Journal Equity of Law and Governance

Vol. 6, No. 2
ISSN: 2775-9512 (Print) 2776-5121 (Online)
https://www.ejournal.warmadewa.ac.id/index.php/elg

Progressive and Perfective Local Wisdom of Civil Law Study

Japansen Sinaga[1], Irene Puteri AS Sinaga[2], Alum Simbolon[3]
Pelita Harapan University Medan[1],
Pelita Harapan University Jakarta[2],
Bhayangkara University of Greater Jakarta[3].

Abstract - Local wisdom, reflecting the values, knowledge, and strategies of local communities, plays a crucial role in shaping Indonesia's cultural identity and societal resilience. With its vast diversity, each region of Indonesia possesses unique traditions and local wisdom, integral to the nation's heritage. However, modernization and external influences have gradually eroded these traditional practices, particularly among younger generations. This study explores the role of local wisdom in Indonesia's customary law and its integration into civil law using normative research methods, analyzing laws, doctrines, and jurisprudence. The research aims to identify the impact of local wisdom on customary law development and examine how progressive and responsive local wisdom can be effectively applied within the civil law framework. Findings suggest that integrating local wisdom into the legal system can create a more inclusive, adaptive, and contextually relevant framework, contributing significantly to the development of civil law theory and practice in Indonesia.

Keywords: Local Wisdom, Progressive, Responsive, Civil Law

I. INTRODUCTION

The role of local wisdom in shaping Indonesia's civil law is pivotal, reflecting the nation's rich tapestry of ethnicities and cultures. Rooted in the principle of Bhinneka Tunggal Ika Unity in Diversity local wisdom serves as a bridge between the legal pluralism inherent in Indonesia's diverse society and the unifying framework of national law. This motto, symbolized by Garuda Pancasila, originates from the Sutasoma Book by Mpu Tantular, written in Old Javanese with Balinese script. It underscores the coexistence of diversity and unity, forming a foundation for integrating customary law and modern legal principles. This sentence quote is found in the excerpt of pupuh 139 verse 2 in the Sutasoma Book Rwaneka dhatu winuwus Buddha Wiswa, Bhinnêki rakwa ring apan kena parwanosen, Mangka ng Jinatwa kalawan Siwatatwa sung, Bhinnêka sung ika tan hana dharma mangrwa. Which is interpreted as. It is said that the teachings of Buddhism and Hinduism are different, but how can God be divided, because the truth of Jina and Shiva is one, different but one, there is no dharma (path of devotion/goodness) that has two goals).

A diverse society is also defined as a plural society, or a pluralistic society. The idea of legal pluralism highlights how many legal systems interact and coexist to shape societal norms, procedures, and legal institutions. Indonesia's ethnic diversity contains multicultural culture. A multicultural society is a society that has different ethnic groups in culture, language, values, customs and behavioral systems that are recognized as a positive way to create tolerance in a community. The pluralism paradigm was originally used to counter traditional theories regarding state sovereignty, which did not consider the types of rights, interests and developments of various groups or groups within the country. The development of the concept of legal pluralism is the linkage of law to other aspects of culture, in order to express legal theory as a system (the legal system), (Friedman, 1977). The elements contained in the law

as a system, there are 3, namely the structure of the legal system, the substance of the legal system, and the legal culture of society. The structure of the legal system consists of the legislative institution, the court institution with its structure, the prosecutor's office with its ranks, the state police agency that functions as a law enforcement apparatus. The substance of the legal system is in the form of legal norms and regulations, including patterns of behavior of society contained in the legal system. The legal culture of society consists of values, ideas, hopes and beliefs found in the behavior of society.

Indonesia as a country of law as regulated in Article 1 paragraph (3) of the 1945 Constitution. The 1945 Constitution is the highest legal regulation. The concept of a country of law forms a state government that aims to protect human rights and enhance national well-being, promote public welfare, and take part in establishing a global order founded on social fairness, independence, and lasting peace as national goals. Legal thinking in community life such as natural law theory, positivism and utilitarianism legal theory, pure law theory and groundnrom, other sociological theories of legal development. One important development of the sociological theory of legal development is progressive legal thinking according to the teachings of Satjipto Rahardjo which can answer the needs of society.

However, this progressive legal thinking hasn't entirely supported Indonesian lawmakers' ideas, therefore the country's current legislation nevertheless incorporates elements of Dutch law. Many of Indonesia's laws are still founded on positivistic-legalistic principles rather than progressive legal theory. A certain social and cultural inclination is necessary for the rule of law and modern law to function. based on the investigation of positivist legal theory and the creation of specialized critique concerning Indonesian law enforcement situations. It is because Indonesian practitioners and legal theorists are still constrained by a single positivist paradigm, which is no longer useful for analysis and control of the dynamic and multi-interest human characteristics that exist in both legal events and processes, (Rehatta, 2015).

Customary law has its own role according to its development. Likewise, in the development of national law, law has a special place. In the formation of state law, customs (also called local wisdom) are in the midst of society and are considered in the formation of state law through the formation of laws and the formation of regions. Law is one of the cultural products that is inseparable from other aspects of culture, such as politics, social, economic, religion, ideology, structure and organization. Practical knowledge or local wisdom is popularly known as local culture, local genius, local knowledge system (SPL), indigenous knowledge and others. Local wisdom knowledge is often in a state of urgency and isolation, especially if the traditional community lives in a country that applies a top-down development approach or is based on a view outside the community because local wisdom is considered less than fulfilling the demands of rationality and progress of the times, (Nugraheni & Winata, 2003). Local wisdom serves as a foundation for progressive legal development, emphasizing values such as mutual cooperation and deliberation (Suwandoko et al., 2022)

The physical and emotional closeness of humans to the natural resource environment is established through interactions resulting from interrelated processes, giving and taking benefits over a long period of time which has created knowledge. which then gave birth to local wisdom, especially related to human attitudes towards nature. Local wisdom is a form of implementation of articulation and form of traditional knowledge understood by humans or communities that interact with their natural surroundings, (Suhartini, 2009). Local wisdom must be communal in nature and not merely individual, Local wisdom has an open nature and can be practiced in life throughout the life of the existing community, especially being applicable and pragmatic based on a philosophy that is understood together.

Local wisdom concerns good relations with all the contents of nature. Local wisdom also has local characteristics that reflect the characteristics of local communities. The paradigm of understanding customary law and its development is studied extensively, including: 1) studies that no longer look at a country's legal system in the form of state law, but also customary law, religious law and customary law; 2) Understanding the law does not only understand the customary law that isare in traditional rural communities, but also the laws that apply in certain community environments (hybrid law or unnamed law); 3) Understand the

symptomstrans national lawas laws made by multilateral organizations, there is an interdependent relationship between international law, national law and local law. The formulation of the problem to be discussed in this study is 1) how is the influence and role of local wisdom in the development of customary law in Indonesia? and 2) how is local wisdom implemented effectively in the civil law system? The purpose of this writing is to find the influence and role of local wisdom in the development of customary law in Indonesia and to find out how to implement local wisdom progressively and responsively in the existing civil law system.

II. METHOD

This research is a normative legal research using the doctrinal legal research method. It emphasizes internal legal sources, such as law and case law, rather than external methodologies from the social sciences (Nyathi, 2023). The data used is secondary data by means of library research by referring to written regulations and customary laws in society, searching through internet media (online research). Normative legal research is studied from various aspects such as aspects of theory, philosophy, consistency and explanations contained in each article of applicable and binding laws and regulations in order to answer legal issues that occur in society, (Marzuki, 2010). In Indonesia, normative law research is a significant academic field, emphasizing the importance of understanding legal norms through various approaches, including a socio-legal perspective (Negara, 2023). This study focuses on the role and local wisdom in the legal system in Indonesia. This is done using a deductive method, namely drawing conclusions from the results of hypothesis testing and theories from general (theory) to specific (observation). The author uses this method to observe general problems related to the research object discussed by the author in this study, then draws specific conclusions. This study uses descriptive analysis, namely describing the results of the study based on data and sources that have been processed and obtained.

III. RESULT AND DISCUSSION

1. The Influence and Role of Local Wisdom in the Development of Customary Law in Indonesia

In the Dictionary, Local Wisdom is defined as wisdom and local. In the English-Indonesian translation dictionary of Joghn M, Echols and Hassan Syaduly, local is defined as local, while wisdom as wisdom. So in general it can be defined as local ideas that are wise, full of wisdom, have good values that are planted and followed by the community, (Sartini, 2004) The inventor of the term Customary Law is Snouck Hurgronje through research published in his work entitled De Atjehers. Van Vollenhoven is known as the Father of Customary Law who is credited as the first user of the term customary law technically and maintaining its existence as law for indigenous people. According to Supomo, Customary Law is defined as law that is not written in legislative regulations but is obeyed and complied with by the Indonesian people because it is based on belief. Based on its practice, customary law contains local wisdom that still exists. The existence of customary law communities has an important role in maintaining multiculturalism and local wisdom. Cultural traditions that apply from generation to generation play an important role in maintaining the sustainability of the natural environment, establishing social relations and maintaining customary values. The existence of customary law communities gives birth to special knowledge and expertise in managing natural resources and maintaining ecosystems through the application of rules that have been in place since ancient times in order to maintain the balance between humans and nature. So, when a dispute occurs, the customary law community resolves it through deliberation and restorative justice.

The role of local wisdom in the development of customary law in Indonesia has challenges, namely the existence of modernization and urbanization that bring social changes that threaten the existence of indigenous communities. Therefore, the role of government and society is needed in protecting the rights of indigenous communities and also strengthening and respecting their existence in decision-making that affects the region and life. Erica Irene Daes identifies customary law problems related to rights to natural resources, including:

a. Failure or reluctance of the state to recognize the rights of indigenous peoples to land, territory and natural resources
b. Discriminatory laws and policies that impact Indigenous Peoples in relation to their land and natural resources.
c. The failure and reluctance of the state to delimit the customary land of local communities.
d. Failure and reluctance of the state to implement or implement laws that protect indigenous peoples' lands.

Modernization brings social, technological and global changes. The impacts of social change that affect the existence of customary law communities include urbanization, migration and shifts in cultural values that affect the lifestyle and interaction of customary law communities. Urbanization is the movement of people from villages to cities with the aim of increasing the cost of living. Urbanization is one of the most common types of regional interaction as a form of reciprocal relations between two or more regions. Quoted from the book Pocket Shortcut SMA Soshum written by the Smart Solution Team: factors causing urbanization include:

a) There are pull factors such as the assumption that there are more jobs in the city and it is easy to earn income because they have high wage levels, the availability of complete facilities in the city, especially in the fields of education, recreation and health, and the level of culture in urban areas is considered higher.
b) There are factors driving urbanization, namely high levels of poverty in rural areas, limited availability of jobs, minimum wages, strict customs in rural areas that can hinder progress, and minimal educational facilities.

Urbanization has a negative impact on cities, namely increasing population density, increasing numbers of unskilled workers, resulting in increased unemployment, homelessness and vagrants, and increasing levels of traffic congestion and crime. This condition often occurs in almost all indigenous communities spread throughout Indonesia. The role of local wisdom requires the role of law as one of the means of national development that is based on general legal principles and concepts, in order to improve the welfare of the community based on the principles of original law or values, norms, and unwritten laws that are still valid and relevant in the existence of indigenous legal communities. The context of pluralistic Indonesian society requires a responsive-progressive type of law, not a repressive one that only focuses on the rulers.

In this context, it is necessary to have the participation and role of the community. Local wisdom thinking is created in the form of official regulations in line with the advancement of the globalization era. Since the evolution of cultural elements is a significant component of science and its connection to human social relations, efforts must be made to incorporate local cultural values and customs into positive legislation. Such as spatial planning and civil regulations. Efforts that can accommodate local wisdom in spatial planning regulations are carried out through the process of adoption and adaptation. Adoption means accommodating everything contained in local wisdom in its entirety and incorporating it into spatial planning regulations without any intervention from other aspects. For example, the Balinese people have using regional religious doctrines as a guide for environmental preservation initiatives. Local culture is significant, and this includes communal behavior and religious beliefs aspects in realizing good relations between the community and its nature. With legal provisions and the adaptation process, the local community continues to maintain its existence, including cultural values that continue to be preserved so that local wisdom can be synchronized with the adaptation process into spatial planning regulations. Of course, it is adjusted to existing conditions.

The implementation of spatial planning and local wisdom have a close relationship, especially at the regional level. Through According to Law Number 26 of 2007 concerning Spatial Planning (UUPR), the government has the power to plan each region's layout based on its resources, features, and culture (local knowledge). UUPR highlights how crucial it is to consider elements of local knowledge that are incorporated into the cultural framework of spatial planning. so that in order to preserve the sustainability of local wisdom values, the

government keeps working to enhance spatial planning. This pertains to the function of the Community in every process carried out. The role of the government includes regulation, guidance, and supervision of spatial planning. The operational policies and strategies for preserving and developing local wisdom are carried out in an integrated and sustainable manner by synergizing cultural aspects and other strategic aspects that prioritize regional cultural principles and values.

2. Progressive and Responsive Local Wisdom Can Be Integrated and Applied Effectively in the Civil Law System

The 1945 Constitution of the Republic of Indonesia (UUD 1945) declares Indonesia as a state of law (rechtstaat). This means that all aspects of state life in Indonesia are subject to the rule of law, both written legal rules (statutory regulations) and unwritten legal rules (customary law and cultural values of society). Responsive law is a theory proposed According to Nonet and Selznick, in response to Neo-Marxist criticism of liberal legalism, the rule of law regime is a real manifestation of legal autonomy, and the law is believed to be able must keep its own integrity and manage repression. The argument of integrity can be understood based on the internal interests of the legal system, which is shaped by human life itself. Nonet and Selznick's proposal of a responsive legal model is a way to pay particular attention to elements of the law that have a coercive function, such as moral order, the role of aims in legal judgments, the place of discretion, participation, legitimacy, legal compliance, and the relationship between the law and state politics.

Based on the description of the opinions of According to Philipe Nonet and Philip Selznich, social issues, criminality, environmental damage, large-scale demonstrations, poverty, urban riots, and instances of authority abuse occurred in America in the 1970s. The general public believed that the law had failed to address a number of societal issues. According to Philippe Nonet and Philip Selznich's works, there are three categories of law: responsive law, autonomous law, and oppressive law. A community that has the political capacity to resolve its issues, establish priorities, and make the required commitments is signaled by responsive law. because political resources and will are necessary for its accomplishment. The emergence of progressive law in 2002 which was initiated by Satjipto Rahardjo. Progressive law was born because of the teachings of positive law (analytical jurisprudence) which were practiced in the unsatisfactory empirical reality in Indonesia. The search for solutions to the failure of the application of analytical jurisprudence, progressive law is assumed to be the basis of the relationship between law and humans.

Progressiveism begins with the view of humanity, where humans are basically good, compassionate and care about others. Progressive law is present not only for itself as stated in positive law, where humans exist to achieve prosperity and happiness. This position is what leads the law to the position of law in the making (law that is always in the process of becoming), (Rahardjo, 2005). Its contribution is seen from the public purpose facilities and building a spirit to correct oneself in the governance process. Law is interpreted comprises a body of rules governing society, backed by a strict and transparent system of sanctions to ensure that justice is served. In this case, justice is judicial justice rather than absolute justice, which is predicated solely on the imposition of a punishment based on established legal procedures and obvious and basic reasoning, in accordance with that regulated in Article 27 of the 1945 Constitution.

Progressive There is a responsive sort of legislation. According to Mulyana and Paul S. Baut, responsive law seeks to eliminate narrow-mindedness (prosocialism) in social morality and promotes a problem-oriented approach to social integration. This style of law connects the law to goals that are not directly related to the story of the legal language itself. The concern for the meta-juridicial elements stated by Hans Kelsen is another way that progressive legal theory is similar to natural law theory. The higher interests of people are thus given precedence above "logic and regulations" while interpreting the law under progressive law. Progressive Law goes beyond just critiquing the liberal legal system, despite having many similarities to the Critical Legal Studies Movement that first appeared in the US in 1977. Progressive Law puts forward the understanding that law is not absolutely driven by positive

law or statutory law, but it is also driven by non-formal principles. Keywords that are worth noting when we want to raise the understanding of progressivism, namely:

a. The regulation is based on the circumstances and state of the community's regulatory demands, and it evolves in tandem with community ambitions;The law must side with the interests of the people and in the interests of justice;
b. The goal of the law is to guide people toward pleasure and success;
c. Law is constantly evolving; it is a process that is constantly changing.
d. The foundation of excellent legislation is a better life, according to the law;
e. The type of law is responsive;
f. The statute promotes public service;
g. A constitutional state with a conscience is created by the law.

Therefore, the Indonesian rule of law should reduce its dependence on the formation of laws by further improving the position, role, and quality of the judiciary in various resolutions of legal problems in practice. At the same time, there is also a tendency to prioritize the role of supervision by parliament compared to the role of legislation, so that the drafting of laws can be idealized to be prepared on the initiative of the government, but the role of supervision of the DPR can be further enhanced effectively, both supervision in the formation of laws (legislative acts), and supervision of the formation of implementing regulations of laws (executive acts), as well as supervision of the implementation of laws and supervision of the implementation of development work programs funded by the State Budget (APBN) in the context of implementing laws and regulations (executive actions).

IV. CONCLUSION

The legal theory of positivism is a single paradigm that is related to law enforcement in Indonesia which is functionally used to understand, analyze and control the characteristics of pluralistic life. The enforcement of legal positivism (legal positivism) initiated by Nonet-Selznick in the responsive legal theory includes repressive law, autonomous law and responsive law. The existence of society and local wisdom is recognized, even its role is explicitly accommodated in laws and regulations including at the regional level through regional regulations. Efforts made to accommodate local wisdom in regional regulations are a process of adoption and adaptation, including the preparation of spatial plans, the role of society is involved in the entire process from the preparation stage to completion. Active participation is the key so that society can play a real role, not just formal procedural activism in the formation of regulations in the region.

Responsive law becomes a signal for Indigenous Peoples in resolving every problem that arises and making it a priority in making the required commitments. So that the law can be used as a tool that regulates the Community through the application of firm and clear sanctions and upholding justice.Therefore, from the perspective of progressive legal theory, the omnibus law is very important to be implemented immediately so that human interests are not hampered by regulations, and the stages for understanding human interests and needs are by optimizing public participation in the formation of the omnibus law.

REFERENCES

Friedman, L. M. (1977). Law And Society: An Introduction. Prentice-Hall.

Marzuki, P. M. (2010). Penelitian Hukum Normatif. Kencana Prenada Media Group.

Negara, T. A. S. (2023). Normative Legal Research In Indonesia: Its Originis And Approaches. Audito Comparative Law Journal (ACLJ), 4(1), 1–9. Https://Doi.Org/10.22219/Aclj.V4i1.24855

Nugraheni, E., & Winata, A. (2003). Konservasi Hutan Dan Pola Pertanian Tradisional Masyarakat Baduy Di Banten.

Nyathi, M. (2023). Re-Asserting The Doctrinal Legal Research Methodology In The South African Academy: Navigating The Maze. South African Law Journal, 140(2), 365–386. Https://Doi.Org/10.47348/SALJ/V140/I2a5

Rahardjo, S. (2005). Hukum Progresif: Hukum Yang Membebaskan. Jurnal Hukum Progresif, 1(1).

Rehatta, V. J. (2015). Implementation Of Responsive Law In Indonesia.

Sartini, S. (2004). Menggali Kearifan Lokan Nusantara: Sebuah Kajian Filsafati. Jurnal Filsafat, 14(2), 111–120.

Suhartini. (2009). Local Wisdom And Biodiversity Conservation. UGM Press.

Suwandoko, S., Yusliwidaka, A., Rihardi, S. A., Lubis, R. K., Triantono, T., & Pajrin, R. (2022). Legal Humanism Based On Local Wisdom: Progressive Legal Development Study In Magelang. Pandecta Research Law Journal, 17(2), 229–236. Https://Doi.Org/10.15294/Pandecta.V17i2.36870

