THE ROLE OF THE LOCAL GOVERNMENT IN FORMING LAW TO PROTECT LOCAL COMMUNITY RIGHTS IN THE BORDER OF INDONESIA-TIMOR LESTE

Rudepel Petrus Leo

Faculty of Law, Nusa Cendana University

ABSTRACT

The separation of East Timor into the state of East Timor had a negative impact on the people on the borders of Indonesia and Timor Leste, especially those in Belu and North Central Timor. Those who previously were one family, in one tribe, namely the Timorese tribe, are now separated. Life that was originally harmonious is now a new problem, especially related to obstacles due to state borders. As a result, they are enemies. The desire of citizens in the border region to live together in harmony communal, such as visiting each other by crossing the border into RDTL countries or vice versa. This can be done illegally, for example crossing national borders without permits, which has a negative effect because they do not care about the existence of national borders. The Government of Indonesia, especially the Regional Government, needs to formulate legal provisions that provide opportunities for citizens of both countries to visit each other. The fact that they already have the legal provisions they have to overcome their problems.

Keywords: formation of law, rights of local communities, border areas.

INTRODUCTION

After 24 years of unity with the Unitary State of the Republic of Indonesia and through a long period of turmoil, East Timor finally broke away and became its own country which is now known as the Democratic Republic of East Timor or RDTL since May 20, 2000. This has had a negative impact on former communities East Timor and the people of West Timor who live directly adjacent to the new country, namely Belu Regency and North Central Timor Regency.

The separation of East Timor into a country had an impact on the border communities of the two countries, both physical and psychological (sociological) conflicts. Citizens who used to have the same language, religion, race and culture, as well as their customs, have now become separated. Life that had been close in togetherness, became separated and difficult to meet and now become scattered, and even more than that they even hostile to each other.

The desire of citizens in the border area to live together intimately and communally,

can be seen from cases of cross-border violations committed by citizens of the Republic of Indonesia and RDTL. There are citizens of the Republic of Indonesia who go to visit or cross the border into RDTL or vice versa, with no concern that this action could result in them losing their lives if captured by border guards at the border. They cross the boundaries and protect each other because of the inner bonds that have existed since ancestors from generation to generation. Society has become a victim of the will of the political elite who thirst for power. Basically they want to keep visiting each other as before. Visas and passports have become a strange item that limits the relationship between them.

The urge or instinct to live together (zoon politicon) in a friendly, peaceful, harmonious and communal nature between citizens of the two countries in the border region, is a very positive thing and desires of any community in this world. Such life should be valued and supported by the formal governments of the two countries, namely NKRI-RDTL. Is not instinct zoon politicon already a destiny of human life? Moreover, as has been stated previously that from long time ago, for decades and even hundreds of years, people in this border region are one family, one tribe, one cultural family, one religious system, and one law custom.

The main issues discussed in this paper are: How do local governments form laws to protect the rights of local communities in the Indonesia-Timor Leste border region?

This writing aims to explain the steps that can be taken by the Regional Government in establishing a law to protect the rights of local communities in the Indonesia-Timor Leste border region. The results of this writing are expected to benefit the Regional Government in order to protect local communities in the border region.

This paper was prepared using the deductive thinking method of discussing or solving problems on the basis of theoretical study. Theories (as well as concepts, principles, laws, postulates and scientific assumptions) from experts or scholars are collected and used as a

guide in problem solving efforts.

THEORETICAL BASIS

Satjipto Rahardjo stated two aspects of legal work in relation to social change, namely (1) law as a means of social control, and (2) law as social engineering. The law as a means of social control, the law works by plotting one's actions or relationships between people in the community. Such designation requirements, the law describes its work in a variety of functions, namely: (a) making norms, both those that provide designation and those that determine the relationship between person and person; (b) settlement of disputes; (c) ensuring the continuity of people's lives, i.e. in the event of changes. The implementation of social control at a time will no longer stop at the present orientation, but can also surpass it, which means it is intended to reach the future. Thus, the problem that we want to solve here is no longer how to influence people's behavior in accordance with the expectations of society in the present situation, but rather the problem of desired changes. The latter type of social control is commonly used in the term social engineering.[231] Describing law as social engineering, Satjipto Rahardjo quoted Hart as saying that the structure of the administration of law is based on the primary rules of obligation and secondary rules of obligation.

On the other hand, the structure of the administration of law is a kind of correction to the first structure, especially in relation to a social life that has increasingly developed. Viewed from the point of view of such developments, the social life that relies on the primary rules of obligation shows deficiencies in the form of traits: (1) uncertainty, (2) static, and (3) inefficiency.

Hart further said that the introduction of secondary rules of obligation as the implementation of law replaces the first, as well as a step from the pre-legal world to the legal

[231] Satjipto Rahardjo, *Hukum dan Perubahan Sosial: Suatu Tinjauan Teoretis serta Pengalaman-Pengalaman di Indonesia,* Alumni, Bandung, 1979, hlm.122-123.

world. Through what he refers to as secondary rules, people turn to a legal system in the real sense, which starts to serve functions: (1) making rules (recognition of rules), (2) changing regulations, namely implementing new ones or delete the old one (rule of change) and (3) determine the law in a dispute (rule of adjudication).

The important thing to note here, is that the function of serving these changes by Hart is referred to as one of the characteristics of the existence of a legal system.[232]

In all aspects of development, active community participation must be optimized. According to Yulius Slamet, no matter how good a development program, no matter how much the costs are spent, no matter how sophisticated the technology used, everything will be in vain, if the community does not actively participate in it.[233] One way is to reform existing laws so that they become responsive laws, which are laws that meet or reflect the aspirations and sense of community justice.[234] If the law does not yet exist, the government and all components of society must immediately make or create new and responsive laws. Leopold Pospisil reminded that a good law is a law relating to the bottom of the heart and in accordance with the legal awareness of the community. The law can only be implemented well if spontaneously welcomed by the community members.[235] This new and responsive law or regulation must then be disseminated to the wider community.

Theoretically, the framework of legal reform --responsive-- has the possibility to be taken from various sources, whether from customary law, religious law, Western law, law from various countries and others. Mohammad Taufik Makarao took the example of criminal law reform and criminal punishment. According to Makarao, the problem was how to develop research from the above sources for the purpose of forming and updating national

[232] *Ibid.,* hlm. 142-143; tentang *social engineering*, lihat pula Soerjono Soekanto, 1994, hlm. 118-125.

[233] Slamet, Yulius, *Pembangunan Berwawasan Partisipasi,* Sebelas Maret University Press, Surakarta, 1993, hlm. 2-7.

[234] Moh. Mahfud, "Demokratisasi dalam Rangka Pembangunan Hukum yang Responsif," Makalah, disajikan pada 12-13 November 1996 di Semarang, hlm. 4-5; Philippe Nonet dan Philip Selznick, *Law and Society in Transition: Toward Responsive Law,* Harper Colophon Books, New York, tanpa tahun.

[235] Abdurrahman, *Aneka Masalah dalam Praktek Penegakan Hukum di Indonesia,* Alumni, Bandung, 1980, hlm. 30.

law. A norm from one of these sources, can be drawn to be formulated in order to realize the new national law to what extent it is suitable for it. This means that the caning criminal must be suitable to be used as a criminal form in the new National Penal Code.[236]

Theoretically, the law that is considered valid must always meet several measures, as stated by Jimly Asshiddiqie, as follows.

1. The validity of juridical, namely:
   a. If the determination of its validity is based on a hierarchy of legal norms which is higher in level, as in Hans Kelsen's theory.
   b. If the rule of law is formed according to the methods that have been determined as in the theory of W. Zevenbergen.
2. Sociological validity:
   a. If the rule of law is enforced on the basis of public power, regardless of whether or not accepted by the community (macht-theorie).
   b. If the rule of law is really accepted and recognized by the community members (annerkerrnungs¬theorie).
3. Philosophical Applicability:

   A rule of law can be said to apply philosophically if the rule is in accordance with or not contrary to the legal ideals of a society as the highest positive value in the philosophy of life of that society. In terms of the philosophy of life of the Indonesian people, for example, what is used as a measure of course is the philosophy of Pancasila which in legal studies is known as the source of all legal sources in the context of social, national and state life in Indonesia.

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[236] Mohammad Taufik Makarao, *Pembaharuan Hukum Pidana Indonesia: Studi tentang Bentuk-bentuk Pidana Khususnya Pidana Cambuk sebagai Suatu Bentuk Pemidanaan,* Kreasi Wacana, Yogyakarta, 2005, hlm. 7.

DISCUSSION

1. Position of DPRD in the Form and Structure of Regional Government in Accordance with Law Number 32 of 2004

In the formulation of Article 3 paragraph (1) of Law Number 32 Year 2004 it is stated that the Regional Government is: (1) the provincial regional government consisting of the provincial regional government and the provincial DPRD; (2) district/ city government consisting of district/city regional government and regency/city DPRD.

Furthermore, in Article 40 of Law Number 32 Year 2004 it is formulated, “DPRD is a representative institution of the regional people and is domiciled as an element of regional government administration.” Provincial DPRD and Regency/City DPRD have the same function, namely: (1) legislation, (2) budget, and (3) supervision. It turns out that the functions of DPR, Provincial DPRD, Regency / City DPRD are uniformed. This is detailed in the Elucidation of Article 61 and Article 77 of Law Number 22 Year 2003. In essence, what is meant by the legislation function is regional legislation which is the function of the Provincial DPRD to form provincial regional regulations with the governor.”[237]

2. Position of Informal Leaders in Local Law

a. The Meaning of Customary Law

To prevent confusion in the discussion of this paper, here the term “customary law” is used in the sense adatrecht, which is used by van Vollenhoven, the original law of a group of people in Indonesia bound by geneological (tribal) or territorial (village) relations and based on Articles 131 and 163 1ndische Staatsregeling (S.1855-2) applies to the population of the Son of the Earth, namely de onder hel geldende met hunde gotsdienten en gowoonten samen hangen de rechtsregelen (legal regulations relating to religion and custom and applies to the Bumi Putera class).

[237] *Ibid.,* hlm. 73.

According to Prof. Mr. Hazairin, the rules of customary law also cover the rules of religious law as long as the rules of religious law have been accepted into customary law.[238]

According to van Vollenhoven, in Indonesia there are 19 customary law environments, so naturally it can also be said that in Indonesia there are at least 19 kinds of customary law, which are grouped into one nomenclature (customary law) because all customary law applies to residents Bumi Putera, which is distinguished from the European population on the one hand with foreign Easterners on the other.

So, in fact the nature of customary law is not homogeneous, like Western law which applies to the Eastern and European population groups based on Staatsregeling 1917-129 (for the Chinese group) and Staatsregeling 1924-556 (for the group of East Eastern non-Chinese residents). In fact, customary law in Minangkabau which is so close to the Batak region in Sumatra, is an example of two traditional legal systems that are in principle conflicting.

Even so, van Vollenhoven found three common features in all subsystems of Indonesian traditional law, namely the nature of commun (kinship), contant (cash), and concret (real).

When compared, the three characteristics can be found in the applicable law in agrarian or pre-industrial societies, not only in Asia, but also in Europe and America.

b. Meaning of National Law

Sunaryati Hartono states that the term national law is used in the sense of law which is based on the Basic Law or the Constitution. Thus, Japanese national law is a law that applies in Japan based on the Japanese Constitution. However, there are some parts of Japanese national law originating from Germany or from America. Turkey's naïional law is also a law that applies in Turkey based on the Turkish Constitution, even though Turkey's civil law comes from Switzerland.

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[238] Sunaryati Hartono, "Sumbangsih Hukum Adat Bagi Perkembangan Pembentukan Hukum Nasional," dalam M. Syamsudin, *et al.* (ed.), *Hukum Adat dan Modernisasi Hukum,* Pustaka Pelajar, Yogyakarta, 1998, hlm. 169-170.

Likewise, Indonesian national law is a law based on the 1945 Constitution and Pancasila, although there is a possibility that some of Indonesia's national law will be taken from Dutch law or Philippine law, Australian law, American law or Yugoslavia law.

Of course the Indonesian national law will not be accepted and enforced (enforced) as a positive law in Indonesia if the law is not rooted in the basic concepts that have long been recognized and held firm in Indonesia such as the principle of Godhead, the principle of kinship and others.

However, this does not mean that only customary legal concepts may be used in national law because after all, it is difficult to dispute the principles of contract law or company law covered by Burgerlijk Wetboek (Civil Code) and Wet van Koophandel (Comercee Code), which has been valid for more than 100 years in Indonesia.

Because at present the positive law in Indonesia is not entirely based on the 1945 Constitution and Pancasila, both laws that were enacted or developed before the Proclamation of Independence and those enacted after the proclamation of independence, it can be said that up to now there is no national legal system, but still in the process of forming and developing it.

In the context of establishing the national legal system, several things need to be considered, namely: (a) What is the framework of the national legal system?, (b) What is the material or substance of the national law?

c. National Legal System Framework

According to Sunaryati Hartono, because the national legal system must be based on the 1945 Constitution and Pancasila, the framework of the national legal system can take the following forms: (a) the 1945 Constitution, (b) Basic Laws or Codifications, and (c) Sectoral Laws, that is, legal regulations specifically regulating the development sectors as stated by the GBHN.

Viewed from another angle, it can also be said that a legal system does not consist of and are determined by legal norms only, but rather consist of and are determined by the entire rules, institutions, institutions and facilities, devices and resources. Thus, the style of a legal system will depend on: (a) The availability of the rules, institutions and institutions mentioned above, (b) The effectiveness of these elements, and (c) Interaction between the elements.[239]

d. Material or Substance of National Law

Furthermore, Sunaryati Hartono said that when discussing material on national law, it would touch on philosophical issues, principles of approach and systematic concepts as well as the contents of the national legal norms. Of course the material or content of the rules of national law must be based on the philosophy of the Pancasila and the 1945 Constitution. This is where the problem of the contribution of customary law to the formation of Indonesian national law becomes relevant because only the norms of customary law are appropriate or at least not opposition to Pancasila and the 1945 Constitution (UUD 1945), which can become part of national law.

From the above discussion, it is understood that Indonesian national law will not be entirely a modernization of customary law, but customary law is "basic capital" for the formation of national law in addition to the elements Other elements, such as the rules of legislation and old legal institutions/institutions, such as BW, WvK and religious law institutions which apparently do not conflict with the 1945 Constitution (UUD 1945) and Pancasila.

In addition, there are still international conventions that can and are good as "basic capital" of national law, especially UN conventions that specifically pay attention to the

[239] *Ibid.,* hlm. 172-173.

situation of developing countries. In fact, there is a possibility that foreign legal norms can be used as “basic capital” for the formation and development of national law.

However, whatever will be made and recognized as “basic capital” in the formation of national law, that element must always be tested against the philosophy of Pancasila and the 1945 Constitution.

The principles or principles that are in accordance with the Pancasila and the 1945 Constitution, or at least not in conflict with the Pancasila and the 1945 Constitution, can be accepted as part of national law, whether they are rules derived from customary law, religious law, international law, or foreign law. This is the meaning of national law.[240]

e. Contribution of Customary Laws to National Law Formation

Sunaryati Hartono said that in this case it is necessary to find out which principles and legal norms or institutions are in accordance with the philosophy of Pancasila and the 1945 Constitution. 33 Article 1 paragraph 1 of the 1945 Constitution. In its modern form, the principle of extinction needs to be further developed so that it does not stop at the realization of the principle of kinship in customary law alone.[241]

f. Customary Law in Border Areas

M. Syamsudin, et al. Argued that customary law is a phenomenon. Its presence and presence in the midst of society is felt and needed for the people of Indonesia. Customary law has its own meaning because it is a reflection of culture and at the same time living within the community.

As one type of law in the world, customary law has a distinctive character. Because customary law is basically compounded with the community in which it was born and grew, then naturally the customary law is a form (juris-phenomenologist) of Indonesian society. The inherence between customary law and the community (should be) can be contained in

[240] *Ibid.,* hlm. 173-174.
[241] *Ibid.,* hlm. 175-176.

customary law. This is relevant to the dynamic and praxis nature of customary law so that (supposedly) adat law remains relevant and plays a role in the community, both now and in the future.

Customary law and social change are two things whose relationship with each other is paradoxical. The law is always subject to its normative character while social change goes according to its empirical continuity. With inherent attributes, the law requires rigidity in the flow of change, while social dynamics requires adjustment to the law, on the pretext that the law can be functional. What matters is the law that must conform to changes or maintain the law in change. When laws have to adjust to changes, this kind of situation can result in the existence of basic norms that are behind the law, especially customary law. Conversely, if in the process of change, the law must be maintained, then all legal norms will guide changes and the result will be left behind. Therefore, what is important in the context of this change is to elaborate the role of law, especially customary law, so that it can still be functional in society.

In the framework of national law development, customary law which is declared as living law is a vital element. The statement proved that the importance of customary law is recognized. The style of customary law which teaches in a figurative form, places the community as a whole, focuses on the basic principles and gives great trust to the legal officers, who in many ways are in line with the 1945 Constitution. religio-magical, communal, concrete, and visual are expressions of the people's way of thinking. The unwritten form of customary law shows its ability to adapt and accommodate with the times.

In the arena of law enforcement, the role and contribution of customary law cannot be denied that law enforcement is the harmonization of values with human behavior, by manifesting ideas or values into legal form in concreto requiring judges as law enforcers and justice to explore, follow, and understand the legal values that live in society. Such matter

clearly indicates that customary law is an important factor in law enforcement, because the goal is the realization of a sense of justice that lives in the community. The incompleteness of the codified legal system, which is still in force at the moment, which is therefore one of the problems in the law enforcement process, further strengthens the role of customary law in the pursuit of justice.

Based on the foregoing, ideally the existence of customary law in the future does not need to be a concern. However, looking at the direction of community development towards industrial society, it seems that the ideal customary law situation needs to be reviewed and predicted further, in order to truly become a reality.

In summary this subject is a review of the current state of customary law, which then looks at the forecasts of future industrial societies with various problems that arise. Departing from this issue, how will the relevance and role of adat law in the future be seen? How to prepare traditional law studies with increasingly modern community settings?[242]

According to Iman Sudiyat, every person only has meaning in life together and because of the community. His attitude and behavior should reflect the soul and spirit of the community. His personal values are determined by his position and responsibilities in the life together. Both objects and humans function socially.

The atmosphere of help and assistance includes the pas of everyday life. Transactions that result in law cannot be separated from positive moral judgment. Because the process of individualization cannot be prevented, efforts must be made so that modernization efforts are based on a collective spirit, which is transformed into a cooperative spirit, aware of the vital insight of the archipelago.[243]

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[242] M. Syamsudin, Endro Kumoro, Aunur Rachiem F., dan Machsum Tabrani (ed.), "Hukum Adat dan Modernisasi Hukum: Sebuah Pengantar," dalam M. Syamsudin, *et al.* (ed.), *Hukum Adat dan Modernisasi Hukum,* Pustaka Pelajar, Yogyakarta, 1998, hlm. v.

[243] Iman Sudiyat, "Perkembangan Beberapa Bidang Hukum Adat sebagai Hukum Klasik-Modern," dalam M. Syamsudin, *et al.* (ed.), *Hukum Adat dan Modernisasi Hukum,* Pustaka Pelajar, Yogyakarta, 1998, hlm. 30.

3. The Role of Leaders in the Traditional Law Community

Each traditional law community group or customary law association, whether territorial or genealogical or in a new form such as community associations overseas, governed according to customary law (custom) has a management structure that is integrated with official or separate management independently. Regarding this matter, Miriam Budiarjo stated that in a country there is an organization that is: authorized to formulate and implement binding decisions for all residents in its territory. These decisions, among others, take the form of laws and other regulations. In this case the government acts on behalf of the state and exercises power from the state.[244]

Starting from the above thought, when compared to the customary law community structure, there is also a governing body that carries out government, which has the duty and authority to administer and regulate all the alliance activities for the benefit of its members. This body may consist of a chairman or head of a partnership according to their respective levels.[245]

The management and governance of the community in the customary law community is influenced by the structure of the community. The fabric of the origin of the formation of the community influences how the leadership structure in a customary law community. Strictly speaking, the high or low part of the structure in the governance of a customary law community will differ from one region to another.

The legal alliance is not an alliance of power (gezaggemeenschap). Life and livelihoods in the customary community composition are almost certainly running on the basis of family, harmony, and togetherness. Thus, the legal alliance is a unity of life together (levesgemeenschap) from a group of people with each other know each other from birth to

[244]Soleman B. Taneko, 1977

[245]I Gede A.B. Wiranata, *Hukum Adat Indonesia: Perkembangan Dari Masa Ke Masa,* Citra Aditya Bakti, Bandung, 2005, hlm. 122.

become an adult, old, and even almost died. With the concept of thought as revealed above, it can be understood that a head of legal alliance is the head of the people, the father of society, who is morally obliged to maintain the peace of his group, make and maintain the law of his group so that peace, harmony in behavior is created.[246]

According to Soepomo, there are three main activities of the people's heads, namely:

1. Actions regarding land affairs are related to the close relationship between the land and the fellowship that control the land.
2. Implementation of the law as an effort to prevent violations of the law, so that the law can run as it should (coaching in a preventive manner).
3. Carrying out the law as a law rectification after the law was violated (coaching repressively).

The task of maintaining or administering the law to the people includes the entire field of customary law. If elaborated, this activity in the Javanese traditional law community can be in the form of:

1. As an absolute guarantor in an agreement about land, sell off, sell sende, or lease land. This guarantee makes every act in the field of customary law clear and open and far from violating the rule of law (adat).
2. As a supervisor in the distribution of inheritance in the village.
3. Settlers and pemakat in the field of marriage, come looking for a way out whenever there is a possibility, that customary law will be violated. As a recipient, the head of the alliance is obliged to morally bring together the disputing parties so as to remain secure and maintain the order of the community. The actions taken in the form of initiative, always consider the value that lives in the community.

[246] *Ibid.,* hlm. 122.

The head of the fellowship has an obligation to preserve the legal life in the fellowship group, keeping the law running properly. In short, there is not a single field of life that is not the responsibility of the head of the legal alliance.[247]

The birth of Law Number 22 of 1999 concerning Regional Government, in which there are provisions concerning villages. According to Article 104 of this Law, it is stated that the Village Representative Body or so-called other functions function to protect customs, make village regulations to accommodate and unite and supervise village government violations. As implementing the provisions of this law, a Decree of the Minister of Home Affairs Number 63 of 1999 concerning Guidelines for Implementation and Adjustment of Terminology in the Administration of Village/ Marga Government and Decree of the Minister of Home Affairs Number 64 of 1999 concerning General Guidelines for Regulation on Villages/Marga. Two tasks and obligations of the village head/clan include: (1) Submitting the Village/Marga Draft Regulation and together with the BPD/BPM stipulating as village/clan regulations, (2) Maintaining the preservation of the customs that live and develop in the village/clan concerned.

Furthermore, I Gede A.B. Wiranata said that sociologically, the position or status is a container of rights and obligations; sometimes position is also interpreted as a collection of rights and obligations. The dynamic aspect of the position is the role or “role” which means the implementation of rights and obligations. Theoretically, it can be distinguished between three types of roles, namely:

1. Perceived role

   The role which is assumed by the stakeholders;

2. Expected role or ideal role

   The role according to the expectations of the community members;

[247] *Ibid.,* hlm. 122-124.

3. Actual role or role performance

   The role in reality or in its application.

The three roles above should run in harmony, balance and harmony. However, rarely the leadership pattern can work ideally. Throughout the history of society, every pattern of leadership must always be a lack or imperfection. A leader is in the front to provide strong ideals by giving an explanation of his ideals so that he is able to walk in line together, a leader is in the middle of following the will formed by the supporting community, and finally a leader must be behind guarding so that the desires which is to be achieved does not deviate from the goals previously agreed upon.[248]

Just as various countries or communities of nations in the world are always changing and developing, Indonesia is also experiencing an era of development. The various transitions are related to various fields of life, social economy, politics, and law. In its legal system, there is a change in direction from the level of unwritten law to written law, although it is unavoidable that the existence of unwritten law remains alive and developed in the lives of most customary law communities. Thus, the existence of customary law covers at least three main aspects: (1) The existence of customary law in the development of national law, (2) The existence of customary law as a means of social control, and (3) The existence of customary law in accordance with the function of law as a basis for change society.

The elaboration of political will regarding customary law in the development of Indonesian law has been raised specifically through the formulation of the results of the Seminar on Customary Law and National Law Development in Yogyakarta in 1975 with its recommendations:

1. Customary law is one of the important sources for obtaining materials for the development of National Law that leads to the unification of law and which will be

[248]*Ibid.,* hlm. 126-127.

mainly carried out through the making of laws and regulations. by not ignoring the emergence/growth and development of customary law and courts in legal development.

2. Taking material from customary law, in the preparation of national law, basically means:
    a. The use of conceptions and principles of customary law to be formulated in legal norms that meet the needs of present and future societies, in the context of building a just and prosperous society based on Pancasila and the 1945 Constitution.
    b. Using customary law institutions which are modernized and adapted to the needs of the times without losing the characteristics and traits of their Indonesian personality.
    c. Incorporating traditional legal concepts and principles into new legal institutions, foreign institutions and laws are used to enrich and develop national law, so as not to conflict with Pancasila and the 1945 Constitution.
3. In the development of national property law, customary law is one element, while in the development of family law and national inheritance law, customary law is the core.
4. With the formation of national law which contains elements of customary law, the position and role of customary law has been absorbed in national law.

A review of the formulation of the results of the seminar above shows that customary law has been positioned in such a way that it becomes an important substance in the development of Indonesian national law which will be primarily aimed at the unification of law. Associated with the three existence of customary law in the development of the law mentioned above, it becomes a fundamental problem, including:

1. What is the position of customary law?
2. How to reflect on empowerment?
3. Concretization of what business has been, is being and will be done in the politics of law?

4. How will the response of this legal reform be received by the public supporting the law?
5. What legal fields and activities in the customary legal system are so easy to the contrary that it is difficult to accept modernization and legal politics?

Although it is stated that customary law has a strategic role, it does not mean that all customary law material can be used as material or source of national legal material, as stated by Bushar Muhammad that in gathering materials from the results of customary law (and ethnographic) investigation, the attitude we deal with these materials there must be two aspects, namely negative aspects and positive aspects. The negative aspect is that since its inception we immediately separate the customary law institutions that cannot be included in improving the standard of living of the Indonesian people who want to be adjusted to the level of progress of the modern world or customary law institutions according to the standards of humanitarianism. cannot be sustained in a modern society.

Similar to Bushar Muhammad, Selo Soemardjan also stated there are a number of social and cultural values (customary law is a concretization of a system of social and cultural values), which can be grouped into four groups, namely:

1. Values that support development (law), which values must be preserved and instead strengthened.
2. Values that support development (law), if the values are adjusted or harmonized with the development process.
3. Values which, although they hamper development (the law), will gradually change or disappear due to other factors in development.
4. Values that definitively hinder (legal) development and must therefore be deliberately removed.

If Selo Sumardjan's description is agreed upon, the grouping of value perspectives can only be done if the political direction and conception of legal development are thoroughly understood. Thus, the development of the new law will be carried out if there is an awareness based on the harmony between the desire to make legal reform through legislation on the one hand and the awareness that in these efforts social values and social facts need to be considered. that lives and applies in a society that supports law on the other side. With such a preposition, if lately there has been a tendency for mass judgments in a region of Java on the pretext of causing shame to the perpetrators by carrying out nude wine around the village, this kind of action, although perhaps believed by most members of the community, gives the deterrent effect cannot be used as an essential value so it needs to be included in the formulation of the new Criminal Code (KUHP) because it clearly overrides aspects of human rights.[249]

New integrated legal development is considered successful if it is in accordance with living law and with public awareness without any frontal coercion. Thus, changing the format and legal system towards modernization (in this case one of the characteristics is unification), especially in the field of law that is sensitive for most members of the legal community should be done slowly so as not to cause public turmoil, especially things that will be regulated related to established beliefs/beliefs. The formulation of customary law in order to become national law must therefore be examined from the political orientation of law. Politics of law in addition to displaying attention to the organization of collective activities to achieve the goals that collectively the customary law community wants to achieve, is also related to the selection of priority objectives of the various possible goals to be carried out.

[249] *Ibid.,* hlm. 204-205.

Has this country's policy makers been able to find the essence in patterning legal development with customary law as its basic pattern? History will answer it.[250]

4. Legal Formation for Local Communities in Border Areas

This section can be said to be an affirmation of previous descriptions. The regional government has the authority to form or make laws for local communities in the border regions between countries as well as the Unitary State of the Republic of Indonesia and the Democratic Republic of Timor Leste. In addition, local governments can propose that the central government (which) makes laws for local communities in the border regions between countries. Various sources of legal material can be integrated in formulating the new law, of course by following the stages or steps that are right and right. To realize this very positive thing, it is necessary to have political will from all relevant elements, both the executive and legislative branches at the Central and regional levels, informal elements, the community and existing community leaders. Good cooperation between all related elements is very necessary in forming or making the law of the border region for the peace and comfort of the lives of citizens on the border of the two countries.

The stages or steps that can be taken in establishing or enacting the border area law, with reference to the description in the previous sections, are visualized in Figure 1. The first stage or step for making the border area law is the local community along with existing social organizations in the community concerned. The arrows indicate the direction for the next step or step that can be taken in order to make the border area law.

[250]*Ibid.,* hlm. 300.

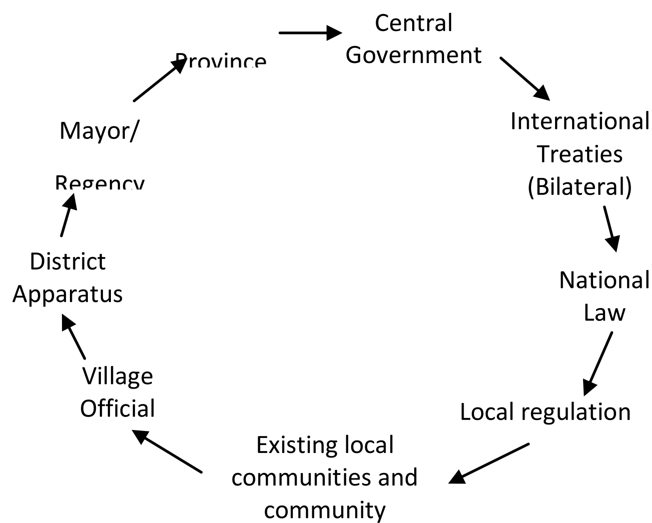

Figure 1 Stage or step of making border area law between countries

CONCLUSSION

The regional government has the authority to form or make laws for local communities in the border regions between countries as well as the Unitary State of the Republic of Indonesia and the Democratic Republic of Timor Leste. In addition, local governments can propose that the central government (which) makes laws for local communities in the border regions between countries. Various sources of legal material can be integrated in formulating the new law, of course by following the stages or steps that are right and right. To realize this very positive thing, it is necessary to have political will from all relevant elements, both the executive and legislative branches at the Central and regional levels, informal elements, the community and existing community leaders. Good cooperation between all related elements is very necessary in forming or making the law of the border region for the peace and comfort of the lives of citizens on the border of the two countries.

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