Customary law adoption in state law related to disaster mitigation of coastal area in Aceh Besar

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Abstract. This article aims to answer how State Law regulates the existence of local wisdom related to disaster mitigation in coastal areas? How is the ideal adoption of customary law by State Law that will contribute to the disaster mitigation process of coastal area based on local wisdom? There is a most basic difference between State and Customary Law regarding disaster mitigation in coastal area. There are things that make it possible to reconcile through the harmonization of laws related to the legal functions positioning, both State Law and Customary Law. However, this step is not simple, because it must be preceded by the integration of Customary Law and State Law. This writing will apply a qualitative approach, by setting the law in an interdisciplinary study, allowing what is stated in law through fisheries assistance. Theoretically, this integration is known in the legal pluralism, where State Law recognizes the existence of Customary Law. Meanwhile, at the practical level, state legal instruments have begun to be built that allow recognition of Customary Law. With its position and function, there is a number of possible parts are used as meeting points between the pantang (taboo) areas and the fisheries conservation area. Conservation areas that are very strict, must be positioned in a social justice reality, as has been known and applied through pantang areas.

1. Introduction
There are two important things to be answered in this paper; firstly, how State Law regulates the existence of local wisdom related to disaster mitigation in coastal areas. Then, how is the ideal adoption of Customary Law by State Law that could contribute to the disaster mitigation process of coastal area based on local wisdom.

These matters emerge based on the complexity of the problems in the coastal area. Conceptually, the coastal area is a transitional area between terrestrial and marine ecosystems that are affected by changes on land and sea (Article 1 Number 2 Law 1 Year 2014). In Aceh, the coastal area has economic, ecological, political, socio-cultural potential, as well as of strategic significance for defense and security. With 119 island groups, the length of the coastline in Aceh reaches 1,660 km. Politically, 18 of the 23 districts/cities in Aceh are coastal areas. With Aceh population that reaches 5.6 million [1], almost 80% depend on coastal areas [2, 3].

Ecologically, the meaning of coast is related to ecosystem diversity [4]. There are a number of ecosystems with its traits and characteristics, namely tidal and estuaries areas, mangroves, seagrass meadows and coral reefs. Various ecosystems interact and influence each other.
In socio-cultural terms, the coastal communities of Aceh also have spatial areas and Customary Law of the Sea [5, 6]. The existence of customary space could be traced to the fact that there is a spatial arrangement in the legal concept called zoning [7]. So far, the understanding of zoning is not only related to space use, but also the meaning is very country centric. Whereas in reality, the local wisdom of the living people has its own spatial pattern, as determined by the customary law of the sea. In addition, considering Aceh's position directly facing the Indonesian Ocean and the Malacca Strait, there is a strategic coastal meaning for Aceh, especially for national defense and security. The presence of local communities in defense and security is very important.

Ironically, the potential and diversity of ecosystems is destroyed. The decline in coral reef cover has reached 7% in the last three years. Damage more than 75% of mangroves [8], due to logging, conversion of land use for ponds, and opening of oil palm plantations. Though coral reefs and mangroves are a buffer for other ecosystems. Damage to mangroves has implications for the food chain, as well as preventing erosion, breaking waves, trapping sediment and arresting intrusion of salt water from the sea. The role of mangrove vegetation in the biological environment is as a spawning place and for a fish farm and also for other marine biota [9].

In the context of customary space, there is a recognition of state law towards customary law which has not been operative and functional until now [10]. Due to this condition, Aceh to be particularly privileged, but in reality it cannot be fully operationalized.

With the above explanation, it appears that the coastal area of Aceh is competing and contesting various other interests, between the mangrove land conversion, utilization for housing and residential areas, marine tourism, and culinary centers, also permits in the form of mining [11]. The above facts may lead to potential disasters in Aceh, both natural and social disasters. The problem is in the mitigation process where state law limits further involvement of customary law. In fact, state law should open itself to the involvement of Customary Law and/or local wisdom in the disaster mitigation process.

Based on above description, this paper aims to offer the reality of local wisdom in the context of spatial planning for disaster mitigation efforts in Aceh. With the social setting of Aceh Besar, it’s due to the large potential of mineral resources in Aceh Besar. In addition, there are supporting regulations, namely the Mukim Qanun (Qanun 8/2009) and the Spatial Planning Qanun (Qanun 4/2013). Furthermore, there is a Regent Regulation 11/2011. However, this area also provides space for mining iron sand and black sand in the coastal area without providing any records of the territorial customary law of the sea. This can be seen in the Regent's Decree Number 545/5449 (17 October 2011) and Letter Number 545/4264, Letter of the Head of BP2T Number 545/BP2T/1002/2011, Letter of the Head of the Aceh Province Mining and Energy Service Number 545/430/KDPE/2011, Aceh Governor Recommendation Number 545/BP2T/REK/2011, Aceh Besar Regent Decree Number 1 Year 2012, and Aceh Besar Regent Letter Number 523/12859. The mining process was stopped due to the Aceh Governor’s instruction policy Number 11/Instr/2014 on 30 October 2014 concerning the Moratorium on Mining Business Permits (IUP) for Metal Mineral and Coal.

The issuance of the marine conservation area with the Decree of the Minister of Marine Affairs and Fisheries No. 78/Kepmen-KP/2020 concerning Aceh Besar Watershed Conservation Area, Pinang Island Marine Conservation Area, Siimat Island and Simanaha Island, Southwest Aceh Marine Conservation Area, and South Aceh Marine Protected Area in Aceh Province, should solve all problems. However, after the implementation of Qanun Aceh No. 1 year 2020 concerning the Zoning Plan for the Coastal Areas Management and Small Islands, it should take seriously the reality of local wisdom in the coastal communities of Aceh.

2. Research Approach
This research was conducted based on various field findings, not from theory. In addition, this research also emphasizes an inductive process and applying a qualitative style, which is included in the non-doctrinal stream [12, 13]. The approach used is socio-legal, related to the desire to understand the law more thoroughly. In essence, what we want to observe and know is not only how the law orders and governs, but also how the law orders proceed. We also want to know whether the
3. Result and Discussion

3.1. Local Wisdom of Disaster in State Law

The term traditional/local knowledge that used by Gadgil, Berkes and Folke which means the cumulative knowledge and beliefs from generation to generation about life, society and the environment [15,16]. According to Nyoman Sirtha, forms of local wisdom in society were in the form of values, norms, ethics, beliefs, customs, customary law, and special regulation. The functions include: (1) for the conservation and preservation of natural resources; (2) human resource development; (3) development of culture and science; (4) as advice, beliefs, literature, and taboos; (5) its social meaning such as ceremony; (6) ethics and morals, and so on [17].

Local environmental wisdom in indigenous people was essentially rooted in the religious and value systems believed in the community [18]. It was lived, practiced, taught and passed down from one generation to another which simultaneously shapes the patterns of everyday human behavior, both towards humans and nature and the unseen [19].

In reality, local wisdom has been practiced in a concrete way in the form of Customary Law. Whereas local wisdom has a broader meaning than just Customary Law. Customary Law considered as the legal order [20]. Customary Law also accepts the religious law. It was also influenced by western concepts [21]. Hence, in the context of political State Law tends to focus on written law [22]. In its development, perhaps what is referred to as conditional recognition as stated in Article 18B Paragraph (2) of the 1945 Constitution is a feature of the domination of the written legal system.

On this basis, in the context of Aceh, I would like to expand the scope of local wisdom, apart from Customary Law. There were also Hadih Maja, Haba Peuingat (reminder words) and even new forms of local law. This condition makes it possible, at least to see, Hadih Maja, which depicted the dominant character of the Acehnese [23, 24]. The well-known of general Hadih Maja is as mentioned in the explanation of Law No. 22 Year 1999 and Law No. 18 Year 2001, "Adat bak Poteumeureuhom, hukum bak Syiah Kuala, Qanun bak Putro Phang, Reusam bak Laksamana" which means: “Customary Law is in the hands of the government and Sharia Law is in the hands of the scholars.” With the Hadih Maja, it can be understood that law and custom are inter-related. "Hukum ngon adat lagee zat ngon sifeut", and the custom is based on religion. "Hukum ngon adat han jeut cre lagee mata itam ngon mata puteh”. “It means that law and custom cannot be separated like black and white eyes.” Through the Hadih Maja, the Acehnese people were reminded, "Adat meukoh reubong, Hukum meukoh purieh, Adat jeut barangkaho takong, Hukom han jeut beurangkaho ta kieh” (means that customs can be made good, but the law must be implemented correctly, customs could be applied in a any nice way to implement but the law must not be applied carelessly. Therefore, discussing local wisdom does not only about Customary Law itself. Customary problems are related to the system, which in its meaning not only regarding custom, but also more about Customary Law. With Customary Law, the law enforcement and implementation mechanism can be applied. Talking about Customary Law in coastal areas, it cannot be separated from four things that determine its existence as well as effectiveness. Everything is interrelated, including the Customary Law of the sea, taboo area of the sea (pantang laot), sanction, and khanduri laot [25].

The Customary Law of the sea is not only regulating about fishing systems and disputes, but it also regulates and controls for instance that tress on the beach are not cut down, because the fish will drift away from the sea. There is a prohibition against cutting/destroying coastal tress. At sea, it is prohibited to destroy the environment and marine life. There is also a prohibition on fishing and other marine biota which protected by statutory regulations [26]. There is an arrangement of coastal areas
for coastal space, where it has implications for the chain of ecosystems in the sea. In the sea, the use of resources should also not be arbitrary, because it is associated with social disasters.

Customary Law of the Sea is periodically socialized both internally and externally. Internally, towards the internalization of values. Externally, introducing Customary Law of the Sea in the form of horizontal both among the community and the government. In addition, Customary Law of the Sea also regulated coastal use in accordance with customary spatial palnning. This matter which has not yet received full recognition by State Law.

These facts may lead to the potential disasters in Aceh, whether natural disasters, non-natural disasters or social disasters. In this matter, “a disaster is an even or series of events that threatens and disrupts the life and the livelihood of the community which is caused, either by natural factors and/or non-natural or human factors, resulting in human casualties, environmental damage, property loss, and psychological impacts” (Article 1 Number 1 Law 24 Year 2007).

In the mitigation process, State Law put a limitation on the applicability of Customary Law. According to Article 1 point 9, “mitigation is a series of efforts to reduce disaster risk, either through physical development or awareness and increased capacity to face disaster threats”. In Article 47, stated that mitigation is implemented to reduce disaster risk for the community living the disaster-prone areas, which conducted through the implementation of spatial planning, development regulations, infrastructure development, building layouts, and the provision of education, counseling and training, both in the conventional and modern form.

In the coastal context, mitigation of disaster is regulated in Law No. 1 Year 2014 on Amendments to Law No. 27 Year 2007. Article 1 point 25 stated, “mitigation of disaster is an effort to reduce disaster risk, either structurally or physically through natural and/or artificial and non-structural or non-physical development by improving the ability to face disaster threats in coastal areas and Small Islands.” Article 1 point 26, stipulated that “coastal disaster is an event due to a natural event or due to the actions of a person which causes changes in the physical and/or biological characteristics of the coastal area and result in casualties, property loss, and/or damage in the coastal zone and small islands.”

In the coastal law, mitigation of disaster is conducted by the government and/or local government through the management plans preparation (Article 56). Mitigation process is implemented by involving the government responsibilities, Local Government, and/or the community (Article 57). Mitigation of disaster that implemented in coastal areas shall take into account the following aspects: (a) social, economic and cultural aspects of the community; (b) environmental preservation; (c) benefit and effectiveness; and (d) wide area coverage (Article 58). However, it is the competent authority that determines the mitigation of disaster implemented by everyone who has activities that lead to the potential disaster in coastal areas (Article 59).

After the enacment of Law No. 11 Year 2006, the position of whether Customary Law is accomodated in the customary space can be traced by the existence of Mukim as customary law communities. In accordance with the Qanun Mukim (Aceh Besar Qanun No. 8 Year 2009), stipulated three important things: First, it is known that Mukim’s wealth are assets controlled by Mukim. Second, ulayat land is land within the Mukim area which is controlled and regulated by Customary Law. Third, the duties and obligations of Imum Mukim in maintaining the preservation of ecological functions and natural resources.

There are two interesting and crucial points related to the above regulation. First, in the Qanun it is determined that the ulayat is controlled by the Mukim as long as it does not conflict with the prevailing laws and regulations. Second, type and the amount of Mukim’s assets must be inventoried and registered and then its utilization shall be regulated by the Regent based on the agreement of the Mukim Deliberation.

Basically, the above two points describe that all things or assets related to the Mukim are not clear and concrete to implement. There is still a clause that limits the role of Mukim. Whereas in the explanation of Qanun Mukim Aceh Besar, the assets of Mukim land and sea consist of at least: (a) the sea area, up to the land trawl boundary (about 300-500 meters from the shoreline), among others in the arrangement of jermal, keramba, seaweed, shells, etc; (b) the bay overhangs too far into the land;
(c) land area, including: free area (consists of several gampong) –including meurabe meadow; river bank area (watershed flow); water absorption points (such as swamps/peatlands; scrubland, hills; mining potential controlled by customary institutions; potential environmental services (absorbers of water resources, etc); Mukim forest (Uten Mukim); hills (glee); groove (alue); river (krueng); delta (pante); swamp (paya); sea coast (pasti); sea (laot); public land (tanoh meusara); waqaf (wakeuh); lake (kuala), and others.

Article 162 paragraph (2) letter (e) Law No. 11 Year 2006 regulated the authority to maintain “Customary Law of the Sea”. According to Administrative Law, authority what is called “formal power” that comes from legislature (given the law) or from the administrative executive power. Authority is the rights to use the power of an official or institution according to applicable regulations [27].

With the Mukim position, the 2013-2022 RTRWA Qanun, ratified at the Aceh People’s Representative Council (DPR) Plenary Session on 27 December 2013 (Qanun No.19 Year 2013) did not accomodate Mukim customary space. This admission is also not explicitly found in the Qanun RPJMA No. 12 Year 2013 and Qanun No. 2 Year 2011. The same thing was found in Qanun Aceh Besar No. 4 Year 2013. The position of Mukim does not have a clear place in these provisions. In fact, the recognition of Mukim customary space in the RTRWK is very important, because in the Mukim Qanun, it is mentioned that the areas managed by Mukim are only on land and in waters.

Regarding disaster management, there is Law No. 24 Year 2007, which regulated disaster management objectives by harmonizing the existing laws and regulations. This law emphasizes that regional Government have the responsibility to implement the regulation by integrating guarantees for fulfilling the rights of disaster victims, protection from impacts, reducing risk that is in line with development programs, and allocation pro-disaster mitigation regional budgets (APBD). The fact that to implement this, the Regional Government has the authority, among other things, to stipulate disaster management policies that are in line with development policies.

With the description above, it seems that disaster mitigation and local wisdom, in State Law, are very complex, so that relationships and interests allow contestation. At the sectoral context, nationally, related to natural resources, at least it is divided into six sectors, such as: energy and mineral resources; forestry; water resources; marine and fisheries; agriculture and plantations; land [28]. Thus, the coastal space itself, including in relation to local wisdom, cannot possibly be separated from these various sectors when it is related to the coastal area. In fact, the law provides a principle for this settlement, which illustrated that the contestation opportunity, does not have a big side of Customary Law and local wisdom.

3.2. Customary Law Adoption in State Law
Based on the above situation, this article aims to explain the importance interaction between State Law and Customary Law. So far, some of what Griffith called legal centralism has been prevailed, not legal pluralism. What is called legal centralism that only State Law applies to all people equally, uniformly, and exclusive to other laws. Griffith offered legal pluralism. Griffith divided legal pluralism into two situations that are strong legal pluralism and weak legal pluralism. Strong legal pluralism applied in situations where a society is not only subject to State Law or the rules established by state institutions, but also the law order that implemented in the community which is not uniform and systematic. While weak legal pluralism refers to the ideology of legal centralism, legal pluralism is one small part of a country's law [29].

It can be concluded that Aceh to be in a weak type of legal pluralism. In this context, there are parts of Customary Law that are “recognized”. The state legal system covers society at large, while the state legal system is not the same with the existing social structure. Such legal pluralism is not really a hope. However, it will open space for ideal State Law and Customary Law interactions. The relationship that must be built is the human moral role as part of the universe. The three functions of natural resources in human life, including production, ecology, and culture, described the inevitability of this interrelated meaning. Ecological morality also determines the achievement of welfare, which is
not only a material-quantitative issue. Thus, what is called welfare is not only an economic concept, but also an ecological and cultural concept.

The latter concept is important, because it has evolved hundreds of years. He developed with a magical communal atmosphere, and rooted in traditional knowledge [30]. The meaning of the environment in this context is a common possession that must be treated very carefully. In current conditions, there is a common ground that can be reached, as a space for operative negotiations. First, limitation. In State Law, boundaries are always determined by administrative regions. While the boundaries in Customary Law are generally natural boundaries and the existence of certain signs. Regarding this boundary, there is place to meet, that is by combining the two in the boundary management area. According to State Law, coastal areas must provide space for boundaries in accordance to Customary Law without restrictions. Second, rules according to State Law are formalism, that is, various things that must be passed by the State. It is different from Customary Law which is based on living and developing laws. Both have room to be reconciled, especially with the openness of State Law so as not to positivate Customary law. Third, rights according to State Law are determined by the State through the rights to control the State. The division process is also only possible with this framework. In fact, to explain the position of these rights, several laws that were examined before the Constitutional Court, must be made more concrete. In Customary Law, rights are determined by customary authoritative spaces. In Customary Law, each room already has a management mechanism. Between State Law and Customary Law, there is room for reconciliation, given that when returning to territory, not all customary territories represent one administrative area.

The above are three negotiating factors between Customary Law and State Law, the coastal space based on local wisdom can be explained that the customary space for coastal areas is not based solely on State legal arrangements. State Law recognition towards Customary Law and Ulayat rights has an implication on the recognition of customary space, which was concretely based on the regulation of customary institutions. This Customary space was made possible by the existence of a space for the interaction of State and Customary Law, in the form of adopting the Customary Law into State Law.

State Law is reflected in the existence of substance, structure and culture [31], enabling interaction not only with Customary Law of the Sea, but also with Hadith Maja and various new forms of local law by combining State and Customary Law. Each part of State and Customary Law allows for interaction with the space for legal relation, spatial planning as local wisdom that has room to be implemented.

The interest of customary spatial planning is basically to create a natural condition that is getting smaller and is always oriented towards disaster risk reduction. With the division of space according to their respective functions, each function will proceed as expected.

4. Conclusion
The existence of State Law does not fully regulate operatively and functionally regarding the coastal arrangement based on customary law of the sea. With state law conditions that are not fully operational, the applicability of customary law in coastal spatial planning cannot fully take place. This condition is partly due to the different perspectives of state law and customary law. The perspective and operationalization of customary law of the sea in regulating coastal areas has adopted by state law in the context of realizing disaster mitigation. State law and customary law allow for a reconciliation, with room for negotiation it is hoped that an adoption space will emerge that provides space for coastal spatial planning in Aceh based on local wisdom.

It is recommended to the Government and Aceh Government to be open in regulating zoning for coastal areas that are oriented towards social justice. Customary law of the sea communities as part of the people, must receive justice regarding how they can access coastal areas, as well as being involved in managing their coastal areas properly and sustainably.

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