

Customary Law In Conflict Mitigation Within Families, Communities And Spiritual Entities

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ABSTRACT

Community conflict is not seen as an isolated phenomenon, but rather as a disruption to the broader social and cosmological balance. The purpose of this research is to show that the process of community conflict resolution often involves not only the parties directly involved in the dispute, but also families, communities, and even spiritual entities that are believed to have a role in maintaining harmony. The qualitative research used a descriptive approach to collect data systematically, factually, and quickly according to the picture when the research was conducted. The results of this study show that facing this challenge, there needs to be an integration effort between customary mediation and the national legal system. The government can play a role in recognizing and validating the results of customary mediation as part of legitimate dispute resolution.

INTRODUCTION

Historically, the recognition of customary law in the Indonesian legal system can be traced back to the Dutch colonial period. The concept of “customary law” (*adatrecht*) introduced by Cornelis van Vollenhoven and his students in the early 20th century became the basis for the colonial policy of legal pluralism. After independence, however, there was a trend towards the unification of national laws that often overruled customary law. In recent decades, however, there has been a shift back towards greater recognition of customary law. This is reflected in various laws and court decisions. For example, Law No. 5/1960 on Basic Agrarian Regulations recognizes the existence of customary law communities' *ulayat* rights. Furthermore, the Constitutional Court Decision No. 35/PUU-X/2012 which recognizes customary forests as rights forests, not state forests, is an important milestone in the recognition of indigenous peoples' rights. More broadly, the revitalization of adat-based dispute resolution mechanisms has important implications in the context of developing access to justice in Indonesia. In situations where the formal justice system is often difficult to access or ineffective, especially in rural and remote areas, adat mechanisms can be a vital alternative to guarantee access to justice for communities. However, it is important to note that the aim is not to create a parallel system separate from the national legal system, but rather to develop an integrated approach to legal pluralism. In this approach, custom-based dispute resolution mechanisms are recognized and valued as part of the broader legal landscape, operating in harmony with the formal justice system.

LITERATURE REVIEW

1. Customary Law.

The definition of customary law according to Ter Haar is all regulations stipulated in decisions with full authority which in their implementation are “simply applied”, meaning without the existence of an overall regulation which in its birth is declared binding at all.

Soekanto in his book reviewing Indonesian customary law, argues that “this complex of adat-adat which is mostly not written down, not codified (*ongecodiceerd*) and is coercive (*dwang*), has sanctions (from the law), so it has legal consequences (*rechtsgevolg*), this complex is called adat law (*adat recht*).

Thus, customary law is the whole custom (which is not written) and lives in society in the form of morals, customs, and conventions that have legal consequences.

2. Mitigation.

According to the Federal Emergency Management Agency, (2016), Mitigation is part of disaster prevention by making efforts to reduce casualties and infrastructure damage as a result of conflict events so that it can be carried out with steps taken, namely analyzing and reducing existing conflict risks.

3. Conflict.

Conflict is an inevitable social occurrence because humans have diverse needs, interests and points of view (Commonwealth Youth Program, 2007).

Conflict is also the disputed values and demands to obtain status, power, sources of wealth that are inadequate supplies for the public, in which the disputing parties not only want to control the goods they want, but also corner, harm or even harm the opponent they face (Veeger, 1990).

Many conflicts stem from the unfulfillment of basic human needs, so to resolve them there needs to be an effort to recognize that these needs are true and are not met by the opponents of the conflict who demand their rights (Kriesberg, 2013).

Based on that recognition, opponents in a claimant-induced conflict should be able to change their conditions and/or understanding of each other's human needs. These changes can then transform the conflict positively. So as to emphasize conflict according to John Burton (1990) in conflict studies there are two focuses that must be of concern, namely first explaining the symptoms of conflict and violence caused in the life of society and universal society which is useful for identifying constructive approaches to resolving them. Second, it is able to present an explanation of conflict problems to find principles of the policy process derived from an explanation of conflict.

METHODOLOGY

This research is a legal research that uses several approaches to answer the problems studied, namely: 1) statute approach, 2) conceptual approach, 3) comparison approach, and 4) historical and philosophical approach. Data processing is done qualitatively. Written legal materials that have been collected are then systematized in accordance with the problems studied. Furthermore, the legal material is reviewed and described in accordance with the problem using the relevant theoretical basis. To answer the problem, the legal material that has been systematized is then assessed so that it can answer precisely the meaning and position and legal implications.

RESEARCH RESULT AND DISCUSSION

In the context of Indonesia's rich cultural diversity and customary legal system, adat-based dispute resolution mechanisms have long been an integral part of community life. These systems, which have evolved over centuries, offer a unique and often effective approach in resolving conflicts at the community level. Unlike the formal justice system, which tends to focus on determining the right and wrong parties, adat-based dispute resolution mechanisms generally emphasize restoring social harmony and reconciliation between conflicting parties.

Custom-based Dispute Resolution Mechanisms

One of the main characteristics of adat-based dispute resolution mechanisms is their holistic approach. Conflict is not seen as an isolated phenomenon, but rather as a disruption to the broader social and cosmological

balance. Therefore, the resolution process often involves not only the parties directly involved in the dispute, but also their families, communities and even spiritual entities that are believed to have a role in maintaining harmony.

In Bali, for example, the customary dispute resolution system is known as “kertha desa” or “village paruman”. This process is usually led by a traditional leader or “bendesa adat” and involves intensive deliberation between the disputing parties. The ultimate goal is not only to resolve the specific issues that are the source of the conflict, but also to restore social and spiritual balance in the village. In many cases, conflict resolution is followed by a purification ritual or “mecaru” to restore harmony with nature and ancestors. As expressed by I Wayan Windia, an expert on Balinese customary law:

“In the Balinese customary system, conflict is seen as a disruption to Tri Hita Karana - the balance between humans, nature and God. Dispute resolution is therefore not only about reconciling disputants, but also about restoring cosmic balance.”

This quote emphasizes the spiritual and ecological dimensions that are integral to the dispute resolution process in Balinese customary law.

In Minangkabau, West Sumatra, the customary dispute resolution mechanism is known as “bajanjang naiak batanggo turun” (tiered up and down). This system involves a gradual process that starts at the family level, then moves up to the tribe level, and if necessary, to the nagari level. The main principle is to resolve disputes at the lowest level possible, involving traditional leaders or “niniak mamak” as mediators. The process emphasizes deliberation and consensus building, with the ultimate goal of not only resolving disputes but also strengthening social ties within the community.

Meanwhile, in Maluku, the “pela gandong” system has long been a mechanism for resolving conflicts between villages and even between religions. This system, which is based on the bonds of brotherhood between villages, has proven effective in preventing and resolving conflict, even amid broader communal tensions. Pela gandong serves not only as a conflict resolution mechanism, but also as a system of social and economic support between communities.

While adat-based dispute resolution mechanisms have many advantages, they also face various challenges in the modern context. Some of the main challenges include:

1. Erosion of Customary Authority: Modernization and changing social structures have resulted in the diminishing authority of customary leaders in some communities.
2. Complexity of Modern Disputes: Some new types of disputes, such as large-scale natural resource-related conflicts or intellectual property rights disputes, may be beyond the capacity of traditional adat systems.
3. Conflict with Formal Law: There is sometimes tension between decisions taken through customary mechanisms and the formal legal system of the state.

4. Human Rights Issues: Some practices in customary dispute resolution systems may be considered contrary to universal human rights principles.
5. Lack of Documentation: Many processes and decisions in customary systems are not well documented, posing challenges in terms of consistency and accountability.

Faced with these challenges, several innovative initiatives have emerged to revitalize and adapt custom-based dispute resolution mechanisms:

1. Selective Formalization: Some regions have developed local regulations that give formal recognition to adat dispute resolution mechanisms, giving them stronger legal legitimacy.
2. Indigenous Mediator Training: Training programs that combine modern mediation techniques with local wisdom to increase the capacity of adat leaders to handle complex disputes.
3. Documentation and Codification: Systematic efforts to document processes and decisions in adat dispute resolution, helping to build a more consistent adat jurisprudence.
4. Integration with the Formal Justice System: Development of mechanisms that allow recognition of customary decisions by the formal justice system, creating a hybrid system that combines the strengths of both approaches.
5. Rights-Based Approach: Efforts to harmonize customary practices with human rights principles, especially in terms of gender equality and protection of vulnerable groups.
6. Use of Technology: Utilization of digital platforms to expand access to knowledge about customary law and facilitate remote dispute resolution processes.

One interesting example of the adaptation of customary dispute resolution mechanisms in a modern context is the development of "Peradilan Adat" in Aceh. This system, formally recognized through Qanun Aceh, authorizes adat institutions to resolve certain disputes at the gampong (village) level. This process not only maintains the principles of adat-based dispute resolution but also integrates them with the formal legal system, creating a unique hybrid model. According to research conducted by Taqwaddin Husin of Syiah Kuala University:

"Customary Courts in Aceh have demonstrated effectiveness in resolving community-level disputes quickly, cheaply, and in accordance with local values. However, the challenge is how to ensure consistency of decisions and protection of individual rights in the process."

These observations highlight the potential and challenges of integrating adat dispute resolution mechanisms into the formal legal framework.

Going forward, a key challenge is how to develop a regulatory framework that is flexible enough to accommodate the diversity of customary practices across Indonesia, while still maintaining universal standards of justice and human rights. This requires an ongoing dialogue between adat stakeholders, policymakers, academics and civil society to find the right balance between respect for tradition and the need for adaptation in a modern context. Ultimately, the revitalization and adaptation of adat-based dispute resolution mechanisms is not just about resolving conflicts, but also about strengthening the social cohesion and cultural identity of communities. With the right approach, these systems can be a key component in building a more inclusive, responsive justice system rooted in local values in Indonesia.

Integration of Customary Law in the Formal Justice System.

The integration of customary law into the formal justice system in Indonesia is a complex and often contentious topic. On the one hand, there is increasing recognition of the value and effectiveness of customary law in resolving disputes and maintaining social harmony. On the other hand, there are challenges in harmonizing diverse customary practices with national legal principles and international human rights standards. This integration process reflects broader efforts to create a legal system that is pluralistic and responsive to Indonesia's cultural diversity. In the judicial context, several attempts have been made to integrate elements of customary law into the formal system. One interesting example is the development of "village courts" in some regions. For example, in Bali, the institution of "kertha desa" has been revitalized and given formal recognition through regional regulations. This system allows for the resolution of certain disputes at the village level using customary law principles, while remaining within the framework of the national legal system. As expressed by I Made Widnyana, an expert on Balinese customary law:

"The integration of customary law into the formal justice system is not about replacing one system with another, but about creating synergies that recognize the strengths of each. Customary law brings a more restorative and contextual approach, while the formal system ensures standardization and protection of rights."

This quote emphasizes the potential complementarity between customary law and the formal justice system.

However, this integration process faces various challenges. One of the main issues is how to define the jurisdictional boundaries between the customary and formal systems. There are questions about what types of cases each system should handle, and how to deal with potential jurisdictional conflicts. Another challenge is in terms of standardization. Customary law, which varies from community to community, can be difficult to integrate into a formal justice system that demands a certain level of consistency and predictability. There are concerns that attempts to "formalize" customary law too much may lose the flexibility and contextuality that are its strengths.

Human rights issues are also an important consideration. Some practices in customary law may be considered contrary to human rights principles, especially in terms of gender equality or the protection of individual rights. Harmonizing these aspects with international human rights standards is a significant challenge. Despite these challenges, some innovative initiatives have emerged in an effort to integrate customary law into the formal justice system.

Customary Mediation in Agrarian Conflicts

Customary mediation is one of the conflict resolution mechanisms that has long been applied in Indonesian society. In the context of agrarian conflicts, customary mediation is often relied upon by local communities as an alternative resolution that is more in line with cultural values and local justice. The existence of customary mediation in agrarian conflict resolution is particularly relevant in Indonesia, given the complexity of the relationship between indigenous peoples and the land and natural resources they own. Agrarian conflicts in Indonesia often occur due to clashes between the interests of local communities, governments and companies in land tenure and utilization. These conflicts can include land disputes, natural resource management, and customary rights of indigenous communities. Customary mediation plays an important role in resolving agrarian conflicts with an approach that prioritizes dialogue and deliberation to reach a fair agreement for all parties. Customary mediation in this context usually involves traditional leaders who have authority and are respected by the community. They act as mediators who maintain balance and justice in the dispute resolution process. The customary mediation process does not only focus on formal dispute resolution, but also considers spiritual and social aspects that are often overlooked in the formal justice system.

The main principle in customary mediation is deliberation and consensus, where each party involved in the dispute is invited to openly dialogue and find a solution that is acceptable to all parties. This is different from the formal justice approach which tends to be more rigid and bureaucratic. Customary mediation is also rooted in local wisdom values, such as gotong royong, mutual respect, and maintaining harmony within the community. This approach is believed to be able to preserve social relations within the community while resolving disputes in a way that does not cause hostility in the future. Customary mediation procedures vary from one community to another, but in general the process involves several important stages.

The first stage is the identification of the disputing parties and an in-depth understanding of the roots of the conflict. Next, the customary mediator will organize a deliberation that is attended by all parties to the dispute. In this deliberation, each party is given the opportunity to express their views openly. The customary mediator will guide the deliberations wisely, ensuring that each party is heard and all aspects of the conflict are considered. After a long and in-depth discussion, the customary mediator will try to facilitate a mutual

agreement that is fair to all parties. This agreement is usually put in the form of a written or oral agreement that has the force of customary law.

Several cases in Indonesia show that customary mediation is effective in resolving agrarian conflicts. For example, in the Papua region, customary mediation has successfully resolved land disputes between indigenous communities and mining companies with agreements that benefit both parties. Another case in Kalimantan shows how customary mediation can avoid prolonged conflicts between indigenous communities and oil palm companies through deliberation and consensus mechanisms. The success of customary mediation in these cases shows that this traditional mechanism is still relevant and effective in the context of modern dispute resolution, provided that the process is conducted with respect for local values and involves all interested parties. Although customary mediation has many advantages, there are some challenges and obstacles faced in its implementation. One of the main challenges is the difference in perception between customary law and state law. In some cases, customary mediation decisions are not recognized by the formal legal system, leading to confusion and legal uncertainty. In addition, modernization and social change within indigenous communities can also erode the authority of traditional leaders and the effectiveness of customary mediation. Younger generations tend to prefer dispute resolution through formal channels, which are considered faster and more effective. This can reduce the role of customary mediation in agrarian conflict resolution.

Relevant references to support this discussion include the work of Pelly (2019) on customary law and conflict resolution in Indonesia, as well as a study by Warren (2013) that discusses indigenous peoples' land rights in forest management in Indonesia. Research by Mulyanto (2020) also provides important insights into the challenges and opportunities in mediating adat and agrarian conflicts. In addition, studies by Persoon and Kerkhoff (2009) on customary land management, as well as Bedner and Van Huis (2008) on customary law and the New Order are also relevant in understanding the dynamics of customary mediation in Indonesia.

CONCLUSIONS.

1. The main principle in customary mediation is deliberation and consensus, where each party involved in the dispute is invited to openly dialogue and find solutions that are acceptable to all parties. This is different from the formal justice approach which tends to be more rigid and bureaucratic. Customary mediation is also rooted in local wisdom values, such as gotong royong, mutual respect, and maintaining harmony within the community. This approach is believed to be able to preserve social relations within the community while resolving disputes in a way that does not cause hostility in the future. Customary mediation procedures vary from one community to another, but in general the process involves several important stages.
2. Facing these challenges, there needs to be an integration effort between customary mediation and the national legal system. The government can play a role in recognizing and validating the results of customary mediation as part of legitimate dispute resolution. This can be done through the

recognition of customary law in applicable laws and regulations, as well as training and capacity building of customary mediators in dealing with complex agrarian conflicts. This integration can also be done by creating a space for dialogue between customary leaders and state legal apparatus, so that customary mediation can be implemented while respecting the principles of national law, but not losing the essence and customary values that are the basis for its resolution. Customary mediation is an important asset in resolving agrarian conflicts in Indonesia. By maintaining local wisdom values and prioritizing deliberation, customary mediation can be a fairer and more sustainable solution for all parties to the dispute. However, challenges in its implementation require serious attention from all parties, especially in integrating customary mediation with the national legal system to create harmonious and sustainable justice.

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