
The Existence of Indonesia's National Law in Bridging the Gap Between National Development and Local Wisdom

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Abstract

Development is always prone to causing negative impacts on the environment and marginalized communities, especially indigenous peoples. In fact, the local wisdom that is identical to indigenous people is often very detailed and accurately guiding the society in developing their life and also proved to be very effective to preserve the environment and ensure compatibility of community. The problem is, how does Indonesia's national law play role in bridging the gap between development and local wisdom, and in order to elaborate the existence of Indonesia's national law, this paper will try to answer the role of national law in protecting the local wisdom and also its effort in realizing sustainable development.

Keywords: Local wisdom; sustainable.

I. INTRODUCTION

Local wisdom is based on knowledge or mindset that departs from beliefs in the behavior of traditional communities, where the knowledge in question includes patterns of sustainable use and management of natural resources, from these beliefs social institutions are created as simple rules which is obtained from the experiences of communities, where the rules or provisions in the local wisdom format are created by the community in terms of views with a religious-magical character and customary rules (Aravacik, 2018).

According to Mithcell, local wisdom has six dimensions that are inherent, while these dimensions are: First, the dimension of local knowledge to adapt to their environment. Second, the dimension of local values regarding actions or behaviors are adhered to and mutually agreed upon by all. Third, the dimension of local skills that are used to survive (survival) is to meeting their needs. Fourth, the dimensions of local resources that are used and utilized are not exploited. Fifth, the dimension of local decision-making mechanisms basically has their own local government or called tribal government and sixth, the dimension of local group solidarity as well as humans working together in protecting the surrounding environment (Baharudin, 2015).

Local wisdom ingrained in various forms in indigenous peoples has made it as a way of life for the community to date, but the emergence of modernization as an impact of development and globalization that offers alternative new values in achieving prosperity has eroded local wisdom that has existed before. Ongoing development which uses economic approach or economic orientation, triggers many victims including displacing and ignoring local culture variations that reflect indigenous people's ecological wisdom in the management and utilization of natural resources. In its practice, the domination and usage of natural resources that dominated by the countries which are only pursuing their economic interests also become the primary cause of environmental degradation.

Modernization and globalization as a consequence of development marked by the signing of global agreements such as the GATT, WTO and other trade agreements, have opened up boundaries between countries where industrial-economic development has caused distortion to other components in the society, although the government can accept globalization by adjusting policies and laws that have been agreed upon in global regulations, however not all components of society can accept this and this is what causes a pattern of resistance to the development.

The pattern of resistance towards development is an action or movement carried out by most components of society to survive from the pressures of globalization and look for other alternatives from the negative impacts of the development. Regarding resistance to the impact of globalization, (Fakih, 2003), identifies them as follows:

1. Challenges of cultural and religious movements. The phenomenon of religion-based movements and cultural resistance movements against development and globalization has occurred for a long time, such as in Egypt where the disappointment with development that hit the urban poor Muslims raised a religion-based movement that was branded Islamic fundamentalism, and in India the cultural resistance of Rashtriya Swayam Sewak Sangh who urged a boycott of foreign-made goods.
2. Challenges of new social movements and global civil society. New social movements are social movements against development and globalization, such as the green movement, the feminist movement and grassroots community movement. In Indonesia, actions to expand their movements of these new social movements are usually assisted by Non-Governmental Organizations (NGOs).
3. Challenge of the environmental movement. Although not all environmental movements directly oppose globalization, to some extent the development of environmental movements influenced by Rachel Carson's thinking in her novel *Silent Spring*, has triggered the "environment for the environment" (eco-fascism) movement and the community empowerment on the environment (eco-populism).

Based on the understanding of the development discourse above, development is always prone to negative impacts on the environment and marginalized communities, especially indigenous peoples. In fact, the local wisdom that is identical to indigenous people is often very detailed and accurately guiding the society in developing their life. Local wisdom is proved to be very effective to preserve the environment and ensure compatibility of community. However, modern development seems to be leaving this wisdom behind. Moreover, communities are often excluded from development policy decision making (Baharudin, 2015).

As a developing country, the current position of Indonesia's local wisdom and natural resources also has potentially vulnerable with the same pattern of retention in the midst of existing development, but on the other side the fact that development is also needed as a medium in realizing social welfare for all citizens. The question is how does national law play a role in bridging between development and local wisdom in Indonesia? and this article will try to analyze the current development problems, particularly related to the protection of local wisdom in order to realizing sustainable development in Indonesia?

II. METHOD

The method that been used in this paper is normative legal research with a statutory and analytical conceptual approach, by using a systematic interpretation, all legal materials that been collected through literature study will be presented in a descriptive analytical concept.

III. RESULTS AND DISCUSSION

The sustainable development paradigm towards the protection of indigenous peoples' local wisdom

Research regarding the negative impact of modernization on rural areas in Indonesia, shows that there is a clash of two different cultures with a tendency to erode local culture with new cultural values that enter

through modernization, in his research Dove divides the impact of modernization into four aspects, namely ideology, economics, ecology and social relations. In his research, Dove taking the example of South Sulawesi, his research on the Wana Tribe shows that modernization has resulted in displacement of local religions replaced by new religions. According to Dove, modernization seems to be a powerful force that shackles human freedoms, including freedom of religion, as well as local knowledge that was previously considered to be able to solve community problems, replaced with new knowledge that is considered more superior.

In line with Dove's research above, (Baharudin, 2015) gave an answer as to why traditional wisdom is being eroded. *First*, there is a process of natural desacralization by the invasion and domination of modern science and technology. It appears through changes in the perception of space, space which was originally sacred by indigenous peoples is considered to hold a million mysteries later on by the modern science is understanding only as scientific-rational facts without religious magical vibrations and moral values, consequently nature is treated arbitrarily and exploitatively. *Second*, nature is no longer sacred but has a very high economic value, so there is abundant wealth that must be utilized to change human economic life. The sacredness of nature is lost, when morals are abandoned and humans no longer depend on nature but depend on themselves by using reason and technology to conquer and change nature, automatically traditional wisdom regarding the sacredness of nature also loses its relevance and eventually becomes extinct. *Third*, the modern knowledge ethics only sees humans as social beings and it causing the ethics of indigenous peoples which are a reflection of their moral responsibility to nature became forgotten. *Fourth*, development and modernization causing the loss of biodiversity while traditional wisdom can be preserved only if nature and all its existing wealth are still preserved, and the loss of the rights of indigenous peoples, including the right to live and survive in accordance with their identity and unique cultural traditions and the right to self-determination.

Reflecting on the explanation above, the question that may arise, is the development paradigm always lead to a shift in cultural values and customs so that it tends to eliminate the existing local wisdom in indigenous peoples? The existence of modernization and globalization cannot be avoided in development, globalization and modernization are part of the development that affect the possibility of changing the world by removing various obstacles, bringing new perspectives as future realities that affecting culture and people's lives. It is undeniable that in a development discourse always causes social change or vice versa social change requires development to achieve prosperity, therefore development is always needed by all countries, especially developing countries that are affiliated in third world countries.

The problem is not in development, modernity or globalization, but in the paradigm and orientation of the development, in line with that, the thing that needs to be changed and even expanded in development is not only orientation to economic welfare, but also alignment with justice and equity. Development must also positioning-humans, the environment and local wisdom, as a unitary material subject where in its implementation always adheres to ethics and morals, and in order to create a synergy in development where local wisdom is not eroded or even extinct due to the polarization of development, the values of local wisdom that have existed so far need to be actualized as social energy in the participatory development process.

In the progress of the development paradigm especially at the end of the 20th century, the discourse of local wisdom has emerged and it's recognized as an important part of future development programs (Baharudin, 2015). The emergence of this discourse cannot be separated from the global environmental crisis that characterizes the development paradigm, where the movement towards global environmental awareness was discussed by the United Nations Economic and Social Council (ECOSOC) while reviewing the results of the 1st Decade of World Development Movement (1960-1970) to formulate the strategy of the 2nd World Development agenda (1970-1980). The term, 'sustainable development', first appeared in the *World Conservation Strategy* drafted by the United Nations Environment Program (UNEP) and the International Union for the Conservation of Nature (IUCN) in 1980. The UN's World Commission on Environment and Development (WCED), chaired by Gro Harlem Brundtland of Norway, renewed the call for 'sustainable development' to alleviate poverty, safeguard the environment and feed the world, in 1987. Publication on the Report of the Brundtland Commission entitled our common future defined 'sustainable

development' as "development that meets the needs of the present without compromising the ability of future generations to meet their own need", has triggered the birth of a new agenda regarding the concept of economic development and its relationship to the environment in the context of sustainable development (Alisjahbana, Armida Salsiah., and Murniningtyas, 2018).

However, the most important role in formulating the concept of sustainable development was the United Nations Conference on Environment and Development (UNCED) with achievements such as Rio Declaration on Environment and Development; realizing "Agenda 21" as the Action of Sustainable Development Program; Agreement on the Climate Change framework Convention; Conventions on Biodiversity; Statement global consensus on management, conservation and development sustainable forest (Alisjahbana, Armida Salsiah., and Murniningtyas, 2018). The Rio Declaration contains 27 principles in which there are 5 main principles related to environmentally sustainable development, those principles namely (Basiago, 1999).

1. Inter-generational equity,
2. Intra generational equity,
3. Precautionary principle,
4. Conservation of biological diversity, and
5. Internalization of environment cost and incentive mechanism).

Related to the development paradigm in relation to the concept of sustainable development, local wisdom should not be something that must be contested, because the values of local wisdom that exist in all parts of the world are generally socio-cultural capital. Local wisdom must also be understood as a social basis that propulsive development in various fields, including as an alternative solution in realizing environmental-friendly development. Local wisdom is also part of cultural construction which refers to various cultural assets that grow and develop in the community, are known and trusted as beliefs, and recognized as important elements that are able to strengthen social cohesion among the community (Abdullah, 2006). So, if we analyze the relationship between the concept of sustainable development that synergizes or synchronizes three aspects of development such as: economic aspects, social aspects and environmental aspects, a common thread can be drawn, that local wisdom which is part of socio-cultural construction is the main capital in development.

As a welfare state, Indonesia needs development as a tool to realize its goals, on the other hand the state also has an obligation to provide fulfillment of the rights of its citizens. According to (Aravacik, 2018) the fulfillment of these rights include: equality, equal opportunity, fulfillment of basic needs, freedom in civil right, social right and political right. Based on those view, the role and function of local wisdom must be carried out with a holistic approach, where the State in this case the government, plays a role in accommodating and protecting all interests especially marginalized communities. Therefore, development must be able to provide space for the maintenance, empowerment and active participation of indigenous peoples who have traditions and values of local wisdom.

Legal perspective on the Protection of Local Wisdom in National Development

The legal dimension of development cannot be separated from the role of law in social change, because development is part of social change itself, and social change arises from the desire to improve the conditions of society, which generally require justice, equity, equality, and legal certainty. Currently, trust in the law is weakening, due to the view by most people that the law tends to be used as a tool of oppression. However, this view is not entirely correct because it is seen from its function that the law is like a double-edged-swords, on the one hand it can be a tool of oppression for the evil one, while on the other hand the law can be a tool to create order.

The law is purported to achieve justice and legal certainty, and to provide benefits to the community. Therefore, the law must be dynamic and adjust to current developments to achieve the intended legal purpose of benefitting the society and maintaining social order. Understanding of the three basic values of existing law,

1. Legal certainty

It is interpreted by the clarity of behavioral scenarios that are general and binding on all members

of the community and their legal consequences, including providing directions for obligations that must be carried out, in relation to other members of the community and the rights which they obtain. The creation of legal certainty in the legislation is related to the internal requirements of the legal norms themselves, namely the clarity of the concepts, the clarity of the hierarchy of authority of the institutions forming the laws and regulations, and the consistency of norms in the legislation.

2. Justice

Referring to moral thinking, there are two main streams of opinions to declare something fair, namely Utilitarianism which emphasizes the results achieved from the distribution of resources, where distribution of resources is declared fair if there is the greatest good for the greatest number, and deontologist which does not pay attention to on the distribution results, but is more committed to the mechanism, procedure or rule of law/norm that applies to realizing justice, which according to its followers there are three elements that can determine to find out that the method or procedure is fair, namely feasibility, freedom and equality. In addition, according to It is not easy to combine justice which emphasizes procedures with justice that emphasizes results, she stated, "Not easy to make a choice between deciding something formally qualified (formal justice) but does not meet the substantial fairness or the fulfillment of substantial justice priority but formally ineligible. Perhaps, the thing that can be used as guideline is the voice of conscience with empathy for the plight of others".

3. Benefits

In the context of optimizing the achievement of legal social goals, apart from being aimed at achieving order as the ultimate goal, legal provisions also have certain social objectives, such as interests that are to be realized through law by individuals, society, or by the state itself.

Regarding the dimension of legal protection in addition to fulfilling the three basic values which mentioned above, in the context of development and social change, the framework of legal functions also plays important role in community reform, which according to (Fakih, 2003) the role of law in development is an instrument to ensure orderly social change. Regular social change through legal procedures, either in the form of legislation and judicial decisions would be better than an irregular change especially if it carried out by violence, so that change and order are the main goals from the changing society.

Furthermore, the supporting opinion from (Abdullah, 2006), explains that the role of law in the context of development interests can be translated into the following forms:

1. Coordinate development efforts comprehensively and systematically with a series of other processes in the community, so that the deviant state of the processes in society can be identified and corrected and the level of productivity is maintained;
2. The law maintains predictability in society among others by working various principles that support that direction;
3. Controlling the consistency of business or activities in development;
4. Creating an open democratic climate in development; and,
5. Become a source of information and education.

There are two kinds of legal development strategies which at the same time have implications for the character of legal products, namely the development of "orthodox" law and the development of "responsive" law. In the development of orthodox law, the role of state institutions (government and parliament) is very dominant in determining the direction of law development or elitist-conservative, while the development of responsive law is dominated by the judicial institution and the participation of social groups or individuals. In its legal products, the development of orthodox law is positivist-instrumentalist, which is a strong basis for the implementation of state ideology and programs, or the realization from the vision and social will of the government, so the role and participation of the community is relatively small and the process of making legal products is centralized. Meanwhile, responsive legal development produces responsive/populistic legal products to the demands of various social groups and individuals in society, where the process of legal construction is participatory.

In connection with the opinion stated above, Indonesia as a developing country is always in need development to accommodate various interests that exist in social change, where the law acts as the

foundation of the norm, so the social-economic development in harmony with the development of the law. Therefore, law as a system in national development must be responsive by creating legal products that reflect certainty, fulfill a sense of justice and benefit the interests of all levels of society.

In the context of the rule of law as affirmed in Article 1 paragraph (3) of the Fourth Amendment to the 1945 Constitution, and in the National Development Plan contained in the main reference document for the implementation of national development, Law Number 17 of 2007 concerning the Long-Term Development Plan of 2005-2025, has required the development of a sustainable legal substance as never ending process, integrated with the development of other legal subsystems namely, the subsystem of culture or legal awareness (legal culture), legal apparatus (legal apparatus) and legal infrastructure (Mattalatta, 2008: 209-210). This confirms that, laws and regulations have a dominant role in community development and social change compared to other legal products.

As an effort to realize responsive legal development, the existence of legal dimension in protecting local wisdom in national development has recognized and protected constitutionally, as a special regional government unit regulated in the 1945 Constitution Article 18 B paragraph (2) which stated "The state recognizes and respects traditional legal community units with their traditional rights as long as they are still alive and accordance with the development of society and the principles of the Unitary State of the Republic". Recognition and protection of local wisdom also reaffirmed as a manifestation of the protection of human rights as regulated in Article 28 I paragraph (3) which stated "Cultural identity and the rights of traditional communities are respected in accordance to development of the age and civilizations.

Furthermore, as a part of the concept of sustainable development contained in Law No. 17 of 2007 concerning The National Long-Term Development Plan for 2005-2025, local wisdom also absorbed and arranged in the material of other legislation, which is include:

1. Law No.23 year of 2014 concerning Regional Government, in its attachment letter "K" number 7 related to the division of government affairs in the environmental sector, it is stated that the determination of recognition of indigenous peoples, local wisdom or traditional knowledge and rights of indigenous peoples related to environmental protection and management is the affairs of the Central, Provincial and Regency/City Governments.
2. Law No. 32 year of 2009 concerning Environmental Protection and Management, in Article 63 paragraph (1) letter "t", Article 63 paragraph (2) letter n and Article 63 paragraph (3) letter "k", stated that in environmental protection and management, the central government and regional government have an authorities in charge of establishing and implementing policies regarding the procedures for the recognition of indigenous peoples, local knowledge, and community customary law relating to the protection and management of the environment.
3. Law No. 6 year of 2014 concerning Villages, where in Article 25 letter I and Article 81 Paragraph (3) it is stated that the administration of village governance is carried out based on one of the principles of local wisdom and the implementation of village development is carried out by utilizing local wisdom and natural resources of the village.
4. Law No. 1 year of 2014 concerning Amendments to Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands, which regulates amendments to the Article 1 of Law No. 27 of 2007 and amendments to Article 21 paragraph (1) which among others states about the definition of Customary Law Society and Local Wisdom.
5. Law No.32 year of 2014 concerning Marine Affairs, in Article 3 letters a and e, Article 13 paragraph (2), Article 22 paragraph (2) letter "d", Article 36, Article 42 letter "a" and Article 70 paragraph (4) which regulates concerning respect and recognition of the local wisdom in the management of marine areas in Indonesia.
6. Government Regulation No.68 year of 2010 concerning Forms of Procedures for Community Roles in Spatial Planning, in Article 8 letter "c", states that the use of space carried out by the community can be in the form of activities that utilize space in accordance with local wisdom and a predetermined spatial plan.

7. Presidential Regulation No.122 year of 2012 concerning Reclamation in Coastal Areas and Small Islands, in Article 11 letter "k" states that in terms of preparing a master plan for reclamation, local wisdom must be taken into account.
8. The Minister of Home Affairs Regulation No.33 year of 2009 concerning Guidelines for Ecotourism Development in the Region, in Article 3 letter "g" states that Local Wisdom is one of the principles in ecotourism development.
9. Regulation of the Minister of Environment and Forestry No.P.34/Menlhk/Setjen/ Kum.1/5/2017 concerning Recognition and Protection of Local Wisdom in the Management of Natural Resources and the Environment.

The existence of the recognition of local wisdom in various existing laws and regulations in national development has indicated that, the state has provided space to accommodate local wisdom, and at the same time also accommodate the active participation of indigenous peoples in national development. In addition, regarding the universal values of local wisdom related to environmental protection and management as stated in Article 2 Paragraph (1) of Law No. 25 year of 2004 conjunction with Article 2 of Law No. 32 year of 2009 has also emphasized the state's recognition of the local wisdom's universal values and absorb it as one of the important principles or elements in environmental management and protection in order to realizing the sustainable development.

Then, as a responsive legal development concept, regional development also provide a special space for the implementation of local wisdom that is spread across various existing indigenous communities, as stated in Article 31 Paragraph 2 Letter "f" of Law No. 23 year of 2014 that, the implementation of decentralization, regional structuring is carried out by maintaining the uniqueness of local customs, traditions and culture. Based on this, the local government has responsibility to provide full guarantees for the protection and implementation of local wisdom in their territory by regulating and absorbing the values of local wisdom through local regulations and development policies, and in addition within the framework of the Unitary State of the Republic of Indonesia, the local government should also provide assistance in the form of access and facilities to its institutions, cultural traditions, territorial spaces, and material artifacts.

IV. CONCLUSION

The retention of the development discourse always occurs worldwide, but the problem is not in the development, modernity or globalization, problem is on the paradigm and the orientation of the development, it's have to be changed and even expanded into construction of development with not only oriented in economic prosperity, harmony in justice and the equity, but also positioning the humans, environment and the local wisdom as an united subject. Local wisdom must be carried out with a holistic concept and approach, where the State in this case the government plays a role in accommodating and protecting all interests of various parties including marginalized people, which mean that development must be able to provide space for maintenance, empowerment and active participation, especially for indigenous peoples who closely related to the traditions and values of local wisdom. Based on the results from the study of this paper, the actualization of the concept of responsive legal development in Indonesia's national development has accommodated the concept of sustainable development, where the state has provided space to accommodate existing local wisdom, at the same time providing space for creating an active participation to indigenous peoples. Constitutionally, local wisdom in national development has been recognized and protected, and its existence is manifested in various national laws and regulations.

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