local wisdom and were afraid of sanctions, in Bawang Village, Magelang Regency The river in Bawang Village used to be as polluted as in other areas. However, since the presence of volunteers who helped explain and develop the public's mindset regarding the importance of the RBA, within 2 (two) years a cleaner RBA began to appear. All community members in this hamlet are very close to nature because they feel that nature also needs to be protected for the lives of themselves and their children and grandchildren. The residents of Bawang Village not only enforce existing regulations but also provide customary punishments such as having their hair shaved off, being paraded around the village, etc. which provide a deterrent effect on anyone who commits a

violation. Here is the discharge of water from the village into the river; the water is cleaner and without waste because the people themselves clean it before flowing into the river.

In issuing legal regulations, attention must be given to the appropriate national legal system, including:

- a. The basic source of law is Pancasila,
- b. The ideals of national law,
- c. National legal policy,
- d. Improvement of national laws,
- e. National legal development mechanism,
- f. Institutions that handle national law,
- g. Community legal awareness.

From these seven points, it is clear that good law is based on basic principles, namely:

- a. Philosophical Foundations

This foundation can be found in the basic sources of law, namely the ideology of the Indonesian nation (Pancasila), and the ideals of national law (order, security, and justice).

- b. Juridical Foundation.

This foundation can be found in improving national law, mechanisms for developing national law, and institutions that handle national law. So, this juridical basis is a basis that requires formal requirements, which do not conflict (in accordance) with the rules that legally apply in Indonesia.

- c. Sociological Foundations

The sociological basis is a basis that must pay attention to the values applied and accepted by society. The points above can be found in national legal politics and public legal awareness.

Harmonization of statutory regulations is the harmonization of a law with other laws both vertically (hierarchy of statutory regulations) and horizontally (legislative regulations of the same level). In the laws and regulations regarding RBA, because this sector is in several different agencies, each agency makes its regulations without any coordination. From this, it can be seen that there is almost no vertical harmonization between these agencies, so each of these agencies should work together to formulate regulatory material regarding watersheds. Integration between policy and regulations regarding watersheds means that regulations made by the central government do not have relevance socially. Society and the world effort on the edge of the river know the law and existing environmental regulations however No enforce these regulations because of weak controls to regulation.

For synergistic and sustainable RBA management, it is necessary to carry out several studies taking into account the following matters:

- a. RBA management as a process involves separate but closely related planning and implementation steps.
- b. RBA management as a management planning system and as a tool for implementing RBA management programs through relevant and related institutions.

- c. RBA management is a series of activities, each of which is related and requires specific management tools.
- d. Considering that many institutions have an interest in RBA management, it is necessary to manage RBA in an integrated manner through an RBA Forum.
- e. Participatory community involvement in the RBA management planning process must be an integral part of producing RBA management policies.
- f. Create a harmonization of regulations that specifically regulate RBA which are made jointly by all related institutions/agencies/services together with regional governments up to the local regional governments through which the river passes.

Harmonization of statutory regulations is an effort to harmonize, adjust, consolidate, and round out the conception of a draft statutory regulation with other statutory regulations, whether higher, equal, or lower, and other things besides statutory regulations. -invitations, so that they are arranged systematically, do not conflict with each other or overlap as one of the consequences of the existence of a hierarchy of statutory regulations. The Bureau is responsible for harmonizing Legislative Regulations and is tasked with coordinating the harmonization, rounding out, and strengthening of conceptions not only of Draft Laws, but also of Draft *Peraturan Pengganti Undang-Undang* (PERPU), Draft *Peraturan Pemerintah* (PP), and the Draft *Peraturan Presiden* (PERPRES) and here the need for skilled and reliable personnel or experts in carrying out harmonization related to various statutory regulations.

- a. Harmonization of legal regulations has an important meaning in the case that legal regulations are an integral part or sub-system in the legal system of a country so that these legal regulations can be interrelated and dependent and can form a unified whole. In Indonesia, the system for forming legislative regulations can be found in the constitution, namely in Article 5 paragraph (1) of the 1945 Constitution which states that the President has the right to submit draft laws to the House of Representatives and in Article 20 paragraph (1) of the Constitution 1945 which states that the People's Representative Council holds the power to form laws.
- b. The provisions have regulated the legal force and binding force of each statutory regulation. The material of statutory regulations must not contain substances that conflict with higher regulations. Legal regulations can only make detailed rules and implement the laws and regulations above them.
- c. In the principle of *lex superiori delogat legi inferiori*, makers of statutory regulations must ensure that the material regulated in the statutory regulations does not conflict with the statutory regulations above them. Makers of statutory regulations are obliged to prepare a statutory regulation in harmony with the articles in higher statutory regulations which are the articles that form the basis for the formation of statutory regulation. This is what is called vertical harmonization of statutory regulations, namely the harmonization of statutory regulations with other statutory regulations in a different hierarchy.
- d. The significance of this vertical harmonization of laws and regulations is that in the Indonesian legal system, these laws and regulations can be tested by the judiciary.

- e. In this case, vertical harmonization of laws and regulations has an important role. In addition to its function of forming laws and regulations that are interrelated and dependent and form a unified whole, vertical harmonization of laws and regulations functions as a *preventive measure* to prevent the occurrence of a *Judicial Review* of law and regulation because if this happens, various kinds of losses will arise both in terms of cost, time and energy. In terms of costs, the drafting of these laws and regulations is financed from APBN funds which are not small, in terms of time the process of drafting them takes quite a long time and can even take years, while in terms of manpower in preparing the laws and regulations it takes a lot of energy, concentration, and coordination of the makers of these laws and regulations. With a good process of vertical harmonization of legal regulations, the potential for various losses above can be prevented. In addition to the vertical harmonization mentioned above, in the preparation of statutory regulations, attention must also be paid to the harmonization of statutory regulations within the same or equivalent hierarchical structure. This type of harmonization is called Horizontal harmonization of laws and regulations. Horizontal harmonization departs from the principle of *lex posterior derogat legi priori*, which means that a new legal regulation overrides/defeats the old legal regulation, and the principle of *lex specialist derogat legi generalis* which means a specific legal regulation overrides/defeats general legal regulations. Horizontal harmonization of legal regulations based on these two principles is very important in the preparation of legal regulations because, in essence, legal regulation is a form of regulation that is cross-sectoral and cannot stand alone. In these laws and regulations, there are various sectors and fields of law that are different but are interrelated and connected so that a comprehensive, rounded, and intact regulation is needed.⁴
- f. In this case, those forming legal regulations need to coordinate with agencies related to the substance that will be regulated in the legal regulations. If the process of Horizontal Harmonization of legal regulations fails to be implemented, conditions will be created that overlap between sectors and legal fields in a country's legal system. This condition will have a very massive and dangerous impact because it can create legal uncertainty and ambiguity in the application of these laws and regulations which ultimately defeat the purpose of the law to serve the state's goals, namely creating prosperity and happiness for its people.⁵
- g. Horizontal harmonization of statutory regulations is carried out based on the principle of *Lex Posterior Delogat Legi Priori* towards statutory regulations which are in the same hierarchy and are equal and in practice are regulated in the closing provisions of a statutory regulation. The closing provisions of statutory regulation regulate the status of existing statutory regulations, whether they are declared to remain valid as long as they do not conflict, or whether they are declared not to apply at all. This provision is very important to regulate and organize various aspects and areas of law related to

⁴Asshiddiqie, Jimly. *Constitutional Law and the Pillars of Democracy: Fragments of Thought on Media Law and Human Rights*, Jakarta: Constitution Press, 2005.

⁵*Idem*

these laws and regulations so that there is no dualism in regulating the same legal rules in several laws and regulations.⁶

Synchronization is one of the steps to see that the laws and regulations that apply to a particular area of life do not conflict with one another when viewed from a vertical angle or the hierarchy of existing laws and regulations. Referring to the field of communication and based on research results, it can be conveyed in regulatory socialization activities and increasing public awareness in protecting the environment and watersheds for message delivery by fellow communities, local government at both village and city/district levels, Ministry of the Environment, provincial government and central government. While the target of the message is the entire community, the messages conveyed in the socialization activities themselves for the general information category are what is the environment, what is a watershed, responsible institutions, and environmental regulations. The media that can be used for outreach includes the internet, environmental brochures, K3 and protecting rivers, newspapers, and television.

Based on the data and facts from the research above, as well as reading several theoretical frameworks, the following communication strategy can be formulated first: in their respective residences, the attraction arises from respect for these community figures. The element of credibility will be low if the person conducting the outreach is a figure from the surrounding community and a lecturer, but if the person delivering the message is a government representative, the level of credibility in the outreach material will be higher.

By paying attention to hierarchy, creating or designing legal regulations must follow this system to create harmonious legal regulations. In making Legislation, to realize a harmonious system it is necessary to pay attention to good national legal order, which includes:

- a. The basic source of law is Pancasila
- b. National legal ideals
- c. National legal politics
- d. Improvement of national law
- e. National legal development mechanism
- f. An institution that handles national law
- g. Community legal awareness.

Harmonization of laws and regulations is the harmony between one law and another, whether in the form of vertical (hierarchy of laws) or horizontal (equal laws). This harmony means that there is no conflict between one regulation and another, but one regulation and another strengthen or reinforce and clarify each other (PP Number 68 of 2005). In the laws and regulations regarding River Watersheds, starting from the Environmental Law to the implementation regulations, because they are in several agencies, each agency makes its provisions without any synchronization. Here there is almost no vertical harmonization, every related agency such as the River Management Agency, Environmental Sustainability, and Disaster Management Agency should work together to formulate regulatory materials regarding River Watersheds.

⁶ Fatmawati, *The Right to Test (Toetsingsrecht) Possessed in the Indonesian Legal System*, Jakarta: Raja Grafindo Persada

Horizontal harmonization of laws and regulations in the case of Rivers Basin means that the regulations that have been made by the central government are not well socialized in the community, even regional regulations in both sub-districts and sub-districts are not made and documented, so many violations occur. The legal harmonization that is needed in the regulation of Amdal and population in the watershed is coordination between the institutions granting Amdal permits, the environment, spatial planning, the River Management Agency, the Disaster Management Agency, the Population Service, and village officials to sit together to draft provisions for granting Amdal by cultural characteristics.

In establishing harmonization of these regulations, academic texts of legal regulations must be created with participants from various related agencies/institutions accompanied by traditional community leaders. The provisions are regarding preventive actions that occur and sanctions to provide a deterrent effect to the violators. The approach to customs and culture is very popular in society, therefore legislation must also be in sync with the local culture of the region it regulates. This provision is an operational guideline that can be made by each regional government with the same main regulations and coordinated cooperation from various parties involved.

Conclusion

The implementation of Regional Regulations that are well socialized and provide a deterrent effect to the community regarding rivers can provide legal protection from environmental pollution in the river basin. Here the applicable regulations cannot only rely on written regulations but also unwritten regulations in the community in the form of Indigenous Law and culture held by the community can have a more effective and well-embedded deterrent effect so that it can contribute to the protection of the rivers Basin.

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