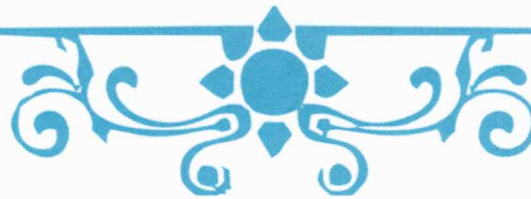


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Outside The Court**

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## ENVIRONMENTAL DISPUTE SETTLEMENT IN THE PERSPECTIVE OF SUNDANESE RELIGIOUS COSMIC WISDOM

Mella Ismelina FR, Anthon F. Susanto, and Liya Sukma Muliya<sup>\*)</sup>

### Abstract

Naturally, every environmental dispute occurs in the community can disturb the balance of social structure. The settlement under customary law always finds way to restore balance and harmony of the structure disturbed. Customary people, in their lives, always maintain the harmony, balance, and continuity between people and the ecosystem so that when an act inflicting disharmony or dispute, it will be settled through mediation under the customary law. It also goes with the environmental dispute. The mechanism of customary dispute settlement will be done through existing customary institution to restore the balance disturbed.

**Keywords:** social cause, mediation, dispute settlement, environment, and religious cosmic.

### Introduction

This paper will discuss about the environmental dispute settlement in the perspective of Sundanese religious cosmic wisdom. This problem is raised due to the dispute occurred between the customary society and the government or between the customary society and the general public as the result of the exploitation and the management of environment that is not in line with the pattern of environmental exploitation according to the local wisdom held by the customary society or the dispute occurred due to the custom violation by the society in exploiting the environment.

The issue of environmental dispute settlement under the customary law will certainly be not separated from the discussion about the customary law itself. Customary law is a legal system comes and grows from the society of which the existence is harmonious and in accordance with the society. Customary (*Adat*) law is born from values, norms, and principles agreed and believed by the customary society and are always referring to the concept of religious cosmic.

According to Ter Haar's Decision Theory, *adat* law is defined as the decision of the law maker, either the village judges, village council, chaplains, and village administration with dignity and is obeyed necessarily by the *adat* law society. The decision of the village administration holds spiritual virtues (*religio magis*) and also social values living in customary

<sup>\*)</sup> The writers are the team of researchers in a study on "Social Cause on Legal and Social Empowerment in Preserving the Religious Cosmic Based Environmental Function Through Patanjala Method".

community (communal value) (Hendra Nurtjahjo, 2010)

The existence of *adat* law today is

still relevant to be applied as law imposed in Indonesia. *Adat* law is a law coming from Indonesian culture origin. It grows and develops along with values living in people of Indonesia (Hendra Nurtjahjo, 2010). In the context of *adat* law, the environmental dispute settlement cannot be separated from the *adat* people and their environment. The people think, behave, and act according to the structure of the values distinguishing them from Western culture (Hendra Nurtjahjo, 2010).

In some literatures and regulations in Indonesia, there are stated various names for the *adat* community such as *adat* law people, *adat* law community, remote *adat* community, traditional community; and in international level are such Indigenous Peoples. However, in this paper, the term *adat* people will used.

*Adat* people is a communal community. Communal community is community in which every aspect of life is communal. *Adat* people show a inter-personal close connection and the process of social interaction of the people creates certain patterns known as a uniform or custom of behaving within a social group (Hendra Nurtjahjo, 2010).

Juridical concept of Indonesian people can be seen from the power of *ulayat* rights of *adat* people within or outside the community. The *ulayat* within can be interpreted as that only *adat* people who are able to commit a legal action within the legal jurisdiction and to gain benefit from their *adat* law jurisdiction. The right outside the *adat* law community means the statement to parties outside the *adat* law community to not take any advantage from them. Therefore, the rights is given to the *adat* law community to commit

legal action within the territory of their *adat* community.

*Adat* people in their daily life certainly depends on nature and in interacting with the environment, they hold local wisdom well preserved in generations. In exploiting the environment, dispute often occurs related to the exploitation and the management of the environment.

Environmental dispute occurred can be external and internal within the *adat* people themselves. External environment-dispute sometimes occurs due to the different perspective between the *adat* people and the government or general public in managing certain area. Sometimes the area that is forbidden to be exploited by *adat* is given to the business proprietor through concession to exploit the *adat* land. The example of this is the issue of site removal done by the government. In *adat* community, there is a belief that "site removal is forbidden, cannot be crashed"; "*buyut teu meunang dirubah*", since the site is natural heritage. However, for the economic interest, sometimes the protection of site as natural heritage is put aside. It triggers dispute involving *adat* people; while internal environmental dispute often occurs due to the violation of *adat* committed by the *adat* people themselves.

### Analysis

#### Sundanese Religious Cosmic Wisdom

Sundanese wisdom is a local wisdom simply means as genuine knowledge local genius, and indigenous knowledge certain community of people or local community (local; region; *wewengkon*). For example, local genius of people of Ujung Berung, Cililin, Pamengpeuk, Ciomas, Kampung Kuta, Kampung Naga, Baduy,

Bali, Asmat, and others. Sundanese knowledge in preserving or life coming from or man-made life creatures Java, the Indonesian local wisdom in the area of value of certain local wisdom places and tribes. This different natural changes, therefore their life needs system of knowledge environment a As one wisdom is not along the time and social-culture. As A. S. that local wisdom, believe, and custom or duct in their community. A domains are lived through the pattern of man, nature a (2005) explain skills and strategies to maintain and disasters wisdom does through norms

Bali, Asmat, Amazon Indian, Aborigin, and others.

Sundanese wisdom is indigenous knowledge in restoring or repairing and preserving or conserving the sources of life coming from the nature, either pristine or man-made and the ecosystem where the life creatures live. In the context of West Java, the indigenous knowledge is the Sundanese local genius as the majority in West Java.

Local wisdom is a environmental wisdom in the community at certain location or area and is related to the structure of value of *adat* people. Therefore, referring to certain locality and community, local wisdom is not the same at different places and different time and different tribes. This difference is due to the different natural challenge and the life necessities, therefore the experience in fulfilling their life necessities constitutes various system of knowledge both related to the environment and the social.

As one of the man behaviour, local wisdom is not static but rather it changes along the time, depending on the structure and social-cultural bound in the community. As A. Sonny Keraf (2010) argued that local wisdom is all forms of knowledge, believe, teachings or understanding and custom or ethic guiding the man conduct in their life within the ecological community. All forms of these local wisdoms are lived, practiced, taught, and inherited through generations and shaped the pattern of man conduct towards other man, nature and spirit. Francis Wahono (2005) explained that local wisdom is the skills and strategies in managing the universe to maintain ecological balance tested in centuries by various catastrophes and disasters and human errors. Local wisdom does not end at the ethic, but goes through norms and act, and conduct so

that the local wisdom may be similar to religion that guides human in behaving and conducting, both in context of daily life and in setting up further human civilization.

As understood, in adjusting with the environment, people gain and develop wisdom in the form of knowledge or idea, *adat* norms, cultural values, activity, and tools as the abstraction of environmental management. Often, their knowledge local environment is used as the accurate guidance in developing life in their neighborhood, Diversity of pattern of adjustment towards the environment in Indonesian communities inherited through generations becomes the guidance in exploiting natural resources. People's awareness in conserving the environment can be promoted effectively through cultural approach. When the awareness is improved, it becomes great power to manage the environment. In this cultural approach, reinforcement of social capital such as social-cultural institution, local wisdom, and norms related to environmental conservation are the important to be main basis.

#### **The Settlement for Environmental Dispute according to the Law No.23/ 2009 on the Management and Preservation of the Environment**

Article 1 point 25 of the Law No.2/ 2009 on the Management and Preservation of the Environment defines environmental dispute as "disagreement between two or more parties that is originated from activities with potential or have been affected the environment". In this dispute, environmental pollution and/or devastation are the keyword, and without the presence of those, the disagreement cannot be qualified as environmental dispute. Therefore, pollution and devastation of



**Dispute Resolution of Environmental Dispute under Perspective of Religious-Cosmic Sundanese Wisdom**

A community of indigenous peoples is led by a village chief or *Adat* chief. All legal activities of the village community are centered on the Village Head who became the father of the village community and who is considered to know all the customary laws and *Adat* of the indigenous peoples he leads (Bushar Muham-

mad, 2002).

Activity of *Adat* chief mainly divided into three areas: land, social and legal order to ensure the communal life goes as it should be and prevent any misconduct (preventive); and endeavors to restore the social order and brought balance based on measured under a religious-cosmic point of view (repressive). For a indigenous people, the judgment of *adat* chief is a true norm and must be executed. By these powers, it can be said that the *adat* chief is authorized in creating regulations for indigenous people to obey (Bushar Muham-

mad, 2002).

According to Sundanese wisdom, traditional institutions with role in dealing with environmental dispute are: (1) *adat* chief with authority to considering every opinion of *bari kolot* or village leaders, the *adat* chief and *kuncon* (caretaker) has power to decide whether a person is guilty or not guilty. (2) *Girang Serai* or the *Chamberlain*, authorized for internal affairs such as record of verbal event, administration of *adat*, providing access of information and inviting the elders. (3) *Jaro-jaro* or ministers/heads of divisions along with their vice-ministers called *pangwiwa*. (4) *Panangkkes*, with duty and responsibility for technical matters in dispute settlement (5) *Baris kolot* or village elders who represent villages.

The perpetrator of pollution and/or environmental devastation is stated under Article 1 point 32 of the Law No.32/2009 as an individual, or business entity, both legal entity/non-legal entity, while the intended victim of pollution and/or destruction of the environment are the people and the environment itself.

Under the law, the settlement for environmental disputes can be resolved through litigation and non-litigation channels where the selection of this environmental dispute resolution forum is voluntarily handed over to the disputing parties.

environment has been identified cause of environmental dispute or its determinant factor. The environmental pollution or devastation itself is either physically existed or mere potential to come.

If we take a look into juridical definition of environmental pollution and devastation in Article 1 point 14 and point 16 of the Law No.32/2009 on the Management and Preservation of the Environment, it stated that "environmental pollution is diffusion of living organisms, substance, energy and/or other component into the environment undertaken by human activities and causing exceed to previously determined environmental quality. Meanwhile, environmental devastation is "any activity causing direct or indirect transformation on physical, chemical, or biological character of environment and causing exceed to previously determine environmental quality".

Related to environmental disputes, what is said to be the subject of environmental disputes are the perpetrators and victims of environmental pollution and devastation. Meanwhile, the environmental disputes object is environmental pollution and / or actual and/or potential damage to the environment.

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As we said, regarding to communal dispute, it can be occurred in internal or external level. In the event of internal environmental dispute, the *adat* institution or the community hold an internal assembly. Meanwhile, if the disagreement is considered external, the conflict is resolved through state mechanism, which is litigation or non-litigation process.

Among the indigenous people, peace settlement is common to resolve a dispute. This is a mean to avoid grudge, conflict, disintegration, and else. In settling a case, each individual comes with their own way. According to Nader and Todd, there are ways or stages a person can do in dealing with her problem, those are: to let go, evade, coercive, negotiation, mediation, arbitration, and court (Hendra Nur-tjahjo, 2010). The most commonly used means of resolution in *adat* community is negotiation or mediation. This is chosen in order to prevent hatred between parties. The *Adat Law* does not separate between criminal and civil offences, however, every offence requires remedy and the judge (*adat* chief) decide which *adat* action or reaction to be applied for such remedy (I Dewa Made Suartha, 2015).

Regarding to communal sanction, it is a mean of social control possessed by a particular community to establish order in the society (I Dewa Made Suartha, 2015). Therefore, *adat* sanction is given to restore balance including the magical balance which is previously violated through *adat*

offences (I Made Widnyana, 1995). In other words, *adat* sanction is a correctional measure as a consequence of offence to remedy the violation. In this way, *adat* sanction is repressive.

*Adat* sanction can be imposed as physical punishment or mental punishment. Examples of mental punishment are a person is banished from his village, he/she is forbidden to marry another person in that community, or he/she must not eat rice harvested from the community. Meanwhile, physical punishment can be imposed to certain work such as cleaning community road or else. In the event of capital offenses such as tainting sacred forest or activities that injured public interest, when these are committed by a parent, the guilt also descended to his/her 7<sup>th</sup> generations of family until forgiveness is received from the ancestors (*sadu karuhun*).

### Epilogue

The environmental dispute is essentially a disturbance of harmony and balance that exists in indigenous peoples. Therefore, when disputes happen, the indigenous peoples make efforts to restore disturbed balance. Sundanese local wisdom provides a communal assembly mechanism and communal institution to take action each time an environmental dispute arises. The gathering led by *Adat* chief is a forum to be chosen in every settlement for environmental dispute.

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