

**OBSTACLES AND SOLUTIONS IN UPHOLDING  
CUSTOMARY LAW IN INDONESIA: R. SOEPOMO'S  
PERSPECTIVE**



Acc Munaqosyah  
13-2-2024

**By :**  
**FARICH ALVIN ARBIANSYAH**  
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**THESIS**

Submitted to Ahwal Syakhsiyah Department International Program

Faculty of Islamic Studies Universitas Islam Indonesia

Presented As Partial Fulfillment Of The  
Requirements Of Obtaining A Bachelor Degree Of  
Law

**YOGYAKARTA**

**2023**

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Supervisor:

M. Miqdam Makfi, Lc., MIRKH.

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**2023**

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## STATEMENT LETTER PAGE

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Hereby declare that the results of writing this thesis are my own work and are of true authenticity. If it turns out that at a later date the writing of this thesis is the result of plagiarism or plagiarism of other people's work, then I am willing to take responsibility and be willing to accept sanctions based on the rules and regulations that apply at the Islamic University of Indonesia.

Thus, I make this statement honestly and not forced.

Yogyakarta, 16 Februari 2024  
Yang Menyatakan,



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### PENGESAHAN

Tugas Akhir ini telah diujikan dalam Sidang Munaqasah Program Sarjana Strata Satu (S1) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyah IP yang dilaksanakan pada:

Hari : Senin  
Tanggal : 4 Maret 2024  
Judul Tugas Akhir : Obstacles and Solutions in Upholding Customary Law in Indonesia : R. Soepomo's Perspective  
Disusun oleh : FARICH ALVIN ARBIANSYAH  
Nomor Mahasiswa : 20421104

Sehingga dapat diterima sebagai salah satu syarat untuk memperoleh gelar Sarjana Strata Satu (S1) Syariah pada Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta.

#### TIM PENGUJI:

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**INTERNAL MEMO**

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Dear : Honorable **Dean of the Faculty of Islamic Studies**  
Universitas Islam Indonesia  
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*Assalaamu'alaikum Wr. Wb.*

Based on the appointment by the Dean of the Faculty of Islamic Studies, Universitas Islam Indonesia, with letter number: 1579/Dek/60/DAATI/FIAI/X/2023, On 09 October 2023/ 23 Rabiul Awwal 1445 H, for our duties as supervisor of the thesis:

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Academic Year : 2023/2024  
Thesis Title : Obstacles and Solutions in Upholding Customary Law in Indonesia: R. Soepomo's Perspective

After researching and making necessary improvements, we finally decided that your thesis above fulfills the requirements to be submitted to the Munaqasyah Trial of the Islamic Studies Faculty, Universitas Islam Indonesian  
Thus, it can be tested soon, and together with us, we will send 4 (four) copies of the thesis in question.

*Wassalaamu'alaikum Wr. Wb.*

Supervisor  
  
**M. Miqdam Makfi, Lc., MIRKH.**

## SUPERVISOR'S APPROVAL

The undersigned is the thesis supervisor, certifying that :

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PERSPECTIVE

According to the process and the results of supervising among several months, and being made necessary improvements, then the concerned person can register herself to join the Munaqasah Trial of the *Ahwal Syakhsiyah* International Program Department, Faculty of Islamic Studies, Universitas Islam Indonesian.

Supervisor

Yogyakarta, 13<sup>th</sup> of February 2024



**M. Miqdam Makfi, Lc., MIRKH.**

## **ACKNOWLEDGMENT**

*“This thesis is dedicated to the Islamic University of Indonesia, the unitary state of the Republic of Indonesia (NKRI), the next researcher in the field of law, especially customary law, as well as for his beloved father who always sees his child from the beauty of the sky in the morning, evening, and evening, may he be calm there. This will be my new weapon to uphold justice in the world.”*

**MOTTO**

*“Justice without power is empty, but power without justice is only violence.”*

*(Nagato Uzumaki)*

Justice and power must be balanced with each other. Justice that is not supported by concrete force or action is often unable to bring about significant change. On the other hand, having power without a foundation of justice will only result in repressive and violent actions, which in the end cannot bring true justice. Achieve a wise balance between power and justice to achieve positive and sustainable change in a society-



## PEDOMAN TRANSLITERASI ARAB LATIN

### Arabic Transliteration Guideline

Transliteration of Alphabetic Character follows Library of Congress Arabic Transliteration System

Character and latin symbol:

ا = 'a	ز = z	ق = q
ب = b	س = s	ك = k
ت = t	ش = sh	ل = l
ث = th	ص = ṣ	م = m
ج = j	ض = ḍ	ن = n
ح = ḥ	ط = ṭ	و = w
خ = kh	ظ = ḏ	ه = h
د = d	ع = ' (ayn)	ء = .../...
ذ = dh	غ = gh	ي = y
ر = r	ف = f	



## Arabic

### Letters of the Alphabet

Initial	Medial	Final	Alone	Romanization
ا	ا	ا	ا	omit (see Note 1)
ب	ب	ب	ب	b
ت	ت	ت	ت	t
ث	ث	ث	ث	th
ج	ج	ج	ج	j
ح	ح	ح	ح	h
خ	خ	خ	خ	kh
د	د	د	د	d
ذ	ذ	ذ	ذ	dh
ر	ر	ر	ر	r
ز	ز	ز	ز	z
س	س	س	س	s
ش	ش	ش	ش	sh
ص	ص	ص	ص	ṣ
ض	ض	ض	ض	ḍ
ط	ط	ط	ط	ṭ
ظ	ظ	ظ	ظ	ẓ
ع	ع	ع	ع	' (ayn)
غ	غ	غ	غ	gh
ف	ف	ف	ف	f (see Note 2)
ق	ق	ق	ق	q (see Note 2)
ك	ك	ك	ك	k
ل	ل	ل	ل	l
م	م	م	م	m
ن	ن	ن	ن	n
هـ	هـ	هـ، ه	هـ، ه	h (see Note 3)
و	و	و	و	w
ي	ي	ي	ي	y

### Vowels and Diphthongs

ā	a	ā (see Rule 5)	ī	ī
ū	u	ū (see Rule 6(a))	aw	aw
i	i	ū	ay	ay

### Letters Representing Non-Arabic Consonants

This list is not exhaustive. It should be noted that a letter in this group may have more than one phonetic value, depending on the country or area where it is used, and that the romanization will vary accordingly.

گ	g	چ	ch	ڦ	v
ڱ	ñ	چ	zh	ڙ	v
پ	p	ڙ	zh	ڦ	v

### Notes

1. For the use of *alif* to support *hamzah*, see rule 2. For the romanization of *hamzah* by the consonantal sign ' (alif), see rule 8(a). For other orthographic uses of *alif* see rules 3-5.
2. The *Maghribī* variations ڦ and ڙ are romanized *f* and *q* respectively.
3. *ō* in a word in the construct state is romanized *t*. See rule 7(b).

## RULES OF APPLICATION

### Arabic Letters Romanized in Different Ways Depending on Their Context

1. As indicated in the table, *w* and *y* may represent:
  - (a) The consonants romanized *w* and *y*, respectively.
 

wadʿ	وضع
ʿiwad	عوض
dalw	دلو
yad	يد
ḥiyal	حیل
ṭahy	طهی
  - (b) The long vowels romanized *ū*, *ī*, and *ā* respectively.
 

ūlá	أولى
ṣūrah	صورة
dhū	ذو
īmān	إيمان
ḥīl	حیل
fī	فی
kitāb	كتاب
saḥāb	سحاب
jumān	جمان

See also rules 11(a) and 11(b)(1-2).

(c) The diphthongs romanized *aw* and *ay*, respectively.

awj	أوج
nawm	نوم
law	لو
aysar	أيسر
shaykh	شيخ
'aynay	عينى

See also rules 11(a)(2) and 11(b)(3).

2. | (*alif*), و and ى when used to support ء (*hamzah*) are not represented in romanization. See rule 8(a).
3. | (*alif*) when used to support *waslah* ( َ ) and *maddah* ( ِ ) is not represented in romanization. See rules 9 and 10.
4. | (*alif*) and و when used as orthographic signs without phonetic significance are not represented in romanization.

fa'alū	فعلوا
ulā'ika	أولائك
ūqīyah	أوقية

See also rule 12 and examples cited in rules 23-26.

5. | (*alif*) is used to represent the long vowel romanized *ā*, as indicated in the table.

fā'il	فاعل
riḍā	رضا

This *alif*, when medial, is sometimes omitted in Arabic; it is always indicated in romanization. See rule 19.

6. Final ى appears in the following special cases:

(a) As ى ( *alif maqṣūrah* ) used in place of ِ to represent the long vowel romanized *ā*.

ḥattá	حتى
maḍá	مضى
kubrá	كبرى
Yahyá	يحيى
musammá	مسمى
Muṣṭafá	مصطفى

- (b) As  $\text{رَضِيَ}$  in nouns and adjectives of the form  $\text{fāṭil}$  which are derived from defective roots. This ending is romanized  $\bar{r}$ , not  $\bar{r}y$ , without regard to the presence of  $\text{و}$  (*shaddah*). See rule 11(b)(2).

Raḍī al-Dīn                      رَضِيَ الدِّينِ

Compare the  $\text{fāṭil}$  form of the same root الرَضَى [without *shaddah*] *al-Raḍī*.

- (c) As  $\text{مِصْرِي}$  in the relative adjective (*nisbah*). The ending, like (b) above, is romanized  $\bar{r}$ , not  $\bar{r}y$ .

al-Miṣrī                      المِصْرِي

Compare المِصْرِيَّة *al-Miṣrīyah* and see rule 11(b)(1).

7.      $\text{ö}$  (*tā' marbūṭah*)

- (a) When the noun or adjective ending in  $\text{ö}$  is indefinite, or is preceded by the definite article,  $\text{ö}$  is romanized *h*. The  $\text{ö}$  in such positions is often replaced by *o*.

ṣalāh	صَلَاةٌ
al-Risālah al-bahīyah	الرِّسَالَةُ الْبَهِيَّةُ
mir'āh	مِرَاةٌ
Urjūzah fī al-ṭibb	أَرْجُوزَةٌ فِي الطَّبِّ

- (b) When the word ending in  $\text{ö}$  is in the construct state [*muḍāf wa-muḍāf ilayh*],  $\text{ö}$  is romanized *t*.

Wizārat al-Tarbiyah	وِزَارَةُ التَّرْبِيَةِ
Mir'āt al-zamān	مِرَاةُ الزَّمَانِ

- (c) When the word ending in  $\text{ö}$  is used adverbially,  $\text{ö}$  (vocalized  $\text{ö}$ ) is romanized *tan*.  
See rule 12(b).

### Romanization of Arabic Orthographic Symbols Other than Letters and Vowel Signs

The signs listed below are frequently omitted from unvocalized Arabic writing and printing; their presence or absence must then be inferred. They are represented in romanization according to the following rules:

8.      $\text{ء}$  (*hamzah*)

- (a) In initial position, whether at the beginning of a word, following a prefixed preposition or conjunction, or following the definite article,  $\text{ء}$  is not represented in romanization.

When medial or final,  $\text{ء}$  is romanized as ' (alif).

asad	أَسَدٌ
uns	أُنْسٌ
idhā	إِذَا
mas'alah	مَسْأَلَةٌ
mu'tamar	مَوْتَمَرٌ

dā'im	دائم
mala'a	ملاً
khaṭi'a	خطئ

(b) *ع*, when replaced by the sign  $\text{◌}̣$  (*waṣlah*) and then known as *hamzat al-waṣl*, is not represented in romanization. See rule 9 below.

9.  $\text{◌}̣$  (*waṣlah*), like initial *ع*, is not represented in romanization. See also rule 8(b) above. When the *alif* which supports *waṣlah* belongs to the article  $\text{ال}$ , the initial vowel of the article is romanized *a*. See rule 17(b). In other words, beginning with *hamzat al-waṣl*, the initial vowel is romanized *i*.

Riḥlat Ibn Jubayr	رحلة ابن جبير
al-istidrāk	الإستدراك
kutub iqṭanat'hā	كتب أقتنتها
bi-ihtimām 'Abd al-Majīd	باهتمام عبد ألمجيد

10.  $\text{◌}̣$  (*maddah*)

(a) Initial  $\text{◌}̣$  is romanized *ā*.

ālah	آلة
Kulīyat al-Ādāb	كلية الآداب

(b) Medial  $\text{◌}̣$ , when it represents the phonetic combination 'ā, is so romanized.

ta'ālīf	تأليف
ma'āthir	مآثر

(c)  $\text{◌}̣$  is otherwise not represented in romanization.

khulafā'	خلفاء
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11.  $\text{◌}̣$  (*shaddah* or *tashdīd*)

(a) Over *و*:

- (1)  $\text{◌}̣$ , representing the combination of long vowel plus consonant, is romanized *ūw*.

adūw	عدو
qūwah	قوة

See also rule 1(b).

- (2)  $\text{◌}̣$ , representing the combination of diphthong plus consonant, is romanized *aww*.

Shawwāl	شوّال
ṣawwara	صوّر
jaww	جو

See also rule 1(c).

(b) Over ى:

- (1) Medial ى, representing the combination of long vowel plus consonant, is romanized *īy*.

al-Miṣrīyah                      المصريّة

See also rule 1(b).

- (2) Final ى is romanized *ī*. See rules 6(b) and 6(c).

- (3) Medial and final ى, representing the combination of diphthong plus consonant, is romanized *ayy*.

ayyām                      أيام  
sayyid                      سيد  
Qūṣayy                      قضي

See also rule 1(c).

(c) Over other letters, ى is represented in romanization by doubling the letter or digraph concerned.

al-Ghazzī                      الغزي  
al-Kashshāf                      الكشاف

12. *Tanwīn* may take the written form ً, ٍ (|), or ِ, romanized *un*, *an*, and *in*, respectively. *Tanwīn* is normally disregarded in romanization, however. It is indicated in the following cases:

(a) When it occurs in indefinite nouns derived from defective roots.

qāḍīn                      قاض  
ma'nān                      معنى

(b) When it indicates the adverbial use of a noun or adjective.

ṭab'an                      طبعا  
faj'atan                      فجأة  
al-Mushtarik waḍ'an                      المشترك وضعاً  
wa-al-muftariq ṣuq'an                      والمفترق صقعاً

### Grammatical Structure as It Affects Romanization

13. Final inflections of verbs are retained in romanization, except in pause. represent

man waliya Miṣr                      من ولي مصر  
ma'rifat mā yajibu la-hum                      معرفة ما يجب لهم  
ṣallā Allāh 'alayhi wa-sallam                      صلى الله عليه وسلم  
al-Lu'lu' al-maknūn fī ḥukm                      اللؤلؤ المكنون في حكم  
al-ikhbār 'ammā sa-yakūn                      الإخبار عما سيكون

14. Final inflections of nouns and adjectives:
- (a) Vocalic endings are not represented in romanization, except preceding pronominal suffixes, and except when the text being romanized is in verse.
- uṣūluḥā al-nafsīyah wa-ṭuruq      أصولها النفسية وطرق تدريسها  
tadrīsiḥā  
ilá yawminā hādhā      الى يومنا هذا
- (b) *Tanwīn* is not represented in romanization, except as specified in rule 12.
- (c) *ö* (*tā' marbūṭah*) is romanized h or t as specified in rule 7.
- (d) For the romanization of the relative adjective (*nisbah*) see rule 6(c).
15. Pronouns, pronominal suffixes, and demonstratives:
- (a) Vocalic endings are retained in romanization.
- anā wa-anta      انا وانت  
hādhīhi al-ḥāl      هذه الحال  
mu'allafātuḥu wa-shurūḥuhā      مؤلفاته وشروحيها
- (b) At the close of a phrase or sentence, the ending is romanized in its pausal form.
- ḥayātuhū wa-'aṣruḥ      حياته وعصره  
Tawfiq al-Ḥakīm, afkāruḥ,      توفيق الحكيم، أفكاره، آثاره  
āthāruḥ
16. Prepositions and conjunctions:
- (a) Final vowels of separable prepositions and conjunctions are retained in romanization.
- anna      أن  
annahu      أنه  
bayna yadayhi      بين يديه
- Note the special cases: مما *mimmā*, ممن *mimman*.
- (b) Inseparable prepositions, conjunctions, and other prefixes are connected with what follows by a hyphen.
- bi-hi      به  
wa-ma'ahu      ومعه  
lā-silkī      لاسلكي
17. The definite article:
- (a) The romanized form *al*/is connected with the following word by a hyphen.
- al-kitāb al-thānī      الكتاب الثاني  
al-ittiḥād      الإتحاد  
al-aṣl      الأصل  
al-āthār      الآثار



- (b) When **ل** is initial in the word, and when it follows an inseparable preposition or conjunction, it is always romanized *al* regardless of whether the preceding word, as romanized, ends in a vowel or a consonant.

ilá al-ān	الى الآن
Abū al-Wafā'	ابو الوفاء
Maktabat al-Nahḍah al-Miṣrīyah	مكتبة النهضة المصرية
bi-al-tamām wa-al-kamāl	بالتمام والكمال

Note the exceptional treatment of the preposition **ل** followed by the article:

li-Shirbīnī	لشربيني
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See also rule 23.

- (c) The **ل** of the article is always romanized *l*, whether it is followed by a “sun letter” or not, i.e., regardless of whether or not it is assimilated in pronunciation to the initial consonant of the word to which it is attached.

al-ḥurūf al-abjadīyah	الحروف الأبجدية
Abū al-Layth al-Samarqandī	ابو الليث السمرقندي

### Orthography of Arabic in Romanization

18. Capitalization:

- (a) Rules for the capitalization of English are followed, except that the definite article *a*/*is* given in lower case in all positions.  
 (b) Diacritics are used with both upper and lower case letters.

al-Īrī	الايحيى
al-Ālūsī	الآلوسى

19. The macron or the acute accent, as appropriate, is used to indicate all long vowels, including those which in Arabic script are written defectively. The macron or the acute accent, as the case may be, is retained over final long vowels which are shortened in pronunciation before *hamzat al-waṣl*.

Ibrāhīm	إبراهيم ، إبراهيم
Dā'ūd	داؤود ، داؤد
Abū al-Ḥasan	ابو الحسن
ru'ūs	رؤوس
dhālika	ذلك
'alá al-'ayn	على العين

20. The hyphen is used:

- (a) To connect the definite article *a*/*with* the word to which it is attached. See rule 17(a).  
 (b) Between an inseparable prefix and what follows. See rules 16(b) and 17(b) above.

(c) Between *bin* and the following element in personal names when they are written in Arabic as a single word. See rule 25.

21. The prime ( ' ) is used:

(a) To separate two letters representing two distinct consonantal sounds, when the combination might otherwise be read as a digraph.

Ad'ham	أدهم
akramat'hā	أكرمتها

(b) To mark the use of a letter in its final form when it occurs in the middle of a word.

Qal'ah'jī	قلعه جى
Shaykh'zādah	شيخ زاده

22. As in the case of romanization from other languages, foreign words which occur in an Arabic context and are written in Arabic letters are romanized according to the rules for romanizing Arabic.

Jārmānūs ( <i>not</i> Germanos <i>nor</i> Germanus)	جارمانوس
Lūrd Ghrānfil ( <i>not</i> Lord Granville)	لورد غرانفيل
Īsāghūjī ( <i>not</i> Isagoge)	ايساغوجي

For short vowels not indicated in the Arabic, the Arabic vowel nearest to the original pronunciation is supplied.

Gharsiyā Khayin ( <i>not</i> García Jaén)	غرسيا خين
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### Examples of Irregular Arabic Orthography

23. Note the romanization of الله, alone and in combination.

Allāh	الله
billāh	بِالله
lillāh	لِالله
bismillāh	بِسْمِ الله
al-Mustanṣir billāh	المستنصر بالله

24. Note the romanization of the following personal names:

Ṭāhā	طه
Yāsīn	يس ، يسن
'Amr	عمرو
Bahjat	بهجت ، بهجة

25. ابن and بن are both romanized *ibn* in all positions.

Aḥmad ibn Muḥammad ibn Abī al-Rabī	احمد بن محمد بن ابي الربيع
Sharḥ Ibn 'Aqīl 'alā Alfīyat Ibn Mālik	شرح ابن عقيل على الفية ابن مالك

Exception is made in the case of modern names, typically North African, in which the element بن is pronounced *bin*.

Bin Khiddah	بن خده
Bin-'Abd Allāh	بنعبد الله

26. Note the anomalous spelling مائة, romanized *mī'ah*.

**ABSTRACT**  
**OBSTACLES AND SOLUTIONS IN UPHOLDING**  
**CUSTOMARY LAW IN INDONESIA: R. SOEPOMO'S**  
**PERSPECTIVE**

FARICH ALVIN ARBIANSYAH

NIM : 20421104

*"Obstacles and Solutions in Upholding Customary Law in Indonesia: R. Soepomo's Perspective" described the long journey of customary law in Indonesia as an inseparable part of the culture and traditions of the local people. However, in recent years, customary law enforcement faced various obstacles that hinder its implementation. Indigenous law is not only an important tool in maintaining cultural sustainability and the rights of indigenous peoples, but also played an important role in protecting cultural diversity and the preservation of natural resources. One of the key figures who had an important view of customary law in Indonesia is R. Soepomo, a nationalist figure, scholar, national hero, father of the constitution, figure who drafted the 1945 Constitution and the 1950 Constitution and the first professor of customary law in Indonesia. He understands the importance of customary law in harmonising the national legal system with local values. This research aims to identify and analyse the main obstacles in customary law enforcement in Indonesia, as well as present solutions in overcoming existing challenges using the R. Soepomo perspective. Soepomo as a theoretical basis. These barriers include pluralistic elements of society, cultural diversity, government policies, the role of customary law enforcement, the conflict between customary law and positive law, and human rights that together affected the recognition, protection, and enforcement of customary law. Through this research the author wanted to clearly describe how R. Soepomo views. Soepomo about the challenges in enforcing customary law in Indonesia, as well as the solutions he provided, which can still be applied today by going through several adjustments, such as harmonisation of customary law.*

**Keywords:** *Culture, Law Implementation, Indigenous Peoples, Enforcement of Indigenous Law, R. Soepomo, Challenges, Solutions.*

## PREFACE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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وَصَحْبِهِ أَجْمَعِينَ، أَمَّا بَعْدُ

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## LIST OF CONTENTS

<b>FRONT COVER</b> .....	ii
<b>INNER COVER</b> .....	i
<b>STATEMENT LETTER</b> .....	ii
<b>VALIDATION</b> .....	iii
<b>INTERNAL MEMO</b> .....	iv
<b>SUPERVISOR’S APPROVAL</b> .....	v
<b>ACKNOWLEDGMENT</b> .....	vi
<b>MOTTO</b> .....	vii
<b>PEDOMAN TRANSLITERASI ARAB LATIN</b> .....	viii
<b>ABSTRACT</b> .....	xix
<b>PREFACE</b> .....	xx
<b>LIST OF CONTENTS</b> .....	xx
<b>CHAPTER I. INTRODUCTION</b> .....	1
A. Background.....	1
B. Problem Formulation.....	5
C. Objective of Research.....	5
D. Benefits of Research.....	6
E. The Structure of Thesis.....	7
<b>CHAPTER II. LITERATURE REVIEW AND THEORITICAL FRAMEWORK</b> ... 9	9
A. Literature Review.....	9
B. Theoretical Framework.....	49
<b>CHAPTER III. METHODOLOGY OF RESEARCH</b> .....	59
A. Type of Research.....	60
B. Analysis Method.....	60
C. Data Source.....	61
D. Data Collection Technique.....	61
<b>CHAPTER IV. RESULT AND DISCUSSIONS</b> .....	63
A. About of Mr. Dr. R. Soepomo.....	63
B. Enforcement of Customary Law in Indonesia.....	77
<b>CHAPTER V. CONCLUSIONS AND SUGGESTIONS</b> .....	96

A. Conclusion .....	96
B. Suggestion.....	99
<b>REFERENCES</b> .....	100

# CHAPTER I

## INTRODUCTION

### A. Background

Law is a system of rules with norms and sanctions intended to control human behavior, maintain order and justice, and prevent chaos. Some opinions state that the understanding of law is written or unwritten rules that govern society and include sanctions and penalties for those who violate them.

Indonesia is a country that embraces legal pluralism. There are three valid, recognized, and applicable legal systems: Western law, religious law, and customary law<sup>1</sup>.

In practice, many communities still rely on customary law to regulate daily activities and resolve existing issues. Each region in Indonesia inevitably has its own customary law that governs the lives of indigenous communities in socializing. Most of these customary laws are not in written form, commonly referred to as unwritten law.

Customary law, broadly speaking, is a set of written and unwritten rules or norms derived from traditions and customs of a community. Customary law can also be interpreted as a legal system that grows and develops organically and

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<sup>1</sup> Zaka Firma Aditya, "ROMANTISME SISTEM HUKUM DI INDONESIA : KAJIAN ATAS KONTRIBUSI HUKUM ADAT DAN HUKUM ISLAM TERHADAP PEMBANGUNAN HUKUM DI INDONESIA," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (May 15, 2019): 37, <https://doi.org/10.33331/rechtsvinding.v8i1.305>.

naturally within a society, ultimately rooted in the traditions and culture of the local community.<sup>2</sup>

The purpose of these laws is to regulate behavior in communal living. Anyone who violates them will face customary sanctions, including fines, exile, social ostracism, and even a decline in social status.

A profound understanding of customary law can be found in both the positive and Islamic perspectives, forming the basis for the recognition and implementation of customary law in Indonesia. Indonesian positive law acknowledges the existence of customary law as a legal reality with a place and role in preserving cultural diversity within society.<sup>3</sup>

The customary law in Indonesia has deep roots and a rich history, serving as a reflection of the cultural diversity that spans the archipelago. The emergence of customary law in Indonesia not only mirrors the internal processes of a society but is also influenced by various external factors such as cultural contacts, political changes, and interactions with foreign legal systems.

Within the framework of legal development in Indonesia, there exists complexity, obstacles, and challenges in the application and enforcement of customary law, which is considered to be overshadowed by positive law. Despite having strong roots in cultural diversity, customary law often encounters significant hurdles in its implementation. This raises profound questions about the

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<sup>2</sup> Fatahuddin Aziz Siregar, "CIRI HUKUM ADAT DAN KARAKTRISTIKNYA" 4 (2018).

<sup>3</sup> Muhammad Arief Syahfrudin Ramadhan Muhammad Akbar., "IMPLEMENTASI DAN HARMONISASI NORMA HUKUM ADAT DAN HUKUM NASIONAL DI INDONESIA" 1 (2023): 204–17.

reasons behind this inequality and its impact on the sustainability of local values amidst the modernization of national law.

One of the main reasons why the application and enforcement of customary law in Indonesia seem to lag behind is the dominance of positive law that is general and on a national scale. Positive law, as a result of the modernization of national law, tends to be more centralized and formal, while customary law tends to be local and rooted in tradition. This difference creates tension between the specific norms of customary law and the general nature of positive law.<sup>4</sup>

Furthermore, the lack of formal recognition of customary law within the national legal framework poses a serious constraint. Despite some steps taken to integrate aspects of customary law into specific laws, implementation often faces challenges due to regulatory ambiguity. This creates legal uncertainty and confusion among indigenous communities and law enforcement agencies.

Inequality in access to justice and legal representation is also a significant factor. Indigenous communities often encounter obstacles in exercising their customary legal rights before formal legal institutions. The lack of adequate understanding among law enforcement officials regarding customary law and a tendency to prioritize positive law pose major challenges.

As one of the key figures in the history of Indonesian law, R. Soepomo stands out as a prominent figure with a crucial role in the development, application, and enforcement of customary law in Indonesia. Through his exceptional contributions, R. Soepomo was able to establish a strong legal foundation to

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<sup>4</sup> Ibi Satibi, "Politik Hukum Adat di Indonesia Era Kolonial: Akomodasi, Penetrasi dan Resistensi," *AL-MIKRAJ Jurnal Studi Islam dan Humaniora (E-ISSN 2745-4584)* 4, no. 1 (June 10, 2023): 51–66, <https://doi.org/10.37680/almikraj.v4i1.2998>.

recognize and protect customary law as an integral part of the identity and cultural diversity of Indonesian society.

Prof. Dr. R. Soepomo is a national hero commonly referred to as the Father of the Constitution. Before becoming a figure in the formulation of the 1945 Constitution and the 1950 State Constitution, Soepomo was known as Indonesia's first professor of customary law. This was elucidated by AT Soegito in his book "R. Soepomo"<sup>5</sup> (Department of Education and Culture, 1979). Born in Sukoharjo, Central Java, on January 22, 1903, into a noble family of the Solo Palace, Soepomo delved into the intricacies of Javanese customary society from a young age.

Prof. Dr. Soepomo's interest in customary law strengthened during his studies at Leiden Law Faculty in the Netherlands. At the age of 21, Soepomo joined the Perhimpunan Indonesia, an organization of students and scholars from the Dutch East Indies (Indonesia) founded in 1908.

The significant role of R. Soepomo can be understood from the perspective of his work in producing laws that legitimize customary law in Indonesia. One of his major achievements is his involvement in the drafting of Law No. 5 of 1960 on Basic Agrarian Principles. Through this law, Soepomo established a legal basis recognizing the rights of indigenous communities related to land and natural resources, providing a legal foundation for the implementation of customary law in Indonesia.

R. Soepomo understood the importance of harmonizing customary law and positive law to support national development. He acknowledged that customary law plays a strategic role in preserving cultural diversity and achieving social

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<sup>5</sup> A.T. SOEGITO, *Prof. Mr. Dr. R. Supomo*, vol. 1, 354476 (Jakarta: Proyek Pelita, 1981).

justice. With his inclusive vision, Soepomo advocated for the implementation of customary law as a crucial step in maintaining the integrity and stability of the nation.

By digging deeper into R. Soepomo's thoughts and actions, and considering that the enforcement and application of customary law in Indonesia still faces various obstacles and challenges, the researcher finally took up a thesis with the title "*Obstacles and Solutions in Upholding Customary Law in Indonesia: R. Soepomo's Perspective*" which aims to explore the obstacles in enforcing customary law in Indonesia from R. Soepomo's perspective. Apart from that, this study will also examine potential solutions based on R. Soepomo's ideas to overcome problems related to customary law.

## **B. Problem Formulation**

Based on background of study, the problem formulation of this research are :

1. How the concept of customary law according to R. Soepomo's perspective and what is his view of the importance of upholding customary law in Indonesia?
2. How the main obstacles in upholding customary law in Indonesia based on R. Soepomo's perspective?
3. How the solutions can be proposed based on R. Soepomo's perspective to overcome obstacles in upholding customary law in Indonesia?

## **C. Objective of Research**

The objectives of this research are :

1. To know the concept of customary law according to R. Soepomo's perspective and R. Soepomo's view of the importance of upholding customary law in Indonesia.
2. To understand the main obstacles in upholding customary law in Indonesia based on R. Soepomo's perspective.
3. To study solutions can be proposed based on R. Soepomo's perspective to overcome obstacles in upholding customary law in Indonesia.

#### **D. Benefits of Research**

The benefits of this research are :

1. A better understanding of customary law in Indonesia: This research can provide a deep insight into customary law in Indonesia, especially through the perspective of R. Soepomo. This will help in understanding the nature, characteristics, and challenges faced in the enforcement of customary law in Indonesia.
2. Identification of obstacles in the enforcement of customary law: This research can identify various obstacles that hinder the enforcement of customary law in Indonesia. This can include legal, social, political, economic, and cultural factors that affect the effectiveness of customary law enforcement.
3. Mapping solutions to improve customary law enforcement: This research can provide a better understanding of possible solutions to overcome obstacles in customary law enforcement in Indonesia. This can include policy recommendations, legal changes, social approaches, and collaboration between legal institutions and indigenous peoples.



4. Contribution to the development of customary law: This research can make an important contribution to the development of customary law in Indonesia. By identifying barriers and solutions in customary law enforcement, this research can strengthen arguments and advocate for better recognition and protection of customary law.
5. Provide a reference for further research: This research can be the basis for further research on customary law in Indonesia. These research findings and recommendations can encourage follow-up studies that involve a broader perspective, comparison with other cases, or research in a related field.

## **E. The Structure of Thesis**

This research is made with coherent systematics, the purpose is to make it easier for both researchers and readers to understand the contents of this research. So there needs to be a systematic discussion. The systematics of discussion in this study are as follows:

Chapter I is an introduction to discussing the background of the problem, research focus, problem formulation, research objectives, research benefits, frame of thought, relevant previous research, research methods and writing systematics.

Chapter II explains the literature review that presents:

- 1) A Comprehensive overview of obstacles and solutions in upholding customary law.
- 2) Analysing relevant literature on Customary Law.
- 3) Identify related research that has been done and the existing knowledge gap.

Chapter III describe the theoretical study of :

- 1) Legal Pluralism.
- 2) Definition of Custmoary Law.
- 3) Describe about Historical and Cultural Significance of Customary Law.
- 4) Enforcement of Customary Law in Indonesia.

Chapter IV is a legal analysis of relating to this research and its approach, will describe the type of research and approach, data collection techniques, and data analysis techniques.

Chapter V is a conclusion that contains conclusions and suggestions.

Then ends with a Reference or Bibliograph.

## **CHAPTER II**

### **LITERATURE REVIEW AND THEORETICAL FRAMEWORK**

#### **A. Literature Review**

The literature review is an obvious and logical presentation of the prior relevant research. The literature review aims to identify and emphasize the vital variable and then document it as an urgent discovery from the previous research that functioned as the basis of the theoretical framework and hypothesis. A literature review in research is a must because a literature review such like a key for revealing the truth to help solving the research problem.

This library study is intended to put forward relevant theories with the problem being studied, it is also used as a comparison tool for researchers against a study they are doing. By looking at previous research, researchers can see the advantages and disadvantages of the theory used by other researchers in their research. With the previous research, it can be seen the substantive differences that distinguish one study from another. So that in order to clarify to know the differences in previous research related to the problems that the researcher will study, it is necessary to study the results of previous research, including:

1. In the article Ucuk Agiyanto entitled "LAW ENFORCEMENT IN INDONESIA: Exploration of the Concept of Divine Dimensional

Justice"<sup>6</sup>, a theory can be taken that discusses customary law enforcement in Indonesia. This theory states that the enforcement of customary law in Indonesia must refer to the values of Pancasila and the religious teachings and customs of the Indonesian people. The purpose of customary law enforcement in Indonesia is to create justice in society. In addition, this theory also emphasises the importance of the role of carrying practical laws such as parliament, justice, legal aid institutions, and government bureaucracy in building the structure and substance of law in Indonesia. However, this theory also recognises that a good legal culture also has a significant effect on good law enforcement. In the context of customary law enforcement in Indonesia, this theory emphasises the importance of the concept of godly justice. Enforcement of customary law must be based on the concept of justice based on religious values and beliefs of the community. However, in reality, the enforcement of customary law in Indonesia is still not effective and is influenced by political factors. In the enforcement of customary law, the role of judges is also very important. Judges must understand the legal values that live in society and interpret reality to give a fair judgment based on truth and realize a sense of justice.

The advantages of this article are :

- a) Multifaceted Approach: This article integrates various aspects to explain law enforcement in Indonesia, including structure, substance, legal culture, and concepts of justice with a divine foundation. This

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<sup>6</sup> Ucuk Agiyanto, "Penegakan Hukum Di Indonesia: Eksplorasi Konsep Keadilan Berdimensi Ketuhanan," *Hukum Ransidental*, no. 4 (2018): 493–503.

provides a comprehensive understanding of law enforcement issues.

- b) **Strong References:** The article refers to robust legal concepts such as legal structure, legal substance, and legal philosophy, citing perspectives from B. Arief Sidharta. This demonstrates that the article is grounded in strong and reliable references.
- c) **Philosophical Legal Approach:** The article employs a philosophical legal approach to examine law enforcement in Indonesia, offering insightful and analytical perspectives on the issue.

The disadvantages of this article are:

- a) **Lack of Empirical Data:** The article tends to be conceptual and philosophical without providing empirical data to support its claims. Empirical data could strengthen the presented arguments.
- b) **Lack of Alternative Solutions:** While the article identifies issues in law enforcement in Indonesia, it fails to present concrete alternative solutions. The article could be stronger by offering recommendations or implementable solutions.
- c) **Scope Limitations:** The article focuses on law enforcement in Indonesia without extending its view to legal issues in other countries. Expanding the scope could provide a broader perspective.

The similarities is both discuss the challenges and solutions related to the application of law, with the article focusing on law enforcement in Indonesia, while the thesis specifically addresses the challenges and solutions related to the application of customary law in Indonesia

according to the perspective of R Soepomo. Both works also emphasize the importance of aligning legal practices with the values of Pancasila and the role of legal culture in shaping the enforcement of law in Indonesia. Additionally, the article emphasizes the importance of aligning legal practices with the values of Pancasila and the role of legal culture in shaping the enforcement of law in Indonesia. This specific emphasis on Pancasila and legal culture is not explicitly mentioned in the thesis, which focuses more on the challenges and solutions related to the application of customary law according to R Soepomo's perspective. Therefore, while both works discuss law enforcement and legal challenges in Indonesia, the article has a broader focus on law enforcement in general, while the thesis specifically addresses the challenges and solutions related to the application of customary law according to R Soepomo's perspective.

In conclusion, this article provides in-depth insights into law enforcement in Indonesia but could be strengthened with empirical data and more concrete alternative solutions.

2. In the article written by Imam Sukadi entitled "The Powerless of Law in the Process of Law Enforcement in Indonesia"<sup>7</sup> there is one theory that is relevant to customary law enforcement in Indonesia, namely the theory of the Legal System proposed by Lawrence M. Friedman. This theory includes three factors that affect law enforcement, namely legal substance, legal structure, and legal culture [3]. In the context of customary law

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<sup>7</sup> Imam Sukadi, "Matinya Hukum Dalam Proses Penegakan Hukum Di Indonesia (The Powerless of Law in the Process of Law Enforcement in Indonesia)," *Risalah Hukum* 7, no. 1 (2011): 49.

enforcement in Indonesia, these factors can be applied to understand how customary law is carried out, both in terms of customary law substance, customary law structure, and customary law culture that affects the use, avoidance, or misuse of customary law by the community. In addition, there is also a theory about the importance of accommodating values and culture in law enforcement in Indonesia. The legal model and character in Indonesia must be able to accommodate the values and culture that develop in society, as well as refer to the ideals of Indonesian law. In terms of customary law enforcement, this theory emphasises the importance of understanding and respecting the values and culture that live in indigenous people, as well as integrating them into the legal system that applies in Indonesia. However, it should be noted that customary law enforcement in Indonesia still faces various obstacles and challenges. One of the main factors that causes customary law enforcement to be ineffective is the figure of law enforcement, both in legal institutions such as the Attorney General's Office, the Police, the Supreme Court, and in other institutions. Therefore, there needs to be a change in the legal paradigm.

The advantages from this article are :

- a) **Discussing Challenges in Law Enforcement in Indonesia:** This article clearly identifies various challenges in law enforcement in Indonesia, including the influence of Dutch colonial law, weaknesses in anti-corruption laws, and the lack of justice in judicial decisions.
- b) **Presenting Perspectives from Various Legal Figures:** The article encompasses views from various Indonesian legal figures, such as

Soekanto, Soepomo, and Satjipto Rahardjo, providing diverse insights into law enforcement in Indonesia.

- c) **Highlighting the Need for Legal Paradigm Shift:** The article emphasizes the need for a legal paradigm shift in Indonesia, including incorporating legal substance into law enforcement and adopting legal sociology as a tool.

The disadvantages of this article are::

- a) **Not Presenting Empirical Data:** This article tends to be theoretical and does not present empirical data to support its arguments. Empirical data could provide stronger support for the claims made in the article.
- b) **Not Providing Concrete Solutions:** Although the article identifies various challenges in law enforcement in Indonesia, it does not offer concrete solutions or implementable recommendations to address these issues.
- c) **Not Providing Contrasting Perspectives:** The article tends to present a consistent view of challenges in law enforcement in Indonesia without offering contrasting or controversial perspectives.

The similarities is both discuss the challenges and solutions related to the application of law, with the article focusing on law enforcement in Indonesia, while the thesis specifically addresses the challenges and solutions related to the application of customary law in Indonesia according to the perspective of R Soepomo. Both works also emphasize



the importance of aligning legal practices with the values of Pancasila and the role of legal culture in shaping the enforcement of law in Indonesia. Additionally, the article emphasizes the importance of aligning legal practices with the values of Pancasila and the role of legal culture in shaping the enforcement of law in Indonesia. This specific emphasis on Pancasila and legal culture is not explicitly mentioned in the thesis, which focuses more on the challenges and solutions related to the application of customary law according to R Soepomo's perspective. Therefore, while both works discuss law enforcement and legal challenges in Indonesia, the article has a broader focus on law enforcement in general, while the thesis specifically addresses the challenges and solutions related to the application of customary law according to R Soepomo's perspective.

In conclusion, this article provides crucial insights into challenges in law enforcement in Indonesia but has shortcomings in terms of lacking empirical data and concrete solutions.

3. In the journal of *Gema Keadilan* which was compiled by Nadhia Ayu Sarasvati, Maria Ayu Riski Purnama, Riska Andi Fitriyono entitled "THE EXISTENCE OF THE ENFORCEMENT OF CUSTOMARY LAW IN ACEH IN CRIMINOLOGY PERSPECTIVE"<sup>8</sup> it is explained that in practice, customary law in Aceh is applied fairly regardless of the social status of the perpetrator. That is, whoever the perpetrator of the crime, whether the perpetrator comes from a sultanate family, the perpetrator will

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<sup>8</sup> Nadhia Ayu Sarasvati, Maria Ayu Riski Purnama, and Riska Andi Fitriyono, "Eksistensi Penegakan Hukum Adat Di Aceh Dalam Perspektif Kriminologi," *Gema Keadilan* 8, no. 3 (2021): 239–52, <https://doi.org/10.14710/gk.2021.12625>.

receive the same punishment as other people. However, in the imposition of punishment from a criminological point of view, there are still perpetrators of crimes who get preferential treatment from the government. Traditional institutions in Aceh have the authority to resolve community disputes, such as the distribution of water in rice fields, the division of labour between fishermen, and the division of catch areas. However, there are obstacles in the enforcement of customary law in Indonesia. If customary disputes are not resolved in the customary court, they will be handled by law enforcement officers. In its implementation, customary law in Aceh has a good purpose, which is to cause a deterrent effect so that people who violate criminal acts no longer have the intention to do it again. However, keep in mind that every human being has inherent rights from birth. Therefore, it is better for customary law that applies in Aceh to be strictly enforced only for criminal acts, but still pay attention to the human rights inherent in a person.

The advantages of this article are :

- a) Qualitative Approach: This article utilizes qualitative research methods through literature review, enabling the discovery, revelation, development, and testing of the truth behind concepts, theories, and thoughts.
- b) Focus on Criminological Perspective: The article provides a criminological perspective on the enforcement of customary law in Aceh, offering a different and in-depth insight into the issue.

The disadvantages of this article are:

- a) **Limitation in Research Methodology:** The article exclusively relies on qualitative research methods in the form of literature review. The use of more diverse research methods, such as field research, could provide a more comprehensive understanding of the issues surrounding the enforcement of customary law in Aceh.
- b) **Limited Primary Data:** The article does not mention the use of primary data, such as interview results or direct observations, which could strengthen the analysis and findings in the article.
- c) **Scope Limitation:** The article only discusses the enforcement of customary law in Aceh, thus failing to provide a comprehensive overview of customary law enforcement throughout Indonesia.

This journal specifically discusses the existence and enforcement of customary law in Aceh from a criminological perspective, while the thesis discusses the challenges and solutions related to the implementation of customary law in Indonesia according to R. Soepomo. On other hand the the thesis discusses the challenges and solutions related to the application of customary law in Indonesia according to R. Soepomo's views, without specifically focusing on the criminological perspective . Therefore, the main difference lies in the specific focus of the journal on the criminological perspective in the enforcement of customary law in Aceh, while the thesis focuses on the broader challenges and solutions related to the application of customary law in Indonesia according to R.

Therefore, this article offers valuable insights into the enforcement of customary law in Aceh from a criminological perspective.

4. In the EduTech Journal written by Asliani Harahap entitled "NEWAL OF CRIMINAL LAW BASED ON CUSTOMARY LAW"<sup>9</sup>, as a whole, the article discusses the importance of customary law enforcement in Indonesia. Some of the important points discussed in the article are:
- a. Existence of Customary Law: The article explained that Law No. 32/2004 concerning Local Government and Law No. 35/1999 concerning the Principles of Judicial Power emphasised the rights of indigenous people to manage the political system and government in accordance with the provisions of local customary law
  - b. The Lack of Customary Law Use: Although the use of customary law in law enforcement in Indonesia is still minimal, there are several cases where customary law is used in making decisions, such as the decision of the Padang District Court which uses Minangkabau customary law in criminal cases involving children as perpetrators.
  - c. Limitations of Customary Criminal Law: Limited customary criminal law applies to certain indigenous communities, and there is no customary criminal law that can apply to all Indonesian people. The force of customary criminal law applies depending on the circumstances, time, and place.
  - d. Criminal Law Update: The article also proposes a renewal of criminal law in Indonesia by considering the use of local wisdom (customary law) in designing the Criminal Code Plan in the future. Indonesian customary criminal law can be used as material or a source of law for

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<sup>9</sup> Asliani Harahap, "Pembaharuan Hukum Pidana Berbasis Hukum Adat," *Jurnal Edutech* 4, no. 2 (2018): 1–9.

making new criminal law, so that it can be accepted by the community.

The advantages of this article are:

- a) **Discussing the Importance of Customary Law Enforcement in Indonesia:** This article discusses the significance of customary law enforcement in Indonesia, providing a better understanding of the existence of customary law and its role in the national legal system.
- b) **Presenting Information on the Limited Use of Customary Law in Law Enforcement in Indonesia:** The article provides information on the minimal application of customary law in law enforcement in Indonesia, along with cases where customary law is employed in decision-making. This offers a broader insight into the application of customary law in legal practice.
- c) **Proposing Criminal Law Reforms in Indonesia:** The article proposes reforms to criminal law in Indonesia by considering the use of local wisdom (customary law) in designing future drafts of the Criminal Code. This contributes constructively to criminal law reforms.

The disadvantages of this article are:

- a) **Not Providing Concrete Examples of Challenges in Customary Law Enforcement in Indonesia:** The article does not offer concrete examples of challenges faced in the enforcement of customary law in Indonesia, potentially leaving readers without a deep understanding of the implementation challenges of customary law.

- b) Not Providing In-Depth Analysis of the Limitations of Customary Criminal Law: The article lacks a thorough analysis of the limitations of customary criminal law and how this affects the enforcement of customary law in Indonesia. This omission may result in readers lacking a complete picture of the issues at hand.

The similarities between the journal and the thesis discuss the application of customary law in Indonesia. Apart from that, both of them also discussed the relevance of customary law in the context of legal reform in Indonesia. The main difference between this journal and the thesis is that this journal focuses more on reforming criminal law based on customary law, while the thesis places more emphasis on the challenges and solutions to the application of customary law in Indonesia according to R Soepomo's view

Therefore, the article provides valuable insights into the importance of customary law enforcement in Indonesia and proposes criminal law reforms, but it still has shortcomings in offering concrete examples of challenges faced in customary law enforcement.

5. In the thesis written by Ilham Fadhil entitled "CUSTOMARY LAW EXISTENCE IN LAW ENFORCEMENT IN INDONESIA (Analysis of Decision Number 12/PDT.G/2012/PN. PYK)"<sup>10</sup>, explained that the existence of customary law in Indonesia has decreased. Although customary law still exists and is recognised in Indonesian law and constitution based on article 18B paragraph (2) of the 1945 Constitution

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<sup>10</sup> Analisis Putusan, Nomor Pdt, and G P N Pyk, "Eksistensi Hukum Adat Dalam Penegakan Hukum," 2023.

of the 1945 NRI, indigenous people tend to prefer to resolve customary disputes through the State Court rather than through customary law itself. This shows the active role of the national legal system in resolving customary disputes. It was also revealed that the analysis in the thesis was that the judge's decision on the decision Number 12/PDT.G/2012/PN. PYK is not in accordance with Minangkabau customary law and does not protect the sovereignty of customary law. The judge in the decision does not use customary law as the main basis, but uses the Supreme Court's decision. This reflects one of the obstacles in the enforcement of customary law in Indonesia, namely the lack of recognition and use of customary law as a basis in deciding customary disputes. The important points are:

- a. Injustice in Customary Law Enforcement: it is revealed that the judge in the judgement does not apply fairly. Judges do not use customary law that applies and is recognised by the state to achieve justice for indigenous people. The decision issued by the judge clearly does not provide welfare for indigenous people, so this causes injustice in the enforcement of customary law.
- b. Not Juridically Recognised: it is explained that juridically, customary justice is not recognised in all regions of the Republic of Indonesia based on the Judicial Power Law. However, in West Sumatra Province, there is an effort to recognise customary justice through Regional Regulations that regulate the Nagari Judicial institution (Adat) as an institution that resolves customary disputes.

The advantages of this article are :

- a) In-depth analysis: This article provides an in-depth analysis of the legal considerations made by judges in specific rulings, offering deeper insights into the court process.
- b) Strong References: The article is supported by robust references from various sources, such as customary law, legislation, and related literature. This enhances the accuracy and reliability of the presented information.
- c) Multidisciplinary Approach: The article also incorporates a multidisciplinary approach by referring to legal, historical, and cultural aspects, providing a more comprehensive understanding.

The disadvantages of this article are:

- a) Scope Limitations: This article may have limitations in its scope, particularly in terms of generalizing findings to courts beyond the investigated context.
- b) Lack of Empirical Data: Some sections of the article may lack strong empirical data support, potentially affecting the validity of certain arguments presented.
- c) Lack of Contemporary Perspectives: The article might not sufficiently highlight contemporary perspectives regarding the existence of customary law in the context of modernization and current social developments.



What this journal and this research have in common is that they both aim to implement and enforce customary law in Indonesia. This journal also intends for the government to pay attention to customary law in making decisions, as is the case with this research so that the application of customary law is more effective. PYK, whereas in this research it pays more attention to R. Soepomo's Perspective.

Considering these strengths and weaknesses, readers should carefully evaluate the information presented in this article.

6. The article from Riezka Eka Mayasari, "*ADAT LEGAL CHALLENGES IN THE ERA OF GLOBALISATION AS LIVING LAW IN THE NATIONAL LEGAL SYSTEM*".<sup>11</sup> This article discusses customary law in Indonesia and its role in the development of national law. This article also discusses the influence of globalisation on customary law and national law, as well as the importance of understanding the cultural values contained in customary law. The author also highlights differences of opinion regarding the determination of customary law as a positive law. In addition, the article also discusses the challenges of customary law in the era of globalisation and how customary law can be considered as a "living law" in the national legal system. Globalisation and modernisation demand everything that is rational and empirical, which is contrary to traditional customary law. However, the existence of customary law is still needed in answering the demands of globalization. The concept of legal plurality is also debated in the context of globalization. In addition, the book 'Notes

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<sup>11</sup> R Mayasari Eka, "Tantangan Hukum Adat Dalam Era Globalisasi Sebagai Living Law Dalam Sistem Hukum Nasional," *Journal Equitable*, 2018, 94–112.

Against Today's Customary Law' by Moh. Koesnoe was also discussed, which discussed about customary law and its characteristics, as well as the impact of development policies on indigenous people in Indonesia. The linkage of customary law with the principles of human rights is also discussed, where human rights are raised as important in a democratic country. Finally, the article also discusses Human Rights (HAM) as basic rights inherent in humans naturally, universally, and eternally, as well as the recognition and protection of customary law in the context of human rights. Customary law is still needed in answering the demands of the complexity of the globalization problem because it is a value that lives in the midst of society.

The purpose of this article is to discuss the role of customary law in Indonesia in the development of national law, as well as to highlight the influence of globalisation on customary law and national law. In addition, this article also aims to understand the cultural values contained in customary law, highlight differences of opinion regarding the determination of customary law as a positive law, and discuss the challenges of customary law in the era of globalisation. This article also aims to highlight the existence of customary law as "living law" in the national legal system, as well as to discuss the relationship of customary law with human rights principles. Finally, this article also aims to recognise and protect customary law in the context of human rights, as well as to highlight the importance of customary law in answering the

demands of the complexity of the problem of globalisation because it is a value that lives in the midst of society.

The advantages from this article are :

- a) Comprehensive Discussion : This article provides a comprehensive discussion about customary law in Indonesia, its role in national legal development, the influence of globalisation, and its relevance to human rights principles.
- b) Multidisciplinary Approach: This article combines legal, cultural, and human rights perspectives, providing a broader understanding of the topics covered.
- c) Strong Reference: Quoting the book 'Notes Against Today's Customary law' by Moh. Koesnoe provides a strong foundation for the discussion of customary law and its influence on indigenous people in Indonesia.

The disadvantages from this article are :

- a) Scope Limitations: This article may not provide enough space to discuss in depth all aspects related to customary law, globalisation, and human rights.
- b) Lack of Empirical Data: This article may be lacking in providing empirical data or case studies that support the arguments presented.
- c) Limitations of Point of View: This article may have limitations in presenting diverse points of view, such as the point of view of indigenous peoples or parties affected by development policies.

d) Thus, this article provides good insight into customary law in Indonesia, but also has limitations in scope and empirical data.

This article provides a comprehensive discussion of customary law in Indonesia, its role in the development of national law, the influence of globalization, and its relationship to human rights principles with a multidisciplinary approach. This article has a broader approach to customary law, including the influence of globalization, its relationship to human rights, and its role in the development of national law.

This article concluded that customary law in Indonesia has an important role in the development of national law, but faces challenges due to the influence of globalization and modernization. Although customary law is traditional, its existence is still needed in answering the demands of globalisation. In addition, this article highlights that the existence of indigenous peoples in Indonesia is often threatened by development policies, which leads to the destruction of indigenous people's systems and patterns. The linkage of customary law with human rights principles is also emphasised, where human rights are appointed as important in a democracy. Finally, this article emphasised that customary law is still needed in answering the demands of the complexity of the problem of globalisation because it is a value that lives in the midst of society.

7. The Article from Takwim Azami, *"DINAMIKA DEVELOPMENT AND CHALLENGES OF IMPLEMENTATION OF CUSTOMARY LAW IN*

*INDONESIA*".<sup>12</sup> This article discusses the dynamics of the development of Customary Law in Indonesia, the challenges in its implementation in Positive Law, and the urgency of the formation of the Law on Indigenous Peoples. The research method used is analytical descriptive with a normative juridical approach. The development of Customary Law in Indonesia was influenced by political policies during the Dutch colonialism period, the independence period, the old order period, the new order, and the reform era. Although there is no specific Law on Indigenous Peoples yet, many sectoral laws regulate, guarantee, and recognise the traditional rights of indigenous peoples. This article also discusses the dynamics of development and challenges of the implementation of customary law in Indonesia. Indonesia uses three legal systems at once, namely Civil Law, Islamic Law, and Customary law. Customary Law has an important role in the development of national law, but its implementation still faces challenges.

This article also explains the understanding of Customary law, the role of indigenous people, and constitutional recognition of indigenous people in Indonesia. Recognition and protection of indigenous people in Indonesia is still a problem. Although customary law is officially recognised by the state, its use is still limited. Conflicts related to customary rights and their agrarian resources are also still frequent. The urgency of the formation of the Law on Indigenous Peoples is very important to provide guarantees for the rights of indigenous peoples.

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<sup>12</sup> Takwim Azami, "Dinamika Perkembangan Dan Tantangan Implementasi Hukum Adat Di Indonesia," *Qistie* 15, no. 1 (2022): 42, <https://doi.org/10.31942/jqi.v15i1.6487>.

Conflicts related to the decision of the Constitutional Court are also still issues that must be overcome.

The purpose of this article is to investigate the dynamics of the development of Customary Law in Indonesia, identify challenges in its implementation in Positive Law, and highlight the urgency of the formation of the Law on Indigenous Peoples. In addition, this article also aims to provide an understanding of the important role of Customary law in the development of national laws, as well as to highlight the issue of recognition and protection of indigenous people in Indonesia. Thus, this article aims to contribute to understanding the issues of customary law and provide a basis for further discussion on the protection of the rights of indigenous people in Indonesia.

The Advantages are :

- a) Clear Methodological Approach: This article uses an analytical descriptive method with a normative juridical approach, which provides a clear framework to investigate the dynamics of the development of Customary law in Indonesia.
- b) Deep Understanding: This article provides a deep understanding of the role of Customary law in the development of national law, as well as the challenges of its implementation in Indonesia.
- c) The Urgency of Law Formation: This article highlights the urgency of the formation of the Law on Indigenous Peoples, providing a strong understanding of the need for guarantees for the rights of indigenous peoples of law.

The Disadvantages are :

- a) **Limitations in Implementation:** Although this article identifies the challenges of implementing Customary Law in Indonesia, it does not provide concrete solutions or recommendations to overcome these problems.
- b) **Lack of Empirical Data:** This article may be lacking in providing empirical data or case studies that support its findings and analysis.
- c) **Scope Limitations:** This article may not cover all relevant aspects related to Customary Law in Indonesia, such as social, economic, or political aspects that may affect its implementation.

The conclusion of this Article is to discuss the dynamics of the development of Customary law in Indonesia, the challenges of its implementation in Positive Law, and the urgency of the formation of the Law on Indigenous Peoples. The research method used is analytical descriptive with a normative juridical approach. The development of Customary law in Indonesia was influenced by political policies from the Dutch colonial period to the reform era. Although there is no specific Law on Indigenous Peoples yet, many sectoral laws regulate, guarantee, and recognise the traditional rights of indigenous peoples. Indonesia uses three legal systems at once, namely Civil Law, Islamic Law, and Customary law. Customary Law has an important role in the development of national law, but its implementation still faces challenges. Recognition and protection of indigenous people in Indonesia is still a problem, with conflicts related to customary rights and agrarian resources often occurring.

The urgency of the formation of the Law on Indigenous Peoples is very important to provide guarantees for the rights of indigenous peoples. Conflicts related to the decision of the Constitutional Court are also still issues that must be overcome. Thus, this article highlights the importance of recognising, protecting, and implementing Customary law in Indonesia, as well as supporting the urgency of forming a special Law to provide guarantees for the rights of indigenous people.

This documents advocate for the recognition and strengthening of customary law in Indonesia, the document directly addresses the challenges and solutions of applying customary law, aligning with the focus of the skripsi. This journal focuses on the dynamics of the development of Customary Law, the challenges of its implementation, and the urgency of establishing a Law on Customary Law Communities in Indonesia. While the thesis places more emphasis on the challenges and solutions to the application of customary law in Indonesia according to R Soepomo's view.

8. The Article From Zaka Firma Aditya and Rizkisyabana Yulistiyaputri, *"HUKUM SYSTEM ROMANTISM IN INDONESIA : STUDY ON THE CONTRIBUTION OF CUSTOMARY LAW AND ISLAMIC LAW TO LEGAL DEVELOPMENT IN INDONESIA"*.<sup>13</sup> This article discusses the contribution of Islamic law and customary law in the legal system in

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<sup>13</sup> Zaka Firma Aditya and Rizkisyabana Yulistiyaputri, "ROMANTISME SISTEM HUKUM DI INDONESIA : KAJIAN ATAS KONTRIBUSI HUKUM ADAT DAN HUKUM ISLAM TERHADAP PEMBANGUNAN HUKUM DI INDONESIA (The Romanticism of Legal Systems in Indonesia: The Study of The Contribution of Islamic Law And Islamic Law for Legal Devel," *Jurnal Rechtsvinding* 8, no. 1 (2019): 37–54.



Indonesia. The article also examines the influence of the continental legal system, customary law, and Islamic law in the legal system in Indonesia. The research method used is normative law with a legal, comparative, and historical approach. In addition, this article also discusses legal pluralism in Indonesia and how customary law and Islamic law can fill the legal void in the Indonesian civil legal system. This article also highlights the recognition of Islamic law in Indonesia since the entry of Islam into the archipelago as well as the important role of customary law and Islamic law in ordering people's lives.

The contribution of Islamic law in the Indonesian legal system, including constitutional recognition and application of Sharia principles in regional regulations. The influence of the continental law system, customary law, and Islamic law in the Indonesian legal system, as well as the position, existence, and contribution of customary law and Islamic law. Legal pluralism in Indonesia as a solution to the legal vacuum in the civil legal system.

Recognition of customary law in Article 18B paragraph (2) of the 1945 Constitution, the contribution of customary law in the formation of legal jurisprudence, and legal romanticism in dispute resolution. The important role of customary law and Islamic law in ordering people's lives, as well as the relevance of customary law as an effective source of law if recognised and respected in accordance with the development of society.

The purpose of this article is to discuss the contribution of Islamic law and customary law in the legal system in Indonesia, as well as to

examine the influence of the continental legal system, customary law, and Islamic law in the Indonesian legal system. This article also aims to highlight legal pluralism in Indonesia and how customary law and Islamic law can fill the legal void in the civil law system. In addition, this article also aims to highlight the recognition of Islamic law in Indonesia since the entry of Islam into the archipelago and the important role of customary law and Islamic law in ordering people's lives.

The advantage of this article is the approach used in research, namely the legal approach, the comparative approach, and the historical approach, providing a comprehensive understanding of the contribution of Islamic law and customary law in the Indonesian legal system. In addition, this article also provides a deep understanding of legal pluralism in Indonesia and how customary law and Islamic law can fill legal gaps in the civil legal system. However, the shortcomings of this article may lie in the focus that is too broad, so that it does not explore in depth certain aspects of the contribution of Islamic law and customary law in the Indonesian legal system. In addition, this article also does not provide an in-depth analysis of the impact of the contribution of Islamic law and customary law on the development of the legal system in Indonesia.

The conclusions that can be taken from this article are:

The legal system in Indonesia is influenced by the continental legal system, customary law, and Islamic law. Customary law and Islamic law have important contributions in the Indonesian legal system. Islamic law has been constitutionally recognised in Article 29 of the 1945 Constitution,

and the principles of Sharia began to be regulated in regional regulations in several regions in Indonesia. Legal pluralism in Indonesia can be a solution for the legal vacuum created due to the rigour of civil law application. Customary law has contributed to the formation of legal jurisprudence, but its existence is marginalised because of the influence of the legal system that prefers the western legal system model.

However, customary law is still relevant and can be an effective source of law if it is recognised and respected in accordance with the development of society. This conclusion shows the complexity of the legal system in Indonesia and the importance of recognising the role of customary law and Islamic law in the formation of national law.

The similarities focus in discussing the challenges and solutions to implementing customary law in Indonesia, although from different perspectives discussing challenges and solutions related to implementing customary law in Indonesia. then both discuss the contribution of customary law in Indonesia and its development in legal development. But in differences this journal discusses the contribution of Islamic law and customary law to the legal system in Indonesia, as well as examining the influence of the continental legal system, customary law and Islamic law in the Indonesian legal system.

9. The Article From, Muhammad Akbar Ramadhan and Muhammad Aried Syahfrudin, *"IMPLEMENTATION AND HARMONISATION OF*

*CUSTOM LEGAL NORMS AND NATIONAL LAW IN INDONESIA*<sup>14</sup>.

This article discusses the development of customary law in Indonesia, the urgency of the formation of the Law on Indigenous Peoples, obstacles and challenges in the implementation of customary law, as well as the dynamics of the relationship between customary law and national law. The research method used is analytical descriptive research with a normative juridical approach. This research also discusses the importance of implementing and harmonising customary law norms and national laws in Indonesia, as well as the challenges faced in the process. There are also suggestions to overcome obstacles and challenges in the implementation of customary law, including strengthening customary law education, active participation of indigenous people in policy formulation, consistency of government policies, recognition of indigenous rights, the role of legal activists and civil society organisations, development of special laws for indigenous people, synergy between customary law and national law, strengthening communication and dialogue between parties, understanding of generational challenges, as well as continuous research and evaluation.

The purpose of this article is to discuss the development of customary law in Indonesia, the urgency of the formation of the Law on Indigenous Peoples, obstacles and challenges in the implementation of customary law, as well as the dynamics of the relationship between customary law and national law. In addition, this article also aims to

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<sup>14</sup> Ramadhan Muhammad Akbar., "IMPLEMENTASI DAN HARMONISASI NORMA HUKUM ADAT DAN HUKUM NASIONAL DI INDONESIA."

explain the dynamics of customary law enforcement in the Indonesian legal system, the challenges of its implementation, and the neglect of customary law as a source of law in Indonesia. In addition, this article also aims to provide suggestions to overcome obstacles and challenges in the implementation of customary law, including strengthening customary law education, active participation of indigenous people in policy formulation, government policy consistency, recognition of indigenous people's rights, the role of legal activists and civil society organisations, development of special laws for indigenous people, synergy between customary law and national law, strengthening communication and dialogue between parties, understanding of generational challenges, as well as continuous research and evaluation.

This article has several identifiable advantages from the given citation. First, this article presents a comprehensive analysis of the dynamics of the relationship between customary law and national law in Indonesia, as well as obstacles and challenges in the implementation of customary law. Second, this article provides an in-depth understanding of the importance of the formation of the Law on Indigenous Peoples in Indonesia and provides concrete suggestions to overcome obstacles and challenges in the implementation of customary law. Third, this article uses a strong research method, which is analytical descriptive research with a normative juridical approach, which provides a solid basis for the analysis presented. Fourth, this article provides an important insight into the importance of implementing and harmonising the norms of customary law

and national law in Indonesia, as well as the challenges faced in the process. Fifth, this article provides a deep understanding of the dynamics of customary law enforcement in the Indonesian legal system and the challenges of its implementation. Thus, this article makes a significant contribution in understanding the issues of customary law in Indonesia and provides suggestions that can help in the implementation of customary law more effectively.

There are also some shortcomings that can be identified in this article. First, this article may not explore the perspective of indigenous people directly, so that it can reduce a deep understanding of their challenges and needs in the implementation of customary law. Second, this article may not discuss the social, economic, and political impacts of the implementation of customary law, which can provide a more comprehensive insight into the issues at hand. Third, this article may be less highlight on the role of government and related institutions in overcoming obstacles and challenges in the implementation of customary law, which can provide a more complete perspective on the efforts needed to achieve harmonisation between customary law and national law. Thus, this article may be enriched by further deepening the perspective of indigenous people, discussing the social, economic, and political impacts of the implementation of customary law, and highlighting the role of the government and related institutions in efforts to harmonise customary law and national law.

This article concluded that the development of customary law in Indonesia was influenced by various policies during the Dutch colonial period, the period of independence, the old order, the new order, and the reform period. The implementation of customary law faces obstacles such as obscurity and overlapping laws, lack of legal recognition and protection, as well as conflicts with development and investment. The dynamics of the relationship between customary law and national law face a variety of challenges, including inequality of access to justice, the influence of globalisation and modernisation, lack of customary law education, the inconsistent role of government, climate and environmental change, generational challenges, and technological challenges. The importance of the formation of the Law on Indigenous Peoples is increasingly real because of conflicts related to the rights of indigenous people, especially in agricultural resources. Suggestions to overcome obstacles and challenges in the implementation of customary law include strengthening customary law education, active participation of indigenous peoples in policy formulation, consistency of government policies, recognition of indigenous rights, the role of legal activists and civil society organisations, development of special laws for indigenous people, synergy between customary law and national law, strengthening communication and dialogue between parties, understanding of generational challenges, as well as continuous research and evaluation. With these steps, it is hoped that Indonesia can achieve harmonisation between customary law and national law and protect the rights of indigenous people more effectively.

What this journal and research have in common is that they both discuss the challenges in implementing customary law in Indonesia. Thus, both have a similar focus in discussing the challenges and solutions to implementing customary law in Indonesia, although from different perspectives.

The difference between this journal and research is that this journal provides a comprehensive analysis of the dynamics of the relationship between customary law and national law in Indonesia, as well as the obstacles and challenges in implementing customary law. Meanwhile, this research has a more specific focus on R. Soepomo's views on the challenges and solutions in implementing customary law in Indonesia.

10. The Article From Veisa Najwa Tionika, Rizka Ayu Mardiana, and Najwa Mufidah Hasibuan, *"INTEGRATION OF THE CONCEPT OF CUSTOM LAW IN THE FRAMEWORK OF NATIONAL LEGAL DEVELOPMENT OF INDONESIA"*.<sup>15</sup> This article discusses the resolution of disputes over the right to the land of indigenous people, constitutional protection against the unity of indigenous peoples, the integration of customary law concepts in the framework of Indonesian national legal development, as well as challenges and opportunities in accommodating the principles of customary law by indigenous people in national law. In addition, this article also discusses related regulations, recognition of the rights of indigenous people in the Indonesian legal system, as well as the efforts

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<sup>15</sup> Eirene Eva Martha Sheila et al., "Jurnal Hukum Dan Kewarganegaraan," *Jurnal Hukum Dan Kewarganegaraan* 5, no. 1 (2023): 1–11.



needed to ensure justice for indigenous people, such as improving education, in-depth study, dialogue, review of regulations, and strengthening legal institutions.

The purpose of this article is to discuss and analyse issues related to the resolution of disputes over land rights of indigenous peoples, constitutional protection against the unity of indigenous peoples, the integration of customary law concepts in the framework of Indonesian national legal development, as well as challenges and opportunities in accommodating the principles of indigenous peoples of customary law in national law. In addition, this article also aims to highlight related regulations, recognition of the rights of indigenous people in the Indonesian legal system, as well as the efforts needed to ensure justice for indigenous people, such as improving education, in-depth study, dialogue, review of regulations, and strengthening legal institutions.

This article has several advantages, including:

- a) In-depth Analysis: This article provides an in-depth analysis of the settlement of disputes over land rights of indigenous peoples, constitutional protection of the unity of indigenous peoples, the integration of customary law concepts in the framework of Indonesian national legal development, as well as challenges and opportunities in accommodating the principles of customary law by indigenous people in national law.
- b) Strong Reference: This article refers to related regulations and laws, as well as other works relevant to the topic of customary law in

Indonesia, showing the accuracy and reliability of the information presented.

- c) **Relevance to Contemporary Issues:** This article is relevant to contemporary issues related to the land rights of indigenous peoples and the integration of customary law in Indonesian national law, thus making an important contribution to understanding and solving ongoing problems.
- d) **Solution Recommendations:** This article also provides solution recommendations, such as improving education, in-depth study, dialogue, regulatory review, and strengthening legal institutions to ensure justice for indigenous legal communities, which can be a guide for policy makers and legal practitioners in dealing with issues related to customary law in Indonesia.

The conclusion of this article is that the settlement of disputes over the land rights of indigenous peoples and constitutional protection of the unity of indigenous peoples are important aspects in realising social justice. The integration of the concept of customary law in the framework of Indonesian national legal development is also the main focus, by recognising the important role of customary law in people's lives. Although customary law is recognised in the constitution, its integration into national law is often neglected. The recognition of the rights of indigenous people in the Indonesian legal system is regulated in regulations and laws, but there are still conflicts and disputes related to land between indigenous people and the government. Therefore, efforts

such as improving education, in-depth study, dialogue, regulatory review, and strengthening legal institutions are needed to ensure justice for indigenous people.

This journal focuses more on the integration of customary law concepts within the framework of Indonesian national legal development, constitutional protection of the unity of customary law communities, as well as challenges and opportunities in accommodating customary law principles by indigenous communities in national law. What this journal and research have in common is that they both discuss challenges and solutions related to the application of customary law in Indonesia.

11. The article from Sri Sudaryatmi "*THE ROLE OF CUSTOMARY LAW IN THE DEVELOPMENT OF NATIONAL LAW IN THE ERA OF GLOBALISATION*".<sup>16</sup> This article discusses the role and importance of customary law in the development of national law in Indonesia. Customary law is considered an important part of national law that needs to be adjusted to the times and Indonesian cultural values. The discussion also includes the importance of modernising customary law to meet the needs of modern society, but still maintains Indonesian cultural values. In addition, this article also highlights the importance of incorporating the concepts and principles of customary law into new legal institutions and foreign laws to enrich and develop national law, without contradicting

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<sup>16</sup> Sri Sudaryatmi, "Peranan Hukum Adat Dalam Pembangunan Hukum Nasional Di Era Globalisasi," *Masalah-Masalah Hukum* 41, no. 4 (2012): 572–78.

Pancasila and the 1945 Constitution. Customary law has an important role in the development of national laws in Indonesia, especially in managing ownership issues in industrial societies. The role of customary law is also seen in law enforcement, where values harmonised with human behaviour are the key to achieving a sense of justice in society. The functional relationship between customary law and national law in the development of national law emphasises the importance of customary law that is adapted to the times. Modernisation of customary law to meet the needs of modern society, but still maintain Indonesian cultural values, is a crucial thing. Globalisation also affects the behaviour and customs of the Indonesian people, so that legal values need to be prepared in accordance with the development of national law, based on Pancasila and the 1945 Constitution. Therefore, customary law institutions need to be modernised and adapted to the demands of the times, without losing the characteristics of Indonesia. In addition, the concepts and principles of customary law also need to be included in new legal institutions and foreign laws to enrich and develop national law, without contradicting Pancasila and the 1945 Constitution.

The purpose of this article is to highlight the important role of customary law in the development of national laws in Indonesia, especially in the context of globalisation and modernisation. This article also aims to emphasise the need for customary law to be adjusted to the development of the times and cultural values of Indonesia, without contradicting Pancasila and the 1945 Constitution. In addition, this article also intends to highlight the importance of incorporating the concepts and principles of

customary law into new legal institutions as well as foreign laws to enrich and develop national law. Thus, this article aims to provide a comprehensive view of the role of customary law in the context of national legal development in Indonesia.

This article has several significant advantages, including:

- a) **Highlighting the Role of Customary Law:** This article places a strong emphasis on the important role of customary law in national legal development in Indonesia, especially in the context of globalisation and modernisation.
- b) **Emphasising the Importance of Modernisation of Customary Law:** This article highlights the importance of modernising customary law to meet the needs of modern society, but still maintaining Indonesian cultural values.
- c) **Presenting a Historical Perspective:** This article links the concept of customary law with Von Savigny's view of the *Volkgeist*, which provides a deep historical perspective on how customary law develops and is maintained by the people of Indonesia.
- d) **Relevance to Global Conditions:** This article recognises the influence of globalisation on the behaviour and customs of the Indonesian people, and highlights the importance of preparing legal values that are in accordance with the development of national law, based on Pancasila and the 1945 Constitution.
- e) **Recommendation for Modernisation of Customary law Institutions:** This article recommends the modernisation of customary law

institutions and adaptation to the demands of the times, without losing the characteristics of Indonesia, as well as the importance of incorporating the concepts and principles of customary law into new legal institutions and foreign laws to enrich and develop national law.

This article has several shortcomings that need to be considered, including :

- a) Lack of Empirical Data: This article tends to be theoretical and does not support its arguments with empirical data or concrete case studies that can illustrate the application of customary law in the development of national law in Indonesia.
- b) Perspective Limitations: This article may have limitations in paying attention to diverse perspectives, such as views of indigenous peoples or minority groups that may have different experiences and views related to the application of customary law.
- c) Lack of Critical Analysis: Although this article provides an overview of the role of customary law in national legal development, the lack of critical analysis of the challenges and obstacles that may be faced in the modernisation of customary law.
- d) Not Discussing Negative Impacts: This article does not explicitly discuss the negative impacts or potential conflicts that may arise in the process of modernising customary law, which is also an important aspect to consider.

This article concludes that customary law has an important role in the development of national law in Indonesia, especially in the context of

globalisation and modernisation. The role of customary law includes the structuring of ownership issues in industrial societies, law enforcement, and its influence on the formation of national law. This article also highlights the need to modernise customary law to meet the needs of modern society, but still maintain Indonesian cultural values. In addition, this article emphasises the importance of incorporating the concepts and principles of customary law into new legal institutions and foreign laws to enrich and develop national law, without contradicting Pancasila and the 1945 Constitution. Thus, this article emphasises that customary law needs to be adjusted to the times and cultural values of Indonesia, while still maintaining the characteristics of Indonesia.

What this journal has in common is the emphasis on the important role of customary law in the development of national law in Indonesia. This shows similarities in views regarding the role and modernization of customary law in the context of development.

Emphasis on Modernizing Customary Law: This journal highlights the need to modernize customary law to meet the needs of modern society, while still maintaining Indonesian cultural values. The main difference lies in the approach, focus and recommendations presented in this journal.

12. The article from Sartika Intaning Pradhani "*The Approach of Legal Pluralism in the Study of Customary Law: The Interaction of Customary Law in National Law and International Law*"<sup>17</sup>: This article discusses the

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<sup>17</sup> Sartika Intaning Pradhani, "Pendekatan Pluralisme Hukum Dalam Studi Hukum Adat: Interaksi Hukum Adat Dengan Hukum Nasional Dan Internasional," *Undang: Jurnal Hukum* 4, no. 1 (2021): 81–124, <https://doi.org/10.22437/ujh.4.1.81-124>.

approach of legal pluralism in the study of customary law, with a focus on the recognition of customary law by the state and the interaction between local, national, and international customary law. This article also discusses the adaptation of customary law in the UUPA, the recognition of customary law in the Criminal Code Bill, as well as the role of information and communication technology in facilitating the interaction between customary law, state law, and international law.

There are examples of concrete cases, such as land and border disputes between Indonesia and Timor Leste, which are explained to illustrate how customary law interacts with state and international law. This article also discusses the categories of application of legal pluralism approaches in customary law studies, such as weak legal pluralism, strong legal pluralism, and multi-sited legal pluralism. Dispute resolution through indigenous institutions and state courts is also the focus in this article, showing how legal pluralism occurs in the context of conflict resolution. The influence of state land law on the role of traditional functionaries, such as *mamak* in the Minangkabau indigenous legal community, is also discussed in this article. This article also highlights the limitations of recognising customary law by the state, especially in terms of individual protection, as well as the concept of indigenous legal communities that have not changed much since its introduction by Van Vollenhoven.

The purpose of this article is to explore the approach of legal pluralism in the study of customary law, especially in the context of Minangkabau customary land law, as well as to discuss the state's recognition of the structure of indigenous people, the adaptation of



customary law in the UUPA, the interaction of customary law and state law in the public aspect, recognition of customary law in the Criminal Code Bill, and recognition of customary law by state courts. In addition, this article also aims to explain the categories of application of legal pluralism approaches in the study of customary law, such as weak legal pluralism, strong legal pluralism, and multi-sited legal pluralism, as well as to illustrate how customary law interacts with state and international law through examples of cases such as land and border disputes between Indonesia and Timor Leste. This article also aims to highlight the role of information and communication technology in facilitating interaction between customary law, state law, and international law, as well as to discuss dispute resolution procedures through indigenous institutions and state courts and their implications in the context of legal pluralism.

The advantages of this article are: In-depth Discussion: This article provides an in-depth understanding of the approach of legal pluralism in the study of customary law, by discussing various aspects such as state recognition of customary law, adaptation of customary law in UUPA, interaction of customary law with state and international law, as well as the role of information and communication technology in bridging these relationships.

The conclusion of this article is that the approach of legal pluralism in the study of customary law shows how customary law interacts with state law and international law. There is a recognition of customary law by the state, but there are still limitations in the recognition, especially in

terms of individual protection. Legal pluralism also occurs in dispute resolution, where customary institutions and state courts play an important role. In addition, information and communication technology also facilitates interaction between customary law, state law, and international law. That is, the approach of legal pluralism views customary law as a dynamic legal order because it continues to interact with other laws at the national and international levels.

Emphasis on the important role of customary law in the development of national law in Indonesia. This shows similarities in views regarding the role and modernization of customary law in the context of development. This journal discusses the legal pluralism approach in the study of customary law with a focus on the recognition of customary law by the state, the interaction between local, national and international customary law, as well as the role of information and communication technology in bridging this relationship. This journal discusses various aspects such as adaptation of customary law in the UUPA, recognition of customary law in the Draft Criminal Code, and dispute resolution through customary institutions and state courts. Meanwhile the thesis specifically addresses the challenges and solutions related to the application of customary law in Indonesia according to the perspective of R Soepomo.

From the explanation above, a statement can be drawn that research on customary law, especially customary law in Indonesia, has been carried out a lot, even in various fields and aspects of people's lives. However, there

has not been a single study on customary law in Indonesia that discusses "Obstacles and Solutions in Upholding Customary Law in Indonesia: R. Soepomo's Perspective". So that this research is a new research that can enrich science in the field of customary law. It can even be a reference for how previous figures analysed challenges in enforcing customary law in Indonesia, as well as providing solutions to the challenges that occurred at that time, as well as in the present.

## **B. Theoretical Framework**

### **1. Legal Pluralism**

Legal pluralism refers to a situation in which multiple legal systems coexist within a single jurisdiction or society. In the context of Indonesia, legal pluralism is evident because the country recognizes and accommodates various legal systems, including customary law, alongside the national legal system. Here's an explanation of legal pluralism and the historical and cultural significance of customary law in Indonesia.<sup>18</sup>

- a) National Legal System : Indonesia has a centralized national legal system, primarily based on civil law principles and influenced by Dutch colonial law. This system includes statutory laws, regulations, and judicial decisions.
- b) Islamic Law (Sharia) : Islamic law, or Sharia, has a significant role in Indonesia, especially concerning family and religious matters.

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<sup>18</sup> B. Setiawan, "Customary Law and Legal Pluralism in Indonesia : Problem and Prospect," 2020, 10.

Sharia courts handle issues like marriage, divorce, and inheritance for Muslims.

- c) Customary Law (Hukum Adat) : Customary law, known as "Hukum Adat" in Indonesia, encompasses traditional norms, practices, and legal systems that have developed within indigenous communities for generations. These systems vary across different ethnic groups and regions.
- d) Colonial Legacy : Indonesia's legal pluralism can be traced back to its colonial history. The Dutch colonial administration acknowledged the existence of customary law and allowed it to coexist with Dutch law during their rule.

## **2. Customary Law**

Customary law refers to the body of rules, practices, and traditions that are developed and followed by a specific community or society based on their customs, traditions, and cultural values. It is a form of unwritten law that evolves over time within a particular community and is passed down through generations. Customary law is often distinct from formal legal systems and may coexist with statutory or written laws in many societies.

References to customary law can vary based on the specific culture, region, or community being discussed. Generally, customary law is documented through anthropological studies, historical records, and oral

traditions. Here are some common references and sources related to customary law<sup>19</sup>:

- a) Anthropological Studies : Anthropologists often study and document various customs, traditions, and legal practices within specific communities. These studies provide valuable insights into the customary laws of different societies.
- b) Oral Traditions : In many cultures, customary laws are passed down orally from generation to generation. Oral traditions, including stories, myths, and rituals, can provide insights into the historical development and practices of customary law.
- c) Ethnographic Research :Ethnographers conduct fieldwork to study the customs, social structure, and legal systems of specific communities. Ethnographic research often involves direct observation, interviews, and participation in the community's activities.
- d) Case Studies :Researchers and scholars often analyze specific cases or disputes resolved through customary law systems. These case studies provide real-life examples of how customary law is applied in different situations.
- e) Government Records : In some cases, governments recognize and codify customary laws. Government records, such as official documents and publications, may contain references to the

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<sup>19</sup> Wiranata Gede, A, "*Hukum Adat Indonesia Perkembangan Dari Masa Ke Masa,*" 2005, 6.

recognition and application of customary laws within a specific jurisdiction.

- f) Legal Anthropology Texts : Legal anthropologists study the intersection of law and culture. Texts and articles in this field explore various aspects of customary law, its evolution, and its role within societies.
- g) Community Elders and Leaders : Elders and traditional leaders within communities are often the custodians of customary law. Interviews and discussions with these individuals can provide valuable insights into the principles and practices of customary law.
- h) Historical Records : Historical documents, including letters, diaries, and official records, can sometimes provide glimpses into how customary law was practiced in the past.
- i) International Conventions and Treaties : Some international conventions and treaties recognize the importance of respecting indigenous and customary legal systems. These documents may reference the significance of customary law in the context of human rights and cultural preservation.

When researching or referencing customary law, it's essential to specify the particular culture or community under consideration, as customs and practices can vary significantly between different societies. Additionally, consulting experts in anthropology, sociology, or legal

anthropology can provide valuable guidance and insights into understanding and referencing customary law.

Customary law in Indonesia holds a paramount role in shaping the legal landscape, acting as a reservoir of traditional practices and beliefs passed down through generations within indigenous communities. It serves as a pivotal mechanism for dispute resolution and conflict management, deeply intertwined with the cultural identity and lifestyle of indigenous peoples. Indonesia, celebrated for its diverse ethnic groups, encapsulates a plethora of customs and traditions, with customary law mirroring this rich cultural tapestry, manifesting uniquely across different communities. Operating within a legal system that recognizes both formal state law and customary norms, the nation grapples with the challenge of harmonizing these diverse legal traditions to ensure justice and legal certainty.

Community-based justice takes center stage in customary law, where mechanisms for dispute resolution are deeply rooted in social structures. Elders and traditional leaders play indispensable roles in maintaining social order and resolving conflicts within the community, emphasizing a localized approach to justice. One hallmark of customary law lies in its adaptability and flexibility to local contexts and evolving societal norms. This characteristic allows customary law to endure, incorporating new elements while preserving its core principles in response to dynamic social and cultural changes. Despite its significance, customary law has not always received formal recognition in the national legal framework. Theoretical discussions orbit around the integration of customary law into

the broader legal system, aiming to ensure its recognition and protection while aligning with international human rights standards.

Theoretical debates delve into the delicate balance between customary practices and modern human rights principles. Addressing instances where these practices may conflict with internationally recognized human rights standards becomes crucial, sparking discussions on finding resolutions that respect cultural identities. In matters of land rights and resource management, customary law often takes a pivotal role, guiding governance in these areas. Theoretical discussions revolve around finding equilibrium between the imperative of economic development and the imperative to protect indigenous rights, fostering sustainable practices for the benefit of both local communities and the nation. The interplay between the state and customary law raises theoretical questions about the extent of state intervention. Navigating this delicate relationship involves striking a balance between the need for national unity and legal consistency with the autonomy of indigenous communities, an essential consideration in theoretical discussions.

In conclusion, the theoretical exploration of customary law in Indonesia navigates through the intricate realms of legal pluralism, cultural diversity, human rights, and the interplay between state and community-based legal systems. The ongoing challenge lies in harmonizing tradition with modern legal principles to foster a just and harmonious legal landscape in Indonesia.



### 3. Historical and Cultural Significance of Customary Law <sup>20</sup>:

- a) Cultural Heritage : Customary law in Indonesia is deeply rooted in the rich cultural heritage of the various indigenous communities across the archipelago. It reflects the values, traditions, and social structures of these communities.
- b) Local Autonomy : Customary law has historically provided local communities with a degree of autonomy in governing their internal affairs. It has been instrumental in resolving disputes, managing natural resources, and maintaining social harmony within these communities.
- c) Conservation of Tradition : Customary law has played a vital role in preserving traditional knowledge, customs, and practices. It acts as a repository of indigenous wisdom and cultural identity.
- d) Conflict Resolution : Customary law has often served as a mechanism for conflict resolution within communities. Elders and traditional leaders play essential roles in interpreting and applying customary laws to address disputes.
- e) Protection of Indigenous Rights : In recent years, there has been a growing recognition of the importance of customary law in

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<sup>20</sup> [CSL STYLE ERROR: reference with no printed form.].

protecting the rights of indigenous peoples in Indonesia. Efforts have been made to integrate customary law into national legal frameworks to safeguard these rights.

- f) Challenges : Despite its historical and cultural significance, customary law in Indonesia faces challenges, including erosion due to modernization, inadequate legal recognition, and conflicts with the national legal system. Balancing the preservation of customary law with the need for legal coherence and protection of individual rights is an ongoing challenge.

In summary, legal pluralism in Indonesia is a complex but essential aspect of the country's legal landscape, where multiple legal systems, including customary law, coexist. Customary law holds historical and cultural significance as it represents the traditions, values, and governance systems of indigenous communities, contributing to the diversity and richness of Indonesia's legal heritage. Balancing the coexistence of these legal systems while addressing contemporary challenges is an ongoing endeavor in the country.

#### **4. Enforcement of Customary Law in Indonesia:**

The enforcement of customary law in Indonesia holds significant relevance within the context of cultural diversity and the legal system in the country. This theoretical framework aims to present a conceptual foundation that can explain how customary law is applied within Indonesia's national legal system. The theory incorporates historical, sociological, and legal

aspects to identify key factors influencing the enforcement of customary law.

a) Historical Context:

1) Evolution of Customary Law:

Understanding the evolution of Indonesian customary law is crucial, spanning from pre-colonial times to the post-independence period. This historical factor influences the patterns of applying customary law within the modern legal system.

2) Colonization and Its Impact:

The involvement of Dutch colonial rule significantly shaped customary law. The process of colonization introduced new dynamics in the recognition and application of customary law in Indonesia.

b) National Legal System:

1) Legal Dualism:

The existence of legal dualism between customary law and national law in Indonesia requires a profound understanding of the relationship and interaction between these two systems.

2) Alignment and Integration:

Efforts towards aligning and integrating customary law into the national legal system are crucial to understanding how the enforcement of customary law can be enhanced and institutionalized.

c) Social and Cultural Aspects:

1) Role of Indigenous Communities:

The involvement and participation of indigenous communities in the formulation and enforcement of customary law can strengthen its implementation.

2) Local Cultural Values:

Exploring the local cultural values that underpin customary law helps in understanding the uniqueness of each customary legal system in various regions of Indonesia.

d) Contemporary Issues:

1) Globalization and Modernization:

Examining how globalization and modernization impact the sustainability and relevance of customary law amid a society increasingly open to external influences.

2) Human Rights:

Investigating the understanding and recognition of human rights within the context of customary law, as well as efforts to minimize potential conflicts between these two paradigms.

Considering the above factors, this theoretical framework is expected to provide a holistic insight into the enforcement of customary law in Indonesia. Overall, efforts to enhance the enforcement of customary law should consider history, the national legal system, social dynamics, and contemporary issues to achieve a more inclusive and just legal system in Indonesia.

### CHAPTER III

## METHODOLOGY OF RESEARCH

*Methodology* is a word derived from the Greek *meta hodos*, which means the way along which or a system of methods and principles in doing something. The methodology used in the thesis "*Obstacles and Solutions in Upholding Customary Law in Indonesia: R. Soepomo's Perspective*" can be based on *Normative Legal Research and Sociological Analysis*. This approach involves examining the origins and approaches of normative legal research, emphasizing the former type of research. It also includes a normative-juridical research method with a philosophical approach to explore the formulation of Indonesia as a legal welfare state. Additionally, the thesis can incorporate a review of Indonesia's legal community's growing acceptance of customary rights, which refers to the norms found in social life. Furthermore, the research method can be normative juridical, focusing on the recognition and protection of customary rights, and it can involve the examination of the coexistence of customary law with other legal systems, such as Islamic law. This approach will provide a comprehensive understanding of the challenges and potential solutions in upholding customary law in Indonesia, particularly from R. Soepomo's perspective.

Normative sociological research involves the conceptual examination of values or norms and seeks to establish the values and norms

that best fit the overall social structure. It is a prescriptive approach to sociological studies that aims to appraise or establish the most suitable values and norms for a society. This type of research concentrates on making value judgments and giving instructions about how things should be. It is about setting standards for behavior and assessing goodness, value, practicality, and functionality. *Normative sociology* is the normative-scientific study in sociology, focusing on the examination of values or value systems within a society. It is a theoretical and prescriptive approach that is common in social sciences, aiming to define and establish the most appropriate values and norms for a given social context.

### **A. Type of Research**

The type of research used in this research is literature research, namely library research, research by collecting data from several archive book references, and other literature to discuss what will be researched in this thesis.

### **B. Analysis Method**

The methods used in this study are: applying a contextual approach in qualitative research.<sup>21</sup> This approach is able to explore the elements of customary law in Indonesia.

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<sup>21</sup> Ritchie, J., Lewis, J., Nicholls, C.M. and Ormston, R., Eds., *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (Sage, 2013).

### **C. Data Source**

- 1) Primary Data : the type of primary data is the main data that related and obtained directly from the object of research. The primary data source in this study is the result from interview with several customary law expert.
- 2) Secondary Data : a data source that does not directly provide data to researchers. This secondary data is data that supports primary data needs such as literature books and reading related to online investment and stock buying and selling practises.

### **D. Data Collection Technique**

Data collection techniques used in this study ;

- 1) In this study, the author collected various necessary literature that was successfully collected both from primary and secondary book materials, then the author examined various other literatures and classified them according to the main problems discussed and then analysed in depth.
- 2) Interview, is a data collection technique that is done face to face with the interviewee by being asked a question first. In this study, the interviews used unstructured interviews (unstructured interviews) the interview guidelines used were only in the form of outlines of the questions asked.

## **E. Data Analysis Technique**

The analysis technique that the compiler uses in this study is the deductive method, which is to draw conclusions after researching the data that has been collected.



## CHAPTER IV

### RESULT AND DISCUSSION

#### A. About of Mr. Dr. R. Soepomo

##### 1) Birth of R. Soepomo

Prof. Mr. Dr. R. Soepomo, a figure who has a big role in Indonesian history, was born on January 22, 1903, in the city of Sukoharjo (Solo - Central Java). He is the first son of Raden Tumenggung Wignyodipuro, a Regent of Anom, Inspector of the State Results of Kasunanan Surakarta Hadiningrat, and Raden Ajeng Renak Wignyodipuro. Birth of R. Soepomo, who became the starting point of his life, takes place in a family full of honour inheritance. Raden Tumenggung Reksowadono, his grandfather who at that time served as Regent of Anom Sukoharjo, became an important part in the family's life. From an early age, R. Soepomo is instilled with Javanese philosophy, "Bocah lanang iso mikul duwur medem jero," which means that a boy can raise the surname and maintain the honour of a family that is dead. As the son of an honourable family, he was always taught noble values in his ancestral customs and traditions.<sup>22</sup>

Moral education received by R. Soepomo from the family made him grow up as a humble, polite, respectful, obedient, orderly, and quiet individual. This attitude became his trademark and reflected the guidance

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<sup>22</sup>A.T. SOEGITO, *Prof. Mr. Dr. R. Supomo*, vol. 1, 354476 (Jakarta: Proyek Pelita, 1981).

and values he received from his ancestors. As a son of the Regent, R. Soepomo still maintains a respectful, polite, and respectful character of friends and the surrounding community. He was not tempted by the luxury of living and living simply, in contrast to some of the other Regent's sons who tend to be spoiled and satisfied with a luxurious life.

Big responsibilities are also entrusted to R. Soepomo as the eldest son. He was obliged to guide his younger siblings and become the main character in speech, behaviour, and actions. He was the first of eleven children.

Every day, R. Soepomo proved a spirit of leadership that is full of patience, kinship, and wise wisdom. With strong family upbringing and formation, he grew into a figure who not only led, but also set an example for the next generation.

## 2) Education History

Educational history of R. Soepomo reflects the extraordinary journey of an Indonesian intellectual leader who was born in the midst of the challenges of the colonial era. Since his childhood, Indonesia had been shackled by the Dutch education system which was detrimental, creating inequality in education and degrading the sons and daughters of the Indonesian nation. Indigenous people were only given access to low-education, while secondary and higher education was provided for the

powerful nobles and foreigners.<sup>23</sup>

Soepomo, who was born in Sukoharjo, Central Java, lived in an unfertile environment. Nevertheless, he was raised in an honourable and distinguished family, giving him access to a proper education. As the son of a Regent of Anom, Supomo had the right to attend the Europeesche Lagere School (ELS), where he showed intelligence and perseverance. At the age of 14, he managed to finish ELS in Solo in 1917. After successfully completing ELS, Supomo continued his education to Meer Uitgebreid Lager Onderwijs (MULO) in the city of Solo in 1920. His abilities were increasingly visible, and in 1920, he successfully completed his education with brilliant achievements. His expertise brought Supomo to Bataviasche Rechtschool in Jakarta in the same year, making overseas a new life sheet for him.

In 1924, Soepomo got the opportunity to study at Rijksuniversiteit Leiden, Netherlands, under the guidance of Cornelis van Vollenhoven, a prominent jurist. Studying in the Netherlands opened new horizons and added valuable experience to Soepomo. In 1927, he earned the title of Meester in de rechten (Mr) with the title of "summa cum laude" from the Universiteit Leiden. Soepomo's success didn't stop there. On July 8<sup>th</sup> 1927, he defended his dissertation with the title "De reorganisatie van het agrarisch stelsel in het gewest Surakarta" in the promotion of the Doctor in de Rechtsgeleerdheid title at the Universiteit Leiden and won the "Gajah

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<sup>23</sup>A.T. SOEGITO, *Prof. Mr. Dr. R. Supomo*, vol. 1, 354476 (Jakarta: Proyek Pelita, 1981).

Mada" prize. Within a year, he earned two undergraduate degrees, showing his extraordinary dedication. After returning to Indonesia, Supomo received heavy duties and presided over several District Courts in Indonesia. In 1939, he became a lecturer in Customary law at the Rechts Hoge School and Bestuursacademie in Jakarta. Two years later, on January 6<sup>th</sup> 1941, Soepomo won the title of professor and was appointed as an Extraordinary Professor at Rechts Hoge School in Jakarta. On July 30<sup>th</sup> 1941, he was appointed as a Professor in Customary law at Rechts Hoge School Jakarta, and received the title of Prof. Mr. Dr. R, Soepomo.

The journey of education R. Soepomo showed that through enthusiasm, perseverance, and intelligence, he was able to overcome various educational challenges in his time, becoming one of Indonesia's leading intellectual leaders.

### 3) Career History

R. Soepomo began his career after completing his legal education at the Universiteit of Leiden, Netherlands, in 1927. Returning to the country, he was involved in the judicial system as a judge and leader of the District Court. His success in carrying out these tasks gave an overview of his dedication to justice and law in Indonesia. Not only in the realm of education and justice, R. Soepomo was also active in the political arena. He became one of the formulators of the 1945 Constitution (UUD 1945), marking a large role in the formation of the legal foundation of the Indonesian state.

The following is the career history of Prof. Mr. Dr. R. Soepomo from

the book "Prof. Mr. Dr. R. Soepomo" by A.T. Soegito.<sup>24</sup>:

a) In the Dutch East Indies era:

- i. On May 16<sup>th</sup> 1923, Supomo was seconded to the Head of the District Court in Sragen;
- ii. On August 12<sup>nd</sup>, 1924 to July 15<sup>th</sup> 1927 he received a studieopdracht to the Netherlands (on June 14<sup>th</sup>, 1927, he passed the Bachelor of Laws exam with the title of summa cum laude and was given the "Gajah Mada", the highest award from the *Leidsche Universiteitsfonds*. and on July 8<sup>th</sup> 1927 the promotion of the title of Doctor in Rechtsgeleerdheid after maintaining the dissertation "De reorganisatie van het agrarisch stelsel in het gewest Surakarta ");
- iii. On September 30<sup>th</sup> 1927, he was be helped to the Head of the District Court in Jogjakarta;
- iv. On September 21<sup>st</sup> 1928, he served as Extraordinary Chairman of the Jogjakarta District Court;
- v. On October 21<sup>st</sup> 1930 to September 1<sup>st</sup> 1932, he was seconded to the Director of Justice in Jakarta, and was ordered to conduct an investigation of customary law (privaatrecht der Inheemse bevolking);
- vi. On December 13<sup>th</sup> 1932 to August 10<sup>th</sup> 1938, he served as

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<sup>24</sup> A.T. SOEGITO, *Prof. Mr. Dr. R. Supomo*, vol. 1, 354476 (Jakarta: Proyek Pelita, 1981).

the Head of the District Court in Purworejo;

- vii. On July 1<sup>st</sup> 1939, he was appointed as a Lecturer in Customary Law at the Rechts Hoge School in Jakarta;
- viii. On September 12<sup>th</sup> 1938, he was seconded to the Director of Justisi in Jakarta.
- ix. On September 1<sup>st</sup> 1939, he was appointed as a Lecturer in Customary Law at the Bestuursacademie in Jakarta;
- x. On January 6<sup>th</sup> 1941, he was appointed as an Extraordinary Professor at the Recht Hoge School in Jakarta;
- xi. On July 30<sup>th</sup> 1941, he was appointed as a Professor in Customary law at the Rechts Hoge School. in Jakarta.

b) In the era of the Japanese occupation:

- i. From April 1942 to August 1945 :
  - a. As Head of the Law Office (Hooki Kyoku Cho) of the Justice Department;
  - b. As a member of the Supreme Court (Saikoo Hooiin);
  - c. As a member of the Indigenous and Constitutional Law Committee;
- ii. From September 1943 to August 1945 :
  - a. Head of the Department of Justice (Shijobucho);
  - b. Member of the Preparatory Committee for

Indonesian Independence.

- c) In the era of Independence:
- i. 1945
    - a. Minister of Justice of the First Cabinet of the Republic of Indonesia;
    - b. Advisor to the Minister of Justice of the Republic of Indonesia;
    - c. Member of the Central Indonesian National Committee
  - ii. 1946 :
    - a. Master Professor at Gajah Mada University in Jogjakarta;
    - b. Master at the Police Academy;
    - c. Master Professor at the Academy of Politics;
  - iii. December 1946 to May 1947, Member of the Reorganisation Committee of the Army of the Republic of Indonesia;
  - iv. January 1948, Member of the Delegation of the Republic of Indonesia in the Renville Negotiation;
  - v. February 1948, Member of the Delegation of the Republic of Indonesia in negotiations with the Dutch in

Jakarta;

- vi. May 1949, Member of the Delegation of the Republic of Indonesia in the Rum-Royen Negotiations;
- vii. August 1949, Members of the Delegation of the Republic of Indonesia in the negotiation of the Round Table Conference in The Hague (as Chairman of the Constitutional and Political Committee);
- viii. December 20<sup>th</sup> 1949 to September 6<sup>th</sup> 1950, Minister of Justice of the United States of Indonesia (R.I.S.) ;
- ix. October 1950 to March 1951, Advisor to the Minister of Justice of the Republic of Indonesia;
- x. October 17<sup>th</sup> 1950, Member of the Committee for the Establishment of the West Irian Residency;
- xi. November 13<sup>th</sup> 1950, Member of the Delegation of the Republic of Indonesia to the 5th UN general assembly in Lake Success;
- xii. January 17<sup>th</sup> 1951, Professor in Constitutional Law at the Faculty of Law and Public Knowledge in Jakarta;
- xiii. 3<sup>rd</sup> February 1951, Chairman of the Special State Committee in charge of reviewing the agreements between Indonesia and the Netherlands reached in the KMB;
- xiv. March 17<sup>th</sup> 1951 to April 15<sup>th</sup> 1954, President of the



- University of Indonesia;
- xv. July 24<sup>th</sup> 1951, Special Envoy of the Government of the Republic of Indonesia with the title of Special Ambassador and full power to the Netherlands to discuss the renewal of Indonesia - the Netherlands;
  - xvi. August 31<sup>st</sup> 1951, Member of the Republic of Indonesia's envoy to San Francisco for a peace treaty conference with Japan;
  - xvii. October 27<sup>th</sup> 1951, Chairman of the State Committee in charge of planning the replacement of KMB approvals into ordinary international agreements;
  - xviii. November 5<sup>th</sup> 1951, Advisor to the Delegation of the Republic of Indonesia to the UN general assembly in Paris;
  - xix. December 3<sup>rd</sup> 1951, the Chairman of the Delegation of the Republic of Indonesia unnegotiated about the change of Union and Western Irian Status;
  - xx. 17<sup>th</sup> February 1954, Member of the Advisory Body of the Western Irian Bureau;
  - xxi. April 15<sup>th</sup> 1954 to October 1956, Ambassador of the Republic of Indonesia in London;
  - xxii. November 1956, High Employees were seconded to the Ministry of PP and K; Professor at the Faculty of Law,

University of Indonesia and Police Science College;

- xxiii. March 11<sup>st</sup> 1958, Leader of the National Legal Development Institute;
- xxiv. August 29<sup>th</sup> 1958, Member of the State Committee on Constitutional Affairs.

In addition to what has been mentioned above, R. Soepomo has also served as the head of international institutions, such as Vice President of the International Institute of Differing Civilisation in Brussels; International Commission for a scientific and Cultural History of Mankind & Indonesian Institute of World Affairs. The success and dedication of R. Soepomo in these various fields makes him one of the highly respected and recognised figures in Indonesian history. His career history reflects the spirit of devotion to law, education, and the development of the country.

#### 4) Death of R. Soepomo

Prof. Supomo finally left all of us on the morning at 07.30 on December 12<sup>nd</sup> 1958, on Friday Kliwon on Jalan Diponegoro 9<sup>th</sup> Jakarta. Based on the doctor's post-mortem, the deceased was diagnosed with heart disease. This sad news was immediately conveyed through all means of communication to the corners of the country<sup>25</sup>.

After undergoing the process of bathing and praying the body according to Islamic teachings, the body of Prof. Supomo was dispatched with the last honour by the state officials. On the same day, at 05.30, his

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<sup>25</sup> A.T. SOEGITO, *Prof. Mr. Dr. R. Supomo*, vol. 1, 354476 (Jakarta: Proyek Pelita, 1981).

body was dispatched to Solo using the Express Train. The entire series of funeral ceremonies, starting from Jalan Diponegoro 9 Jakarta to the family's grave in Solo, was carried out militarily with the handling of the Police (POLRI). Upon arrival in Solo, the body was temporarily buried in Kalitan, the house of the late Gusti Kangjeng Ratu Alit's in-laws. After going through a ceremony according to Islamic procedures and customs, on Saturday, December 13<sup>rd</sup> 1958, the body of Prof. Supomo was dispatched to the family's grave at the Yosoroto Cemetery on Slamet Riyadi Purwosari Street in Solo. The funeral was grandly solemnly carried out, involving the military element as the final tribute to the figure who has contributed greatly to the nation and state.

#### 5) Works and Contributions of R. Soepomo

He is R. Soepomo, or better known as Prof. Mr. Dr. R. Soepomo, is one of the figures who has a great contribution to the country in the field of law and legislation in Indonesia. He devoted many things to the field of science and government. Like other national figures, he took part in the independence process until the establishment of the Unitary State of the Republic of Indonesia. Some of his striking works and contributions include<sup>26</sup> :

##### a) Member of Committee Nine (1945) :

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<sup>26</sup> Jefik Zulfikar Hafizd, "Sejarah Hukum Islam di Indonesia: Dari Masa Kerajaan Islam Sampai Indonesia Modern," 2021.

As a member of Committee Nine, R. Soepomo was involved in the preparation of the 1945 Constitution, the Indonesian constitutional document which is the basis of the country until now.

b) Member of the Indonesian Independence Preparation Business Investigation Agency (BPUPKI) :

R. Soepomo also plays a role in the Indonesian Independence Preparation Business Investigation Agency (BPUPKI), which is in charge of drafting the basics of the state and legislation towards independence.

c) Assistant Chairman of Committee Nine (1945-1949) :

After the Proclamation of Independence, R. Soepomo became the Assistant Chairman of the Nine Committees who played an important role in the formation of laws and the initial government structure of the Indonesian state.

d) Author of the Civil Code (BW) :

R. Soepomo was involved in writing the Civil Code (BW), which became the basis of civil law in Indonesia. His contribution to the field of civil law through the preparation of the book became an important legacy in the development of the legal system in Indonesia.

e) Lecturers and Professors of Customary law at the Faculty of Law,

University of Indonesia :

After independence, R. Soepomo is active as a lecturer and professor in the field of Customary Law at the Faculty of Law, University of Indonesia. Its role in education and teaching makes a major contribution to the development of legal science in Indonesia.

i. Professor of Customary law (1941) :

In 1941, R. Soepomo earned the title of professor after being appointed as an Extraordinary Professor at Rechts Hoge School in Jakarta.

ii. Council of the Supreme Court (1945-1956):

R. Soepomo is also involved in the Supreme Court Council and has a role in developing the judicial system in Indonesia.

h) Author of Legal Books :

In addition, R. Soepomo is also known as the author of various legal books that discuss various aspects of law, constitution, and legislation in Indonesia. Some books by R. Soepomo include:

- i. De Reorganisatie Pan het Agrarisch Stelsel in het Cewest Surakarta, dissertation, promotion of Doctor in de Rechtsgeleerdheid degree, Universiteit Leiden, July 8<sup>th</sup> 1927.
- ii. Het Adatrecht 11an West-Jai·a (1933).

- iii. A little about the hidoep hoekoem of the Indonesian nation, (1937).
- iv. De aansluiting van de dorps justitie aan de gouJernementsrechtspraak (1940).
- v. De Perhvuding van indilidu en gemeenschap in het Adatrecht (1941).
- vi. The Position of Customary law in the Future (1947).
- vii. Political History of Customary law (1950).
- viii. Provisional Constitution of the Republic of Indonesia, (1950).
- ix. Statute of the Union of Indonesia - the Netherlands (1950).
- x. The Legal System in Indonesia before World War II, (1952).
- xi. Civil Procedure Law of the District Court (1958).
- xii. Indonesia Facing Problems of New life and Re-integration (1958).
- xiii. Chapters On Customary Law (1958).

His contribution is not only limited to his writings, but also in contributing his thoughts and vision to build a strong legal foundation for the newly independent Indonesia.

## **B. Enforcement of Customary Law in Indonesia**

### 1. History of Upholding Customary law in Indonesia

Customary law in Indonesia had deep roots and a rich history, becoming a mirror of the cultural diversity that crosses the archipelago. The history of the emergence of customary law in Indonesia not only reflects the internal processes of a society, but was also influenced by various external factors, such as cultural contact, political changes, and interaction with external laws.

At first, if you explore further, people do not know what is called customary law, but even so, the rules that regulate the behaviour of the people themselves actually exist with different designations in each region-different. For example, "adat istiadat" is a term for the Javanese, while in the Minang community it is called "adat basandi syarak, syarak basandi Kitabullah".

Seeing the uniqueness and diversity of different customs in each region, finally encouraging legal experts to research more about customs. To facilitate the research, the term "Customary law" is given to refer to the rules that grow and develop in that society. So that it can be interpreted from the two words "Customary Law" that the word "Law" refers to the term rules applied by the government and religion, while the word "Custom" refers to ancestral rules.

In the development of customary law in Indonesia in general, can be

divided into several stages<sup>27</sup>:

a) Prakolonial Era :

Customary law in Indonesia existed before the arrival of Europeans. Each ethnic group has rules and legal norms that govern the lives of their people. Customary law in this period is closely related to the belief system, kingdom or sultanate, religion and daily life.

b) Colonial Era :

During the colonial period, customary law experienced significant influences and changes. The Dutch colonial government tried to incorporate some aspects of customary law into the laws introduced by the colonial parties. This process created a hybridisation between customary law and colonial law.

c) Independence Era :

After Indonesia's independence in 1945, customary law was still recognised as part of the national legal system. Nonetheless, there are efforts to combine customary law with a more general national legal system. It was at this time that Prof. Mr. Dr. R. Soepomo has a big part in the field of customary law.

d) New Order Era:

During the New Order period (1966-1998), the Suharto government tended to control and regulate customary law to maintain political

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<sup>27</sup> Sigit Supto Nugroho, "PENGANTAR HUKUM ADAT INDONESIA," n.d.



stability. The government passed laws and policies that limit the autonomy of customary law.

e) Reform Era:

Along with the reform era that began in the late 1990s, there are efforts to recognise and strengthen customary law as part of efforts to decentralisation and empower local communities. Several laws and policies have been implemented to support the recognition of customary law.

After knowing briefly some periods and stages of the development of customary law in Indonesia, it can be concluded that the history and development of customary law in Indonesia includes several significant stages. Starting from precolonial to the reform era, customary law has been influenced by various factors, including Dutch colonialism, New Order government, and reform efforts. This process creates a complex dynamic between customary law and national law, which continues to develop over time. It is important to understand that customary law in Indonesia is closely related to the diversity of culture, religion and traditions of each ethnic group, and the recognition of customary law has changed in the context of regional autonomy and the empowerment of local communities.

## 2. Legal Basis of Customary Law Enforcement in Indonesia

A deep understanding of customary law can be found in a positive and Islamic view, which is the basis of the recognition and implementation of customary law in Indonesia. Indonesia's positive law recognises the

existence of customary law as a legal reality that has its place and role in maintaining cultural diversity in the community. The positive law that underlies the recognition of customary law and gives legitimacy to customary law are<sup>28</sup> :

- a) Article 18B paragraph 2 of the 1945 Constitution: "The state recognises and respects the unity of the customary law community and its traditional rights as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which is regulated in the law."
- b) Law Number 39 of 1999 concerning Human Rights, Article 6 paragraph (2): "The cultural identity of indigenous people, including the right to customary land is protected, in accordance with the times.
- c) Law Number 12 of 2011 concerning the Formation of Legislation, Article 7 paragraph (1), it is written that the letter (f). Provincial Regional Regulations; and the letter (g). District/City Regional Regulations, included in the Types and hierarchies of Laws and Regulations, which are in "EXPLANATION OF THE LAW OF THE REPUBLIC OF INDONESIA NUMBER 12 OF 2011 CONCERNING THE FORMATION OF LAWS REGULATIONS" Chapter II regarding article by article, in Article 7 Paragraph (1) letter f: "Included in Provincial Regional Regulations are Qanun

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<sup>28</sup> Aisyah Maharani, "IRONI KITAB UNDANG-UNDANG HUKUM PERDATA DALAM SISTEM HUKUM DI INDONESIA," n.d.

which apply in Aceh Province and Special Regional Regulations (Perdasus) as well as Provincial Regional Regulations (Perdasi) that apply in Papua Province and West Papua Province"; and letter g: "Included in District/City Regional Regulations is Qanun which applies in the Regency/City in Aceh Province."

- d) Law Number. 5 of 1960 concerning the Basic Regulation of Agrarian Principles, Article 5: "The agrarian law that applies to the earth, water and space is customary law, as long as it does not conflict with the interests of the national and the State, which is based on the unity of the nation, with Indonesian socialism as well as with the rules listed in this Law and with other laws and regulations, everything by heeding the elements that rely on religious law."

Islamic customary law refers to rules or norms related to people's lives that are carried out by Muslims, and this can include customs, traditions, and customary norms that are in accordance with Islamic principles. The basis of Islamic customary law can be found in several main sources, namely the Al-Qur'an, Hadith, Ijma (consensus of scholars), and Qiyas (analogy).

- a) Al-Qur'an: Al-Qur'an as the holy book of Muslims is the main source of Islamic law. Some verses of the Al-Qur'an provide guidelines on the ordinance of life of the community, including in the aspects of custom. For example, in the Al-Qur'an, Allah gives instructions

about marriage, inheritance, and the ordinance of daily life.

- b) Hadith: Hadith is a narration about the words, actions, or approval of the Prophet Muhammad SAW. Hadith can provide additional details and explanations about how the Prophet implemented Islamic teachings in daily life, including in terms of customs.
- c) Ijma (Consensus of Ulama): Ijma is the agreement or consensus of leading scholars in a Muslim society on a legal issue. Ijma can be used to form the rules of Islamic customary law.
- d) Qiyas (Analogue): Qiyas is a method of analogy in which the law that has been established for a problem can be applied to a similar problem that is not regulated directly in the sources of Islamic law.

Islam is a religion that respects and advocates the preservation of customs and traditions as long as they do not violate Islamic religious teachings. As we know, adat or urf (islamic terms) is a source of law somewhere. That suggests that Islam values and encourages the preservation of customs and traditions as long as they align with Islamic teachings. It mentions the concepts of "adat" and "urf," which are Islamic terms signifying customary practices. The implication is that these practices can serve as a source of law within Islamic principles, provided they don't contradict religious teachings.

Al-Imam Abu Al-Muzhaffar as-Sam'ani said:

وَالْعُرْفُ مَا يَعْرِفُهُ النَّاسُ وَ يَتَعَارَفُونَهُ فِيمَا بَيْنَهُمْ

'Urf is something that is known by the community and they make it a tradition in their interactions<sup>29</sup>.

The interpretation of 'urf with a good tradition and has been known by the community in the verse above, is also in line with the statements of the scholars of interpretation. Al-Imam Burhanuddin Ibrahim bin Umar al-Biqā'I also said<sup>30</sup>:

وَأْمُرُ بِالْعُرْفِ أَيْ بِكُلِّ مَا عَرَفَهُ الشَّرْعُ وَ أَجَازَهُ، فَإِنَّهُ مِنَ الْعَفْوِ وَ سُهُولَةٍ وَ شَرَفًا

"Tell people to do what is 'urf, that is, every action that is well known by the syara' and is permissible. Because that is a light and noble nature of forgiveness."

### Rules of Ushul Fiqh:

العَادَةُ مُحْكَمَةٌ

(Adat can be taken into consideration in establishing law)<sup>31</sup>

العَادَةُ مُحْكَمَةٌ is an Arabic expression that can be translated as "العادة" (al-'adah) which means "custom" or "tradition," and "مُحْكَمَةٌ" (muhkamah) which means "solid," "detailed," or "firm ." So, literally, العَادَةُ مُحْكَمَةٌ can be interpreted as "firm habits" or "firm habits."

<sup>29</sup> 2018 Rahmah Muthia, "TRADISI DALAM AL-QUR'AN (Studi Tematik Paradigma Islam Nusantara Dan Wahabi)," 2018, 1–26.

<sup>30</sup>Rahmah Muthia.

<sup>31</sup> JM Lukita Fahriana Muslimin, "Penerapan al-Qawā'Id al-Uṣuliyah Dan al-Qawā'Id al-Fiqhiyah Dalam Kasus Riba Dan Bank Syari'Ah," *Jurnal Indo-Islamika* 10 no.2 (2020): 92–106.

More profoundly, within the setting of Islamic law, the term العادة مُحكّمة alludes to laws that apply in society as a result of built up and broadly acknowledged traditions or conventions. In Islamic law, there are two sorts of laws known as الحُكْمُ الشَّرْعِيُّ (al-hukmu ash-shari) and الحُكْمُ الْعَادِي (al-hukmu al-'adi). الحُكْمُ الشَّرْعِيُّ alludes to laws set up by Islamic law through the Al-Quran, Sunnah, and other sources of Islamic law. In the interim, الحُكْمُ الْعَادِي alludes to laws that begin from the traditions or conventions of society.

In a few settings, on the off chance that a issue or circumstance does not have clear references in Islamic lawful sources, Islamic researchers and law specialists may allude to العادة مُحكّمة to discover suitable arrangements or lawful rules based on the propensities that are commonly practiced by the community. Be that as it may, it is vital to keep in mind that in Islamic law, الحُكْمُ الشَّرْعِيُّ (al-hukmu asy-shari) features a higher authority than الحُكْمُ الْعَادِي (al-hukmu al-'adi), and shari'a law will stay the most rule in deciding the authenticity and the legality of an act or activity.

### 3. Concepts of Customary Law in R. Soepomo's Prespective

R. Soepomo is an Indonesian legal figure who played an important role in the formulation of legal concepts in Indonesia, especially in the early days of independence. R. Soepomo's view on the concept of customary law can be found in his thinking which refers to the formation of Indonesian national law. According to R. Soepomo, customary law has a significant role in the formation of national law. He

believes that customary law is not just a local tradition or custom, but also a source of law that can be recognised and integrated into the national legal system. His thinking underscores the importance of understanding and respecting local values as well as customary norms in the process of forming national laws. R. Soepomo also emphasised that customary law must be recognised as an integral part of a diverse Indonesian society. Therefore, the concept of customary law should not be ignored or underestimated, but on the contrary, should be respected and given a place in the national legal system.

This view is in line with the spirit of recognising cultural and community diversity in Indonesia, which consists of various tribes, ethnicities, and customs. R. Soepomo tries to combine customary law values with national legal principles to create a continuity and harmony in the Indonesian legal system. Despite the view of R. Soepomo on customary law is highly appreciated in the context of the formation of national law, it should be noted that this view also reflects the order of thought and view of the law of his time. In the next development, the understanding of the role of customary law can change and adjust according to the constantly changing social and political dynamics.

Unfortunately, specific information regarding the opinions of some customary law figures who directly support the concept of R. Soepomo in the context of customary law in Indonesia may not be very documented in detail. However, some Indonesian customary law figures or

culturalists may have views in line with R's idea. Soepomo on the importance of recognising and respecting customary law in the formation of national law. Some of these figures may see customary law as a cultural heritage that must be well maintained and integrated into the framework of national law. For example:

- a) Prof. Dr. H. Hazairin, S.H.: Hazairin is an Indonesian legal scholar who contributes to the formation of law in Indonesia. He can have a view that is in line with R. Soepomo in recognising the role of customary law as an important element in the life of the Indonesian people.
- b) Prof. Dr. H. M. Sidik Jati, S.H.: As an Indonesian legal expert, Sidik Jati may have a view that is in line with the concept of customary law that is recognised and respected in the national legal system.
- c) Prof. Dr. H. B. Jassin, S.H.: Jassin is an Indonesian legal and literary scholar who may be able to provide a cultural perspective on the integration of customary law in the national legal system.

Although not all of their views may be identical to the concept of R. Soepomo in particular, they can represent the idea that customary law has a significant value and role in the Indonesian context. However, it should be noted that this is just an example of a character and a view that may be in line with R's thinking. Soepomo, and further interpretations



can be found in their more specific works.

There are several customary law figures who have different concepts from R's view. Soepomo is related to the role and integration of customary law in the national legal system. Some figures who have different opinions include:

- a) Prof. Dr. H. Muhammad Yamin : His opinion tends to be more conservative. He argues that customary law should be used as a separate legal system and should not be integrated into national law. According to him, customary law has unique characteristics and values and should be maintained independently.
- b) Prof. Dr. Sudikno Mertokusumo : Sudikno Mertokusumo is a legal expert who stated that customary law should be recognised as a source of law, but with certain limitations. He argues that aspects of customary law that do not conflict with national legal norms can be accommodated, while those that conflict must be adjusted or harmonised.
- c) Prof. Dr. H.A. Soehino : Soehino argues that customary law should be integrated into the national legal system more thoroughly. He supports the concept of national law that includes and accommodates customary legal values as an integral part of the Indonesian legal system.
- d) Prof. Dr. Sri Soemantri : Sri Soemantri stated that customary law should not only be recognised as a source of law, but must also

be respected and empowered to self-regulate the internal affairs of indigenous people. He emphasised the need to provide autonomy to indigenous peoples to regulate and manage their internal affairs.

The opinions of these figures reflect the diversity of views regarding the role of customary law in the Indonesian national legal system. While R. Soepomo tries to integrate customary law into the national legal system, other opinions reflect variations in views on the degree of integration, autonomy, and recognition of customary law.

#### 4. Challenges in Enforcing Customary law in Indonesia

R. Soepomo thinking about customary law enforcement in Indonesia is reflected through the influence of several factors that underlie his views. One of the main factors is the view from Van Vollenhoven, who is a teacher of R. Soepomo while studying in the Netherlands. Van Vollenhoven made an important contribution in shaping the perspective of R. Soepomo against customary law by providing a conceptual and methodological foundation. The views of Teer Haar, who is a student of Van Vollenhoven, also influenced R's thinking. Soepomo. There is a legacy of thought and interpretation of customary law that Teer Haar passed on to R. Soepomo, who later became an integral part of his view of customary law enforcement in Indonesia. The real condition of the national diversity in Indonesia is also an important factor that affects R. Soepomo's thinking. Awareness of the

plurality of cultures and customs in Indonesia encourages him to find legal solutions that accommodate these diversity within the framework of customary law enforcement<sup>32</sup>.

In addition, the condition of the colonial era government had a significant impact on R. Soepomo's thinking. The colonial era brought major changes in the legal and administrative structure in Indonesia, which affected customary legal governance. Understanding R. Soepomo on this condition played a key role in the formulation of his views on customary law enforcement. R. Soepomo was also influenced by his vision for the future of Indonesia, especially in the modern era. His view of customary law enforcement not only rests on the historical context and cultural diversity, but also considers the changing times and challenges faced by the Indonesian people in the future. By combining all these factors, R's thinking. Soepomo about customary law enforcement becomes a structured and insightful narrative. Its holistic approach reflects the blend of historical heritage, cultural diversity, and an inclusive vision of Indonesia's future.

Enforcement of customary law in Indonesia, from the perspective of R. Soepomo, facing various complex challenges that reflect the diverse and diverse context of society. First, the diverse and pluralistic condition of the Indonesian people is the main obstacle. With the diversity of cultures and customs throughout the archipelago, this challenge requires a very inclusive

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<sup>32</sup> R. Soepomo, *Bab Bab Tentang Hukum Adat* (Pradhya Paramita, 1987).

approach so that customary law can be accommodated and applied effectively in various regions. Furthermore, customary law sometimes intersects or contradicts national positive law. This challenge requires adjustment and harmonisation between customary law and positive law so that there is no legal conflict that harms the parties involved. In addition, there is a potential conflict between customary law and humanitarian principles or human rights law. This requires adjustments so that customary law does not violate human rights and provides protection that is in line with international standards in the field of human rights. The less active role of the customary court is also one of the challenges. Efforts are needed to strengthen the customary justice system in order to provide a fair and effective settlement in the context of customary law. In addition, the role of customary law enforcement, both at the local and national levels, needs to be strengthened to increase the effectiveness of customary law enforcement.

Finally, unclear knowledge about the source of the origin of each customary law becomes an obstacle. It is necessary to be open and transparent about the origin and substance of customary law to avoid misinterpretation and ensure that customary law enforcement is in accordance with the desired values and objectives. Overall, the understanding of these challenges shows the complexity in customary law enforcement in Indonesia, and R. Soepomo may detail holistic, inclusivity-based approaches to address every aspect of the challenge.

In facing the challenges of applying customary law in Indonesia,

there are several aspects that need to be considered, in line with R's thoughts. Soepomo. First of all, the recognition of cultural diversity and customs in Indonesia can be considered as a positive foundation. This recognition can be the basis for formulating legal policies that are inclusive, as well as supporting the preservation of local identity.

The main challenge that remains relevant is the harmonisation between customary law and national positive law. Efforts to achieve this harmonisation are crucial to prevent legal conflicts and provide legal certainty for indigenous people and related parties. Human rights protection is also becoming an increasingly important aspect in the application of customary law. Ensuring that customary law does not violate human rights principles is an integral part of the transformation of customary law in Indonesia. The other challenge is the less active role of customary courts. Strengthening the role and institutional of customary courts can be a more effective solution in resolving disputes related to customary law.

The uncertainty about the source of the origin of customary law can be overcome by increasing openness and transparency. Providing clear information about the origin and substance of customary law can prevent misinterpretation and ensure the sustainability of the desired values. Concept of R. Soepomo, who pays attention to Indonesia's future vision, is also relevant in facing the modern era. The adjustment of customary law with the dynamics of social, economic, and political change can provide a

strong foundation for effective application. By combining the values inherited by R. Soepomo and paying attention to the actual challenges faced by the Indonesian people, the application of customary law can develop holistically, inclusively, and adaptively according to the evolving needs and social dynamics.

#### 5. Solutions to Challenges in Enforcing Customary law in Indonesia.

In facing the complexity of customary law enforcement in Indonesia, R. Soepomo looks at various challenges that require holistic and integrated solutions. Here are some solutions that can be proposed to overcome these obstacles<sup>33</sup> :

- a. The Condition of Indonesian Society that is Diverse and Compound:  
Solution: Encourage intercultural dialogue and strengthen cooperation between governments, indigenous leaders, and local communities. The application of an inclusive approach that takes into account cultural diversity can be done through consultative forums involving all relevant parties.
- b. Customary Law Contrary to Positive Law:  
Solution: Initiate legal reform to accommodate customary law and harmonise between customary law and national positive law. The process of dialogue and legislative revisions can help create a fair balance between the two.

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<sup>33</sup> R. Soepomo, *Bab Bab Tentang Hukum Adat* (Pradhya Paramita, 1987).

c. Customary Law Contrary to Humanitarian or Human Rights Law:

Solution: Applying a customary law approach that respects human rights principles. There needs to be an independent surveillance and assessment mechanism that ensures that customary law does not violate human rights and complies with international standards.

d. The Less Active Role of Indigenous Courts:

Solution: Strengthen indigenous judicial institutions by providing training to indigenous judges, improving accessibility, and supporting adequate resources. Increasing the role of customary courts in resolving disputes fairly and effectively will be key in customary law enforcement.

e. The Role of Indigenous Law Enforcement:

Solution: Encouraging the strengthening of the role of customary law enforcement agencies through training, capacity building, and policy support. Awarding rewards and incentives to customary law enforcers can also motivate them to carry out their duties more effectively.

f. Know Clearly The Source Of The Origin Of Each Customary Law:

Solution: Encourage transparency and better documentation related to the origin and substance of each customary law. Education and dissemination of information to the public about customary law can also increase understanding and reduce uncertainty regarding the source of customary law.

The comprehensive implementation of these solutions is expected to help overcome challenges in the enforcement of customary law in Indonesia, in accordance with the views and thoughts of R. Soepomo. By implementing these solutions, it is hoped that the enforcement of customary law in Indonesia can take place more effectively and fairly. These measures reflect efforts towards harmony between customary law, positive law, and humanitarian principles, in line with the inclusive vision championed by R. Soepomo for the sustainability of customary law in Indonesia.

In the face of the complexity of applying customary law in Indonesia, R. Soepomo views various challenges that require holistic and integrated solutions. The solutions put forward in the text reflect efforts to overcome those barriers in accordance with R's vision. Soepomo. First, the text highlights the diverse and complex condition of Indonesian society. As a solution, it is proposed to encourage intercultural interaction and strengthen cooperation between governments, indigenous leaders, and local communities. An inclusive approach involving all parties can be implemented through consultative forums. Challenges related to customary law that are contrary to national positive law are overcome through the initiation of legal reform. The proposal includes measures to accommodate customary law and harmonise it with national law, creating a fair balance through dialogue and legislative revision.

Human rights protection is an important focus in solutions to



overcome the tension between customary law and humanitarian principles. An indigenous legal approach that respects human rights is proposed, with the need for independent oversight mechanisms to ensure compliance with international standards. Other challenges, such as the less active role of customary courts, are faced with the strengthening of indigenous judicial institutions. Solutions involve training indigenous judges, increased accessibility, and resource support to ensure a more effective role of indigenous courts in resolving disputes fairly. Strengthening the role of customary law enforcement agencies is the focus to overcome less active roles. Solutions include training, capacity building, and policy support to increase the effectiveness of customary law enforcement, while providing incentives to customary law enforcers.

Lastly, the solution includes transparency and education regarding the origins of customary law. Increasing people's understanding of customary law and reducing uncertainty regarding its sources are pursued through education and the dissemination of information. The implementation of these solutions is expected to help overcome challenges in the application of customary law in Indonesia, in accordance with R's view. Soepomo. This effort reflects a commitment to harmony between customary law, positive law, and humanitarian principles, in line with the inclusive vision advocated by R. Soepomo for the sustainability of customary law in Indonesia.

## CHAPTER V

### CONCLUSION AND SUGGESTION

#### A. Conclusion

Based on this research, it can be concluded that :

- 1) R. Soepomo, a prominent figure in Indonesian law, emphasized the significance of upholding customary law, also known as adat law, in Indonesia. He viewed customary law as a "living law," reflecting the natural legal sentiments of the people and evolving with the society it governs. Soepomo stressed the importance of formally recognizing and respecting customary law as practiced in traditional communities, as enshrined in the 1945 Constitution and subsequent statutes. He also highlighted the role of customary law in resolving community conflicts, emphasizing its efficiency, simplicity, and low cost compared to formal legal mechanisms.
- 2) Soepomo identified several obstacles to upholding customary law in Indonesia, including the historical subordination of adat law to national law, the reluctance of some judges to apply adat law, and the lack of formal recognition and support from government institutions. Additionally, the coexistence of customary law with other legal systems, such as Islamic law, posed challenges in ensuring equal force and harmonious application of these legal traditions.

- 3) To overcome these obstacles, Soepomo proposed the formal recognition and respect of customary law by the state and its institutions, as mandated by the 1945 Constitution and subsequent legislation. He also emphasized the need for the education and training of judges, legal professionals, and community leaders to ensure a better understanding and application of customary law. Furthermore, Soepomo advocated for the strengthening of the customary law system through the collaboration of various stakeholders, including traditional leaders, community leaders, and government authorities, to enhance the efficiency and effectiveness of customary law mechanisms in resolving legal problems within the community.

That being said, discussing the challenges in enforcing indigenous law in Indonesia generally involves understanding the complex interplay between indigenous legal systems and the national legal framework. Some common challenges in this context include:

- a) Legal Pluralism: Indonesia is characterized by legal pluralism, where both state law and traditional or indigenous law coexist. Balancing these two legal systems poses challenges, especially when conflicts arise between the principles and norms of each system.
- b) Recognition and Integration: Indigenous legal systems may not always be formally recognized or integrated into the national legal framework. This lack of recognition can lead to difficulties in

enforcement and create a gap between the official legal system and traditional practices.

- c) **Limited Awareness and Understanding:** Many people, including legal practitioners and policymakers, may not have a comprehensive understanding of indigenous legal systems. This lack of awareness can hinder effective enforcement and may lead to the neglect of important cultural and customary practices.
- d) **Land Rights Issues:** Indigenous communities often face challenges related to land rights, as their traditional territories may overlap with government-designated areas or face threats from development projects. Resolving disputes related to land rights requires navigating both legal systems.
- e) **Social and Economic Factors:** Socio-economic factors, such as poverty and lack of access to legal resources, can impact the ability of indigenous communities to engage with the legal system. This may result in a lack of legal representation and challenges in asserting their rights.
- f) **Inadequate Legal Framework:** Some argue that the existing legal framework may not adequately address the needs and rights of indigenous communities. There may be a need for legal reforms to better accommodate and protect indigenous customary law.

## **B. Suggestion**

Based on R. Soepomo's perspective, the thesis "Obstacles and Solutions in Upholding Customary Law in Indonesia" could explore the following suggestions:

- 1) Formal Recognition and Respect : Emphasize the formal recognition and respect of customary law by the state and its institutions, as mandated by the 1945 Constitution and subsequent legislation.
- 2) Education and Training : Propose the education and training of judges, legal professionals, and community leaders to ensure a better understanding and application of customary law.
- 3) Strengthening the Customary Law System : Advocate for the strengthening of the customary law system through the collaboration of various stakeholders, including traditional leaders, community leaders, and government authorities, to enhance the efficiency and effectiveness of customary law mechanisms in resolving legal problems within the community.

These suggestions align with Soepomo's views on the importance of upholding customary law and overcoming the obstacles associated with its implementation in Indonesia.

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