

SYNCHRONIZATION OF CUSTOMARY LAW AND NATIONAL LAW: THE PERSPECTIVE OF THE NORTH TORAJA PEOPLE

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Abstract

Customary law has become an important part of the life of the people of North Toraja, its existence in solving social problems that occur is evidence that its role is very strategic. This research aims to understand how the people of North Toraja view and adapt customary law in the context of national law. Along with the challenges of globalization and social change, a deep understanding of the synchronization of these laws is very important. In this study, researchers used a case study research method with an explanatory research approach. The subjects in this study amounted to 3 (three) people consisting of traditional leaders, community leaders and local government. Based on the results of this study, it shows that synchronization between customary law and national law in North Toraja is a strategic step to create a more comprehensive and effective legal system for the needs of society. By integrating local values into the national legal framework, it is expected to build a harmonious and respectful society between tradition and modernity. The synchronization of customary law and national law in North Toraja shows that the integration of these two legal systems is essential to create justice and sustainability in society.

Keywords: Customary Law, National Law, Community Perspective

INTRODUCTION

Indonesia's legal system reflects the historical heritage and cultural diversity that has formed the legal foundation of the country. Indonesia, as a country with an ethnically, linguistically, and religiously diverse population, has a unique legal system that includes elements of various legal traditions (Hamdani, M.Rasmiaty, & Farida, 2024). Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia clearly states that "Indonesia is a State of Law" (Warzuki, Suprijatna, & Aminullah, 2024). In addition, customary law is a product of customary customs that bind the community and are unwritten, which include cultural values created by human creation, karsa, and sense and arise from practices that grow and develop from certain customary law communities

(Aditya, Inayatuzzahra, Azhari, Nabillah, & C, 2024). The Toraja tribe has thick customs that are always maintained to this day, this can be seen in traditional ceremonies, such as death ceremonies, marriage ceremonies, and other traditional ceremonies.

The customary law of the land of Toraja has a substance that has always been maintained from generation to generation but does not contradict the positive law that exists in the Indonesian state. Regarding the application and imposition of sanctions, it is seen from the caste and ability of a person who violates the customary law. This, as stipulated in Article 18B paragraph (2) of the 1945 Constitution, contains provisions that the state recognizes and respects customary law communities and their traditional rights as long as they are alive and in accordance with the development of



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society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law. One of the customary law communities in Indonesia is the customary law community of Tanah Toraja (Ansyar, Wajdi, Putra, & Salim, 2022).

The people of North Toraja, with their rich cultural heritage, face challenges in harmonizing customary law and national law. Rapid social change, including modernization and urbanization, has sparked controversy over how customary law should function within the national legal framework.

The tendency of emergencies often arises when conflicts between customary norms and national regulations cannot be resolved in harmony, resulting in legal uncertainty and significant social impacts on communities. This research is important to understand how the people of North Toraja view and adapt customary law in the context of national law. With the increasing challenges of globalization and social change, a deep understanding of this legal synchronization has become essential. This research aims to provide insight into the need to preserve cultural identity while ensuring compliance with national laws, as well as building bridges between the two.

The research gap arises from a lack of exploration of how the North Toraja people specifically interpret and apply customary law in their interactions with national law. This research offers a novelty by focusing on the perspective of local communities, which is often overlooked in legal research in general. By exploring the voices and experiences of the community, this research has the

potential to identify good practices that can be adopted in legal policy.

The research is not only academic, but also has practical implications for policymakers and legal institutions. This research can also be used to formulate more inclusive policies, which take into account local values and norms in national law. This research contributes to the formulation of strategies to harmonize customary law and national law, which in turn can improve social justice and sustainability in North Toraja. Therefore, the researcher raised the title "Synchronization of Customary Law and National Law in North Toraja: Perspective of the North Toraja Community".

RESEARCH METHODS

The approach method used in this study is empirical legal research. In this case, legal research functions to see law in a real sense and research how the law works in the community (Soekanto, 2010). Data collection techniques through in-depth interviews, participatory observation, and document analysis. This research was conducted in North Toraja, Kesu District. This research method makes it possible to explore and analyze the synchronization of the national legal system with the customary law system in North Toraja in a representative manner with an in-depth approach. So that researchers can obtain as much data as possible about the events or phenomena being researched.

RESULTS AND DISCUSSION

1. The Position of Customary Law in National Law in Indonesia

Customary law is something that grows from the ideals and nature of the

Indonesian people's mind. So the existence of customary law can be traced through the history of kingdoms, which are spread throughout the archipelago. For example, Srivijaya, Mataram, Majapahit Period and several inscriptions

(inscriptions) describe the development of the applicable law (original law). Regarding the position of Adat Law in National Law, it can be seen from the following table:

Table 1. Position of Customary Law and National Law

Number	Customary Law	National Law
1	Unwritten	Written
2	Growing up in people's lives	Created by the legislature
3	Valid for Indonesians	Valid for Indonesians and Foreigners

Regarding the recognition of Customary Law has been regulated in the law as follows, including:

1. Article 18B paragraph (2) of the 1945 Constitution, states that recognizing and respecting customary law community units and their national rights;
2. Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles, states that it recognizes the customary rights of indigenous peoples over land and natural resources;
3. Law Number 41 of 1999 concerning Forestry, explains that it recognizes the

rights of indigenous peoples to forests and other natural resources.

2. The Existence of Toraja Customary Law

In customary law societies, it is generally known as the family as the smallest group to the tribe as the largest group. In the life of the group, there are factors that strengthen the unity of the community, namely the existence of common property, unitary territories and customary ceremonies with religious-magical value.

Position Of Customary Law In Positive Law In Indonesia

Legal System of the Government of the Dutch East Indies (Indische Staatsregeling)	Legal System of the Republic of Indonesia (Pancasila and the 1945 Constitution)
Customary Law System	Customary Law System
Islamic Legal System	Islamic Legal System
Western Legal System	Western Legal System National Legal System

Source: Hukum101.com

In this study, we seek to explore and understand the synchronous dynamics between customary law and national law in North Toraja, focusing on the perspective of local communities. This research involves close collaboration with

various parties, including traditional leaders, community leaders, and local governments, which provides valuable insights into legal practices and values that apply in the daily lives of the Toraja people.

This is in accordance with what was conveyed by the informant, Mrs. Lucia F Gala (Community Leader):

“The structure of Toraja Customary Law has 14 customary institutions and in the community area it is different, depending on the customs because in the Toraja area, each Toraja region has a ritual. Rambu Solo (Duka) which means death, Rambu Suka (Pleasure) which means thanksgiving but cannot be separated from the local government when performing rituals” (Interview on July 25, 2023).

On the other hand, this is as said by informant Layuk Sarungallo as (Traditional Chairman) who explained that:

"The structure of Toraja Customary Law is the same as the bureaucratic structure (synchronous), the traditional chief is the same as a role model if you do not follow the patua and our role models will be humiliated and harassed or expelled from the village. Parange, Alfa, Romeo, Eko, November is one of the terms used in the Toraja Traditional Structure, the figure or arrangement of Toraja traditional figures where these figures are very influential in the implementation of ceremonies and cooperation with the government but traditional leaders who are in power in it". (Interview on July 25, 2023).

In addition, this is as said by the informant Mr. Kudu as (Community Leader) explained that:

"Explaining the importance of synchronization between the structure of national law and customary law. Although they have different roles and functions, they should not contradict each other. In practice, there is often tension when national

laws do not accommodate customary norms that apply in society". (Interview on July 26, 2023).

The resource person believes that with this recognition, the people of North Toraja can maintain and preserve their culture and traditions, while still actively participating in the national legal system. Thus, it is hoped that a harmonious society will be created, where national law and customary law can go hand in hand in achieving justice and welfare for all.

The implementation or synchronization between national law and customary law in North Toraja is a complex process, where the two legal systems seek to complement and adapt to each other in the context of a society rich in tradition. This process is essential to create justice and prosperity for local communities.

This is in accordance with what was conveyed by the informant, namely Mr. Bastian Sarapang as (Traditional Figure) explained that:

“The Toraja people have a customary law system called the application of Toraja customary law, where the people in Toraja have a legal basis called panda and have 5 precepts, namely (1). A Helping Hand (2). Panda Hole (3). Fat Panda, (4). Panda Plant Pegs, and (5). Pandas are the Bondok group, which consists of five main principles. If there is a violation in traditional ceremonies such as Rambu Solo, for example, the traditional chief or "toparenge" will give sanctions in accordance with the applicable customary rules. The concept of "measurable error" is a guideline in determining sanctions, where the amount of punishment is adjusted to the ability of the offender. This sanction is generally in the form of fines, such as handing over buffalo

or pigs". (Interview on July 26, 2023).

On the other hand, this is as said by the informant according to the belief of Aluk Todolo as (Community Leader) explaining that:

"The application or synchronization of national law and customary law in this area is very important to maintain justice and community welfare. According to him, customary law has a depth of local values and wisdom that has been tested by time, which is often more relevant to the social context of the Toraja community. There needs to be recognition of customary law within the national legal framework so that local norms can be formally integrated." (Interview on July 26, 2023).

In addition, this is as said by the informant Mr. Kudu as (Community Leader) explained that:

"The application or synchronization of national and customary laws in this area is a very important step to achieve social justice. According to him, customary law has become an inseparable part of the life of the Toraja people which reflects the values and traditions that have been passed down from generation to generation. The recognition of customary law within the framework of national law is necessary so that the community feels valued and involved in the law enforcement process." (Interview on July 26, 2023).

Therefore, by involving all parties in the decision-making process, it is hoped that a more inclusive and responsive legal system will be created to the needs of the people of North Toraja. Thus, the two legal systems can run in harmony, providing justice and welfare for the

entire community, while respecting and preserving local cultural values.

Based on the results of this study, it is shown that the synchronization between customary law and national law in North Toraja is a strategic step to create a legal system that is fair and responsive to the needs of the community. By integrating local values into the national legal framework, it is hoped that it can build a harmonious and respectful society between tradition and modernity. In addition, customary law is a reference in the development of national law.

1. **Local Wisdom:** Customary law reflects local wisdom that has been tested by time and in accordance with the cultural values of the local community. This can be a solid basis for building laws that are more relevant and accepted by the community.
2. **Social Justice:** Customary law is often more equitable and appropriate to the needs of local communities compared to national laws which may not always take into account the local context.
3. **Dynamics and Flexibility:** Customary law is dynamic and can adapt to changing times, so it can continue to be relevant in the context of modernization.

Basis of the National Legal System

The basis of Indonesia's national legal system begins with the 1945 Constitution, which is the supreme source of law. In Indonesia itself, the legal basis is the constitution. This Constitution establishes the basic principles of the state and human rights, as well as divides power among state institutions. The 1945

Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) as the highest basic law in Indonesia has an important role in maintaining the dignity of the constitution. One of the mechanisms to maintain the dignity of the constitution is through testing the constitutionality of laws and regulations against the 1945 Constitution of the Republic of Indonesia. With the existence of the 1945 Constitution, all laws and regulations made under it must be in accordance with and not contrary to the principles that have been established.

In addition, the constitution is all the rules of Indonesia's constitution as a guideline in running its government leadership system (Lingga, Purba, & Sitorus, 2024). After the constitution, laws and regulations became an important pillar in the national legal system. In addition, in the national legal system, the community as a pillar of law enforcement emphasizes the importance of citizen participation in maintaining justice and the effectiveness of the law (Alkaida, A.M, Andini, & Nurhasanah, 2024).

Based on the different legal systems in each country, the principle of the rule of law is strongly emphasized, meaning that all individuals and institutions, including the state, must be subject to the law. The rule of law and justice are fundamental values that must be upheld. The rule of law will be meaningful if there is law enforcement based on the principle of equality before the law and based on justice (Hanifah & Lewoleba, 2024). Fair and non-discriminatory law enforcement is the key to creating a just and civilized society.

The Basis of the Indigenous Peoples' Legal System

Customary law is a set of norms, values, and rules that apply in indigenous peoples. Indigenous peoples have been recognized and protected as mandated in the Indonesian constitution and through international instruments (Earlene & Sitabuana, 2024). This law arises from local traditions and cultures that have existed for a long time, regulating various aspects of the social, economic, and political life of the community. Customary law is considered to be a law that is closer to people's lives and pays more attention to local customs and values (Marten, 2024). In addition, its unwritten nature makes customary law flexible and adaptable to changing times, while still adhering to the basic principles that have been inherited (Irgeuazzahra, Darmayanti, Gilto, Batubara, & Syahputra, 2024).

Based on this customary law, it is recognized as a form of law in the life and culture of the Indonesian people (Harniwati, 2024). The source of customary law includes the customs, traditions, and decisions of respected community leaders. The existence of customary law as a unique legal life for the Indonesian people is increasingly marginalized from time to time (Rahayu, 2024). Customary law is also often considered closer and relevant to people's daily lives.

In addition, customary law or customary tradition is part of the cultural heritage of each customary and has an important role in terms of identity or community togetherness in order to preserve and maintain the existence or existence of customary law and

customary traditions (Kurniati, Prasetyo, Wijaya, Reyhanif, & Manihuruk, 2024). Customary law has various important functions in society. First, it serves as a dispute resolution tool, where people prefer to resolve conflicts through customary mechanisms rather than formal legal channels. Second, customary law also plays a role in social arrangements, maintaining harmony, and strengthening solidarity between community members. Thus, customary law is a means to preserve cultural values and community identity, as well as reflect the personality of the Indonesian people and nation (Ndraha, Marwiah, Amiq, & Prawesthi, 2024).

Regarding the rules governing the position of customary law, which is as stipulated in the 1945 Constitution Article 18D paragraph 2 states that the state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law.

3. Synchronization of the National Legal System and the Customary Law System

Synchronization between the national legal system and the customary law system is essential to create justice and sustainability in society. The legal system in Indonesia consists of two systems, namely customary law and national law (Rizani, Sukarni, M, & A, 2024). In addition, the national legal system, which is based on the 1945 Constitution and laws and regulations, functions to regulate community life in general. The national

legal system has a significant role in regulating legal relations between legal subjects from different countries (Pakpahan, 2024). On the other hand, customary law is a legal system that develops from the traditions and customs of the local community. This system not only reflects local values and norms, but also becomes an integral part of the cultural identity of its people (Nurtresna, 2024). By integrating the two, it is hoped that harmony can be created in law enforcement that respects cultural diversity.

The 1945 Constitution and various laws and regulations recognize the existence of customary law as part of the legal system in Indonesia, in the constitution, this custom is the wealth of the nation that must be maintained and can even be used as a spirit and guideline in the formation of national law (Widiyastuti & S, 2024). This is as stipulated in the 1945 Constitution Article 18D paragraph (2) which states that the state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. Article 18D of the 1945 Constitution stipulates that (1) the Constitution guarantees the unity of indigenous peoples and their traditional rights; (2) Constitutional guarantees as long as the customary law is still alive (in force); (3) In accordance with the development of society; (4) In accordance with the principles of the Unitary State of the Republic of Indonesia; (5) As well as regulated in the Law, a strong legal basis is the basis for synchronization, thus

providing space for customary law to play a role in the broader legal context. On the other hand, customary law serves as a foundation for the development of national law and existing legal sources (Renanda & Sari, 2024). The legal role of indigenous peoples in Indonesia is very important in the context of synchronization with state law. Customary law is not only a traditional legal system, but it also plays an important role in maintaining cultural identity, social values, and environmental sustainability in local communities. In the midst of modernization and globalization, customary law serves as a foundation for the regulation of social, economic, and political life in many regions. One of the main roles of customary law is as a way to regulate the control and management of natural resources in a sustainable manner. Indigenous peoples have in-depth knowledge of sustainable ways of utilizing the environment and natural resources that exist in their territories. The synchronization of customary law with national law allows for the recognition and protection of their rights related to land, water, forests, and other natural resources. In addition, customary law also plays a role in resolving conflicts at the local level. Traditional mechanisms possessed by indigenous peoples can be an effective alternative in dealing with disputes between individuals or groups, while still taking into account the values of social justice and local wisdom that have been embedded in their traditions (Gunawan, Rohmatilah, Hartanty, Novaryana, Prasasti, & Rahman, 2024).

One example of synchronization of customs and law is in the field of land law, in several regions each plays an

important role in regulating land ownership, including in Toraja. In this case, the law recognizes and respects the customary land ownership system, so that the community can defend the rights to the land that they have controlled for generations. To achieve effective synchronization, education about the two legal systems is necessary. Thus, a high legal awareness will facilitate the acceptance and recognition of customary law within the framework of national law.

CONCLUSION

Based on the results of research and discussion, it can be concluded that:

1. The position of customary law in the Toraja community has long grown and developed and has become a legal tool in resolving various problems that occur in the indigenous people of North Toraja.
2. The existence of customary law is the source of national legal treasures. As in the nature of the law itself, rules are not only in written form, but also unwritten. With the existence of customary law which is one of the unwritten legal tools which contains the values of local wisdom of the Toraja indigenous people. It will still be recognized as existing, if it does not contradict national law.
3. The synchronization of customary law and national law in North Toraja shows that the integration of these two legal systems is very important to create justice and sustainability in society.

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