

THE APPLICATION OF THE BALANCE PRINCIPAL IN THE NATURAL RESOURCES MANAGEMENT IN MARINE AND COASTAL AREAS*

Jantje Tjiptabudy**

Bagian Hukum Tata Negara/Hukum Administrasi Negara,
Fakultas Hukum Universitas Pattimura, Ambon
Jalan Ir. M. Putuhena, Kampus Poka, Ambon, Maluku 97233

Abstract

This research aims to discuss the implementation of balance principle of marine and coastal resources management. The type of this research is a normative research by way of applying the provisions and conceptual approach. The result of the research shows that the government authority is more dominant than protect the interest of adat law society. In the implementation of balance principle with regards to the coastal and natural resources management has not yet fully provided the positive impact for the social welfare. Besides, both parties have different concept of balance principle, so that it is incompatible with the substance and interpretation in its implementation.

Keyword: *balance principle, adat law society.*

Intisari

Penelitian ini bertujuan mengkaji penerapan asas keseimbangan dalam pengelolaan sumberdaya alam laut dan pesisir. Jenis Penelitian ini adalah normatif dengan menggunakan pendekatan perundang-undangan dan pendekatan konsep. Hasil penelitian menunjukkan bahwa kewenangan pemerintah lebih dominan dalam pengelolaan sumber daya alam, namun kurang memberikan perlindungan terhadap kepentingan masyarakat hukum adat. Penerapan prinsip keseimbangan dalam pengelolaan sumberdaya alam di wilayah laut dan pesisir belum sepenuhnya memberikan pengaruh positif bagi kesejahteraan masyarakat. Selain itu, kedua belah pihak mempunyai konsep yang berbeda tentang prinsip keseimbangan sehingga dalam penerapannya belum sesuai dengan makna atau hakekatnya.

Kata Kunci: prinsip keseimbangan, masyarakat hukum adat.

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** Correspondence address: dekan@fhukum-unpatti.org

A. Background

Management and utilization of natural resources, both marine as well as other natural resources as national economic assets, is held in line with Article 33(3) the Constitution of the Republic of Indonesia of 1945, which asserted that “The earth and water and natural resources contained in it are controlled by the State and shall be put into maximum use for the prosperity of the people”.

Implementation of Article 33 of the Constitution of the Republic of Indonesia 1945 is further regulated by law with regard to the principles of efficiency with justice, among others. Therefore, the existing resources must be allocated efficiently to support the healthy growth of the national economy and, at the same time, to achieve justice. The balance of economic progress in the entire country and must be well considered, and in the implementation of regional autonomy must also be guarded for national economic unity.¹

To further describe the provisions of the Constitution of the Republic of Indonesia 1945, there are several laws passed by the government, namely Law Number 5 of 1960 on Basic Regulation of Agrarian, Law Number 32 of 2009 on Environmental Protection and Management, Law Number 32 of 2004 on Regional Government, Law Number 17 of 2007 on National Long-Term Development Plan, and Law Number 27 of 2007 on Management of Coastal Areas and Small Islands.

In the reality of what happens, other than the rule of positive law governing the management of marine and coastal natural resources, rules of customary law are also established. Customary law that is still alive and thriving in the community system of customary law also regulates the management and utilization of natural resources in marine and coastal areas. The real authorization over the marine and coastal areas by the indigenous people in line with the relations they do to meet their

needs over the area is something that is passed down from the ancestors. Within this particular area, in *de jure*, there exists the authority of indigenous people. Authority here is related to the management and use of natural resources, according to the principles of customary law with the peculiarities of each. This principle of peculiarities of each is difficult to be replaced as stated by Koentjaraningrat that:

As part of the customs and the ideal form of culture, the cultural value system exists as if it is outside and above the individuals who become members of the community concerned. Those individuals since childhood have been infused with cultural values that live in the community so that the conceptions have long been rooted in the nature of their souls. That is why the values of the culture are difficult to be replaced with the values of other cultures in a short time.²

Recognition of the rights of indigenous people is constitutionally contained in the Constitution of the Republic of Indonesia 1945 in Article 18B paragraph (2) which states that: “The State recognizes and respects units of indigenous peoples and their traditional rights as long as they are all still alive and in accordance with the development of society and the principles of the Republic of Indonesia, which is regulated by law.”

In Maluku, especially in the Aru Islands, the *petuanan* region or the communal area of the indigenous people are often entered by fishermen or entrepreneurs who have large sum of capital with a variety of sophisticated tools, so that for the indigenous people surrounding coastal areas and small islands, it becomes difficult to obtain fishes and other marine resources. Fishery entrepreneurs with big capital are granted permission from the government so they can freely install fish aggregating devices in areas adjacent to the area of capture of indigenous peoples, and eventually the fish resources in the region of indigenous peoples

¹ MPR RI, 2003, *Panduan dalam Memasyarakatkan UUD Negara RI Tahun 1945-Latar Belakang, Proses dan Hasil Perubahan UUD Negara RI Tahun 1945*, Secretary-General of MPR RI, Jakarta, pp. 225-226.

² Koentjaraningrat, 1984, *Kebudayaan, Mentalitas dan Pembangunan*, Gramedia, Jakarta, pp. 25-26.

become reduced.³

Government policy that gives permission to the entrepreneurs but less attention to the interests of indigenous peoples who live primarily in coastal areas would certainly impact the lives of indigenous peoples, and eventually they would be living in uncertainty.

Such circumstance causes imbalance because of the strong dominance of the government. Constitutionally, the existence of indigenous people is recognized, including the communal *petuanan* region both at sea and on land. This implies that the government's development policies, especially in the field of law, must remain consistent and pay attention to the existence and rights of indigenous communities as the ones that already existed before the state was formed. Waiving the rights and existence of indigenous peoples will inevitably lead to imbalance, which can lead to upheavals in the life of society, nation and state.

Conflicts of interests will inevitably arise and affect government policies. It should be acknowledged that the government exists for the benefit of people, but government policies are often detrimental to the society. If government policy is contrary to the public interest, particularly indigenous peoples, then it will definitely bring a negative impact on the development process in general and more specifically related to natural resource management in marine and coastal areas. It is said so because the three essential pillars of natural resource management in marine and coastal areas that are the government, employers and indigenous peoples must be in a balanced position.

Specifically for indigenous people, they actually have traditional rights from the beginning to natural resources both on land and at sea with the great ability to preserve and maintain the natural balance of the ecosystem. The presence of the large employers in the management of natural resources leads to an imbalance in natural resource

management, especially in marine and coastal areas.

Constitutional principle as formulated above is apparently often violated and the victims are indigenous peoples. The presence of large employers in the management of natural resources should be given access in accordance with equipment capabilities or owned infrastructure, so there needs to be government policies that provide a balance in the management of natural resources.

Therefore, there is the need for balance in the control of marine and coastal areas by indigenous people associated with the government's policy on the limits of authority of marine and coastal area management. In this perspective, there is also a recognition given by the state which can be categorized as objective recognition.

Government, as a part of the nation, has a responsibility to create a harmonious life of nation through various policies in the form of legislation. The responsibility of government must be in line with the basic needs of the people, especially of indigenous people in this issue, to create a harmonious balance in the atmosphere so it does not cause too much conflict in people's lives both vertically and horizontally. Based on the above background, the problem to be studied is: how is the embodiment of the concept of balance that can give a positive contribution to natural resource management in marine and coastal areas?

B. Research Method

To answer the problem that has been formulated in this study, the author used the type of normative legal research, using two approaches, namely regulatory approach and the approach of the concept. The collection of legal materials in the study is conducted by an inventory of documents through literature study. Literature study is how to find legal materials or data by reviewing legal documents, such as law books, law journals and legal provisions, legislation and other relevant legislation which

³ M.J. Saptanno, "Kajian Yuridis tentang Pengelolaan Wilayah Pesisir dan Laut", *Paper*, presented on "Seminar Hukum Lingkungan Pengelolaan Wilayah Laut dan Pesisir" in the Faculty of Law Universitas Pattimura, Ambon, 2003, p. 2.

include: (a) primary legal materials, (b) secondary legal materials, and (c) tertiary legal materials. The method used in the analysis is a qualitative method. With the methods of qualitative, the content of analysis is done towards the contents of the legal provisions relating to the management of marine and coastal areas.

C. Research Result and Analysis

1. Legal Arrangement of Marine and Coastal Areas Management

Indonesia is a nation based on the rule of law, and it belongs to the category of modern constitutional state. Modern conception of the nation based on the rule of law can constitutionally be referred to the formulation of the country's goal: to protect the whole Indonesian nation and the entire country of Indonesia, promote the general welfare, the intellectual life of the nation and social justice. Normalization of the purposes of the nation, in particular to promote the general welfare and social justice, among others, is contained in Article 33 of the Constitution of the Republic of Indonesia 1945.

Article 33 of the Constitution of the Republic of Indonesia 1945 applies as a base of the state's right to control the basics of the economic system and the desired economic activities in the country of Indonesia. Article 33 is not a stand-alone provision, but it is rather related to social welfare. The concept of well-being here has a broad meaning and scope, where people should be free to enjoy it.

Based on such thoughts, the attempt to understand Article 33 cannot be separated from the basic concept of social welfare.⁴ The purpose of state's right of control over natural resources is social justice and the overall prosperity of the people. Specifically relating to government policy in the management of marine resources, it can be explained that there are at least three characteristics of marine resource management policies practiced, namely (1) centralized, (2) is based on the doctrine

of common property, and (3) ignoring the legal pluralism.

Centralized policy is with regard to the substance and also the formation process. The substance of the centralized policy is reflected in marine resources management authority, or at least it is what happens in the fisheries sector. In this sector, the licensing process as well as the competent authority is almost entirely in the hands of the central government. If there is a delegation of authority to the Governor, it is solely in his capacity as representative of the central government in the regions. Similarly in the policy-setting process, almost all of the steps involve the central government. The indication is that marine natural resource management policies are generally packaged in the form of laws, government regulations, or presidential decrees which process of establishment solely involve central government officials.

Marine resource management policies that are based on common property as a second feature also contain a number of disadvantages. By basing the policy on the doctrine of common property, the sea is positioned as a common property resource. Consequently, the sea is treated like a treasure of no man's land where everyone is free to do the occupation and exploitation (open access). These characteristics are very evident in the Fisheries Law (Law Number 31 of 2004) and also in other policies. This is what lies behind the emergence of the various conflicts in the use of marine resources, especially among traditional fishermen and fishing company.

Basic formation of marine management policy, according to the doctrine of common property, in fact has many weaknesses. In relation to it, Francois T. Christy stated that there are four negative consequences of a marine resource management policy based on the doctrine of common property, namely; (a) the waste of physical resources, (b) economic inefficiency, (c) poverty of

⁴ Bagir Manan, 2004, *Menyongsong Fajar Otonomi Daerah*, Pusat Studi Fakultas Hukum UII, Yogyakarta, p. 55.

the fishermen, and (d) conflicts between resource users.⁵

Ignoring legal pluralism, which is the third characteristic of marine management policy, is incarnated in the form of lack of recognition of marine resource management system based on customary law. In fact, such management system is still practiced in many regions. Some examples could be given, such as the system of sea territorial rights in Maluku or fisheries in Bagang and Rompong of South Sulawesi.

According to Van Vollenhoven,⁶ people in South Sulawesi have for long practiced the claims over waters for fishing purposes. In Aceh, certain parts of the sea near the coast can be controlled from any permission from the *Sultan*. In Tegal, coastal waters are divided among the fishermen as successive *gogolan* provided for them to catch fish. In Ambon, the waters are considered as coastal village territory. In Banten, coastal waters called *patenaken* only entitles the concerned villagers to catch fish. Even to a certain degree, legal pluralism in the management of marine resources also hints that the sea can be an object of single ownership, something which is diametrically different from the doctrine of common property.

2. *Ulayat* Right of *Adat* Community or Indigenous Peoples over Ocean and Coastal Areas

Hak ulayat laut (communal right of the ocean) is the Bahasa translation of a phrase in English, “sea tenure”. As Sudo⁷ cited Laundgaard, the term refers to a set of sea tenure rights and mutual obligations that arise in connection with the ownership of marine areas. Sea tenure is a system, in which several people or social groups utilize marine areas, set the level of exploitation

of the region, which means also protecting it from excessive exploitation (over exploitation).

Completing the Sudo limit, another scientist named Akimichi Tomoya⁸ said that property rights have the connotations to own, to access, and to use. These connotations do not only refer to the fishing area (fishing ground), but they also refer to the capturing techniques, equipment used (technology) or the captured and collected resources.

Furthermore, Sudirman Saad⁹ said that there are three main elements to the *ulayat* or communal rights, namely: **Firstly**, the legal community as the subject of communal rights is a community that is controlled, is permanent or fixed, and has its own power as well as movable and immovable properties. **Secondly**, the leadership institution having public and civil authority over the territory of communal rights. **Thirdly**, the region which is the object of communal rights, consisting of land, water and all natural resources contained therein. The region typically is an actually occupied area and the results are collected for the lives of members of the legal community concerned.

Meanwhile, Wahyono¹⁰ concluded that in communal rights of the ocean, there are three main variables, namely:

Firstly, the region. Communal right of the ocean is not only limited to zoning restrictions, but also exclusivity of the region. This exclusivity may also apply to marine resources, the technology used, and the level of exploitation as well as the constraints that are temporal.

Secondly, the social right-holding unit. Such units are very diverse of individual nature, kinship group, village communities to the State. This is about transferability, namely how the exploitation right is transferred from one party to another party,

⁵ M. Arif Nasution, et al., 2005, *Isu-Isu Kelautan – dari Kemiskinan hingga Bajak Laut*, Pustaka Pelajar, Yogyakarta, p. 105.

⁶ Sudirman Saad, 2003, *Politik Hukum Perikanan Indonesia*, Lembaga Sentra Pengembangan Masyarakat, Jakarta, p. 13.

⁷ Sudo Ken Ichi, “Social Organization and Types of Sea Tenure in Micronesia”, as cited by Kenneth and R.E. Johannes (Eds.) 1983, *Traditional Marine Resources Management in Pacific Basin: An Anthropology*, UNESCO/ROSTSEA, Jakarta, p. 9.

⁸ Akimichi Tomoya, 1991, *Territorial Regulation in the Small Scale Fisheries of Ittoman*, National Museum of Ethnology, Osaka, p. 18.

⁹ Sudirman Saad, *Op.cit.*, p. 13.

¹⁰ A. Wahyono, 2000, *Hak Ulayat di Kawasan Timur Indonesia*, Media Presindo, Yogyakarta, p. 6.

and equity, which is the division of rights into a single unit.

Thirdly, legality and its implementation (enforcement). On issues of legality, the subject is about the legal basis underlying the enactment of the communal rights of the ocean, which in some cases are in the form of written rules. While in other cases, it shows that the implementation of the customary rights of the sea is extra-legal practice because it is based on the habits that people done, not the laws.

Thus, theoretically it can be said that the reference to the indigenous marine rights (communal rights of the ocean) are a set of rules or practices or management of marine areas and resources in it based on customs performed by coastal communities in the villages.

This set of rules is related to who owns the rights to an area, the type of resources that may be captured, and techniques that are allowed to exploit the resources that exist in a sea region.

As already mentioned above, the communal rights of the ocean refer to a set of reciprocal rights and obligations that arise in the shared ownership of the institution. The term shared ownership here refers to the division of joint property rights in the management and utilization of a particular resource. The concept of ownership when applied to resource means as a primary social institution which has the composition and function to set up more resources based on customs, prohibitions and family. Therefore, the institution in a system of ownership or control of shared resources cannot be separated from the existence of a social order that has binding force for each individual member of a community.

The rules formed in the shared control of the system are basically a collective consciousness. In this case, the collective consciousness has two fundamental natures.¹¹ First, it implies that the collective consciousness of a community or social group is outside the “individuality” of each

individual member of the society. So the collective consciousness of its existence does not depend on the existence of any individual, but rather the opposite, that is always inherited or disseminated from one generation to the next. Second nature, collective consciousness contains a psychic power that forces individuals to group members adapt to it.

Based on the given description, it can be said that the function of communal rights of the ocean within a community can be seen from how far the related institutions provide a stable social structure of the community.

3. Ulayat Rights and State Tenure

Ulayat rights are not equal to the State tenure originating from the State’s constitution. *Ulayat* rights are recognized and referred to in Article 3 of the Indonesian Basic Agrarian Law (*Undang-Undang Pokok Agraria*). Recognition of the existence of *ulayat* rights is reasonable, because the customary rights and the indigenous peoples along with had been there before the formation of the Constitution of the Republic of Indonesia Year 1945, which includes the concept of State tenure. BAL itself does not provide an explanation of the meaning of *ulayat* rights, except to mention that it is *beschikkingsrecht* in *adat* law literature. Maria S.W. Sumardjono¹² interpreted customary law communities as communities that arise spontaneously in certain areas with a great sense of solidarity among its members and non-members view as an outsider, use their territory as a source of wealth that can only be fully utilized by their members, and the use by outsiders must be with permits and certain benefits in the form of recognition.

Therefore, *ulayat* rights suggest a legal link between customary law communities (subject right) and natural resources as well as the specific territories (object right). *Ulayat* rights contain authorities that state the legal relationship between indigenous people and natural resources/land is a relationship

¹¹ *Ibid.*, pp. 8-9.

¹² H. Abrar Saleng, 2004, *Hukum Pertambangan*, UII Press, Yogyakarta, p. 51.

of control, not ownership. The relationship is called *ulayatnya*, which originated from Minang language meaning “its territory”.¹³

Based on theoretical understanding and view of the above, there are indications of a relationship of similarities and differences between *ulayat* rights and State tenure, namely:¹⁴ (a) the subject, for the *ulayat* right is the legal society and not the individuals, whereas for State tenure is the State; (b) the object, for *ulayat* right are land, water and natural resources in its territory, while State tenure is broader, because all the natural resources that exist in the territory of Indonesia are potential, they are also important for the production branch of the State and serving the people; (c) the contents, for *ulayat* rights are a series of powers and duties including: arranging, granting the use of natural resources and maintaining them, while for State tenure is a set of public authorities and duties including: arranging, maintaining and monitoring the use and utilization of all potentials natural resources and production branches for the maximum prosperity of the people; (d) the Executive, for *ulayat* rights is the Head of the Guild or the *adat* law union chief, while for State tenure is the government of the Republic of Indonesia. Based on the above differences, the *ulayat* rights can be equated with the right of the people, and the authority of *adat* law union chief is equated with State tenure. The scope of *ulayat* rights is more narrow and limited, while State tenure is national in scope and includes all natural resources found in Indonesia.

4. The Existence and Eligibility of *Adat* Law in the Management of Natural Resources

Adat law or factual rights or may be called as well as local laws, to the things that the rights of indigenous peoples in relation to other individuals, other community groups that utilize the surrounding natural environment, the ownership of customary

land, coastal and marine, mangrove forests, sale and purchase of agricultural, plantation and fisheries products that follow the laws of the market.

Factual rights are the rights that apply in the local community that is not derived from customary or *adat* law. This right is the type of right that cannot be identified in the types of rights that are known in the literature of *adat* law, but it is the right emerging in people’s lives. An example is the right of people to plant seaweed in the coasts of a particular island. Seaweed plant is not known in their *adat* law. This right is a new right, as well as rights to the waters around FADs, the rights to the waters around the fishing cage, right on the waters around the chart. Between indigenous people and the government, conflicts often emerge. Conflicts between communities dealing with government-backed foreign or domestic investors such as the case of Napoleon fishing in coral reef areas of Metimarang and Wekenau (around Luang Island, West Southeast Maluku).

This is in line with the framework of Kluckhohn,¹⁵ that the cultural value system is actually about 5 (five) main problems in human life. They are: (a) The nature of human life; (2) The nature of human work; (3) The nature of the place of humanity in space and time; (4) The nature of human relationship with the universe; (5) The nature of human relationship with others.

What is presented above reflects a strong relationship with the posed sociological aspect that is the existence of a symbol or emblem of a systematic and structured interaction that is still valid until this day. This reveals the existence of a permanent norm besides maintaining regularity or order in their environment, which is also used to meet the needs of everyday life.¹⁶

In Maluku cultural concept, there is a philosophy known as *Heka Leka, Heka Hiti*. The

¹³ Budi Harsono, 1975, *Hukum Agraria Indonesia – Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta, p. 83.

¹⁴ H. Abrar Saleng, *Op.cit.*, p. 52.

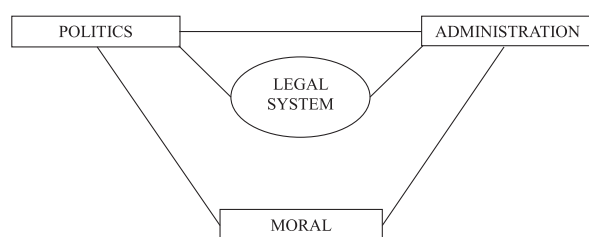
¹⁵ Kontjaraningrat, *Op.cit.*, p. 28.

¹⁶ Robert Souhaly, 2006, *Hukum dan Pengelolaan Sumberdaya Alam*, UNESA University Press, Jakarta, p. 74.

whole Maluku cultural community understands the principles of *Heka Leka, Heka Hiti* as cultural dialectic. Such philosophy of culture is sourced from Maluku cultural understanding of the 'Asa' or the 'Single' which is the power of the God as a single and one. Men as the image of the 'Asa' must maintain the integrity of the lives of each other and must not harm or destroy each other. This means that the understanding of wholeness and unity among humans is a highly religious understanding. Religious communities in Maluku realize the understanding in keeping and maintaining relationships with others and with the universe that God created so nothing is destroyed, and they rebuild the destroyed instead, because it is the core of religious life and devotion to God.¹⁷

Borrowing the schemed analysis of functional relationships that Nonet and Seznick put forward¹⁸ then we obtain the following picture:

Figure 1. Analysis of Function Relationship



This model shows that the moral, political, legal and administration system is a powerful network. In the concept of social welfare, the public recognition of the existence of *adat* law and *adat* law over natural resources requires administration. That is, the bureaucracy needs to give or serve all necessary steps to fulfill the achievement of objectives. Legal politics is directed at achieving people's welfare. Legal moral is associated with distributive and commutative justice that gives the

rights of indigenous people on the resources that are nearby.

Sally N. Jeane¹⁹ in a seminar in Surabaya customary law reveals that the existence of indigenous peoples today are in concern, particularly with regard to their rights to land. This opinion, if expanded, is not only regarding the rights to land, but also the rights to natural resources, including rights over marine and coastal natural resources. Recognition and respect for the government (State) against the indigenous people is constitutionally stipulated in Article 18 of the Constitution of the Republic of Indonesia Year 1945, but in its application in everyday life is very far from it: there are still plenty of exploitation, marginalization and neglect.

Furthermore, according to Sally N. Jeane, regarding the existence of indigenous peoples and their rights in relation to the recognition and regulation in national law, the first thing to do is put the position and status of indigenous peoples as legal subjects with rights and obligations of the Republic of Indonesia, whether the State recognizes and respects or not the existence (existence) or the position and status of indigenous peoples with traditional rights attached to it. Second, the next thing to do is in concern of the customary rights over the rights attached to objects of indigenous peoples themselves, whether their customary rights still exist, are recognized, respected, and protected well. In normative forms of recognition, respect and legal protection can be sought and found in the legislation or in the positive law. Moreover, it is empirically can be searched and found in its application in everyday life.

According to Anthoni Mason,²⁰ the starting point of state recognition and respect for the rights of the legal community with all the economics, social, and cultural rights is closely related to their

¹⁷ Robert Oszaer, et al., 2011, *Model Pendidikan Karakter Berwawasan Kebangsaan dan Berbasis Budaya Lokal*, Badan Penerbit Fakultas Pertanian Universitas Pattimura, Ambon, pp. 17-18.

¹⁸ R.Z. Titahelu, "Hukum Adat dalam Konteks Pluralisme Hukum: Implikasi terhadap Manajemen Sumber Daya Alam Maluku", *Speech*, Inauguration of Professor in Faculty of Law Universitas Pattimura, 2005, p.14.

¹⁹ Jeane N. Sally, "Hukum Adat dan Arah Kebijakan Hukum Nasional", *Paper*, presented on *Adat Law Seminar* in Faculty of Law Universitas Airlangga, Surabaya, 2008, p. 5.

²⁰ Anthoni Mason, "The Rights of Indigenous Peoples in Lands Once Part of The Dominions of Crown", *International and Comparative Law Quarterly*, October, 1997, p. 7.

rights to land and natural resources, not only for the present, but of all time. Such recognition is an acknowledgment of the existence and it is very substantive due to the fact that it is directly related to their lives, especially with their well-being in the present and future, the social environment, culture, and their habitat in which the customary law communities dwell for centuries and at one with its nature of habitat.

The role of positive law which will be discussed below is still within the prescription that is in the legal system. The role is to put provisions in the legislation as rules that provide opportunities, underlying two things: (1) the necessity of government's action, as well as; (2) the permissibility of actions in real communities to take action for the protection of the rights of indigenous peoples and to provide more moving opportunities or the opportunities for indigenous people to run what is part of the right. This principle is actually a principle developed starting from the implementation of the objectives to achieve the welfare of the community.

5. The Principle of Balance in the Equitable Management of Natural Resources

The balance can be highlighted on the levels of philosophy, principle, and norms. At the philosophical level, the nature of the balance can be assessed from the aspect of ontology, epistemology and axiology. Ontology balance implies that there is a unity of the whole of the various elements and values that can provide benefits in harmony. This means that the relationship between these values may reflect a condition where there are influences and interdependence with one another. Values are mutually contributing positively as meaningful and beneficial to people's lives, especially indigenous peoples.

Indonesia recognizes and appreciates the values and it is reflected in Pancasila as the philosophy of state and nation. This philosophy was excavated from the values of the people who live in Indonesia, which is spread from Sabang to Merauke.

All elements contained in Pancasila are the crystallization of the values in a pluralistic society. These values apparently reflect aspects of balance that should be implemented in all aspects of nation and state development.

The values of Pancasila are further elaborated in the principles which are guidelines for the establishment of the norm. Pancasila principles include unity, humanity, fairness, consensus, and kinship is guidelines that can guide the nation of Indonesia in implementing various development activities. Especially regarding kinship principle, it is closely linked and practiced in the life of indigenous peoples. In line with it, Soepomo argued that:

Kinship is a spirit, or a value which becomes the basis of social relations among the people of Indonesia. Indonesian society is analogized as a family [...] within the family, social relationship is run based on kinship principle as seen between the father-son, husband-wife [...] and so forth, because of the breadth of the spectrum covered by the relationships between family members, then the relationship in the spirit of kinship is of course not to be limited in the field of economy alone, as stated in the Constitution of 1945, but also includes political, religious, government administration and so on.²¹

To be implemented properly, these principles must be realized in more concrete norms in a variety of legislation. When examined, principle of balance is not yet reflected between value, principles and norms.

It is said so because the various norms in the legislation have not fully reflected the balance of these elements. The norms tend to overlap other norms, giving rise to various problems in its implementation. Furthermore, the norms are formulated not in line with the meaning of values and principles that guide the formation of such norms.

Therefore, there needs to be a proper concept of the determination and formulation of values, principles and norms in accordance with the

²¹ Amri Marzali, 2007, *Antropologi & Pembangunan Indonesia*, Kencana, Jakarta, pp. 157-158.

meaning and scope so as to reflect a principle of balance, especially in the management of natural resource.

The principle of balance is an interesting issue in natural resource management. It is said that because of this principle has always been associated with justice. Justice is also a legal goal has always fought for, but in reality has not fully delivered maximum results.

The government and indigenous communities are often in conflict with each other, claiming the authority in natural resource management. Indigenous peoples claim their existence as the party that had already existed before the state or government is formed.

Legal arrangement on the balance that leads to justice turns out to be out of sync and disharmonic with each other, causing specific legal uncertainty in natural resource management.

The issue of the legal system that attracts many other experts is that in reality, it is found that the legal system look so easy apart from justice and a wide range of other issues, such as compliance issue.

The justice which must be returned by law, to borrow a phrase from John Rawls, is “reasonably expected to be everyone’s advantage”, as shown in the following opinion of John Rawls.

I shall now state in a provisional form the two principle of justice that I believe would be chosen in the original position [...] The first statement of the two principles reads as follows: **Firstly**, each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. **Secondly**, Social and economic inequalities are to be arranged so they are both (a) reasonably expected to be everyone’s advantage, and (b) attached to positions and offices open to all.²²

Justice is the main focus of each legal and justice system and it cannot be sacrificed, as said by John Rawls as follows:

Each person possessed an inviolability founded on justice that even the welfare of society as a whole cannot override. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests [...] an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising.²³

From the opinion of John Rawls, it can be seen that justice should not be negotiable and it must be incorporated into the community without having to sacrifice the interests of other communities.

Therefore, according to the author, there are at least three main points if the administration of justice can be done and will be able to achieve the expected benefits in the administration of justice, namely:

- 1) The participation of indigenous peoples in the process of drafting regulations at the national level, especially in the local level, both the provincial and district/city levels.
- 2) The accommodation of demands to allow the exercise of *adat* law in the management of natural resources according to the practice that is consistently run by indigenous peoples.
- 3) Law enforcement is a positive solution of the faced alternative problems.

A thing to pay attention to is the presence of indigenous peoples in the villages regarding marine and coastal management that will be juxtaposed with written rules made by the State, which will be applicable both nationally and locally.

Some experience in other parts of Indonesia shows that the traditional system of a society that is run intensively will have positive results and

²² John Rawls, 1971, *A Theory of Justice*, Harvard University Press, Cambridge, p. 60.

²³ *Ibid.*, p. 361.

will also successfully change the coastal or marine waters or coral reefs or mangroves, although often worried by the rejection of a few members of the society. On the other hand, some places have shown that the income of the indigenous people who live in coastal areas, small islands in the sea as well as other regions, shows significant improvement. Thus the concept of balance and fairness is not defined as something that should be treated equally, but must be proportional, so it can give a certain value which is comparable associated with its existence in the social interaction.

An ability to obtain balance is necessary. Aspects that need to be put forward within the framework of balancing include:

- 1) Placement of fairness value of some perspectives namely human rights, legal, religious, customs and social facts;
- 2) Analysis of the various conflicts as challenges or opportunities seen from the sources of conflict: prejudice, differences in values, classification;
- 3) Finding a solution to the form of balance (equilibrium) as a form of justice.

What are the essential balanced justices? According to the author, it requires the grouping of concepts, at least to the two terms of each (a) the concept of justice in the field that are more neutral and (b) in a field that is not neutral. The concept of justice in a field that is more neutral is seen from the conflicts in the community where there are no sharp horizontal conflicts of interests. For example: the interests of the environment (environmental justice), the benefit to the environment across generations (intergenerational justice), and fairness to gain equal access to natural resources.

Indigenous people that have been marginalized or disadvantaged according to the theory of justice developed by John Rawls are in fact the party needing to be treated fairly by protecting and providing an opportunity with fair requirements.

In connection with it, in order to manage the natural resources of national wealth (in this case

of marine and coastal natural resources), the law must be enabled to create a balance between the three interests, namely: (1) the rights of indigenous people on marine and coastal areas; (2) the division of economic benefits (between governments, indigenous people and their employers); and (3) continued availability between generations. Maintenance of a balance between the interests of the three falls along with the State purpose of creating a balance between the welfare aspects and safety aspects that should have been implemented by the State government in this regard, so that the realization of the principles of balance is achieved. Related to natural resource management system based on the principle of balance, the concept that can be used is equilibrium socio-ecosystem, which implies that the social balance that reflects the values of humanity, unity, democracy, and justice can be realized in a variety of norms as the basis of a pattern of behavior of the (*adat*) community, including the government and entrepreneurs which are the three important pillars in natural resource management in marine and coastal areas.

Integrated and sustainable management of marine and coastal areas must be based on the concept of socio-ecosystem, which is a reflection of the philosophy of Pancasila. The absence of natural resource management based on such principle must later injure a party in its implementation, be the injured party in this case the actual indigenous groups which is an integral part of the Indonesian nation.

Socio-ecosystem balance will provide an opportunity for various parties, especially the indigenous communities to manage natural resources in marine and coastal areas based on the philosophical values and principles that are the foundation for the formulation of norms in structuring life together as a nation. Based on the above concept, integrated coastal management and sustainable development will be achieved.

D. Conclusion

The concept of the principle of balance in the management of natural resources in marine and

coastal areas is not entirely based on the values and principles in line with the values of Pancasila ideology. Therefore, it is necessary that the formulation of the concept and principles of balance in the management of natural resources in the sea area is based on the values of Pancasila as the state ideology based on the proportionality principle.

Based on the principle of balance in accordance with the values of Pancasila, the indigenous peoples must be seen as an integral part of all aspects of the development of the nation, both as object and subject of development which should be empowered so that it brings maximum impact for the betterment of the nation and the state.

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