“The Challenges of Social Sciences in a Changing World”

Politic and Governmental Issues
International Conference on Social Politics

The Challenges of Social Sciences in a Changing World

Published By:
Jusuf Kalla School of Government (JKSG)

January 26 - 28, 2016
Universitas Muhammadiyah Yogyakarta
Indonesia
THE CHALLENGES OF SOCIAL SCIENCES
IN A CHANGING WORLD

Proceeding Books
By Faculty of Social and Political Sciences
Universitas Muhammadiyah Yogyakarta (UMY)
For the International Conference on Social Politics

Volume I, xii + 636 and 210 x 297 mm

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Lay Out:
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Special Copies, Januari 2016
Printed in Yogyakarta

ISBN:
ISBN 978-602-73900-1-0 (jil.1)

Published By:
Jusuf Kalla School of Government (JKSG)
Bekerjasama dengan
Universitas Muhammadiyah Yogyakarta

Host By:
By Faculty of Social and Political Sciences
Universitas Muhammadiyah Yogyakarta
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INDIGENOUS PEOPLE EXPERIENCES IN DEMOCRACY
(A LEGAL PLURALISM ANALYSIS)

Sukri Tamma
sukripolitik@gmail.com
Institute of Southeast Asian Studies, Bonn University, Germany

Sakinah Nadir
sakinahnadir_unhas@yahoo.co.id
Politics Department, Hasanuddin University, Indonesia

IsmahTita
tee_ruslin@yahoo.com
Politics Science Department, Islamic State University Alauddin Makassar, Indonesia

Abstract

This paper based on the research from the one famous ethnic group in South Sulawesi Province, Indonesia, The Toraja Ethnic group related to their experiences in the regional election under the direct election system. The facts, shows tendency that the event was not simply as the way to prove the “people rule” only as known generally by most people. For the toraja people, the event was became an opportunity for their unique customary guidance existences. It then makes the situation was as the “legal pluralism” event. Therefore, the situation should be viewed as unique experience and pattern as the react of the indigenous people to the general idea of democracy that formalized by the state.

Keyword (s): Democracy, Legal Pluralism, Regional Election, Indigenous People, Adat.

1. INTRODUCTION

The indigenous people basically is a concept that has recently emerged in the context of international attention. Where the concept of indigenous people or kosep who looked like him are old. International attention began to swell against the context of this community since 1977 when the Second General Assembly of World Council of Indigenous People (WICP) state that “only Indigenous people could define indigenous people”. Since then, two international organizations were very active in promoting the presence and issues of indigenous people is the United Nations Working Group on Indigenous Populations (WGIP) and The International Labour Organization (ILO) had advocated an unlimited right to self-identification for indigenous peoples in order to counter possible actions of “host” states who might deny indigenous claims within their border (Cornassel 2003).¹

world. Besides as the acknowledgement, the declaration also became the list of indicators related to this people community. The list shows that indigenous people mainly have unique socio-history, certain occupying area, system of lifes etc. Besides that, they are also as the unique community within the general community in certain area with a few different chareacteristic as their common identity. Another important thing that presences in the indigenous existence is a set of value or norms that functionate as the guidance or laws for their behaviours that usually called as the customary law. It means, in context of indigenous people there is another law beside the formal law from the state occurring in their daily lives. It makes them usually have more than one system of law that should be obediences. When there is an event or object occurring in the context of this community and it can be seen in that two laws then the indigenous people should behaves based on those due to they have each consequences. One of important event reflect that situation in Indonesia is the Regional election as one indicators of democracy. The democracy actually is one of important term in the modern world nowadays. Minimaly it indicated by facts that mostly country in the world reclaiming itself as the democratic country where using democrac as their system of government (Sen 1999). It makes democracy became the “dominant game in the world”. Therefore, although it implement in varies forms in the different contexts but it seems consider as the best system for the government even for the society including in Indonesia.

After the fall of the Suharto in 1998, Indonesiaentering the new era called and “the reform era” or “era reformasi” where the democracy became the most important idea as the spirit of the Indonesian transition from the authoritarian regime. Democracy has been present as the promising idea for the better Indonesian meant as the democratic country. To support desires to the be s democratic country, the new regime then produce some laws to build a system to support the idea of democracy. One of important system that regulated thru a few laws is about the regional election as the democratic process to elect the regional leader in the regions.

Consequently, for the community like the indigenous people who has own rules or requirements to choose their leader, the election will became an event for the two laws, formal law and the customary law. It makes the regional election then occurring as a “legal pluralism” condition due to there are two fundamental laws met in the same event for that community that required similar obediences.

The unique experiences from the Toraja ethnic group as one of indigenous people in Indonesia should be views as the other react to the general term of democracy that institutionalize by the state. Their unique condition even it tends produced some aspect based their own way that possibly unsuitable with the general term of democracy.

2. LEGAL PLURALISM ANALYSIS

The understanding of legal pluralism is closesto the two important key words “legal” and “plural”. The word “legal” is strongly associated with the law or something that is justified or authorized by a law or rule. Usually it is associated with something that is legally established by a statute or regulation (Lazar 1999). That concept is always related to the existence of a set of rules to get the justification of a particular system of power in a society. The trend so far has shown that it is something that often associated with the existence of a legal system of state. This trend indicates that something is legal usually has received approval from the state or even from the state. It makes the “legal” consequently binding the community of the state to obey it.

The word “plural”, usually contrasted with a single form, which means more than one. It can be applied to indicate the person or thing. It shows the existence of a particular unit consisting of a variety of individuals or objects. Therefore, the primary meaning of “pluralist” is something that is formed from a plurality or something that varies. thus, the plurality always indicate the presence of two or more things that exist simultaneously in space.
and the same period and are associated with more or less similar conditions.

Based on that explanation then the legal pluralism defines as “a situation in which two or more legal rules interact with each other” (Hooker in Lakin 2005). It tend focus on a particular communities, that particularly interested in the transfer law between cultures. To examines the plurality in term of legal pluralism, most scholars usually used the legal pluralism condition in colonial societies or post-colonial context. From the colonial society, the existence of legal pluralism was very clear related to the power equivalent relations of two or more rules interact with each other. The existence showed two or more fundamental laws for certain community that intertwined in a particular condition. The interrelation between both usually associated with the formal law by the state law and the local custom that simultaneously regulate certain community. It means the legal pluralism situation will usually occur in context of certain community that has particular legal system or norms based on beliefs of common values that mostly as part of their social identity (see e.g Benda-Beckmann 1993).

Moreover, Griffiths (1986) provides two types of legal pluralism which are the weak and the strong. The weak presence when there is a command of different legal institutions against different groups in particular society through a normative order of a court or legal institution center. It seen as the “technique of governance” that exist only on the state laws. In this view, presences of the non-state laws will depend on the central government recognition (Griffiths 1986).

The strong legal pluralism exist in the existence of normative rules regardless of its origin exist together in mutual respect with others is a situation that is unavoidable in the rules of the universe (Griffiths 1986). It confirm that only in the form of legal pluralism those laws, the formal and the non-formal can be recognize as fundamental basis for the people which meant the analytical and descriptive framework of it will depend on that condition equally.

Nowadays, meanings of the legal pluralism has been defined divided into three groups; (1) studies that emphasize institutional analysis; (2) evolutionary analysis, and (3) the colonial jurisprudence. This perspectives began in the early 20th century by Eugene Ehrlich’s argument about the existence of “lebensrecht” or the law of life where Ehrlich puts it as a legal order that is contrary to the official law of the state (Lakin 2005). It’s usually found in community groups where laws are made by the social processes. It indicate the important of context and the relation within the particular community (Lakin 2005). It makes the real context of each group became an important aspect of the legal pluralism perspectives. The important reason related to the real context of each community actually due to the “sflp” or the “Social fact of legal pluralism”.

The “sflp” can be built upon the contexts are anthropological and socio-legal studies based on understanding that the local knowledge is an important aspect. It meant, the legal pluralism focus on the interaction among various norms or orders that admitted equally. It then makes understanding of the legal pluralism usually through the recognition of the existence of rules that are referred as “law” in certain contexts (Twining 2010). That situation then makes the rule of law as managing people’s behavior is no longer as something that refers to the formal law by the state, uniforming for all people, exclusive of all other law, and administered by a set of state institutions only. The rule of law then also refer to the context of local values that guides the community behaviors (Lakin 2005). In that views, how people establish themselves as the subject in relation to the existence of the two laws became crucial aspect in the analysis.

The explanation above actually showing that the legal pluralism is finest that the formal law is not the one and only laws for the certain community such as the indigenous people. It means, there are other laws such as customary laws, religion etc that also became a law for that particular people. The legal pluralism then can be used...
3. **THE ELECTION IN INDONESIAN DEMOCRACY**

Actually for Indonesia as the independence country, the idea of democracy is not a new concept. It can be seen from the history of Indonesia since the independence days on 17 August 1945. A few indicators of democracy such as the political party and the general election were occurred in the history of Indonesia. The history noted that in the year 1955 Indonesia had successfully to perform the first general election to votes for the *Dewan Perwakilan Rakyat* (DPR) or the House of representative members and the member of the Konstituante. There were around 30 participants even political organization or individual that participated in the democratic event (see e.g. Vickers 2005; Ricklefs 2001). Even in the Sukarno’s period with the “*Demokrasi Terpimpin*” era, the presences of political party and the general election still became important aspects in the Indonesian political system.

When the New Order regime under Suharto ruling Indonesia for around 32 years, the regime also trying to showed itself as the democratic regime. Minimally, the Suharto’ authority Even the Suharto’s regime more considered as the authoritarian regime but the presences of the political party and regular general election was made this regime still have its indicators as the democratic authority. Even the party system and the result of general election was controlled by the regime used to support his continuity power and authority but the presences of that two aspects was as the reason to proclaiming itself. It showed that democracy accepted as the important thing related to the government system as well as the political system in Indonesia. But, the truth was showed that the regime control almost all aspects of life and restrict people participation in various political activities. It means, eventhough it was important for the people to actively in term of democracy as the fundamental aspect of the system but the regime restrain it.

After the fall of the Suharto’s regime in 1998, Indonesia entering the new era called the “*era reformasi*” or the reform era. Aspinall and Mietzner (2010) seen that this newest era regarded as the transition momentum of Indonesia’s transition to toward the democratic country. It indicated by the euphoria to the spirit of democracy related to opportunity to involve in various socio-political aspect including for the local people under the equality and freedom for all.

Indonesian democracy in the reform era attempts to encourages more opportunity for people actively in the various aspect of the nation’s dynamics. It makes one of important Indonesian democracy discourse related to convergences of democracy idea by the state with the public acceptance associated with how they will participate. Facts that people participation is not only associated with desire to fit the formal rules but also due to the reason that are as part of their contextual then make people participation became a general overview in Indonesia regions. It encourages emergence of local people demands related to need for reforms in political, administrative, economic, and others in mostly regions in Indonesia. That conditions then leads to transformation of political and administrative authority that produces wider opportunity for local people and its governments to take control of the decision-making processes in the region (Palmer and Engel 2007). That pictures showed that most people optimistic with the Indonesian democratization currently. In fact, various groups or specific communities that marginalized previously then get opportunity to got bigger authority for their community existence in areas that they claim as their area (Tyson 2010).

That dynamics actually showing tendency of democratization in Indonesia that local people mostly demand more
wider opportunity to involve in the various important aspect in their regions. Besides that, there is also effort of the government to keep the euphoria of locality still under control by the state. The government wish to control it seems based on the reason that the increasing of locality based on ethnicity, regionalism, religion and so in various islands potentially trigger disintegration and create disunity in the nation. By the current political transformation, the process not to seen only as positive effort to stabilize the new institutions, but also as an attempt to modify existing institutions which are unsuitable with the purpose to bring real changes for Indonesian people. It becomes important attention in transition phase nowadays where civilians hopefully will play prominent role (see eg. Nordholt and Klinken 2007). It because a transition process not always will create a more democratic condition, democratic transition process even can turn to create another authoritarian system (Huntington 1991). That potentiality things then make Indonesia should play thoughtfully. Therefore the tendency of Indonesian democracy that seemly more liberalism should be adapted with the certain fundamental condition in various background of people in each regions. Therefore, government intend to keep the process under control thru formal laws to make it sure. Within the local people euphoria related to the freedom and demands for more actively involving in the their regions policy process, the state then decided to provides two important thing reflects the spirit of Indonesian democracy which is the regional autonomy and the more demoratic regional election.

The regional autonomy and the newest regionalelection seems becomeimportant factorthat believed will driveindonesia into more democratic society. It seen as real effort to give big authority to the local people to actively participate in variety of political and policy-making process (Pratikno 2005) that guarantee by the state under various formal laws. It means the local people considered seriously as important factors in the Indonesian democratization. Based thatpoints, the local people then received important rights to voted for their regional government head which means they became the most influences factor for the most important position in the region.

The tendency of liberalism in the form of Indonesian democracy then formalize through some formal laws. It makes form of democracy in Indonesia became the formal idea where should be obedience by all people in Indonesia. The idea of equality and freedom together with the individual rights as main issue then became formal and compulsory in Indonesia. Through presences of the law, basic principle and procedures that guarantee the equality and freedom for individuals and that allow them to participate in the political life is guaranteed. In this term, each people who considered eligible to the law, have the same right to choose or be vote in the election process regardless of differences in social, political, culture, and economic backgrounds. Consequently, all people allow to vote based on their personal preferences that possibly based on un-democratic reasons as like as the state proposed.

All pictures and reasons above actually shows the important position of election in the term Indonesian democracy. As the important ways to proof of people actively in the event to elect the leader, not only in the national level, the importance of election also occurring in the local level thru the regional election. The democratic event will involving many things of people not only how to votes and their reasons but also related to various requirements and the effect thru the event as desires to proof the concept of “people rules”.

4. THE LEADERSHIP CONCEPT AND REGIONAL ELECTION FOR THE INDIGENOUS PEOPLE

As the indigenous people, the Toraja people have its “laws” based on their unique common values and belief in ada’. In term of bahasa Indonesia, the word ada’ called adat. Actually the ada’ values is based on the Toraja’s old religion called “aluk” or “aluk to dolo” or the “ancestors legacies”. The aluk believes as guidance to bring the
toraja people towards the light as like the phrase “anna bendan tutungan bia ‘tunannang tendanan ma’lana-lana” which means “then stand flame torches, the upright burning stick numbers 7777777 or another version amounted of 7777 (Kobong et.al. 1992). The numbers actually implies the perfection or completeness of the aluk. It means, aluk believed as guidance direction to be complete and perfect because it was created by the gods where the gods are believed to also live within the rules of aluk which later manifested on earth (Kobong et.al. 1992). As the gods creature, all values in the aluk then believes as the good and ideal guidances for this people.

Nowdays, through various transformation and development in the toraja’s history as the community, the word aluk that used to express the concept of the believe of the toraja people then replace to the word ada’. The last word then more often used in various activities referring to the toraja indigenity than the aluk. Actually it showing that there is an effort to separates the religiosity related the gods of the aluk by used the word ada’ where more seen as the variety of rituals or ceremonies not only as the social phenomena but also have connectivity to the aluk guidances. The Implications is the word ada’ then seen in broader meaning than aluk but basically both reflect the similar thing that regulates the toraja people (Kobong et.al, 1992). In this sense, the ada’ or adat can be accepted as the a set of laws related to the all aspect of the toraja’s lives. It means, when the people use the word ada’ or adat to explain some activities or even a set of regulation then it actually meant they using the aluk guidances. Therefore, the using word ada’ or adat then became more frequently to be use. It makes the adat laws to reflect the aluk guidances became normally to be used in quite similar meaning including in the term of the regional election and its aspects.

Based on the adat as the law, there are a few criterias for people who intend to be the leader. A leader in the term of adat should fill the fourth requirements based on adat. Those requirements are Wisely, Capable, Wealth, and the Should be the Nobles descent. Actually the first three of that requirements is seems similar with the general indicators for the leader in many modern institutions. It also shows that many people potentially to be the leader due to many people can fullfil those. In term of democracy where the equality for the people is must, the first three requirements is gives opportunity equally for many people. The problem suddenly arise from the last criteria.

As a social community that has hierarchical system that separates all people in the a few level based on the adat direction, potentially to be the leader then should be put in term of this social structures. Based on the Social hierarchical system, the toraja people separates in to fourth level which is the Tana’ Bulaan or the High Nobles, the Tana’ Bassi or the Medium Nobles, the Tana’ Karurung or Ordinary independent people; and the Tana’ Kua - kua or servant or slave (Baruallo 2010). Even the structures not longer became the division of works as it had previously and the lowest caste had been forbidden by the Dutch colonial authority but the existence of the hierarchical structures still occuring nowadays. Minimally it still exist in various social and adat rituals and ceremonies where important for the toraja people. Thru the various adat activities the position of people in the system structures will be reproduce in the people mind. Facts that various activities for example the Rambu solo’ or the Funeral ceremony always conducted by the people then the troaja people will always considering their position in the structure. Within the ceremony, people will placing in the certain places based on their position in the structures. Consequently, certain people will receive honourable respect while the common people will not. It meant, the toraja people will know who are the nobles descendant and who are not. Specifically, the toraja people will always considering who are the appropriate people to be leader and who are not based on the adat. It makes the nobles descent then enjoying social priveleges that also became the political priveleges as the appropriates candidates to be the leader also in the term of
the regional election based on the adat. That condition then met the formal requirements for the candidates.

Actually based on the formal law there are some requirements needed by the people to be nominate as the candidates in the regional election. When the election conduct in the North Toraja 2010, the existing law was the Law No. 32 year 2004 completed by the Law No. 12 year 2008. Based on the Law No. 12 year 2008 the candidates should fulfill some requirements that:

“Candidates of Regional Head and Deputy Head is Indonesian citizens that eligible if: a) Beliefs in one God; b) Faithfully to Pancasila as the State ideology, the Constitution of Republic of Indonesia 1945, the ideals of the independency Proclamation of August 17, 1945, and to the Republic of Indonesia and the Government; c) Has education level at least secondary school and/or equivalent; d) be at least 30 (thirty) years; e) Health condition of physically and mind based on the results of a thorough medical examination of the doctors; f) has never been sentenced to imprisonment by a court decision that has obtained permanent legal force for committing a criminal act punishable by imprisonment of five (5) years or more; g) not being deprived of their right to vote under a court decision which has obtained permanent legal force; h) know the area and known by the people in the region; i) submit a list of personal wealth and willing to be announced; j) does not currently have a mortgage debt of individuals and / or legal entity that is detrimental to its responsibility to the state finance; k) is not bankrupt by a court decision that has obtained permanent legal force; l) never committed a disgraceful act; m) have a Taxpayer Identification Number (TIN) or for those who do not have a TIN must have proof of tax payments; n) submit a complete curriculum vitae which includes, among others, education and employment history and biological family, a husband or wife; o) have never served as regional head or deputy head of the region during the two (2) consecutive terms in the same office; and: p) not in status as the acting head of the region.

That article provides the formal requirement for people to be the candidates. Those formal requirements basically make all people that appropriate with the law have opportunity to be nominated. All of that requirements were meant all candidates are those who have integrity and do not have legal problems. As part of the spirit of democracy, the legal requirements basically was presence as the formal guarantee for the equality for all people to be vote but it not a insurance for all people to be vote. Besides the position only for one pair, the regional government head and its vice, the other important thing is the others appropriateness of the candidates for the voters. Since the voters have their own reasons to vote, the candidates should be someone who fix with the people appropriateness requisite. It meant besides the formal requirements, a leader should come from the Toraja is closely associated with the understanding that the unique customs of the Toraja people will be more easily understood by the torajas. As the majority ethnic group in the region the toraja preferences occupying fundamental position in determines the result of the democratic event. It because the appropriateness should associated to the existence adat values of the Torajas.

The basis for the appropriateness basically related to the assume that only people Toraja understand how to address the unique customs that became one of the important element in their social identity. The toraja people believe, they have important value that is only understood only by the Toraja people. Standard appropriateness from the beginning then make the non-toraja people socially has been eliminated from the possibility to be the candidates. Thus it can be said that the social context is characterized by the their belief over their traditional has became screening mechanism to the non-toraja and the non-nobles potentially to be the leaders. It actually seems a non-democratic situation in the context of the toraja people.

That condition then explains why the people who were eligible as a participant in regional election was in the 2010 are considered...
as the fully of the adat requirements. It shows tendency that a leader in Toraja should be someone who has suitability with the local contextual values which mean the adat. Besides as the requirements, it was facts that various adat ways was used by the candidates to get supports from the people. It indicated by the candidates strives to approach the community by attending various social and adat events that carried out under the adat directions.

That was very important due to those events have implications for the candidates in order to meet part of the social decorum as a potential leader and showed himself as a candidate which has more capabilities than the most people. It ultimately led the candidates attempts to fulfill appropriateness based on what the mostly the torajas accepted as the very important events. When the candidates can provides themselves properly in the various events, they will known as the appropriate persons that has privilege to be the leader based on the adat.

That factsis confirm that the democratic competition in the regional election was included variety of cultural activities that actually non-political but important to influences the voters. It means that formal events was deeply influenced by various informal aspects. The regional election from the North Toraja 2010 then confirms that the event actually was a “legal pluralism” event.

Results from the regional election in the north toraja can be seen as the indigenous people reacting to the democratic event that regulated by formal laws that should be obey and the adatas another law for them. It confirm that a leader should serve as the formal and informal leader. Since most the torajas used that two laws to decide their choice and seems regards it as mandatory aspect, then the legitimacy from the people as the democracy fundamental thinstagram should establish based on that two laws. It means, almost impossible for the non-torajas to be the leader in this regions under the currently system of votes. Besides that, the aristocrats descent will enjoying political privilege based on the social uniquely context as the most appropriates candidates to be the leader even in the formal term.

5. CONCLUSION

Based on the experiences of the Toraja ethnic group in the regional election 2010 in the North Toraja District, the democracy implementation tendsto moves inunique pattern. The pattern basically occur due to the event was related to the two fundamental laws for the people as the legal pluralism situation. The existences of the adat and the formal regulations in the term of democracy was made the toraja people showed their own way.

The regional election was confirms that dynamics of democracy in the North Toraja term of regional election should be seen in different way related to the justify whether it was indicated a democratic event or not as well as its result. Based on the formal regulation, basicaly the right to vote or be votes in the electionis not limited only for certain people, but the presences of adats seems made specific restriction for person suitability to participate especially to be the candidate that will vote by the people and its chance to win. The adat was play important role determining the people choice where at the end impacted the after election government legitimacy.

Presences of the two laws in the regional election was made the event became a real pictures related to how an indigenous people react to the formality of the state based on their fundamental basis of lives. Even the democracy spirit through equality and liberty accepted by the people but for the special concern as to chose a leader for their area, the people seems would like to return their locality preference to make sure the result should be the appropriate candidate through the adat requirements. Basically, it can be seen as non-democratic terms through the formal perspective. But when the perspective turning in to the toraja people views it actually as their own way to addressthe “people rules”. The toraja people has been choose their own way to celebrate the democracy based on their actual preferences. It means, their democratic style should be accepted as the democratic.
way based on the equal position of the two laws for this ethnic group.

At the end, since the leader produced through the “legal pluralism” condition of the Toraja people, then the people should stand in that two sides. Consequently, a leader will always expected as the formal and also an informal leader as well due to the unique context of the region. Moreover, in this situation, the indicators of a success leader will be seen thru that two laws due those have its own standard for a leadership successfully.

REFERENCE


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