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Relevance of Local Wisdom in Rural Judiciary for Indonesian Societies

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This study is directed towards finding answers about the social basis of the community regarding local wisdom in Court, and the socio-juridical relevance of the judiciary in bridging the gap between the people and the aspirations that are so plural towards the legal logic that is centralised and technical. This problem arises when the problems faced by society today in the field of justice, especially in the civil field are: "how to obtain legal certainty without sacrificing justice and guarantees of harmony, and how to obtain justice and guarantees of harmony supported by legal certainty." The approach used is a qualitative research method with a type of sociological research juridical. The results showed that the court community is a place to seek justice. So that the court aims at resolving disputes in society fairly, the judicial mechanism must not only rely on procedural aspects but also how to make people feel accommodated in the judicial procedure. For this reason, a compatible court mechanism needs a form of justice that can accommodate proportionally and equitably the formal and informal aspects with a new vision that respects the value system and the needs of the community. This scholarship concludes that in solving problems in rural communities, it is necessary to obtain formal certainty through negotiating and familial processes.

Key words: *Social based, Local wisdom, Plural Society.*

Introduction

One of the central questions in the context of modern legal politics is whether law created to guide and direct social life nationally attracts people to use it, that law in modern legal politics is generally directed at its use as a tool for social change (Falk-Moore 1993). The underlying point of this view is the assumption that social relations are very vulnerable to legal control as a controlled system of control. (Voigt, 2012) The fact is that law is a social engineering tool. The law is assumed to be able to direct social change. (Edwards, 2018). Similarly, the ideology of the Israeli Family Court system is holistic. Under this view, it is inappropriate to regard the legal and juridical aspects of a dispute within the family in

isolation, without full consideration of the effects of the judicial process, in all its stages, on the parties and their families (Marcus, 2019) In Indonesia, that belief is also held. Law is believed to be a means of community renewal (Kusumaatmadja 1978).

Even judicial unification through Law Number 48 of 2009, aims to carry out planned social changes. Judicial unification is based on ideological and political thought, especially in the context of the unitary state format (Jeandarme, Habets, & Kennedy, 2019). When viewed from various regulations concerning the judiciary, state justice is a judiciary whose legitimacy rests on the strength of the state's national legitimacy, not on the strength of local cultural legitimacy (Park, 2019). In the context of a pluralistic and heterogeneous Indonesian society (Darmaputra1987), there is an imbalance when state justice institutions that rely on state legitimacy, will be confronted with various local legitimacy from one community to another (Tanya 2000). This situation has an impact on the existence and appeal of state courts to be used as institutions for dispute resolution by the public. Also, the difference factor of legitimacy (state and cultural), will determine the pattern of dispute resolution in society, namely settlement through the court or outside the court (Utari 2012).

Research Method

This study of conciliation proceedings limits the legal issues that theoretically and factually require the active participation of the parties in determining the direction and substance of the settlement. For this reason, this study only focuses on the aspirations and needs of the community regarding the mechanism for the resolution of civil cases. For this reason, the research approach used is sociological juridical, so that in obtaining data, data collection techniques used are literature and document studies and observations. Observation includes the activity of focusing attention on an object by using all the senses. What is at the time of observation is observing social phenomena in the right category, observing back and forth, and taking notes immediately using tools such as recording devices, forms, and mechanical devices. In observations, there are observation guidelines that contain a list of types of activities that may arise and will be observations.

Results and Discussion

A. Court as a Means of Completion with Local Wisdom

Various studies on social attitudes towards the court show that in societies where social stratification is still simple, the tendency of conflict resolution through the courts tends to be less prominent, what is preferred is a compromise resolution or reconciliation (Chambliss and Seidman, 1971). Out of court dispute resolution in traditional societies was successful because of their attachment to traditional values, which emphasised the importance of harmony, respect for the elder, or those who had the reputation, personality, and seniority. (Brown, 2005). Conversely, in complex societies (advanced societies), there is a tendency to impose behavioural norms that guarantee the position of each person, so that the role of the judiciary appears to be very large, because such dispute resolution pivots a win-win effort (Bank, 2002). Since the 1970s, in America, there has been a tendency to "create" alternative institutions for dispute resolution outside court proceedings (Nolan-Haley, 1992). The need for alternative dispute resolution (ADR), is based on the idea that the resolution of disputes

through the court process is considered to require a lot of high costs and requires a relatively long time (Schoenherr & Black, 2019).

Steward Macauly's study among the American business community found strong trends in the use of non-litigation methods, especially in contractual disputes in business (Aubert V at all, 1969). In the business relationship, according to Macauly, it turns out that there are sanctions that are not legal but have considerable effectiveness (Tanya 2002). Aims to achieve the best performance in the business world not because of fear of legal sanctions, but people are afraid of getting criticism and adverse reactions from their relationships, which in turn will bring their reputation to the public (Young, 2016). In Japan, there is a conciliation institution outside the court, namely, Jidan (Tanaka, 1988). For the Japanese, bringing a case to court is a dishonorable trait. It is wisest to solve it first through the Jidan mediation forum (Henderson, 1965). The settlement of disputes through the court is considered to contain weaknesses, which are time-consuming, high costs, and stretching the relationship of the parties to the dispute (C. Shdaimah & Summers, 2014).

In developing countries, the court is often considered an extension of power, in some countries, the court is even considered unclean, so the decisions tend to be impartial and do not bring justice (C. S. Shdaimah & Alexander, 2018). The tendency to avoid court, aside from the cost and time factor, is also due to the view that not all disputes are suitable to be resolved through the court process (Death, Ferguson, & Burgess, 2019). Trubek said that some disputes were not suitable to be resolved through the court, namely family disputes, controversies between neighbours, claims that included a small amount of money and problems that arose in managing long-term trade relations (Trubek,1987). In China, Confucianism views the law (Fa) as punishment (Hsing) (Chang-Bin Liu, 1983). Therefore, the law is not a good way to maintain social order. That is also why traditional Chinese people (Chang-Bin Liu, 1983) are reluctant to bring disputes before the court because harmonious relations have a high place in society (Connor, 2019).

In Indonesia, in addition to consideration of cultural values, reasons for avoiding the use of the court are partly due to the nature of the verdict that invites hostility (Munir, 1999), about costs and time that are felt to be burdensome and complicated procedures (Tanya, 2000), Munir, 1999: 14), reasons for inability to proceed (Pellegrina, Garoupa, & Gómez-Pomar, 2017) and reasons for the lack of court cleanliness (Erickson, 2016). According to Rahardjo (1986: 551), dispute resolution through the court requires complete resolution of disputes - unless there is peace - so it can be ascertained which party wins and which loses. In such a situation, then what happens is the emergence of cultural conflict (Wignjosoebroto, 1986).

The results of Keebet von Benda Beckmann's research in rural Minangkabau, West Sumatra, show that there is a tendency for disputing parties to make choices among existing institutions (traditional institutions and district courts) which are as beneficial according to what is expected by the parties disputing (Benda Beckmann, 1984). Also, the existing dispute resolution institutions, in certain cases, actively offer services to resolve disputes that occur (Brown, 2005). It seems clear that various studies on the use of forums in conflict resolution are still at the stage of a description of forum choices (court and non-court) conducted by the community in a variety of social and cultural environments (Utari 2012).

B. The Social Base of Justice Procedure Which Accommodates Local Wisdom

The legal function to resolve disputes today does not have to be centred on the courts as an organisation, but rather on the ways that must take in handling various disputes that occur. Here, aspects that are the mechanism, procedure, and process of dispute resolution are an inseparable part of the law (Jeandarme et al., 2019). This also opens the possibility of developing towards the emergence of various forms of mechanisms, procedures, and processes by the needs of the user community and the substance of the conflict itself (Singer, 1994). According to Yoshiyuki Noda, for respectable Japanese people, formal legal procedures are something that is not liked, even hated. Bringing people to court for any reason is an embarrassing act (Yosiyuki Noda, 1976). Similar to Japanese culture, South Korean culture regards litigation as a symbol of conflict. For Koreans, what is known as a law in modern society is considered synonymous with punishment. Formal legal forums are seen as forums that rely on strength and violence - which are contrary to the values of goodness, peace, and harmony (Rahardjo, 1989).

In the Philippines, non-litigation forms of justice based on local values are known as Katarungang Pambarangay Law and Barangsay Justice Law.

The formation of such a body is through a Presidential Decree to reduce the fertilisation of cases in court, in addition to promoting fast and efficient justice while preserving their traditional values (Santoso, 1999). In Indonesia, in addition to consideration of cultural values, the reasons for avoiding the use of courts are partly because of the nature of the ruling, which invites hostility, the matter of time and cost that is felt to be burdensome and complicated procedures, reasons for the inability to proceed with law and reasons for unclean courts (Edwards, 2018). Dispute resolution through the court requires complete resolution of disputes unless there is peace so that it is certain which party wins and who loses. In such a situation, what happens is the emergence of cultural conflict (Soebroto, 1986). Vilhelm E. Aubert stresses the need for historical and evolutionary studies of the kinship system; and understanding the relationship between kinship structures and the forms and ways of resolving conflicts, because within the kinship structure is contained the spirit of kinship that animates relations, perspectives, and attitudes of kinship members to each other (Aubert, V., 1986: 42).

Institutionalisation, is an evolutionary development and has historical legitimacy. In this view, it is assumed that there is equality between modern forms of institutionality and previous experience (Edwards, 2018). There is a historical and theoretical linkage between institutional typologies and mechanisms currently developing with pre-existing typologies and mechanisms (Schoenherr & Black, 2019). The preference for resolving disputes through village or subdistrict forums is a manifestation of the settlement model that requires

accommodation in the "formal and informal system." Requesting village and sub-district assistance to resolve disputes, is not just for customary reasons, but also formal certainty obtained through negotiation and kinship processes. In the scope of rural life, the involvement of the Village Head in dispute resolution is not seen as outside interference but rather a dispute resolution in the context of a "family" that has formal authority to decide on something. It must be recognised that the main problem facing the community, especially rural areas in the field of justice today, is "how to obtain legal certainty without sacrificing justice and guarantees of harmony and how to obtain justice and guarantees of harmony supported by legal certainty."

C. Relevance of Social Based On Juridistic and Local Values in Indonesian Communities

The emergence of state law as a normative institutional complex that is national in scope is only one of the prominent features of the modern world (Harwin, Broadhurst, Cooper, & Taplin, 2019). The normative institutional complex referred to is identified as the national legal system (Mattsson & Tidanå, 2019). Such a system, which consists of institutions related to the state, proposes a group of normative teachings, and the teaching is recognised as a norm that covers and controls all other institutions in society and subordinates all to a set of general rules (Marc Galanter, 1976). Although the formal rules complex is undergoing a process of consolidation and replacing several normative regulatory systems that previously operated in society and reducing them to lower-ranking institutions (Max Webber, 1954: 140), other systems of order control do not disappear. Social research on the law has been characterised by repeated rediscovery that law in modern society is more plural than monolithic (Galanter).

Although the "primary function" of the legal system is to facilitate the resolution of disputes, sociologically, it is more a "promise" than an empirical experience. According to Mnookin and Lornhauser, the parties to the dispute may not be an isolated pair, but become part of or stick to a group or network that has its own rules and standards. That is why every action is a choice that is affiliated or refers to certain normative structures. In the quest for justice, most people follow what is common (Galanter, 137). The above phenomenon is a fact about what Tanya calls the difference in basic concerns between state law and culture (Tanya 2000). According to him, these differences led to a quarrel between the two truths. Normal things in culture can be abnormal according to law, and vice versa. The choice of one will hurt the other. Also, ignoring the two is still risky because it will bring out a "punishment" reaction. Combining the two is not always easy, because not all elements are easily combined. All of them may be contradictory.

D. Justice of Conciliation in the Context of Social Meanings

One way to capture the social meaning of law in its most pragmatic aspect is to examine the use of the court in the context of informal institutional rivals as a forum for dispute resolution. In this context, Galanter said, justice institutions (and other formal institutions) are not the sole source of normative messages and are not the only arena where supervision is directly applied. This is in contrast to the notion of "legal centralism" - a picture in which state equipment (and their teachings) occupy the central point of legal life and have a hierarchical oversight position (LH Mayhew 1971: 208) over other norms that regulate more low position, such as families, corporations, business networks. It was said by Galanter, from disputes submitted to be processed in court, most were resolved through negotiations between the parties concerned or through several "forums" sourced from the social environment from which the disputes arose (Galanter: 96-97). Negotiations revolve around bargaining that cannot be distinguished from adjustments needed daily and which are fundamental elements for the formation of social relations. Of the cases submitted to a judicial institution, most were stopped (because they were left alone, or withdrawn or settled peacefully), ended without the usual procedures, and often without binding decisions from the judiciary (HD Nins 1950).

As noted by Galanter in his work, which has been repeatedly mentioned in the previous section, most of the disputes which, according to official rules can be submitted to the judiciary, are never recorded socially (L.B Mohr, 1976: 621). The judiciary is not only the place for administrative proceedings and filing of cases and the place for terminating cases through trials but also a place for changes in status, negotiations for the achievement of peace, a place of mediation, arbitration and "war" (Galanter Op.Cit: 97).

Ferguson notes that "... written language rarely accurately reflects spoken language; often in written language, certain characteristics develop that are not found in the spoken language concerned. " In the legal-positivistic tradition, there is a tendency to imagine "law in action" as a deviation or a lower-valued version of a higher law that is law, according to the book "law on books." It is generally known that disputes that are processed by the judiciary begin in other places and may have undergone many changes since they were submitted, and when they went through the process further. Disputes need to be reformulated according to the applicable legal categories. In the process of reformulation, there could be a limitation of its scope, somewhat diffuse cases can become more focused according to time and space, and then narrowed down to certain events involving only specific individuals (Galanter).

In short, the relationship between justice institutions (formal forums) and disputes is multi-dimensional. Decisions, though important, are not the only link between the judiciary and the dispute. Judicial institutions can cause or mobilise disputes, for example, when statements

about certain rights raise and validate expectations about a person's reasonable nature to fight for a claim, or there was a change in procedural provisions which suggested that the claims made would be successful (Flango, 1994). Finally, judicial institutions may change the dispute, so that the issues at issue are broader or narrower than the issues at issue at the initial stages of the dispute (Young, 2016).

The activities of the judiciary not only affect those who directly submit to it, but also others (Henry, Liner-Jigamian, Carnochan, Taylor, & Austin, 2018). The consequences of the actions of the judiciary will spread in a variety of ways, such as reactions that arise to behaviour that changes among those who are directly affected or because of the consequences of unified dissemination, strengthen certain groups and immobilise others (Metsker, Trofimov, Petrov, & Butakov, 2019). On the other hand, communication regarding a legal rule or its application by a court may change the moral evaluation of other actors concerning certain ways of acting. There are impressive hints, evidenced by the fact that at least certain segments of the population have had this effect (Jones et al., 2019). Another thing that is not so dramatic is that observations about the application of the law may preserve or strengthen existing evaluations of behaviour (Bath et al., 2019).

The judiciary can also have a facilitative effect. Legal applications are not seen as facts about where adaptations must be made and also not as norms that must be as recipes that need to be followed. Laws can be used just like a cookbook from which people can learn how to achieve something they want — how to regulate rights, how to form partnerships, how to get subsidies (Harwin et al., 2019). Judicial activities influence behaviour at the level of disputes, as well as at the level of the underlying transaction relationship. Thus, disputes can have strong mobility and demobilisation effects (Mattsson & Tidanå, 2019). Disputes also produce symbols that can move the group, broadcast awareness about complaints, and dramatically challenge the status quo condition (Schoenherr & Black, 2019). On the other hand, focusing on disputes can undermine an organisation's ability to utilise political means (S.A Scheingold, 1974). Or success in resolving disputes might spread and become an incentive to fight for more extensive regulatory changes. The impact of the judiciary on disputes is, for the most part, achieved because of the spread of information. The judiciary produces not only decisions but also messages. The results are double, namely what they do and what they say about what they do (Galanter Op.Cit pp. 108-109). Messages regarding these two matters through various intermediaries are transmitted to different public spheres. These messages are sources used by disputing parties and others in imagining, planning, submitting, negotiating and defending demands (Steele, Wee, & Ramsay, 2018).

Legal content as a system that includes cultural and symbolic meanings is more than a set of operational monitoring tools. The law affects citizens mainly through the communication of symbols - by providing threats, promises, models, persuasion, legitimacy, stigma, and so on

(Edwards, 2018). The extent to which the parties to the dispute can utilise the resources provided by the judiciary is strongly influenced by their cultural background, abilities, and relationships with each other (Jeandarme et al., 2019). Each person has different abilities in receiving and evaluating messages received from justice institutions. There are differences in them, for example, regarding their ability to make sophisticated estimates of what is done by a judicial institution, namely what bargaining tips are in reality (Teixeira, Bigotte, Repolho, & Antunes, 2019).

The people who are simple thinkers will tend to generalise the assessment of a certain field of legal activity to other fields (Connor, 2019). Whereas professional and sophisticated thinkers will make relevant distinctions and can place messages in a more differentiated context, the latter will be able to extract from legal messages, information that is more specific and accurate (Jones et al., 2019). If the judiciary exerts influence through communication, the results to a strong degree will be influenced by the ability to process information from message seekers and by gaps in their conclusions (Dwyer, 1979). This "culture" determines the appropriate content and style for the various legal roles and processes (Gau & Brunson, 2010). It is "culture" that determines the use of preliminary summons, pre-trial hearings, the role of judges in determining excuses or defense, and negotiating settlements, the tendency to bring disputes to court and to refer to certain procedural rules, steps in handling disputes, decisions that are appropriate for certain violations by actors with certain characteristics and so on (Salmanowitz & Spamann, 2019). The meaning of what is done by the judiciary and the types of opportunities that can be abstracted by the disputing parties from all of these differ according to these cultures (Edition & Haurovi, 2019). The new law, set forth again by the legislative body and even more that are produced by various government bodies and agents that are constantly multiplying, is driven by a general climate in the form of regulatory intervention (Nafstad, 2019). The fragmentation of regulation and regulatory authority among government representatives and their numerous agents, each of which has overlapping legal mandates and jurisdiction, is a big problem (Utari, 2017). The spread of innovation and interpretation authority among government agencies with weak coordination and little hierarchical oversight all combine to make the mandates of the legal authority erratic and often inaccurate (Park, 2019).

Another theory, from Steward Macauly, suggested that in American society, classified as a modern society, the use of justice is not the best way out, especially in business contract disputes (Macaulay, 1969).

It was said that even though the contractual texts had been regulated in detail about the rights and obligations of the parties and the sanctions that would be imposed in the event of irregularities, both parties did not necessarily question their rights according to law, or threatened to do so claim to court based on reasons for breach of contract by the opposing

party (Brown, 2005). In the business relationship, according to Macauly, it turns out that there are sanctions that are not legal but have considerable effectiveness.

It appears from the two theories above that the level of community progress does not solely determine the use of the court as a dispute resolution agency. The settlement of informal disputes (outside the court), is not only a simple community monopoly but can also be found in developed societies (Harwin et al., 2019). Whether or not the court is chosen as a dispute resolution forum can be related to the objectives to be achieved and the choice of strategic actions .(Steele et al., 2018). Legal, cultural factors can also determine whether or not the court is chosen as a dispute resolution forum (Connor, 2019). The views and values adopted by society are social forces that directly or indirectly influence the mechanism of the operation of the law as a whole (Rings & Goodwin, 2019). These values are the forces that move the community to obey and or expect the judiciary to solve the problems that occur between them (Flango, 1994). So that dispute resolution through the courts (state law) (Mathur & Singh, 2013) requires complete resolution of disputes - unless there is peace - so it can ascertain which party wins and loses, while regarding the cultural context, there is a preference to dampen an existing dispute and wrap it in the form of harmony ((Rahardjo, 1986). In such a situation, then what happens is a cultural conflict (Wignyo Soebroto, 1986).

Today the legal function to resolve disputes is no longer focused on the law, but rather on the ways (law) to handle various disputes that occur (Voigt, 2012). Here, the institutional aspects, procedures, and dispute resolution processes are an inseparable part of the law (Jones et al., 2019). Also open is the possibility of developing towards the emergence of various forms of institutions, procedures, and processes following the needs of the community, users and the substance of the conflict itself (Salmanowitz & Spamann, 2019).

Conclusion

For the community, the court aims to resolve disputes within the community, so the judicial mechanism should not only rely on procedural aspects, but also the people should feel accommodated. For this reason, a "conciliation court" is a system with a new vision that gives room to differences, diversity, and even the need to respect the value system and the needs of the community. So the reality is that the community often avoids the use of national fishing, taking into consideration other than cultural values that are not following the values of the community, also because of the nature of the ruling that invites hostility. Besides that, the matter of cost and time is felt to be burdensome, with complicated procedures, reasons for an inability to proceed and reasons for the lack of court cleanliness. In settling cases outside the village court or at the village head or traditional elder, the Village Head in settling the dispute is not seen as outside interference but rather a dispute resolution in the context of a "family" that has formal authority to decide on something. Therefore, people need formal

and informal aspects. Therefore, it can be said that conciliation justice is a court that accommodates a balanced "formal system" and "informal system. Thus the expected form of justice is suggested to have the following characteristics: (1). There is a document that contains complaints from both parties on the dispute and is submitted to the court. (2). There is a conciliation commission consisting of judges and deputy conciliators. (3). The conciliation commission's trial process should not be more than three months. (4). Conciliation Commission decisions (whether in the form of agreements or penalties) must be legally binding as a court decision. (5). The decision was stated in written form as a legal basis. This form of justice is considered quite accommodating to the community's need for legal certainty and justice as well as harmony, that can be achieved quickly and at a low cost.

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