

Preserving Customary Law in the Era of Globalization within Indonesian Society and Legal System

Yuki Muhamad Firdaus
Universitas Negeri Semarang
yukimuhfir45@gmail.com

DOI: 10.23917/laj.v9i1.597

Submission Track:

ABSTRAK

Received:
22 April 2022

Final Revision:
07 August 2023

Available Online:
28 May 2024

Corresponding

Author:

Yuki Muhamad Firdaus
yukimuhfir45@gmail.com

Globalisasi telah memberikan pengaruh yang signifikan terhadap gaya hidup masyarakat, sering kali mengarah pada pergeseran menuju budaya yang lebih modern dan kontemporer, yang oleh banyak orang dianggap lebih praktis dibandingkan dengan budaya tradisional lokal. Pergeseran ini menimbulkan tantangan terhadap pelestarian hukum adat, yang meskipun tidak diakui secara formal oleh negara, tetap eksis dalam masyarakat Indonesia. Sistem hukum Indonesia mengintegrasikan hukum adat sebagai salah satu komponen utamanya, di mana proses pembentukan hukum sangat dipengaruhi oleh kebiasaan yang berasal dari praktik masyarakat Indonesia kuno. Tujuan utama dari penelitian ini adalah untuk mengeksplorasi pentingnya mempertahankan hukum adat di era globalisasi, khususnya untuk memastikan bahwa generasi mendatang, terutama generasi muda, memahami dan menghargai hukum adat mereka sebagai ciri khas negara Indonesia. Penelitian ini menggunakan metode kualitatif, dengan memanfaatkan teknik penelitian kepustakaan dan pengumpulan data. Temuan ini menyoroti pentingnya melestarikan dan mempromosikan budaya serta adat istiadat Indonesia untuk menjaganya bagi generasi mendatang dan memperkuat perannya sebagai ciri khas negara Indonesia.

Kata Kunci: hukum adat, globalisasi, sistem hukum Indonesia

ABSTRACT

Globalization has significantly influenced people's lifestyles, often leading to a shift towards more modern and contemporary cultures, which many perceive as more practical than traditional local cultures. This shift poses a challenge to the preservation of customary law, which, despite not being formally recognized by the state, continues to exist within Indonesian society. The Indonesian legal system integrates customary law as one of its key components, with the process of law enactment deeply rooted in customs derived from ancient Indonesian societal practices. The primary objective of this study is to explore the importance of maintaining customary law in the era of globalization, particularly to ensure that future generations, especially the youth, understand and appreciate their customary laws as a distinctive feature of the Indonesian state. This study employs qualitative methods, utilizing library research and data collection techniques. The findings

highlight the necessity of preserving and promoting Indonesian culture and customs to safeguard them for future generations and reinforce their role as a defining characteristic of the Indonesian state.

Keywords: customary law, globalization, Indonesian legal system

INTRODUCTION

Many people hold the opinion and assume that culture or customary law originates from the past and is often labelled as outdated. As a result, there is a widespread belief that such laws are not suitable or relevant in the current era, which has entered the age of globalization. However, these assumptions and opinions are not entirely accurate. It is partly true that customary law is regional or traditional, arising from the practices of specific areas, whereas life in the era of globalization is characterized by modernity in almost every aspect. Nevertheless, this assumption is not entirely correct because many customary laws have been incorporated into formal legislation. Furthermore, customary law is dynamic and adaptable to the evolving dynamics of human life, particularly among those who adhere to it (Mayasari, 2017).

Customary law is usually not studied by local communities as a form of knowledge. In discussions and everyday conversations, or even in traditional gatherings, people often equate “custom” with “customary law.” (Hadikusuma, 2014) therefore, simply mentioning “custom” already encompasses “customary law”, which includes customs that may or may not have associated punishments or sanctions.

Nowadays, many customs are beginning to fade within Indonesian society, largely due to the effects of globalization, where many Western cultures have rapidly arrived and influenced traditional customs in Indonesia. The process of globalization is marked by the rapid development of capitalism, characterized by the opening of production, investment, and marketing roles, often driven by transnational corporations. (Fakih, 2001) This is further strengthened by new trade ideologies supported by regulations established by free trade organizations, which have been enacted and are globally applicable. The process of globalization within the framework of capitalism is closely associated with a significant theory of capitalism: modernization, or social change.

Modernization, which can also be referred to as social change, is revolutionary in nature (a rapid shift from traditional to modern eras), characterized by complexity, and gradually affects

all people, leading toward homogenization and progressiveness. Modernization involves the introduction of better living conditions, where the role of modern science plays a crucial part.(Mayasari, 2017)

The contemporary way of life is markedly distinct from that of previous eras, a phenomenon that can be attributed to the globalizing trend. This phenomenon has given rise to the necessity for effective management. The advent of globalization has also brought about a profound transformation in the realm of technology, which has become a pervasive force in human endeavours. However, alongside these benefits, there are also potential challenges, including the possibility of undermining the moral and mental well-being of the younger generation. The effects of globalization are multifaceted, encompassing both advantages and disadvantages for humanity. The advantages include the ease of rapid interaction between regions, provinces, and even countries. On the other hand, the disadvantages involve negative effects on mental health and morality, especially for the younger generation, if they become addicted to advanced technologies (Nahak, 2019)

In the process of globalization, one of the needs is to create a legal framework that facilitates the products of globalization. The most suitable legal framework for this process is positive law. In positive law, there is a principle called the principle of legality, which requires that laws provide legal certainty, and such certainty can only be achieved through rational thinking.

The legal system is conceptualized as a set of historically entrenched attitudes toward the nature of law that have become deeply embedded and pervasive, encompassing not only the legal regulations that shape a society but also its political ideology, organizational structure, and the administration of the legal system. Peter de Cruz defines the legal system as the driving force of a collection of institutions, procedures, and legal regulations. The legal system has a broad definition, encompassing legal philosophy and techniques similar to those used by several countries with generally similar laws (Syafiie, 2003).

Indonesia is a legal state as affirmed by Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which also encompasses a legal system within it. In Indonesia, several legal systems coexist and develop within Indonesian society and its state apparatus, one of which is the customary law system.(Cruz, 2010) Customary law is a legal system that grows, lives, and evolves from the customs of a community, significantly influencing the legal processes in Indonesia. This customary law is also very diverse across Indonesia. Many

regulations address and discuss the existence of and community customary law.(Aditya, 2019) Most of these regulations represent recognition of the existence of indigenous communities and their rights, which are operationally established through regional regulations or decrees by local officials.

We must acknowledge that the impacts of globalization and modernization can create human rights issues such as moral, ethical, and human rights problems.(Aditya, 2019) Furthermore, these impacts have the potential to affect and erode traditional customs, which are a defining feature of Indonesian culture. It is therefore imperative to ensure the preservation of cultural practices and customary systems within Indonesian society, in order to guarantee their continued existence for future generations. These cultures and customs represent an integral aspect of Indonesia's national identity.(Nurdin, 2019)

In light of the aforementioned discussion, two pivotal issues emerge: the preservation of customary law in the contemporary era of globalization and the interrelation between customary law and the Indonesian legal system in the context of globalization.

RESEARCH METHOD

The research method employed in this scientific article is a qualitative approach. This involves the use of various data collection techniques, primarily through literature review. The methodology includes the examination of relevant literature sources to analyze efforts to preserve customary law in the current era of globalization. Additionally, other supplementary literature sources are reviewed to provide further context and support for the writing.

DISCUSSION

1. Effort to preserve customary law in the current era of globalization

Many people believe that studying and delving into customary law is something only old-fashioned individuals do, and those who focus on it are considered out of touch with modern developments. There is a perception that those who study and deepen their understanding of customary law are outdated. Indonesia, with its vast land and sea, hosts thousands of customary communities within its borders. The challenge of being a country with extensive maritime and terrestrial areas also entails a high level of commitment to maintaining the nation's legal and social systems. Moreover, the diversity among indigenous peoples and in the maritime sector in Indonesia presents a challenge to the preservation of numerous regional languages, customary communities, cultural

identities, and the authority of customary institutions in national and state affairs.(Nurdin, 2019)

In the face of globalization, the continuity and preservation of customary law are crucial. Adat law, not just as a historical legal system originating from Indonesia, must be maintained, but it also serves as a tool for filtering foreign influences that come, grow, and develop in our country. This filtering mechanism is something Indonesia has yet to fully implement. When customary law faces foreign intervention, it becomes vulnerable. This is due to the lack of in-depth study, understanding, and application of customary law by the Indonesian people.

There is a prevailing belief that maintaining and upholding customary law will prevent a country from advancing. It is thought that a country adhering to customary values cannot compete globally. However, looking at the experiences of countries like Malaysia, the United States, the United Kingdom, and other common law nations, this hypothesis can easily be disproven. The issue lies not in the customary law system itself but in how customary law can be harmonized with modern legal systems, often referred to as positivistic law. The relation between these two legal systems is closely intertwined.(Syahrin, 2013)

In order to address this issue, it is recommended that four progressive measures be implemented with the aim of preserving customary law in the context of globalization. Firstly, it is recommended that customary law be made a mandatory component of all law programs in Indonesia. It is anticipated that this requirement will encourage students and faculty to integrate and value the significance of customary law in their endeavours, ultimately contributing to the advancement of customary law preservation in the contemporary era.

Second, the focus should be on applying the values of customary law in educational activities rather than indoctrinating it. Educators should integrate the values of customary law into their teaching practices, which will positively impact the preservation of customary law.

Third, greater emphasis should be placed on customary law values in the formulation of legal regulations in Indonesia. This means that every legal regulation in Indonesia should consider and preserve the role of customary law, which has developed within Indonesian society.

Fourth, the community plays a crucial role in preserving local customary law by conducting outreach and education, especially for the younger generation. This ensures that customary law remains vibrant and is not eroded by the forces of globalization.

The implementation of these four measures will contribute to the gradual reduction of the erosion of customary law due to globalization. Through the study of customary law, it is our intention to gain an understanding and appreciation of Indonesia's legal culture, while simultaneously accepting external legal cultures, provided that they do not conflict with Indonesian legal traditions. While the existence of modern law cannot be rejected due to ongoing changes, customary law, as the original legal system of Indonesia, should be accorded significant attention to achieve legal harmony within society. (Hadikusuma, 2014)

2. The relation between customary law and the Indonesian legal system in the current era of Globalization

In the current era of globalization, the relation between customary law and the Indonesian legal system is complex and multifaceted. Adat law, which refers to the customary laws and practices of indigenous communities in Indonesia, operates alongside the formal legal system established by the state. This relation involves both integration and conflict, shaped by the interaction between traditional customs and modern legal principles.

Indonesia's legal system is distinguished by legal pluralism, which denotes the coexistence of multiple legal traditions. The Indonesian Constitution acknowledges the existence of indigenous peoples and their customary practices, thereby recognizing customary law as a legitimate source of law within the framework of the Indonesian legal system. This recognition is of paramount importance for the integration of customary law into the national legal system. Customary law and the formal legal system frequently serve to reinforce one another. While the formal legal system provides a standardized approach to governance and justice, customary law addresses local and culturally specific issues. For example, customary law may regulate land use, family matters, and local dispute resolution in a manner that reflects the values and practices of indigenous communities.

Various national regulations and policies, such as the Law on Village Governance and the Law on the Recognition and Protection of Indigenous Peoples, aim to recognize and incorporate customary law into the broader legal framework. These laws provide

mechanisms for the formal recognition of customary practices and their integration with national legal standards.

Customary Law is an unwritten law, comprising regulations that, although not officially enacted by authorities, are observed and supported by the people based on the belief that these regulations possess legal authority, according to Prof. Dr. Soepomo, S.H.

The legal status of customary law is a significant source in shaping Indonesian law aimed at legal unification. The system of customary law is based on the foundational principles of Indonesian thought, which differ from the principles underlying Western legal systems. The existence of customary law within the Indonesian legal system has become a positive law recognized constitutionally by Indonesia. The application of customary law in Indonesia is not due to its formal enactment by the state, as this would require a new legal system not previously established. Instead, customary law existed in Indonesia before the nation was formally established. Thus, the Indonesian legal system must be acceptable to all groups and parties, necessitating general formulations in its creation.(Koesnoe, 1996)

According to the 1945 Constitution (Article 18B, paragraph 2), the state acknowledges and respects customary law communities and their traditional rights, as long as they remain alive and align with the development of society and the principles of the Unitary State of the Republic of Indonesia (NKRI) as regulated by law.(Mansur, 2018) This article includes several elements: the state respects and acknowledges the existence of customary law; and it recognizes the existence of customary communities and their traditional rights. To develop customary law and support customary institutions, it is essential to provide positive effects so that they can actively serve as a filtering mechanism against the negative impacts of globalization.

According to Soekanto (1982:10), customary law has two aspects within its unwritten meaning. First, written customary law (*beschreven adatrecht*) is the result of research by experts who then document it in monographs or anthropological studies. Second, documented customary law (*gedocumenteerd adatrecht*) refers to the recording of customary law by customary functionaries or officials. Customary law is an important component of cultural or customary strategies, and understanding it can aid in the development and preservation of customary values embedded in customary law. Under the 1945 Constitution, customary law implicitly applies according to the transitional provisions of Article II, which states: "All state bodies and regulations still apply directly

until new ones are established according to this Constitution.” This transitional provision provides a legitimate legal basis for the applicability of customary law.

Customary law in Indonesia has many unique characteristics that differentiate it from other laws in the country. Customary law embodies pragmatic-realist qualities, meaning it can meet the needs of communities with functional-religious characteristics, thus fulfilling a social or justice function.(Pide, 2014) The diverse legal systems in Indonesia reflect the legal needs of its pluralistic society. In practice, however, the implementation of certain regulations may be inadequate or even unacceptable to the community. Therefore, the Indonesian legal system also includes customary law, which applies to the customs and practices within specific communities.

Customary law is fundamentally a source of law used in rule-making, as it originates from human behaviour within a community. However, in the era of globalization, customary law often plays a diminished role in rule-making due to its erosion within communities. Despite this, customary law is crucial in the rule-making process as it stems from the very life of the society it serves.

CONCLUSIONS

In the era of globalization, where external influences and modern legal systems increasingly shape national policies and societal norms, preserving customary law within the Indonesian legal system is both a challenge and a necessity. Customary law, rooted in the traditions and values of Indonesia’s diverse communities, plays a crucial role in maintaining cultural identity and social harmony. Despite the pressures of modernization and global legal standards, customary law continues to be recognized constitutionally and remains a vital part of the Indonesian legal framework. To ensure its preservation, there must be conscious efforts to integrate customary law into the broader legal system, promote its relevance through education, and safeguard it against the erosion of globalization. In this way, Indonesia can maintain its distinctive legal heritage while responding to the challenges of a globalized world. This approach ensures that customary law remains a dynamic and relevant aspect of Indonesian society and the legal system.

Customary law constitutes a robust, deeply entrenched, and foundational element within Indonesian society. Despite the absence of formal codification or state recognition, customary law persists as a vital and observed aspect of Indonesian society. The effectiveness of

customary law is not contingent on the imposition of formal sanctions; rather, it is contingent on the expression of justice and welfare within the community. This ensures that customary law meets the essential needs for justice that the people of Indonesia require.

In conclusion, customary law is increasingly essential in addressing the challenges posed by globalization. Fundamentally, it is a legal system derived from the values of justice and truth that are inherent, evolving, and thriving within Indonesian society. The objective is to preserve customary law as an integral component of Indonesia's broader legal system. This endeavour not only preserves the cultural and legal heritage for future generations but also addresses the adverse effects of globalization. It ensures that justice remains pertinent and accessible to all Indonesians.

REFERENCES

- Aditya, Z. F. (2019). Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 8(1), 37. <https://doi.org/10.33331/rechtsvinding.v8i1.305>
- Cruz, P. de. (2010). *Perbandingan Sistem Hukum Common Law, Civil Law, and Socialist Law*. Nusa Media.
- Fakih, M. (2001). *Sesat Pikir Teori Pembangunan dan Globalisasi*. INSIST Press bekerja sama dengan Pustaka Pelajar.
- Hadikusuma, P. H. H. (2014). *Pengantar Ilmu Hukum Adat Indonesia*. CV Mandar Maju.
- Koesnoe, M. (1996). Hukum Adat (Dalam Alam kemerdekaan Nasional dan Persoalan Menghadapi Era Globalisasi). *Ubhara Press*.
- Mansur, T. M. (2018). *Hukum Adat: Perkembangan dan Pembaruan*. Syiah Kuala University Press.
- Mayasari, R. E. (2017). Tantangan Hukum Adat Dalam Era Globalisasi Sebagai Living Law Dalam Sistem Hukum Nasional. *Journal Equitable*, 2(1), 94–114.
- Nahak, H. M. . (2019). Upaya Melestarikan Budaya Indonesia Di Era Globalisasi. *Jurnal Sosiologi Nusantara*, 5(1), 65–76. <https://doi.org/10.33369/jsn.5.1.65-76>
- Nurdin, F. S. (2019). *Kewajiban Negara Mengakui dan Menghormati masyarakat Hukum Adat Sebagai Entitas Dasar Pembentuk Peradaban Bangsa*.
- Pide, P. D. A. S. M. (2014). *Hukum Adat Dahulu, Kini, Dan Akan Datang*. Kencana.
- Syafiie, I. K. (2003). *Sistem Adminitrasi Negara Republik Indonesia (SANRI)*. Bumi Aksara.
- Syahrin, M. A. (2013). *Petak Norma: Relevansi Hukum Adat Di Era Global: Distorsi Idealika Dan Realita*. <http://www.petaknorma.com/2013/07/relevansi-hukum-adat-di-era-global.html>