



Ahkam

Jurnal Ilmu Syariah

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- ❖ M. IKHSAN TANGGOK
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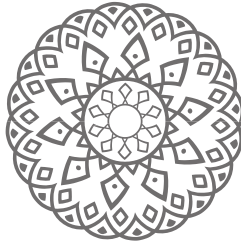
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CONFIGURATION OF COSTUMARY LAW RELATED TO ECONOMY (ECONOMIC ADAT LAW STUDY IN NORTH SUMATERA, INDONESIA)

Mustapa Khamal Rokan & Kama Rusdiana

Abstrak: Tulisan ini ingin melihat konfigurasi berbagai bentuk hukum adat yang berkaitan dengan ekonomi sebagai hukum yang hidup di masyarakat. Tulisan ini berbasis penelitian dengan menggunakan metode kualitatif dengan pendekatan sejarah. Data diperoleh dari lapangan (*field research*) serta wawancara yang kemudian diolah secara analitis deskriptif. Hasil penelitian ini memperoleh empat (4) konfigurasi hukum adat yang berkaitan dengan ekonomi dengan bentuk, pertama, hukum adat ekonomi konfigurasi pilantropi murni dalam rangka menegakkan ajaran agama (Islam) dan kebiasaan yang terdapat pada masyarakat. Kedua, konfigurasi hukum adat ekonomi semi bisnis dimana pelaku usaha (pemilik modal) melakukan bisnis disertai untuk membantu pihak petani. Ketiga, konfigurasi hukum adat ekonomi murni dalam melakukan bisnis. Keempat, konfigurasi hukum adat ekonomi dalam melindungi alam. Penelitian ini juga menguatkan asumsi sosial ekonomi dan berdampak terhadap dimensi sosial dalam hukum ekonomi.

Kata kunci: Konfigurasi Hukum, Hukum Adat, Hukum Ekonomi

Abstract: This paper wants to see the configuration of various forms of customary law relating to the economy as a living law in society. This paper is based on research using qualitative methods with a historical approach. The data was obtained from the field and the interview which was then processed analytically descriptive. The results of this study obtained four (4) configurations of customary law relating to the economy with the form, first, the customary law of economic configuration of philanthropy in order to uphold the teachings of religion (Islam) and habits found in society. Secondly, the configuration of semi-economic customary law in which businesses (capital owners) conduct business are accompanied to assist the farmers. Third, the configuration of pure economic customary law in doing business. Fourth, the configuration of economic customary law in protecting nature. This research also strengthens socio-economic assumptions and impacts on the social dimension in economic law.

Keywords: legal configuration, customary law, economic law

ملخص: تريد هذه الورقة أن ترى تشكيلة الأشكال المختلفة من القانون العربي المتعلقة بالاقتصاد كقانون حي في المجتمع. تستند هذه الورقة البحثية باستخدام أساليب نوعية مع النهج التاريخي. تم الحصول على البيانات من الميدان والمقابلة التي تمت معالجتها بعد ذلك بطريقة وصفية تحليلية. حصلت نتائج هذه الدراسة على أربعة (4) تشكيلات من القانون العربي ذات الصلة بالاقتصاد مع الشكل، أولاً، القانون العربي للتكوين الاقتصادي للعمل الخيري من أجل دعم تعاليم الدين (الإسلام) والعادات الموجودة في المجتمع. وثانياً، فإن تشكيل القانون العربي شبه الاقتصادي الذي يرافق الشركات (أصحاب رأس المال) الأعمال التجارية لمساعدة المزارعين. الثالث، تكوين القانون العربي الاقتصادي الخالص في القيام بالأعمال التجارية. الرابع، تكوين القانون العربي الاقتصادي في حماية الطبيعة. هذا البحث يعزز أيضاً الافتراضات الاجتماعية والاقتصادية والآثار على البعد الاجتماعي في القانون الاقتصادي.

الكلمات المفتاحية: التكوين القانوني، القانون العربي، القانون الاقتصادي

Introduction

Customary law as living law in society is not only related to ritual law, family law, art, or social relations but also concerns economic activities. This is evidenced by various forms, models or ways agreed upon by the community as a guide in economic activities.

The community's need to survive requires people to do economic activities related to one another. At that time, rules emerged regarding economic activities in the community. Therefore, births and legal developments related to the economy go hand in hand with the development of the community itself. As is the definition of customary law or adat law, which is a set of norms or rules, both written and unwritten, that live and apply to regulate the shared life of indigenous peoples who are inherited in a descent, which are always obeyed and respected, and have sanctions. Therefore there are the same customary laws concerning economy among one region and another, but there are also differences between one region and another. This depends on the habits and wisdom that live in an area.

On the other hand that the law concerning the economy is termed "business law", "commercial law", economic law is always assumed to be law that comes from outside, especially Dutch Law. Economic law always refers to the Commercial Law (KUHD) and the Civil Code (KUHPerdara). In fact, customary law related to the economy is the law that lives in society.

In fact, customary law concerning the economy that lives in the community is very numerous and varied. Those are related to buy and sale law, debt law etc. In the case of the need for capital or business there is a law of leasing. Customary law concerning the economy is also related to exchange and trade. Customary law relating to buying and selling has many forms of cash buying and selling etc.

Of the various forms of customary law related to the economy its forms or configuration are unknown. As the meaning of configuration is the formation of an object, it becomes an important object to be studied. That is why this paper describes configuration of costomary law concerning the economy.

This paper is based on research using qualitative methods. Field research or observation is used to see the living laws relating

to customary law related to the economy. The research site is North Sumatra, Indonesia. Field data collection that the authors will do in various places in North Sumatra namely Mandailing Natal, Langkat, Deli Serdang and Medan City. Document study is carried out to obtain secondary data which can be divided into primary legal materials related to the discussion.

Configuring Customary Economic Law

Based on the results of the study there are four (4) configurations of customary law relating economic, first, the customary economic law of pure philanthropic configuration in order to uphold the teachings of religion (Islam) and the habits found in society. Secondly, the configuration of semi-economic customary law in which businesses (capital owners) conduct business are accompanied to assist the farmers. Third, the configuration of pure economic customary law in doing business. Fourth, the configuration of economic customary law in protecting nature as source of economy.

Configuration of Economic Customary Law based on Pilantropy

Like the original nature of the Indonesian people that philanthropy has been existed since the thirteenth century. Customary law related to the economy is based on the spirit of mutual assistance (*gotong rotong*). Tribes and nations make mutual cooperation as a principle of interaction among communities, including in fulfilling the needs of life or the economic field at large.

The configuration of traditional economic law based on philanthropy is divided into two (2) forms, namely, the configuration of economic customary law based on religious values and the configuration of customary law in economics that are values that have fused in society. It is difficult to distinguish which religious (special Islamic) law and which is customary law.

Configuration of economic customary law based on philanthropy based on religious values in the practice of buying and selling contracts with clear agreements or expression. In the Malay community, the contract that is spoken in every sale and purchase transaction even with

small objects such as vegetables, household appliances is still maintained by the words of offer and acceptance (*ijab* and *qabul*). *Ijab* is usually done first by the seller, then then accepted (*qabul*) by the buyer, but the consent can sometimes also be initiated by the buyer. Contracts occur after the payment process and delivery of goods by the seller to the buyer when the parties are still in one place.

The law of sale and purchase contract like this is believed to originate from Islamic teachings, which is related to the law of buying and selling or *muamalah*. In the Syafi'i school, offer and acceptance (*ijab* and *qabul*) are one of the pillars in buying and selling so that they cannot be left behind. Therefore, the Malay community implements the teachings of religion in making a sale and purchase transaction by expressing the lafzah *ijab* and *qabul* clearly. It usually by mention, "I sell and I buy".

Configuring Customary Economic Law based on Pilantropy based on religious values is productive *waqf*. Productive *waqf* practices existed around the beginning of the 20th century in Langkat Regencies and Mandailing Natal (Madina) Regencies, North Sumatra, Indonesia. Ceta engine endowments were carried out by Syekh Abdul Wahab Rokan AL-Khalidi–An-Naqshabandi, a Sufi person cleric in Babussalam village, Langkat Regencies. This productive endowment has produced a valuable scientific civilization. The cash waqf carried out in Babussalam made Islamic civilization through the book expand. In history, dozens of people worked for this printing company. With the mediation of publications such as brochures, the name Babussalam, Langkat, and close relations with other countries have been spread.

Similarly, the market *waqf* was carried out by Sheikh Al-Junaid Thola Rangkuti. Market Waqf located in Lamo Village, Huta Namale Village, Puncak Sorik District, Marapi Mandailing Natal, North Sumatera. Not only that, other productive *waqf* are one hectare of hermitage of Al-Junaidiyah Madrasah Islamiyah, one hectare market with ballrooms and warehouses, one hectare of hermitage laboratory buildings, libraries, public schools, housing, mosques, and fish ponds, (4) four hectares rice fields in the Tarlola area, plus 2.5 hectares of waqf of students and followers in Pidoli and one hectare in Tarlola, (5) one house plus five other houses of worship for the pilgrims, (6),

15 hectares of gardens, including 10 hectares for planting coffee. Of course, productive *waqf* comes from Islamic law.

As understood that endowments are Islamic economic instruments that have been practiced since the time of the Muhammad Prophet. The characteristic of continuous and elastic *waqf* makes this instrument carried out by the ulamas in North Sumatra. It is elastic, because *waqf* does not have to be bound exclusively for certain groups, such as zakat. Continuously called because *waqf* property is property (*'iqār*) and continue (*itshāl*), so the *waqf* property must be productive continuously (*dawām al-Intifā'*).

Configuration of Customary Law Economic based on Pilantropy which has been integrated as a value that lives in society can be seen from mutual cooperation (*gotong royong*). Mutual cooperation (*gotong royong*) in meeting the economic needs of indigenous peoples in North Sumatra can be seen from several forms of customary law from various ethnicities and regions.

In the Mandailing Tribe there is the term *Marsalapari* which means "pick up the day". *Marsalapari* is a system of mutual cooperation (*gotong royong*) among residents when harvesting rice, where each citizen helps people who are harvesting their crops. This mutual help is done alternately between one family to another so that everyone helps and is helped. For residents who help in the harvest process also get a little from the harvest as a thank you. The principle of brotherhood and fellowship in Mandailing society can be seen as "*Songon siala sampagul, Rap tu ginjang rap tu toru, Madabu rap ma gulang, Manyiborang rap mar lange* (Like the chalice and together up and down together falling together rolling across the river swimming together).

In the Batak tribe there is a term *marsiurupan* where people work together in planting rice in the fields or in the fields. Mutual cooperation (*gotong royong*) is followed by close and distant family members, neighbors and so on. Mutual cooperation (*gotong royong*) is not only in terms of work, but also in terms of preparing food and so on.

Configuration of traditional economic law based on philanthropy is also found in Malay society. This can be seen from the poems, rhymes, poems contained in the Malay tribe aspiring to people who

help and help each other. There are Malay terms that reflect the principle of mutual cooperation, among others, while being active, and in other ways. Raising is mutual cooperation when starting rice. Usually everyone takes their respective roles and parts such as preparing food, water and working together to grow rice. Likewise with the term *berurup (urup-urupan)*, which means changing, please help when grazing and inserting in the fields. Whereas in terms of discussing solidarity, consensus, and mutual cooperation, such as in the field of government or talking about the crowd is called density. The phrase that is famous in the Malay language *Berat sama dipikul, ringan sama dijinjing. Kebukit sama mendaki, ke lurah sama menurun. Makan sama dengan bersantai, Tidur sama dengan beradu, Mandi sama dengan bersiram* (*The same weight is carried, light is the same as carrying it. To mountain is the same as climbing, eating together is relaxing, sleeping together with fighting, taking bath together with watering.*

Mutual economic cooperation in the Simalungun customary law is called *haroan* and *markarah*. *Haroan's* work is called *marharoan*. *Haroan* is a mutual assistance organization, please help those who have members, rights and obligations. While *markarah* is the deployment of other personel without salary, but will be fed. *Markarah* is done in an urgent situation, and *haroan* is an organization that is discussed first. The *marharoan* activity started from *mangimas* (cutting down wood first and now cutting down shrubs and weeds), *manggodung* (hoeing), *mardang* (planting rice), weeding, and *pariaman* (harvesting).

Marharoan or *haroan* occurred due to agreement between several villagers, for example there were six people together who had agreed to make *haroan*. While *markarah* is not an organizational form, it is only asking for help from others to work in someone's field. Meka who is asked for help is only given food, without pay. However, if the person asking for help is asked for help, it needs help, it must also be assisted by someone who has been helped. All forms of mutual cooperation referred to as *Sapagambai Manoktok Hitei*, it can simply be interpreted to work together to achieve glory.

The economic cooperation in Dairi's customary law is called the *menanda tahun*, which is planting their leaders' fields. After the celebration of *menanda tahun*, other farmers' fields are planted together

with their families. The day before the year marking, all members of the community (*ginenggem*) were called upon to provide food. The officer who carries out and prepares the ceremony is the Parkebbas—which comes from young children—gives the call from house to house.

The principle of mutual help is the cultural spirit of the Indonesian people. The principle of helping is a form of resistance from the perception of some founding fathers on individualism and free fight competition in people's lives. They regard individualism and free competition as the “culprits” of capitalism and imperialism so it is very natural that these values are kept away from Indonesian society. Welfare that is aspired can be achieved with the spirit of collectivism. Bung Hatta said:

According to the direction, the basis of the economy in the future will be further away from the basis of individualism and closer to collectivism, which is equally prosperous. Indeed collectivists have been in accordance with the ideals of Indonesian life. It has been from time immemorial that Indonesian society—as in other Asian societies—is based on collectivism, which is famous as a basis for mutual assistance.

This mutual economic system is called the Pancasila economic system. The Pancasila economic system is based on five pillars namely, the first cooperative must be the main pillar of the economy, because cooperatives are concrete forms of joint companies. Second, the wheels of the economy are run by an economic, social and moral spirit system, and this is what distinguishes the Pancasila economy from the capitalist economic system which only emphasizes economic spirit. Third, there is a strong enthusiasm for obtaining social justice, this is what distinguishes it from capitalists who are only individual and gain personal gain. Fourth, nationalism provides inspiration for all economic policies. Fifth, there is a clear balance between national planning and decentralization of economic activity.

The sentence “joint effort” is contained in Indonesia Constitution Article 33 paragraph (1) “the economy is prepared as a joint effort on the principle of kinship”. The sentence “joint effort” shows that economic activity is an effort and activity carried out in collaboration between parties such as stakeholders, business actors, consumers, government and all those involved in the Indonesian economy. Conversely, the economy does not want economic development to be carried out alone,

unilaterally, a handful of people or only certain parties and groups. Joint effort also means that the Indonesian economy is based on the principle of cooperation, not individually.

The social value of society in trade can be seen from the mutual help between business people. Customary law is communalistic and religious-religious. The religious-religious nature of positioning trade as a form of effort (effort) to meet the needs of life or survival in life while income or profit is believed to have been determined by the almighty. Therefore, the attitude of mutual assistance and mutual cooperation becomes a living law in Indonesia.

Configuring Customary Economic Law based on Semi-Business

Configuring customary law regarding economic activities based on semi-business. That business agreement practices between capital owners and business actors are not purely based on business, but also related to mutual help. This can be seen from the profit sharing system in business.

The profit sharing system in doing business is generally carried out in the livestock, agriculture and plantation business. The profit sharing system in business is done by the community in the field of animal husbandry such as cattle and goats which are called “two to one” (*dua banding satu*). The profit sharing system in animal husbandry is a profit sharing between investors or those who have livestock by guarding livestock or commonly referred to as *pengangan* (*keeper*). Whereas contracts are usually not done in writing, all agreements are made based on the trust of the parties who are collaborating.

The term profit sharing is often found in indigenous peoples, as in Javanese society called *paro* (half-half), the Batak call it *marbola*, the Minangkabau people call *Mengduai*, If the result is divided by three then it is called thirds. The result system divided by three on Java is called *Mertelu*.

Likewise in agriculture, the profit sharing system has become a law that lives in the people of North Sumatra, Indonesia. The profit sharing system is an agreement between the land owner and the land manager which is usually made in writing. The profit sharing system is carried out by the system, the land owner gives land to the manager to

be managed. Furthermore, the manager will provide the results of the management of land or rice fields voluntarily to the landowner from the net profit.

The social aspects of customary law in terms of business agreements can be seen from voluntary profit sharing, usually the owner of the rice field gets a third of the net profit. This is influenced by several factors, such as land managed by farmers is land that is not used, for landowners who are important, the land is clean and has been benefited, therefore the results of land managed are not expected. Besides that, usually farmers who work on rice fields are also relatives and classified as poor people who need assistance.

Likewise, the practice of cultivating oil palm plantations can be done with a profit sharing system for capital. Collaboration usually occurs when the landowner is unable to manage his land because he is not in a place such as outside the city so it is not possible to manage it. Landowners hand over to people who are able to maintain and manage it.

The same thing is done in terms of profit sharing in harvesting rice and oil palm. In harvesting agricultural products such as rice fields, when the rice has yellowed it must be harvested immediately. The owner of the rice field is sometimes unable to harvest it himself so that other people who also need work are needed so there is cooperation. The forms of cooperation that are carried out are not in the form of remuneration but in the form of cooperation with the profit sharing system.

Likewise in terms of labor relations where in indigenous communities legal relations between workers and employers in the form of strong social relations. For example, in the case of a wage agreement usually not set at the beginning. Employee and employer relationships in the community are based on mutual trust and help. If an agreement has been reached, what must be done is followed by an agreement on the amount of wages. However, there is a wage or nominal amount of wages to be paid is not discussed. Sentences that emerge from the worker when asked how much wages should be paid: ... it's up to you, ... it's easy, or, ... how good it is.

Likewise in terms of piece rates. The wholesale wage is the relationship of the worker with the employer with the payment of

wages calculated by the completion of the work to completion. While the payment of wages can be done at the beginning of work, in the middle or after completing the work in its entirety. Payments can also be made several times which ends with the final payment after all work is done. In the case of payment of this system, the money to purchase material is first given to the worker while the wages can be paid in part first or given after all work is done.

In terms of daily wages it is also done not strictly because it is based on social values. Although the agreement is usually one day's time, it starts from morning to evening with hours that are considered normal by the local community, for example at 8:00 a.m. to 5:00 p.m. for daily wages or 8:00 a.m. to 12:00 p.m. for half-daily wages. However, in the implementation of work wages there is no written agreement and without the use of witnesses. Everything is done on the basis of mutual trust and even the owner of the capital also lets go home prematurely. At certain times the work owner asks workers to stop and talk and joke, even though they are still in working period which will harm themselves.

Configuring Customary Economic Law based on Pure Business

Configuration of customary economic law based on pure business can be seen from the practice of profit sharing in the restaurant business in the Minang community. The term for results is commonly referred to as *diparo* which means divided by halves or profit sharing with a 50:50 ratio, or 40:60. Distribution of results based on position and ability. The position of the cook is very important in the restaurant business to get a large profit sharing. As for the dish and dishwashers get a smaller profit.

Business configuration in the form of profit sharing is a just economic law. Profits and losses are shared. This is in accordance with the saying in the Malay tradition said: *berat sama di pikul, ringan sama dijinjing* (the same weight is borne, light is the same as being carried). The values of justice which are the philosophy of the mutual cooperation system are reflected in the economic law of indigenous peoples. The source of the values of justice in the profit sharing system cannot be found with certainty, but the author believes that this system

may come from religious values in indigenous peoples.

Configuration of customary law relating to pure business economics is in the case of buying and selling where the goods that are subject to direct delivery are called cash buying and selling. It's the same as buying and selling debt, where the money that should be received by the seller from the buyer is postponed in a certain time called debt-buying. Buying and selling of debt can occur because of the agreement of the parties to make a sale and purchase of debt transactions or also sometimes insedentil where the buyer is not carrying money or other reasons. Buy and sell installments, where the payment of money from the buyer is made gradually in accordance with the agreement of the parties such as being paid five (5) times, three (3) times or two (2) times. Prices given to buyers are more expensive than goods paid directly or in cash. Buying and selling messages, where the items purchased will be handed over later at a time agreed by the parties, not infrequently the time is determined, only around a certain time.

A little different from the sale-commission, where someone sells someone else's goods with a commission to get a deal. This agreement is usually not in written form, even the contract used is usually only to help friends or relatives who are selling goods, but usually the intermediary seller will get a salary or called a commission.

Likewise in the case of collateral items. In the Malay tribe, if there is a large amount of lending and borrowing (according to the estimation of the lender), he can ask for the collateral (borg) when he moves, for example, mas, and others whose value is roughly equivalent to the borrowed money. This item is returned after the debt is repaid in the promised time. As long as the debt has not been paid in full, this jewelry can be used in connection with it but may not be given to others.

If within the time of borrowing the item is lost, without any deliberate error from the lender, then the debt is deemed paid off with no other calculations. If the borrowing time is past without repayment from the borrower, the item becomes the property of the borrower. Large loans can also be made by mortgaging immovable property, land / houses or rice fields. As long as the debt has not been paid off, then

the property referred to is prolonged to be controlled and enjoyed by the lender until the debt is repaid.

Configuration of customary law relating to Economic Sources

Configuration of customary law relating to economic sources can be seen from the law concerning economic sources such as rivers and forests. Local wisdom of Mandailing Natal indigenous people towards economic sources such as forests, water, rivers and other economic resources has its own peculiarities. The local wisdom is:

Harangan rarangan, for forest ban in the traditional conception of indigenous law communities is part of a forest area belonging to a village (*huta*) that cannot be opened for agricultural land. Likewise, the forest wood must not be taken for personal purposes, let alone those of a commercial nature. For Mandailing Natal people, the land is customarily reserved specifically for agricultural land. Likewise the land designated for grassland for livestock shepherds separately so that it does not mix with the surrounding community plants.

Trust in the residential area of these spirits is still very entrenched in the Mandailing Natal area. *Lubuk* prohibits customary products which are still maintained in the form of water and fish along the river which should not be disturbed and harvested because for social religious purposes, those who violate will be subject to good sanctions, especially sanctions that are magic.

Lubuk prohibition is a certain area that is made boundaries that are usually with rocks that should not be touched by the community. *Lubuk* prohibition is planted with fish seeds and the harvest is usually done at the time of *Id al-Fitr*. At that time, many residents visited and participated in the harvest by paying some money. Tariffs going into the prohibition to harvest fish are usually adjusted to the catches used by a person.

Between one village and another village usually has a different schedule when opening *Lubuk Larangan*. In general, these activities are entertainment for the community, but in particular it is a form of local wisdom so that the typical Batang Gadis River fish (like jurung fish) still live never extinct.

Likewise with *bahasa daun* (leaf language). *Bahasa daun* of Mandailing Natal people has a philosophy that underlies their attitudes and behavior in interacting with nature. As such, the community is environmental lovers and conservationists. *Bahasa* vocabulary of the Mandailing community leaves according to the name of the leaf where the types of leaves are scattered in the forest area in Mandailing. The existence of *Bahasa daun* suggests how Mandailing people are very close to nature who want to create a natural ecosystem system.

Based on the above description, it can be seen that the configuration of customary law related to diverse economies. Diverse in terms of source and application. However, economic customary law is very strong based on social. This shows that the assumption of social aspects is very dominant in customary economic law. Thus it is true that the assumption that there is no community anywhere and anytime that does not seek its existence without seeking to uphold the law.

Conclusion

From the description above, it can be concluded that there are several customary law configurations related to the economy, namely the configuration of economic customary law in the form of pure philanthropy. This configuration can be divided into two things, namely religion (Islam)-based philanthropy and value-based philanthropy that has been embedded in the community. In addition, there is a configuration of customary economic law that is semi-business in which business actors (capital owners) conduct business accompanied by assisting the farmers and there is a pure configuration of customary economic law is doing business. In addition, the results of the study also show that there are configurations of customary economic law related to natural protection. []

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Interview

Interview with Muhammad Idris Nasution

Interview with Muhammad Faury

Interview with Ali Murtadho

Interview with Said Hanafi

Interview with Siti Fatimah

Interview with Hendrik

Interview with Syamsul Bahri

Interview with Bagus Ramadi



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