

Application of Customary Law in Improving Economic Welfare of Adat Village Community: a Case Study of Tourism Economic Potential of Adat Village in West Java

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Abstract—*Adat Village is one of the tourism economic potential that has huge potential to be developed. West Java has a community of indigenous peoples who are gathered in the "adat village" where a daily life order that is still based on cultural values as ancestral heritage. The ancestral cultural values are still applied to the social life of citizens in adat village. The unique life of the inhabitants caused these traditional villages to be popular as tourist destinations and was a delight in learning the art of living. This article aims to define how the review of customary law systems is particularly relevant to the economic field for the improvement of the economic and social welfare of indigenous peoples, particularly in West Java, including contributions as tourist destinations. The method used to analysis is normative juridical with analytical descriptive. Normative research emphasizes research on library data, or secondary data through legal principles, customary rules, the law of tourism and intellectual property right (IPR). The Result of Research show that The adat village community in West Java still implements local wisdom as the cultural heritage of its ancestors. Forms of local wisdom that appear in the form of prohibitions or cling to the phrase "pamali", preserving nature with the existence of sacred forest / banned. The problem faced is that the culture of traditional society does not recognize copyright. The cultural values of the local community do not recognize individual ownership of a work in the field of science, literature and art. Government cooperation has an important role in the maintenance of recognize copyright of cultural values of the adat village communities, such as literature, local languages, script, arts, archeology, history, and traditional values that supports the income and economic welfare of local communities.*

Keywords— *Adat Village; Tourism Economic;*

I. INTRODUCTION

The existence of indigenous villages, especially in West Java region is its own wealth for Indonesia. West Java has a community of indigenous peoples who are gathered in the "Adat Village" area with a daily life order that is still based on cultural values as ancestral heritage. Utilization of ancestral cultural values is still applied to the social life of citizens within Adat Village in West Java. This can be seen in Kampung Pulo in Garut, Kampung Kuta in Ciamis, Kampung

Naga in Tasikmalaya, Ciptagelar Village in Sukabumi, Kampung Urug in Bogor and Cireundeu Village in Cimahi.

The existence of Adat Community (indigenous peoples) in Indonesia has been factually existed since the time of the ancestors to this day. Indigenous peoples are a territorial or geneological entity that has its own wealth, possesses citizens who can be distinguished from other legal people and can act in and out as an independent legal entity (legal subject) and govern themselves. (Alting, 2010)

The attention of Indonesian law to the existence of customary law can be known from the rules contained in the legislation. As the basic law of the 1945 Constitution expressly recognizes and respects special regional government units and the unity of indigenous people along with their traditional rights, as long as they are alive and in accordance with the development of society and the principles of the State Unity of the Republic of Indonesia. (Toha, 2011)

West Java land or known as Tanah Priangan has made the prestige of tourist attractions not only West Java but also outside Java and even abroad. The way of life of its unique inhabitants makes the Adat Village as tourism destination and is a fun way to learn about the way life is more than just looking for fun.

The article aims to define how the review of customary law systems to improve of the economic and social welfare of indigenous peoples in West Java? including adat village contributions as tourist destinations and how the protection against geographical indications of cultural arts traditional into intellectual property rights.

The method used to analysis is normative juridical with analytical descriptive. Normative research emphasizes research on bibliographic data, or secondary data through customary law principles especially in the economic field, tourism related laws of the adat village as tourist destinations, as well as provisions related to Intellectual Property Rights (IPR) protection. This research uses descriptive-analytical approach method. Methods used in research of law that combine the descriptive and analytical process so that through

this method solving a problem studied is expected to be able to critically find the expected solution. (Surakhmad, 2003)

II. RESULT AND DISCUSSIONS

A. Terminology and Definition of Customary Law

The definition of "Adat" or "Urf" is something that has become a human habit in terms of relationships among human beings (*'muamalah'*). Thus, the field of aqidah and worship does not include the subject of adat or 'urf, although there are words and deeds of these two areas that people do repeatedly. (Dasuki, 1997) Supomo (Wignyodipoero, 1995) gives the indigenous definition - as an unwritten law in unstatutory laws including life rules which, although not stipulated by the authorities, are complied and supported by the people based on the belief that they have the force of law. B. Terhaar and C. Van Vollenhoven give the definition of Customary Law is a law that is not derived from the rules made by the Dutch East Indies government or other power tools that became joint and held by the old Dutch power alone.

B. Protection and Recognition of Indigenous Peoples Law

Based on Article 18 b of paragraph (2) the second amendment of the 1945 Constitution of the State of the Republic of Indonesia states: "The State recognizes and respects the unity of indigenous and tribal peoples as long as it is alive and in accordance with the development of society and principles Unitary State of the Republic of Indonesia, as governed by law ". Similarly, in Article 28 i Paragraph (3) the second amendment of the 1945 Constitution of the Republic of Indonesia, states "The cultural identity and rights of traditional societies are respected in harmony with the development of the times and civilizations".

The second instrument is the Convention on Biological Diversity (1992) which has been ratified by the Government of Indonesia as Law No. 5 of 1994, particularly Article 8 (j) which emphasizes the protection of indigenous knowledge in the preservation resources and biodiversity and intellectual property rights of indigenous peoples. There are many more international instruments (although not specifically for indigenous peoples) that can provide "living spaces" for indigenous peoples, such as the United Nations (UN) International Economic and Social Rights Treaty (1966), the UN Convention on the Rights of the Child Elimination of All Forms of Racial Discrimination (1966), and so on. (Saleh, 2013)

The principle of equity is one of the foundations used in implementing national development as stipulated in Article 33 of the 1945 Constitution. With the principle of equity is expected all the people of Indonesia can benefit from development without exception, including indigenous community. The instruments of human rights law also recognize the existence and rights of indigenous peoples, as stipulated in the Law on Human Rights. 39 of 1999 on Human Rights, in particular in article 6, paragraph 1 and 2, which states that In the context of human rights enforcement, the differences and needs of indigenous and tribal peoples shall be

observed and protected by law, society and government and paragraph 2 which states' indigenous and tribal peoples' cultures, including the right to ulayat lands are protected, in harmony with the development of the times.

C. Application of Customary Law to improve the Economic Welfare of Indigenous People.

The rights of indigenous peoples to customary law areas include the determination of territories, the existence of legal guarantees on land use and space that protect the right of ownership both communally and individually, the existence of legal and political guarantees to protect the sources of life indigenous peoples in the form of water, soil, forest, watersheds and disaster-prone areas into their customary law territories. In addition, there are legal and political guarantees for policies to ban forest encroachment, investments, fishing in watersheds and disaster-prone locations, regulation and prohibition of commercialization of land in customary law areas, prevention of the use of chemicals such as pesticides, forest exploitation excessive and environmental pollution.

Implementation of the concept of recognition and existence of society, among others, admitted to be done in the form of a community (*rechtsgemeenschap*); there is an institution in the form of its traditional ruling device; there is a clear customary law; there are institutions and legal instruments, especially customary justice, which are still adhered to; and from the existence of economic rights among them still holds the harvest of forest products in the surrounding forest areas for the fulfillment of the necessities of daily living. (Firdaus, 2007)

Often indigenous people are thoughts to have their own culture as if they are excluded from the practises and pleasures that mass culture offers. The right to cultural identity of indigenous peoples in the form of strengthening the institutional structure and leadership of indigenous peoples, legal guarantees on customary law instruments along with the institutions and norms applicable therein, the opportunity to express the customs and cultural arts, intellectual property rights and local wisdom for indigenous communities.

In customary law it is a fact that the land is the home of the family and the community, livelihood, and is the place where members of the community die and are buried. In accordance with the belief, the land is the abode of the patron gods and the place where the spirits of the ancestors reside. Even between the legal community as a union with the land it occupies, there is a very close connection, a relationship that originates in a religious-magical belief. This relationship has given rise to the right to control the land, to collect the produce and hunt the animals that are on the land of adat territories. The right of the legal community over the land is called Hak Ulayat,

According to Van Vollenhoven called *Beschikkingsrecht* (Muhammad, 2004). Object ulayat rights can be classified into: Land, Water (for example; lakes, beaches); Wild vegetation (fruit trees, trees for carpentry or firewood, etc.), and Wild animals that live freely in the forest.

Hak ulayat apart, individual rights to use or possess adat lands are also commonly subject to obligations to provide voluntary labor to the community. Land as one object of ulayat right, there is an individual right to land which is limited by customary rights. As a communal citizen, each individual has the right to collecting forest products, such as rattan, timber, and so on, Hunting wild animals that live in the territory of communion, takes results from wild-growing trees, cultivate the land constantly, try to take care of next a fish pond (Muhammad, 2004).

In the latest development of economic potency of adat village can also be done through adat village tour. The two main concepts in the components of the tourist village are accommodation and attractions. The accommodation means part of the residence of the locals and / or units that evolved over the concept of residence. While attractions include all the daily life of the local population along with the physical setting of the village location that allows the integration of tourists as active participation such as: dance courses, language and others specific. For the development of tourism potency of adat village of west java, the above two concepts need to be implemented in more mature and concrete planning, especially for the concept of attraction because the concept allows the integration of tourists to interact actively, including the development of art culture. the concept of this attraction also according to Edward Inskeep gives the definition: Village Tourism, where small groups of tourist stay in or near traditional, learn about adat village life and the local environment that rural tourism where a small group of tourists live in or close to the traditional atmosphere.

Based on the Law number 10 year 2009 on Tourism, Tourism is a wide range of tourism activities and supported by various facilities and services provided by the community, entrepreneurs, government, and local government. Attraction of Tourism is everything that has the uniqueness, beauty, and value of diversity of natural wealth, culture, and man-made results that are the target or destination of tourist visits. Based on Article 4 of the Tourism Law aims to increase economic growth, improve the welfare of the people, eradicate poverty, resolve unemployment, conserve nature, environment, and resources; fostering culture, lift the image of the nation, foster the love of the homeland, strengthen the identity and unity of the nation and cultivate friendship among nations.

To preserve the culture of West Java, local government set 12 cultural villages, the typical village that is set up for the interests of preserving the culture in the form of custom or traditional house. The cultural village are Cikondang Village, Mahmud Village, Kuta Village, Gede Kasepuhan Ciptagelar Village, Sirnaresmi village, Cisolok Dukuh Village, Pulo Village, Cangkuang, Leles District, Adat Ciburuy Village, Palamayan, Naga Village, Urug Village, Kiarapandak, Citalang Village Lengkong Village, and Panjalin Village.

As one example of indigenous villages in West Java is the Kampung Naga community is still very firmly holding strong customs inherited by their ancestors, their lives are very modest, and accentuate the strong local wisdom. They reject external intervention if it interferes with and undermines the

sustainability of the village. Another example is applied related to local wisdom held by Kampung Kuta community managed to maintain the balance of nature and the maintenance of social order. One that stands out is in terms of preservation of forests, springs and palm trees for the source of their lives. Indigenous peoples have a sacred forest or called Leuweung Gede which is often visited by people who want to get the salvation and happiness of life. However, it is strongly challenged to ask for something that shows greed like wealth. To enter the territory of the sacred forest imposed a number of restrictions. These include: not to harness and destroy forest resources, no wear office clothes, gold jewelry, black clothes, carry bags, footwear, and do noisy. Not even wearing footwear. All such restrictions aim to keep the forests uncontaminated and sustainable.

In the perspective of Intellectual Property Right (IPR) art is one of creation creations together with other creations that take place in the long period of time passed down through generations in certain regions and communities, as a result of the culture of the people concerned called "traditional knowledge". Types of West Java art creations such as wayang golek have not received IPR protection under Law of Intellectual property Right. Expression of Traditional Culture and Copyrights to Works of Unknown Creator Arranged in Article 38 of Law Number 28 Year 2014 on Intellectual Property Right as follows:

- 1) *The copyright on traditional cultural expressions is held by the State*
- 2) *The State shall inventory, preserve and maintain traditional cultural expressions as referred to in paragraph (1)*
- 3) *The use of traditional cultural expression as referred to in paragraph (1) shall take into account the living values of the carrier society.*
- 4) *Further provisions concerning the Copyright held by the State over traditional cultural expressions as referred to in paragraph (1) shall be governed by Government regulations.*

The problem is that traditional culture does not recognize copyrights. Cultural values of local communities do not recognize individual ownership of a work in the field of science, literature and the arts. This situation is evident in the appreciation of creativity and art in traditional societies.[1]

The number of tourist visits to tourist objects in West Java is one of the source of local revenue because every tourism object managed by the Local Government will collect payment for the service of tourism place. However, it is unfortunate that the development potential of traditional village tourism in West Java has not been optimally developed so that it needs correction of all related stock holder especially the support from local government and the synergy of all to

promote indigenous village as a potential tourist destination for local revenue West Java.

III. CONCLUSION

The existence of Indigenous Peoples is recognized in Indonesian Legislation, including the protection of Indigenous and Tribal People's economic and social rights. The economic potential of indigenous tourism in West Java has its own uniqueness that can be a great potential for improving the economic welfare of local communities. However, for the development of the economic tourism of adat village, there needs to be more coordinated and directed, such as the need for cooperatives established in the local adat villages that can be distributors of local tourism economic results. The need for management of the economic potential development of indigenous peoples, among others, through the establishment of cooperatives and register the original results of each indigenous peoples work as Intellectual Property Rights (IPR), so that the potential of custom tourism can also contribute greatly to the improvement of adat society

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