

ALTERNATIVE DISPUTE RESOLUTION IN BANYUMAS REGENCY: IN THE PERSPECTIVE OF CULTURAL STUDIES

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ABSTRACT

This study discusses about an Alternative Dispute Resolution in Banyumas Regency as a non-litigation dispute resolution. The problem observed was a breakthrough taken by the Society in Banyumas Regency in overcoming the so far deadlock of law enforcement and the attitude of not trusting the justice enforcement. It has been a public secret that the dispute resolutions employing the legal centralism paradigm have been dominated by the judicial network. This has caused the acknowledgement of the state law to decrease, being a commodity that can be traded. The research aims at finding out and describing how the alternative dispute resolution (ADR) emerges as an alternative mechanism in deconstructing the legal centralism; interpreting and describing what is meant by the alternative dispute resolution (ADR) in the development of progressive law.

This research was conducted employing qualitative method. In this context, the researcher explored various pieces of related information with the reason that the society in Banyumas Regency has chosen the alternative dispute resolution mechanism as the mechanism in deconstructing the legal centralism. The research was conducted as follows: the problems were identified, the theories for analyzing the data were selected, the primary and secondary data were collected, the collected data were analyzed and interpreted, and finally, the results of the research were written and constructed. The theories employed were critical legal studies, deconstruction, and large narration criticism theories.

The results of the research show that: firstly, the alternative dispute resolution has emerged because of the awakened local knowledge, as the form of anticipation to the ineffective formal law domination. With regard to the effect of global intercourse, the alternative dispute resolution has emerged because of the refusal against the cultural homogeneity. Secondly, the implementation of the alternative dispute resolution has become the preferred mechanism in deconstructing the law centralism because it can be implemented effectively and efficiently, and ensures the win-win solution. Thirdly, denotatively, the alternative dispute solution reduces the confronting and antagonistic conceptions. Connotatively, the alternative dispute resolution is the legal culture of Banyumas society. It has functioned as the legal *dynamisator* creating and implementing law.

Key words: dispute, local knowledge, non litigation

INTRODUCTION

This dissertation is concerned with the Alternative Dispute Resolution in Banyumas Regency. The study observes the breakthrough taken by the society in Banyumas Regency in overcoming the deadlock of justice enforcement using the legal centralism paradigm. The legal paradigm intentionally or unintentionally practiced has made the attempt to look for justice in a simple, quick and cheap process difficult to conduct. In its daily life, the society observes that the legal enforcement done by the government has been dominated by a judicial network, making the law enforcement complicated, take a longer time, cost much, and not completely reliable.

Related to this, several items are necessarily observed. Firstly, constructing a law-based country cannot only be delegated to the legal professionals, because what is encountered is not solely a “legal project”, but “a human and humanity project”. Secondly, an existing law is not part of script that the court recognizes as the binding provision when a sentence is imposed in a juridical dispute, but only part of life that is really

referred to by the parties involved in a dispute. The observation above indicates that the judicature institution and the other formal legal enforcers are not the only sources of normative messages. There are three main problems in this research. Firstly, how the alternative dispute resolution (ADR) has emerged as the preferred mechanism; secondly, why the implementation of the alternative dispute resolution (ADR) has become the preferred mechanism in deconstructing the legal centralism; thirdly, what the alternative dispute resolution (ADR) means in the progressive legal development.

In general, the research aims at identifying, describing, analyzing, and understanding the alternative dispute resolution phenomenon in Banyumas Regency as a dispute resolution tradition, which is an integral part of other cultures and daily reality performed by the society. In particular, this research aims at firstly finding out and describing the emergence of the alternative dispute resolution (ADR) as a preferred mechanism. Secondly, it aims at understanding and describing the implementation of the alternative dispute resolution (ADR) as the preferred

mechanism in deconstructing the legal centralism. Thirdly, it aims at interpreting and describing the meaning of the alternative dispute resolution (ADR) in the progressive legal development.

In theory, this study is useful for solidifying the scientific tradition developed by Post Graduate Program of Cultural Studies of Udayana University, which is full of critical discourse prioritizing interdisciplinary and multi-disciplinary approaches as to the human life along with the cultural value of his environment that advocates the minority and marginal people. In practice, this study is expected to be able to eliminate the confronting and antagonistic conception in the dispute resolution through the court based on the centralistic state hegemony. This research is expected to develop a meditating, negotiating and conciliating conception responding to the disputing parties' interests so that the social relationship can be maintained. The alternative dispute resolution developed through this study also has more access to the justice, because it is an answer to the society's dissatisfaction with the court's performance. This study will expand the non-confronting dispute

resolution learning that always criticizes the large narrations influencing the society.

MATERIAL AND DISCUSSION

This research was conducted employing qualitative method. In this context, a variety of relevant information was explored with the reason that the society of Banyumas has chosen the alternative dispute resolution mechanism in deconstructing the legal centralism, and the meaning of the alternative dispute resolution in the progressive legal development. The research was conducted as follows: the problems were identified, the theories for analyzing the data were selected, the primary and secondary data were collected, the collected data were analyzed and interpreted and finally the results of the research were written and constructed. The theories employed were Roberto Unger's *critical legal*, Derrida's deconstruction, and Lyotard's large narration critical.

The results of the research can be described as follows. Firstly, from the analysis on why the alternative dispute resolution (ADR) has emerged as the

preferred mechanism, many factors have been identified. The local influential factors include (1) the awakened local collective awareness; (2) the development of indigenous knowledge; (3) the role of the traditional institutions has returned back to the old “memory”, meaning that there is an inspiration to act more smartly in exploring the creative ideas which have already disappeared so far. Meanwhile the influential global factors include (1) governmental hegemony, the court dictatorship and less effective formal law; (2) ease of access to information has made the society feel a higher autonomy and gets a wider room to express what they wish; (3) the change of socio cultural, political, economic, scientific and technological aspects so that all the society members should have social responsiveness and awareness of the nation’s and state’s problems; (4) the realization of peaceful life. The society needs certain culturally shared rooms in creating peace.

Secondly, from the analysis on alternative dispute resolution (ADR) as the preferred mechanism in deconstructing the legal centralism, the results can be explained as follows. As the

preferred mechanism in deconstructing the legal centralism, the alternative dispute resolution can be implemented in certain ways and patterns. Such ways are: (1) emphasizing effectiveness and efficiency; and (2) mitigating the obstacles blocking the dispute resolution. The patterns employed are: (1) consultation; (2) negotiation; and mediation. The alternative dispute resolution is a small narration constituting the postmodern element to deconstruct the large narration that is in the form of legal centralism that refuses diversity. The alternative dispute resolution deconstructs (1) power “absolutism”; (2) juridical power game ideology; (3) state centralism in law ; (4) legal simulacrum; and (5) justice demon.

Thirdly, from the analysis on the meaning of the alternative dispute resolution (ADR) in the progressive legal development, the results can be explained as follows. The progressive law is the power refusing and having desire to break the status quo. Therefore, denotatively, related to the development of progressive law, the alternative dispute resolution refers to (1) law in action that updates the law; (2) the improvement of the public role in law;

and (3) the peace maintenance. Connotatively, related to the development of progressive law, the alternative dispute resolution refers to (1) maintenance of harmony, conformity and fairness; (2) strength of multiculturalism root ; (3)sturdiness of national identity ; and (4) truth and justice.

NOVELTIES

The novelties that can be revealed include: (1) the alternative dispute resolution producing substantial truth and justice within the society emerges because of the convergence of two elements: the effect of local/global culture and the need for an alternative. This finding can be conceptualized and understood using Roberto Unger's critical legal studies theory; (2) the alternative dispute resolution is a disorganization of a condition in which the society feels no harmony between the formal legal rules (less effective state law, dishonest law enforcers) and their legal needs. When the expected new norms have not been institutionalized while the formal legal values cannot be trusted completely, the society renegotiates the norms constituting the process

of establishing values regulating the relationship among them. Such values are the combination of the formal law and the traditional values (local policy). This can be conceptualized and understood using the deconstruction theory developed by Derrida; (3) the alternative dispute resolution is the dispute resolution that is able to build the local spirit. Because of its cultural approach, however, in physical level it will improve the awareness of pluralism, precluding the society from "any action permitted". The cultural approach makes the alternative dispute resolution not constitute legal reformation, a radical legal deconstruction. This is relevant to the Lyotard's large narration critical theory.

CONCLUSION

The conclusions that can be drawn are: (1) the alternative dispute resolution (ADR) emerges as the preferred mechanism because of the awakened local collective awareness, in which the justice referred to by the society is derived from the ethnic cultural spirit that can give a cool solution when the members of society

encounter various problems. In the dimension the effects of global intercourse, the alternative dispute resolution emerges due to counter trend against the cultural homogeneity; (2) the implementation of the alternative dispute resolution (ADR) has become the preferred mechanism in deconstructing the legal centralism because it is the dispute solution that can be implemented effectively and efficiently and with the patterns ensuring the win-win solution; (3) denotatively, the alternative dispute resolution (ADR) reduces the confronting and antagonistic conceptions in solving the dispute through the judicature institutions based on the state centralistic hegemony. Connotatively, the alternative dispute resolution (ADR) means maintenance of harmony, conformity and fairness; strength of multiculturalism; national identity sturdiness; and truth and justice.

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