International Journal of Business, Law, and Education
Volume 4, Number 1, 2023

PROSPECT THE STUDY OF LOCAL LEGAL AUTONOMY IN REGIONAL AUTONOMY LEGAL POLITICS

Ilyas[1] and Sahra Roba[2]
[1]Mega Buana University Palopo
[2]STISIP Veteran Palopo
Coresponding author: ilyas093017@gmail.com[1], sahraroba888@gmail.com[2]

ABSTRACT
This research examines local legal autonomy's prospects in regional legal politics with historical, juridical normative-empirical, experimental, and comparative study methods. As a result, legal autonomy can become a new social movement and counter-cultural movement for autonomous regions or local legal community units in Indonesia to realize local wisdom and customary law autonomy in regional autonomy. “Legal autonomy is the 'new antithesis' to legal centralism, Legal Pluralism, and multiculturalism at the global, regional, national, and local levels.

Keywords:
Legal autonomy, legal politics of regional autonomy, Pluralism, legal multiculturalism.

INTRODUCTION

Pre-colonialism and globalization of modern law exist, several essential things that must be underlined, namely: First, the existence of the state is generally in the form of a royal government (including the Luwu Kingdom) that implements a unique legal system, which is based on noble values or wisdom and packaged in the form of customary law/custom; Second, local law has grown, existed and developed (*written* and unwritten) in the form of *local wisdom* and customary law in people's lives, which in Simarmata terms is equated with folk *law*. According to Brian Tamanaha (2003), this local law simultaneously contains customary law, local law, and religious law, which Eugene Ehrlich calls living law. In addition, according to Beckman (2005), local law also has several synonyms, such as customary law, regional law, and customary law; Third, noble values (wisdom) and local laws appear to lead, unite, harmonize, maintain ethics and morals and dignity, maintain order and peace as well as security and peace of life, and play a central and strategic role in solving problems and conflicts efficiently and effectively (Ilyas, 2018).

After the globalization of modern law through imperialism, various implications arise, by Hendra Wahanu Prabandani (2011), including (1) States with a royal system of Government have changed to become unitary State, federal State, or democratic State that implements a legal system based on modern law; (2) The newly independent modern state and Government are governed by modern law based on the teachings of the concept of the State of *Law Rule of Law, Rechstaats*; (3) Positive law (Positive law, *legal positivism*) is packaged into State/national Law that appears to perform unification, domination, hegemony and uniformity of law; (4) The diversity and plurality of laws (legal *Pluralism, legal multiculturalism) in multiethnic* societies is set aside by State/national Law, so that *legal centralism* is

very dominant; (5) State/national law (modern law) ignores, marginalizes, submerges, and even feeds on local law.

The phenomenon of the problem until now, the internalization and actualization of local wisdom and customary law, is increasingly *absurd* and marginalized amid the implementation of regional Government based on the concept and policy of regional autonomy. Local wisdom and customary law that have been proven to be effective in realizing the order of Government and order of protection-law enforcement as well as the resolution of various problems and conflicts in people's lives are now increasingly powerless in the face of the domination and hegemony of positive law (as State/national law). The facts and realities of its current development, the application of positive law that puts forward a positivistic legal paradigm is increasingly distancing people from a legal culture with wisdom, people's legal behavior and awareness are decreasing or lower, conflicts or conflicts between local-indigenous communities and the government and law enforcement agencies are increasingly coming to the fore in various domains of protection and law enforcement. Amid regional autonomy in implementing local Government, local governments and local-indigenous legal communities are increasingly losing autonomy in punishment (protection and enforcement). Local-indigenous law communities increasingly yearn to internalize and actualize the values of local wisdom and customary law in a just punishment (protection and enforcement). Thus the demands and needs for institutionalization (institutionalization) of local wisdom and customary law become inevitable, increasingly urgent, and strategic in order to restore the bottom-up paradigm of law and restore the rights of *local-indigenous* law communities as subjects, pioneers, pillars, and hosts of the implementation of law and justice based on local wisdom values in their regions within the frame of the Unitary State of the Republic of Indonesia by the mandate of Pancasila and 1945 Constitution.

METHOD

The location of this research is Luwu Raya, the former territory of the Kingdom of Luwu, the first and oldest kingdom on the peninsula of Sulawesi Island, Indonesia. This research combines normative, doctrinal, empirical, and non-doctrinal legal research. Normative legal research is research on legal history, legal principles, legal systematics, legal synchronization, and comparative law (Soejono Soekanto and Sri Mamudji, 1994: 3) or using existing legal foundations, while doctrinal research, according to Terry Hutchinson cited by Amiruddin and Zainal Asikin, (2006: 118), interpreted as research that analyzes law, both written in books and laws decided by judges through court proceedings. The empirical and non-doctrinal types examine various empirical facts that occur in the field related to LEGAL AUTONOMY: An Overview of New Paradigms and New Sociocultural Movements. The research design is exploratory and phenomenological. The type of data used is data obtained directly in the field (empirical data) and data obtained from library materials (secondary data), while data sources consist of primary, secondary, and tertiary legal materials (Soerjono Soekanto, 2008:51).

The primary legal materials are the 1945 Constitution and products of laws and regulations (UU) governing the administration of regional Government (regional autonomy) and related laws and regulations. Secondary legal materials come from I Lagaligo, Lontara' (Latoa version), historical and legal literature (scientific books),

scientific writings, research results of legal scholars, and scientific journals in the field of law. Tertiary legal materials in the form of legal dictionaries, environmental dictionaries, and other materials relevant to the needs of this research.

Methods or data collection techniques by observation, literature or literature studies, interviews, and documentation studies. Observations were made on the sociocultural situation and conditions and the protection and enforcement of the law in Luwu Raya. In addition, there are also observed monuments and historical sites, the existence of Luwu Kedatuan and traditional houses, *To Manurung* and *Arajang*, the continuity of the original rule of Luwu Kedatuan informally, and the values of local wisdom passed down by the Luwu Kingdom. Literature and documentation studies were conducted on history and cultural books on Luwu, *Sure*' *I La Galigo,* and *Lontaraq* (Book), legislation, as well as writings, scientific journals, and relevant research results. Interviews were conducted with the 40th Datu Luwu, cultural and customary elites (traditional figures and stakeholders, *tomakaka*, culturalists), community elites, experts or academics, authors of books on Luwu history and culture, observers of Luwu historical and cultural issues, observers of legal issues and local wisdom, local political elites and local bureaucrats (chairmen and members of the DPRD, local government officials), law enforcement elites in Luwu Raya.

The analytical method or technique used in this research is descriptive qualitative. Miles & Huberman (1984) and Creswell (1998:76) suggest that there are several research models that can be used in qualitative research, among which the prominent ones are life story models, phenomenology, grounded theory, ethnography, and case studies. One characteristic of qualitative research is that the researcher is the main instrument in the research process. Researchers who conduct qualitative research must start writing research reports since they are in the field. Because the analysis process is carried out simultaneously with the data collection process, there is little possibility of data shortages because researchers can easily see which elements of analysis are missing or not discussed with informants when interview and observation methods are used. In this regard, Moleong (1999:51-52) suggests that data analysis is the process of organizing and sorting data into patterns, categories and basic descriptive units so that themes and working hypotheses can be found from the data. The work process of data analysis is divided into: (1) examining all the data that has been obtained by reading, studying and understanding the data in depth, (2) reducing data by means of abstraction. Abstraction is the process of analyzing and summarizing the essence of data, (3) checking the validity of the data. The collected data is processed, interpreted and then analyzed. Conclusions are drawn using inductive and deductive methods.

RESULT AND DISCUSSION

Based on research results findings in Palopo City (Luwu Raya) that (1) regional law is still marginalized and helpless in the face of state/national legal hegemony; (2) policy changes to the Regional Government Law continue to ignore and formalize local wisdom and local customary laws; (3) Local governments still rely heavily on positive law; (4) Regional Governments and local communities lose or do not have legal autonomy; (5) the process of regressus (formulation of laws) for both PERDA policies and regional heads is still dominantly carried out unilaterally by political elites and regional officials and very rarely involves the role and participation

of the local community; (6) it is rare to find PERDA that are based on community rights, local wisdom and customary law; (7) increasing conflicts or disputes over customary rights involving indigenous peoples groups (supported by various NGOs) with certain investors and local governments; (8) normative juridical recognition of the rights of local legal community units, customary law and local wisdom contained in Article 18 B of the 1945 Constitution as well as several organic or sectoral laws (UU) whose explanation and implementation by the government is unclear (absurd) regions and their institutional ranks; (9) provisions regarding autonomous regions and regional autonomy regulated in Article 1 of the Regional Government Law No. 23 of 2014 has not been clearly implemented by the local government; (10) regional development paradigms and policies are still very dominantly oriented towards economic growth which ignores local wisdom and customary law; (11) the formal bureaucratic structure of local government and law enforcement based on positive law still dominates the socio-cultural institutions of society, which causes the role of the local community (experts or legal experts, legal practitioners, community leaders, religious leaders, humanists, traditional leaders and stakeholders) interests (Datu Luwu, Ma'dika, Tomakaka), educational leaders, academics, NGO activists and other community elements) did not draw up law-based local regulations; (12) there are still many other problem.

The existence of local laws adopted by the people in Palopo City (Luwu Raya) is increasingly powerless and marginalized by the dominance of national law based on positivistic paradigms, positive law (modern law), and teachings that are contrary to the values of local cultural wisdom and customary law. This is in accordance with what was stated by I Nyoman Nurjaya (2007) that despite the fact of life that shows the diversity of laws (legal *plurality*), legal development in Indonesia is still dominant in the national legal system and pays less attention to the customary law system, religious law and also *self-regulation* mechanisms that exist in the community in the regions. Even a study conducted by Benard L. Tanya (2010) proves that positive law or national law is even a burden for some local people. Legal development that *ignores the fact of political plurality ignorance* can be a trigger for conflicts of values and norms in society (Hendra Wahanu Prabandani, 2011).

The powerlessness of local law and the marginalization of local law (local wisdom and customary law) are also influenced by the problem of paradigm factors and basic development policies derived from the ideology of capitalism, which relies on the paradigm of modern science which considers *"tradition is a problem."* and hindering development, and predominantly oriented towards industrialization to spur economic growth (Soetandyo Wignyosoebroto, 1994) so that ecological, cultural and legal wisdoms are neglected. With this paradigm, the State-government created many highly centralized legal and political devices in a technocratic and repressive style. National laws are enforced uniformly by ignoring regional and local disparities, which in turn kill the autonomy, laws and institutions of indigenous peoples. The process of marginalization of indigenous peoples in development in turn evokes the *cultural counter* movement, a movement of cultural resistance of indigenous peoples to the persistence and elimination of local institutions and laws that have been valued and confirmed (Soetandyo Wignyosoebroto, 1994).

The demand for regional legal autonomy is in line with a number of previous research results which show that local wisdom can answer the challenges and problems of life. Various studies, research and recent media coverage reveal

effective local wisdom practices as a mechanism for maintaining social harmony and solving various problems of daily life in society (Hendra Wahanu Prabandani, 2011). A study by I Nyoman Nurjaya (2008) found that the Balinese Tenganan community managed to maintain forest management in the traditional village of Tenganan Pegrisingan Bali by using their local wisdom. Likewise with Imam Koeswahyono's research that the people of Bunaken Manado use their local wisdom to carry out spatial planning and natural resources (2008, Hendra Wahanu Prabandani. 2011). While the Keboromo community in Pati Regency, Central Java, uses their local wisdom to overcome corruption problems in their village, so do people in Bantaeng, Pinrang and Gowa, South Sulawesi, using their local wisdom to help the police overcome crimes that occur in their area (Satjipto Rahardjo, 2009). Pecalang (traditional officials) in Bali were formerly popular as guardians of adat values and security, who not only worked when adat momentum was being carried out, but had taken on a broader role in carrying out day-to-day security duties. In Madura, local wisdom has been successfully used to restore harmony in society that was damaged by the carok incident. The local community feels that state law is unable to provide answers to the construction of justice that insults the dignity of the Madurese and only views carok in a positivist frame. Settlement through a culture of deliberation led by Kiai and Tenka Bajing turned out to be effective in reducing disputes and grudges arising from the carok incident (Mahrus Ali, 2009).

Ahmad Ubbe's research (2005) in South Sulawesi found that customary law still has a very important position in harmonizing the lives of local communities, but has not been translated into regional regulations at the provincial level or district/city level decisions and other regional regulations. The need to develop regional regulations based on customary law, and the need for regions to continue to encourage the emergence of indigenous peoples who have greater power to influence government policies, as well as the need for more in-depth studies to be able to maintain the preservation of customary law as a source of public order and its possible embodiment in regulations regional legislation. Irwan Abbas (2013) from the results of his research concluded that Pappaseng is still highly respected and contains moral and ethical teachings that must be obeyed. The noble values in Lontara' Pappaseng have advantages because they contain advice on the ethics of interacting with fellow human beings, parents, and responding to the natural surroundings, as well as being recipes and guidelines for living life. The content of Lontara' Pappaseng is full of values that are relevant to Islamic religious teachings, and are in line with the beliefs of the majority of the Bugis community. In addition, it also contains various universal values, suitable for past generations, present generations, and future generations. Research by Muhammad Yusuf (2013) found that expertise (Amaccang) and work tenacity (Tenareso) according to the Bugis language play an important role in exploring and integrating local cultural wisdom values with religious (Islamic) values and applying them effectively in everyday life. to deal with various crises of contemporary thought. and challenges of modern science and technology. Local wisdom and cultural values are the closest solution to people's lives. The main values of Bugis culture can be an alternative solution in responding to the impact of modern science and technology and globalization so as not to lose identity.

Sulaiman (2011) from his research in Aceh found that the critical condition of fishery resources was also caused by management patterns that overlooked

traditional local wisdom in the era of Aceh's special autonomy. Although the concept of local wisdom in regional autonomy has an important position in fisheries management, the attraction of interests still occurs, among others by distinguishing the concept of local wisdom from development in general. Policy makers still attach great importance / prioritize and are fixated on formal juridical foundations, and have not made traditional wisdom as a raw material for the preparation of various related laws and regulations and have not used a thorough approach. From the findings of Hasan Basri (2013) that local wisdom plays an important role in shaping experience of problem and conflict resolution. The concept of Aceh autonomy is distinctive and thick with local wisdom as a *pilot project* in the implementation of decentralization in Indonesia. Darmini Roza (2016) from the results of her research in Nagari West Sumatra found that the recognition of Nagari as a traditional village, legal community unit and indigenous community requires strengthening legal protection guarantees for its rights and authority in managing Government and community empowerment based on the Village Law. The prospect of Nagari government management is on the agenda of the North Sumatra Regional Government for the empowerment of villages or villages through village funding assistance although it is still a controversy in maintaining the cultural traditions of Salingka nagari.

The results of Marhaeni Ria Siombo's research (2011) in Palu found that the people of the Lore Lindu *enclave* have principles of living behavior as 'local wisdom' (*Indegenous knowledge*) that have not been utilized to strengthen regulations and other policies in preventing and minimizing cases of violations of damage to the Lore Lindu National Park. The local Government has not utilized the local wisdom of the local community in strengthening regional policies to maintain and strengthen the buffer area in Lore Lindu National Park which will prevent natural disasters from occurring.

Sri Kusriyah (2016) from the results of his research found that the legal politics of implementing regional autonomy according to Law Number 23 of 2014 is based on the principles of a unitary state, namely sovereignty only exists in state/national government and there is no sovereignty in the regions. No matter how much autonomy is granted to the regions, the ultimate responsibility for the administration of local Government will remain in the hands of the Central Government. Local Government in a unitary state is one unit with the National Government. Policies made and implemented by the regions are an integral part of national policies. The differentiator lies in how to harness the wisdom, potential, innovation, competitiveness, and creativity of the Region to achieve those national goals at the local level which in turn will support the achievement of the overall national goals. One way to realize this goal is by mapping the affairs that are the affairs of the central Government.

Logeman Het constitutionele recht van zelfbesturende gemeenschappen argues that autonomy means freedom or independence (zelfstandigheid) but not freedom freely (onafhankelijkheid). Autonomy as an opportunity to use one's own initiative of all sorts of mastered values to take care of the interests of the public (population). Limited freedom or independence is a form of providing opportunities that must be accounted for (Ateng Syafrudin, 1983:23). The challenge of the autonomy of local wisdom and customary law in regional autonomy is also faced with the problem of the magnitude of dependence on the central Government, not adhering to free autonomy in the sense of independence (*onafhankelijkheid*) but

Indonesia adheres to independent autonomy in the sense of *zelfstandingheid* , including the still strong influence of regional autonomy in a multilevel manner (Ateng Syafrudin, 1983). Similarly, the relationship between the center and the regions should be based on the concept of partnership (reciprocity) and mutual benefit through coordination between the center and the regions (Rondinelli and Cheema, 1988), but in practice it is thus dominant the relationship of subordination (Bagir Manan, 1980).

The extent of autonomy in each activity depends on the decentralization policy that corresponds to the socio-political configuration of the country. In the history of the development of the Government of the Republic of Indonesia, although local Government or regional autonomy laws have been applied, there has not been found a grant of autonomy to the regions which fully covers the four areas of government duties as stated in Van Vollenhoven's theory, namely *bestuur, politie, rechtspraak* and *regeling*. So far, local governments have been given more autonomy rights in the field of tasks to form their own laws (*zelfwetgeving*) such as regional regulations and regional decisions, as well as the right to carry out their own (*zelfuitvoering*). The duties of the police are limited to efforts to have local regulations obeyed by the people in the area concerned. The duties of the judiciary are not owned at all by the local Government because the judicial affairs do not include government affairs handed over to the regions. Therefore, the weight point of granting autonomy to the regions is not in the sense of independence to exercise the power of Government fully, but in the sense of limited autonomy in a unitary state

The urgency of legal autonomy, especially local wisdom and customary law autonomy is in line with the opinion which asserts that: "...in the postmodern era, respect and recognition of local identity is very important" (Muslim Abdurrahman, 2005:67). In fact, when many people feel they have lost their direction and have no grip (despite the name paradigm) after the collapse of the grand narrative, people everywhere talk about the importance of returning to local wisdom. The urgency and strategic importance of autonomy in the implementation of regional autonomy because: first, the cultivation of local wisdom for both individuals and actors. Second, the articulation of local wisdom as a basis for social capital to uphold social coherence. Local wisdom is a source of norms, namely social institutions that obey them because they want to. elements that are informally able to coordinate themselves to achieve common goals. Third, the articulation of local wisdom as a technique for resolving conflict and violence. Local wisdom that contains local cultural wisdom is actually local wisdom that is so integrated with belief systems, norms and culture and is expressed contained in traditions and myths that have been adhered to for a long time in a society (Jajang Hendar Hendrawan, 2011: 230). Therefore, the loss or destruction of local wisdom (local genius) also means the waning of the personality of a community, while the strength of local genius to survive and develop also shows the personality of the community. What is very important is the effort to grow and develop local wisdom that functions throughout people's lives, both in people's lifestyles, in patterns and attitudes, perceptions, and in community orientation (Ayatrohaedi, 1986:33).

Local legal autonomy concerns something very fundamental, namely human autonomy or local legal communities. J.J Rousseou states that "human autonomy means that a legal norm will only have legally reviewable obligations if it is made with the free participation of those subject to it, and that only within the framework of the

categorical imperative can free decision be realized as a form. human autonomy, as an indication of the general will (volunte generale) in 1945. Regional autonomy is meaningless without local community autonomy in institutionalizing and actualizing the values of local wisdom and customary law. Likewise, it is difficult for local legal communities to have autonomy in their area. Autonomy without regional legal autonomy (Ilyas, 2018), between regional autonomy and local legal autonomy (local wisdom and customary law) actually mutually benefits integral and inseparable political allies bound by decentralization and democracy. Therefore the formulation of regional autonomy in Article 1 paragraph (5.11) of the Regional Government Law No. 23 of 2014 can be said to be appropriate, because what is meant by autonomy is an autonomous region, in this case a local legal community unit that does have local cultural wisdom, local values and laws (customary law, religious law, living law). It is in this context that there is actually an opportunity for "legal autonomy" or legal autonomy if applied consistently at the level of a pluralistic and multicultural local society in various regions including Luwu Raya (formerly the Kingdom of Luwu).

Regional autonomy will have meaning and benefits for autonomous regions or local legal community units if it is based on the principle of autonomy law. If not, then regional autonomy will only become a regime, strategy and puppet for the State and the central Government to maintain political legitimacy and hegemony of power in the regions, so that what is called "legal community unity" in the sense of regional autonomy (Article 1 Law No. 23 of 2014) and what is called "sovereignty is in the hands of the people" (Article 1 paragraph (2) of the 1945 Constitution) is only policy and symbolic rhetoric, and regionalism. People will never feel they have autonomy (in the sense of being independent and sovereign). Without decentralization and democracy, the autonomy of local wisdom and customary law will be difficult to realize within the political regime of regional autonomy law. Therefore, regional autonomy through decentralization and democracy is very important to be integrated together in order to strengthen the unity of local law communities while at the same time automating local cultural wisdom and regional laws. According to Rondinelli and Cheema (1988: 13), local government institutions and communities will have access to decision-making at both the regional and central levels.

Regional legal autonomy in regional autonomy is a necessity. The values of modernity are increasingly embraced amid the practice of traditional values by the local community, so it is necessary to realign the roles and functions of local wisdom and society into a system that is synergistic with the role of the current Government. (Jawahir Thontowi, 2000). The formal structure of government and law enforcement greatly influences the role of social institutions in shaping society, causing local communities to play less of a role in public affairs and interests. Likewise, the rules of the game that guide the behavior of the state and Government depend heavily on positive law. As a result, cultural and institutional roots do not get the proper place. Legal values and norms including institutional operations are limited to private aspects, family law, marriage, inheritance, and religious ritual ceremonies, while public legal aspects are heavily influenced by the dimensions of the state and Government. The development of governance and the climate for democracy that grew in problematic situations was still asymmetric (there were positive or negative results) so that the choices offered at that time were very limited. But now, people's choices tend to be more open. One of them is the legal significance of efforts to

appreciate and elevate local wisdom and local communities (Jawahir Thontowi, 2005).

Building a national and regional legal system based on local wisdom and customary law is a strategic step for the realization of regional autonomy based on the principles of equity, convenience, certainty, simplicity, decentralization and regional accountability that need greater and serious attention. This does not mean that there is irony and inconsistency in the implementation of regional autonomy, which in principle has outlined the existence of decentralization and the authority of the regions to make special arrangements and requirements for their regions, for example the establishment and administration of regional governments. government, laws and regulations (Perda) and reviving customary law, including customary rights which have been submerged and not recognized proportionately in the national legal system. In fact, from the point of view of justice, humanity and community dignity, the position of local customary law guarantees justice far more and is felt to have the strength of prevailing values compared to national law which tends to be less pro-community. people's rights. indigenous peoples (Fathullah, 2000; Rachmad Safa'at et al, 2008; Aan Eko Widiyanto, 2006). Regional autonomy means relating to the values, legal issues of the community and local government as well as parties involved in assisting and dealing with regional problems based on the mechanisms that exist in the autonomous region, except those involving inter-regional, regional or national issues. interest or included in the field of public law. The enactment of customary laws or regional legal regulations in the form of regional regulations means independence and separate freedom for individuals and communities in the regions in carrying out the long-desired decentralization and democracy. Recognition and enforcement of customary law and regional regulations as part of the national legal system will be able to dilute crucial legal and law enforcement issues and at least provide new brightness for a rule of law and a state of law (Fathullah, 2000).

The multicultural aspect of a state community is increasingly important to consider in legal development, because if the *fact of political plurality ignorance* is ignored, it can trigger a conflict of values and norms in society. In addition, the strengthening of the role and capacity of local wisdom in society, the national legal system must also be prepared to provide space to deal with the situation referred to by Holleman as an amalgamation of laws or unrecorded laws, i.e. situations where a new form of law cannot be labeled as state law, customary law, or religious law. In its current development, it can be seen in several regions in Indonesia that there have been many efforts to institutionalize "new" customary law with the format of state law, namely into regional regulations or village regulations following the formal structure and logic of state law (Hendra Wahanu Prabandani, 2011).

The demands for local legal autonomy are well-founded because the law does not have universal force (Friedman, 1953), and that the process of working the law in society is also influenced by legal cultural factors (Friedman, 1986). The same thing was expressed by Sulistyowati Irianto (2009) and I Nyoman Nurjaya (2007), that law is part of a cultural product, not merely a building of regulatory norms made (a product of logical abstraction) by a group of people (legislature or executive). which has or is authorized to form a rule of law which is then formulated in the form of regulations, but more than that the perspective of legal anthropology shows its form as a system of social control) and part of social behavior to create social order and maintain order in shared life (legal order).

Regional legal autonomy is an integral part of the development of national and regional laws. Social transformation in the reform era has given birth to a legal politics that reinforces itself that there is political will towards developed countries characterized by autonomy. With the enactment of regional autonomy soon gave rise to a series of regional, ethnic, political and legal revivals. In the opinion of Alo Liliweri (2005), strengthening awareness of the role of local values in supporting sustainable development has an impact on the national legal development process. Customary law and local wisdom must be made components and joints in the development of national law. The purpose of law as social control, guardian of the social order and order of life together must be placed within the framework of the scale, namely culture. The social setting of the Indonesian state that is multiethnic, multiracial and multi-religious should not be forgotten by development policy makers so that they can understand the wishes of the community and at the same time direct legal development to a better goal. In the context of policy, legal development in a multicultural society must be interpreted as a set of government policies designed in such a way that the whole society can pay attention to the culture of all ethnic groups or ethnic groups (Alo Liliweri, 2005). This is reasonable because after all, all ethnic groups or tribes and nations have contributed to the formation and development of a nation.

Regional legal autonomy is in line with the legal development strategy going forward. Hendra Wahanu Prabandani (2011) suggests several steps that can be taken in the context of legal development based on pluralism and local wisdom, namely: (1) Building an understanding of legal Pluralism for every legal development actor. It must be realized that state law written in documents and statute books does not always reflect the people's law which is lived and obeyed by local people in their daily life; (2) Reorientation of the legal development paradigm, by prioritizing laws that provide complete and essential recognition and protection for the legal system other than state law but also customary law and religious law, including the regional regulation mechanism (deep sequence mechanism), that empirically exist and live and operate in society; (3) The social control system that has been used by the community for generations must be understood as a building element for the national legal system. This is because national legislation and all law enforcement officers will not be able to reach every dimension of people's social life. In fact, it is the system of social control that maintains an orderly and orderly rhythm of life together; (4) Improving aspects of legal substance. In terms of legal substance, the process of making law, implementing and enforcing state law must respond to and accommodate living law as an expression of living values, norms and laws, legal institutions and traditions, develop in a multicultural society (I Nyoman Nurjaya, 2007).

Local legal autonomy in line with political and legal developments in relations between nations encourages the re-recognition of the existence of subnational communities as autonomous units whose rights to self-determination in economic, social and cultural life will be recognized (Soetandyo Wignjosoebroto, 2008). International recognition of the existence of indigenous peoples' rights is contained in various ILO Conventions No. 107 and 169 as well as the 2006 United Nations Declaration called “United Nations Declaration on the Rights of Indigenous Peoples”. This internal declaration on the right to self-determination recognizes the right of peoples to self-determination in the conduct of their internal affairs and to participate

fully in the decision-making that may affect their destiny and preservation, in particular with regard to their culture, identity and spiritual life. Therefore, if the fact that there is a space for differences between state law and informal and unwritten people's law is seen as a matter of competition with potential conflict between the central and the local, then developments in political and legal relations between nations can be noted as a process of policy that leads to compromising solutions (Soetandyo Wignjosoebroto, 2008: 113).

Efforts to avoid legal *gaps* and sharp legal conflicts between the legal substance of state legislation and informal people's law require guarantees of legal protection for the existence of customary law and its traditional rights. Opinion of Satjipto Rahardjo, (2005:51-52), it is necessary to change the politics of national law which substantively includes: first, so that the state government first repositions its position in dealing with customary law. Second, realize that local people and customary law are part of the body of the state, the flesh and blood of the country itself. Third, the privilege of regulating and interfering in community affairs owned by the state government should be subdued to the spirit of *empathy*, *concern* and *care* for how local communities accept customary law and local law. Fourth, it is better for our knowledge of customary law to be enriched with local law, as a separate type (*distinct*). Fifth, law enforcers must be able to correct mistakes made in the past, namely “allowing customary law to be contaminated by state law (modern law)”.

The development of the world today has shown a series of transformations of legal patronage from legal centralism to legal Pluralism (Rachmad Syafaat et al, 2008), then from legal Pluralism to legal multicularism (Okke KS Zaimar and Joesana Tjahyani, 2007). This series of paradigm shifts is difficult to escape from the demands of new legal studies which require society as a top priority, not just a concept or doctrine. The need for a rational system of law science as well as encouraging a scientific revolution, that is, if the old paradigm experiences a crisis and eventually people discard it and adopt a new paradigm (Kuhn, 2005).

This paradigm shift has encouraged the development of a new generation of legal science called “plurality-conscious jurisprudence”, which uses the argument or basis that the legal system is a form of social life that is unique to the region. According to Menski, people are too far exploiting globalization by ignoring local legal dimensions (Menski, 2006). Globalization has marginalized glocalization or global Pluralism. The formation of a universal legal order is just wishful thinking. Regarding legal Pluralism, Japan is an excellent example of how a nation struggles with externally imposed laws and its desire to maintain its original social order (Satjipto Rahardjo, 2007). From a legal standpoint, Japan has experienced many ups and downs so that the use of modern law does not interfere with efforts to preserve Japanese values (Ozaki, 1978). Japan has created layers of legal avenues to defend Japanese values. (Parker, 1984).

Legal Pluralism views that in the same social arena there are more than two legal systems (Pluralism is generally defined as “a situation in which two legal systems coexist in the same social field” (Marry, 1988), with different “law” is “I believe there is more than one legal order in a social field” (Griffiths, 1986), while customs or other social conventions are seen as law (Sulistyowati Irianto, 2005:58). Pluralism, namely legal Pluralism which weak and strong Weak legal Pluralism is another form of legal centralism, in this case state law remains superior, while other laws are unified in a hierarchy under state law (Bernard Steny, 2006), whereas

strong legal Pluralism views facts as legal plurality, order in all groups of society (Griffiths, 2005) All legal systems are seen as equal in society, there is no clear hierarchy .shows that one legal system is superior to another. Included in the theory of Living Law from Eugene Ehrl ich, namely living law from a normative order, which is contrasted with the rule of law (Brian Tamanaha, 1993:24-25). Various debates and discussions have given rise to new thoughts on legal Pluralism that are sharper and more meaningful in analyzing legal phenomena in society in various parts of the world (Sulistyowati Irianto, 2007:3).

The new paradigm of legal Pluralism is associated with "moving laws" in the realm of globalization, that is, laws of various levels and corners of the world move into borderless territories, and there is contact, interaction of constituencies, fulfillment of interests in cooperation between nations, self-adjustment, mutual reproduction and strong mutual adoption between international, national and local laws (certain socio-political spaces and contexts) so as to create transnational laws and *transnationalized law*. The reformulation and transformation of interpretation makes it increasingly difficult to create *mapping of legal universes* or mappings as if certain laws (international, national and local) are clear entities with firm boundary lines and separate from each other (Woodman, 2004).

In its development, a new social movement emerged called legal multiculturalism which urged change and offered new theories and concepts to protect and guarantee the rights of minority groups in the nation state. This movement coincided with the birth of the multiculturalism movement in Europe in the 21st century, which then moved to countries in Asia, Malaysia, and including Indonesia (Okke KS Zaimar and Joesana Tjahyani, 2007:6). As a cultural movement, multiculturalism is a manifestation of the unsatisfactory condition of the contemporary global multicultural world. This is a result of the dimensions of social, economic and political injustice in the capitalistic world (Kusnanto Sunarto et. al., 2004:2). The concept of multiculturalism is very different from the concept of plurality. There are three things included in multiculturalism, namely: (1) multiculturalism is a political ideal or program, and is not a characteristic of a society. Human society has always been plural, culturally diverse, but political responses to that diversity have varied depending on the era; (2) multiculturalism is truly a contemporary invention, at least initially, in democratic societies that witness the transformation of issues of cultural differences into social justice stakes; (3) as a political program, multiculturalism brings institutional changes, and in general brings the active role of public power. In this view multiculturalism needs to be distinguished from other answers to the problem of diversity (Milena Doytcheva, 2001).

The transformation of the legal paradigm from legal centralism to legal Pluralism, as well as from legal *Pluralism to legal multicularism*, has basically touched and influenced the political policy of law in Indonesia. This paradigm has shown its influence in the amendment of the 1945 Constitution (especially with the birth of the formulation of Article 18 B paragraph (2), the emergence of sectoral legislation that alludes to indigenous peoples and local wisdom, and the political changes in regional autonomy law (especially after the reform era with the alternation of the Local Government Law. This influence has also encouraged the emergence and spread of socio-political movements, cultural and legal resistance by various elements of society (NGOs, academia, indigenous communities) against the State and Government in recent decades. But all of them move more at the

normative level, and until now there have been no concrete results that provide guarantees and certainty. This means that new concepts and paradigms and new sociocultural and legal and political movements are still needed, in the context of "legal autonomism".

Legal autonomy can be a new paradigm, policy and program as well as political action in realizing the legal politics of implementing regional autonomy and decentralization of local Government based on local wisdom and customary law, especially in Indonesia. Legal autonomy as the best and strategic path today to realize the autonomy of local wisdom and customary law in regional autonomy. Autonomous regions or the unity of diverse and plural local legal societies (plural-multicultural) do not merely require normative recognition and respect of the legal politics of the State-government for its existence, rights and sociocultural identity (such as Article 18B of the 1945 Constitution and other legislation) as well as the ideas and paradigms of legal *Pluralism* and *legal multiculturalism* which is currently popular globally/internationally-transnational-national-local today, but more than that, it is in dire need of real *elaboration, real* action or concrete action of such recognition in all aspects of multi-sectoral development and the life of local or autonomous regional legal communities.

The paradigm approach of legal Pluralism and legal multicturalism originating from outside (Europe and America) has expanded its influence in Indonesia but until now has not provided a significant change in orbiting the existence of local wisdom and customary local law, even the hegemony of state / national law (modern law) is still very dominant, *legal gaps* between state legislation and people's law is still coming to the fore and has not found a compromising solution holistically, even the legal politics of regional autonomy still determinate and marginalize the value system of local wisdom and customary local law. Legal Pluralism and legal multicturalism, which are currently the trend of the global political paradigm and sociocultural and legal movements for the rights of local legal communities in various countries, including Indonesia, which are still being echoed, in fact until now have sharpened more conflicts between NGOs, indigenous community groups and the States, even they show each other's strength and power both before the Constitutional Court (MK) and in the mass media. This fact shows that there is still a fundamental weakness, namely that it does not have the coercive ability/ strength for and against the States to meet their demands. This is in contrast to "legal autonomy" which has great energy to drive the legal politics of regional autonomy and encourage the autonomy of local wisdom and customary law in autonomous regions.

The fundamental essence of the paradigm of "legal autonomism" is that diversity (plurality), plurality (multicultural) and diversity of local legal communities have been *de jure* recognized by the State-government, and that the rights and authorities of regions to organize their own governments and take care of their own households based on the principle of regional autonomy have always been set forth in the 1945 Constitution and the political policy of regional autonomy law. However, local legal societies and autonomous regions have never really been legally and politically independent, except to be merely puppets and treated as mere objects in various aspects of development, especially in the legal sphere. Regions and communities that in fact are called autonomous regions and regional authorities, thus never clear their local legal autonomy. State law with its positive laws thus goes too far to prey on indigenous local law and kill the legal autonomy of local and regional

communities. Therefore, legal autonomy is expected to execute state recognition, revive the long-dead engine of the value system of local wisdom and indigenous local law.

CONCLUSION

The transformation of the legal paradigm from legal centralism to legal Pluralism, as well as from legal *Pluralism to legal multicularism* has basically touched and influenced the political policy of law in Indonesia. This paradigm has shown its influence in the amendment of the 1945 Constitution (especially with the birth of the formulation of Article 18 B paragraph (2), the emergence of sectoral legislation that alludes to indigenous peoples and local wisdom, and the political changes in regional autonomy law. However, this influence to date has not provided a significant change in creating a unified local legal community that is monochrome and does not even promote the existence of local wisdom and indigenous local law in regional autonomy at all. Therefore, "*Legal authonomy*" is expected to become a *new social* movement and *cultural counter movement* for autonomous regions or units of local legal communities in Indonesia in executing State recognition, realizing the autonomy of local wisdom and customary law. *"Legal authonomism* as a 'new antithesa' to legal *centralism, legal Pluralism* and *legal multiculturalism* at the global, regional, national and local levels.

REFERENCE

Aan Eko Widiyanto. (2006). *Rekonstruksi Politik Hukum Pemerintahan Desa: Dari Desa Terkooptasi dan Marginal Menuju Desa Otonom dan Demokratik*, Diterbitkan Atas Kerjasama SPOD FE Unibraw-Partnership For Government Reform, UNDP dan Uni Eropa, Jakarta.

Ahmad Ubbe dkk. (2005). *Laporan Akhir Penelitian Hukum Tentang Perkembangan Hukum Adat Di Propinsi Sulawesi Selatan*. Departemen Hukum Dan Hak Asasi Manusia Badan Pembinaan Hukum Nasional.

Alo Liliweri (2005). *Prasangka dan Konflik Komunikasi Lintas Budaya Masyarakat Multikultur*. Yogyakarta: LKiS Pelangi Aksara.

Ali Mahrus (2009). *Menggugat Dominasi Hukum Negara: Penyelesaian Perkara Carok Berdasarkan Nilai-Nilai Budaya Madura*, Penerbit Rangkang, Yogyakarta

Andi Ima Kesuma IC (2015).*Legacy Luwu*. Dinas Kebudayaan dan Kepariwisataan Provinsi Sulawesi Selatan.

Ateng Syafrudin 1983. *Pasang Surut Otonomi Daerah*, Bandung: Bina Cipta

Ayatrohaedi. 1986. *Kepribadian Budaya Bangsa (Local Genius*). Jakarta: Pustaka Jaya.

Bagir Manan, 1980*. Hubungan antara Pusat dan Daerah Berdasarkan Asas Desentralisasi Menurut UUD 1945*", Disertasi Doktor Ilmu Hukum, Bandung: Universitas Padjajaran, 1980.

Bernard L. Tanya, 2011. *Hukum dalam Ruang Sosial*, (Cetakan kedua) Genta Publishing, Yogyakarta.

Bernard Steny, 2006. Pluralisme Hukum: Antara Perda, Pengakuan Masyarakat Adat dan Otonomi Hukum Lokal. ***Jurnal*** Pembaruan Desa dan Agraria, III (2006).

Brian Tamanaha, 1993.The Folly of the Concept Of Legal Pluralism. Paper XIth International Congress of Comission on Folk Law and Legal Pluralism, New Zealand: Law Faculty. Victoria University of Wellington.

Darmini Roza. THE IMPORTANCE OF VILLAGE GOVERNMENT LAW RENEWAL AND ITS IMPLICATIONS TO NAGARI GOVERNANCE IN WEST SUMATERA. *Jurnal Dinamika Hukum* Volume 16 Nomor 3 (2016).

Farida Patinggi, Peranan Hukum Adat dalam Pembinaan Hukum Nasional dalam Era Globalisasi. *Majalah Ilmu Hukum Amanna Gappa* XI (13) Januari-Maret 2003. Fakultas Hukum Universitas Hasanuddin

Fathullah, 2000. Otonomi Daerah dan Penguatan Hukum Masyarakat. Kompas, Senin, 3 Juli 2000.

Friedman, Lawrence M. 1986, *Legal Culture and The Welfare State*, dalam Gunter Teubner, Dilemmas of Law in The Welfare State, Walter De Gruyter-Berlin-New York.

Freidman, Wolfgang. 1953, *Legal Theory*, Stevens & Son Limited, London.

Friedrich, Carl Joachim, 1969. *The Philosophy of Law in Historical Perspective*. Chicago. The University of Chicago Press. Raisul Muttaqien (terj.) 2004. Filsafat Hukum: Perspektif Historis. (Bandung: Nusamedia).

Griffith, John. 2005. *Memahami Pluralisme Hukum. Sebuah Deskripsi Konseptual.* Jakarta. HuMa dan Ford Foundation

_____. "What is Legal Pluralism". *Journal of Legal Pluralism and Unofficial Law,* No. 24/2986, 1986.

Hasan Basri M. Nur. 2013. MENUJU DESENTRALISASI BERBASIS KEARIFAN LOKAL DI INDONESIA. JURNAL AL-BAYAN VOL. 19, NO. 27, JANUARI – JUNI 2013 .

Hendra Wahanu Prabandani, 2011. Pembangunan Hukum Berbasis Kearifan Lokal. *Jurnal Hukum*. Edisi 01/Tahun XVII/2011.

Idwar Anwar, 2005. *Ensiklopedia Kebudayaan Luwu*, Makassar: Pustaka Sawerigading.

Ilyas, 2018. *Hukum dan Kearifan Lokal*. Cet.1. Makassar De lamacca.

I Nyoman Nurjaya, Pembangunan Hukum Negara Dalam Masyarakat Multikultural: Perspektif Hukum Progresif, ***Jurnal*** Hukum Progresif. Vol.3 No.2 Oktober 2007

_____, Kearifan Lokal dan Pengelolaan Sumber Daya Alam, ***Jurnal*** Ilmiah Vol.VIII No.40 2007.

Jajang Hendar Hendrawan (2011). "Transformasi Nilai-Nilai Kearifan Lokal dalam Kepemimpinan Sunda, Prosiding Konvensi Nasional Pendidikan IPS ke-1 Peranan Ilmu-Ilmu Sosial dalam Pendidikan IPS untuk Membangun Karakter Bangsa. Bandung: Fakultas Pendidikan Ilmu Pengetahuan Sosial.

Jawahir Thontowi. 2005. Komunitas Lokal dalam Perspektif HAM dan Hukum Nasional. *Jurnal Manajemen Negara dan Nasionalisme* UNISIANO. 57/XXVIII/III/2005.

_____. 2000. HAM dan Hukum Internasional dan Prospeknya Dalam Kabinet Persatuan Nasional. *Jurnal Magister Hukum*. Vol 2. 1. Februari.

Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang,* Yarsif Watampone, Jakarta. 2005.

Beckman, Keebet von Benda. 2005. *Pluralisme Hukum : Sebuah Sketsa Geneologis dan Perdebatan Teoritis.* Jakarta: HuMa dan Ford Foundation.

Kuhn, Thomas S. The Struktur of Scientific Revolution, The Univercity of Chicago Press”**. (**Terj. Tjun Suryaman). Cet.V. *Peran Paradigma Dalam Revolusi Sains**,*** Remaja Rosdakarya, Bandung. 2005.

Kusnanto Sunarto, *et. al*., “Introduction: Multicultural education in Indonesia and Southeast Asia Stepping into The Unfamiliar”. *Jurnal Antropologi Indonesia*, Depok, Universitas Indonesia, 2004

Mattulada. H.A. 1998. *Sejarah, Masyarakat dan Kebudayaan Sulawesi Selatan.* Makassar: Hasanuddin University Press

Marhaeni Ria Siombo.2011. *Kearifan Lokal dalam Perspektif Hukum Lingkungan*. JURNAL HUKUM NO. 3 VOL. 18 JULI 2011: 428 – 443

Menski, Werner. *Comparative Law in Global Context, The Legal Systems of Asia and Afrika**,*** Cambridge University Press, 2006.

Merry, Sally Angel. Legal Pluralisme”, *Journal Law and Society Review*, Vol. 22/1988.

Milena Doytcheva, *Le multiculturalme*, Paris : La Decouverte. 2001.

Muslim Abdurrahman, *Islam yang Memihak,* LKiS, Yogyakarta, 2005.

Okke KS Zaimar dan Joesana Tjahyani, 2007. Multikulturalisme di Eropa”. Program Studi Kajian Wilayah Eropa – Program Pascasarjana Universitas Indonesia and The Delegation of the European Commission. *Jurnal Kajian Wilayah Eropah (Journal Of European Studies)*, Volume III – No. 3. 2007.

Ozaki, Robert S. *The Japanese, A. Cultural Portrait,* Tokyo : Charles E. Tuttle. 1978.

Parker Jr. L. Craig, *The Japanese Police System Today, An American Perspective*, Tokyo : Kondansha International, 1984.

Rachmad Syafaat, dkk, 2008, *Negara, Masyarakat Adat dan Kearifan Lokal*, In-Trans, Malang

Rachmad Syafaat, dkk, 2008, Transformasi Paradigma Hukum Pengelolaan Sumber Daya Alam Perspektif Global : dari *Legal Centralism* Ke *Legal Pluralism*. ***Jurnal*** Hukum Progresif. Vol.3 No.2 Oktober 2007

Rismawidiawati, 2016. Bertahannya Bangsawan Luwu (Suatu Analisa Budaya Politik Orang Bugis. ***Jurnal*** Patanjala Vol. 8 No. 3 September 2016: 413 - 428

Woodman, R. Gordon. Why There Can Be No Map of Law, dalam Rajendra Pradan (ed.) Legal Pluralism and Unofficial Law in Society, Economic and Political Development, *Papers of the XIIIth International Congress*, 7-10 April Chiang Mai, Thailan. Khathmandu, Nepal: INEC, 2004.

Rondinelli, Dennis A. Rondinelli and G. Shabbir Cheema, (1988), *Implementing Decentralization Policies: An Introduction*. California: Sage Publications Inc.

Satjipto Rahardjo, 2009, *Hukum dan Perilaku*, Penerbit KOMPAS, Jakarta.

_____.2009, *Hukum dan Perubahan Sosial Suatu Tinjauan Teoritis Serta Pengalaman-Pengalaman di Indonesia*, Genta Publishing, Yogyakarta.

_____.2007. Kemajemukan Sebagai Konsep Hukum”, *Makalah* No. 24, Bahan Bacaan Program Doktor Universitas Diponegoro, Semarang. 2007.

_____. 2005. *Hukum Adat Dalam Negara Kesatuan Republik Indonesia*. Yogyakarta. Genta Press.

Soetandyo Wignjosoebroto, *Hukum Dalam Masyarakat: Perkembangan dan Masalah (Sebuah Pengantar ke Arah Kajian Sosiologi Hukum)*. Bayumedia, Malang, 2008.

_____.1994. *Dari Hukum Kolonial Ke Hukum Nasional: Dinamika Sosial Politik Perkembangan Hukum Selama Satu Setengah Abad di Indonesia (1840-1990*). PT Raja Grafindo Persada, Jakarta. 1994.

Sulaiman. Kearifan Lokal dalam Pengelolaan Sumber Daya Perikanan di Aceh pada Era Otonomi Khusus. *Jurnal* Dinamika Hukum. Volume 11 Nomor 2 Mei 2011

Sulistyowati Irianto, 2009, *Hukum yang Bergerak, Tinjauan Antropologi Hukum*, Yayasan Obor Indonesia, Jakarta.

_____, "Pluralisme Hukum Dalam Perspektif Global", dalam Digest *LSD: Law, Society & Development*, *Hukum yang Bergerak*, Vol. 1. No. 3 Agustus 2007 .

_____, Sejarah Perkembangan Pemikiran Pluralisme Hukum dan Konsekwensi Metodologisnya", dalam *Pluralisme Hukum: Sebuah Pendekatan Interdisiplin.* Penterjemah, Andri Akbar, et. al. HuMa, Jakarta. 2005.