



Recognition of Lempa Dua Principle as Traditional Rights of Indigenous People Tau Taa Wana

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ABSTRACT: Tau Taa Wana Indigenous Law Society is an integral part of the nation that has traditional or indigenous rights that must be respected and protected. The existence of the value of customary law as a sub-national legal system is recognized constitutionally in Article 18B Paragraph (2) of the 1945 Constitution of The Republic of Indonesia. The state recognizes, respects, and guarantees the enactment of customary law and its traditional rights as an integral part of the national legal system in Indonesia. This research aims to analyze and explain the legal recognition of the constitutional rights of Tau Taa Wana in the essential legal value of lempa dua as part of the Indonesian legal system for law enforcement efforts. This research used the normative-empirical method with library research and the study of law as a reality (behavior) is done through research on how people follow the lempa dua principle as the living law. It shows that legal recognition of the rights of Tau Taa Wana guaranteed by the Constitution, as long it still exists as a subsystem of Indonesian law as well as a cultural identity and the rights of traditional peoples which is a human right that must be respected. As a subsystem of law, the principle of lempa dua also has a strict ordinance and division of duties between the three elements of kinship in resolving conflicts that occur between relatives tied in the principle of lempa dua. Also, juridically determined that judges and Constitution Court judges as law enforcement are obliged to always keep up with the development of the values of law and justice of society in prosecuting and deciding the case against the court.

KEYWORDS: Indigenous People, Traditional Rights, Tau Taa Wana, and Recognition

INTRODUCTION

Recognition of the rights of indigenous peoples in order of national and state life has been guaranteed by the constitution and protected as a constitutional right (Constitutional Rights are the basic rights and basic freedoms of every citizen, related to education, employment, equality before the law, socio-economic rights, free speech, the right to life and residence guaranteed by the Constitution) of the legal community. The preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the Indonesian Constitution), as the original intent determined that the purposes of the state are to protect all Indonesians and the homeland. Tau Taa Wana Indigenous Law Society (hereinafter mentioned as Tau Taa Wana) is an integral part of the nation that has traditional or indigenous rights (traditional rights are special or privileged rights inherent and owned by a community of people for the similarity of origin (genealogical), territorial similarity, and other indigenous objects, the right to ulayat land, rivers, forests, and practiced in their communities) that must be respected and protected. The value of customary law as a sub-national legal system is recognized constitutionally in Article 18B Paragraph (2) of the Indonesian Constitution. According to this Article, the state recognizes and respects the existence of adat law societies along with their traditional rights as an integral part of the national legal system in the Unitary State of the Republic of Indonesia.

The article of the Indonesian Constitution mentioned above has sought to give recognition and respect to the Unity of Indigenous Society, which is the recognition of the state to the existence of indigenous law and its traditional rights (Asshiddiqie, 2006). Further regulation of this Article is implemented through the provisions of Article 5 Paragraph (1) Act No. 48 Year 2009 on Judicial Power (hereinafter mentioned as Judicial Power Act) that affirms and requires judges and Constitution Court judges to delve, follow, and understand the values of law and the sense of justice that lives in a society in prosecuting and deciding cases brought against it. Also, it is stipulated in Article 51 Paragraph (1) letter b Act No. 24 Year 2003 on the Constitutional Court determines that indigenous peoples are one of the parties who can be applicants



in the proceedings in the Constitutional Court. Constitutional rights are also a fundamental right for all Indonesians, including indigenous people who still uphold the values of indigenous law (Zazili, 2016).

Rahardjo (2010) explained, the law is not understood as an esoteric institution and autonomy, but rather as part of a more extensive social process, so he stated, "... Law as a great anthropological document", i.e. the understanding of law as an instrument of the profession only needs to be shifted into an anthropological document. With this understanding, the spirit to always, "... searching for (the social) meaning of the law" will open with a wide space. The basis of the legislator in creating the law, the customary law as a material law that must be unearthed by the legislator, is inevitable. Surely legislators and law enforcement must first find "jural postulate" as a fundamental value that resides in the lives of the people. That understanding makes us aware not to narrowly define the law.

The value of the social bond of the Tau Taa Wana is based on a close and robust blood bond and is very basic in the organization of kinship with a line which is called *mlanga* in Taa language and is perceived as *opot* (a small patrilineal line). The concept of *opot* (small patrilineal clan) is the kinship of one line consisting of all the descendants of an ancestor that is taken into account through the male lineage with patrilineal nature (Koentjaraningrat, 2002). *Opot* consist of a group of extended families that are derived from the same ancestor bound by the male (*mlanga tangkai*) lineage only. A person is considered a relative by another person because it is considered to be a descendant or has a blood connection. Patrilineal kinship in the Tau Taa Wana can occur over small clans of *opot* and large patrilineal clans called *lipu*. In contrast, the *lipu* (large patrilineal clan) is a kinship group consisting of all the descendants of an ancestor that is accounted for through the male lineage.

The patrilineal system strongly affects the life of this particular community, which includes the structure of inheritance, marriage, landowning, and residential patterns. Marriage can also bring forth a kinship between *opot* and *opot*, even *lipu*. The kinship system in Tau Taa Wana is associated with a common thread intertwined with the principle of *lempa dua*, which is a framework that includes blood relatives and marriage relationships that connect a kinship group consisting of males from the same descendants with the family in which they married their daughter (anave 'anya), also known as the in-laws.

All aspects of community life, as well as various essential things such as the happiness and welfare of the Tau Taa Wana, are strongly influenced by the kinship bond based on *lempa dua*. Because every traditional ceremony is always followed by this principle. *Lempa dua* also contains the values of law and a sense of justice that is alive and recognized its existence in the process of resolving conflicts that occur in the Tau Taa Wana community. In determining the conflict, the principle of *lempa dua* prioritizes the values of deliberation (*mogombo*) to get a mutual agreement.

The enactment of the customary legal system as an addendum (the definition of "Addendum" in the Dictionary of Bahasa Indonesia is additional volumes (in books); attachments; provisions; or additional clauses, e.g. in the deed. In general, the term addendum is used when there are additions or attachments to the underlying agreement but is a union with the underlying agreement. Although the term of the agreement has not expired, the parties may add an addendum as long as it is agreed upon by both parties) to Indonesia's positive law reflects the diversity of legal pluralism (the term "legal pluralism" has been widely used since the early 20th century, in many cases potentially interpreted and applied differently. As an academic concept, the notion of legal pluralism is constantly changing and constantly being sharpened. The latest development is a legal pluralism approach in global prestige, considering the old approach is no longer adequate. (See Sulistyowati Irianto, Legal Pluralism as a Theoretical Concept and Approach in Global Perspective, Paper in the Seminar of Legal Pluralism and Challenges for the Establishment of the National Legal System, BPHN, FH UNHAS and Kumham Sulsel Chancellor, Makasar 1-2 May 2007). That must be understood as the enactment of the adat law system in addition to positive laws in Indonesian society (Soerojo, 1993). A judge should not adjudicate according to his legal feelings but is bound to the order of adat law, which is what grows and develops in society. It is a fact that the public cannot always accept the process of litigation in Indonesia's positive legal order because the judge's ruling is not always based on a sense of justice living in society (the living law).

As a consequence, the verdict is asked for an appeal or cassation. Whereas in litigation, the principle of the judiciary shall be carried out simply, quickly, and lightly as specified in Article 2 Paragraph (4) of the Judicial Power Act. The weakness of the state's judicial system is the opportunity for the existence of legal value in *lempa dua* as part of



the Indonesian legal system for law enforcement efforts to resolve disputes that essentially promote family and peace. This pluralism view engenders legal issues that the values of adatlaw can play a role in regulating and resolving cases of indigenous dimensions that occur in Indonesia's positive legal system. In court, these indigenous legal values are applied in the litigation process in addition to the validity of positive laws or national laws of Indonesia. Lempa dua principle is an alternative that can be used in dispute settlement outside the court, based on Article 58 of the Judiciary Power Act.

METHODOLOGY

This research is a socio-legal research combined with qualitative approach and discourse analysis. Discursive analysis is an analysis of oral or verbal, visual, audio, or textual statements and their relations with other statements. The combination of qualitative approach and discourse analysis aim to change the emphasize from behavior to discursive aspects of the law in practice. In this study, recognition of “lempa dua” principles as traditional right of indigenous customary law “tau taa wana” is not given, meanwhile; is related to discourse practices. The methodology in this study is hermeneutics and dialectics. The data used is the combination of primary data and secondary data. Data collection technique conducted by structured and in-depth interviews and focus group discussions.

RESULTS AND DISCUSSION

LEMPA DUA PRINCIPLE AS A JURAL POSTULATE AND VALUE SYSTEM

Mertokusumo (2007) explained that law is a system because the law is the entire complexity of elements consists of legislation, jurisprudence, court, institution, or organization, and organized values in the interaction to achieve the purpose of the law which is an order in society. Mertokusumo (2007) asserted that the system is a unity in which there is no answer or solution to all problems arising in the system. In a legal system, there is never a conflict between the elements or parts until protracted, because in fact, the legal system is consistent and steady.

The indigenous law system of Tau Taa Wana as a subsystem of the national legal system consists of organized values in the interaction of each other to achieve the purpose of law order in the community, and it is also available answers or solutions to all problems arising in that particular community. In their kinship structure, the pattern of behavior of its people is organized in an orderly and continuous pattern into a legal system. The atmosphere of togetherness is tied to kinship, as well as various essential things such as happiness and family welfare is summed up in a common thread called the lempa dua principle. Which there is a close connection to all kinship relations.

Lempa dua is a jural postulate which is the essential value that is the basis of the culture of the tribes amid their unique natural environment. This is similar to Von Savigny described as *volksgeist* or folkways. To understand the law in the spirit of the people who believe it, then the law cannot be released from the cultural process that shows a close association with the law of a particular community (Salam, 2015). The principle of lempa dua also includes equal relationships in a blood kinship (*mlanga*) or kinship that occurs due to a marriage that connects a group of kinships consisting of men (*yunungku*) with a man of a herd who has married their daughters (*anave' anya*) (the family of men) with the men of other blood kinship groups (the family of women /*tauve'a*).

The principle of lempa dua which is a sub-legal system and is already rooted in the community life in the indigenous area of Tau Taa Wana contains legal values governing how they should behave. In it, there is also a division of duties in resolving conflicts contained in the community as well as preventing ways of resolving disputes within the kinship system. Thus, the principle of lempa dua consists of three elements: *tangkai* parties that are in line with *tauve'a* (future wife) are the parties of married and women (families of both parties and other citizens who are family). The three elements have their values and duties in the pattern of association in the Tau Taa Wana. In the event of a conflict among the community, the basis of lempa dua becomes a guideline. It has its settlement procedures in and by the lempa dua system, such as disputes between the three parties will be handled in a kinship atmosphere.

The intermediary/peacemaker (*tau top muspaka*) in the typical case will be resolved by and in the customary legal system by the expression: “.... mpak sfaju galo mpaktao katuvu re lino galo msanang raya seja mgana nanu ra koni mangpakrata tuvu msanang, ane re'e sala ada to mangpakrata sesa katuvu Tau boros Tau Taa Wana tompak rusai koro ngkilyo galo tau boros.” Loose translation reads “... the basis of balancing and restoring between the world of birth and



the inner world (religious-magical) and between material and immaterial, of bringing about the harmony of life” (Interview with several stakeholders: Apa Inse, Tau Tua Lipu Mpoa, and Tau Tua Ada Ueviau in Lipu Mpoa and Tikore on 22-24 September 2019). Legal harmonization is defined as an effort or process of adjustment of principles and legal systems, in order to realize the simplicity of the law, legal certainty and justice. The word harmonization, in English, is called harmonize, in Francis’ language is called harmonie, and in Greek it is called harmonia. And the term legal harmonization itself appeared in the study of legal science in 1992 in Germany. Where this law harmonization study was developed with the aim of showing that in the world of law, government policy, and the relationship between the two there is a diversity that can lead to disharmony (Suhartono, 2011). If a violation of the customary provisions occurs, it will bring disruption to the balance and harmony of Tau Taa Wana, and result in damage to individuals and communities (tau boros/taboros).

Since it is generally unwritten, the adat law is reflected in the expression of the law or often called kayori (proverb or metaphor) which contains the value of how the society should behave to avoid conflict and even natural or social disasters. The development of these legal values in Tau Taa Wana is influenced by the entry of religion, life experience, education, and marriage. Adat law stems from the adat that lives and thrives in society, but not all customs are the law. The principle of lempa dua as a value system contains the underlying value of the entire life of the Tau Taa Wana. It contains philosophical values that are believed to be the normative basis that rules every pattern of life of its people.

Freely, this normative expression can be interpreted as an attitude of caution in behavior towards blood relatives because the dispute that occurs between these relatives will reduce the number of these relatives. In indigenous peoples, firstly, the relatives share the same fate and co-worker in all joys and sorrows. Secondly, the obligation to love tauve’a. The position of the tangkai in traditional ceremonies and rituals (adang kita) is higher than tauve’a. However, it does not mean the tangkai can treat tauve’a arbitrarily, she must be respected and loved because if tauve’a offended by the behavior of the tangkai, then the tangkai will feel aggrieved because the tauve’a will not be his helping hand in managing adang kita. After all, tauve’a is the main caretaker of adang kita. Thirdly, respect for mokole (the king/tangkai) is even higher because philosophically, mokole is considered the representative of God in the world, who has given offspring (both boys and girls (anangkai or anave’anya) to all families (tau boros opot)). The relationship between the tangkai and the tauve’a is very strong, it can be expressed with “... akusi’i bubunga, the corom ra’anya”. The loose translation reads “... if a woman is a flower, then a man is the twigs and branches that will support the flower.”

In Tau Taa Wana’s customary philosophy, this lempa dua principle becomes local wisdom. It represents the balanced, order, equal, and fair side of life in Taa language as an equal scale that maintains the balance of life (evenwicht). It is an all-in-pairs philosophy (participierend denken), where traditional minds are integral-harmonious with the universe and crave a balanced atmosphere in the life of Tau Taa Wana people. Lempa dua can also mean "tigang" (The three-legged furnace made of stone (or other material) to snare or cook something, also means furnace stone. The stone must be strong, sturdy, and heat resistant and not easily broken. Firewood is placed on the sidelines of the stone for cooking, then a cauldron is placed on it for cooking. Must be a draw, must not be timed, otherwise the cauldron will fall and break) which is the second philosophy in the life of the people of Tau Taa Wana after the faith of the Almighty God (Pue) who describes life as an established relationship with God and their fellow humans. A balanced life will be created when the harmony of relationships in the lineage (mlanga) is maintained.

These elements have their values and duties in the pattern of association in the Tau Taa Wana. In the event of a dispute, the basis of lempa dua has its settlement procedures. For example, disputes between tangkai and tauve’a will be handled in a kinship atmosphere. The peace in this adat case will be restored by and in the adat law system with the phrase “mpali vusu, rbanang nja kranji darpa koni sapi.” The loose translation reads “... the grass is sickled, put in the cow’s food basket”. If the tauve’a family faces conflict, then the tangkai act as mediator/peacemaker and vice versa.

Suppose it is associated with the opinion that value is conceptually understood in two senses, which is in a subjective and objective sense (Mudji, 1993). Subjectively, it can be expressed as a value, if the need and estimation elements are met. Objectively is considered to have value if the utility is fulfilled, and important. The legal value depicted in the lempa dua expressed through parables or metaphors (lolita) contains a value in a subjective sense because the traditional proverb/expression already meets the element of need and estimation. The value is aimed at fulfilling the needs of the parties if it can be used to establish balance in the kinship system and at the same time resolve the conflicts that may occur in the



kinship. It is estimated that by meeting the needs of interested parties, it can create justice and legal certainty for indigenous peoples.

Objectively, the value contained in the principle of lempa dua already meets the element of utility and importance because of the three components that formed that principle-based on normative values that regulate the pattern of behavior in kinship life contained in the phrase “Plindoka indo kita, plindoka ntau tua'a (ja'i kita), kita moja mba'a raya.” Beneficial to the society and can protect the interest of every individual bind by the kinship.

THE VALUES OF LEMPA DUA PRINCIPLE IN LAW ENFORCEMENT

Efforts to enforce the law are the process of implementing the law or the operation of maintaining the moral values contained in the law in a normal state without any dispute or in the event of a violation of the law (Rahardjo, 1986). In its realization, the principle of lempa dua as a value system is also heavily influenced by the development of its people and it still exists to regulate the pattern of life of the society. It is known by the reality of its acceptance by the society (longa et inveterata consulted), then induce the public faith (opinio necessitatis) that the repeated behavior is indeed objectively worth doing. The public faith to always obey this principle in their interaction with one another becomes the essence from law enforcement to create legal order.

The patrilineal kinship system, which rules the principle of lempa dua, is a society whose members prefer the lineage of tangkai than tauve'a. This cause the position of tangkai as the successor of his parents while tauve'a is prepared to bear children that will strengthen the offspring of her husband. Therefore, in patrilineal communities such as the Tau Taa Wana, the birth of tangkai children is paramount in marriage because if there is no child, it is considered that the family will lose offspring/hereditary, in the term adat Taa Wana called mati punu, (death without children). That is because the right of anave 'anyawith anangkai is not the same, especially in possession of the land, a daughter cannot control the land of her parents, because she is prepared to bear the offspring of others (her husband). This relates to the open marriage system that is embraced in the principle of lempa dua, i.e. marriage is done outside of kinship.

Anangkai who formed a kinship group, while anave' anya created affina (in-law) relationship because he had to marry anangkai from another patrilineal group. The creation of this relationship makes a kinship (pojai) that is not only about the newly married couple and the first generation he born, but also establishes a condition that will continue between the age of anangkai and the generation of anangkai passed down by the father and the group (opot).

The philosophical value of lempa dua that becomes the foundation of Tau Taa Wana entire life aimed to achieve peace and human welfare. It is believed to be created if all members of the kinship behave according to normative teachings, “plindoka indo kita, plindoka ntau tua'a (ja'i kita), moja kita mba'a raya.” The atmosphere of togetherness tied to kinship in all aspects of life including happiness and family welfare.

As a subsystem of adat law, which is the basic framework for all kinship relationships in social organizations among the Tau Taa Wana people, lempa dua is built on the belief that the male is given supernatural powers (Adikodrati or supernatural (“supra” means “above”, and “nature” means “nature”, first used in 1520 - 1530 AD) is a term for events that cannot be explained by the laws of nature, or are above and beyond nature. Adikodrati is often associated with the paranormal and occult, this differs from traditional concepts in some religions such as Catholicism which considers miracles to be adikodrati and in Islam the extraordinary occurrence of many places and circumstances, such as miracles, karamah, ma'unah, magic, etc.), so that it can reflect joy and glory and vitality to the tauve'a. The kinship in lempa dua has a religious-magical character. Tauve'a considers tangkai as a person who is endowed with “rimbo kojo” (superior power) which can be regarded as a formidable force, beyond the latent power that is in mal'eka (spirit), which can exude a powerful influence that can be useful and save tauve'a. Also, his power created fear and respect for him. This means, tauve'a must avoid actions that can harm or offend the tangkai, and tauve'a never neglect to show gratitude for the goodness that is obtained from her tangkai.

The principle of lempa dua is already rooted in the community life of Tau Taa Wana, the behavior of its society built in an orderly and sustainable pattern to be a legal system. The conflict between elements or parts in the legal system never dragged on because the legal system is consistent and steady. If a conflict occurs, it will be solved by the system through its principle as an available solution. Hendroyono (2005) stated that there are three common theories



about changes associated with the law, which is the progressive cumulation of technological discoveries, contracts, or conflicts between cultures and social movements. According to Ter Haar, the indigenous law community is an orderly horde with its power and wealth. In general, legal relations in indigenous law communities are based on patrilineal, matrilineal, and parental kinship.

The development, which resulted in a shift in value towards equal rights between anangkai and anave'anya, practically does not affect the pattern of life in the kinship between the three elements of the family in lempa dua. Following the characteristic of adat law in which its traditional but also has merits that can follow changes and ability to adjust (Salman, 2002). Indonesia's positive law opens space for the validity of adat law, as mentioned in Article 4 Paragraph (1) of the Judicial Power Act that the court adjudicates according to the law. The word "according to the law" is defined as written or unwritten law, so this article becomes the basis for judges to always have written rules and laws that genuinely live in a society in the process of law enforcement.

Similarly, based on research conducted by Kurniawarman (2009) the settlement of adat disputes outside the state judiciary has still happened in West Sumatra. It still exists in resolving indigenous matters, because it is perceived to be more effective and beneficial directly to the parties. Furthermore, the researchers explained that the settlement of disputes outside the state judiciary does not explicitly use the name "adat court". This way of settlement is known as dispute settlement outside the court, based on Article 58 Judiciary Power Act. This article regulates that the effort to adjudicate civil conflict outside the court can be done by arbitration and alternative dispute resolution. As encouraged by Shirta (2012), the ability of society to use adat law (awig-awig) as the foundation of interaction in life can prevent disputes. If a dispute occurs, it can be solved with customary law to realized peace so that the harmonious lives in the society are restored.

According to Danil (2012) in reality, dissatisfaction with the ruling of the formal court in deciding the typical criminal case makes the existence of the customary judiciary something essential to consider in the life of the national law. Therefore, factually in the absence of formal rules that explicitly accommodate it, the existence of an indigenous judiciary is something that still seems of urgency to indigenous peoples, such as the existence of Karapatan Adat Nagari (KAN) in Minangkabau can even be placed within the framework of legislation as an institution that serves to resolve indigenous disputes.

Traditional law is generally unwritten and religious, so the traditional legal values of Tau Taa Wana are also spiritual. It can be seen from all the events that occur in society always associated with magical and religious forces. Concerning the values of adat law that are evolving in Tau Taa Wana, those legal values are often implemented with the proverbial or phrase (lolita'), such as the following terms relating to tangkai as heirs, "... indanya apa kami, indanya ana kami, indanya mambayari ananya," (the father's debt is child debt, the children must repay the father's debt). Concerning the right of the anangkai as an heir, the obligation of anangkai through the phrase, "... tau top mngika pncai, mengkeni mroroa, mengkeni musbungka seja" The loose translation reads, "... people are singling out palm stick, inheriting joy, inheriting riots as well."

In the principle of lempa dua, anave 'anya does not become an heir because she will bear her husband's offspring, that later get the right to inherit from the parents. The marriage of the daughter forms a kinship with her parents called the ntau'ta, while the family she formed, becomes tauve'a. The creation of such a mindset because kinship laid out in this system are passed down through generations. If it violates the customary order, it means breaking the ancestral admonition which also means against the will of the wider community (tauboros) which of course can be gossip and the offender can be excommunicated from the community.

In its development, the tendency of anave'anya has also been able to acquire land rights in patrilineal systems just like anangkai. Granting rights to land that is a parental property to anave'anya does not mean the patrilineal system has changed towards a parental system which grants equal rights between anave'anya and anangkai. In this case, the tendency is overcome by giving land to the daughter as a form of affection of parents or brothers to their anave'anya. The patrilineal system of Tau Taa Wana remains well maintained through inters kinship in the necessary kinship of lempa dua. The daughter married to another opot through an exogamous marriage with the gift of dowry, but the relationship between the daughter and her parents remain tied. Therefore, anave'anya still has the right to the property of their parents.



This development is also occupied by Indonesia's national legal system, which also upholds human rights under Article 71 and Article 72 of Act Number 39 Years 1999 on Human Rights. Article 31 Paragraph (1) The Act Number 1 Years 1974 on Marriage also determines the rights and obligations of a wife are balanced with the rights and positions of the husband in domestic life and the association of living together in society. In Article 9 Paragraph (2) of the Agrarian Act it is also determined that each citizen, both *tangkai* and *taue'* have the same opportunity to obtain a right to land for benefits and results for both themselves and their families. Furthermore, the provisions of Article 1 of Act Number 7 Years 1984 on the Ratification of CEDAW regulated that discrimination against women means any discrimination, exclusion, or restriction made based on gender. It has the influence or purpose of reducing or abolishing recognition. They enjoy action or use of human rights and fundamental freedoms in the fields of politics, economy, socio-cultural, civil, or whatever other by women, regardless of their marital status based on equality between men and women.

LEGAL PROTECTION TO TRADITIONAL RIGHTS OF TAU TAA WANA

The law enforcement process is influenced by the legal system which Friedmann (1975) mentioned three factors affect the legal system itself, i.e. the substance of the law (the rules, norms, and patterns of real human behavior in the system), structural factors (law enforcement institutions), and cultural factors (attitude, values, thoughts and social expectations). de Cruz (1995) provides several factors that influence the legal system, namely the historical background of a nation, its characterism, and way of thinking, the type of legal source, and its ideology.

Law must also fulfill Radbruch (1973) *idee des recht* elements of legal certainty (*Rechtssicherheit*), benefit (*Zweckmassigkeit*), and justice (*Gerechtigkeit*) proportionately. Therefore, the principle of *lempa dua* in the traditional legal system of Tau Taa Wana should always be directed to the three elements. Tau Taa Wana as a subpart of the national legal system consists of organized values in the interaction of each other to achieve the purpose of the law which is order in the community. In it, there is also an answer or solution to all problems arising in the Tau Taa Wana community.

Lempa dua as a legal system is an open system, this means that the law opens up the possibility for differences in interpretation and because of it, the rule of law is always changing. Thus, its principle undergoes developments influenced by education, religion, experience, and economy. Also, change can be driven by the legitimacy of the law because it can reform life as a traditional local ethnic community into modern life with a national atmosphere. However, such transformative changes often cause problems. The dynamics of change cannot always offset progression due to the incomprehension of policy and the content of the law by the indigenous legal community.

The existence of recognition of the constitutional rights of indigenous peoples is contained in the Verdict of Constitutional Court No. 35/PUU-X/2012 in the case of judicial review to Act Number 41 Year 1999 on Forestry in which the ruling reads "the mastery of forests by the state to keep in account the rights of indigenous peoples, as long as it still exists and are under the development of the society and the principles of the Unitary State of the Republic of Indonesia, which shall be regulated by laws and as the consequences, the state forest does not include indigenous forests".

The Local Government of Tojo Una-una Regency has issued Local Regulation of Tojo Una-una Number 11 Years 2017 on the Inauguration of Tau Taa Wana Indigenous Law Society, which was signed on 18 August 2017. Article 1 Paragraph (1) confirms that the Tau Taa Wana is a unit of indigenous law communities that still have a native order and have a lineage who traditionally live in a particular geographical area based on ancestral origin bonds, have rights born of a strong relationship with natural resources, and have a distinctive customs, values, and cultural identity that determine the economic prenatal, political, social, and customary laws enforced by indigenous institutions. Article 11 Paragraph (1) regulated that this indigenous law society has the right to adhere to and practice beliefs, ritual ceremonies inherited from their ancestors. Article 11 Paragraph (2) stated that they have the right to develop traditions. These customs include the right to defend, protect, and develop its cultural forms in the past, present, and future. Also, Paragraph (3) concludes that Tau Taa Wana must maintain, control, protect, create, preserve, and practice its traditional knowledge, and intellectual property.

The Elucidation part explained that to save the sustainability of the life of the community, the environment, and local values and/or norms of customs institutions. Also, local wisdom that manifests in the principles of *lempa dua* and *tao rapo balu* is the heritage and ancestral property of Tau Taa Wana. So it is considered necessary to immediately establish



the Local Regulation on the Inauguration of Tau Taa Wana Indigenous Law Community in the administrative area of Tojo Una-Una Regency (Kabupaten Tojo Una-Una, 2017).

The research by MHR Tampubolon shows that the principle of lempa dua also plays a role in solving problems or crimes that occur, such as adultery, domestic violence, verbal insults, defamation, or slander, as well as other crimes such as theft of interference with the general welfare. Similarly, the sanction stipulated as punishment to the perpetrator is being expelled from their indigenous community, paying the obligatory fine to the victim, apologizing to the victim, or even his family in the presence of the customary elder. As well as the obligation to bear all the cost of eating incurred at the time the crime is resolved (Tampubolon, 2014)

CONCLUSION

The protection of the law against the existence of legal value in lempa dua as the right of the Tau Taa Wana guaranteed constitutionally in Article 18B Paragraph (2) jo. Article 28 I Paragraph (3) of the Indonesian as a subsystem of national law in the Unitary State of the Republic of Indonesia and the cultural identity of the rights of traditional peoples that are respected as human rights as long as they still exist. The existence of values in the principle of lempa dua remains used as an effort to enforce the law on one of the internal conflicts within the Tau Taa Wana. This can be seen this from the following: firstly, the reality of recognition of the value of the law in the principle of lempa dua as the normative basis in regulating the pattern of behaviour of indigenous peoples which is a unit of kinship contained in the principle of lempa dua, *yunungku* (relatives inside the opot) *tauve'a* and *tangkai* about how to behave, tied to the value of the law, "*plindoka indo kita, plindoka ntau tua'a* (our ja'i), *moja kita mba'a raya*" to create order and welfare of Tau Taa Wana. Secondly, the value of the law in the principle of lempa dua is often used to resolve disputes that occur in society because as a legal system, it has a strict procedure and division of duties between the three elements of kinship in resolving conflicts that occur between relatives. Thirdly, the reality of the principle of lempa dua is supported by the constitutional recognition of the state and strengthened by making indigenous law people as parties to disputes in the Constitutional Court. Also, it is implemented in the Judicial Power Act which requires judges and Constitution Court judges as law enforcement to always follow the development of legal and justice values in society in prosecuting and deciding the case against them.

REFERENCES

1. Asshiddiqie, J. (2006). *Hukum Acara Pengujian Undang-undang* (pp. 76–77). Sekretariat Jenderal and Kepaniteraan Mahkamah Konstitusi.
2. Danil, E. (2012). *Konstitusionalitas Penerapan Hukum Adat dalam Penyelesaian*
3. *Perkara Pidana*. *Jurnal Konstitusi*, 9(3), 583–596. <https://doi.org/10.31078/jk%x>
4. de Cruz, P. (1995). *Comparative Law in Changing World*. Cavendish Publishing Ltd.
5. Friedmann. (1975). *The Legal System A Social Science Perspective*. Russel Sage Foundation.
6. Hendroyono, M. A. (2005). *Sosiologi Hukum dan Pengaruh Perubahan Masyarakat dan Hukum*. Srikandi.
7. Kabupaten Tojo Una-Una. (2017). *Peraturan Daerah Kabupaten Tojo Una-una Nomor 11 Tahun 2017 tentang Penguhan Masyarakat Hukum Adat Tau Taa Wana*. Kabupaten Tojo Una-Una.
8. Koentjaraningrat. (2002). *Pengantar Antropologi Pokok-Pokok Etnografi 2*. Rineka Cipta.
9. Kurniawarman. (2009). *Pengaturan Sumberdaya Agraria pada Era Desentralisasi Pemerintahan di Sumatera Barat*. Gadjah Mada University.
10. Mertokusumo, S. (2007). *Penemuan Hukum sebuah Pengantar*. Liberty.
11. Mudji, S. F. X. (1993). *Manusia dan Pijar-Pijar Kekayaan Dimensinya*. Kanisius.
12. Radbruch, G. (1973). *Rechtsphilosophie*. K. F. Koehler.
13. Rahardjo, S. (1986). *Hukum dan Masyarakat*. Alumni.
14. Rahardjo, S. (2010). *Sosiologi Hukum: Perkembangan Metode dan Pilihan Masalah*. Genta Publishing.
15. Salam, S. (2015). *Hukum Adat Dan Perjuangan Hukum Lokal*. Thafa Media.
16. Salman, R. O. (2002). *Rekonseptualisasi Hukum Adat Kontemporer*. Alumni.
17. Shirta, I. N. (2012). *Aspek Hukum Dalam Konflik Adat di Bali*. Udayana Universitas Press.



18. Soerojo, W. (1993). Pengantar dan Asas-Asas Hukum Adat. Haji Masagung.
19. Tampubolon, M. H. R. (2014). Givu as Criminal Sanctions Tau Taa Wana Indigenous People and its Relevance to The National Criminal Justice Reform. *Journal of Law, Policy and Globalization*, 23(0), 39.
20. Suhartono, 2011, Harmonization of Legislation in the Implementation of the State Budget (Dissertation: Faculty of Law, University of Indonesia), Jakarta.
21. Zazili, A. (2016). Pengakuan Negara Terhadap Hak-Hak Politik (Right to Vote) Masyarakat Adat dalam Pelaksanaan Pemilihan Umum (Studi Putusan Mahkamah Konstitusi Nomor 47-81/PHPU.A-VII/2009). *Jurnal Konstitusi*, 9(1), 135–162. <https://doi.org/10.31078/jk%x>.

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