

A law-abiding behaviour of the indigenous peoples in realizing environmental law enforcement in South Sulawesi, Indonesia

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ABSTRACT

There are many laws and regulations governing the environment in Indonesia from the central level to the regional level, especially for the areas whose territory consists of land, sea, and vast forests inhabited by certain tribes and can be classified as indigenous peoples. South Sulawesi is one of the regions in Indonesia that has many indigenous peoples. The existence of indigenous peoples in South Sulawesi is very important because they have an important role in the environment, including protecting the environment from pollution and environmental damage, as well as assisting law enforcement officers in reporting not only perpetrators of environmental destruction but also reporting any environmental damage that occurs in their area. This study aimed to determine the law-abiding behavior of the indigenous peoples in realizing environmental law enforcement in South Sulawesi, Indonesia. The method used in this study was empirical juridical research using several laws, regulations and local customary law as well as visiting and conducting direct interviews to the community to collect the data from these indigenous coastal communities. The results of the study showed that the indigenous peoples in South Sulawesi are known to be very obedient to customs. The customs are applied from generation to generation in protecting their forest and marine environment, so that they are not threatened with extinction. For the indigenous peoples of South Sulawesi, forests and the sea are their homes that provide their various needs. Their survival depends on the sustainability of forests and seas in South Sulawesi. The law-abiding behavior of the indigenous peoples in realizing environmental law enforcement in South Sulawesi is based on moral which are known as Sipakatau, Sipakalebbi, and Sipakainge.

Keywords: Indigenous peoples, Environment, Law-abiding.

Article type: Short Communication.

INTRODUCTION

Indonesia is as a state of law and an archipelagic country inhabited by people from Sabang to Merauke, with various ethnic groups, cultures, religions and languages. This diversity also affects the laws that apply in each area, known as customary law. The customary law that applies to each tribe or region in Indonesia is different from one another. In the Indonesian literature, the terms *Rechtsstaat* and *The Rule of Law* are often translated as a state of law. Historically, these two terms come from different legal systems. The term *Rechtsstaat* became popular in Europe since the XIX century. This term has actually been around for a long time. In contrast to *Rechtsstaat*, the term *The Rule of Law* became popular with the publication of a book from A.V. Dicey in 1885, entitled *Introduction to The Study of The Law of The Constitution*. *Rechtsstaat*'s understanding emerged from a struggle against absolutism, so that it was revolutionary and rested on the Civil Law System with administrative characteristics. On the other hand, the notion of *The Rule of Law* develops evolutionarily and relies on a Command Law System with judicial characteristics. One of the categories of state of law is the legal awareness of the people.

Since the Dutch colonial era, Indonesia has had its own laws and has received recognition. The law that applied to native Indonesian citizens at that time was customary law whose existence was recognized to date. The position of indigenous peoples has been regulated within the unitary state of the Republic of Indonesia and has been formulated in the Indonesian constitutional laws and regulations. In the 1945 Constitution of the Republic of Indonesia, Article 18 B paragraph 2 stated that the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development and principles of the unitary state of the Republic of Indonesia. The law-abiding behavior carried out by indigenous peoples begins with orderly living behavior and protecting the environment and the area they inhabit. In order to maintain the continuity of life from generation to generation, indigenous peoples are expected to be able to enjoy a decent and hassle-free life and have the right to receive recognition and a decent living and education. The orderly behavior of the law should be applied for the continuity and smooth running of a rule. Good rules are those that can make people in an area getting law-abiding behavior. The Law No. 48 of 2009 concerning the power of the judiciary Article 5 paragraph 1 confirms that: "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society". To realize this, the government seeks to better preserve the culture and customs of a society. This is very important to be applied in the life and way of life of indigenous peoples because it can reduce crime in an area, especially those related to the misuse of forest use. Law-abiding behavior can arise from legal awareness and legal compliance. Legal awareness is born from the existence of abstract conceptions in humans about the harmony between order and desired peace. Legal awareness is actually values related to social, political, economic, and legal, so that there is a good correlation. Law-abiding behavior can improve and bind the good image of an area because in essence, law-abiding behavior can be noble values that can affect all existing systems starting from the implementation of rules, the enactment of rules and the operation of a rule from the government. In terms of the development of indigenous peoples, especially coastal indigenous peoples, and indigenous peoples who inhabit forest areas, the central government and local governments are obliged to develop and implement development for the realization of prosperity. In the 1945 Constitution of the Republic of Indonesia, explicitly stated that the Indonesian state government which established based on the Constitution of the Republic of Indonesia must protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, and educate people's lives.

Formulation of the problem

What is the pattern of law-abiding behavior of indigenous peoples towards environmental law enforcement in South Sulawesi, Indonesia?

MATERIALS AND METHODS

The method used in this study was empirical juridical research using several laws, regulations and local customary law as well as visiting and conducting direct interviews to the community to collect the data from the indigenous coastal communities. The study with the empirical juridical research is an approach to the rules that exist regularly with certain categories. This approach aims to analyze the relationship between law and the rule of law as well as the behavior of the community towards the rule of law. Research with this method also analyzes how a rule can be applied or not, as well as obstacles and legal developments that will be carried out in this study accompanied by empirical juridical research on an environment and events in society.

RESULTS AND DISCUSSION

Indigenous peoples are an autonomous community unit. They regulate their life system such as law, politics, and economy. Indigenous peoples are born and grow together, and are guarded by the community itself. The existence of indigenous peoples in Indonesia has been stated by many practicing customary law scholars, including Van Vallen Hoven who said that in the archipelago, which is now called multicultural, there are 19 customary law areas (Rechtsringen), such as 1- Aceh, 2- Gayo Alas Batak, and Nias, 3- Minangkabau, Mentawai, 4- South Sumatra and Enggano, 5- Malay, 6- Bangka Belitung, 7- Kalimantan, 8- Minahasa, 9- Gorontalo, 10- Toraja, 11- North Sulawesi, 12- Ternate Islands, 13- Maluku, 14- West Irian, 15- Timor Islands, 16- Bali Lombok, 17- Central Java, East Java and Madura, 18- Solo and Yogyakarta, 19- West Java, 20- and Jakarta with its Betawi tribe. South Sulawesi is a province in eastern Indonesia, which was originally part of several kingdoms under the Dutch government. After independence, the kingdom was merged into a province.

Nevertheless, the existence of indigenous peoples is still maintained so far and their existence is still recognized by the local government. Indigenous peoples consist of coastal indigenous peoples and those inhabit certain forests and areas. In South Sulawesi, there are indigenous peoples, namely in the Sillanan-Tana Toraja Traditional Village, Ammatoa Traditional Village, Karampuan Sinjai Traditional Village, Kete Kesu Traditional Village in North Toraja, Tangsa Indigenous Community in Enrekang, and Pattalasang Indigenous Community - Gowa Regency. The existence of these indigenous peoples are in an effort to fulfill the rule of law and law enforcement, especially for archipelagic areas. To protect the environment, law-abiding behavior and legal culture are very important in order to prevent environmental damage. The phenomena that occur in coastal areas as described above can be a concern for both the central government and local governments. As community representatives, indigenous peoples are expected to be able to voice and pay attention to the fate, lives and welfare of coastal communities in coastal regency such as in Selayar. The importance of monitoring the implementation of local government policies in maintaining and preserving coastal communities is very interesting. This is to remember that coastal communities are the first who maintain the life and sustainability of the existing islands. Coastal indigenous peoples are those inhabit an island or a land where there are various assets that must be protected for the preservation of the environment they inhabit. In responding to environmental pollution, the indigenous peoples of South Sulawesi who inhabit several areas ranging from coastal areas, forests, and villages as well as a certain areas, always put forward a simple way by conducting patrols and using forests wisely, encouraging the local government to protect always the forests and seas as a place for obtaining the necessities of daily life. Polluted seas can cause the extinction of marine life. Polluted environment such as soil and water can have a negative impact on the health of the surrounding community. Damage to the forest environment can cause air pollution, landslides, drought in the dry season and affect the natural products of indigenous peoples in the area. There are several positive regulations related to the rights of indigenous peoples, such as Law No. 39 of 1999 on Human Rights, Law No. 41 of 1999 on forestry, Law No. 32 of 2009 on environmental protection and management, Law no. 1 of 2014 concerning the management of coastal areas and small islands, Law No. 6 of 2014 concerning Villages, Law No. 39 of 2014 concerning plantations, Law no. 17 of 2019 concerning water resources, Minister of Home Affairs Regulation No. 52 of 2014 concerning guidelines for recognizing and protecting indigenous peoples, Minister of ATR Regulation No. 18 of 2019 concerning how to administer customary lands for customary law community units. In customary law which is a living law or law that lives in society, statutory regulations become regulations based on what lives in society then it made into a rule that can be run together. In responding to the existing regulations, the obligation of indigenous peoples to their environment is to do a lot of socialization and prevention of environmental damage from the beginning and prevent tree cutting and other forest damage for the survival of future generations. Law No. 6 of 1960 concerning the basic Agrarian law, explained that the social function of the coast must be maintained properly so as to avoid its inappropriate use and utilization. From this it can be seen that legal protection for coastal indigenous peoples can be carried out to prevent marine damage. In the law on marine and coastal communities, Law no. 27 of 2007 concerning coastal areas and small islands, it is stated that the management of areas and small islands is a process of planning, utilizing, monitoring, and controlling coastal resources. The existence of indigenous peoples plays an important role in preserving the traditional culture and the environment as well as the customary rights that exist in the area. In Sulawesi culture, there are terms *Sipakatau*, *Sipakalebbi*, and *Sipakainge* which means the superior ethics and values of the people in South Sulawesi.⁵ *Sipakatau* means mutual respect, mutual support, mutual care, mutual guidance, sharing, and giving to each other which in the indigenous community in South Sulawesi can generally be implemented through an attitude of respect. *Sipakalebbi* means mutual respect within the indigenous community. It does not mean having to fear the traditional leader, but it is very important to apply to the younger generation that in etiquette “the young respect the old while the old love the young”. *Sipakainge* means reminding each other of religious norms, customs, manners and various character values. This will lead to the ethics of every indigenous people in South Sulawesi in speaking and acting well within the indigenous community in South Sulawesi. Indigenous peoples are not much different from other communities because of the similarities in their family life patterns and mutual cooperation. In indigenous communities, the spirit of mutual cooperation and friendship based on simple and familial principles makes the coastal indigenous people need to be preserved and considered for their sustainability. The law-abiding behavior of indigenous peoples in South Sulawesi towards environmental law enforcement is carried out by

applying customary rules and government regulations. If in the future, there are perpetrators of environmental destruction, besides being fined with customary punishments, they are also fined with punishments by authorized officers or officials. The sanctions for breaking the rules are different in each region. An example of a sanction for the indigenous people of Sillanan, Tana Toraja which is given to perpetrators of environmental destruction is bringing a buffalo or *tedong* to the traditional leader. For the Ammatoa Traditional Village in Bulukumba district, the customary sanction given is to make repairs or bring offerings to the traditional leader to atone for a mistake for those who damage the environment. For the traditional village of Karampuan-Sinjai, violators who are proven to have damaged the environment must make an apology verbally by bringing traditional advice to the local government. For the traditional village of Kete Kesu in North Toraja, the penalty for fines is slaughtering buffalo which has a selling rate determined by the traditional leader. The sanction given by the Tangsa Traditional Village in Enrekang is that the indigenous people must bring replacement trees for trees that have been cut down. Customary sanctions for the Pattalasang indigenous people, Gowa Regency are tree replacement, while for coastal areas in Selayar Regency the customary sanctions are a ban on entry and a ban on fishing for those who violate the sea.

CONCLUSION

Indigenous peoples in South Sulawesi are known to be very obedient to the customs and this applied from generation to generation in order to protect their forest and marine environment so that they are not threatened with extinction. For the people of South Sulawesi, the forest and the sea are their life. Forests and the sea are their homes that provide various necessities of their life. Their survival depends on the sustainability of forests and seas in South Sulawesi. The law-abiding behavior of indigenous peoples in the realization of environmental law enforcement in South Sulawesi is based on moral values in South Sulawesi which are known as *Sipakatau*, *Sipakalebbi*, and *Sipakainge*.

REFERENCES

- Akib, M 2021, Global and national perspective environmental law, Rajawali Grafindo Press, Jakarta.
- Arliman, L 2018, Customary law in Indonesia in the view of experts and the concept of enforcement in Indonesia. *Selat Journal*, Vol. 5, No. 2.
- Article 6 of Law no. 6 of 1960 on Agrarian Principles.
- Article 18, B paragraph 2 of the Constitution of the Republic of Indonesia.
- Hadjon, PM 1987, Legal protection for the people in Indonesia: A study of its principles, their handling by the courts in the general court environment and the establishment of state administrative courts. Bina Ilmu Surabaya.
- Heryanti, 2017, Philosophical study of the state's responsibility to the values of local wisdom of indigenous law communities. *Halu Oleo Law Review*. Vol. 1, No. 1.
- IDG 2019, Palaguna, welfare state vs. globalization of welfare state ideas, Rajagrafindo Press, Jakarta.
- Ilias, BS, 2021, Autonomization of local wisdom and traditional law in regional autonomy. *Law Journal of Mai Wandeu*, Vol. 1, No. 2.
- Konradus, D 2018, Local wisdom bounded by globalization currents: A study on the existence of indigenous law communities. *Legal Problems*, Vol. 47, No. 1.
- Majid, J 2021, Transparency; preserving wisdom of budget allocation in the manifestation of Tudang Sipulung culture. *Accounting Professional Journal*, Vol. 3, No. 2. DOI: 10.35593/apaji.v3i2.30.
- Moh Fadli, DKK 2016, Environmental law and policy. UB Press, Malang, 2016.
- Nugroho, N 2018, Traditional law in the perspective of the development of national law based on Pancasila. *Legal Spectrum Journal*, Vol. 15, No. 2.
- Pradhani, SI, 2021, Legal pluralism approach in customary law studies: interaction of customary law with national and international law. 4: 81-124, DOI: 10.22437/ujh.4.1.81-124.
- Rosana, E 2014, Legal compliance as community legal awareness. *Tapis Journal*, Vol. 10, No 1.
- Sridiani, NW 2020, Preventive measures for traditional law and national law go hand in hand. *Widya Kerta Journal of Hindu Religion*, Vol. 3. No. 1.
- Salim, A, Salik, Y, Wekke, IS, 2018, Character education in Bugis community. *Journal of Islamic Community*

Development. Vol. 11, No.1.

UU 2017, No. 27 of 2007 Concerning the management of coastal areas. Asmah, Indonesian Customary Law: An introduction. Fahmis Pustaka Publisher, Makassar, 2017.

Wahid, AMY 2021, Orderly behavior of indigenous people laws in the realization of enforcement environmental law in South Sulawesi. *Amanna Gappa*, Vol. 29 No. 1.

Winardi, 2020, The existence and position of customary law in the political struggle of national law. *Widya Yuridika: Law Journal*. Vo. 3, No. 2.

Zaman, A 2018, Businesses to community the law in community. *Cendikia Law Journal*, Vol. 3 No. 2.

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