



RESEARCH ARTICLE

FOUR CONDITIONS FOR
RECOGNITION OF TRADITIONAL
SOCIETY IN THE CONSTITUTION
AND STATE REVENUE INCOME

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Submitted: June 10, 2021 **Revised:** September 11, 2021 **Accepted:** Oct 28, 2021

ABSTRACT

This article is an interpretation of Article 18B paragraph (2) of the Indonesian constitution: four requirements for recognition of traditional societies. Using sustainable tourism development as a case study, explores the important contribution of genealogical territorial participation and the limits of recognition of the role of the State in providing legal protection and traditional societies as the main coders

of legal pluralism. This exploration reveals four different conditions: conditions for survival, dynamic conditions, conditions in accordance with the principle of integration, and regulated by law. The fact that these conditions are so intricately interwoven poses unique challenges for academics and legal practitioners, but also provides a potential blueprint for constitutions and state revenues.

Keywords: Law and Finance; Legal Pluralism Theory; Genealogical Territory Territorial

TABLE OF CONTENTS

ABSTRACT	307
TABLE OF CONTENTS	309
INTRODUCTION	310
TRADITIONAL SOCIETY: CONDITIONS STILL ALIVE	318
DYNAMIC CONDITIONS: RECOGNITION OF TRADITIONAL SOCIETIES & CUSTOMARY LAW COMMUNITIES	323
CONDITIONS ACCORDING TO THE PRINCIPLE OF INTEGRATION	326
CONDITIONS ARE REGULATED BY LAW	327
CONCLUSION	328
REFERENCES	329



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HOW TO CITE:

Adnyani, N. K. S., Atmaja, G. M. W., & Sudantra, I. K. (2021). Four Conditions for Recognition of Traditional Society in the Constitution and State Revenue Income. *JILS (Journal of Indonesian Legal Studies)*, 6(2), 307-332.
<https://doi.org/10.15294/jils.v6i2.48044>

INTRODUCTION

RECOGNITION OF TRADITIONAL communities has become old existing natives in state life. Recognition of traditional society occurred since the 16th-17th century¹. Starting worldwide since international organizations, such as the ILO (1950), United Nations, World Bank, OMP (1982) and OD (1991), especially in third countries, such as in Latin America, Africa and Asia Pacific. In North America, there have been protests by native people asking for development justice. Provoking the ILO and the United Nations raises its generative issues in labor protection. In Indonesia, it was initiated by a number of the Indigenous Peoples Alliance of the Archipelago (AMAN)². Academics and practitioners of Law and Economics are busy with the Discourse on Settlement of Losses on State Income³. This article seeks to answer important questions about the role of the constitution in supporting the recognition of traditional communities and state income, encouraging investment in tourism, and stimulating local economic growth and preserving the environment. To answer this question, this article seeks to measure the "strength" of the law on the protection of taxpayers and tax collectors, then determine the level of classification of law enforcement activities according to the Indonesian national legal system with the size of the balancing fund and the structure of state income from the revenue-sharing fund between the central government and the government area. A striking finding is that there is better legal protection for

¹ Besse Sugiswati, *Perlindungan Hukum Terhadap Eksistensi Masyarakat Adat Di Indonesia*, 17 PERSPEKTIF 31-43 (32) (2012).

² Azmi AR Siradjudin, *Pengakuan Masyarakat Adat dalam Instrumen Hukum Nasional*, 1 YAYASAN MERAH PUTIH SULAWESI TENGGARA 1 (2010).

³ Arifki Nindi Achid, *Penyelesaian Kerugian pada Pendapatan Negara melalui Pengungkapan Ketidakbenaran (Suatu Kajian Hukum Doktrinal dalam Sistem Perpajakan)*, 1 J. SUARA HUK. 91-104 (2019).

investors between common law countries than civil law countries⁴. This methodology yields a finding: it offers better legal protection to taxpayers than the tax authorities' obligations as government implementers.

The science of law and income of this third country has become the target of criticism in various fields. The imposition of taxes on the income of multinational companies in the United States⁵. Perhaps most notably, it has been criticized for adopting a post-capitalist approach to the exchange of labor-generated commodities and the form of the nation-state resulting in a community-based Critique and Alternative of Employment around the automation of production and the provision of basic income for employment. Criticism of rights, that rights are indeterminate and regressive⁶. The right to control the state over natural resources as a source of livelihood for many people⁷. Amendments result in lowering the income tax base on state government corporations (SGUs)⁸. The author places the focus of this study in the domain of "legal pluralism paradigm" with the focal point of progressive legal studies. answer the legal problems faced, ignore the law in the context of fair, correct, beneficial, and protect the interests of the community. Legal science avoids the question of whether the constitutional protection of taxpayers as a recognition of a "strong" traditional society is desirable from a tax compliance perspective. For the most part, these criticisms are well-founded. The

⁴ Dan Awrey, *Three Projects in the New Law and Finance*, 11 GRUYTER, ACCOUNT. ECON. LAW 9-25 (10) (2021).

⁵ Chantal Thomas, *Customary International Law and State Taxation of Corporate Income: The Case for the Separate Accounting Method*, 1 BERKELEY J. INT'L L 99 (1996).

⁶ Paul. D Butler, *Poor people lose: Gideon and the critique of right*, 122 YALE LJ 2176 (2012).

⁷ SATJIPTO RAHARDJO, ILMU HUKUM CETAKAN VII (2014).

⁸ K Gopakumar, *Computation of Taxable Income of State Government Undertakings In India: A Critique in View of The Amendments in Income Tax Law*, J. INDIAN LAW INST. 244-269 (244) (2015).

perception of taxpayers assumes that tax collection in the management of tourist areas is quite burdensome. So far, the reciprocity of tax realization on the arrangement of supporting infrastructure in tourism areas is very minimal. Likewise, the tax authorities in collecting taxes sometimes intervene by closing business operating licenses because taxpayers do not fulfill their obligations. Supposedly as a form of State recognition of traditional community tax subjects, the State through the Fiscal can provide tax relief, extension of payment period, whitening and warning before the execution of license revocation. However, the question of the relationship between law and state income remains very important even more so the 2008 crisis, caused by the collapse of international financial institutions in the west⁹. What we need is a new and better approach to frame and answer questions around the recognition of traditional societies as taxpayers, theoretical and methodological taxpayer compliance and tax authorities designed to avoid tax evasion that cloaks third countries from the perspective of law and state income.

Fortunately, the recognition of traditional society in the constitution that explores the relationship between law and state income continues to grow and develop. Currently, scholars are asking more in-depth questions about this relationship, using broader tools to explain these questions, and applying these tools to examine broader areas of taxpayer compliance, such as: Taxpayer Honesty, Compliance and Awareness, Tax Mindness, Tax Discipline. Predictably, however, the characteristics of the company represented by the size of the company (size), debt to equity ratio, profitability (ROI) together have an influence on the level of taxpayer

⁹ Dea. K Raz, Arisyi. F., Indra, Tamarind. P. K., & Artikasih, *Krisis keuangan global dan pertumbuhan ekonomi: Analisa dari perekonomian Asia Timur*, 15 BUL. EKON. MONET. DAN PERBANK. 37-56 (37) (2012).

compliance¹⁰. has contributed to the level of fragmentation in the legal community and state income: in each region in Indonesia, traditional communities with traditional village institutions, which are treated as sectors, tend to create fragmentation of interests¹¹. Investment at the customary village level will foster economic activity and the competitiveness of traditional villages. District government capacity in supporting villages is low (average Local Original Income). This fragmentation is not necessarily a bad thing. Indeed, specialization and diversity are now arguably the two greatest powers of state law and income. In the same way, this fragmentation has placed great stress on the intellectual bonds that bind this ever-expanding scientific community. The fragmentation and atomization of science into strict disciplines has reduced the substance of the law¹². The scientific community wants to correct its mistakes by rejecting the fragmentary and atomistic portrait of nature and life. In particular, third country law and economics scholars, this often occurs in the neglect of the recognition of the rights of traditional communities because there is no ideal model for regulating the recognition of traditional communities by law as the fourth requirement for recognition of the Indonesian constitution.

One of the negative impacts of development is the neglect of the social and cultural order of indigenous peoples¹³. The political symptom of neglect is marked by changes in capitalist-oriented

¹⁰ Muhammad Rizal Hani, Syafrida., & Lubis, *Pengaruh Karakteristik Perusahaan terhadap Kepatuhan Wajib Pajak*, 10 J. RIS. AKUNT. DAN BISNIS 24 (2016).

¹¹ I. I BUDIMAN, SUDJATMIKO, & KOMISI, *PEMBERDAYAAN MASYARAKAT, PEMBANGUNAN DESA, DAN PEMBANGUNAN KAWASAN PERDESAAN BERDASARKAN UNDANG-UNDANG DESA*. (2014).

¹² SATJIPTO RAHARDJO, *HUKUM DALAM JAGAT KETERTIBAN (BACAAN MAHASISWA PROGRAM DOKTOR ILMU HUKUM UNIVERSITAS DIPONEGORO)* (2006).

¹³ Mulyadi Mohammad, *Pemberdayaan Masyarakat Adat Dalam Pembangunan Kehutanan*, 10 J. PENELIT. SOS. DAN EKON. KEHUTAN. 224-234 (224) (2013).

economic development policies that are a big challenge for the recognition of indigenous peoples in Indonesia¹⁴. Property is defined as the right to something of value that is recognized by a public authority and is justified by laws and regulations¹⁵. There is no legal recognition of the existence of indigenous communities and their territories. In a situation like this, the biggest catastrophe for traditional communities is when they face the government and capital owners who join together to run large-scale corporations to control their forests or lands, either through GRIT which is considered manipulative or by means of expropriation. This process has strengthened the formation of a new accumulation circuit through land grabbing which is considered legitimate land grabs¹⁶.

The urgency that plagues traditional societies is to fight back with counter-territorial efforts and resistance actions, and in the end force them to negotiate about identity, because identity boundaries are determined by land. In politics, indigenous voices are often ignored in higher social structures¹⁷. The relevance of the recognition of traditional communities to development is as taxpayers who participate in fulfilling payment obligations for the implementation of tourism activities in their genealogical territorial areas. Taxes as state

¹⁴ Soeryo Adiwibowo Iskandar Zulkarnain, Endriatmo Soetarto, Satyawan Sunito, *Stifling of Customary People Political Voice of Recognition in Political Economy Perspective (Case Study on Mapur Tribe Lom Bangka Belitung)*, 6 SODALITY J. SOSIOL. PEDESAAN 24 (2018).

¹⁵ C Sikor, T. and Lund, *Access and Property: A Question of Power and Authority*, 40 DEV. CHANGE 1-22 (22) (2009).

¹⁶ LA Ito, T. Rachman, NF. Savitri, *Power to Make Land Dispossession Acceptable: A Policy Discourse Analysis of the Merauke Integrated Food and Energy Estate (MIFEE), Papua, Indonesia*, 1 J. PEASANT STUD. 1-22 (2014).

¹⁷ Anak Agung Ayu Intan Parameswari I Wayan Widyartha Suryawan, Idin Fasisaka, *Gerakan Simbolik Kultural Masyarakat Adat Sengwer Merespon Marginalisasi Terkait Penerapan Program NRMP di Cherangany Hills, Kenya*. 1 J. HUB. INTER. 1-11 (2015).

income must still be deposited because they have become an obligation. The decline in tourism as a result of the Covid-19 pandemic has brought a shift from active taxpayers to passive taxpayers. Caused by the non-operation of the tourism business due to social restrictions. On the other hand, the tax authorities continue to carry out their obligations to record the number of taxpayers and intervene for orderly payments by sending warning letters and even imposing fines. Traditional communities feel burdened with obligations in the midst of a disaster emergency. The state also applies relief from the extension of the payment period for the middle and lower classes, but this is not enough to cover the high number of tax debts due to the layoffs of one-third of Indonesia's population. Tax waivers have harmed the state's income, because the government needs an injection of operational funds in the field of accelerating virus disaster management, pre-employment incentives and social security for laid-off and laid-off workers. The first attribute is priority, which serves to determine the target for timely tax imposition for all parties. The second and third attributes are tax relief and time concessions for taxpayers who have economic difficulties. Viewed from the perspective of the State's recognition of this traditional society, the hallmark of recognition is that it provides legal protection and welfare guarantees for all citizens, places the law as control over the flow of state income from the tax sector, the heart of economic democracy.

It is understood that the explicit recognition of traditional communities has been regulated in Article 18B paragraph (2) of the Indonesian constitution. But a number of studies and studies by Law and Economics scholars, government, and policy makers map out the four requirements for recognition. First, the acknowledgment of being still alive introduces a traditional society that is natural in describing the function of law in compiling life in the midst of a plurality of

customs, ethnicities, religions and cultures. In their community, indigenous peoples need to fulfill their daily needs, stimulate community economic regulation. However, important questions remain about why and how this legal instrument works in fulfilling the rights and obligations of traditional communities as taxpayers. Second, discussing state income, a broad but theoretically testable set of hypotheses about the relationship between the use of legal instruments to "*code*" the fulfillment of tax obligations and the level of non-compliance with tax payments. Scholars can and should test the strength and limits of this hypothesis. Finally, it gives us a new blueprint for how to conduct research at the intersection of law and state income. This blueprint is based on four different, but closely related, requirements for recognition: conditions for being alive, dynamic, in accordance with the principle of a unitary state, and regulating recognition by law.

This short article explores the promise and dangers of this blueprint for a new state constitution and income. This exploration is carried out through the lens of sustainable tourism development as a case study, exploring the important contribution of genealogical territorial participation and the limits of recognition of the role of the State in providing legal protection and traditional societies as the main coders of legal pluralism. However, at the same time, this case study also illustrates the potential for denying the application of this legal pluralism framework as a whole, in a context where laws and regulations are still developing, and in a situation where the relationship between law and state income is unequal due to the neglect of traditional community recognition rights.

This article uses a normative legal research typology¹⁸. A process to find the rule of law, legal principles and legal doctrines in order to

¹⁸ PETER MAHMUD MARZUKI, *PENELITIAN HUKUM* (2010).

answer the legal issues faced in order to achieve legal goals that reflect the values of justice¹⁹. Analyze the legal norms that have been set by the authorized official²⁰. The normative legal research method is needed in presenting a legal argumentation. The study of this article is based on the existence of an arrangement for the recognition of indigenous people in tourism development which is interpreted as a blurring of norms between Article 26 (2) of the Regional Regulation of the Province of Bali No. 2 of 2012 concerning Balinese Cultural tourism with Article 23 of the Bali Provincial Regulation No. 4 of 2019 concerning Desa Adat²¹. The approach used in normative legal research is the statute approach²². The legal materials used in the preparation of this article are primary legal materials in the form of laws and statutory regulations as the main legal materials, while secondary legal materials include legal reports, legal records, and other legal papers that only have persuasive power²³. Primary and secondary legal materials are collected using a card system based on subject matter to facilitate analysis and concepts related to certain legal issues are recorded on the cards. As a theoretical framework in this study, the theory of legal pluralism is used²⁴; rule of law theory²⁵ and the theory of justice²⁶. The technique of analyzing legal materials uses legal hermeneutic techniques using legal interpretation methods so that the rules meet the elements of logic and develop rational

¹⁹ BAMBANG SUNGGONO, *METODOLOGI PENELITIAN HUKUM* (2017).

²⁰ SALIM HS DAN ERLIES SEPTIANA NURBANI, *PENERAPAN TEORI HUKUM PADA PENELITIAN TESIS DAN DISERTASI* (2014).

²¹ SOERJONO SOEKANTO DAN SRI MAMUDJI, *PENELITIAN HUKUM NORMATIF* (2009).

²² ABDULKADIR MUHAMMAD, *HUKUM DAN PENELITIAN HUKUM* (2004).

²³ I Wayan Suandi, *Penggunaan Wewenang Paksaan Pemerintah dalam Penyelenggaraan Pemerintahan Di Propinsi Bali*, 2003.

²⁴ ED. SALLY FALK MOORE, *=LAW AS PROCESS: AN ANTHROPOLOGICAL APPROACH* (1978).

²⁵ BRIAN Z TAMANAHA, *ON THE RULE OF LAW: HISTORY, POLITICS, THEORY* (2004).

²⁶ JOHN. RAWLS, *A THEORY OF JUSTICE* (1971).

arguments by explaining the results of legal interpretation, legal construction and legal reasoning²⁷.

TRADITIONAL SOCIETY: CONDITIONS STILL ALIVE

THE CONDITION IS STILL ALIVE, that the traditional society until now still exists and its existence is found in the genealogical territorial sector. The phrase as long as it still exists in the recognition of the customary rights of customary law communities as regulated in Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia can lead to the potential for multiple interpretations and become fertile ground for conflicting norms in the practice of constitutional life of the Republic of Indonesia, especially in the context of the relationship between power, recognition, and respect. This situation causes the recognition and respect that is intended for indigenous peoples cannot be implemented²⁸. In connection with the substance of Article 18 B of the 1945 Constitution of the Republic of Indonesia, there is also one thing that needs to be understood through the phrase as long as it exists, namely the possibility of the emergence of new customary law communities in the future being closed. The language construction of conditional clauses in Article 18 B of the 1945 Constitution of the Republic of Indonesia also indicates the nature of norms that are difficult to apply. This is contrary to the rules of the Indonesian language which must be made clear (obvious), objective

²⁷ BERNAND ARIEF. SIDHARTA, REFLEKSI TENTANG STRUKTUR ILMU HUKUM, CETAKAN KEDUA (2008).

²⁸ Lalu Subardi, *Konstruksi Makna Yuridis Masyarakat Hukum Adat Dalam Pasal 18 B UUD NRI Tahun 1945 Untuk Identifikasi Adanya Masyarakat Hukum Adat*, 1 J. HUK. DAN PEMBANG. TAHUN KE 43 NO. 2 APRIL. 171 (2013).

(objective), does not contain multiple interpretations (non-multi-interpretation) and must be applicable and must not make certain groups difficult or unlucky²⁹.

Traditional society, in essence, is not oriented towards disability, backwardness. However, the orientation of traditional society lies in the belief and enthusiasm to maintain that belief as a tradition³⁰. The existence of conditionality on the juridical status and rights of traditional communities, causes the existence of traditional communities to depend on the political will of the government. This is due to the presence of a clause 'determined by law' within the boundaries of traditional society. This clause places the traditional community in a difficult position because it is required by four conditions of recognition. As a result, if there is a violation of the rights of traditional communities, there is no legal basis that can be used to develop and implement special advocacy efforts for this group. Right to Development, the right to development is part of the Right to Development, which according to the United Nations Declaration on the Right to Development, 1986 and the 1989 ILO Convention on Minority Groups and Traditional Peoples in Independent Countries³¹. The constitutional rights of traditional people should be prioritized over the rights of ordinary citizens. Because traditional people are citizens who have traditional special rights. Theoretically it is recognized that traditional communities as citizens of the Republic of Indonesia need to get protection, guarantees and legal certainty, but in reality, their fate and socio-

²⁹ Jawahir Thontowi, *Pengaturan Masyarakat Hukum Adat dan Implementasi Perlindungan Hak-hak Tradisionalnya*, 10 PANDECTA RES. LAW J. 25 (2015).

³⁰ Lalu Sabardi, *Konstruksi Makna Yuridis Masyarakat Hukum Adat dalam Pasal 18B UUDN RI Tahun 1945 untuk Identifikasi Adanya Masyarakat Hukum Adat*, 44 JURNAL HUKUM & PEMBANGUNAN. 170 (2014).

³¹ KOMISI NASIONAL HAK ASASI MANUSIA, MEWUJUDKAN HAK KONSTITUSIONAL MASYARAKAT HUKUM ADAT (2006).

economic status are marginalized. To strengthen the protection for them, a special "*affirmative action*" is needed. That is why constitutional rights are more focused on efforts to fight for the legality of basic rights for traditional communities in the 1945 Constitution, even though in its realization many are negated by the sectoral law³². With the fact that traditional communities are recognized because they still live in all areas that are part of the territory of Indonesia. As legal subjects, the public also has the right to obtain welfare guarantees from the State and also pay taxes as an obligation of legal subjects.

Land Management Rights (*Hak Pengelolaan Lahan*, HPL) are rights outside the LoGA that grow and develop in accordance with development demands. Rights that have existed since the colonial era need to be formulated in a statutory regulation, so that between HPL holders and third parties who use HPL are in the corridor of legal certainty, justice and expediency. Development that takes place in Indonesia still requires the existence of HPL, due to limited government funds, and in the context of empowering Government Agencies (central) and Regional Governments. HPL can be a test tool for the state's right to control. Has the weak economic group got a place in the existence of HPL in order to balance out the parties who always "*exploit the land*" namely the investors.

Recognition of indigenous peoples in government programs is often ignored, because it is considered to hinder government programs. Whereas customary law is a source of material law that can be used in and for national development. Hasn't the school of history given the view that customary law is a reflection of the indigenous cultural values of the indigenous population. Even in the philosophy of law the flow of "*socio-logical jurisprudence*" says that a good and

³² Jawahir Thontowi, *Perlindungan dan Pengakuan Masyarakat Adat dan Tantangannya dalam Hukum Indonesia*, 20 J. HUK. IUS QUIA IUSTUM 21-36 (24) (2013).

effective positive law is a positive law that is in accordance with living law³³.

The transition from HPL to *Hak Guna Bangunan* is the land parcel that causes the most problems for both HPL holders and third parties. Development sectors that take advantage of this opportunity include Perumnas; Industry; Tourism, etc. According to the Regulation of the Minister of Agrarian Affairs Number 9 of 1965, authorizing HPL holders to receive income and/or annual mandatory fees determined in accordance with the agreement, there are many cases that occur between HPL holders and third parties, there are often disputes related to this income. . For this reason, the presence of laws and regulations is so important to determine the minimum and maximum percentages for determining income. What are the standards that can be used as a benchmark for determining income money (for example, Sales Value of Tax Objects-NJOP). In addition, third parties are also required to pay Customs for the Acquisition of Land and Building Rights (BPHTB) as regulated in Law No. 21 of 1997. HPL makes a positive contribution to state finances through taxes.

The function of law in the development process is as a means of development. Law is a means that pave the way and channel the wishes and needs of the community in the desired direction³⁴. In the future perspective, the world will become a big village, while national boundaries will become very blurry. Meanwhile the global economy follows its own logic³⁵. For this reason, the role of the state in protecting its citizens is an important element, in addition to accommodating the changes that occur.

³³ SUNARYATI HARTONO, *BHINNEKA TUNGGAL IKA SEBAGAI ASAS HUKUM BAGI PEMBANGUNAN HUKUM NASIONAL* (2006).

³⁴ MOCHTAR KUSUMAATMADJA, *PEMBINAAN HUKUM DALAM RANGKA PEMBANGUNAN NASIONAL* (1986).

³⁵ KHUDZAIFAH DIMYATI, *TEORISASI HUKUM. STUDI PERKEMBANGAN PEMIKIRAN HUKUM DI INDONESIA 1945-1990* (2005).

The practice of using HPL in development in Indonesia can be categorized into 3 (three) major parts, namely the use of HPL for the lower middle economic class, the use of HPL for the lower middle economic class, and the use of public facilities. Land is an asset and development capital as well as non-economic. Both are a unit, where on it there are humans as residents and the content of natural resources in it. Indonesia is an archipelagic country consisting of 17,508 and is even dubbed the Maritime Continent. Its entire jurisdictional area is 7.8 million Km², including a land area of 2,027,087 Km²³⁶.

Based on the above conditions, geographically to advance the above islands, private sector participation is needed in an effort to accelerate development. One of the principles in reorganizing the bureaucracy is results-oriented government and prioritizes budgeting to finance results and not inputs. The existence of a government with an entrepreneurial spirit, which is more oriented to, not spending (spending). Legal development is legal reform. In the land law, HPL must be given a place as an administrative right in the context of accelerating Indonesia's development, especially in border areas, islands, and others. HPL has made many positive contributions to Indonesia's development. Example of tourism. As a state of material law (welfare state)³⁷, the government together with business entities and the community, drive the government through the principle of entrepreneurship.

³⁶ AGUM GUMELAR, KEBIJAKAN AGRARIA/PERTANAHAN DARI PERSPEKTIF PERTANAHAN KEAMANAN DALAM KONTEKS NEGARA KESATUAN REPUBLIK INDONESIA, DALAM BRAHMANA ADHIE DAN HASAN BASRI NATA MENGGALA (PENYUNTING), REFORMASI PERTANAHAN (2002).

³⁷ UZAIR FAUSAN DAN HERU PRASETYO JOHN RAWLS, A THEORY OF JUSTICE, CAMBRIDGE: HAVARD UNIVERSITY PRESS, TERJEMAHAN, TEORI Keadilan: DASAR-DASAR FILSAFAT POLITIK UNTUK MEWUJUDKAN KESEJAHTERAAN SOSIAL DALAM NEGARA (2010).

DYNAMIC CONDITIONS: RECOGNITION OF TRADITIONAL SOCIETIES & CUSTOMARY LAW COMMUNITIES

PHRASES IN ACCORDANCE with the principles of the times and the principles of the Unitary State of the Republic of Indonesia. According to Van Apeldorn, law is not enough to be interpreted as a rule that binds its citizens but must have aspects of justice and other principles that are useful for protecting citizens fairly and guaranteeing legal certainty for every citizen, without exception³⁸. In the study of the recognition of indigenous peoples with a legal pluralism approach, indigenous peoples are positioned according to their views³⁹, A semi-autonomous social area is a social group that is identified and engaged in regulatory activities (laws) in which individual behavioral processes and processes of interaction within and between semi-autonomous areas affect the effectiveness of the law at a particular location and time. The existence of these two requirements in the recognition of the customary rights of customary law communities shows that Indonesia adheres to weak pluralism in the categorization proposed by Griffith⁴⁰. Weak pluralism, according to Griffith, occurs when the existence of customary law communities

³⁸ E. Juanda, *Hukum Dan Kekuasaan*, 5 J. ILM. GALUH JUSTISI 177–191 (2017).

³⁹ JOHN GRIFFITHS, MEMAHAMI PLURALISME HUKUM, SEBUAH DESKRIPSI KONSEPTUAL”, DALAM PLURALISME HUKUM: SEBUAH PENDEKATAN INTERDISIPLIN, ED. PERKUMPULAN UNTUK PEMBAHARUAN HUKUM BERBASIS MASYARAKAT DAN EKOLOGIS (2005).

⁴⁰ SOETANDYO WIGNJOESOBROTO ET.AL., UNTUK APA PLURALISME HUKUM?; REGULASI, NEGOSIASI DAN PERLAWANAN DALAM KONFLIK AGRARIA DI INDONESIA (2011).

is dependent on the state⁴¹. The dynamic requirements are in accordance with the development of society where the law has an imperative power over taxpayers to fulfill their tax obligations to traditional communities whose livelihoods depend on the tourism industry. Tourism commodity is a leading asset that can develop by utilizing local labor. The transition from natural resource assets of tourist village objects to capital, the elaboration of this dynamic requirement is the process of transferring knowledge and technology that is contributed to the management of tourism areas. The perspective of academic scientific studies tries to develop a theoretical and conceptual framework that explains the logic, functions, limitations, and consequences of this dynamic recognition requirement for the existence of traditional societies. As a realization of the mandate of the Constitution Article 18B paragraph (2) of the Indonesian Constitution, the Constitution introduces us to the concept of genealogical territory for the purpose of explaining how law is an absolute requirement and the dynamic nature of law is sometimes bumped into by the complexity of the legal needs of society which require adjustments and can even lead to discrepancies.

In many ways, the dynamics of the recognition of traditional societies that are genealogical in nature illustrates the strength of the indigenous people found in each region in Indonesia according to this concept to be fought for. However, for reasons of respect for legal pluralism, the dynamic requirement for local community recognition is based on Article 18B paragraph (2) of the Indonesian constitution that the dynamics of law always respects pluralism to reach a more general audience, the dynamic requirements in the substance of

⁴¹ I Ketut Kasta Arya Wijaya AA Gede Oka Parwata, *Eksistensi Desa Pakraman Dalam Pengelolaan Kepariwisata Budaya Bali (Kajian Terhadap Peraturan Daerah Provinsi Bali No 2 Tahun 2012 , tentang Kepariwisata Budaya Bali)*, 12 KERTHA WICAKSANA: 69-75 (72–74) (2018).

Article 18B paragraph (2) of the Indonesian constitution. Article 18B paragraph (2) does not provide the reader with a detailed technical explanation of how the law has helped change what was once a financially remote area into one that is rich in natural resources and is produced as a source of State income from the tax sector related to the management of the tourism industry. This explanation may continue as long as it is in accordance with the legal reality of Indonesian society. Genealogical territories are entities that have autonomy in independent financial management according to potential. The government should also not partially see the relationship between customary law communities and their territory from an economic point of view. The government as the executor of the right to control the state must look at these linkages holistically in terms of economic, social, cultural and spiritual aspects. The government must be able to understand the intersubjective meaning, namely the meaning created in community interaction and the emic meaning, namely the local meaning. The state develops policies to revive the economy of traditional communities through the provision of tax incentives. The procedure for providing incentives has not yet been regulated, causing legal certainty and justice for traditional communities to be difficult to obtain. The denial of the economic rights of traditional communities in the use of land rights is not in line with the basic principles of tourism development based on Article 4 of Law No. 10 of 2009 concerning tourism.

So, the dynamic requirements become the foundation for taking legal initiatives in providing tax incentives. The state through the tax officer collects data on the number of taxpayers on the tax object. The intervention of tax collectors is reduced by incorporating tax incentive criteria into the legal substance so that it can serve as a formal legal basis for economic tax relief.

CONDITIONS ACCORDING TO THE PRINCIPLE OF INTEGRATION

THE THIRD CONDITION to be fulfilled in order to be recognized is if the traditional community unit does not interfere with the existence of the Unitary State of the Republic of Indonesia as a political and legal entity that does not threaten the sovereignty and integrity of the Unitary State of the Republic of Indonesia and the substance of its customary law norms is in accordance with and does not conflict with the provisions of laws and regulations.

The question is what the limits of national interest in this law are. In practice when acting in the name of national interest, it is always the traditional society who has to give in. The concept of involving indigenous peoples in determining policies is still very rarely applied. Especially with this provision, if a corrupt government comes to power, it is certain that the rights of traditional communities and their traditional rights will be violated. It is necessary to specify in detail what national interests must be protected.

If an area is burdened with customary rights, it makes it a privilege for traditional communities to use it. This is something that is not easily accepted by districts or cities, because these areas should be used as areas to increase regional income. The tax policy does not take into account the unique characteristics of traditional society, it is suspected that it only attaches importance to certain groups and is full of the spirit of materialism. Considerations for the government regarding policies that need to be formulated as an appropriate taxation scheme for traditional communities⁴².

⁴² Yuyung Rizka Aneswari, *Membongkar Imperialisme dalam Kebijakan Pajak Usaha Mikro Kecil dan Menengah (UMKM)*, 14 INFESTASI 1-10 (1-2) (2018).

Large resources and capital mean for the development and improvement of tourism, capital is one of the potentials that must be utilized optimally through the implementation of tourism which in general aims to increase national income in order to improve people's welfare. Economic benefits and the entry of foreign exchange for the region and the state, increase and income of the community and government. Tourism also encourages the protection process of a physical and socio-cultural circle of the local community, because it is an asset that can be sold to tourists and if it wants to continue it must be maintained. Therefore, to optimize the benefits and reduce the various problems caused by tourism development, good planning and good management are needed. National tourism development refers to the ideal foundation (religious values and Pancasila), the constitutional basis of the 1945 Constitution of the Republic of Indonesia which is operationally carried out by the main actors of tourism development. The tourism sector can be categorized as a source of income in several sectors that can directly provide income to state revenues sourced from taxes. The amount of income in a country or in an area can affect the population. If the population increases, the income that can be withdrawn will also increase in line with the Tourism Law, that tourism is shown to increase national income in order to improve the welfare and prosperity of the people.

CONDITIONS ARE REGULATED BY LAW

THE ENTRANCE FEE for tourist areas has been regulated in the law consisting of villages and traditional villages. The largest income contribution from tourism comes from the imposition of taxes. The tourism industry has an important role in development efforts to increase people's economic income in the long term. The Agrarian

Law and the Tourism Law are to be aligned in the context of central and regional relations in managing regional potential in the tourism sector with the authority possessed by traditional communities over the management of the land.

The important role of law in tourism development, such as providing job protection for local communities; increase in income based on laws, court decisions, and customary law materials as sources of state income from tourism industry taxes. the principle of administering local government as regulated by law as a requirement for traditional communities to receive recognition. Increasing state income from tax proceeds shows a harmonious relationship between the community, local government and lawmakers. The legal umbrella for the constitution is Article 18B Paragraph 2 with four requirements for recognition of traditional communities in development and accountability to citizens. The administration of government and development needs the initiative of the traditional community, the Act bridges the management of the interests of the local community based on their origins and customs. The strong influence of *Adat* on the local government system is regulated by law.

CONCLUSION

WITH THE UNIVERSAL recognition of traditional societies, it is natural to ask what impact the Capital Code has on science at the intersection of the constitution and state income. Only time will tell. However, one thing that is certain is that Article 18B paragraph 2 of the Constitution of the Republic of Indonesia has laid the basis for further research exploring various forms of regulatory recognition of Laws, Government Regulations, Ministerial Regulations and Regional Regulations which together form the national economic

system by adopting a balance of superstructure loads. and bottom up. Becoming more critical in examining the relationship between law, finance, and inequality is a further task for law and economics scholars in the field of research and economic policy making.

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