

LEGAL REVIEW ON NGLURUG BY MUD-AFFECTED PEOPLE AGAINST GOVERNMENT OF INDONESIA AND LAPINDO BRANTAS CORPORATION

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ABSTRACT

Legal culture will form the legal consciousness of people in a country. Country through the government as the organizer of national and state has a very important role to create prosperity for their people including the role of government in assuring law enforcement. Legal culture witnesses that the operations of the law implemented by normative state does not automatically resolve the disputes in society. For this reason, there is an alternative dispute resolution by utilizing a culture that grows and develops in the community, including the process by community well-known nglurug undertaken by mudflow victims in Sidoarjo

Keywords: “nglurug”, legal culture, alternative dispute resolution.

INTRODUCTION

The nature of law enforcement which has been devastatingly ineffective to resolve dispute concerning environment impact does not hinder affected people to fight for their legal rights.

The inefficiency of law, especially of 1997 act No. 23 on environment handling has been driving affected people to look at other forum outside the court. It is especially obvious in mudflow case in Sidoarjo

The work of Mac Galanter (Mac Galanter, 1981), Justice in Many Rooms, has served as a fundamental theoretical framework to look at how far dispute-resolving forum is relevant to be comprehensively taken into account. It includes values of solidarity, cooperation, caring and empathy among local people. In Java tradition, especially in Sidoarjo and east Java, ngluruk refers to action by some people of a community who find government policy as unsatisfactory. Nglurug signifies public refusal or resistance to government policy.

The term 'nglurug' is local concept referring to a sudden gathering of some people and their coming to government's office (legislative and executive) as an instrument to put forward opinion, criticism, protests, or even a demand. This term, along with other term such as 'pepe' referring to basking in front of government's office is now accommodated within constitutional rights, since is a part of rights of opinion and organisation as confirmed by articles 27 and 28 of 1945 Constitution.

In the context of mudflow context, the affected people make a movement and action which mass media consider as 'nglurug'

Public's movement to voice their interest in the midst of pessimism over law efficacy, in this case 1997 act no. 23, is acceptable to find other resolution outside court as long as the latter is considered unsatisfactory. On one side, the movement is intended as a means for communication to find trade-off among parties involved in the dispute. On another hand, this supported by cultural values and local wisdom might serve as political pressure to government to act impartially.

From above background, the problem formulation can be drawn as follows: how is legal review to nglurug action by affected people and Lapindo Brantas Corporation.

Legal Cultural Concept

As a concept, legal culture is applied as analytical tool to comprehend phenomena outside the law and its enforcing institutions, but can be supporting or impeding the work of the law.

To Friedman (Lawrence M Friedman, 1975) ' legal culture' always exists in any legal system. Legal culture refers to attitude, values, and opinions of public with emphasis on law, legal system and some parts of law. Legal culture is a part of general law, habits, opinions, procedure and mindset guiding people to approve or disapprove law in a distinctive way. From those three components above, legal culture is the most significant component.

Further more , *Lawrence M. Friedman* put forward three components internal in the legal system. The first of Those three components is structure. This structure is explained by friedmen as follows:

First many features of a working legal system can be called structural-the moving parts, so to speak of the machine Courts are simple and obvious example; their structures can be described; a panel of such and such a size, sitting at such and such a time, which this or that limitation on jurisdiction. The shape size, and powers of legislature is another element of structure. A written constitution is still another important feature in structural landscape of law. It is, or attempts to be, the expression or blueprint of basic features of the country's legal process, the organization and framework of government.

From the passage, it can be concluded that the component of structure covers various institutions created by the legal system. They serve different functions supporting the work of legal system, embodied in the institutions of police, court, justice and others.

The second component legal system is the substance. In his writing, Freidman described it as follows:

These are the actual products of the legal system -what the judges, for example, actually say and do. Substance includes, naturally, enough, those propositions referred to as legal rules; realistically, it also includes rules which are not written down, i.e. those regulates of behavior that could be reduced to a general statement. Every decision, too, is a substantive product of the legal system, as is every doctrine announced in court, or enacted by legislatures, or adopted by agency of government.

The substantive component covers all the products of legal system, including legal norms such as rules, decision and doctrines applied in in the legal system. It also includes regulations, written and not written, and court's decree.

The third component is legal culture. Friedman described it as follows:

Legal culture can be defined as those attitudes and values that related to law and the legal system, together with those attitude and values affecting behavior related to law and its institution, either positively or negatively. Love of litigation, or a hated of it, is part of legal culture, as would be attitudes toward child rearing in so far as these attitudes affect behavior which is at least nominally governed by law the legal culture, then, is a general expression for the way the legal system fits into the culture of the general society.

Legal culture as a non-material or sipitual is comprised of values which are abstract conception defining what is good (therefore must be followed) and what is bad (therefore must be avoided). It means that there is spirituality within law which is close to faith or trust (Soerjono Soekanto, 1994)

Law enforcement by emphasizing legal culture based on justice needs to be brought to the fore to mend the existing mess of law administration so far. Law enforcement to uphold justice can also serve as means for

According to Sarjipto Rahardjo (Sarjipto Rahardjo, 2009) , legal culture of a nation is determined by certain values which become reference in practicing its law. Its substantive behavior is discerned and guided by different value system.

It is because legal culture is essentially public's attitude in a society to law and legal system such as belief, value, ideas and hopes. Legal culture can be interpreted as the nature of social thinking and social power determining how law should be followed, broken and protected. According to Mahfud MD, without legal culture a legal system is unconceivable.(Mahfud MD, 2007)

The Nature, Characteristics, and Forms of Nglurug done by Public of Sidoarjo

The word nglurug derive from Java language to represent an action of group of people. It is meant as coming to the homebase of opponent.(Wardoyo, 1991)

People in Sidoarjo, like other most java people, interpret the word nglurug as attitude and protest against a policy or decision of an institution. They, however, have their own glurug with its distintintive characteristics as follows:

First

nglurug is an concerted action or gathering around in one place. This practice is common in Sidoarjo.

Second

Sidoarjo-specific ngluruk takes the form of blocking the main roads with effect of paralyzing the traffic.

Third

Sidoarjo-specific ngluruk often involves all elements of community.

Fourth

Sidoarjo-specific ngluruk is well-known for its intractability and persistence. According to Imam, mud-victims will keep demonstrating until Brantas Lapindo corporation keep its promise to pay the compesation.

Sidoarjo-specific ngluruk is periodic in nature, including against Lapindo Brantas Corporation, regional government, parliaments, and president.

Based on description above, how is legal cultural review on nglurug?

As explained earlier, nglurug has its place since law and courts do not have ability to resolve dispute in a smooth, quick, and effective manner. Outside court resolutions are in fact found more effective. This is part of legal culture growing and developing in a community.

Upon this fact, Satjipto Rahardjo suggested that justice should not be concentrated only at one institution, that is courts. Marc Galanter made a wonderful representation, that is justice in many rooms. The idea of Alternative Dispute Resolution (ADR) has already existed since the movement wave of Access to Justice Movement (AJM), especially the third wave which requires alternativte path outside public court.

Modern law in Indonesia is accepted and implemented as a new institution imposed externally. This is mostly due to liberal philosophy that presently blocks substantial justice enforcement.

The consequent result is the difficulty to build and develop new legal behavior and legal culture supporting the change from 'the state of being colonized' to 'one of being sovereign'. On this issue, Satjipto Rahardjo stressed the difficulty to change Indonesia people's behavior after such a long colonization that fifteen years of independence is not enough for a significant change.

It is then quite understandable that Indonesia people seeks out other way outside the court to get justice. Nglurug is a part of local wisdom to counter unsatisfactory legal decree. Nglurug also serves as a media to convey opinion on allegedly unjust legal decree. But it does not mean that law should subject to social power. It means that law should take into account of social phenomena outside. It is this practice that is commonly identified as legal culture.

For further examination of relation between nglurug and legal culture, I make an analysis by means of Friedman's legal system. Legal system, according to Friedman, was modified by incorporating the elements of legal habits and law awareness.

According to Benny S. Tabalujan, this will create a simple model describing the relation between legal culture and community. From this model he drew a thesis of four implications as follows:

The first implication is that legal culture is a central element of a successful legal reformation. The efforts to change behavior by changing legal institutions or the law itself, if not supported by the change of legal culture, will not last long and not be meaningful.

The second implication is that legal culture can change at any time with the increasing legal awareness.

The third implication is that the changes in legal awareness can be affected by external factors such as economical, political and social events. This is in line with Weberian approach to law and society looking into ties among social relations.

The fourth implication is, resounding Weberian approach, that external development in economical, political and social sectors can influence legal awareness of a community and therefore its acceptance of more rational law. It gives a way to Weber's view of society who acts rationally to shallow Law.

How can Pancasila, as national ideology, be applied to review ngulurug practice? As the main source of all law and regulations, Pancasila provides guiding values. It means that regulations and rules must accomodate and reflect those values. Law in Indonesia must guarantee and uphold values contained in preamble of constitution which reflects Pancasila and principles contained in the body of constitution. These three components are inseparable from constitution

In practising law in a sovereign country, cultural dimension should take the first place in law. It is because within cultural dimension there lies a set of values (value system). This value system, in turn, provides a base for policy formulation, and followed by law making as a juridical guidance and code of conduct for every day activity.

From this review, nglurug is sensible and explainable. Pancasila provides a latitude for the people to demand justice. When law is considered too narrow to accomodate justice, it should turn to principles of Pancasila. Nglurug is one expression reflected in Pancasila culture.

CONCLUSION

Legal culture will form legal awareness of community. Government has a significant part in growing prosperity, and holds responsibility for law enforcement. Legal culture witnesses that normatif law alone sometimes does not resolve disputes. In order to keep balance, there is alternative resolution by capitalizing on local culture. Ngluruk is part of the culture. Ngluruk is media for the people to demand justice from government and Lapindo Berantas Corporation.

ACKNOWLEDGEMENTS

This article is dedicated to civitas academica of Bhayangkara university Surabaya particularly law faculty. They have already contributed significantly to this article.

REFERENCES

- Arinanto, Satya, (2003). *Hak Asasi Manusia dalam Transisi Politik di Indonesia*, Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, Jakarta.
- Darmodiharjo, Darji dan Sidharta. (1995). *Pokok-pokok Filsafat Hukum*. Jakarta: Gramedia.
- Echols, John M., Hasan Shadily, (1996). *Kamus Inggris Indonesia*. Jakarta: Gramedia.
- El-Muhtaj, (2005) *Hak Asasi Manusia dalam Konstitusi Indonesia*. Jakarta: Kencana.
- Friedman, Lawrence. (1975). *The Legal System: A Sosial Science Perspektive*. New York: Russel Soge Foundation.
- Galanter, Marc. (1981). *Keadilan di Berbagai Ruangan: Lembaga Peradilan , Penataan Masyarakat serta Hukum Rakyat, Dalam T.O. Ihromi (ed), Antropologi Hukum; Sebuah Bunga Rampai*. Jakarta: Yayasan Obor Indonesia.
- Huda, Ni'matul. (2001). *Politik Ketatanegaraan Indonesia; Kajian terhadap Dinamika Perubahan UUD 1945*, Yogyakarta: FH UII Press.
- Koentjaraningrat. (1965). *Pengantar Antropologi*. Jakarta: Universitas Indonesia.
- Lumbun, T. Gayus. (2002). *Confusianisme dan Lingkungan Hidup; Budaya Hukum Masyarakat Pasiran*. Jakarta: Universitas Indonesia.
- Mahfud MD., Moh. (2007). *Perdebatan Ketatanegaraan Pasca Amandemen*. Jakarta: LP3ES.
- Priapantja, Cita Citrawanda. (1999). *Budaya Hukum Indonesia Menghadapi Globalisasi: Perlindungan Rahasia Dagang di Bidang Farmasi*. Jakarta: Chandra Pratama.
- Rahardjo, Satjipto. (2009). *Biarkan Hukum mengalir; Catatan Kritis tentang Pergulatan Manusia dan Hukum*, Gramedia: Kompas.
- Siahan, N.H.T. (2006). *Hukum Lingkungan, Pancaran Alam*, Jakarta.
- Soekanto, Soerjono et al. (1994). *Antropologi Hukum: Proses Pengembangan Ilmu Hukum Adat*. Jakarta: Rajawali.
- Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa. (1989). *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka.
- Wardoyo. (2010). *Kamus Lengkap Jawa-Indonesia, Indonesia-Jawa*. Yogyakarta: Absolut.
- Wijoyo, Suparto. (2003). *Penyelesaian Sengketa Lingkungan (Environmental Disputes Resolution)*. Surabaya: Airlangga University Press.