

The Wisdom of Indigenous People on Eco-Based Management for Forestry and Mining in Indonesia

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In addition to basing itself on the provisions of existing regulations, it is equally important for the resources management of forestry and mining to respect the wisdom of adat law communities (Indonesian legal term for its indigenous people, in Dutch: *rechtsgemeenschap*) in the region. Indigenous people use this wisdom in managing the natural resources with their aim to maintain cosmic (nature) balance and environmental sustainability. Forestry and mining policies in the context of legal pluralism should integrate these local values with an eco-based perspective. The paper focused on two issues, firstly, the philosophy of indigenous people in environmental management based on their wisdom, and secondly, the wisdom of indigenous people managing their communal rights on forestry and mining resources in Indonesia. The research used qualitative research methods that focused on the wisdom of indigenous people in forestry and mining management in Indonesia based on forestry and mining regulations, as well as the eco-based perspective. The approach of Indonesian legal pluralism on eco-based management of forestry and mining resulted interaction between the state law over the control on natural resources and the non-state law by applying the principles of eco-based perspective.

Key words: *Indigenous people, environmental, forestry, mining.*

Introduction

Managing Indonesia's abundant mineral resources and green forests requires a high level of wisdom and the right paradigm from the state officials, corporations and communities to utilise forest products and mining operations. It is not only the concern of capitalist economic interests to loot the forests and to exploit the mineral contents. *Adat law communities* (Indonesian legal term for its indigenous people, Dutch: *rechtsgemeenschap*), as they have

existed before the establishment of Indonesian state, have their own wisdom and/or philosophy on managing the forests and mining locally. Excessive economic glorification on development policies by exploiting large amounts of forestry and mining resources was regretted by Giblett who condemned the arrogance of modernity that put efficiency ahead by sacrificing the balance of nature conservation (Giblet 1996).

The constitutionality of the state in the control of natural resources becomes important in its policies on legislations establishment and implementation of sectoral legislation in the context of forestry based on Law No. 41 of 1999 and the mining of mineral and coal based on Law No. 4 of 2009, and also submit to environmental management policies based on Law No. 32 of 2009 on Environmental Protection and Management. These policies are not easy to implement in the dynamic of interests from various non-state parties, i.e. private (corporations), civil society groups, communities in and surrounding the forests and mining activities, as well as adat law communities who have their own local values or wisdom systems in managing forestry and mining resources. All parties have the right to manage these resources as long as they submit to the stages or mechanisms which are set forth in the legislation.

In addition to base itself on the provisions of existing regulations, for the resources management of forestry and mining it is equally important to respect the wisdom of indigenous people in the region, especially because politically based on constitution and legislation, the existence of indigenous people is recognised, including their rights to manage natural resources in the forestry and mining sectors. Adat law communities use this wisdom in managing the natural resources with their aim to maintain cosmic (nature) balance and environmental sustainability. Forestry and mining policies in the context of legal pluralism should integrate these local values with an eco-based perspective. In fact, however, the existing practices create environmental degradation since those investments are based on the right of control by the state over the natural resources with welfare-oriented goals.

The paper discussed two problems, *firstly*, what is the philosophy of indigenous people in environmental management based on their wisdom? And *secondly*, how does the wisdom of indigenous people work in managing their communal rights in regards to Indonesian forestry and mining?

Research Method

The research used qualitative research methods that focused on the wisdom of indigenous people on forestry and mining management in Indonesia based on forestry and mining regulations, with their eco-based perspective. The approach of Indonesian legal pluralism on environmental management of forestry and mining resulted in interaction between the state

law over the control of natural resources and the non-state law by applying the principles of an eco-based perspective.

Results and Discussion

The Concepts of Local Wisdom and Indigenous People

The Indonesian word for wisdom, i.e. “*kearifan*,” can be understood as a collective understanding, knowledge and intelligence that affects a decision to solve or to overcome a problem of life (Marfai, 2012). In *Kamus Besar Bahasa Indonesia* (Great Dictionary of the Indonesian Language, 2008), the root “*arif*,” is synonymous with “*bijaksana*” (wise), while “*kearifan*” means wisdom (Kamus Besar Bahasa Indonesia, 2008). Then the word for local, i.e. *local*, means local, or happening unevenly in one place only. When incorporated as a phrase “*kearifan lokal*” (local wisdom), it means the embodiment of a set of understandings and knowledges from an undergoing process of development by a local community. It is compiled within a long process and experience on various interactions in a mutually beneficial system and bond. Indonesia has many ethnicity and people groups, each of which has its own systems and approaches to understand and to behave towards the management of natural resources. Almost every ethnicity or people groups has its own traditional knowledge system. They even spawned a unique environmental management innovation and resource utilisation based on local customs and cultures.

Local wisdom, with its specific characteristics, needs to have some attentions and protections by local policymakers, with their local regulations, decisions or public policies. If local governments ignore these local values and wisdoms, it will destruct and destroy the local culture as a living norm in society.

Conceptually, local wisdom is a part of the culture and more specifically, it is a part of traditional knowledge systems, and some universal values such as historical, religious, ethical, aesthetic, science, and technology values that are called *local genius* (Geriya, 2005). Indonesia writes the national motto *Bhinneka Tunggal Ika* (Old Javanese: *Unity in diversity*) within its national emblem, with a legendary bird *Garuda*. It indicates the *condition sine qua non*, a commitment to consistently pay attention and accommodate the wisdom of adat law communities in policy making and legislative drafting as a form of recognition of legal pluralism that empirically lives and develops in Indonesian society.

Substantively, the main contents of local wisdom include: local concepts, folklore, religious rituals, local beliefs, various taboos and suggestions that are embodied as a system of public behaviours and customs. Functionally, some dimensions of local wisdom in the management of the environment include the methods and the approaches that promote wisdom and policy.

Other important dimensions are the directions and goals that emphasise harmony, balance and sustainability. In magical and religious minds of indigenous people, human beings are tasked to maintain the balance of the universe, and if they become greedy, there will be a shock in the universe that can caused a natural disaster (Senastri, 2012).

Under the provisions of Law No. 32 of 2009 on Environmental Protection and Management, local wisdom is defined as the noble values prevailing in the life of the community to protect and to manage the environment in a sustainable way. Furthermore, local wisdom that emerges in a system of life in society can be understood as a form of environmental wisdom. Understanding constructed in these norms implies that all the words and deeds that exist within each particular local community become the guidances or beliefs for them, in the context of environmental management. In sectoral regulations related to natural resources (forestry, mining, coastal and small islands, plantations, etc.), local wisdom becomes the principle, showing its consistency with the regulations and environmental management policies.

The image of local wisdom, on one hand, can be based on sciences as patterned in scientific societies in the developed countries with its rational nature. On the other hand, however, the local wisdom is based on a value and religious systems that develop in the simple and modest mind of society in developing countries. The teachings of local religions and the beliefs of these local communities animate and influence how a regulation can be done. The reflection of the environmental wisdom of society is concretely crystallised in the legal products of local communities, in legal anthropology, it can be called customary law, people's law, indigenous law, unwritten law, or *adat* law (Syafaat, 2008).

Soetandyo Wignjosoebroto asserted that when Van Vollenhoven from his podium at Leiden played a major role in reviving the idea of the existence and potential of *adat* law to preserve the welfare of indigenous peoples, Ter Haar, who had been struggling in the Indonesian lands, successfully operated *adat* law as a functionally used law to uphold orderly life in indigenous autochthon societies (Wignjosoebroto, 1994).

Local wisdom that comes from the natural mind of a simple society that continuously and hereditary apply customary law, is then termed as *masyarakat hukum adat* (indigenous people). The term and understanding of indigenous people are created by Van Vollenhoven to illustrate the original law of indigenous tribes in Europe. In Indonesian context, each tribe of its region has their own term for this people group. Some call it *desa*, *kelurahan*, *nagari*, *negorij*, *ana woe*, *suku*, etc. In general, they are a human community that is united as one communion. The term of *adat* law community is also called the *persekutuan hukum* (legal alliance), *persekutuan adat* (*adat* alliance), or *masyarakat adat* (indigenous people). Some refuse to mention indigenous people, prefer the term *adat community*, because in these

indigenous and tribal peoples, the matter is not only about the law, but also some customs, culture, agriculture, house forms, art, religions and politics. The problem, however, the struggle for an entry to the constitution, is a matter of law, and the law must adhere to its subject and its legal object (Rato, 2015; Kumari and Singhe, 2014; Isola, et.al. 2014; Obasi, et.al. 2014; Awuah and Addaney, 2016; Addae-Korankye and Abada, 2017; Ghosh and Ghosh, 2017. Ekpete and Iwedi, 2017; Oli, 2018).

To accommodate all categories of adat community in one definition is very difficult, because the indigenous people according to Surojo Wignjodipuro are formed based on: blood (genealogical), territorial, territorial-genealogical or genealogical-territorial (Wignjodipuro, 1995). When Van Vollenhoven invented adat law as a science (*adatrecht geleerheid*), while in Western thought a law necessarily always has a subject and object, the question then arose: Who is the subject of adat law? Based on that question, the thought of a science construction on this subject of adat law was then found. The subject of adat law is the *rechtsgemeenschap*. *Rechtsgemeenschap* included the individuals as part of *rechtsgemeenschap*. Thus, there are two subjects of adat law: the person as an individual and the people as a whole or the indigenous people. Unlike the law as in European legal sense, which has a legal subject called a person, the subject of adat law is the *rechtsgemeenschap* or indigenous people.

The terminology of indigenous people is criticised by adat community from *Aliansi Masyarakat Adat Nusantara* (AMAN, Indigenous Peoples Alliance of the Archipelago) because it contains a confusion between "law-society of adat" and "adat-law society", one emphasises the law society while another emphasises the adat law. AMAN also argued that the term of adat law community reduces indigenous people in a single dimension, namely law, whereas they are also depending on other dimensions such as social, political, cultural, religious, economic and ecological. Therefore, AMAN offers the term *adat community* that can cover more dimensions in indigenous peoples. To provide a framework on adat community, they referenced the definition of adat community produced in the AMAN first congress in March 1999:

Adat community is a group of people who have ancestral origins in certain geographical areas, and have their own values, ideological, economic, political, cultural, social and territorial systems. The amendment process of the 1945 Indonesian Constitution, which took place from 1999 to 2002, became an arena to include new norms for the promotion of adat community rights in Indonesia. From the constitutional amendment, there are three provisions in the Constitution which relate directly to the existence and the rights of adat community, namely Article 18B verse (2), Article 28I verse (3) and Article 32 verses (1) and (2). The three provisions each have different substances and approaches in view of indigenous peoples (Arizona, 2010).

Soetandyo Wigndjosoebroto stated that various dynamics and configurations relating to the rights of adat law community in the management of natural resources, particularly in the forestry and mining sectors, are necessary. Especially in the context of its social, economic and political aspects of the laws relating to recognition of the rights of adat law community on forestry and mining resources. The test for this dynamics is conducted by analysing the effects of economic, social, and political interests to understand whether there are deviations, thus making the constitutional protection framework weakened or unable to work. The idea to always examine the constitutionality of constitutional norms is the point of review for the guarantee of the rights of adat law community, in order to avoid arbitrariness (Wignjosoebroto, 2002).

The Philosophy of Indigenous People in Environmental Management Based on Their Own Wisdom

Bushar Muhammad expressed the characteristics of adat law, namely: religious, magical, *commun*, at that very moment, and concrete (Muhammad, 2006). The natures of adat law in its development are related to environmental law, which then came to be called adat environmental law. According to Imamulhadi, adat law is the whole principles and rules, both codified and uncoded that govern the relationship between indigenous people and their environment based on traditional thought patterns. It is *religious magical*, meaning that the prevailing provisions come from God or ancestral spirits, they are sacred, and it is considered as sinful or ungodly if they were violated, the violation also has a negative effect. It is also *participating cosmic*, which means to maintain a harmonious relationship between the elements of the universe in order to maintain a balance between the elements of nature, both in the micro and the macro natures, or with the aim to achieve the salvation of all elements of nature. It is *commun*, meaning the rules that apply on the basis of public interest, i.e. the universe, including humans as a part of it (Imamulhadi, 2016). These definition are characterising the adat environmental laws, to have a pattern of traditional mindsets: *religious magical*, *participating cosmic*, *commun*, and steady.

Adat environmental law is steady. Adat environmental law has existed since adat community have been formed, and since its formation, it remains unchanged. Forbidden forests, sacred forests, prohibitions, and taboos remain as they are. This steady nature are caused by the community beliefs that the law is the rule derived from God, the violation is believed to bring disaster and calamity. In addition, adat environmental law is also believed as the message from the parents and ancestors. Violating adat environmental laws is considered an act of disobeying parents and ancestors. Adat communities strongly believe that violating adat rules is related to the supernatural dimension of nature. The change of it, moreover, will bring disaster and calamity, consequently they will experience sufferings, miseries and difficulties. Based on these beliefs, adat law communities always maintain the purity of adat law. Adat

environmental law shall not be reduced, supplemented and may not be altered. The norms are *adat nan sabana adat*, i.e. will not be weathered by rain, and will not be cracked by the heat.

The concretisation of this philosophy in preserving the natural resources of the forest through its wisdom can be seen by the Ammatoa indigenous people in Bulukumba, South Sulawesi, who recognise some functions of forests. *Firstly*, forbidden areas or *borong simenanggamma*. In this area, the human is absolutely not allowed to enter. The contents of the forest should not be disturbed. *Secondly*, adat or sacred forest area in adat. This area can only be entered at certain times, for the purposes of traditional ceremonies. *Thirdly*, the area of production forest or *borong ta'bala*, in this area the community may manage the forest together. *Fourth*, the community forest area or *borong tau*, the community may enter into this forest and take the results only during the harvest season.

The authors also took the example from adat environmental law in Dayak, known as the philosophy of *belom bahadat*. 'Belom bahadat' is firstly a concept of balance and harmony of life, harmony between man and divine beings, *sangiang*, ancestral spirits, and God, as well as harmony between God and the Universe; *secondly*, it is also harmony between man and the natural environment (flora, fauna, and other living things); *thirdly* it is a harmony between man and his neighbour, either individual or inter-group. To carry out the harmonisation of the above three things, it takes the fourth: the obedience to the law, not only to adat law, but also to religious, state, and customary laws. The concept of *belom bahadat* is the basis for the Dayak people in observing the ancestral command. It is implemented in every thought, word, attitude and behaviour, making the concept *belom bahadat* become the foundation of manners, ethics, humanity and justice for the life. The actualisation of that philosophy by the indigenous peoples in Central Kalimantan has always adhered to adat, natural, and state laws, including the approach to resolve the disputes within indigenous peoples and also dispute of the nature and environment problems. It has a distinctive adat court system through the Lembaga Kadamangan (Central Kalimantan Provincial Government, no year number).

The wisdom of adat law community over the management of their common rights on forestry and mining resources with eco-based perspectives

There are some conflicts between local communities, government and mining entrepreneurs whose resolutions sometimes lead to human rights violations due to their repressive handling, conflict of interest between the mining sector and other sectors, the lack of awareness toward the interests of indigenous peoples, or local and regional communities who do not get a fair share of the use of natural resources. Non harmonious conditions within the local community, can also eventually arises the desire of separation from the Unitary State of the Republic of Indonesia (Fendri, 2016). This situation does not allow mining investment to carry on a

sustainable development mission through social transformation to the greatest prosperity of the people as mandated in Article 33 verse (3) of the 1945 Indonesian Constitution.

Indonesia, as a multicultural country, includes legal pluralism in various fields, one of them is in the management of natural resources in the context of forestry and mining. This has the consequence of interaction between some legal systems. In addition to the state law system through its legislation products, there are also some *de facto* systems of adat laws in the life of the communities. Therefore, the involvement of participation from the community on the framework of eco-based management is a very important approach, since the maintenance of forest resources and mining will provide opportunities for the people to live optimally. Therefore, to foster community participation through the principles of local wisdom, the partnership between the government and the community must be established through the strengthening of adat law. That living law, in the midst of society, is a necessity, although the position of state law is very dominant, the adat law is still and always regarded as one of the laws prevailing in society (Yas, 2007).

Adat law communities have a strategic position in the constitutional recognition and derivative regulation. It cannot be denied that in the context of natural resource management, especially in the forestry and mining sectors, the communities have some access rights to the resources to live their own lives. State recognises the existence indigenous people including their wisdoms and traditional rights, but must also be consistent with the policies to be incorporated into the development of the natural resource economy. The diversity of cultures and indigenous people in the forestry and mining sectors has always been taken into account to develop responsive and adaptive regulations and policies in a national legal unification framework. The constitutionality of economic development in the field of natural resources includes the existence of traditional communities or indigenous people residing in forest or mining areas.

Two sectoral legislations in the field of natural resources, Law No. 41 of 1999 on Forestry and Law No. 4 of 2009 on Mineral and Coal Mining, in their journey through policies by related ministries, have experienced shifting, asynchronicity and disagreements with the citizens' constitutional rights, the principles of local, participatory and sustainable wisdom. The provisions are then declared contrary to the constitution (unconstitutional) in the Constitutional Court. The paradigm built by the state still used a legalistic approach, this legal unification ignored legal pluralism, and has anthropocentric tendency in the context of natural resource management and utilisation.

In the context of local wisdom on the field of mining, there has been a waiver of adat common rights and an overlapping in the determination of mining areas, as well as reclamation and post mining activities. Many adat communities are harmed by mining pits, or

destruction of wildlife habitat in the forest. Natural imbalances in mining or in the forest disturb the elements of the cosmos (nature): humans, animals, and plants. In addition to this, the public interest is more dominated by the economy, development and investment. Based on mining legislation through Law No. 4 of 2009, there is discrimination and/or absence of the state on the local wisdom as the spirit of mining policy, and the communities referred to in the provision are very general, there is no categorisation or specialisation for indigenous peoples. This is in contrast to forestry legislation through Law No. 41 of 1999 which is very concerned with local wisdom and includes indigenous people in managing customary forests, so that there is a normative attachment concerning the space for common adat law. Indigenous people use the philosophy of harmonising God with the universe in the context of managing forestry and mining resources, not just utilising concern for the economic needs (survival) of people who live in forests or mining areas. Normatively, the provisions of forestry and mining legislation provide only legitimacy in the management of natural resources, but have not been directed toward sacred philosophy and the balance of the cosmos (universe). In addition to this, the public interest is more dominated by the economy, development and investment. In legislation policy, the integration of other aspects is very important, and the legislators should have awareness of placing themselves as part of the universe, so that they can reduce various conflicts of interest that exist, whether economic, development, investment, and state control politics that leads to conflict over natural resources.

Implication

The philosophy of indigenous people in the management of the environment based on their wisdom is largely based on three philosophies: religious magical, which means sacred provision derived from God or ancestral spirit; participating cosmic, means to always maintain the balance of nature, and how to recover conditions when experiencing an imbalance of nature; and commun, which means that rules are based on the public interest of the universe, not individual human nature. The wisdom of indigenous people over the environmental management of their common rights on forestry and mining resources is a form of legal pluralism that should be integrated into legislation. In practice in the mining sector there has been a waiver of indigenous people rights and overlapping in the determination of mining areas, as well as reclamation and post mining activities, with many indigenous peoples harmed by mining pits, as well as the destruction of wildlife habitats in the forest. The provisions of forestry and mining legislation provide legitimacy only in the management of these natural resources, but have not been directed to the sacred philosophy and balance of the cosmos (the universe). High awareness from policymakers is required by placing themselves as part of the universe, so that they can reduce various conflicts of interest that exist, whether economic, development, investment, and state control politics that lead to conflict over natural resources.

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The 1945 Constitution of Indonesian Republic