Reviving the Role of Customary Law as a Legal Foundation in the Development of the Indonesian Legal System

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Abstract
This research discusses the neglect of customary law as one of the sources of law in Indonesia, due to the perception that customary law is considered too traditional and unable to keep up with the times, such as globalization and technology. This research aims to explore areas of customary law that are still relevant in addressing the challenges faced by Indonesian society in the era of globalization, as well as to highlight the urgency of customary law as a foothold for national legal development policies. The research method used is descriptive analytical with a normative juridical approach. Data and information were obtained through interdisciplinary and multidisciplinary approaches as well as cross-sectoral, then analyzed in depth in a normative juridical manner. The results showed that several aspects of customary law, such as inheritance law, customary rights, pawn, rent, and profit sharing, still have relevance and can be a source of inspiration in the formation of national law and act as a source of law in the process of legal discovery.

Keywords: revitalization, adat law, source of law

INTRODUCTION
The existence of customary law as a unique legal life for the Indonesian people is increasingly marginalized from time to time. Although it used to be a living and effective legal foundation in solving various problems in the lives of Indonesian people, now the existence of customary law is increasingly threatened. Today, Indonesian indigenous peoples often face challenges when customary law collides with positive law, especially when traditional community rights clash with the interests of investors through state legal instruments. The ongoing development of the Indonesian Legal System has given rise to complex dynamics in the interaction between customary law and positive law.

The lack of attention to customary law as part of the legal life of the Indonesian nation is increasingly visible, especially with the trend towards civil law and common law systems and legal politics that lead to legal codification and unification. This has resulted in the diminishing role of customary law in solving problems in society, especially in situations where traditional rights collide with the interests of investors through positive law. Economic development has also created change, with positive law adopting sharia principles in some business activities. Ironically, existing principles in customary law are often in line with sharia principles, such as the principles of balance and sustainable development, adding complexity to the national legal system.

In this context, the neglect of customary law is rooted in the assumption that customary law is too traditional and unable to adapt to the times, such as globalization and technology. The implications of this political law policy are felt in the resolution of community problems, where often customary law, which is actually more relevant, is ignored. For example, horizontal conflicts that often arise among indigenous peoples should be resolved through indigenous dispute resolution institutions. However, different perceptions of land ownership
between indigenous peoples and the public interest often become a source of conflict that is difficult to resolve.

The history of law in Indonesia shows that many jurists have studied customary law as a living part of Indonesian society. The conception of customary law pluralism unifies and provides solutions in people’s lives. Until now, customary law pluralism in Indonesia continues to develop, following changes in society while maintaining its characteristics. Nonetheless, the adoption of other legal systems has sometimes led to conflicts with local justice, as has happened in economic law cases in the capital market. Dispute resolution through deliberation and restorative approaches in indigenous communities demonstrate the relevance and effectiveness of customary law in resolving conflicts.

Customary Law, as a reflection of the soul and identity of the nation, still has relevance in the formation of the Indonesian legal system. In the view of Savigny and van Vollenhoven, Customary Law is a living law that continues to develop over time, because it is a real expression of community life. Therefore, efforts to revitalize Customary Law need to be made to make it an integral part of the source of national legal formation. Mochtar Kusumaatmadja also emphasized that the law must be responsive to the development of society and can be adjusted to the situation.

The concept of living law underlines the importance of paying attention to the values and legal norms that live in society when forming laws. If the law contradicts the values and norms of living law, then the law risks being rejected by the community. In Indonesia, Customary Law is a form of living law that reflects the values of Indonesian society.

Customary Law also has the potential to be used as a source of law by judges if the law requires it. However, one of the main problems is that Adat Law is not codified in Indonesia and among foreign communities such as Chinese and Arabs.

**METHODS**

To carry out this research more effectively, it is necessary to use appropriate research methods, data collection techniques, and approaches. Therefore, this research uses an analytical descriptive method with a normative juridical approach. This approach allows the collection of data and information from various fields in an interdisciplinary and multidisciplinary manner, as well as cross-sectoral. Primary, secondary, and tertiary data will be collected and analyzed qualitatively to gain an in-depth understanding of customary law.

The data collection technique used is a literature study. Data from literature and documents will be analyzed qualitatively, where conclusions are not only based on statistical data, but also on the relationship between legal principles, legal rules, and legal theories with phenomena that occur in society, through juridical interpretation.
DISCUSSION

Customary law plays an important role in the context of national law, particularly in three main areas: community organization, marriage and inheritance, and land law. In community structure, adat law regulates how an adat community is organized, both by lineage and territorial factors. For example, villages, regions and village associations are different forms of indigenous communities.

In the areas of marriage and inheritance, customary law still plays a significant role, especially in regulating family relationships and the transfer of property rights. In some cases, customary law also influences the national legal system, such as in marriage and the division of inheritance. Land law is another area where customary law has great influence. Land rights in indigenous communities, such as hak ulayat, hak keuntungan jabatan and hak tarik hasil, are an integral part of the customary law system. Land transactions, such as buying and selling and leasing land, are also governed by customary law.

Despite efforts to merge customary law with national law, such as in agrarian law, the existence of customary law is still recognized and relevant in the context of national legal development. Customary law is often considered an additional source of law that enriches the national legal framework and fulfills local needs that may not be covered by formal law.

Customary law, in the context of marriage and inheritance, is a set of norms, rules and traditions that regulate family relationships and the transfer of property rights in a society or community. The role of customary law in this regard is often very significant, especially in areas where the customary law system is still strong and upheld by the local community.

First of all, let's talk about marriage. In some cultures, customary law has a strong role in regulating marriage. This can include rules on how the couple is chosen, the wedding procession, the customs to be followed, and the rights and obligations attached to both parties after the marriage. For example, in some indigenous societies, the marriage process may involve the wider family and have certain traditions that must be followed, such as the payment of dowry or property.

Secondly, in relation to inheritance, customary law often regulates how property and possessions are transferred from one generation to the next. This can involve rules on how property is divided between heirs, who has rights to certain property, and procedures for those who wish to claim their share of the inheritance. In many cases, customary law also governs how property is divided between sons and daughters, as well as other parties who may have a claim to the inheritance. The importance of customary law in marriage and inheritance is also reflected in the interaction between customary law and national law. In some countries, national legal systems recognize and allow for the application of customary law in certain cases, especially if the parties involved in the marriage or division of inheritance agree to use customary law as the basis for their legal arrangements. This reflects the recognition of diverse cultures and legal traditions within national legal systems.

However, there are also challenges in the integration of customary law with the national legal system. Conflicts often arise when customary law conflicts with national legal principles or norms, and their resolution can be complex and difficult. Therefore, while customary law still plays an important role in many societies, efforts are also being made to integrate the principles of customary law with national law more harmoniously.
Land law is the area of law that regulates land rights and all transactions related to the ownership, use and utilization of land. In the context of indigenous communities, customary law has a major influence in regulating land rights as well as land transactions conducted by members of these communities.

First, let's talk about land rights in indigenous communities. Different types of land rights, such as hak ulayat, hak keuntungan jabatan, and hak tarik hasil, are an integral part of the customary law system.

Hak Ulayat: Hak ulayat is the traditional right of indigenous peoples to land that has been recognized for generations. It is often held by indigenous peoples collectively and includes the right to use, manage and utilize the land for the benefit of the community.

Right of Profits of Office: Positional advantage rights are rights associated with land ownership acquired through a particular position or social status within the indigenous community. Examples are land rights granted to traditional leaders or community leaders.

Right to Extract: The right to extract products includes the right to take products from the land, such as agricultural products, plantations, or other activities carried out on the land.

Secondly, customary law also regulates land transactions within indigenous communities, such as buying and selling and leasing land. While the principles of customary law may vary from community to community, in general, customary law regulates the procedures, terms and conditions that must be met in any land transaction. These include requirements on who has the right to sell or lease land, the procedures to be followed in the transaction process, and the rights and obligations attached to both parties involved.

The importance of customary law in the field of land law reflects the close relationship between indigenous peoples and the land on which they live and make their livelihoods. Land is not only a source of material life, but also has symbolic, spiritual and cultural values that are very important to indigenous peoples. Therefore, the recognition and protection of land rights in customary law is an integral part of efforts to preserve the culture and sustainability of the lives of indigenous peoples.

Land law is a branch of law that regulates all matters relating to land rights, including ownership, use and utilization of land. In the context of indigenous peoples, customary law has a great influence in regulating land rights and all transactions related to the land.

Land Rights in Indigenous Peoples:

Ulayat Rights: These are indigenous peoples' traditional rights to land that have been passed down from generation to generation. Ulayat rights are often collectively owned by indigenous peoples and include the right to use, manage and utilize the land for the benefit of the community.

Right of Profit of Occupation: This right relates to land ownership acquired through a particular position or social status within the indigenous community. For example, a traditional leader or community leader may have land rights as part of the recognition of their position or social status.

Right to Extract: This includes the right to extract products from the land, such as agricultural products, plantations, or other activities carried out on the land. Indigenous peoples
have the right to extract products from the land they manage in accordance with their traditions and customs.

**Land Transactions in Indigenous Communities:**

Sale and Purchase: Land transactions in indigenous communities are governed by customary law. The procedures, terms and conditions governing land transactions usually vary from one indigenous community to another. However, customary law ensures that the transaction process is in accordance with local traditions and customs.

Land Lease: Apart from buying and selling, land lease transactions are also governed by customary law. The provisions governing land lease transactions include matters such as the term of the lease, payment of rent, and the rights and obligations of both parties involved in the transaction.

The importance of customary law in the field of land law shows the close relationship between indigenous peoples and the land on which they live and make their livelihoods. The recognition and protection of land rights in customary law is an integral part of efforts to preserve the culture and sustainability of the lives of indigenous peoples.

**CONCLUSION**

This conclusion presents an overview of the complexity of the interaction between customary law and positive law in Indonesia. Although customary law used to play a significant role in solving various problems in people's lives, its existence is now increasingly threatened. Conflicts between customary law and positive law often arise, especially in the context of traditional rights of indigenous peoples colliding with the interests of investors and state legal instruments. The importance of customary law in solving problems in society, especially in situations where traditional rights collide with the interests of investors through positive law, highlights the importance of recognizing the diversity of cultures and legal traditions within the national legal system.

However, lack of attention to customary law can lead to disregard for the values and legal norms that live in society, which in turn can result in conflict and injustice. Therefore, revitalizing customary law and integrating its principles with national law is important in ensuring justice and sustainability in the resolution of community problems. As part of the Indonesian legal system, customary law still has relevance in the formation of national law. Recognizing the diversity of cultures and legal traditions is an important step in maintaining justice and harmony in society. By paying attention to the values and legal norms that live in the community, the formation of laws can be more responsive to local needs and avoid conflicts with the values believed by the community. The study of customary law requires appropriate research methods, such as analytical descriptive methods with a normative juridical approach. Data collection through literature studies can provide a deep understanding of customary law and its role in community life. Through a deep understanding of customary law and its role in people's lives, steps can be taken to recognize, protect and strengthen the existence of customary law as an important part of the Indonesian national legal system. Thus, customary
law can continue to develop and adapt to the development of society, in accordance with the principle of living law which emphasizes the importance of paying attention to the values and legal norms that live in society when forming laws.

REFERENCE