EVALUATION OF LOCAL WISDOM-BASED ATTRIBUTIVE REGIONAL REGULATIONS FORMULATION IN KUPANG REGENCY

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Abstract

Local wisdom is an essential aspect in formulation of regional regulation including in Kupang regency. This paper aims to determine and describe the implementation of local wisdom in formulating Kupang regional regulation. The results shows that the given attributive regulations do not contain local wisdom which results in ineffective impelemntation since it is not in accordance with aspects of philosophy, sociology, diversity and balance, compatibility and harmony. Based on the analysis, it concludes that the value of local wisdom is not accommodated nor effectively implemented in formulating attributive regional regulation of Kupang regency. In regards to this, it is expected that the local wisdom existing in Kupang regency is necessarily taken into account in formulating regional regulations.

Keywords: local wisdom, regional regulation materials, law formulation

Abstrak

Kearifan lokal merupakan suatu hal yang esensial dalam pembentukan peraturan daerah, termasuk di Kabupaten Kupang terdapat berbagai kearifan lokal yang ada di masyarakat. Tulisan ini dilakukan untuk mengetahui dan mendeskripsikan penyerapan kearifan lokal dalam Pembentukan Peraturan Daerah Kabupaten Kupang. Hasil analisis menunjukan bahwa materi muatan yang terkandung dalam peraturan daerah atribusi Kabupaten Kupang tidak memiliki nilai-nilai kearifan lokal dan konsekwensi dari itu adalah peraturan daerah atribusi itu tidak dapat berlaku secara efektif dalam penerapannya karena bertentangan dengan aspek filosofi, sosiologis, kebhinekaan dan keseimbangan, keserasian dan keselarasan. Berdasarkan analisis yang dilakukan, dapat disimpulkan bahwa nilai kearifan lokal tidak terakomodir dalam pembentukan peraturan daerah atribusi Kabupaten Kupang sehingga tidak efektif dalam penerapannya. Oleh karena itu diharapkan agar dalam pembentukan peraturan daerah harus mengakomodir kearifan lokal yang ada di Kabupaten Kupang.

Kata kunci: kearifan lokal, materi muatan peraturan daerah, pembentukan hukum

Introduction

Attributive Regional Regulation is an authority granted by the Constitution or Law to local government to formulate local regulations based on regional necessity at anytime they require according to the provided limitation.[1]

Entrustment of attributive regional regulations formulation is provided in the autonomyous system on the basis of Indonesian geographical and sociological conditions as an archipelagic nation which is enriched with ethnicity, race and religion plurality. This entrustment is confirmed in article 18, 18A and 18B of the 1945 Constitution and Law Number 12 Year 2011 on Formulation and Drafting of Laws and Regulations.

Article 18 paragraph (6) of the 1945 Constitution states that local governments stipulate regional and other regulations to implement regional autonomy and duty of assistance. In this regard, the national legal systems provide attributive authority to regions to formulate regional and other regulations. Then it is expected to

[1] Andri Harijanto Hartiman, "Ketaatan Otomatis Spontan Pada Hukum Adat Studi Kasus Dalam Masyarakat Suku Enggano", *Jurnal Penelitian Hukum,* Year III No. 1, Edition VI January 1998, Bengkulu: Faculty of Law Universitas Bengkulu, page 21.

synchronically support government programs in the regions.[2]

The entrustment of attributive regional regulations formulation is very important to accommodate all the particularity of the diversity in accordance with the local wisdom that exists in every region for achieving effectiveness of law enforcement in the region. This idea is reinforced by Eugen Erlich in the flow of *sociological jurisprudence* stating that the law is living rules which move from the community's ideas and the law is social law; it emerges from custom that becomes an effective order.[3] This notion contributes to the formation of rules at the level of central and local government.

According to the basis of the attributive regional regulation entrustment and idea of *sociological yurisprudence*, thus, the formulation of attributive regional regulations in Kupang must accommodate the values of local wisdom as living law for Kupang people. The focus of the problem is the values of local wisdom has been accommodated in the substantive content of Kupang regional regulations of Kupang.

Discussion

Growing Local Wisdom Values in Kupang Regency

A lot of particular conditions which constitute local wisdom of one or other regions in Indonesia. As an example in Kupang regency, East Nusa Tenggara province, there are various forms of local wisdom in terms of prohibitions and sanctions. Local wisdoms in Kupang regency are manifested as follows:[4]

First, local wisdom in forest management. Kupang regency has wide restricted forest areas in each district. Restricted forest in Kupang is known as *Nasi Talas*, this term is derived from the Dawan language namely *nasi*: forest and *talas*: restricted/forbidden, then, *nasi talas* means restricted forest. Nasi Talas is a forest area that is prohibited to maintain or to cultivate improperly.

There are several reatricted forests that may be identified including *Sisi Meni* in South Amarasi district, *mamreo* in East Amarasi, *Bireo* in West Amarasi, *Fenu*, *Faut ao*, *Neut fanu*, *Aitea*, *kee* and *fatuboko* in Amabi Oefeto, Timau Forest in Amfoang and Saika Lili Forest in Fatuleu district.

The agreement to run pohibition on harvesting the forest (nasi talas) is considered effective to conserve the forest because there are people in charge to maintain or implement the agreement. The officer is known as Ana'tobe/ apao pah/ ana'akrao (the guard/forest ranger)

Second, local wisdom in coastal resources management. There are some coastal area districts such as the West Kupang district, East Kupang, Sulamu, Semau, South Semau, South Amfoang, Nekliu, West Amarasi, South Amarasi, and East Amarasi. Some of them apply local wisdom in the management of the coastal area. Those wisdoms include: *Lilifuk* in the West Kupang district, *Uin Lulin* in Semau and South Semau districts, *Tais Tala*s in South Am-foang and Nekliu. The terms of *Lilifuk*, *Uin Lulin* and *Tais Talas* are different in terminology but has the same meaning namely: Restriction on taking marine products before the specified time and fishing with modern equipment. If there are parties who abuse, there will be pen-alized based on valid customary decisions.

Third, local wisdom in spatial management. The spatial management especially in Amarasi, West Amarasi, South and East Amarasi, apply the unique and valuable local wisdoms because it provides enormous benefits for local people. It includes proportional and distribution of 25x50 meters in size for the whole Amarasi people; The obligation to plant longevity, medium, and fodder crops such as palm bananas and lamtoro 25 trees for each in the yard; the obligation to maintain cattle and pigs (2 for each); and the obligation to open driveway/walkway

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[2] Rodiyah, "Aspek Demokrasi Dalam Pembentukan Peraturan Daerah (Studi Kasus Pembentukan Peraturan Daerah tentang Pendidikan dalam Perspektif Socio-legal)", *Jurnal Masalah-Masalah Hukum*, Jilid 41 No. 1, January 2012. Semarang: Faculty of Law Universitas Diponegoro, page 3.

[3] Marshaeni Ria Siombo, "Kearifan Lokal Dalam Perspektif Hukum Lingkungan", *Jurnal Ius Quia Iustum*, Vol. 18 No. 3, July 2011, Yogyakarta: Faculty of Law Universitas Islam Indonesia, page 3.

[4] Stefanus Y. Kotan et.al. 2015. *Revitalisasi dan Refungsionalisasi Lembaga Adat di Kabupaten Kupang*, Report of Research, Kupang: Universitas Cendana Kupang.

and provide a plot of land of 50x75 in size for developing infrastructure such as schools, places of worship, courts and others within every 5 houses.

Fourth, local wisdom in the development of agriculture and livestock. Local wisdom in this part is implemented in the separation of agricultural land with livestock land which is commonly known as "*Bah batis pah muit ma pah roat*" (Dawan language) which means as the separation between livestock and agricultural areas. There are two types of conditions, i.e. when one wants to raise livestock in the agricultural area, they are obliged to curb or graze their livestock in order not to damage the crops of others and if ones want to farm or do agricultural activities in the livestock area, they are obliged to build fence around the livestock. This kind of wisdom is almost applied to all Kupang regency due to the large population as farmers (farming and breeding)

Fifth, local wisdom in conflict resolution. Conflict resolution (*a'lasi*) is a local wisdom used by the people in resolving conflicts that occur in the community. Conflicts or problems may include, domestic violence, land issues, fight among residents, theft, marital issues and other problems that are not included in the category of serious crimes that can be resolved by prevailed customary law. The stages of the prevailed conflict resolution (*a'lasi*) in the community are as follows: *pas me*, unspecified amount of money put in *oko mama* (betel container) and then gave it over to *nakaf/ amnasi* (village chiefs and custom figures) then the people who feel aggrieved deliver the intent and purpose of *oko mama* which is given as *han busenot* (request expression) to solve the existed problems. Later, *nakaf/amnasi* investigates the conflicting parties to determine the issue. The last stage is to decide and to impose sanctions on those guilty parties in the form of: returning the money of *pas me* of the reporting party, paying the penalty according to the decisions, dissolving the custom figures and the people who are present at the time (*sisa, en tom faun*) and cleaning any thing in problem-solving spot (*nau pua po'ot*).

Sixth, local wisdom in determining service month. It is implemented by setting up month of service for either communal or individusl work schedules of Amarasi area. It is organized as follows: May; community service at the village, June; community service in each district, July; a joint community service throughout the regions of Amarasi, August; the time to have parties, and from September to April is the time given to the people to work for personal necessity. Determination of prohibitions and sanctions made by consensus (*tok tabuam tafek*) with the custom figures known as *Nakaf* (village chief) and *Amaf-Amaf* (Custom figures supporting *Nakaf*/village chief) and then the agreements are adhered or implemented by all indigenous communities at local area. Determination of prohibitions and sanctions is commonly referred to Dawan terms namely "*nakaf-nakaf nok-Amaf Amaf ma totafa*, *tok nabuam namolok*, *nafekam*, *nanaob*". This term means that the village chief (*nakaf-nakaf*) and custom figures (*Amaf-Amaf*) and society (*totafa*) sit together (*tok nabua*), talk/agree (*namolok*) to determine (*nafek*) and run (*nanaob*) an agreement.

This collective agreement is based on traditional ceremonies, so it strongly binds and forces to be obeyed by all the people. If the agreement is violated, then customary sanctions will be given according to the agreement. Customary sanctions known as (*tasaeb tafani soko no, o*) means to recover damages/errors that have been made. The description above shows the existence of moral values that should be preserved in Kupang regency.

Attributive Regional Regulation in Regency

Kupang regency has two types of attributive regional regulation namely: Regional Regulation Number 12 Year 2003 on Supervision and Control of Non-Iodized Salt and Iodized Salt Distribution and Regional Regulation Number 24 Year 2002 on Empowerment, Conservation, Protection and Development of Custom and Custom Agency.

Researcher conducted a review of any local regulation to understand local wisdom val-

ues in Kupang Regional Regulation, as follows: Kupang Regency Regional Regulation Number 12 Year 2003 on Supervision and Control of Non-Iodized Salt and Iodized Salt Distribution

The substantive content included in each chapter of the Regional Regulation on Supervision and Control of Non-Iodized Salt and Iodized Salt Distribution do not seem to accommodate the values of local wisdom in society. Rozali Abdullah said: "Regency and City area established based on the principle of decentralization has complete autonomy resulting in the authority to determine and to implement policies on their own initiative based on people's aspirations.[5]

The implementation of the governance including the establishment of Regional Regulation (PERDA) in Kupang regency, necessarily notices authority granted by the central government in order to fulfill the most necessary needs of society. Regional Developmenst are only perceived by several people, not all people, and it seems to just pursue economic growth. Economic Growth is a strategy considering that development is identical with economic development; the parameter of success equals to the high economic growth[6].

There are some parts set in the substantive content of Kupang Regional Regulation Number 12 Year 2003:

1) Object and subject of supervision and control of non-iodized and iodized salt distribution, namely: objects are all non-iodized and iodized salt and subjects are persons or entities conducting trade or distribution of salt;
2) Supervision and control are, namely: a central production, markets, shops, stalls, restaurants, cooperatives, and others in Kupang regency;
3) Supervision and control of non-iodized and iodized salt conducted by: Department of Trade and Industry, Department of Health, Agency of Drugs and Foods Control, Department of Revenue, Office of Municipal Police, Economic Section, Legal Department, the Police and the Attorney; and
4) Criminal Provisions: conducted by certain civil servants mandated sufficient authority to conduct the investigation in accordance with the Criminal Code.

The substantive content of Kupang Regency Regional Regulation Number 12 Year 2003 described above clearly indicates that there is no phrase in the substantive content of the Regional Regulationa which have or accommodate local wisdom in Kupang regency.

Article 18 A and B of the 1945 Constitution, calls for the regional autonomy so that the values of local wisdom that constitutes the specificities of each region can be accommodated. In fact the formation of regional law speficially in Kupang regency shows that local wisdom has been ignored even interfered by the government through the existing regional regulations. This is proven in Kupang Regency Regional Regulation Number 12 Year 2003, no article in the substantive content accomodates local wisdom values that reflect the characteristic of Kupang regency.

If the formation of regional regulations in this region is reviewed thoroughly, one of the objects to be set in the substantive content of the Regional Regulation is the coastal area supervision as a source of raw material for salt production. Unfortunately, the fact shows that the substantive content of Kupang Regency Regional Regulation Number 12 Year 2003 does not regulate coastal areas regarding the fact that Kupang regency has the wide coastal areas and potential as a large salt producer and nowadays are managed by the community based on local wisdom known as *Lilifuk*, *Uin Lulin* and located in several districts in Kupang Regency.

Kupang Regional Regulation Number 24 Year 2002 on Empowerment, Conservation, Protection and Development of Custom and Custom Agency

The Regional Regulation is one of attributive regulations governing custom and Custom

[5] Rozali Abdullah, 1999, *Pelaksanaan Otonomi Luas dan Isu Federalisme Sebagai Suatu Alternatif*, Jakarta: PT. Raja Grafindo Persada, page 154.

[6] Maksimilianus M. Jupir, "Implementasi Kebijakan Pariwisata Berbasis Kearifan Lokal (Studi Di Kabupaten Manggarai Barat)", *Journal of Indonesian Tourism and Development Studies*, Vol. I No. 1, Year 2013. Malang: Universitas Brawijaya. page 3.

Agency. To identify values of local wisdom in the wisdom of this regulation, the researchers have cited several articles in which local wisdom values lie in the following table:

Table I : Description of Articles in Kupang Regency Regional Regulation Number 24 Year 2002 Having Local Wisdom Values

Article	Content
3 paragraph (3)	The action plan and order were established by the custom agencies stated in the constitution and by laws through conference in accordance with the given custom.
4 paragraph (1) and (4)	1. Boards of custom agency recognized by the community are chosen through conference/ consensus in accordance with given customs (paragraph 1) 2. Customs Agency organizational structure is assigned and re-elected in accordance with the customs applied in the local area (paragraph 4)
5 paragraph (2)	Deliberative decisions of customs agency are served as guidance for all parties and if there is a violation towards the given norms, it can be sanctioned in accordance with customs of the local community.
8 paragraph (1) point b	(1) Customs Agency has the right and authority described as follows: b. Managing traditional rights and wealth to develop and to improve living standards for people to a viable and better life.
16 paragraph (1)	Customs Agency wealth are utilized to empower, preserve, protect, and develop customs in order to improve the welfare of society.

The afore-mentioned regional regulations organize community participation in local development, through planning, decision making, monitoring/ control which have been set in accordance with local wisdom in society. This regional regulation shows the government's recognition of the values of local wisdom in the form of the rules of living in society. Meanwhile, Jim Ife stated that local wisdom is a value that is created, developed and maintained in the local community and for its ability to survive and become a guideline of life in society.[7]

From the description above, it can be concluded that the positive experiences in the community can be used to regulate the people's behavior in a particular community. Those experiences constitute a culture that is able to maintain its existence from other cultures as a result of developments.

Kupang Regional Regulation Number 24 Year 2002 is a legal product which strongly supports the existence of the values of local wisdom that living among Kupang people. This regional regulation shows that there are specific things which is an initiative of the region. The Regulation Number 24 year 2002 is a legal product of Kupang regency which strongly supports the existence of the values of local wisdom of living in society. However, the problem is local wisdom in this regulation is treated in abstract way or general so it does not show the existence of local wisdom concretely and clearly embedded this regional regulation.

Consequently, there are negative impacts of this fact as follows: *first*, Deforestation such as illegal logging, frequent forest fires, gardening sedentary resulting in narrower forests, decreasing forest products such as honey and endangered animals. This may occur because the role of indigenous people has been transferred through various sectoral laws.[8] *Second*, Pollution and damage in coastal areas as a result of explosives and toxic chemicals fishing; *third*, Spatial management is not well-arranged which complicates the development process; *fourth*, A decline in agricultural production and live-stock as a result of no separation of agricultural land and livestock well; *fifth*, Problem reso-lution processes that occur in society becomes complicated and convoluted in accordance with

[7] Muhammad Yamani, "Strategi Perlindungan Hutan Berbasis Hukum Lokal Di Enam Komunitas Adat Daerah Bengkulu", *Jurnal Ius Quia Iustum*, Vol. 18 No. 2, April 2011, Yogyakarta: Faculty of Law Universitas Islam Indonesia, page 3.

[8] R Yando Zakaria, "Kriteria Masyarakat Hukum Adat dan Potensi Implikasinya Terhadap Perebutan Sumber Daya Hutan Pasca Putusan MK Nomor 35/PUU-X/2012", *Wacana Jurnal Transformasi Sosial*, Year XVI No. 33, 2014, Jakarta: INSIST, page 110.

the procedures of law enforcement by law enforcement because people no longer regard the process of settlement of indigenous; and *sixth*, poverty level tends to increase because the working calendar is not well-organized according to the Local Wisdom in Determining Calendar Month of Service that have been described in the previous section.

Legislation should be formulated based on the principle of Legislation Formulation as stipulated in Law number 12 year 2011 one of which is in accordance with the object of this paper "the principle of clarity formulation", that any Legislation must meet the technical requirements of drafting Legislation, systematic, terminology, as well as the legal language is clear and easy to understand avoiding misinterpretations in the implementation[9].

The substance of the legislation as contained in Article 1 paragraph 13 of Law Number 12 Year 2011 is the material contained in the legislation in accordance with type, function and hierarchy of legislation. Regional regulations have the substance containing the principles as contained in Article 6 paragraph (1), namely:

a) protection;
b) humanity;
c) nationality;
d) kinship;
e) nationalism;
f) bhineka tunggal ika;
g) justice;
h) equality before law and governance;
i) order and legal certainty; and/or
j) balance and harmony.

Among those principles, there are four principles that have a direct relation with the object of this paper which has the following definitions: *first*, nationality principle, that every Material Contents of Legislation should reflect the nature and character of the nation of Indonesia's diversity while maintaining the principle of the Unitary Republic of Indonesia; *second*, Kinship principle, that each Material Contents of Legislation should reflect deliberations to reach consensus in decision-making; *third*, The nationality principle, that every Material Contents of Legislation always takes account of the whole of Indonesia's interests and the content of legislation made in the area is part of the national legal system based on Pancasila and the Constitution of the Republic of Indonesia Year 1945; *fourth*, Bhinneka tunggal ika principle, Material Content of Legislation should pay attention to the diversity of the population, religion, ethnicity and social class, region specific conditions and culture in the society, nation, and state.

The substance of Regional Regulation, both Provincial Regulation and Regional Regulation, is included in the provisions of Article 14 of Law Number 12 year 2011 which contains the substance in relation to the implementation of regional autonomy and duty of assistance and to accommodate the particular conditions of the area and/ or further elaboration of higher legislation. The substance can also load the Regional Regulation criminal sanctions as the provisions of Article 15 of Law Number 12 Year 2011.

The substance in terms of criminal sanctions in regional regulation such as imprisonment of 6 (six) months or a maximum fine of Rp.50.000.000,- (fifty million rupiah). Article 15 paragraph (3) of Law Number 12 Year 2011 states that Provincial Regulations and Regional Regulations can impose penalty of imprisonment or a fine in accordance with the rules set forth in other legislation.

Regional regulations and other regulations set by Local Government has the right to implement regional autonomy and duty of assistance in accordance with the provisions Article 18 paragraph (6) of the 1945 Constitution. The regional governments organize and manage their own affairs in accordance with the principle of autonomy and duty of assistance which means that implementation of government affairs by areas can be held directly by the regional administration itself and may also be assigned by the provincial government to regency/city and village or assignment from the regency/city government to the village.

[9] Bernard Steny, "Plurasisme Hukum: Antara PERDA Pengakuan Masyarakat Adat dan Otonomi Hukum Lokal", *Jurnal Pembaruan Desa dan Agraria*, Vol. III Year III, 2006, Bogor: Institut Pertanian Bogor, page 83.

Article 1 paragraph (5) of Law Number 32 Year 2004 stipulates that local autonomy is rights, authorities, and obligations of autonomous regions to set up and manage their own affairs and interests of local communities in accordance with the legislation; while co-administration as stipulated in Article 1 point 9 is an assignment given by the government to the regional and/or village from provincial government to the regency/city and/ or village as well as from regency/city to the village to carry out certain tasks. Autonomous regions as re-ferred in Article 1 paragraph 6 of Law Number 32 Year 2004 is the legal community unit which has boundaries authorized to regulate and administer governmental affairs and public interests at its own initiative based on the aspirations of the people in the system of the Republic of Indonesia.

One of the significant things in the formulation of legislation is the public participation. Law Number 12 year 2011 stated transparency as one of the principles that must be followed by every-forming legislation. In the Law stipulated that an individual or group of individuals who have an interest on the substance of the draft have the right to provide oral or written input through public hearings, official visits, yet, at what stage and how the mechanism is not regulated in the Law.[10]

Community participation should be stated in the Law as part of the stage that passed in the formulation of legislation. In the provisions of Law, public participation is "right", so of course the community's rights can only be performed if there is a will of the drafters to conduct these activities.

Conclusion

Kupang regency have several local wisdom in the community, namely: local wisdom in forest management, coastal resources management, spatial determination, agriculture and animal husbandry, conflicts setlement and the determination of the calendar month of service. However, in the formulation of attributive regional regulations, there is not any regional regulation in accordance with the local wisdom in the community. There are two attributive regional regulations in Kupang regency yet the value of local wisdom contained in the substance of the regional regulations is so abstract that it can not be clearly understood. As a result, these values tend to become unpreserved.

Suggestion

There are some suggestions in this paper namely: *first*, Kupang regency government needs to develop the formulation of attributive regional regulation to accommodate local wisdom in Kupang regency; *second*, the formulation of regional regulations is expected to accommodate all the values of local wisdom in Kupang regency society that does not affect the effectiveness of the implementation of the given regional regulations.

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[10] Akhmad Adi Purawan, "Korupsi Legislasi Dalam Pembentukan Peraturan Perundang-Undangan", *Jurnal Rechtvinding*, Vol. 3 No. 3, December 2014, Jakarta: BPHN Jakarta, page 3.

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