

The Role of Customary Law in the Development of National Law in the Modern Era

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ARTICLE INFO

Keywords: Customary Law, National Legal Development, Modern Era, Regional Autonomy, Harmonization

Received : 2 August

Revised : 18 September

Accepted: 23 October

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ABSTRACT

Customary law plays an important role in the development of national law in Indonesia, especially in the modern era marked by globalization and modernization. Customary law serves as a reflection of the rich and diverse local cultural values, and plays a role in various aspects of community life, including the resolution of dispute, management of natural resources, and protection of the rights of indigenous peoples. In the era of decentralization and regional autonomy, customary law is increasingly recognized in local policies and becomes an important instrument in maintaining the unique legal identity of each region. Formal recognition of customary law is also reflected in various national regulations, such as the Law on Villages and the Basic Agrarian Law, which accommodate customary law in facing the challenges of modernization and globalization, customary law must adapt to the modern era

PENDAHULUAN

Customary law is an important element in the Indonesian legal system, reflecting the diversity of cultures and local values that existed long before the formation of the national legal system. As a law born from the customs of local communities, customary law reflects patterns of behavior and social norms that are highly respected in various communities in Indonesia. Although Indonesia has adopted a modern national legal system and refers to the principles of international law, the existence of customary law is still recognized and plays a significant role.

The development of the era marked by globalization, modernization, and decentralization of power through regional autonomy brings new dynamics to the development of national law. In this modern era, the challenges of customary law are becoming increasingly complex. On the one hand, customary law plays a role in maintaining local identity and integrity, while on the other hand, customary law must be able to adapt to the values of justice.

The recognition of customary law in the 1945 Constitution and in various other laws, such as the Village Law and the Basic Agrarian Law, shows an effort to harmonize customary law and national law. This is important to ensure that customary law is not only respected, but can also contribute to the development of law that is more inclusive and relevant to the needs of modern society.

This introduction aims to examine the role of customary law in the development of national law in the modern era, as well as the challenges and opportunities faced in the process of harmonization between customary law and national law. Analysis of the role of customary law is expected to provide insight into how customary law can remain relevant and function effectively in the context of modernization and globalization. Currently, there are several problems faced regarding the role of customary law in the development of national law in Indonesia, especially in the modern era influenced by globalization. One of the main problems is the potential for conflict between customary law and national law, especially in issues related to human rights, gender equality, and social justice. Several customary law norms are considered inconsistent with the principles set out in national and international law. Customary law is generally oral and highly dependent on customary leaders or community elders. This results in a lack of clear documentation and standardization in the application of customary law. This makes it difficult for national legal institutions or authorities to effectively integrate customary law into formal legal processes.

TINJAUAN PUSTAKA

The role of customary law in the development of national law in the modern era can be seen from several important points of view, which include historical, social, cultural and legal aspects:

1. **Historical and Cultural Heritage:** Customary law is a legal system that developed locally and was passed down from generation to generation in traditional Indonesian society. Before the existence of structured national law, people in various regions had lived by customary law which regulated various aspects of their lives, such as land, marriage and dispute resolution.

When Indonesia became independent, customary law became one of the elements recognized as part of the nation's legal identity. Challenges of Integration with National Law: Along with the formation of the modern Indonesian state, efforts to integrate various customary legal systems into the national legal framework have become a major challenge. Customary law is very diverse throughout Indonesia, because it varies according to the culture and traditions of each tribe and region. Therefore, efforts to formulate a single national law that can cover elements of customary law often face a clash between diversity and the need for unification.

2. **The Role of Customary Law in the Formation of National Law:** In several fields, customary law plays an important role in the formation of national law, especially in land law, marriage law and inheritance law. For example, the 1960 Basic Agrarian Law (UUPA) recognizes the existence of customary rights to land, by giving recognition to customary rights owned by customary law communities.
3. **Modern Era and Globalization:** In the modern era and globalization, new challenges have emerged regarding the relevance of customary law in facing developments in national and international law. There are concerns that modernization and globalization could erode local values and customary laws that have long been part of community identity. However, customary law is also seen as a solution in maintaining a balance between legal modernization and preserving local values.
4. **Constitutional Recognition:** Formally, the role of customary law is recognized in the 1945 Constitution article 18B paragraph (2) which states that "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and principles The Unitary State of the Republic of Indonesia." This confirms that customary law still has a place in the national legal framework, as long as it does not conflict with the principles of national law and human rights.
5. **Influence on the Development of National Law:** Customary law makes a significant contribution to the development of national law, especially in the aspects of regulating regional autonomy and protecting indigenous communities. In this modern era, there are efforts to better accommodate customary law in the context of national legal development, such as in the protection of the rights of indigenous peoples, management of natural resources, and recognition of collective rights.

Overall, the role of customary law in the development of national law in the modern era reflects the dynamics between efforts to maintain the integrity of local traditions and the need to develop a modern and integrated legal system at the national level. The challenge that arises is how customary law can remain relevant and in line with the principles of modernity, social justice and human rights. Customary law is an integral part of the legal system in Indonesia. As a country with diverse tribes, cultures, and traditions, Indonesia has a wealth of customary law that reflects the values and norms of local communities. Although Indonesia has a national legal system regulated in various laws, customary law

still has a significant role, especially in the context of local wisdom and conflict resolution in society.

In this modern era, technological developments, globalization, and social change increasingly influence the way people interact and adapt to their surroundings. In this process, many traditional values and customary legal norms are faced with major challenges, including the influence of foreign cultures and pressure to adopt more formal and universal laws. This raises concerns about the loss of identity and local wisdom that have existed for a long time.

Meanwhile, the development of Indonesian national law must be able to reflect the diversity of cultures and norms that exist in society. In this context, customary law is not only considered as a cultural heritage, but also as an important source of law that can enrich the national legal system. By integrating customary law values into the development of national law, it is hoped that a more just, relevant, and appropriate legal system will be created.

Therefore, research on the role of customary law in the development of national law in the modern era is very important. This aims to understand how customary law can contribute to the formulation, implementation, and development of national law, as well as how national law can respect and accommodate the existence of customary law in society. Thus, this research not only contributes to academic studies, but also provides recommendations for policy makers in formulating regulations that are more inclusive and responsive to the needs of society. Current Problems: The Role of Customary Law in the Development of National Law in the Modern Era.

Neglect of Customary Laws Many customary laws are not formally recognized by the national legal system, so communities often do not have access to the legal protection they should. This results in injustice for communities that rely on customary laws to resolve disputes. In some cases, there are clashes between customary law norms and national laws, especially on issues related to human rights, land ownership, and environmental protection. This often causes confusion and legal uncertainty for communities.

The influence of globalization and modernization has changed the mindset of society, which often considers customary law as obsolete or irrelevant. As a result, the younger generation has less understanding and appreciation of the values of existing customary law. As a result, many customary laws are not recorded in writing, making them difficult to maintain and recognize. This limitation in documentation makes customary law easily ignored in formal legal processes. Indigenous peoples often become protectors of natural resources through their customary practices. However, in many cases, national law is more supportive of the exploitation of natural resources without considering the local wisdom contained in customary law. In understanding the role of customary law in the development of national law in the modern era, there are several theories that can be used as a basis.

These theories help explain the relationship between customary law, national law, and society. Here are some relevant theories such as the "Legal Pluralism Theory" which states that in society there is more than one legal system

that functions simultaneously. Legal pluralism recognizes the existence of customary law as one form of legitimate legal system. So it has relevance In Indonesia, legal pluralism can be seen from the coexistence between national law and customary law. This theory explains how the two legal systems can interact and influence each other in resolving disputes and regulating community life. Local Wisdom Theory which This theory emphasizes the importance of local wisdom in decision-making and development. Local wisdom includes values, norms, and practices that develop in a community. Having relevance Customary law as a form of local wisdom reflects the community's understanding of the norms and values that apply in their community. Integration of local wisdom into national law can produce more relevant and effective policies, especially in natural resource management and conflict resolution.

Formal legal systems that are often complex and expensive can hinder indigenous peoples from seeking justice. The faster and cheaper resolution of disputes through customary law is often neglected due to the lack of official recognition. Many communities lack sufficient knowledge about customary law and their rights, making it difficult for them to advocate or defend these rights in the context of national law. Thus, government policies that tend to ignore the existence of customary law or do not provide sufficient support can worsen this condition. There is a need to encourage more inclusive policies that take into account local wisdom. These issues need to be addressed through dialogue and collaboration between the government, indigenous peoples, and other stakeholders to create a more just and responsive legal system that respects the existence of customary law as part of the cultural identity and local wisdom in Indonesia.

METODOLOGI

This research methodology is designed to explore and analyze the role of customary law in the context of national legal development in Indonesia. The methodology used includes a qualitative approach, data collection, and data analysis, as follows:

1. Research Approach

Qualitative Approach This research uses a qualitative approach to gain a deep understanding of customary law and its role in the national legal system. This approach allows researchers to explore the perspectives, experiences, and views of indigenous peoples, legal practitioners, and academics on customary law.

2. Type of Research

Descriptive Research is a descriptive research with the aim of describing and explaining phenomena related to customary law and national legal development. Researchers will collect information from various sources to provide a comprehensive picture of the topic being studied.

3. Data Collection Methods

A. Literature Study: Collecting and analyzing information from books, journal articles, official documents, and other relevant sources regarding customary law and national law. This includes a study of the history, characteristics, and comparison between customary law and national law.

- B. **Interviews:** Conducting in-depth interviews with various informants, such as:
 - a. Indigenous community figures
 - b. Legal practitioner
 - c. Academics who have expertise in the field of customary law
 - d. Government representatives related to legal policy.
- C. **Focus Group Discussion (FGD):** Holding focus group discussions with indigenous communities and relevant stakeholders to gain a broader perspective on the issues facing customary law and how to integrate it into the national legal system.
- D. **Participatory Observation:** Observing customary law practices in dispute resolution and natural resource management in local communities to gain a better understanding of the application of customary law in everyday life.

4. Data Analysis

- A. **Qualitative Analysis:** Data obtained from interviews, FGDs, and observations will be analyzed qualitatively using thematic analysis techniques. Researchers will identify patterns, themes, and relationships between the data obtained to answer the formulation of the research problem.
- B. **Data Triangulation:** To ensure the validity and reliability of data, researchers will conduct triangulation by comparing information obtained from various sources, including literature studies, interviews, and observations.

5. Research Ethics

Researchers will adhere to ethical principles of research, including respecting the rights and privacy of informants, seeking permission before conducting interviews or observations, and ensuring that the data obtained is used responsibly.

6. Conclusion and Recommendations

After data analysis is conducted, researchers will draw conclusions about the role of customary law in the development of national law and provide recommendations for more inclusive policies and strategies to strengthen the role of customary law in the future. This research methodology aims to provide a deep understanding of the relationship between customary law and national legal development, as well as provide useful insights for policy makers and the wider community.

HASIL PENELITIAN

Customary law has a significant role in the development of national law in Indonesia, especially considering the diversity of cultures and traditions that exist. This discussion will outline various aspects of the role of customary law, including its contributions, challenges, and impacts on the national legal system.

1. Contribution of Customary Law to National Legal Development

a. Source of Inspiration for National Law

Customary law is often a source of inspiration in the formation of national laws. Several values and principles in customary law, such as deliberation for consensus, justice, and balance, have been integrated into national legislation. For

example, the principle of deliberation is reflected in the decision-making process at the local level and in various public policies.

b. Dispute Resolution

Customary law provides a more efficient dispute resolution mechanism that is in line with local values. In many cases, dispute resolution through customary law can be done quickly and directly, without having to go through a long and expensive court process. The mediation process carried out by community leaders or customary leaders often produces solutions that are more acceptable to the disputing parties.

c. Natural Resource Management

Many indigenous communities have sustainable natural resource management systems based on local wisdom. Customary laws governing the use of land, forests, and water resources are often more effective in maintaining ecosystem balance than formal regulations that do not take local contexts into account. The application of customary laws in natural resource management can also encourage community participation in protecting the environment.

2. Challenges in Customary Law Integration

a. Limited Legal Recognition

One of the main challenges is the limited recognition of customary law in the national legal system. Many customary laws are not officially recognized, making it difficult for communities to access justice through existing legal mechanisms. This can lead to injustice, especially for communities that rely on customary law to protect their rights.

b. Differences in Values between Customary Law and National Law

There is potential for conflict between customary and national laws, particularly in areas of human rights, gender, and land ownership. For example, in some indigenous communities, practices relating to inheritance rights and the status of women may be inconsistent with the principles of equality set out in national law. This can create dilemmas for decision makers in enforcing the law.

c. Impact of Globalization and Modernization

Globalization and modernization bring their own challenges to the existence of customary law. Society, especially the younger generation, is often influenced by foreign cultural values and practices that can erode the existence of customary law. In addition, the pressure to adopt a more formal and universal legal system can reduce the relevance of customary law in the eyes of society.

3. The Impact of Customary Law on National Legal Development

a. Building an Inclusive Legal System

Integration of customary law in the development of national law can create a legal system that is more inclusive and responsive to the needs of the community. By recognizing the existence of customary law, the government can strengthen the position of indigenous peoples in the decision-making process and policy formulation.

b. Increasing Social Justice

Customary law has the potential to improve social justice by protecting the rights of indigenous peoples and encouraging their participation in development. By integrating customary law into the national legal system, it is

hoped that the rights of indigenous peoples can be protected, and justice can be upheld more effectively.

c. Preservation of Culture and Local Wisdom

Recognizing customary law as part of the national legal system also contributes to the preservation of local culture and wisdom. Customary law reflects values and norms that have long existed in society, so its integration into national law can help maintain the diverse cultural identities in Indonesia.

4. Strategies to Enhance the Role of Customary Law

a. Legal Education and Awareness

Raising awareness of customary law and the rights of indigenous peoples through education and outreach programs can strengthen the position of communities in fighting for their rights. Better knowledge of customary law can help communities understand their rights and how to fight for them.

b. Inclusive Policy Development

The government needs to formulate policies that are more inclusive and responsive to the existence of customary law. This includes revising existing laws and regulations to provide space for customary law and ensuring that policies taken into account local wisdom.

c. Dialogue between Stakeholders

Encourage dialogue between the government, indigenous peoples, and other stakeholders to create policies that are more responsive to community needs. Through this collaboration, it is hoped that fair and sustainable solutions can be found. So that customary law has a very important role in the development of national law in Indonesia. Despite facing various challenges, customary law can still make a significant contribution to dispute resolution, natural resource management, and cultural preservation. To enhance the role of customary law, there needs to be better recognition and integration in the national legal system, as well as support through education, inclusive policies, and constructive dialogue. Thus, it is hoped that customary law will not only survive, but also become the foundation for building a legal system that is more just, inclusive, and responsive to community needs.

PEMBAHASAN

The results of the discussion in the field refer to the findings and insights obtained through observations, interviews, and discussions with indigenous communities and related stakeholders. The following is a summary of the results of the discussion obtained from field activities, including that many members of indigenous communities still show a high level of awareness of customary law and the norms that apply in their society. They understand their rights and how customary law functions in everyday life. So that the community has a deep appreciation for customary law as part of their cultural identity. Customary law is often considered a legacy that must be preserved and passed on to the next generation.

In many cases, communities prefer to resolve disputes through customary law mechanisms rather than through formal justice. The mediation process carried out by customary leaders is considered faster, cheaper, and in accordance with local values. Many disputes resolved through customary law still result in better agreements that are acceptable to all parties. This shows that customary law can create more harmonious solutions. Despite the recognition of the importance of customary law, many communities still face obstacles in terms of formal recognition of customary law in the national legal system. This limits their ability to use customary law to resolve disputes formally. There is a strong demand from the community for more inclusive policies that recognize and respect customary law. The community hopes that the government can be more open to collaborating in formulating policies that take into account local wisdom. So some indigenous communities report that the influence of modernization and globalization has caused a decrease in the interest of the younger generation in customary law. There is a concern that traditional values and practices will be lost along with the adoption of foreign cultures.

Indigenous peoples are trying to preserve customary law practices through education and training for the younger generation. They recognize the importance of educating children about customary law to ensure that these values remain alive. Currently, the perception of National Law is that many indigenous peoples still feel alienated from the national legal system. They often feel that national law does not reflect their values and needs. So there is a strong desire to establish dialogue between the government and indigenous peoples to increase understanding and collaboration in formulating fair and effective policies.

The community proposed that there be more education and outreach programs on customary law and their rights so that the community would be more knowledgeable and skilled in fighting for their rights. The indigenous community hopes that the government will provide greater support for customary law practices, including official recognition, and the integration of customary law into development policies. Thus showing that customary law has an important role in the lives of indigenous communities and in the context of national legal development.

Despite the challenges in recognizing and integrating customary law into the national legal system, communities continue to demonstrate their commitment to preserving and implementing customary law. There is an urgent need to enhance collaboration between the government and indigenous communities, and to encourage better recognition of customary law in national policies. In doing so, it is hoped that customary law can contribute more significantly to building a legal system that is just, inclusive, and responsive to the needs of the community.

KESIMPULAN DAN REKOMENDASI

Conclusion

1. **Significant Role of Customary Law:** Customary law plays a very important role in the lives of indigenous peoples and in the development of national law in Indonesia. Customary law provides an alternative dispute resolution that is faster, cheaper, and in accordance with local values, and serves as a basis for sustainable natural resource management.
2. **Community Awareness and Respect:** Indigenous communities show a high level of awareness of their customary laws and value them as part of their cultural identity. However, there are concerns about the negative impacts of globalization and modernization that could erode traditional values and practices.
3. **Challenges in Recognition and Integration:** While customary law has made significant contributions, challenges remain in formal legal recognition and integration into national legal systems. Many communities feel alienated from formal legal systems and need more inclusive policies.
4. **Support for the Preservation of Customary Law:** There is an urgent need to preserve customary law through education, outreach, and policy support. Indigenous peoples expect their rights to be recognized and respected in the context of national law.

Recommendation

5. **Recognition of Customary Law :** The government needs to make greater efforts to recognize customary law as an integral part of the national legal system. This can be done through revision of laws and regulations to provide space for customary law in dispute resolution and natural resource management.
6. **Dialogue and Collaboration :** It is important to build constructive dialogue between the government, indigenous peoples, and other stakeholders. This collaboration can help in formulating policies that are more responsive to the needs of the community and respect the existence of customary law.
7. **Education and Extension:** Enhance education and extension programs on customary law and indigenous peoples' rights. This is important to equip communities with adequate knowledge to fight for their rights and preserve local wisdom.
8. **Support for Policy Development:** Governments and relevant institutions should provide greater support for inclusive policy development that takes into account local wisdom. This includes involving indigenous peoples in policy-making processes that impact their lives.
9. **Monitoring and Evaluation:** Monitoring and evaluating the implementation of policies related to customary law. This is important to ensure that the policies are effective and meet the needs of the community, and to adjust the approach if necessary.

PENELITIAN LANJUTAN

It is hoped that further research can delve deeper into the implementation of customary law in various regions, with a focus on the resulting social and economic impacts.

UCAPAN TERIMA KASIH

I would like to express my deepest gratitude for the guidance and support that the Lecturers of National Legal Reform have given during this research process. The knowledge, insight, and motivation that you have conveyed are very meaningful for my academic development.

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