The Formation of Customary Law Related to the Use of Natural Resources in the Lore Lindu Region*

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Abstract
The research aims to know and comprehend the customary law principles as a rule in the exploration of natural resources, to know communities behavior on customary law in exploring the natural resources, and to explain the customary law as a beneficial rule to conserve the natural resources in lore lindu region. It will be conducted through the research method of socio-legal by data collecting will be done by direct observation of the research object as well as interview and participatory appraisal. Secondary data such as documented policy, law and regulations, political

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agreements, village demographic data, and other supporting data will be collected from various sources of concerns. The result of the research could be revealed as that the customary law principles as a rule in the explorations of natural resources still influence their rule in using its of course lead by head of tribe (totua Ngata) for a long time ago. As well as the communities behavior on customary law in using the natural resources in general. Then the customary law as a beneficial rule to conserve the natural resources in lore lindu region in particular can be assumed, but the intervention of state law or policy made it diminish gradually. Customary law related to forest conservation as a part of their values such as ombo (forbidden) cutting or bring tree or fish in a certain time.

Keyword: Formation; Customary Law; Natural Resources; National Park

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A. Introduction

Sulawesi Island, a transitional zone between the Australian and Asian biological realms that have long been isolated, is considered very rich in species diversity with a high level of endemism. Lore Lindu National Park located at Central Sulawesi Province is one of the most important conservation areas, representing a critical refuge for biodiversity in Sulawesi.

The Lore Lindu area, recognized internationally as centers for plant diversity and endemic bird areas, was declared a national park in 1984 during the Third World National Park Congress held in Bali. Since then, its natural and biodiversity resources are arranged, treated and managed as a conservation area by the central government through modern conservation organization, policies, and practices.

The unique feature of natural resources in Sulawesi and Lore Lindu area is also reflected in the diversity of its culture. ANZDEC (1996)
reported that 15 indigenous ethnic groups, 24 distinct languages and numerous in-migrants from other parts of Sulawesi and other islands of Indonesia lived in Central Sulawesi. The Kaili, Pekurehua, Behoa, Bada, and Katu are among others indigenous ethnic groups to the area who identify themselves and are also identified by others as a distinct culture and linguistic groups\(^4\). (AMAN, 2012) They live mostly in rich natural resources (e.g., forest, water, minerals, and land).

In the name of development government has and continues to transfer land ownership to a private enterprise such as forest concession, plantation, and timber industry, it's in surrounding the national park\(^5\).

However, local communities become loss their area to fulfill their need, means its potential to encroach the national park, even though delimitation of the national park (LLNP) without the prior and informed consent of local communities. The vicinity of Lore Lindu National Park can be identified that have been acquired some change and or the environmental destabilized (damage) as due to of human activities for example; illegal logging, planting, and mining for gold regardless of environmental circumstance.

Meanwhile, local communities had practice part of the preserve natural resources principles. Its existence of values in the belief which had long been known and practiced in daily living. These values have been reflected by the wisdom of the local community in their interaction as man-nature. It is known local community custom which living around the national park have had local knowledge which can be categorized as a legal institution\(^6\) both for having the character as rules and also as a sanction\(^7\). Especially inexperienced exploiting forest have been made and/or agreed on by an interdict existence custom citizen and also govern to treat forest as something that has to be protected beside exploited\(^8\).

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3 Anzdec, Report on the Central Sulawesi Integrated Area Development and Conservation Project, ANZDEC, (1997).

4 Rizal Mahfud and Rukmini Paata Toheke, “Masyarakat Adat Ngata Toro Sulawesi Tengah,” p. 31.

5 Dahniar Dahniar, “Hukum Lokal Sebagai Media Perlawanan Petani (Studi Kasus Gerakan Petani Di Kecamatan Kulawi),” in Penguasaan Tanah dan Kekayaan Alam di Indonesia yang Sedang Berubah: “Mempertanyakan Kembali Berbagai Jawaban”, Jakarta: Huma, (2004), p. 15

6 Michael Fremerey, “Local Communities as Learning Organizations. The Case of the Village of Toro, Central Sulawesi, Indonesia”, STORMA Discussion Paper Series, (2002), pp. 7–8.

7 K. N. Ninan, Conserving and Valuing Ecosystem Services and Biodiversity: Economic, Institutional and Social Challenges, Earthscan, (2012).

8 Günter Burkard, “Natural Resource Management in Central Sulawesi: Past Experience and Future Prospects,” n.d., 27.
However, local communities living in all behavior is relied on and impelled by the view of the law, which can be known from a view of the personal obligation and the others\(^9\). The views are representing the rules decision. Hence, there are two rules come in the same object of natural resources which one can replace the other. In this case, customary law is overruled by statutory law in general implement\(^10\); its indicated two conflicts rise such vertical between state and local communities the other is a horizontal conflict between private enterprise and local people\(^11\). Approximately 22,950 hectares of the area overlapping with the communities properties.\(^12\)

The problem is coming while the natural resources found was a loss or tend to decrease since its effected through a series of human activities such logging, planting, and persecution as direct categories and habitat destruction\(^13\) and modification that indirect categories\(^14\). Based on this description above, three related questions arise as follows:
1. What are there the customary law principles as a rule in the exploration of natural resources in Lore Lindu Region?
2. How did the community behavior on customary law in using the natural resources in Lore Lindu Region?
3. How do the communities know the customary law as a beneficial rule to conserve the natural resources in Lore Lindu Region?

Those questions strongly support research that will search the formation of customary law toward using the natural resources in the area of national park.

B. Research Method

The research conducted through the research method of socio-legal\(^15\). Data collected by direct observation of the research object as well as an interview and participatory appraisal\(^16\). Secondary data such as documented

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\(^9\) Siombo, “Kearifan Lokal Dalam Perspektif Hukum Lingkungan”
\(^10\) Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge: Cambridge University Press, 1997)
\(^11\) Naldi Gantika and Agung Wibowo, *RaTA (Rapid Land Tenure Assessment) Desa Sedoa Dan O’o, Sulawesi Tengah*, Jakarta: HuMa, (2013), p.11.
\(^12\) Fremerey, “Social and Economic Dynamics in Rain Forest Margins,” *Op.Cit.*, p. 13.
\(^13\) Soeryo Adiwibowo et al., “Promoting Sustainable Development at the Rainforest Margin: Economic and Ecological Trade Offs,” *Stability of Rainforest Margin in Indonesia*, (2009), p. 16.
\(^14\) Brian Groombridge, “Global Biodiversity, Status of the Earth’s Living Resources”, Chapman & Hall, (1992).
\(^15\) Michael Biggs, “Sociological Theory, Theoretical Perspective”, (2017).
\(^16\) Sarah Blandy, “Socio-Legal Approaches to Property Law Research,” in Susan Bright and Sarah Blandy, *Researching Property Law*, London: Macmillan Education UK, (2016), p. 16
policy, law and regulations, political agreements, village demographic data and other supporting data collected from various sources of concerns.

Research location is villages surround the national park such as Bolapapu, Toro, Puro’o, Tomado, and Sedoa. Those villages have represented the communities living in the region of the national park.

C. State of Art

There are several customary law principles as a base of man–nature relationship\(^\text{17}\) which highly potential to design as rules and sanctions to stabilize rainforest margin\(^\text{18}\). Means the formation of customary law could be identified in its implemented by the communities\(^\text{19}\). The general nature of customary law could be described in the form of the matrix below as follow:

| Natures of customary law | Comprehends | Kinds of the community activities | Usual symbol/curing |
|--------------------------|-------------|----------------------------------|---------------------|
| Magic religious          | Pre-logic, animism, abstention, witchcraft | Think, feel, and act are pushed by believing (religion) of magic energy that filling and dwelling entire universe (cosmos) | Rites de passage |
| Communal                 | Individual interest as equal as community, decision on whole of | Relations of among communities are base of feeling the togetherness, familiarity, help each other and mutual assistance. | Gotong royong (mapalus) |
| Contant                  | Any activities and its consequence occur in the same time | Any real act, uttering, symbolic deeds have finished at once which have to be by custom. | Sell to release or waive for land |
| Concrete                 | Visual, only real acts are recognized | Any relation have to be done in a real which seen and heard by others, look happened. | Create look like object desired (panjer and peningset) |
| Flexible and adaptable\(^*) | Custom may be change according to circumstance, time and place. | Influence of external or internal could be adopted in developing of the custom | Marriage, heritage, and family system. |

Source: Holleman with some modification\(^\text{20}\)

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\(^\text{17}\) Regina Bendix, Aditya Eggert, and Arnika Peselmann, eds., *Heritage Regimes and the State*, Göttingen Studies in Cultural Property, Göttingen: Universitätsverlag Göttingen, (2012).

\(^\text{18}\) Ninan, *Conserving and Valuing Ecosystem Services and Biodiversity*.

\(^\text{19}\) Kristin Walker Painemilla, *Indigenous Peoples and Conservation: From Rights to Resource Management*, (2010).

\(^\text{20}\) Jawahir Thontowi, “Pengaturan Masyarakat Hukum Adat dan Implementasi Perlindungan Hak-hak Tradisionalnya,” *Pandecta: Research Law Journal*, 10 (1), (2015), pp. 4–5
*) Hilman Hadikusuma added with flexible and adaptable as the nature of customary law.

Man nature relationship can develop the wisdom in the environment. However the existence of the environmental wisdom does not come by itself close, the possibilities of environmental damage are also coming from a human being. That is why sanction and punishment are a tool of the law 21.

Legal predictability (and hence the feeling of security) is low due to weak law enforcement and the lack of experience with established adapt regulations. This situation encourages illegal encroachment in forest natural resources.

Customary law which formerly regulated man-nature relationship becomes weak and fades due to established regulation by government that effect to the stabilization or destabilization of forest margins.

The implication of the man-nature behavior change will affect the level of effectiveness of the customary law in dealing with planning, using and controlling natural resources.

D. Result and Discussion

Natural resources have been used for centuries in various needs and its developed during the time as well. For instance, its used more than 6,000 plant flower species (whether wild or planted). The communities have rules to collect the biomaterial forward to encourage, and it's sustainable. Its base on local wisdom as tradition and local rules as called the customary law 22.

Customary law which mentioned above still is obeyed by the community in utilizing and conserving natural resources. The benefit of them could be identified which more than 100 species used for carbohydrate, more than 940 species used for medical, 100 species of trees used as wood 23. And Lore Lindu National Park is one of the natural resources areas even data species still not available enough.

Bio-diversity convention has also recognized the contribution of indigenous people (local community) to the conservation of biological diversity and the sustainable use of its component but falls short of recognizing rights of indigenous peoples, base on their knowledge and practices to the conservation and sustainable use of biological diversity 24.

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21 Lawrence M. Friedman, “The Law and Society Movement,” Stanford Law Review, 38 (3) (1986), p. 763
22 Agenda 21 Indonesia, (akarta: Ministry of Environmental Affair Republic of Indonesia, (1996), pp. 16-27
23 Soegijono Moeljoprawiro and Achmad M. Faqih, Access To the Genetic Resources and Utility’s Regulation, Jakarta, (1998), p.1.
24 Nico Schrijver, Sovereignty Over Natural Resources, Balancing Rights and Duties, New York: Cambridge University Press, (1997), p.317
Local knowledge existence system encourages the important approach of more systematic participation and partner in the management of natural resources and environment. In every of situations, the local knowledge system can give the true basis for assist to study whether for basic assumption or modeling.\(^{25}\)

The principle of open access governed lore Lindu Region, in the past relation of the local community and the forest environment. Local people have the right to convert forest into agricultural land even it was limited by personnel. For example, opening new land was only rejected when *certain holy places* in the forest were affected. The certain holy places are an area, which is protected by the meaning of believing if there is one against it, it will disturb the cosmic equilibrium. Therefore it needs to be cured by the community; anyway, sanction relies on the level of violation (table 1).

A human develops relation interpersonally. Interaction process continuously will generate certain pattern called the way of or usage. A Uniform or customary way of behaving within a social group. The way of is the represent the certain form in more dominant of human behavior in relation interpersonal.\(^{26}\) Spiritual purity, represent of personal ethics as a reality usage base of. The way of as an expression of personal ethics, which is not impossible different from each other to each.

However, from now on, a way of applied possibly will generate folkways. Social norms or standards of behavior that are socially approved, but is considered to be of moral significance.

Folkways provide traditional definitions of proper ways of behaving in a particular society or social group. Conformity to folkways usually occurs automatically without rational analysis and is based primarily upon custom, passed on from generation to generation through the socialization of children.

Folkways are not enforced by law, but by informal social control. They are not held to be as important or obligatory as mores, or moral standard, and their violation is not as several sanctioned.

Unlike to the way of its collision only result in denigration from another party personally). Hence custom has strength fasten larger ones. Customary interpreted as a deed which repetitive in the same form, representing evidence that a lot of people taking care of the behavior, so that communities will inveigh any infringement\(^{27}\)

Recognizing as above mentioned customary and also accepted as a norm. Hence the custom becomes more. A human being has strong willing

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\(^{25}\) Bruce Mitchell, *Pengelolaan Sumberdaya Dan Lingkungan* Yogyakarta: Gajah Mada University Press, (2000), p. 326.

\(^{26}\) Soerjono Soekanto, *Hukum Adat Indonesia*, Jakarta: Raja Gafindo Persada, (2002), p.19

\(^{27}\) Soekanto, *Op.Cit.*, p.23
for the life order. However, regularity for each people are possible different, so that needed guidance or directive. If a customary (what intrinsically represent regularity) accepted as a rule hence the customers become faster, so that mores which marking of are as follows:

1. Representing medium for behavior controlling
2. As a norm commanding or as a directive limiting aspect against a citizen.
3. Identify the person with his group
4. As one of medium maintains, socialize solidarity.

In comparison with customary, mores also as those social norms that provide of moral standards of behavior a group society. Conformity of the mores is of note optional, and non-conformity is severely sanctioned. Group Members feel an emotional attachment to the mores end their preservation is considered essential to the group's welfare. Usually, The term is limited to those standards of behavior accepted by the members of the society of ace of standards of moral of conduct whether or of note if they have been enacted into law.

The customary is generally given by all kinds of meaning, and its use fastened upon the routine acts of daily life; the rules implicit in routine; the cultural patterns discernible in repetitive acts; and the distinctive nature of the whole culture (Duncan Mitchell, 1977).

To know how do customary law will arise, hence require to be analyzed by the manifestation of the legal principles as a living law, in this case, Holleman described the nature of Indonesia customary law which consists of four as general; firstly magic religious; secondly communal; thirdly content and fourthly concrete. That the four above nature is integrated.

Customary law ever grows from something real-life need, a way of living and life view which entirely as represent the culture of the community as the place is going into effect. (von Savigny, Mannheim in Muhammad) In spite of we may not forget the structure of Indonesia spiritual society.

Anyway, customary law may be formed through legal decisions (rechtsblessing). Community behavior in social interaction which is relied on and impelled by law. It can be known by recognizing personal obligation (Pospisil in Ihromi) and also the others as a legal decision. The legal decision meant could include; the decision to marry, domination for the beneficiary, performing the agreement, payment, release, permit gift, decision gift, enacted of rules.

28 Busar Muhammad, Asas-Asas Hukum Adat Suatu Pengantar, Jakarta: Pradnya Paramita, (2002), pp. 42-44
29 Ibid., p.55
30 T.O Ihromi, Antropologi dan Hukum, Jakarta: Yayasan Obor Indonesia, (1993).
The legal decision core is: (1) If all communities real behavior relied on confidence that society wants and can force that matter if neglected hence that matter can be told as a legal decision from the communities; (2). There no reason to mention something else as law, except decision containing law, from law functionary which have been appointed.

Thereby, that decision taken by judge and head of the tribe shall be seen as general principles of law and going into effect for the same case (precedent). Those who authoritative to give decision shall be aware of his responsibility involved to develop the customary law formation.

E. Conclusion

The customary law principles as a rule in the used of natural resources still influence their rule in using its of course lead by head of tribe (totua Ngata) for a long time ago. As well as the communities behavior on customary law in using the natural resources in general.

The customary law as a beneficial rule to conserve the natural resources in lore lindu region, in particular, can be assumed, but the intervention of state law or policy made it diminish gradually. Then, customary law related to forest conservation as a part of their values such as ombo (forbidden) cutting or bring tree or fish in a certain time.

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31 ter Haar it is a well known with his *beslissingenleer* theory which was published in entitling articles and book such *de rechtspraak van de landraden naar ongeschreven recht, onderzoek naar adatrecht and Benginsellen en stelsel van het adatrecht.*
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