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Preserving Customary Title Granting Ritual in Bolaang Mongondow Raya in Perspective of 1945 Indonesian Constitution

Johan Jasin¹, Gusniarjo Mokodompit²

ABSTRACT

The Dutch colonialism period has brought changes in the Indonesian law system, in which, as the colonized, Indonesia was obliged to comply and apply the colonizer's law system. This ruled out customary law systems which have been regarded as locally-specified law in regions in Indonesia for a long time. Moreover, the obligation of using Dutch's law system renders customary law's influence weakened, as the customary law was no longer regarded as the standard norms of behavior in Indonesian society. Factually, the phenomenon is reflected in customary title granting ritual. Once regarded as the utmost important ceremony towards a deceased region leader as a form of highest respect in remembrance of his/her services, the ritual is no longer considered as a sacred ceremony, thus receiving little to no attention from the regional government. Therefore, this study contends that establishment of customary institutions, as well as implementation of regional regulation by the region's executive and legislative, is fundamental to internalize and preserve cultural values embedded in traditional ceremonies such as customary title granting ritual; the establishment also serves as the implementation of Article 18B Paragraph (2) of the 1945 National Constitution of Republic of Indonesia.

Keywords: Preservation, customary title award.

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1. Introduction

According to the logic of modern law, what considered legal is the decisions of authorized parties; those who are not made by the authorized parties were not considered legal, except those granted by the law of the state. Therefore, existing customary law (living law) will only be valid when it is granted by the state's main law system.

¹ Universitas Negeri Gorontalo, Indonesia, Email: johanjasino19@gmail.com

² Institut Agama Islam Muhammadiyah Kotamobagu, Indonesia, Email: transbahasa.ilmiah@gmail.com

The history has recorded that modern nation-states were introduced to the world since the feudalism era in the 7th to 8th century; from there, the concept of nation-state has evolved throughout the time until 19th century, in which new concepts such as the rule of law (common law system), *rechstaat* (civil law system), and constitutional state; the development of modern nation-state is in accordance with the timeline progression of social history of Western European countries: from dark ages, middle ages, renaissance, to the modern era (Rahardjo, 2010).

From that very moment, the law has been introduced to the core of humanity; it constructs order and intervenes in almost every aspect of human life. By that, law begins to segment every part of human life, e.g. health, economy, socio-culture, education, and maintains order in the particular aspect in the form of set of rules and guidelines that must be obliged and applied by the society. Law then constructs and bends reality and truth for its benefits.

Wignjosoebroto (1995), Indonesia is a state that adopts a modern law system through annexation and cultural transplantation (as well as its modification and adaptation process) that has been going in more than one century (1840-1950). As Sir Stamford Raffles mentions in History of Java, Indonesia was featured with abundant cultural articulation, e.g. Buddhism, Hinduism, Islamism, and Confucianism. The cultural articulations eventually crossed with culture from Portuguese, Spanish, Dutch, and English as the colonizer(s). However, the basic Indonesian character mainly revolves around the unity of a family or total mystical experience of ancestors (Asshiddiqie, 2015).

The codification and unification of a modern law did not only affect the structure and system of law enforcement, but it also affected the dynamics of existing local wisdom(s) in society. Dimiyati (2010) states that Indonesians were forced to apply an entirely different law system that does not follow their cultural norms and values; therefore, as a developing state, the implementation of modern law in Indonesia should not follow that of the developed, western countries.

Implementing a modern law (positive law) for a long time, this study sees that Indonesia is not completely 'comfortable' with the modern positivistic law approach, as it becomes a burden for the local institutions in regions around Indonesia to implement. The promise of modern law to ensure justice for all was not achieved. Adji Samekto (2008) reported "among regions with local customary law that is impacted from the positivistic law paradigm is Bolaang Mongondow Raya (consisting of Bolaang Mongondow, Bolaang Mongondow Utara, Bolaang Mongondow Selatan, Bolaang Mongondow Timur, and Kotamobagu City). Bolaang Mongondow Raya or BMR is yet to be an autonomous region, but the proposal has been acknowledged in the Proposal Letter No. 100/2061/Sekr.Rp.Pemhumas on July 28, 2016 regarding the Establishment of Autonomous Region of Bolaang Mongondow Raya Province. Prior to the region division proposal, Bolaang Mongondow Raya is a part of the Northern Sulawesi administrative territory."

An internationally published article entitled "The History of Islam in Bolaang Mongondow, North Sulawesi: Rationalisation and Derationalisation of Religion" describes that Bolaang Mongondow is in the province of North Sulawesi. It shares its northeastern border with the Minahasa region – well known as a stronghold of Protestant Christianity – and its western border with Gorontalo which has a special pride in its long history of Islamic influence dating before the arrival of the first Europeans (Kosel, 2010). Located near both regions with religious-cultural influence, Bolaang Mongondow Raya has its distinct cultural features and traditional customs its own people has been upholding for a long time.

The Article 18B Paragraph (2) of The 1945 Constitution of the Republic of Indonesia is about the State's respect towards existing traditional customs in society. The article is a legal foundation on the regional governments and all citizens to freely practice their tradition as long as it abides by the State's interest. This is regarded as the representation of acknowledgment of diversity in terms of culture and traditions in Indonesia, which are seen as precious treasure to preserve. This is explained in an article entitled "Value in Executing Tumbilotohe (Part of Light) Each of Ramadan as One Manifestation of the Practice of Pancasila by People of Gorontalo" that in Indonesia there are hundreds of tribes, whose culture must be multi-faceted and should still be preserved according to the Sound of Article 18 B Amendment to The Constitution of 1945 (Jasin, 2015).

Article 28 I Paragraph (3) states that “the State respects traditional community’s cultural identity and rights as well as adjusts with development of civilization.”³ This is supported by Article 32 Para. (1), asserting that “the State advances Indonesia’s national culture amid world civilization by guaranteeing freedom to the society to preserve and develop their cultural values.”⁴ The State’s acknowledgment towards cultural rights is a sign for the local government, particularly in Bolaang Mongondow Raya to attribute the authority in initiating cultural preservation of traditions in the region.

However, the factual situation in Bolaang Mongondow Raya displays an entirely different condition with what is expected; as the region little to no interest in instigating actual steps to preserve the culture. Such diverse culture involves traditions and rituals compiled in the Customary Law of Bolaang Mongondow Raya and/or in each region involved. These traditions serve as celebration/remembrance of important events, e.g. marriage, death/funeral, and public forum. This study focuses its emphasis on analyzing the customary title granting ritual in Bolaang Mongondow Raya.

The regional government should take responsibility in organizing a customary title granting ritual, since it is considered an important tradition that requires transparent selection process and ritual stages. During the recent three years, the ritual was organized by an NGO for three times. This was considered inappropriate for it deviated the mandate of constitution and that it was suspected that the ritual only benefitted particular groups. Moreover, the ritual did not follow the exact procedures as written in the Customary Law compilation; therefore, the figure only has less influence in the community.

The customary title granting ritual is performed to celebrate a newly-inaugurated government official as a symbol of warning to the official to maintain good performance and noble behavior in his/her daily duties as well as to engage with the society. Therefore, the granted official is expected to be the role model for society. The official is considered incompetent and not worthy of the title when s/he misbehaves, (e.g. being dishonest, unfair, and hypocrite), consequently, s/he is demanded to step down from his position as a sign of shame and disgrace.

In performing their governmental duties, public officials are required to uphold key ethics in life, i.e. socio-cultural ethics, politic and governmental ethics, economic and business ethics, equal and fair law enforcement ethics, scientific ethics, and environmental ethics. These are the fundamental guidelines of societal life according to the MPR’s (People’s Representative Council) Statute No. V/2001 as supported by the Art. 18B Para. (2) of the 1945 Constitution.

2. Methodology

It is essential for the government officials to develop good ethics; it is achievable if backed by the Constitution in the form of law/regulation as a formal instrument, particularly in preserving the tradition of customary title granting ritual. Therefore, this descriptive research employed qualitative approach and socio-legal design to analyze the reality of customary title award, taking reference from the non-written stipulation(s) as well as from the informants’ explanation.

3. Discussion

3.1 Mechanism of customary title award ritual

During the recent three years, the customary title granting ritual was organized by AMABOM (Bolaang Mongondow Traditional Community Alliance) without any involvement from the regional government. When a region leader, e.g. the Regent or Mayor, contributes to the ritual, s/he did it as his/her individual self, not as the leader of the region. For instance, in the title granting ritual of the PJS (temporary as acting position) Ex-Governor Sonny Sumarsono, the local region leaders (i.e. regents and mayor) contribute to the AMABOM acting as their selves. It is often regarded that the organization of the ritual by AMABOM lacks conceptual basis, as observed from the award recipient criteria and the ritual procession organization itself. The ritual should be carried out fully by the traditional institutions, since the institutions have expertise in performing customary rituals, thus considered appropriate as the temporary organizer until a new regulation stipulates a new organizing commission. Such

³ UUD 1945 [The 1945 Constitution]

⁴ *ibid*

regulation already exists in Northern Bolaang Mongondow regency in the form of Regent's Regulation, yet it is still considered not powerful enough as a legal framework of the existing traditional institution. Mr. Datunsolang as the Regent asserts that a customary regulation will have more enforcing power rather than the Regent's Regulation.

Raharjo (2017) states that value is one of the legal paradigms, in ways that law can also be seen as a value. As an embodiment of values, the law intends to protect and advance the values that the community upholds. To the community, the customary title granting ritual is considered sacred, since it depicts meaningful values in life; therefore, the ritual must be performed strictly to avoid misuse or loss of meanings. The title granting is often symbolized as the highest form of honor to a person; therefore, a regulation governing the ritual is considered necessary (Raharjo, 2010).

The granting ritual of paying homage to a deceased figure, *gobi'ianya*, is performed for 40 days long since the day of his/her death. During the 40 days there are certain important nights, e.g. the third night (*tolu gobi'i*), the seventh night (*pitu gobi'i*), the fourteenth night (*kodua pitu*), the fortieth night (*opat nopulu' no gobi'i*); while some processions continue up to the 100th night (*tompod mogatut*) in which the *Momilat kon Aluwang* ritual (taking off the white scarf wore by the deceased figure's female family member as a sign of mourning period) is performed. In Raharjo (2010), it is elaborated that to honor a deceased leader (*kimalang*), an animal sacrifice ritual is performed every day for 40 days. During the day of the leader's death, a tower-like building called *dantangan* is constructed with maximum height of four meters; the corpse, with his/her attire set, is placed on top of the *dantangan* and wrapped with white cloth. Under the *dantangan*, the procession leader and all the ritual performers recite mourning songs. Afterwards, the corpse is placed inside a coffin made of whole bamboo, and is further buried with the bamboo coffin. These certain ritual processes are only performed for the region leader, not for common public. That being said, to grant a customary title to a leader after his/her death is considered more appropriate rather than to those who are still alive, as it is considered as valuable honor to the deceased leader's service during his/her duty.

The granting ritual is also performed to a currently leading public official. The history has recorded that this kind of ritual has been performed to several public officials by the custom leaders. In this particular ritual, the criteria refer to that of inauguration of *Bogani* (an ancient regional king/leader), i.e.:

1. *Mokodotol*: patriotism, strong and healthy physique
2. *Mokorakup*: be a patron who is capable of solving difficult problems
3. *Mokodia*: be just and fair to enforce sanction, even to closest relatives.
4. *Mokoanga*: be charismatic and able to maintain good behavior.
5. Possess supernatural power (this trait is considered no longer valid, therefore, replaced with the leader's contributions during his/her service)

A customary title can be awarded to either a native Bolaang Mongondow or a non-native one, as long as the figure is regarded commendable to the community and considered worthy of the award. These sets of criteria illustrate that the title granting is only meant for select figures whose notable contributions to their respective region.

Currently, the ritual procession's mechanism is still unclear; however, it is considered essential to deliberate the ritual mechanism by involving all competent parties, including the traditional society in each region. These steps should involve⁵:

- The mayor/regent or any relevant figure recommend a list of title recipient;
- A forum is held to discuss the appropriateness of the awardee candidate;
- Should the candidate considered appropriate, the forum will disseminate the planned ritual day for public consumption;
- The ritual organization is open to the public.

The mechanism of the ritual organization by AMABOM is considered invalid. The Traditional Board in AMABOM mostly consists of persons with lack traditional (*o'adatan*) knowledge. Moreover, the ritual does not involve all figures in the *ex-Swapraja*; therefore, losing its sacred status. Therefore, the involvement of various parties is important in formulating matters related to the tradition by taking into account the values upheld by the community. All agreements reached are then treated as

⁵ Chairun Mokoginta, Interview, December 10 2017.

reference for the academic drafting team as well as the executive and regional legislatures in the regulation drafting process to achieve sustainable cultural preservation.

3.2 Consequences of customary title award

The granting of the customary title has both positive and negative impacts. Although no longer used by a title recipient's descendants, the customary title still possesses social impact on them that they need to maintain good behavior within society so as not to destroy their ancestor's reputation. From a legal standpoint, persons holding customary titles become reputable and considered a role model by the community.

In granting customary title to an official who will be appointed, there is an important procession to be carried out before being handed a carved wooden stick made from black ebony. The *itum* (vow) procession is held, in which all the participants recite an oath to be respectful and loyal to the leader and his/her descendants; in breaking the oath, one (or his/her descendants) will have to bear consequences such as curse (Dunnierbier, 1984). Within the community, an oath is still considered sacred, as F.D. Holleman in "De Comune Trek in het Indonesische Rechtleven" (Mutual Cooperation in Legal Life in Indonesia: Sudiayat, 1991).

The customary title contains noble values that serve as a limitation that governs the recipient's behavior in social interaction and in performing his/her duties. Therefore, the recipient of the title must carefully consider his/her behavior so as not to embarrass the mandate of the title s/he bears; as well as maintaining leader-worthy characteristics such as charisma and bravery.

In a legal perspective, the title recipient has obligations to carry out, e.g., maintaining the region's good reputation and promoting the traditional land of Bolaang Mongondow. For non-native awardee, s/he is required to blend in and commit him/herself to the progress of the local indigenous community. Another good consequence the awardee will bear is that s/he will be respected and regarded as one of the highest figures in traditional society. S/he will receive special treatments such as special place during traditional rituals.

The title awardee possesses a set of rights and obligations. Among the rights are granted as an honorary citizen with special treatment for him/herself and his/her descendants. The special treatments are obvious in the form escort and service provided by the Regent/Mayor, as happened to the Acting Governor Sonny Sumarsono, Former Governor A.J. Sondakh and Former Governor G.H. Mantik. Meanwhile, the awardee is obliged to maintain moral values behavior so as not to hurt the feelings of the indigenous people who granted the title. Persons with customary titles cannot yet be associated with certain legal sanctions such as prison or fines. According to Soepomo, actions that are not in accordance with the rules must have sanctions as a form of punishment and self-improvement (Soepomo, 2013). In Bolaang Mongondow Raya, the term "mogompat kon lipu" means to pay a fine in the village or region for one's misbehavior as compensation for humiliating the village. This fine must be applied to the customary title awardee to preserve the nobility status of the title itself. Even though it has not yet been enacted, violations related to customary title must be subject to legal sanctions that are regulated through the establishment of regional regulations on Traditional Institution. This is feasible by referring to the Law No. 23/2014 concerning Regional Government and Law No. 12/2011 concerning Law Establishment. Therefore, the mechanism for granting customary titles must be formalized in form of regulation that is in line with the Indonesian Constitution so that the values contained therein will remain sustainable along with the development of generations. With the Regional Regulation on Traditional Institution, the intervention of certain parties who exploit such tradition for their benefits can be avoided.

3.3 Preservation of customary title granting

Article 11 Paragraph (1) of the UN Declaration on Rights of Indigenous People declares that "indigenous people have rights to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature". Moreover, Paragraph (2) of the same article declares that "States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual

property taken without their free, prior and informed consent or in violation of their laws, traditions and customs” (The UN Declaration on Rights of Indigenous People).

Following the Declaration, the Article 18B Paragraph (2) of The 1945 Constitution of Indonesia acknowledges that: “State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.” This provision shows the State's recognition of the existence and implementation of customs as long as it does not interfere with the State’s interest. This provision is further emphasized in Article 31 Paragraph (2F) on Law No. 23/2014 concerning Regional Government which obliges the regional government to maintain the uniqueness, tradition and culture of the region. The stipulation attributes the authority to the regional government as an extension of the national government to preserve traditions in regions in Indonesia. The right to use the authority is held by an official or institution in accordance as regulated in existing law/regulation; the authority also encompasses the competence of legal actions that are allowed be carried out according to formal rules. In terms of regional autonomy, this means the region can manage and administer its domestic affairs as long as it is in accordance with existing regulation/law.

The authority attribution allows the government of Bolaang Mongondow Raya to govern matters related to traditions in the form of Regional Regulation. According to Damopolii (1991), this is crucial because Bolaang Mongondow Raya is a combination of 4 of ex-swapraja (areas with special privileges), each with its unique traditions. The diversity within the region must also be preserved as a form of autonomy in managing their domestic affairs.

In order to avoid any clash that can lead to conflicts between regions, the formulation of Regional Regulations must accommodate the diversity by giving authority to the Traditional Institution to resolve issues related to customs and traditions. Therefore, the members of the Traditional Institutions must represent each of the Swapraja regions. One of the forms of diversity is seen in the variety of languages used in traditional processions. Every customary ritual in Bolaang Mongondow Raya has an introductory language that is required to be recited by the Ritual Leader prior to performing the customary procession. Therefore, each region needs to have its own formal rules so as to preserve their respective traditions and customs. Language is protected by the law as Indonesian cultural property; therefore, the preservation of language elements in the tradition is also critical. This study argues that the previously-discussed matters on traditions can be drafted in a Regional Regulation on Traditional Institutions. The Regulation should include a chapter or section governing such diversity, including mechanism of dispute resolution.

In drafting process of the Regional Regulations, the drafters can refer to the theory of legal validation as a basis. This theory teaches how and under what conditions are for a rule of law to be legitimate and valid, so that it can be applied to the community, if necessary, by force. There are seven conditions that must be met by the region to formulate legitimate regulation (Fuadi, 2013): (a) These legal rules must be formulated in various forms of rules, such as the form of articles in the Constitution. (b) The formal rules are made lawfully. (c) By law, these rules must not be canceled. (d) There are no juridical defects in the regulation, e.g. contradicting law/regulation with a higher position. (e) The rule of law must be applicable by law enforcement agencies, such as: courts, the judiciary, and the police. (f) The rule of law must be accepted and obeyed by all people. (g) The rule of law must comply with the State key principles.

Regional Regulations on Traditional Institution is drafted in order that the effort of cultural preservation will have a formal legal basis; therefore, it is expected to be implemented optimally if all stakeholders simultaneously and consistently carry out their duties and functions. In this regard, this study offers the scope under which the regulation can be discussed academically by related parties as regulated in the Law No. 12/2011:

1. General provision
2. Principles of formulation
3. Structural hierarchy and position of the traditional institution
4. The institution’s job and function
5. Authority and obligation

6. Organizational management
7. Criteria of customary title awardee
8. The stipulation of customary title granting
9. Procession of customary title granting ritual
10. Conflicts and solutions
11. Financial sources
12. Guidance and supervision
13. Sanctions
14. Concluding provision

Following the regulation formulation, this study contends that there are technical steps to be conducted by the drafters in order to establish a new traditional institution under the Regulation of Regent/Mayor in mechanisms as follows:

1. The establishment of a traditional institution is facilitated by the regional government. At this stage, the regional government holds a special meeting with the delegations of each village and selects a maximum of 7 (seven) regency/city indigenous commissioners for a certain length of service;
2. The commissioners, along with traditional institutions in each village, formulate criteria for the customary title awardee candidate and as well as determining sanctions for any violations;
3. The result of deliberation is further disseminated to the public as the overseer of the ritual organization.

The proposed content of the local regulation and the steps taken in forming the Customary Institution are carried out to meet the public expectation of an institution that is free from nepotism. A bottom-up mechanism will produce decisions that have minimal criticism. This is different from the current practice that the selection of personnel for traditional institutions is only through appointment, not through village delegations. As a result, the decisions often draw criticism from the public

In addition to their respective responsibility, the members of the institution are obliged to coordinate with each other to preserve the unity of culture between regions in Bolaang Mongondow Raya. The expected goal of Traditional Institution as an organization authorized by the Regional Regulation correlates with the public policy. Taufiqurohman (2014) defines the policy: a) The relationship of a government unit with its environment (Robert Eyestone); b) A series of interrelated activities and its consequences (Ricard Rose); c) Every government decision which is implemented or not implemented (Thomas Dye); d) Government skills to actualize social objectives (Ricard Hula).

Suharno (2008) argues that the term “policy” differs from the word “wisdom” and “virtues”. Budi Winarno dan Solichin A. Wahab has agreed that the word “policy” is interchangeable with other terms, such as “goal”, decision, law, regulations, standard, proposal and grand design.

The establishment of traditional institutions through regional regulation serves as the grand design of traditional custom preservation. Components, such as the guideline of customs which adjust the traditional procession of ex-Swapraja in Bolaang Mongondow Raya, are also involved in the preservation. It later serves as the guideline for the people in living their life.

The granting of traditional title by the NGO was performed without the involvement of the government. However, the stipulation of regional regulation has emphasized the importance of the traditional institution. For this reason, the government has played its role according to Article 18B Paragraph 2 of the 1945 Constitution. The involvement and commitment of the regional government with the Provincial Legislative Council in the stipulating regional regulations on customary institutions strengthens and places customary institutions in an independent position automatically. It promotes the freedom of the institutions from the intervention of any party during the granting of traditional titles to formulating and deciding social and legal consequences for awarding customary titles. This implies that traditional institutions have expanded authorities to resolve more conflicts, be it individual or group conflicts. Furthermore, traditional Institutions established with Regional Regulations will legitimize the performance of the institutions in villages. Conflict of interest between the traditional institution and the state law, however, is inevitable. Still, the establishment of the institution is a part of traditional customs preservation which has been adjusted according to the mandate of the constitution and other regulations.

4. Conclusion

The establishment of a Regional Regulation on Traditional Institution is considered a breakthrough as an effort to preserve the customary titles granting ritual, in which the current organization by AMABOM is considered invalid due to lack of cultural roots and professionalism in the appointment of the institution member. The ritual is regarded as a manifestation of the mandate of The 1945 Indonesian Constitution; therefore, involvement of the Regional Government is highly critical. In order to prevent certain parties from exploiting the ritual to their own benefits, the customary title granting ritual must be organized by an independent traditional institution with strong legitimacy. However, the realization of the aforementioned expectations depends very much on the political will of the Regional Government as well as the legislative board. This Regional Regulation can be referred as legal basis in the institution's organization, including their duties and functions, as well as other matters related to the customary title granting ritual. This regulation is an accurate parameter in measuring and evaluating the implementation of the customary procession. The customary values that have been elaborated in this regulation can be internalized and sustainable in the soul, spirit, attitude and behavior of the Bolaang Mongondow Raya community in the midst of globalization. .

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