Journal
OF CONSTITUTIONAL LAW SOCIETY
E-ISSN: 2829 - 5014

EQUAL STATUS BEFORE THE LAW BY INDIGENOUS PEOPLES IN ORDER TO IMPROVE THE QUALITY OF LIFE IN SOCIETY, NATION AND STATE

KESAMAAN DERAJAT DI HADAPAN HUKUM OLEH MASYARAKAT ADAT GUNA MENINGKATKAN KUALITAS KEHIDUPAN BERMASYARAKAT BERBANGSA DAN BERNEGARA

Doris Rahmat[1*], Widya Daniswara[2]
*Faculty of Law, Universitas Slamet Riyadi
* doris_rahmat@yahoo.com

Volume 3, Number 2, September 2024
Received: July 25, 2024 Accepted: July 25, 2024 Online Published: September 30, 2024.

ABSTRACT
The utilization of the Nagari Customary Court is actually important because it is needed by the customary law community. In fact, it is the customary law community that knows and understands the historical aspects and the ins and outs of the lineage, environment and local culture. Therefore, this research seeks to find an optimal model of utilization of the Nagari Customary Court. How is equal status before the law by indigenous peoples in order to improve the quality of life in society, nation and state. This research is a socio-legal research that uses a qualitative approach. The data used in the research are primary and secondary data. The data collection method is through literature study and interviews. Therefore, the articles of Pancasila that regulate equal rights and justice also apply to indigenous peoples, and must also be perceived through philosophical, juridical and sociological perspectives. Indigenous Peoples according to Jawahir Thontowi is a group of citizens who have genealogical ancestors in common, live in a place, have a common goal of living within the framework of values and norms, still enforce a binding Adat system, led by the head of Adat, coordinate the administration of power and the existence of dispute resolution institutions in the community.

Keywords : Equality, Custom, State.

ABSTRAK

Pendayagunaan Peradilan Adat Nagari sebenarnya menjadi penting karena sangat dibutuhkan oleh masyarakat hukum Adat. Dalam kenyataannya masyarakat hukum Adat-lah yang paling mengetahui dan memahami mengenai segi historis serta seluk beluk dari silisilah, lingkungan dan budaya setempat. Oleh karena itu penelitian ini berusaha mencari model pendayagunaan Peradilan Adat Nagari yang optimal. Bagaiman kesamaan derajat di hadapan hukum oleh masyarakat adat guna meningkatkan kualitas kehidupanbermasyarakat, berbangsa dan bernegara. Penelitian ini merupakan penelitian socio-legal research yang menggunakan pendekatan kualitatif. Data yang digunakan dalam penelitian adalah data primer dan sekunder. Metode pengumpulan data adalah melalui studi pustaka dan wawancara. Oleh karena itu, butir pancasila yang mengatur mengenai kesamaan hak dan keadilan juga berlaku kepada masyarakat Adat, juga harus dipersepsikan melalui perspektif filosofis, yuridis dan sosiologis. Masyarakat Adat menurut Jawahir Thontowi adalah sekumpulan warga yang memiliki kesamaan leluhur secara genealogis, tinggal di suatu tempat, memiliki kesamaan tujuan hidup dalam kerangka nilai-nilai dan norma, masih memberlakukan sistem Adat yang mengikat, dipimpin oleh kepala Adat, mengkoordinasikan pengadministrasian kekuasaan dan keberadaan lembaga penyelesaian sengketa di dalam masyarakatnya.

Kata Kunci : Kesamaan, Adat, Bernegara.

I. INTRODUCTION

This research is a socio-legal research that uses a qualitative approach. The data used in the research are primary and secondary data. The method of data collection is through literature study and interviews. In this essay, the author takes the case In general in the Minangkabau region, many customary conflicts that occur in West Sumatra are resolved through the Nagari Customary Court formed by the Nagari Customary Density (KAN).[1] The process of overcoming and resolving various kinds of Adat conflicts that arise in West Sumatra through the Nagari Customary Court is considered quite effective because various conflicts that occur can be resolved quickly and in accordance with the customs generally accepted in West Sumatra.[2] Disputes are basically a reflection of the character and will among humans that cannot

[1] Berdasarkan penelitian Velly Farhana Azra, Peradilan KAN masih banyak menyelesaikan perkara-perkara Adat dan penyelesaian kasusnya dinilai masih cukup efektif dalam menyelesaikan konflik Adat di masyarakat. Velly Farhana Azra, *Op cit*, hlm 8-9.

[2] *Ibid*, hlm 150.

be uniform. in society, when a dispute occurs, it is generally resolved in various ways. Each approach uses a different paradigm in accordance with the goals, culture or values believed by each party to the dispute.[3]

Article 12 paragraph 1 of West Sumatra Provincial Regulation No. 16/2008 on Customary Land and its Utilization states that customary land disputes are resolved by the Kerapatan Adat Nagari (KAN) according to the provisions of the applicable customs. Judging from its development, in general, the decision in resolving Adat disputes in the Nagari Customary Court has been in accordance with the customary provisions prevailing in the community. However, because the decision of the Nagari Customary Court does not have legal force that can execute its decision, the community in dispute feels dissatisfied because the decision cannot be executed, so the community resubmits it to the State Court. The problem is that in the State Courts, the decisions of the Nagari Customary Courts that have previously existed are often not taken into consideration in making decisions.

The main reason why State Courts often do not consider decisions from the Nagari Customary Courts is because Article 2 paragraph 3 of Law No. 48 of 2009 concerning Judicial Power does not include elements of Customary Courts. This Law affirms that "All Courts throughout the territory of the Republic of Indonesia are State Courts regulated by law", in Article 18, Law No. 48 of 2009 also details the types of Courts that apply in Indonesia as follows: "Judicial power shall be exercised by a Supreme Court and the judicial bodies subordinate thereto within the General Court, the Religious Court, the Military Court, the State Administrative Court, and by a Constitutional Court."

Due to the non-recognition of Customary Courts in the Judicial Power Law, State Courts easily override the decisions of Customary Courts because they are considered not included in the judicial power recognized by the State. In other words, the existence of the Customary Law Community Unit has not received fair protection from the State.[4]

Law No. 48/2009, if examined further, is actually juridically and philosophically contrary to Pancasila. In the second principle of "just and civilized humanity", one of the points of practice is to recognize the equality of status, equal rights and human obligations of every human being without distinction of ethnicity, descent, religion, belief, gender, social position, skin color, and so on. Philosophically, this principle recognizes the existence of indigenous peoples by emphasizing the value of equality regardless of ethnicity, religion, belief, or gender. This means that indigenous peoples are

---

[3] Adi Sulistiyono, *Pengembangan Paradigma Non - Litigasi di Indonesia*, UNS Press, Surakarta, 2007, hlm. 3.

[4] Mulyanto. *Penataan Kesatuan Masyarakat Hukum Adat Menjadi Desa Adat Berdasarkan Undang-undang Nomor 6 tahun 2014 tentang desa di Provinsi Bali.* Disertasi. UGM.2018. Hlm 2.

also equal people, whose rights are recognized in society within the scope of the Unitary State of the Republic of Indonesia, which is also based on historical and cultural values.

Article 18b paragraph (2) of the 1945 Constitution states that the State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the principles of the Unitary State of the Republic of Indonesia. Although the Constitution does not specifically mention Customary Courts, philosophically, the 1945 Constitution recognizes and respects the unity of Customary law communities and their Courts.[5] The close relationship between the State and indigenous peoples, philosophically, means that the Indonesian State as the highest organization of power is obliged to recognize, protect, safeguard, fulfill the rights and respect the indigenous peoples' units.[6] According to Van Vollenhoven, (1) Indigenous peoples can form their own laws (zelfwetgeving), (2) carry out their own laws (zelfluitvoering), (3) conduct their own judiciary (zelfrechtspraak), and (4) conduct their own police duties (zelfpolitie).This theory is based on the fact that Indigenous law and its judiciary have grown autonomously long before State law.[7]

II. METHOD

Therefore, this research seeks to find an optimal model of utilization of the Nagari Customary Court. How is equal status before the law by indigenous peoples in order to improve the quality of life in society, nation and state. This research is a socio-legal research that uses a qualitative approach. The data used in the research are primary and secondary data. The data collection method is through literature study and interviews. Therefore, the articles of Pancasila that regulate equal rights and justice also apply to indigenous peoples, and must also be perceived through philosophical, juridical and sociological perspectives. Indigenous Peoples according to Jawahir Thontowi is a group of citizens who have genealogical ancestors in common, live in a place, have a common goal of living within the framework of values and norms, still enforce a binding Adat system, led by the head of Adat, coordinate the administration of power and the existence of dispute resolution institutions in the community.

---

[5] *Ibid*, hlm. 6.

[6] Mohammad Jamin, Mulyanto, Sahid Teguh Widodo, "*Reformulation of a legal Policy Affirming Recognition of Indigenous Community Units*", *International Journal of Innovation and Change* Volume 11, Issue 8, 2020, hlm. 474.

[7] Mohammad Jamin, *Peradilan Adat Pergeseran Politik Hukum Perspektif Undang-undang Otonomi Khusus Papua,* Graha Ilmu, Yogjakarta, 2014. hlm. 35-36.

III. ANALYSIS AND DISCUSSION

In Indonesian laws and regulations, customary rights and customary courts are recognized, respected and protected, meaning that the existence of customary courts and customary rights is recognized and protected from all disruptive actions by anyone. In Pancasila, there is already a principle of equality and protection for all Indonesian citizens. As the basic philosophy of the State, Pancasila has an imperative or compelling nature. This means that anyone within the scope of the Unitary State of the Republic of Indonesia must respect Pancasila as the nation's view of life, including the State and the law itself.

This means that the points of "Fair and Civilized Humanity" and "social justice for all Indonesian people" which embrace the principles of equal rights and justice must always be adhered to by all elements in the Republic of Indonesia. Pancasila is also a juridical-sociological basis, or in other words is the basis of norms and laws that live in society, and thus Pancasila has fulfilled the principles and basic values according to the development and needs of society and the State. To achieve justice, the strategic lagkah that needs to be taken is to instill the values of Pancasila as the basis for legal development in the context of the development of Customary Law communities.

Therefore, the articles of Pancasila that regulate equal rights and justice also apply to indigenous peoples, and must also be perceived through philosophical, juridical and sociological perspectives. Indigenous Peoples, according to Jawahir Thontowi, are a group of citizens who have genealogical ancestors in common, live in a place, have a common goal of living within the framework of values and norms, still apply a binding customary system, led by a customary head, coordinate the administration of power and the existence of dispute resolution institutions in the community.

Philosophically, Indigenous Peoples are also recognized for their rights and considered equal as citizens and independent communities based on the basis of historical and cultural existence. This is juridically explained in the second amendment of the 1945 Constitution, where there are two articles that recognize and respect the rights of Indigenous Peoples, namely, Article 18 B paragraph (2) and Article 28 I paragraph (3). Article 18 of the 1945 Constitution, which originally consisted of only one paragraph, was changed to 7 paragraphs plus Article 18 A consisting of two paragraphs and Article 18 B also consisting of two paragraphs. Article 18 B paragraph (2) of the 1945 Constitution, for example, contains provisions on the recognition and respect for customary rights which reads as follows:

"The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law".

What is meant by the State recognizing and respecting the unity of customary law communities along with their traditional rights, there is no explanation because there is no further form of recognition and respect. The word "respect" in Article 18 of the 1945 Constitution lacks clarity. According to the Big Indonesian Dictionary, the definition of respect includes: to recognize and obey (about rules, agreements): we will agree and the agreements we have made.

Based on the word respect, the State of the Republic of Indonesia must respect (meaning recognize and obey), the existence of Adat law communities and their Adat governments, and Adat land rights held by Adat law communities (hak ulayat) and individual land rights regulated in Adat land law.

Article 28, which originally also consisted of only one paragraph, was changed to Article 28 A to Article 28 paragraph (1). Article 28 paragraph (1) consists of (5) paragraphs, paragraph (3) contains provisions on the recognition and respect for customary rights as follows: "The cultural identity and rights of traditional communities are respected in harmony with the development of the times and civilization". The rights of traditional communities include customary rights.

Based on Article 18 B paragraph (2) and Article 28 I paragraph (3) of the 1945 Constitution, it can be concluded that:

"The State recognizes and respects the units of customary law communities and their traditional rights."

The 1945 Constitution does not explain what is meant by the traditional rights of indigenous peoples. According to customary law, the traditional rights of indigenous peoples are, for example, ulayat rights, so the State recognizes and respects the unity of indigenous peoples and their traditional rights, such as ulayat rights. This recognition and respect for hak ulayat must also be accompanied by recognition and respect for the rights of indigenous peoples attached to hak ulayat, namely, the rights of indigenous peoples to their customary land, as explained above.

IV. CONCLUSION

Customary Justice is needed for the Minangkabau Community as a community justice system because it is one of the solutions in providing Access to Justice to the Customary Law Community in Minangkabau.

The legislator should immediately pass the Indigenous Peoples Bill so that it can become a legal basis for the institution, authority and status of Indigenous Judicial decisions. According to the author, this bill will be the best problem solving in terms of legal substance to utilize the Nagari Customary Court. The concept is as a lex specialis by including recognition of customary courts in Indonesia as a community justice system. In other words, Indigenous judicial decisions are placed as final and binding decisions.

REFERENCE

Adi Sulistiyono, *Pengembangan Paradigma Non - Litigasi di Indonesia*, UNS Press, Surakarta, 2007.

Mohammad Jamin, Mulyanto, Sahid Teguh Widodo, "*Reformulation of a legal Policy Affirming Recognition of Indigenous Community Units*", *International Journal of Innovation and Change* Volume 11, Issue 8, 2020.

Mohammad Jamin, *Peradilan Adat Pergeseran Politik Hukum Perspektif Undang-undang Otonomi Khusus Papua,* Graha Ilmu, yogjakarta, 2014.

Mulyanto. *Penataan Kesatuan Masyarakat Hukum Adat Menjadi Desa Adat Berdasarkan Undang-undang Nomor 6 tahun 2014 tentang desa di Provinsi Bali.* Disertasi. UGM.2018

Velly Farhana Azra, *"Kewenangan Kerapatan Adat Nagari (KAN) Dalam Penyelesain Sengeketa Tanah Ulayat Di Nagari Koto Baru kabupaten Solok Berdasarkan Perda Sumatera Barat No.6 Tahun 2008",* Ejournal Undip, Volume 6, Nomor 2, 2017.