

The Role of the State in Realizing Economic Rights through Social Culture in Indonesia

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Abstract: *The role of the state in realizing economic and socio-cultural rights for villagers can be seen by the existence of Law No. 6 of 2014 concerning Villages, which gives a greater role to the Village Government in the administration of Village Government, implementation of Village Development, Village Community Development, and Village Community Empowerment based on community initiatives, original rights, and village customs. Whereas in realizing the economic rights of village communities, it has been regulated in Law Number 32 of 2004 concerning Regional Government. This research uses empirical normative, which is legal research concerning the application of normative legal provisions (codification, law or jurisprudence) in action on every particular legal event that occurs in society. empirical normative research methods also function to look at the law in the real sense and examine how law works in the community. The target of this research is to get answers on how the role of the state in realizing economic and socio-cultural rights for rural communities and the constraints for the state in realizing and enhancing rural economic rights in Indonesia.*

Keywords: Role of the State, Village Economic Rights, Socio-Cultural Rights

1. Background

The existence of the Republic of Indonesia is inseparable from the existence of the village as the smallest existing government unit. The progress of the country certainly can not be separated from the large contribution made by the village. With all the potential possessed by the village, it is hoped that the village can fully support the wheels of the country's economy.

Economic, social and cultural rights are an inseparable part of human rights. Economic, social and cultural rights have intrinsic value. These rights allow freedom to determine the way of life that we value. Human potential can be expressed through civil and political rights but developing this potential requires adequate social and economic conditions.

Indonesia has ratified the Covenant on Economic, Social and Cultural Rights (Ecosob) which clearly reveals Indonesia's obligation as a ratifying party state to fulfill the Ecosob Rights. Nationally integrated efforts to encourage full participation of all sectors of society are important to achieve progress in the realization of economic, social and cultural rights. A series of state obligations after ratification include the preparation of a preliminary report on the implementation of all provisions in the covenant, preparation of an action plan, and guaranteeing the achievement of actions and results, which clearly demand state obligations towards the results of development achievements, such as the level of public education, quality of public health, conditions of settlements community, the availability of jobs for the community, for example. And demands the state in the implementation of actions that look at the strategies, policies and processes carried out by the government in building a system of fulfilling the rights of socio-cultural economy.

Efforts to fulfill the socio-cultural economic rights are carried out through the formulation of a village law which one of the points in the law refers to the formation of a village-owned business entity (BUM Desa) as a means to increase the progress of the village economy which is expected by the village to be able to manage its wealth so as

to improve the standard of living of the community. the village.

The village has the right to form a Village-Owned Enterprise (BUMDesa). Actually the signal began to appear in Law Number 22 of 2009. However, BUM Desa began to mushroom after it was explicitly stated in Law Number 32 of 2004 concerning Regional Government. The support of the Provincial and Regency Governments is quite large. Ministries / Institutions have also begun to respond by involving BUM Desa in programs / activities of village community economic development. Nevertheless the efforts of the Regional Government and the Government are considered not optimal.

The birth of Law No. 6 of 2014 concerning Villages is expected to be a source of new spirit for BUM Desa. Law No. 6 of 2014 reaffirmed that villages can establish village-owned enterprises. BUM Desa is a business entity whose entire or most of its capital is owned by the Village through direct participation from village assets that are separated to manage assets, services, and other businesses for the maximum welfare of the village community.

Provisions regarding Village-Owned Enterprises in Law Number 6 of 2014 are regulated in Chapter X, with 4 articles, namely Article 87 to Article 90. In Chapter X of the Village Law it is stated that villages can establish village-owned enterprises called BUM. The village is managed with a family spirit and mutual cooperation. Enterprises that can be run by BUM Desa are businesses in the economy and / or public services in accordance with statutory provisions. Establishment of BUM Desa is agreed through the Village Deliberation and stipulated by the Village Regulation. BUM Desa was designed by prioritizing the role of the Village Government and its people more proportionally. When reflecting on the role of the Village Government in the implementation of community empowerment programs so far, it is expected that through the Village BUM model the revitalization of the role of the Village Government in local economic development / community empowerment will occur.

Technically, the existing BUM Desa is still referring to the Minister of Home Affairs Regulation No. 39 of 2010 concerning Village-Owned Enterprises. With the presence of Law Number 6 of 2014 and Government Regulation Number 43 of 2014 concerning the Implementation of Law Number 6 of 2014 concerning Villages, the village will have greater opportunities in the future to enhance its role in the economic development of rural communities. In this case BUM Desa can be an instrument and optimized its role as a legal local economic institution at the village level to improve community welfare and village income. Based on the above background, the problem in this study is whether the role of the state in fulfilling the socio-economic economic rights for rural communities in Indonesia.

2. Research Methodology

In conducting this research the writer uses the normative-empirical legal research method.¹ Normative juridical research is research to find out the positive law of a certain thing, event or problem. The type of data used in this study is secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials. The primary legal materials used in this study are the 1945 Constitution of the Republic of Indonesia, Law Number 6 of 2014 concerning Villages, Law Number 32 of 2004 concerning Regional Government, Minister of Home Affairs Regulation Number 39 of 2010 concerning Business Entities Village Owned. While the secondary legal materials used in this study are legal materials that are supportive and provide an explanation of primary legal materials in the form of books, papers, reports or research results, scientific writings, materials or articles from the internet regarding oil and gas revenue sharing, while the materials Tertiary law is an Indonesian dictionary or a black law dictionary. Data collection techniques in this research is the study of literature. This research also uses empirical research. Empirical legal research is a research method that uses empirical facts taken from several villages in Indonesia, both obtained from interviews and direct observations of brand matters. The three data collection techniques in empirical legal research were used individually, separately, and together at the same time. The technique comprised interviews and questionnaires.

3. Analysis and Discussion

1) The Role of the State in Relating to Villages in Fulfilling Cultural and Social Economic Rights

The existence of the state of the Republic of Indonesia is inseparable from the existence of the village as one of the smallest existing government units. The progress of the state is certainly never separated from the large contribution made by the village. With all the potential possessed by the village, it is hoped that the village can fully sustain the wheels of the country's economy. Birth of Law No. 6 of 2014 concerning Villages is a new hope for Indonesia. Unlike Law No. 32 of 2004 concerning Regional Government and PP No. 71 of 2005 concerning Regulations for Implementing Law No. 32 of 2004 concerning Regional

Government, Law No. 6 of 2014 on Villages developed a different perspective and new concepts related to villages and village governance. The Village Law no longer places the village as the background of Indonesia, but the front page of Indonesia. This means that villages that existed before the formation of the Unitary Republic of Indonesia were not only recognized as existing parts and developed long before the formation of the Unitary Republic of Indonesia, but the village was also recognized as an important part that supported and determined the Unitary Republic of Indonesia.²

The Village Law, which was born in early 2014, promotes the principle of village recognition and sub-attendance and develops the principle of diversity. In the explanation of the Act stated that the purpose of Law No. 6 of 2014 is as follows³:

- Give recognition and respect for existing villages with their diversity before and after the formation of the Republic of Indonesia.
- Provide clarity of status and legal certainty over villages in the Republic of Indonesia's constitutional system.

Village definition according to the provisions of Article 1 paragraph (1) of Law no. 6 of 2014 concerning Villages explained as follows:

"Village is a village and a customary village or what is referred to by another name, hereinafter referred to as Village, is a legal community unit that has the authority to manage and manage government affairs, the interests of the local community based on community initiatives, rights of origin, and / or rights traditionally recognized and respected in the system of government of the Unitary Republic of Indonesia."

The village is now an important actor in development, especially in the village itself. This law also emphasizes: a) the administration of the village government, b) the implementation of development, c) community development, and d) community empowerment based on Pancasila, the 1945 Constitution, the Unitary State of the Republic of Indonesia, and Unity in Diversity.

It cannot be denied anymore, that the potential of natural resources contained in the village is extraordinary. Call it the potential of water resources, natural resources such as mining, agriculture, plantation, forestry and others become an invaluable natural wealth as God-given. However, the existence of this natural wealth was not supported by qualified human resources in its management and professional management in its organization. Thus, we often hear that the existence of natural resources is as if left alone, God's grace in vain Even if managed, the nature of the management is still individual or group and is not oriented towards the development of village communities as a whole.

2) The Purpose of Village Management

²DirektoratPemberdayaan Masyarakat Desa, Dirjen Pembangunan dan Pemberdayaan Masyarakat Desa, Panduan Pelatih: Pelatihan Masyarakat TentangAdvokasiDesa, Kementerian Desa, Pembangunan Daerah Tertinggal dan Transmigrasi, 2015, hal. 60.

³ Ibid, hal. 61.

¹ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang :Bayumedia Publishing, 2006), hlm. 295

The village has original rights and traditional rights in regulating and managing the interests of the community and contributing to the realization of the ideals of independence based on the 1945 Constitution of the Republic of Indonesia. By Karen, it needs to be protected and empowered to be strong, advanced, independent, and democratic so that it can create a solid foundation in carrying out governance and development towards a just, prosperous, and prosperous society. The purpose of stipulating village arrangements in Law Number 6 of 2014 is further elaboration of the provisions as referred to in Article 18 paragraph (7) and Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, that mentions as follows⁴:

- a) Give recognition and respect for existing villages with their diversity before and after the formation of the Unitary Republic of Indonesia;
- b) Provide clarity of status and legal certainty over the Village in the constitutional system of the Republic of Indonesia in order to realize justice for all the people of Indonesia;
- c) Preserve and advance the customs, traditions and culture of the village community;
- d) Encourage the initiative, movement and participation of the village community to develop the potential and Village Assets for the common welfare;
- e) Forming a professional, efficient and effective, open and responsible village government;
- f) Improving public services for villagers to accelerate the realization of public welfare;
- g) Increasing the socio-cultural resilience of the village community in order to realize the village community that is able to maintain social unity as part of national security
- h) Promote the economy of the village community and overcome national development gaps; and
- i) Strengthening the village community as a subject of development.

Based on the concluding provisions of the Village Law above, it is clear that all statutory provisions that are directly related to the Village must base and adjust their arrangements to the provisions of this Law. In addition, all the implementing regulations regarding the Village that have been in place remain valid as long as they do not conflict with this Law.

3) Village Authority

Government through Law Number 2 of 2015 concerning Establishment of Government Regulation in Lieu of Law Number 2 of 2014 concerning Amendment to Law Number 23 of 2014 concerning Regional Government Becoming Laws, determines that government affairs which become the authority of villages include government affairs existing ones based on the village's original right, governmental affairs whose authority is delegated by the regency / city, assistance tasks from the government and regional government, and other governmental affairs which by law are handed over to the village. In addition, this Law also provides a strong foundation for villages in realizing "Development Community" where the village is no longer an administrative or subordinate level of the region but

instead as an "Independent Community", namely the village and its people have the right to speak on behalf of the community's own interests. Villages are given the authority to manage their villages independently including in the social, political and economic fields. It is hoped that this independence will increase the participation of rural communities in social and political development.

The autonomy that is owned by the village government is very different from the autonomy that is owned by the provincial and district / city regions. Autonomy owned by the village is strongly influenced by the origins and customs of the tradition, not based on the surrender of authority from the government. Village or other name, hereinafter referred to as village is a legal community unit that has the authority to regulate and manage the interests of the local community based on local origins and customs that are recognized in the national government system and are located in the district area. The basic thinking that needs to be developed now is diversity, participation, genuine autonomy, democracy, and community empowerment.

According to Law Number 6 of 2014 concerning Villages Article 18, village authority includes authority in the administration of village governance, implementation of village development, village community development, and empowerment of village communities based on community initiatives, original rights, and village customs. And according to Article 19 of Law Number 6 Year 2014 concerning Villages the authority of villages includes:

- a) Authority based on original rights;
- b) Village-scale local authority;
- c) Authority assigned by the government, provincial regional government, or district / city regional government; and
- d) Other authorities assigned by the government, provincial government, or government.

Based on the authority mandated in the laws and regulations above, giving authority to the village to be able to carry out village development and rural areas by utilizing the potential of natural resources in the village in a sustainable manner. The arrangement aims to create a source of livelihood in the village through land use in order to improve the welfare of the community. This is also regulated and affirmed in article 371 paragraph (2) of Law Number 23 of 2014 concerning Regional Government, namely the Village has the authority in accordance with the provisions of the legislation concerning the Village. This means that village authority related to rural area development and management and use of natural resources can be based on the authority mandated in Law No. 6 of 2014 concerning Villages.

4) Principles of Village Management

The principles of village regulation as stated in the provisions of Article 3 of Law no. 6 of 2014 concerning Villages includes the following principles⁵: 1). Recognition, namely recognition of the right of origin; Subsidiarity, namely the establishment of local scale authority and taking it locally for the interests of the village community; 2). Diversity, namely recognition and respect for the value

⁴ Ibid, hal. 62.

⁵ Ibid, hal. 65.

system that applies in rural communities, but by continuing to heed the shared value system in the life of the nation and state; 3). Togetherness, which is the spirit to play an active role and work together with the principle of mutual respect between institutions at the village level and elements of the village community in developing villages; 4). Mutual cooperation, which is the habit of helping one another to build a village; 5). Kinship, which is the custom of villagers as part of a large family unit in the village community; 6). Deliberation, which is a decision-making process that concerns the interests of village communities through discussions with various interested parties; 7). Democracy, which is a system of organizing rural communities in a system of government carried out by village communities or with the agreement of village communities and the dignity of human dignity as the creatures of God Almighty is recognized, arranged, and guaranteed; 8). Independence, which is a process carried out by the Village Government and the village community to carry out an activity in order to meet their needs with their own abilities.

Of the eight principles mentioned above, there are two principles that are very important to note namely the principle of recognition and the principle of subsidiarity. Said to be important because the two principles, in addition to being the basis for the other principles, the two principles were also reaffirmed as village authority, as explained in the provisions of Article 19 of Law No. 6 of 2014. Therefore the two principles can be said as two principles in the substance of the Village Law, and it is important to be specifically understood.

The following will be explained separately about the understanding of the two principles, namely the principle of recognition and the principle of subsidiarity. Recognition means recognition of the right of origin as described in the Village Law explanation. This recognition principle is closely related to the definition of villages as regulated in Article 1 number 1 of the Village Law. As mentioned in the village definition above, the village regulates and administers based on community initiatives, original rights, and / or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia (NKRI). The principle of recognition that respects and recognizes the authority of village origin rights is further emphasized in Article 19 letter a of the Village Law, "Village Authority includes: a) authority based on origin rights ". The principle of recognition of villages in the Village Law is contextual and constitutional and results from political negotiations between the government, DPR, DPD and also the Village. Contextual means that recognition is a relevant principle in the context of the village as a legal community unit that exists and has the right of origin, each village has diversity according to the context. Constitutional means that the principle is protected by Law which is none other than the Village Law itself.⁶

Furthermore subsidiarity means local scale authority and local decision making for the benefit of village communities. The principle of subsidiarity is further emphasized in Article 19 letter b of the Village Law, "Village Authority includes:

b) local-scale village authority ". The existence of local authority is a consequence of the village's recognition as a legal community unit that has original rights. Without this recognition, it will be difficult to talk about village authority. The meaning of the principle of subsidiarity is as follows⁷:

- Use of authority and decision-making about the interests of the local community in the village. Local affairs or interests of the local community on a local scale are handled by the Village as the local organization closest to the community.
- The state establishes village-level local authority into village authority through the Village Law. Determination of local-scale local authority means that there are laws and regulations that directly provide clear boundaries of local-scale local authority, without going through delegation mechanisms or delegating functions / authority from the district / city.
- The government carries out support and facilitation for villages in developing initiatives in formulating and establishing village-scale local authorities.

5) Socio-Economic Economic Rights for Village Communities in the Establishment of Village-Owned Enterprises (BUMDes)

The initial purpose of establishing Village-Owned Enterprises (BUMDes) is intended to encourage or accommodate all activities to increase community income, both those that develop according to local customs and culture, as well as economic activities that are surrendered to be managed by the community through programs or projects. As a village effort, the establishment of BUMDes is really to maximize the potential of the village community in terms of economic potential, natural resources, or human resources. Specifically, the establishment of the Bumdes was to absorb village workers to increase creativity and productive economic business opportunities for those on low incomes.

The aims and objectives of economic empowerment of rural communities with BUMDes are to serve rural communities in developing productive businesses from natural resources in the village and aim to provide a variety of media businesses and facilities needed by rural communities in order to support the economy of rural communities in accordance with the potential existing villages and the needs of the village community concerned.

The village head in establishing the BUMDes there are steps that must be taken by the village head, that is, there needs to be an initiative from the village head as a commissioner of the BUMDes, with the support of all components of the village community. There are three stages or steps in establishing BUMDes, namely:

a) Stage I: Agreement

At this stage there needs to be an agreement between the village community and the village government for the establishment of the BUMDes which is carried out through village deliberations or village meetings. In this case the Village Head held a village meeting by inviting the BUMDes formation committee, BPD members and

⁶ Ibid, hal. 67.

⁷ Ibid, hal. 68-69.

community leaders and community organizations in the village. The purpose of this phase I meeting is to formulate the following: a). Name, position and working area of BUMDes; b). The purpose and objectives of establishing BUMDes; c). Form of BUMDes legal entity, d). BUMDes capital source; e). BUMDes business units; f). BUMDes Organization; g). BUMDes supervision; h). BUMDes responsibility; i). If it is deemed necessary to form an Ad-hoc Committee for the formulation of a Village Regulation concerning Establishment of the BUMDes.

In this first stage is to design an organizational structure of BUMDes which describes like the organizational structure in general such as the structure of the management of BUMDes, the field of work, as well as the employment relationship between the BUMDes management.

b) Phase II: Ratification of the BUMDes organization.

At this stage it is related to the formulation of the Village Deliberation in Phase I Developing village regulations and articles of association and ratification of the following:

- 1) Village Regulation concerning Establishment of BUMDes that refers to Regional Regulations and other applicable legal provisions;
- 2) Ratification of Village Regulation concerning Establishment of BUMDes
- 3) BUMDes Articles of Association
- 4) BUMDes Organizational Structure and institutional rules
- 5) Duties and functions of the BUMDes manager
- 6) Rules of cooperation with other parties
- 7) BUMDes business plan and business development.

c) Phase III: Development and Management of BUMDes.

BUMDes development and management in the form of:

- 1) Formulate and establish a salary system and remuneration for BUMDes managers,
- 2) Election of managers and managers of BUMDes
- 3) Develop BUMDes management information systems
- 4) Develop BUMDes administration and bookkeeping system
- 5) Drafting BUMDes work plan.

In the last many points discussed, namely composing the form of rules of cooperation with third parties concerning the sale and purchase or savings and loan transactions, this is important arranged in a clear and mutually beneficial rule. The form of cooperation with third parties is regulated jointly with the BUMDes Board of Commissioners. It also discussed the preparation of a business plan, which is the preparation of an important business plan to be made in a period of 1 to 3 years. So that BUMDes managers have clear guidelines of what needs to be done and produced in an effort to achieve the goals set and their performance measurable. The preparation of a business plan was made jointly with the BUMDes Board of Commissioners.

Another point that was also discussed was carrying out the recruitment process and the payroll and remuneration system. To determine the people who will become managers of BUMDes can be done by deliberation. But the selection must be based on certain criteria. The criteria are intended so that holders of positions in BUMDes are able to carry out

their duties properly. For this reason, the requirements for holders of positions in BUMDes are important to be made by the Board of Commissioners. Then it is brought to the village consultation forum to be socialized and offered to the community. The next process is to select applicants and select and determine the people who are most in accordance with the criteria made.

Besides providing incentives if the manager is able to achieve the targets set during a certain period. The amount of money that can be paid to BUMDes managers must also be based on the level of profit that is likely to be achieved. Providing rewards to BUMDes managers must be delivered from the beginning so that they have the responsibility in carrying out their duties. Because giving rewards is a bond for everyone to fulfill the requested performance.

There are several theories used in this study, including the Theory of Welfare State (Welfare state), Theory of justice proposed by Jeremy Bentham and John Rawls, Theory of development law from Mochtar Kusumaatmadja. The framework of thought in this study is used to be able to answer 3 (three) identified problems that have been determined. Juridical thinking choice from one theory about the purpose of the state is the Welfare State (Welfare State). The concept of the rule of law which was originally a liberal has changed to a state of law which operates people's welfare.⁸ According to the concept of the welfare state, the goal of the state is for general welfare. The state is seen as only a means to achieve the shared goals of prosperity and social justice for all the people of that country.⁹ In addition to the concept of a state based on law (commonly called the rule of law), also the concept of a welfare state (Welfare state), which is a concept that places the role of the state in every aspect of people's lives in order to realize social welfare for all people.¹⁰ In connection with the concept of the welfare state, the state that embraces the concept of the welfare state can carry out 4 (four) functions¹¹ namely:

- 1) The State as provider
- 2) The State as Regulator (State as regulator),
- 3) The State as an entrepreneur (State as an entrepreneur), and
- 4) The State as umpire (State as referee).

Referring to the function of the state which adheres to the concept of the welfare state as stated above, causes the state to play an important role. In order to fulfill its function as a steward and as a regulator, the state is involved and given the authority to make regulations in the management of natural resources that provide protection to local communities, so that people's welfare can be realized as stated in the Preamble to the 1945 Constitution and Article 33 paragraph (3). Therefore, the role of the Government in

⁸Kusnardi dan Bintan R. Saragih, Ilmu Negara, Gaya Media Pratama, Jakarta, 2000, hlm.133

⁹CST Kansil dan Christine ST. Kansil, Hukum Tata Negara Republik Indonesia (1), RinekaCipta, Jakarta, 1997, hlm.20

¹⁰Mustamin Dg. Matutu, "Selayang Pandang (tentang) perkembanganTipe-tipe Negara Modern," Pidato Lustrum ke IV Fakultas Hukum dan Pengetahuan Masyarakat Universitas Hasanuddin Ujung Pandang, 1972. Hlm, 15.

¹¹ W. Friedman., *The State and Rule of Law In a Mixed Economy*, London: Steven & Son, 1971, hlm. 5

encouraging communities to be more empowered in participating in managing and utilizing land becomes a very important matter. The state has an important role in regulating the realization of the rights of rural communities. An important instrument that can be used by the state in carrying out regular functions, including in the field of agrarian affairs, especially for land, forests, plantations, and other natural resources is the law, and this is the application of legality in the concept of a state based on law.

The Welfare State Theory strongly supports the application of policies on regulations related to villages, specifically related to the redistribution of the state to the distribution of land to villages, the liberation of villages from forest and plantation enclaves, and the holding share of ownership of capital between villages and investors in the management of local natural resources village in realizing the welfare of the village community, so that it will support the realization of general welfare and prosperity for all Indonesian people through the agrarian sector which can be utilized for agriculture, plantation and other fields.

The concept of the Welfare State in the 1945 Constitution was first adopted by Muhammad Hatta,¹² which can be stated based on the provisions of Article 33 which reads:

- 1) The economy is structured as a joint effort based on family principles.
- 2) Production branches which are important for the state and which control the lives of many people are controlled by the state.
- 3) The earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.
- 4) The national economy is organized based on economic democracy with the principles of togetherness, efficiency, fairness, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.
- 5) Further provisions regarding the implementation of this Article are regulated in the Law.

Natural resource management policies in Indonesia, including agrarian resources, refer to the ideology of control and utilization as reflected in article 33 paragraph (3) of the 1945 Constitution which reads as follows:

"The earth, water and natural resources contained therein are controlled by the State and used as much as possible for the prosperity of its people".

Based on these provisions it can be concluded that the state controls the natural wealth contained therein, but this control is limited, that is, it must be used for the greatest prosperity of the people.¹³

The Government's intervention above shows that Indonesia adheres to the concept of a welfare state (Welfare State), as

sparked by Beveridge.¹⁴ Furthermore, in its development due to the involvement of the government in carrying out its functions in making regulations and overseeing various activities in the community, various problems occurred between the government and the community in the field. This is illustrated by Tocqueville's frequent conflicts including tenure conflicts in a country. He stated that: *"Conflict, however bounded; controversy, but regulated - these are features not incidental but essential to the operation of the political system"*.¹⁵

First, from the perspective of positive normative or dogmatic juridical jurisprudence, where the purpose of law is emphasized in terms of legal certainty. Second, from the perspective of legal philosophy, where the purpose of law is emphasized in terms of justice. Third, from the perspective of legal sociology, the purpose of law is emphasized in terms of its usefulness.¹⁶

In addition to the theory of the welfare state, a theory related to the theme of research as a knife for analysis is the theory of justice. According to the teachings of utilitis with the purpose of its benefits, stated by Jeremy Bentham. According to this view, the purpose of law is merely to provide the maximum benefit or happiness for as many citizens as possible. Handling is based on social philosophy that every member of society seeks happiness, and law is one of the tools. The doctrine of utilitis shows, "The greatest happiness principle" (The principle of happiness as much as possible). Strictly speaking, according to this theory, the ideal society is a society that tries to provide as much happiness as possible to the people in general and so that unhappiness is attempted as little as possible is felt by the people in general.¹⁷

In addition to the view of justice theory as put forward by Jeremy Bentham, it can be put forward the theory of justice put forward by John Rawls. According to John Rawls, all theories of justice are theories about how to determine the different interests of all members of society. According to the concept of utilitarian justice theory, a fair way to unite different human interests is to always try to increase happiness.

According to Rawls, however, a fair way to unite different interests is through a balance of these interests without giving special attention to the interests themselves. This theory is often called 'Justice as fairness' (Justice as honesty). So the main thing is which principle of justice is the most fair, that is what must be guided. There are two basic principles of justice. The first principle, called freedom

¹⁴Beveridge seorang anggota Parlemen Inggris dalam reportnya yang mengandung suatu program sosial dengan perincian antara lain tentang meratakan pendapatan masyarakat, usulan kesejahteraan sosial, peluang kerja, pengawasan oleh Pemerintah dan Usaha di bidang Pendidikan. Muchtar Kusumaatmadja, *Konsep-konsep Hukum dalam Pembangunan*, (Bandung: PT. Alumni 2002), hl. 82.

¹⁵Tocqueville's seperti dikutip Gianfranco Poggi, *The Development of the Modern State*, (New York: Stanford University Press, 1978), hlm 111.

¹⁶Achmad Ali, *Menguak Tabir Hukum, Suatu Kajian Filosofis dan Sosiologis*, (Jakarta: PT. Gunung Agung, 2000), hlm 72.

¹⁷*Ibid*, hlm. 77

¹²Jimly Asshiddiqie, *"Undang-undang Dasar 1945: Konstitusi Negara Kesejahteraan dan Realitas Masa Depan"*, Universitas Indonesia, Jakarta, 1998

¹³Muchsan, *Hukum Administrasi Negara dan Peradilan, Administrasi Negara di Indonesia*, (Jakarta: Liberty, 2003), hlm, 9.

which states that every person has the right to have the greatest freedom as long as he does not hurt others. Strictly speaking, according to this principle of freedom, everyone must be given the freedom to choose to become an official of freedom of speech and to think freedom of having wealth, freedom from arrest without reason and so on.¹⁸

The second principle of justice that all fair people will agree on is that social and economic inequality must help the whole community and high officials must be open to all. Strictly speaking, social and economic inequalities are considered unfair unless these inequalities help the whole community.¹⁹

Friedman argued that a legal system consists of three elements²⁰: "Law as a system basically has 3 (elements), namely:

- a) The structure of the legal system (structure of legal system) which consists of legislative bodies, the judiciary with the structure of the prosecutor's office and the state police, which functions as law enforcement officers;
- b) The substance of the legal system (substance of legal) in the form of legal norms, legal regulations, including patterns of community behavior that are behind the legal system; and
- c) Legal culture of society (legal culture) such as values, ideas, hopes and beliefs that are manifested in people's behavior in perceiving the law ".

A similar opinion was expressed in the theory of development law from Muchtar Kusumaatmadja. Based on the social reality and cultural situation in Indonesia and the real needs of the Indonesian people, Muchtar Kusumaatmadja formulated a theoretical foundation or framework for the development of national law by accommodating views on the law of Eugen Ehrlich and Roscou Pound's legal theory, and processing it into a legal concept that views law as a means renewal, besides the means to guarantee order and legal certainty.²¹

To provide a theoretical basis in playing the law as a means of community renewal and building a national legal order that would be able to carry out this role, Muchtar Kusumaatmadja proposed a conception of law that not only constitutes the whole principles and rules governing human life in society but also includes institutions institutions (institutions) and processes that realize the enforcement of these rules in reality.²²

With this conception of law, it appears that Muchtar views the legal order as a system composed of 3 (three) components (sub-systems), namely:²³

- a) Principles and legal principles;

- b) Institutional law;
- c) Legal realization process.

According to Muchtar Kusumaatmadja, law is a means of community renewal based on the assumption that there is order or order in the development or renewal effort that is something that is desired or even considered (absolutely) necessary.²⁴

Another assumption contained in the conception of law as a means of development is that the law in the sense of rules or legal regulations can indeed function as a tool (regulator) or means of development in the sense of the direction of the formulation of activities desired by development or renewal.²⁵

Both of these functions are expected to be carried out by law in addition to their traditional functions, namely to ensure certainty and order.²⁶

Change and order or order are twin goals of the developing community, law becomes a tool (means) that cannot be ignored in the development process.²⁷

The role of law in development is intended so that the development can be achieved in accordance with what has been determined. This means that there is a need for a set of legal products in the form of legislation and decisions of judicial bodies capable of supporting development.²⁸

At the level of policy implementation, the pattern of control, use, ownership and use of customary / ulayat land must be elaborated in more detail and further in various laws and regulations.

4. Conclusions

The Village Law, which was born in early 2014, promotes the principle of village recognition and sub-attendance and develops the principle of diversity as a means of fulfilling social economic rights for rural communities so that the fulfillment of these rights is accommodated by the positive law of the Indonesian state and the Role The state in realizing socio-cultural economic rights for rural communities as stipulated in Law Number 6 of 2014 on Villages is expected to be able to force all relevant parties to consistently give a greater role to the Village Government in the administration of Village Government, implementation of Village Development, Coaching Village Community, and Village Community Empowerment based on community initiatives, original rights, and village customs. Included in giving a maximum role to the Village Community Enterprises in developing rural economic activities.

¹⁸Uzair Fauzan dan Heru Prasetyo, Teori Keadilan Dasar-Dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial Dalam Negara, (yogyakarta: Pustaka Pelajar, 2006), hlm. 181 dan 203.

¹⁹*Ibid*

²⁰ Lawrence W Friedman, American Law, (New York: W.W. Norton & Company, 1984), hlm. 7.

²¹*Ibid*, hlm. 7.

²²*Ibid*.

²³*Ibid*.

²⁴Muchtar Kusumaatmadja, Konsep-Konsep Hukum Dalam Pembangunan, (Bandung: PT. Alumni, 2002), hlm. 89.

²⁵*Ibid*.

²⁶*Ibid*.

²⁷*Ibid*, hlm. 89.

²⁸Otje Salman dan Anthon F. Susanto, Beberapa Aspek Sosiologi Hukum, (Bandung: PT. Alumni, 2004), hlm. 65.

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