

The Role of Customary Law in the National Legal Structure of the Archipelago

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ABSTRACT

Customary law plays an important role in the national legal structure in the archipelago, which is known for its diversity of tribes, cultures, and traditions. This article examines how customary law functions and interacts with the positive legal system in Indonesia and its contribution to the formation and implementation of national law. The main focus of this study is the analysis of the recognition, protection, and integration of customary law within the state legal framework, as well as the challenges and opportunities that arise in the harmonization process. Using a case study approach and comparative analysis, this article explores various models of interaction between customary law and positive law in various regions in the archipelago. This study also discusses the role of customary institutions in enforcing customary law and the contribution of customary law to preserving local cultural identity. The results of the study show that although the integration of customary law with national law faces various challenges, customary law still makes a significant contribution to maintaining social justice and protecting the rights of indigenous peoples. This article aims to provide insight into the importance of recognizing and respecting customary law in the national legal system and to encourage discussion on how the integration of customary law can improve the quality and justice of law in the archipelago.

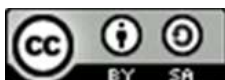
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INTRODUCTION

Indonesia, with its abundant cultural and ethnic diversity, has a very complex and multi-layered legal system. One important element in the national legal structure is customary law, which is the cultural and historical heritage of the Nusantara people. Customary law, often referred to as local law or traditional law, refers to the norms, rules, and legal practices that have developed in indigenous communities in various regions in Indonesia. Although customary law has existed long before Indonesia's independence, its role in the national legal structure remains crucial to this day (Muliadi, 2015).

As national laws and more modern judicial systems develop, challenges arise in integrating customary law into a broader legal framework. National law, which regulates general and universal matters, must be able to function in conjunction with customary law systems that reflect local values and needs (Sihombing, 2018). This process involves recognizing the existence of customary law and applying its principles in the context of state law, while ensuring that the principles of national law are adhered to.

Customary law not only functions as an alternative legal system, but also plays an important role in maintaining cultural identity, indigenous peoples' rights, and social justice. Customary institutions in various regions are often at the forefront of enforcing customary law, resolving disputes, and preserving local traditions (Wicaksono, 2020). However, challenges such as conflicts between customary law and state law, as well as



social and political changes, require special attention in the integration process (Zainuddin, 2021).

This article aims to examine the role of customary law in the national legal structure of the archipelago with a focus on how customary law is recognized and integrated into the country's legal system. Through an analysis of various models of interaction between customary law and positive law, as well as case studies in several regions, this article will explore the contribution of customary law to the preservation of culture and social justice in Indonesia. With a deep understanding of the role of customary law, it is hoped that useful insights can be obtained to strengthen the harmonization between customary law and national law, as well as support the achievement of justice and diversity in the Indonesian legal system.

METHODS

This article uses a qualitative approach to examine the role of customary law in the national legal structure in the archipelago. The methods applied include literature studies, comparative analysis, and case studies. This method is expected to provide a comprehensive understanding of the role of customary law in the national legal structure of the archipelago and its contribution to the preservation of culture and social justice in Indonesia.

RESULTS AND DISCUSSION

1. Recognition and Protection of Customary Law in National Law

The results of the study show that the recognition of customary law in the Indonesian national legal system has undergone significant development. In the 1945 Constitution Article 18B paragraph (2), there is recognition of customary law communities and their rights, which provides a constitutional basis for the application of customary law (Lestari, 2017). However, the implementation of this recognition often faces challenges, such as the lack of uniformity in recognition by local governments and the lack of harmony between customary law and positive law (Sihombing, 2018).

Formal recognition of customary law can be seen in Law No. 6 of 2014 concerning Villages, which provides space for customary villages to regulate internal affairs according to their customs. However, there are disparities in the implementation of this law in various regions, given the differences in the strength and scope of customary law in each region (Hartono, 2021).

2. Integration of Customary Law and National Law

Comparative analysis shows that the model of integration between customary law and national law varies across Indonesia. In Bali, customary law is well integrated into the national legal system through clear regulations regarding authority and limitations. In Papua, although there is recognition of customary law, its

implementation is often hampered by conflicts between customary norms and national law and differences in interpretation (Nugroho, 2016).

In Sumatra, especially in the Minangkabau region, customary law has a strong influence in regulating people's lives. The integration of customary law here has succeeded in maintaining local wisdom while adapting to national law. However, there are challenges in terms of enforcing customary law which is often poorly supported by the national justice system (Sihombing, 2018).

3. The Role of Customary Institutions in Law Enforcement

Customary institutions play a central role in enforcing customary law, with the responsibility to resolve disputes and regulate social life based on customary norms. In areas such as Bali and Minangkabau, customary institutions have well-organized and officially recognized structures, so they are able to function effectively in the local legal system (Wicaksono, 2020).

However, in some areas, customary institutions face difficulties in adapting to rapid social and national legal changes. Conflicts between customary norms and positive law often occur, and customary institutions must navigate between tradition and modern legal demands. For example, in Papua, customary institutions often do not have adequate support from the government in handling cases involving legal conflicts between custom and state law (Hartono, 2021).

4. Challenges and Opportunities in Customary Law Integration

The main challenges in the integration of customary law with national law include differences in interpretation, conflicting norms, and lack of understanding of customary law among national legal practitioners. In addition, globalization and rapid social change often cause conflicts between customary values and modern demands (Nugroho, 2016).

However, there is an opportunity to strengthen integration through increased dialogue between customary institutions and national legal institutions, as well as through better training and education on customary law. More consistent recognition and support from the government can help align customary law with national law and increase the effectiveness of law enforcement at the local level (Lestari, 2017; Wicaksono, 2020).

CONCLUSIONS

This article explores the role of customary law in the national legal structure in the archipelago, focusing on the integration and harmonization between customary law and national law. Based on literature review, comparative analysis, and case studies, it can be concluded that customary law has a very important and irreplaceable role in the Indonesian legal system. Customary law not only functions as an alternative legal system, but also plays a central role in cultural preservation, dispute resolution, and social regulation at the local level.

1. Recognition and Protection of Customary Law

Recognition of customary law in the 1945 Constitution and related laws provides a strong legal basis for the existence and application of customary law. However, its implementation is often inconsistent throughout Indonesia. Recognition of customary law at the constitutional and statutory levels provides space for indigenous communities to maintain their norms and traditions, but there are still challenges in aligning it with more general national laws (Lestari, 2017).

2. Integration of Customary Law with National Law

The integration of customary law with national law shows significant variation across regions. In Bali and Minangkabau, the integration of customary law with national law can be considered successful, with customary law functioning harmoniously with state law. In other regions such as Papua, differences in interpretation and conflict between customary norms and national law are major challenges (Sihombing, 2018; Nugroho, 2016). Successful integration models in various regions can be an example for other regions in harmonizing customary law with national law.

3. The Role of Customary Institutions

Customary institutions play an important role in enforcing customary law and resolving disputes at the local level. In some areas, customary institutions have officially recognized structures and functions, allowing them to manage customary affairs effectively. However, in other places, customary institutions often face difficulties in adapting to changes in national laws and internal challenges (Wicaksono, 2020; Hartono, 2021).

4. Challenges and Opportunities

The main challenges in integrating customary law with national law include conflicts between customary norms and positive law and the lack of support from the judicial system for customary law. However, there are opportunities to improve harmonization through dialogue between customary institutions and national legal institutions, as well as through more consistent recognition and support from the government (Nugroho, 2016; Hartono, 2021).

Overall, customary law plays an important role in maintaining cultural diversity and social justice in Indonesia. Harmonizing customary law and national law requires an inclusive approach that is sensitive to local contexts. With the right approach, the Indonesian legal system can better appreciate and utilize the wealth of customary law in the archipelago, and support justice and cultural preservation throughout the country.

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