

Juridical Study of Customary Law In The Indonesian National Legal System

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ABSTRACT

Customary law, as an integral part of the cultural and social identity of Indonesian society, has an important role in shaping the norms and values that prevail in various communities. This study aims to examine the juridical aspects of the recognition and application of customary law within the national legal framework, focusing on the constitution, laws, and regulations governing customary law. The research method used is the normative juridical method with an analytical-descriptive approach. The data analysed consisted of primary legal sources, such as the 1945 Constitution, laws, and court decisions, as well as secondary legal sources, including legal literature and previous research. The results show that although customary law is constitutionally recognised, there are significant challenges in its implementation at the national level. This is mainly due to the existence of legal dualism, norm conflicts between customary law and national law, and the lack of harmonisation in legislation governing the existence of customary law. The study concludes that further efforts are needed to harmonise customary law with national law through legislative reform, legal education, and public awareness raising. Thus, customary law can function effectively and fairly in the national legal system, while preserving Indonesia's cultural diversity.

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Introduction

The history and role of customary law in Indonesia stems from the fact that customary law has been an integral part of Indonesian life long before the formation of this unitary state. Customary law was formed through a long evolutionary process, influenced by the norms and values adopted by local communities. Customary law reflects local wisdom that is passed down from generation to generation and is adapted to local geographical, social and cultural conditions (Abdullah, 2020).

The important role of customary law lies in its ability to regulate people's daily lives, from marriage procedures, division of inheritance, to dispute resolution. Although

in its development, national law began to be more dominant, customary law is still respected and practiced in various regions as a form of respect for local identity and wisdom. This shows that customary law not only has historical value, but also contemporary relevance in maintaining harmony and justice among communities (Siombo & Wiludjeng, 2020).

The potential for conflict or overlap between customary law and national law in Indonesia is increasingly evident in many ways, especially due to differences in understanding and enforcement of norms (Kavling, 2017). Discrepancies between formal legal procedures and traditional practices can trigger conflicts in dispute resolution at the local level. Despite mediation efforts through legal reconciliation policies, the challenges in achieving harmony between customary law and national law remain complex and require a careful approach. The issue of legal certainty regarding the recognition and protection of customary law is also an important issue. While customary law is recognized in the constitution and laws, its implementation is often unclear, causing uncertainty for indigenous peoples (Gorby et al., 2023). The process of formalizing customary law is also often hampered by bureaucracy and political interests, resulting in unequal access to the justice system.

Customary law in Indonesia faces various challenges in an era of modernization, globalization, and rapid social change. Modernization brings changes in the social, economic and cultural structures of society, which often conflict with the traditional values upheld by customary law. Globalization introduces international norms and practices that can erode the authority and relevance of customary law in the eyes of younger generations who are more exposed to global culture. In addition, urbanization and migration increase interactions between different cultures, resulting in possible clashes between customary law and more formal national laws. Other challenges include economic pressures leading to shifting ownership of land and natural resources that are often governed by customary law. Amidst these changes, customary law must adapt without losing its essence to remain relevant and respected, while ensuring that traditional values can coexist with the demands of modernity and globalization.

The purpose of this research is to conduct an in-depth juridical analysis of the position and function of customary law within the framework of Indonesia's national legal system. Through this approach, the research aims to comprehensively understand how customary law is recognized, integrated, and applied in national legal practice. By exploring aspects such as constitutional foundations, legislation, and legal practice, this research will provide in-depth insight into the role of customary law in the context of Indonesian national law.

Research Methods

This research methodology adopts a normative approach that involves an in-depth analysis of relevant legislation related to customary law in Indonesia. This approach allows the researcher to explore and understand the legal foundations governing the recognition, protection and implementation of customary law within the national legal framework. An analysis of laws, court decisions and other relevant regulations will be used to gain a comprehensive understanding of the position and role of customary law in Indonesia's national legal system. Thus, the normative approach becomes an important foundation in outlining the relevant legal aspects in this research (Nasution, 2024).

Results and Discussions

Customary law is a set of rules that develop and are maintained in the life of indigenous peoples that are unwritten but obeyed by each member (Siregar, 2018). According to legal experts and academics, such as van Vollenhoven and Soepomo, customary law reflects social norms that live and develop dynamically according to the needs of the community (Sulistiani & Sy, 2021). The main characteristics of customary law include its unwritten nature, flexibility in application, and contains local wisdom that is rich in local cultural and moral values. Specific examples of customary law in Indonesia include the Tana Toraja customary law in South Sulawesi, which regulates funeral procedures and the Rambu Solo ceremony, and the Minangkabau customary law in West Sumatra, which adheres to a matrilineal kinship system, where the lineage is drawn from the mother's side.

The integration of customary law into Indonesia's national legal system has been a long journey from the colonial period to post-independence. During the Dutch colonial period, customary law was recognized as part of legal pluralism, where customary law applied to the indigenous population, while European law applied to Europeans and foreigners. After independence, recognition of customary law was formalized in the constitution and various laws, reflecting a spirit of respect for local cultural heritage. In the post-independence era, customary law continued to be integrated through agrarian laws, customary courts, and various policies that recognized the existence and role of customary law in various aspects of community life. These integration efforts reflect the state's commitment to maintaining local identity and wisdom, while creating harmony between customary law and national law within the framework of the Unitary State of the Republic of Indonesia (Arliman, 2018).

Customary law has an important position in Indonesia's national legal system which is constitutionally recognized through Article 18B of the 1945 Constitution. This article states that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. This recognition confirms that customary law can function parallel to national law as long as it does not conflict with higher laws and regulations. In practice, customary law is often used in dispute resolution at the local level particularly in relation to land, inheritance and community social relations to demonstrate its flexibility and relevance in the cultural and social context of Indonesian society (Azami, 2022).

Other laws and regulations in Indonesia explicitly recognize and regulate the existence and role of customary law in various aspects of community life. Law No. 6/2014 on Villages provides formal recognition of customary villages as government entities with special autonomy based on local customary law, including in governance and natural resource management (Wisadnya, 2018). Similarly, Law No. 41/1999 on Forestry recognizes indigenous peoples' rights to customary forests and authorizes them to manage and conserve forests based on prevailing customary law (Nugroho, 2014). This recognition strengthens the position of customary law in the national legal system and ensures that local wisdom values are maintained and preserved within a modern legal framework.

The implementation of customary law in the national justice system is reflected through its recognition and application in various court decisions. Many cases involving land disputes, inheritance, or community conflicts where judges refer to the customary

law applicable in the area. For example, the Indonesian Supreme Court has issued several decisions recognizing indigenous peoples' rights to customary land, such as in the case of the customary land of the Kasepuhan Cisitu community in West Java (Zakaria, 2016). Courts also often use customary law principles as considerations in making decisions especially in areas where customary law is still highly respected and practiced by local communities. This recognition shows the flexibility and inclusiveness of the national legal system in accommodating various local norms and rules that live in the community.

Research results (Zain, 2023) indicate that the integration of customary crimes in the Criminal Code aims to improve justice for the community and respect the existence of customary laws that are still in force. In the Criminal Code, the regulation on customary criminal offenses is made minimal because the details will be regulated through Regional Regulations. In addition, this study found that Adat Villages should be actively involved in the formulation of customary crimes by the Regional Government. In its implementation, Desa Adat plays a role in the enforcement of customary crimes, either directly or indirectly.

Customary law plays an important role in dispute resolution especially in communities that still highly respect local traditions and norms. Customary dispute resolution mechanisms usually involve mediation and deliberation led by customary figures or customary institutions that function as arbiters and decision-makers based on local wisdom and applicable customary law. This process is often considered faster, cheaper and more acceptable to the disputing parties than formal litigation. In many cases, the outcome of customary dispute resolution is then integrated into the formal legal system through the recognition of customary decisions by the district court which gives the decision formal legal force. This integration allows customary decisions to be recognized and legally enforceable within the national legal framework, ensuring harmony between customary norms and state law.

One case study of successful dispute resolution through customary law is the case of a land dispute in Pusako Tinggi conducted by the Limo Kaum Customary Council (KAN). The KAN functions as a mediator in resolving land conflicts in Pusako Tinggi. Many cases of land disputes have been successfully resolved through KAN Limo Kaum, while only a few have gone to court. The existence of KAN allows for customary resolution of High Pusako land disputes by prioritizing local wisdom, not only to handle disputes, but also to maintain the continuity of local traditions of the Minangkabau people (Putri, 2021).

Another study by (Hakim, 2015) on the Tolaki indigenous people. The results showed that the dispute resolution mechanism through Tolaki customary institutions includes negotiation, mediation, and customary justice. This dispute resolution model is called Hybrid Justice, which aims to harmonize legal values in Indonesia. This model involves mandatory mediation for both customary criminal and civil cases. In addition, the model of dispute resolution through Tolaki customary institutions emphasizes the importance of good faith from all parties involved as well as the application of customary sanctions in both customary criminal and civil cases. The successful resolution of these disputes demonstrates the effectiveness of customary law in resolving conflicts peacefully and equitably, and how this mechanism is respected and recognized in the formal legal system.

Dispute resolution through customary law faces a number of challenges including sustainability and equitable access to the resolution process. First, as customary law is often based on oral tradition, lack of documentation can be an obstacle in clarifying and

interpreting customary norms. In addition, there are also challenges in maintaining the sustainability of customary law practices amidst modernization and urbanization that are changing the way people live (Adenisatrawan, 2023). However, dispute resolution through customary law also has advantages, including flexibility, speed and relevance to local needs. An inclusive and participatory approach to resolving disputes can strengthen social solidarity and accelerate the reconciliation process between disputants. In addition, customary law often provides more holistic solutions by considering cultural, social and environmental aspects that may not be covered by formal law (Is & SHI, 2021). Therefore, integrating customary law with the formal legal system can be an important step in strengthening access to justice and building peace at the local level.

The interaction between customary law and national law often creates complex dynamics in various sectors of life, such as land, marriage and forestry. In the land sector, there is a clash between the concept of customary land ownership and government regulations on land certification. For example, the recognition of customary land rights by customary law often conflicts with the need for land certification by national law. In the area of marriage, customary law often practices marriage and inheritance systems that differ from national law, especially in terms of the status and rights of women. Meanwhile, in the forestry sector, customary forest management by local communities often conflicts with government regulations on logging licenses and forest management. These interactions point to the need for harmonization between customary and national laws in order to create an inclusive and equitable framework for all parties involved.

Resolving conflicts between customary law and national law often involves efforts by governments and legal institutions to reach an agreement that balances and respects both legal systems. One common approach is to conduct a dialogue between stakeholders from both sides, such as the government, indigenous community leaders, community organizations and academics to find a compromise solution that is acceptable to all parties. In addition, the establishment of regulations or policies that accommodate customary law within the national legal framework is also an important step to address conflicts. This process usually involves public consultation and inclusive decision-making and considers relevant legal, cultural and social aspects. In addition, a pluralist legal approach that recognizes both as legitimate sources of law can be a foundation for long-term conflict resolution between customary law and national law.

The Constitutional Court has an important role in resolving conflicts between customary law and national law by providing rulings that establish clear legal boundaries and parameters. As the institution responsible for the interpretation of the constitution, the Constitutional Court has the authority to examine laws and government regulations that are deemed contrary to constitutional principles including in terms of the protection of indigenous peoples' rights (Abqa et al., 2023). Decisions of the Constitutional Court in cases involving conflicts between customary law and national law often serve as guidelines for governments, judicial institutions and communities in determining solutions that are in accordance with constitutional values and principles of justice. Thus, the Constitutional Court plays a role in creating a solid and consistent legal foundation to resolve such conflicts in a fair and proportional manner.

The challenges in recognizing and protecting customary law by the government include a number of complex legal and practical aspects. Legally, one of the main challenges is the harmonization of customary law with the national legal system, which often has significant normative and structural differences. The formation of policies and regulations that accommodate customary law often faces obstacles in determining the

boundaries of authority, rights and obligations between customary law and national law. Practically, the challenge lies mainly in the implementation of customary law recognition in the field, especially in remote and hard-to-reach areas. The lack of understanding and capacity of local governments in dealing with customary law issues, along with conflicts of interest between economic sectors and local communities, are also obstacles that are often faced.

Problems of discrimination and marginalization of indigenous communities often occur in the implementation of national laws in many countries. This is due to the lack of recognition of a community's customary rights, unequal access to resources and decisions that affect their lives and lack of representation in policy-making processes. As a result, indigenous communities often face difficulties in protecting their traditional rights including rights to land, water and other natural resources. Inadequate application of laws that are often insensitive to the needs and interests of indigenous peoples also exacerbates the inequalities and injustices experienced. Concrete measures are needed to address this discrimination including formal recognition of indigenous rights, active participation of indigenous communities in decision-making processes and the development of laws that are more inclusive and sensitive to cultural diversity.

Government and community efforts to protect the rights of indigenous peoples are an important aspect of ensuring social justice and the protection of human rights. The government often takes steps to improve the recognition and protection of customary law both through the establishment of policies and regulations that support the rights of indigenous peoples and through development programs that favor the interests of indigenous peoples. In addition, communities including human rights organizations and advocacy institutions also play an important role in supporting and fighting for the rights of indigenous peoples through advocacy, training, legal assistance, and monitoring the implementation of government policies and programs. Through cooperation between the government and the community, it is hoped that a conducive environment can be created for the protection and promotion of the rights of indigenous peoples and the realization of equal social justice for all citizens.

The role of indigenous communities in the development of customary law not only includes efforts to maintain existing customary traditions and norms, but also involves initiatives to develop customary law in accordance with the needs and challenges of the times. Indigenous communities often play an active role in decision-making processes and customary regulations that take place through deliberation and consensus among community members. Initiatives such as the collection and documentation of customary legal knowledge, the establishment of customary institutions to resolve disputes, and the drafting of customary regulations in accordance with changes in the social and natural environment are clear examples of indigenous communities' efforts to strengthen and develop their customary laws. By involving customary leaders, community leaders and the younger generation in this process, indigenous communities can maintain the sustainability and relevance of customary law in meeting the needs and addressing the challenges faced by indigenous communities.

The involvement of indigenous peoples in legislation and public policy processes is becoming increasingly important as a measure to ensure the recognition of indigenous rights and the protection of indigenous peoples' interests. Through participation in public consultations, dialogues and participatory forums, indigenous peoples seek to voice their aspirations and needs to policymakers. By sharing their knowledge, experiences and perspectives, indigenous communities can make valuable contributions to relevant

policy-making processes. This engagement not only strengthens the legitimacy of the resulting policies, but also helps to ensure that the policies take into account their impacts on indigenous peoples and meet human rights and social justice standards. Thus, the involvement of indigenous peoples in the legislative and public policy process is an important step in the fight for the recognition, rights and welfare of indigenous peoples within the framework of a democratic state of law.

Indigenous legal training and education programs for indigenous youth are important instruments in strengthening cultural identity, expanding knowledge of indigenous traditions and values, and preparing indigenous peoples to face the challenges of the times relating to law and justice. These programs are often organized by community organizations, educational institutions or indigenous institutions themselves with the involvement of indigenous leaders, legal experts and customary law practitioners. Through various activities such as workshops, practical training, counseling and the provision of legal assistance, indigenous youth are given a deeper understanding of customary legal systems, dispute resolution procedures and the importance of maintaining and promoting cultural heritage. In addition, the program also aims to develop leadership, problem-solving and legal advocacy skills in order to strengthen the role of indigenous youth in maintaining the sustainability and relevance of customary law in modern society. As such, indigenous legal education programs for indigenous youth play an important role in building a stronger and more sustainable future for indigenous communities.

Conclusion

Based on the discussion that has been outlined, it can be concluded that the interaction between customary law and national law in Indonesia reflects the challenges and opportunities in creating an inclusive and fair legal system. Although customary law is recognized within the national legal framework, differences in norms and procedures often lead to conflicts in dispute resolution. Reconciliation and mediation efforts have shown some success, but more needs to be done to address the legal uncertainties and bureaucratic obstacles that prevent the effective implementation of customary law. It is important for governments, communities and indigenous peoples to work together to formulate policies that accommodate both legal systems so that there can be equitable justice and better protection for indigenous peoples.

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