

THE PARTICIPATION OF INDIGENOUS COMMUNITIES IN FORMING A LOCAL REGULATION: URGENCY OF INTERDISCIPLINARY APPROACH TO CREATE A RESPONSIVE LAW

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ABSTRACT

The rising legal issue is about legal problem that related with the participation of Indigenous Communities in forming a local regulation. There are several legal problems about that article such as : judicial problem (vague norms), sociological problem (neglecting indigenous participation rights), philosophical problem (inequity towards indigenous communities) and theoretical problem (neglecting interdisciplinary approach). Based on those problems, there are three objectives of the study, which are 1) What is the juridical basis about the need of regulation for Indigenous Communities Participation in a local regulation, 2) What is the theoretical basis in reviewing Indigenous Community participation in a local regulation, 3) What is the philosophical basis about the urgency of interdisciplinary approach in forming a local regulation. This research are using a sociologic approach and hermeneutic interpretation approach.

The result obtain from this research are: 1) The juridical basis is article 18 B paragraph (2) and The Constitution of The Republic Indonesia 1945 which can be understood as a constitutional rights that owned by Indigenous communities to participate in forming a local regulation, article 354 Local Government Regulation, article 96 Act on Establishment of Regulation and President Regulation Number 87 year 2014. 2) The theoretical basis are state law theory, participation theory, legislation forming theory, and responsive theory. 3) The philosophical basis about the urgency of interdisciplinary approach in forming a local regulation is required some interdisciplinary approach that capable to explain about the relation between the law and society (social reality), therefore the out coming local regulation appropriate with the value of life and be able to responding society needs.

The recommendation of this research is, in every local regulation legislation steps, social participation still partial and symbolic, so it needs to be formed a strategy to more actively involve the society including Indigenous Community.

Keywords: Participation, Indigenous Communities, Local Regulation Legislation, Interdisciplinary.

INTRODUCTION

According to Aristoteles contention human existence by nature is an individual beings and social beings.²¹ Aristoteles also said that the origin of the formation of the state start from a family, then form a group, after that form a village, later formed the city and then formed a state. According to Aristoteles contention can be understood that the gradual development of society can be seen from the establishment of the state from the legal community until that be on one's own that subjected to their own rules and custom and then they formed a state and obey the law. A great law is the law that desired by the society, that is give a same attention

²¹ Max Boli Sabon, 1994, *Ilmu Negara*, PT Gramedia Pustaka Utama Jakarta, h.40.

between the law and society with the intention of a great law is a living law that initiated by Eugen Erlich.²² A good constitution is a constitution that formed in harmony with the laws that live in the community. In pursuance of Padmo Wahjono as quoted by Janedjri M Gaffar²³, said that the applicable law in the country must be formulated with democracy (law that the people desired / participate law).

In formal legal context social participation is regulated in article 354 act 23 year 2014 concerning Local Government (hereafter referred to as Local Government Regulation) and article 96 act 12 year 2011 concerning Establishment of Regulation (hereafter referred to as Act on Establishment of Regulation). Basically in forming a Local regulation have to involving society participation both in the planning, discussion, implementation, monitoring and evaluation of the local regulation. In article 1 point 41 social participation is community participation to canalize their aspiration, idea and also their needs in the enforcement of a local regulation. Criticize article 1 point 41 and article 354 act 23 year 2014 that the meaning of the norms of society participation shows a vague norms, related to the Indigenous community existence (*desa pakraman*) with their constitutional rights in forming a local regulation. A norm of “society participation” lead to state society (exclude Indigenous communities).

Social participation is also regulated in Indonesian Domestic Ministry Regulation Number 1 year 2014 concerning the establishment of local regulation, specifically in article 110 that basically regulate about the ability of society to give a verbal or written suggestions in forming a local regulation. The understanding about society participation shows a vague norms concerning *Desa Pakraman* existence in the country.

That vague norms caused a sociological problem which is neglecting *Desa Pakraman* rights to participate in forming a local regulation can be seen in the table 1.

Table 1. Vague Norms Caused a sociological problem which is neglecting Desa Pakraman rights to participate in forming a local regulation

Year	Study	Notes
2012	Public Discussion of Local Regulation Draft in Badung Regency concerning Women and Child Protection the victims of violence.	<i>Desa Pakraman</i> is not involved
2013	Public Discussion of Local Regulation Draft in Badung Regency concerning Environment Protection and Management.	<i>Desa Pakraman</i> is not involved
2013	Public Discussion of Local Regulation Draft in Bali concerning Child Protection.	<i>Desa Pakraman</i> is not involved
2014	Public Discussion of Local Regulation Draft in Bali concerning Traditional Tenun Preservation.	<i>Desa pakraman</i> is not involved
2014	Public Discussion of Local Regulation Draft in Denpasar concerning Women and Child Protection the Victims of Violence.	<i>Desa Pakraman</i> involved through <i>MUDP</i>

Source: The results of public discussions of 2012, 2013, 2014.

²² H. Lili Rasjidi, 2008, “*Pembangunan Sistem Hukum Dalam Rangka Pembinaan Hukum Nasional*” dalam Butir-Butir Pemikiran Tentang Hukum Memperingati 70 Tahun Prof. Dr. B Arief Sidharta, SH., Refika Aditama, Bandung, h. 142.

²³ Janedjri M. Gaffar, 2013, *Demokrasi dan Pemilu Di Indonesia*, Konstitusi Press khasanah peradaban hukum & konstitusi, Jakarta, h.75.

The vagueness regulation regarding Desa Pakraman participation in forming a local regulation specified by the following table:

Table 2. The vagueness regulation regarding Desa Pakraman participation in forming a local regulation

Bali Local Regulation Number 3 Year 2013 concerning the protection of local fruits	Local Regulation of Badung Regency Number 15 Year 2013 concerning Protection of Women and Children of Violence Victims
Article 69 paragraph (1) The Society be able to participate in organizing the protection of local fruits	Article 16 paragraph (2) Society participation as referred to in paragraph (1) perform by individual, society institutions, nongovernmental organization, educational institutions, private and mass media

Source: Compiled from Bali Local Regulation and a Local Regulation of Badung Regency.

In assessing Society Participation, is also need to propose the philosophical problem, which is disharmony between sociological jurisprudence that revive *Desa Pakraman* participation and legal positivism that deaden *desa pakraman* participation. Gede Marhaendra Wija Atmaja said that disharmony called contention between philosophy of law of sociological jurisprudence and positivism law.²⁴

Moreover, it also need to adduce the theoretical problem, which is a conventional approach in forming a local regulation is only legalistic approach (normative) that only refers to jurisprudence studies in normative perspective without interdisciplinary study (sociolegal). Normative legal study is a study that value free and objective, a normological concept (the law exclusively go into positive norms that exempt of multidisciplinary and interdisciplinary effect.²⁵ Therefore, in axiology a legal certainty is the goal. Sociological study is reviewing the law by using social science approach.²⁶ Therefore in sociological, the legal expediency is the goal.

Based on the explanation above, it is relevant to examine a problems as follows:

- 1) What is the juridical basis of the needs of Indigenous Participation Regulation in Local Regulation?
- 2) What is the theoretical basis in reviewing Indigenous participation in local regulation?
- 3) What is the philosophical basis about the urgency of interdisciplinary approach in forming a local regulation?

This research using hermetics methods with interdisciplinary approach (sociolegal). Sociolegal approach²⁷ is a textual study towards the provision of the legislation critically and explain the meaning and its implications of the legal subjects (including marginalized groups).

²⁴Gede Marhaendra Wija Atmaja, 2012, *Politik Pluralisme Hukum Dalam PEngakuan Kesatuan Masyarakat Hukum Adat Dengan Peraturan Daerah*, Disertasi pada Progam Doktor Ilmu Hukum Fakultas Hukum Universitas Brawijaya Malang, h 8.

²⁵Widodo Dwi Putro, 2009, "Mengkritisi Positivisme Hukum : Langkah Awal Memasuki Diskursus Metodologis dalam Penelitian Hukum" Makalah dalam *Metode Penelitian Hukum Konstelasi dan Refleksi*, Editor Sulistyowati Irianto & Shidarta, Yayasan Obor Indonesia, Jakarta h. 23.

²⁶Sulistyowati Irianto, 2009, *Memperkenalkan Studi Sosiolegal dan Implikasi Metodologisnya*, makalah dalam *Metode Penelitian Hukum Konstelasi dan Refleksi*, Editor Sulistyowati Irianto & Shidarta, Yayasan Obor Indonesia, Jakarta h.174.

²⁷Sulistyowati Irianto, 2009, *Op.cit.*, h.177. Lihat Reza Banakar And Max Travers, 2005, *Theory and Method in Socio-Legal Research*, Hart Publishing Oxford and Portland Oregon, h 1-26.

CONTENT

2.1 Juridical basis of the needs of indigenous communities participation regulation in local regulation

The comprehension problem about *Desa Pakraman* constitutional rights pushed back when there are an enactment of Act 23 year 2014, especially article 354 regarding society participation. Those norms lead to society participation in general (exclude *Desa Pakraman*). In connection with *Desa Pakraman* constitutional, theoretical comprehension started by article 18 B paragraph (2) The Constitution of Republic Indonesia 1945 which confirm: the state recognize and respects unit of customary law communities as well as their traditional rights as long as they live and in accordance with society development. As well as the principle of The Unitary State of The Republic of Indonesia that regulated by the law. In the description above it become clear that the recognition and protection of Indigenous Communities (hereafter referred to as *KMHA*) has limits. Those limit means *KMHA* existence will be recognized and protected when it's still alive (the dead *KMHA* cannot be revived) and still growing. The meaning of *KMHA* recognition is granting a legal status for *KMHA* as well as its traditional rights including customary law. This is also confirmed by Mahfud MD²⁸ that the recognition of *KMHA* can act as a legal subject. This status put *KMHA* as a legal subject which is equal to other legal subjects (either individuals or legal entities). The meaning of recognition and protection of *KMHA* traditional rights by the state is also a reflection of the value of human rights. In a legal formal context its regulated in article 28 I paragraph (4) The Constitution of Republic Indonesia 1945. In the norms of article 28 I paragraph (4) The Constitution of Republic Indonesia 1945 explicitly stated: protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state. Therefore the state obliged to recognize, respect, protect and fulfill the rights of *KMHA* as a human rights. Hereafter Mahfud Md²⁹ said that recognition concept of *KMHA* encompass: 1) the recognition of *KMHA* as a legal subject, 2) the recognition of the structure and governance of indigenous, 3) the recognition of customary law, 4) the recognition of the rights over customary property, including customary rights (*ulayat*). Based on the explanation above the existence of *Desa Pakraman* as *KMHA* clearly have the constitutional right that must be recognized, respected, protected and filled their rights by the state (government).

The adhesion of constitutional rights of *Desa Pakraman* so its implicate for the participation of Indigenous Community in the context of forming a local regulation. Heed back to article 354 Act 23 year 2014 it is very important to critized regarding the meaning of social participation. To deeply reflect those articles, need to understand the historical context about the meaning of society participation norms. It can be seen in the following table:

Table 3. Historical context about the meaning of society participation norms

Act	Article Norms	Annotation
Article 151 Act 32 year 2014	The Local Government in making policy, program and development activities encourage society	1) Society participation norms scattered in several articles 2) There are no clear norms

²⁸Moh. Mahfud MD, 2010, "Revitalisasi Masyarakat Hukum Adat Dalam Kerangka UUD 1945 Menyongsong Globalisasi", makalah pada acara Seminar Awig-awig II "Pemberdayaan Awig-Awig Desa Pakraman di Bali Dalam Mewujudkan Masyarakat Adat yang sejahtera, Bali, 30 September 2010, h. 4.

²⁹Moh. Mahfud MD, 2010, *Op.cit.*, h. 4-6.

	participation	about society participation in forming a local regulation
Article 1 point 41 Act 23 year 2014	The definition of Society Participation concept is about the participation of society to canalize their aspiration, thought, and their interest in the enforcement of Local Government	1) Society participation norms regulated in a separate chapter
Article 354 Act 23 year 2014	One of the society participation is in forming a local regulation and local policy	2) Society participation is regulated in forming a local regulation

Based on the description in the table above, there are a differences in the provisions of society participation, however in the context of forming a local regulation, need to pair the provisions of society participation in act 23 year 2014 and act 12 year 2011. The pairing of those norms can be seen in the following table:

Table 4. Pairing of norms of society participation in act 23 year 2014 and act 12 year 2011

Act	Article Norms	Annotation
Article 354 Act 23 year 2014	Society participation encompass: local regulation drafting and local policy	Society participation in forming a local regulation is regulated.
Article 96 Paragraph (1) act 12 year 2011	Society participation has rights to provide a feedback orally or in writing in forming a legislation	Society participation in forming a legislation is regulated

The description above showed that society participation clause has received legal formal arrangements. However regarding the constitutional rights of *Desa Pakraman* participation in forming a local regulation still vague, in the view of the meaning about society participation in legislation only society in general (exclude *Desa Pakraman*). Therefore based on constitutional rights comprehension on article 18 B Paragraph (2) that also explained by Mahfud Md and Marhaendra Wija Atmadja, it can be interpreted that based on *Desa Pakraman* constitutional rights, *Desa Pakraman* has rights to participate in forming a local regulation and then cast in the normative form in legislation (especially local regulation) concerning *Desa Pakraman* participation.

2.2 Theoretical base in reviewing society participation in forming a local regulation

There are several theoretical base that related to this research such as:

a) Get the hang of State Law

The state law concept legally regulated in article 1 paragraph (3) The Constitution of the Republic of Indonesia 1945. Democracy as regulated in a constitutional based on sovereignty of the authority to the people, Jimly Asshiddiqie said that the authority comes from (i) comes from the people (ii) performed by the people through its representative (iii) the activities of power that organized together with the people, (iv) all of the holding power function intended for society prominence. It such a democracy that based on the law. Democracy gives freedom within the framework of the rules till fare orderly and organized. In this case the rules also serves as a freedom balancer, therefore the democracy reasoning shall be governed with the concept of the state law based on constitutional democracy.³⁰ Based on the state law reasoning and democracy, *desa pakraman* as part of the society have an equal rights to participate in forming a local regulation. Basically *desa pakraman* as Indigenous Communities in the comprehension of society in general has an equal position in the law. Hereafter State Law comprehension in accordance with legal state theory that reaffirmed by Brian Z. Tamanaha, there are two (2) approaches that used in reviewing a state law which are: formal approach and substantive approach.³¹ The state law formal approach intended for legal announcements by the authorities about the conspicuousness of the norms in a legislation. The substantive approach of state law want to move further that is basic rights be a foundation to distinguish the law that filled a basic rights and the law that ignore a basic rights including ignoring the basic rights of the marginalized.

The comprehension of State Law theory above, put *desa pakraman* participation in forming a local regulation that needs to regulated clearly in a legislation both the concept and procedures of *desa pakraman* participation. A clear rules in the legislation provide a strong legal basis with clear legal certainty. As well as the regulation of procedure and clear substance regarding *desa pakraman* participation in forming a local regulation so that substantive justice can be achieved, therefore the aspect of justice and expediency also achieved.

b) Conceiving society participation

The participation means a society participation in observing, controlling and affect the formation of local regulation. In this concept, society has the right in the process of government decision making. Samuel P. Huntington and Joan Nelson convey that to understand the intact participation concept we need to find political participation concept. Political participation denote that we define political participation simply as activity by private citizen design to influence governmental decision making³². Saifudin³³ said that in political participation, showed that the participation substance is an activities to influence government decisions regardless of the form, trait and results of their participation, however there are four principal about participation restriction:

- 1) Participation includes activities, exclude attitudes towards the political orientation.
- 2) Participation is a regular citizen political activity in their role as citizens.
- 3) Participation only activity that influence government decision making.
- 4) Participation covers all activities that influence the government, whether that activity has effect or not.

³⁰Jimly Asshiddiqie, 2010, *Konstitusi Ekonomi*, Kompas Jakarta, hal 361-362.

³¹Brian Z Tamanaha, 2004, *On The Rule Of Law*, Cambridge University Press, New York, h.91.

³²Saifudin, 2009, *Partisipasi Publik dalam Pembentukan Peraturan Perundang-undangan*, FH UII Press, Yogyakarta, hal. 18.

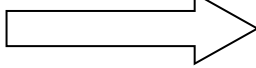
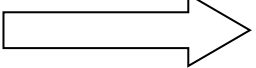
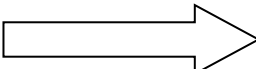
³³Ibid.

Basically, the society required to participate in the process of decision making by government. Furthermore society participation in forming a local regulation categorized as a political participation, Jazim Hamidi Classify the participation concept into:

- 1) **Participation as a policy:** Participation as a consultation procedure by policy makers towards society as a local regulation subject
- 2) **Participation as a strategy:** Participation as one of strategy to get a society support for the credibility of the policy
- 3) **Participation as a communication instrument:** A communication instrument for the government to ascertain society pretension.
- 4) **Participation as a dispute settlement:** Participation as a dispute settlement and tolerance for society incredulity³⁴

Accordingly in the terms of society participation in a concept of Indigenous Communities can provide a legitimacy towards government policy and inflict trust with concern of the government against the interests of the society.³⁵ Huntington and Nelson said that a political participation is defined as private citizens activities which aims to influence decision making by the government. To support the theory above, in a responsive legal theory stare that the law is the way to achieve the goal. A legal product that has a responsive character in the forming process invited society participation as much as possible about all the society elements participation, both individual or groups that is aspirational from the interest of the society.³⁶ In pursuance of Sherry Arnstem³⁷ in Aladder of citizen participation enact an scheme about 8 society participation level in forming a policy. In AIP journal Sherry Arnstein³⁸ describe a society participation level as follows:

Figure 1. Participation Degree

8	Citizen Control		Degree of Citizen Power
7	Delegated Power		
6	Partnership		Degree of Tokenism
5	Plactation		
4	Consultation		
3	Informing		Non Participation
2	Therapy		
1	Manipulation		

³⁴Jazim Hamidi, 2008, *Panduan Praktis Pembentukan Peraturan Daerah Partisipatif*, Prestasi Pustaka Publiher, Jakarta h 48.

³⁵Pendapat Samuel P Hungtington dan Joan Nelson Sebagaimana dikutip oleh Sirajuddin, didik Sukrino, Winardi, 2011, *Hukum Pelayanan Publik Berbasis Partisipasi dan Keterbukaan Informasi*, Setara Press, Malang , h. 171.

³⁶Philippe Nonet dan Philip Selznick, 2007, *Hukum Responsif, Judul asli : Law & Society in transition: toward Responsive law*, Nusamedia Bandung. Sebagaimana dikutip oleh Janedjri M. Gaffar, 2013, *Demokrasi dan Pemilu Di Indonesia*, Konstitusi Press Khasanah Peradaban Hukum & Konstitusi, h.89.

³⁷Sirajuddin, Didik Sukrino dan Winardi, 2011, *Hukum Pelayanan Publik Berbasis Partisipasi dan Keterbukaan Informasi*, Setara Press, Malang, hal.173.

³⁸Sherry R. Arnstein, 1969, *A Ladder of Citizen Participation*," JAIP, Vol. 35, No. 4, July 1969, pp. 216-224.

Figure 2. Public participation level in Sherry Arnstein Theory

Level	Illustration
8	Citizen control, already reach where the society have the authority to determine, implement and controlling resource management
7	Delegate power, the society authority is bigger than a state promoter in forming policy
6	Partnership, in this case there are a relative power balance between the society and the authorities to planning and making decision together. In this level recognize the existence of society rights to participate in forming a legislation in this context local policy
5	Placation is a moot participation, meaning society have influence towards the policy, but if there is a voting the decision is in a state so the society control not impact
4	Consultation, in this level society feedback is required then it concluding that the society have been participate in forming a legislation and the State Institution has comply its obligation in the context of involving the society
3	Informing, the society only get informed about the existence of the laws and regulations. Regardless of the public understanding even less providing option to negotiate the policy
2	Therapy, society as the victim of policy, recommended to report to the authorities however it is unclear and not followed
1	Manipulation, the State Institution provide a guidance to community groups as if participating, whereas occurred cooptation and ruler repression.

Social participation in this context is the indigenous community participation in forming a local regulation. The meaning of those participation is a form of good governance implementation such as society participation, accountability and transpiration.

The relevance of participation theory towards *Desa Pakraman* participation in forming a local regulation is to put *Desa Pakraman* to have rights to involve in forming a local regulation and suits to Sherry Arnstein participation degree, therefore in forming a local regulation *desa pakraman* is in moot participation level (Degree of Tokenism). The analysis who puts on moot participation degree is based on the practice of *desa pakraman* participation in forming a local regulation.

c) Conceive a Legislation Forming Theory

Hamid S. Atamimi³⁹ assert that the establishment of legislation is one of the powerful methods and instruments that available to set and directing community existence to achieve their goals. Accordingly a constitution in order to comply legal ideal is required a proper legislation forming theory to assess *desa pakraman* participation in forming a local

³⁹A. Hamid Attamimi, 1992, *Teori Perundang-undangan Indonesia : Suatu Sisi Ilmu Pengetahuan Perundang-Undangan Indonesia Yang Menjelaskan dan Menjermihkan Pemahaman*, Pidato pada Upacara Pengukuhan Guru Besar Tetap Pada Fakultas Hukum Universitas Indonesia, Jakarta, Tanggal 25 April 1992, h.8.

regulation. The legislation forming theory using theory from Jan Michiel Otto, Suzan Stoter and Julia Arnsheidt Classified 5 steps in forming legislation⁴⁰ such as:

1. An evaluation of the effectiveness of the existing law before under-taking steps to improve upon it
2. The development of an understanding of why laws are effective or ineffective
3. An analysis of problems in need of regulation
4. An analysis of the lawmaking process
5. An analysis of the feasibility of a legislative

There are several steps which must be done in the case of forming a local regulation:

1. Evaluation of the effectiveness of legislation before replacing its regulation
2. Effort to understand why the law become effective and ineffective. In this case to find an effective or ineffective regulation is by observing the fact that success or failure of its regulation influenced by a variety of institutional factors and groups interest.
3. Analysis of the issue that will be regulate thru regulatory system. There are 4 steps to analyze:
 - a. Identification of social problems
 - b. Analyze and explaining social problem
 - c. Propose solutions supported by proof including proposing a new regulation draft
 - d. Developing supervision mechanism and evaluation of the implementation in a new regulation draft
4. Analysis of the Process of establishing legislation that involving society participation. In this context, any proposed settlement of the problem which is a new regulation draft should open a space for public participation. This is because of the society condition and heterogeneous values, thus requiring the development of the form or model of new legislation.
5. Analysis towards the feasibility of the establishment of legislation. In analyzing the feasibility of the establishment of legislation are based on theories and social reality on the dynamics of the community.

Therefore, in the process of establishing a legislation in this context is focussed to point 4 which is emphasizes on society participation (*desa pakraman*) in the process of forming a local regulation by giving space, chances and great opportunities to participate in forming a local regulation. Accordingly this participation can be use as means in advocating legal and social (society) interest.

The relevance of the *Desa Pakraman* participation in forming a local regulation is placed in the formation of legislation that involving society participation. A local regulation draft must remain to open space for the public participation including *Desa Pakraman* participation. By involving *Desa Pakraman* to participate in forming a local regulation by

⁴⁰J.M. Otto dkk., 2008, "Using legislative theory to improve law and development projects" dalam *lawmaking for development explorations into the theory and practice of international legislative projects*, Leiden University Press, h. 70. Lihat juga J.M. Otto dkk., 2012, "Penggunaan Teori Pembentukan Legislasi Dalam Rangka Perbaikan Kualitas Hukum Dan Proyek-proyek Pembangunan" dalam Adriaan W. Bedner, Sulistyowati Irianto, Jan Michiel Otto, Theresia Dyah Wirastri, Editor, *Kajian Sosiolegal*, Pustaka Larasan, Denpasar, h.199.

its pluralistic value order, give a legitimacy towards its local regulation draft as a local regulation that suit to a living law in the society which leads to the effectiveness of local regulation.

d) Conceiving Responsive law

According to the Philip Nonet and Philip Selznick contention, there are 3 kinds of law which are repressive law, otonom law and responsive law. In a responsive law situation, the participation chances in forming the law are more opened. By opening space for the society to participate in law-making process (in local regulation context) is aims to the resulting law is not only responsive to the interests of the authorities and can be effective in the society. Nonet and Selznick⁴¹ concept the responsive law is the law that ready to adopt new paradigm and left the old paradigm. Therefore, in a responsive law not only based on juridical consideration but try to see a problem from some other perspective in order to pursue a substantive justice.

To understand a responsive legal theory in analyzing *desa pakraman* participation in forming a local regulation, in the presence of an open space for dialogue in forming a local regulation then *desa pakraman* actively participate to provide verbal or written suggestion to complete the local regulation draft. Therefore *desa pakraman* participation is necessary and very important in the context of forming local regulation, in expectance the local regulation in accordance with the value of society and effectively implemented.

2.4 Philosophical base about the urgency of Interdisciplinary Approach in forming a local regulation

In the context of forming a local regulation, is not only use a normtive legal research but also use an empirical legal research that called sociolegal research by Sulistyowati Irianto. There are many complicated society problems that cannot answered with monodiscipliner legal text. In this hassle, we need a fundamental basic explanation by interdiscipliner. Furthermore, a legal approach that can explain the relation between law and society is required.⁴² A sociolegal study, is a study of law that using law and social approach. The principal of sociolegal study is examines the phenomenon of a very broad law in related to authority relation and social, cultural, economic context where the law is? Besides that, sociolegal study is a textual study within the meaning of clauses in the law, regulations and policy could be critically analyzed and also explaining the meaning and implications towards the legal subject (including the marginalized). Therefore by doing sociolegal study can be explained the meaning contained of those articles wheather it is injure or prosper some particular society.

Conceiving sociolegal (interdisciplinary) above, in forming local regulation, the urgency of Interdisciplinary approach are: First, doing a document study towards law textual in this case society participation text in a constitution and critically analyzed and explained the purpose of those textual law. Secondly, beside document study, also carry on field study to get data(s) and information that basing the local regulation establishment. Thirdly, in conducting document study research and feld research, an interdisciplinary approach is needed. Candra Kusuma⁴³ said that interdisciplinary research about law is a research model that integrate the information, data, technique, equipment, perspective concept and discipline theory of law and non-law discipline (social sciences) to improve fundamental comprehension or for solve the problem that goes beyond the scope of the discipline of law. Hereafter in forming a

⁴¹Philippe Nonet & Philippe Selznick, 2003,*Hukum Responsif, Pilihan di Masa Depan*, Huma, Jakarta, hal. 59-61.

⁴²Sulistyowati Irianto, 2009, *op.cit*, h 173.

⁴³Ibid, h. 88.

constitution is not only need juridical action but also an interdisciplinary action.⁴⁴ Therefore and interdisciplinary approach is a process because it is a flexible approach or interdiscipliner approach is not just compounding the methods or theory from different disciplines but about how to mix it all in a interrelated research scheme that supporting each other to conclude comprehensively. It indicates that every regulations forming activity needs other science support in order that the legal product can be accepted, useful and recognize by the society.

CONCLUSIONS

Based on the explanation above, the conclusion are:

1. The juridical basis of the customary law society participation in forming a local regulation is article 18B paragraph (2) The Constitution of Republic Indonesia 1945, that can be realized as a constitutional rights of the customary law society to participate in forming a local regulation. Furthermore article 354 Local Government Regulation, article 96 Act on Establishment of Regulation, and Domestic Ministry Regulation Number 1 Year 2014 especially article 110, as the basis of the juridical base.
2. The theoretical basis that be used in society participation context in forming local regulation are: state law theory, participation theory, legislation forming theory and responsive theory. Some of those beneficial theory be used as analysis blade at the time when discussing the participation of customary law society in forming a local regulation. Therefore the analysis result is right and can response government needs as the decision maker and also response society needs when that local regulation enforced. However a good local regulation is a local regulation that convenient with the value of law that growth in the society as the purpose of sociological jurisprudence.
3. The urgency of interdisciplinary approach in forming local regulation is important because of considering the otoritative normative legal text cannot answers the issues in a society, in this case we need an interdisciplinary approach that can explain the relation between law and society, in this case need an interdisciplinary approach in forming local regulation process.

SUGGESTIONS

1. In the step of forming a local regulation, society participation still tend to partial and symbolic, therefore the society need to be actively and professionally involved
2. The government need to make a strategy to involving society participation in forming a local regulation that can be afford a participative local regulation.

⁴⁴*Ibid.*

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