

ESTABLISHMENT OF INDIGENOUS PEOPLE OWNED ENTERPRISES AS A FORM OF COMMUNITY CORPORATE IN SUMBAWA REGENCY

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ABSTRACT

*Indigenous People Owned Enterprises are basically business entities which managing two roles, both as a *natuurlijke persoon* and *recht persoon*. In the other hand, it also works as an economic provider along as juridical benefits to members, which leads to encourage economic independence and mutual prosperity. This paper aims to build the economic independence of indigenous peoples through the construction of BUMMA which was formed by indigenous women. The approach method applied within this study is statute approach by applying the combination of library research with social approach for indigenous women in each indigenous community in Sumbawa Regency. The results obtained by the research is BUMMA as *natuurlijke persoon* en *rechtspersoon* is a fresh approach in managing business entities at the level of customary law which worthwhile from, by, and for indigenous women. The existence of BUMMA as a part of customary law communities and as a form of community corporation is a new form of economic institution nowadays in attempt to develop independence and the welfare of indigenous women as part of the customary law community.*

Keywords: *Indigenous People Owned Enterprises; Community Corporation; BUMMA.*

INTRODUCTION

Based on the arrangement of Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia, or hereinafter mentioned as Indonesian Constitution, Indonesia known as a state of law. Basically, state of law is kind of state that regulates the behavior of citizens to comply with the legal rules made by the agency or institution authorized to regulate the order of citizens, including in creating business entities. Business entity is a legal and economic entity or organizational unit consisting of factors of production with the aim of making a profit. By the rapid development nowadays, it become an economic household whose aim to make a profit with the factors of production. A business concludes as a legal entity if it has a deed of establishment which legalized by a notary, accompanied by a signature on stamp duty.

Business entity hold two roles, both of them are *natuurlijke persoon* and *recht persoon*. It is mentioned as *natuurlijke persoon* since the body of the business obtained from human actions as opposed to the human body that occurs according to its nature. While a business entity as

rechtspersoon is defined as a legal entity, corporation, or legal entity. Corporate or also known as *corpus* can also be interpreted as a living being, personal self, council, association, or it can also be interpreted as controlled assets which are the responsibility of the trustee.¹ Based on this explanation, we can drag the meaning of corporation as legal entity or *rechtspersoon*.

While the notion of community implied to the meaning of a social group within several organisms that share one environment, generally gather in identical interests, and living in same habitat. The individuals consisted in the community regularly develop intentions, beliefs, resources, preferences, needs, risks, preferences, and several similar conditions. Community comes from Latin called as *communitas* which means similarity, can then be derived from communism which means equal, common, owned by all or many.

Based on the definitions above, it can be interpreted that community legal entity is a company that should be owned by the community to obtain mutual welfare legally and formally in accordance with the provisions of the legislation. The form of company owned by indigenous peoples according to the same interest belong to them within the ability in managing natural resources and the environment is well-known as the Indigenous People-Owned Enterprise or hereinafter mentioned as BUMMA.

The basic question arise nowadays is regarding to the existence of BUMMA that formed and managed by indigenous women. Indigenous women holding significant roles within the indigenous peoples itself, their presence giving support in surviving through the household of the family as the smallest unit in customary groups that will produce social groups and develop legal institutions. Sociologically, indigenous peoples are built through integration through local wisdom as a common entity in preventing social conflicts. It is meant so that they require norms or rules to regulate the order of their social life. BUMMA as an economic institution in society is built with norms or rules from customary law on the basis of mutual trust with social values that develop in every indigenous community built with a sense of living together and for mutual prosperity.

The concept of BUMMA which is the real form of the corporate of community is a company built by the basis of mutual trust and bound by existing norms within indigenous peoples or customary law communities, which is the hallmark of this economic institution which is different from private companies or corporations that only focus on collecting profits and syndication to take advantage of human resources and natural resources bound by state regulations whose activities use global capitalism standards. Cooperatives also have management standards through articles of association and by-laws as well as a management system regulated by laws and regulations, a new paradigm that will be managed by indigenous women with institutional components based on local wisdom that exist in every indigenous people wherever they are exist. The district was chosen as the location because there was initiation of the formation of BUMMA by indigenous women by considering potential resources, both natural resources and human resources owned by each indigenous people, including indigenous women.

METHOD

Background and research focus taken in this research categorized as empirical legal research. Empirical legal research or sociological legal research is a form of legal research that obtains data from primary data sources. Within this type of research, the focus of the study is the operation of law in society. The approach that the writer uses in this research is the sociology of law approach. The sociology of law approach is an approach that analyzes both between reactions and interactions occur when the norm system works in society. In addition, sociological approach to law is also known as the approach which constructed steady

¹Soetan K. Malikoel Adil. (1995). *Changes to Our Civil Law*. Jakarta: PT Pembangunan. p. 13.

and institutionalized behavior of the community and gains social legitimacy. This study uses qualitative approach, researchers not only collect data in terms of quality, but also want to gain a deeper understanding behind the phenomena that have been obtained.

ANALYSIS AND DISCUSSION

Corporations and Community Overview

According to Sutan Remy Sjahdeini, corporations can be seen both from narrow meaning as well as a broad meaning. According to the narrow meaning, he revealed that corporation is a legal entity whose existence and authority to be able or authorized to carry out legal actions are recognized by civil law. That is, it is civil law that recognizes the existence of corporations and gives life to them to be authorized to carry out legal actions as legal figures. Likewise with the termination of a corporation. Corporations only pass the termination legally if the terminate of the corporation is recognized by law. Furthermore, Sjahdeini stated that the definition of corporation in a broad sense can be seen from the notion of corporation in criminal law. According to him, corporate criminal law includes both legal and non-legal entities. Not only legal entities such as limited liability companies, foundations, cooperatives or associations that have been legalized as legal entities classified as corporations according to criminal law, but also firms, limited partnerships or CV, and partnerships or *maatschap*, namely business entities which according to civil law are not legal entities.

Regarding to this description, it could be seen that, there are differences in the understanding of corporations in the field of civil law with the understanding of corporations in the field of criminal law. In the field of civil law, what is meant by a corporation is a legal entity, while in the field of criminal law a corporation is not only a legal entity, but also not a legal entity. Corporations are essentially the result of a construction or legal creation that requires the corporation to have the status of a legal subject who has rights and obligations regulated by law, including the liability of the corporation if it commits a crime. Regarding the definition of corporation, Prasetyo stated that the word corporation is a term commonly used among criminal law experts to refer to what is common in other fields of law. Especially in the field of civil law, as a legal entity, or what in Dutch called as *rechtspersoon*, or in English called a legal entity or corporation.

Alongside to the definition of cooperation, it is also needed to take the comprehension of community into account, Gusfield² distinguishes between two main uses of the term community. Firstly, it is the territorial and geographical notion of neighborhoods, communities, and cities. Secondly, it is relational, concerned with the character qualities of human relationships, without reference to location. He also notes that both uses are not as mentioned by Durkheim as a form of mutually exclusive, modern society develops people around their interests and skills more than around that area.³

There are four criteria of definition and theory of sense of community. First, the definition must be explicit and clear. Second, it must be concrete, its parts can be recognized. Third, it needs to represent the warmth and intimacy implied in this term. Lastly, it is needed to provide a dynamic description of the development and maintenance experience. Definition The community has four elements. First element is membership. Membership is the feeling of belonging or sharing a sense of personal attachment. Second element is influence, a sense of importance, makes a difference to a group and the group is important to its member. Third element is reinforcement which consist of integration and need fulfillment feeling that members needs will be met by the resources received through their membership in the group. The next

²Gusfield, J.R. (1975). *Community: Critical Response*. New York: Harper Colophon.

³E. Durkheim. (1964). *The Division of Labor in Society*. New York: Free Press of Glencoe.

element is a shared emotional connection, commitment and trust that members have shared and will share history, shared place, shared time, and similar experiences on a farmer's face when they talk about their place of residence, their land, and their family; this is the feelings the Jewish family felt when they read *The Source* by James Michener.⁴

In a sentence, the proposed definition is as follows: A sense of community is a feeling that members have, a feeling that members are important to each other and to the group, and a shared belief that members' needs will be met through their commitment to being together.⁵

Indigenous Peoples

Edward Shils provides a definition of society as a temporary phenomenon.⁶ Society does not exist because of its existence at one point in time. But that's just in time. He is the embodiment of time. Murtadha Mutahhari gives a different understanding, society is a group of people who are closely intertwined because of certain systems, definite traditions, and particular laws which then lead to collective life.⁷ Collective life within this case is not refers to live in the same place or eat the same food, yet living in similar element mentioned.

Society, as explained by Setiadi, is a gather of actively interacting humans in one group. These definitions, although they indicate to several differences, provide evidence that such thing is exists and called as society. The development of science in the social field evolving the term of customary law community which take notable roles within the society nowadays.⁸ Although there are differences in terms, the object in question remains the same. Customary law community is a community unit in an autonomous customary area, which regulates its life system independently, such as law, politics, economy, and so on. Customary law communities are also defined as units that were born or formed by the community itself, not formed by other forces, such as village units and the Village Community Resilience Institution.⁹ The existence of customary law communities that have been passed down from generation to generation in the archipelago can be seen from its history.

In Bugis, when life was governed by *pangngaderreng*, which known as law, as the highest philosophy governing society until the conquest of all Bugis lands in 1906, the elements that initially consisted of only four were later changed to five. The element in question is *pangngaderreng* which is based on the first *wariq* (royal protocol), the second *adeq* (customs), the third speech (legal system), the fourth *rapang* (decision making based on comparison), then added a fifth element, namely *saraq* (islamic law). The determination of *pangngaderreng*, which adds islamic law as one of its contents, represent that indigenous peoples existed before Islam incorporate in Indonesia.¹⁰ Laurensius Arliman said that our customary rules basically existed in ancient times, the Pre-Hindu era. The customs that lived in Pre-Hindu society according to customary law experts were Polynesian Malay.¹¹

Although the actual historical records that classify the existence of a Hindu or Buddhist era are currently questionable since some Indonesian historians today, such as Santosaba and Sofia Abdullah which find that Hinduism and Buddhism themselves were influenced by the

⁴Michener. (1965). *JA Source*.

⁵McMillan. (1976). *Sense of Community: An Attempt at Definition Unpublished Manuscript*. Nashville: Georgeabody.

⁶Sulfan, Akilah Mahmud. (2018). "The Concept of Society According to Murtadha Mutahhari (Study of Social Philosophy)". *Journal of Aqidah-Ta*, Vol. 4. No. 2. p. 270

⁷*Ibid*, p. 273.

⁸"Natural Science Learning Resources". (2014). *Earth Education*, Vol.3. No.1. p. 38.

⁹"Legal Protection Against the Existence of Indigenous Peoples in Indonesia". (2012). *Perspective*. Vol. 17. No. 1. p. 32.

¹⁰Ismail Suardi Wekke. (2013). "Islam and Adat: Overview of Acculturation of Culture and Religion in the Bugis Society Analysis". *Jurnal Raden Intan*, Vol. 8. No. 1 p. 28.

¹¹Laurensius Arliman. (2018). "Customary Law in Indonesia in the View of Experts and the Concept of Enforcement in Indonesia". *Jurnal Selat*, Vol. 5. No. 2. p. 179.

teachings of the Archipelago. ancestors. Adat also has sanctions that show that in social life, sanctions are one way to bring order to society. Customary sanctions are one of the customary reactions to violations of customary rules or non-implementation of customary rules.

The arrangement of customary rules mentioned as well in Article 18B Paragraph (2) Indonesian Constitution. It stated that. “*the state recognizes and respects customary law community units and their rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia which are regulated by law*”. The Constitution provides instructions on the recognition and respect for customary law communities as regulated in the Law has implications for any laws governing indigenous peoples.

Community Corporation is a business entity owned by indigenous peoples which is formed within the Institution of Indigenous People-Owned Enterprises. If it is viewed from sociological aspect, it explained the core of a society as stated in Durkheim’s Community Theory which states four criteria of definition and theory of sense of community. Alongside with four elements of community definition as described in the part of corporation and community overview, in line with that, customary law communities as social communities show their existence as customary law communities if they have the same history, structure, heritage, customary law and collectively live independently with their traditional rights.

Indonesian Constitution itself as the topless legal foundation in Indonesia provides instructions on the recognition and respect for customary law communities as regulated by law. This recognition surely bringing out several implications for the many laws governing indigenous peoples. Recognition and the protection of indigenous peoples in the constitution provides space and opportunity for indigenous peoples to develop their potential resources to develop economic institutions in order to regulate the affairs of the survival and life of indigenous peoples whose social and economic existence is in the form of an e-company (BUMMA). Economically, socially, and legally, BUMMA is a community-owned business entity with a community approach with very strong social ties, in contrast to cooperatives or corporations that are only profit-oriented or profit-oriented which often prosper a handful of people. which incidentally is at the management level.

BUMMA in the context of community corporation is a new concept or paradigm that has a component of success in improving the welfare of indigenous peoples, both individually and in groups or in the legal language of *natuurlijke persoon* (subject of person) and *rechtspersoon* (subject of legal entity). These components including:

1. the level of trust of members towards the management who is strong because they are in certain areas and communities;
2. between members one and another member can supervise each other in carrying out business activities;
3. there are emotional and mental ties as well as a strong culture. intertwined among members even though the management uses custom;
4. exists in the structure and customary institutions of both management and members;
5. between members and management can support each other for the development of business units in accordance with the natural potential and environment of indigenous peoples.

In fact, BUMMA in indigenous communities in Sumbawa Regency is run by indigenous women in each indigenous community. Every indigenous community in Sumbawa Regency has a lot of natural and environmental potential which can also be managed with local wisdom, such as the *Ponto Ai Padeng*, indigenous people who are on the slopes of the mountain around Mama Village, Lopok Sub-District, which has a lot of potential such as natural honey and fisheries. Because there is Mama’s Dam as a place for freshwater fish cultivation, the *Payung*

Jolo, indigenous people in Dete Village, the sub-district within those area possess to the potential spread Gadung Plants such as sweet potatoes or cassava which contain ingredients that if processed can grow an alternative crop to replace rice and can be processed into cereals. The Rebu Payung indigenous community in Sepayung Village, Plampang, has abundant corn potential which will be processed into corn flour. The Pusu indigenous people in Tepal Batulanteh Village have potential besides Tepal Coffee which is also known with the ginger plants, both white ginger and red ginger which can be used as ginger extracts as ingredients for traditional archipelago ingredients, the Balakewang Kanar indigenous people in Labuan Badas Village, Labuan Badas District which have the potential of coconut sugar, the indigenous community of Cek Bocek in Lawin Village, Ropang District, has the potential for palm sugar produced from palm trees (Nirah). Bekat Moyo District Village, has the potential to weave which will make bag crafts from woven cloth.

The management of BUMMA by indigenous women begins with mentoring activities by the Alliance of Indigenous Peoples of the Archipelago in the Sumbawa region in collaboration with Global Voice in each indigenous community by establishing BUMMA which is oriented towards institutional strengthening of indigenous women's groups by identifying and making an inventory of businesses that will be run as economic support for the thunder family.

CONCLUSION

There are components that distinguish BUMMA which is managed by indigenous women from other business entities, namely:

1. the level of trust of members to a strong board because it is located in a certain area and community;
2. between one member and another. can supervise each other in carrying out business activities;
3. there are emotional and mental and cultural ties that are built between fellow members even though the management is in the traditional system;
4. exists in the traditional structures and institutions of both the board and its members;
5. between the members and the board, management can support each other for the development of business units in accordance with the natural and environmental potential of indigenous peoples. Based on these components, BUMMA as a *natuurlijke persoon* and *rechtspersoon* is a new approach in managing business entities at the customary community level formed from, by and for indigenous women as part of the legal community adat as a form of corporate of com community as a new form of economic institution in building the independence and welfare of indigenous women as part of the customary law community.

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