

The Subject of Customary Law and the Relevance of Customary Law in the Indonesian Legal System

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DOI: <https://doi.org/10.52403/ijrr.20250436>

ABSTRACT

Customary law is a legal system that emerges from local wisdom and evolves within Indonesian society, reflecting distinctive cultural values. The existence of customary law is recognized in the 1945 Constitution. The subjects of customary law include individuals, families, and indigenous communities, each holding specific rights, obligations, and statuses based on prevailing customary norms. However, modernization and globalization present significant challenges, including the marginalization of customary law within the national legal system and its limited adaptability to social and economic dynamics. Therefore, this study aims to examine the existence of customary law in maintaining societal harmony and the challenges faced in its application in the modern era. This research employs a normative approach with qualitative analysis based on literature reviews and relevant case studies. The findings indicate that customary law possesses high flexibility in adapting to societal dynamics, despite facing challenges from the influence of positive law and globalization.

Keywords: Customary Law, National Legal System, Modernization, Legal Adaptation, Indigenous Communities.

INTRODUCTION

Indonesia is a country with a diverse society consisting of various ethnic groups,

cultures, and customs. This diversity is one of the nation's greatest assets. The variety of customary laws in Indonesia is recognized in Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that: "The state recognizes and respects indigenous legal communities along with their traditional rights as long as they remain in existence and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia."

Article 18B Paragraph (2) of the 1945 Constitution holds significant meaning for indigenous communities and their traditional rights in Indonesia. It demonstrates that the state values and respects the diversity and rights of indigenous communities as part of the nation's cultural heritage.

However, in practice, the implementation and harmonization between customary law norms and national law often face challenges. The differences in characteristics between unwritten customary law and codified national law create complexities in their simultaneous application. Furthermore, the perception that customary law is traditional and incapable of keeping up with modern developments contributes to its marginalization as a source of law in Indonesia.

The research questions in this study are: 1) What is customary law, and how can its concept be comprehensively understood within the contexts of culture, history, and social practices?; 2) Who are the subjects of

customary law, and how do individuals, groups, communities, or other entities comply with customary legal regulations?; 3) What is the relevance of customary law within the Indonesian legal system, and how does it contribute to legal diversity in society.

The objectives of this research are: 1) To define and comprehensively understand customary law, including its essential elements within the contexts of culture, history, and social practices. 2) To identify and analyze the subjects of customary law, such as individuals, groups, communities, or other entities that are subject to customary legal rules. 3) To explain the relevance of customary law in the Indonesian legal system and how it contributes to legal diversity in society.

MATERIAL AND METHODS

This research employs a normative legal research method using the statute approach and conceptual approach (Nanda Dwi Rizkia and Fardiansyah 2018). Normative legal research is conducted by examining various relevant laws and regulations, legal doctrines, and court decisions related to legal protection. The data collection technique used in this study is library research, which involves reviewing various primary, secondary, and tertiary legal sources (Qamar and Rezah 2020). Primary legal sources include legislation and statutory regulations. Through this normative approach and literature study, this research is expected to provide a comprehensive understanding of legal protection in Indonesia.

RESULTS AND DISCUSSION

Definition of Customary Law

Customary law in Indonesia is a set of unwritten norms and rules rooted in cultural values that have developed in various regions. Generally, customary law differs from one region to another. According to Soerojo Wignjodipoero, customary law is a collection of norms derived from the people's sense of justice and continuously

evolves. F.D. Holleman defines customary law as an independent legal system because its norms are living rules followed with sanctions and obeyed by the people residing in a particular area. Customary law also regulates human behavior in daily community life.

Soekanto describes customary law as essentially habitual law, but with legal consequences or sanctions (*das sein das sollen*). This means that customary law encompasses all unwritten traditions that exist within society in the form of morality, customs, and established practices that carry legal consequences or sanctions.

The fundamental elements of customary law include social norms that serve as behavior guidelines accepted and respected by community members, cultural values that reflect essential principles and the identity of a community, and traditions and customs that are consistently practiced and characterize a specific region. Furthermore, customary institutions play a role in overseeing and enforcing customary law, while social sanctions, such as reprimands or fines, are applied for violations of customary norms. In the cultural context, customary law represents the identity and heritage of a community, preserving ancestral values amid modernization. Historically, customary law existed before the introduction of formal legal systems and has played a crucial role in regulating social life. In practice, customary law serves as a guide in conflict resolution, land rights, marriage arrangements, and various other aspects of life, ensuring harmony and balance within the community.

Subjects of Customary Law

The term "legal subject" originates from the Dutch word "Recht subject," meaning an entity that holds rights and obligations. It refers to an entity that can possess rights, such as individuals or legal entities recognized by the local customary community. Sudikno defines a legal subject as anything that can acquire rights and obligations under the law. Similarly,

Subekti states that a legal subject is a bearer of rights in law, namely individuals. In the context of Indonesian customary law, legal subjects include individuals (humans) and legal entities recognized by customary communities. The Constitutional Court Decision No. 35/PUU-X/2012 strengthens the recognition of customary communities as legal subjects. This ruling affirms that customary law is no longer part of state-owned forest land but belongs to indigenous communities. This decision reinforces that indigenous communities have rights and obligations in their capacity as a collective group.

Thus, the subjects of customary law in Indonesia encompass individuals and legal entities recognized by customary communities, with increasing recognition reinforced through court rulings.

Relevance of Customary Law in the Indonesian Legal System

The rapid development of modernization and the increasing complexity of society have significantly impacted the existence of customary law in Indonesia. Indonesia is a country that recognizes pluralism in its legal system. There are three types of law in effect in Indonesia: Western law, religious law, and customary law. In daily life, some communities still rely on customary law as a guideline for their activities and dispute resolution. Each region in Indonesia has its own diverse customary legal system that governs social life. Most customary laws are unwritten but continue to evolve along with societal changes.

However, the development of customary law often raises questions about whether it remains relevant in regulating daily life and resolving disputes. On the other hand, Indonesia also has positive law formulated by legislative institutions. Both customary law and positive law have different levels of binding authority, although both are constitutionally recognized.

The official recognition of customary law by the state is limited in scope. This is reflected in Article 18B, Paragraph (2) of

the 1945 Constitution, which states: "The state recognizes and respects the unity of indigenous legal communities along with their traditional rights, as long as they remain in existence and are in accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia, as regulated by law." This article guarantees the existence of customary law and its traditional rights, provided that the following conditions are met:

- 1) Customary law remains relevant and aligns with societal developments.
- 2) Customary law is consistent with the principles of the Unitary State of the Republic of Indonesia.
- 3) Its implementation is regulated by law.

This constitutional guarantee reflects the state's respect for the existence of customary law as part of the national legal system. Customary law emerges from the needs and practices of Indonesian society, making it naturally capable of addressing legal issues that arise within specific communities.

In the context of national legal development, customary law needs to be further studied, considering that each region has different social, cultural, and legal values. This results in a diversity of legal principles as part of the societal culture. Although customary law maintains traditional values, it is also dynamic and adaptable to changes affecting society. This flexibility is a key advantage of customary law, ensuring its continued relevance within the national legal system. The Constitution, as the highest normative rule, guarantees the recognition and respect for customary law. Judges, including constitutional judges, are required to understand and explore the legal values and sense of justice that exist within society.

CONCLUSIONS

Customary law is an essential part of the Indonesian legal system, reflecting the cultural values and traditions that have developed within society. As an unwritten

legal system, customary law continues to evolve, adapting to the needs and practices of communities in different regions. The recognition of customary law has been affirmed in Article 18B, Paragraph (2) of the 1945 Constitution, which guarantees its existence as long as it meets the requirements of relevance, alignment with the principles of the Unitary State of the Republic of Indonesia, and legal regulation. Within the national legal system, customary law serves as a crucial guideline for indigenous communities in daily life, conflict resolution, and the regulation of various aspects, such as land rights, marriage, and other traditions. One of the key strengths of customary law is its flexibility in adapting to changing times without losing its traditional values. However, the role of customary law is often questioned in relation to positive law, which has a different binding force. This creates challenges in harmonizing customary law with national law. Therefore, an inclusive approach is needed to ensure the sustainability of customary law as an integral part of national legal development.

Declaration by Authors

Acknowledgement: None

Source of Funding: None

Conflict of Interest: No conflicts of interest declared.

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How to cite this article: Talita Syamantha, Dedi Hermawan Syahputra, Zulfikar. The subject of customary law and the relevance of customary law in the Indonesian legal system. *International Journal of Research and Review*. 2025; 12(4): 298-301. DOI: <https://doi.org/10.52403/ijrr.20250436>
