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RECONSTRUCTION CONCERNING ULAYAT LAND RIGHT WITHIN TRADITION LAW SOCIETY IN GLOBALIZATION ERA

(Case Study of Ulayat Land within Mesuji Tradition Law Society of Lampung Province)

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Abstract: Legal politic land affairs law in globalization era couldn't work properly because the values impinge with develop values within tradition law society. That impinge cause by culture difference and it's society social structure. State land affairs legal politic was have individual-liberal characteristic, whereas right legal politic of ulayat land within tradition law society wasn't protected yet. In order that legal right about tradition law society of ulayat land could work properly, therefore legal made must accomodate develop values within society which based on tradition and society habit based on local wisdom, therefore will create harmonic law. Why land affairs legal politic wasn't give protection yet concerning society ulayat land of Mesuji tradition law? How reconstruction of land affairs legal politic which able to give right protection concerning ulayat land of Mesuji tradition law society ? was two problematic within this article. By socio legal approach was used within positivism paradigm will answer the problem in this article. This article was aimed to found why land affairs legal politic wasn't give protection yet concerning society ulayat land of Mesuji tradition law and reconstruct land affairs legal politic which could give protection concerning property right of Mesuji tradition law society land.

Keywords: Globalization, Legal Politic of Land Affairs, Ulayat Right, Reconstruction

A. Introduction

1. Background and Problem

Growth and society development in this modern era, was very fast. One of characteristic in this era was science and technology that increase rapidly, and also support by presence globalization spirit. As said by Anthony Giddens, globalization was such complex process, not only move by such certain power, but by much power, such culture, technology, political or economy.¹ Globalization was demand presence alteration within legal system whether legal structure alteration, new legal substance and legal culture, without presence legal system alteration therefore no assurance of legal certainty and within various social live, all will became uncertain, not orderly and unprotected sense, here was legal certainty, orderliness and legal protection will sense as necessity that basically include within legal purpose, it was peacefulness (function of law is to maintain peace), and here that became the purpose from presence reconstruction.

Reconstructio²n defense law politic³ within right of ulayat land was interpret as effort which implemented to made such legal policy which able to give protection to right of ulayat land within tradition law society. Law which regulate right of ulayat land actually still based on Act No.5, 1960 about Main definition of Agrarian called UUPA. Based on Article 3 UUPA was uscertain about acknowledgment presence ulayat land of tradition law society. That Act No.5, 1960 about UUPA was as law which regulate acknowledgment ulayat right of tradition law society, in this case was related to right of tradition law society ulayat land.

Indonesian people was pluralism society including various ethnic, culture, religion and others. Within pluralism or vary people are possible include tradition law or habit used to arrange society live. Tradition law and that habit was used as norm of society live. Presence both laws, was state and tradition law was very possible presence the conflict. To avoid the conflict was needed presence such law which able to protect all interests. If rely on state law only, sometimes

¹ ⁵ Anthony Giddens, third way, *Pembaharuan Demokrasi Sosial*, Jakarta, Gramedia, 1999, Page.38. Also see Candra Perbawati, *Penegakan Hak Asasi Manusia di Era Globalisasi dalam perspektif Hukum Islam*, Law Jurnal of Islam Rule Al-Adalah Vol. XII, No.4 December 2015, page 843

² Reconstruction term within Indonesia Language Dictionary, meant (1) restitution such as return (2) arrangement/redescription see on <http://kbbi.web.id> upload on August 10, 2017.

³ Etimologically, political law was such Indonesian language translation from Duct Law of rectspolitie, as such description from two words recth and politiek Recht meant law, law word itself was came from Arab language, hukm (plural word ahkam), meant decision (judgment, verd¹¹ decision), government provision, Command), government, authority/power). See Iman Syaukani and Ahsin Thohari, *Dasar-dasar Politik Hukum*, Jakarta, Raja Grafindo Persada, 2004, page 19

not sufficient, because state law are formalism and positivism. When there were handling problem by using state law therefore will presence the problem, because which prioritised was certainty value not the justice. That case could presence legal conflict.

Historically, land affairs legal politic which related to right case of ulayat land was already existed since Dutch colonial era, it was Agrarisch wet 1870 which prevailed until Indonesia independence. Land affairs law politic based on Agrarisch Wet 1870 was only protecting Hindia Belanda government interest and big entrepreneur of Europe state. Land affairs law politic on Dutch era by Domein Verklaring principle was aimed to colony government interest and certain state group which get both priority and facility within domination sector and land using. Whereas Bumi Putera group were less get attantion and protection within right sector of ulayat land of tradition law society. State domein principle said that all lands which haven't personal ownership status due to West rule was called as state property. As the consequence, all land neglected or not used society (include woeste gronden), and land which wasn't include personal ownership right (eigendom), was prevailing as state property. More that 75 years, from 1865 to 1942, that state domein principle already became such legal political concept which implemented by colonial state. whether in creating forest domination by government forestry department or plantation land domination by foreign companies. This domein principle actually already opposed directly by anticolonialism power, including rural society protest movement which spreading, separated and change from time to times.

Political of land affairs law on independence era was Old Sociopolitic Rezime of Soekarno, based on UUPA definition as such realization from Pancasila and implementation from UUD 1945 which could be seen within article 33 verse (3) was put basic for national agrarian law which will take prosperity and justice happiness also legal certainty for state, especially giving protection of right concerning tradition law society ulayat land. Article 18 B verse (2) UUD NRI, 1945 was arrange about acknowledgment of both right and tradition law society. On Soekarno rezime within land affairs law politic, already implemented landreform⁴.

On new era of Soeharto (1966-1998) ladreform was change by green revolution term. By domination Soeharto on New Era period, land affairs political system was change from populist became capitalist, it was by break of society political power and focused both political and economic domination on state therefore government was free in implementing legal political

⁴ Landreform term

program of capitalist land affairs. New Era government wasn't placed land affairs problem as development case, but only became routine problem of development bureaucracy. UUPA on new era period wasn't became the main of all land affairs regulation, even include implementer act against with UUPA, such as UU No.1, 1967 about Foreign Capital Investment, Act No.11, 1967 about mining and Act No. 5, 1967 about main definition of forestry.

On Soeharto government was occurred mining license giving, forestry and plantation on large international and national companies. Soeharto government era (1966-1998) already coagulated spirit and soul of UUPA and it's landreform agendas, by interpret domination right from state (HMN) by ignoring content of Article 2 verse (4) that HMN "used to reach society prosperity as much as possible within nationality context prosperity and independence within society and Indonesia legal state which independence, good fortune, fair and prosperous". Then, on Soeharto era was separation of legal, institutional and teritorial among social agriculture, large plantation and forestry, back as already implemented by Dutch colonial government. Land redistribution programs (1962-1965) under UUPA was targeted in social agriculture sector and not targeting state lands dominated by plantations. On the contrary, UUPA was continued presence colonial plantation by converting erpacht became Business Usage Right (HGU).

Initially, UUPA was aimed to placed Indonesian state as legal domination expression from Indonesian people. UUPA formulators was committed to moderning tradition law and made it more compatible with new Indonesia state necessities, as one of independence state member in the world. This case was stated distinctly that "prevailing agrarian law for earth, water and air was tradition law but the implementation of that tradition law wasn't must in contradiction with state general interest which based on republic unity principle, by Indonesian socialism principle, and principle on UUPA and future regulation, also by religion law requirement" (Article 5 UUPA).

Based on political history of land affairs law above, impact on right law political development of ulayat land within tradition law society, one of them was conflict occurred about ³ right of ulayat land of tradition law society in Mesuji regency of Lampung Province. That conflict was such effect from state law implementation, it was presence Lampung Governor Regulation No. G/127/DA/HK/1974 said that "all of ulayat right authority of tradition law society, was on government". Act No.5, 1967 about definition of Forestry subject, became the basic presence Lampung Governor Regulation, No. G/127/DA/HK/1974. This legal instrument which systematically expressing government domination then ignoring and remove presence

ether system which live in tradition law society which have right of ulayat land. Conflict occurred between society of Mesuji tradition law with government in Mesuji Regency of Lampung Province based on presence Forestry Ministry Decision Letter Number 668/Kpts-II/1991, given to PT Silva Inhutani to get Right of Industry Plantage Forest Domination (HPHTI) about 33.500 Ha On 1997, through Lampung Governor recommendation, Forestry department was widening area became 43.100 Ha. Registered land of 45 that initially belong to society of Mesuji Lampung tradition law about 33.500 Ha, the status was change became business usage right belong to PT.Silva Inhutani without compensation. That reality could explained that tradition law people of Mesuji Lampung have disadvantage economically because couldn't used forest again on registered 45 as the place and living place. Forest couldn't separated from it's people. Reality above was effect on social live, social economy of Mesuji tradition law. On November 11, 2011 was occurred conflict between Mesuji people with Silva Inhutani that made Human Right violation⁵.

Based on that case above, could explained that the governor regulation was presence based on centralistic law and within legal making that have top down characteristic, it was law which made for elite interest and ignoring tradition law society interest. Concept used by that land affairs rule was modern legal concept which prioritise certainty and usage, not justice which became society expectation. Besides that because legal politic of right concerning ulayat land within state land affairs law wasn't protecting right about tradition law society of ulayat land, therefore society right of tradition law became disappear like Mesuji case.

Based on explanation above, therefore problem submitted in this writing was; (1) Why land affairs legal politic wasn't give protection yet concerning society ulayat land of Mesuji tradition law? (2) How reconstruction of land affairs legal politic which able to give right protection concerning ulayat land of Mesuji tradition law society ?

2. Research Method

This research including qualitative research tradition by operation study of Post Positivism paradigm⁶. Through qualitative method was possibly the researcher to understand

⁵ Research result from the writer was refine from dissertation research result of PDIH UNDIP, 2016.

⁶ Guba and Lincoln detailed within paradigm of post positivism ontology was have realism 'critical' characteristic within modification epistemology, dualism or objective between researcher and researched was both entities that not totally independent. Within modification methodology, experimental. See Elin Indarti, *Ilmu Teori, dan Filsafat, Suatu kalian Paradigmatik*, Working paper are present within upgrading of Metodology Undip, 2015.

society personally and seen them as themselves expressed their world view⁷. By qualitative method, research able to found reasons from such social phenomena⁸, our able to found undiscovered meanings behind both subject or object researcher. Within qualitative research tradition wasn't known population, because it's research sample was case study.

Based on stand point above, therefore this research grouped into socio-legal research method⁹. According to Soetandiyo Wignjosoebroto¹⁰ called as not doctrinal approach, it was such study which view law as meaning through interpretation process, it's meant any legal product will determined by interpretation made and agreed by actors related within making process and legal implementation. Law could comprehend by participation, experience and total comprehension (Verstehen). This approach was used to comprehend law within it's society context, it was such method that have non doctrinal characteristic.

Through socio-legal research method, legal object will interpreted as a part from social subsystem among other social subsystem. Understanding law within it's society context, it's meant there was connection which couldn't separated between law and society, as social basic. According to Tamanaha¹¹, relationship of both law and society was have the frame called "the Law-Society Frameworks", that have certain characteristic. That relation could be seen within two basic component. First component include from two main themes, it was idea that stated the law as society characteristic and idea that legal function was maintain social order. Second component was Law society relationship, including three basic elements, it was custom/consent, morality/reason, positive law.

Socio-legal studies using, therefore this research will studied legal principles about land during this time already presence injustice because unable in giving right protection of ulayat land within tradition law society in Mesuji. The reality that land affairs legal principles about right of ulayat land wasn't give right protection of ulayat land within tradition law society based on local wisdom value from making process (in abstracto) or the implementation (in concreto)

⁷ Robert Bodgan and Teven J Taylor, *Kualitatif Dasar-Dasar Penelitian*, Terjemahan Khozin Afandi, Usaha Nasional, Surabaya, 1993, page 10

⁸ Sanapiah Faisal, *Varian-Varian Kontemporer Penelitian Sosial dalam Burhan Bungin (ed) Metodologi Penelitian Kualitatif*, Rajawali Press, Jakarta, 2001, Page.28

⁹ Within socio-legal research there are two aspects of researchs, first legal research, it was permanent research, there were several material within norm context, act regulation and second socio research, meant method and social science theories about law to assist researcher in take analysis. This Approach.

¹⁰ Soetandiyo Wignjosoebroto, *Op.Cit.*, 183 4

¹¹ Brian Z. Tamanaha, *Op.cit.*, page 1-2, also Suteki, *Kebijakan Tidak Menegakkan Hukum (Non Enforcement of Law) Demi Keadilan Substantif*, Pidato Pengukuhan Guru Besar Ilmu Hukum Fakultas Hukum Undip Tanggal 4 Agustus 2010), page. 41

wasn't run properly.

Social setting in this research was legal society of Mesuji tradition and other parties needed. Within data collection used deep interview method, related observation and document study. Data validation by using Triangulation of resource. Data obtained was analyzed by combining inductive logical (primary data) and deductive logical (secondary data). Data legality technique was analysed by Triangulation of data analysis model from both Mathew B Miles and A. Michel Huberman.

In determining informant was using purposive, until reach saturation point in the meaning of completeness and validation was enough to analysis interest. In this research, researcher determine main informant previously as the way opening to appoint other people who able to give information related to both problem and research purpose.

Main instrument of this research was researcher, because it was indept research. Supporting instrument was script book, rrcording tool, photo camera and others.

In order to obtain data was used literature study method and interview, also documentation. Data analysis used triangulation by using analysis technique of Mathew B. Mileas and A. Michel Huberman models¹². By three lines, it was data reduction, presentation and conclusion/verification.

3. Theory Plan

Effort to revealed problem include within problem formulation was used several theories as thinking plan which could be used as analysis point. First problem "Why legal politic of land affairs wasn't give right protection about ulayat land of Mesuji tradition law society?. analysed using legal system theory from Lawrence M Friedman also theory legal working from Wiliam Chamblis & Robert B Seidman. To analyzed second problem "How legal politic reconstruction of land affairs which protecting right concerning ulayat land of Mesuji people? used "pluralism" theory from Menski.

To comprehend legal working was needed usage social sciences in organizw and constructing the law. Therefore in constructing defense legal politic to right regulation of ulayat land within legal society needed assistance from social sciences in order that law as such internalization from developing values within society.

Based on Wiliam Chamblis and Robert B Seidman theory¹³ state legal context was based

¹² Mathew B. Miler and A. Michel Huberman, *Analisis Data Kualitatif*, Jakarta, UI Press, page.22

on modern legal system, have individual and liberal characteristic, then realized into national land affairs legal system (UUPA, Forestry Act, Governor Regulation). Within implementation was have problem because tradition law society have own rule which based on tradition law and habit based on local wisdom value. State land affairs rule that have individual and liberal characteristics, different with tradition law and society habit that have communal and social characteristic.

Presence those both regulation was very potential presence problem in implementation. Land affairs rule as state law was such transplantation from modern legal system became national legal system. Legal system which transplanted from other state, therefore the law couldn't just transfered by Indonesian people, such Robert B. Seidman¹⁴ opinion by his theory The Law of the non transferability of law, it's meant law wasn't just transfered from such state to the other.

Political law construction of right protection concerning right protection of ulayat land within new tradition law society (ideal) due to Menski concept thinking was combining or integrate three things. First, religious/ethics/morality sites as such study sector within natural law, content of social justice from Pancasila as direction norm, transitional justice and human rights including authority to have property, right not to discriminate and different from other people. Second, state site as such study from positivism law which content of UUD NRI especially purpose, legal state, UUPA, Forestry law and local rule, Third, society site, as such study sector from socio legal approaches, content on living law in society and culture structure of tradition law society.

Third sites above processed and integrated therefore create new construction of right protection of ulayat land within tradition law society which based on tradition law values that have communal characteristic named 'right protection of ulayat land within pluralism tradition law society'. Said that right protection of ulayat land within pluralism tradition law society meant protecting various tradition law values characteristics which different between one and other area.

B. Result and Discussion

1. Why Land Affairs Political Law Wasn't Give Right Protection Of Ulayat Land Within

¹³ William Chamblis & Robert B. Seidman, *Law Order and Power*, Addison, Wesley, 1971, page. 13

¹⁴ Ibid, opcit, page. 14

Mesuji Tradition Law Society?

Right concerning ulayat land of tradition law society¹⁵ was such authority that due to the tradition law belong you certain tradition law society concerning certain area as such living environment of their people to take benefit from natural resource, including land within that area for tradition law society life. Relationship concept among tradition law society with land that been tradition law society authority as unity which couldn't separated. Necessities all of tradition law society wasn't not individualism but more collective characteristic. Based on that case, therefore right concerning ulayat land of tradition law society wasn't unconditional but there were always the regulation, it was for all of legal society interest. Therefore, tradition law society demand in using and domination land fairly responsible.

Generally, conception about tradition law society was related to combination of legal antropology and indonesian nasional law concepts. In the book *Hukum Adat Indonesia*, Soerjono Soekanto refer to tradition law society formulation from ter Har abd Hazairin, as follow:¹⁶

“ ..goerdende **gropen van blijvend karakter met eigen bewind en eigen materieel en immaterieel vermogen** (independent translation:...well-regulated groups and have permanent characteristic and government have both materiil and materiil goods)” (B ter Haar Bzn 1950:16).

Tradition law societies such as village in Java, clan in Sout Sumatera, nagari in Minangkabau, kuria in Tapanuli, wanua in Sout Sulawesi, was society unity that have completeness in order to stand alone, it was have legal unity, ruler unity and living environment based on collective right about land and water for all of member...” (Hazarin 1970:44).

Cited from Soepomo, Soerjono Soekanto then dividing tradition law society in Indonesia became several group due to basic arrangement, it was based on connection one geneology and based on environment (territory), also system which based on combination of both case. Meanwhile from the type, tradition law society was divided became one and only, level and series.¹⁷

Requiremet of tradition law society was acknowledge by state before alteration of UUD 1945, one of them was regulated within Article 3 of Act Number 5, 1960 about basic system :

1. As long as due to reality still a live
2. Due to society development; and

¹⁵ Kusumadi Pujosewejo, within Djamanat Samosir, *Hukum Adat Indonesia*, Nuansa Aulia, Bandung, 2013, page.69. Meant of Tradition Law Society (MHA) are *Adatrechtsgemeenschaap*

¹⁶ *Ibid.* page. 93-94

¹⁷ *Ibid.* page. 95

3. Due to republic Indonesia principle which regulate within Act

Meanwhile, after second alteration of UUD 1945, acknowledgment and respect to tradition law society unity more ascertain within Article 188 verse (2) and Article 281 verse (3) of Act 1945 as follow:

Article 18 B verse (2): “State acknowledge and respecting tradition law society unity ang their traditional authorities as long as still live and due to society development and Unity State principle of Republic Indonesia regulated within Act”.

Article 281 verse (3) : “Culture identity and traditional society right was respected due to period and civilization development”.

Therefore, tradition law society have constitutional basis to maintain their rights as stated within articles above, although from several realm only seen as restriction context concerning rights of tradition law society.¹⁸

According to Daniel S Lev, UUPA Number 5, 1960 in fact most take big step to erasing tradition properties (Ulayat right) the reason was that land must obey to national demand and national unity purpose¹⁹. Although still allow several administrative policy due to local tradition law. According to Budi Harsono, tradition law judicially and practically was most that not due to UUPA, this case made alot of abasement to tradition land in this case was ulayat land of tradition law society.²⁰

Sunaryati Hartono, in her book economy law of Indonesia Development, stated within legal development context, could be said that, not habit which able to create law again, but the law that must made the habit²¹. Indonesia law development in reformation era and globalization which not only established legal substance such act regulation, but also made legal structure and legal culture.

Such state which faced globalization era wasn't easy, because not likes reverse palm of

¹⁸ See Nanang Subekti, *et. al.*, *Membangun Masa Depan Minangkabau dari Perspektif Hak Asasi Manusia*, General and Secretariat of Constitutin Court, Jakarta, 2007; Ignas Tri, *et. al.*, eds., *Mewujudkan Hak Konstitusional Masyarakat Hukum Adat*, Nasional Hak Asasi manusia, Jakarta, 2006.

¹⁹ Daniel SS. Lev(1965) within Munir Fuady, *Hukum Bisnis Dalam Teori dan Praktik*, Third Book, Second Edition(Bandung, aditya Bakti,2002),Page.237. see alsoAdrian Sutedi,*Tinjauan Hukum Pertanahan*, Pradnya Paramita, Jakarta,2009,page.28

²⁰ Budi Harsono,*Menuju Penyempurnaan Hukum Tanah Nasional*,Second Edition, (Jakarta, universitas Trisakti,2003) page. 60-61 also see Adrian Suteki,ibid.

²¹ Sunaryati Hartono, 2004, *Hukum Ekonomi Pembangunan Indonesia*, , page. 20

hand. Even England state to reach the purpose was through three steps, it was unification, industrialization and Welfare state. Therefore law which transfered such UUPA from advance state need reconstructed in order to applied properly in Indonesian state, because what happen was law compelled, therefore became useless and not effective. In reconstructing law must be not using System Top Down, whereas the law was took sides on elite interest, but using System Bottom up, which more prioritise society interest widely. By law which tended to society, therefore that law will accepted, effective and could welfare people.

Definition include within Lampung Governoor Regulation No.G/DA/HK/1974 which said that all of ulayat right authority of Mesuji tradition society was on government, in fact was law which present by system System Top Down, therefore the law was corecived for elite interest and ignored society interest widely. Therefore, that law must reconstructed by using system bottom up in order that the law could accepted by society, effective and could made society welfare.

That law needed to reconstructed because related to protection problem concerning ulayat land authority within tradition law society became important to implemented acknowledgment and the protection. That case made effect such as economy, social and legal effects. Socio economy effect of tradition law was nomore have authority to use forest as a place to find their life needs. Then. Social effect was bleed conflict occured which until recently not settled yet. Then legal effect of legal society within Mesuji Lampung tradition law was have no right again about their land property on register 45. Tradition law society no more have right to have the ulayat land, because that land has cahnge the status became Business Using Right which have by PT. Silva Inhutani recently. Tradition law, which previously was forest as place whereas tradition law society meet their living need, recently change become sawit coconut plantation belong to PT. Silva Perhutani.

Based on effect presence, must be law established must seen other aspect, such as social, economy and the most impotant are tradition law society interest. Therefore, law couldn't protected equally and law must seen other important aspect also. Effects presence from that Mesuji cases must made inspiration for state in take legal reconstruction, therfore law established was law that really take sides to society.

Within Human Rights context, reconstruction concerning law which presence the problem was able to implemented. Law established must protecting society Human rights widely.

In reality that it's Lampung Governor regulation was legal product which not protecting but even seize rights of tradition law society. Within Human Rights perspective, land robbery of ulayat land right by government through Governor Rule was such Human Rights violation²², because that land status alteration without involving tradition law society (license from tradition law society) and no compensation. Therefore, in made law must seen important factors existed in tradition law society.

Factors

Factors such as social, economy, politic and culture within such legal construction are take important role, according to Robert B Seidman²³, that any actions taken whether from role actor, implementer institution who make the rule was always within complexity of social, politic, economy and culture powers and other. All of that power was also work in functioning prevailing regulation. To comprehend legal working was needed cultivate social science in arrange and construct law. Therefore in constructing law of right about ulayat land within tradition law society of land affair rule are needed assistance from social science therefore law was such internalization from developing values in society. According to Von Savigny, must be law was such description from society live²⁴. Therefore, legal construction established was law which could accepted by society because the values rooted, therefore law cpuld work properly. Law established from living law in society, such as local wisdom, are law which could create the justice and society welfare.

In reality, state have legal system used by state (modern law), but tradition law society have own law. In reality there are society that still used state law and other that maintain and using tradition law. State law values such as UUPA, forestry act, Local Rule, Governor rule and others, the values are different with tradition law and society habit who both communal and social. That reality showed that within society include more that one rule that used in regulate society live. In practice, state law sometimes unable to create justice expected by society because differeny values which not rooted and not description from society live.

²² Rahayu, *Hukum Hak Asasi Manusia*, Publiser UNDIP, Semarang, 2010, page . 46. To identified wheter present or no such Human rights violation, therefore, first thing must to do are connected that violation with such state violation whether direct or indirect action

²³ 10 William Chamblis & Robert B. Seidman, *Law, Order and Power*, Addison Wesley, 1971, Page. 12. Also see Esmi Warasih, *Lembaga Pranata Hukum, Sebuah Telaah Sosiologis*, Suryandaru Utama, Semarang, Page. 12

²⁴ Von Savigny merumuskan *Volgeist* as *general ascionsness of* 15 people or spirit of the people, see Denis Lloyd, *The India of Law*, see Bernard L. Tanya and colleagues within *Teori Hukum Strategi Tertib Manusia Lintas ruang dan generasi*, Genta Publising, Yogyakarta, 2005, page. 11

Indonesian people area pluralistic, include of various ethnic group, culture, religious and other. Within pluralistic people or diversity very possible include tradition law and that habit which used to arrange as society live. Tradition law and that habit was used as society live norm. Presence two rules was state and tradition law very possible will presence conflict. To made that conflict not occurred are needed presence such law which able to protect all interests. When rely on state law only, sometimes not enough, because state law was formalistic and positivistic. When there are problem in handling by using state law, therefore will made conflict, because only prioritising certain value not the justice. That case could presence legal conflict.

In order that conflict between (state and tradition law) able to minimize or prevent, therefore need presence reconstruction of state law as the cause of. Related to land affairs law regulation (UUPA, Forestry Act) as both formalistic and positivism state law as such universal law. Governor regulation is state law that have universal characteristic; that law against with tradition law and society habit of tradition law. Therefore, in reconstructing law must accordance with Indonesian culture values which respecting humanistic values it was tolerance, togetherness and justice based on Pancasila legal feeling. Law making are, law which able protecting and made Indonesian people welfare.

Presence two land affairs rule made people became ambiguous. There were people who used state law and used society habit based on local wisdom.

It's condition showed that state law wasn't function properly in society. That condition showed that state law couldn't work properly within society, because legal state values wasn't rooted and description from society values.

Based on William Chambliss and Robert B. Seidman theories²⁵, state legal context was based on modern legal system, have individual and liberal characteristics, then create into national land affairs law system (UUPA, Forestry Law, Governor Law). Within application have problem because tradition law society have own rule which based on tradition law and habit based on local wisdom value. State land affairs law than have both individual and liberal characteristics, different with tradition law and society habit that have both communal and social characteristics.

Presence those both rule was very potential presence conflict in implementation. Land affairs law as legal state was such transplantation from modern legal system became national law

²⁵ William Chamblis & Robert.B.Seidman, opcit, page.13

system. Legal system which transplanted from other state, therefore the law couldn't just transfered Indonesian people, such Robert B. Seidman opinion²⁶ with his theory *The law of the non transferability of law*, meant law couldn't just trasfered from such state into other state.

State land affairs law which have both individual and liberal characteristic was not compatible with both structure and culture of Indonesian society who communal and social. Communal and social society structure was influence by cosmology of Indonesian people and tradition law. Cosmology of both Indonesian people and tradition law was create both communal and social ownership, that land was owned collective and could be used by wide society. Incompatible of social structure within tradition law society will influence legal working within tradition law society. According to Satjipto Rahardjo²⁷, social structure was sets of value which prevailing within society and attitude also relationship type among society member. Therefore, when that legal system transfered or came from other state will presence the problem within implementation, therefore law couldn't work properly. In reality, governoor regulation as state law than been as right regulation concerning ulayat land of tradition law society was couldn't work properly, because the values wasn't accordance with developing values in society, such tolerance, togetherness and mutual cooperation which have communal characteristic. Besides that, state law was only protecting individual interest and unable protection ulayat land of tradition law society that have socio comunal characteristic. That reality showed that governoor rule (Lampung) couldn't work properly.

Right concerning ulayat land of tradition law people within consideration that national Indonesia land affairs was acknowledgment presence communal right and same as that from tradition law society as long as basically still presence as stated within Article 3 UUPA No. 5, 1960 about UUPA. Then within consideration mentioned society rights that dominate land within quite longterm period and as such living place and to found life was needed to give prpotection to create land for society prosperity as much as possible. Based on that article definition, therefore right concerning ulayat land of tradition law society must protected, due to Indonesia glorious expectation.

In reality, Right protection legal substance of ulayat land within tradition law society of Mesuji was ignoring social reality and developing values within tradition law people which came

²⁶ Ibid, [2](#)ge 14

²⁷ Satjipto Rahardjo, *Hukum, Masyarakat dan Pembangunan*, Alumni Bandung, 1980,page.12 , Look to Suteki , *Desain Hukum Di Ruang Sosial*, Thalia Media, 2013, page.35.

from Pancasila.

Land affairs legal politic in implementation was legal arrangement that cause right concerning ulayat land of tradition law society became weak. Weak meant, weak within protection, sometimes land affair which protected right of ulayat land within tradition law society will replace by powerful state law, because of weak in the protection. When land affairs is weak, therefore right of tradition law society will ignored in the protection, therefore if that case runs continually will influence prosperity of tradition law society widely.

2. Reconstruction of Land Affairs Legal Politic that give Protection of Ulayat Land of Mesuji Tradition Law Society

a. Legal basic reconstructing land affairs legal politic for right of ulayat land which able to give right law protection about ulayat land of tradition law society was as follow:

Effort to take reconstructon was difficult activity because the idea probably not reached when both concept or idea proposed. Reconstructing established law and get legitimation from society (state) was needed forbearance and needed long time and presevering hassle. Moreover reconstructing land affairs law which take the balance between individual and social interest, which protected interest of tradition law society right, in this case was ulayat land right, which will get opponent from state of entrepreneurs as investor who dominate land with Business Usage Right status.

In reconstructing must have optimistic thinking that effort implemented will success. If their effort success, therefore law established was law which able to give protection and finally law will increasing society prosperity.

Pancasila was such resource from all of Indonesian state law resource was as Grundnorm for system and Indonesia law sense. All of state law arrangement must came from Pancasila law sense, therefore all of legal system and act regulation in Indonesia must based on Pancasila values. Law established must could create national expectation as provided within Commencement of UUD NRI 1945 fourth alenia, it was protecting all of nation and Indonesian blood spilled, advancing general prosperity, educating state life and participate in doing world orderliness which based on independence, eternal peacefulness and social justice.

By refer to national expectation such provided within Commencement of UUD NRI 1945, law established was law which could create the justice, protecting all of society and

prosperous society. Indonesia as independence country that have full sovereignty, in develop land affairs legal politic which able to give right protection of ulayat land within tradition law society must able to construct law due to Pancasila legal construction, it was construction based on Humanity and Justice concepts.

Pancasila as basic state to be the direction in law and politic which differentiated Indonesian constitution with other state. land affairs policy provide within act regulation must describe Pancasila values such as social justice value. Therefore land affairs case wasn't only society case only, but also state through constitution.

Related to land affairs law was needed reconstructed therefore the value due to Pancasila, it was social justice. Reconstruction need implemented because right law about ulayat land within governoor regulation, the values was both individual and monopoly, which wasn't compatible with Pancasila value that prioritize general interest on both personnal and group interests, which aimed to create social justice.

Due to national expectation to protect all nation, therefore law established must give protection and able to create prosperity to poor class. Without presence protection to poor class, therefore when there were legal conflict was could assured poor class will loss to compete with strong party. With persence protection to poor party, therefore equality principle on law (equal before the law) was could create. When this condition could created therefore prosperity could create, therefore law totally able to prosperous society.

As already explained above that protection of Right concerning ulayat land within tradition law society that have both communal-socio characteristic within Lampung Governoor Regulation was impossible. Philosophically, law politic of Right about ulayat land within tradition law society existed was Dutch inheritance law (Agrarische 1870). That legal politic just protecting elite who both individual and liberal, because that law was based on modern legal structure and have liberalism culture which prioritising individual interest and oriented on economy interest. Hedonism value reached, therefore right of land was interpret as property and wealth (property right).

Land affairs law politic which arrange about right protection of ulayat land within tradition law society existed within state law that have individual and liberal characteristics and ignoring tradition law society rights. Threrefore, land affairs legal politic which arrange right of ulayat land must reconstructed bu using Legal Pluralism approach from Werner Menski.

Reconstruction concept of land affairs legal politic which arrange right concerning ulayat land of tradition law society which concentrate on triangle theory of Legal Pluralism by Werner Menski, therefore legal political reconstruction through Local Rule of Right protection of Ulayat Land within tradition law society was able to give protection to right of ulayat land was law able to protect variety and dissimilarity. Based on thinking concept of Menski from state point of view, therefore right protection of ulayat land within tradition law society on terminology protecting was taken from obligation and responsibility of state to respecting and protecting Human Right of tradition law society. Duty and responsibility of state already mandated within Pancasila of moral principle 5, UUD NRI 1945, Article 3 UUPA, Act No.39, 1999 about Human Right, Act No.41. About Forestry which followed up with Agrarian Department Rule and space system No.9, 2015 which regulate about ulayat land settlement of tradition law society that have central position within national law, because legal maintenance of right about ulayat land within tradition law society was such requirement legal certainty, justice and potential for tradition law society achieved.

Then from society perspective, protection about right of ulayat land within tradition law society must based on social reality or social structure of different tradition law society. Unification of right legal protection about ulayat land within tradition law society based on UUPA, Act of Forestry was action that less prudent, because within tradition law society include Right about ulayat land of tradition law society which based on tradition law.

Then, from religion site, ethic and morale by seen right legal protection about ulayat land of tradition law society include within legal politic of state and from various tradition laws, therefore both views needed to combine by ethical to appreciate multiculturalism by state and morally by applied transitional social justice. Although right of ulayat land within tradition law society already obtain legal protection, but if not based on ethical to appreciate presence culture among state with tradition law, and morally state have no desirability to applied transitional justice/corrective by doing affirmative action, therefore right protection about ulayat land of tradition law society was couldn't create justice and prosperous people, especially for tradition law society as right owner.

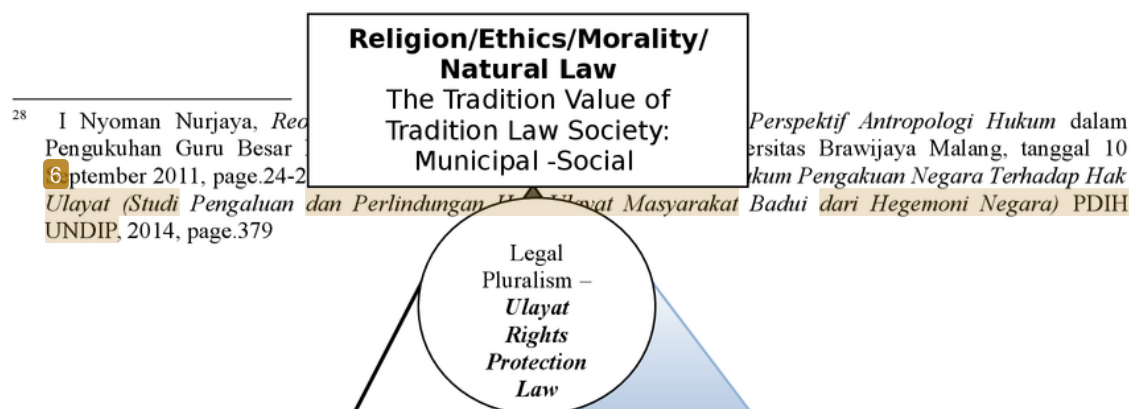
Theoretically, political construction of right protection law of ulayat land within new tradition legal society was no more followed centralistic, because that paradigm was contravene with legal complexity reality within society. Therefore, state or government must take legal

development paradigm reformation which pluralistic, by prioritising state legal regulation explicitly giving acknowledgment and genuine recognition and protection to legal system besides UUPA including inner order mechanism which empirically existed and live also operated effectively within society. Implication of values, legal principles, legal institution and society tradition must responded, and integrated into national legal system, and provide concretely became state law 'as act which regulated multicultural society live sites'²⁸.

Legal politic construction of right protection about ulayat land of new tradition law society (ideal) which followed thinking concept from Menski was integrate or connected three things. First, religious/ethics/morality sites as such study sector within natural law, content of social justice from Pancasila as direction rule, transitional justice and human right including right to have wealth, right to not discriminate and different from other people. Second, state site as such study from legal positivism which content UUD NRI 1945 especially purpose, legal state, UUPA, Forestry Law and Local Rule. Third, society site, as such study sector from socio legal concept, including living law in society and culture structure of tradition law people.

Third sites above was process and integrate therefore create such new construction of right protection about ulayat land with tradition law society which based on tradition law values that have both communal characteristic called 'right protection of ulayat land within pluralism tradition law society'. Said that right protection of ulayat land within pluralism tradition law society meant protecting multicultural of tradition law system among one and other area, as such antithesis from legal unification of property **right of land within tradition law society in** UUPA, Forestry Law and Local Rule of Lampung. Then stated that protection of pluralism, meant that protecting different live style as a part of religious within tradition law society and human right, as such antithesis from government policy to implement modernization to tradition law society.

Metodologically, pluralism law was describe interconnected of all laws whether state, society and natural law. Legal pluralism could be seen as below:



State Positivism
Agrarian Principal Law,
Forestry Law,
Governing Regulations
of Individualists and

Society
Socio-Legal Approaches
Customary Law and Customs
of Communal and Social
Customary Law Community

Concept of Legal Pluralis by Werner Menski that already adapted²⁹

C. Conclusion and Suggestion

1. Legal politic of land affairs with ³right of ulayat land within tradition law society so far in implementation wasn't give protection yet to right of ulayat land within Mesuji tradition law society, this is because:

- a. Philosophically, political land affairs rule was Dutch heritage law (Agrarisch wet) which refer to both structure and modern legal culture of west people which prioritized individual interest and oriented on economy interest (provit oriented) and seek hedonism. Legal construction of that land affairs was legal construction which refer to structure and modern law culture of west people which only protecting individual right and not protecting communal right, this case could be seen within land affairs law, right of ulayat land wasn't mentoned as property land, which in development will made the conflict.
- b. That construction wasn't due to structure and traditon law society culture, therefore imposible to arrange developing values in communal and social tradition law people. In reality, legal politic of right about ulayat land within land affairs rule was ³only protecting government rule, and have individual characteristic and not protecting right of ulayat land within tradition law society. Legal politic of right concerning ulayat land so

²⁹ Werner Menski, *Perbandingan Hukum dalam Konteks Global* Translation from Comparative Law in Global context, page 244-245

far include within UUPA, Forestry Act, Lampung Governor Rule during this time couldn't be used as a tool to solve the problem when presence conflict of right about ulayat land that have communal characteristic. This case was cause of the protection wasn't regulated yet within state political law such as on Local rule. therefore needed presence new legal policy, it was made right protection local rule concerning ulayat land within tradition law society. Construction of right political law about ulayat land within tradition law society, expected able to protecting right of ulayan land that have communal characteristic and could be used to solve right conflict about ulayat land within tradition law society.

3

Conflict about right of ulayat land within tradition law society occurred in Mesuji was showed that Indonesian law wasn't capable yet to reach their purpose, it was for justice, benefit and certainty, whether from formulation process, implementation or the maintenance, when connected with Human Rights by state, justice within legal state conception of Pancasila, there were emphasizing about the importance of balance among duty and responsibility also freedom and responsibility within legal maintenance.

2. Political law construction of land affairs which could give right protection of ulayat land within Mesuji tradition law society

Political law construction of land affairs which able to give protection for right of ulayat land within Mesuji tradition law society through legal policy (Local Rule) as solution in handling the problem faced as effort in giving protection to right of ulayat land within Mesuji tradition law society, it was presence two regulation of land affairs law, it was state law (UUPA, Forestry Law, Governor Law) as such both individual and liberal also tradition law that have both communal and social characteristic (such as Mesuji case).

Construction of ideal law about political law of ulayat land authority of tradition law society was legal construction which could assured right protection of ulayat land within tradition law society. National land affairs law existed was legal construction which within existence already have Human rights perspective but wasn't yet in implementation, therefore in order that land affairs able to protect ulayat right of communal tradition law society, Lampung Governor rule needed to reconstructed. In reconstructed, there are several case that must paid attention, as follows:

a. Basic to reconstruct

Basic in reconstructing the law of right about ulayat land within land affairs regulation was national law definition, tradition law, international definition.

National law : UUD NRI 1945, Act No.5, 1960 about UUPA, Act No.39, 1999 about Human Right, Act No.23, 2014 about local government, Act No.41, 1999 about Forestry, PP No.20 about BPN, Department Rule of Agrarian and Room system/Head of BPN No.9, 2015 about Communal Right protection or collective right about land of tradition law society, and Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ECOSOC), Act No.11, 2005 about ratification of Ekosob rights.

From that explanation above, therefore political right law of ulayat land was followed Menski thinking concept, was combining or integrated three things. First, religious/ethics/morality sites as such study concept into natural law, including social justice from Pancasila as direction norm, transitional justice and human rights including wealth, right not to discriminate and different from other people. Second, state site as such study from legal positivism, content of UUD NRI 1945 especially purpose, legal state, UUPA, Lampung Governor Rule, Local rule of Mesuji regency, Lampung. Third, society site, as such study concept from socio legal approaches, including living law in society (tradition law) and culture structure of tradition law society.

Third sites above was processed and integrated, therefore create new construction of right protection concerning ulayat land within tradition law society which called as 'right protection of ulayat land within tradition law society of variety and diversity'. Said right protection of ulayat land within tradition law society of variety meant protecting various characteristics of different tradition law values between one and other area, as such antithesis from political law unification of national land affairs. Then said that protection of diversity, meant was protecting different live ways as a part from belief of tradition society and human rights, as such antithesis from government policy to implement modernization to tradition law society.

b. Based on conclusion above therefore could deliver recommendation as follows:

Recommendation proposed was as follows:

1. For the law making institution or policy maker whether Government, DPR, DPRD, President and Regulator of Mesuji Regency, Lampung in order to take development within regulation,

because existed regulation, are Lampung Governoor regulation wasn't protecting right concerning ulayat land of tradition law society, Mesuji Lampung, therefore both Government and regulator of Mesuji Regency, Lampung made Local rule of Right protection concerning ulayat land of Mesuji tradition society, Lampung.

By presence that Local Rule, therefore when there were annoyance concerning right of ulayat land of state tradition law society able to protect because there were include the legal standing. It's meant by presence that local rule, right protection of ulayat land of tradition law society could implemented. For entreprenour or investor should be when will open the area must ask explanation clearly not only to Government who give license but also to tradition law society, therefore land that made business area wasn't made the conflict. When this case implemented properly, therefore will avoid the conflict with society.

2. For rule sactioning institution, in this case have a duty to escort, controlling until pulled out regulation when that rule in conflict. Competent institution, in this case was Court of Institution or Supreme Court, both these institution must have sensitivity to the function as "consitution guardian". Department of Agrarian affairs and Room system, that have important role within legal working of right concerning ulayat land of tradition law society, must brave to applied responsive policy for right protection of ulayat land withintradition law society .

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