

Corruption Project Rehab Abrasion Beach and Mangrove Forest Planting in Philosophy Review

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Abstract : *Corruption is a very serious crime in this country because it can destroy the nation of the various lines, both educational, social, environmental, economic or other strategic corner of the nation. Even has been categorized as a crime "Extra Ordinary crime", although the effect is not directly visible bleeding. But if we want to examine how the conditions of this country which has become the country with debt is very high, schools and bridges collapsed prematurely (remember the victims of the bridge kutai Kertanegara in East Kalimantan collapsed prematurely) as well as many more cases of corruption sprung up like mushrooms in the rainy season. For in Maluku Province which is an area with an archipelago, even also known as the land of a thousand islands, I would try to lift up on the corruption case of coastal erosion renovation project including mangrove forest planting project that failed in East Seram. Besides poverty in eyes could easily be encountered. Such as school-age children who become garbage collectors in some housing in the red rocks, or as a plastic bag and fish sellers in the market looks paced everywhere. fact quite disturbing conscience. The purpose of this writing is to increase the sense of our concern for the latent danger of corruption and foster empathy and a sense of responsibility to do something for the benefit of the wider community, especially from the lower classes (disadvantaged / poor). The methodology used in this paper is a normative juridical method. While the results of the study are expected to provide a solution, in order to be applied significantly to increase the degree of people's lives and foster a government that is clean and prestigious.*

Keywords: *Corruption; abrasion; Mangrove forests; Philosophy.*

1. INTRODUCTION

Indeed, the root of all poverty is corruption; corrupt behavior makes a handful of people or a group of people lavishly over the suffering of other people (groups) of society. What is worse if there is omission of unhealthy situations and conditions then what happens next is the community began to apathetic and no longer care. And if people do not care anymore then it is the future of this nation. It should be in addition to the application of strong legal sanctions, can also dig back the noble values that exist in Maluku customs. So that can be used to minimize this type of crime. It could even be one solution that can be utilized to make customs values in society can live again. Is not with the life of indigenous people who hold firm *custom* values in the region also can to prevent the occurrence of corruption. For example, the customary rules on effective marine zone utilization will therefore be a worsening coastal abrasion will not occur as well as cultivation of mangrove crops grown on the coast will remain fertile with its function as a shrimp, fish or crab shrimp which will ultimately provide a livelihood for local indigenous communities Siti Chomarajah Lita Samsi (2014). The Purpose of Writing is Giving awareness to the wider community that they actually have tools in their own environment, which if digged and utilized properly will be beneficial to the environment and ultimately can improve the standard of living. And for the Law Enforcers, especially Judges, in order to carry out their duties as well as possible. Because it must always be remembered that the task of a hakim will be accounted horizontally to the community also vertically to God Almighty. The formulation of the problem in the case of Corruption of Coastal Abrasion Rehab Project and Mangrove Forest Planting in Philosophy Review are:

1. What is the philosophical view of the Corruption Eradication of the Beach Abrasive Rehab Project and the Planting of Mangrove Forest in East Seram District?
2. What can a judge do as a law enforcer in pursuing decisions that give optimal benefit to local indigenous peoples?

While the purpose of research on corruption cases of Coastal Abrasion Rehab Project and Mangrove Forest Planting in East Seram District from Philosophy point of view is to try to find the root of the problem deeper and closer to the truth. It can be attempted by using the views of some philosophers, in which case I try to analyze mainly using the thoughts of Jhon Austin and H.L.A Hart. Similarly, trying to examine using some views such as the Welfare State and Night Watchman State.

2. METHODOLOGY

The method in this paper is descriptive. While this type of research is legal juridical normative research, namely research on the rules of law (regulation legislation) is relevant. The study of positive law is done by evaluating the terms of conformity between one rule of law with other legal norms, or with legal principles recognized in existing legal practice (Bagir Manan, 1999). A positive law inventory is an activity that must be done first as a basic introduction. Before finding the legal norms in-concreto must be known in advance what positive law applies.

3. RESULT AND DISCUSSION

To get a clear picture of the Corruption case of Coastal Abrasion Rehabilitation Project and Mangrove Forest Planting in Philosophy Review, it is better to quote the corruption case that happened in East Seram District in 2010 and appealed in 2012 as follows : A case of corruption concerning Mangrove forest project in East Seram Island (SBT), in 2 (two) sub-districts of Salahutu and Bula sub-districts involving local farmer groups (ie farmer group: sukamaju I, forward 2, Makmur tongke 1 , wai Bula and Akat Permai). The government has given enough attention to the destruction of nature, which can result in misery for the people around the coast and even eliminate their livelihoods, which are mostly fishermen. Funds disbursed by the Government (as mentioned in Document of implementation of changes in SKPD Budget 2010 budget year) forestry and plantation offices kab. East Seram budgeted funds for Forest and Land Rehabilitation program with its activities Mangrove Forest Rehabilitation is IDR. 1,174,000,000, - and supplemented with funding The administration of DAK DR's companion fund in the forest and land rehabilitation program is IDR 176.000.000, - which sourced from APBD year eastern part, so total fund of Mangrove forest rehabilitation activity is equal to IDR 1.350.000.000, - (one billion three hundred fifty million rupiah), with one of the work on Mangrove forest rehabilitation activities. What turned out in the implementation was far from expectations, even led to the corruption court because it has caused losses to the State finances. Although they involve farmer groups around the site of the Mangrove Forest Rehabilitation Project but because of the greedy view of the amount of funds available, it leads to the use of funds for personal gain. While the planting and rehabilitation of damaged Mangrove forest is done carelessly, Specification of mangrove plants are required to certificate and in good growing condition with certain age neglected. So that optimal growth can not be obtained even a lot of drifting sea waves and abrasion increasingly become-so, (Siti Chomarjah Lita Samsi (2014).

To complete the description of the corruption case of the Coastal Abrasion Rehabilitation Project and the Mangrove Forest Planting, there are some data (which, although in the form of old data that is up date in 2009 from the Official Site of East Seram Regional Government) about the existence of the sea and its wealth of fish and crabs and shrimp and other marine products is an important asset for the survival of the local community. The data are as follows:

Fishery Resources contained in East Seram Region and mainly in Gorom sub-districts such as Fish and Lobster that have been exported abroad, with available capacity 108,969,600 Ton / Year while utilization only: 27.242.400 Ton / Year (20 %).

Potency Fishery Capture

Fishery products that have important economic value include: big *pelagis*, small pelagic, *demersal* fish species, crustsea, sea cucumber, seaweed, marine ornamental fish species in addition there are other potential fisheries such as tuna, skipjack, lola, cardamom, shrimp and lobster.

Fishery production in East Seram Regency is mostly concentrated in the archipelagic areas of East Seram and PP sub-districts. Gorom, and a small part of Werinama and Bula sub-districts. various types of marine commodities, such as: fish, shrimp, crab, sea cucumber, leather lola, various types of snails / seashells, seaweeds and other marine products have long been the identity of commodities from East Seram District and PP Gorom Subdistrict. The last data of production value from the fishery sector in East Seram Regency reaches the value of: IDR 13,561,250,000, - with the number of fishermen totaling 6,882 people.

Research results for the potential of natural resources in the form of Fisheries and Marine. The potential for sustainable fisheries sector includes surface fish (*pelagis*) and fish base (*demershal*) estimated 128,692,2 ton / year where until year 2005 can be

managed 9,340,6 ton (7,79%) with production value 13,561,250,000. Besides, there are still many marine potencies of high economic value such as sea cucumber, lola, squid, shrimp penaide, etc ..

Which is included in the priority of choice in SBT in 2008. (source idem top) Marine and Fisheries:

- a. Improving human resources, fishermen skills and cultivation
- b. Improving the development and prosperity of the community in the small island area by coordinating and declaration of marine development programs.
- c. Rehabilitate and improve the physical function of ecosystem habitats, as well as optimize the use of coastal space.
- d. Improving facilities for catching and using infrastructure technology
- e. Improving the quality of capture fisheries production and cultivation. (Official Site of SBT District (2009).

The description of a case, if completed with various related data will give a more complete picture of the existence of a case. So it will make it easier to make an assessment and be more wise. As in the case of corruption in general, if it has been submitted to the court both at the first level of Corruption Court and the level of appeal then used is the provisions contained in the positive law in our country. Among them are Law Number 31 Year 1999 concerning the Eradication of Corruption Act jo Law Number 230 Year 2001 regarding Amendment to Law Number 31 Year 1999 concerning Eradication of Corruption and Criminal Code. After the criminal sanction for the defendant, it is expected that the verdict can provide a sense of justice for the parties who lit and also give benefit that is primarily for the wider community.

Why the problem of corruption becomes interesting when viewed from the point of view of philosophy, according to the author is because it is expected to appear the values of wisdom of the judgments imposed. Is not philosophy there and is learned because of a sense of amazement, dissatisfaction, desire to ask and doubt. So by using philosophical thought that a deeper thought to be able to find the truth is expected to answer the problem better. Finally, it is hoped that someone who has studied law philosophy will be awakened to encourage law enforcers to dare to uphold truth and justice especially judges. The judge should pay attention to the element of justice in the judgment because often people forget that the element of justice must basically be attached to the decision given by the judge. (Nomensen Sinamo, quoting from Harkristuti Harkrisnowo (2003: 28)

In producing a verdict that can satisfy the sense of justice, although of course it will be difficult to satisfy both sides of the litigant, but can be attempted by trying to find and explore the truth values contained in a problem (case) carefully. In Science there are several kinds of truths such as absolute truth, Relative truth, Speculative Truth, Correspondence Truth, Pragmatic Truth, Normative Truth, Religious Truth, Philosophical Truth, Aesthetic Truth, Scientific Truth, Theological Truth, Ideological Truth, Constitutional Truth and Logical Truth In the case mentioned above, which may be used in this case include:

1. Normative truth, that is truth based on a standard social system. For example, custom demands or social agreements that have long been valid in the cultural life of the community concerned.
2. The truth of correspondence, the truth that is based on objective reality. Correspondence truth criteria are characterized by the relevance between statement and reality, between theory and practice.
3. Philosophical truth, is the truth of contemplation and reflection of the philosopher called the nature, although subjective, looks profound because through existential living is not just intellectual experience and thought. (Beni Ahmad Saebani, 2009)

By using some of the truths that have been described, it can be said in a normative truth is that there has been a long-standing social agreement in the community of SBT Regency (East Seram) associated with the coast and natural resources contained within the territory of the sea .. Natural wealth is God's gift to the local community. Well maintained natural wealth, certainly can be used for the survival of the livelihood of indigenous communities. Similarly, in the area of mangrove forest plantation and coastal rehab from abrasion. This can also be proved by the truth in a correspondence between the conditions in the field of the project implementation and the provisions of the contract agreement with the normative values in the community.

In the execution to try to get into the realm of philosophical thinking, the author uses what John Austin's basic idea of legal positivism puts in his book *The Province of Determined Jurisprudence* (1832). Austin explains that legal philosophy has two important tasks related to two dimensions: (Anonymous, 2015a).

In the dimension of analytical jurisprudence, the task of legal philosophy is to analyze the basic concepts in law and the legal structure as they are. For example, when we ask the question of what a law is, this question is one example of typical questions posed by legal thinkers as a starting point for analyzing and then trying to understand the basic concepts.

In the dimension of normative jurisprudence, the task of legal philosophy is to try to evaluate or criticize the law by the point of departure is the concept of law as it should be. An example of the main questions raised in this section is the legal reason is called the law, why we have an obligation to obey the law, which basis of legal validity, and so forth. Based on these questions this second dimension concerns the ideal dimension of the law itself.

Law as Command (Law is Command of a Sovereign)

According to Austin, law must be understood as 'command'. 'The law is always a collection of command commands (laws are commands). The law is always a commanding character. Thus, according to Austin, the key word in jurisprudence is command. The law prevailing in society is the general command of a political entity with sovereignty, the supreme political authority. Or, Austin calls it sovereign: a sovereign ruler over its citizens. This authority functions to regulate the behavior of every member of the community. The holder of this supreme authority may be by a group of people or just one person. Requirements for the holder of this supreme authority include: first, the holder of this authority must be a person or group of people who are obeyed by all its citizens without exception. Second, the holders of this authority (either one person or a group of people) disobey no one. That is, the holder of this authority is the absolute ruler, the master of all, not under other rulers. He is the supreme ruler.

Departing from this Austin thought, we can see that the source of the law is the supreme ruler who is de facto obeyed by all citizens or members of society who are in his territory. He does not bow to anyone. Thus, the command (law) is the imperative of the ruler. Here, Austin seeks to account for the validity of the law by referring to a 'factual' or 'source' which is in fact empirically recognized as having the authority to create law.

Furthermore, Austin said that law must be understood in the sense of command because the law should not give room to choose: whether obey or disobey. The law is non-optional. That is, the command issued by the sovereign must be obeyed by all its citizens without exception and without choice.

Thus, according to the authors of Austin's opinion about the existence of command of the authorities (the authorities) about certain rules that must be obeyed by the community. And there is a clear dividing line between the ruler and the common people, namely that the ruler (Superior) has no obligation to obey the rules made. This will be very vulnerable to use, especially in the conditions of a society that is growing rapidly and the more complex the problems encountered. Can be imagined if the regulators do violations and do not get sanctions, of course will arise chaos. This is because perpetrators of violations of a rule can be made possible by all (both rulers and ordinary people).

What is said by John Austin is getting a reply (criticism) by H. L. A Hart. About the existence of 3 (three) main weaknesses are: 1. What if Sovereign die then there can be ambiguity that is whether there will be continuity of law made by Sovereign or not ?, 2. The law should apply to all (all members of society without exception, good he as a ruler or just an ordinary citizen), 3. John Austin has failed to distinguish the concept of "being under obligation" and "under duress. And over some of these weaknesses Hart gave arguments in the book he wrote.

According to Herbert Lionel Adolphus Hart (also called H L A Hart or Hart) in Theory contained in his book, The Concept of Law (1972). that law must first be understood as a regulatory system of two kinds: primary and secondary obligations.

1. Regulation of Primary Liability

There are habits within each community. Examples are: courtesy or etiquette that guide behavior. Primary Regulations can apply effectively if:

- a) making restrictions on violence (free), theft and dishonesty (fraud); in order to live side by side
- b) get majority support (because without majority support will be weak); and
- c) the community has relatively primordial attachments (eg blood ties, feelings and beliefs).

Since the primary rule is still in a very simple form and not a legal system, it does not have a legitimate authority as a determinant (judgment) so that there will be uncertainty if there is a conflict. Especially if conflict exists outside of the small community.

2. Secondary Regulations

Secondary regulations are expected to be able to provide answers to 3 (three) weaknesses in the Primary Basis Rule namely: not forming a system (still scattered), is static and inefficient. Thus the secondary rule at its core serves to further regulate the primary

rules. Hart distinguished this secondary rule into three more sections: recognition rules, change rules and adjudication rules by a court (judgment and conflict resolution).

In the case mentioned above, in the area around the coast where the project of Corruption of Coastal Abrasion Rehabilitation Project and Mangrove Forest Planting in Seram Timur District, there are certainly indigenous people who have a more complex regulation of what is expressed by Jhon Austin namely Law as Command (Law is Command of a Sovereign) as well as the Primary Liability Regulations as described by HLA Hart. But it has had traditional values believed by the ancestors of the local community, and has become a guide for solving the problems that arise in the interaction of daily life between the local community and in dealing with the community outside the increasingly complex customary territory.

What is customary law?

Customary law is an indigenous Indonesian law that is not codified in national legislation. Laws that have long been adhered to by indigenous peoples in various regions of Indonesia, and are recognized to the present day as one of the lawful, fully valid laws in the country. Currently, custom law is still applied by indigenous Indonesians, laws governing indigenous heritage, customary marriage, and other matters governing regulation within a cultural culture. The oldest legal type that has ever been owned by Indonesia to date is still implemented by the community, and recognized by the state. (Anonimous, 2015b).

At first glance the case above looks like other cases of corruption. But if we look for a moment against the object of corruption in the form of mangrove forest planting in order to prevent coastal abrasion and maintain the habitat of shrimp, crab and fish in the region of East Seram. So it becomes not wise enough to only see from the side of the nominal value of money in corruption by the defendant. Why is that? It is necessary to see how vital the existence of the abrasion rehab project and the planting of the mangrove tree and what if it fails.

The impact on the lives of local people who live near the beach and livelihood in daily life is as a fisherman. Of course it would be fatal if the beach is continuously eroded by abrasion, and the habitat of biological riches (in the form of ecosystems of fish, crabs, shrimp or other marine animals and plants) becomes disrupted. The planting of mangrove trees is highly desirable, so any behavior that causes the project to fail is highly untruthful. Because the fishing community is the majority of the lower class society (poor). The poor must be guarded from ill-treatment that will make their lives more miserable / suffering. Indiscriminate mangrove forest planting shows no empathy at all in the lives of the poor. The result is very fatal for the life of the fishermen in the future. It also concerns the continuity of indigenous peoples in the local area as well as the continuity of their grandchildren in search of livelihoods.

Similarly, the continuing application of the rules made by the authorities, required a more complex thought on this matter. So that people can run their daily activities with a comfortable and orderly, without disturbed by the rules that will change too often. Indeed, policy is very much in favor of the interests and livelihoods of local people, but in reality it is not sufficient with just a policy. Especially if the policy is in the can from the central government that is not necessarily accommodate input from the region. So in the level of implementation will be difficult to achieve the expected results together.

Often there is also concern that the circumstances and purity of customary law will be lost, due to intervention from the State in the form of regulation. This is because of the many perspectives on the diversity of customs and cultures that exist in our country. So it can be ascertained each region has the characteristics of each of course not easy to make it a unity without mutually intervene. Because the state has a tool that can be used as a tool of coercion (if necessary) the existence of customary law becomes "vulnerable" to be exploited for the sake of the authorities. For that we need a formula that can provide coolness for customary law in the national legal space.

Therefore, indigenous peoples should not allow their *custom* law values to slowly but surely become dead, because it is indispensable for the participation of the community as a form of sense of responsibility for their children and grandchildren in order to be able to become the next generation of the tough. That is the form of participating assist in the implementation and supervision of policies that (may) actually have sided with the needs of the community. Like when the implementation of mangrove planting projects, should the local community be involved. They certainly better understand the "natural language" so that it can know when the best time to do planting and how the treatment in the next treatment. So that eventually the planting will work well.

But a responsible attitude and a sense of belonging must be respected, because it can prevent and minimize the existence of corrupt behaviors. So strict sanctions are required for those committing the offense, not only with the positive law but also the support of local indigenous peoples. In many situations, indigenous cultures everywhere are always tied to leaders. Therefore, the exemplary of indigenous leaders is a fixed price. The local customary law community, will still respect its customary values if the *custom* stakeholder is authoritative. So the integrity of the customary stakeholders is something that can not be negotiable and becomes a fixed price.

An example is customary law in Bali (Executing customary law / guardian customs called *Pecalang*). A *Pecalang* understands the customary rules of the community and guards its implementation well. So that people can live in harmony, although customary law still exist but does not interfere with the existence of state law. It is even possible to complement each other. If a case / problem has been resolved customarily, but still be brought to justice. So a judge must understand whether the customary law that has been implemented has been fair enough so that no longer need to get sanction for the second time.

There are several systems or concepts that have been entrenched as a result of people's understanding and interpretation of their environment. The truth if it can be functioned properly will be able to help prevent the occurrence of cases of corruption as mentioned above. And it should be maintained because it is very important for the tale of harmonious society life, both in social life and life coexist with nature. Are as follows:

1. Concept Of Questions.

Every village / custom in Maluku owns and knows their boundaries on land or sea. These boundaries are usually characterized by natural borders such as headwaters, rivers, trees or rocks. In the concept of Petronas there are Land Inquiries and Sea Guards.

2. The Concept Of Mono Dualism.

It is the perspective of a way of thinking that views its environment as a unified whole (eg Lao Dara: Sea-land, Lanit-ume: sky-earth, Pante-mountain, beach-mount).

3. Concept Of Pamali Place.

is a place that must be respected, protected and maintained and if violated it will get wretched. The real concept is to preserve nature (forests, springs and headlands) in order to stay in function.

a. Sea Zone; classified into several zones indicating claims over marine territories relating to fishing limits, use of technology / fishing gear. What is also worth noting is the supervision, guarding and enforcement by certain community groups that control the area. For example: people in eastern Seram (garogos) classify their seas in some zones (Lawena is a coastal area, tansoa is a seaboard with seawater, *moti* is a tidal / shallow area where the water is green or light blue, *arat* is the area between shallow sea and deep sea, methane name is deep sea).

b. Land Zone; the management system and land use are divided according to their designation (*kintal* is around the house with varied crops, *Kabong* is cultivated and cultivated crops, *Dusun* has varieties of trading plant crops, fruit and vegetable trees, *Aong* is a former garden deliberately abandoned to restore its fertility, *ewang* is a forest where hunting and looking for wood).

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4. Concept Of Sasi

It is a local system of natural resource management that is a temporary prohibition to extract resources from existing natural resources both in marine and terrestrial areas within the community. In the *sasi* there are rules and sanctions (penalties) which under its supervision are supervised by *Kewang* institution (a task supervisory unit of petition) in charge of controlling the utilization of natural resources. (Siti Chomarijah Lita Samsi (2014).

If local customary law is in place, local people can be optimized and will be very helpful to take care of it (this is possible by empowering the existence of *Kewang* in Maluku as well as *Pecalang* in Balinese custom). So the welfare of the community is more likely to be achieved, because they can have hope to get more catches. And a more prosperous society will be more willing to participate in supervising projects that are beneficial to the welfare of his life.

Similarly, supervision in marine areas will be more efficient when utilizing local community resources. Because the marine biodiversity may be included in the ownership of local indigenous peoples. So that the Supervision of the Wealth of marine areas, if involving the local community is expected to be more effective and efficient. Should the wealth of the sea in exploration, especially to meet the life of the community. It is not impossible, with a genuine effort to realize the synergy between the existence of customary regulations (in local indigenous communities) with the provisions of the law of the State (positive law) that is assertive. Thus emerged a regulation capable of protecting the community that resulted in the welfare of the community can be realized. The end is certainly expected to diminish corrupt behaviors. This is in line with Hart's view that:

The failure of the Corruption Eradication Commission, as well as institutions of police, prosecutors and courts in the absence of corrupt behavior, and even the failure of the government in this case the failure of the Ministry of Justice and Human Rights, as well as the Correctional Institution in restricting the behavior of corrupt prisoners, then it is a form of failure to achieve prosperity and the common good of the nation and society of Indonesia, as a form of survival. (SEM Nirahua et al, 2013).

According to the author, it is true that a society that is vulnerable to corrupt acts often occurs because of lack of welfare in their daily lives. But what is required by Hart for a criminal act of corruption does not occur, always required the welfare first in the life of the community. In a sense, there is no hope (eradication of corruption in all ways and forms) if the condition of society is still not prosperous. But based on the fact that there is in our society (in the State of Indonesia) where corruption is always ranked among the countries in the world. The perpetrator is not an individual who lives below the poverty line or the less fortunate. But instead done by people who are clever, wealthy and even wealthy and powerful who were more greedy as well.

For corrupt behaviors that may be 'almost' deemed reasonable by village or sub-district level society may be done by the less-well-off populace. But for Corruption cases that enter the legal domain and then handled by the Corruption Court, most of the perpetrators are people who can be said to be prosperous life. In the sense of the middle and upper classes, who usually have a position and not infrequently they are people who are respected or respected in the environment. This shows that, corrupt behavior is not only due to lack of welfare in a society. But also because of the factor of the greedy nature. Because you want to keep going / survive in a luxury lifestyle regardless of the interests of others. So that justifies any means to fulfill his wishes, although it is no longer a necessity of life for him.

Corrupt behavior has covered from the executive, judicial and legislative branches. And from the lower classes to those who claim to be honorable, from those who work in the real sector to the formal sector. Therefore, it is necessary to formulate the right formula to be able to get out of the situation of the State already with corrupt behavior from all sides of nation and state life in this country.

If seen from the definition of a State in its function as a community organization in the implementation of the livelihood of its citizens it can be stated as follows: (Anonimous, 2015c).

Welfare State itself is a response to the concept of nacht-wachter staat (night wachman state, country guard night). In the guardian state of the night, its basic character is liberalism, which developed in the mid-to-18th century, largely because of the impulse of understanding of the Invisible Hands contained in Adam Smith and David Ricardo's *The Wealth of Nations: An Inquiry into the Nature and Causes* (1766). In this liberal system, the role of the state is minimal, so it is often said to be the minimum state or minarchism, a view which believes that the government has no right to use the monopoly to impose or regulate relationships or transactions between citizens. In other words, the government put forward laissez faire approach in creating prosperity. Instead, the market mechanism gets a large portion in meeting the needs of the community. The state / government only has the function / role of citizen protection from assault, theft, breach of contract, fraud, and other security disturbances. So it is not strange that the state institutions established in the liberalism system are also only institutions that deal with security aspects, namely military, police, judiciary, firefighters, including prisons. Beyond the institutions dealing with security issues, it is still possible to establish other institutions that are associated with taxation. In practice, this liberalism system often brings consequences of social inequality and economic injustice because of the widespread practice of exploitation de l'homme par l'homme, nation par nation, resulting in poverty and severe inequalities between community groups.

This is the situation behind the emergence of socialism, or a new idea that requires more intensive government intervention in the economic field and all spheres of public life embodied in the form of welfare state.

In Indonesia, the State in addition to functioning to secure also provide prosperity for all citizens. This is as stated in the State Goals of Indonesia in the opening of Indonesia in the preamble of the 1945 Constitution of the State of the Republic of Indonesia is as follows:

1. Protecting The Whole Indonesian Nation And The Entire Indonesian Blood Spill
2. To Promote The Common Good,
3. Educating The Nation,
4. Implementing a world order based on independence, eternal peace and social justice,

The state is seen as a night watch country, its basic character is liberal or liberal. So a government has no monopoly / imposing rights in managing relationships / transactions that take place between citizens of one country with other citizens. So that the State only has the authority in conducting security, so that the condition of society becomes unstable in the field of economy. Seeing the condition of the Indonesian economy, the number of poor people and unemployment is still very alarming. The availability of employment increasingly incapable of accommodating the number of graduates from various levels of education.

Why is that? This can happen because of the absence of State intervention in strategic policies in economic matters. So the protection of the weak / vulnerable groups against strong community groups becomes minimal or even nonexistent. In a free economic transaction without the existence of rules favoring the poor / poor, it makes the rich class richer and the poor will suffer more. Certainly can cause instability that can shake the existence and survival of a State. And in the end bring up the idea of a welfare state.

The root of the problem is actually the corrupt behavior of officials. But combating corruption is not as easy as turning a palm. The success of eradicating corruption crime is also no sign of cheering up, even more and more perpetrators of corruption and evenly existed in almost all sectors. And if it is linked to the case of corrupt coastal abrasion rehab project and mangrove forest planting, then we can see the real form of the unsuccessfulness of our country to achieve what is aspired. So that the achievement of welfare for all of Indonesia, until now still only rhetoric.

As for the discussion what can be done a judge (as law enforcement), in order to seek decisions that give optimum benefits to indigenous peoples?

Can be put forward as follows:

Article imposed in the Corruption of Coastal Abrasion Rehab Project and Mangrove Forest Planting is Article 2 paragraph (1) or 3 Corruption Act. The main difference in the article is that Article 2 paragraph (1) is about unlawful acts with a minimum sanction of 4 (four) years imprisonment and a fine of IDR 200.000.000, - (two hundred million rupiah) and article 3 (three) on abuse of authority by state official with criminal sanction of at least 1 (one) year imprisonment and fine (tentative may be imposed or not charged) that is minimum of IDR. 50.000.000, - (fifty million rupiah).

To decide on which article to use, it must also consider the sense of justice. Concerning Justice, I can refer to Plato's view. According to Plato justice can only exist in laws and legislation made by specialists who are concerned about it. For this term of justice Plato uses the Greek word "Dikaiosune" which means wider, which includes individual and social morality. The explanation of the theme of justice is illustrated by the experience of a wealthy merchant named Cephalus. The merchant emphasizes that great profits will be gained if we do not lie and do not cheat. Fair about human relationships with other human beings.

Aristotle, was the first philosopher to formulate the meaning of justice. He said that justice is to give to everyone what is his right, fiat iustitia brevit mundus. Furthermore he divided the justice into two forms namely;

1. First, distributive justice (is justice based on the amount of services provided), is the justice prescribed by the legislator, the distribution of services, the rights and the good for the members of society according to the principle of proportional equality.
2. Secondly, corrective justice (based on equality of rights regardless of the amount of services provided), namely justice that guarantees, monitors and maintains this distribution against illegal attacks.

The corrective function of justice is principally regulated by the judge and re-stabilizes the status quo by returning the victim's property or by compensating for his lost property.

The flow of Utilitarianism by Jeremy Bentham, presents one of the periodic movements from the abstract to the concrete, from the idealistic to the materialistic, from the a priori to the experiential. According to this flow, the purpose of the law is to give as much benefit and happiness to the citizens based on the social philosophy which reveals that every citizen craves happiness, and the law is one of its tools.

According to the authors, to achieve the goal of justice, the usefulness and certainty of the law in the application of which articles will be imposed, must use conscience. Certainly not in the sense of being carried away, therefore the conscience must always be guided by clear and intelligent minds capable of thinking intelligently. Which in general, can the author put forward as follows:

1. Have the ability to understand the laws and regulations on which to base a decision.
2. Extending insight into the circumstances of the local community in which a judge is in charge.
3. Conduct polite and ethical conduct or behavior as set forth in a joint regulation between the Supreme Court of the Republic of Indonesia (as the Internal Supervisor) and the Judicial Commission (as external supervisor) as outlined in a Code of Judicial Conduct (PPH) which is a code of ethics for a judge.

With regard to morals, for a judge is something that can not be underestimated. So much pressure and temptation may come unnoticed, because for someone who is in contact with legal matters may justify any means to win or escape from the bondage of the law. To be able to face these challenges, strengthening morality as a person who has been called the "representative of God" is no longer an option but an obligation. Understanding the importance of morals, writers can convey what has been put forward by H.L.A Hart as follows: (H.L.A. Hart, 2013).

In Moral the general form of tangible pressure is the appeal to respect the rules as something important itself, presumably shared by those directed by the moral. Thus, moral pressure is typically, though not exclusively, conveyed not by threats or appeals to the fear or interest of the people, but by reminding people of the demands of morality and the moral character of the intended act 'it means a lie', 'that means we break a promise'. In the background there is an analogy between the 'internal' morals and the fear of punishment; because it is assumed that protests will bring shame or guilt into the intended person: they may be 'punished' by their own consciousness.

4. Be simple and not luxurious.

5. Able to limit the scope of his association both when running the service or outside the official.

And it will be even better, if in doing his work a judge, in addition to observing the provisions of the law should also pay attention:

1. Trying to understand / understand customs in the local area where he is in charge (To minimize the unwanted impact of the judgment he dropped).
2. The consequences of such crimes, both in the short and long term. Especially for the survival of local communities (fishermen and farmers in SBT);
3. The Behavior of the Accused in court and outside the court (eg, courteous, coercive or cooperative, showing remorse for his actions or not);
4. Dependents of the family who must be held accountable by the Defendant;
5. Position of perpetrators in the community (as community leaders / exemplary);
6. Previous pre-agreed collective agreements between relevant agencies; and
7. Jurisprudence.

As a normal human being a judge, it is possible to make mistakes because of various desires and temptations. Therefore required a firm attitude, trained and wise to be able to control various desires, which can lead to the abyss of humiliation. This is very important because what a judge determines, can cause sorrow for the parties who submit the problem to be handled. The unconscionable attitude will lead to an error, therefore a judge should have: (Zainal Abidin, 2000).

The power of Intellect on the will can be developed further. Desire can be controlled or directed by knowledge, as long as the intellect knows more about our own desires. The more we recognize our passions, the less we are overpowered by the passions and nothing will protect us from force or external force, in addition to the control of ourselves. The vis tibi Omnia subjicete, subjicete ratione - if you want to make anything subservient to you, then submit to your ratios. The most amazing of all that is amazing is not the conquest of the world, but the conquest of oneself.

5. CONCLUSION

In Hart's view, the Primary Liability Rule can be asserted in the presence of a Secondary Regulation that is in the form of a recognition regulation (the character is to be called a recognition regulation is an obligation which obliges society to acknowledge

or support it), regulation of change (at this stage to the idea of the necessity parliament) and regulations for the assessment and resolution of conflicts (this is to address in efficiency in the Primary Liability Rules, ie by the existence of a court). The three forms of secondary law are interrelated and are expected to be able to answer about the existence of law in realizing the state of society that is orderly and comfortable in order to realize a condition of prosperous society, which is a common aspiration. And Indonesia is neither a night wachman state nor a welfare state but as a State which aims to provide security for its citizens (both inside and outside the country) and participate in maintaining world peace, more putting welfare for all people. As stated in the preamble of the 1945 Constitution. In order for a judge to be wise, it is best if a judge gets used to thinking deeply in searching for the truth. Review issues from many points of view, before dropping a decision. So it is expected that what he decided to give benefit to the wider community. Of course, to be able to do so, a judge must have extensive knowledge and experience. And must be able to subdue any desires that are not good in him. So it is true that the most amazing of all that is amazing is not the conquest of the world, but the conquest of oneself.

REFERENCES

1. Anonimous, 2015. *Hukum dalam Perspektif Austin dan Hart* <http://www.kompasiana.com/stevesht/hukum-dalam-perspektif-austin-dan-hart>, dikutip pada Rabu, tanggal 7 Oktober 2015 pukul 16.20 WIT.
2. Anonimous, 2015. *Memahami Konsep Negara Kesejahteraan (Welfare State)* <https://www.hotforex.com/en/landing-pages/social-trading.html>. Dikutip hari Rabu, tanggal 2 Nopember 2015, pukul 15.20 WIT.
3. Anonimous, 2015. *Sejarah Hukum Custom di Indonesia* <http://topihukum.blogspot.co.id/2013/05/sejarah-hukum-custom-di-indonesia.html>, dikutip pada Senin, tanggal 2 Nopember 2015 pukul 15.00 WIT.
4. Bagir Manan, 1999. *Penelitian di bidang hukum*, dalam *jurnal hukum Puslitbangkum Nomor: 1-1999*, Pusat Penelitian Perkembangan Hukum, Lembaga Penelitian Universitas Padjajaran, Bandung, 1999, hal. 3 dalam Tesis Kemmy Efrosien Leunufna, *Penerapan Bantuan Hukum Dalam Perkara Pidana Di Tingkat Pengadilan Dihubungkan Dengan Prinsip Persamaan Hak Di Depan Hukum (Suatu Kajian Hak Asasi Manusia)*, Program Pascasarjana Unpatti, Program Studi Ilmu Hukum, Ambon 2013.
5. Beni Ahmad Saebani, Filsafat Ilmu, 2009. *Kontemplasi Filosofis tentang Seluk beluk Sumber dan Tujuan Ilmu Pengetahuan, Cetakan ke 1*, Pustaka Setia, Bandung, 2009, hlm.7.
6. H.L.A. Hart, 2013. *Konsep Hukum (The Concept of Law)*, Cetakan ke V, Penerbit Nusa Media, Bandung, 2013, hlm, 278.
7. Nomensen Sinamo 2014. mengutip dari Harkristuti Harkrisnowo, 2003. *Filsafat Hukum dilengkapi dengan materi Etika Profesi Hukum*, Permata Aksara, Jakarta, 2014, hlm.7.
8. SEM Nirahua dkk 2013. (ed), *Kompilasi Pemikiran Tentang Dinamika Hukum Dalam Masyarakat, Kumpulan tulisan dosen-dosen Fakultas Hukum*, (2013), Ambon, CV Anugerah Sejati.
9. Siti Chomarijah Lita Samsi ,2014. “ *Korupsi Proyek Penanaman Hutan Mangrove (Suatu Tinjauan Antropologi Hukum)*, Makalah Mata Kuliah Antropologi Hukum Prodi Ilmu Hukum PascaSarjana Unpatti,
10. Situs Resmi Kabupaten SBT ,2009. <http://www.serambagiantimurkab.go.id/>. Dikutip pada Rabu, tanggal 7 Oktober 2015. Copyright@ Situs resmi Kabupaten SBT (2009).
11. Zainal Abidin 2000. *Filsafat Manusia Memahami manusia Melalui Filsafat*, Cetakan keTujuh, PT Remaja Rosdakarya, Bandung, 2000, hlm.84.

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