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**FUNCTIONALIZATION THE CUSTOMARY INSTITUTION AS LAW
ENFORCEMENT EFFORTS IN WEST SUMATERA**

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ABSTRACT

Various legal problems that occur in the community require effective and efficient formulations to be used to overcome them. Legal communication is traditionally considered more effective to be implemented as a law enforcement effort. This can be done through existing customary institutions. This research is a socio legal research. The method used to solve problems was qualitative research methods. The results of the study showed the form and relationship of customary institutions with legal communication systems that already exist in the community in an effort to uphold the law. It is as a place for the community to resolve various legal problems they face. The role of customary institutions in law enforcement in marginal areas is as a means that can be utilized by the community as soon as possible because it is closest to their daily lives. Customary institutions only play a role in resolving civil cases not in all legal cases. The influence of the role of customary institutions on law enforcement in marginal areas in certain regions does not have a significant influence. However, there are still areas, in law enforcement, are still using existing customary institutions. Restoring the function of customary institutions as the closest to people's lives is part of non-penal efforts to deal with crime as a form of law enforcement. The model of the function of the developed customary institution is a form of efforts to restore the value of local wisdom.

Keywords: Customary Institution, Functionalization, Law Enforcement

INTRODUCTION

Legal issues among ordinary people or community leaders are inseparable from the level of legal awareness of the community. Conflicts and violations of law often occur in communities due to the inability to communicate problems that occur in their midst and lack of legal knowledge. Lack of legal knowledge causes the low level of community legal awareness. This condition also creates difficulties in providing legal knowledge to the community and solving various legal issues in their midst.

Various legal empowerment initiatives were taken to protect the community, especially in marginal area. The crime prevention strategy cannot only be carried out in formalistic legality, but further it must be done through non-judicially. The strategy offered can reduce the weaknesses of the existing crime prevention strategies. Communities and

¹ institutions in the community can be empowered to enforce the law. In marginal areas legal culture can be used for law enforcement.

People prefer to settle legal issues that occur through customs or cultures that exist in their midst. Likewise with law enforcement, people are easier to be given an understanding of the law through the cultural approach they have been adopting. In this case the customary institution (adat institution) becomes a place as a means of law enforcement in the community.

Cultural organizations that exist in the middle of the community are gathered in a customary institution. Customary Institutions are expected to function together with the government in planning, directing, synergizing development programs so that they are in line with the values and customs that develop in the community for the sake of harmony, balance, justice and community welfare. Customary institutions are a means of controlling security, peace, harmony and public order, both preventive and repressive.

In practice, the customary institutions that exist in the middle of the community now only live on the nameplate. Customary institutions have lost their function and role, especially in terms of law enforcement. The improvement of the function of customary institutions can be assessed through the form and relationship of customary institutions with the existing legal communication systems in the community in law enforcement efforts and the role of customary institutions in law enforcement in marginal areas and the influence of the functions and roles of customary institutions in law enforcement in marginal areas. Customary law with its customary institutions acts is as a driving force for law enforcement in the midst of society, which can bridge between *das sein* and *das sollen* in the law enforcement effort. Borrowing the term from Soetandyo Wignyo-subroto, he said that law enforcement must be balanced with psychological and cultural duties (*the psychological costs and the cultural costs*)¹. So far, law enforcement has been largely carried out without regard to the values and norms that apply to the cultural wealth of the community. A semiotic perspective explains the function of legal functions that are facilitative, repressive and also ideological. Semiotic analysis can be interrogated in a number of perspectives to construct a more holistic approach in law sociology².

The fundamental theory used in this research was criminal policy theory. Criminal politics as an effort to overcome crime can be pursued through the efforts/means of Penal and

¹Soetandyo Wignyo-subroto, 2002, *Hukum: Paradigma, Metode dan Dinamika masalahnya*, ELSAM & HUMA, Jakarta, hal. 161

²Anthony Freddy Susanto, 2005, *Semiotika Hukum, dari Dekonstruksi Teks menuju Progresivitas Makna*, Refika Aditama, Bandung, hal. 61

¹ Non-Penal way. Law enforcement cannot only be done in a positive law, but also social approach. The form of the law enforcement is the involvement of the community through legal communication by making the existing customary institutions function. This is included in the non-penal effort with Influencing View of Society on Crime and Punishment. As stated by G. Peter Hoefnagels³:

"Criminal policy as a science of policy is part of a larger policy: the law enforcement policy. The legislative and enforcement policy is in turn part of social policy "

Another theory used in analyzing the problem of this research was the symbolic interactionism theory. By knowing this symbolic interactionism as a theory, we would be able to understand social phenomena more broadly through individual scrutiny. There are three main premises in this symbolic interactionism theory. They are humans act based on meanings; the meaning is obtained from interaction with others; the meaning developed and perfected when the interaction took place. "In the concept of The Looking-Glass Self", according to Cooley⁴, the main social institutions are language, family, industry, education, religion, and law.

These institutions form 'facts from the community' which can be learned by sociological studies, they are also products that are determined and built by the public opinion. According to Cooley, these institutions are the result of the organization and crystallization of the mind that forms customs, symbols, beliefs, and sentiments of lasting feelings. Therefore, these institutions are mental creations of individuals and are nurtured through human habits of the mind which are almost always done unconsciously because of the nature of their closeness to our familiarity. As stated by Cooley, when community institutions are understood primarily as mental creations, the individual is not merely an 'effect' of the social structure, but also a creator and maintainer of the social structure. In essence, Cooley concentrated his analytic abilities on the development of his fundamental dictum, namely "Imaginations shared by people constitute solid facts from society." Based on the theory put forward by Cooley, individuals by interacting through social institutions will form habits or customs in the form of symbols. This resulted in the emergence of a habit in the community to overcome the problems that exist in their environment. One of the habits of

³G.Peter Hoefnagels, *The Other side of Criminology*, 1969, hal. 56-57, sebagaimana dikutip oleh Barda Nawawi Arif dalam *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*, Prenada Media Grup Semarang, 2008, hal. 3.

⁴George Mead, *Mind, Self, and Society: From The Standpoint of A Social Behaviorist*, University of Chicago Press, 1972, hal. 167

¹ the people in the form of symbols is the existence of habits in society to solve problems that arise in their social interaction in their own way.

The theory of legal work formulated by Robert Seidman⁵ is as follows:

How a role holder is expected to act is shown in every rule of law;

1. Every person who has a role in acting and making a decision to respond to legal regulations is depended and controlled by the applicable law. Every sanction from the activities of the implementing agency and all social, political and other forces work for him;
2. The implementing agency responds to legal regulations in taking steps to be dependent and controlled by applicable law. Every sanction from the activities of the implementing agency and all social, political, and other forces that work on them as well as from the feedback coming from the role holders and the bureaucracy;
3. The steps to be taken by the legislative body to respond the legal regulations will be determined by the functioning of the applicable law. Starting from every sanction from the entire complex of social, political, and other forces that work on them, it is also the feedback that comes from the role holders and the bureaucracy.

The problems discussed were the form and relationship of customary institutions with legal communication systems that already exist in the community in law enforcement efforts and the function and role of customary institutions in law enforcement in marginal areas.

Research Methods

This research is a socio legal research, it is a research conducted by field studies and supported by document study. The approach used in this study was a descriptive-analytical and hermeneutic approach. Descriptive-analytical approach is defined as an effort to describe the forms, relationships and functions of customary institutions in relation to law enforcement. Furthermore, it was described in such a way and then analyzed so that the desired objectives of this study were achieved. A hermeneutical approach was used to interpret the implicit things in law enforcement.

Data collection was carried out by using field research methods, namely by collecting data sourced from the community. Data collection techniques used were observation, questionnaires and interviews. This research was also supported by normative research. The research location was in the West Sumatra province. Before being analyzed, all data collected were tested with triangulation data techniques. Furthermore, analytic descriptive analysis was

⁵ Robert Seidman, 1972, *Law and Development: A general model law and society review*

¹ analyzed, which was intended as a rational analysis of data by looking for relationships, comparing and finding certain patterns.

RESULT AND DISCUSSION

1. Form of Relationship between Customary Institutions and Legal Communication Systems in Law Enforcement Efforts

According to Teer Haar, customary law institutions are born and maintained by decisions of citizens of the legal community, especially authoritative decisions from the heads of people who assisted in the implementation of legal actions or in the case of the interest of the judge's decision in charge of adjudicating. As long as the decision is not in conflict with the people's legal beliefs, but in harmony with that awareness, accepted/acknowledged or at least tolerated by the community. Customary law institutions become a community association that actively participates in socio-economic, religious and various matters as a form of representation of a community in development⁶.

The form of the existing traditional institution is divided into two, namely has not been in the form of a particular institution and has been in the form of an institution made by the government. The customary institution recognized and formed by the government is the *kerapatan adat nagari* or KAN. Customary institutions that are not formed by the government and do not have a particular institution are indigenous organizations in the form of ethnic groups, customary associations and groups of people. The non-institutionalized customary institutions exist when there is a custom problem. This customary institution has an organizational structure that is arranged according to the level of the degree in customary system.

Legal communication formed in the community is carried out in customary institutions that occur from the daily life of the community. The form of legal communication systems related to customary institutions is in the form of:

- a. Adat Consultation (musyawarah Adat)
- b. Custom education for prospective customary stakeholders, for example at Nagari Gantuang Ciri
- c. Mutual cooperation (Gotong Royong)
- d. *Julo Julo* association formed based on customary closeness
- e. Customary/Adat consultation through customary institutions
- f. Customary/Adat sanctions
- g. *Ma ota di lapau*

⁶ I Dewa Made Suartha, 2015, *Hukum dan Sanksi Adat – Perspektif Pembaharuan Hukum Pidana*, Setara Pres, Malang, hal. 78

¹ The existing legal communication is formed in the institutionalized and non-institutionalized customary institutions.

The relationship between customary institutions and legal communication is the use of customary institutions as a forum for the creation of legal communication in society. The community uses customary institutions to solve various problems they face. From the results of research, legal issues that are often communicated through customary institutions are about civilization. In general, almost 70% of Nagari residents know the customary institutions in their respective nagari, but do not know the function of the customary institution.

2. The Role of Customary Institutions in Law Enforcement in Marginal Areas

The law essentially contains abstract ideas or concepts, including ideas about justice, legal certainty, and legal benefits. Enforcement of environmental law is an abstract idea that is realized into reality. To realize the law as abstract ideas requires a quite complex organization. The state as an organization has the duty to realize the law, by organizing various kinds of bodies for these purposes, such as courts, prosecutors, police, correctional institutions, and legislative bodies. These bodies carry out the task of enforcing law in society. Without the creation of these organizations or bodies, the law cannot be implemented in society. The work of law enforcement organizations or agencies means that people have problems, people's behavior, facilities and culture. Through these organizations, the community accepts the realization of the purpose of the law. Like justice, it is no longer an abstract concept, but it is really given to the community in the form of a certain action or interaction. Legal certainty is realized through judges' decisions. Security can be realized through police action (*tindakan kepolisian*)⁷.

Customary institutions do not play a role in law enforcement. In most of the research areas, customary institutions are no longer known. Communities are more likely to use national law in their various legal issues. In the provision of legal information, customary institutions do not have a role as well, as is the case when the establishment of law at the level of the *nagari* of customary institutions is not functioned. Customary consultation is largely not followed by community members. Customary meetings are only attended by traditional leaders and elders. In the making of the *nagari* regulations, customary institutions only make regulations (*nagari*) that regulate the life of the *nagari* community. Customary institutions only settle civil cases in the form of ownership disputes.

⁷ Satjipto Rahardjo, 1986, *Hukum dan masyarakat*, Angkasa, Bandung, hal. 19.

¹ The idealistic legal theory states that, to know the development of law in society, the first thing to understand is the culture of that society. So this shows the close relationship between values, norms and law⁸. Legal reform must refer to community legal empowerment. The law is in the community, to know the law works or not, it can be done by observing how the community responds to or interprets the law. The concept of legal pluralism is somewhat varied but on the basis of referring to the existence of more than one legal system which together are in the same social field. The Griffiths concept states that there is more than one legal order in a social field.⁹

The law that lives in other indigenous and local communities including its functional institutions (customary justice institutions) is slowly but surely disappearing along with the strengthening of government hegemony with its legal system and character that promotes *legism* (which is recognized as law is promulgated) and very formalistic. Other customary and local legal systems, including the judicial institutions, receive pressures that make them alienated and uprooted from their roots, from the local wisdom they possess (customary decisions). While with such rapid development, traditional traditions have not been heeded by the people themselves.

Everyone responds to a particular legal rule in a different way because everyone's knowledge, hopes and interests are different. This shows that everyone's legal culture is different. Community social relations in daily life form a legal system that jointly influences or becomes a reference for people's behavior in interacting with their environment. The influence of customary law on law enforcement cannot be ignored. However, in reality, wisdom and knowledge of local culture tend to get less space in national policy. The formation of a pattern of cultural harmonization allows the creation of opportunities for the use of local culture in national law.

Local law application can be found in the way of solving legal problems by the community. It is found ways to solve legal problems by using a combination of 2 (two) customs in the area. In addition to ways to resolve legal issues, culture is also used to provide information about the law to the public. The culture used can take the form of art performances, local wisdom and customary law. Customary issues that arise are usually land, marriage and criminal law problems. The influence of the role of customary institutions in law enforcement has not been in accordance with the ideal function of the customary institution.

⁸Roscoe Pound, 1989, *Interpretations of legal history*, Holmes Beach, Florida, page 143.

⁹ John Griffiths, 1986, *What is Legal pluralism*, in: *Journal of legal Pluralism and Unofficial Law*. No. 24/1986: p. 1-56

¹
The function is not running properly. Based on the results of research , there were only 20% of the community still use customary institutions for law enforcement. The customary institutions referred to here are institutionalized and not institutionalized.

CONCLUSION

The forms and relationships of customary institutions with legal communication systems that already exist in the community in law enforcement efforts are as a forum for the community in solving various legal issues they face. The role of customary institutions in law enforcement in marginal areas is as a means that can be utilized by the community as quickly as possible because it is closest to their daily lives. From research found that in most of the research areas is there no longer of the role of customary institutions in enforcing the law. Customary institutions only play a role in the settlement of civil cases not on the whole legal cases. The influence of the role of customary institutions on law enforcement in marginal areas in certain regions does not have a significant effect. But there are still areas, in law enforcement, still use existing customary institutions.

BLIBIOGRAPHY

- Awaludin Marwan, 2012, *Studi Hukum Kritis: Dari Modern, Posmodern hingga Posmarxis*, Satjipto Rahardjo Institute. Semarang.
- Anthon Freddy Susanto, 2005, *Semiotika Hukum, Dari Dekonstruksi Teks Menuju Progresivitas Makna*, Refika Aditama, Bandung
- Barda Nawawi Arif, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru* , Prenada Media Grup, Semarang,
- G.Peter Hoefnagels, 1969, *The Other side of Criminology*
- George Mead, 1972, *Mind, Self, and Society: From The Standpoint of A Social Behaviorist*, University of Chicago Press.
- I Dewa Made Suartha, 2015, *Hukum dan Sanksi Adat – Perspektif Pembaharuan Hukum Pidana* , Setara Pres, Malang
- John Griffiths, 1986, *What is Legal pluralism, in: Journal of legal Pluralism and Unofficial Law*. Nomor 24/1986
- Otong Rosadi, 2103, *Critical Contemplation High Education In Indonesia: Law School Struggle*, lihat dalam link <file:///C:/Users/Otong%20Rosadi/Downloads/SSRN-id2208503.pdf>

Robert Seidman, 1972, *Law and Development: A general model law and society review*

Roscoe pound, 1989, *Interpretations of legal History*, Holmes beach, Florida.

Satjipto Rahardjo, 1986, *Hukum dan masyarakat*, Angkasa, Bandung.

Soetandyo Wignyosubroto, 2002, *Hukum: Paradigma, Metode dan Dinamika masalahnya*,

ELSAM & HUMA, Jakarta

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