

The Role And Benefits of Legal Anthropology in the National Development of the Indonesian Nation

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Abstract

According to the Legal Anthropology approach, law is fundamentally rooted in society. This approach utilizes a model that focuses on micro-processes. A distinctive characteristic of Legal Anthropology is that various legal systems in diverse societies across the world are studied by focusing on micro-processes that empirically occur in people's lives. Therefore, a holistic method in examining legal pluralism in society is highly instrumental in explaining legal mechanisms, procedures, and institutions, as well as the operation of law and its relationship with political, economic, religious, social organization, and ideological aspects. This study discusses the role and benefits of legal anthropology in the development of Indonesian society. The role of legal anthropology in the national development of Indonesia is to explore existing norms and values within society. As the arena of Legal Anthropology focuses on human beings and legal culture, social rules that are not legal in nature are not the primary target of Legal Anthropology research.

Keywords: Legal Anthropology, National Development, Indonesian Nation

Abstrak

Berdasarkan pendekatan Antropologi Hukum, hukum pada dasarnya berakar pada masyarakat. Pendekatan ini menggunakan model yang berfokus pada proses-proses mikro. Salah satu ciri khas Antropologi Hukum adalah berbagai sistem hukum dalam masyarakat di berbagai belahan dunia dipelajari dengan berfokus pada proses mikro yang secara empiris terjadi dalam kehidupan masyarakat. Oleh karena itu, metode holistik dalam mengkaji pluralisme hukum di masyarakat sangat membantu dalam menjelaskan mekanisme, prosedur, dan lembaga hukum, serta bekerjanya hukum dan hubungannya dengan aspek politik, ekonomi, religi, organisasi sosial, ideologi, dan lain-lain. Studi ini membahas tentang peran dan manfaat antropologi hukum serta perkembangan masyarakat Indonesia. Peran antropologi hukum dalam pembangunan nasional bangsa Indonesia adalah untuk menggali norma-norma dan nilai-nilai yang ada di masyarakat. Ranah Antropologi Hukum mempelajari manusia dan budaya hukum, oleh karena itu aturan-aturan sosial yang tidak bersifat hukum bukanlah target utama dari penelitian Antropologi Hukum.

Kata Kunci: Antropologi Hukum, Pembangunan Nasional, Bangsa Indonesia

A. Introduction

Anthropology is etymologically derived from the Greek language. The word *Anthropos* means man and *logos* means science. So anthropology is the science that studies humans. In legal anthropology, it is studied about roles, status or position, values, norms, and culture. All of this is closely related to legal anthropology. Before the establishment of Communism, Chinese magistrates, for example, did not deal with interpreting and applying the rule of law to cases of conflict, but used the rule of law only as a guideline of very useful examples, but not necessarily in concrete cases.

In the legal anthropology, it is impossible to limit oneself to the content of legal regulations and their forms of sanctions, but what needs to be clearly known is the process of forming the law. Legal anthropology is a science that studies human beings and their culture, especially in the field of law. Anthropology is the science that studies humans.

This science has become so broad in scope that there are now 4 (four) major specialties in anthropology, namely: physical anthropology, cultural anthropology, psychological anthropology and sociological anthropology. In addition to these specialties, there are still general anthropologists who look at bio-social humans holistically. In this study, anthropology uses methods used by the natural, social and religious sciences. (Harsojo, 1966).

The definition of culture can be formulated in the following points:

1. That the culture that exists among mankind is very diverse;
2. That culture is acquired and passed on socially with lessons;
3. That culture is described from the biological component, the sociological component of human existence;
4. That culture is structured;
5. That culture is divided into several aspects;
6. That culture is dynamic;
7. That values in culture are relative.

The study of Legal Anthropology is to explore norms and values in society. The Legal Anthropology arena studies human beings and legal culture, therefore social rules that are not legal in nature are not the main target of Legal Anthropology research. Norms/rules according to Legal Anthropology of patterns of behavior repetition in society. Norms/Rules are basic values that exist in society that can measure human behavior in order to be able to judge which actions are right and which are not right. Norma has a legal aspect when the authorities impose sanctions for deviant or unlawful acts. Sanctions are positive such as paying fines or social work, and sanctions are negative such as corporal punishment or exclusion. Law emerged from human civilization, where there are 2 or more people where there is a law.

The scientific nature of legal anthropology is:

1. Legal Anthropology does not limit its views to a particular culture (comparative study).
2. Legal Anthropology studies society as a whole whole, where its parts are interconnected.
3. Modern Legal Anthropology does not focus only on social forces and the superorganic.
4. Legal Anthropology views society dynamically, so that the role of society and law is not limited to maintaining the status quo.
5. Legal Anthropology is an empirical science of Law.

In the perspective of Legal Anthropology, law is born from culture. Seeing the above certainly makes us aware of the role of Legal Anthropology as a perspective to see various kinds of legal patterns that are born and develop from various patterns and cultures. Studying Legal Anthropology means that we see a reality, a reality of legal life that actually runs in society. One thing that we can take from Legal Anthropology, is that it is expected to raise awareness of the reality of legal diversity due to various cultures. The diversity of laws should not be interpreted as a conflict of laws, but should be considered as a treasure trove of legal wealth that will be able to strengthen and renew national law. On the other hand, the result is to give rise to an attitude of tolerance to respect humanity with diverse mindsets, characters, understandings, and of course also diverse laws.

To understand the problems within the scope of legal anthropology has several benefits to solve legal matters in society, namely theoretically being able to know the legal definitions that apply in simple and modern society, and being able to find out how society can maintain its basic values as well as knowing how society can make changes to these basic values, can also know differences in public opinions/views on something they should do and can find out which tribes/communities are still strong/fanatical in maintaining the validity of their cultural values, as well as being able to find out which tribes/communities have high norms of legal behavior and which are not. To understand more about legal anthropology, it is also necessary to know the scope of study of various schools of legal anthropology.

Like the discipline of legal anthropology, understanding cultural phenomena is not a mere normative phenomenon, but a symbolic phenomenon that gives birth to laws for the society that supports the culture. The research method of Legal Anthropology seeks to explore symbols, meanings, and things behind the veil that are believed to exist and are seen as law, legal disciplines include, among others, teachings that determine whether it should or should be done (perspective), as well as teachings that determine whether it is actually done (descriptive) in life.

Teachings in legal dogmatics, legal philosophy, and legal politics. To find out the links to legal anthropology in studying law, it can be done with a holistic approach, which is to relate legal phenomena to cultural aspects as a whole, the Legal Centralism Approach, which is a centralized approach, as well as the Comparative Method approach, which is to conduct comparative studies between legal systems in different societies in various parts of the world.

B. Problem Statement

Based on the description in the background mentioned above, this paper aims to review and analyze about the role and benefits of the Legal anthropology, and its development within Indonesian society.

C. Research Methods

This study employs a normative juridical research method with a descriptive- analytical approach, focusing on the examination of library materials and secondary data (Harsojo, 1971). The research framework utilizes two primary approaches: the case approach, conducted by analyzing the socio-cultural developments within Indonesian society, and the statutory approach, performed by examining the prevailing legal provisions relevant to the subject

matter. In this context, the legal basis under review specifically pertains to customary law communities (Masyarakat Hukum Adat).

Data collection is an indispensable stage of this research process, as the integrity of the analysis depends on the quality of the sourced data. The collection process is strictly focused on the core legal issues to prevent deviations and ensure clarity throughout the discussion.

D. Results and Discussion

1. The Role and Benefits of Legal Anthropology

According to Drs. H. Subrata, there are three concepts that must be built so that a country is more stable in the overall sense, namely building National Identity, National Integrity, and National Credibility.

- a. In the field of national identity, culture is referred to as a parameter of national identity must be defined as the totality of all human attitudes, behaviors, and deeds. If culture is only interpreted narrowly, as if culture is only art, then it becomes inappropriate. And the so-called true totality is not just what we see on television or on the street such as fashion, hair and others, but is how our image as a nation is.
- b. regarding the development of national integrity. Based on existing data, our nation has 17,506 islands after subtracting the islands of Sipadan and Ligitan. Meanwhile, there are 318 tribes. And 524 very different regional languages or dialects. The problem is that people have not really realized that the diversity of ethnicities, cultures, languages, islands and others is an infinite wealth and must actually be a potential for unity and unity. There are actually many integrity values that have been carved by the historical actors of this country, if contemplated and continued, it will make this nation a great nation so that it is respected because it has unified integrity. Although in the past, it was divided where there were Yong Java, Yong Sumatra, Yong Ambon and so on, but then they could unite under one inner bond, namely the Indonesian Nation.
- c. Regarding credibility development, even though the identity and integrity of a nation already exists, if credibility does not exist, it is the same as meaningless. So, so that investors enter this republic, they cannot just invite or travel to several countries by saying 'please invest in our country'. But everything must start from within the country itself. Prove first that this country is stable, potential, there is no KKN, there are no things that make the economy 'high cost', no matter how small. And it must be proven that small and medium enterprises and cooperatives are the idols of this nation's economy. That way, investors will be interested and enter this country by themselves.

Anthropology in society plays a role as a researcher about the diversity of society. Ethnicity can be used for science itself (development of scientific methods), as well as a basis for taking development policies that can solve social problems in society. Legal anthropology helps to maintain the law in regulating the development of the country as a whole, both physical and mental, by providing an analytical study related to human culture or society governed by law. In the perspective of legal anthropology, law is born from culture. Seeing the above certainly makes us aware of the role of Legal

Anthropology as a perspective to see various kinds of legal patterns that are born and develop from various patterns and cultures. Studying Legal Anthropology means that we see a reality, a reality of legal life that actually runs in society.

One thing that we can take from legal anthropology, is that it is expected to raise awareness of the reality of legal diversity due to various cultures. The diversity of laws should not be interpreted as a conflict of laws, but should be considered as a treasure trove of legal wealth that will be able to strengthen and renew national law. On the other hand, the result is to give rise to an attitude of tolerance to respect humanity with diverse mindsets, characters, understandings, and of course also diverse laws.

Some of the benefits of Legal Anthropology:

- a. Theoretically, it is possible to know the legal definitions that apply in simple and modern society.
- b. Be able to find out how the community can maintain their basic values as well as know how the community can make changes to these basic values.
- c. Be able to find out the difference of opinion/view of the public on something they should do. to be able to find out which ethnic groups / communities are still strong/fanatical to defend the validity of their cultural values.
- d. can find out which ethnic groups/communities have high norms of legal behavior and which ones are not.

The study of law as a system of social control in people's lives has been widely carried out by anthropologists (Black, 1976, 1984). Therefore, it is said that anthropologists made a very meaningful contribution to the development of the concept of law operated in society (Griffiths, 1986:2). The legal norms that apply in society can be methodologically understood from the decisions of a person or group of people who are socially given the authority to impose sanctions on lawbreakers. Therefore, to investigate the law that lives in society (living law) can be done in three ways, namely a. By investigating abstract norms recorded from the memories of traditional chiefs, community leaders, or authority holders who are authorized to make decisions (ideological method); b. By observing every actual action (behavior) of community members in daily life when interacting in their community (descriptive method); c. By examining disputes that have occurred or are occurring in society (trouble-cases method) (Llewellyn & Hoebel, 1941).

Law in its function as a tool of social control is one of the roles of law (law as a tool of social control) in society (Black, 1973). Along with the demands of the development of society itself, especially in an increasingly complex society, the role of law is then directed and leveled as a means to carry out social life engineering (law as a tool of social engineering), or to make social changes by using legal instruments (social engineering by law) to achieve the social conditions desired by the State represented by the government (Moore, 1978; Scott, 1982; Darmodiharjo & Shidarta, 1996). Legal anthropology helps to maintain the law in regulating the development of the country as a whole, both physical and mental, by providing an analytical study related to human culture or society governed by law. Identity development can actually be engineered through the formation of a legal

instrument that forces members of society to be able to understand a national identity in the long term. But in order to get a legal instrument that can last until the goal is achieved and can even create a new culture in society, the maker of the legal instrument must understand the characteristics of the society where the law will be applied in a certain period of time. For example, the people of Jakarta are very diverse and most of them are immigrants. Therefore, a mature study is needed from an anthropological perspective related to the culture of urban communities so that the laws applied are really effective. This identity development can be associated with education about the nation's culture which is continuously given to students and the community.

2. Development of Indonesian Society

Like other nations in the world, the Indonesian nation is now building a society towards modernization. In carrying out national development since the beginning of independence, there has always been a clash between two great social forces that want the development of a closed modern society, and the other social forces that want the development of an open society. And after experiencing ups and downs in the growth of the nation, today the Indonesian government and nation are carrying out planned development, which leads to the construction of an open modern society. In principle, political dogmatism is abandoned and development is carried out more realistically. Basically, scientific calculations and economic-technical principles are the basic ingredients of the national development plan. And in accordance with this new approach to development, the principle of democracy was introduced in political, educational and economic life. In these fields, the educated expressed their desire through writings in magazines and newspapers, in seminars, and academic disputes, about the need for constitutional protection for the people, in the sense that the constitution in addition to guaranteeing the human rights of the individual, must also determine the procedural means of obtaining protection and guaranteed rights, about the existence of an impartial judiciary, about the existence of free elections, about the freedom to express opinions and thoughts, about the freedom to organize and conduct healthy opposition, about the existence of civic education in accordance with the aspirations that are developing among today's society. The aforementioned principles are required as a basic requirement for a democratic government under the Rule of Law.

Especially in university life, academic freedom is required, namely the freedom of scholars who devote themselves to the development of science to freely express their scientific opinions, and are free to conduct research and announce the results. In addition to political rights and obligations, democratic minds should also be recognized, in the sense that there must be social and economic standards. Solving hunger, poverty, and unemployment are requirements for the Rule of Law to run well. In this connection, there is an opinion among the public that the economic sector that controls the livelihood of the people must be in the hands of the government, while land reform in certain areas is considered necessary, as long as its implementation does not conflict with the Rule of Law. To be able to carry out development in the economic, political and cultural fields

that are democratic, strong administrative power is needed. For the State of Indonesia, where political participation has not been possible for the majority of the people, especially those living in rural areas, who do not have an adequate level of education, interference in individual rights is sometimes inevitable, in order to achieve equitable social justice. Because the same opportunity is not accompanied by the same ability, does not foster a democratic life, and even endangers the principle of the Rule of Law. On the contrary, the intervention should not be more than necessary and should be subject to the guarantees provided by the Rule of Law. (Miryam Budiarjo).

That this Five-Year Development leads to the development of an open modern society can be seen as an indication contained in the wisdom of the government and community institutions, which view that the existence of a diverse society, which is diverse in nature, is natural. It is acknowledged that every society is divided into different classes and schools of thought and sometimes one is at odds with the other, and accepts one mind, that the various classes have the right to live. That the conflicts that arise between factions and schools of thought must be resolved peacefully and through legitimate courts that are commonly used and not resolved politically, as the only means or by violent means by the use of the force of pressure groups, intimidation and issues that contain forms of coercion. It is stated that in an open modern society, social change must be organized peacefully.

Also in the development of society, the principle of class conflict is no longer highlighted, the understanding that the revolution has enemies or the great leap forward, but the principle of community development is highlighted which wants to change society in an orderly and harmonious manner and in stages and stages. For developing countries as well as for Indonesian society, peaceful change in fostering an open society is important, as the change from traditional society to a modern and industrialized society often creates great tensions, which can lead to disorganization and disintegration of society and culture. It was also highlighted that in fostering an open society; The top leadership of the state can be replaced in an orderly manner through free and secret elections. The principle of leadership replacement based on free and secret elections contains an assumption that the majority vote wins and the minority accepts defeat sincerely. However, in addition to that, it must also be accepted one other assumption, that for the losing minority there is always an opportunity to gain power in the next general election. Coercion against minorities should be minimal.

They should be given free opportunity to express their opinions and votes. It is also highlighted among the community, that in fostering an open modern society, human dignity is upheld and human rights are held for the sake of achieving justice. Thus, the political, economic, social and cultural values that have begun to be developed in the development of Indonesian society today.

The principle is modern and democratic. The development has been carried out based on planning using the results of science and technology. The planning that underlies the development effort is integral, which pays attention to all aspects of people's lives, namely aspects of material and spiritual welfare, intellectual and emotional, political, economic and

security aspects, in the foreign and domestic, national and regional fields. Any development is impossible to do without a plan. The greater the development carried out, the more a thorough plan is needed that covers all aspects and employment. And this plan should have been scientifically prepared. The existence of BAPPENAS, shows that technical development factors are prioritized. This is certainly good, but it also contains various weaknesses, because the Five-Year Development is a community development that does not contain purely technical factors, but also contains psychological values, cultural values, political values and so on.

Without intending to deny that technical factors must be included in the implementation guidelines, it must also be noted that the traditional factor as one of the cultural factors plays a big role in achieving development goals. In addition, we need to state that in planning the results of the last knowledge should be used. In this connection, it can be said that modern development gives form to science, while science is the driving force for modern development. The characteristic of science is to work according to plan, and in order to achieve good results in research that underlies development, we must minimize the possibility of unexpected factors that can interfere with the course of investigation.

In the planned national development, the Indonesian nation wants to build a democratic, united, modern, open society, which provides material and spiritual happiness to its people. Perhaps it would be more complete if it were added that the Indonesian nation also wants to live peacefully and sovereignly together with other nations in the world. This formulation is indeed short and dense, but it contains a lot of interpretations. One of the essential development goals that needs to be studied in depth, for example, is the concept of a happy life. This problem is highlighted here, because the Indonesian nation is very diverse in culture and perhaps the same is true of the concept of happiness. If we ask how the culture of the Indonesian nation is today, what is its hope as a national one, seen from the socio-political, socio-economic, and sociocultural perspectives, then it can be said that the Indonesian nation, which consists of tens, even hundreds of ethnic groups, represents all centuries in one era. Because in addition to jet airplanes that have been used and their very modern organization, carts are also still used that are pulled by animals or humans. In addition to tractor engines from the 20th century, we also use ploughing tools from prehistoric times. In addition to calculating individual human working hours in development, we still use the gotong-royong system that is commonly developed as an institution in a traditional agrarian society.

Besides we already value time, human relationships at work are still often fostered by customs that are considered appropriate, proper, ritualistic, and a great waste of time. The background of cultural diversity and the diversity of life orientations, causes that it can be taken as an assumption, that also the concept of happiness is different. The themes of "Man does not live by bread alone" and "The stomach cannot wait" are the truths of life but which contain various traditions and nuances. In fact, development can be carried out with passion, if the happiness pursued by the group, ethnicity, or nation is real and realistic, which stands on the value system supported by that nation. We need to remember that a strong motivation for development is the pursuit of happiness, truth, justice, salvation, peace. Of course, in

formulating development goals, we cannot assume that the Indonesian nation lives alone.

Therefore, the reality of international relations, our geographical position, cannot be separated from formulating our development goals. A rational approach to development will bring many benefits, if it can be applied wisely in our society, which, as described above, is seen from the point of view of its whole way of life, from the point of view of "the total way of life", representing all centuries in one age, very diverse in its nature of mind and value system, its material culture and in its assumptions.

Therefore, to be able to build successfully, it is very necessary for us to know the nation that is doing the development. It is very difficult to take a generalization of the situation in Indonesia today. However, even so, we can make a classification of the prominent elements in the socio-cultural life of the Indonesian nation which are the dominant elements in today's development. There are two living units in Indonesia that according to anthropology are important factors for development, namely ethnic groups and villages. As we know, Indonesian society consists of many ethnic groups and is divided into various rural areas.

The concept covered by the term ethnic group in anthropology is human or collective unity that is bound by the awareness of cultural unity and language unity. And a village as a legal alliance is a certain area inhabited by a community, which has the power to establish its own government. As a small village community, there are several groups where the citizens all still know each other and get along with each other with less or greater frequency. And because of its small nature, there are no large citizens among the special sections and groups in it.

As a village community, it is a group where humans can live most of their fields of life in a circular manner. (Koentjaraningrat, 1967) In other words, a village as a community is a social group that has strong inner ties, which has a communal and religious nature. Villages and ethnic groups are highlighted in this description as prominent socio-cultural categories and require special study in modern development, because traditional life is still maintained and carried out in the bonds of village and tribal life.

In the meantime, we cannot deny that for some time, especially since the emergence of cities in Indonesia since the growth of Indonesian nationalism, there has been a process of bi-culturalization in Indonesian society. This means that more and more people support both cultural patterns, namely regional culture and Indonesian culture that can be seen in those cities. Hildred Great called the latter cultural pattern metropolitan superculture. (Hildred Beertz, 1963). In talking about traditional ethnic groups and villages, there are two concepts that need to be put forward, namely the concept of tradition and traditionalism. What is meant by tradition is all beliefs, assumptions and behaviors that have been passed down since ancient times, through several generations. Thus, when we reinterpret tradition, the tradition changes.

Traditionalism, on the other hand, is a mental attitude, an inner attitude that worships the past. A traditionalist sees the culture or tradition static. The concepts of tradition and traditionalism are important to discuss development, because it concerns how humans see their past, and their attitude towards renewal.

In talking about the tradition, there are two aspects of culture that exist in ethnic groups and in rural communities in Indonesia, which are difficult to experience change and are strong in resisting various influences that come from outside. The cultural institution in question is a social structure based on kinship and belief systems.

Therefore, the problem faced in development and modernization is not solely how we can build, but how we can build even faster. To accelerate this development, the Indonesian nation has now abandoned the Marxist approach, which uses a single method to force individual freedom and human self-esteem, and can force people to work according to plan. With the principle of indoctrination, regimentation, revolution, it can indeed be tried to accelerate development, but the Indonesian people do not agree with the Marxist approach in principle, philosophically and methodologically. Many communist countries are economically advanced, but judging from the sense of human nature, they are lagging behind, and it can even be said that they are not yet modern. We have established the definition of development as an effort towards personal development in accordance with its strength.

The principle of development is not indoctrination, but education, not revolution but uses the principle method of "community development", not regimentation but plurality, not coercion and intimidation but conformity, not dictatorially, but democratically. And we understand that carrying out development in the way that has been set is not as easy and fast as the approach that is forced and directed. In today's development, the slowness of development does not lie in collective power, but in personal responsibility.

Therefore, personal development must be given good attention. The way to modernize individuals is through systematic education. To modernize society requires a modern state of mind, because it may happen that we have used modern institutions such as universities, factories and hospitals, but our state of mind is actually a new version of the traditional-feudalistic state of mind. And in place. If the world of education from low to high is taken, it is instead recruited from "The Cream of the Nation", given adequate facilities and buildings and given a much larger budget and fostered in a democratic, rational-modern manner.

Perhaps by improving the quality, organization and facilities of education, we have jointly laid the seeds for the future, better and more accelerated development, even though we realize that building a newly colonized nation into a sovereign, independent, united, democratic, materially and spiritual happiness fostered by the basic values contained in Pancasila cannot be completed in one day and one night. The obligation of the present generation is to prepare everything, so that we can build more and more quickly and successfully. (Prof. Harsojo, 1966)

E. Conclusion

Legal anthropology as a branch of cultural anthropology sees law as a cultural phenomenon so that a society's collective response to the law in the form of culture (obeying or breaking the law) is greatly influenced by the cultural values of the society itself. The law will be obeyed if it does not

contradict the cultural values of the community and the law will be violated if it contradicts the cultural values of the community. After studying it, we can state the results that the benefits in legal anthropology are very broad. Legal anthropology has made a huge contribution to the development of legal science. And the conclusion that can be drawn is that no matter where we are, we will never be far from the law as long as we are in the state of law.

F. Recommendation

From the perspective of legal anthropology, the phenomenon of legal pluralism is a fact of legal life in a multicultural society. Therefore, in order to improve the goals, functions, and roles of law in a multicultural society, maintain and strengthen the integration of the nation in the future, efforts must be made to reform the paradigm of national legal development, from the ideology of legal centralism to the ideology of legal pluralism, with legal characteristics that are responsive to values, principles, and social institutions. and traditions that grow, live, and develop in society.

In the Indonesian context, customary law is a folk law system that empirically grows and develops in people's lives, as a system of norms and regulations that function as an instrument of social control (legal order) that maintains social order in society. Therefore, law is not only manifested as state law, which is formulated in laws and regulations, but also manifested in religious law, customary law, and also in internal regulatory mechanisms in society.

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