

Hybridization of Indigenous Knowledge-Based Positivistic Governance

¹Syahrul Yasin Limpo, ²Farida Patittingi, ³Muh. Hasrul, ⁴Ahsan Yunus

ABSTRACT--- *The success or failure of democratic reform in Indonesia is a key question for Indonesia itself and for the surrounding region. Although Indonesia's transition to democracy holds out the promise of good governance, this cannot be taken for granted as the recent practical governance is likely future challenges faced by Indonesia as it implements decentralization and provide some recommendations to improve the ongoing decentralization process. This article is a normative-legal research by using statute, case, and conceptual approaches. Meanwhile, data were analyzed descriptively, consisting of quotes. The results show that the practice of governance based on rather rigid State governance laws actually need to be hybridized with local wisdom (indigenous knowledge) in order to have a participatory spirit that can encourage active community participation in supporting government and development movements. This is a hybridization of Positivistic Constitutional Law with Indigenous Knowledge to formulate the complexity of the challenges faced by a government. Responsive governance supported by high community participation is the key to what we have achieved so far. This is possible as the hybridization of positivistic State administration law with indigenous knowledge in formulating policies as needed by the people.*

Keywords--- *Good Governance; Hybridization; Indigenous Knowledge; Local Government*

I. INTRODUCTION

Good governance refers to government agencies' conduct in implementing innovative policies and programs to increase the quality of public service (Mardiasmo *et al.*, 2008). Recent decentralization reforms in low- and middle-income countries have revived a long-standing debate on the benefits and drawbacks of empowering local governments. While some scholars highlight advances in local democratic accountability, others emphasize the dangers of decentralized governance when democratic practices are poorly institutionalized (Fossati, 2016).

The practice of governance is not always run as the rules of the constitutional law that applied in full and consequent. Frequently the problem found in implementing governance that requires wisdom (*freies ermessen*) in decision-making. Even, requires the implementation of impure rules of the State Administrative Law as an applicable legal theory, but rather a cross that takes place between the habit of State administration law and approaches of custom, habits and culture of South Sulawesi's peoples.

This natural process of crossing is what the authors called, "*hybridization of constitutional law*". While the culture, customs and habits of the ancestors that I have learned so far epistemologically are known as *Indigenous Knowledge*. Hybridization is a term adopted by the author of agricultural science which is usually used to describe

¹ Ministry of Agriculture Republic Indonesia, Indonesia, komandansyl@gmail.com

² Faculty of Law, Universitas Hasanuddin, Indonesia, farida.pada@unhas.ac.id

³ Faculty of Law, Universitas Hasanuddin, Indonesia, luluhukum@gmail.com

⁴ Faculty of Law, Universitas Hasanuddin, Indonesia, ahsanyunus@unhas.ac.id

the process of crossing two varieties of plants or animals, each of which has certain advantages in order to produce a superior new variety.

The term “*hybridization*” is intended to emphasize a novelty and excellence elements that results from this hybridization process. All this time, the author (as the regional head) has unknowingly used a hybrid product to overcome the complexity of governance. It can be assumed that our success has brought South Sulawesi superior to compete with other provinces in Indonesia because we use superior products in the governance.

This is what distinguishes Universities and Research institutions from the practical world. In Universities and Research Institutions, a superior product is produced from a systematic and structured assessment process, while in the practical world as I have worked so far, a superior product or best practices is usually coming from repeated trial and error processes until finding the best formula.

There is no contradiction and controversy between the two processes, but instead it will enrich and complement each other. In the end it comes down to producing something better and more useful in responding to the increasingly advanced and complex challenges of civilization in the future. Today, the era is referred to as the VUCA era (Potsangbam, 2017). An era marked by volatility, uncertainty, complexity and ambiguity that is very high in all aspects of life that has never happened in previous eras. Therefore, it is important to respond to these rapid changes, not only quickly but changes that experience an acceleration that can be hesitant in dealing with it, if not really ready.

In Indonesia, legal thinking is undeniably much influenced by the thought of the legacy of Continental European legal traditions that also known as *Civil Law*, which developed since the entry of the Dutch colonial government into Indonesia approximately four centuries ago. Epistemologically, legal science in Indonesia develops following the tradition of the positivism paradigm, which has become the mainstream in Europe. From the point of view of positivism, law is the accumulation of norms that have been negotiated by citizens as a system of rules that are autonomous and neutral (Kasim, 2000). The development of this positivism received strong support from academics in the field of law (*academic jurists*) who developed an attitude that academic and professional authority can interpret law. The next, this community is obsessed with continuing to establish formal, rational and logical legal arrangements. This is what is called the tradition of positivistic legal thought.

The rapidly changing times that come along with all the challenges of change in the order of human life, encourage a number of thinkers and practitioners of law to question the relevance of the tradition of positivistic legal thought to the present conditions. They place legal studies no longer focused solely on legislation, but on a broader and dynamic context. In other words, law must be in harmony with the logic and social, political and cultural dynamics of society. They observe law science through the viewpoint of behavior, culture and social dynamic.

Until now, the legal thinking based on behavior, cultural and social still remains a minor in the midst of analytical-positivistic thinking that remains dominant. According to Hunt (1978) on the development of social and legal studies, in his work “*The Increasing Intellectual Ascendancy of Sociology*” found there was a flow of general thought that began to grow, which gave a new orientation in legal analysis. He concluded that there was a strong magnetic that drive the legal, social and political community to analyze law by including socio-cultural phenomena. It means that there is a room for studying legal phenomena by considering socio-cultural aspects and placing legal thinking in the socio-cultural context.

At a practical level, the positivistic local governance is implemented with all its advantageous and disadvantageous. And also, the adaptation process of the socio-cultural dynamics of the community, which in some ways is different from the socio-cultural conditions in other regions. Ideally, the government does not simply apply positivistic Constitutional law in local governance in order to respond to the socio-cultural dynamics that continue to develop in society and free will (Covey, 1989; Aspan *et al.*, 2019). In many situations, its successes overcome governance problems with a socio-cultural approach. Norms, values, habits and culture strongly influence not only personally but also as bureaucrats.

But this is not a problem because there is a clear demarcation line for difference. It is fortunate that in the bureaucratic world, the demarcation line is unknown, so that a Professor who does not have a career from the bottom but wants to be a bureaucrat will not be called a not permanent bureaucrat or a not permanent Regent/Mayor. But whatever it is, someday it is hoped that there will be a hybridization of campus governance rules with *Indigenous Knowledge* in achieving the objectives of governance.

Certainly, it cannot be denied that the formulation of the Constitutional law according to the positivism thought has been built from the accumulation of norms that have been negotiated by the people or its representation into positive law. Many countries that had been colonized by the Netherlands adopted solely legal thoughts from the Netherlands. Likewise, countries that had been colonized by Britain adopted legal products from England. The closest example is our neighbor Malaysia, which even has a Democratic-Monarchy system that mimics the British system of government. Definitely, impersonation cannot give originality. Even though the most fundamental foundation of a country's legal structure is norms and noble values that live in the midst of its society. Only with that, positive law has strong legitimacy to be accepted and fully supported by the people. Luckily because long before independence, the founding fathers of this country with all their wisdom and sensitivity have sought to grasp the aspirations of the indigenous norms and local wisdom of the archipelago to formulate a state ideology which then becomes the basis and spirit of all legal products present in this country, starting from the 1945 Constitution as the *filosofische grondslag*.

II. METHODOLOGY

This study is a normative-legal research by using statute, case, and conceptual approaches (Marzuki, 2008). Meanwhile, data were analyzed descriptively, consisting of quotes. Data were analyzed with descriptive qualitative analysis with content analysis.

III. RESULTS

Hybridization of Positivistic Regional Government Law and Indigenous Knowledge: Challenges and Development

The success of national development goals will be achieved optimally as aspired, if there is a good development planning in various aspects of life. National development is the accumulation of regional development, which is essentially a place for accumulation of development programs (Nazarudin. 2015). Regional development will be

done well, synergistically and directed if it starts with careful and professional planning coordination and consider continuity aspect.

The development of globalization that has hit the cities have been enjoyed its wisdom, but accompanied by a number of increasingly complex problems and no less complicated. According to Richard Rogers, “*cities are undermining the world’s ecosystem... they are becoming socially diversified and environmentally hazardous*” (Budihardjo & Sujarto, 2009). This phenomenon needs to be realized by preparing preventive measures at an implementation level. Small cities will turn into medium cities, medium cities will grow into big cities, and big cities will develop into metropolis cities, not just stop there, because big cities will bloom into megapolist cities, to become a world city (ecumenopolis), and if not careful will end in a tragic position as necropolis city (Nazarudin, 2015).

Observing various paradoxes and urban deviations, the main challenges that must be faced and must be immediately addressed by urban planners and all the main actors determining the urban development is how to reverse the adverse tendencies. Sustainability in city development does not merely contain the notion of ecological or biophysical sustainability, but also socio-cultural and economic (Pakpahan, 2019). The development of spatial practices can also be observed in the institutional and legal aspects and applicable laws and regulations (*ius constitutum*).

As a direct result of this change, Regional Head can come from anywhere, including among artists who mostly lack knowledge and experience in the practice of Constitutional law, which also means minimal experience in managing State power. It does not mean that there is no room for the executive, in this case the bureaucracy, to be creative in its implementation. Creative is permissible as long as it does not conflict with existing formal law and does not violate the philosophy of law intended to create certainty, order and justice.

Power is something that related with the lives of many people, the lives of citizens wherever they are. Therefore, it is called power because it has the power to change, control and even influences many people. This power can be very dangerous if it is in the wrong hands. Conversely, it can also be a tool to bring great benefit if used according to the mandate of the State given by our constitution. “*Power tends to be corrupt, and absolute power is absolutely corrupt*”. The power has a potential to be abused, and absolute power can certainly be easily distorted. Hence, to ensure that power is not misused, a State organization and all the legal instruments that govern it are established. That is the philosophy of the birth of Constitutional law which is practiced by the government in the form of Governance Law and Administrative Administration.

Another thing that absolutely must be understood is that law is a tool. The essence of a tool, its function is very determined by who uses the tool. Certainly, we are very familiar with the term “*the man behind the gun*”. Gun can be a destructive tool, can also be for self-defense or earn a living by hunting. In the United States, a country that we know is very liberal will revoke the right to use firearm for lifetime if it has been proven to misuse their firearms. If this weapon is likened to power, then it is very natural that someone who has legally or *incracht* according to the court to abuse authority that harms the State, is no longer entrusted to hold power. Even if our positivistic legal decisions do not explicitly state that, then a civilized society can certainly use common sense to be careful in giving confidence to this power, because of course there is great potential for future abuse. Power can also be likened to a knife that would be very dangerous in the hands of an insane person. But it will be different if it is in the hands

of a reliable Balinese carver. The knife can be an extraordinary tool for creating beautiful and admired masterpieces of wood carving.

The formulation of law in Indonesia, including the Constitutional law, originates from the norms and cultural values of our nation. This departs from the development of national law which is the result of assimilation of a legal system that grows and develops from local culture. This national legal system is actually based on the socio-cultural prototype of all Indonesian people from various ethnic, ethnic and racial backgrounds. Therefore, the development of the national legal system is indeed Indonesian-oriented (Rahardjo, 2009).

The formulation of national law in this modern era must not be contrary to the sense of social and cultural justice of the archipelago, and at the same time must also accommodate the international legal system. By this principle, the legal system should have been complementary and have adaptive capacity with existing systems, including the system of values, norms, habits and customs of the community where the law is applied.

It is not surprising that at any time the government is confronted with various problems and challenges that must be responded to, all references that exist include knowledge about the law, behavior and socio-cultural conditions of the community must be presented together. Therefore, synergy between government practitioners who understand the law with experts and academics who study other references is an absolute thing to do. As a party who is in a position as a practitioner, the government must naturally take strategic steps to ensure that the management of the inherent state power, among other things to the regional government, can be carried out as effectively as possible. One of them is through an *Indigenous Knowledge*-based approach to governance.

The historical message which we later interpret as *Local Wisdom* in the context of governance today implies an important message that a leader, a Regional Head must always have integrity in defending the interests of his people. All forms of cooperation offered by outside parties must first be filtered by prioritizing the interests of the people as the main consideration, not only for the prestige or popularity of the Regional Head. The attitude of prioritizing the interests of the people is the main attitude that must be present in every bureaucrat. Because if the government is inclined to certain parties then its legitimacy as a government or power manager will be lost. Recognizing the importance of this neutrality attitude, the government regulates the procedure for appointing and inaugurating bureaucrats in a position that is obliged to take an oath to always prioritize the public interest rather than personal or group interests. This oath taking will lose enthusiasm or driving force if it is not associated with local wisdom and religious values which are usually more sanctioned than the written law itself. Once again the hybridization of positive law rules with local wisdom becomes very important because without this hybridization effort, positive law will lose its spirit.

People or community participation is an important part of the success of running the wheels of government. Take the example of the phrase in Makassar language that I often say in various forums: "*parentai taua ri eroqna*". If translated freely it means: *rule as the wishes of those who are governed*. A moral message if it cannot be called a moral obligation to all stakeholders, be it executive, legislative or judicative so that they do not arbitrarily apply the law because it may be the rejection or dissent of the people not because they really want to disobey but because they do not know or they feel not *nipakatau* or respected. There is no explanation of the values of *sipakatau* and *sipakalabbiriq* in positivistic Constitutional and Governance law, but it must inspire and become a spirit in the administration of governance, especially in South Sulawesi.

The governance will work well if government actions are in line with the hopes, aspirations, norms and values of the community. In the practice of government bureaucracy, not infrequently what is thought and desired by the government or the authorities in line with community expectations. This is because positivistic laws that are formulated nationally are equated for application throughout Indonesia. This is our challenge as a consequence of a unitary state whose legal rules apply nationally, except in some autonomous regions such as Aceh, Yogyakarta and Papua. We are challenged to accommodate *Indigenous knowledge* in our State and government law practices in order to be obeyed by our society without having to change the positive rules. That is the meaning and urgency of hybridization. The government succeeded, the community succeeded. This is a *win-win* solution, said Stephen R. Covey, this is a synergy that will maintain mutual relations and will guarantee a harmonious relationship between the government and its people in a sustainable manner.

If there is no creative effort from the local government in understanding the local needs of the community, then I think there is no important breakthroughs that can inspire to be used as best practices for the next government. A trial to create local policies and prioritize education was done even though at that time nationally education was not yet a priority, at that time the budget allocation in the State budget was still relatively small. In South Sulawesi, an exercise has been conducted on our Regional Budget to provide a greater allocation for improving the quality of education in South Sulawesi. Hence, the hybridization of the education rules governed by country we cross with the socio-cultural conditions of the community and finally can produce a regional regulation on the South Sulawesi Regional Budget that accommodates the freeing of education costs for elementary schools which until now we have expanded to high school and vocational schools, even up to college level.

In the meaning of local wisdom in South Sulawesi society, it is also well known that the choice to sink rather than recede back to shore is an expression of consistency in running the ark of organization. The government must strong in managing the powers mandated by the State. We not only try to develop good governance but at the same time also try to develop strong government governance. Because a good will is not guarantee the implementation of governance without the power to defend the right. This good governance thinking was born from the thought of scientists and practitioners of government in the West whose behavior and socio-cultural conditions are different from our community. Then the strength that is *getting* or tenacious must characterize our government in South Sulawesi. The government should not be dictated let alone humiliated by any party because it involves the dignity or *siri* ' of the State.

Various governance program, development and community development are trying to be realized. The key to its success actually lies in the ongoing efforts to gain community support and participation. Without the participation and community support as well as any program planned, it will not get community participation and support and can even turn us to embarrass each other. One of the teachings of local wisdom is that the people' self-esteem is in their government, the success of an effort depends on the support of the people, so govern according to the will of the people. This is a discipline rooted in local wisdom that must always be prioritized. This is also in line with the opinion of management experts, Larry Bossidy *et al.* (2002). One important discipline that we must do is to promote participation by sharing vision and equalizing the mission and then maintaining mutual trust or accountability in its implementation.

Efforts are needed to orchestrate government practices in order to create harmony at all levels of government. Because each Regional Head knows best the condition of the region and its people, including local wisdom

(*Indigenous Knowledge*) that lives in the midst of its people. This is also a form of hybridization of governance laws where the government is generally accustomed to communicating one way with the people by issuing relevant regulations. The scientific basis of this practice of governance is also inseparable from the inspiration of Osborne and Gaebler (1993), who sees the pattern of government in the United States which tends to only focus on the application of formal government rules and administration, increasingly alienates the government from the dynamics and aspirations of the people's needs. So, David and Ted look for patterns and see the spirit of good governance in the world of US' entrepreneurs which are judged to be transformed into governance of public services. Therefore, many parties translate the *Government Reinventing* with the term "Endeavor Bureaucracy".

Besides in the field of law, indigenous knowledge also discusses the field of government. This is said in one of *sinrilik* that tells about the leader namely *Sinriliq Kappala Tallumbatua*. *Sinriliq* is one of the oral literatures found in Makassar society. *Sinriliq* is delivered orally by chanting and accompanied by violin-like sounds called *kesok-kesok*. *Sinriliq* is a cultural treasure that also inspires leaders, including the government, on how to manage and keep power in the proper corridor.

As explained above illustrates that a leader is not obeyed then there will be damage in a country. Likewise, if honesty is no longer the main character and actually hides the truth. When right something is blamed and wrong something is justified, then humans are likened to creatures that prey on one another. The big preys the small, the strong preys the weak. Because of the riots that occurred, the economy of community was damaged too. It is likened to a kitchen which is a source of unkempt life to overgrown with weeds. Even the rice pounder which is a symbol of the production sector is left neglected. The metaphor in *Lontaraq* as above can be interpreted that when the country is destroyed because the rules are not enforced, then wait for the destruction of other joints of life.

The current issue about the capacity of government organizations in the world is how to solve the complicated problems that occur suddenly and unpredictable. The rapid development of knowledge, science and technology always goes beyond the limits of organizational capacity and the level of government administration in responding. The complexity that occurs tends to involve multi-level, multi-sectoral actors and uncertain knowledge. The presence of online application technology in the fields of transportation, retail trade, microfinance, education, government management and many other sectors, makes government organizations and regulations often nervous about responding. Rapid changes invite a debate and controversy in society, some even lead to horizontal conflict. This situation no less fades public confidence in the role of mediation and government regulation. So, the decline in public trust is not only due to governmental actions or government capacity that is not in accordance with public preferences, but also due to government uncertainty in responding to the progress of science, technology and civilization is changing very rapidly.

At the same time, constitutional law is dwarfed as government administrative affairs which weaken its power as a source of inspiration in responding to increasingly dynamic and complex community problems. Resolving governance problems today is no longer enough to rely on legal and administrative instruments as they have been used successfully in the past. This means that the main thing must be done in order to answer the complexity of government problems. Because we might assume that it is a problem but only natural dynamics that do not need to cause panic in responding.

If the government conducts intensive dialogue with its people as we have always done so far, then the gap between *das sein* and *das sollen* will not be too wide. *Effective government must build from discussion to*

discussion, more effective means more dialogue. Therefore, we have formulated a number of government policies in South Sulawesi from coffee shops to coffee shops so that they can always meet the eyes and hearts of the people. "Take my hand I take your hand". Dialogue is built on the basis of equality and mutual trust and mutual understanding. Because we believe, an effective dialogue formula listens to something which maybe you don't like to listen. Government officials must be accustomed to listening not only normative things but something they might not like to listen. Because not infrequently the problem can be solved precisely from the willingness to face crucial conversations that were initially bitter to be heard but that is where the answers to the problems and needs of the community are found.

IV. CONCLUSION

The practice of government governance based on rather rigid State governance laws actually need to be hybridized with local wisdom (indigenous knowledge) in order to have a participatory spirit that can encourage active community participation in supporting government and development movements. This is a hybridization of Positivistic Constitutional Law with Indigenous Knowledge to formulate the complexity of the challenges faced by a government. Responsive governance supported by high community participation is the key to what we have achieved so far. This is possible as the hybridization of positivistic State administration law with indigenous knowledge in formulating policies as needed by the people.

REFERENCES

1. Mardiasmo, D., Barnes, P, & Sakurai, Y. (2008, March) Implementation of good governance by regional governments in Indonesia: the challenges. The Twelfth Annual Conference of the International Research Society for Public Management (IRSPM XII).
2. Fossati, D. (2016). "Beyond "good governance": The multi-level politics of health insurance for the poor in Indonesia." *World Development* 87: 291-306.
3. Potsangbam, C. (2017). Adaptive Performance In Vuca Era–Where Is Research Going?. *International Journal of Management*, 8 (6).
4. Kasim, I. (2000). *Membebaskan Hukum*, Yogyakarta: Insist Press.
5. Hunt, A. (1978). *The Sociological Movement in Law*. London: Macmillan Press.
6. Covey, S.R. (1989). *The 7 Habits of Highly Effective People*. New York: Simon and Schuster,
7. Aspan, Z & Yunus, A. (2019). The right to a good and healthy environment: Revitalizing green constitution. *IOP Conference Series: Earth and Environmental Science* 343 (1), 012067.
8. Marzuki, P.M. (2008). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
9. Nazarudin. T. (2015). Perencanaan Kota Secara Komprehensif Berbasis Hukum Integratif Menuju Pembangunan Kota Berkelanjutan. *Jurnal Cita Hukum*, 3 (2): 213-24.
10. Budihardjo, E & Sujarto, D. (2009). *Kota Berkelanjutan (Sustainable City)*. Bandung: Alumni.
11. Pakpahan, R.H. (2019). "Pembaharuan Kebijakan Hukum Asset Recovery: Antara Ius Constitutum dan Ius Constituendum." *Jurnal Legislasi Indonesia*. 16, (3): 369-78.
12. Rahardjo, S. (2009). *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*. Yogyakarta: Genta Publishing.

13. Bossidy, L., Charan, R., and Buck, C. (2002). *Execution: The Discipline of Getting Things Done*. New South Wales: Currency Media.
14. Osborne, D., and Gaebler, T. (1993). *Reinventing government: how the entrepreneurial spirit is transforming the public sector*. 18th edition. New York: Plume.