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Progressive Law Model Based on Dayak Tobag Local Wisdom in Conflict Resolution

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Abstract:

This study aims to describe a progressive law model based on local wisdom of the Dayak Tobag in conflict resolution. This research used a qualitative approach with the case study method, was conducted in the village of Subah, Tayan Hilir Subdistrict of Sanggau Regency. The research informants were comprised of the village head and members of the customary law managing board. The data were collected through in-depth interviews using interview guidelines. The data were analyzed using data reduction, data display and conclusion/verification. The findings of this study are: (1) the progressive law model based on local wisdom of the Dayak Tobag in conflict resolution consists of the Colap and Angat models, (2) the Colap model is a way of resolving conflicts through deliberation-consensus while the Angat model is the settlement of conflict using customary law, (3) The Dayak Tobag community prioritizes conflict resolution through the Colap model, if it does not work, then they continue with the Angat model. If the Angat model also does not work, then the settlement will proceed through the positive law, (4) Conflict resolution through the Colap and Angat models is deemed as capable of upholding substantive justice in society, (5) The process of conflict resolution using the Colap and Angat models is carried out in stages in accordance with the authority of each member of the customary law managing board.

Keywords: Dayak local wisdom, progressive law model, conflict resolution

1. Introduction

Tayan Hilir Subdistrict as one of the subdistricts in Sanggau Regency is comprised of 15 villages, most of the inhabitants are of Dayak Tobag ethnicity. Until 2020 in that area there had been eight large-scale oil palm plantation companies spread across eight villages. Since the presence of large-scale oil palm plantations, there have often been conflicts between the plasma smallholders, the local community and the oil palm companies. This conflict is mainly related to the resolution of the unsettled status of plantation land which resulted in recurring conflicts between plasma smallholders, the community and the company. The recurring conflicts have disrupted social order in society, such as suspicion, distrust, and intimidation from those who have power.

Based on research data from Wiko et al. (2015) there have been at least three recent major conflicts between plasma smallholders and communities and companies. The three conflicts were (1) the 2015 conflict between 56 plasma smallholders and PT. MSP in Yongkok Hamlet of Sejutang Village related to 427 hectares of land, (2) the conflict in 2017, between the company PT. MSP and the indigenous people of Gunung Tamang village related to an area boundary of 300 hectares and (3) the 2018 conflict between 41 plasma smallholders in Rimba Kedokok village and the company PT SYAL 2 Tayan regarding 39,176 hectares of land.

These conflicts were caused by the fact that companies often position themselves as the superior. They do not involve farmers and the community in making decisions about the location of the plantation. From the farmers and the community, this action was deemed to violate the principle of equality in the partnership agreement as stipulated in Government Regulation Number 44 of 1997. From the perspective of the plasma smallholders, the company's actions were declared invalid by law.

Several times, the community and plasma smallholders asked for discussion to resolve the conflict, but the company always refused. When the community and plasma smallholders felt that there was no other way, then they used a settlement method with customary law in their territory. The irony is that after customary law was imposed, the company agreed to comply.

In accordance with customary law, the community fences the site of the oil palm plantation by installing a '*mandohadat*'. It aims to set the boundaries of areas that are claimed as their property. The traditional *mandoh* is in the form of an earthenware jar that is installed with a traditional ritual. In this ritual, spells that contain magical elements are recited.

In the belief of the local customary community, anyone who violates the *mandohadat* will receive harm / disaster. For the community, this method of conflict resolution based on customary law is more acceptable than settlement through court.

For the farmers, conflict management based on customary law is considered an effective way to solve problems because it contains elements of belief, namely a relationship with the superpower. Basically, conflict management based on customary law is to prioritize deliberation, unless the deliberation method is not heeded, then the customary justice system method will be used.

Studies by Bahari (2013) suggest that conflict management using customary law (progressive law) can be an alternative in conflict resolution in the community. The result is more effective because it provides satisfaction and peace to the community.

In the Dayak Tobaq community in TayanHilirSubdistrict, for a long time there has been customary law (progressive law) which has become their local wisdom in resolving conflicts in the society. Customary law (progressive law) can also be used as an alternative in resolving conflicts between the community and companies. This study was carried out to explain the use of customary law (progressive law) as an alternative model for resolving conflicts between the parties.

2. Literature Review

2.1. Local Wisdom

Kongprasertamom (2007), Mungmachon(2012), Alfian (2013), and Fajarini (2014) describe local wisdom or local knowledge or local genius as a view, knowledge and strategies of life in the form of local community activities in fulfilling their needs and responding to various issues in fulfilling their needs. Local wisdom takes the form of *adat*(customary practices or tradition)and habits that have been traditionally passed down from generation to generation in a community group, whose existence is still maintained. Meanwhile, Na Talang (2001) and Haryanto (2016) argue that the forms of local wisdom in a society can be in the form of culture (values, norms, ethics, beliefs, *adat*, customary law and special rules) in that community.

In line with the above view, Wahyudi (2014), Istiawati (2016) and Iswadi (2018) argue that local wisdom is a conceptual idea that lives in local society, grows and develops continuously be it sacred or profane, or the way local people behave and act in responding to changes in physical and cultural environment. Local wisdom is an unwritten rule that becomes a reference for the community in practicing all aspects of life. These rules concern relationships between fellow humans, and in social interactions between individuals and groups, relating to hierarchy in government and *adat*, rules governing marriages within and between clans, manners in daily life and rules governing human relations with nature, animals and plants as well as the relationship between humans and the supernatural world (mystical).

Based on these views, it can be described that local wisdom is wisdom that lives in a community in the form of local ideas that are wise, full of wisdom, of good value and embedded and followed by members of the community. Local wisdom can take the form of *adat*, customary laws, values, norms, ethics, beliefs and rules that live and apply in a society. In other words, customary law that exists in a community and has long been a source of law in conflict resolution for the community can be categorized as local wisdom of the community.

2.2. Progressive Law

According to Benny, et al., (2008), Satjipto (2009), Muhkidin (2014) and Mosses (2017), progressive law is a breakthrough model in law enforcement because it frees the way of thinking and acting in a legal framework. This model allows the law to flow alone to complete its task of serving human and humanity. This legal breakthrough is indispensable to overcome a determinative order which in its implementation often collides. This determinative order often triggers crises of legitimacy and abuse of law so that the actual function of law as a tool to achieve substantive justice and maintain social order often fails.

The progressive legal approach as described by Kallie (2002), Von Benda et al., (2011), Wiko, (2009), and Musa (2012) is responsive, meaning that an attempt is made to construct a legal formulation on a new balance without ignoring the existing regulations. In addition to being based on legal facts, regulations in progressive law also include the domain of social facts. It means that there are local wisdom values that exist in the community which are explored and used in the process of resolving a case.

Moreover, progressive law must be based on an ideology that is in favor of the people. It means that progressive law must be fair, especially with regard to substantive justice, not formal justice. Justice that is not merely related to the legislation but also justice that is in accordance with the spirit of the community. Therefore, progressive law is beneficial for the law itself and for society as well.

Based on the concept of progressive law which refers to the domains of legal facts and social facts, then in its implementation the target subject is society. The point is how people can build themselves in a social bond without discriminatory treatment from other parties. Therefore, a progressive legal approach requires social reconstruction by exploring the shared values that exist in society.

Social reconstruction through a progressive legal approach in conflict management in society is a necessity in the context of creating a responsive conflict management based on social justice. Progressive law which calls for liberation from the tradition of inflexibility, bears a resemblance to legal thought as a tool of social engineering. Social engineering is considered an obligation to find the best ways to organize interests in order to promote or direct society (Kallie, 2002, Sufriadi, 2010, Nurjaya, 2015, and Ndun, 2018).

In this case, Huijbers. (1982) it is necessary to channel interests in society in a proportional balance scheme. Law as an element in people's lives must prioritize public interests. This statement is known as the theory of law as a tool of social engineering. The purpose of law is to balance social and individual interests in the best possible way. Law enforcement not only uses intellectual intelligence but also spiritual intelligence. Law enforcement must provide a sense of justice and welfare for the people (Engel, 1980, Satjipto, 2009).

That being said, the customary law of a community that has long been local wisdom for its people can function as progressive law or alternative law in resolving conflicts in its community.

2.3. Conflict Resolution

According to Kraybill (2010), Fisher (2010), Abercrombie (2010), and Mukhtar (2016) conflict resolution is a method of resolving conflict or a way to get a peaceful settlement between two or more conflicting groups. Conflict between two individuals / groups or more is often related to personal, economic (financial), political and emotional issues. Bahari (2019), citing the views of social science experts, argues that conflict in society is usually caused by one or more overlapping factors. Factors that often lead to conflict include (1) differences in values (religion, *adat*, culture, ideology), (2) misinformation and miscommunication, (3) acts of dislocation, (4) structural actions and (5) differences in interests between parties.

In reality, conflicts in a society often recur. The recurrence of conflicts may be caused by the complexity and dynamism of the conflicts that are difficult to resolve or the settlement is incomplete or the resolution does not fulfill the community's sense of justice. Therefore, good conflict resolution must pay attention to these aspects. In addition to overcoming or resolving the factors that cause conflict, we must also pay attention to the sense of justice that lives in the community itself.

According to social science experts, in general a conflict can be resolved through litigation (court) and non-litigation (outside the court). Each of these methods has its strengths and weaknesses. Therefore, the choice of the method used will determine the success of the conflict resolution itself.

Furthermore Bahari (2013), Satjipto (2009) and Wiko (2009) in the results of their research on conflict management or conflict resolution state that conflict management or conflict resolution in a community does not always have to use positive law but can also use living customary law that has become local wisdom in the community. Conflict resolution using customary law which has become local wisdom in the community can actually fulfill a sense of substantive justice in a community.

In light of the notion above, customary law which has become the local wisdom of the community can be used as an alternative law or serve as progressive law in resolving conflicts in society. Customary law in a society as a legal institution aims to lead people to a just, prosperous life and make humans happy or it can be dubbed as the law that sides with the people and sides with justice.

3. Methods

This study used a qualitative approach with the case study method. According to Borg and Gall (2005) and Sugyono (2018) qualitative research aims to explain and analyze phenomena, events, social dynamics, beliefs and a person's or group's perceptions of something. Meanwhile, a case study is a method of investigating the phenomenon of events, social dynamics, beliefs and perceptions which are carried out intensively, in depth and systematically. The object of research is the Dayak Tobag's progressive law model (customary law) in conflict resolution. The research was conducted in Subah Village of Tayan Hilir Subdistrict in Sanggau Regency. The research informants were comprised of the village head and members of the customary law managing board. The data were collected through focus group discussions (FGD) and in-depth interviews. Data processing is done through data reduction, data display and conclusion / verification. The validity of the data was tested using source triangulation.

4. Results and Discussion

4.1. Progressive Law model in Conflict Resolution in the Dayak Tobag Community

Based on the information collected from the informants, the following research findings are obtained regarding the progressive law model in conflict resolution in the Dayak Tobag community.

First, there are two conflict resolution models used by the Dayak Tobag community, namely: (1) the settlement model outside the customary justice system and (2) the settlement model in the customary justice system. The model outside the customary justice system is called *Colap* (cold); while the model in the customary justice system is called *Angat* (hot).

Second, the Dayak Tobag people have a notion that the community and the individuals belong to an inseparable big family. As part of a big family, each individual must always maintain a harmonious and peaceful life so that the balance of the community can be maintained. In this regard, every conflict resolution prioritizes the *colap* (cold) model. The

principle of settlement is through deliberation and consensus. Meanwhile, the *angat* (hot) model is the last option (*ultimumremedium*). This model is only applied if a consensus or an agreement cannot be reached.

Third, the Dayak Tobag people have been accustomed to it for a long time and from generation to generation resolving any conflicts or disputes using the *Colap* and *Angat* models. Both of these models have been used and function as a breakthrough and alternative law in conflict resolution.

Fourth, for the Dayak Tobag community, conflict resolution does not have to use positive law, and if possible, it should be avoided because it is perceived as unfair. Positive law only decides on the basis of right and wrong based on the law so that public justice is often neglected. Meanwhile, for the Dayak Tobag community, no matter how serious the conflict is, if it is resolved through customary law, it is always acceptable because it provides substantive justice for the community. On the other hand, it always leaves dissatisfaction and anxiety when using positive law. Community acceptance of conflict resolution with customary law is not only due to profound belief but also because customary law has been part of the culture of their life.

Based on the research findings, it can be argued that the two conflict resolution models in the Dayak Tobag community can be classified as progressive law models. This is in line with the opinions of Benny, et al. (2008), Satjipto (2009), Muhkidin (2014) and Mosses (2017) as well as the views of Kallie (2002), Von Benda et al. (2011), Wiko (2009), and Musa (2012) which state that progressive law is a breakthrough model of thought in the field of law which is generally in the form of a way for the community to respond when overcoming or solving problems or an alternative law that is often used by the community in resolving conflicts to get substantive justice in society. Through these two models, the Dayak Tobag people fight for and uphold substantive justice in their society, namely justice that is difficult to uphold in a positive law model.

The two models of conflict resolution in the Dayak Tobag community have been around for a long time. Therefore, it can be classified as local wisdom. This view is in line with the opinions of Kongprasertamom (2007), Mungmachon (2012) Alfian (2013), Fajarini (2014), Na Talang, (2001) and Haryanto (2016) which state that local wisdom in a society can be in the form of culture (values, norms, ethics, beliefs, customs, customary laws and special rules) in the community.

These two conflict resolution models are not contradictory with the principles of conflict resolution. As suggested by social science experts, conflict resolution can be done in various ways, litigation or non-litigation. Bahari (2013), Satjipto (2009) and Wiko (2009) argue that the resolution of a conflict does not always have to be with positive law but it can be achieved with customary law which has become local wisdom of a community. Conflict resolution using customary law can be classified as a form of conflict resolution outside the court. Such a mechanism in the legal system is commonly known as Alternative Dispute Resolution (ADR).

5. Conflict Resolution Process Using Progressive Law (Customary Law of Dayak Tobag)

As reported by the informants, the following are the research findings related to the process of conflict resolution using progressive law in the Dayak Tobag community.

First, conflict resolution in the Dayak Tobag community is carried out through customary justice system (*domongadat*). This customary justice adjudicates conflicts in their respective indigenous peoples' territories, such as: *kepatian*, *ketemenggungan*, *jaya*, *pesirah* and *lawangagong*.

Second, hierarchically the Dayak Tobag customary justice system (*DomongAdat*) is described as follows in figure 1:

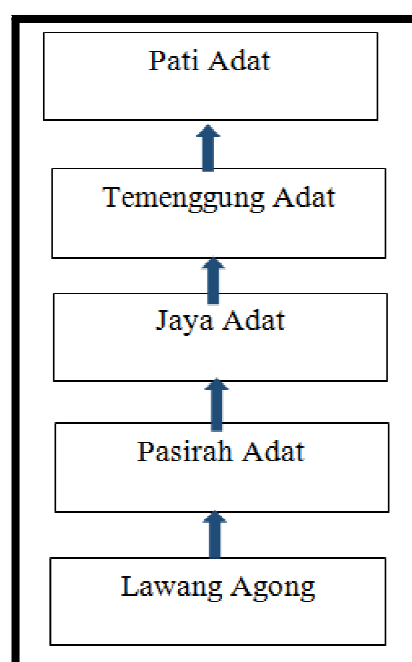


Figure 1

Source: Dayak Tobag Customary Council, (2013).

According to the hierarchical customary justice system, it can be explained as follows: (1) *Patiadat* adjudicates / handles conflicts with a monetary value of 12 *reals* (amount of money paid as compensation) and his position is in charge of several *temenggungadat*, (2) *Temenggungadat* adjudicates / handles conflicts with a monetary value of 8 *reals* and his working area is at the village level. He supervises several *Jayas* (at the level of village head), (3) *Jaya* adjudicates / handles conflicts with a monetary value of 6 *reals* and his working area is at the regional / hamlet level (equivalent to regional head), (4) *Pesirah* adjudicates / handles conflicts with a monetary value of 2 *reals* and his working area is at the level of citizens association (RW) or equivalent to RW head, (5) *Lawang Agong* adjudicates / handles conflicts with a monetary value of 2 *reals*, and his working area is at the level of neighborhood association (RT) or equivalent to RT head

Third, in the Dayak Tobag customary justice system in Tayan Hilir Subdistrict, the central role of customary justice system lies at all levels of the judiciary in carrying out its function as a means for upholding justice. Customary justice system is also an instrument for creating stability in the entire existing system in the customary law community, namely restoring balance.

Fourth, the Dayak Tobag customary justice system is a tiered system, starting with the lowest level court, namely *Lawang Agong*, then the *pesirah* level, from *Pesirah* to *Jaya* and from *Jaya* to the *Temenggung* level, then at the *patiadat* level, and at the highest level is the trial conducted by the *patiadat* (led by the oldest *patiadat*). If the trial at the last level reaches a deadlock, the process can be continued in the state court by the parties or one of the parties in conflict. From here, the role of customary justice system is taken over by the state judiciary.

Fifth, if a certain conflict can be resolved by customary justice system or resolved through customary law, the settlement process will not be continued at the state court. Regarding certain conflicts, for example *adatpatinyawa* which occurs as a result of traffic accidents, almost all of them are resolved through customary law, not in the state court. For other conflicts, generally even though they have been resolved through customary law or customary justice system, they can still be continued to the state court. The concept of settlement is different between the two justice systems because they have different goals. The customary justice system aims to create balance and justice, while state courts aim to achieve legal certainty. Customary justice system recognizes the one 'door' mechanism which means one judicial institution for all cases, while the state judiciary is not the same, where each court has a different function, for example there are public courts, military courts, religious courts, state administrative courts, etc.

Sixth, as in the justice system in general, the Dayak Tobag customary justice system also recognizes legal remedies (appeal). However, not all cases that are resolved using the customary justice system model can make such legal appeals. Only criminal cases can be appealed. This is because criminal cases are related to neglecting the sense of justice in society while civil cases are not. Criminal cases are directly related to the interests of the community, whereas civil cases are not. This principle is in line with aspects that individual interests are no different from community interests. This is a basic teaching found only in customary law. However, this does not mean that customary law does not recognize the existence of individual rights, which are given a wide room in the modern legal tradition. The concept of individual rights is only recognized as long as it does not violate the benefit of the community. Individuals cannot be separated from their communities because an individual's duties are always considered to be related to their involvement in the community. So, individuals and the community are inseparable.

Seventh, the communal way of life as found in *adat* is reflected in the basic teachings of individual life in the community which is very similar to family life where a distinction is rarely made between private matters and communal interests. In legal matters, it is often found that decisions regarding business transactions are influenced by considerations of communal solidarity because individuals are basically part of a broad community. Harmony between individuals and society or between one group and another is a key issue in maintaining the values of law that exist in the community, particularly regarding legal stipulations by *adat* judges.

Regarding the research findings as described above, the conflict resolution process in the Dayak Tobag community has actually shown and described the high values of local wisdom they have. They have their own values, norms, ethics, customary practices, and customary laws in the conflict resolution process, so they do not always have to depend on other means from outside. The process and procedures for conflict resolution in the Dayak Tobag community are considered to contain local wisdom because as suggested by Kongprasertamom (2007), Mungmachon (2012), Alfian (2013), and Fajarini (2014), Na Talang (2001) and Haryanto (2016) that the forms of local wisdom of a community can be seen from the values, norms, ethics, beliefs, customary practices, customary laws and special rules that live and function in the community..

The conflict resolution process in the Dayak Tobag community not only shows the high level of local wisdom but also illustrates the high capacity and ways of responding to conflict resolution. It turns out that they have the capacity to resolve conflicts in ways that they agree on. In addition, the results are able to create substantive justice not just formal justice. The conflict resolution process model in the Dayak Tobag community can be regarded as a progressive law model because as suggested by Benny, et al. (2008), Satjipto (2009), Muhkidin (2014) and Mosses (2017) that progressive law is a form of legal breakthrough that provides freedom to the community to use the law in resolving their conflicts.

6. Conclusion and Recommendation

6.1. Conclusion

Based on the findings and discussion of the research, it can be concluded that:

- The progressive law model based on local wisdom of the Dayak Tobag in conflict resolution consists of the *Colap* and *Angat* models.

- The *Colap* (cold) model is a way of resolving conflicts through deliberation for consensus while the *Angat* (hot) model is the settlement of conflict using customary law.
- The Dayak Tobag community prioritizes conflict resolution through the *Colap* model, if it does not work, then they continue with the *Angat* model. If the *Angat* model also does not work, then the settlement will proceed through the positive law
- For the Dayak Tobag community, conflict resolution through the *Colap* and *Angat* models is deemed as capable of upholding substantive justice in society.
- The process of conflict resolution using the *Colap* and *Angat* models (progressive law) is carried out in stages in accordance with the authority of each member of the customary law managing board.

7. Recommendation

- This progressive law model based on the local wisdom of the Dayak Tobag can be used as a model for conflict resolution in other places because this model prioritizes achieving substantive justice.
- The adoption of the progressive law model in the formal legal system is a necessity to create legal methods that promote a sense of justice as well as a fast and efficient settlement process.

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