

Evolution and Development of Customary Law in the Archipelago: From Tradition to Modernity

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ABSTRACT

Customary law in the archipelago is a deep cultural heritage and plays a significant role in the lives of traditional communities. This article examines the evolution and development of customary law in Indonesia, from its traditional roots to its adaptation in a modern context. This study aims to understand how customary law, which was originally local and traditional, has adapted to social, political, and legal changes that have occurred at the national and global levels. Through a historical approach and literature analysis, this article identifies important stages in the evolution of customary law, including the influence of colonialism, integration with the national legal system, and post-independence legal reform. The main focus lies on how customary law adapts to the dynamics of modernity while maintaining its cultural essence. This study also explores the challenges faced by customary law in facing globalization and social change, as well as efforts to maintain its sustainability amidst an increasingly dominant national legal system. The results show that customary law has undergone significant changes but continues to play an important role in society. Adaptation of customary law includes adjusting norms and practices to align with national law and modern values, without losing its original cultural identity. This article concludes that although customary law faces various challenges, it continues to contribute to the preservation of culture and dispute resolution in indigenous communities, as well as playing a role in the development of more inclusive national laws.

Keywords: Customary Law, Evolution, Modernity, Nusantara, Legal Integration, Cultural Preservation

INTRODUCTION

Customary law in the archipelago has a long history as a legal system that developed in the social and cultural context of local communities. As an integral part of traditional community life, customary law functions to regulate social norms, resolve disputes, and maintain social balance based on local wisdom. With its depth and complexity, customary law is not just a rule, but also a reflection of the culture and identity of the community that adopts it (Muliadi, 2015).

Along with the arrival of colonialism, social change, and modernization, customary law in the archipelago underwent a significant transformation process. The colonial period, with the legal system introduced by the colonizers, often conflicted with existing customary norms. During independence, Indonesia faced a major challenge in integrating customary law with the newly formed national legal system. This process involved harmonization between the principles of customary law and positive law that apply nationally (Lestari, 2017).

Rapid social change and globalization in the modern era bring new challenges to customary law. The influence of modernity often demands adjustment and adaptation of customary law to remain relevant and effective in addressing contemporary problems. In this context, it is important to evaluate how customary law adapts to the dynamics of modernity, while maintaining its cultural essence (Sihombing, 2018).

This article aims to examine the evolution and development of customary law in the archipelago from a historical to contemporary perspective. This study includes an analysis of the changes experienced by customary law, external influences that affect its evolution, and the challenges and opportunities faced in the process of adaptation to modernity. With this approach, it is hoped that a deeper understanding can be obtained regarding how customary law functions within the current national legal framework and how it contributes to the preservation of culture and social regulation in the modern era.

METHOD

This article uses a multidisciplinary approach to analyze the evolution and development of customary law in the archipelago, from tradition to modernity. The methods used include literature studies, historical analysis, and case studies to provide a comprehensive picture of this article. This method is expected to provide in-depth insight into the evolution and development of customary law in the archipelago and its contribution to the national legal system in the context of modernity.

RESULTS AND DISCUSSION

This article examines the evolution and development of customary law in the archipelago from a traditional to modern perspective. The results of the study indicate that customary law has undergone significant changes in response to external and internal influences. The following discussion outlines the results of the study and provides in-depth insights into the adaptation of customary law in a modern context.

1. Evolution of Customary Law from Tradition to Modernity

a. Traditional Customary Law

Customary law in the archipelago, which developed before colonization, has a strong and comprehensive system to regulate people's lives. Customary law is usually based on local values and traditions that regulate various aspects of life, including land ownership, marriage, and dispute resolution. Each customary community has rules that are tailored to its needs and social conditions (Boer, 2020; Harsono, 2019).

b. Impact of Colonialism

The influence of colonialism brought major changes to the customary law system. European colonialism introduced Western laws that often conflicted with customary law. The colonial system often ignored or even replaced customary law with new legal rules that prioritized colonial interests. However, in some areas, customary law adapted to this influence, such as in areas that maintained customary practices while adjusting to colonial law (Subekti, 2018).

c. Post-Independence Reform

After Indonesia's independence, the national legal system was regulated by laws that recognized customary law but often within certain limits. The Basic Agrarian Law of 1960, for example, regulates land rights by considering customary law but still upholding national law. During this period, customary law began to be integrated into the national legal framework, although it often faced challenges in its implementation (Bambang, 2021; Sugiharto, 2021).

2. Adaptation of Customary Law in a Modern Context

a. Adjustment and Harmonization

In facing the challenges of modernity, customary law has undergone adjustments to remain relevant. In Bali, for example, customary law continues to play an important role in people's lives despite the influence of modernization and globalization. These adjustments include integration with regional regulations regarding tourism management and development that are in line with customary values (Hadi, 2020).

b. Challenges of Globalization

Globalization presents additional challenges for customary law, such as pressure to align customary practices with international standards and rapid social change. Indigenous communities must confront conflicts between traditional values and modern demands, including human rights and environmental protection. This process often requires negotiation and compromise to maintain a balance between tradition and modernity (Halim, 2022; Santoso, 2023).

3. Case Study

a. Bali

In Bali, customary law continues to function significantly in regulating aspects of daily life. Adaptation of customary law in Bali includes adjustments to government policies in tourism management and environmental protection. The Balinese customary system, known as the concept of "Tri Hita Karana," focuses on the balance between humans, nature, and God, and has adapted to include modern aspects without losing its essence (Hadi, 2020).

b. Minangkabau

Minangkabau customary law, with its strong matrilineal system, faces challenges in adapting to patriarchal national law. Adjustments are made to ensure that matrilineal principles remain recognized in the national legal system. For example, customary rules regarding inheritance and women's rights have been modified to accommodate social changes while maintaining customary structures (Nugroho, 2016).

c. Papua

In Papua, customary law faces major challenges from natural resource exploitation and development pressures. Indigenous Papuans struggle to maintain their land and cultural rights in the context of rapid globalization and development. Legal advocacy and customary protection policies are increasingly important to ensure that customary rights are respected and protected (Sugiharto, 2021).

CONCLUSION

This article describes the journey of evolution and development of customary law in the archipelago, which includes changes from a traditional system to integration within a modern legal framework. Some of the main conclusions of this study are as follows:

1. Sustainability and Flexibility of Customary Law

Customary law in the archipelago has shown impressive sustainability despite facing various external and internal challenges. The customary legal system, which was originally built on local values and traditions, has shown flexibility in the face of changing times. The adjustment of customary norms and practices allows customary law to remain relevant in the modern context, while maintaining its cultural and social essence.

2. The Impact of Colonialism and Adaptation

European colonialism brought significant changes to customary legal systems in the archipelago, with the introduction of Western laws that often conflicted with customary principles. Although many customary norms were suppressed, a number of customary legal systems managed to adapt to these changes. This adaptation involved a combination of absorbing elements of colonial law and maintaining traditional aspects that were still relevant.

3. Integration in National Law

Post-independence, Indonesia faced challenges in integrating customary law into the national legal system. Although laws such as the Basic Agrarian Law of 1960 provide recognition to

customary law, the implementation and harmonization of customary law within the national legal framework often encounter difficulties. This adjustment is necessary to ensure that customary law can function effectively within the wider legal system without losing its cultural relevance.

4. Challenges of Globalization and Modernization

Globalization and modernization present new challenges for customary law, including pressure to align customary practices with international standards and rapid social change. On the other hand, globalization also opens up opportunities to strengthen advocacy and protection of customary rights through international mechanisms and cross-border cooperation.

5. Case Study as Practical Reflection

Case studies in Bali, Minangkabau, and Papua show how customary law adapts to local and global challenges. Bali successfully adapts customary law to development and tourism policies; Minangkabau faces adjustments to national patriarchal law; and Papua struggles to maintain customary rights amidst development pressures.

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