

The Role of Local Wisdom in Law: Alternative Dispute Resolution in the Land Sector in North Sumatra, Indonesia

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Abstract

This paper discusses the role of local wisdom in alternative dispute resolution in the land sector in North Sumatra. Of all the 33 provinces in Indonesia, North Sumatra ranks number one in terms of land disputes or agrarian-related issues. Unfortunately, however, both national law and provincial law have not been able to provide efficient and reliable solutions to these problems.

This study addresses the issue as to what role can the North Sumatra local wisdom play in addressing land disputes and land related issues in the province of North Sumatra. In order to do so, the study uses a descriptive qualitative research method. Data was collected through court observations, document analysis, interviews and documentary studies.

The findings show that local wisdom plays a significant and effective role in resolving land dispute cases, which are not criminal acts. They also reveal that mediation and local wisdom as well as the desire to find a win-win solution are useful in devising comprehensive strategies for resolving land disputes that are still piling up in North Sumatra.

Keywords: *Tuturangiana*, local wisdom, *Baubau* community, and coastal protection.

Introduction

Land right disputes are a form of conflict that requires serious attention from various groups including the National Land Agency which is tasked to handle land issues starting from the regulation of land allocation to land to provide legal certainty and guarantee land (Middleton & Tait, 2013). This agency also regulates the legal relations between individual land as well as the settlement of land right disputes between individuals or groups of individuals, and the state (Ajayi & Buhari, 2014). If land disputes or conflicts do not receive serious attention and wise settlement patterns are not sought, then both vertical and horizontal conflicts cannot be resolved properly. Legal certainty and certainty of land rights in line with local wisdom seem to be one of the sustainable solutions to addressing these issues in the North Sumatra Province (Suryadi & Santiago, 2022).

Civil resolution of land issues in North Sumatra always involves alternative mechanisms such as mediation. The existence of mediation as a form of alternative dispute resolution mechanisms is not foreign to communities around the globe, including indigenous

communities with their various local values (Carol, 1995), because dispute resolution is part of the social norms of living. This condition can be traced from the fact that people are more oriented towards balance and harmony, the point of which is that everyone feels respected and valued and that no one's interests are defeated (Andrew, 2003).

Land conflicts have occurred from pre-independence era until now (Gunter, 2007). During the colonial era, land conflicts occurred because of differences in interests between the colonizers and the colonized (natives) due to the dualism of land law (Arifianto, 2009). However, after independence and reforms, land conflicts have arisen due to individual interests and group interests (Nino et al., 2018).

Disputes are universal legal phenomena that can occur anywhere and anytime. It is relatively easy to settle disputes within a community where kinship and group relationships are still strong, and where folk institutions are popular (Oehr et al., 2014).

Patterns of conflict resolutions include litigation and non-litigation conflict resolutions (Shearman & Dumlao, 2008). Litigation conflict resolution is carried out through formal court institutions, while non-litigation conflict resolution is carried out by parties outside the judiciary (Jamal et al., 2021) in the form of negotiations, deliberations, or mediations. Negotiations are carried out by means of the conflicting parties sitting together to find out the best way to resolve the conflict with the principle that no party is harmed (win-win solution), and neither party feels aggrieved. Deliberation is a further step of negotiation.

The study of alternative dispute resolution or what is often known as alternative dispute resolution (hereinafter abbreviated as ADR) in Indonesia is important. It is more so if it is associated with the views of the Indonesian political elite and the thoughts of some Indonesian legal experts who want to actualize various institutions or values that live in society to answer various social problems and contemporary agrarian conflicts (Suárez, 2013). Deliberation to reach consensus is a process of dispute resolution and decision-making considered as being rooted in various Indonesian communities. In addition to deliberation, there are other methods commonly used by the community in resolving conflicts. One of them relates to local wisdom known to the Indonesian population as *kearifan lokal* as stipulated in Law No. 30/1999 on Arbitrary Dispute Resolution. The purpose of this study is to discuss the use of alternative dispute resolution techniques in agrarian conflicts. The study acknowledges that although much has been done to improve access to justice by including alternative dispute resolution within the Indonesian justice system, local wisdom can be a better and sustainable alternative conflict resolution mechanism to consider.

Literature Review

Local Wisdom

According to Gadeng et al. (2018), local wisdom means local ideas that are wise, and of good value, embedded and followed by the community. Local or traditional wisdom is all forms of knowledge, belief, understanding or insight as well as customs or ethics that guide human behavior in life in ecological communities. Local or traditional wisdom is part of ethics and morality that helps people to answer moral questions about what to do, and how to act, especially in the field of environmental and natural resource management (Jonas, 2014). Fennell et al. (2008) argue that local wisdom is a view of life, science, and various other things. It is a life strategy in the form of activities carried out by the local communities in responding to various problems in meeting their needs (Schwartz et al., 2012). Local wisdom is a concept that lives in the community, grows and develops continuously in public awareness, and functions in regulating people's lives from those related to sacred and profane life (Erlina, 2022).

According to Koentjoroningrat (1964), local wisdom can be in the form of ideas, values, norms, and regulations in the realm of culture, while in social life can be in the form of religious systems, social systems and organizations, knowledge systems, livelihood systems, and social life, technology systems and equipment (Kurniasari & Reswati 2011). Ketut Gobyah as quoted by Sartini (2004) argues that local wisdom is the truth that has been a tradition or is steady in an area. Local wisdom is a combination of the sacred values of God's word and various

existing values. It is formed as a cultural advantage of the local community and geographical conditions in a broad sense (Sartini 2004). The form of local wisdom possessed by an area will be different from other regions according to the setting at hand. In a speech, Yusuf Kala (2013), the Indonesian Vice President claimed that the role of local wisdom is to prevent conflicts from happening, not to resolve the conflicts. Local wisdom maintains harmony so that conflicts do not occur.

Specific environmental settings will cause differences in a person's knowledge in interpreting the influence of the environment on his life (Kurniasari & Reswati 2011). Local wisdom is a product of the past that should be continuously used as a guide to life. Although it has a local value, the value it contains is considered universal (Sartini 2004). A local word that means a place or in a place where there is growth or life which may be different from other places or exist in a place is of value and may be locally applicable or universally applicable. In other words, local wisdom can be understood as ideas, values, and local views that are wise, and are good values, which are embedded and followed by the members of a community (Unayah & Sabarisman, 2016).

In anthropology, the term local genius is known and was first introduced by Quaritch Wales (1957). Anthropologists discuss at length the notion of local genius. Among other things, local genius is also a cultural identity, a national cultural identity/personality that causes a nation to be able to absorb and cultivate foreign cultures according to their character and abilities. Meanwhile, according to Moendardjito (1986), the elements of regional culture are potential as local genius because they have proven their ability to survive. They are,

- 1) able to withstand foreign cultures;
- 2) can accommodate elements of a foreign culture;
- 3) can integrate elements of foreign culture into the original culture;
- 4) can control;
- 5) able to give direction to the development of culture.

Local wisdom is a combination of the sacred values of God's word and various existing values. Local wisdom is formed as a cultural advantage of the local community and geographical conditions in a broad sense (Wakano, 2019). Local wisdom is a cultural product of the past that should be continuously used as a guide for life. Even though it comes from the local area, the values contained in it are universal. Conflict resolution should be adapted to the context and setting or setting in which the conflict occurs (Hasudungan et al., 2020). Thus, the general approach is not relevant to be applied in dealing with local conflict problems. Thus, a special model is needed.

The local wisdom approach to conflict resolution has not been studied much (Hasudungan, 2021). This dispute resolution model needs to be disclosed, keeping in mind the numerous conflicts in the society. In resolving them, the authorities tend to ignore the existing local wisdom, but prefer the litigation model which brings the consequence of the emergence of hostility because there are elements of winning and losing that are packaged to seek justice (Astuti, 2016).

Research Methods

In this study, qualitative research methods are used. A qualitative method is a research procedure that produces descriptive data. The purpose of descriptive research is to make a systematic, factual, and accurate description of the facts, characteristics, and relationships between the phenomena being investigated.

Descriptive characteristics not only describe situations or events but also explain relationships, tests, and hypotheses. They make predictions and get the meaning and implications of a problem to be solved (Sugiyono, 2017). Descriptive research seeks to describe phenomena that occur in a real, realistic, actual, real and current way because this research is to make a systematic, factual, and accurate descriptions, images, or paintings of facts, characteristics, and relationships between the phenomena under investigation (Creswell, 2013).

The qualitative approach used does not employ statistical figures but has descriptive exposure, which describe symptoms, events, and incidents that occur to be the focus of attention and then describe it as it is. Data collection is done through document analysis, interviews, and observations. Primary data have been derived from the religious and traditional leaders, farmers, and local government officials. Purposive sampling was used to select the respondents. Secondary data is derived from laws and regulation dealing with land issues and land tenure in the North Sumatra Province. Land acquisition and land tenure laws and regulations were observed during the study to determine the causes of disputes and how local wisdom can be used to effectively address them. The study took place between January and May 2021. To collect data, respondents were provided with open-ended questionnaires due Covid 19 restrictions put in place by the local government.

Findings and Discussion

The legal theory supporting the idea that the current criminal law enforcement is not dynamic in its application is because there are sometimes conflicts between positive laws, legal science, and legal philosophy in the harmonization stage. In an interview, respondent Barda Nawawi Arief (2022) claimed that the fact that the Indonesian Criminal Code has not been replaced/updated not only harms law enforcement but also legislation and criminal law education. Even the draft Criminal Code is taking so long to materialize.

The alternative widely discussed is that it concerns the interests of many parties, which is to absorb and reflect the values of justice. The strengthening of the lower community has given birth to a new agreement, that the people had a decisive position in the implementation of development and were not objects of marginalization (Fadilah, 2022).

Likewise, the conception of the rule of law born from the modern legal system has logical consequences, one of which is equality before the law (Stewart, 2004). This is what currently applies in Indonesia; the concept of equality before the law as a key element of the rule of law. The history of development of the Indonesian legal system is unique.

One aspect that makes the Indonesian legal system unique is the existence of local wisdom known to Indonesians as *Kearifan Lokal*. This national concept is not just a cultural idea, but it is also widely used as an alternative dispute resolution mechanism. This is reflected in the concept of *Bhinneka Tunggal Ika* (unity in diversity) which reflects the cultural diversity of the nation under the auspices of the Unitary State of the Republic of Indonesia. Land disputes in Indonesia are dependent on the conditions of existing agrarian relations between the parties involved, as well as the laws and policies that apply. During the political era known as the New Order era (1965-1998), land disputes/conflicts were related to government policies that gave capital owners the freedom to make various investments to increase economic growth (Naimah, 2015).

These policies have placed the government and investors in a dominant position in the development process which eventually has led to the emergence of disputes or conflicts. Different types of conflicts require different conflict resolutions. According to the Lampung traditional community leader, chances are that a dispute will be resolved properly when all the actors are consulted. The state has recognized the existence of customary law communities through the 1945 Constitution in Article 18B paragraph (1) that says that the state recognizes and respects special or special regional government units which are regulated by special laws such as in Papua. The law recognizes and respects the customary law and its traditional rights, as long as these rights still exist and are according to the development of society and the principles of the Indonesian state (Triana, 2017; Suwardi & Rustan, 2022).

In an interview, Uten Sutendi (2021), head of the Save Local Wisdom Movement, argues that the values of local wisdom in various regions in Indonesia can serve as a role model to resolve conflicts in Indonesia. He went on to say that local wisdom as an alternative dispute resolution mechanism is needed because modern criminal law and criminal systems have failed to resolve disputes and bring about peace in the community (Sutendi 2021), The self-proclaimed cultural observer also claimed that local wisdom that develops and spreads among the local communities in Indonesia from coast to coast (*Sabang ke Marauke*) is the roots of not

only peace but civilization. He went further to claim that Local wisdom in Banten and Papua Bedouins, for example, are just a few examples of the many tribes and customs in the Archipelago that consistently maintain and protect the availability of the archipelago's natural resources.

Analysis of Interviews

Edy Rahmayadi (2021), the governor of the North Sumatra Province acknowledged that the resolution of land disputes is crucial in the North Sumatra Province. He argued that the resolution of land issues can provide certainty of land ownership to the community. Echoing the governor, Dadang Suhendi (2022) claimed that land disputes in North Sumatra were resolved with not only the applicable rules but also with local wisdom. The Ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) revealed that there are three areas with the most findings of land dispute cases, namely Riau, North Sumatra, and Jambi. For example, people who live in the land dispute locations, especially in the former PTPN II Sei Malingkar Business Use Rights land and the location of Business Use Rights No. 92/Sei Mencharim, struggle with the status of land disputes over their places of residence.

Adrianus Meliala (2021) suggests that in resolving the land conflicts, especially in North Sumatra, the government should not only take a legal approach but a political approach instead. If the settlement of land conflicts like in North Sumatra is carried out with a legal approach, then land problems in North Sumatra will never be resolved.

Priono (2022) claimed that North Sumatra is one of the provinces with a high number of land dispute cases. However, according to him, there are two types of land cases in North Sumatra, which are crucial. If they can be resolved, 80 percent of the land cases in North Sumatra can be completed. Both are cases of ex-PTPN-II Business Use Rights land and land cases between thousands of people and the Indonesian Air Force in Sari Rejo Village, Medan Polonia District. Following Priono, Abyadi Siregar (2021) argued that land dispute resolutions have failed in North Sumatra because so far, the government tends to use a legal approach. This includes the case of the former PTPN-II Business Use Rights land case and the land case of the Sari Rejo Village, Polonia District. If the government persists with a legal approach, then these two cases will be difficult to resolve. Therefore, the local wisdom approach is indeed an option that the government needs to consider if it wants to complete the settlement of land cases in North Sumatra.

According to Abyadi, in the local wisdom approach, what needs to be considered later is the existing condition of the community. In the case of Sari Rejo land, for example, the existence of land that has become a dense and compact residential area inhabited by tens of thousands of people must be a very important consideration. Likewise, in completing the ex-PTPN Business Use Right land, the condition of the community that has controlled the land for decades must be an important consideration.

In resolving land conflicts with a local wisdom approach, all stakeholders are brought together. The issue of the former PTPN Business Use Rights land, for example, was presented by the Minister of SOEs, the Minister of Finance, and the regional government. Likewise, in the case of the Sari Rejo land, the Ministry of Defense, the Minister of Finance, and the regional government were present.

How to Handle Land Disputes and Conflicts

Since ancient times, the Indonesian people have had one way of resolving conflicts, namely using local wisdom. Conflict resolution with local wisdom can be introduced by developing local wisdom-oriented insights. Besides being useful as an alternative to conflict resolution, local wisdom also maintains and adheres to national identity. All parties involved in utilizing local wisdom to resolve social conflicts are responsible for both the process and the implementation of the resolution results. The multi-dimensional conflicts that often arise in Indonesia are an accumulation of public disappointment with the implementation of policies that are considered not to place rights and obligations as they should.

Local wisdom rooted in tradition considered sacred, causing its implementation to be more efficient and effective because it is easily accepted by the community. Local wisdom has the potential to encourage people's desire to live in harmony and peace. Local traditions and culture generally teach peace living in harmony with their social environment. It constitutes a set of traditions, norms and values handed down from generation to generation. It also teaches harmony and togetherness. Local wisdom approach cannot be equated from one region to another. However, local wisdom is still centered on a cultural approach, by utilizing local values and culture that are owned by the local communities.

In fact, Local wisdom invites the people involved in the conflict to discuss and negotiate their respective wishes towards the other party. This will have an impact on the form of resolution considered possible and appropriate, and can be used as an early warning of a conflict.

Local wisdom also implies mediation, referred to in Indonesia as *musyarawat mufakat*, a concept rooted in the Indonesian culture, namely deliberation for consensus. The culture of deliberation has become part of dispute resolution in indigenous and local communities. Partially, many positive legal policies have also adopted conflict resolution through mediation, both mediation outside the court and mediation connected to the judicial system, such as in the Regulation of the Supreme Court of the Republic of Indonesia number 8 of 2008 concerning Judicial Mediation Procedures. However, the practice of resolving conflicts through formal legal channels or courts is still more dominantly resolved through judge decisions, not the result of mediation. It can be concluded that dispute resolution through mediation is still very weak in implementation, both as a result of institutional and implementing capacity as well as in terms of the weak goodwill of the disputing parties.

Conclusions

The ongoing conflict in an area both vertically and horizontally has disrupted the resilience of communities in the province of North Sumatra. This is due to the fact that conflicts extend to various aspects of life such as the fading of social ties, bad/biased government policies, differences in political orientation, and lack of legal certainty. Patterns of conflict resolution in one region may not be applied in other regions. Therefore, in determining the steps to resolve various conflict incidents, it is necessary to examine and analyze, not only based on universal conflict theory, but also to use local paradigms so that objectivity remains within the framework of local conditions, values and life order. In responding to conflicts, especially land conflicts, a more appropriate resolution is needed by applying a settlement model that is adapted to regional conditions and local culture.

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