Collaborative Governance in Determining Legal Status for Traditional Marriages of the Dawan Ethnicity

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Abstract—**After 1974, there has been a unification in the field of marriage law, marked by the issuance of Law no. 1 of 1974 concerning marriage. This Law consists of XIV Chapters and 67 articles. It regulates the basics of marriages, conditions of marriages, prevention of marriages, cancellation of marriages, marriage agreements, rights and obligations of husbands and wives, assets in marriage, termination of marriages and their consequences, position of children, guardianship, other provisions, transitional provisions and closing. The implementation of Law No. 1/1974 is regulated by the issuance of PP No. 9/1975. Before the unification of marriage law, there were ways to legalize marriage, either by custom or religion, which were considered valid and recognized by the community. By the existence of unification, legal recognition and legal protection of marriages for all Indonesian citizens have to be based on Law No.1 of 1974. There are questions arising about the legality of customary marriages after the unification, what is the consequence or continuity of individuals involved / in a marriage that is carried out according to custom, especially with regard to legal rights and obligations.**

Keywords—collaborative, governance, marriage law

I. INTRODUCTION

In administration theory and public policy, there is a concept known as collaborative governance. Collaborative Governance was born in the era of the governance paradigm, when society was growing so that the government faced more complex problems. On the other hand, the government has limited time to solve these problems; therefore, it requires collaboration with external actors [1].

The definitions by Ansell and Gash emphasize six criteria. First, the forum was initiated by a public institution. Second, participants in the forum must include non-government actors. Third, participants must be directly involved in policy making and not just "consulting" with the government. Fourth, the forum must be formally organized and meet regularly. Fifth, the policies taken must be based on consensus. And sixth, collaboration focuses on public policy management [2].

Therefore, it is clear that collaborative governance is the right instrument to be used to overcome some circumstances, in other words, collaborative governance creates "joint ownership" of a particular problem.

In implementing its various programs and public service activities, government does not only utilities its internal capabilities. There are limited capabilities, resources, and networks that are supporting factors for the implementation of a program or policy. In turn, it encourages the government to collaborate with various parties, both with the private sector and the community and the civil society so that collaborative cooperation can be established for achieving programs or policy objectives [3]. Collaborative clearly requires the involvement of many parties, even though they have different interests. However, the goal is to achieve the same goals.

The *Dawan* ethnicity live in Timor Island. They have several stages before the legalization of the Dawan traditional marriage (*tolas kabin*/inauguration of marriage according to the customs of the Dawan ethnicity). The length, complexity and strictness of the traditional marriage could result in the delay or even fail to achieve the legalization of marriage in accordance with what is preserved in the Marriage Law Number 1 of 1974, namely legal according to religion and the positive law. The stages leading to the tolas kabin (complete marriage procession either according to custom, religion or government law) often stagnate at the *Bunuk Hauno'o* stage (Putting something on the tree as a sign of prohibition), the stage which is actually the legalization of the relationship between men and women according to custom.

The obstacles often come from within the community itself, who are not willing to undergo a slight change in their customs. This is, of course of, concerning because the validity of marriage status is legally positive and religion which originates not only in the legal protection. The legal protection is obligatory for every citizen as well as in religious recognition as a provision at the end of people's lives. The absence of legal and religious ratification greatly affects the status of a person in

a relationship. Precisely, the union is traditionally "recognized" as marriage but has several side effects both in one's legal status and in other social impacts.

In the social science tradition, there are various theories compiled by experts which could be used as tools (instruments) to understand and explain the dynamics of people's lives, as a tool for analyzing social reality (tools of analysis), as well as various means of re-construction of reality. Some of these theories are in various paradigms. Those are purpose, as a tool to understand something (understanding), to explain something (explanation), to predict something (prediction), to control scientific validity (sciences control), and to train sensitivity to something [4].

Efforts to find wise solutions in a good collaborative governance for the development of human resources from within the family without neglecting the customs that have been rooted in the traditions and culture of Indonesian society have become the "home work" for leaders in every administration. The process towards a governance collaboration, which also become the concern of stakeholders, cannot be taken lightly or ignored.

II. RELATED WORK

Ramsiah [5] wrote in her journal entitled "The Process of Collaboration between Government, Private and Community in Implementing Local Government Policies" that:

- The key to success in collaboration is of course there must be mutual commitment and harmonious cooperation through harmonious collaboration, away from the elements of pressure because a climate of trust has been built between the partners involved.

- Regional development in Indonesia, in order to recognize diversity, should apply participatory policies through a dialogue approach. This means that in realizing development, a partnership network is needed by paying attention to locality in the frame of a multi-stakeholder communication process, not a bureaucratic instruction approach. This process is needed to find nodes of common ground which then become a consensus to build multi-stakeholder commitment in improving community welfare.

- Collaboration is an alternative to public policy as an interactive process that involves an autonomous group of people who take advantage of shared rules with organizational norms and structures to solve problems, reach agreements to take collective action, and share resources such as information, funds, or staff.

Sudarsono [6] in the Journal of Law and Human Rights, Part II Protection of Customary Rights in his article entitled "Protection of Indigenous Peoples' Rights in the Aspect of Human Rights" delivered at the Human Rights Conference "Rethinking Rule of Law and Rights" in collaboration with PUSHAM UBAYA and SEPAHAM Indonesia, 20-21

September 2011, at the University of Surabaya. He described that indigenous peoples are a unique community with a continuous existence and identity from generation to generation that connects them with communities, tribes, or nations from past history. The Law No. 39 of 1999 on Human Rights actually emphasizes the obligation for law, society and government to respect the plurality of identities and cultural values that apply to local customary communities. Therefore, the protection of the rights of indigenous peoples is strictly regulated in article 6 letter a of Law no. 39 of 1999 which stipulates that: In the context of upholding human rights, differences and needs in indigenous peoples must be considered and protected by law, society and government.

Mukhtaromi [7] in the Administration Journal entitled "The Synergy of Local Government and Traditional Institutions in Implementing Cultural Preservation (Studies on the Culture of the Tengger Bromo Sabrang Kulon Tribe, Tosari Village, Tosari District, Pasuruan Regency)" wrote that the local government followed by the role of customary institutions are authorized to cultural diversity and its preservation in Indonesia, which then form a collaboration in implementing conservation: positive synergy towards cultural values and social changes in the Tengger Sabrang Kulon community, as well as success in developing tourism potential. The supporting factors are the contents of the regulations that are easy to understand, the attitude of the implementing actors in applying the synergy principle and the provisions of the regulations. The inhibiting factor is the capacity of human resources, and problems in the area of conservation and regional autonomy. There are still gaps in implementing synergies because there is no special Regional Regulation that regulates the issue of cultural preservation of the Tengger Bromo Tribe.

Mujib [8] in his writing entitled "Understanding Legal Pluralism in the Middle of a Tradition of Legal Unification: A Study of Traditional Divorce Mechanisms" explains the results of his research that the existence of legal unification has a socio-political impact, because it changes the existing customs and is obeyed by Public. The marriage law also has this problem. On the one hand, the unification law of marriage is enforced, but on the other hand, it must respect, maintain and even develop customary marriage laws that are obeyed and implemented by the community.

Anil [9] in an article entitled "Alor Women in the *Belis* Cultural Center: An Ethnographic Approach through Cultural Revitalization" reveals that there is a dilemma that limits their empowerment efforts when discussing women in Alor, East Nusa Tenggara in the *Belis* context. Cultural revitalization is closely related to the issue of child protection and women's empowerment. Therefore, it is necessary to reconstruct the existing and ongoing social constructs. However, it has an impact on systematic impoverishment, where women's rights and basic rights of children are not fulfilled. The existence of collective awareness with 3T (three stoves), namely traditional leaders, religious leaders and government. Collective awareness is the result of a long journey and combinatorial collaboration between insiders who are willing to change, the

middle person as companion and facilitator of change and the government as the key stakeholder providing support for power, funds and prayers.

Vivi [10] in her research entitled "Strengthening the Legal Position of Indigenous Peoples in Fulfilling Constitutional Rights" writes that the existence and rights of indigenous peoples have been accepted in the framework of both unwritten legal and positive law in Indonesia. However, in reality, a growing issue regarding the presence and rights of indigenous peoples is the limited space and movement for indigenous communities in realizing the democratization of territorial management.

Riyanta and Kurniati [11] in their article "Collaborative Governance Strategy between Government and Non-Government Actors in Poverty Alleviation" explain that community empowerment as a long-term solution is expected to be carried out in a sustainable manner. To ensure its sustainability, a collaborative governance of stakeholders is needed. A collaborative governance approach in community empowerment is very important as an instrument that brings together government and non-government actors, including the community, such as in poverty alleviation. The strategic steps that can be taken are (1) encouraging the involvement of all stakeholders including non-state actors; and (2) strengthening cooperation between central and regional governments. In addition, the active role of the community must also be encouraged in establishing a social resilience system in the community.

Siti Malaiha Dewi et al. [12] in their research entitled "Prevention of Early Marriage and Sirri Through Gender-Based Collaborative Governance in Pati District" straightforwardly reviewed that collaborative governance has six key words that can be concluded from several definitions. Those are namely: 1) Forums are initiated and implemented by public institutions and actors in public institutions; 2) Participants in the forum are also non-public actors; 3) Participants are directly involved in making and decision making; 4) Formally organized forums and meetings held together; 5) Consensus oriented forum; and 6) Collaboration focusing on public policy and public management.

III. METHODOLOGY

Arikunto [13] states that "the research method is the method used by researchers to collect research data. Research on "Collaborative Governance in Customary Institutions" will be carried out using a qualitative research type with a research approach using a mixed method, namely SWOT analysis and phenomenological studies. Qualitative research is a method for finding and understanding meaning that comes from social or humanitarian problems. Qualitative research is included in research with the aim of understanding the phenomena that occur and are experienced by research subjects in the condition of the object naturally [14].

The use of SWOT analysis approach and phenomological study as a mixed method aim to obtain more comprehensive

facts in researching research problems. It could happen because researchers have the freedom to use the two data collection tools according to the type of data required. Mixed method research encourages researchers to collaborate with social, behavioral, and humanistic collaboration. In other words, there would not be much done if the research only uses one type of approach.

Qualitative research is a naturalistic research method (natural setting). It means that the object of research naturally develops as it is, the dynamics of the object are not manipulated by the researcher at all. Therefore, phenomenological approach is seen as an element of science that is able to explain social phenomena and natural phenomena that are the center of its attention, as a series of assumptions, concepts, constructs, definitions and propositions to explain social phenomena systematically by formulating relationships between concepts [15]. The main purpose of using phenomenological studies is to study how phenomena are experienced in consciousness, thought and in action, such as how these phenomena are aesthetically valued or accepted. First, try to find an understanding of how humans construct important meanings and concepts, within the framework of intersubjectivity. Second, to obtain an explanation of reality that appears as a reflection of a reality that does not stand alone because it has meaning that requires further interpretation. Third, to break through phenomena to be able to know the meaning (essence) of the deepest phenomena that occur in everyday life.

According to Creswell [16], the phenomenological approach delays all judgments (epoches) about natural attitudes until a certain basis is found. Epoche concept differentiates the data area (subject) according to the researcher's interpretation. Therefore, the epoche concept becomes the center where the researcher could compile and classify initial assumptions about phenomena in order to understand what the respondent says.

Polkinghorne in Creswell [16] argues that phenomenology describes the meaning of a life experience for some people about a concept or phenomenon. People who are involved in dealing with a phenomenon explore the structure of awareness of human life experience. Whereas Husserl in Creswell [16] also reveals that a phenomenological researcher tries to find things that are essential, invariant structures (essence) or the basic meaning of experience and emphasizes the intensity of consciousness where experience consists of things that appear from outside and things that are in their respective consciousness based on memory, image and meaning.

IV. RESULTS AND DISCUSSION

East Nusa Tenggara Province is one of the provinces in Indonesia which has 22 regencies / cities. On the island of Timor, traditionally the Dawan ethnicity who live in North Central Timor Regency, known as "Salu Miomafo Kuluan Maubes", includes three previously major kingdoms, namely Biboki in Boki Taek region, Insana in Sana Taek region, and Miomaffo in Mafo Taek region (See Figure 1).

Fig. 1.   Administrative map of North Central Timor Regency.

The Dawan ethnicity is a very religious indigenous group. Long before the arrival of modern religions (namely Protestant Christianity and Catholic Christianity) to the island of Timor, the Dawan people had known their god as Uis Neno Uis Naijan, meaning the One who rules the universe, the owner of heaven and earth (See Figure 2).
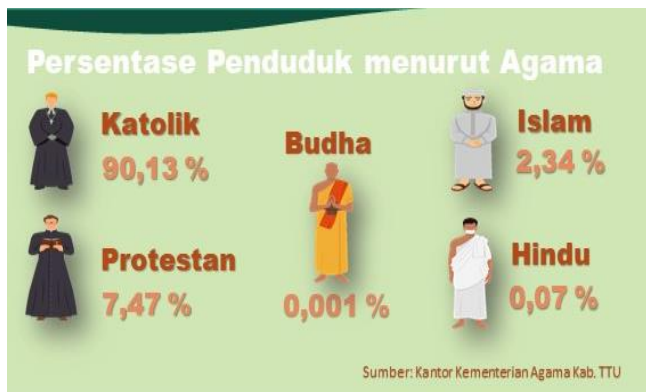

Fig. 2.   Percentage of religious adherents in the regency of North Central Timor.

The form of religiosity of the Dawan people is manifested in the philosophy of the three branches of wood/*Hau Teas* (a carved whole wooden trunk). *Hau Teas* is also called *Hau Monef /Hau Le'u* meaning sacred wood / pillar (*pemali*/taboo). The carved wood is usually placed in front of *Uem Le'u* or *Uem fam* (traditional house), *Oe Le'u / Oe mata* '(*pemali* spring water), and *Fatu/faut Le'u* (*pemali* /taboo/sacred stone) (See Figure 3).

Fig. 3.   A *Hauteas* in front of Fetor Ukat's traditional house in Tuamese.
Source: Personal Documentation taken in July, 2020.

The meanings of *Hau Teas* (the wooden branch which brings enligtenment) symbol are:

- The first branch is usually the highest/longest and the symbol of *Uis Neno Uis Naijan* (The Highest, the Powerful, the Unreachable, the Transcendent), namely God; whose existence is represented by a Religious Institution.

- The second branch is called *Smanaf-smanaf* (souls/departed ancestors) and a symbol of ancestral spirits, extended families and all those who have passed away. Their existence is represented by the implementation of the Customary Institution.

- The third branch is called *Aina-Ama ana'a Plenat*: (Powers of the World) namely King/ State-Government. Their existence is represented through the Customary Institution.

The government is seen as a charismatic figure capable of bringing about a comfortable and peaceful life.

The three philosophies contained in *Hau Teas* actually should be able to be carried out in a balanced manner through God (religion), custom and the State. The three of them were then adopted as the main capital for the implementation of a collaborative governance between institutions, in determining the legal status for traditional marriages among the Dawan people.

Government agencies, traditional institutions, and religious institutions, should synergize to build an awareness that *atoin meto* (people from the Dawan ethnicity) should be educated, have a position, and have an influence. Therefore in turn, when carrying out marriage, they would prioritize the legalization of marriage in accordance with the Law no. 1 of 1974 and not only dominated by custom.

The concept of collaborative governance is considered to be the best solution in the effort to encourage the legalization of customary marriage laws, and to overcome the various side effects arising from the absence of protection of legal status in a marriage bond. Collaborative Governance is a process which involves various stakeholders involved in carrying out the interests of each agency in achieving common goals [17].

Emerson, Nabatchi, and Balogh [18] suggest 3 (three) components in collaborative governance, namely the general system context; collaborative governance regime (CGR); and (collaboration dynamics and actions. Those are depicted with a dotted line; the full line in the outer box describes the surrounding system context, such as political, social, cultural, legal influencing collaborative governance arrangements (See Figure 4).
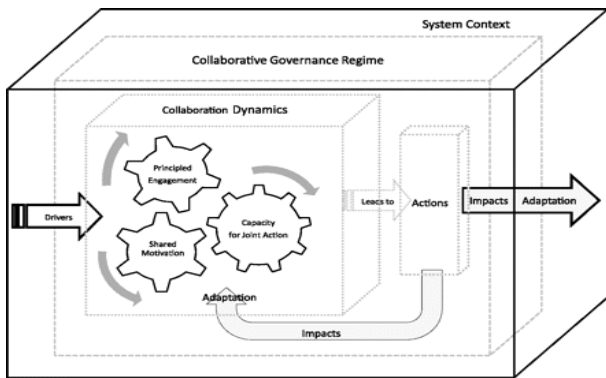

Fig. 4. The integrative framework for collaborative governance.
Source: An Integrative Framework for Collaborative Governance [18].

Still according to Stephan Balogh, he describes collaborative governance in the box of The Integrative Framework for Collaborative Governance with 3 (three) dimensions as follows:

The first component is the outermost box that describes the system context / scope with opportunities and limitations that affect work dynamics from the start. In this dimension, there are 7 (seven) elements, namely:

- Resource Condition (Resources owned);

- Legal Policy (Policy and legal framework);

- Level of Conflict (Conflict between interests and levels of trust);

- Socio-economic; health; culture; and variety (Portrait of Conditions);

- Prior Failure to Address Issues (Failures encountered at the beginning);

- Political Dynamics / Power Relations (Political dynamics), and;

- Network Connectedness (related networks).

The second component is a dynamic and collaborative action that presents elements in the form of several drivers, including leadership, consequential incentives, interdependence, and uncertainty in starting and setting goals for the collaborative governance regime (CGR). The four elements can be explained as follows:

- Leadership, is a leader figure who is able to initiate initiatives and prepare resources;

- Consequential Incentives are focused on internal (issues of resources, interests or opportunities), or external (crisis, threat, opportunity, both situational/institutional);

- Interdependence is a condition where individuals and organizations cannot achieve something with only the efforts of one of the parties;

- Uncertainly; in this element, uncertainty is the main challenge in managing various public problems.

The third component is the dynamic of collaboration and it has 3 (three) elements, namely: Principled Engagement, Shared Motivation, and Capacity for Joint Action [3].

In collaboration of interactions, egalitarianism would appear: all actors would have the same position. Those are the collaboration among Government Agencies, Religious Institutions and Customary Institutions in order to determine legal status in traditional marriages. To achieve that, the main thing to be done is to create public values and to educate, awake, and empower the community by providing stimulants or solutions to the problems in society caused by post and pre-marriage arrangements (See Figure 5).
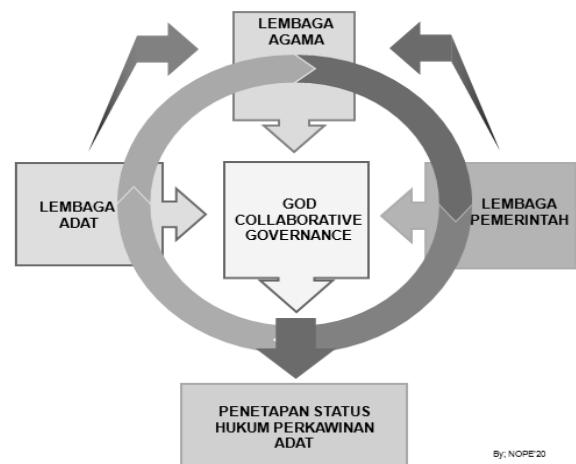

Fig. 5. Collaborative governance framework in determining legal status for traditional marriages of the Dawan Ethnicity.
Source: Processed data.

V. CONCLUSION AND FUTURE SCOPE

Marriage is one of the important events in the history of human civilization, the first and foremost environment for

every birth of future generations. In Article 28B paragraph 1 of the 1945 Constitution states: "Everyone has the right to form a family and continue their offspring through a legal marriage.

The validity of a marriage according to the Marriage Law Number 1 of 1974 which is stated in Article 2 (paragraph 1): Marriage is legal, if it is carried out according to the law of each of their respective religions and beliefs; (paragraph 2); Every marriage is recorded according to the prevailing laws and regulations.

Two-way communication is important in a collaborative process for the creation of a mutual trust and understanding by all collaborative governance actors. Another important thing that must be considered is the existence of institutional design, leadership and democracy to encourage participation and transparency in the process of creating collaboration that is able to build public confidence as well as in being able to obtain legal status in the Dawan traditional marriage.

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