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The Existence of the Maybrat Tribe Customary Court in the Middle of Modernization

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Abstrak

This research describes and examines the problems about how is the existence of the Papuan Maybrat Tribe in the midst of modernization? Second, what are the dynamics that occur in the modern Maybrat Tribe's customary court today? The type of research in this study is empirical research which is a legal research method that uses empirical facts taken from human behaviour, in this case, the behavior of the Maybrat indigenous people in maintaining the existence of the Papua Maybrat customary court in modernization, both verbal behavior obtained from interviews with local traditional leaders and legal apparatus in the Maybrat tribal customary law environment as well as real behaviour carried out through direct observations in the Maybrat tribal customary law environment located in the jurisdiction of the Maybrat Regency, West Papua Province. The pattern of thinking used is deductive. Based on the explanation above, the conclusion drawn from the author is that the indigenous peoples of the Maybrat Tribe, who are in the jurisdiction of the Maybrat Regency, West Papua Province, inevitably must accept the current developments so that indigenous peoples become modernized. The indigenous people of the Maybrat tribe have changed from habitual behaviour to a more modern society so that the applicable customary law also adapts to the times and the problems that occur also change. The legal system that occurs also changes from the customary judicial process to the imposition of sanctions that are applied differently, even though there are some that are still maintained and do not leave the values of local wisdom that have grown and developed within the Maybrat tribal community.

Keywords

Customary Court, Modernization

A. Introduction

Indonesia is the largest archipelagic country in the world, with 17,508 islands inhabited by more than 360 ethnic groups. This makes Indonesia a country that is rich in cultural diversity in terms of regional languages, customs, habits, and various other things that enrich the diversity of Indonesian culture itself. Culture is the whole complex of knowledge, belief, art, morals, law, customs, and all other capabilities and habits acquired by a person as a member of society.¹

In addition, culture, in general, comes from the Sanskrit language, namely *buddhayah*, which is the plural form of *buddhi* (mind or reason), which is defined as matters relating to the mind and human mind, in English culture is called "culture" which comes from the Latin word "culture." *Colere*, which means cultivating or working, can also be interpreted as cultivating land or farming; the word culture is sometimes often translated as "Kultur" in Indonesian. This culture in each tribe is different, as well as the island of Papua. Papua has a culture, customs, rules, norms, and way of life that are believed and regulated according to each tribe called customary law, which is still valid today. Customary law existed before the positive law made by the state, namely positive law or national law.²

Talking about customary law in Indonesia will never end because Indonesia is a multicultural country that has many tribes, from Sabang to Merauke. Customary law is maintained and still exists today and is protected and recognized by the state, like in Papua. The legal protection of every citizen of the Republic of Indonesia has been implicitly and explicitly stated in the 1945 Constitution and was further emphasized after the Fourth Amendment of the 1945 Constitution in 2002, related to aspects of human rights regulated in articles 28A, 28B, 28C, 28D, 28E., 28G, 28H, 28I and 28J. As stated in the 1945 Constitution, particularly concerning the protection of customary law communities, it is regulated in Article 18B paragraph (2), which reads: "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and following developments. Society and the principles of the Unitary State of the Republic of Indonesia are regulated by law."³

Furthermore, for Papua itself, Law Number 21 of 2001 concerning Special Autonomy for the Papua Province, which includes the Papua Province and West Papua Province and various *Perdasi* and *Perdatus* products, is an effort of state policy to prosper, respect and protect indigenous peoples in Papua. Furthermore, for the customary courts, a Special Regional Regulation Number 20 of 2008 concerning Customary Courts in Papua was established. Papua has many tribes,

¹ Rollys Suriani and others, 'Legal Protection of Indigenous Legal Communities and Traditional Rights Holders After The Constitutional Court Decision Number 35 / Puu-x / 2012', *International Journal of Advanced Science and Technology*, 29.3 Special Issue (2020), 1298-1306.

² Soeleman Djaiz Baranyanan, I. Gusti Ayu Ketut Rachmi Handayani, and Isharyanto, 'Political Law of Local Government to Resolve Disputes Adat Law in Kei Island', *International Journal of Advanced Science and Technology*, 28.20 (2019), 494-99.

³ Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani, and Willy Naresta Hanum, 'Legal Policy of Old Wells Petroleum Mining Management Based on Social Justice in Realising Energy Sovereignty', *Sriwijaya Law Review*, 6.2 (2022), 286-303 <<https://doi.org/10.28946/slrev.Vol6.Iss2.1745.pp286-303>>.

almost 200 tribes that have very different languages and cultures, one of which is the Maybrat tribe, which is in the jurisdiction of the Maybrat Regency, West Papua Province. The Maybrat tribe has a habit that is still enforced in the customary law environment to solve the problems of indigenous peoples in their familiar environment. The location in customary law is extensive from one village to another, very far away. When problems occur in the typical climate to resolve customary issues, following procedures such as the presence of tribal chiefs and other customary councils cannot always be present whenever needed.⁴

Even though the road infrastructure can be reached by vehicles, such as in certain villages, it cannot be acquired, and the problem is not only one. Although in each town, there are traditional elders, the community still considers that an effective solution must be the presence of a tribal chief so that if there is no tribal chief, problems will be brought to the positive law. In this way, the customary law for the judiciary may be lost. Thus, the researcher took the title of this research, "The Existence of the Papuan Maybrat Tribe in the Middle of Modernization."

B. Metode penelitian

The type of research in this study is empirical research which is a legal research method that uses empirical facts taken from human behavior, in this case, the behavior of the Maybrat indigenous people in maintaining the existence of the Papua Maybrat customary court amid modernization, both verbal behavior obtained from interviews with local traditional leaders and legal apparatus in the Maybrat tribal customary law environment as well as actual behavior carried out through direct observations in the Maybrat tribal customary law environment located in the jurisdiction of the Maybrat Regency, West Papua Province. The pattern of thinking used is deductive by concluding from general to specific discussions. The approach used in this study is a historical approach, which is an approach that is carried out by comparing the law from time to time, as in this case, looking at the changes in customary law past and present in the customary law community of the Maybrat Tribe which is modern in choosing the judicial process to resolve customary issues both customary courts and state courts. In addition, a case approach is used by assessing cases within the Maybrat customary law community, which are resolved through customary courts and state courts (Thaenthao, 2021).⁵

The data needed in this research is secondary data, which is in the form of primary and secondary legal materials. Primary legal materials, namely in the form of laws and regulations whose order is following the procedures for the formation of laws and regulations, namely: 1) the 1945 Constitution Article 27 paragraph (1), which explains the recognition of the principle of equality for all citizens without

⁴ S. Djaiz Baranyanan, I Gusti Ayu Ketut Rachmi Handayani, and Isharyanto, 'Implementation of The Values Sasi Customary Law in the Formation of Regional Regulations on Environmental Sector', 358.Icglow (2019), 309-12.

⁵ Sepus M. Fatem and others, 'Camouflaging Economic Development Agendas with Forest Conservation Narratives: A Strategy of Lower Governments for Gaining Authority in the Re-Centralising Indonesia', *Land Use Policy*, 78 (2018), 699-710 <<https://doi.org/10.1016/J.LANDUSEPOL.2018.07.018>>.

exception. 2) Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua Article 43 concerning the protection of the rights of indigenous peoples. And 3) Special Regional Regulation Number 20 of 2008 concerning Customary Courts in Papua. Secondary legal materials, namely legal opinions obtained from books, journals, research results, newspapers, and the internet, relating to the existence of the Papuan Maybrat Tribe. Amid modernization, secondary legal materials are also obtained from interviews with sources who are the Maybrat Tribe Chief in Maybrat regarding the existence of the Papuan Maybrat Tribe Customary Court amid modernization (Toby & Sarakiri, 2021).

C. Analisis dan pembahasan

In conducting research, a theoretical framework is needed, as stated by Ronny H. Soemitro. To provide a solid foundation, every researcher must always be accompanied by theoretical thoughts. Legal pluralism is often defined as legal diversity. According to John Griffiths, legal pluralism is the presence of more than one legal rule in a social environment, in this case, not only customary law or state law and religious law but also customary law and customary law that applies in society. Based on this, the authors consider that this theory is very relevant if used to see the legal views of state law and customary law and traditional customs that apply in the Maybrat Tribe that affect customary justice in the current modernization period.⁶

Change is a continuous process that occurs in every society. There is a process of change that runs so that it is not felt by the people who support it. Such a change in motion is called evolution. Sociology has a picture of a change in the evolution of society from a simple community to a modern society. The process of moving this change is within a range of goals in contemporary society. The theory of social change is very appropriate if it is used to see the changes in indigenous peoples who used to be ordinary to modern, especially in the customary justice process in the Maybrat Tribe.

What is meant by comparing here is looking for and combing out differences and similarities, providing explanations, and researching how the law functions and how its juridical solutions are in practice, as well as which non-legal factors influence it. According to the author, this theory needs to be applied to compare the customary law in the Maybrat Tribe and the positive directio that affects the choice of the indigenous Maybrat community to choose a better solution to be applied in the traditional law environment during modernization.⁷

Jeremy Bentham, a figure in the flow of utilitarianism, said that justice is not for individuals; justice is measured by how much impact it has on people's

⁶ David L.A. Gaveau and others, 'Forest Loss in Indonesian New Guinea (2001–2019): Trends, Drivers and Outlook', *Biological Conservation*, 261 (2021), 109225 <<https://doi.org/10.1016/J.BIOCON.2021.109225>>.

⁷ Kazuhiro Harada and others, 'The Role of NGOs in Recognition and Sustainable Maintenance of Customary Forests within Indigenous Communities: The Case of Kerinci, Indonesia', *Land Use Policy*, 113 (2022), 105865 <<https://doi.org/10.1016/J.LANDUSEPOL.2021.105865>>.

welfare. Individual welfare can be neglected in favor of the more significant benefit (public interest). Accordingly, many laws that provide happiness to the most crucial part of society will be judged as good laws. While John Rawls does not accept the concept of justice, which only thinks about benefits and argues that there needs to be a balance between personal interests and common interests, in the sense that the concept of justice must rely on rights and obligations, John Rawls also discusses two concepts, namely: In justice, everyone has the same right to the broadest fundamental liberties, as wide as the same freedoms for all. Second, social and economic inequality must be regulated so that (a) it can benefit everyone, and positions and positions are open to everyone.⁸

If applied in the State of Indonesia, the value of justice can be seen in the importance of Pancasila, namely social justice. Social justice in Pancasila is one of the values used as the goal of the value system. Social justice in Pancasila can be regarded as the pyramid of the Pancasila system. Following this concept, Notohamidjojo said that justice demands that humans live correctly in society; everyone must be allowed to live properly as a human being. With this theory of justice, according to the author, it is very appropriate if it is applied to see how justice is to be achieved by the Maybrat tribal customary law community in modernizing and maintaining customary justice in the Maybrat tribal customary law community.⁹

D. The Existence of the Papuan Maybrat Tribe Customary Court in the Midst of Modernization

Indigenous peoples in Papua are not unique in the social and cultural fields, but also in legal life are unique. From various ethnic groups and more than 200 regional languages in Papua, which are very different, each tribe has different customs and traditions. With this pluralism, customary law in Papua continues to this day. Customary law is the first reference for indigenous peoples to resolve customary issues.

E. 2. Dinamika Perubahan Peradilan Adat Di Suku Maybrat Yang Sudah Modern

The legislation that explicitly mentions the term and explains the concept of customary justice is Law Number 21 of 2001 concerning Special Autonomy for Papua. This law confirms the state's recognition and respect for the existence of traditional justice in Papua. According to Article 51 paragraph (1) of the law, the customary court is a peace court within the established law community, which has the authority to examine and adjudicate customary civil disputes and criminal cases among the members of the customary law community concerned.

⁸ Isma Rosyida and Masatoshi Sasaoka, 'Local Political Dynamics of Coastal and Marine Resource Governance: A Case Study of Tin-Mining at a Coastal Community in Indonesia', *Environmental Development*, 26.September 2017 (2018), 12–22 <<https://doi.org/10.1016/j.envdev.2018.03.003>>.

⁹ M. B. Adi Wicaksono, I.G.A.K. Rachmi Handayani, and Lego Karjoko, 'State Policy's Analysis in the Redistribution of Reformed Agrarian Lands From Forest Areas in Indonesia (Study of Presidential Regulation Number 86 Year 2018 Regarding Agrarian Reform)', 358.Icglow (2019), 174–78.

Furthermore, in paragraph (2) and paragraph (3), it is determined that the customary court is structured according to the provisions of the customary law of the customary law community concerned; has the authority to examine and adjudicate customary civil disputes and criminal cases based on the customary law of the indigenous peoples concerned. In addition to Law Number 21 of 2001, the term customary justice is also found in the explanation of Article 9 paragraph (1) of Law Number 18 of 2004 concerning Plantations, which explains that the existence of customary courts is one indicator that shows that a community unit customary law still exists in reality.

By drawing on the elements of Article 51 of Law Number 21 of 2001 above, there are several concepts of customary justice: 1. Customary justice is a judicial system that lives in customary law community units in Indonesia; 2. Customary courts are based on customary law; 3. Customary courts are not part of the state justice system; 4. Customary courts have the authority to adjudicate customary cases, whether in the form of disputes or violations of customary law;

Customary courts have the authority to adjudicate cases between members of customary law community units. Sociologically, customary justice is not commonly used in everyday people's lives; even the word "customary justice" is rarely used in a community association. Although the term "customary justice" has never been used in the everyday language of the community, researchers generally believe that all customary law community units in Indonesia have a system or problem-solving mechanism that can be understood as a judicial system according to the above concept. The terms used are very diverse, such as "customary meeting," "customary meeting" and others.^{10v}

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Customary justice for the Maybrat tribal community is local wisdom. Local wisdom itself is the identity or cultural personality of a nation that causes the country to be able to absorb, even cultivate, a culture that comes from outside/other nations into its character and abilities. With the development of this era which is so fast, like it or not, indigenous peoples must also adapt to the development of the current period. This also affects some habits and behavior of indigenous peoples in the customary environment. Changes are like some new things must be accepted and implemented and also some things that must be renewed so that society continues to exist in this era of globalization. The development of the current generation makes indigenous peoples more modern. With a more modern society, the system and laws, and customs that apply to indigenous peoples must also adapt to these changes, but what must be maintained is that the values of local wisdom that apply in society must not be eliminated.¹¹

Indigenous peoples who have modernized and habits that have changed also do not open up the possibility that different patterns can cause other problems

¹⁰ Rodd Myers and others, 'Claiming the Forest: Inclusions and Exclusions under Indonesia's "New" Forest Policies on Customary Forests', *Land Use Policy*, 66 (2017), 205-13 <<https://doi.org/10.1016/J.LANDUSEPOL.2017.04.039>>.

¹¹ Suriani and others.

and follow the community's behavior, for example, issues or violations of new customs with modern society today. This change is also felt by all indigenous peoples, except the indigenous peoples of the Maybrat Tribe. Indigenous peoples of the Maybrat Tribe have also experienced changes in behavior and habits to become more modern, and the problems that occur in indigenous peoples are also different, such as in the past, defamation was only carried out in the traditional environment directly, but look at current developments with current technology which is increasingly advanced. It can also be done using social media; before, accidents were only done when people did traditional gardening or hunting or when doing something only in a traditional environment. However, with the current developments, accidents can also occur from vehicles.¹²

Even though the problem differed before, the settlement process still prioritizes settlement with custom through customary courts. So the laws and rules applied must also be different according to the times and adapt to the existing cases. So eventually, the sanctions imposed were imposed by paying for eastern cloth, pigs, beads, and land, using clans. However, with current developments, some sanctions are maintained, such as eastern cloth and beads and pigs are still being applied. What can no longer be supported is that land was only given directly without procedures. Still, the state must regulate an official policy, such as a deed of sale and purchase, and changing clans used to be implemented, but now it's rare because changing clans have to go through a process of determination from the state.¹³

This change also extends to the normal justice process, which previously only took a long time because considering the geographical area of the Maybrat Tribe's customary environment, which is in the jurisdiction of the Maybrat Regency, West Papua Province, which is very far from one village to another. So if there is a customary problem, the tribal chief must resolve it on foot. Also, the traditional elders entrusted with completing the customary justice process are not in every village so the operation can take a long time. However, developing a more modern society with accessible infrastructure makes the judicial process more manageable and can be carried out quickly.

F. Conclusion

Based on the explanation above, the conclusion drawn from the author is that at this time, the customary law community is already living in a modernization period which certainly has a positive and negative impact on customary justice. But it is positive, but for the indigenous people of the Maybrat tribe, customary justice is the leading choice to solve problems through data courts. So it can be said that until now, the customary court still exists because it better understands the

¹² Micah R. Fisher and others, 'Striving for PAR Excellence in Land Use Planning: Multi-Stakeholder Collaboration on Customary Forest Recognition in Bulukumba, South Sulawesi', *Land Use Policy*, 99 (2020), 102997 <<https://doi.org/10.1016/J.LANDUSEPOL.2017.09.057>>.

¹³ Khudzaifah Dimiyati and others, 'Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis', *Heliyon*, 7.8 (2021), e07865 <<https://doi.org/10.1016/J.HELIYON.2021.E07865>>.

situation and conditions of the Maybrat tribal community.

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