



The Urgency of Customary Law in Public Life in Indonesia at the Modern Era

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Abstract. This article explains the importance of customary law in the lives of Indonesian people in the modern era and the role of law in people's lives. This research aims to understand the importance of customary law in the lives of Indonesian people in the modern era. The research method used is normative. The results of this research show that customary law is a law that reflects the personality and spirit of the nation, so several customary law institutions are believed to still be relevant as building blocks for the Indonesian legal system because of the constitutional arrangements they are. In essence, it does not necessarily eliminate the juridical facts that exist in the field. Empirically, the existing legal system is effective in regulating people's behavior in everyday life. The social reality of Indonesian society shows that there is more than one legal system that effectively works to regulate people's lives, resulting in the existence of a legal system outside the formal legal system enforced by the state regarding the existence of customary law communities with their customary legal system. As part of Indonesia's social reality, the existence of community groups called indigenous peoples clearly cannot be minimized, there is a tendency that their existence must be maintained and fought for to become more prominent as a result of the inclusion of cultural rights as part of human rights. In conclusion, customary law in Indonesia is very important in people's lives, as a basis for making formal regulations in the state.

Keywords: Customary Law, Society, Modern.

1 Introduction

Indonesia is characterized by a rich diversity of ethnicities, races, religions, and customs spanning across its cities and villages. This diversity represents a collective wealth and potential among its people. Law and society in Indonesia are deeply intertwined, reflecting the principle "ubi societas ibi ius" — where there is society, there is law. Thus, legal norms are essential to govern social life and maintain public order. Legal rules in Indonesia encompass both written and unwritten forms, applicable at national and local levels, including customary and private laws (Soeipomo, 1967). This legal framework acknowledges and integrates the various societal norms and customs across the diverse Indonesian landscape.

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In Indonesia, with its multitude of races, ethnicities, cultures, and customs, diverse rules and norms coexist and evolve within each society. Customary laws vary significantly across different communities throughout the country. Within each customary law system, specific sanctions are applied to individuals who commit offenses or breach norms that contradict the public interest. These sanctions serve to maintain order and uphold the collective values and traditions within each respective community.

Ironically, the application of customary law within the Indonesian legal system remains limited, albeit not nonexistent. The Padang Negeri Court Decision Number 247/Piid/B/2012/PN.Pdg. introduces a novel perspective on using customary law in adjudicating criminal cases involving juvenile offenders. Despite the lack of evidence supporting the public prosecutor's charges of molestation and assault, a minor offender was sentenced to three months in prison. This ruling was justified by the defendant's violation of Minangkabau customary law as outlined in the "Nan Duo Puluah Law, Minangkabau Customary Criminal Law." This case illustrates the utilization of traditional criminal norms in juvenile criminal cases, underscoring their close relationship with justice (Zurneittii, 2015). However, in contemporary times, many traditional laws have waned in relevance and are increasingly disregarded, particularly by younger generations more focused on modernity than on customs and traditions.

Customary law initially became a living and balanced law and was able to provide solutions to various problems in the lives of Indonesian society, even as its unique characteristics disappeared. Currently, if you look at the current facts in society, you can find a variety of complex problems faced by indigenous peoples in Indonesia, especially when customary law is confronted with positive law. For example, the traditional rights of society are confronted with the interests of investors through state legal means. The balance of Indonesia's legal system, which is increasingly looking at the model of civil law from Western countries, and Indonesia's legal politics, which tends towards the codification and unification of law, has led to the disappearance of the traditional legal existence and its institutions (Aditya and Yulistyaputri, 2019).

Based on the explanation above, this research explains the urgency of customary law in modern society. The formulation of the problem in this research is whether customary law is still needed in the lives of Indonesian people in the modern era and what is the role of customary law in people's lives. The purpose of this research is to understand the urgency of customary law in the lives of Indonesian people in the modern era and the role of customary law in society.

2 Research Methods

In this research, the research method used is a normative research method, namely research that uses several journals and books to be identified according to the main problem in this research. Normative research methods have the characteristic that research uses libraries or literature research. This method is defined as legal research at the rules, principles, philosophy, theory, and norm level to obtain solutions to answers to legal problems in the absence of a law, or conflicts in norms [2].

3 Results and Discussion

3.1 Understanding Customary Law

Customary law is a legal framework that operates within a community's environment and is harmonized with its customs and traditions. Various definitions highlight its nature and role. According to Hardjito Notopuro, customary law is an unwritten set of rules characterized by its distinctiveness, serving as a guide in ensuring justice administration and social welfare with a familial context. Soepomo describes customary law as synonymous with norms not codified in legal statutes but recognized in state bodies like parliaments and councils, as well as maintained as societal conventions in both urban and rural settings (Manariisiip, 2012).

According to Cornelis van Volleinnhovein, customary law is a set of rules regarding behavior for indigenous and foreign eastern people, on the one hand, it has sanctions (because it is legal), and on the other hand, it is not codified (because it is customary) (Wulansarii, 2010). Customary law refers to the legal rules that apply in customary communities or traditional communities. Customary law is based on beliefs, norms, and values that have existed in that society for centuries. Customary law is usually inherited from generation to generation and is a core part of the cultural identity of a society.

Customary law usually regulates various aspects of people's lives, including marriage, inheritance, farming, land ownership, and internal punishment. However, it is important to note that customary law often evolves continuously with national law or modern law implemented by the country in question. In Indonesia, customary law is recognized as part of national law. Indonesia recognizes cultural diversity and customs throughout its territory, and the Indonesian Constitution (1945 Constitution) recognizes the rights of indigenous peoples as well as the absence of customary law.

Customary law in Indonesia is regulated in various legislative regulations, including Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA): UUPA recognizes and protects the rights of indigenous peoples related to the ownership and use of customary land. The UUPA provides recognition and protection of ulayat rights (collective ownership rights to customary land) as well as other rights that are tied to customary communities. Law Number 39 of 1999 concerning Human Rights (Human Rights Law): The Human Rights Law recognizes the rights of indigenous peoples, including customary land management regulations, the right to maintain the continuity of cultural life and customs, as well as the right to participate in related decisions, with the wishes of indigenous peoples.

Law Number 32 of 2004 concerning Regional Government (UU Regional Government): The Regional Government Law provides space for recognition and protection of the existence and rights of indigenous peoples in the context of regional government. Regional governments in Indonesia are required to involve indigenous communities in decision-making that impacts their lives and rights. In addition to this regulation, there have also been other efforts to strengthen the recognition and protection of customary law in Indonesia. For example, the Body for Balancing Customary Law and Culture (BPHN) was created to provide advice to government leaders regarding customary law

and cultural issues. In addition, the Indonesian Supreme Court has also issued several decisions that recognize and protect the rights of indigenous peoples.

Implementing customary law in Indonesia faces various challenges, including conflicts with national laws and insufficient recognition and protection of indigenous peoples' rights. Despite these challenges, the Indonesian government is actively working to enhance the acknowledgment, protection, and involvement of indigenous peoples in decision-making processes affecting the nation.

The 1945 Constitution of Indonesia, which was enacted through the Presidential Decree dated 5 July 1959, does not explicitly provide a legal basis for the application of customary law. According to Article 11 of the Constitutional Transition Regulations, all existing state bodies and regulations remain in force until new ones are established under this Constitution. Prior to the implementation of the 1945 Constitution, the Temporary Constitution of 1950 governed the legal framework.

These constitutional provisions highlight the ongoing legal framework within which customary law operates in Indonesia, reflecting the country's commitment to evolving legal systems while addressing the complexities of customary practices and indigenous rights.

In the interim Constitution, Article 104 paragraph 1 states that "All court decisions must contain reasons and in matters of punishment these include the statutory rules and customary law rules which serve as the basis for the punishment. "But this intention, which if interpreted as "customary law" is as broad as possible, contains a constitutional basis for the application of customary law, until now there has been no legal basis for its national identity (the Constitution) (Manariisiip, 2012).

The legislative basis for the application of customary law, which originates from ancient times, the law that applies today is Article 131 paragraph 2 sub b IiS. According to these intentions, the original Indonesian legal groups and the foreign Eastern legal groups apply their customary law. But if their needs require it, then the makers of the ordinance can prescribe for them: European Law, amended European Law (*geiwijziigd Eiuuropeieis reicht*), Law for several groups equally (*geiwijziigd Eiuuropeieis right*), and if the public interest requires it, new Law (*niieiuw reicht*), namely law that is a "synthesis" between customary law and European law ("*fantasiieireicht*" van Vollein hove in *atau "ambteinareinrecht"* van Iidsiinga) (Manariisiip, 2012).

In Indonesia, the existence of customary law is recognized and supported by several robust legal foundations. The 1945 Constitution, in Article 18B paragraph (2), acknowledges and respects the unity of customary law communities and their traditional rights, provided they are in harmony with societal balance and the principles of the Unitary State of the Republic of Indonesia as regulated by law. Emergency Law No. 1 of 1951 and Temporary Law No. 1 of 1951 also provide temporary measures for unifying the structure, power, and events of civil law, indirectly acknowledging the role of customary law. Furthermore, in the explanation accompanying Emergency Law No. 1 of 1951, I Made Widnyana clarified that customary criminal law would be maintained until integrated into a new Criminal Code. This affirms that customary crimes and punishments will continue to be recognized until further legal adaptation.

Law No. 5 of 1960 concerning Basic Agrarian Law (UUPA) delegates authority to customary law communities to manage and control land within their territories, acting as implementers of the state's land control rights. With these legal foundations, Indonesia asserts its commitment to recognizing, respecting, and integrating customary law into the national legal system, while ensuring it aligns with legal principles and societal values.

Law Number 14 of 1970 stipulates the Basic Intentions of Judicial Power. Law Number 35 of 1999 contains amendments to Law Number 14 of 1997 regarding the basic intentions of Islamic authority, which has been replaced by Law Number 4 of 2004 and at this time has been replaced by the latest law, namely Law Number 48 of 2009 Regarding the Authority of the Faith, in Article 50 paragraph (1) it is intended as follows: "A court decision must also contain the reasons and basis for the decision, and also contain specific articles from the relevant legal regulations or unwritten sources of law which serve as the basis for the trial."

Law No. 39 of 1999 on human rights can be seen as implementing the TAP MPR (Majelis Permusyawaratan Rakyat) No. 32/2004 on Regional Government Regulation, with a specific focus on reinforcing the rights of customary law communities to govern themselves according to local customary laws. This intent is also echoed in previous legislation predating the Regional Government Law, such as Indonesian Law No. 14 of 1970, later amended to Law No. 35 of 1999 concerning the Principles of Judicial Power. These laws underscore the recognition and integration of customary law as mandated by Indonesia's constitution. Article 23 paragraph (1) stipulates that all judicial decisions must justify their rulings based on specific articles from relevant regulations or unwritten sources of law that serve as the foundation for adjudication [3]. This framework ensures that customary law communities have the legal basis to organize their governance and political structures according to their traditions and local customs, within the broader legal framework of Indonesia.

Customary law communities in Indonesia are divided into two groups according to their basic structure, namely based on their hereditary ties (genealogy) and based on their regional environment. The members of society are tied to a specific area of residence, both in terms of worldly relations as a place of life and in terms of the worship of ancient spirits. Some indigenous peoples are unique in their own right, being part of a higher level of traditional society or including some of the more beautiful indigenous peoples, as well as being a part of several similar indigenous peoples. Since the number of indigenous communities is large, their existence must be taken into account. Indigenous communities are aware of their commitment to culture, culture and traditional values, and must be prepared to face the Industrial Revolution 4.0. they are starting to open up towards technological balance. For example, using intelligent intelligence technology to improve agricultural results (Dahlianoor, 2022).

The modern era is characterized by artificial intelligence (artificial intelligence), computing technology, engineering, nanotechnology, automobile automation, and innovation. These changes occur in economic and financial acceleration which will have an impact on the economy, industry, government, and politics. In this era, it is increasingly visible that the world has become a global village. Modernization in this era is characterized by the emergence of the term Industry 4.0, a term that was first coined in

Germany in 2011, which was characterized by the digital revolution. This industry is a digitally connected industrial process that includes various types of technology, starting from 3D cores to robots that are believed to be able to increase productivity.

3.2 The Urgency of Customary Law in Modern Society

Mason C. Hoadley, in his work "The Leiden Legacy: Concepts of Law in Indonesia," argues that customary law, once vibrant and integral to Indonesian society, is now increasingly marginalized. Initially serving as a balanced and practical legal framework that addressed various societal issues, customary law has lost its distinctiveness over time. Presently, indigenous communities in Indonesia face complex challenges, particularly when customary law conflicts with statutory law. An example is when traditional community rights clash with state-sanctioned interests, such as those of investors (Adiitya and Yuliistyaputri, 2019).

The evolution of Indonesia's legal system has emphasized modernizing civil law based on Western models and promoting codification and legal uniformity. This trend has contributed to the diminishing role of customary law and its institutions. There is a prevailing assumption that customary law is traditional, outdated, and unable to adapt to modern standards, leading to its perceived irrelevance in contemporary legal discourse.

As a result, the concept of customary law as a primary source of legal authority in Indonesia has eroded. This shift reflects broader societal changes and the prioritization of modern legal frameworks over traditional customary practices. The implications of this Indonesian legal politics can be seen in the emergence of problems in society that tend to ignore customary law and prioritize state law, even though it is generally more relevant than using state law. There are many horizontal conflicts between indigenous peoples in one region which should be resolved through the framework of indigenous community reform institutions. A crucial problem that arises in everyday life is the distinction between ownership of land by the community based on customary rights and general desires which become the burden and obligation of the state. Another example is the idea that the basis for whether an act should be prosecuted should be extended to the realm of customary law values (Adiitya and Yuliistyaputri, 2019).

If we delve into Indonesia's legal history, the application of law reveals significant interest among legal scholars, particularly from Western countries, in studying customary law, which has been ingrained in Indonesian society for millennia. Notably, Snouck Hurgronje stands out as the pioneering expert who extensively studied Indonesian law. In his book "De Atjehers," Hurgronje introduces the term "customary law" to describe a unique system of social control prevalent in Indonesian society. This term refers to customs and norms that guide and regulate social behaviors, reflecting the indigenous legal traditions that have shaped Indonesian communities over centuries. Hurgronje's work marked a pivotal moment in the academic exploration of customary law within Indonesia, highlighting its role as a cornerstone of social governance and legal practice in the region.

Subsequently, Snouck Hurgronje's theory was balanced by Cornelis van Vollenhoven, who later became known as an expert on Customary Law in the Netherlands. Bearing in mind that customary law is a law that reflects the personality and soul of the nation, it is believed that certain customary legal institutions are still relevant as ingredients in forming the Indonesian legal system. Customary law that can no longer be maintained will become extinct over time, in line with the flexible and dynamic nature of customary law (not static).

According to Von Savigny, as followed by Soepomo, he emphasized that Customary Law is a living law because it is the embodiment of the real legal feelings of the people. By its nature, customary law continues to exist in a state of growth and balance as life itself. In line with Savigny's ideas, van Vollenhoven said that customary law in the past was somewhat different in content, customary law showed balance. Vollenhoven further emphasized that customary law is balanced and progressing continuously, customary decisions give rise to customary law. If the enactment of a law conflicts with the values and legal norms that live and apply in society, it will inevitably receive rejection. In the Indonesian context, the living law of the Indonesian people is customary law. Customary law can also be used as a source of law by judges if the law is so ordered (Adiitya and Yuliistyaputri, 2019).

The existence of such constitutional regulations has brought the consequence that Indonesia as a country must implement and implement the principles contained in the concept of the state of law. Implementing these principles and concepts does not necessarily mean that it immediately eliminates the existing juridical facts in the field, that the existing legal system effectively regulates the behavior of society in everyday life, not only the Civil Law System but also the same legal system. The formal ceremony was carried out by the state.

The social reality of Indonesian society shows that there is more than one legal system that effectively works to regulate people's lives, resulting in the existence of a legal system outside the formal legal system implemented by the country, namely the existence of indigenous communities with their customary legal system. As part of Indonesia's social reality, the existence of a group of people referred to as indigenous peoples clearly cannot be defined, in fact, a theory (a clear activist) has emerged that the existence of society must be maintained and fought for to advance. as a result of impeaching (cultural rights) as part of human rights, law no. 39 of 1999 article 6 paragraph (2) (Dahlianoor, 2022).

In society, customs are very influential in regulating life, and procedures for socialization in society. Customs regulate how to behave politely, talk about decisions, and so on because a high level of manners will show the high level of civilization in a region.

Customary law is a form of law that still exists or exists in the lives of traditional law communities in Indonesia. It is important to know that customary law is a form of law that applies in the life and legal culture of Indonesian society which is still in effect today. The existence of customary law can be seen to this day through the existence of customary laws as well as customary legal instruments that are still maintained by customary law communities in Indonesia to resolve various issues and disputes that cannot

be handled by political institutions, and judicial authorities. As well as community institutions.

The term customary law that we use today is a translation of the Dutch language, namely from *datrecht*, which was first used to define a name for a system of social control (social control). This system is something that grows in the lives of Indonesian people. The first person to put forward this term was Prof. Dr. C. Snouck Hurongronje in his book entitled "De Atjehen" 1894 to name the social leadership system that lives in Indonesian society (Dahlianoor, 2022).

Customary law was originally applied to Indonesian and East Asian people. It is a law, that has sanctions, which is why it is called "recht", and for the most part it does not exist in the form of legislation, which is why it is called "custom". It is a Law that is not written down and for the most part, has not been written down (Dahlianoor, 2022).

According to Prof. Dr. R. Soepomo, S.H: Customary law is non-statutory law which is largely customary law and to a small extent Islamic law. Customary law also includes law that is based on judges' decisions which contain legal principles in the environment, where it decides cases. Customary law is a living law because it embodies the real legal feelings of the people. By its nature, customary law continues to exist in a state of growth and balance in the same way as life itself [4].

According to Prof. Dr. H.R. Orje Salman Soemadinigrat, S.H.: Customary law is part of the law that originates from traditional customs, namely social rules created and maintained by legal functionaries and applies as intended to regulate legal relations in Indonesian society. Customary law is a complex of norms. -norms that originate from the people's sense of justice which is always balanced and include rules for human behavior in everyday life in society, which are largely unwritten, are always obeyed and respected by the people because they have legal consequences (Dahlianoor, 2022).

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The existence of customary law can be seen to this day through the existence of customary laws as well as customary legal instruments that are still maintained by customary law communities in Indonesia to resolve various issues and disputes that cannot be handled by political institutions, and judicial authorities. As well as community institutions. Customary law continues to be maintained to this day by customary law communities because they believe that a decision issued through customary justice regarding a deed that is judged through it can bring satisfaction to a sense of justice, as well as a balance in the lives of indigenous peoples due to spiritual instability. which occurs due to the implementation of the customary deeds mentioned (Dahlianoor, 2022).

The current balance of the 21st century has entered the Industrial Revolution 4.0, which in essence consists of a balance of digitalization and innovation. This is a challenge for us together to prepare the Indonesian people without exception to be ready for such a balance, not least the customary law community which continues to be present only as an object in the country's regional development. The leadership's will must

be able to bring about regulation that can accommodate all the desires of its people. Customary Law Communities are a logical consequence of the concept of a unified nation. This means that customary law communities have an equal position in national and national life. The explicit enshrinement of national rights in the 1945 Constitution of the Republic of Indonesia implies that the State is obliged to carry out protection, balancing, and empowerment of society in general (Dahliianoor, 2022).

Customary law as the original law of Indonesia is a law that always follows the soul of the people of Indonesia because it always grows and lives from the culture of the people to which this law applies. Customary law is one of the embodiments of personality, soul, and structure of society/nation. This is in line with Von Savigny's opinion, which states that the contents of the law are determined by the history of the society in which the law applies. Since Indonesia's birth on 17 August 1945, the Indonesian nation has been free and independent in the political, economic, social, and cultural fields. With the promulgation of the 1945 Constitution, the Indonesian State had the foundations of the new legal order, which reflected the individuality of the Indonesian nation. This can be seen from the decision of MPRS No. III/MPRS/1960, which states explicitly that the guidance of national law must pay attention to the homogeneity of law by taking into account the realities that live in society and must be by the country's direction as well as being based on customary law which does not interfere with social balance (Dahliianoor, 2022).

In a seminar on National Customary Law on 15-17 January 1975 organized by Gadjah Mada University and the National Law Development Agency, customary law was defined as "original Indonesian law which is not written down in the form of Indonesian Republic of Indonesia legislation, which here and there contain religious elements". In this seminar, the concept of customary law is formulated in the context of balancing law in Indonesia, including Firstly, the adoption of materials from customary law uses the concepts and legal principles of customary law to be formulated in legal norms. which meets the needs of society; secondly, the use of customary legal institutions is being modified and adapted to the needs of the times; thirdly, incorporating the concepts and principles of customary law into new legal institutions [5].

Talking about modernization, what happens is when humans have mastered and can apply knowledge and technology in the fields of communications and transportation. Faced with this, the question that arises is how globalization influences the development of national law, and what things must be paid attention to face globalization without abandoning the identity of one's identity as a nation (Sunaryatii, 1991).

The formal framework for the balancing of the national legal system must be based on Pancasila and the 1945 Constitution so that every area of law that will be developed is part of the national legal system, which is comprised of several statutory regulations, jurisprudence, and customary law, which must be sourced from Pancasila and the Constitution 1945. If legal pluralism is no longer desired to be maintained, then elements of customary law and religious law will be transformed or become part of the legal fields in the national legal system, which will be balanced in each field. At present Indonesia has emerged a kind of courtesy for If we ask first whether we can smoke, then this is based on an awareness that cigarette smoke harms the environment because it harms the entire surrounding environment (Sunaryatii, 1991).

In Singapore, it has become a customary law for people to regularly cover their mouths with a handkerchief, or even express their concern for people smoking nearby. In public places, smoking is prohibited by written law. It is here that we see the influence of globalization from a widely informed social outcome, which grows into an awareness of being balanced into values, which is then implemented into behavior, and through manners and customs, which will eventually become legal norms (Sunaryatii, 1991).

In the future, it can be predicted that there will still be many legal norms that are based on scientific research which will then be recognized internationally, as an international legal rule or have universal values, which will also be accepted and implemented in our national law. Changes in values and awareness as a result of globalization in the fields of technology and information, directly or indirectly, will also impact the content and pattern of our national legal system. With this in mind, customary law which originates from the consciousness and culture of the nation, namely law which is a direct statement of the consciousness and feeling of the law of the Indonesian nation based on the national cultural order, will play a core role in balancing national law. With globalization, customary law as such will no longer be established as one of the most important sources of balancing national law. It's just that customary law needs to be adapted to circumstances that are far different from those in the past, but its principles will still be unique to every national legal guidance (Sunaryatii, 1991).

If some in society believe that customary law has experienced a softening in its application in the modern era, then there is some truth to this opinion. This fact is supported by the fact that the legal system used in our country is the Continental European system. In the Continental European system, written law (legislative regulations) has a greater function in state administration and community governance, when compared to law that is not written down. In the context of the Continental European system, the more dominant law is the written one, and the law that is not written down (which includes customary law) is referred to as only an overlay (Dahlianoor, 2022).

As long as a problem has been regulated in legislation and it turns out that its contents conflict with customary law, then from a formal juridical perspective, what applies is written law. This fact is supported by the fact that the legal system used in our country is the Continental European system. In the Continental European system, written law (legislative regulations) has a greater function in state administration and community governance, when compared to law that is not written down. In the context of the Continental European system, the more dominant law is the written one, and the law that is not written down (which includes customary law) is referred to as only an overlay. As a result, as long as a problem has been regulated in legislation and it turns out that its contents conflict with customary law, then from a formal juridical perspective, what applies is written law. However, what needs to be remembered is that in practice in society, written laws are not always in line with a balanced in society so written rules cannot resolve existing problems and sometimes do not ensure a sense of justice in society. If this happens, it means that there is a discrepancy between written law and the law that exists in society. In this case, it is the unwritten law (customary law) that will create the problem. This can be seen from the mandate of Law Number 4 of 2004,

which provides the freedom for judges to understand, understand, and follow the legal values that exist in society (Dahlianoor, 2022).

The development of the principles of customary law to this day continues to have a core role, especially in the future formation of national law, especially in the field of family law. Customary law will become one of the main sources of law in the formation of written law so that written rules automatically become the reflection of community law. And of course, with the hope that this written law has been implemented, in practice in society there will no longer be any irregularities in the law's action.

To remain open to modernity, we must also be alert to changes in thought patterns. Technological sophistication is not always positive. Everything depends on how we use and utilize it. Here, indigenous peoples must be vigilant. Do not let the existence of culture, customs, and traditional values that have long been guarded and upheld to the highest level be lost. Cultural, cultural, and traditional values must be a form of coping in the face of extreme changes. The variety of thoughts and various elements of society are Indonesia's wealth that must be cared for. This diversity must be viewed as a beautiful harmony. All members of society can live together peacefully. Unity and oneness must be upheld and maintained. For Indonesia which is doing well. For indigenous peoples whose existence is acknowledged, their existence is acknowledged.

4 Conclusion

In practice in society, written laws are not always in line with a balanced society so written rules cannot resolve existing problems and sometimes do not ensure a sense of justice in society. If this happens, it means that there is a discrepancy between written law and the law that exists in society. In this case, it is the unwritten law (customary law) that will create the problem. This can be seen from the mandate of Law Number 4 of 2004, which provides the freedom for judges to understand, understand and follow the legal values that exist in society, so that the existence of customary law to this day continues to have a core role, especially in the guidance of law. in the future, especially in the field of family law. Customary law will become one of the main sources of law in the formation of written law so that written rules automatically become the reflection of community law. And of course, with the hope that this written law has been implemented.

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