



SOCIO-LEGAL CHALLENGES OF INDIGENOUS LAND IN WEST KALIMANTAN: CUSTOMARY PRACTICES AND NATIONAL LAW

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ARTICLE INFO

Keywords:

Legal problems; Indigenous peoples; Legal certainty; Traditional communities

ABSTRACT

Customary law in the national legal system is undoubtedly fundamental to maintaining existence because customary law can also be applied to resolve conflicts in society. This research uses socio-legal methods, and the data obtained is based on data in the field through an interview process with several related parties. In contrast, for legal problems in this society, only some things can be resolved through a customary law approach. For example, in the Dayak indigenous community, several legal problems cannot be resolved according to custom, especially regarding unregistered land rights. These problems certainly cannot be solely resolved using a customary law approach. This certainly shows that customary law cannot necessarily accommodate the interests of Indigenous peoples because this is also closely related to legal certainty. Because they relate to legal certainty, they must be resolved through a positive legal approach, such as submitting a request to the court or an application to the relevant agency. This certainly happens because the legal awareness of regional communities in Indonesia is currently not very good; this leads to legal issues within indigenous communities that cannot be resolved through customary law.

A. INTRODUCTION

Indonesian society is pluralistic, consisting of various ethnic groups that live and reside in certain areas of Indonesia.¹ Indonesian people are known for their various customs.² Indonesia is a country consisting of various ethnicities, races, and cultures. These various ethnic and cultural groups are united by *Bhinneka Tunggal Ika*, who makes the motto Pancasila the ideology of the Indonesian state. The diversity in the life of the nation and state is what unites the various indigenous tribal communities that number in the thousands in Indonesia. The motto *Bhinneka Tunggal Ika* is a form of philosophical respect and appreciation for the Indonesian nation and its diversity.³ In a country, law is a cultural product that cannot be separated from other aspects of culture, such as politics, economics, social structure and organization, ideology, religion, etc.⁴

The people in a country certainly have a significant influence on a country. Society is a unit of individuals whose social lives are intertwined by various kinds of relationships between the individuals who are its members.⁵ According to Soekanto, society is a collective form of life in which its citizens live together for a long time, thus producing culture.⁶ The influence of customs on national law is undoubtedly very large. This shows that indigenous peoples certainly have unique characteristics and differences in each region, which can also have an impact on national law. This habit is carried out continuously from generation to generation.⁷

The habit that is carried out continuously indicates that the local community accepts the habit. If, in the future, something is found that is contrary to these habits, the community tends to consider it a violation of the laws that apply in society. The habits of local communities that can affect the law are also greatly influenced by the mindset and awareness of the community towards the law. This will significantly impact the development of national law to create legal certainty in society. The habit that exists in a

¹ Winne Christine et al. "Sanksi Adat dalam Perceraian Suku Dayak Ngaju Kalimantan Tengah." *Bhirawa Law Journal* 4, no. 2 (2023): 194.

² Magdalena. "Peran Hukum Adat dalam Pengelolaan dan Perlindungan Hutan di Desa Sesaot, Nusa Tenggara Barat dan Desa Setulang, Kalimantan Timur." *Jurnal Penelitian Sosial dan Ekonomi Kehutanan* 10, no. 2 (2013): 110.

³ Syamsudin. "Beban masyarakat adat menghadapi hukum negara." *Jurnal hukum ius quia iustum* 15, no. 3 (2008): 338.

⁴ Jenni Kristiana Matuankotta. "Peran Aktif Masyarakat Hukum Adat dalam Pembangunan Ekonomi." *Sasi* 24, no. 2 (2019): 101.

⁵ Wiwik Utami. "Hukum Sebagai Agen Pengendali Sosial Dalam Masyarakat Ditinjau Dari Segi Sosiologi Hukum." *Jurnal Maksiagama* 12, no. 2 (2020): 97.

⁶ John Haba. "Realitas masyarakat adat di Indonesia: sebuah refleksi." *Jurnal Masyarakat Dan Budaya* 12, no. 2 (2010): 255.

⁷ Munir Salim. "Adat Sebagai Budaya Kearifan Lokal untuk Memperkuat Eksistensi Adat ke Depa." *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 5, no. 2 (2016): 244.

certain society is how to adapt that society to its environment.⁸ In some cases, habits in the community then become an icon or characteristic of the area.

The large number of traditional tribes in Indonesia makes Indonesia unique and different from other countries, which is a difference that makes Indonesia have different laws from other countries. The existence of customary law in indigenous peoples in various regions of Indonesia also affects the law in Indonesia. Customs are a reflection of a nation's personality.⁹ The term customary is absorbed in the Indonesian language into a habit so that the terms customary and custom have the same meaning. There is a close relationship between customs or customs and the people who carry out the customs, where this community is then referred to as indigenous people.

The existence of indigenous peoples in Indonesia is not only a custom related to culture, but several indigenous tribes in Indonesia also have laws that apply to these indigenous peoples. Thus, the existence of customary law in Indonesia certainly affects law enforcement. On the other hand, recognition of the existence of customary law communities has indeed been given by the state and regulated in various laws and regulations.¹⁰ Indigenous peoples have an important role in realizing justice and peace.¹¹ Indigenous peoples in each region are important in developing their regions, especially through their local wisdom.¹²

In some cases in Indonesia, customary terminology and customary law are often mixed to provide a meaning, even though they are different things. Adat is seen as a tradition or habit that indigenous peoples often carry out, then develops into a rule without any real sanctions (punishments) in the community. Meanwhile, according to Cornelis van Vollenhoven, customary law is the entire code of public conduct that applies, has been sanctioned, and has not been codified.¹³ The influence of customary law also affects Indonesian national law; this is also intended to relate to the certainty of indigenous

⁸ Abdul Wahab Syakhrani and Muhammad Luthfi Kamil. "Budaya dan kebudayaan: Tinjauan dari berbagai pakar, wujud-wujud kebudayaan, 7 unsur kebudayaan yang bersifat universal." *Cross-border* 5, no. 1 (2022): 782.

⁹ Rahmad Fahreza Setiawan and Lisnawati. "Jipen: Menilik Hukum Adat Dayak Perspektif Kaidah Fikih Jinayah." *Jurnal Ilmu Syariah dan Hukum (Jisyaku)* 2, no. 1 (2023): 59.

¹⁰ Nyoman Mas Aryani and Ni Putu Suari Giri. "Hak Kolektif Perempuan Sebagai Bagian Masyarakat Hukum Adat dalam Pembangunan Sistem Hukum Nasional." *Jurnal Majelis*, no. 2. (2020): 88.

¹¹ Yuliyanto. "Peranan Hukum Adat Masyarakat Dayak dalam Menyelesaikan Konflik untuk Mewujudkan Keadilan dan Kedamaian." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 37.

¹² Isnawati, Nur Arfiani, and Nopi Abadi. "Perlindungan dan Pengelolaan Tanah Adat di Dayak Meratus Desa Papagaran Kalimantan Selatan." *Jurnal De Jure* 12, no. 2 (2020): 92-109.

¹³ Fatahuddin Aziz Siregar. "Ciri hukum adat dan karakteristiknya." *Jurnal Al-Maqasid: Jurnal Ilmu Kesyarifan Dan Keperdataan* 4, no. 2 (2018): 2. See also, Mason C. Hoadley. "The Leiden Legacy: Concepts of Law in Indonesia." *Sojourn: Journal of Social Issues in Southeast Asia* 21, no. 1 (2006): 128..

peoples' laws in Indonesia's national legal system. The 1945 Constitution of the Republic of Indonesia (UUD 1945) also recognizes the existence of customary law communities.

The main goal of law is justice; the state of law must uphold the values of justice.¹⁴ However, in addition to justice, the law also aims to create legal certainty. The recognition of the Constitution of the Republic of Indonesia to customary law communities is recognized in Article 18B paragraph (2) of the 1945 Constitution, which reads as follows: "The State recognizes and respects customary law community units and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law." In addition to being regulated in the Constitution, Recognition of Customary Law is enshrined in Article 2, paragraph (2) of Law Number 1 of 2023 concerning the Criminal Code, which reads, "Law that lives in society as referred to in paragraph (1) applies in the place where the law lives and as long as it is not regulated in this Law and in accordance with the values contained in Pancasila, The 1945 Constitution, human rights, and common legal principles recognized by the people of the nations."

The existence of customary law in Indonesia's national legal system certainly indicates that the state implements Pancasila's values in the legal system. This can be seen in the application of customary law to indigenous peoples in various corners of Indonesia. Customary law in each indigenous community is different. The culture and customs of each different indigenous people also influence it. In addition, law enforcement is also different from national law enforcement, and customary law involves customary leaders in terms of law enforcement. Customs duties and sanctions also vary. Law has an important role in regulating everything in a country.¹⁵

In countries that use the common law legal system, customary law can be defined and used as applicable law if it is passed by legislators, judges, or legal scientists. Customary rules are considered to be laws because these rules have been accepted and used since time immemorial. Meanwhile, countries with a civil law system only recognize customary law as people's law or traditional law that is not written, so it is not used nationally.¹⁶ The differences in customary law from various indigenous tribes are what make this customary

¹⁴ Arsyad Aldyan and Abhishek Negi. "The model of law enforcement based on Pancasila justice." *Journal of Human Rights, Culture and Legal System* 2, no. 3 (2022): 178.

¹⁵ Arsyad Aldyan. "The Indonesian State Law System Is Based On The Philosophy Of Pancasila And Constitution." *Res Judicata* 6, No. 1 (2023): 5.

¹⁶ Franz Von Benda-Beckmann and Keebet von Benda-Beckmann. "Myths and stereotypes about adat law: A reassessment of Van Vollenhoven in the light of current struggles over adat law in Indonesia." *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 167, no. 2-3 (2011): 167.

law must be recognized in the national legal system to accommodate the interests of each indigenous community in various regions in Indonesia. In the various customary law communities in this region of Indonesia, there is something that makes the people of this region have their own characteristics, which also have a relationship with the customs that appear in the people of a region.

In addition to being related to customary law, in every community from various regions in Indonesia, Indonesian citizens have several customs that certainly affect the law in Indonesia. The habits of each regional community in Indonesia certainly have distinctive characteristics, and the habits of these people can undoubtedly affect the legal system in Indonesia and do not rule out the possibility of causing problems. Basically, every habit of the community in various regions must be in harmony with the rules and provisions related to the applicable norms because if it is not appropriate, it can cause legal problems in the community, which can affect the national legal system. Local communities certainly have different views on the law. Legal knowledge from different communities also affects this, and some people have low legal awareness, which will also have an impact on the effectiveness of the law in society.

If there are legal problems in Indonesia's legal system, this will directly affect legal certainty. Therefore, this needs to be solved adequately, and not only that but legal problems in the community of a region must also be prevented. In addition to that, prevention is needed so that legal problems do not occur in the community. This research aims to provide views for the community about the importance of legal awareness, and from the legal problems of existing Indigenous peoples in the context of unregistered land, it is hoped that it can provide views on Indigenous peoples in order to increase legal awareness, and this research is also expected to provide views on the community. Customs has problems that must be solved, especially in some related cases.

B. RESEARCH METHODS

This study uses the socio-legal research method, where the data obtained is based on data in the field through an interview process with several related parties. Data was obtained from interviews, among others, from several parties who were resource persons, including interviews conducted with Dayak indigenous people, Kalimantan regional judges, the Indonesian National Army who had been assigned to Dayak customary areas, and also customary law experts.

Interviews from various parties were conducted to obtain complete information, especially related to the research that is being carried out related

to the legal problems faced by the Dayak Indigenous people and also maintains the existence of Dayak customary law in resolving legal problems, although based on the results of the research it appears that not all problems faced by Indigenous peoples can be solved in accordance with custom.

C. RESULT AND DISCUSSION

Article 1, paragraph 3 of the Constitution of the Republic of Indonesia states that Indonesia is a legitimate country.¹⁷ The existence of customary law communities in Indonesia is undoubtedly unique in its legal system, which makes Indonesia's legal system different from other countries. The customary laws of each indigenous tribe are undoubtedly diverse. It has its own characteristics, the essence of which is that the existence of customary law in indigenous peoples is intended to be able to regulate indigenous peoples in accordance with the provisions and cultural customs they have. If a problem occurs, it can also be used to resolve this issue.

Customary law that lives in society certainly has a good purpose in that society, which also aims to provide tranquility in society; this customary law must also be in line with national law, or in other words, not contradict national law because basically even though its existence is recognized in the constitution of the Republic of Indonesia, precisely in Article 18B paragraph (2) of the 1945 Constitution of which recognizes The existence of customary law communities, but customary law must still not conflict with national law. In Indonesia, in addition to adhering to positive laws, it also upholds customs.¹⁸

The Indonesian state, which consists of various ethnicities, religions, and races, with the emergence of customary law societies, certainly has an influence on law enforcement in Indonesia, which is currently in national law enforcement, does not rule out the possibility of law enforcement by implementing customary law enforcement. The existence of customary law must also prioritize legal purposes. As Gustav Radbruch stated, the law's purpose is for benefit, legal certainty, and justice. The purpose of the law must be prioritized in the implementation of customary law in the life of the community. This law can run well in accordance with the purpose of the law, which is to create peace in society.

Customary law that lives in society is greatly influenced by the customs that live in indigenous peoples. This custom was born through noble cultural

¹⁷ I Gusti Agung Mas Rwa Jayantiari, Kadek Agus Sudiarawan, and Tjok Istri Diah Widyantari Pradnya Dewi. "Pembangunan Hukum Berorientasi Keadilan Melalui Harmonisasi Hukum Negara dan Hukum Adat." *Jurnal Majelis* 2, no. 1 (2020): 154.

¹⁸ Gery Gea Grappelly. "Penegakan Hukum terhadap Pelanggaran Norma Adat Dayak Ngaju, atas Tindakan Kekerasan dalam Rumah Tangga (Studi di Kecamatan Tewah, Kabupaten Gunung Mas, Kalimantan Tengah)." *Bhirawa Law Journal* 3, no. 2 (2022): 119.

values in indigenous peoples and has become a habit in society, which is very influential and can also affect the implementation of the law. Customs are customs that exist in customary law societies, where sometimes these customs make a law for indigenous peoples. However, the customs of each indigenous tribe are different, even though the constitution recognizes the existence of customary law communities. From the Republic of Indonesia, namely the 1945 Constitution, the customs of indigenous peoples also affect the certainty of national law.

The existence of Indigenous peoples with different customs is also influenced by the human resources of Indigenous peoples related to national law. This greatly affects the application of national law to Indigenous peoples, which can also have an impact on the certainty of national law on Indigenous peoples. Indigenous peoples must preserve and develop their customs and traditions.¹⁹ Legal certainty is something significant in the development of national law. This is intended so that with legal certainty in the community, the community also gets legal protection and good legal recognition. Sometimes, the existence of different customs in customary law societies raises several problems in national law, which also has an impact on legal certainty.

People in various regions certainly have habits that can affect the development of the law and the legal system. Therefore, the customs of different communities in each region must undoubtedly be in harmony with the development of law, especially customs related to legal certainty in local communities. Various community groups have unique customs-related characteristics, especially the habits of local communities, which are included in customary law communities. Several habits in society certainly have an impact on the national legal system and legal certainty. This is certainly something that can cause these habits to have a negative impact if they are not in line with applicable norms. Only some people in the community understand and understand the applicable legal provisions or rules. This is a social phenomenon that the laws that apply in this society certainly not everyone can understand, and this is a problem that not all people know, so it can affect the legal system in Indonesia.

The habits of people in various regions can affect people's legal awareness. In general, legal awareness is associated with legal compliance or legal effectiveness.²⁰ The law must always be associated with the society in

¹⁹ I Made Kastama. "Hukum adat dayak: Bentuk, penerapan dan sanksi singer di desa pendreh kecamatan teweh tengah kabupaten barito utara." *Belom Bahadat* 8, no. 2 (2018): 8.

²⁰ Atang Hermawan Usman. "Kesadaran hukum masyarakat dan pemerintah sebagai faktor tegaknya negara hukum di Indonesia." *Jurnal Wawasan Yuridika* 30, no. 1 (2015): 26.

which it operates.²¹ Factors of legal awareness and legal compliance have an important role in legal development.²² Whether or not the rule of law is upheld is determined by the level of people's obedience to its orders.²³ Legal culture also influences this in society. Legal culture is an important aspect of building better laws.²⁴ The definition of legal culture has a variety of topics.²⁵ This legal culture certainly has a significant influence on the development of law. Considering the legal culture is very important.²⁶ The legal culture itself is flexible and dynamic.²⁷ Legal culture has been used to clarify its potential role in further developing comparative legal studies in society.²⁸ The implementation of the law by the people in Indonesia is an important aspect of realizing a goal.²⁹ Humans must pay attention to and implement the rule of law in society.³⁰

Legal problems that are influenced by the habits of local communities or indigenous peoples can undoubtedly cause serious legal problems that lead to a lack of legal certainty. Indeed, national law recognizes the existence of indigenous peoples as stated in the constitution of the Republic of Indonesia, namely the constitution. Republic of Indonesia in 1945, but the customs of indigenous peoples also need to be given firmness in relation to ensuring legal certainty. The public's legal awareness also influences this. The role of public legal awareness, as well as the purpose of the law itself, is to ensure certainty and fairness.³¹ To achieve legal signing and certainty, it is necessary to have

²¹ Rahma Marsinah. "Kesadaran Hukum Sebagai Alat Pengendali Pelaksanaan Hukum Di Indonesia." *Jurnal Ilmiah Hukum Dirgantara* 6, no. 2 (2018): 86.

²² Zulkarnain Hasibuan. "Kesadaran hukum dan ketaatan hukum masyarakat dewasa ini." *Jurnal Justitia: jurnal Ilmu Hukum Dan Humaniora* 1, no. 1 (2016): 78.

²³ Puji Wulandari Kuncorowati. "Menurunnya tingkat kesadaran hukum masyarakat di Indonesia." *Jurnal Civics: Media Kajian Kewarganegaraan* 6, no. 1 (2009): 60.

²⁴ Arsyad Aldyan. "The influence of legal culture in society to increase the effectiveness of the law to create legal benefits." *International Journal of Multicultural and Multireligious Understanding* 9, no. 11 (2022): 324.

²⁵ Mateja Čehulić. "Perspectives of legal culture: A systematic literature review." *Revija za sociologiju* 51, no. 2 (2021): 259.

²⁶ Alejandra Díaz Gude and Iván Navarro Papic. "Restorative justice and legal culture." *Criminology & Criminal Justice* 20, no. 1 (2020): 57.

²⁷ Claire Hamilton. "Interpreting change through legal culture: the case of the Irish exclusionary rule." *Legal Studies* 41, no. 3 (2021): 355.

²⁸ David Nelken. "Comparative legal research and legal culture: facts, approaches, and values." *Annual review of law and social science* 12, no. 1 (2016): 45.

²⁹ Rahma Aulia. "Membangun kesadaran hukum masyarakat di masa pandemi Covid-19 melalui peran keluarga." *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam* 12, no. 2 (2021): 225.

³⁰ Salman Alfarisi and Muhammad Syaiful Hakim. "Hubungan Sosiologi Hukum Dan Masyarakat Sebagai Kontrol Sosial." *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 1, no. 2 (2019): 20.

³¹ Ellya Rosana. "Kepatuhan hukum sebagai wujud kesadaran hukum masyarakat." *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 10, no. 1 (2014): 64.

a good system of cooperation between institutions.³² Education can improve a society's legal culture and awareness.³³

The different habits of each society can undoubtedly affect the law, which can also cause legal problems in society. These legal problems can cause a lack of legal certainty in society. In fact, legal certainty is important to create orderly and safe conditions. In this study, the research is related to something that is often a problem related to law in the Kalimantan region. Kalimantan is also the largest in Indonesia, which means that with the size of the island, there are various communities consisting of various ethnicities, races, religions, and customs.

Public legal awareness will undoubtedly have a significant effect on legal development. The fact that there are people with a low level of legal awareness will undoubtedly cause legal problems in society, which also results in legal certainty. People's habits are certainly influenced by the influence of legal culture in society. In this article, we look at the legal problems that occur in the Kalimantan region, which also have an impact on legal certainty. Currently, in empirical reality, various problems faced by Indonesia's indigenous peoples often arise when customary law clashes with positive law.³⁴

In the context of unregistered land, problems in customary law societies can also become national legal problems. One of the problems for indigenous peoples is the large amount of land that is not registered, or in other words, land whose legal data has not been registered with the National Land Agency regarding the certificate of land rights. Unregistered land is undoubtedly a legal issue that can affect legal certainty regarding land rights and land use by the people who occupy it without legality regarding their rights. Indigenous communities still have many lands whose legality is not registered, which is also related to legal certainty.

Customary lands occupied by indigenous peoples are often not registered in the national land data. However, several customary lands are registered in the customary land data held by the customary head. Customary lands in indigenous peoples are only registered in the customary land data but are not registered in the national land data. This can also cause legal problems because it is related to the certainty of land rights.

Based on the results of interviews with Dayak Indigenous peoples, it appears that there are several legal problems in the Dayak indigenous people,

³² Naufal Akbar Kusuma Hadi. "Penegakan Hukum Di Indonesia Dilihat Dari Perspektif Sosiologi Hukum." *Jurnal Hukum Dan Pembangunan Ekonomi* 10, no. 2 (2022): 227.

³³ Anna Piszcz and Halina Sierocka. "The role of culture in legal languages, legal interpretation and legal translation." *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique* 33, no. 3 (2020): 534.

³⁴ Lastuti Abubakar. "Revitalisasi hukum adat sebagai sumber hukum dalam membangun sistem hukum Indonesia." *Jurnal Dinamika Hukum* 13, no. 2 (2013): 319.

including the large amount of land used by the community is not certified, the land is only registered as customary land and is only recorded in the customary land data, not recorded in the national land data regarding rights. On the land they occupy. Customary land is only recognized by customs, not recognized by the state. There is data on customary heads, such as the letter c, which issues customs (tribal chiefs). Even though this customary land has been recorded in the customary land data, it is still necessary to record land rights to the National Land Agency so that there is more than legal certainty, and if there are legal problems related to land so that you can still get good legal protection because land legality is also important for legal certainty.

Based on an interview with First Lieutenant TNI Tunjung, S.H., M.H. Traditional approaches to resolving conflicts are highly prioritized in the context of conflict resolution in Indigenous communities. This is also to maintain the existence of customary law in resolving conflicts among indigenous peoples. Conflict resolution in Indigenous peoples indeed, in some cases, also involves the Indonesian National Army in resolving conflicts; although using a customary approach, the TNI is sometimes also involved so that conflicts do not spread. This is also intended to protect the integrity of the Republic of Indonesia.

The recognition and protection of customary land are carried out in the positive legal construction of the state. To protect customary lands, the Minister of Agrarian Affairs issued Regulation of the Minister of Agrarian Affairs Number 5 of 1999 concerning Guidelines for the Settlement of Indigenous Peoples' Customary Land Rights.³⁵ Various problems in indigenous peoples are different and have different solutions, but what is really different is the solution of legal problems using the customary law approach. The customary law approach in resolving legal problems uses the peacemaking approach first, but this is only done if there are problems related to disputes with aggrieved parties. However, to answer a problematic legal problem, especially related to legal certainty, it is also necessary to use a positive legal approach to provide greater legal certainty and legal protection to the community.

Legal problems in various regions are also influenced by legal knowledge and the legal culture of society, which greatly affects the continuity of the development of a country's law. This certainly needs to receive better attention so that it can provide legal benefits for the community. Not all legal problems in indigenous peoples in Indonesia can be solved by customs or, in other words, using a customary approach in the process of solving them, especially in problems in regional communities or indigenous peoples. There are several problems related to legal certainty.

³⁵ Ana Suheri. "Perlindungan Hukum terhadap Tanah Adat Kalimantan Tengah dalam Kerangka Negara Hukum." *Morality: Jurnal Ilmu Hukum* 4, no. 2 (2018): 89.

Some of these problems are problems that occur to indigenous peoples in the Kalimantan region, which are problems that cannot be solved just by customs. However, related to legality, these legal issues must be resolved through a systematic application to the relevant agencies, where the agency has special tasks that the state has determined. This must be resolved appropriately because it concerns legal certainty. In some cases, customs-related problems are resolved by law. Customary law will make it difficult to solve problems that were previously social problems. However, sometimes it often becomes complicated and does not get a settlement value that meets the sense of justice in society.³⁶

The existence of customary law must be well maintained. This is also a form of implementation of Pancasila values in the daily life of indigenous peoples in an area. Customary law must be well protected and maintained, especially the use of customary approaches in resolving legal problems in which disputes occur. Then, the use of this customary law approach is much more effective and efficient. In addition to maintaining customary law, something that is also very important to increase legal certainty in the community is increasing legal awareness in the community. Increasing legal awareness in the community is fundamental and urgent because public awareness of this law greatly affects the development of the law, which also affects legal certainty in society. Through legal certainty, the community is expected to be more orderly and reduce the number of law violations in state life.³⁷

The existence of customary law in Indonesia makes national law different from that of other countries. The existence of customary law in Indonesia is also protected by the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia. Customs are also laws that live in society and must be maintained. However, in addition to preserving customs as a form of manifestation of the existence of customary law, it is also necessary to pay attention to national legal rules or regulations. This also influences the development of law in Indonesia, which will affect the continuity of law, especially regarding legal certainty in society. Indigenous peoples are obliged to comply with customary regulations. This can also be seen when there are legal problems that cause disputes. In terms of settlement, it also uses a customary law approach. The customary law approach in resolving legal disputes is a form of implementation of customary law in resolving disputes in order to provide social justice based on the noble values of traditional culture.

³⁶ Sardjana Orba Manullang. "Understanding the sociology of customary law in the reformation era: complexity and diversity of society in Indonesia." *Linguistics and Culture Review* 5, no. 3 (2021): 16.

³⁷ Hasaziduhu Moho. "Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan." *Warta Dharmawangsa* 13, no. 1 (2019): 2.

Indeed, in Indigenous communities, it does not rule out the possibility of legal problems in the community that must be resolved. Although not all legal issues can be resolved according to custom, Indonesian state law still provides legal protection for indigenous peoples in the event of legal problems, which can also be resolved through legal channels: litigation or judicial processes. However, again, in the judicial process, sometimes the panel of judges examining the case needs to consider the possibility of using a customary law approach in the trial. This is because customary law is also a law that lives in society, and its existence is also recognized by the 1945 Constitution.

The main problem in Indigenous peoples that is currently occurring is also legal in the Indonesian state. The Indonesian state, which recognizes the existence of customary law in the Indonesian constitution, must also be able to solve different legal problems for indigenous peoples. Various legal problems faced by indigenous peoples still need to be adequately resolved, and the national legal system must also play a role. For example, legal problems in indigenous peoples cannot be solved according to custom. In this case, state law must also be able to play a role in resolving legal problems in indigenous peoples. Solving legal problems and problems in indigenous peoples is very important in maintaining the existence of customary law in the national legal system.

The role of customary law in developing the national legal system is vital. The customary approach in resolving legal problems is also often used to maintain customary law in local communities. However, developing a national legal culture in Indigenous communities is also very important so as not to cause legal problems in the future. Therefore, developing a legal culture in society is also important to maintain legal certainty so that the law can benefit society. In order to increase legal awareness in the community, it is necessary to develop a legal culture in the community by educating the public about matters related to legal certainties, such as those related to the legal problems of the Indigenous people of West Kalimantan that have been obtained from empirical research in the field.

D. CONCLUSION

Indigenous peoples have different problems, and the legal culture or mindset of indigenous peoples can also influence this. In the indigenous people of West Kalimantan, the results of field research revealed several legal problems in indigenous peoples, especially those related to legal certainty, especially regarding customary lands that have not been certified. Some of these problems are closely related to legal certainty, which requires the resolution of legal problems to be carried out properly in order to provide legal protection to the community.

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