

Customary Law In Indonesia: A Legacy for a Sustainable Future

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ABSTRACT

This article explores the relevance of customary law in fostering a sustainable future. Customary law, rooted in the traditions and values of indigenous communities, offers valuable insights and practices for addressing contemporary challenges such as environmental degradation, social inequality, and economic disparity. We will examine how customary law, with its emphasis on community well-being, environmental stewardship, and social justice, can provide a framework for sustainable development. The presentation will delve into specific examples of how customary law has been successfully applied in various contexts, highlighting its potential to contribute to a more equitable and sustainable future for all.

Keywords: Customary law, sustainability, indigenous knowledge, environmental stewardship, social justice, community development.

Introduction

Customary law is all the rules or norms, both written and unwritten, that come from the customs or habits of the community. Simply put, customary law is the rules that grow and develop in a society over generations, governing various aspects of their lives. These rules are not written in law books as we know them, but live in the collective memory of the community and are passed down from generation to generation. Customary inheritance law in Indonesia remains characteristically plurality, as it is influence by the presence of kinship systems in its community.(Poespasari et al., 2017) Customary law is the original law of the Indonesian people which originates from unwritten legal rules that grow and develop and are maintained by the community.(Siregar, 2018). Customary law in Indonesia is a complex of norms that are the source of the people's sense of justice.of the people's sense of justice that always grows and concerns all rules of human behaviour in everyday life, mostly unwritten, always respected and obeyed by the community, because it has legal consequences (sanctions).The word customary law itself was first coined by Snouck Hurgronje in his book *De Atjehnese* in 1983.

Snouck explained the term *Adatrecht* (customary law), which is the law applied to the people of the earth putra (native Indonesians) and foreign easterners when the Dutch East Indies were implemented in Indonesia. In the end, customary law had a technically juridical meaning after C. Van Vollenhoven published his book, *Adatrecht*. Van Vollenhoven published his book with the title *Adatrecht*. Customary law has always been seen by the state to be a social control of society and plays an important and leading role in efforts to anticipate and prevent conflict in society(Safitri et al., 2022). Indigenous Peoples (Masyarakat Hukum Adat, hereinafter called as MHA) are recognized for their existence in positive Indonesian law, in national and regional dimensions, included in the Indonesian State Constitution, and the Decree of the People's Consultative Assembly, as well as Sectoral Laws, and also in the regional dimension, namely Regional Autonomy.(Joesoef, 2020) Factors Affecting the Formation of Customary Law Some of the main factors that influence the formation of customary law include:Cultural Values: The noble values, beliefs, and worldview of a society form the basis for the formation of customary law.

For example, the value of gotong royong in Javanese society will give birth to various customary rules related to cooperation and gotong royong. Historical Experience: Important events in the history of a society also shape customary law. For example, the experience of facing natural disasters can give birth to customary rules related to disaster mitigation. Social Interaction: Relationships between individuals and groups in society influence the formation of customary law norms. For example, interactions between farming groups and fishing groups can give rise to customary rules on the joint use of natural resources. Adaptation to the Environment: Customary law also adapts to the changing conditions of the natural and social environment. For example, communities living in mountainous areas will have different customary rules from communities living in coastal areas. Although we live in a very modern era with all kinds of technology and rapid development, customary law still has a very high relevance. Globalisation brings significant social, economic and cultural changes that will affect the value system in customary law. (Dwiko et al., 2024)

Methods Research

The writing of this article applies the normative legal research method, where the collection of legal materials is done by literature study. (Rizka Fakhrurozi & Erwin Syahrudin, 2022) The type of approach used is the statutory approach and conceptual approach (Poespasari et al., 2017). Legal materials are the 1945 Constitution of the Republic of Indonesia, especially referring to Article 18B paragraph (2) and Article 28I paragraph (3). Secondary legal materials are scientific works (books, articles and scientific journals) related to the topic of discussion. The analysis technique in this research is qualitative analysis technique. The overall research results and discussion are presented in a descriptive manner.

Result and Discussion

Customary law, as a legal system that grows and develops in society for generations, is often considered a legacy of the past that is less relevant to the dynamics of modern life. However, we need to examine this view more deeply. Why Does Customary Law Remain Relevant? Deep Cultural Roots: Customary law is an integral part of a society's cultural identity and values. It has been formed and passed down over centuries, so it has very strong roots in people's lives. The phrase 'customary law has deep cultural roots' implies that customary law is not just a collection of rules, but an integral part of a society's identity and values. Let us delve deeper into the meaning of this statement:

Customary Law as a Reflection of Cultural Values:

The integration of customary law in Indonesia has become the concern of many legal experts and influential legal thinkers, especially in understanding the position of customary law in the national legal system. (Febrianty et al., 2024) Despite the fact that various ethnic groups and people from all over the world have different customs in our society, they all share an Indonesian identity and culture. Thus, Bhineka was born, which is different in various regions and sub-regions, and Tunggal Ika, which is also a unity but does not yet reflect the principles and essence of Indonesia, thus forming a traditional Indonesian nation. The tradition of Bhinneka Tunggal Ika in the country is still alive and thriving, developing dynamically, constantly adapting to changing demands, and continuing to progress along with the civilisation of the nation. (Muhammad Saukhan Aulana, Aulia Salsabila, Farantika Dwi Hardini, Heraldo Naufal Cannafaro, 2024). Customary law reflects the noble values embraced by the community, such as gotong royong, justice, honesty and respect for ancestors. These values form the basis for the formation and application of customary law. Universal values found in traditional cultures form the basis of our laws. These values include the following: a) The principle of Gotong Royong This can be seen from the continuous detrimental practice of working together in building and maintaining village roads, places of

worship, flood defences, irrigation waterways, and other structures.b) The social function of people and property in society This is also seen in the law as above (the social function of property and the social function of people). It is also seen in the practice of owners allowing villagers to utilise their land only during certain hours, such as when they are allowed to freely return their animals to the fields. This means creating opportunities for others to benefit from the produce as well.c) The Principle of Consent as the Basis of General Power This can be seen in the way the village government carries out its duties, discussing and reaching consensus before making important decisions that affect the interests of the wider community(Ridwan et al., 2017).d) The idea of representation and discussion in the political system, and how it is applied in everyday life through the institution of the Village Hall has been mentioned previously.

Customary law is a legal system that is known in the social environment

Social system is the starting point for the discussion of customary law in Indonesia. The term customary law is also introduced to many people who refer to their customs as 'customary law'. The word 'adat' comes from the Arabic language which means habit. Based on this, it can be seen in the development of human life that God Almighty provides reasons for his behaviour. This is what Otje Salman Soemadiningrat meant in her book *Reconceptualisation of Law*, the birth of customary law is the forerunner of individual habits. It is important to note that customary law in Indonesia is a socially familiar legal system and is the starting point for this discussion. According to Soerjono Soekanto, the process of forming customary law is divided into 2 aspects namely:

1. Sociological Aspects

Basically, humans cannot live alone and need other humans because humans are social creatures and have instincts. Because other people are needed in human life, every person communicates with other people, resulting in experiences from the communication. Based on this experience, a value system can be found that can be considered as good and bad things. From this value system, a mindset / assumption arises which gives birth to an attitude, namely the tendency to act or not act.

2. Juridical Aspect

This aspect is reflected in the level of sanctions. Certain forms of behaviour are a way of life that is uniform to a group of people, for example, how to buy and sell, how to divide inheritance, how to get married, and so on. There are sanctions for offences, but they are weak. This method creates a habit and the sanctions for deviations are somewhat more severe than the sanctions for the method/use, habits repeated in society lead to norms of behaviour or ways that increase the punishment for deviance. As behavioural norms or customs emerge, so do customs consisting of customs and customary laws, and the penalties are very severe.(Nafisa et al., 2024)

Customary Law as a Social Binder:

Customary law already existed and developed in Indonesian society before 1927. Customary law was scrutinised and viewed as a legal policy of the legal policy of the Dutch government since 1927, following the confirmation of the acceptance hypothesis in I.I.S.1925, article 134 paragraph 2.11 Additional sources of customary law are available because customary law already existed and developed in Indonesian society before 1927. Law customary law was scrutinised and viewed as a legal policy of the Dutch government from Since 1927, following the confirmation of the acceptance hypothesis in I.I.S. 1925, article 134, paragraph 2. The sources of customary law can be further divided into three types, namely as follows:1. Source of Recognition According to B. Ter Haar, the decision of the customary ruler is the source of recognition of customary law.(Syahbandir, 2010) However, Mohammad Koesnoe denied this. He argues that genuine legal interaction within the relevant community-whether at the level of single or repeated behaviour-is the source of customary law

recognition.level of single or repeated behaviour-is the source of recognition of customary law.

2. Source of content The legal consciousness that pervades indigenous peoples is the origin of the content of customary law. of customary law.

3. Source of binding The root of binding customary law is the sense of shame caused by the workings of the community's value system or other consequences that will eventually lead to the death of the community.by the workings of the community's value system or other consequences that will ultimately be befall the offending individual if they break the rules. In In other words, the legal consciousness of the members of the indigenous community involved is the binding force of customary law.the binding force of customary law. Customary law provides a sense of identity and togetherness for members of the community.

Customary Law as a Regulator of Life:

Aspects of life: Customary law regulates various aspects of community life, ranging from relationships between individuals, natural resource management, to traditional ceremonial procedures.(Lestiawati et al., 2024) Concrete Example: Customary Law in Bali: The concept of Tri Hita Karana (harmonious relationship between man, God, and nature) is the basis of many customary laws in Bali. Customary Law in Papua: Customary law in Papua is closely related to human relationships with nature and ancestors.Local Wisdom: Customary law contains time-tested local wisdom. This wisdom is often more in line with the environmental and socio-cultural conditions of the local community than the generalised positive law.Environmental Preservation: Many customary laws contain principles of environmental preservation that are highly relevant to the current challenges of climate change. For example, the prohibition of cutting trees carelessly or sustainable natural resource management systems.Conflict Resolution: Customary law is often used to resolve conflicts at the community level. Conflict resolution processes based on customary law tend to be more participatory and acceptable to all parties.(Maisa et al., n.d.)Protector of Indigenous Peoples: Customary law provides a legal umbrella for indigenous peoples to defend their rights to land, customary territories and natural resources.Complementary to Positive Law: Customary law can be a complement to positive law in regulating various aspects of the law.(Adolph, 2016)

Examples of the Relevance of Customary Law in the Modern Era: Forest Management: Many indigenous communities in Indonesia have managed to preserve their forests by applying customary law.Marine Resource Management: Traditional fishing communities often have customary rules governing fishing in order to preserve marine resources.Land Dispute Resolution: Customary law can be used to settle complex land disputes, especially in areas where communities still hold strong customs.Challenges and Opportunities While relevant, customary law also faces challenges such as: Conflict with positive law, Modernisation and urbanisation Weak legal recognition and protection.

Conclusion

In the context of sustainable development, customary law has a very important role. The principles contained in customary law, such as justice, equality, and sustainability, are in line with the sustainable development goals (SDGs). Customary law is not just a legacy of the past, but also a valuable asset that can be utilised to build a better future. By understanding and appreciating the values contained in customary law, we can create a more just, sustainable and harmonious society.

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