



The Community Conflict Settlement With Customary Law And Local Wisdom Approaches And Law No. 7 Of 2012 Concerning Handling Of Social Conflicts

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Abstract

In every society, there must be a conflict with different levels and intensities and various causes because social conflict is an inseparable part of the dynamics of people's lives. However, the most important thing about the conflict is how to resolve the conflict and restore peace to society as before. The conflict resolution mechanism that is most often used is customary law and local wisdom because nowadays, Indonesian society is still classified as a traditional society with a magical religio style. If a problem cannot be resolved, it will be resolved using Law No. 7 of 2012 concerning the Handling of social conflicts. This research was library research included in normative sociological research using secondary data equipped with laws and regulations.

Keywords: Social conflict; Customary law; Local wisdom.

A. Introduction

Based on the concept of a state of law, Indonesia is not a state based on laws. Therefore, fair legal certainty is not only pursued with the arguments contained in the law but also sees developments values that live in society, such as customary law (Syarifuddin, 2019). According to Soepomo, customary law is a living law because it embodies a natural legal feeling from the people. In accordance with its nature, customary law grows and develops like life itself (M. Bakri, 2020). Therefore, it is stated that customary law is a crystallization of community culture that is attached to the human soul of community members. It is very relevant if it is used to solve problems that occur in society, such as community conflicts caused by differences in religious views, conflicts due to land grabs, and other community interests.

Conflicts between community groups have often occurred in the past, caused by many factors in society. The factors included economic factor, because of the large number of unemployed, and political view factor, due to competition for votes in elections, various factors that have occurred in various regions, ideology or religion perspective factor, and fanaticism factor due to differences in sects within a religion. Thus, all these conflicts can cause chaos and conflict between community groups in a particular area. The degradation of people's understanding of tolerance, brotherhood, equality, and harmony values created horizontal conflicts. These values were often

considered not to play a role when faced with conflicts that occurred in society (Hanafi, 2018).

Conflicts between community groups can be called horizontal conflicts, namely conflicts between two or more camps where each party has the same position and position when viewed from a legal perspective and social strata. In general, horizontal conflicts occur in two or more community groups who live in a particular area or close or neighboring village, or in different but not too far apart villages.

Conflicts between community groups basically had the same characteristics, whether a significant conflict that invited international attention in human rights or a minor community conflict. It only involved a few members of the community or specific streams. The different views were further elaborated by the subjects and the conditions that existed in the community as external supporting factors to sharpen disputes and ultimately create conflicts between community groups.

Community horizontal conflict is a big future task for community leaders, religious leaders, scholars, academics, and all generations of society, and especially the task of the State how to prevent conflict, so there needs to be prevention and preventive action so that conflicts can be controlled and prevented as early as possible. At present, horizontal conflict control in the community has been carried out and is divided into two, namely through education which requires a long process and time, and through the judiciary or mediation. Both ways of preventing and controlling conflict can be taken by all parties related to conflict, especially the government, by using customary law and local wisdom as the basis for controlling and resolving conflicts. Conflict resolution is an effort to reformulate a solution to the existing conflict to reach a new, more acceptable agreement to the conflicting parties (Irwandi, n.d., 2017).

After observing and studying several horizontal conflicts and finding some conclusions about the characteristics of conflicts in the community, the researchers could conclude that using customary law and local wisdom was seen as the most effective and efficient way to resolve and control horizontal community conflicts. One of the reasons was the purpose of conflict resolution, namely through traditional dispute resolution, as well as the impact of adverse effects, such as trauma, fear, even threats, and revenge that were expected to arise in the future to a minimum could be avoided.

Conflict resolution using custom and local wisdom was chosen because there was a meaning of understanding and common perception and unity of view between community members towards certain customs in a custom and local wisdom. Based on these similarities, a conflict will be easier to reconcile. Indigenous peoples were bound by a sense of similarity with the existence of these similarities. People felt safe and comfortable interacting with others. Besides that, based on these common perceptions, indigenous peoples built relationships with others to meet their needs, although the forms could vary. The sense of commonality of views born since the beginning of the existence of indigenous peoples was the primary foundation for the development of indigenous peoples. Therefore, if this foundation were used as a means of resolving conflicts that arose over time, the results would be easy to determine. Resolving conflicts using local customs or local wisdom could be effective because, so far, it has been entrenched and has become a guideline in society. As stated by Jacky Manuputty:

"There was nothing wrong with local wisdom but simply because the politicization of religion was growing quite rapidly. When the role of religion could not resolve conflicts, local wisdom was effective in uniting dispersed communities based on religious communities".

B. Research Methods

This research was sociological normative, namely research by examining data from several previous research results related to the object of the problem, which was reviewed in the literature using secondary data equipped with laws and regulations as the research object.

C. Result And Discussion

Indigenous people are a group of people who have lived for generations in a particular area whose members are permanent. Although in specific communities, they are still nomadic. Indigenous peoples are united by three main things, namely the genealogical aspect, the psychological aspect, and the sociological (environment/place) aspect. The genealogical aspect is called heredity, namely blood relations between community members. They are united by a kinship that starts from a pair of ancestors who become the base of the lineage. Furthermore, the psychological aspect is the tendency within the human soul. Psychologically humans need other humans. This psychological aspect encourages humans to interact with others. The psychological aspect can be an expression of human conscience expressed in tangible form through behavior/words, objects of work. The psychological aspect encourages humans to do things according to their own will without any outside influence. In the relationship between indigenous peoples, this psychological aspect is the most decisive and supports the genealogical aspect. The psychological aspect continues the genealogical aspect where a community relationship is due to heredity. The kinship relationship will stretch and get further away but equipped with a psychological aspect that is a desire within humans. The kinship will feel close. The third is the sociological aspect, where the relationship between community members is united by external factors that come from nature or the environment they live in. The state of the community members primarily determines the sociological aspect at a specific time because at a particular time they are in the same state, the same choices, sociological aspects influenced by the similarity, then at that time a community can be established starting from a small number to a large number as members of indigenous peoples.

As only the conflict that occurred in Jember Regency, which is a society with sociological factors during the period 1990-2000 that had several conflicts. Jember was famous for its Pendhalungan society, with Javanese and Madurese as the largest ethnic groups, mixed with Chinese, Arab, Indian, and Osin. In resolving horizontal conflicts between communities, they used local wisdom to resolve conflict. It was indicated by the active role or involvement of religious leaders, such as Ustadz Mulyono and Drs. Sunardi (public figures) and Ustadz Heri Yudi Siswono (Robbany figure). The sociological conditions unite the people of Jember, and the majority of people are magical religio, namely the belief from within humans in supernatural powers beyond human reason and ability. According to Soerojo Wignjodipoero, the magical religio style can be seen clearly in traditional ceremonies where offerings are usually held to

ancestral spirits who want their blessing and assistance (Soerojo Wignjodipoero, 2017). The majority of the Jember society is Muslim, so their magical religious style is manifested by trust and obedience, and high loyalty to religious leaders (Kyai, Lora, Gus). Therefore, they will obey and implement what the religious leaders advise.

The resolution of horizontal conflicts in the community using customary law mechanisms and local wisdom must begin by tracing the origins of the formation of the community from a genealogical aspect, psychological aspect, and sociological aspect, which can be seen in the paragraph above. Every community group is sometimes different from other groups. After knowing the foundation for the formation of the community, the following steps that need to be taken are explored. Mistakes in determining settlement steps due to a lack of understanding of the community's foundations and the source of the problem will undoubtedly worsen the situation and increase the conflict.

The conflict resolution process using the approach and kinship system or community gene relations has been carried out in the Ambon conflict, and the results were very positive, and peace could be achieved. This kinship system was known as *pela gandong*. The word "pela" comes from the word "Pila," which means to make something for us together. *Gandong*, literally translated as "come from the same womb," so they believe they have a common ancestor (uterus) (Bakri, 2015). In the concept of *pela gandong*, people are united in an inner bond because of blood relations. Even though in the times, the conditions of the people have changed culturally, and an economic level, education and most importantly are religious differences. However, they feel bound by a blood relationship so that the conflict can be resolved with peace.

Every kinship system, such as a kinship system bound by blood relations (genes), must have its respective laws that serve as guidelines. The opinion of the functionalism flow of customary law functions as a "guideline" for living in a society so that the community lives in an orderly, calm, peaceful, and peaceful manner towards a just, prosperous and prosperous society. In Javanese, the guideline comes from the word "dom," which means a needle with a unifying function (integration) as a tool for sewing and uniting (Dominikus Rato 2015). Local wisdom and customary law are joint products of community members as the accumulation and crystallization of the values, views, ideas, and creativity of all community members in which they prioritize common interests, where shared interests cover personal interests. One for all and all for one. The legal relations between members of indigenous peoples are based on a sense of togetherness, kinship, mutual assistance, and mutual assistance (Hilman Hadikusuma 1992).

The last resort that can be taken in resolving conflicts of an ethnic nature, inter-religious conflicts or conflicts that occur between members of groups within the same religion, where the law and state courts and even religious figures are unable to restore the situation is by using the customs and local wisdom of the society, because, in essence, customary law prioritized deliberation and consensus, Decisions made through compromise are unlikely to cause the parties to the conflict to feel disappointed or hurt. Nevertheless, from the organization's point of view, compromise is the weakest method of conflict resolution because it usually does not result in the best solution to help the organization achieve its goals. On the other hand, an achievable solution will only be acceptable to both parties (Amalia, 2015). Both within

the family, kinship relations, neighbors, starting a job or ending work, especially those of a judicial nature in resolving one another, prioritizing a harmonious and peaceful settlement by deliberation and consensus, by forgiving each other. It is not in a hurry that the dispute is immediately brought or submitted to the state court (Dewi Wulansari, 2016). The state itself also applies a double standard in resolving conflicts, namely applying a pluralist-humanist strategy on the one hand, while on the other hand, it also applies a bureaucratic-structuralist settlement strategy (Jati, 2013). The humanist pluralist strategy is a way of resolving conflicts by accommodating the opinions and interests of all parties involved in the conflict, even though they come from various backgrounds, ethnicities, religions, customs, and even political views, by studying the root causes of the problem then analyzing and determining a conclusion as conflict resolution. Meanwhile, the structural bureaucratic strategy is a method that uses the power of state institutions that prioritizes repressive methods, which involve the police and courts by determining one of the parties as to the source of the conflict. By carrying out two conflict strategies at the same event and location, there seems to be ambiguity, and if the two strategies are carried out simultaneously, it can lead to higher tensions. It cannot resolve the root of the problem, thus using other alternative solutions, namely by deliberation and consensus (Suhardin, 2020).

The style of deliberation and consensus in dispute resolution is preceded by good faith, fairness, and wisdom from trusted people to mediate cases or the spirit of the customary deliberation assembly (Hilman Hadikusuma, 1992). People who are trusted as mediators in resolving conflicts in customary law are usually someone who is considered to have certain (magical/spiritual) advantages compared to other community members, authority, or people who are entrusted and have trustworthy assertiveness can come from ancestral descent as the top of the lineage of members of the community. How to resolve conflicts in a customary land is indeed more appropriate to use models that are adapted to regional conditions and local culture. In the conflict resolution stage, John Burton stated that the settlement has a cultural nuance. It shows that conflicts in the community can also be resolved to utilize the culture and customs adopted by the local community. Resolving conflicts using local customs or local wisdom can be effective because, so far, it has been entrenched and entrenched and has become a guideline in society (Indriane, 2019). It is such the conflict of Iwaro society in South Sorong District, with the entry of plantation investors in 2013. The symptoms of the conflict began in 2015 and ended in 2017. The Iwaro Tribe indigenous people and the State Apparatus and security forces, led by the traditional leader, use the "Sirih-Pinang," namely custom/ceremony as local wisdom - a ceremony carried out before clearing the land can be said to be a permission step to honor the ancestors. Sirih and Pinang are a symbol of honor for the gift given by God and become a tradition, the daily food of the Papuan people in general.

1. The Conflict Resolution according to Law no. 7 of 2012 Concerning Handling of Social Conflicts

Before this regulation was enacted, conflict management in Indonesia was still based on several laws and regulations. Therefore, it can be said before that conflict handling was not systematic, ineffective, and efficient. So far, it has prioritized policy, Policies are different from regulations and laws, both in definition and meaning. The

law prohibits or forces behaviors while the policies are more directed to the most reasonable steps to get the most desired results (Betawihanta, 2020). The following conflict-related regulations were used before 2012:

- a. Law Number 23 Prp of 1959 concerning Dangerous Conditions, as amended twice, most recently by Law Number 52 of 1960;
- b. Law Number 27 of 1997 concerning Mobilization and Demobilization;
- c. Law Number 56 of 1999 concerning Trained People;
- d. Law Number 2 of 2002 concerning the Indonesian National Police;
- e. Law Number 3 of 2002 concerning National Defense;
- f. Law Number 15 of 2003 concerning Stipulation of Government Regulations instead of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Laws;
- g. Law Number 25 of 2004 concerning the National Development Planning System;
- h. Law Number 32 of 2004 concerning Regional Government as last amended by Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government;
- i. Law Number 33 of 2004 concerning the Financial Balance of the Central Government and Regional Governments;
- j. Law Number 34 of 2004 concerning the Indonesian National Army;
- k. Law Number 24 of 2007 concerning Disaster Management;
- l. Law Number 11 the Year 2009 concerning Social Welfare

Conflict management is a series of activities carried out systematically and planned in situations and events before, during, and after a conflict which includes conflict prevention, conflict cessation, and post-conflict recovery (Sinaga, 2019). It can be said that Indonesia only had a legal umbrella for handling conflicts in society in May 2012 with the enactment of Law no. 7 of 2012 concerning Handling of social conflicts, which is accompanied by Regulation No. 2 of 2015 concerning the Implementation of Law no. 7 of 2012. Conflict resolution can be carried out through a legislative process or approach. Conflict resolution through a legislative approach is conflict resolution through legislation issued by the legislature. Conflicts resolved using this method are significant and cover a large population but affect individual members (Uchaimid and Akhiruddin, 2021).

This regulation can be said to be late, considering that since Indonesia's independence, until this regulation is promulgated has been 76 years. There have been many horizontal conflicts in society in various regions of the Indonesian state, which have resulted in the loss of thousands of Indonesian people's lives which have resulted in incalculable material losses and deep psychological trauma psychology for conflict victims. However, if viewed based on a positive perspective, of course, regulations regarding conflict handling will be beneficial in the future. Indeed, a legal basis will create high legal certainty, concrete, and legal steps, and of course, it will be more systematic and efficient in resolving conflicts in the community.

The scope of conflict handling is regulated in Article 4 of Law no. 7 of 2012 concerning Handling of social conflicts, namely:

- a. Conflict Prevention;
- b. Cessation of Conflict; and
- c. Post-conflict Recovery

Prevention, as intended, is carried out by the Government, Regional Government, and the community (Article 6 paragraph 1). Conflict prevention is the most crucial action to resolve and stop potential conflicts early on before they escalate and the task of handling them becomes even more difficult. The most appropriate party to carry out and be responsible for this task is the village apparatus before the conflict reaches the district and central government levels. Seeing the conflicts in various parts of Indonesia started from a simple/slight incident/accident/misunderstanding, which then dragged on to become a frightening and national-scale event. Hence, the most responsible party, in this case, is the village apparatus, because the village apparatus chaired by the Village Head has been recognized as legal and traditional (customary law and local wisdom) and attached to the village apparatus as a symbol that has the authority and trust of the village apparatus public.

If examining more deeply, the spirit of Law No. 7 of 2012 concerning Social Conflict Management (PKS) can be found lie in Chapter VI, Article 40 and Article 41, paragraph 1;

Article 40: Conflict resolution institutions consist of the Government, Regional Government, Customary Institutions, Social Institutions, and the Social Conflict Resolution Task Force.

Article 41 paragraph 1: Conflict resolution is carried out by the Government and Regional Government by prioritizing the existing customers or social institutions, and their existence is recognized.

The two articles are the main foundation of this regulation in resolving horizontal conflicts in society. The key to the resolution is traditional institutions. All components relating to indigenous peoples have a significant role in resolving conflict problems, including law and order of customary courts and local wisdom always maintained by the community. Customary institutions include institutions and rules used by indigenous peoples in creating an orderly, safe and orderly society. This rule is found in customary law communities in a verbal form (Dauh, Sukadana, and Widyantara, 2020). Social institutions themselves are divided into norms and sanctions, which are essential components of social capital and must be considered to see whether a relationship can be created well or not in a community or group of society (Faridl, dkk., 2020).

Chapter VI article 40 and article 41 of Law no. 7 of 2012 concerning the Handling of social conflicts is proof that the State strongly recognizes the existence of customary law and local wisdom as an inseparable part of the Indonesian legal system and an inseparable part in real life of the Indonesian people. This recognition of customary law and local wisdom is part of the great respect of the state government for the will of the ancestors of the Indonesian nation; therefore, the desire to do something is returned to the will of the ancestors (R. Abdoel Jamali, 2018). So that until now, the Indonesian people still have magical religious personalities and create a strong psychological relationship between the natural world and the spirit/unseen realm, which is reflected in traditional behavior/ceremonies, customary organizational systems, community structures, and institutions that exist in the society's daily life. Learning from cases of violent social conflict in Ambon, Poso, and Sampit, conflict management works optimally when traditional institutions are function by civil society and political leaders (Novri Susan, 2014). Such social order (traditional and small

communities) in society ranking is called primary obligation rules in which detailed and official regulations cannot be found. Only needs can be overcome with standard behavior. Informal social control mechanisms cause one another to carry out their functions effectively (Rahardjo, 2009).

Law no. 7 of 2012 concerning Handling Social Conflict is humanist and responsive legislation. Humanist and responsive law is the main requirement of modern legislation, which must be embodied in the articles of these regulations. A not humanist and unresponsive regulation will automatically be rejected by the community, even though the state has enacted the regulation.

Humanist means that the regulation prioritizes humanitarian aspects because it prefers a peaceful settlement without punishing one party so that the parties involved in the conflict do not feel won and the other party does not feel defeated. The humanism factor of Law no. 7 of 2012 has been reflected in the principles of the regulation regulated in article 2. The humanism factor which is reflected in the article includes:

- a. Humanity;
- b. Human rights;
- c. Nationality;
- d. Kinship;
- e. Bhinneka-tunggal-ika
- f. Justice;
- g. Gender equality;
- h. Order and legal certainty;
- i. Continuity;
- j. Local culture;
- k. State responsibility;
- l. Participatory
- m. Not taking sides; and
- n. Non-discriminatory/non-discriminatory.

Responsive means that the regulation accommodates the symptoms and facts, as well as the society's interests. Therefore, in resolving conflicts, it does not use one critical problem method determined by the state but uses existing methods where the conflict occurs. It is in a conflict area. Responsive law opens vast space for dialogue and discourse and pluralistic ideas as a reality. Therefore, responsive law no longer always bases its considerations on juridical considerations but tries to see an issue from various perspectives in order to pursue what is called "substantive justice." Therefore, the judges in carrying out their professional duties regarding the perspective to respond to the law are as follows: "The law, like the traveler, must be ready for the morrow, it must have a principle"(Sanusi, dkk., 2019).

The use of traditional institutions (local wisdom) that has responded to all the parties' interests sometimes does not resolve conflicts in the community or even adds to the increasingly heated problems. The government needs to take decisive actions to immediately resolve conflicts, which have been determined in the legislation, but also must pay attention to the human factor. In this case, the first conflict resolution mechanism used traditional institutions. If traditional institutions cannot resolve the problem, the law orders the use of a Social Conflict Resolution Task Force (UU 7 of 2012, Article 41 paragraph 4), which was formed independently on an ad hoc basis by

the government. It did not involve the traditional institutions of each party and the composition and way of working under those determined by laws and regulations. The formation of the ad hoc committee is an alternative solution if traditional institutions cannot solve the problem. It is an alternative, and the laws and regulations do not specify another alternative. Whatever the results of the committee must be obeyed and implemented by all parties.

D. CONCLUSION

Social or horizontal conflict is a phenomenon that often occurs in social life, especially in developing societies with heterogeneous cultures, such as Indonesian society. Whatever form the social conflict takes, it must be stopped immediately, and a meeting point is found. Based on the research results from several conflicts in Indonesia and equipped with expert opinions, the best conflict resolution mechanism was to use traditional institutions, namely by involving traditional institutions, customary law, and local wisdom that existed and was obeyed by the local community. The use of custom elements as the main element in dealing with social conflicts was adopted by the state as reflected in Article 40 and Article 40 paragraph (1) of Law no. 7 of 2012 concerning Handling of social conflicts.

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Law and Regulation

Law No. 7 of 2012 concerning Handling of social conflicts