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Recognition of Customary Law in the Perspective of Legal Politics: A Study of Weak Legal Pluralism in Dayak Society

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Abstract: This study examines the relationship between legal pluralism and legal politics in the recognition of customary law in Indonesia, which remains conditional in practice. The background of this research lies in the diversity of legal systems in Indonesia that creates legal pluralism, while the state continues to exercise control through its legal policies. The novelty of this study is reflected in its critical analysis of the ambiguity of customary law recognition, particularly through the concept of *weak legal pluralism* as observed in the practices of Dayak indigenous communities in Kalimantan. This research employs a normative legal method using statutory and conceptual approaches. The findings reveal that although Article 18B paragraph (2) of the 1945 Constitution constitutionally recognizes indigenous peoples, such recognition is limited by the conditions “as long as they still exist” and “in accordance with the principles of the Unitary State of the Republic of Indonesia,” which position customary law as subordinate to state law. In practice, customary law continues to function in dispute resolution but requires formal validation from the state. Therefore, a reorientation of legal politics is needed to ensure that the recognition of customary law is not merely formal but also substantive, providing greater autonomy to indigenous communities

Keyword: Legal Pluralism, Legal Politics, Customary Law

INTRODUCTION

Indonesia is a country characterized by a highly complex level of social, cultural, and normative diversity, which directly influences the formation and development of its legal system. This diversity gives rise to what is known as legal pluralism, a condition in which multiple legal systems coexist and operate simultaneously within society, including state law, customary law, and religious law. In practice, legal pluralism is not merely a normative phenomenon, but a social reality that demonstrates that state law is not the sole source of legitimacy in regulating social life. However, the existence of legal pluralism in Indonesia is not necessarily accompanied by equal recognition of all existing legal systems. The state, through its legal politics, continues to position itself as the primary authority in determining the validity and applicability of a legal system, including customary law.

This is reflected in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which recognizes the existence of customary law communities along with their traditional rights, but subject to the conditions that they “still exist” and are “in accordance with the principles of the Unitary State of the Republic of Indonesia.” These phrases indicate that the recognition of customary law is not absolute, but rather operates within the framework of state control.

Problems arise when such conditional recognition, in practice, creates ambiguity regarding the position of customary law. On the one hand, the state acknowledges customary law as part of the national legal system; on the other hand, it requires formal legitimacy through state legal mechanisms. This condition reflects a tension between the reality of legal pluralism and a legal political orientation that tends to be centralistic. In this context, customary law does not fully function as an autonomous legal system, but rather occupies a subordinate position under state law.

Previous studies have generally approached the recognition of customary law within a normative-constitutional framework, emphasizing that the state has provided space through formal recognition in statutory regulations. However, such studies tend to overlook a deeper critique of how state legal politics actually constructs structural limitations that weaken the position of customary law in practice. Therefore, a research gap exists in examining the recognition of customary law not merely as a form of normative legitimacy, but as a product of legal politics imbued with interests that shape power relations between the state and customary communities.

Based on this gap, this study offers a more critical analytical approach by employing the concept of *weak legal pluralism* to explain how the state acknowledges legal pluralism while maintaining the subordination of customary law to state law. This concept highlights that legal pluralism in Indonesia has not yet reached a substantive form, but remains largely superficial due to the continued dominance of the state. This analysis is reinforced by examining practices within Dayak customary communities in Kalimantan, particularly in the settlement of divorce disputes, which, although resolved through customary mechanisms, still require formal validation from state courts.

This research employs a normative legal research method using statutory and conceptual approaches. The statutory approach is used to examine various regulations governing the recognition of customary law communities, while the conceptual approach is applied to analyze theories of legal pluralism and legal politics. The analysis is conducted qualitatively by interpreting the relationship between legal norms and social practices within society.

Based on the foregoing, the research questions are: (1) how is the relationship between legal pluralism and legal politics in the recognition of customary law in Indonesia, and (2) how does state legal politics influence the position of customary law in social practice. The objective of this study is to critically analyze the relationship between legal pluralism and legal politics, as well as to identify forms of subordination of customary law within the national legal system. This research is expected to contribute theoretically to the development of legal pluralism studies and to provide recommendations for more substantive legal policies in recognizing and protecting customary law in Indonesia.

METHOD

This study employs a normative legal research method that focuses on analyzing legal norms governing the recognition of customary law communities within Indonesia’s national legal system. The research design is qualitative in nature, adopting an analytical-critical approach that not only examines legal texts descriptively but also explores the relationship between legal norms and social practices within the framework of legal pluralism. This

approach is chosen to reveal how state legal politics shapes a conditional construction of the recognition of customary law and its implications for the position of customary law within the national legal system.

The sources of data in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant statutory regulations, particularly the 1945 Constitution of the Republic of Indonesia, as well as various regulations related to the recognition of customary law communities. Secondary legal materials are derived from scholarly literature, including books, journal articles, and previous research that discuss the concepts of legal pluralism, legal politics, and customary law. Meanwhile, tertiary legal materials serve as supporting references, such as legal dictionaries and encyclopedias, which help provide conceptual clarification of the terms used in this study.

Data collection is conducted through library research, involving the identification, examination, and analysis of various legal sources and relevant literature. This process is carried out systematically to obtain comprehensive data regarding normative regulations and the development of scholarly thought related to legal pluralism and legal politics in Indonesia. In addition, this study integrates a conceptual approach by examining theories developed within the field of legal pluralism, including the concept of *weak legal pluralism* as an analytical framework for understanding the relationship between state law and customary law.

The data analysis method is qualitative, utilizing legal interpretation and conceptual analysis techniques. Legal interpretation is applied to statutory provisions in order to understand the normative meaning of the recognition of customary law communities, particularly concerning the notion of conditional recognition. Furthermore, conceptual analysis is used to examine the relationship between legal pluralism and legal politics, as well as to identify forms of subordination of customary law in practice. This analysis is also connected to empirical realities represented by practices within Dayak customary communities in Kalimantan, demonstrating how the interaction between customary law and state law reflects the characteristics of *weak legal pluralism*.

Through this approach, the study not only produces a normative understanding of the recognition of customary law but also offers a critical analysis of the legal political construction underlying it. It is expected that this research will contribute to the development of legal scholarship that is more reflective of the dynamics of legal pluralism in Indonesia.

RESULTS AND DISCUSSION

Legal Pluralism as a Social Reality in Indonesia's Legal System

Legal pluralism constitutes an inseparable reality within Indonesia's legal system, which has developed within a highly pluralistic society. In this context, law is not solely understood as a product of the state, but also as a set of social norms that live and evolve within society. This perspective aligns with Eugen Ehrlich's concept of *living law*, which emphasizes that the law truly operating in society is not always identical to written law in statutory regulations. In practice, legal pluralism in Indonesia is reflected in the coexistence and interaction of state law, customary law, and religious law.

John Griffiths distinguishes legal pluralism into *strong legal pluralism* and *weak legal pluralism*. In the Indonesian context, legal pluralism tends to fall within the category of *weak legal pluralism*, as the state remains the primary authority in determining the validity of other legal systems. This indicates that although customary law is recognized, its applicability remains within the framework of state control.

Legal Politics and the Construction of Conditional Recognition of Customary Law

The recognition of customary law communities within the national legal system cannot be separated from the state's legal politics. Legal politics functions as the fundamental policy

direction that determines how law is formulated and implemented. M. B. Hooker argues that in developing countries, legal pluralism is often controlled by the state through formal legal mechanisms.

In Indonesia, the constitutional recognition of customary law is regulated under Article 18B paragraph (2) of the 1945 Constitution. However, the use of the phrases “as long as they still exist” and “in accordance with the principles of the Unitary State of the Republic of Indonesia” indicates that such recognition is conditional in nature. The findings of this study demonstrate that these conditions do not merely function as normative limitations, but also as instruments of legal politics that enable the state to selectively determine the existence of customary law. Consequently, customary law does not hold an equal position with state law but is instead placed in a subordinate position. This reflects the dominance of the state in determining the existence and validity of customary law, resulting in a hierarchical rather than equal form of legal pluralism.

The Practice of Legal Pluralism in Dayak Customary Communities

The findings of this study show that legal pluralism can be observed concretely in the practices of Dayak customary communities in Kalimantan. Within these communities, customary law continues to function effectively in regulating social life, including in the resolution of divorce disputes through deliberative customary mechanisms.

Empirically, among the Dayak Ngaju community in Central Kalimantan, divorce settlements are conducted through customary institutions led by the *Damang Kepala Adat*. In this process, the party deemed at fault is subject to customary sanctions in the form of fines (*singer*), the amount of which is determined by customary norms and prior marital agreements. This mechanism functions not only as a form of sanction but also as a means of restoring social balance within the community.

Similarly, within the Dayak Maanyan community, there exists a mechanism known as *pipikatan*, a multi-level mediation process involving family members, customary leaders, and ultimately the *Damang* as the highest authority before a divorce decision is made. This process emphasizes gradual and collective conflict resolution, reflecting the restorative nature of customary law rather than a repressive one.

However, despite the strong sociological legitimacy and community compliance with these customary mechanisms, in practice such resolutions are not recognized as final legal decisions within the national legal system. Couples who have divorced under customary law are still required to bring their case before state courts to obtain formal administrative validation. This condition reflects a dualism of legal processes that not only illustrates the coexistence of multiple legal systems but also indicates an imbalance in the relationship between customary law and state law.

Customary law serves as an effective substantive mechanism for dispute resolution at the social level, while state law remains the sole source of formal legitimacy. Thus, the applicability of customary law in practice remains dependent on state validation, indicating that it has not yet achieved full autonomy within the national legal system.

More deeply, the existence of Dayak customary law in resolving civil disputes, such as divorce, also reflects the philosophical values of *Huma Betang*, which emphasize peace and the restoration of social harmony. In practice, customary sanctions such as *singer* are not merely viewed as material punishment, but as mechanisms of moral accountability aimed at restoring balance or resolving disharmony within the community. For example, certain *singer* sanctions intended to protect life demonstrate that customary law serves a fundamental protective function for the community.

Nevertheless, despite its effectiveness and strong social legitimacy, customary institutions such as the *Damang Kepala Adat* remain structurally subordinate to the state. This

is evident in the fact that customary decisions do not possess executorial power equivalent to court judgments, thereby positioning customary law as a system that is “recognized yet co-opted” by the administrative interests of the state.

Discussion

The empirical findings within Dayak customary communities not only demonstrate the existence of legal pluralism in practice but also reveal an imbalance in the relationship between customary law and state law. The fact that customary dispute resolutions, which have been socially accepted, still require state validation underscores that the recognition of customary law is not yet fully realized but remains within the framework of state control.

This study finds that the relationship between legal pluralism and legal politics in Indonesia is structural in nature, wherein the state acts as the dominant actor in determining the scope of applicability of customary law. From a theoretical perspective, this condition reinforces the concept of *weak legal pluralism*, in which non-state legal systems remain subordinate to state authority.

The conditional recognition of customary law, as stipulated in Article 18B paragraph (2) of the 1945 Constitution, reflects an inherent ambiguity in Indonesia’s legal politics. On the one hand, the state provides normative recognition of customary law; on the other hand, it restricts its applicability through certain criteria. This condition indicates that such recognition is not fully substantive, but rather remains within an administrative and procedural framework.

Findings from Dayak communities reveal a gap between social legitimacy and juridical legitimacy. Customary law possesses strong binding force at the social level; however, it lacks formal legal authority without state endorsement. This demonstrates that legal pluralism in Indonesia does not yet reflect equality among legal systems but instead reveals the dominance of state law.

This disparity between social and juridical legitimacy further confirms that Indonesia’s legal politics remains entrenched in a paradigm of legal centralism, albeit cloaked in formal recognition. Such a condition strongly reflects the characteristics of *weak legal pluralism*, where the state only provides space for customary law insofar as it does not challenge formal governmental authority.

The dominance of state law, which requires administrative validation of customary decisions—such as in divorce cases—indicates that the autonomy of Dayak customary communities remains largely illusory. Without a reorientation that grants binding legal force (*inkracht*) to decisions made by competent customary institutions, the constitutional recognition under Article 18B paragraph (2) of the 1945 Constitution will continue to function more as an instrument of subordination rather than substantive protection.

Thus, legal pluralism in Indonesia is not merely a legal phenomenon but also reflects power relations between the state and customary communities. Therefore, a reorientation of legal politics is necessary, not only to formally recognize customary law but also to provide broader autonomy for its effective implementation in practice.

CONCLUSION

Based on the findings of this study, it can be concluded that legal pluralism in Indonesia constitutes a social reality; however, its operation is shaped by state legal politics that position customary law in a subordinate role. The recognition of customary law, as stipulated in Article 18B paragraph (2) of the 1945 Constitution, is conditional in nature, thereby creating ambiguity between normative acknowledgment and structural limitation.

In practice, customary law continues to possess strong social legitimacy, as demonstrated in Dayak customary communities, yet it still requires formal validation from the state. This condition indicates that legal pluralism in Indonesia remains within the framework of *weak*

legal pluralism, in which the state acts as the primary authority in determining the validity and applicability of law.

Therefore, a reorientation of legal politics is necessary—one that moves beyond formal recognition and provides more substantive acknowledgment, as well as broader autonomy for customary law within the national legal system.

REFERENCE

- Efriani, Jagad Aditya Dewantara, Meliya Fransiska, Iwan Ramadhan, and Edy Agustinus. "EKSISTENSI ADAT DALAM KETERATURAN SOSIAL ETNIS DAYAK DI KAMPUNG BONSOR BINUA SAKANIS DAE." *Refleksi Hukum Jurnal Ilmu Hukum* 6, no. 1 (2021). <https://doi.org/https://doi.org/10.24246/jrh.2021.v6.i1.p87-106>.
- Herawati, Arya Setya Novanto Ratna. "Efektivitas Undang-Undang Cipta Kerja Dalam Pembangunan Hukum Indonesia." *Jurnal USM Law Review* 5, no. 1 (2022). <https://doi.org/https://doi.org/10.26623/julr.v5i1.5084>.
- Hidayatullah, Nana Yogatiyana Mohammad Arief. "EKSISTENSI HAK TANAH ULAYAT MASYARAKAT ADAT DALAM HUKUM TANAH DI INDONESIA." *ANWARUL : Jurnal Pendidikan Dan Dakwah* 2, no. 4 (2022). <https://doi.org/https://doi.org/10.58578/anwarul.v2i4.505>.
- HilaireTegnan, SaldiIsra Ferdi. "Rule of Law and Human Rights Challenges in South East Asia : A Case Study of Legal Pluralism in Indonesia." *Hasanuddin Law Review* 3, no. 2 (2017). <https://doi.org/10.20956/halrev.v3i2.1081>.
- Mujib, M.Misbahul. "Memahami Pluralisme Hukum Di Tengah Tradisi Unifikasi Hukum: Studi Atas Mekanisme." *Supremasi Hukum : Jurnal Kajian Ilmu Hukum* 3, no. 1 (2014). <https://doi.org/https://doi.org/10.14421/sh.v3i1.1945>.
- Sihotang, Amri Panahatan, Dominikus Rato, and Wafda Vivid Izziyana. "Legal Status of Customary Communities, Customary Law Communities and Indigenous Communities as Custom Law Subjects." *Journal of Ecohumanism* 3, no. 6 (2024). <https://doi.org/https://doi.org/10.62754/joe.v3i6.4128>.
- Suartina, Tine. "BETWEEN CONTROL AND EMPOWERMENT: LOCAL GOVERNMENT ACKNOWLEDGMENT OF ADAT COMMUNITIES AND ADAT VILLAGES IN INDONESIA." *Indonesia Law Review* 10, no. 3 (2020). <https://doi.org/10.15742/ilrev.v10n3.679>.
- Wardatun, Atun. "Egitimasi Berlapis Dan Negosiasi Dinamis Pada Pembayaran Perkawinan Perspektif Pluralisme Hukum Atun." *Al-Ahkam : Jurnal Pemikiran Hukum Islam* 28, no. 2 (2018). <https://doi.org/http://dx.doi.org/10.21580/ahkam.2018.28.2.2438>.