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Traditional Law Areas Relevant To Overcoming The Problems Of The Indonesian Nation In The Globalization Era

[1]Afnaini, [2]Hamdan
[1,2]Fakultas Hukum Universitas Nasional

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Email :
afnainieni@gmail.com

ABSTRACT

Customary law is unwritten legal regulations that grow and develop and are maintained with the legal awareness of the community. Customary law is the law of the Indonesian people and is spread throughout Indonesia with various features and characteristics. The purpose of this research is to find out the constitutional position of the existence of customary law and the alliance of customary law communities and which two areas of customary law are still relevant in overcoming problems faced by the Indonesian nation in the era of globalization. With the normative juridical research method, it is known that the constitutionality of the existence of customary law and the association of customary law communities has a strong constitutional juridical status as stipulated in Article 18 B paragraph (2) and Article 28 I paragraph (3) of the 1945 Constitution of the Republic of Indonesia and is strengthened by the existence of juridical guarantees from several sectoral laws governing traditional rights. Areas of customary law that are still relevant in overcoming current problems include both neutral law fields such as family and inheritance law, land rights, namely ulayat, rights to gain from office, rights to withdraw the results of usage rights, and related transactions. with land such as, lease rights, split pinang (maro) agreements, leases and guarantees in transfer of rights relating to land and non-neutrality.

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia (UUD 1945) as a constitutional foundation, Article 18B paragraph (2) states that the state recognizes and respects community unities of customary law and their traditional rights as long as they are still alive and in accordance with community development and principles. The Unitary State of the Republic of Indonesia, which is regulated by law. Customary law has very strong ties and influence in society. Its strength binds to the people who support the customary law which mainly stems from its sense of justice. According to Ter Haar, in making decisions in customary law, it must be carried out by paying attention to the legal system, social realities and humanity.

Customary law is the law of the Indonesian people and is spread throughout Indonesia with various features and characteristics. Customary law as the law of the Indonesian people consists of legal principles which are mostly unwritten which are made and obeyed by the communities where the customary law applies. The customs that live in society are closely related to the

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traditions of the people and this is the main source of customary law. As well as regarding areas in customary law itself include; Marriage law, inheritance law, land law, accounts payable law and contract law. However, this paper emphasizes the scope of customary law in society only.

Currently Indonesia is faced with an era of a world without borders or globalization, countries in the world cannot avoid the influence of other regions in the world because of advances in information and transportation technology. So that the existence of customary law as living law, the Indonesian nation is increasingly marginalized. Customary law, which was originally a living law and is able to provide solutions to various social problems in the Indonesian people life, is increasingly fading. At present, in its empirical reality, various problems sometimes arise that are faced by indigenous Indonesians when customary law is faced with positive law.

The development of the Indonesian Legal System which tends to prefer civil law and common law systems and Indonesian legal politics that lead to codification and unification of law, accelerating the disappearance of customary law institutions. The increasingly marginalized existence of customary law as a source of law in Indonesia, one of which is due to the assumption that customary law is very traditional in nature and cannot reach the developments of the times (globalization and technology). The implications of Indonesian legal politics are also felt in solving problems in society that deny customary law, which is actually more relevant.

The Problems

Based on the description above, with regard to the customary law position as living law in indigenous peoples in Indonesia, there are two issues discussed in this journal. First, what is the constitutional position of the existence of customary law and an alliance of customary law communities and second, which areas of customary law are still relevant in overcoming problems faced by the Indonesian nation in the globalization era?

METHOD

In order to facilitate this research, then a relevant research method, data collection technique and method of approach are needed. In this case, a normative juridical research method with a descriptive analytical approach is used. The normative juridical research method is literature law research which is carried out by examining library materials or mere secondary data. Secondary data used are primary, secondary and tertiary legal materials and the information is then analyzed in a qualitative juridical manner in order to obtain an overview of customary law. The data collection technique used is literature study. The literature study results are then analyzed using qualitative data analysis methods, meaning that the conclusions are not based on statistical figures but are concluded based on the relationship between legal principles, legal principles and legal theory with phenomena that occur in society (through juridical interpretation).

RESULT AND DISCUSSION

Definition of Customary Law

For a foreign jurist who is just studying customary law, it is generally not understood because of that, for those who understand customary law it is as if only magic rules which are largely confusing. As we know, customary law does not have punishment, but rather in the form of sanctions which are public reactions. Customary law is constantly in a state of being and develops like life itself (Prof. Dr. Soepomo SH), while according to Van Vollenhollen it is emphasized that "customary law in the past has a somewhat different content; customary law shows the development then customary law develops and progresses continuously and customary decisions give rise to customary law".

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When we conduct a study of customary law, we must try to understand the way of life and outlook of the Indonesian nation which is a reflection of the way of thinking and the psychological structure of the Indonesian nation. There are several understandings that have developed in the community regarding customary law, as stated by Moch Koesnoe, as follows:

a. Understanding First, associating customary law with primitive law. Customary law which is interpreted as such has a consequence, i.e. the existence of a view of how inappropriate customary law is to be used as law that leads to modern life. In this view, customary law is only compatible with primitive life.
b. The second understanding is to see that customary law is the same as customary law (*gewoonterecht* or customary law, i.e. law that lives in daily legal practice in a relatively constant form for all time regarding legal issues that exist in the community concerned. Customary law as such brings the consequence of the view that customary law does not change, does not follow the society development and cannot adapt to the times.
c. The third point is to see customary law in the sense as followed by Snouck Hurgronje, which states that customary law is a law that has legal consequences, then van Vohlebhoven further emphasizes that custom / tradition *(adat)* has sanctions, and then Ter Haar further emphasizes the interests of legal cultivation. .
d. The fourth point, see customary law is not a law that lives in our nation's society as a law that belongs to the nation, because of the birth and cultural ideals of the nation. In this sense, customary law as groups among the indigenous Indonesian people, is required to be the law for the Indonesian nation, meaning the national law of Indonesia.

Customary Law As Principles of Establishment of National Law

Customary law is part of Indonesian culture, this is reflected in community life, because each community has its own culture with its own style and nature, although in the culture of certain peoples (such as all Western European peoples) there are many similarities as well, have their own way of thinking geestestructuur, then the law in society as one of the embodiments of the geetestructuur of the society in question, has its own pattern and nature so that the law of each society is different.

Von Savigny once taught that the law follows Volkgeist and the society in which the law applies, because Volkgeists are different from each other. Likewise with customary law in Indonesia. As is the case with all legal systems in this part of the world, customary law continues to grow, develop and be maintained by the indigenous peoples of Indonesia because it arises and is a real need of life, a way of life and a way of life which is wholly the community culture where the customary law exists applying The MPRS Decree No.IIIMPRS / 1960 concerning MPRS Decree No. II / MPRS / 1960 Concerning the Outlines of the First Stage Planned Universal National Development Pattern 1961-1969 in Appendix A Paragraph 402 has established customary law as the principles of fostering national law, which is political lines in the law field, which reads in full as follows:

a. The principles of building national law to be in accordance with the direction of the country and based on customary law that does not hinder the development of a just and prosperous society.
b. In the effort towards homogeneity in the law field, the realities of life in Indonesia must be taken into account.
c. In the improvement of marriage law and inheritance law, the existence of religious, customary and other factors should be taken into account.

Based on MPRS Decree No. II / MPRS / 1960 mentioned above, the position and role of customary law in fostering national law becomes clearer and more firm, that is, as long as it does

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not obstruct the development of a just and prosperous society, it is the foundation. The MPRS Decree is very precise, because customary law is part of Indonesian culture.

A law that arises and the overall behavior, morals and habits of the Indonesian people on a daily basis. The law is obey, obeyed and also defended by people of Indonesia, so it can be said that the customary law is the law of the Indonesian people. According to van Vollenhoven in his book Het Adatsrecht van Nederlandch Indie Volume III, it is said that the legal circle (rechtsknngen), in which each circle of law shows its own character and style. National law must meet the following requirements:

a. Customary law must not conflict with national and state interests based on the nation unity;
b. Customary law should not be in conflict with the Pancasila as philosophical state of Indonesia;
c. Customary law must not conflict with written Regulations (Laws);
d. Clean customary law and the attributes of Feudalism, Capitalism as well as human suction on man;
e. Customary law that is not in conflict with religious elements.

Thus, customary law that can be used as the principles or foundation for the development of national law is not pure customary law, but customary law that is clean and fulfills the requirements above. The provisions of the conditions above require us to carry out careful research of all customary complexes that are currently living and developing in everyday people's lives.

Customary Law in Globalisation Atmosphere

The real globalization that occurs is when human has mastered and is able to apply science and technology in the field of telecommunications and transportation. Facing this, the question is how the effect of globalization in the national law development, and what things must be considered in facing globalization without leaving the identity as a nation.

Globalization affects behavior patterns and customs and the Indonesian nation, can be explained by the example given by Sunaryati Hartono. If now Indonesia has arisen a kind of courtesy to ask first whether we are allowed to smoke, then it is based on an awareness that cigarette smoke pollutes environment and therefore endangers the entire environment. In Singapore has become customary law a person will soo demonstrate closing his-her mouth with a handkerchief, or even raise an objection to a person who smokes nearby. In public places smoking is prohibited by written law. This is where we see the effect of globalization and a result of research that is widely informed, which grows into awareness to develop into a final, which is then implemented into behavior, and through courtesy and habit, eventually it will become a legal norm. In the future, it can be predicted that there are still many legal norms based on scientific research which are then recognized internationally, as an international legal rule that will have universal values, and will also be accepted and receipted into national law.

Changes in values and awareness as a result of globalization in the technology and information fields, will also directly or indirectly affect the content and features and the national legal system. Thus, customary law originating from national awareness and culture, i.e. law which is a direct statement and awareness and feeling of the Indonesian nation's law on the basis of a national cultural order, will play an important role in the development of national law. With globalization, such customary laws will not be shifted as an important source of breaking national laws. Only one customary law needs to be adjusted to a situation that is far different from the previous one, but its principles will still color every formation of national law.

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The Constitutionality Position of the Existence of Customary Law and its Alliance of Customary Law Communities

Customary Law Community, a group of people who are bound by their customary law order as citizens with a legal partnership because of the same place of residence or on the basis of descent. As for customary communities as legal subjects, legal objects and authority of customary communities as follows: Customary law communities in Indonesia are communities with territorial equality (territory), geneology (descent) and territorial-geneology, (territory and descent), so that there is a diversity of forms of society customs from one place to another.

Indigenous peoples are groups of people who have ancestral origins (from heredity manner) in a certain geographic area and have their own value, ideological, economic, political, cultural, social and territorial systems. The tendency of indigenous peoples is due to major changes in the decentralized system of regional governance. The demands of the indigenous peoples' movement for lands and oversight of regional autonomy are strengthened by Law no. 22 of 1999 concerning Regional Government, and Law no. 25 of 1999 concerning Financial Balance between Central and Regional Government. The influence of the Congress of the Alliance of Indigenous Peoples of the Archipelago (AMAN) proved to be positive when the process of amending the 1945 Constitution of 2002-2004 by the PAH I of the MPR RI, was evidenced by the inclusion of the position of indigenous peoples in relation to the regional model that has this original composition. A A. GN. Ari Dwipayana and Sutoro Eko said that recognition of regions that have original structures uses the principle of recognition. If the principle of decentralization is based on the principle of handing over governmental authority by the government to autonomous regions to regulate and manage government affairs, then the principle of recognition is the state's recognition and respect for customary law units and their traditional rights (community autonomy).

Customary communities as legal subjects, legal objects and authority of customary communities because customary law communities in Indonesia are communities of territorial (territory), genealogical (descent) and territorial-geneological equality, (territory and descent), so that there is a diversity of forms of indigenous peoples from a certain area, place to other place. The objects of community rights over their customary territories (Ulayat rights), are land, water, plants, and animals, having clear boundaries both factually (natural boundaries or markings in the field) as well as symbolic boundaries. In providing an interpretation of these provisions, Jimly Ashiddiqie stated that it should be noted that this recognition was given by the state:

1. to the existence of a customary law community and its traditional rights;
2. the recognized existence is the existence of customary law community units. This means that recognition is given to one by one of these units and therefore the customary law community must have a certain character;
3. the customary law community is alive (still alive);
4. in a certain environment (*lebensraum*);
5. Such recognition and respect are given without neglecting the measures of worthiness for humanity in accordance with the development level of the nation's existence. For example, certain traditions that are no longer worth defending should not be allowed to not follow the flow of civilization progress just for sentimental reasons;
6. Such recognition and respect must not reduce the meaning of Indonesia as a country in the form of the Unitary State of the Republic of Indonesia.

The existence of customary law communities has not only received constitutional juridical protection as regulated in Article 18B paragraph (2), but the protection is even stronger because it is emphasized in Article 28I on Human Rights. On the one hand, legally speaking, village autonomy which is genuine autonomy is recognized by the state. Article 18B paragraph (2) of the

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1945 Constitution clearly states "The state recognizes and respects indigenous peoples and their traditional rights as long as they are still 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 law".

On the other hand, for the sake of the future, recognition and respect for community (village) autonomy is intended to answer the future, especially in response to the globalization process, which is marked by the liberalization process (information, economy, technology, culture, etc.) and the emergence of players. - economic players on a global scale. The impact of globalization and exploitation by global capitalists is unlikely to be faced by localities, even with adequate autonomy. This challenge requires stronger institutions to face it.

More fully it is stated that customary law communities are (1) a group of people who have the same ancestry (geneological), (2) live in a place (geographically), (3) have the same life goals to maintain and preserve values and norms. norms, (4) a system of customary law that is obeyed and binding (5) is led by customary chiefs, (6) there is a place where the administration of power can be coordinated, and (7) there are institutions for resolving disputes both between indigenous peoples ethnicity and fellow ethnic groups with different nationalities. Therefore, it is not impossible if the constitutional rights are the right to life, the right to work, the right to education, the right to health, the right to housing, and the socio-political and cultural rights are not guaranteed. More than fourteen (14) sectoral national laws have provided equal guarantees of recognition of the traditional rights of the MHA, including Ulayat land rights, Ulayat water rights, Ulayat forest rights, customary rights to pastoral land, and rights other traditional. For example, hereditary rights and customary titles, property rights to sacred or regalia objects, copyrights and Intellectual Property Rights (HAKI) to customary works and copyrights. The law is Law no. 5 of 1960 concerning Basic Agrarian Principles, Law no. 4 of 2009 concerning Mineral and Coal Mining, Law no. 5 of 1990 concerning Conservation of Living Natural Resources and their Ecosystems, Law no. 7 of 2004 concerning Water Resources, Law no. 41 of 1999 concerning Forestry, Law No. 22 of 2001 concerning Oil and Gas, and Law No. 24 of 2003 concerning the Constitutional Court, Law no. 4 of 2004 concerning Judicial Power, Law no. 14 of 1985 concerning the Supreme Court of the Republic of Indonesia, and Law no. 32 of 2004 concerning Regional Government.

The traditional rights of the customary community are the rights to occupy Ulayat land, herding, the right to own customary forests, the right to take fish in rivers or lakes, the right to take firewood, the right to hunt. In addition, there are rights related to the right to art, paint, sculpt, and the right to belief and religion. However, all of these laws have not yet operationally provided guarantees for the continuity and preservation of Customary Law Communities (MHA) in various regions. Incomplete legal instruments, such as government regulations and other government policies, result in the MHA's position not obtaining legal standing.

There are no technical procedures and mechanisms for recognition and respect for indigenous peoples as well as other factors that result in the role of local governments being less than optimal in providing protection and recognition of MHA and its traditional rights. Although changes in political and legal policies towards the development of customary law communities have occurred, the fate of indigenous and tribal peoples has not changed significantly so far. First, recognition and respect for customary law communities as stipulated in Article 18B paragraph (2) and 28I paragraph (3) of the 1945 Constitution cannot be implemented, and therefore MHA has not received any real benefits. The position of the MHA who are not legal subjects (legal standing) not only does not have the authority to control property rights, but also they cannot bring court proceedings. In fact, Law no. 24 of 2003 provides an opportunity for the MHA to be able to sue in the Constitutional Court of the Republic of Indonesia. Second, the unclear legal position of the MHA results in legal uncertainty and legal justice cannot be obtained. The constitutional rights of

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the MHA that should be able to be utilized by the community. Their condition in the fields of education, culture, health services and socio-economic sectors are generally underdeveloped. When MHA struggles for their constitutional rights the result of national economic policies such as their customary lands being controlled by domestic and foreign capital owners cannot be prevented. National development policies implemented in various regions, whether due to mining minerals, gas, oil and other coal, or due to overlapping arrangements between customary lands and forestry parties, MHA was defeated. Whereas the recognition and respect for the MHA, textually, has been clearly regulated in the sectoral law.

The opportunities that exist and provide support to the regions include the following. First, the emergence of customary Bylaws in various regions in Indonesia is indeed encouraging considering that the spirit of regional autonomy is not only related to increasing the role of regional government in the political and economic or regional financial aspects, but also has an impact on the birth of regional regulations, both in general and specifically based on customary law. However, the customary Bylaws that have grown around almost all provinces are not only unable to function effectively to provide satisfaction for efforts to improve the welfare of the local community, but for certain areas, they are actually counter-productive. Not a few of the indigenous peoples reject the use of lands that have been granted the Mining Concession Permit (KP) from the Minister of Forestry.

Jimly Asshiddiqie, emphasized that "the existence of this customary law community can be considered very strategic, and therefore, to increase its empowerment, it is necessary to conduct a national inventory. Although the Regional Government Law has stipulated that the determination of the surviving customary law communities is carried out by the regional government (Pemda). It is not appropriate to give this authority to regional governments without substantive guidelines that can be used as comprehensive guidelines. If the death / life of a customary law community is fully submitted to regency and city level regulations without clear signs, the risk is quite high. Without comprehensive substantive guidelines there can be discrimination against indigenous peoples simply because of different interpretations made by the local government.

Customary law communities in Indonesia are very diverse and data on indigenous and tribal peoples cannot be used, except through an in-depth assessment process in each region. In addition, in its conclusion, it is stated that as long as the laws regulating customary law communities do not exist or are not clearly regulated in the Constitution, it is necessary to prepare regional regulations that can temporarily resolve the problems of indigenous peoples' rights in their territory. The regional regulations that must be prepared are in the form of recognition, justification or acceptance so that the role that has been carried out by the Ministry of Forestry has to be vacated from areas where there are indigenous peoples. Lastly and it is important to note that the Provincial and Regency Regulations must be able to continue to provide the right of aging to indigenous peoples so that the community is not "conserved" but is still accepted as indigenous peoples who have the right to determine the direction of advancing their lives dynamically.

Areas of Customary Law that are Relevant in Overcoming Indonesian Problems in the Globalization Era

Customary law can not only be classified based on the diversity found in legal circles (rechtskring), it can also be seen from another perspective, i.e. from the field of study, i.e. customary law regarding the structure of citizens (constitutional law), customary law regarding relations between citizens (civil law), and customary law regarding offenses (criminal law). Based on this and to study the relevant customary law, which is used as a source for the formation of national law, the researcher first establishes the following guidelines.

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Variations in the fields of customary law can be obtained in various ways, one of which is by examining the work of scholars who have conducted studies of customary law. Based on the formulation of Van Dijk Concerning areas of customary law are: "apart from the territorial division according to the essay contained in the customary law circle which consists of 3 (three) groups". According to Van Dijk, the field of customary law can be concluded that:

1. Customary Law regarding State Administration
   Covers all structures and order in society as well as in the environment of work, position and equipment.
2. Customary Citizen Law includes kinship law, marriage law, inheritance, land law (land rights, land transactions) and debt law
3. Customary Law regarding Offense (discordant)
   Offense is an act that is prohibited because it causes (punishment) society against the person who commits an offense.

Van Vollenholen as described by Soeleman B. Taneko (1974), the fields of customary law include: 1) Government and Judiciary, 2) Family law, 3) Personal concerns, 4) Indigenous people, 5) Marriage law, inheritance, 6) Law sanctions, offenses, 7) Laws on accounts payable, land, thus the areas of customary law are varied. Strictly speaking, these variations were obtained based on the environment and atmosphere at that time which influenced thinkers to detail their views on the of customary law field.

Areas of customary law that are neutral and non-neutral and based on customary law that do not hinder the development of a just society. The field of law that is neutral in nature is the law field that is not directly related to the spiritual aspects of humans, such as the law of objects, contract law and economic law, while the non-neutral field of law is the law field that is closely related to the human spirituality such as marriage law, inheritance law and land law.

a. Marriage law and inheritance law

   Marriage law and customary inheritance are non-neutral (sensitive) areas of law, therefore legal politics in the field of marriage and inheritance, customary law are the basis for the formation of national law. Based on this, the researcher will focus on certain areas in customary civil law, i.e. laws related to kinship law including the law of kinship (kinship law) and marriage. In addition, the field of inheritance law, which is closely related to the field of law, cannot be separated from the kinship and marriage system.

   The enactment of Law Number 1 of 1974 concerning Marriage, ended pluralism of customary marriage laws. Thus, it can be said that in the field of marriage law there has been a unification and codification of marriage law. However, Hazairin said that the unification of marriage law is a unique unification, because in fact it still recognizes the application of various religious legal systems. The impact of religion on customary law has been recognized since Snouck Hurgronje conducted research on Indonesian customary law. This can be seen, among others, in Article 2 paragraph (1) which stipulates that marriage is valid if it is carried out according to the law of each religion. It can be said that the source of the formation of the Marriage Law is customary law and Islamic law. When examined further, the recognition of the principles of customary law is very visible in Law Number 1 of 1974.

   The child's relationship with the sibling of the mother is equal to the sibling of the father side in the arrangement of parental relationship or bilateral relationship, or bilateral. The same rules apply to the child regarding marriage, the obligation to provide maintenance, honor, and inheritance. In the parental arrangement a child only acquires semenda by way of marriage. In the order of kinship according to paternal or patrilineal lineage a child finds his siblings only from paternal lineage. The family of the Mother line does not include the child's

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relatives. The rules that apply to the child regarding prohibition of marriage, inheritance law, and the obligation to provide maintenance for his father's siblings are different from those of his mother's siblings. In general, the father's siblings are more important to the child than the mother's siblings. In the order of kinship according to maternal or matrilineal line, the number of siblings of the child is the mother, and further those who are together from a mother of origin are counted according to the maternal line.

For indigenous peoples, marriage is a problem that affects the entire federation of indigenous peoples. Marriage is a matter of family in areas where there is a parental order, and marriage is a matter of family, descent, and clan, especially in indigenous peoples who adhere to matrilineal and patrilineal lineage. The arrangement of parental, matrilineal, and patrilineal ties forms the basis of rules in marriage such as the prohibition of marriage with certain people. In the order of relatives, a ban on marriage with the immediate family has a special nature. In relation to marriage, indigenous peoples recognize runaway marriages, honest marriages, and marriages with other payments.

Elope or *kawin merat* is a marriage that is carried out because the parents do not approve of it, or because the male party is unable to pay the expensive costs of the marriage. In a patrilineal order, honest marriage is known, which is marriage by paying honestly, or dowry on the part of the man to release the prospective bride from his family and to be included in the family class of the male party. In an honest marriage, it is also known as a marriage with payment of services, that is, the payment of the dowry is postponed where the groom works for his in-laws so that his honest debt is paid off. With regard to the kinship system in a patrilineal society, currently girls tend to have the same position and inheritance rights as men.

Marriage includes *(inlijfhuwelijk)* where the man is removed from his family and included in the woman's family. Intermarriage is where a wife dies and her position is replaced by her sister without dowry, or vice versa where a man marries his brother's widow who has died. Marriages with other payments are available in societies that have a Mother line order or in a parental order. Payment is meant to be different in nature from dowry. In the pure matrilineal order the wife remains in her family, and the man also remains in her, even though he lives in his wife's house, and his children are in his wife's family.

In addition, in indigenous peoples, patrilocal and matrilocal marriages are also known. Patrilocal marriage means that the husband and wife live in a man's family either temporarily or forever. Matrilocal marriage means that the husband and wife live in the woman's family. Marriage has consequences in the form of the emergence of marital property, which consists of inheritance, property obtained from their respective businesses, and joint property. Inheritance is property that remains the property of the party who acquired it. Inheritance does not fall into common property. In most districts the property available during the marriage becomes joint property. However, this is not the case in areas where there is a single family arrangement.

Customary inheritance law contains all legal regulations governing the transfer of goods ownership and property due to death. In the parental order all property belonging to both parents is inherited equally to all children. The estate in this order consists of the own property of the deceased plus half of the joint property in the marriage. The surviving husband or wife does not inherit from the deceased. When the deceased has no children the joint property will fall into the hands of his surviving brother, and when there are no relatives, the joint property will be the family inheritance of both parties. In a patrilineal order only the son inherits from his father and mother, and is entitled to all property. If the

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deceased does not have a son, then the inheritance will fall to his grandfather from the father who inherited, as well as the inheritance. If his grandfather has died then the children of that grandfather (the brother who inherited) become the heirs. In the matrilineal order the heirs are all children, but usually only the children of the Mother. If a man dies, then the heirs are his female brothers and their children.

The politics of national law in terms of inheritance is to submit to the respective customary laws, and to Islamic law in the Muslim community. Based on this, the existence of customary inheritance law is still needed as a legal basis for the inheritance process. The state recognizes the inheritance distribution mechanism by the community based on customary inheritance law, and if a dispute occurs, the judge will decide the case based on their respective customary laws. So far, the State does not want to unify inheritance law, because inheritance issues are a non-neutral field of law (sensitive).

Efforts to unify inheritance law into one national inheritance law will have an impact on the disintegration of the nation. Therefore, the national inheritance law consists of customary inheritance law and Islamic inheritance law, where customary inheritance law consists of the inheritance law of each indigenous community. Related to the issue of inheritance is the law of kinship. The inheritance system of indigenous peoples is greatly influenced by the arrangement of ties they adopt. In a society that takes lineage based on the arrangement of matrilineal relationships, the system of inheritance will be different from the patrilineal and parental society. Because the national inheritance law is the inheritance law of each indigenous community, the existence of kinship law or family law cannot be separated from its existence from customary inheritance law.

As for the marriage law, based on Law Number 1 of 1974 concerning Marriage there has been legal unification, whereby marriage is legal if it is carried out according to one's respective religion. This provision has overridden the existence of a marriage system based on customary law. This means that people who marry based on customary law, the State does not recognize it. With the enactment of Law Number 1 of 1974, the customary marriage law is not recognized as binding law and as something that has legal consequences. Thus the existence of customary law is no longer relevant.

b. Land Law

Indigenous peoples recognize land rights which include the rights of association which van Vollenhoven called *beschikkingsrecht*, rights to profit from office, rights to extract yields, rights to use, liens and lease rights. Alliance rights over land are customary rights that allow the association and its members to take advantage of the land and everything that grows and lives on that land (cultivating, building buildings, grazing livestock, gathering food, hunting and fishing).

The right to take advantage of the fellowship land is only used to meet the necessities of life for oneself from the family (it cannot be commercialized). If the rights of the partnership are cultivated or cultivated, then there will be a permanent relationship between the members of the association who cultivate the land. The right to gain advantage is the right of a village official to the land of office where he has the right to withdraw the produce from the land as long as he is in office. The right holder is not allowed to sell and mortgage this land. When his position has ended, the land will return to the right of the partnership. The right to collect produce is a right obtained with the agreement of the leaders of the association for members who cultivate or process the land for one or more harvests. Meanwhile, what is meant by Right to Use is the right to cultivate the land and collect the results obtained from agricultural land owned by other people.

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With regard to land transactions, customary law differentiates between land transactions and transactions related to land. In land transactions, there is only one type of legal action known, i.e. selling, i.e. the transfer of title to land, either for eternity or free sale, transfer of land with payment of an amount paid in cash and the person who transfers the land title can recover the land if he paid back as much as the money he received or sold the pawn. The pawn holder obtains the right to withdraw all benefits from the land, but is not allowed to rent and sell off and sell annually, which is a form of transfer of land and the owner for a certain time by paying a certain amount of cash to another person and after a certain time, the land will return to the owner.

Customary Law, apart from recognizing land transactions whose object is land, also recognizes transactions related to land. In this transaction, land is not the object of the agreement, but cannot be separated from the agreement. In customary communities, for example, there are maro agreements or divisions of the pinang and mertelu. A split-areca agreement is an agreement whereby the land owner allows other people to work, plant, and reap the produce of his land with the aim of dividing the results according to a previously agreed ratio. A split-pinang agreement usually comes from the land owner, this is because the land owner does not have enough manpower to cultivate his own land. In the betel nut agreement model, most apply a split agreement, where each party receives half of the result. If the land is fertile, easy to cultivate, the landowner provides the tools and seeds. The land owner received 2/3 of the share while the cultivator received 1/3 of the share. On land that is less fertile and difficult to work on, the owner of the land gets 1/3 of the share and the cultivator gets 2/3 of the share.

Another type of agreement related to land is a lease agreement, which is an agreement in which the land owner allows other people to cultivate, plant and collect produce from the land with a payment of a certain amount of money thereafter. Furthermore, in customary law there is also a guarantee agreement related to land, which is a guarantee in the event of a debt where if the debt is not paid, the plantation or agricultural products are handed over to the creditor as repayment of the debt. It can be concluded that land law, namely land transactions and transactions related to land that applies to Indigenous communities, is actually relevant in the formation of national law because it is considered to fulfill the nation's sense of justice and philosophy. This is in line with Article 5 UUPA agrarian law which applies to earth, water, space is customary law. As for the customary law, it must meet the requirements. First, it is not against the national interest and the State which is based on national unity. Second, it does not conflict with the regulations stated in the UUPA. Third, it does not conflict with other laws and regulations.

Based on Article 5 of the UUPA, the position of customary law is in an important position in the structure of the National Agrarian Law System. The customary law which is the basis for the application of the National Agrarian law is customary law that has been cleared of foreign individualistic-liberal and feudal elements that are incompatible with Pancasila, then this customary law becomes the main source in the development of national land law, as well as a complementary source for national land law. In line with this thought, it is said that the UUPA is more of a discussion of land law based on the basis of land law regulations that are adjusted to Pancasila, the structure and objectives of the unitary State of Indonesia.

Meanwhile, according to Soepomo, the position of customary law in the future remains a reference for the development of Indonesian law, both to provide materials in the formation of legal codification, as well as directly applied to fields where it is not possible to

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codify it. Even in the legal field that can be codified, customary law as unwritten customary law will still become a source of new law for matters that are not or have not been stipulated in law. This reinforces the position of customary law as the basis for the National Law System

In addition, the betel nut (maro) agreement has been a source of inspiration for production sharing cooperation between the Indonesian government and foreign investors such as PT Freeport. Most of the state's assets, both at the central and regional levels, are utilized by investors, such as the Concessions Agreement, Build Operate and Transfer (BOT), Build Operate Leasehold and Transfer (BOLT), which is an agreement similar to the split-pinang agreement. Therefore, the split pinang (maro) agreement is still relevant to the current and future development of the agreement. Here it can be seen that customary law institutions are a source of inspiration for legal developments that are anticipatory to the needs of the global era. In Western parts of the world, the recognition of local customary law is very relevant in planning legal concepts in various aspects of life, including family law, even corporate and trade law.

One of the results of research on the existence of communities in current activities is regarding natural resource management in Asia and Latin America which has proven that indigenous peoples have the capacity of culture, knowledge systems, and technology, religion, tradition, and social capital such as ethics and wisdom. environment, norms, and legal institutions to manage natural resources wisely and sustainably. The same thing is recognized in Timor Leste, that land ownership rights can be controlled by the community for the common interest. Based on the previous description, with regard to the relevance of customary law in the development of national law, some of the institutions of customary law are still relevant as below.

Field of Law	Institution
Civics	Nagari
Civilization	Blood ties, inheritance, Ulayat (customary) rights, Right to profit from office, Right to attract profits, Right to use, Right to lease, Agreement on split pinang (maro), lease and guarantee in a transaction concerned with land

Some of these customary law institutions have been partially codified in various laws and partly as a source of inspiration for the formation of national law and become a source of law in the process of legal discovery. In addition, customary law is believed to play a role in safeguarding the values generated by the community, and in the end it is hoped that it can protect the results of development.

Referring to the existence of customary law in Indonesia's potential law, it can be said that both neutral and non-neutral customary law is still recognized, and has even become a source of law that can be referred to in anticipation of global developments. The government should explore the values in customary law as the original law of the Indonesian nation in the formation of future national laws. One of the sources of law in Indonesia comes from the habits of society, where these sources follow the times and must be adjusted to the principles of law in force and must not conflict with the ideology of the nation. A regulation that has been promulgated must be agreed upon and obeyed together with no exceptions.

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CONCLUSION

There are several conclusions on the problems discussed in this journal, i.e., the constitutionality of the customary law existence and the association of customary law communities has a strong constitutional juridical status as regulated in Article 18 B paragraph (2) and Article 28 I paragraph (3) of the 1945 Constitution of the Republic of Indonesia and is strengthened due to the juridical guarantees of several sectoral laws regulating their traditional rights. The two areas of customary law that are still relevant in overcoming current problems include both law areas that are neutral in nature such as family and inheritance law, land rights i.e. Ulayat, right to gain from office, right to withdraw the results of usage rights, and transactions related to land, such as lease rights, betel nut (maro) agreements, leases and guarantees in transfer of rights relating to land and non-neutrality.

REFERENCE

Bushar Muhammad, *Asas-Asas Hukum Adat*, Jakarta, Pradnya Paramita, 1978

Dewi Wulansari, *Hukum Adat di Indonesia*, Bandung: PT Refika Aditama

Hilman Hadikusuma, *Pengantar Antropologi Hukum*, Bandung, Citra Aditya. Bakti, 1992

I Gede A.B Wiranata, *Hukum Adat Indonesia*, PT. Citra Aditya Bakti, Bandung, 2005

Ida Nurlinda, *Prinsip-prinsip Pembaruan Agraria Perspektif Hukum*, Bandung: Rajawali Pers, 2009

Jimly Asshiddiqie, *Menuju Negara Hukum Demokratis*, Jakarta, Mahkamah Konstitusi RI. Sekretaris Jenderal dan Kepaniteraan, 2008

Moh. Koesnoe, *Catatan-Catatan Terhadap Hukum Adat Dewasa ini,* Surabaya, Airlangga University Press

Soerojo Wignjodipoero, *Pengantar dan Asas-asas Hukum Adat*, Jakarta, PT Toko Gunung Agung.1995

Soerjono Soekanto, *Hukum Adat Indonesia*, Jakarta, PT Raja Grafinda Persada, 2007

----------, *Hukum Adat Indonesia*, Jakarta: Raja Wali Press, 1983

Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo Persada, 2003

Sunaryati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, Bandung, Alumni, 1991

Ihromi T Omas, "Inheritance and Equal Rights for Toba Batak Daughters", Law and Society Review, Vol 24 Issue 3, September 1994

Jaja Ahmad Jayus, "Rekonstruksi Kedudukan Hukum Adat Dalam Pembangunan Hukum Dewasa Ini", Jurnal Litigasi, Vol. 12 No. 1 April 2011

Jawahir Thontowi dalam "Eksistensi Hukum Adat Sebagai Hukum yang Hidup (living law) di Indonesia". Disampaikan dalam Seminar Sehari, 19 Desember 2006, Bagian Hukum Adat dan Program Notariat FH UGM, Yogyakarta.

Joeni Arianto Kurniawan, Hukum Adat dan Problematika Hukum Indonesia Vol.23 No. 1, 2008, di unduh dari http://journal.lib. unair.ac.id/index.php/yrik/article/view/511/510 tanggal 2 April 2021

Lastuti Abubakar, "Implikasi Aktivitas Ekonomi Syariah Terhadap Perkembangan Hukum Ekonomi di Indonesia", artikel dalam Jurnal Legal Review, Vol. I No. 2 Desember 2010

Emily Kadens, "The Myth of The Customary Law Merchant", Texas Law Review, Vol.90 Issue 5, April 2012

Gregory L Acciaioli, "Memberdayakan kembali Kesenian Totua, Revitalisasi Adat Masyarakat To Lindu di Sulawesi Tengah, Antropologi Indonesia", Tahun XXV. No 65. Mei Agustus 2001.

H. Abdurrahman, "Hukum Adat Dalam Perkembangan Pluralisme Hukum di Indonesia" Makalah yang disampaikan pada seminar tentang Pluralisme Hukum dan Tantangannya

bagi Pembentukan Sistem Hukum Nasional, Badan Pembinaan Hukum Nasional Depkumham di Makassar 1-2 Mei 2007

Kallie Szczepanski, "Land Policy and Adat Law in Indonesia Forests", Pasific Rim Law & Policy Journal Association, Vol. 11 No. 1, 2002

Martua Sirait, dkk., "Bagaimana Masyarakat Hukum Adat Dalam Mengelola Sumber Daya Alam, Diatur", disampaikan dalam Seminar Perencanaan Tata Ruang dilaksanakan oleh WATAKA dan Provinsi Lampung, Oktober 2011 di Bandar Lampung

Teddy Anggoro, "Kajian Hukum Masyarakat Hukum Adat dan HAM Dalam Lingkup Negara Kesatuan Republik Indonesia", Jurnal Hukum dan Pembangunan, Tahun Ke-36 No. 4 Oktober-Desember 2006.

Yanis Maladi, "Eksistensi Hukum Adat Dalam Konstitusi Negara Pasca Amandemen", Jurnal Mimbar Hukum Vol 22 No. 3, Oktober 2010

AA GN Ari Dwipayana dan Sutoro Eko, Pokok-pokok Pikiran Untuk Penyempurnaan UU No. 32 Tahun 2004 Khusus Pengaturan Tentang Desa, di unduh dari http://desentralisasi.org/ makalah/Desa tanggal 1 April 2021

Bederman, David J, "Rhe Customary Law of Hal And Ruth", Emory Law Journal, Vol. 57 Issue 6 tahun 2008, hlm di unduh dari http:// web.ebscohost.com/ehost/delivery tanggal 1 April 2021.

Maria SW Sumardjono, Research into East Timor Adat Law, di unduh dari http://easttimorlawjournal.word press.com/tag/adat-law, pada tanggal 1 April 2021

Mason C Hoadley, "The Leiden Legacy: Concepts of Law in Indonesia (Review)", Journal of Social Issues in Southeast Asia, Vol. 21 No. 1 April 2006, di unduh dari http://muse.jhu.edu/journals/soj/summary/v021/ 21.1.hoadley.html tangal 1 April 2021

Thailand Law Journal Fall Issue 1 Volume 15, 2012 di unduh dari http://www.thailawforum.com/articles/Indonesia Customary Law and European Colonialism-4.html, tanggal 2 April 2021.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (Amandemen)

Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-pokok Agraria

Undang-Undang Nomor 1 tahun 1974 tentang Perkawinan

Undang-Undang Nomor 14 Tahun 1985 tentang MA RI, dan UU No. 32 Tahun 2004 tentang Pemerintahan Daerah

Tap MPRS No. II/MPRS/1960 Tentang Garis-Garis Besar Pola Pembangunan Nasional Semesta Berencana Tahapan Pertama 1961-1969