



# Traditional Law of The Nusantara; Reflection of The Indigenous Justice System in Indonesia

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## ***Abstract***

The development of the order of life in Indonesia, has always experienced very significant changes and developments, these developments have begun to occur when this country was not yet independent, one aspect that would like to be further improved in order to form a national judicial law is the customary justice system. This study uses a descriptive method with a qualitative approach and data triangulation analysis, the results of the study explain that the customary justice system is a system formed from various Indonesian values and culture, customary law by law is not yet included in a written law but its existence is still maintained Until now, customary law is reflected as a characteristic of the nation because it is able to explore various values contained in society, such as the values of togetherness, mutual cooperation, having a high national spirit, and upholding the sense of unity and integrity of the Republic of Indonesia. k Indonesia, besides that, there are many who think that customary law is the original personality and nature of the Indonesian nation that cannot be left behind and must be enforced for the sake of various interests of the ideals of the Indonesian nation and state.

**Keywords:** Customary law, System, Judiciary.

## **1. Introduction**

Efforts to build a national law in Indonesia as one of the laws that are recognized and implemented in the context of forming a just and prosperous society are still being pursued even before this country became independent, indeed in the early days of its independence, the Indonesian people had not found a law. stable and able to make laws and regulations that are complete and touch various aspects of the life of the nation and state (Wiranata, 2005; Achmad, 2021). So to avoid a legal vacuum that can result in chaos and disputes in various parts of Indonesia, the laws that apply during the Dutch colonial administration still enforced by referring to Article II of the Transitional Rules of the 1945 Constitution of the Republic of Indonesia, Article 192 of the Constitution of the United States of Indonesia, and Article 142 of the Provisional Constitution of 19501. With the ratification of the 1945 Constitution of the Republic of Indonesia, the nation Indonesia has a new legal basis, a law that reflects the personality of the Indonesian nation, to regulate all regulations in

the context of realizing a just, prosperous and prosperous Indonesian society (Arliman, 2018).

Entering the era of changing times that are increasingly developing, the process of development and management of the government order in Indonesia is always colored with various dynamics and currents of policies implemented by the government system that is in power. The application of the law which is considered not to be able to synergize properly and the many encouragements from various parties to create a law that is in accordance with the values and personality of the Indonesian nation is still being pursued and can be implemented in the process of national and state life, especially the various kinds of problems that are currently being investigated (Abubakar, 2013; Salim, 2015). faced by the Indonesian state demanding the law to continue to move forward and control the social order so that it is in accordance with the ideals of national development to create an orderly, prosperous society capable of upholding the values of the unity and integrity of the Republic of Indonesia, in accordance with the preamble to the Constitution. In the fourth paragraph of 1945, it is explicitly explained that, to form an Indonesian state government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, lasting peace and social justice.

Building a national law based on the values and norms of the Indonesian people is a top priority and a responsibility that must be realized immediately for the formation of an ideal law that is able to provide social protection guarantees for all Indonesian people. echoed as the demands of the people who want a new rule of law and of course in accordance with the personality of the nation, because it cannot be denied that as a country rich in various tribes and cultures, there are also several customary laws that live and develop in parts of Indonesia, according to Aditya (2019) Customary law is a complex of norms rooted in the people's sense of justice which is always evolving and includes the regulations of human behavior in everyday life in society, most of which are unwritten, always obeyed and respected by the people because they have legal consequences (sanctions), meanwhile according to Mansur (2018) states that customary law is a synonym of "unwritten law." Unwritten law means law that is not formed by the legislature. Furthermore, Manarisip (2013) explained that customary law is not a separate legal field but covers all legal fields. Thus there is customary constitutional law, customary civil law, customary trade law, customary criminal law and so on.

Meanwhile, to form an ideal law that is able to provide welfare for the Indonesian people, as stated in the section of the 1945 Constitution of the Republic of Indonesia concerning the Indonesian judicial administration system which reads, judicial power is an independent power to administer justice (Damanik, 2019; Siombo&Wiludjeng, 2020). In order to enforce law and justice, judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court, and other bodies. whose function is related to judicial power regulated in law.

Meanwhile in other government regulations, specifically in the National Long-Term Development Plan program for 2005-2025, it is explained that one of the tasks

of the state which has not yet been properly realized is to establish an Indonesian national legal system that is reflected in the aspirations of the people. Indonesia, as well as the cultural values of the nation, there are several government efforts in realizing the vision and direction of the national development plan through reforming national laws and regulations, then empowering existing legal institutions/institutions, increasing the integrity and morale of state law enforcement officers, and lastly, improving various legal facilities and infrastructure, besides that the government is also trying to reform the Indonesian criminal law system which is a legacy of the Dutch colonialism, as well as various laws and regulations that are not in accordance with the characteristics and personality of the Indonesian people (Alting, 2011; Pide, 2017).

So based on several descriptions and elaborations contained in the vision and direction of the National Long-Term Development Plan that law enforcement efforts must be in accordance with the values contained in the life of the Indonesian people, not only from the perspective of legal substance, because it creates a legal institution (Sudaryatmi, 2012; Abdullah, 2015). that is in accordance with the ideology of the nation and state, there must be more efforts from the government so that everything can run according to what is expected by all Indonesian citizens, one of the efforts that are often found and become a topic of discussion for the people of the country is to raise customary law as one of the one state institution that must be implemented in the Indonesian government system, because as we know that customary law is the actual elaboration of national legal regulations, which are in accordance with the mandate of the state constitution and a reflection of the Indonesian people, Article 18B paragraph (2) of the Constitution 1945 states: "The state recognizes and respects customary law community units 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, which are regulated by law.

So as an Indonesian citizen who always prioritizes the moral values of the nation, it is appropriate for the government to form a new legal basis that is in accordance with the characteristics of the Indonesian people, through the spirit of mutual cooperation, loving various differences, maintaining the integrity of the nation, and of course upholding the spirit of struggle and justice and strive for public welfare in the context of realizing the ideals of the nation so that the Indonesian people can live a just and prosperous life.

## **2. Approach Method**

This research uses descriptive analysis research using qualitative methods. Researchers also want to examine a phenomenon that discusses the Reflection of the Customary Justice System in Indonesia, qualitative research is aimed at a very detailed and detailed study where the results of the research are studied in depth and then interpreted clearly. There are two sources of data used in this study, where the data includes primary data and also secondary data, then the facts of the findings are described in a very easy form of discussion so that researchers can find a complex and structured understanding in a directed manner.

### **3. Result and Discussion**

#### **3.1 The Existence of Customary Courts in Indonesian Legislation**

When interpreted into the big Indonesian dictionary, the meaning of justice is everything that concerns court cases, while the meaning of law itself is everything related to several state tasks, in order to enforce various laws and justice, so we can conclude that customary justice is , a court that is held to resolve cases that arise within an indigenous community, juridically the meaning of a customary court is a peace court within the customary law community which has the authority to examine and try the members of the customary law community concerned.

As one of the unwritten laws, customary law is born from the reflection and values of justice that live and develop in an environment of indigenous peoples, customary law regulations are not determined by a state government, but are obeyed and become legal forces that develop in the community. a certain community environment, according to Tahali (2018) Customary law is unwritten law in unwritten regulations, including living regulations which, although not stipulated by the authorities, are obeyed and supported by the people based on the belief that these regulations have legal force.

If you look at the history of customary justice in Indonesia, it cannot be separated from the history of the Indonesian judicial system and government since the Dutch colonial era, to the era of national independence where the Indonesian people themselves have gone through various judicial systems that greatly affect all aspects of Indonesian people's lives precisely in 1814 Indonesian customary law began to be implemented through the Raffles regulation led by the Dutch, the regulation contained directions for all regional heads who led their territory to form a judicial and moral law based on values and pre-existing culture, as long as the rule of law does not conflict with the Dutch colonial system of government at that time, the rule is stated in Article 86 of the 1804 charter as a judicial basis for the BumiPutera group (Pohan, 2018; Putra & Farda, 2019).

After the independence of the Indonesian state, there were several legal foundations that were used as references regarding the application of customary law for the Indonesian people, the government was named the Constitution of the United States of Indonesia (RIS), which was formed in 1949, one of which contains all judicial decisions in Indonesia must contain the law. customary law as a sovereign legal basis and recognized by the government, then when the government switched to the UUDS system, the mechanism for recognizing customary law was still a priority and must be involved in every formulation and decision of the ruling government. UUDS) in 1950 to 1951, Emergency Law Number 1 of 1951 was issued concerning temporary measures to exercise power, structure of power and judicial procedures using customary law.

After entering the reformation era, precisely in 1998, and marked by the fall of President Suharto, the government system also underwent various changes. However, these changes do not have an impact on the existence of customary law as one of the laws recognized by the Indonesian government, if previously contained in Article 18B paragraph 2, then thereafter contained in Law 48 of 2009 (Sulaiman et al, 2019; Sidiq&Maulida, 2021), although it is not stated clearly, will but the meaning contained in the article, still shows how the government still recognizes and respects

the existence of customary law, this can be seen in article 10 paragraph (1) which reads, courts are prohibited from refusing to examine, try, and decide on a case filed under the pretext of that the law does not exist or is unclear, but it is obligatory to examine and try it. Paragraph (2) The provisions as referred to in paragraph (1) do not close efforts to settle civil cases amicably.

As for some of the characteristics and characteristics inherent in customary law itself, among others, customary law is in the form of traditional, meaning that customary law is passed down from generation to generation and is considered as inheritance law from its predecessors, but its nature and authenticity are still considered sacred and developed until today. at this time, then customary law is religious, meaning that the rules contained in customary law are directly related to the beliefs of indigenous peoples themselves, so that many indigenous peoples still believe in animist and dynamism beliefs, the next point is customary law is togetherness, the point is that, in an environment of customary law, togetherness and harmony among others is still firmly held and based on a sense of kinship and mutual help which is very well preserved and becomes a symbol of customary law itself, and the last one is open and simple, meaning that the nature of and character of customary law can accept various elements that come from outside, as long as they do not damage and change the original nature of the customary law, besides that customary law is simple, uncomplicated and unwritten by governmental law, meaning that it is easy to understand and understand by various groups (Sabardi, 2014; Sidiq et al, 2021).

As a country that upholds the values of justice and peace, Indonesia guarantees a rule for the implementation of independent judicial power for all Indonesian people, as well as in enforcing an ideal law based on the values of the Constitution and Pancasila as the nation's ideology. , as contained in article 24 of the 1945 Constitution where the article clearly regulates the judicial regulations for the Indonesian state, which reads, judicial power is the highest peak of power, independence and guarantees every judiciary of the Indonesian people, then judicial power is exercised by a state institution called the Supreme Court and the judicial bodies under it are organized into a religious court environment, a military court environment and a constitutional court.

### **3.2 The Development of Customary Law in Indonesia**

The official acknowledgment of the existence of indigenous peoples in Indonesia has actually been stated in Article 18 of the 1945 Constitution, where the state is obliged to respect the rights and origins of customary areas, while the Amendment to the 1945 Constitution places the issue of indigenous peoples in Article 18 B paragraph 2, along with local government, besides that in another article, precisely in article 28 paragraph 1, indigenous peoples are termed as traditional communities who live in groups and are bound to each other. Constitutionally, there are five aspects that must be fulfilled within the scope of customary law communities, including being formed on the basis of togetherness that has been established for generations, then institutionalized and adapted to the changing times that develop, the next point is that there is a clear legal territory or territory. , and the last one still relies on sources of income from various forests, seas or mountains as the main income in meeting the needs of daily life, according to Haq (2020) customary law is

the rule of human habits in social life. Since humans were sent down by God to the face of the earth In the development of his life, the occurrence of the law starts from the human person who is given by God reason, thought and behavior as a source of habits and rules in their lives.

As one of the most influential laws in the creation of the independence of the Indonesian state, the existence of customary law in the midst of Indonesian society is getting more attention and appreciation from various groups, for that the involvement of customary law in the creation of the formation of national law is highly respected and is one of the one of the laws that have the most influence on the living conditions of the Indonesian people. Similarly, Article 28 I paragraph (3) stipulates: "Cultural identity and rights of traditional communities are respected in line with the development of times and civilizations". In accordance with the provisions in the articles of the Constitution of the Republic of Indonesia, it can be said that the existence of customary law is recognized as long as the customary law is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia (Anggoro, 2017; Munandar, 2019).

Likewise, in Law No. 17 of 2007, regarding the long-term national development plan for 2005-2025, it is stated that customary law was born from a local wisdom of the Indonesian people, in order to form a national legal constitution, which is sourced from cultural values and traditions. ideology of the Indonesian nation, as for several efforts to improve the legal substance and legal structure in the Indonesian state, carried out by making several efforts, among which are, rearranging some legal substances through legislation and rebuilding the image and quality of customary law to form a legal reflection reflected in the habits of the Indonesian people, then carrying out several reforms of the legal structure through the arrangement and professionalism of judges and court staff, interpreting the relevance and existence of customary justice in the legal order in Indonesia, is an ideal of the nation that must be realized immediately. In various programs that are being launched by various government institutions in Indonesia, the revival of customary justice in the justice system in Indonesia must be based on respect and protection of indigenous peoples, by affirming normative juridical, especially regarding the formulation in laws and regulations. invitation.

In various lives among Indonesian people, the legal position cannot stand alone, furthermore, the law must also be accompanied by various values and culture of the surrounding environment. Law as a social rule cannot be separated from the values that apply in a society, it can even be said that is a reflection of the values that live in society (Harahap, 2018). Good law is law that is in accordance with the living law in society, of course it is a reflection of the values that live in society. As we know that the judicial system in Indonesia still adheres to the executive and legislative laws as forming legal judicial authority and is recognized in writing by the government, therefore in order to re-establish the existence of customary law as one of the sovereign laws in Indonesia. In Indonesia, there is a need for a re-examination of various legal institutions to explore the meanings implied in the customary law, to be further accommodated in the establishment of an effective and applicable judiciary for the people of Indonesia (Febriwanti& Mansur, 2020).

As we know that the customary law mechanism in the Indonesian state is formed on the basis of a series of norms that regulate various behaviors and actions of the Indonesian people as a whole, customary law has a noble goal, namely the creation of an order and legal justice in accordance with the ideals of the ideals of the Indonesian nation, although it is included in an unwritten law, but the role of customary law is believed to be able to restore legal protection that can bring Indonesian people to prosperity and justice. Because in fact the law that applies and is sovereignly ratified by the Indonesian government is criminal and civil law, and various state courts that are under the power and authority of the Supreme Court, as contained in a State Law Article 2 (3) of Law No. Law Number 48 of 2009 which reads: "All courts in the entire territory of the Republic of Indonesia are state courts regulated by law". This Article only recognizes the State Courts as the judiciary applicable in Indonesia, namely courts within the scope of the General Courts, Religious Courts, Military Courts, State Administrative Courts, and Constitutional Courts. This fact proves that the law has not been in favor of strengthening customary courts. (Lapadengan, 2015). In the case of Aceh, this situation can cause confusion for justice seekers because they do not get legal certainty.

In the unitary state of the Republic of Indonesia, the customary justice system is often also known as people's law, this law will continue to grow and develop in the life of the Indonesian people, even the concept of customary law can be used as a norm and various policies to realize a concept of fair governance. and able to maintain every order and protection that occurs in a social community environment, in addition to functioning as state law, thus the true meaning of law does not only function as one of the state laws, but is able to become a law that represents religious law and customary law, The development of national law in Indonesia needs to be changed, from a centralized legal ideology (legal centralism) to an ideology of legal pluralism (legal pluralism). Although legal pluralism is seen as conflicting with the national legal system, the existence of customary law and Islamic law in national law can actually strengthen national law. Especially in realizing the purpose of the law itself, namely, maintaining order, regulation and harmony of the Indonesian people

#### **4. Conclusion**

The development of customary law courts in Indonesia was already known before the independence of the Indonesian state, in simple terms customary judicial law prioritizes aspects contained in the characteristics of Indonesian society, as one of the unwritten laws, customary court law has not been legally recognized by the government. Indonesia, and to strive for a legal justice system that is in accordance with the Indonesian people, the need for further discussion on technical matters and their implementation in Indonesian society, customary law is really expected to become a law that can implement various legal policies in accordance with the ideals of the nation, namely to educate the nation, and form a just and peaceful society. customary law was born and developed into a single entity that cannot be separated, because customary courts can be a real solution for people who want a new legal court that is very populist and considers various positive laws in Indonesia to be incompatible with the interests of the nation, basically law Criminal and civil law

applied in the Indonesian justice system does not reflect the values of the Indonesian people.

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