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Sociology of Law: Its Role in Local Law Formation & Mechanisms of Action in Society

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Abstract

This study aims to examine the role of legal sociology in the formation of regional laws and their working mechanisms in society, especially in the context of legal policies that are responsive to local social and cultural conditions. The research method used is a qualitative method with a literature study approach, in which various literature sources, legal documents, and regional policies are systematically analyzed. The results show that the sociology of law plays an important role in ensuring that regional legal products are in accordance with the social values and norms of the local community. Through case examples in several regions, including Papua, it is seen how an understanding of social dynamics can encourage the effectiveness of local regulations and reduce the potential for conflict. Further discussion reveals that the interaction between state law, customary law and community interests often creates challenges in law implementation. Therefore, a holistic and participatory legal approach is needed that strengthens community involvement in the local legislative process. This study emphasizes the urgency of using a sociological approach in the formation of just and contextualized laws.

Keywords: sociology of law, local law, social mechanism, customary law, Papua

INTRODUCTION

Academically, the Sociology of Law has an arena for the study of the relationship between law and society. It examines how law functions in social life, how law is influenced by social structure, culture, and community behavior, and how law can be used as a tool for social change. In general, the sociology of law focuses on law in social practice emphasizing aspects of how law is applied and obeyed in society. Reviewing the influence of society on the law so as to explain

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how the norms, values, and habits of society shape the law (Biroli, 2015; Hadi, 2022). Thus, the law functions as a tool of social change where the law can be used to change behavior patterns and social structures in order to achieve legal effectiveness when factors determine the success or failure of the law in regulating society.

In addition, the study of Legal Sociology has several practical objectives, namely to understand the interaction of law and society, where there is a symbiotic understanding that law functions in social life so that society can respond to it (Alfarisi & Hakim, 2019; Saleh, et al, 2020; Solahuddin, 2017). In other contexts, legal effectiveness analysis is carried out to examine the factors that influence the success or failure of the law in regulating community behavior. Sociology of Law can also be used to identify gaps between law and social reality so that differences are found between written law and practice in the field and find solutions to overcome the discrepancy (Zia, et al, 2020). Emphasizing that law is not just a written rule, but also a social phenomenon that develops along with the dynamics of society. At a higher level, responsive legal policies are developed to assist in the formulation of laws that are more in line with the needs and social conditions of society. And even help resolve social conflicts. Law is used to resolve disputes and maintain social order, as well as encourage positive and equitable social change.

In the context of academic assessment of the application of legal sociology norms empirically, it is necessary to examine the facts accompanied by evidence that exists in society. This is intended to ensure the coherent usefulness of the study of legal sociology in the context of its practice. Empirically, it can actually reveal various variants of factual cases that occur and are recorded in legal treatise documents. By studying the sociology of law, individuals, especially policy makers, legal practitioners, and academics, can be more effective in understanding and applying law in accordance with the dynamics of society. Therefore, in order to be more realistic, the following is an analysis of the role of law formation in several regions *[including Papua],* along with its working mechanism using examples of popular cases and their follow-ups.

RESEARCH METHOD

The research method used in this article is a qualitative method with a literature study approach. Qualitative research aims to understand social phenomena in a natural context through interpretative approaches and in-depth analysis of non-numerical data. In this context, the literature study approach was chosen because the author utilizes literature sources such as scientific journals, books, legal documents, and local regulations to examine the role of legal sociology in the formation of local laws and their mechanisms of action in society. Literature study

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allows researchers to critically examine theories and empirical findings relevant to the object of study, without conducting direct data collection in the field. This approach is in accordance with the characteristics of conceptual and normative studies that focus on synthesizing existing knowledge to build a comprehensive framework (Hasibuan, 2020; Creswell & Poth, 2018).

The Role Of Regional Law Formation

The sociology of law acts as a bridge between legal norms and social reality. By understanding social dynamics, local laws can be more effective, accepted by the community, and able to solve problems without causing new conflicts. The role of legal sociology in the formation of regional legal products is very important because it helps ensure that the regulations made are in accordance with the social conditions of society. Here are some of its main roles: *First,* Analyzing social needs. Legal sociology helps understand the social problems faced by people in an area. With an empirical approach, it can be seen what kind of law is really needed by the community. *Second,* Customizing legal products with local culture. Each region has local wisdom and distinctive social norms. Legal sociology ensures that regulations made do not conflict with local values and culture. *Third,* Helping community participation. Through sociological studies, the community can be involved in the formulation of legal policies. This participation ensures that the laws made are more accepted and obeyed by citizens. *Fourth,* measuring the effectiveness and impact of the law. Before being implemented, the law can be tested for effectiveness with a sociological approach. Once implemented, the sociology of law can also evaluate its impact on society. *Fifth,* reducing the potential for social conflict. Legal products that are not in accordance with social conditions can trigger conflict. With a legal sociology approach, the regulations made are more harmonious with the needs and interests of the community.

Every regional legal product made must consider social conditions so that it can be accepted and run effectively. Sociology of law plays a role in: Identifying social problems that need to be regulated by law, ensuring that the law is in accordance with the cultural values and norms of society, and preventing social conflicts due to policies that are not in line with social conditions. With this approach, local laws become more effective, accepted, and can reduce the potential for conflict in society.

At the implementation level, regional regulations are not only about making rules, but also ensuring that these rules can be implemented properly. Legal sociology plays a role in understanding community responses and finding solutions to challenges in implementing local regulations. Collaboration between the government, the community and the private sector is

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essential for local regulations to run effectively without social conflict.

For example:

1. **Implementation of Local Regulation (DKI Jakarta No. 5 Year 2014 on Online Transportation)**

There has been socialization to the community and related parties, where the local government held meetings with online ojek drivers, conventional taxi drivers, and transportation application provider companies. Provided an understanding of the new rules of the game, such as upper and lower tariff limits and operating licenses. Regulated on Tariff and Quota Regulations, where the Transportation Agency regulates tariff limits so that there is no price competition that harms one party. The quota of online drivers is limited so that there is no excess number of drivers that have an impact on their income. Operating Zones and Pick-up Points are also regulated regarding zones that may and may not be used as passenger pick-up points. For example, online transportation is prohibited from picking up passengers in certain areas such as airports or stations that are already controlled by conventional taxis.

Challenges in Implementation are the emergence of conflicts between online and conventional transportation, there are clashes between online transportation drivers and angkot/taxis because feel they are losing customers, so the DKI Jakarta Regional Government holds dialogues and provides incentives for conventional transportation drivers to adapt, for example by digitizing services. However, law enforcement is inconsistent, many online transportation drivers continue to operate without following quota or tariff rules, so the government has tightened supervision with raids and sanctions for applications that do not comply with regulations.

2. **Implementation of Regional Regulation No. 4 Year 2014 on Local Labor Protection in East Kalimantan**

Companies are required to employ a minimum of 30% local labor in the mining and plantation sectors. If they do not meet the requirements, companies must provide reasons and training programs for prospective local workers. On the other hand, the local government cooperates with universities and BLK [Vocational Training Center] to train local workers so that they can compete with workers from outside the region. For example, certification of heavy equipment skills for workers in mining.

Supervision by the Manpower Task Force, where a supervisory team is formed to check whether companies really prioritize local workers in recruitment. Tax incentives are provided for companies that comply with this regulation. The challenge faced in implementation is that

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companies prefer workers from outside the region. Many companies prefer workers from outside the region because they are more experienced or have higher skills, so the local government is improving the quality of the local workforce with special training and cooperation with industry. Although some locals are less interested in attending training because they find it difficult or irrelevant.

3. **In Papua, the** sociology of law plays an important role in ensuring that local regulations are well implemented in accordance with the social conditions of the community. Involvement of indigenous communities is crucial to ensure that the regulations are implemented and accepted by the community. The main challenge is the gap in infrastructure and legal understanding, which needs to be addressed by socialization and strengthening community capacity. Examples of the implementation of local regulations related to the sociology of law are:

- Regional Regulation on the Protection of the Rights of Indigenous Papuans

Papua Special Regional Regulation No. 21/2008 on Indigenous Community-Based Forest Management. Recognition of Indigenous Peoples' Rights through this Perdasus, requires companies that want to manage forests to obtain permission from indigenous communities. Indigenous communities are given full rights in managing forest products traditionally. The institution of Indigenous Peoples established is tasked with ensuring the rights of indigenous peoples in the utilization of natural resources. For example, the DAP [Papuan Customary Council] is often involved in decision-making related to forests, with Fair Revenue Sharing mechanisms and Systems. If companies are allowed to manage forests, they must provide compensation or profit sharing to indigenous communities. The challenge is the clash between adat and modern investment. Some companies try to ignore this local regulation and occupy land without indigenous peoples' permission, so the local government strengthens supervision and provides strict sanctions for violating companies. Furthermore, there is still a lack of legal understanding among indigenous peoples. Many indigenous people do not understand how to legally claim their rights, which requires training and legal assistance so that indigenous people can defend their rights.

- Regional Regulation on Papua Special Autonomy

Papua Special Autonomy Law Number 2 of 2021, regulates the implementation of the Special Autonomy Fund for Education and Health, where most of the Special Autonomy funds are allocated for scholarships for Papuan children to study outside the region or abroad and the construction of regional hospitals with more complete facilities. There is an employee quota for

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Indigenous Papuans (OAP), local governments are required to recruit a minimum of 80% Indigenous Papuans in the recruitment of civil servants and government employees. If this is not met, there must be a special training program so that OAP can be better prepared to compete. The challenge in its implementation is that the Special Autonomy Fund is not always on target. There are cases where Otsus funds are used ineffectively or misappropriation occurs, so transparency and stricter supervision of budget allocations and There are still gaps in public services, even though large funds are allocated, some remote areas in Papua are still difficult to get access to proper education and health, so focus on basic infrastructure development so that all regions can feel the benefits of Otsus.

Mechanism Of Work In Society

In the sociology of law, law is seen not only implicitly, but also explicitly as part of social life that continues to interact with culture, norms and community interests. Law works in society as a tool for regulating social life, conflict resolution, and a tool for social change, by:

1. Maintaining order and harmony. Law creates rules that regulate social relations to avoid conflict. Example: Traffic regulations prevent accidents and ensure the safety of road users.
2. Conforming to culture and social values. Laws must conform to social norms in order to be accepted by society. Example: Regulations on customary land management in Papua, which respect indigenous peoples' rights to their land.
3. As a tool for social change. Laws can be used to promote social change for the better, such as gender equality or compulsory education. Example: Papua's Special Autonomy Law, which was created to give indigenous Papuans greater rights in governance and development.
4. Resolving social conflicts. In the event of a dispute, the law serves as a resolution mechanism through courts or deliberation. Example: The case of a land dispute between a mining company and an indigenous community in Papua, where resolution was done through the courts and customary dialog.

In Papua, the law often faces the challenge of differences between state law and customary law. The Freeport case shows how law, politics and culture interact in resolving indigenous conflicts. Special Autonomy for Papua stipulates that indigenous peoples should be more involved in natural resource management.

Case Example in Papua:

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Amungme and Kamoro Indigenous Land Dispute with PT Freeport Indonesia

The Amungme and Kamoro tribes in Papua claim that PT Freeport's mining area is on their customary land. Since 1967, the mine has been operating without the full consent of the indigenous community. The communities are demanding compensation and recognition of their rights to the land. In this case, the law works on multiple levels:

- National Law: The Indonesian government granted a license to Freeport based on investment regulations.
- Customary Law: Papuans have a customary land ownership system that is different from national law.
- International Law: Several international human rights organizations highlight the need to respect the rights of indigenous peoples.

In the settlement of the case, there was compensation and dialogue, after years of conflict, Freeport compensated in the form of funds and development programs for indigenous communities. In 2018, part of Freeport's shares were handed over to the Papuan local government as a form of economic justice for indigenous communities.

A deeper analysis of the Amungme and Kamoro tribes' land dispute case with PT Freeport Indonesia, including the perspectives of legal sociology, customary law, and state law. The gold and copper mines managed by Freeport are located in the Mount Nemangkawi area, claimed as customary land by the Amungme and Kamoro tribes. The indigenous people rejected the mining operation because they felt they had never been given permission to use their ancestral land. The main problem that then arises is the contradiction of understanding where state law recognizes Freeport's mining license, but Papuan customary law considers the land to belong to indigenous peoples. From the point of view of Sociology of Law, it can be traced that there is a clash of interests between Customary Law and State Law.

1. State Law Perspective

- Under Law No. 1 of 1967 on Foreign Investment, the government has the right to grant natural resource exploitation licenses to foreign companies.
- Freeport operates under a Contract of Work authorized by the central government, without direct consultation with indigenous Papuans.
- The government considers that land and natural resources are part of the national interest, so they can be given to foreign investors.

  Problems
- There is no clear mechanism for involving indigenous peoples in the licensing process.

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- The central government has more authority than local governments and indigenous communities in mining licensing matters.

2. Papua Customary Law Perspective

- The Amungme and Kamoro tribes have a customary land ownership system (hak ulayat).
- In customary belief, land is not only an economic source but also has spiritual and cultural values.
- Customary law states that any use of customary land must obtain approval from the customary owner, not just from the government.

  Problems
- Customary law is not strongly recognized in the national legal system, so indigenous communities do not have sufficient legal power to resist mining.
- There was no adequate compensation or fair pre-agreement for indigenous peoples when the mine began operations.

3. Human Rights and International Law Perspectives

- Several international human rights organizations have condemned the neglect of the rights of indigenous Papuans.
- The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) states that indigenous peoples have the right to give or refuse consent to projects that affect their lands (Free, Prior, and Informed Consent/FPIC).
- This case has received international attention because it is considered a form of exploitation without the consent of indigenous peoples.

From the above problems, dispute resolution and legal implementation are sought through a scheme:

1. Compensation for Indigenous Peoples. Since the 1990s, Freeport began to provide financial and social compensation for indigenous communities, such as: 1% of Freeport's revenue for local communities (1% fund program), education, health and infrastructure development programs for indigenous communities, and recruitment of local workers in the mining area. The problem is that many indigenous communities feel this compensation is insufficient compared to the environmental damage and loss of their customary land rights.
2. Transfer of Freeport shares to the Papuan government. In 2018, the Indonesian government took over the majority of Freeport's shares from a foreign company. A total

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of 51% of Freeport's shares are now owned by Indonesia, with 10% going to the Papua Regional Government. Indigenous communities hope that with these shares, they can benefit more from the mine. The problem is that the management of funds from Freeport shares must be transparent and actually reach the indigenous people, not just the local political elite.

3. Recognition of Customary Rights in National Law. After numerous protests and conflicts, the government began to include indigenous peoples' customary rights in mining regulations. Papua's Special Autonomy Law gives more authority to indigenous peoples in natural resource management. Several regions in Papua have begun to implement Special Regional Regulations on the Recognition of Customary Rights to protect indigenous peoples' lands.

All of the cases below, show how the law in Papua often clashes between state law, customary law, and political or economic interests. Some other examples of legal cases in Papua relate to the sociology of law and the implementation of law in society:

Case	Problem	Social Impact	Solution
Mozes Kilangin Airport Land Dispute, Timika	The Kamoro indigenous people claim that the land used to build Mozes Kilangin Airport in Timika is their customary land.	State law considers the land as part of a national development project, but customary law states that the land should be developed or compensated.	After a series of negotiations and protests, the indigenous community was granted compensation and involvement in the management of the airport
Illegal Timber Exploitation in Papua	Many companies are illegally logging forests without permission from indigenous communities or local government	Damages the environment and threatens the survival of forest-dependent inland tribes.	The government has increased surveillance, but illegal logging still occurs due to weak law enforcement.

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Case	Problem	Social Impact	Solution
Human rights violations in Paniai (2014)	Clashes between security forces and civilians occurred in Paniai, Papua, causing casualties.	Papuans demanded justice for the alleged human rights violations that occurred	The case remains a national and international concern, with calls for a transparent investigation.
Discrimination against Papuan students in Surabaya (2019)	A group of Papuan students in Surabaya experienced discriminatory actions and racist attacks from unscrupulous officials and the surrounding community.	Triggered large protests in Papua and other parts of Indonesia, demanding justice and respect for the rights of Papuans	The government took action against those involved and increased social reconciliation efforts between Papuans and other regions in Indonesia.

CONCLUSION

The learning in the perspective of Legal Sociology from a number of cases that have been described is that law in society is not only in the form of written rules, but must also consider social values, culture, and justice for all. The existence of cases or disputes shows that national law often clashes with customary law, so there must be a fairer legal mechanism for indigenous peoples. The resolution of legal conflicts in Papua and several other regions throughout the archipelago requires an approach that accommodates the interests of indigenous peoples, governments and companies in a balanced manner.

Transparency in the causality of legal interactions of the parties in various sectors and fields of development is very important so that there is an understanding between the government, indigenous peoples, and third parties [for example, investors] really get legal benefits together. Thus, Sociology of Law is seen as very instrumental in contributing to the formation of laws in various regions by considering the scheme and mechanism of its work in a *pentahelix* society.

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REFERENCES

Alfarisi, S., & Hakim, M. S. (2019). Hubungan Sosiologi Hukum Dan Masyarakat Sebagai Kontrol Sosial. *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia*, *1*(2), 20-28.

Biroli, A. (2015). Problematika Penegakan Hukum Di Indonesia (Kajian Dengan Perspektif Sosiologi Hukum). *DIMENSI-Journal of Sociology*, *8*(2).

Creswell, J. W., & Poth, C. N. (2018). *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (4th ed.). SAGE Publications.

Darmawati H. (2023). *Sosiologi Hukum*. Ed. Arif Ridha, M.I.Kom., Penerbit Resota Mediatama. Dicetak oleh Ayuandirya Offset. Makassar.

Hadi, N. A. K. (2022). Penegakan Hukum Di Indonesia Dilihat Dari Perspektif Sosiologi Hukum. *Jurnal Hukum Dan Pembangunan Ekonomi*, *10*(2), 227-240.

Hasibuan, M. S. (2020). *Metode Penelitian Kualitatif dalam Pendidikan dan Ilmu Sosial*. Pustaka Pelajar.

Munir, F. (2011). *Teori-teori dalam Sosiologi Hukum*. Fajar Interpratama Mandiri. Gramedia Grup. Jakarta.

Saleh, K., Agusta, M., & Weni, W. (2020). Hukum dan masyarakat dalam perspektif sosiologi hukum. *Datin law JURNAL*, *1*(2).

Sholahudin, U. (2017). Pendekatan sosiologi hukum dalam memahami konflik agraria. *DIMENSI-Journal of Sociology*, *10*(2).

Wibowo, A. & Kossay, M. (2024). *Teori Sosiologi Hukum*. Yayasan Prima Agus Teknik. Semarang.

Yahman. (2020). *Pengantar Sosiologi Hukum*. Jakad Media Publishing. Surabaya.

Zia, H., Sari, N., & Erlita, A. V. (2020). Pranata Sosial, Budaya Hukum Dalam Perspektif Sosiologi Hukum. *Datin Law Jurnal*, *1*(2).

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