

The Entry of Law No. 5 Of 1990 and the Impact on the Preservation of the Lamaholot Culture

Taslim Pua Gading

Faculty of Law, University of Merdeka Malang
Jl. Terusan Raya Dieng No. 62-64 Malang, 65146, Indonesia

Corresponding Author: E-mail: taslimpuagading22@gmail.com

Abstract

This study aims to determine the relationship between Law no. 5 of 1990 concerning the conservation of biological natural resources and their ecosystems with the culture of the lamaholot tribe in this case elephant tusks which are used as dowries in the marriage tradition. The method used in this research is a normative legal research with a statutory approach and a conceptual approach which is carried out by the author conducting an assessment of the laws related to the research objectives. The data used in this study is secondary data in this case Law no. 5 of 1990 and the 1945 Constitution of the Republic of Indonesia. In this study it was found that there is a legal conflict in the hierarchy of the formation of laws and regulations, where the Law on the Conversation of living natural resources and their ecosystems contradicts higher regulations as a basic reference in the formation of the legislation below. . In this inequality in the formation of laws and regulations, elephant ivory which is used as a dowry in the marriage tradition of the Lamaholot tribe is contrary to Law no. 5 of 1990 but this tradition has actually been recognized and respected by the State through the 1945 Constitution of the Republic of Indonesia Article 18B paragraph (2). Thus, the writer concludes that in the hierarchy of laws and regulations in Indonesia, there is a legal conflict between laws which hierarchically position under the 1945 Constitution of the Republic of Indonesia.

Keywords: Conversation, Culture, Ivory as Mahar

©2023 Published by University of Merdeka Malang

1. Introduction

Indonesia is one of the countries in Southeast Asia which is rich in flora and fauna both on land and at sea so that the State needs to protect the existing flora and fauna to preserve it. The conservation of flora and fauna is stated in Law no. 5 of 1990 concerning the conservation of living natural resources and their ecosystems. This illustrates that the existence of law in Indonesia not only protects humans but also provides protection for the universe and its contents. Thus the law can be interpreted as a rule that regulates the norms between humans and humans and humans and the universe and its contents (Sunarjo & Darmanto, 2022).

Law was created for humans, thus the law always influences and influences each other with the various components that are around humans, in other words the law does not move in a value-free vacuum, but it is in a certain social order and living humans. Law is not only understood as the building of regulations, but the building of ideas, culture and ideals. So that it can be understood that the law is not only seen as rules and procedures and everything means value-free. The law is seen as functionally related to efforts to maintain the continuity of social life, such as maintaining peace, resolving disputes, eliminating or eliminating deviations. In short, the law intends to maintain order and control. just as water will find a surface, on its own which only does not differ from society to society but it also changes within those societies. Law is basically not just a black and white formulation as in various laws and regulations, but the law should be seen as a symptom that can be observed in people's lives, which means that the law is heavily influenced by non-laws such as values, attitudes of the people who are used to it in society call it legal culture. The existence of a legal culture is what makes the difference between the work of law in one society and another (Rahardjo, 2010).

In everyday life, people often talk about culture. Also in everyday life people also cannot but deal with cultural products. Every day people see, use, and sometimes even destroy culture. Two prominent anthropologists, namely Melville J. Herkovits and Bronislaw Malinowski, argued that Culture Determinism means that everything that exists in society is determined by the culture that is owned by that society. Then, Herkovits views culture as something super-organic because the culture that has been passed down from generation to generation continues to live on, even though people who are members of society are constantly changing due to death and birth (Soekanto, 2013).

Regarding the term organization of community life, it must also be clearly distinguished between the customary law community unit and the customary law community itself. Society is a collection of individuals who live in a social environment together as a community or society, while community unity refers to the notion of organic society, which is structured within the framework of organizational life by binding themselves together for the benefit of achieving common goals.

Lamaholot is one of the ethnic groups in Indonesia, where the Lamaholot tribe inhabits the area of Adonara Island, Solor Island, Lembata Island and Larantuka (eastern tip of Flores Island). As one of the large tribes, of course, the Lamaholot tribe has many ancestral heritages and living traditions as the hallmark of the Lamaholot people. One of the prominent lamaholot traditions is the dowry of the lamaholot tribal woman, where in the lamaholot tribal tradition ivory (bala in the lamaholot language) is used as a marriage dowry when a man wants to propose to a woman from the lamaholot tribe. Ivory itself is a symbol of the high cost of the lamaholot woman that must be upheld.

The existence of the Lamaholot ethnicity in Indonesia is the same as other ethnic groups that are protected by the 1945 Constitution Article 8B paragraph (2) which states that "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which is regulated by law." This means that the traditions and culture of the lamaholot ethnic group are protected by the 1945 Constitution where the lamaholot ethnicity and other ethnic groups have traditional rights, in this case determining the marriage agreement of their respective cultural heritage.

Ivory is the trunk of an elephant, where in Indonesia itself the elephant is one of the animals protected by the State which is regulated in Law No. 5 of 1990 concerning the conservation of biological natural resources and their ecosystems. Seeing this, the legal community or customary law of the Lamaholot tribe itself is contrary to the conservation law that protects flora, fauna and its ecosystem. Based on these problems, the authors want to conduct research on the influence of Law no. 5 of 1990 concerning the conservation of living natural resources and their ecosystems to the lamaholot culture as a legal or customary law community.

2. Methods

This type of research is a normative legal research (normative legal research) that is research carried out by conducting a study of the applicable legislation, especially Law Number 5 of 1990 article 21 paragraph (2) point d concerning the Conservation of Biological Natural Resources and their Ecosystems.

The approach in this research is a statutory approach, which is an approach that is carried out by examining all laws and regulations related to the problems (legal issues) that are being handled. This approach is carried out to solve existing problems by referring to the relevant principles (Soekanto, 1996).

The second approach used in this research is the conceptual approach. This conceptual approach departs from the views and doctrines that develop in the science of law. This conceptual approach is carried out to solve problems by looking at the views of legal experts on the problems at hand. The views/doctrine will clarify ideas by providing legal understandings, legal concepts, and legal principles that are relevant to the problem (Marzuki, 2004).

3. Discussion

Cultural relations of Lamaholot as a legal society with the law on conversation of biological natural resources and its ecosystems

Every region in Indonesia when carrying out the marriage process is always filled with a very sacred and thick atmosphere. This is due to the power of adat which has been believed by the Indonesian people for generations as something that must be carried out by the community. This also applies to the districts of East Flores and Lembata, East Nusa Tenggara Province. Adat is very dominant in a marriage

process, one of which is in terms of giving belis to the Lamaholot community in East Flores and Lembata. In daily life, social stratification sees women as the center of community life and has high value. Therefore, even though people judge a woman not materially, they are still looking for material for comparison in the form of belis.

Upholding the dignity of the lamaholot woman, especially in the marriage process, can be seen from the marriage agreement itself, where the lamaholot tribe itself makes ivory (elephant trunk) as a dowry that must be prepared by the male family who will propose to the girl from the lamaholot tribe. The handover of the ivory itself goes through several stages and is ceremonial which is very sacred in nature. In the ceremonial process, the lamaholot tribe involves traditional leaders between the two parties. In addition, the ivory that must be given to the woman's family must be in accordance with the results of the customary forum agreement between the two parties. As one of the tribes in Indonesia, by making ivory (elephant trunk) as a dowry or marriage agreement, of course, it is very contrary to Law No. 5 of 1990 concerning the Conservation of Biological Resources and their Ecosystems. It is said to be contradictory because elephants are one of the wildlife protected by the State. The purpose of protection through the law is to preserve endangered wildlife.

The contents of Law no. 5 of 1990 article 21 paragraph (2) concerning the conservation of living natural resources and their ecosystems as follows: (1) Catching, injuring, killing, keeping, possessing, maintaining, transporting, and trading protected animals alive; (2) Storing, possessing, maintaining, transporting, and trading protected animals that are dead; (3) Releasing protected animals from one place in Indonesia to another inside or outside Indonesia; (4) Trading, storing or possessing skins, bodies, or other parts of protected animals or goods made from these parts or releasing them from one place in Indonesia to another inside or outside Indonesia; (5) Taking, destroying, trading, storing or possessing eggs and or nests of protected animals.

Based on the description of the law above, it is clearly stated in point (d) that it is not allowed to trade, keep or possess the skin, body, or other parts of protected animals or goods made from these parts or remove them from a protected area. place in Indonesia to other places inside or outside Indonesia.

When viewed from the contents of the law above, the ivory (elephant trunk) which is used as a belis or dowry in marriage to the Lamaholot tribe itself has violated Law no. 5 of 1990 because ivory is part of the body of elephant animals that are protected by law. But on the one hand, making ivory as a belis or dowry in marriage in the Lamaholot tribe itself existed long before the birth of Law no. 5 of 1990 itself. Even when viewed from the history of the origin of ivory as a belis in marriage in the Lamaholot tribe itself, during the Dutch colonial era in Indonesia, the Lamaholot tribe itself had made ivory as a belis or dowry in marriage.

Based on the description above, the Lamaholot tribe itself is one of the many tribes in Indonesia that have customary traditions as ancestral heritage and are recognized and respected by the constitution. In the constitution, the State clearly recognizes and respects the customary law owned by the lamaholot tribe. This is stated in Article 18 B paragraph (2) which reads "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law. law."

Based on the description above, the culture of the legal community in the Lamaholot tribe itself is one of the legal communities in Indonesia that is recognized and respected by the constitution, but on the one hand one of the traditions of the Lamaholot tribe, namely "Belis Marriage" is actually contrary to the law on the conservation of biological and natural resources. the ecosystem. At the position of the legal hierarchy from the lowest position to the highest position, namely the Constitution, the Constitution must not conflict with each other or in other words, the Constitution is a reference in the formation of laws under it so that other laws and regulations which are in a hierarchical position under the Constitution must not conflict. In accordance with the Constitution, this is regulated through the Indonesian legal principles "Lex Superior Derogat Legi Inferiori" which means that laws that have a lower basis in the regulatory hierarchy must not conflict with higher ones. One of the policies in strengthening this principle is Law no. 12 of 2011 concerning the formation of laws and regulations in article 7 divides the types and hierarchies of laws and regulations sequentially from a higher degree, namely: the 1945 Constitution of the Republic of Indonesia; MPR decision; Law/Perpu; government regulations; presidential decree; provincial regulations; district or city regulations. The legal power of laws and regulations is in accordance with the hierarchy.

As a state of law, all aspects of life in the social, national and state fields, including the government, are always based on law, so that an orderly arrangement is needed, including in the field of forming laws and regulations that must be initiated from the time of planning to enactment. The form must be related to the system, principles, procedures for preparation and discussion, preparation techniques and their implementation.

As Article 22A of the 1945 Constitution of the Republic of Indonesia bases, "further provisions on the procedure for the formation of laws are regulated by law. "Law No. 12 of 2011 was enacted to regulate the formation of policies under the 1945 Constitution of the Republic of Indonesia, in a planned, gradual, directed and integrated manner so that the 1945 Constitution of the Republic of Indonesia became the policy under it.

Cultural relations of Lamaholot as a legal society with other legislations

Lamaholot culture is one of the many cultures or legal communities in Indonesia and is recognized by the constitution which confirms that the Constitution of the Unitary State of the Republic of Indonesia respects and recognizes every culture and its respective traditions.

As one of the recognized tribes in Indonesia, of course, the Lamaholot tribe has traditions and culture as its identity. Thus, the identity of the lamaholot tribe which is embodied in the tradition and culture is recognized and deserves to be respected by all elements of the nation and state. The lamaholot tribe itself has a lot of wealth in the living traditions of its people in the form of dance, clothing, language, ancestral heritage and living traditions that are passed down from generation to generation.

The word "culture" comes from (Sanskrit) buddahayah which is the plural form of the word "buddhi" which means mind or reason. Culture is defined as "things related to mind or reason." As for the term culture, which is a foreign language term which has the same meaning as culture, which comes from the Latin word colere. It means processing or working, another anthropologist, namely E.B Tylor (1871) once gave the following definition of culture (Koentjaraningrat, 2014).

"Culture is that complex which includes knowledge, belief, art, morals, law, customs and other capabilities and habits acquired by man as a member of society."

In other words, culture includes everything that humans get or learn as members of society. Soemardjan & Soemardi (1964) defined culture as all the creations, tastes, and creations of society. The work of the community produces technology and (material culture) or physical culture (material culture) that humans need to master the surrounding nature so that their strengths and results can be immortalized for the needs of the community.

The opinion above can be used as a guide. However, when analyzed further, humans have both material and spiritual aspects in their lives. The material aspect contains works, namely the human ability to produce objects and other tangible objects. The spiritual aspect of humans contains creativity that produces knowledge, intention that produces rules or beliefs, morality, decency, and law and taste that produces beauty. Humans seek to gain knowledge through logic, to interpret rules through ethics and to obtain beauty through aesthetics. It is a culture, which can be used as a benchmark for analysis.

In Indonesia, groups are known on the basis of blood ties, for example clan, split and so on. On the other hand, the name of the village is also known, which is based on territorial factors. Personal authority is very dependent on solidarity between group members and here the element of togetherness plays a very important role. Individuals are considered to have more obligations than rights. The structure of authority is concentric, that is, from a central point it extends through a certain circle of authority, each circle of authority is considered to have full power in their respective areas. If this form of authority is connected with Max Weber's teachings, personal authority is based on tradition rather than rules. It may also be based on a person's charisma. In territorial authority, the area of residence plays a very important role.

Lamaholot itself is one of the tribes or ethnicities located in eastern Indonesia where the Lamaholot tribe generally inhabits the eastern tip of the island of Flores, Adonara Island, Lembata Island, and Solor. Ivory itself is a form of appreciation for the dignity of the Lamaholot woman, which is priceless in rupiah. Like other tribes in Indonesia, the Lamaholot itself also has a tradition as the identity of the lamaholot. One of them is the customary tradition in the Lamholot wedding process, as Gading Gajah is an object that is used as a dowry in marriage, Ivory itself can be given in cash or debt within a certain period of time according to the agreement in the customary forum between the two parties. The amount of ivory given to the Lamholot woman's family also differs according to social status, education level.

Lamaholot culture is one of the many cultures in Indonesia which is protected by the constitution so that the existence and traditions of the Lamaholot tribe are ancestral heritage as Indonesia's wealth.

4. Conclusions

The culture of the lamaholot tribe, in this case ivory as a dowry in the marriage tradition, is an ancestral heritage that existed long before the law was enacted RI In 1945, even today one of these ancestral heritages is still deeply embedded in the daily life of the lamaholot tribe. As a country rich in culture, the State must pay attention to and preserve the culture of each region, this is stated in the 1945 Constitution of the Republic of Indonesia Article 18 B paragraph (2) which affirms that the State recognizes and respects customary law community units and their rights. as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

On the other hand, Indonesia is a legal state where the 1945 Constitution of the Republic of Indonesia as a reference for the formation of laws and regulations under it, is emphasized in the Lex Superior Derogat Legi Inferiori principle which stipulates that the formation of laws and regulations under the Constitution does not conflict with the Constitution itself. hierarchy of laws and regulations. In this study, it was found that there was no harmony between the Act and the Constitution as a reference itself. Where in this study it was found that Law No. 5 of 1990 article 21 paragraph (2) point d which regulates the Conversation of Biological Natural Resources and Ecosystems is contrary to article 18b (2) of the Republic of Indonesia Constitution which affirms recognition and respect for the existence of cultural traditions. society in Indonesia itself.

In this study, Ivory as a dowry in the marriage tradition of the Lamaholot Tribe is one of the Ancestral heritage that is recognized and respected by the State but the use of Ivory as a dowry in this marriage tradition is contrary to the Act on the conservation of living natural resources and its ecosystem. keep or possess the skin, body or other parts of protected animals or goods made from parts of these animals or export them from one place in Indonesia to another place inside or outside Indonesia

References

- Koentjaraningrat, K. (2014). Antropologi hukum. *Antropologi Indonesia*.
- Marzuki, P. M. (2004). *Penelitian hukum*. Jakarta: Kencana Prenada Media Group.
- Rahardjo, S. (2010). *Penegakan hukum progresif*. Penerbit Buku Kompas.
- Soekanto, S. (1996). *Pengantar metode penelitian hukum*. Jakarta: Universitas Indonesia.
- Soekanto, S. (2013). *Sosiologi suatu pengantar*. Jakarta: Rajawaliipers.
- Soemardjan, S., & Soemardi, S. (1964). *Setangkai bunga sosiologi*. Jakarta: Fakultas Ekonomi UI.
- Sunarjo, S., & Darmanto, T. S. (2020). Klausula demurrage dalam perjanjian jual beli batubara dan akibat hukumnya. *Jurnal Cakrawala Hukum*, 11(2), 231-239.
- Undang-Undang Dasar Negara Republik Indonesia 1945 Pasal 18 B Ayat (2) Tentang Pengakuan dan Perlindungan Masyarakat Hukum Adat.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 pasal 22A Tentang Tata Cara Pembentukan Perundang-Undangan .
- Undang-Undang No. 5 Tahun 1990 pasal 21 ayat (2) Tentang Konversasi Sumberdaya Alam Hayati dan Ekosistemnya.
- Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.