



INTEGRATION OF MARRIAGE LAW AND CUSTOMARY LAW WITHIN THE INDONESIAN LEGAL FRAMEWORK

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Abstract: Indonesia's pluralistic legal system presents challenges where national marital law intersects with diverse customary traditions. This study employs both a conceptual framework, analyzing legal pluralism and the interaction between national and customary laws, and a statutory approach, examining key legal instruments including Law No. 16 of 2019, Article 18B (2) of the 1945 Constitution, Law No. 6 of 2014 on Villages, and Law No. 41 of 1999 on Forestry. The research highlights tensions between the rigidity of national law such as the uniform minimum marriage age of 19 and the adaptability of local customs. Key issues include inconsistent enforcement and limited recognition of customary systems. To address these, the study recommends enhancing the legal status of customary law, empowering traditional institutions, and promoting sustained dialogue between state and indigenous communities. This integrated approach aims to create a cohesive marital law framework that respects cultural diversity while ensuring legal certainty.

Keywords: marriage law, customary law, legal pluralism, legal harmonization, Indonesian legal system.

INTRODUCTION

Indonesia is a country with cultural diversity and a complex legal system. As a country that recognizes legal pluralism, the legal system in Indonesia does not only refer to positive law derived from statutory regulations, but also accommodates customary law that has developed in society (Atmaja, 2018; Hamida, 2022; Lukito, 2012). One aspect of law that is often debated is marriage law, where there is an interaction between national marriage law regulated in Law Number 1 of 1974 regarding Marriage with various customary law provisions that still apply in various regions.

National marriage law aims to unify legal provisions in the

implementation of marriage in order to create legal certainty and protection for individuals who marry. However, on the other hand, customary law still has a strong influence on marriage practices, especially in areas with indigenous communities that still uphold traditional values. This often causes clashes between national and customary legal norms, especially in aspects such as marriage procedures, polygamy, interfaith marriage, and the rights and obligations of husband and wife in marriage (Nasir, 2020; Pedada, 2021).

The study of collaboration between national marriage law and customary law is important in order to

find common ground that allows the two legal systems to run harmoniously without eliminating the essence of each legal norm. Thus, this study seeks to explore how the interaction between marriage law and customary law takes place and to find a collaboration model that can ensure legal justice for all Indonesian people.

Theoretically, this study provides insight into the collaboration of customary law and national marriage law, which can be a reference for academics and legal practitioners in understanding legal pluralism in Indonesia. From a policy perspective, the results of this study can help the government in formulating more inclusive regulations, especially in the harmonization of marriage law and customary law, so that it still accommodates cultural diversity without sacrificing legal certainty.

Meanwhile, from a socio-cultural perspective, a better understanding of the interaction between marriage law and customary law can help the community in knowing their rights and obligations in marriage and reduce legal conflicts due to differences in interpretation (Manthwa, 2019; Sheleff, 2013; Weitzman, 1974). This study is also expected to provide a solution to the overlapping of national marriage law and customary law, so that individual rights in marriage are more fairly and proportionally protected. Thus, this study contributes to developing an Indonesian legal system that is more inclusive and responsive to cultural diversity and the legal needs of the community.

MAIN PROBLEM

How does national marriage law and customary law interact in the Indonesian legal system, and what challenges are faced in seeking harmonious collaboration between the two legal systems?

The purpose of this study is to analyze how national marriage law and customary law interact in the Indonesian legal system and to identify the challenges that arise in collaborative efforts between national marriage law and customary law

METHOD OF RESEARCH

This study employs both a conceptual framework and a statutory framework. The conceptual framework is employed to examine the notion of legal pluralism and the interplay between national law and customary law within the marriage system, aiming to elucidate the interaction and issues encountered by these two legal systems in practice (Ali, 2021; Syahrur, 2022). This study use a statutory approach to examine the laws and regulations pertaining to marriage law and customary law in Indonesia. This study pertains to Law Number 16 of 2019, which amends Law Number 1 of 1974 regarding Marriage, serving as the principal legal foundation of the national marriage system. This amendment specifies that the minimum marriage age for both men and women is 19 years. This study also examines various regulations acknowledging customary law, including Article 18B Paragraph (2) of the 1945 Constitution, Law Number 6 of 2014 on Villages, and Law Number 41 of

1999 on Forestry, in relation to the customary rights of indigenous peoples. This essay analyses the degree to which national laws have integrated customary law inside the marital system and explores how current restrictions can be reconciled to establish a more cohesive and inclusive legal framework.

RESEARCH RESULT AND DISCUSSION

The theory of legal pluralism describes how various legal systems can coexist in a society. In this context, state law and customary law are not mutually exclusive entities, but can interact and influence each other in forming the applicable legal order. Legal pluralism is based on the fact that societies often have diverse legal systems, each of which has its own legitimacy and function in regulating social life.

1. Interrelationship between Statutory Law and Customary Law

In the national legal framework, state law frequently serves as the primary basis for governing individuals' lives through official statutes and regulations. State law is established based on constitutional principles and universally applicable positive law within a nation (Brewer-Carias, 2010a; Goldsmith & Levinson, 2008). In social reality, individuals are governed not only by statutory law but also by customary legal rules that have evolved over generations. This customary law plays a significant role, particularly in governing facets of life that are not comprehensively addressed by national legislation, including the marriage system, inheritance distribution, dispute

settlement, and community-oriented natural resource management.

In Indonesia, the interplay between state law and customary law exemplifies the idea of legal pluralism, when many legal systems coexist under a singular national legal framework. This legal plurality is acknowledged in multiple regulations, including the 1945 Constitution. Article 18B Paragraph (2) of the 1945 Constitution specifically acknowledges the existence of customary law communities, provided they align with the principles of the Unitary State of the Republic of Indonesia (NKRI). This signifies that customary law holds a valid status within the national legal framework, provided it does not contravene the constitution and statutory law. Moreover, the acknowledgement of customary law inside the national legal framework is seen in numerous sectoral statutes.

Act No. 6 of 2014 on Villages allocates provisions for customary law in the administration of customary villages and customary-based governance systems. Furthermore, Act. No. 41 of 1999 regarding Forestry acknowledges the rights of indigenous peoples to manage customary forests as an integral component of the existing legal framework. This acknowledgement indicates that state law does not promptly extinguish customary law but endeavors to integrate enduring local values into society.

While customary law is acknowledged inside the national legal framework, the interplay between the two is not consistently harmonious. A primary problem in this connection is reconciling the notion of legal certainty inherent in state law

with the situational flexibility of customary law, which is frequently grounded in debate. Occasionally, a dispute arises between national law and customary law, particularly with customary land ownership, which frequently contradicts national agrarian law. Instances of customary land disputes indicate that customary law, grounded in customary rights, continues to encounter obstacles in achieving complete acknowledgement inside the state legal framework (Brewer-Carias, 2010b; Mnisi & Claassens, 2009).

A more inclusive and dialogical legal strategy is required to reconcile state law with customary law in order to address these issues. Synergy between the two can be attained by a legislative framework that is more receptive to customary law practices still prevalent in society. Furthermore, law enforcement officials and judges must possess a comprehensive understanding of customary law to ensure its administration does not result in injustice to indigenous populations.

The interplay between state law and customary law is an undeniable aspect of the Indonesian legal system. Customary law continues to play a significant role in governing the lives of individuals in diverse regions, but state law serves as the primary framework regulating all inhabitants. It is anticipated that a more harmonic approach will enable customary law and state law to mutually reinforce one another, so establishing a legal system that is more inclusive, equitable, and attuned to the social and cultural diversity of Indonesian society.

2. Legal Certainty and Flexibility of Customary Law

In the national legal system, legal certainty is the main principle underlying legislation. National law is written, systematic, and binding on all citizens. Through laws and other regulations, national law provides clear and predictable legal standards. With legal certainty, the community can know their rights and obligations with certainty, and have a firm reference in resolving disputes. In the formal justice system, this legal certainty is the basis for decision-making by judges, so that legal decisions can be applied consistently and fairly throughout the country (Braithwaite, 2002; Humairoh & Negara, 2024).

In contrast, customary law is more dynamic and flexible because it is based on cultural values and norms that develop in local communities. Customary law is not always written and is often conveyed orally and passed down from generation to generation. This flexibility allows customary law to adapt to social changes and community needs. For example, in some customary communities, rules regarding marriage and inheritance can change in accordance with social developments, such as increasing gender equality in the distribution of inheritance.

3. Impact of Inconsistency between National Law and Customary Law

The inconsistency between legal certainty in national law and the flexibility of customary law often causes confusion in its application, especially in the formal justice system. According to Zhang &

Grégoire (2011), Some impacts that can occur due to this inconsistency include:

3.1. Inconsistency in Dispute Resolution

In some cases, communities still use customary law as the main guideline in resolving disputes, especially those related to land, marriage, and inheritance. This happens because customary law is closer to people's lives, has strong social legitimacy, and is more flexible in adapting to local community dynamics. For example, in customary land cases, many customary communities recognize a communal ownership system based on customary rights, where land is inherited or managed together by certain groups without any official certificates as required by national law. Likewise, in marriage cases, some communities still carry out customary practices that are not fully in accordance with national law, such as customary marriages without official registration at the Religious Affairs Office (ROA) or Civil Registry Office. In the context of inheritance, some customary laws have different distribution systems from national laws, such as prioritizing certain male or female lineages, which in some cases can conflict with the principle of equality stipulated in state law.

When disputes that were initially resolved based on customary law then enter the formal justice system, challenges often arise in the application of the law. National laws that are based on written regulations and the principle of legal certainty often do not fully accommodate the flexibility of customary law. As a result, it is possible that formal court decisions do not comply with the norms prevailing in the relevant customary community. For example, in the case of customary land disputes, indigenous peoples may feel that they have rights to land that has been inherited from generation to generation based on customary law, but in national

law, the land is considered legally invalid if it does not have an official certificate. This inconsistency can cause communities to lose their legal rights even though they still recognize their social ownership.

Furthermore, inconsistencies in judges' decisions also often occur because not all judges or law enforcement officers have a deep understanding of customary law. In some cases, judges may consider customary law aspects as part of their decisions, while in other cases, customary law may be ignored entirely. As a result, two cases with similar characteristics may result in different decisions depending on the extent to which customary law was considered by the judges handling the case. Inconsistencies in the application of these laws can also create legal uncertainty for indigenous communities, who do not know whether their customary laws will still be recognized when they encounter the formal justice system. This suggests the need for better harmonization between customary law and national law to avoid injustice and disparities in the application of law at the community level and in the national justice system.

3.2. Dilemma in Law Enforcement

Law enforcement officers, such as police, prosecutors, and judges, are often faced with a dilemma in enforcing the law in communities that still rely heavily on customary law (Gottschalk, 2011; Karimullah, 2024). This dilemma arises because national law and customary law have different characteristics, both in substance and in their implementation mechanisms. National law prioritizes legal certainty through written and universally binding regulations, while customary law is more flexible, dynamic, and based on local cultural values that develop in society. When a conflict occurs between the two, law enforcement officers must choose the right approach to enforce the law without ignoring the legitimacy of

customary law that is still strong among certain communities.

If law enforcement officers only adhere to national law without considering customary law, they risk ignoring social norms that have long been the guidelines for people's lives. For example, in the case of resolving customary land disputes, national law requires proof of ownership in the form of a certificate issued by the state, while indigenous communities often rely on a system of customary rights that are passed down from generation to generation. If the authorities only follow national law strictly, they may decide that indigenous people do not have rights to the land because they do not have official documents, even though the land has been legally controlled by the community for generations. Such decisions can trigger dissatisfaction, even social conflict between indigenous peoples and the government or other parties involved in the dispute.

On the other hand, if law enforcement officials accommodate customary law too much in judicial practice, they may be considered not to be strictly enforcing the country's positive law. This is especially true in cases where customary law conflicts with national legal principles, such as human rights or constitutional rules. For example, some indigenous communities still apply dispute resolution practices through mechanisms that are considered discriminatory or do not provide adequate legal protection for vulnerable groups, such as women and children. In cases like this, if judges or prosecutors accommodate customary law too much without considering broader aspects of justice and legal protection, they may be considered to have violated the principle of a constitutional state that demands equality before the law for all citizens.

This dilemma becomes more complex when there is pressure from various parties, both from indigenous communities demanding recognition of

their legal systems, and from the government wanting uniform application of national laws. Law enforcement officers are often in a difficult situation, where their decisions must be able to balance legal certainty, substantive justice, and social acceptance. In some cases, judges and prosecutors may try to find a solution by considering customary law as part of the considerations in their decisions, but still within the framework of national law. However, this approach is not always easy because not all judges or prosecutors have a deep understanding of the customary law that applies in a particular area. Therefore, to overcome this dilemma, a more systematic strategy is needed to align national law and customary law. One step that can be taken is to provide special training to law enforcement officers regarding customary law that still applies in various regions, so that they can understand the social and cultural context in implementing the law. In addition, there needs to be a more flexible legal mechanism in accommodating customary-based dispute resolution, for example by strengthening customary institutions that can work together with the formal justice system in handling certain cases. In this way, it is hoped that law enforcement officers can carry out their duties professionally without ignoring the legal diversity that exists in society, and still maintain a balance between legal certainty and respect for local values that still exist in indigenous communities.

4. Efforts to Harmonize National Law and Customary Law

To overcome the inconsistency between national law and customary law, a more inclusive approach is needed in building a legal system that can accommodate the diversity of Indonesian society. One of the main steps that needs to be taken is to increase the recognition of customary

law in the national legal system. The state must more explicitly accommodate customary law practices in national regulations, for example through laws that clarify the status of customary law, including customary rights and customary-based dispute resolution mechanisms. This recognition is not only in declarative form, but must also be implemented concretely in judicial policies and practices, so that indigenous peoples have legal certainty over their rights (Rahmad et al., 2024).

In addition, increasing the understanding of customary law among law enforcement officers is crucial. Judges, prosecutors, and police often only adhere to national law without considering the social and cultural context of customary law. Therefore, special training on customary law needs to be provided so that they can understand how customary law functions in community life. With a better understanding, law enforcement officers can issue fairer decisions and not ignore the values that live in indigenous communities. This will also reduce the potential for legal conflicts and uncertainty in resolving cases involving customary law.

The next step is to strengthen the role of customary institutions in resolving disputes. Customary institutions have conflict resolution mechanisms that have proven effective in maintaining social harmony in customary communities. However, their role is often considered informal and has received little recognition from the formal justice system. Therefore, there needs to be a mechanism that provides legitimacy to decisions made

by customary institutions, so that they can be recognized in the national legal system (Rahmad et al., 2024). Thus, dispute resolution based on customary law can run side by side with the formal justice system, rather than becoming two entities that conflict with each other.

In addition to the structural approach, ongoing dialogue between the government and indigenous communities is also very necessary. Legal conflicts that occur are often caused by a lack of communication and participation of indigenous communities in the formulation of legal policies that affect them. With open dialogue and inclusive consultation mechanisms, the resulting regulations can better reflect the interests of indigenous communities without ignoring the principles of national law. This participatory approach will also increase indigenous communities' trust in the government and reduce the potential for conflict that arises due to policies that do not take into account the social and cultural realities of indigenous communities. By implementing these steps, it is hoped that the discrepancy between national law and customary law can be minimized, thus creating a more just, harmonious legal system that reflects the diversity of laws in Indonesia.

The discrepancy between legal certainty in national law and the flexibility of customary law is a major challenge in the Indonesian legal system. National law provides clarity and predictability in law enforcement, while customary law offers a more contextual approach and is based on local values. To avoid confusion in the application of the law, better

harmonization efforts are needed between the two, either through more inclusive regulations, increasing understanding of customary law among law enforcers, or strengthening the role of customary institutions in resolving disputes. With the right approach, national law and customary law can complement each other to create a legal system that is fairer and more responsive to the needs of the community.

CONCLUSION

Indonesia, characterized by a heterogeneous legal system, confronts a significant issue in reconciling national marriage legislation with the customary law prevalent in society. National law prioritizes legal certainty through codified regulations, whereas customary law is adaptable and context-dependent, rooted on local cultural norms. The interplay between the two frequently results in discrepancies, particularly in law enforcement, conflict resolution, and safeguarding individual rights, notably in the domains of marriage and customary land tenure. This study emphasizes the significance of synergistic cooperation between national law and customary law via a more inclusive and dialogic methodology. Initiatives such as enhancing the acknowledgement of customary law within national regulations, educating law enforcement personnel on customary law, and reinforcing the function of customary institutions in conflict resolution are essential to establishing a legal system that is equitable and attuned to cultural diversity. Consequently, the matrimonial legislation in Indonesia.

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