

**Development of Agricultural Economic Law : Law Unification
over Pluralistic of Social Conditions**

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Abstract

Cultural diversity of people in a country may result in Law Pluralism practised in a society. Some of them are traditional law and customs which regulate the life of farmers. On the other side, government's responsibility to develop unification of agricultural economic law is aimed to push the improvement of productivity in agricultural products. However, unification of economic law which is not in accordance with the social conditions, custom, and traditional law of farmers brings them face to face with law problems. As a result, this affects negatively on productivity or causes state law disobedience.

Key words: Law Unification, Law Pluralism, Agricultural Law

Problems of agricultural law unification. Indonesia is a multicultural country. Its cultural diversity among the people is not only based on ethnic, race, language, religion or belief but also types of job such as farmer, fisherman, craftsman, trader, labor, businessman and many more. Moreover, in a group of society various cultures exist. In Javanese ethnic, for example, there is *Santri*, *Abangan*, and *Priyayi*.¹ Each group based on ethnic, religion, and types of job has its own cultural values contained not only in custom but also religion believed as legal structure in the life.

In Anthropology Legal point of view, cultural values and legal structures in life of each group in a society become starting point of a relation between multicultural and law. The problem which frequently appears is the demand of various groups in a society on pluralistic law. The source of conflict occurs when there is a discriminative policy expressed in constitutional law and other regulations concerning recognition and protection of local community right.²

Such a conflict may become physical conflict which results in court.

¹ *Abangan, Santri, and Priyayi* areclassification among Javanese people based on culture, see Clifford Geertz, *Abangan, Santri, Priyayi dalam Masyarakat Jawa*, Jakarta: Pustaka Jaya, 1983.

² I Nyoman Nurjana, 2012. State law in Multicultural Country of Indonesia: Toward A Just and Equitable State Law in Anthropology Legal Point of View, article published in <http://ebsohost.com/artiles/74629544/state-law-multicultural-country-of-Indonesia-Toward-Just-and-Equitable-State-Law-in-Anthropology-Legal-point-of-View>

One of the community or group that often experiences policy descrimination is farmers. In Indonesia, they are the largest group comparing to the others with different means of livelihood. Based on the statistical data issued by BPS, they reach 40%. Besides that, agricultural activities play a very important role to maintain food sustainability for all Indonesian citizen. Despite the biggest number and essential contribution , they are not always protected by law. Several policies and law that regulate agricultural resources do not take any sides with their interests. A very common example is farmer's right of **ulayat land** that is conceded by law concept stating that the land, the water, and the natural resources are under the government's authority which is clearly stated in Indonesian Constitution *UUD NKRI* article 33 subsection 3 *juncto* article 2 subsection 1 the act of agrarian Law. Both derivative law policies frequently take by force **ulayat land** as an economic source of traditional farmers.

Since the issue of UUPA in 1960, there are fewer acts and regulations that directly manage agriculture. On the other side, it was established with the spirit of agrarian reform that support interests of farmers. Prior to UUPA, the goverment once issued the Act No.2 year 1960 about agricultural products sharing . This act regulates the procedure of agreement of farming land sharing. In 1992, the Act No.12 year 1992 was issued regulating planting cultivation system. Then, in 2000 Law of Intellectual Right was established specifically the Act No 29 year 2000 concerning protection of plant variety. The three Acts can be categorized as law unification dealing with agriculture. The goal of the acts is to give law assurance and protection of agricultural activities.

Prior to the establishment of the above acts, all law relations of agricultural activities including product sharing, seed transaction, farm product trade, labor relation, seed supply, irrigation control reffered to traditional law or cutomary law. A question ,then, appears whether the three acts surely protect both farmers and their activities. This article focuses on describing how agricultural economic law unification possibly becomes a thread not only to law practised in society but also to the autonomy of farmer group upon agriculture products.

Unification versus Law Pluralism in Indonesia

The history of law pluralism in Indonesia is related to the acceptance of colonial authority toward social anthropology facts as juridicial facts, where a country called Netherlands Indies is inhabited by peoples with unique languages, law, and traditions. Based on the fact, colonial government admitted traditional law in addition to Dutch Law for European people.³ This became the starting point of pluralism although Indonesia was not established.

³ See Soetandyo Wignjosoebroto, *Hukum dalam Masyarakat, Perkembangan dan Masalah: Sebuah Pengantar ke Arah Kajian Sosiologi Hukum*, Malang, Banyumedia Publishing, 2008:117-118

Law pluralism occurs when there are more than one legal structures prevail in a society.⁴ Another indication is that one legal structure is not arranged in a hierarchy system over the other.⁵ Law pluralism is different from multilegalism which is characterized by comprehensive majority. ⁶ jurisdiction, possessing the right to decide all problems, and majority authority to give legal authority and creating minority jurisdiction to manage several problems. In multilegalism the state gives legal authority to a group or ,in other words, to establish minority authority⁶. In multilegalism the source of authority of minority group is state law.

Griffiths distinguishes between strong legal pluralism and weak legal pluralism. Both are distinguished by the the source of legal prevailing. Strong legal pluralism is characterized by state law co-existence with another law and its jurisdiction to regulate human lives. Meanwhile, weak legal pluralism is characterized by a single law prevailing which is established by considering cultural values in a society. The latter is commonly recognized as law sentralism.⁷

In colonialism era, law pluralism can be categorized as strong legal pluralism. It is indicated by the admission of colonial government toward traditional law jurisdiction as a means to solve legal problems of native citizen. Moreover, there is judicature *Landraad* or autonomous judicature body⁸ which has an authority to administer justice of native citizen as an evidence of strong legal pluralism.

After the Indonesian independence, the government try to establish law unification. In ex-colony, law unification is a kind of effort to be freed from colonial policy. Most ex-colony take similar action that is changing legal pluralism --- law discrimination prevailed to colonizer and that to native citizen colonized based on religion, ethnic, or language into an independent nation with a need of one law for all persons. In political point of view, the step depicts an effort to unite the nation by prevailing law unification.

⁴ See J. Griffiths, What is Legal Pluralism, article in Journal of Legal Pluralism and unofficial Law, vol.32 no.24, 1986

⁵ See A-J Arnaud, A-J. Legal Pluraismean the Building of Europe.In *Legal Polycentricity- Concequency of Pluralisme in Law*,eds.H.Petersen and H Zahle, Darmouth: Aldershot,pp.149-169

⁶ Morten Ebe Juul Nelsen, Multiculturalism and Legal Autonomy for Minorities Cultural, Etik I Praksis Nordic Journal of Applied Ethics (2013), 7 (2), pp.67-84

⁷ Griffiths, op.cit

⁸ Soetandyo Wignyoebroto, *Dari Hukum Kolonial ke Hukum Nasional: Dinamika Sosial Politik dalam Perkembangan Hukum di Indonesia*, Jakarta, Rajawali, 1994 pp 62-63

In the practice of sentralistic law, the faith of traditional law is different from that of Islamic law. The development of state law which depends entirely on legislative process commitment and law operational framework as social creative action causes the role of traditional law in under pressure condition.⁹ On the other hand, Islamic law gradually exists due to the struggle of several Islamic groups. The Act No.1 year 1974 concerning marriage , as an example, is one kind of legal sentralistic product in the framework of law unification. However, its content gives jurisdiction to religion law to determine marriage and divorce endorse especially for Moslems belonging to the authority of religious court.¹⁰ Moreover, the existence of Islamic law is getting stronger when the goverment has admitted Islamic economic and gives autonomy to Aceh province to use Islamic law in the affairs of local goverment and criminal law (*Jinayat*). This situation depicts a tug of power between the state and groups that have political strength in society. In line with that, Jacson states that centralized legal affairs or legal pluralism is not legal doctrine but political affairs. This occurs as a result of development of modern states which monopolize legal establishment and distribution of power.¹¹

The distribution of power, which is reflected in the establishment of law obviously apparent in Article 18 of the Constitution Amendment and the Act of local goverment, gives authority to establish local regulations which do not fall under the authority of central goverment. However, the distribution power to local authorities for legal establishment is more properly called multilegalism instead of legal pluralism since the autonomy granted to local goverment to establish local law is based on the principle of hierarchy and constrained affairs arranged.

In most ex-colony, the phase from pluralism toward law unification, according to Künkler and Sagins, in the context of legal unification or pluralism tends to follow similar course. At the beginning of the independence, they prevailed Law unification , but after that they imposed legal pluralism.¹² This may be related to the development of the system of goverment in each countries.

⁹ Ibid pp 158-159

¹⁰ Ratno Lukito, *Legal Pluralisme in Indonesia: Bridging the Unbridgeable*, New York: Routledge, 2013

¹¹ Sherman A. Jacson, *Legal Pluralisme between Islam and The Nation State: Romantic Dedievalism or Romantic Modernity?* Fordam International Law journal Vol 30 Issue 2016, Article 5 is produced by The Berkley Electronic Press <http://ir.lawnet.fordam.edu/ilj>

¹² see Künkler and Sezgin, *The Unification of Law and The Post Colonial State: The Limit State Monist in India and Indonesia*, Journal American Behaviour Scientist, Sage Publication pp 1-26 downloaded from abs.sage.com by guest on August 27,2016

Similar to political context, in context of political economy unification and pluralism can be understood as monopoly or distribution of economic power for the party authorized by law. Monopoly of economic power belongs to those who are given the rights by the state. One of the examples is the economic monopoly derived from intellectual property rights in agriculture. In other words, discussing unification and legal pluralism means indirectly discussing power

The Development of Agricultural Economic Law: Unification of Law over Pluralistic Social Condition

According to Djojodiguno, law is social conditions. It is not the law that changes social conditions but law is based on social conditions.¹³ This implies that unless rooted in social conditions, the law will encounter problems in its implementation. Moreover, the law that changes social conditions, in fact, has no basis in its implementation.

Farmers in Indonesia are not homogenous . Despite their similar activity (farming), their social conditions, customs and traditional laws, are different one another. When studying the relationship between law and agricultural activities, one only associates it with the size of an area, land use, and land rights. However, legal aspects of agricultural activities, in fact, have developed in line with the development of administrative law and intellectual property.

In the past farmers faced problems of land rights administration. Along with its development, they are facing increasingly complex problems like administration and intellectual property rights in germination . Farmers can not find such problems in traditional laws and customs. At the same time, the state prevails the law to change social conditions of farmers for the development of agricultural economy. Moreover, this is aimed for unification of law, to manage all agricultural activities which are , so far, based on customary laws or customs.

Among various customary laws, the most prominent one is the law governing community rights to farmland. The act no.2 year 1960 concerning revenue sharing agreement was issued prior to the establishment of the act no.5 year 1960 concerning the principal provisions of the agrarian. The emergence of the previous act was to solve different practices of profit sharing among farmers in Indonesia which were seen not to provide certainty for tenants. This was explicitly stated in preamble laws to provide certainty of legal position of tenants farmers/sharecroppers and to prevent extortion or exploitation in any activities for profit sharing of agricultural products. Both tenant farmers/sharecroppers and landowners are required to make agreements before village head and approved by head of subdistrict. The agreement, then, is announced by head of subdistrict in village meeting (article 3). Sharecroppers are protected since revenue

¹³ Djojodiguno, as quoted by Sutandyo Wignjosebroto, *Dari Hukum Kolonial ke Hukum Nasional: Dinamika Sosial Politik dalam Perkembangan Hukum di Indonesia*, Jakarta, Rajawali, 1994:201

sharing agreement is not interrupted if landowners divert land to others (article 4). The amount of revenue sharing is not governed by the agreement but by the regent.(article 6)

The terms of revenue sharing agreements based on the above act are very simple. However, so far in practice only few farmers obey it. Generally, the agreements of sharing are based on traditional law, both the process and the substance. The agreements between sharecroppers and landowners are made orally and do not involve village head and head of subdistrict. Moreover, the amount of sharing is based on agreements both sides. The underlying reason is the substance of the above act considered too bureaucratic and complex. Besides, the amount of sharing set by regent's decision is considered unsatisfactory. Therefore, they prefer using traditional law to share revenue.¹⁴

The tendency of making sharing agreement orally shows that trust between the parties is more important than evidence of written agreement. Farmers rely on Traditional Law or customs in the community that is considered more communal. They are more cautious in default since it may result in loss of trust of the community in the neighbourhood. Moreover, in certain areas, sharing agreement is made between people who still have relative relationship.

Traditional Law or customs on revenue sharing provide flexibility for sharecroppers and landowners to determine sharing ratio. This is commonly based on the cost spent of each party. The amount of the share for sharecroppers ranges between half¹⁵ to three-quarters of the crop. However, what generally occurs is that landowners simply hands over the land. They rarely cover the cost of production. Consequently, landowners receive a quarter to a third of the net.

The act No.2 year 1960 is, in fact, a unification of agreement of agricultural land profit sharing in order to overcome pluralistic sharing based on Traditional Law in Indonesia. There is a customary law , as an example, that provides half of the profit sharing while another one provide three quarters for sharecroppers. This is considered to give legal uncertainty for them. Therefore, it is stated in the preamble of the act the objectives are to protect legal position of sharecroppers, (mostly poor ones), who allegedly have no bargaining position when encountering landowners and to provide legal certainty , both the form and the content of sharing agreements. However, people do not feel the benefit of this legislation. This is evidenced by consistent use of customary law in profit sharing. Based on several research on legal protection for

¹⁴ The conclusion is based on the result of a research on the implementation of crop sharing in Tawangmangu Karanganyar Regency, Brebes Regency, Nganjung Regency, Narada Bali District, Nganjuk Regency, Karo Regency

¹⁵ see Thesis Hidup Iko about the implementation of crop sharing in Bulakamba District, Brebes Regency

sharecroppers, it is found that sharecroppers receive only half to three quarters of the share. Besides that, the term of the agreement lasts only one year and will be renewed in the beginning of the next season. It is different from the term stated in the act No 2 year 1960 mentioning that it lasts for three consecutive years.

Meanwhile article 7 of the act authorizes regent to set ratio of the share for both sharecroppers and landowners. It is, in fact, an opportunity to accommodate traditional law practised in society. Nevertheless, the authority of regent to determine the cost of yields (stated in article 6) results in nominal reduction in the share of both parties.

In the view of farmers, Act no 2 year 1960 is considered too complex, expensive, and gives no benefits for them. As a result, it is disobeyed. On the other side, in the point of view of legal development, to ensure legal certainty, this reflects disharmony between positive law and social condition of society.

In addition to revenue sharing, another agricultural activity governed by law is plant seeds. There are two laws governing plant seeds, The act no.12 year 1992 concerning cultivation system and The act no.29 year 2000 concerning protection of plant varieties.

Plant seeds are basically mini plants which are clearly identified. The embryo contained in zygote inside embryo sac as a result of fertilization of ovum and sperm is, in fact, a whole plant which has clear genetic identity.¹⁶ The seed functions as reproduction. Therefore, it must have clear genetic quality, both physiological and physical.

It is described in the preamble and explanation of the act no 12 year 1992 that the goal of this law is to protect seed-user farmers since seed producers are responsible to have seed certificate. A seed producer can be accused to market fake seed if it is not certified. Meanwhile, it is stated in the preamble of the act no.9 year 2000 that the objective of this law is to protect the party invented plant variety or plant breeders.¹⁷ Both acts have similar final goal, to increase agricultural productivities despite their different parties protected.

So far, to do seed captivity, farmers rely on their traditional knowledge hereditarily acquired (indigenous knowledge) or using limited technology. Moreover, related to the goal, in the past farmers did seed captivity for their own sake and their neighbourhood. Nowadays, they sell or commercialize the seed. Unfortunately, the change of this mindset is not followed by institutional change, that is the procedures of seed circulation. Whereas with the enactment of the act no 12 year 1992, there is a fundamental change in the institution specifically about certification of seed germination. It is stated in article 13, paragraph 1 that improved varieties released by

¹⁶ Sjamsoe'oed Sadjad, *Dari Benih kepada Benih*, Jakarta, Grasindo 1993 p.10

¹⁷ Based on article 6 UU PVT, the PVT right holder has the right to use and give agreement to individual or other legal institution to use variety of seed and crops used as propagasi

the government are seeds of *bina*. *Meanwhile*, it is stated in article 13, paragraph 2 that seeds of *bina* that will be distributed have to go through certification and meet the quality standards set by the government. In article 13, paragraph 3, the seeds which pass certification and will be distributed are mandatory labeled.

There is inconsistency between the mindset change of farmers to commercialize seeds and germination institution prevailed. In one side, the government has changed the state institution in the context of commercialization. On the other side, farmers still hold on communal institution. As a result, when farmers have affairs with commercialization, they have to face legal problems. As the illustration, in 2006, 11 farmers in Kediri were on trial for allegedly distributing counterfeit seeds as they had sold uncertified or unlabeled corn seeds and violated the act no 12 year 1992. In practise, so far, they perform traditional seeds captivity. They do not apply the process of certification mandated in article 13 of the act no 12 year 1992.

According to farmers, certification provisions are considered complicated. Moreover, it requires big cost. The process of certification is not only a matter of administration but also proof of physical characteristics and quality of seeds that requires heavy cost.¹⁸ Based on a research on horticultural plant seeds bred by farmers, it is found that the seeds distributed by farmers are, in general, uncertified. The reasons are seed certification needs heavy cost and complicated bureaucracy.¹⁹ These become the reasons why farmers did not apply certification and label. Furthermore, among the 11 farmers in Kediri accused of violating article 13 of the act no 12 year 1992 stated that they did not know that the seeds sold had to be certified and labeled.

The protection of plant varieties and seeds certification are the most established seed commercialization since the seeds has clear source and their genetic identities have to be bred by plant breeders with accountable program. Moreover, They have to possess distinguished characteristics comparing to the varieties previously distributed. Then, they have to have the nature of high homogeneity. This means that when farmers plant certified seeds they will find homogenous plants with uniform nature or characteristics. In the end, the advantage of nature should be stable. This means that when they are grown in any places, the nature does not change. **DUS** (Distinguished,

¹⁸ Based on article 33 PP No 44 year 1995 about germination, to obtain seed certification, the applicant has to fulfill some requirements of laboratory test which needs high cost.

¹⁹ The result of a research on farmers working on seed breeding in Lampung, Jambi, and Bogor shows that there is 70-80 per cent uncertified seeds. See Pratiknyo Purnomosidi and James. M. Roshetko, *Legalitas Produksi Bibit Tanaman Hortikultura dari Masyarakat*, an article published in www.worldagroforestry.org downloaded on September 4, 2016

Uniform, and Stable) is the rule of certification that has to be fulfilled seed producers or certified plant breeders.²⁰

In the context of developing agricultural economy, the state applies tool of social engineering for the development of comprehensive germination institution. Consequently, there are old plants that should be changed so that the social system expected functions well. The act No 12 year 1992 concerning plant cultivation and the act No 29 year 2000 concerning plant varieties protection are used as tools of social engineering toward institutional arrangements to increase agricultural productivity. Despite the different materials regulated, both Acts regulate seeds and plant varieties.

When the institutional arrangements are in pressure with positive law, the existing social system may be unstable. The institutional arrangements cover seed supply which is full of communal interests. In the life of traditional farmers, seeds are productions which are kept for the upcoming planting. Generally, farmers harvest the best production, store as seeds, and use them when planting season comes. There are two main differences of seed recognition when comparing between the seed supply as mode of technology which is produced by industry, on one side, and the seeds produced by traditional farmers on the other side. The previous seeds have commercial value as commodity that are protected by positive law. Meanwhile, the latter have not only commercial but also social values. In this case, seeds production is used for consumption, trade, and reserve or nursery in case of crop failure.²¹ The social function of plant seeds results in an institutional borrowing and seed storage to maintain seed quality and supply/stock. However, this function is not found in the concept of modern seed since seed propagation of protected PVT right without any permission belongs to criminal acts (article 71 UU PVT).

The regulation is different from the social condition of the society where in the life of farming community seeds serve social function. The seeds will be shared to farmers with crop failure. In other words, seeds become a means of producing social capital.

According to Djojodiguno, the existence of positive law that serves as a tool of social change may potentially destroy the existing social condition. On the other side, the social condition has generated an order for the economic life of the community. It is not easy for the community to change the social condition as they worry it will disturb

²⁰ Sjamsoe'oed Sadjad (b), *Potensi Desa Dalam Jelajah Agropolitik*, IPB Press, Bogor, 2005 p.324

²¹ Melaku Worede, *Membangun Sebuah Sistem Komunitas Benih dalam Pangan, Kearifan Lokal, dan Keanekaragaman Hayati Pertaruhan Bangsa Yang Terlupakan* edit Francis Wahono, AB Widyanto, and Titus O.Kusumajati, Cindelas Pustaka Rakyat in cooperation with USC Satunama, PPE Sanata Dharma, STPN-HPS and Lo-Rejo CCTIF, Yogyakarta, 2001:224

their economic life. Moreover, when the positive law enacted contains foreign cultural values as it is contained in the group of regulation of intellectual property right. As a result, it is difficult for the people to obey the rules.

In addition, economy development which neglects customary law will be beneficial only for foreign companies.²² The development of economy, in general, is escorted by the economic law that is introduced by foreign law or the derivation of international treaty. Some laws of intellectual property right, for example, are adopted from the rules set out in TRIPS. There is a fundamental difference between the cultural values of Indonesian society and those set out in the laws of intellectual property rights. Based on the customary law, knowledge or ideas belong to communal property that can be freely shared to the others. On the other side, based on liberal capitalist culture, it belongs to individual property and is considered as property rights.

Politically, there is a difference between customary law and regulation law. Customary law is created with relatively decentralized procedure while regulation law is created with centralized procedure. Customary Law is created by individual who is subject to authority of the legal order of the creator or norm creator and individual subject to identical norms.²³ In the case of the above profit sharing, the position of sharecroppers and landowner in customary law is more autonomous since they determine their own laws.

When correlating between legal development efforts that tend to be centralized and the existing social condition, positive law should be able to accommodate the social condition in accordance with the law of future goals. However, the willingness/interests of legislator and capital strength become the determining factor to create it. On one side, this step is categorized as weak pluralism. On the other side, this is still beneficial to decrease disharmony between development of law and community life.

Conclusion

Like political context, in the context of political economy unification and pluralism can be interpreted as monopoly or the distribution of economic power for the parties authorized by law. Monopoly of economic power belongs to those authorized by state for example economic monopoly derived from intellectual property rights in agriculture. Law unification can be categorized as a tool of monopoly of economic power. However, it is debatable whether there will be decentralization of economic law. This can benefit only for farming community for certain activities that are not regulated by positive law.

Laws require power to enforce. Positive Law is supported by the state. Moreover, positive economic law, over the state power, has capital power. On the other hand, the

²² Soerjono Soekanto, *Kedudukan dan Peranan Hukum Adat di Indonesia*, Kurnia Esa, Jakarta, 1981:12

²³ Hans Kelsen, *Teori Hukum Murni: Dasar-Dasar Hukum Normatif*, translated from *Pure Theory of Law*, Bandung Nusamedia and Nuansa, 2007 p.251

strength and power of customary law belongs to the community that is possibly lost when dealing with state power.

The development of economic law that regulates agriculture which accommodate the farming cultural values will minimize gap between positive law and customary law. Therefore, law enforcement of economic law can be realized and support the growth of agricultural economic activities. This will be beneficial to improve welfare of farming community.

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