
**THE ROLE OF CULTURAL ASPECT OF *PESAREAN* ON THE REGULATION
FORMATION IN WONOSARI VILLAGE OF GUNUNG KAWI**

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Abstract

This article discusses how the role of cultural aspects influences the formation of regulation in Wonosari Village of Gunung Kawi, Malang Regency. In accordance with the issues raised, this study uses empirical juridical method and the theory of legal harmonization and legal pluralism as a tool for analysis. The conclusions of this research are; (1) Culture has an important role in the formation of law. Culture makes the law work well in the community. (2) The Pesarean region of Gunung Kawi is currently undergoing a transformation from traditional values to modern values. (3) Therefore the urgency now is to create harmonization and unification between culture and formal law. Furthermore the authors advise the government to always consider cultural values in the framework of the formation of village regulations.

Keywords: Culture, Formation of Legislation, and *Pesarean of Gunung Kawi*.

I. INTRODUCTION

Pesarean of Gunung Kawi, Wonosari Village of Wonosari District - Malang Regency has attracted a number of people to keep coming. Some circles assess the existence of Pesarean in Gunung Kawi can provide *pesugihan* to those who are able to meet some terms and conditions. The peak is when the village of Wonosari confirmed as a ritual tourist village by the Government of Malang Regency which is regulated in Article 48 paragraph (4) letter of Malang District Regulation No. 3 of 2010 About Spatial Planning of Malang Regency.

The result of the hearing with the Gunung Kawi figures involving the Village Government, Interpreter of Pesarean Key and the young figures, has been informed that Culture in wonosari village can be seen from the ceremonial procession which is located in Pesarean Gunung Kawi. There are some important things that are of concern in Pesarean of Gunung Kawi, among them. Firstly, there is a grand ritual ceremony which is held regularly every 1st of suro and 12th suro, where the pilgrims must follow the way of Javanese culture that is Kirgh Sesaji. Secondly, there are village clean rituals performed every year and the ritual of rejecting *bala saparan*, other than that the caretaker who, since ancient times, should rise *kepesarean* obligation in the form of betel vine which until now has been followed by the pilgrims. Third, the procession of offerings involves not only a single faith or religion, but is run by a number of believers or religions from Islam, Hinduism, Buddhism, Christianity, Catholicism and congregation and trust. Each of them prayed to the role model of the two Muslims, namely pesarean Eyang Djoego and RM. Iman Soedjono. They are both fighters led by Prince Diponegoro in expelling the invaders in the Java war.¹ Fourth, there is a widely circulated issue in the community that in the offering site Pesarean of Gunung Kawi mentioned that can bring *pesugihan* for them to believe it. As a result there arose hundreds of caretakers (± 300 caretakers) who use the false Gunung Kawi to benefit from services as a caretaker. Fifth, Pesarean Gunung Kawi under the management of a large institution led by the *Juru Kunci*, they have their own unwritten rules such as village regulations.

The phenomenon of the society's habit continues to run until now and obeyed by the people. Sudikno in his book "*Mengenal Hukum*" describes that habit is an action according to the pattern of behavior that remains commonly normal norms or custom in certain societies or association of life.² Behavior that is fixed or steady means repeated human behavior. The repeated behavior has a normative power, has a binding force.³

Based on the above description which has explained that the habit has been systematically derived composed of complex elements, including religious and political systems, customs, language, tools, clothing, buildings and

¹Buku Saku Pengungjung tentang Profil Pesarean Gunung Kawi, p. 20.

²Sudikno in his book "*Mengenal Hukum*" dalam R. Soeroso, S.H., "*Pengantar Ilmu Hukum*", Jakarta: PT. Sinar Grafika (Cet. 13), 2013, p. 150.

³Ibid, p. 150.

network, it can be defined as a culture.⁴ Culture is a way of life that is developed and shared by a group of people and passed on from the generation of generation.⁵

On the other hand, Indonesia is a country that adheres to the continental European legal system in which the rule of law must be contained in a written form of legislation. The main principle underlying the continental European system is the law of obtaining binding power, because it is manifested in laws and in the form of a systematic arrangement in a particular codification or compilation.⁶ This basic principle is embraced considering that the primary value which is the goal of law is "legal certainty".⁷

However, the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) has guaranteed the existence of culture. In Article 32 Paragraph (1) which mentions "The State advances the Indonesian national culture in the midst of world civilization by guaranteeing the freedom of the community in maintaining and developing the cultural values".⁸

Through village regulations established by the village government together with the Village Consultative Board (hereinafter abbreviated VCB), village regulations are established that are adapted to the local culture. According to Edward Burnett Tylor, culture is a complex whole, in which it contains knowledge, beliefs, arts, morals, laws, customs, and other capabilities that a person acquires as a member of society.⁹ Thus, Culture and law can be abstracted to see the social realities of society, especially in societies that still hold culture as the unwritten norm.

Culture that develops and runs in the environment Pesarean Gunung Kawi is not different from the culture of Java, particularly Javanese culture that comes from mataram. It is the Javanese culture that emphasizes the aspects of harmony and harmony.

Departing from it, it is important to take an in-depth study of the culture of Gunung Kawi, as well as to see how culture forms the law in the main Wonosari village within the Pesarean of Gunung Kawi.

The purpose of this paper is to examine and analyze what is the role of cultural aspect in the framework of regulation formation in Gunung Kawi. The expected benefits of this article are theoretically the results of this research can develop and add to the understanding in the field of law science, especially Constitutional Law in the more specific case of legal politic in the field of formulation of legislation. The results of this study are expected to provide input thoughts for the Law Maker parties and all other parties in order to maintain the preservation of cultural values and local wisdom.

This study uses empirical juridical method with the approach used is historical approach (Historical approach) and concept approach (conceptual approach).¹⁰ Historical approach is used to study Customs and culture in Wonosari Village Gunung Kawi from past to present. The conceptual approach is used to analyze the culture of mountain kawi in influencing the formation of village regulations in Wonosari Village Gunung Kawi. The theory used as a knife of analysis is the theory of law harmonization and legal pluralism theory.

II. DISCUSSION

A. History of Pasarean Gunung Kawi

Pesarean of Gunung Kawi is one tourist attraction of Pesarean of Gunung Kawi Malang Regency is a place that has been known since the time before independence or since the Dutch colonial occupation. Located on the southern slopes of Mount Kawi is approximately 40 km from the southwest of Malang. Gunung Kawi is a residential area, a fertile agricultural area, a cool air, and a community of friendly people always tied to the tradition of tradition that is still strong. Pesarean Gunung Kawi occupies a land area of approximately 5 hectares and is managed by family heir Pesarean of Gunung Kawi. In Pesarean of Gunung Kawi there is a legendary tomb of two figures for the Javanese society and the Chinese community because both of these figures have a charisma that until now has always been remembered and prayed by people from various ethnic as if without the division of religion, ethnicity, culture, class, and social strata.¹¹

These two figures are Kanjeng Kyai Zakaria II aka Raden Mas Soerjokoesoemo aka Raden Mas Kromodirejo aka Eyang Jugo. The second is RM Mbah. Iman Soedjono is a favorite student of Mbah Jugo who is a nobleman of Keraton Ngayogyakarta Hadiningrat (Yogyakarta). During his second life he had been together and before he died, Kyai Zakaria ordered to be buried on the slopes of Mount Kawi if he died, and so did Raden Mas Iman Soedjono

⁴Benny Kurniawan, " *Ilmu Budaya Dasar*", Tangerang Selatan: PT. Jelajah Nusa, 2012, p. 1.

⁵*Ibid.*

⁶R. Abdoel Djamali, " *Pengantar Hukum Indonesia*" (edisi revisi), Jakarta: Rajawali Pers, 2011, p. 69.

⁷*Ibid.*

⁸Compare article 32 paragraph (1) *UUD NRI 1945*

⁹Benny Kurniawan, *Op.Cit.*, p. 2.

¹⁰*Ibid.*, p. 93.

¹¹Buku Saku Pengungjung tentang Profil Pesarean Gunung Kawi, p. 1-2.

had a will when he died to be buried near his teacher Jugo (Kyai Zakaria) Mbah Jugo died in his padepokan in Jugo Village, Sanan Sub-district, Blitar Regency, on Sunday Legi (Monday Pahing at 01.30 West Indonesian Time on 1 Selo Dzulhijah in 1799 dal, or on the 22nd of January 1871 AD). Then the corpse departed to the slopes of Mount Kawi to get there on Wednesday Wage, January 24 and laid in the padepokan RM. Iman Soedjono and the next Thursday kliwon, January 25, 1871 his body buried in a Muslim led by RM. Iman Soedjono.¹²

B. Culture

Culture is a comprehensive lifestyle and is complex, abstract, and broad.¹³ While the culture according to selo soemardjan and Soelaiman Soemardi, culture is a means of work, taste, and the creation of society.¹⁴ In terms of Cultural Determinism by Melville J. Herskovits and Bronislaw Malinauski that everything contained in the society is determined by the culture owned by the society itself.¹⁵ Therefore, culture is closely related to society.¹⁶

From the various definitions, can be obtained understanding of culture is one that will affect the level of knowledge and include system ideas or ideas contained in the human mind, so that in everyday life, the culture is abstract.¹⁷

While the embodiment of culture is objects created by humans as being cultured, in the form of behaviors and objects that are real, such as patterns of behavior, language, equipment life, social organization, religion, art, etc. all of which are aimed at helping people in their social life.¹⁸

There are some experts who propose some components or elements of culture, antarlain as follows. Melville J. Herskovits mentioned that culture has four elements, namely: (i) Technological tools, (ii) economic system, (iii) family, and (iv) political power. Bronislaw Malinoeski says there are 4 main elements including: (i) a norm system that enables cooperation between community members to adapt to the natural surroundings, (ii) economic organizations, (iii) educational tools or institutions or educational personnel family is the main educational institution), (iv) power organization (politic).

Thus, in the broad sense of culture concerning the whole system of values and norms, attitudes and behaviors, works, feelings, and human creations formed in community life in the form of (i) belief systems (ii) knowledge systems (iii) equipment and living systems and (iv) the eyesight system or economic (v) system of social and political organization (vi) system of written and spoken language, (vii) art system.

C. Law

Drs. E. Utrecht, S.H. in his book entitled "Introduction to Indonesian Law" (1953) provides the definition of legal definition as follows: "the law is a set of rules (orders and restrictions) that take care of the order of a society and therefore must be obeyed by that society".²⁰

Law is the whole set of rules or rules in a common life: the whole rules of conduct that apply to a common life, which can be enforced by a sanction. The law governs legal relations.

This understanding is in accordance with the opinion of M.H. Tirtamidjaja, SH, in his book "Principles of Commercial Laws" affirms that "the Law is all the rules (norms) that should be followed in the behavior of actions in the social life with the threat of having harm if it violates-the rules will endanger themselves self or property, for example people lose their independence, mendendan and so on".²¹

In law there are also the following characteristics, namely: the existence of the ink and/or prohibition, (ii) the order and/or the prohibition must be obeyed by everyone.²²

The law also has a regulating and coercive nature. It is the living rules of society that can force a person to obey the order in society and to give strict sanctions (in the form of punishment) against who does not obey obey.²³

Of all the above description diker also also the law as something that has a purpose to ensure the legal certainty in society and the law must also bersendikan justice, the principles of justice of the community.²⁴

¹²*Ibid.*, p. 3-4.

¹³Benny Kurniawan, Op.Cit., p. 1-2.

¹⁴Benny Kurniawan, Loc.Cit., p. 3.

¹⁵Benny Kurniawan, Loc.Cit., p. 2.

¹⁶*Ibid.*,p. 2.

¹⁷Benny Kurniawan, Loc.Cit., p. 3.

¹⁸*Ibid.*

¹⁹*Ibid.*, p. 3.

²⁰C.S.T. Kansil, "Pengantar Hukum Indonesia", Jakarta: Balai Pustaka, 1986. p. 38.

²¹*Ibid.*

²²*Ibid.*, p. 39.

²³*Ibid.* p. 40.

²⁴*Ibid.*, p. 40-41

D. Culture Forming Law in Wonosari Village

Culture that developed and run environment of Pesarean of Gunung Kawi not separated from the culture of Java. It is motivated by geographical location and historical aspect (History). The early history of the arrival of two scholars (Eyang Djoego and RM Iman Soedjono) and some of his followers at Gunung Kawi who previously participated in the struggle together with Prince Diponegoro. They came from the Islamic mataram sultanate, centered in Djogjakarta (now) and carrying almost the whole of Java. It means that the rites run by Pengeran Diponegoro and his followers also can not be separated from the culture that developed in the sultanate of Islamic mataram at that time.

From the results of hearings with the interpreter of Gunung Kawi pesarean, explained Javanese culture or ethics Java emphasized on harmony and harmony. It focuses on connecting between nature, spirit and man. The three relationships must be harmonious, so that the conditions are orderly and without conflict. Javanese ethics also emphasizes the avoidance of open conflict. The conflict between individuals or groups is avoided to a minimum and memaksimalnya discomfort to each other.

Although there are several places of worship, ranging from mosques, pagoda and church, rite of offerings ceremony mostly uses the way kejawen (read Javanese culture). It denotes the existence of Javanese culture in the surroundings of Pesarean of Gunung Kawi. Javanese culture, by itself forms a law that is believed and run by the people of the village wonosari especially for the pilgrims.

The description is in line with the weber tradition, Francis Fukuyama (1955), Lawrence Harrison (1985, 1992, and 1997) Samuel Huntington (1996), and Robert Putnam (1993) argue that cultural trasidi remained remarkably and shaped the political and economic behavior of society they are now.²⁵

The laws that form from culture are value systems that contain a number of ideas, actions, beliefs and works, which live and live by the community in a down and continuous way. The belief in the power of sanction or punishment through karma or from supernatural power becomes the binding force of the law that comes from culture. Culture also has a real-life force for certain communities.

The law is rooted in a certain community of human life. The community begins by building a more natural order than the law, such as tradition and custom.²⁶

As a ritual tourist village as well as with the stigma as a seeker of pesugihan, wonosari village has great economic potential. People coming back and forth to undergo a ritual and seek blessing (pesugihan). It then becomes an opportunity and exploited by some people to become caretaker (fake). They offer services as genuine caretakers, directing pilgrims to fulfill certain conditions with the aim that hope can be soon granted.

On the other hand the phenomenon of the existence of caretaker (false) also leads to criminal acts of fraud against pilgrims. Departure from these conditions, the village government subsequently makes Village Regulation No. 3 of 2017 About the Confirmation Interpreter Pesarean Eyang Djoego and RM. Faith Soedjono to provide certainty to the caretaker (original) who comes from legitimate descendants. Unfortunately the village regulations are not regulated on sanctions for those who violate.²⁷

The formation of the village regulations was conducted by deliberation and did not release from the rules of ancestors that have been passed down through generations and obeyed by the community so far that became the basis of consideration in every village rule. Deliberation became a forum as a means to unite elements of culture with the national legal system in accordance with the 1945 Constitution of the Republic of Indonesia and Law Number 12 of 2011 on the Establishment of Legislation.

The deliberations that have been held have formed a harmonization between the national law and the unwritten law which has become a tradition and is obeyed in Wonosari Village.

L.M. Gandhi understands harmonization in law is to include adjustment of law and regulation, government decisions, judges' decisions, legal systems and legal principles with the aim of enhancing legal unity, legal certainty, justice and equality, usefulness and legal clarity without obscuring and sacrificing legal pluralism.²⁸

Although the village regulations in Wonosari Village, Gunung Kawi use the procedures and system of national law formation which is closely related to positivism, but the influence of local culture is very decisive and plays a big role.

If we look closely, there is no universal way of punishment in this world. Talks about modern law in other parts

²⁵Ronald Inglehart, "Bab 7 Budaya dan Demokrasi dalam Buku Kebangkitan Peran Budaya (Bagaimana Nilai-Nilai Membentuk Kemajuan Manusia)", Jakarta: Pustaka LP3ES Indonesia, 2006, p. 130.

²⁶Prof. Dr. Satjipto Raharjo, "Ilmu Hukum" (cetakan keenam), Bandung: Penerbit PT. Citra Aditya Bakti, 2006, p. 253.

²⁷Peraturan Desa Nomor 3 Tahun 2017 Tentang Pengukuhan Juru Kunci Pesarean Eyang Djoego Dan RM. Iman Soedjono

²⁸Mahendra Putra Kurnia, "Hukum Kewilayahan Indonesia", Malang: UB Press, 2011, p. 35.

tell us that it contains a certain value or culture, which since it grew and developed in Europe.²⁹

Since modern law is then used in the world, it is also used by nations in the world who do not have the same tradition of values and culture as Europe. This suggests that in practice there is a different way of punishment between nations in the world.³⁰

III. CONCLUSION

Culture has an important role in the formation of the law. Culture makes the law work well in the community. On the one hand the law can change the values adopted by society and on the other hand the society requires the law to be able to manage its complex life. Laws that are arranged regardless of social value in society, at the end not affective to cause change as expected. Similarly, the preparation of a law that is only goal-oriented without regard to the means it needs will not be effective to cause change.

The Pesarean region of Gunung Kawi is currently undergoing a transformation from traditional values to modern values, although there are still doubts and requires adaptation for the transformation. However, the law and social change of society is a must and has become a provision that is in line with human nature itself as the subject of law. Therefore, the current urgency is to create a harmonization and unification between a harmonious and non-conflicting culture and law. Such a thing can be achieved by always considering the cultural values in the framework of the formation of village regulations

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²⁹Satjipto Raharjo, Op.Cit., p. 253.

³⁰Ibid.