

MINANGKABAU CUSTOMARY LAW AS A FOUNDATION AND PERSPECTIVE FOR THE FORMATION OF THE NATIONAL LEGAL SYSTEM

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Abstract

The purpose of this study is to examine the role of Minangkabau customary law in shaping the country's legal system and its potential contribution in creating social justice, maintaining cultural diversity, and strengthening regional autonomy. This research method used is literature analysis using relevant primary and secondary sources such as legal documents, academic works, and practical experience in the application of Minangkabau customary law. The results of this study show that Minangkabau customary law includes interrelated principles such as deliberation and consensus, gon royong (community cooperation), and restorative justice. The principles contain universal values that can be applied and integrated into the broader national legal system. In the context of building a state legal system, Minangkabau customary law is used as a source of inspiration for the development of laws that serve the interests of local communities, protect individual and collective rights, and maintain a balance between national and local interests. In addition, Minangkabau customary law has the potential to preserve cultural diversity in Indonesia. In the era of globalization that prioritizes cultural homogenization, the application of Minangkabau customary law can provide a strong foundation for the development and maintenance of cultural diversity of the community at the national level. Through an approach that respects and recognizes cultural differences, a country's legal system can be a tool for strengthening cultural identity and ensuring the sustainability of valuable cultural heritage

Keywords: Customary law, National law, Minangkabau customary

Introduction

Minangkabau customary law has a long history as a traditional legal system that has governed the lives of the Minangkabau people in West Sumatra, Indonesia, for centuries. As part of Minangkabau cultural richness and identity, Minangkabau Customary Law has an important role in shaping the social, economic, and political order in the region. Minangkabau Customary Law is an inseparable part of the rich and unique culture and life of the Minangkabau people (Arrazak et al., 2022). Minangkabau customary law is based on values, customs, traditions and norms that have existed in the community for a long time. The main principle in Minangkabau customary law is "Adat Basandi Syarak,

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Syarak Basandi Kitabullah" which means customary law originates from religious sharia and religious sharia comes from the Qur'an. Minangkabau customary law is managed by a customary institution called "Rumah Gadang". Rumah gadang is a traditional house of the Minangkabau tribe and is also a customary institution that plays an important role in maintaining and implementing customary law (Rahmadani & Hasrul, 2021).

One of the main characteristics of Minangkabau customary law is the matrilineal kinship system. In this system, the lineage and inheritance of property are traced through the maternal line. This matrilineal kinship system gives women a strong role in the legal and inheritance system. In addition, Minangkabau customary law also relies on family principles that prioritize solidarity, mutual help, and brotherhood in community life. In recent decades, attention to the role of customary law in the formation of national legal systems has increased. The process of establishing a national legal system is a complex endeavor and involves various considerations. Along with the development of globalization and social dynamics that continue to change, it is important for a country to have a legal system that is able to accommodate the needs and interests of its people (Hanafiah, 2016). In the context of Indonesia, with its rich diversity of cultures, tribes, and customs, the implementation of an inclusive and equitable legal system is very important (Hanafiah, 2016).

Minangkabau customary law, with its local wisdom, can be a source of inspiration and valuable perspective in the formation of a better national legal system. The principles underlying Minangkabau Customary Law, such as musyawarah-mufakat, gotong royong, and restorative justice, have strong relevance in creating social harmony, justice, and sustainable development. Therefore, the focus of this discussion is to explore more deeply the role of Minangkabau Customary Law as a basis and perspective in the formation of a national legal system in Indonesia.

Research Methods

This research uses library research methods in the form of qualitative research. This research uses a qualitative approach with literature analysis that refers to relevant primary and secondary sources, including legal documents, academic writings, and practical experience in the application of Minangkabau Customary Law. This research uses the theory of legal pluralism. By using the theory of legal pluralism, it can be analyzed how Minangkabau customary law acts as a basis or foundation in the formation of a national legal system.

Results and Discussion

The Concept of Minangkabau Customary Law and the National Legal System in Indonesia

Minangkabau Customary Law

Minangkabau Customary Law is a traditional legal system that developed in Minangkabau society, West Sumatra, Indonesia. Minangkabau Customary Law is based on local wisdom, customs, and cultural values that have existed since ancient times. Minangkabau Customary Law has a long history and developed along with the development of Minangkabau society. This customary law reflects the legal system that has existed since pre-colonial times in the Minangkabau region. Over time, Minangkabau customary law continues to develop and adapt to social and cultural changes. The main characteristic of Minangkabau customary law is the existence of a matrilineal system that gives a strong role to women in the legal and inheritance system. These customary law

principles focus on the concepts of kinship, kinship, and social justice in the Minangkabau community (Nova, 2021).

Minangkabau Customary Law has several principles, namely: first, consensus. Decisions are taken through a deliberative process to reach consensus involving various relevant parties. Second, mutual aid. Communities work together to achieve common goals and help each other in daily life. Third, restorative justice. A legal approach that focuses more on rapprochement and social balance, rather than just punishment. Minangkabau customary law is applied in various aspects of community life, including in the marriage system, inheritance, natural resource management, and dispute resolution. The Minangkabau people respect and follow customary law norms in their daily lives as part of their cultural identity (Aoslavia, 2021).

The implementation of Minangkabau Customary Law is carried out through customary institutions such as nagari (villages), penghulu, and customs that are upheld by the local community. Minangkabau customary law is also passed down from generation to generation through oral and cultural practices carried out collectively. Therefore, it can be understood that principles such as musyawarah-mufakat, gotong royong, and restorative justice have a central role in regulating social relations and maintaining harmony in Minangkabau society. The implementation of Minangkabau Customary Law not only includes formal legal aspects, but also manifests in people's daily lives, such as in the marriage system, inheritance distribution, and natural resource management. Customary institutions and cultural values upheld by the Minangkabau people are the main pillars in maintaining and implementing Minangkabau Customary Law in their lives (Jonaidi, 2018).

National Legal System in Indonesia

Indonesia's national legal system is based on the country's constitution, the 1945 Constitution, as the highest foundation. National law includes positive laws consisting of laws and regulations made by legislative institutions, such as laws, government regulations, and presidential regulations. National judicial systems, including the Constitutional Court, Supreme Court, and High Court, are responsible for enforcing national law. To see how the difference between Minangkabau customary law and National Law can be seen from several things, namely: first, Minangkabau customary law is a traditional legal system that grows at the local level, while national law is a law that applies throughout Indonesia. Second, Minangkabau customary law is based on local traditions, customs, and cultural values, while national law is based on positive legal rules passed by the legislature. Third, Minangkabau customary law is more flexible and can accommodate the diversity of society, while national law tends to be general and refers to more universal norms (Nuriz & Sukirno, 2017).

There are several challenges that must be passed in integrating Minangkabau customary law into the national legal system, namely: first, legal harmonization. The main challenge is to integrate the principles and norms of Minangkabau Customary Law into national law without overriding existing legal rules. Second, awareness and understanding. Efforts are needed to increase public awareness and understanding, including stakeholders, of the importance of Minangkabau Customary Law as part of the national legal system. Third, the protection of the rights of indigenous peoples. In the integration of Minangkabau Customary Law, it is important to ensure the protection of indigenous peoples' rights, including land tenure rights, access to natural resources, and participation in decision-making that affects them. Fourth, policy alignment. Good coordination between the central government and local governments is needed in

implementing Minangkabau Customary Law consistently and coherently with the national legal system (Mansyur, 2017).

The integration of Minangkabau customary law into the national legal system faces certain challenges, including legal harmonization, community awareness and understanding, protection of indigenous peoples' rights, and policy alignment between central and local governments. Harmonization between Minangkabau customary law and national law is a complex process, requiring dialogue and negotiation between stakeholders to find common ground that respects local cultural values while maintaining consistency with more general national law (Rahmasari et al., 2023).

In addition, increasing awareness and understanding of Minangkabau Customary Law is important in overcoming integration challenges. A more intensive approach to education, information, and dialogue is needed to strengthen community understanding, including authorities, judges, and advocates, of the values and principles of Minangkabau Customary Law. This will help reduce misunderstandings and conflicts that may arise during the integration process. The protection of indigenous peoples' rights is also a central issue in the integration of Minangkabau Customary Law. Efforts are needed to ensure that indigenous peoples' rights, such as land tenure rights and access to natural resources, are protected and legally recognized. Indigenous peoples must play an active role in decision-making that affects their lives, including in legislative and policy processes involving their territories and cultures. Coordination between central and local governments is essential in the implementation of Minangkabau Customary Law consistently and coherently with the national legal system. Good synergy and cooperation between different levels of government will ensure that policies and regulations related to Minangkabau Customary Law are effectively implemented at the local level. By addressing these challenges, the integration of Minangkabau Customary Law into the national legal system can provide significant benefits, including strengthening cultural diversity, safeguarding the rights of indigenous peoples, and creating a more inclusive and equitable legal system.

The Role of Minangkabau Customary Law in the Formation of the National Legal System The Contribution of Minangkabau Customary Law to Social Justice

Minangkabau customary law has principles that encourage social justice, such as consensus and mutual cooperation. The concept of deliberation in Minangkabau Customary Law enables all parties involved to participate in fair and inclusive decision making. The principle of mutual assistance encourages the community to work together and help each other in achieving common prosperity. The contribution of Minangkabau Customary Law to social justice is by providing space for active community participation in decision-making processes that affect their lives (Nova, 2021).

Preservation of Cultural Diversity through Minangkabau Customary Law

Minangkabau Customary Law is a manifestation of the unique and distinctive cultural richness of Minangkabau. Minangkabau Customary Law provides protection and recognition of local customs, traditions, and cultural values inherent in the Minangkabau People. In an era of globalization that tends to eliminate cultural diversity, Minangkabau Customary Law plays an important role in preserving cultural heritage and promoting cultural diversity in Indonesia. Through the integration of Minangkabau Customary Law into the national legal system, Minangkabau cultural diversity can be officially recognized and respected, thus encouraging the maintenance and preservation of valuable

cultural heritage. Minangkabau customary law has a significant role in the establishment of an inclusive and equitable national legal system (Malik, 2016).

The contribution of Minangkabau Customary Law to social justice is manifested in the principles of deliberation and mutual cooperation that encourage active community participation in fair decision making. In addition, Minangkabau Customary Law also plays an important role in preserving cultural diversity through recognition and protection of local cultural customs, traditions, and values inherent in Minangkabau society. In the context of globalization that often leads to cultural homogenization, the integration of Minangkabau Customary Law into the national legal system can play an important role in maintaining cultural diversity in Indonesia. The preservation of cultural diversity through Minangkabau Customary Law can also contribute to the sustainable development of cultural tourism. Cultural tourism can be a source of income and economic development for the Minangkabau Community, while still maintaining the authenticity and integrity of their culture (Sulistiani, 2021).

In addition, Minangkabau Customary Law provides opportunities for the younger generation to learn and understand their cultural heritage. Recognition of Minangkabau Customary Law in the national legal system can encourage continuous cultural education, including the teaching of Minangkabau values, customs, and traditions in schools and other educational institutions. However, challenges in preserving cultural diversity through Minangkabau Customary Law may also arise. In the integration of Minangkabau Customary Law into the national legal system, it is necessary to ensure that recognition of Minangkabau culture is not only symbolic, but also followed by concrete policies and actions to protect and promote the sustainability of the cultural heritage (Pradhani, 2021).

The protection of intellectual rights to traditional knowledge and cultural expression is also an important issue in the preservation of cultural diversity. Integrating Minangkabau customary law in the national legal system requires strong agreement and cooperation between the government, the Minangkabau community, and other related parties. Joint efforts are needed to overcome challenges and ensure that the role of Minangkabau Customary Law in preserving cultural diversity can be realized effectively and sustainably. By maintaining social justice and preserving cultural diversity through Minangkabau Customary Law, the establishment of a national legal system in Indonesia can become more inclusive, strengthen cultural identity, and promote sustainable development based on local wisdom (Aditya, 2019).

Implementation of Minangkabau Customary Law in the National Legal System

The application of Minangkabau Customary Law in the national legal system can be seen in legal cases involving the Minangkabau community at various levels. Examples of the application of Minangkabau Customary Law can be seen in the settlement of land disputes, settlement of marriages, division of inheritance, and management of natural resources in the Minangkabau region. In some cases, courts recognized and applied the principles of Minangkabau Customary Law as a basis for deciding cases, taking into account cultural values and prevailing local norms. The integration of Minangkabau customary law in the national legal system faces challenges, among others, in terms of legal harmonization, gaps in understanding between authorities and communities, and balancing between local interests and national interests. Challenges related to legal harmonization involve efforts to adapt the principles of Minangkabau Customary Law to the principles of national law that are more general and universal. Unclear or inconsistent understanding of Minangkabau Customary Law among authorities such as judges,

advocates, and law enforcement officials can be an obstacle to effective implementation. Success in the integration of Minangkabau Customary Law depends on efforts made to increase awareness, understanding, and coordination between the government, the Minangkabau People, and related institutions. Success can also be achieved through a dialogue approach, active community participation, and the establishment of a dispute resolution mechanism that combines the principles of Minangkabau Customary Law with the principles of national law (Yusuf & Setiadi, 2023).

The integration of Minangkabau Customary Law in the national legal system involves its application in legal cases involving the Minangkabau community as well as addressing emerging challenges. In some cases, the application of Minangkabau Customary Law has been recognized by the courts and used as a basis in deciding cases. However, challenges such as legal harmonization and gaps in understanding require sustained efforts to achieve more effective integration. Success in the integration of Minangkabau Customary Law depends on better understanding, active community participation, and good coordination between the government and related parties (Abubakar, 2013).

Efforts to Strengthen the Integration of Minangkabau Customary Law in the National Legal System

The integration of Minangkabau customary law in the national legal system needs to be done. To realize this, efforts need to be made in strengthening the integration of Minangkabau customary law in the national legal system in Indonesia, efforts that can be made are: first, increasing awareness and education about Minangkabau customary law. Raising public awareness, including authorities, judges, advocates, and the general public, about Minangkabau Customary Law is carried out as an integral part of the national legal system. Education on Minangkabau Customary Law can be done through the provision of materials and curricula that cover aspects of customary law in the education system, including in schools, colleges, and non-formal educational institutions. Dissemination of information on Minangkabau Customary Law can also be done through mass media, public campaigns, seminars, and training for stakeholders (Wulansari & Gunarsa, 2016).

Second, harmonization between Minangkabau customary law and national law. Efforts to achieve harmonization between Minangkabau Customary Law and national law can be done by identifying similarities, differences, and intersections between the two. Through an inclusive process of dialogue and consultation, an understanding and framework can be built that accommodates the uniqueness of Minangkabau Customary Law within the confines of more general national law. This harmonization can be done through revision and improvement of existing laws and regulations, including recognizing and strengthening the protection of the rights of the Minangkabau indigenous people. Third, strengthening cooperation between the government and the community in the implementation of Minangkabau customary law. Good cooperation between the government and the Minangkabau community is very important in the implementation of Minangkabau Customary Law. The government needs to actively involve the Minangkabau community in the decision-making process related to the formulation of policies, legislation, and development programs that have an impact on the Minangkabau community. In the implementation of Minangkabau Customary Law, there needs to be open and transparent dialogues between the government and the community, so that the

interests of the Minangkabau People can be well represented and considered (Danil, 2012).

The above efforts were made to strengthen the integration of Minangkabau Customary Law in the national legal system. Increased awareness and education about Minangkabau Customary Law will help build a better understanding and appreciation of the uniqueness of this culture. Harmonization between Minangkabau Customary Law and national law will ensure that the principles and values of Minangkabau Customary Law are recognized and applied effectively in the broader legal context. Strengthening cooperation between the government and the community will strengthen community participation in decision-making and implementation of Minangkabau Customary Law (Wirasaputra, 2018).

Conclusion

Minangkabau customary law has an important role as a basis and perspective in the formation of the national legal system in Indonesia. As a form of traditional law based on the customs, traditions, and values of the Minangkabau People, Minangkabau Customary Law brings valuable contributions in maintaining cultural diversity, promoting social justice, and preserving valuable cultural heritage. Minangkabau Customary Law is a rich source of knowledge and foundation to form an inclusive national legal system that takes into account cultural diversity in Indonesia. Through the perspective of Minangkabau Customary Law, the values of gotong royong, musyawarah-mufakat, and social justice can be integrated in the formation of legal policies and more holistic law implementation. Recognition of Minangkabau Customary Law as a basis and perspective in the formation of a national legal system has implications for the importance of respecting legal diversity and recognizing local wisdom as an integral part of national identity.

The integration of Minangkabau Customary Law in the national legal system involves efforts to harmonize the law, better understanding between authorities, and active community participation in decision-making. In the context of globalization and modernization, maintaining and strengthening the role of Minangkabau Customary Law in the formation of the national legal system is important to maintain justice, cultural identity, and local wisdom. Recognition and protection of Minangkabau Customary Law as a basis and perspective in the establishment of a national legal system not only strengthens social justice, but also preserves rich cultural heritage and contributes to sustainable development and social harmony. Minangkabau Customary Law is not only a valuable cultural heritage, but also a meaningful foundation in the establishment of a national legal system that is just, inclusive, and respects cultural diversity in Indonesia.

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