

The Concept and Implementation of Customary Law in Indonesian Society

Yuli Handayani

STAI Miftahul Ulum Tarate Pandian Sumenep, Indonesia; bhinnekayuli@gmail.com

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ABSTRACT

Customary law is a legal system that has grown and developed within Indonesian society, rooted in cultural values, traditions, and local customs. This law is living, dynamic, and possesses normative authority recognized within the national legal system. This article aims to elaborate on the fundamental concepts of customary law, its characteristics, and its application within the context of modern Indonesian society. The study employs a qualitative descriptive approach through a literature review method, drawing on various legal sources and previous research. The findings indicate that customary law not only functions as a regulator of social behavior but also serves as a moral foundation for maintaining societal harmony. Despite the challenges posed by globalization and modernization, customary law remains relevant as long as it can adapt to the principles of social justice and the national legal framework.

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Corresponding Author:

Yuli Handayani

STAI Miftahul Ulum Tarate Pandian Sumenep, Indonesia; bhinnekayuli@gmail.com

1. INTRODUCTION

Customary law constitutes an integral part of Indonesia's legal system that has lived and evolved long before the establishment of the modern state. It originates from the cultural values, traditions, and beliefs of communities that have been tested through time. According to Soepomo (1986), customary law is a legal system that does not derive from written regulations but from customs that are accepted, recognized, and practiced across generations. Thus, customary law possesses unique characteristics—it is living, dynamic, and contextual, constantly adapting to the social conditions of the communities that created it.

The concept of customary law fundamentally differs from Western (Continental European) law, which tends to be written and rationalistic. Whereas Western law emphasizes legality and legal certainty, customary law prioritizes balance, harmony, and social justice. This aligns with Ter Haar's (1930) view that customary law is a "living law"—a law that lives among the people and derives its authority not from the state but from the collective belief and obedience of the community itself. Therefore, the existence of customary law does not depend on the state but on the collective legal consciousness of the people (Rahardjo, 2009).

Historically, customary law has played a crucial role in regulating the social life of the archipelagic societies, covering areas such as agrarian relations, marriage, inheritance, and dispute resolution. This legal system embodies values of mutual cooperation (gotong royong), deliberation (musyawarah), and communal justice consistent with the Indonesian national character. As Van Vollenhoven (1918) noted, Indonesian customary law can be divided into 19 adatrechtskringen (customary law circles), each representing distinctive ethnic and regional characteristics. This diversity illustrates the pluralistic and rich legal heritage possessed by the Indonesian nation.

Within Indonesia's constitutional system, the existence of customary law receives explicit recognition. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that:

"The State recognizes and respects the units of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia."

This provision serves as the normative foundation for the existence of customary law within the national legal system. It shows that Indonesia does not adhere to a monistic legal system but a pluralistic one—acknowledging the coexistence of customary law, religious law, and national (positive) law (Suryadi, 2018).

Recognition of customary law is also reflected in several sectoral legislations, such as Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), which acknowledges ulayat (communal) rights of customary communities, provided they align with national interests. Similarly, Constitutional Court Decision No. 35/PUU-X/2012 affirms that customary forests are no longer part of state forests but belong to customary law communities. This ruling strengthens the position of customary law as a legitimate and living source of law within modern society (Constitutional Court, 2012).

Therefore, the constitutional and judicial recognition of customary law demonstrates that Indonesia embraces legal pluralism as a social and political reality. However, such formal recognition has not yet been fully translated into substantive implementation. In many cases, indigenous communities continue to face marginalization, particularly regarding the management of ulayat lands, natural resources, and cultural rights (Sumardjo, 2019).

Customary law cannot be separated from the weltanschauung (worldview) of Indonesian society, which emphasizes balance between humans and nature, as well as between individuals and their communities. In the philosophy of customary law, justice is not individual but communal and social (Soerjono Soekanto, 2002). This principle is reflected in dispute resolution processes that emphasize deliberation, restoration of social relations, and reconciliation rather than formal punishment.

According to Hadikusuma (2003), the essence of customary law lies in balance—between rights and obligations, individuals and communities, as well as humans and their environment. Hence, violations of customary norms are often perceived not merely as wrongdoings against individuals but as disruptions of cosmic balance. Consequently, customary dispute resolution focuses on restoring disturbed social and spiritual harmony.

Furthermore, Rahardjo (2009) asserts that customary law is a progressive law because it embodies strong moral, spiritual, and humanitarian elements. It not only regulates behavior but also cultivates collective moral awareness within society. In this view, customary law serves as a moral pillar that sustains the social structure of traditional communities while inspiring the formation of a socially just national legal system.

With modernization, industrialization, and globalization, customary law faces significant challenges. The national legal system—often positivistic and written—tends to disregard or marginalize customary law (Sumardjo, 2019). This is evident in various agrarian conflicts involving indigenous communities in regions such as Papua, Kalimantan, and Sumatra, where ulayat rights are often neglected in favor of national or corporate interests (Slaats & Portier, 2004).

In addition, younger generations within customary communities are increasingly detached from traditional legal values due to modern education and urbanization. This shift weakens social legitimacy

toward customary institutions and norms. Without revitalization efforts, customary law risks losing its relevance in modern social life.

However, as Suryadi (2018) argues, customary law should not be seen as archaic or outdated. On the contrary, it possesses remarkable adaptive capacity to evolve with societal change—as long as such transformation does not undermine its foundational values of communal justice. This adaptability distinguishes customary law from rigid and procedural positive law.

One of the central challenges in Indonesia's legal system is how to harmonize customary law with national law. As a pluralistic state, Indonesia requires integration mechanisms that do not negate local wisdom but instead draw upon it as a source of normative value.

According to Soepomo (1986), customary law represents the “soul” of Indonesia's national legal system, embodying the spirit of the nation and the values of Pancasila. This is reinforced by Rahardjo (2009), who argues that an ideal national legal system is one that draws upon the living law within society, rather than merely replicating foreign legal models. In essence, Indonesia's legal development must be rooted in the living customary laws of its people.

In terms of policy, this harmonization can be realized through the formal recognition of customary institutions within the judiciary, legislation grounded in local values, and the empowerment of indigenous communities in managing natural resources. An example is the implementation of Minister of Home Affairs Regulation No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities, which enables local governments to formally verify and recognize indigenous communities.

Revitalizing customary law is an urgent necessity to ensure that Indonesia's national legal system remains culturally grounded. Revitalization does not mean returning to the past, but rather adapting customary values to modern life. For instance, the customary principles of deliberation (*musyawarah*) and consensus (*mufakat*) can be integrated into modern Alternative Dispute Resolution (ADR) mechanisms (Rahardjo, 2009).

Furthermore, the customary law's orientation toward balance and social justice can provide a philosophical foundation for sustainable environmental and agrarian law. In this regard, customary values such as *pamali* (taboo), *gotong royong* (mutual aid), and the notion of land as a mother can be reinterpreted in modern regulations to preserve harmony between humans and nature (Soerjono Soekanto, 2002).

Thus, the revitalization of customary law is not merely cultural preservation but a strategic effort to reform Indonesia's legal system toward greater humanity, contextual relevance, and social justice.

In the broader context of national development, customary law plays a vital role as a moral and social pillar. It instills values of responsibility, solidarity, and equilibrium—essential prerequisites for sustainable development. Legal development that neglects customary values risks generating social alienation and legal disparity between central and regional authorities (Hadikusuma, 2003).

Additionally, customary law can serve as a source of inspiration for Indonesia's legal reform. As Rahardjo (2009) notes, legal development must consider the “Indonesian dimension” to preserve cultural roots and national identity. Therefore, integrating customary law into the national legal system is not an act of romanticism toward the past but a strategic step toward a socially just and sustainable legal order.

In conclusion, customary law is not merely a traditional legacy but a living and evolving legal system that coexists with the people. It reflects the nation's identity, serves as a source of social justice, and balances state law with community needs. The main challenge today lies in strengthening the position of customary law so that it remains adaptive and relevant amidst the rapid modernization of national law and the globalized economy.

2. METHODS

This study employs a descriptive qualitative approach using the library research method. The data sources are derived from legal literature, scholarly books, accredited national journals, and

statutory regulations relevant to the theme of customary law. The analysis is conducted by examining various theories of customary law proposed by scholars such as Soepomo, Van Vollenhoven, and Ter Haar, and then comparing them with their actual implementation in the field. The data analysis technique applies a content analysis approach to understand the relationship between the concepts of customary law and their implementation in modern Indonesian society (Moleong, 2018).

3. FINDINGS AND DISCUSSION

The Existence and Dynamics of Customary Law in Indonesia

Customary law in Indonesia possesses unique characteristics that distinguish it from the Western legal system, which is rational and codified. Customary law originates from the life of the community rather than from the authority of the state. According to Soepomo (1986), customary law is a living law imbued with the spirit of gotong royong (mutual cooperation) and communal solidarity among the Indonesian people. It is not static but continuously adapts to the ever-evolving dynamics of society.

Ter Haar (1930) described customary law as living law a law that grows and develops in tandem with the life of the people. This concept implies that the validity of customary law is not determined by statutes but by the social acceptance and collective belief of the community in its inherent values. The principle of living law is also supported by Rahardjo (2009), who asserted that customary law possesses normative power because it derives from the community's legal consciousness, not from the coercive authority of the state.

Empirically, the existence of customary law remains strong in various regions of Indonesia, particularly within indigenous communities in Papua, Kalimantan, Sulawesi, and Nusa Tenggara. Each region has distinct customary legal patterns that reflect its culture and belief system. For example, the Dayak communities maintain strict customary rules in managing forests and communal lands, while in Bali, the *desa adat* (traditional village) plays a central role in regulating social, economic, and religious life (Sumardjo, 2019).

However, customary law faces pressures from modernization policies and the expansion of centralized national legal systems. Many customary regions have lost their autonomy due to development policies that fail to accommodate local community interests (Slaats & Portier, 2004). Despite these challenges, customary law endures because it retains strong social and moral legitimacy among the people.

Principles and Core Values in Customary Law

Customary law is rooted in the Indonesian worldview that emphasizes balance, togetherness, and harmony. Its primary principle is not legal certainty, as found in Western law, but social justice and cosmic balance.

According to Soerjono Soekanto (2002), customary law embodies four fundamental principles:

- a. Collectivity (Communalism): Rights and obligations are organized based on communal interests rather than individualism.
- b. Balance: Every action must maintain harmony between humans, society, and nature.
- c. Deliberation and Consensus: Decision-making is achieved through dialogue, not confrontation.
- d. Restorative Justice: Conflict resolution aims to restore social relationships rather than merely to punish.

Hadikusuma (2003) further asserts that customary law is flexible and contextual, meaning that its norms can adapt to social change without losing their essence. This adaptability is evident in the diverse customary practices across Indonesia that evolve with time while preserving their moral foundations.

The values embodied in customary law also reflect the philosophy of Pancasila, particularly the second principle (just and civilized humanity) and the fifth (social justice for all Indonesian people).

Therefore, Soepomo (1986) described customary law as the “soul” of the ideal national legal system – a law that draws upon Indonesian values and embodies the nation’s character.

Application of Customary Law in Agrarian Affairs

The agrarian sector is one of the domains where customary law continues to play a dominant role. As stipulated in Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), customary law is recognized as the foundation for land management, provided it does not conflict with national interests.

Van Vollenhoven (1918) introduced the concept of hak ulayat (beschikkingsrecht), a collective right of indigenous communities over land, forests, and natural resources within their territories. This right encompasses the authority to control, manage, and utilize customary land for communal welfare. In practice, hak ulayat often clashes with state law, especially in cases of overlapping claims involving large-scale mining or plantation permits (Slaats & Portier, 2004).

A landmark case affirming the significance of customary land rights is the Constitutional Court Decision No. 35/PUU-X/2012, which declared that customary forests are not part of state forests but belong to indigenous communities. This ruling represents a milestone in strengthening the legal position of customary law in agrarian matters. However, its implementation remains challenging due to the lack of administrative recognition of indigenous communities by local governments (Suryadi, 2018).

Thus, customary law in agrarian affairs is not merely about land ownership but also embodies ecological and spiritual values that maintain harmony between humans and nature. This principle aligns with eco-humanistic theory, which places humans as integral components of interdependent social and ecological systems (Sumardjo, 2019).

Application of Customary Law in Marriage and Kinship

Beyond agrarian matters, customary law plays a crucial role in regulating social relations through systems of marriage and kinship. In customary law, marriage is not merely a union between two individuals but also a bond between two extended families.

According to Hadikusuma (2003), customary marriage serves a social function of strengthening kinship and solidarity among families. Violations of customary marriage norms—such as elopement without family consent—are considered social offenses requiring customary resolution. Remedies may include traditional fines, public apologies, or rituals to restore family honor.

In many regions, customary law still governs marriage procedures and requirements. For instance, the Batak people recognize the marga (clan) system, allowing marriage only between specific clans; in Bali, desa adat rules determine the roles of family and caste; and in Papua, marriage often involves belis (customary dowry), symbolizing social bonds (Soerjono Soekanto, 2002).

Nevertheless, modern influences, such as Law No. 1 of 1974 on Marriage, have transformed many traditional practices. In some cases, customary and national laws coexist harmoniously, while in certain regions, customary law remains dominant as it aligns more closely with local moral values and norms.

Mechanisms of Customary Dispute Resolution

Dispute resolution in customary law is characterized by its restorative rather than retributive nature. According to Rahardjo (2009), the primary aim of customary justice is not to punish the offender but to restore social harmony disrupted by wrongdoing.

Customary dispute resolution is typically managed by traditional institutions such as village councils, customary leaders, or councils of elders. Decisions are reached collectively through consensus rather than formal adjudication. This participatory model is viewed as more effective, as it involves all stakeholders and produces genuine reconciliation (Soepomo, 1986).

For instance, the Baduy people of Banten resolve disputes through a community-based system known as *pembinaan adat*, where offenders are subjected to social sanctions or required to undergo rituals of reconciliation. This approach reinforces social responsibility and communal solidarity while preventing prolonged conflict (Sumardjo, 2019).

In modern national law, restorative approaches inspired by customary law have been adopted in various alternative dispute resolution mechanisms, such as restorative justice in criminal law and mediation in civil law. This demonstrates the continued relevance of customary values in shaping formal legal frameworks.

Customary Law and Legal Pluralism in Indonesia

Indonesia is characterized by a pluralistic legal system comprising three coexisting systems: customary law, religious law, and state (national) law. According to Suryadi (2018), Indonesia's legal pluralism is a legacy of colonial history and the nation's ethnic and cultural diversity.

However, the relationship between customary and national law is often strained. Many state policies fail to adequately accommodate customary law. For example, in forestry and mining sectors, government regulations frequently overlook indigenous land rights, leading to horizontal conflicts between communities, corporations, and the state (Slaats & Portier, 2004).

Nonetheless, efforts toward harmonization are ongoing. The recognition of indigenous peoples through Minister of Home Affairs Regulation No. 52 of 2014 and various Constitutional Court rulings has strengthened the legitimacy of customary law as a valid source of law. Such recognition is expected to enable customary law to function synergistically with national law in promoting social justice and inclusive development (Rahardjo, 2009).

Relevance and Future of Customary Law in Indonesia

In the context of national development and globalization, customary law holds a strategic role in preserving Indonesia's legal and cultural identity. According to Rahardjo (2009), customary law represents a form of progressive law, oriented toward substantive rather than procedural justice—placing humanity and social balance above mere legal formalities.

In the modern era, customary law also contributes to sustainable development, particularly in environmental protection. Customary principles such as “land as mother” and “humans as part of nature” provide a philosophical foundation for ecological justice (Sumardjo, 2019).

To ensure the continuity of customary law, systematic revitalization and documentation are essential. The government should encourage the inventory of customary laws across regions, strengthen customary institutions, and integrate customary values into national legal education. Hadikusuma (2003) emphasizes that customary law must not be allowed to disappear, as it embodies the moral wisdom that defines Indonesia's cultural identity.

From the above discussion, it can be concluded that customary law functions as a complex social system one that regulates behavior while maintaining moral, spiritual, and social balance. Although often perceived as traditional, customary law contains universal values such as justice, solidarity, and equilibrium that remain highly relevant today.

The greatest challenge lies not in the adaptability of customary law but in the lack of structural recognition from the state and modern society. Therefore, the integration of customary and national law must proceed through synergistic recognition, adaptation, and harmonization, rather than subordination.

Through such an approach, customary law will continue to serve as an essential pillar of Indonesia's pluralistic, just, and nationally rooted legal system reflecting the ideals of the nation's founders and the lived realities of the archipelago's diverse communities.

4. CONCLUSION

Customary law reflects the identity, values, and character of the Indonesian nation, born from local wisdom and developed alongside the historical evolution of society. It functions not only as a legal system regulating social behavior but also as a vessel for moral, spiritual, and cultural values that live within the community. Customary law holds a significant position within the national legal system as one of the unwritten sources of law whose existence is still recognized, as stated in Article 18B paragraph (2) of the 1945 Constitution, which affirms the recognition of indigenous law communities and their traditional rights as long as they remain alive and in accordance with the development of society.

In practice, the implementation of customary law demonstrates high dynamism and flexibility. In several regions such as Bali, Papua, Minangkabau, and Kalimantan, customary law continues to serve as the primary guideline in resolving various social issues, including disputes over customary land (ulayat), traditional marriages, inheritance, and inter-community conflict resolution. However, within the context of a modern legal state, the application of customary law often faces challenges, particularly in terms of harmonization with national and international laws, as well as the codification process that may reduce the dynamic nature of customary law itself.

This study emphasizes that the relationship between customary law and national law should be synergistic rather than dualistic. National law should accommodate customary values without erasing their distinctive characteristics. The approach of legal pluralism must be strengthened so that customary law can function proportionally as a genuine source of social justice at the local level. Efforts to revitalize customary law must also be supported by government policies, public awareness, and legal education based on local cultural values.

Therefore, the existence of customary law is not only important as a cultural heritage, but also as a means of maintaining social balance and realizing substantive justice in a pluralistic society. The harmonious integration of customary law with national law will strengthen the legal foundation of Indonesia, grounded in Pancasila values, diversity, and social justice for all Indonesian people. Hence, in the future, a more adaptive, participatory, and equitable legal policy is needed to ensure that customary law continues to live, evolve, and contribute to the development of a truly Indonesian national legal system.

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