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HARMONIZATION OF LOCAL LAWS AND CULTURE AND SETTLEMENT OF CUSTOMARY DISPUTES IN INDONESIA

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Abstract

This study discusses the harmonization of local laws and culture in the settlement of customary disputes in Indonesia. Indonesia has a diversity of indigenous peoples who still use customary law as a guideline in resolving conflicts, while positive law or national law is formal and written. The difference in character between these two legal systems often causes a clash of norms, especially related to land disputes, customary rights, and violations of customary rules.

This research focuses on how positive law and local culture can be harmonized so that customary dispute resolution is effective, fair, and accepted by the community. The research also examines the obstacles in the harmonization and possible integration of customary law mechanisms into the national legal system.

The method used is a juridical-sociological approach with qualitative analysis of customary law literature, laws and regulations, government policies, and previous research. The results of the study show that harmonization between positive law and customary law is important to reduce norm conflicts, strengthen dispute resolution, and ensure legal decisions in accordance with the cultural values of the community. Harmonization can be carried out through the recognition of customary law, the integration of customary mediation into the formal legal system, and the strengthening of regulations related to customary law communities.

With this harmonization, the settlement of customary disputes no longer causes conflicts between customary law and positive law, but becomes a process that complements each other and supports justice for indigenous peoples.

Keywords: *Legal Harmonization, Local Culture, Customary Law, Dispute Resolution, Legal Integration.*

A. INTRODUCTION

Indonesia has a diverse culture and customary law system that is still alive in people's daily lives. Each indigenous community has different norms, rules, and conflict resolution mechanisms, adapting to local cultural values. In practice, people often trust customary-based dispute resolution mechanisms because they are considered fairer, faster, and in accordance with the community's social norms.

Customary law, as living law, emphasizes social values and local wisdom in dispute resolution. This mechanism emphasizes deliberation, consensus, and the restoration of social relations, so that conflicts can be resolved without damaging community harmony[1].
On the other hand, Indonesia's positive law is formal, written, and procedural. Land disputes or ownership conflicts in court follow a written legal mechanism that requires documentary evidence, trial proceedings, and an official ruling from a judge[2]. Conflicts arise when customary rulings emphasize the restoration of social relations while national law demands compliance with formal procedures and clear legal sanctions.
The harmonization of local laws and cultures is important because customary disputes often involve sensitive interests, such as rights to land, natural resources, and communal ownership. Without harmonization, clashes of norms can cause prolonged conflicts, hinder justice for society, and undermine the legitimacy of the law.

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[1] *Abdulkadir, Indonesian Customary Law, (Jakarta: Rajawali Pers, 2008), p. 25.*
[2] *Bedner, Adat and the State in Indonesia: Harmonization Challenges, (Jakarta: KITLV Press, 2014), hlm. 48.*

B. DISCUSSION

I. THEORY OVERVIEW

Legal Harmonization Theory Legal harmonization is the process of aligning various legal systems so that they do not contradict each other and run synergism. Harmonization includes the commonality of legal values, principles, and procedures.

Customary Law Theory Customary law is an unwritten, flexible, and living law in society, emphasizing conflict resolution through deliberation, consensus, and restoration of social relations.

Positive Law Theory Positive law is written, formal, and emphasizes legal certainty through clear procedures and sanctions.

National Legal Basis:

1. 1945 Constitution Article 18B paragraph (2): The State recognizes and respects customary law communities and their traditional rights.
2. Law No. 6 of 2014 concerning Villages: Recognizing the rights of customary law communities to manage resources and resolve local conflicts.
3. Law No. 11 of 2020 concerning Job Creation: Strengthening the role of customary law in the management of local resources.

II. Characteristics of Customary Law and Positive Law

1. Customary Law

is flexible, adapting to the social, economic, and cultural conditions of the community. This flexibility allows customary law to respond to social dynamics without being bound by rigid formal procedures. Customary law is restorative, emphasizing the restoration of social relations and community harmony, not just sanctioning those who commit violations.

Customary law is based on deliberation and consensus, where customary heads or community leaders mediate. This process involves all parties involved, so that the decisions taken are considered fair and valid in the eyes of the local community.

For example, in Central Kalimantan, a customary land dispute between two village groups was successfully resolved through customary meetings. The traditional head facilitated deliberations involving all affected families, and the resulting decision was accepted by all parties as it emphasized the restoration of social relations and collective agreement. Theoretical analysis, according to Van Vollenhoven, customary law is *a living law* that lives in society, is flexible and adaptive to social changes. The case in Kalimantan shows the application of the principle of the theory, where customary law successfully resolves disputes by taking into account the social context and local values. Abdulkadir's theory also emphasizes the restorative aspect of customary law, which is reflected in the practice of customary mediation

2. Positive Law

Positive law is formal and written, with a clear hierarchy of rules. Dispute resolution through positive law follows official procedures, starting from the filing of a lawsuit to a court decision. This system emphasizes legal certainty for all parties involved.

For example, in Central Java, a land dispute between two parties is submitted to a civil court. The court decided based on the evidence of land certificates and other official documents. Although the decision is legally binding, some parties feel dissatisfied because customary values and local deliberations are not taken into account. TheoryAnalysis: Positive legal theory (legal positivism) emphasizes adherence to written rules and formal procedures.[3] The case in Central Java shows the strength and limitations of positive law: legal certainty is guaranteed, but aspects of local wisdom are not accommodated. This shows a fundamental difference with the principle of restorative customary law.

[3] *Muladi, Introduction to Customary Law, (Bandung: Citra Aditya Bakti, 2010), p. 45*

III. Harmonization Barriers

1. Differences in Basic Principles
   Customary law emphasizes social restoration, while positive law emphasizes legal formality and certainty. This difference poses difficulties in integration, as restorative customary judgments are often not recognized by the courts.
2. Lack of Formal Recognition of Customary Law
   Although the Village Law and the 1945 Constitution recognize customary law communities, some regions have not yet given full formal recognition.
3. Lack of Understanding of the Community and Law Enforcement
   The community's ignorance of formal procedures and the lack of legal understanding of customary law hinder harmonization.
4. Potential Conflicts of Interest
   Land and natural resource disputes can trigger horizontal conflicts if harmonization does not work.

Comparative Analysis: In the case of land in Kalimantan, an obstacle arises when one party demands a formal settlement to the courts, while the other party wants to settle customarily. Bedner's theory states that clashes of norms often arise due to different legal goals: restoration and legal certainty[4]. This case shows the importance of formal recognition of the results of customary mediation so that the two legal systems can complement each other.

IV. Harmonization Strategy

1. Formal recognition of customary law and recognition of customary rights provide a formal legal basis for customary decisions. Thus, customary mediation can be recognized as a national legal guideline.
2. Integration of Customary Mediation into the National Legal System The results of customary deliberations can be legal considerations in court, thereby reducing the clash of norms between customary law and positive law.
3. Capacity Building of Legal Apparatus and the Community Mediation training and socialization of formal-customary law

[4] *Bedner, Adat and the State in Indonesia: Harmonization Challenges, (Jakarta: KITLV Press, 2014), hlm. 48–57.*

are needed so that the apparatus and the community understand both legal systems.

4. Drafting Regulations Bridging the Two Systems
5. Local regulations that recognize the results of customary mediation and formal procedures can be a bridge to harmonization.

Example Practice:

- Kalimantan, Customary meetings are used as evidence for the court's consideration.
- Sulawesi, Internal Regulations of Customary Villages are recognized by the provincial government.
- Papua, The results of mediation by customary institutions can be submitted as a formal legal consideration.

Comparative Analysis: In the case of Kalimantan, the integration of customary mediation with the courts demonstrates the theory of legal harmonization put forward by Van Vollenhoven and Bedner: customary law does not disappear, but becomes part of the national legal system. In Sulawesi, the internal regulations of customary villages recognized by the provincial government demonstrate the implementation of the legal principle of pluralism, where customary law and national law run together without eliminating each other. The case in Papua confirms the theory of legal integration: customary decisions can be a formal consideration, so that the community feels recognized and legal certainty is maintained.

C. COVER

1. Conclusion

The harmonization of customary law and positive law is important so that dispute resolution is fair and accepted by the community. Obstacles to harmonization include differences in principles, lack of recognition of customary law, and limited capacity of communities and apparatus. The harmonization strategy can be carried out through the recognition of customary law, the integration of customary mediation, and the strengthening of national regulations.

2. Suggestion

The government needs to strengthen regulations on the recognition of customary law communities, legal officials and communities need mediation training and legal understanding, further research is needed to assess the effectiveness of customary law integration in various regions.

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