

Adat Law ‘*Larwul Ngabal*’ in the Implementation of Regional Autonomy Policy

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Abstract

The purpose of this study was to find the legal position of Larwul Ngabal in the regional autonomy policy in the Kei Islands. This study uses a sociological-anthropological juridical approach that sees law as a social phenomenon that can be observed in people's life experiences. As an empirical legal research with a sociological-anthropological juridical approach, the data analysis technique is descriptive analysis. The results showed that the existence of Adat Law *Larwul Ngabal* in supporting the implementation of regional autonomy based on local wisdom in the Kei Islands both in the implementation of governance in Southeast Maluku Regency and Tual City was formally visible with the preparation of several regional regulations based on the values of customary values, but substantially have not been optimized in various local government policies in order to create a safe, fair and prosperous society, because they can be influenced by various factors such as legal factors, political factors and economic factors.

Keywords: Adat Law, Larwul Ngabal, Regional Autonomy.

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INTRODUCTION

The Kei Islands of Southeast Maluku, has an order of customs and cultural diversity. A series of community customs and culture still function as a binding community between one another, in various dimensions of life. One part of the diversity of customs and culture that is still maintained and preserved and framed the community, in patterns of brotherly ties, is the Adat Law *Larwul Ngabal*. Until now the customary law still exists and becomes an inseparable part of people's lives, so that it becomes a living law, which is made by the community as local wisdom values that are able to strengthen relationships with one another in family ties as well as rules or norms in resolve various conflicts related to the life of the local community [1].

The values of local wisdom that exist in the Kei community, which is contained in the Adat Law *Larwul Ngabal*, is a socio-cultural capital that is very important in the social integration of its people, because it has become a culture that has been passed down for centuries. Such wisdom, as a cultural asset that teaches a culture of peace, harmony, mutual cooperation, compassion, equality, and appreciation according to its function and role. In addition, historically shows that these wisdoms are able to build social solidarity that

transcends barriers of difference, whether in religion, ethnicity, ideology, language or class.

Good Governance, is a concept in management in government that has been popular since the nineties, as if it were a new formula for therapy of a country's governance mechanism to run democratically. In fact, the principles or principles have long been the cornerstones of governance in a modern democratic state, as in our country these principles or principles have long existed, especially values in the cultural traditions of the community as a social capital and are very much in line with the principles of participation, transparency and accountability, as well as opening up space for community involvement. However, these principles or principles as a law that lives in society are simply ignored so that they are not used as a reference in the delivery of public services [2].

The government is aware of the consequences that will arise from the application of the law, the solution chosen is to separate the village administration from the structure of the local/traditional organization. In other words, the structure or structure of the local organization is kept away from government affairs. This politics is then given a legal framework through the Ministry of Internal Affairs and the Minister of Internal

Affairs Instruction which governs the Development of Customary Institutions. The regulation emphasized that adat institutions are not part of local government but are categories of community organizations whose task is to resolve adat disputes and assist village governments in making development successful [3].

As mandated by the 1945 Constitution of the Republic of Indonesia, there are Government Affairs which are fully the authority of the Central Government, known as absolute government affairs and there are concurrent government affairs. Based on Law No. 23 Year 2014 concerning Regional Government, it is regulated that concurrent governmental affairs consist of Obligatory Government Affairs and Preferred Government Affairs which are divided between the Central Government, Provincial Regions, and Regency/City Regions. Mandatory Government Affairs are divided into Mandatory Government Affairs related to Basic Services and Mandatory Government Affairs that are not related to Basic Services. For Mandatory Government Affairs related to Basic Services, a Minimum Service Standard is determined to guarantee the constitutional rights of the community.

The division of concurrent government affairs between the provincial Region and the regency/city Region even though the Government Affairs are the same, the difference will appear from the scale or scope of the Government Affairs. Even though the Provincial Region and Regency/City Region have their respective Government Affairs which are not hierarchical in nature, there will still be a relationship between the Central Government, Provincial Region and Regency/City Region in its implementation with reference to the NSPK created by the Central Government.

In addition to absolute governmental affairs and concurrent governmental affairs, in this Law there are known public affairs affairs. General government affairs become the authority of the President as head of government related to the maintenance of the ideology of the Pancasila, the 1945 Constitution of the Republic of Indonesia, Unity in Diversity, guaranteeing harmonious relations based on ethnicity, religion, race and between groups as pillars of national and state life and facilitate democratic life. The President in the implementation of general government affairs in the Region delegates to the governor as the head of the provincial government and to the regent/mayor as the head of the regency/city government.

It becomes a dogma in the practice of governance that good governance is a government capable of mobilizing and managing the potential of its people in building or improving a better and dynamic quality of life, which is not only able to adapt, but can precisely be a reforming force in an increasingly globalized world civilization order nowadays. In that

context, a leader is not just someone who is strong, brave, has wealth and is in charge, but the leader must use his smart brain to calculate whether his leadership will bring benefit to those he leads [4].

The local legal system, which is called the norm, which was originally applied as customary law to indigenous groups scattered in various corners of the archipelago, has been replaced by the legal system used by the Dutch colonial government in accordance with the interests of the colonialists in preserving their power in their jurisdictions. After the Proclamation of Independence of the Republic of Indonesia, the prevailing legal system was nationalized, in fact the principles and legal principles did not change unless of course the spirit, which was no longer the interests of the colonizers but had become the interests of the Unitary State of the Republic of Indonesia which had positioned itself as a state based on law and not based on mere authority as stipulated in the 1945 Constitution of the Republic of Indonesia.

Rights are something that is inherent in every human being, and rights can be applied in every scope of life [5]. Communities that have local legal rules are very strong in their eradication, where people implement their own local legal rules without the need to understand and apply the state legal system, because the substance of local law is liquid in the cultural values of the community which has a strong influence on the behavior of local communities, besides from the aspect of structure get strong legitimacy from the community because the application of the law in accordance with a sense of justice that has been formed and passed down through generations through norms adopted in the local community value system such as legal awareness to preserve the environment for the Baduy Community in West Java or the Kajang Community in the Bulukumba area of South Sulawesi, this is an example of the persistence of local wisdom values of the local community that have a positive influence on the formation of a legal culture for the local community.

The values of local wisdom such as those found in other regions in Indonesia are also the desire of the people in the Kei Islands of Southeast Maluku. This can be seen in the activities of community life in the Kei Islands in various activities have been colored by a customary law system called the Larwul Ngabal customary law, in that law also regulates customary governance starting from the combination of several *Ohoi* (villages) which led by a king and it still exists today.

As a form of strengthening the Adat Law *Larwul Ngabal*, in the Kei Islands there are two models of leadership that are interpreted by formal leaders, namely state and informal government, namely adat government. The formal leader is recognized by the Kei community as a motivating factor in development in

various fields in the life of the nation and state, while the informal leader is seen as a motivating factor or strengthening the community for fluency in various process activities carried out by formal leaders.

Communities in the Kei Islands view that the Adat Law *Larwul Ngabal* as an adhesive and unifying tool that can eliminate religious barriers between them. The combination of conceptions based on religion and loyalty to local elements, subsequently forms an attitude of life and belief that is embodied in the social system which is very visible from the typical. Departing from the characteristics that are born from the process and integration between religious elements with local culture, and this can simultaneously distinguish the people in the Kei Islands with other communities in Maluku.

The existence of Adat Law Larwul Ngabal, which became a guideline for the people in the Kei Islands of Southeast Maluku, appeared and was able to resolve various conflicts that occurred both in politics and in the economy and finally the social conflict between religious people that occurred in the Kei Islands in 1999. Conflict it has ever happened where the formal legal approach process often experiences failure and resistance from the community. This can be seen from the efforts to resolve conflicts between religious communities that occurred in 1999, by the government both the local government in the Kei Islands itself and the provincial and central government. Efforts such as involving Indonesian Army and Indonesian Police forces with all existing strengths both in terms of equipment and processes in communication, and also at the government level formed a reconciliation team and involved religious, government and community leaders, but in reality experienced a dead end and failed to resolve the conflict.

Seeing the failure made by the reconciliation team formed by the interim government, the day-to-day conflict is increasingly dangerous and widespread to the community, as evidence that formal leadership or state government has not been able to resolve conflicts that occur between religious communities in the Kei Islands, then the choice to resolve with informal leadership or customary government must be done by encouraging customary government as the highest sovereignty holder in *Lorsiuw* or *Ursiuw*, known as the nine-nation alliance *Ohoi* (which means village), and the highest sovereignty holder in *Lorlim* or *Urlim* is the alliance of five countries *Ohoi* (which means village) [6]. The urge to resolve with informal or customary government with a hope and belief that the conflict can be resolved by custom. Based on the explanation, the problem that will be discussed in this paper is how is the position of Adat Law *Larwul Ngabal* in the regional autonomy policy in the Kei Islands?

RESEARCH METHOD

This study uses a sociological-anthropological juridical approach that sees law as a social phenomenon that can be observed in people's life experiences because in this context the law is not autonomous, so in the view of empirical legal science that the study of law is not only concerned with normative aspects, but how the law can interact in people's lives [7]. The juridical approach in this study is based on the provisions contained in the Adat Law *Larwul Ngabal* as a normative basis. Is a method or procedure used to solve a problem by first examining existing secondary data then proceed with research on primary data in the field [8]. As an empirical legal research with a sociological-anthropological juridical approach, the data analysis technique is descriptive analysis.

DISCUSSION

The Position of Adat Law Larwul Ngabal in the Regional Autonomy Policy in the Kei Islands

The 1945 Constitution of the Republic of Indonesia in Article 18B, in paragraph (1) states that the State recognizes and respects special or special regional government units that are regulated by law, and paragraph (2) states that the State recognizes and respects the units customary law community and their traditional rights as long as they are alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia, which is regulated in law.

These two verses provide meaning and spirit for the customary law community in the Kei Islands who feel how important the Adat Law *Larwul Ngabal* is, in their view its existence is still very relevant today, because they believe that by upholding the customary law it is able to solve various problems, the basic problems both legal, political, economic and socio-cultural occur, and it is very complicated if only resolved with a formal legal approach that applies solely. In community life activities in the Kei Islands, the community views that the Adat Law *Larwul Ngabal* is an inseparable part of community life, because it is the main glue and hereditary is still adhered to, even further than that the community views that Larwul Ngabal is also a step forward in civilization which declares rejection of social excitement and the arbitrariness of power.

Historically, the plurality has existed since centuries ago and it becomes a cultural treasure that makes very proud. Such diversity can certainly give hope to the community to grow and develop in the bonds [9]. With the amendment of the law on regional government, in bringing national law closer, as a guideline for the implementation and implementation of regional autonomy, the existence of customary law, including Adat Law *Larwul Ngabal*, in the Southeast Maluku Kei Islands must also be interpreted as one of

the sources of national law, even though its enforcement only in the community in the area but their contribution in various aspects of life can not be doubted, it can even be made by the community as the most important reference in resolving various problems facing both the legal, economic, political and socio-cultural aspects.

Regional autonomy gives space to local governments to manage and regulate their communities by adhering to the legal values that grow and develop in the community as long as they do not conflict with the Pancasila and the 1945 Constitution of the Republic of Indonesia, the customary legal system such as the Adat Law *Larwul Ngabal* which owned by the Kei Islands community which so far in the writer's observation did not get space to develop. What even happens is that the independence of customary rules is depressed, and eventually it will be removed.

Theoretically, state law does apply, but in reality, it is not. Customary law in several areas, including Adat Law *Larwul Ngabal*, in the Kei Islands still persists in the face of changes and developments of the existence that are still recognized by the community as living law, so the role of local government in the era of regional autonomy becomes important to preserve or actualize by adopting the values of customary law into a reference or source in government work, in the form of regional regulations.

The relevance of making Adat Law *Larwul Ngabal* in the form of Regional Regulation is very possible. To formalize the legal values of *Larwul Ngabal* in the form of Regional Regulations highly depends on several conditions such as:

1. Customary law as a living law, both in terms of family law and material law, as seen in the approach of sociology and anthropology of law is possible to be formalized if the aims and objectives of certainty, usefulness and the upholding of justice proclaimed by the community can be achieved.
2. Customary law as a living law, both those that were in effect before the Dutch colonial government as in the Kei Islands, and those that were in force during independence, are not in conflict with the Indonesian national legal order. Not only because indigenous peoples and their laws have preceded the Republic of Indonesia, but also the practice of the Indonesian government in legal and political policies, from the past to the present, trying to maintain diversity, including the enforcement of the national legal system which makes customary law a source of national law

3. Customary law as a living law that has religious, concrete, constant and flexible magical nature and status bases its application on the deepest order of community solidarity, so that customs, traditions and customary norms that are still relevant can be formalized into Regional Regulations it even becomes a law. With the provisions of these things are accommodating with universal values that apply in the order of community life and democratic governance.

On this basis, given the importance of the position of customary law, it is necessary to have accurate data and information regarding the existence of customary law in the Kei Islands. Through the National Legal Development Board as one of the institutions that participated in the development of national law and the Regional Government Legal Entity in the Regency/City Regional Secretariat in the Kei Islands, trying to obtain accurate data and information about customary law in various regions, including Adat Law *Larwul Ngabal*. The existence of data and information regarding the existence and development of customary law will help the national legal development planning so that in its formation pay attention to the diversity of values that live in various regions, so that national laws that are made do not conflict with local wisdom believed by the people. The substance of the regulation that is contrary to the values believed by the community will cause the law to not be obeyed, making it less effective.

Conflict threatens the security of an individual and that of his/her family [10]. The values of local wisdom as found in other areas in Indonesia is also the desire of the community in the Kei Islands, Southeast Maluku [11]. In an effort to explore and maintain the traditional legal values of *Larwul Ngabal* who are still alive in the Kei Islands community in Southeast Maluku, various approaches must be taken to dig them through the process of observing or researching customary law using local customary law experts, the results of which can be made as a means of drafting regional legal products for the benefit of advancing the region. In order for the study to be of benefit to the community, it must involve various parties, especially through hearings between the regional work units as the initiator of the regional regulation on the law and legislation of the Regency/City, institutions especially the Kings and their government apparatuses and prominent figures. Community leaders with the Regional People's Representative Assembly as their legislator hold a meeting in order to solicit input both verbally and in writing in the context of the preparation of the regional regulation, so that it is expected that the regional regulation made by the local government can accommodate the aspirations and be accepted by the community.

The state is the main actor in the fulfillment of the rights of its citizens, including the fulfillment of a sense of security from crime and social conflict [12]. The number of public pressure for the government to issue a pro-people policy [13]. Since 2007, Southeast Maluku Regency has been divided into Southeast Maluku Regency and Tual City, several Regional Regulations and Ranperda which have been produced both in the Regency/City. In Southeast Maluku Regency itself has given birth to several local regulations such as South Maluku Regency Regulation No. 03 Year 2009 concerning *Ratshap* and *Ohoi*, Southeast Maluku Regency Regulation No. 04 Year 2009 concerning Procedures for Nominating, Election and Inauguration of the Government Head of *Ohoi/Ohoi Rat*, Southeast Maluku Regency Regulations Number 05 Year 2009 concerning General Guidelines for Appointment and Dismissal of *Ohoi/Ohoi Rat* Devices, Southeast Maluku Regency Regulation Number 06 Year 2009 concerning Guidelines for Establishing the *Saniri Ohoi/Ohoi Rat* Agency, Southeast Maluku Regency Regulation Number 07 Year 2009 About General Guidelines for Cooperation between *Ratshap* and *Ohoi*, South Maluku Regency Regulation Number 08 Year 2009 concerning Guidelines for the Establishment of *Ohoi* Community Institutions, South Maluku Regency Regulation Number 09 Year 2009 concerning General Guidelines for the Financial Position of the Government Head of *Ohoi /Ohoi Rat*, *Ohoi/Ohoi Rat* Devices and *Saniri Ohoi* Agency/*Ohoi Rat*.

The presence of these regional regulations is very important in the context of implementing regional autonomy in Southeast Maluku Regency, because the Kei community in general and in particular the Southeast Maluku community customary symbols such as Adat Law *Larwul Ngabal* are still respected and well held and it is attached to the community under any circumstances, and assume that being able to solve various problems that occur in the midst of the community and that has been proven by the Adat Law *Larwul Ngabal* able to resolve social conflicts that occurred in the Kei Islands in 1999. By that it required a variety of regulations produced by local governments to support the implementation of regional autonomy in Southeast Maluku regency by making 7 articles contained in the Adat Law *Larwul Ngabal* as local wisdom in carrying out various activities of daily life both legally, politically, economically and socially culturally for the Kei community in general and specifically for the people of Southeast Maluku Regency.

International treaties should bring good for every country that makes them [14]. To further elaborate the soul and spirit contained in article 18B of the 1945 Constitution, the Maluku Provincial Government through the Maluku Provincial Regulation Number 14 Year 2005 concerning Returning the

Country as a Unit of Customary Law Communities in the Government of Maluku Province has designated the State as a unit customary law community in Maluku Province, by continuing to open space to accommodate other customary law community units in various regions within the Maluku Province region, which are referred to or known by other names.

A variety of cultures that not only become the identity of local communities [15]. Adat is also sometimes clashed with religion [16]. In Maluku Regency, which is generally a customary community, traditional law communities are known by the names “*Ratshap*” and “*Ohoi*” which are regulated based on local customary law, namely Adat Law *Larwul Ngabal*. The unity of these indigenous peoples and their government apparatus have long existed, lived and continue to develop and be maintained in the community's social relations.

CONCLUSION

The existence of Adat Law *Larwul Ngabal* in supporting the implementation of regional autonomy based on local wisdom in the Kei Islands both in the implementation of governance in Southeast Maluku Regency and Tual City was formally visible with the preparation of several regional regulations based on the values of customary values, but substantially have not been optimized in various local government policies in order to create a safe, fair and prosperous society, because they can be influenced by various factors such as legal factors, political factors and economic factors.

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