

**THE EXISTENCE OF HUKUM TUA IN VILLAGES GOVERNMENT ( STUDY ABOUT HUKUM TUA ON RESPONSIBILITY OF GOVERNMENT CONCEPT IN THE DISTRICT OF MINAHASA NORTH SULAWESI PROVINCE YEAR PERIOD OF 1945-2014 )**

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**ABSTRACT:** *Issues raised in this dissertation research is about tidal of existence Hukum Tua in governance villages in Minahasa, North Sulawesi Province, in various of State over the village setting. This research focus on secondary data from the literature that is supported by primary data obtained from a field research. Specifications of this research is qualitative analysis. Based on statement of problems presented, can be seen that the existence of Hukum Tua in governance villages in Minahasa, North Sulawesi Provinces has been good; responsibility as accountability (accountability) are performed in calculation (account) on the resources or authority to use, accountability as a liability (obligation) for the fulfillment, keeply, and fulfillment of achievement through agreements with the confidence (trust) communities, and accountability as causation (cause) of the aspirations of the people under the demands that have been accommodated in the task to accelerate the realization achievement of the goals and objectives desired. Hukum Tua liability in governance in various arrangements of State over the governance villages which has been from 1945 to 2014 is divided into four periods (1945 to 1979 period, 1979-1999 period, 1999-2004 period and 2004-2014 period) each with different characteristics on the procedural aspect of formal side. The conclusions research indicate that there a negative influence between existence Hukum Tua and enactmen variuos legislation on Local Government and Village Government*

**KEYWORDS :** government, hukum tua, village, responsibility, authority

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## **INTRODUCTION**

Reformation of 1998 brought significant changes to the governance systems paradigm in Indonesia. Changes of paradigm from centralized to decentralized framed by the democratic cause society, nation, and state more dynamic. Political dynamics of local and regional autonomy is not only understood in local government (provincial, district, and city), but the village and the village government is also an important part in understanding these dynamics.

Based on the description above, researchers interested in conducting research related to existence of Hukum Tua in village government system Minahasa Regency. The existence of this research is to see the presence Hukum Tua from dimensions of accountability, obligation and cause. This research is important because Hukum Tua for the Minahasa community not only as head of government, but more than that, Hukum Tua is a leader whose close to the people, protector and guardian of indigenous communities Minahasa, which has the authority and very honored and respected by society.

Primary theory that are used for the benefit of this research is the theory of liability advanced by Spriro. The argument found dimension Hukum Tua as a leader in the Minahasa community is one of cultural heritage and local wisdom Minahasa community that if managed well in a

village administration system in Minahasa can create a governance both at the village level (local good governance). Therefore, as a consequence of traditional leaders, those Hukum Tua has a huge responsibility in governance in the region. This study is almost had in common with research relating to the customary rules such as *nagari* government in Minagkabau, West Sumatra.

### **Research question**

The existence the Hukum Tua in Minahasa to this day can not be realized in the system of the village government. A country setting on the village has not been able to provide clarity and firmness of tasks, roles and functions, as well as the authority of the Hukum Tua in the system of the village government in Minahasa. Based on an overview from these issues, the problems of this study was formulated as follows:

1. How far the existence of Hukum Tua in the development of state regulation over the village from 1945 to 2014?
2. How far the The existence the Hukum Tua in supporting success accountable governance based on the aspect accountaility, obligation, and cause?

### **Research purposes**

The purpose of this research is:

1. to analyze the existence Hukum Tua in the development of state regulation over the village in 1945 until 2014.
2. to analyze the existence Hukum Tua in the government that is responsible is based on aspects of accountability, obligation and cause.

### **Research benefits**

1. Theoretical aspects, this research will be useful for the development of science, especially the science of Government in the field of policy on the village and the village government.
2. The practical aspect of this study is expected to be useful to construct a model in the formulation of policies on the village in general and prospects from existence (Hukum Tua) in the village administration system in Minahasa regency North Sulawesi province in particular.

## **LITERATURE REVIEW**

### **Responsible Government Concept**

### **Responsibility Concept**

Responsibility means things can be accounted for on an obligation, and includes judgment, skills, abilities, and skills covering also responsible for the obligations of the legislation implemented. The term responsibility assign it to the political accountability (Ridwan, 2006:

335-337). Responsibility is a reflection of human behavior. The appearance of human behavior related to the control of his soul, a part of the consideration of intellectual or mental form.

### **Accountability**

Accountability is essential to ensure values such as efficiency, effectiveness, reliability, and predictability. An accountability is not abstract but concrete and must be prescribed by law through a set of very specific procedures on the issue of what should be accounted for.

### **Obligation**

Obligations according Ndraha (2003: 90) was born from three sources, namely; orders, appointments and status. Orders must be obeyed, the promise must be met, fulfilled and accomplished, and the consequences from status is an obligation to do good deeds to other people. Fulfillment process, determination, and the fulfillment of the three is the government, and the measuring instrument is an accomplishment. Results from accomplishment is public trust to government.

### **Cause**

This research focused on the existence Hukum Tua as a manifestation from government responsible for the system of the village government in Minahasa, because it is directly contact with people related to the duties and functions are always with the people.

### **Village Autonomy**

Along with the reform of 1998 and the fall of the New Order regime, the desire to restore the position of the village and the village empowering getting stronger. A change of paradigm from centralized to decentralized diberlakukanna line in tune with the Law No.22 / 1999 and then perfected by Law No.32 / 2004 on Local Government. Invite OF known as the Local Autonomy Law, which entity is the movement back to the original autonomy and grassroots.

### **Hukum Tua**

Hukum Tua plays an important role in community life. One important role of Hukum Tua in ancient times is the script Friendship Contract (*verbondt ende contract*) dated January 10, 1679 between the Dutch and Minahasa people represented by the Ukung.

### **Concept / Theory Associated With Hukum Tua's Existence**

#### **Social System**

Parson (2005:71) argued that the social system is defined as the relationship between the parts (elements) in the life of the community in the form of the actions of individuals, social institutions and social groups influence each other. Relations between these elements subsequently result products which values and dynamic social norms.

#### **Local Culture**

Thus the local culture has a very important role in determining the progress of civilization of a society. The progress of a society should be arranged in order of ideal system. The ideal system is that sourced from local values that open to good outside values so the system can adapt to face the challenges of times.

### **Local Institutional Development**

While Joseph W. Eaton (1986:14) proposed a 2-dimensional development of local institutions as follows:

1. Dimensional change in the micro system, planning, structuring, and development of new organizations or a reassembled who advocate and realize the changes in the values of function, technologies, physical and social.
2. Change in the macro system, namely establishment, protection and maintenance of normative relationships and patterns of action with related organization.

### **Capacity Building**

Capacity building strategy becomes important and significant to be discussed and developed in the social sciences because there are three factors: first; because of the need, for a second; because of the rapid social changes, in the third; because of the values contained in the process of capacity building. (Giroth:77)

### **Good Governance**

Good governance theory, there are three strategic points that have components that are interconnected. The third strategic point is; institutional, network, and actor. The Third strategic point home to the pathology of bureaucracy that must be done in order to fine answers to attempt diagnose the problems face in order to nourish the bureaucracy in realizing good governance. Third strategic point was a system that each consists of separated subsystems. Institutional strategic points have sub-systems: the structure, organization, law and procedure. have network of strategic point subsystem; trust, complements and symbiotic mutualism. Strategic points actor have subsystem; commitment, morality, incentives, interest, rationality, consistency and firmness in applying the rules. All subsystems in this strategic point interrelated in determining the interaction between subcultures governance, bad or good outcome of the interaction is determined by this subsystem.

### **Organizational Culture**

Organizational culture is a value, guiding belief in one thing and ways of thinking that brought together by the members of the organization and accepted by the members in their entirety. Cultural organizations can also be interpreted as norms of behavior, social and moral basis of every action in the organization and shaped by beliefs, attitudes and priorities their members.

### **Government Culture**

Governance as a formal organization formed by countries in implementing government affairs. Thus institutionally, the government is a system that interacts with other subsystems in a particular social system. Interaction is done by the government as an organization is the implementation of a government function itself as providing public services. In providing services to the public the government should hold the values adopted as a culture.

## RESEARCH METHODS

This research was conducted using qualitative method, through the observation of two phenomena, namely Existence Hukum Tua in a village Minahasa government system and the development of state regulation over the village in Indonesia. The relationship between the two phenomena is the focus of study in this research. Both phenomena are observed in the context of the implementation of village autonomy is based on local wisdom, in the sense that both the phenomenon studied by looking at its role in the process of realizing the implementation of village autonomy is based on local wisdom.

This qualitative research have mindset inductively, which starts from the values existing in society later described theoretically to obtain a picture of the condition of the people specifically in the form of institutionalization into three subcultures interacting to be directed to certain conditions that are framed by a working hypothesis.

In the preparation of this dissertation, primary data obtained through interviews with various parties that are directly related to the problem of existence Hukum Tua in the village government system in Minahasa.

To maintain the credibility of the data and information obtained, this study uses triangulation approach. Triangulation is a way to obtain the data / information from multiple sources in a variety of ways (collecting information from a diverse range of individuals, using a variety of methods) (Maxwell, 1996: 75). In the context of this study, triangulation data is done by obtaining data and information from certain sources by using three (3) ways, namely observation, interviews, and documentation / reference. In addition the data and information was also obtained by using a particular method, for example interview, to some informants.

According to Maxwell (1996: 78-79) in qualitative research, the data that has been obtained through observation, wawacara, and documentation must be analyzed through three (3) phases, namely reading the transcript, categorizing, and contextualizing. Guided by the Maxwell phase, the data that has been collected from observation, interview and re-read the documentation to obtain an indication relating to one infoemasi with another. Linkage an information with other information is done by means of cross-checking any information obtained. By knowing the relationship between the data / information with each other, then the data or information that is categorized and sorted based on the issues that will be an advanced material to be analyzed according to the research question.

Refers to established guidelines and in accordance with scientific standards, so in this study the type of activities carried out through the stages and procedures include a field survey pre-study that was done by using pengamaan direct and interviews with sources that subsequently obtained preliminary data to conduct advanced research.

Research and writing the dissertation was conducted from August 2014 until July 2015.

## **EXISTENCE OF HUKUM TUA IN DEVELOPING STATE REGULATION OVER THE VILLAGE IN MINAHASA**

### **Development of the Hukum Tua Existence Period 1945-2014**

#### **1945-1979 Periods.**

The existence of Hukum Tua in this period is not too disrupted and run in accordance with the values of local wisdom or customary left in the past, considering that in the period 1945-1979 almost all focused on the implementation of government regulations at the level of city / district, provincial and national levels. To govern the post-August 17, 1945, the National Working Committee of the Central Committee, establish the Law No. 1/1945. This legislation regulates the status of national committee of village and regional powers, as a legislative body that headed by a Regional Head. This legislation may be considered as the first decentralization legislation in the Republic of Indonesia. Inside is seen that the location of the autonomy of the village but the bottom is not a sub-district, as the homogeneity of societies with entitled to regulate household own government. Decentralization was only briefly carried out until at Regional Level II.

Based on the description above, the outline can be seen that the existence of the Hukum Tua in the period after the proclamation is not affected by the existing regulations. The existence of the Hukum Tua was very awake and perform their duties based on the values of local wisdom and customs. The existence of the Hukum Tua began to fail after the issuance of Law No. 5 of 1974 on the Principles of Local Government and Law No. 5 of 1979 on Village Government.

#### **1979-1999**

History records that the New Order government put the issue of decentralization and local governance after the village or even below koonsolidasi political and development agenda. In 1969 the government passed Law No. 6/1969 which is intended for freezing Law 5 of 1974 on Regional Government subjects that really is a version New Order regime, the regulation was an instrument to reinforce bureaucratization, authoritarianism, centralization and development. The regulation is not oriented policy of decentralization to strengthen local autonomy or form a local government, but oriented towards the formation of the central government who work in the area. It can be seen how strong the deconcentration scheme than devolution in Law No. 5/1979.

#### **1999-2004**

The passing of Law No. 22/1999 does not recognize the decentralization of the village, but the framers of it, for example Prof. Ryaas Rashid, confirmed that the basic spirit of the Act No. 22/1999 is to give recognition to the diversity and uniqueness of the village as a self-governing community. which of course is a manifestation of the meaning of "special" in chapter 18 of 1945 Fundamental Regulation. This new meanings different from the spirit and major design set forth in Law No.5 / 1979, which just put the village as the lowest administrative unit under subdistrict head. Politically Act. No5 / 1979 intends to subdue the village within the framework of NKRI, which affects base eliminates the self-governing community that weaken the existence Hukum Tua.

## **2004-2014**

From the above analysis it can be seen that the Act No.22 / 1999 has laid the foundation of decentralization, autonomy and local democracy are far more advanced in the reform era, after the Republic of Indonesia shackled by-authoritarian centralized system for three decades. But legislation that has sparked conflict transitional power-wealth between the central, provincial, district / city, and country; invites multiple interpretations are varied so as to make the understanding really chaotic; as well as trigger dissatisfaction and criticism from various parties. Therefore all parties require revision for improvement.

### **Hukum Tua's and Bureaucratic Reform in Minahasa**

Sociologically, culturally government in Minahasa influenced by Mapalus culture. Mapalus cultural essence of this is that human life must possess mutual trust, cooperation and mutual assistance. Even this Mapalus deliver the essence of the Minahasa community into a society that upholds anti-conflict and harmony of life. The work culture in the world of government is very attached to the Mapalus culture.

Cultural nuances mapalus government combines three symbols of the three elements of government that has the role and functions of each. The third element is the government (executive), adat and religious leaders (pastors).

Mission Minahasa as a religious center for the eastern part of Indonesia Minahasa outlined in the strategy, which include; realizing the moral life of the community to support people's lives are ethical, moral, and cultured, with indicator values:

1. Creation of the religious life and tolerance in the form of inter-religious harmony;
2. Creation of a society that is based on the values of religion in the form of faith and devotion;
3. Implementation of Christian teaching which is the duty of every adherents;
4. The realization of positive values and noble among government officials and the public at large are based on the teachings of religion, so that it can be a major value in life.

### **Hukum Tua's Existence Empowerment**

Empowerment of the existence of Hukum Tua in implementing mapalus culture at the village administration in Minahasa can be analyzed through the following aspects:

1. Human Resource Development
2. Organizational Development
3. Institutional Reformation

### **Factors that affect the weakening of Hukum Tua Existence**

Results of research in the field, either through FGD and went into the field, researchers have the opinion that there are two major factors that can lead to weakening of the existence of Hukum Tua in Minahasa at present time. The weakness caused by internal factors and external factors.

Weak institutional capacity and Hukum Tua's existence in Minahasa is also caused by economic factors, namely the inclusion of understanding of capitalism through companies that manage natural resources.

In operation, the company the company received permission directly from the central government without involving local communities and local governments, so a lot of overlap of land ownership. HGU land is actually private companies is also a communal land of local communities in which the inherent rights of a community communal (ethnic) which is inherited hereditary while guarded by the values of local wisdom as a source of livelihood.

In resolving conflicts between companies and local communities, always won by the company, because the company has a licensing document issued by the government as evidence of occupancy rights, while local communities have no ownership documents from the government, merely proverbs hereditary.

The business practices of this kind or commonly known as corporatocracy, namely the existence of a conspiracy between the government and companies (corporate) in managing natural resources in excess. This practice helped corporatocracy has weakened the capacity of communities economically, and therefore contributes to the capacity of the overall Hukum Tua existence.

### **Problem Solving Strategy**

Based on an analysis of the external environment and internal environment and based on the SWOT analysis, then generally obtained four strategies to improve the Hukum Tua existence, as follows:

1. Optimize the role and functions of the village government under the leadership of Hukum Tua and other village institutions towards democratic Autonomous Region.
2. As a government institution the lowest in the order of the macro system of government. Understanding village as has been alluded to earlier in this paper is also a customary law community unit that is autonomous, it is a mini Republic with clear territorial for its members, has its own government, and have their own customs that govern the lives of its members. Besides, there is also a village of traditional institutions that act control the Village Government namely the role of traditional institutions comprising community leaders.

Special measures within the next 6 months is to create and formulate standards of service and was announced to the public. So that the public has the certainty in any business, for instance affairs E-ID card, certificate, and others.

Other efforts to improve Hukum Tua's existence is the increased professionalism of Ability Apparatus Village Government through the following steps: *First*; Maximizing utilization, quality improvement and quality independent apparatus to face the Village Government autonomous and democratic. *Second*; making policy through village regulations regarding recruitment Village selective and have high competitiveness. *Third*; Make new breakthroughs in terms of respect Village employees as employees who have the pride to serve the village government. *Fourth*; Eliminating work culture to underestimate something with always delay the work and extend the bureaucracy and increasing the motivation within the organization.



Obstacles that may be encountered is still lack employees awareness to act in a professionally, limited facilities and infrastructure to work, limited participants to be educated and trained cause of un-professional management and accompanied by budgetary constraints to enhance the human resource especially village government apparatus.

Efforts made in dealing with policy options and constraints posed is, is to increase the role of Hukum Tua to continually provide motivation and attitude transparent in carrying out its roles and functions as the Hukum Tua, as well as autonomous, it is expected the village administration independently can create new breakthroughs in village administration management system whose purpose is none other than the increase in the public service.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Conclusions**

1. Enactment of various laws on local governments and villages in the period 1945 to 2014 have affected the tidal Hukum Tua existence in governance villages in Minahasa. Although there has been ups and downs of existence, the Hukum Tua existence persisted respect the supporting factors such as the strength of the community wanua (villages) are actively participating in government institutions wanua (village), history wanua (village) in Minahasa never become extinct even though it has been replaced with the village administration, village autonomy, unity of indigenous peoples, communities Minahasa critical, giving DAUD and independence of the village.
2. The Hukum Tua existence as responsible governance villages in Minahasa, North Sulawesi, with due regard to accountability, obligation and cause, generally indicated has been held properly due responsibility in accountability refers to the ability to take responsibility for the implementation of the tasks assigned to Hukum Tua. Similarly, the responsibility of which is obliged to follow the rules of a particular task by traditional institutions, BPD and Minahasa government has done well. While the responsibility as a causation of actions taken Hukum Tua to fight to be a force has been able to facilitate the governance responsibilities of the village towards a better state.
3. The new findings that can be drawn from this research is the presence of negative influences between Hukum Tua existence with the enactment of various laws on Local Government and Village Government. The negative influence has made the Hukum Tua and the system of village administration has a weak work culture, infrastructure is minimal, depending on the support from the government budget, the lack of mastery of information and technology, personnel experience more low condition and lack of coordination.

## **RECOMMENDATIONS**

### **Academic Advice**

1. To develop of Government in a variety of perspectives in order to find concepts and new theories in accordance with the times, the embodiment of responsibility through the accountability, obligation and cause as a branch of the building Cybernology (body of knowledge) need to be followed up or investigated by other researchers in local

communities different symptoms to look empirically at the local level, thus expected to strengthen the theory of the existence of local leadership as a study of the Science of Government.

2. Build a government's culture conducted through a model that accommodates the culture mapalus as locally sourced values of indigenous institutions and values universal yang evolved through artificial institution. These values are combined by the local government as a shared value for further arranged into Government Culture.

### **Practical Advice**

Embodiments of Hukum Tua existence in responsible government should continue to be done on an ongoing basis as the embodiment of leadership model that is associated with power or authority possessed by Hukum Tua or other agency leaders to interact in order to achieve the objectives to be achieved.

In order to improve Hukum Tua existence in the governance system wanua (village) towards the autonomy of democratic village in Minahasa, the suggestions can be in sanpaikan are as follows:

1. To boost Hukum Tua's existence in efforts towards a democratic autonomous village in Minahasa, Hukum Tua has responsibility to continue stimulate the process of democratization in the lower levels, through strengthening of local institutions in wanua (village) that will foster community participation.
2. Build a balanced communication path between Hukum Tua as head of the village administration with the community in accordance with the current governance paradigm, it means opening a entrance transparency so that people can know what and how the government wanua (villages) that are actually plays a role.
3. Hukum Tua have the responsibility to solve their own problems, without finding fault with other parties such as happened during the reign of the village under the Law earlier in force, so that a solid foundation in order to raise wanua (village) as an autonomous and democratic can be realized with growing as well as the role and participation of the community to come to think wanua (village) itself.

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