

LOCAL GENIUS AS A BASIS FOR CONTROLLING ENVIRONMENTAL DEGRADATION IN BALI

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**LOCAL GENIUS AS A BASIS FOR
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ENVIRONMENTAL DEGRADATION IN
BALI**

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ABSTRACT

The regulations made by the central government and regional government which are implemented in the form of the permits provided for investment, which are entirely oriented toward economic growth, have been responsible for the environmental degradation currently taking place. It seems that the environment which is managed and controlled for economic purposes reflects the weak political will of the government to protect environment. To ensure that the environment is protected from being degraded, it is necessary for the government to empower the local genius to control environment by integrating it into any positive law which functions as a means of controlling environment from being degraded. This needs to be done; otherwise, the environment in Bali cannot be sustainably preserved and maintained.

KEYWORDS: *Environmental Degradation, Local Genius, Means of Controlling*

I. INTRODUCTION

The economic growth-oriented environmental management has been more intensively encouraged by the government in the last three decades. Such an environmental management has been regulated through the regulations made by the central government with their regional derivable ones; in other words, such regulations are implemented in the form of sectoral investment permits. On one hand, investment contributes to the economic growth as one of the sources of revenues needed to improve people's welfare; on the other hand, it leads to environmental degradation and various environmental disputes between the government and/or entrepreneurs and traditional

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communities. The values, legal norms, traditions, and beliefs of the local people as well as their rights to control and make use of their surrounding environment are neglected.

In relation to that, Nurjaya² affirms that the regulations made by the state (Government) are specific, centralistic, sectoral, and repressive, and give priority to security, not to protect the preservation and sustainability of environmental function. Apart from that, such regulations do not give any space for recognition and protection of the access of the local people to the local genius-based management and utilization of environment as reflected in the system of knowledge, technology, institution, religion, traditional norms, and tradition.

The implementation of centralistic-regulation approach in the form of the permits provided by both the central government and regional government for the sake of investment has not paid attention to the rights of the local people to control and manage their environment especially forests and water sources. This has degraded and unpurified the environment in Bali as exemplified by the following facts:

- (1) The Bukit Berbunga residence in the forest area of Bedugul built by an investor in the form of villa was constructed based on the permit provided by the Regent of Tabanan Regency. However, it was not recommended by the Governor of Bali for the reason that the villas construction was not based on the philosophy of *Tri Mandala* (Hindu philosophy which explains the three spaces in building construction); apart from that, the sacred Lake Berathan could become eroded and polluted, and Bali's hydrology would be disturbed;
- (2) Loloan Yeh Poh, which is located in Canggu Village, North Kuta, Badung Regency, was converted into a water sports tourist attraction 'tempat wisata air' (TWA) with its facilities. It has been managed by PT. Bali Unicorn Corporation (BUC) based on the Decree of Badung Regent No. : 660/723/Pemb, dated 1st February 2007, although it was not recommended by the Canggu Traditional Village based on a decision made in a meeting attended by the villagers. In this meeting it was decided that they disagreed and proposed that BUC and Badung Regent rehabilitate the Loloan Yeh Poh so that it would become a sacred place again. Although refusal was given by the local people, the asset of the Loloan Yeh Poh is still owned by PT. BUC based on

the certificate of ownership issued by BPN based on the approval provided by the Bali Governor No.66/1992, dated 20th August 1992;

- (3) The protected Lake Dasong, which is located around Buyan-Tamblingan, Buleleng Regency, is a natural tourist attraction Tempat Wisata Alam (TWA) which is managed by PT. Nusa Bali Abadi based on the Recommendation given by the Buleleng Regent No. 528/O6/Ekos dated 23th March 2004, and the recommendation given by Head of *Balai KSDA* (Natural Resources Conservation Center) Bali, Department of Forestry of Republic of Indonesia No. 196/IV.K-17 /PPA/2004. It was not approved by the Bali Governor based on *Surat Telaah Staff Bappeda Provinsi Bali* (Bali Regional Planning Board) dated 13th August 2009 in which it was stated that the protected forest area located around Lake Buyan and Lake Tamblingan functions as a water absorbing area; therefore, it is necessary to preserve it. That area is still natural and is still the only area in Bali which has not been touched by any activity; it is a purified area and Bali's lung. Also the villagers of catur Desa Adat Dalem Tamblingan Pengerejeg Dalem Tamblingan showed their refusal based on a decision made in a meeting attended by the villagers and announced through a letter No. 05/DT/2008. They disagreed that the protected forest area of Gunung Dasong located around Lake Buyan and Lake Tamblingan be used as a natural tourist attraction. The reason was that, according to the people living at Catur Adat Dalem Tamblingan, it is a purified area,
- (4) The Sempadan Pantai Mimba, which is located in Padangbali village, Karangasem Regency, is used as accommodation for tourists and was constructed by PT. Chateu The Bali based on the recommendation given by the High Officials of the Government of Karangasem regency No.903/311/51/Bappeda dated 12nd February 2008, and the Recommendation of UKL/UPL No. 660.1/180/DKLHKP dated 28th April 2008. However, the Bali Governor, based on his letter No. 188.34/4518/HK, proposed that the project be stopped for the reason that such a construction was not in accordance with the philosophy of Segara Kertih. Otherwise, abrasion would take place and the beach would become unpurified and could not be used as a place for carrying out religious ceremonies;
- (5) (5) PDAM was permitted by the government of Buleleng Regency to make use of the water in the Busungbiu dam located in Buleleng Regency as a source of drinking water. The *subak* (farming organization) members living around the dam protested for the reason

that if the dam was used as a source of drinking water by PDAM, the water available for irrigation would be insufficient for the *subak*.³

The examples given above represent the matters pertaining to the permits provided to manage the protected forest areas and water sources which are regarded as sacred. They also show that the permits are provided for the sake of investment without paying attention to and taking the local genius into account. The local genius has not been used as the basis for managing forest environments and water sources. They have been managed for economic purposes only; as a result, the environment cannot avoid being degraded and unpurified. In relation to this, Tuny Sukabawa⁴ stated that the amount of investment on Bali Island badly affected the environment and the magical, religious values of the Balinese people. Attention has not been paid to the Tri Hita Karana philosophy-based space layout in Bali; as a result, physical buildings have been constructed on the edges of the lakes, rivers, and beaches, and on the hills which are regarded as sacred areas by the Balinese people.

In the current era of autonomy, the regencies/cities in Bali tend to keep making the market-oriented attempts to exploit the natural resources; capitals are accumulated through the process of investment (capital investment) in order to increase the original regional revenues 'Pendapatan Asli Daerah (PAD)'. Such a way of thinking has been part of how Bali has been governed. Arief and Adji Sameko⁵ state that how the natural resources are managed has been part of the derivative policy of economy, as the natural resources are the only part of economic commodities for gaining benefit.

Considering that investments are made to create conducive atmospheres of businesses for the investors who make use of the forest and water resources in Bali, it is necessary for them to apply the local genius-based environment management as the reflection of the local people's cultural values. Therefore, the development in Bali should pay attention to the local genius as an environmental order such as the philosophy of *Tri Hita Karana* (the relation between human beings and God, the relation among human beings, and the relation between human beings and their environment should be made in harmony). It is expected that the use of the Hinduism-inspired local

³ A.A. KT. Sudiana, *Penanggulangan Kerusakan Lingkungan di Provinsi Bali* (12ⁿd February 2013) (unpublished Ph. D. of law dissertation, Semarang) (on file with author).

⁴ Putu Tuny Sakabawa. *Hukum Investasi Dalam Kerangka Industrial Pariwisata di Provinsi Bali* (2009) (unpublished Ph. D. of law dissertation, Semarang) (on file with author).

⁵ Arief Hidayat & FX. Adji Samekto, *Kajian Kritis Penegakan Hukum Lingkungan di Era Otonomi Daerah*. Genta Press (2007).

genius plays an effective and essential role in controlling the environmental degradation taking place in Bali as it contains the following principles: (1) it keeps the relation between human beings and their environment in harmony; (2) it maintains the preservation of the variety of biological and non-biological resources, (3) it conserves the natural resources as cultural heritages, (4) it saves the natural resources which are economically valuable, and (5) it uses morality and spirituality as the basis for interaction with environment. Such principles of local genius can be regarded as carrying out the function of maintaining the patterns of life already in existence.⁶

The use of the local genius for organizing the environment in Bali has been included in the Development Policy of Bali Green Province proposed by the Bali Governor, Made Mangku Pastika, on 22nd February 2010, during the Opening Ceremony, of the 11th United Nation Environment Program (UNEP) Conference which was held at Nusa Dua - Bali. As the implementation commences, it is expected that all the related institutions, private institutions, educational institutions, Non-Government Organizations and the groups of people can synergize to carry out the Clean & Green Program to make Bali the Green Province. The Development Policy of Bali Green Province⁷, which is based on the role played by and the principles of the local genius, is aimed at helping organize green & clean-based investments, such as investments which are oriented towards reforestation and being clean from plastic rubbish or which do not use any product which is not environmentally friendly. Furthermore, it is aimed at strengthening the local genius used to conserve environment.

Based on what was described above, it can be assumed that the existence of the local genius which functions as a guide to how the local people should behave when managing the forest environment and water resources in Bali has not been referred to in the regulations made by the central and local governments which are implemented in the form of the permits provided for investments. They are only oriented towards economic growth; as a result, the environment in Bali has become degraded and unpurified. The three sub-sections of the study essentially discuss the empowerment of the local genius as the legal environmental instrument used to control the environment degradation in Bali. Actually, the objective is to conserve the environment as part of the sustainable development.

II. DISCUSSION

A. *THE LOCAL GENIUS ADHERING TO ETHICS OF BIOCENTRISM AND ECO CENTRISM AS THE BASIS FOR ADS-BASED PROTECTION AND PRESERVATION OF ENVIRONMENT*

In Article 1 Number 30¹⁴ of the Act of Republic of Indonesia Number 32 of 2009 concerning Protection and Management of Environment, it is stated that the local genius as the applicable great values in the societal life order is used to protect and conserve environment. In it I Nyoman Wardi, E.F. Schumacher⁸, stated that the environmental genius means the cultural value which reflects the adaptability of human beings to consciously and wisely interact with their environment as an attempt to maintain and increase the quality of their life without sacrificing the stability of the environmental condition and function.

Based on the two definitions above, the local genius, as far as the environment is concerned, contains the following elements:

- a. The shape of the local people's mechanism in making adjustments to their environment (coping with environment) by making use of and conserving it wisely and sustainably.
- b. The local people's wise knowledge of environment as part of the system of life which cannot be separated from human beings and environment as the source of life.
- c. The local people's guide of morality to appreciating the environment which has intrinsic values which cannot be treated as we like.
- d. Harmony, balance, conservation, and sustainability are the principles which should be referred to in the long-term environmental management.

From the perspective of environmental ethics, the environment-related local genius is defined as the development of sustainable environmental protection and management in which the Deep Ecology-based Ethics of Biocentrism and Eco centrism are adhered to. These two ethics are holism in

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⁸ I Nyoman Wardi. Kearifan Ekologi Dalam Pengelolaan Hutan, Tanah dan Air. (ed) : Raka Dalem, A.A. et.al. Kearifan Lokal Dalam Pengelolaan Lingkungan Hidup, UPT Penerbit Universitas Udayana Denpasar (2007).

nature; they are the antithesis of anthropocentrism that the natural resources, as the sources of welfare, should be managed sustainably and dynamically by conserving their supporting elements. Actually, these two ethics take us back to the local genius as the foundation of the environmental order.

The existence of the local genius which is growing and developing in several areas of Indonesia (especially in Bali), constitutes the environmental ethics which is developing in the eastern part of the world; it teaches human beings as part of the ecosystem or an integral part of the natural environment. The local genius is considered the system of knowledge which contains cultural values, traditional norms, tradition, religion, and belief. These are the social capitals which have potential for managing environment. As the local genius essentially reflects the cultural values, based on which the local people behave to appreciate the natural environment, it is considered having values in it which are independent from the human interests whether they are beneficial or not. Such a definition of the local genius is based on the deep ecology-based Ethics of Biocentrism and Eco centrism, which suggest that life in the universe should be appreciated as human beings appreciate the social system they have in their life. This means that there are values of kindness, etiquette and life orientation of the universe which should be appreciated when treating both the biotic (forest) and non-biotic (water resources) in systemic relation with its ethic and moral cycle which are accumulated in the life of the universe as God's creation. This view shows the attitude of respecting all the ways and forms of life in the universe; they all have value, as stated in the holy book Bhagawadgita, Chapter III.10⁹, "*sahayajnah prajah sretva puro 'vaca prajapatih anena prasavisyadhvam esa vo'stvistakamanduk* ", meaning that a long time ago God created human beings and the creatures in the other planets using *yadnya* (holy =sacrifice); therefore, human beings should appreciate and maintain the nature and what it contains harmoniously using *yadnya* as well. In addition, human beings should also conserve the nature as the source of life (*kamanduk*).

What is stated in Chapter III.10 of Bhagawadgita is developed by the local Balinese people, who are Hindus, as the source of knowledge, which is then used as the local genius which inspires the awareness that the natural environment and the moral community should be made balanced and harmonious. In addition, the natural environment should be appreciated as well. In this context, the Balinese local people express their own awareness that the relation between them and their natural environment is a cosmic-magical one. In relation to this, Fritjof Capra¹⁰ affirms that what is spiritual

⁹ I.B. Mantra, Bhagawadgita, Pemerintah Provinsi Bali (2006).

is united with what is material in the cosmic order. The human soul is defined as the mode of awareness in which individuals feel that they are related to the universe as a whole; this awareness is referred to as spiritual ecological awareness with its deepest essence.

The Balinese local people's local genius is defined as reflecting the cultural values which inspire awareness of appreciating, maintaining and protecting the conservation of the natural environment. This is shown through the activities of managing the natural environment based on the following principles: (a) *Tri Hita Karana* which functions to manage *Sukerta Tata* which includes *Parhyangan*, *Pawongan*, and *Palemahan*; (b) *Tri Mandala* which functions to manage how space should be used, and includes: *Utama Mandala*, *Madya Mandala*, and *Nista Mandala*; and (c) *Rwa Bhineda*, which functions to manage which space should be made sacred 'Luanan', and which space should be made propane 'Tebenan'. The three principles described above are used as the basis for managing the natural environment in Bali generally and specifically. Such environmental managements contain the principles of holiness, harmony, conservation, and sustainability. This can be exemplified by how the space of natural environment is generally managed, such as how a forest area and water resource area are used as the places where temples are built in Bali, as described in Article 44 paragraph (9) of the Regional Regulation of Bali Province Number 16 of 2009 concerning RTRWP (space layout) Bali from 2009 - 2029, which is based on the provisions 'Bhisama' made by Parisadha Hindu Dharma Indonesia (The Decision of Indonesian Hindu organizations) Number: II/Kep/1/PHDI concerning the Purified Area of a Temple; (a) within a radius of *apeneleng agung* (around 5 kilometers from the temple) around a *Sad Kahyangan* Temple which is located at a forest/or a water source area should be functioned as an open green space and/or for agriculture; residences and places for businesses may be constructed outside it; (b) within a radius of *apeneleng alit* (around 2 kilometers from the temple) should be functioned as an open green space and/or for agriculture, residences and places for businesses may be constructed outside it; and (c) within a radius of *apenimpug* or *apenyengker* (the maximum distance covered by an adult when he throws a stone from the temple) should be functioned as an open green space and/or for agriculture, residences and places for businesses may be constructed outside it.

It seems that how space is generally organized based on the three principles described above can be divided into two categories; they are (1) the main (internal) space which is referred to as *Utama Mandala*, where the temple is

constructed (*Sukerta Tata Parhyangan*); then it is combined with the central space which is referred to as *Madya Mandala*, which functions as the open green space (*Sukerta Tata Palemahan*) and is categorized as 'Luanan' which is purified, and (2) the space outside it which is allocated to be external 'nista' space referred to as *Nista Mandala*, where it is allowed to construct residences and places for businesses (*Sukerta Tata Pawongan*) which is categorized as 'Tebenan' which is propane. Specifically, space layout can be exemplified by how space is designed for the residences of the members of a *Desa Pakraman 'Traditional Village'* in Bali; it is regulated in what is referred to as *Awig-Awig* (the law applicable within the village). The space for residences is divided into three structures of space; they are (1) the northeastern space which functions as what is referred to as *Utama mandala/'Luanan' space*, which is considered purified, where the holy building is constructed (*Sukerta Tata Parhyangan*); (2) the central space, which is referred to as *Madya Mandala*, 'Tebenan' space, which is regarded as being propane, where houses are constructed (*Sukerta Tata Pawongan*); and (3) the outside space, which is referred to as *Nista Mandala*, 'Tebenan' space which is left for what is referred to as 'Teba', which may be in the forms of a garden, plantation and rice field (*Sukerta Tata Palemahan*).

The illustration of how space is organized as described above constitutes a concept of space layout in Bali which is organized by paying attention to the aspect of holiness, the aspect of harmony, and the aspect of sustainability. This is divided into three parts; they are a place in which spiritual activities are done (*Parhyangan*), a place where social activities are done (*Pawongan*), and an open green place where plants are cultivated (*Palemahan*). This means that the concept of space layout in Bali is actually inspired by *Catur Warga* teaching (the four objectives of life in Hinduism); they are (1) Dharma (an obligation to well conserve environment for sustainable development); (2) Artha (environment is processed as the source of welfare by conserving the supporting elements); (3) Kama (long-term fulfilment of desires), and (4) Moksa (life should be controlled so that environment can be managed by giving priority to balance, harmony and sustainability so that the quality of life can be well maintained).

How the natural environment in Bali is organized by empowering the local genius as a cultural order is relevant if used as the basis for organizing environment which is self-regulated 'Atur-Diri-Sendiri (ADS). The Ethics of Biocentrism and Eco centrism-based local genius is similar to ADS in regard to their characteristics; they are carried out through self-awareness based on applicable values such as togetherness, harmony and volunteering. This means that the empowered local genius which reflects the characteristics of ADS may be used as the basis for planning, implementing and carrying out the environmental management determined by the current

government. The combined pattern of environmental management is intended to create an environmental management system which is dynamic, adaptive and responsible. In addition, it is also intended that the environmental management can be controlled by the local people. Finally, it is hoped that it may be used as a responsive and effective means of control and which can make the three pillars of interest balanced: namely: economy, environment and society.

The empowerment of the local genius as an environmental agent in Bali has actually been formulated by the government of Bali Province into the Regional Regulation Number 16 of 2009 concerning Provincial Spatial Plan Bali from 2009-2019. Generally described as follows: Provincial Spatial Plan is needed in the process of space layout management as a space measure for Bali Province Long-Term Regional Development Plan, which is hoped to be able to unify a dynamic space layout and to anticipate the demand for the growth of development. These attempts made to conserve the environment are based on the philosophy of Tri Hita Karana which basically contains the elements of: (a) the values of balance and harmony in the relation between human beings and God, as reflected in the attempt made to protect the holy places and the purified areas which are believed to have the values of holiness, as places where human beings can relate themselves to God, which are further in RTRWP determined as the areas whose existence should be protected, both in the protected and cultivated areas; (b) the values of balance and harmony in the relation among human beings, as reflected in the attempt made to organize and manage the residence areas as places where human beings reside and do their social interaction safely, peacefully, and culturally, and where the human resource can be optimally developed; and (c) the values of balance and harmony in the relation between human beings and their environment, as reflected in the attempt made to organize and manage the natural resources so that they can be sustainably made use of for the sake of both the current generation and the future generation of Bali.

In relation to that, the empowering capacity of the local genius is becoming more strategic to determine the policy of environmental management. The reason is that the local genius reflects reliable cultural values which can be used as a responsive means of controlling environment; in other words, it is in accordance with what is dynamically needed by people. This attempt is made to develop the Ethics of Biocentrism and Eco centrism which refer back to the local genius as a means of controlling the ADS-based environmental protection and management, which tend to grow from the awareness of the lower people. They are aware that they should participatory, democratically, persuasively, voluntarily, dynamically, and

harmoniously control the impact of the environmental management. This attempt is made to make sustainability come true.

B. REINFORCEMENT OF ENVIRONMENTAL LAW USING LOCAL GENIUS-BASED ADS APPROACH

The reinforcement of environmental law in Indonesia follows the general pattern of law reinforcement; in other words, it is executed by a state institution (judicature institution) using a set of laws such as: administration law, civil law, criminal law, and so forth which are concerned with environment. So far laws cannot be quickly, fairly, firmly and consistently executed. Obstructions are still encountered as they are executed through the *Atur-dan-Awasi* (ADA) (command and control) approach which is characterized by complicated bureaucracy, rigid regulations and procedures. In addition, it is repressive and is determined by and sides with the interests of the ruler or other parties. The implication is that the environmental cases are subjectively settled; in other words, how it is settled is not in accordance with the people's justice. Apart from that, the protection of the environmental rights which are degraded and polluted are neglected.

The legal reinforcement executed by the state institution (judicature institution) using ADA-based approach is considered ineffective; in other words, it cannot change the legal behavior of the government apparatus, the entrepreneurs, the law upholders, and people in supporting and coping with environmental deviations. Therefore, it is necessary to apply the pattern of ADS-based - approach which gives priority to the responsibility for maintaining the legal loyalty and reinforcement should be established from the bottom so that the empowerment of the environmental legal reinforcement can be more strongly executed by the state institution to cope with environmental cases. This means that the pattern of ADS-based approach using persuasive instrument and emphasizing the people's cultural aspect to reinforce environmental law is not only aimed at giving priority to legal regulations but adjustments should be made to the people's cultural values which are dynamically developing. The reinforcement of environmental law using the ADS-based approach can be synergized with the local genius as the basis. The reason is that the local genius reflects the applicable effective cultural values if provisions are broken and the environment is degraded.

The empowerment of the local genius in the form of cultural values, traditional norms, and traditional institutions as the basis for reinforcing environmental law can be formulated into an environmental reinforcement system using the pattern of ADS-based approach, that is, a model which

integrates the order of a traditional legal community (cultural order) with the state law (the structural order). As far as the pattern of such an environmental legal reinforcement is concerned, Moores (1987)¹¹ stated that on a social local the state law and local law become unified and interact.

In 1980s the system of the local genius-based environmental law reinforcement started being developed coordinately and intensively involving the local government apparatus and/or the law upholders, the Traditional village leaders, 'pengurus Desa Pakraman' (formerly termed as Desa Adat) and those who are responsible for the security ⁴ the Traditional village 'Pecalang/Pengaman Desa Adat', as regulated in the Regional Regulation of Bali Province Number 3 of 2003 concerning *Desa pakraman* (Traditional Village). In Article 6 it is stipulated that the traditional village leaders and the government have the authority to stipulate every decision made to carry out the development in the area they are in charge of (letter b), and to do any legal deed in and outside the Traditional Village they are in charge of (letter c). To execute such an authority a set of instruments of the state law and traditional law is used or the decisions are made in the meeting held by the traditional village. It is also stated that sanctions shall be imposed upon the environmental deviations made by the community elements. Being found to throw rubbish as they like in the river which takes place frequently in Denpasar city is one example.

The Civil Service Police Force and the Traditional village leaders or district court shall impose a sanction upon them that they are made to clean the polluted river water. In addition, they shall also be imposed a fine starting from Rp. 50,000 (fifty thousand) to Rp. 5,000,000 (five million) . Apart from that, at Madewi Village, Jembrana Regency, for example, someone who is found to steal a tree at Madewi Village protected forest is obliged to pay Rp. 1,000,000,- (one million) as a fine. If he is not able to pay such an amount of money, it shall be substituted for a physical punishment; he shall be obliged to clean the river for 6 (six) months in succession. If he does not fulfil his punishment and happens to be a member of the village, he shall lose his membership in other words, he shall be discharged and/or processed according to the state law. Similarly, a residence or a building for undertaking a business shall be wrecked if it constructed along the demarcation area of a river, forest, and beach as regulated in the local law 'Pararem Desa Adat Bualu, Badung Regency, for example. Those who break it, whether they are members or non-members of the village, according to I Made Reta Head of Bualu Traditional Village, Nusa Dua, Badung Regency, shall be made to make an offering needed, pay for compensation and wreck

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¹¹ Moores, Stradford W & Gordon R. Woodm²¹ Indegenius Law and State. Dordrecht Holland: Foris Publications (1987). Look at Ade Saptomo, *Hukum & Kearifan Lokal Revitalisasi Hukum Adat Nusantara*. PT. Grasindo (2010).

what they have built if it is found to break what has been legally stipulated or if what they build is illegal or has no permit. Such regulations are included in the *Perarem* (the traditional law).

Empowering the local genius as the basis for the environmental legal empowerment system as described above is an effective social capital. It is highly flexible to cope with environmental cases settled through the combination of the instruments of legal system and the instrument of social system as a model for reinforcing the environmental law in Bali. According to Poerwanto, these are all highly integrated with the socio-cultural life of the Balinese people¹². By the same token, Hildred Geertz (1959) affirmed that the Balinese people, as a unified traditional legal community, are strongly bound to their local community itself. Furthermore, it is stated that it is a good case in which new ideas are adapted to environment. Several factors such as the basic nature of the social organization, autonomy and the movement to the centre are responsible for this¹³. This means that the local Balinese community, with the local genius it has, has expressive and dynamic cultural wealth; however, maintaining its integrity constitutes strength of cultural character which is used to control environmental problems.

Forming a pattern of environmental legal reinforcement system which has strength of cultural character has been the model of environmental protection politics which is relevant to develop in the future (*ius constituendum*). Such an idea is related to what was stated by Mahfud MD¹⁴, that law should be established in accordance what is needed, and that the law-upholders should be fostered so that they can execute what is intended by the law made. Satjipto Rahardjo¹⁵ highlighted that it is necessary to change any law in order to achieve what is socially aimed at and a certain law in the community.

The character of legal development which is in accordance with the development of what is needed by the dynamic community and the institutions upholding law so that they have a moral integrity can be an effective idea to establish the local genius-based system of environmental legal reinforcement system in Bali in particular. Thus, establishing the

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¹² Hari Poerwanto, *Kebudayaan dan Lingkungan Dalam Perspektif Antropologi*. Pustaka Pelajar (2008).

¹³ Ibid. p. 255. Look Geertz, H. The Balinese Village. in: *Local, Ethnic, and National Loyalties in Village Indonesia: A Symposium*, G.W. Skinner (ed). Yale University Cultural Report Series Southeast Asia Studies, Institute of Pacific Relations, (1959).

¹⁴ Mahfud MD, 112, *Politik Hukum di Indonesia*, Pustaka LP3ES Indonesia, Jakarta (2001), p. 9. and Abdul hakim Garuda Nusantara. *Politik Hukum Nasional*, (paper at the legal aid training. Surabaya Legal Counsel September 1985)

¹⁵ Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bhakti, (1991).

pattern of environmental legal reinforcement system using the local genius-based ADS approach constitutes an attempt made to integrate the cultural order and the structural order to regulate environmental protection and management. The attempt made to integrate the cultural order and the structural order (the state law) constitutes a choice of an idea made by the community which demands for a relevant and effective order for coping with the environmental deviations which are getting more complex. In relation to this, Hidayat & Adji Samekto stated that evaluating a social concept, a policy and even a law cannot be separated from the social order underlying it. A policy and even a law can be irrelevant as they are applicable in a social order which has changed¹⁶. In line with what was stated by Arief Hidayat & Adji Samekto, it is relevant to understand the phenomenon of the need for the pattern of environmental legal reinforcement system which is in accordance with the social order which has changed and this has become a progressive environmental legal reinforcement idea.

Based on this way of thinking, there is a wish to establish the pattern of environmental legal reinforcement system reflecting the local genius the local communities have to interact sustainably and dynamically with their natural environment. Thus, it is hoped that the environmental legal reinforcement reflecting the local genius of such communities will be effective and accepted to attain environmental protection and management to make sustainable development come true.

C. MODEL OF LOCAL GENIUS-BASED ENVIRONMENTAL LEGAL DEVELOPMENT AS AN ATTEMPT TO COPE WITH ENVIRONMENTAL DEGRADATION IN BALI

To cope with the complexity of the environmental problems, taking place in Bali the local genius-based environmental legal development approach which is constructed in the local regulation regulating environments is needed. Therefore, the capacity of the role played by the local genius as the foundation of the environmental regulation in Bali which has strategic values should be increased. The reason is that so ¹³ Bali has not had any specific environmental regulation as the derivation of the Act of Republic of Indonesia Number 32 of 2009 concerning Protection and Management of Environment and any previous environmental acts. In relation to this, the construction of the regional regulation regulating environment is not necessarily symmetric to any Act above it; this should be adjusted to the specific condition of Bali which has unique local genius as an effective

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¹⁶ Arief Hidayat and FX. Adji Samekto, *Kajian Kritis*,.....*op.cit.*

cultural order for controlling environment. That underlies the consideration why environmental regional regulation is important in Bali as the implementation of the local genius-based environmental legal development model. In other words, the local genius should be integrated within it which is divided into the legal sub-systems as follows: legal culture, legal substance, and legal structure which function as the legal instruments for coping with the environmental degradation in Bali.

In relation to legal development, Bruggink in Esmi warassih, stated that legal development should be viewed as a whole using a holistic approach. The reason is that law is not a formality which is only concerned with normative issues but also with cultural elements, its structure and substance¹⁷. Abdul Hakim G.Nusantara, in Satjipto Rahardjo, stated that level development includes every attempt made by the social groups in a community which is concerned with how law should be formed, conceptualized, applied and institutionalized in a political process¹⁸. Busyro Muqodass et al stated that basically legal development constitutes an attempt made to establish a national legal order based on the state spirit and personality¹⁹. Kusnu Goesniadhie stated that legal development includes the planning, formation and renewal of the national law, which is ideally implemented and is oriented towards the system²⁰.

Various opinions about what legal development is, from the perspective of legal anthropology, is considered a construction of legal system which synergizes various legal systems applicable in the community without dominating each other, meaning that they will be integrated in a harmonious, balanced and dynamic legal order which functions as an attempt to cope with the environmental degradation taking place in Bali Province. Such opinions can be formulated into the local genius-based model of environmental legal development in Bali. What is meant is that the establishment of environmental law is not only done based on the state legal system (structural order) which is top-down, bureaucratic, rigid, and

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¹⁷ Esmi Warassih, Pranata Hukum Sebuah Telaah Sosiologis, PT. Suryandaru Utama, Semarang, (2005).

¹⁸ Satjipto Rahardjo. Membangun dan Merombak Hukum Indonesia Sebuah Pendekatan Lintas Disiplin, Genta Publishing (2009), p.16. Look Prisma 1983.No.4: 54-63 magazine.

¹⁹ Busyro Muqoddas. Salaman Luthan, M. Miftahudin. Politik Pembangunan Hukum Nasional. Penerbit UII Press (1992), p. vi. Look Absori. Globalisasi Dan Pembangunan Hukum di Indonesia (Studi Pergulatan Otonomi Masyarakat dalam Pembaharuan dan Penegakan Hukum Sumber Daya Alam Pada Era Global). Law Journal. Vol.6. Number. 2. September 2003 Faculty of Law UMS, p. 138. Look Endang Sutrisno. Bunga Rampai Hukum dan Globalisasi, Genta Press. (2007).

²⁰ Kusnu Goesniadhie.S., Harmonisasi Hukum Dalam Perspektif Perundang-Undangan, PT. Temprina Media Grafika (2006).

repressive, it is also done based on the basic system of legal system applicable in the community, which is the form of the local genius as cultural order (the cultural values and traditional norms) applicable in the local community.

The model of how to integrate the local genius into the framework of environmental legal system, whose output is in the form of the regional regulation regulating environment in Bali is needed to make what is attempted come true. The local genius-based regulation regulating environment is prepared and based on the principles of decentralization of regional autonomy such as: paying attention to diversity, specialty and uniqueness of a region which then can be used as a reference by the Governor/ the Regent/the Mayor in Bali when issuing permits to manage environment for the sake of investment in tourism sector as the source of the original local revenues 'Pendapatan Asli Daerah (PAD)'. In addition, the local genius-based environmental regional regulation is expected to be able to neutralize the gap between the government interests in Bali and the traditional community in managing environment to support the original regional revenues without neglecting the local genius as a cultural order for maintaining environment especially the forest areas and water sources.

Based on what was taken into account above, constructing positive environmental Law (*milieurechtsvorming*) in the form of environmental regional regulation in Bali using the model which integrates the local genius as the cultural order applicable in the community has been a basic thought. Such an integration of the local genius is underlain by the fact that if the role played by the local genius is not integrated with the regulations issued by the central and regional governments which are implemented through the permits issued for the sake of investment in the form of environmental management the environmental degradation in Bali as stated above cannot be avoided. Thus, the construction of the local genius-based environmental regional regulation becomes the *legal reform* whose applicability is important. The reason is that the environmental legal renewal which is constructed based on the principle of regional autonomy, namely, paying attention to the specialty of a region which has a unique order of cultural values applicable in the community such as is Bali, which functions as the environmental legal instrument to support sustainable development. In relation to that, Soerjono Soekanto stated that a planned and guided development process needs a law which can be used as a means of opening the new streets and channels in the community so that every developmental

activity can be smoothly and regularly carried out. The use of a law as an instrument may lead to positive expectations to support development.²¹

Based on the integration of the local genius with the system of the local genius based environmental development system which is implemented in the form of the environmental regional regulation in Bali described above, it is hoped that the substances of an effective legal instrument as socially needed will be formulated to organize: authority, planning; utilization, control, maintenance, supervision, and integrated legal reinforcement, transparency, participation, accountability, fairness, adherence to principles, and environmental management which can give economic, and socio-cultural benefits based of the principles of carefulness, democracy, decentralization and sustainability.

The reinforcement of the environmental regional regulation and the integration of various such as the provisions from administration law, civil law, criminal law and traditional law which are applied to create the legal awareness of the stakeholders and the Balinese people that they should obey the laws when managing environment in accordance with the order of cultural values adhered to. In relation to this, Vinogradoff (1959), in his book entitled *Common sense in law*, stated that law has strong reference, namely, getting back to what is desired by its people (...important doctrines of a legal system generally correspondent to some deeply rooted requirements of society)²². This in line with what is stated by Hamilton & Sanders (1992) that the cosmologic difference starts from the cultural difference adhered to by a society (state)²³. Thus, what is stated by them can be used to see the Balinese people's cosmology which is used to regulate environmental protection and management. The Balinese people's cosmology is based on the cultural values inspired by Hinduism. Therefore, the local genius-based environmental regional regulation in Bali can be accepted and compatibly applied.

Finally, by designing the model of the local genius-based environmental legal development in Bali in the form of environmental regional regulation, the outcome is to fulfil the responsive and effective capacity of an environmental legal instrument. This can be used to control the environmental degradation taking place in Bali as the ecosystem of the

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²¹ Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*. Rajawali Pers, (1988).

²² Sir 18 il Vinogradoff. *Common Sense in Law*. (first edition. Oxford University Press. Look Satjipto Rahardjo, *Hukum dan Prilaku Hidup Baik adalah Dasar Hukum yang Baik*, Kompas (2009).

²³ V.Lee Hamilton & Joseph Sanders, *Everday Justice-Responsibility and The Individual in Japan and the United States*. Yale University Press. (1992), look Satjipto Rahardjo, *Sosiologi Hukum*. Genta Publishing, (2010).

small island so that its natural environment can be well and sustainably maintained to guarantee that what is needed by the current and future generations.

III. CONCLUSIONS

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Based on what has been discussed above, conclusions can be drawn as follows:

1. The regulations made by the central and regional governments which are implemented in the form of the permits provided cannot effectively function as a means of protecting and managing the environment in Bali Provinces. The reason is that they are more functioned to increase the original regional revenues 'Pendapatan Asli Daerah (PAD)', than as a means of controlling the environment, meaning that economic benefit is given more priority and that no attention is paid to the local genius-based environmental management, and the culture of the local community is neglected.
2. The use of the local genius as the systems of traditional knowledge, cultural values, tradition, traditional norms and belief which have been growing and developing locally in different areas of Indonesia in general and in Bali in particular are factually still applicable and still play effective roles for controlling forest environment, water sources, and other natural resources and so forth which are still are maintained. Such as Tri Hita Karana, Tri Mandala, Rwa Bhineda, Tat Twam Asi, Vasudhevai Kutumbakan, Karma Phala, Wana Kertih, Segara Kertih, Danau Kertih, Jagad Kertih, Tumpek Wariga/Pangitag, Awig-Awig, Desa Pekraman (Traditional Village) and so forth. Empirically, they prove to be affective and strategic social capitalism used as the basis for managing environment
3. by giving priority to the principles such as balance, harmony, and sustainability. The local genius-based environmental legal development which is constructed in the form of the regulation regulating the environmental protection and management generally applicable in Bali is highly possibly and relevantly carried out to guarantee the legal certainty of the environmental management and protection, as, in theory, it can be seen and established as a system of legal plurality applicable in the community. In this context, attempts are made to integrate the local genius as a living legal system in the community into the system of state law so that will become an environmental law (*milieurechtvorming*) which is in accordance with what is dynamically needed by the Balinese community to control the environment in Bali island as an ecosystem which can lead to conservation and welfare for the people.

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