



The Role of the State in the Development of Adat Economic Law in Achieving a Welfare State

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Abstract. The diverse customary law communities in Indonesia certainly have diverse cultural patterns and customary laws. Including its customary economic law. The traditional/indigenous economic system is an economic system applied by traditional/indigenous communities for generations by relying solely on nature and labor, as well as traditional equipment. The existence of this system and customary economic law is considered necessary to know more about how the system and customary economic law exist in several regions in Indonesia, as well as how the concept of a prosperous state and the role of the state in the development of customary economic law in order to create prosperity. The source of data used in this writing is secondary data, the author conducts a study of how customary economic law runs in several regions in Indonesia, existing literature and theories. That the State in this case can be present to play a role in publishing a system or a series of regulations adopted from diverse customary economic systems and laws scattered throughout Indonesia. Indigenous peoples can also be empowered by the Indonesian state towards the Welfare State, where a state with the concept of the Welfare State must be able to create social security in all fields, including in the field of protection of indigenous peoples, as well as the protection of indigenous peoples.

Keywords: State Role, Customary Economy, Welfare State.

1 Introduction

Economic development in a country refers to a framework or reference that becomes the direction for the country in taking national economic activity policies. The reference or framework is referred to as the economic system or economic system. There are several well-known economic systems that are widely adopted by countries in the world, including the planned economic system, the capitalist economic system (market economic system), the mixed economic system, and the Islamic economic system.

The planned economic system is an economic system carried out with planning by the government, where the state through the government, must formulate economic planning more comprehensively and can optimize production and investment for the progress of the country. A mixed economic system is a combination of a market economic system with a planned economic system. The capitalist economic system emphasizes property rights, i.e. an individual may own all factors of production, while the

communist system all factors of production are controlled by the government. Then the Islamic economic system is an economic system based on Islamic values[1]. Other literature states that the capitalist economic system can also be referred to as the liberal economic system. There is also a nomenclature of another economic system, namely the socialist economic system, where economic development is controlled by the government with the aim of developing the economy[2].

The traditional/indigenous economic system is an economic system implemented by traditional/indigenous communities for generations by relying solely on nature and labor. This economic system is still very much bound by tradition and makes land the foundation of activities and sources of prosperity. The land in question is given the term *ulayat* land which simply refers to the land controlled by indigenous peoples collectively based on hereditary customs or traditions. Customary land is an integral part of the identity, culture and livelihood of indigenous peoples. The status of customary land in Indonesia has been recognized and regulated since the Basic Agrarian Law (UUPA) which is then regulated in other sectoral laws. In an economic context, customary land in Indonesia is closely related to the customary economy of the community that manages the land, because the customary economy is based on the use and utilization of natural resources in the customary land to meet the needs of life and as a means of livelihood for indigenous peoples.

Each customary law community certainly has different customary laws. Likewise with the rules or procedures in running the wheels of the economy. This is what is referred to as customary economic law or customary economic law. Indonesia in general, especially through Article 18B Paragraph 2 of the 1945 Constitution of the Republic of Indonesia, has indeed recognized customary law communities and their traditional rights traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia which are regulated by law[3]. The "traditional rights" referred to are in the form of *ulayat* rights (the right to occupy customary land), the right to own customary forests, the right to fish in rivers or lakes, the right to hunt, herd, and the right to collect firewood[4], however, regulations related to the development of customary economic law are currently not specifically regulated in Indonesia, even though in relation to economic development efforts based on legal norms and local wisdom, it is necessary to empower indigenous peoples in the context of utilization, use and management of natural resources and environmental sustainability. Indigenous peoples with their indigenous knowledge, the power to uphold their customary laws, their spiritual abilities, and their religion, are wiser than other communities. In the 1992 Rio Declaration on Environment and Development, it was also stated that indigenous peoples have an important role in environmental management and development because of their traditional knowledge and practices, so the state needs to be present to recognize and fully support the entities, cultures and interests of indigenous peoples and provide opportunities and space to actively participate in achieving sustainable development[5]. Therefore, in addition to the need to know more about the form or system and customary economic law that exists in several regions in Indonesia, it is also necessary to examine how the concept of a welfare state and the role of the state

in the development of customary economic law in order to create welfare or a prosperous state.

2 Research Method

This research is normative research, which is research by tracing various legal norms. This material is presented analytically descriptively, namely to describe and illustrate existing legal phenomena or problems. obtained from a review of existing literature in order to obtain theories and concepts that can be used in compiling research. In this case, the legal problems in question are issues in the field of customary law, especially regarding customary economic law. The data source source used in this writing is secondary data, with library research techniques, where the data presented with library studies include existing legal regulations as well as books and journals on customary law, judge's view, studies on how customary economic law applies in several religions in Indonesia, existing literature. It can also be explained that secondary data is data obtained from a review of existing literature in order to obtain theories and concepts that can be used in compiling research. It is also possible that there is a field situation that can support the research needs[6].

3 Results and Discussion

3.1 Customary Economic Law in Some Regions of Indonesia

There are several terms related to the law that applies among indigenous peoples such as customary law, living law, customary law, local wisdom, while customary law that is directly related to the economy, such as customary law, living law, and local wisdom. atau ekonomi Customary law communities can be called customary economic law or customary economic law. This customary economic law can be defined as a series of legal rules related to the economy that live among indigenous peoples, rules of economic law that regulate relations between indigenous or rural communities in their efforts to meet their needs or in other words in running their economy [7].

The diverse customary law communities in Indonesia certainly have diverse cultural patterns and customary laws. Including related to the law its customary economy. In West Sumatra, precisely among the Minang indigenous people, Minang people as business people basically have a sense of togetherness known as Minang merchants. Minang people either domiciled in nagari or hometown or wherever they are, always have the principle of prioritizing mutual benefits based on deliberation and consensus. In developing and prospering the economy, Minang people do not only prioritize personal gain and wealth and certain groups, by monopolizing and economic actions that harm others. Economic actors so far have unwittingly shifted from traditional economic values that should be based on Islamic economics, according to the philosophy of "Adat Basandi Syarak, Syarak Basandi Kitabullah", while the Minangkabau traditional economy has always used the economic principle of "lamak di awak, katuju di urang", namely the economy mutual benefit, this was conveyed by

Tengku Irwansyah Datuk Katumangguangan [9]. In North Sulawesi, there is the Minahasa indigenous community with an indigenous economic system based on the principle of kinship. The system that applies in customary law is to give to each other without expecting any strings attached because basically all property belonging to the Minahasa tribe is something that is culturally reserved [10]. Minahasa customary economic law regulates a populist economic system that applies throughout the Minahasa land, which requires every community to take an active role in groups, to support the continuity of the economy both now and in the future. This popular economic system is called Mapalus. Mapalus is derived from two syllables, Ma which means "mutual" and Palus which means "pay". In general, Mapalus is the name or designation for a form of socio-economic activity of the Minahasa community in the fields of agricultural business, housing, and others. In essence, Mapalus is a system, procedure, method or technique of cooperation for the common good and each member takes turns. Mapalus is a form of traditional mutual cooperation that is different from modern forms of mutual cooperation such as associations, business associations or other similar forms. As a form of business activity, Mapalus can be said to be an organization because there are those who regulate, those who are regulated, those who make, have goals, and have rules. The governor and the governed are the community itself with the rules that are made.

Unlike the case with customary economic law in Papua, in this case the indigenous people of Keerom who have an economic life that is subsystem in nature, namely every effort made only to meet their needs. In general, they do not know how to produce products in large quantities and become market goods, so that indirectly even though garden products are abundant, in terms of the economy, they are not able to fulfill Keerom's indigenous people's needs, have not been able to boost their welfare. In farming, the population still does not manage natural products optimally. The data shows that the gardens that are cultivated as agricultural land in Arso, Senggi and Web Districts each have an area of 274 Ha (Arso District), 111 Ha (Skanto District) and 39 Ha (Web District). The life of the indigenous people of Keerom, when viewed from the economic side, has not shown significant changes. Villagers generally live from gathering sago, farming, hunting and sometimes looking for fish and shrimp in nearby rivers. The occupation of the Keeromese is to gather sago in the seemingly limitless sago forests.

This is in contrast to the customary economic law in Bali. Bali recognizes a term called "Desa Adat" which is a customary law community unit based on the Tri Hita Karana philosophy rooted in the local wisdom of Sad Kerthi, imbued with Hindu religious teachings and cultural values and local wisdom that live in Bali. These traditional villages play a huge role in the development of society, nation and state. Traditional villages in Bali also have a strategic position in organizing their communities. Customary Villages in Bali have also been legitimized and have a special legal umbrella, namely Regional Regulation No. 4 of 2019 concerning Customary Villages in Bali, with authority based on the right of origin and local authority at the scale of customary villages. Some of them concern the management of customary forests, water sources, beaches and seas, agriculture, plantations, fisheries, and animal husbandry, food industries and folk crafts. The Perda mandates that the authority of

customary villages be regulated in awig-awig. Awig-awig is a system of customary rules that regulates members of the village community in obtaining the distribution of village land revenue.

The customary economic system that has developed is the self-help system. In this system, communities or individuals try to obtain their own daily needs by developing various livelihood sub-systems such as: farming, farm labor, trading and so on. Traditional villages in Bali also have a main pillar in supporting food security, namely the existence of subak.[11] Bali Provincial Regulation No. 2 of 1972 defines Subak as a socio-agrarian-religious customary law society in Bali that was historically established long ago and continues to develop as an organization of land entrepreneurs in an area. Subak is a traditional organization in Bali that is based on customary law, and is autonomous to manage its organization, in a group of overlay areas that originate from the same water source with clear boundaries.

3.2 Welfare State Concept and Its Role in Development Indigenous People's Economic Laws

According to Naqvi, the Welfare State was first proposed in English in 1941 to achieve a balance between state power and individual freedom. The Welfare State is the idea of the state as a servant of citizens so that prosperity is achieved. According to Pass and Lowes, this welfare state can be interpreted as a country that pays more attention to the welfare of its people, namely with a policy of social security (education, health, social), sickness benefits, unemployment, and others. According to Husodo, a welfare state is a state deemed responsible for ensuring a minimum standard of living welfare for every citizen. Indonesia, through its constitution in the Preamble to the 1945 Constitution of the Republic of Indonesia, has emphasized that the aim of the Republic of Indonesia is "To advance general welfare, educate the life of the nation, and participate in implementing world order based on independence, eternal peace and social justice". This actually reflects that Indonesia adheres to the concept of a welfare state. This means that it can be formulated that the goal of the Indonesian State is to create a just and prosperous social order, both materially and spiritually based on Pancasila. The explanation of the 1945 Constitution also stipulates that "the Indonesian state is based on law (*rechtstaat*), not based on mere power (*machtstaat*)". It is clear that Indonesia is a rule of law state which aims to realize general welfare, forming a just and prosperous society based on Pancasila (law state and welfare state) [12].

In realizing the mandate and ideals of the Proclamation of Independence of the Republic of Indonesia which is independent, united, sovereign, just and prosperous, as contained in the Preamble to the 1945 Constitution and Pancasila, a State government system is needed that protects the interests of the entire nation and society based on Pancasila and not based on sheer power. In accordance with the objectives of Pancasila and the Preamble to the 1945 Constitution, namely the desire to create a just and prosperous society.

The meaning of the state's goal for general welfare is that the state is seen as only a tool to achieve the common goal of prosperity and social justice for all people. In its development, considering the people's need for prosperity as life becomes more urgent

and more complex, the doctrine of material law (*materiele rechtstaat*) emerges, which allows the state to intervene more actively to take care of the welfare of its people. This type of legal state is also called a welfare state or social service state or a modern legal state. Regarding the Welfare State or Modern Legal State, Muchsan stated that the main goal of the State does not lie in maintaining positive law, but in the aim of achieving social justice (*sociale gerechtigheid*) for all citizens of the State. If necessary, the state can act outside the law to achieve social justice for all citizens. State administrative tools in carrying out their functions (*bestuurszorg*) are given the freedom to act (*freis ermissen* without having to violate the principles of legality and not acting arbitrarily).” Based on this authority, the state's task in a prosperous state is to maintain security in the broadest sense of the word, namely social security in all areas of community life [13].

The concept of a welfare state according to Bagir Manan is a state or government that is not merely a guardian of security or public order but is also the main bearer of responsibility in realizing social justice, general welfare and the greatest prosperity of the people. In line with Bagir Manan's opinion, Sjahran Basah is of the opinion that the government's goal of a welfare state is not solely in the field of government, but must also implement social welfare in order to achieve state goals through national development. These two opinions are also in line with the opinion of E. Utrecht who states that the scope of the Welfare State's duties is to maintain security in the broadest sense, up to social security in all areas of community life. The government must actively participate in social relations so that social welfare for all people can be maintained. The concept of a modern legal state (welfare state) is adopted by Indonesia, with the aim of realizing a just and prosperous society both spiritually and materially based on Pancasila and the 1945 Constitution, so that it is called the Pancasila Legal State.

When Indonesia was founded, the founders of the country made a promise to the people to realize the nation's ideals, namely social welfare for all Indonesian people. The ideals formulated in the Preamble to the 1945 Constitution are a form of the government's obligations, namely protecting the entire nation and all of Indonesia's blood, promoting general welfare and making the nation's life intelligent. Muhammad Yamin said that the newly formed Republic of Indonesia was a new welfare state, stating that the welfare of the people was the basis and goal of an independent Indonesian state. In short, the implementation of community justice or social justice is what constitutes a new welfare state [14].

If the economic system and laws are linked to the nation's economic development, it will be closely related to the correct pattern of legal regulation, so that it will be deep. Its implementation will create ideal development as stated in Article 33 of the 1945 Constitution. The ratio of the need for modern law in development is because modern law has characteristics, including:

- 1) Rules are applied in no different way
- 2) Legislation is transactional in nature
- 3) Modern legal norms are universal
- 4) The legal system is hierarchical
- 5) The legal system is regulated bureaucratically
- 6) The legal system is rational
- 7) The legal system is run by legal experts
- 8) The legal system is technical and complex
- 9) The legal system can be changed
- 10) This system is political and
- 11) The task of making and implementing laws is carried out by different parties.

Economic development is a change in activities that previously did not exist, or that previously existed to become larger, broader, more advanced in the context of economic activity. In the current era of globalization, economic development must involve all parties, especially the role of the state through the government which must be more dominant because the government has the rules and capabilities that support the growth and development of a region's economy, so that regional economic development develops which ultimately results in the income level of the population increases, employment opportunities increase, purchasing power increases and people can enjoy the results of regional economic development [15].

Economic development essentially aims to improve community welfare. So far, Indonesia's economic growth has experienced a significant increase, but in reality it has also had an impact on increasing inequality in the distribution of people's income, both between groups and between regions. A new economic policy paradigm is needed that is more based on local economic capabilities by recognizing the potential, economic, social and physical characteristics of each region, including its interactions with other regions. This synergy of local economic capabilities is expected to strengthen national economic competitiveness. In this case, the state can play a role in issuing a system or series of regulations adopted from various customary economic systems and laws spread throughout Indonesia. Local communities, in this case especially traditional law communities, can also be empowered by the state to maximize all the potential of local wisdom that exists and is spread throughout all regions in Indonesia. The state, through regional government, can also create an economic system and law that is adaptive based on the territorial conditions of the region. It is also necessary to develop and implement competent education and training programmes for human resources.

3.3 Integration of Customary Economic Laws in Indonesia's Economic System

The Indonesian state with one of its legal systems, namely customary law, with the existence of its customary law communities and traditional life such as local wisdom that is closely related to customary economic activities, is said to be the history of the world's spice centre, the glory of copra, the tobacco centre, the largest producer of oil palm to the achievement of rice self-sufficiency. Where various commodities are said to be successful, it becomes a success in the economic system, which is one of the contributors to the income of the Indonesian State. So these commodities must be manifested and protected in the form of policies that are in accordance with the values of Pancasila for the realisation of a welfare state. The influence of indigenous economic activities on the welfare of the community includes opening up jobs, fulfilling the needs of the community, one of which increases the community's income.

Among the phenomena or manifestations of local wisdom, which is a core part of culture are values and basic concepts that provide direction for various actions. Exploring and instilling local wisdom can be said to be a movement to return to its own cultural value base as part of an effort to build a regional identity, which has a correlation to creating strategic and real steps in empowering and developing the social, cultural, economic, political and security potential of the region optimally and as a filter in selecting various cultural influences from outside.

Like the customary economic activities described above, some of the practices of customary economic activities prove that local wisdom is the real power and potential of a region as a regional asset that encourages regional development and development, especially in the economic system.

4 Conclusion

Indonesia, with its diverse customary law communities, also has diverse customary economic systems and laws. Indigenous people with their indigenous knowledge, strength in holding customary law, spiritual abilities, and religion are also considered capable of maximising all existing economic potential, but this does not mean that the state does not need to play a role in developing customary economic law. In order to achieve a welfare state, Indonesia must be able to create social security in all fields, that reflects customary economic law in various regions in order to realise the goals of the state as originally stated in the Preamble of the 1945 Constitution of the Republic of Indonesia. The role of the state is also very important in efforts to improve and empower the quality of local communities, especially in the economic sector.

Furthermore, in an effort to build indigenous economic activities from indigenous peoples, empowerment of local culture and local wisdom is carried out which supports the preparation of cultural strategies or the formulation of cultural activity plans in the region as a regional foundation in the field of culture. local wisdom as the main strategy in improving the economy in the future, especially a sustainable economy. Due to indigenous peoples who understand in carrying out economic activities in accordance with the potential of an area. The culture carried out by indigenous peoples in the customary economy is a very important factor in the preparation and implementation of economic activities of indigenous peoples to date. With the phenomenon of the success of the customary economy of indigenous peoples, the government must learn from the unity of indigenous peoples on how to develop good, sustainable economic regulations, and prioritise the little people.

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References

1. A. H. Candra Irawan, "Rekonstruksi Ideologi Pancasila Sebagai Sistem Ekonomi Dalam Perspektif Welfare State No Title," *J. Huk. Replik*, vol. 7, no. 1, pp. 25–26 (2019).
2. S. Mujiatun, "Peran Pemerintah Tentang Pengembangan Perekonomian Dalam Perspektif Sistem Ekonomi Kapitalis, Sosialis, dan Islam," *J. Anal. Islam.*, vol. 3, no. 1, p. 91 (2014).
3. S. E. Swasono, "Peningkatan Peranan Negara Dalam Sistem Perekonomian Indonesia," *J. Valid*, vol. 13, no. 2, p. 378 (2016).
4. Thontowi, "Strategi Penyelesaian Pendaftaran Tanah Hak Komunal Masyarakat Hukum

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- Adat Pandumaan-Sipituhuta,” *J. Tunas Agrar.*, vol. 2, no. 1, p. 46, (2019).
5. J. Kristiana, “Peran Aktif Masyarakat Hukum Adat Dalam Pembangunan Ekonomi,” *J. SASI*, vol. 24, no. 2, p. 109, (2018).
 6. M. A. Santoso, “Kajian Tentang Manfaat Penelitian Hukum Bagi Pembangunan Daerah,” *J. Ilm. Huk.*, vol. 3, no. 2, p. 14, (2011).
 7. M. K. Rokan, *Hukum Ekonomi Adat di Sumatera Utara*. CV.Manhaji, (2015).
 8. E. Lenny, “Sistem Ekonomi Tradisional Orang Keerom di Papua, Indonesia”, *Malaysian Journal of Social Science and Humanities*,” *Malaysia J. Soc. Sci. dan Humanit.*, vol. 5, no. 11, p. 189, (2020).
 9. A. Yunimar, Zakaria, “The Comparison of the Minangkabau Traditional Economy with the Islamic Economy,” *J. IMARA*, vol. 3, no. 1, p. 36, (2019).
 10. L. L. Lombok, “Pendidikan Tentang Sistem Ekonomi Kerakyatan Dalam Hukum Adat Minahasa Dengan Metode Value Clarification Technique Sebagai Metode Pencapaian Efektifnya,” *J. Forum Ilmu Sos.*, vol. 14, no. 1, p. 88, (2014).
 11. S. I. N. P Nitiprabhu, D.P Bambang, “Lelangan sebagai Sistem Perekonomian di Desa Julah”, *Sunari Penjor: Journal of Anthropology*,” *Sunari Penjor J. Anthropol.*, vol. 3, no. 1, p. 80, 2019.
 12. K. C. S. Kansil CST, *Hukum Tata Negara Republik Indonesia*. Jakarta: Rineka Cipta, 1997.
 13. I. Nurlinda, *Prinsip-prinsip Pembaruan Agraria, Perspektif Hukum*. Rajawali Pers, 2019.
 14. M. Yamin, *Naskah Persiapan UUD 1945, Jilid 1*. Siguntang, (1970).
 15. D. Djajuli, “Peran Pemerintah Dalam Pembangunan Ekonomi Daerah,” *Din. J. Ilm. Ilmu Adm. Negara*, vol. 5, no. 2, p. 20, (2018).

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