



THE EXISTENCE OF CUSTOMARY LAW: THE HISTORY OF INDONESIAN LAW IN THE PRE-COLONIAL PERIOD

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Abstract:

Customary law forms a fundamental basis of Indonesia's legal system, rooted in the social, cultural, and spiritual values of the archipelago's communities. During the pre-colonial period, customary law functioned not only as a set of legal norms but also as a moral guide and governance system within local societies. This paper explores the existence of customary law in pre-colonial Indonesia by examining social structures, principles of justice, and dispute resolution mechanisms across different regions. Using a historical approach and qualitative analysis of classical sources, the study reveals that customary law embodies harmony among humans, nature, and transcendent forces. The findings affirm that customary law remains a core element of Indonesia's legal identity, preserving its relevance amid modernization and legal pluralism.

Keywords: *customary law, Indonesian legal history, pre-colonial period, cultural values, traditional justice system*

Abstrak:

Hukum adat merupakan fondasi penting dalam sistem hukum Indonesia yang berakar dari nilai-nilai sosial, budaya, dan spiritual masyarakat nusantara. Pada fase pra-kolonial, hukum adat tidak hanya berfungsi sebagai seperangkat norma hukum, tetapi juga sebagai pedoman moral dan tata kelola kehidupan komunitas. Artikel ini bertujuan menggali eksistensi hukum adat pada masa pra-kolonial, dengan menelusuri sistem sosial, prinsip keadilan, serta mekanisme penyelesaian sengketa yang hidup di berbagai wilayah Indonesia. Melalui pendekatan historis dan analisis kualitatif terhadap sumber literatur klasik, penelitian ini menunjukkan bahwa hukum adat mencerminkan keselarasan antara manusia, alam, dan kekuatan transendental. Temuan ini menegaskan bahwa hukum adat merupakan landasan identitas hukum nasional yang tetap relevan di tengah modernisasi dan pluralitas hukum saat ini.

Kata kunci: hukum adat, sejarah hukum Indonesia, pra-kolonial, nilai budaya, sistem keadilan tradisional

A. Introduction

Customary law has shaped the lives of the people of the Indonesian archipelago long before the formation of the Indonesian state and before the arrival of colonial influence. In the pre-colonial era, communities across the archipelago already had social regulatory systems rooted in local customs, traditions, and cultural values that had been passed down and observed from generation to generation.¹ This customary legal system developed alongside the formation of indigenous communities, kingdoms, and customary legal entities such as the nagari in Minangkabau, the desa adat in Bali, the marga in South Sumatra, and various other forms of customary legal entities. During this period, customary law served as the primary guide for regulating the social, political, economic, and religious life of the community.

¹ Susylawati, "Eksistensi Hukum Adat Dalam Sistem Hukum Di Indonesia."

In the pre-colonial phase of Indonesian legal history, customary law grew and developed dynamically in accordance with the characteristics of local communities. The enforcement of customary law generally fell under the authority of customary leaders, tribal chiefs, or kings, who served as both enforcers and guardians of social balance.² Dispute resolution is carried out through a process of deliberation and consensus, with an emphasis on restoring social relationships rather than on punishment alone. This demonstrates that customary law has established a justice system that is communal, restorative, and oriented toward social harmony.

The existence of customary law during the pre-colonial period indicates that the peoples of the Indonesian archipelago already had a well-established concept of legal order and justice before the arrival of Western law.³ Customary law not only governs relationships among individuals, but also governs the relationship between humans and nature, as well as the spiritual dimensions in which the community believes. Thus, customary law can be understood as a comprehensive, living legal system deeply rooted in the social structure of pre-colonial Indonesian society.

A discussion of the existence of customary law in the pre-colonial phase of Indonesian legal history is important because customary law served as the foundation for the establishment of the national legal system.⁴ A comprehensive understanding of pre-colonial customary law helps to affirm that Indonesia's legal system did not emerge solely as a product of colonialism, but rather has strong historical roots in the local values of the Indonesian people themselves. Furthermore, this study is also relevant in the context of legal pluralism, which is still recognized in Indonesia's legal system today.

The impact of customary law during the pre-colonial era was not only felt in the lives of people at that time but continues to influence society to this day. The values of customary law such as deliberation, social justice, balance, and respect for the community are still reflected in legal practices and national legislation. Therefore, understanding the existence of pre-colonial customary law makes an important contribution to efforts to strengthen the national legal identity and preserve local wisdom.

Based on the above discussion, the purpose of this paper is to examine the history of Indonesian law during the pre-colonial period, to explore the existence of customary law that developed during that time, and to analyze the importance of customary law as the foundation for the formation and development of Indonesia's national legal system.

B. Research Methodology

This study is a literature review, meaning it uses reading materials such as journals, books, and legal articles as its primary sources of data. The journals used were selected because they directly address the existence of customary law and its relevance within the Indonesian legal system.⁵ This study was conducted by reviewing several academic journals and legal sources that discuss customary law and the history of Indonesian law during the pre-colonial period. This method was chosen because the

² Gunawan, "Eksistensi Kompilasi Hukum Islam Di Indonesia."

³ Ahadi, "Efektivitas Hukum Dalam Perspektif Filsafat Hukum: Relasi Urgensi Sosialisasi Terhadap Eksistensi Produk Hukum."

⁴ Manarisip, "Eksistensi Pidana Adat Dalam Hukum Nasional."

⁵ Lauw and Thio, "Menggabungkan Tradisi Dan Modernitas: Perbandingan Sistem Hukum Dan Implikasi Pancasila."

research was not conducted through field observations, but rather through an examination of the ideas and research findings of experts that had been previously published.

In analyzing the data, the author read and compared the contents of several of these journals to understand how customary law existed and evolved before the colonial period. This comparison was conducted to identify similarities and differences in the experts' views regarding the status of customary law.

This study is also linked to the 1945 Constitution of the Republic of Indonesia, specifically Article 18B, paragraph (2), which states that the state recognizes and respects customary law communities and their traditional rights. This provision indicates that customary law is recognized not only socially but also constitutionally by the state. The research findings are then presented descriptively that is, explained in clear and easily understandable language to provide an overview of the existence of customary law as an important part of Indonesia's history and legal system.

C. Results and Discussion

The Existence of Customary Law in Indonesia

Customary law is a legal system that has existed and evolved within Indonesian society long before the formation of the state and the modern legal system. The existence of customary law is reflected not only in its historical presence but, above all, in its actual application in the social life of the community.⁶ In practice, customary law governs various fundamental aspects of life, such as marriage, inheritance, land tenure, natural resource management, and dispute resolution mechanisms. These customary norms are observed because they are seen as reflecting a sense of justice, propriety, and balance that exists in the collective consciousness of the community, rather than because of coercive state sanctions.

The validity of customary law does not stem from written regulations or legislative acts, but rather from the community's recognition of and adherence to customary values that have been passed down from generation to generation.⁷ This compliance stems from the strong social bonds within indigenous communities, where violations of customary law have not only legal consequences but also social and moral ones. Customary sanctions often take the form of restoring social relationships, reestablishing community balance, or fulfilling specific customary obligations, reflecting the nature of customary law as a system oriented toward social harmony.

Experts on customary law, such as Van Vollenhoven, assert that customary law is a "living law," because it grows out of the community's legal consciousness and is consistently applied in everyday life without relying on state authority.⁸ Ter Haar added that customary law can be identified through the concrete decisions of customary leaders that are accepted and obeyed by the community. This view is consistent with the theory of sociological jurisprudence, which states that effective law is law that is in harmony with the values, social structures, and needs of the community. In the Indonesian context, the legitimacy of customary law is strong because it arises from social consensus and serves to maintain order and harmony in communal life.

The existence of customary law is also reflected in its ability to adapt to social change and the influx of new values without losing its fundamental character. The arrival of Islam in the Indonesian archipelago, for example, did not eliminate customary

⁶ Hamzani, *Hukum Islam: Dalam Sistem Hukum Di Indonesia*.

⁷ Praditha, "Hukum Kearifan Lokal: Suatu Pengantar Hukum Adat."

⁸ Uddin, SH, and Kristiono, *Hukum Islam Dalam Masyarakat Indonesia*.

law but rather fostered a process of acculturation between traditional values and the principles of Islamic law. In Indonesian society, customary law and Islamic law interact and complement one another, particularly in the areas of marriage, inheritance, and dispute resolution.⁹ This phenomenon demonstrates that customary law is flexible and open-ended, enabling it to adapt to the social and cultural dynamics of a community.

Kemampuan adaptif tersebut sekaligus menegaskan bahwa hukum adat bukan sistem hukum yang statis atau tertinggal, melainkan sistem hukum yang dinamis dan kontekstual.¹⁰ Hukum adat berkembang seiring dengan perubahan struktur masyarakat, pola kepemimpinan, serta sistem nilai yang hidup di dalamnya. Oleh karena itu, keberadaan hukum adat tidak dapat dipahami semata-mata sebagai warisan masa lalu, tetapi sebagai sistem hukum yang terus berfungsi dan relevan dalam kehidupan masyarakat Indonesia.

Thus, the existence of customary law in Indonesia can be affirmed as a real, living, and effectively functioning legal system within society. Customary law not only serves as a means of social regulation but also forms the historical and sociological foundation for the formation and development of Indonesia's national law.¹¹ An understanding of the existence of customary law is important for affirming Indonesia's legal identity, which is rooted in local values and the social plurality of its people.

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⁹ Lauw and Thio, "Menggabungkan Tradisi Dan Modernitas: Perbandingan Sistem Hukum Dan Implikasi Pancasila."

¹⁰ Shofa, Aryani, and Hafidzi, "Eksistensi Hukum Perkawinan Personal Di India: Analisis Komparatif Hindu Marriage Act Dan Muslim Personal Law."

¹¹ Anshori, *Filsafat Hukum*.

¹² Sugiswati, "Perlindungan Hukum Terhadap Eksistensi Masyarakat Adat Di Indonesia."

¹³ Arliman, "Eksistensi Hukum Lingkungan Dalam Membangun Lingkungan Sehat Di Indonesia."

context, the legitimacy of customary law is strong because it arises from social consensus and serves to maintain order and harmony in communal life.

The existence of customary law is also reflected in its ability to adapt to social change and the influx of new values without losing its fundamental character. The arrival of Islam in the Indonesian archipelago, for example, did not eliminate customary law but rather fostered a process of acculturation between customary values and the principles of Islamic law. Konoras (2017) explains that in many Indonesian communities, customary law and Islamic law interact and complement one another, particularly in the areas of marriage, inheritance, and dispute resolution. This phenomenon demonstrates that customary law is flexible and open-ended, enabling it to adapt to the social and cultural dynamics of the community.

This adaptive capacity also underscores that customary law is not a static or outdated legal system, but rather a dynamic and contextual one. Customary law evolves in tandem with changes in social structures, leadership patterns, and the value systems that shape society. Therefore, customary law cannot be understood merely as a legacy of the past, but as a legal system that remains functional and relevant in the lives of Indonesian society.

Thus, the existence of customary law in Indonesia can be affirmed as a real, living, and effectively functioning legal system within society. Customary law not only serves as a means of social regulation but also forms the historical and sociological foundation for the formation and development of Indonesia's national law. An understanding of the existence of customary law is essential for affirming Indonesia's legal identity, which is rooted in local values and the social plurality of its people.

The History of Indonesian Law: The Pre-Colonial Period

The history of Indonesian law during the pre-colonial period was marked by the dominance of customary law as the primary legal system governing the lives of the people of the Indonesian archipelago. In the early stages of societal development, customary law evolved within communal and simple traditional communities, such as clans, tribes, nagari, and traditional villages.¹⁴ At this stage, customary law serves as a guide for communal life, governing social relations among community members, the distribution and ownership of land, the traditional leadership system, and procedures for conflict resolution. These customary norms are unwritten, but they are highly binding because they stem from a shared consensus and the community's belief in their fairness.

In this early phase, the structure of customary law was still closely tied to genealogical and territorial ties. Customary leaders, such as tribal chiefs or elders, served as both interpreters and enforcers of customary law. The decisions they made were final and accepted by the community because they were considered to represent the collective will. This demonstrates that, even in its early stages, customary law had established an effective system of social control without the need for formal law enforcement agencies.

As the kingdoms of the Nusantara, such as Sriwijaya and Majapahit, entered their period of expansion, customary law was strengthened and its functions expanded. Although power structures became more complex, customary law continued to serve as the foundation for regulating community life. In Hindu-Buddhist kingdoms, customary law began to interact with religious norms and royal law, yet it did not lose its local character. Religious values were integrated into local customs, giving rise to syncretic legal practices.

¹⁴ Afifah, "Eksistensi Perlindungan Hukum Terhadap Pekerja Rumah Tangga Di Indonesia."

Significant developments took place during the phase of Islam's arrival in the Indonesian archipelago beginning in the 13th century. During this period, customary law once again interacted with a new legal system, namely Islamic law. Ratno Lukito explains that the process of the Islamization of law in the Indonesian archipelago did not take place in a confrontational manner, but rather through mechanisms of accommodation and integration.¹⁵ Customary law has not been abandoned, but has been adapted to the principles of Islamic law, particularly in the areas of marriage, inheritance, and muamalah. This process has given rise to distinctive legal practices in various regions, such as the fusion of customary law and Sharia in the legal systems of the Minangkabau, Aceh, and other coastal regions.

In the late pre-colonial period, before colonial intervention became widespread, customary law had evolved into a relatively well-established and organized system of justice. Disputes were resolved through a process of deliberation and consensus involving traditional leaders, community leaders, and the parties involved in the dispute.¹⁶ The primary goal of this process is not punishment, but rather the restoration of social balance and harmony in relationships among members of the community. The customary sanctions imposed are primarily social and moral in nature such as customary obligations or reconciliation rather than physical punishment or imprisonment.

This restorative nature of justice demonstrates that customary law had already incorporated the principle of restorative justice long before this concept became known in modern law. This principle places the community at the center of the conflict resolution process and emphasizes the importance of reconciliation and social responsibility. Thus, customary law serves not only as a regulatory tool but also as a means of maintaining social integration.

Therefore, the history of Indonesian law during the pre-colonial period confirms that customary law was a well-established, structured legal system that evolved gradually in accordance with the social and cultural dynamics of the peoples of the Indonesian archipelago. The existence of customary law during this period laid the foundation for the development of Indonesia's legal tradition and demonstrates that the national legal system has strong historical roots in the local values of the Indonesian people.

The history of Indonesian law during the pre-colonial period shows that customary law was the most dominant legal system and served as the primary foundation for regulating life in the communities of the Indonesian archipelago. During this period, law was not yet understood as a set of written rules established by the state, but rather as social norms that existed and evolved naturally within communities. Customary law developed alongside the formation of social groups bound by genealogical and territorial ties, so that law and social structures evolved simultaneously.

Early Phase: Communal and Genealogical Societies

In the early stages of the development of Nusantara society, customary law emerged within small, communal groups, such as clans, tribes, nagari, and traditional villages.¹⁷ At this stage, customary norms serve as guidelines for communal life, governing nearly every aspect of community life from kinship relations and the division

¹⁵ Manarisip, "Eksistensi Pidana Adat Dalam Hukum Nasional."

¹⁶ Ahadi, "Efektivitas Hukum Dalam Perspektif Filsafat Hukum: Relasi Urgensi Sosialisasi Terhadap Eksistensi Produk Hukum."

¹⁷ Gunawan, "Eksistensi Kompilasi Hukum Islam Di Indonesia."

of labor to land ownership and use, as well as conflict resolution mechanisms. Customary law plays a role in maintaining a balance between individual and collective interests, thereby ensuring social stability.

Traditional leadership plays a central role in law enforcement. Tribal chiefs, traditional elders, or community leaders act as interpreters and enforcers of customary norms.¹⁸ The decisions made are binding because they are considered to reflect the values of justice and propriety that are deeply rooted in society. This demonstrates that, from its earliest stages, customary law has functioned as an effective means of social control, even without the support of formal legal institutions.

The Kingdom Phase: Institutionalization and Legal Syncretism

As the kingdoms of the Nusantara, such as Sriwijaya and Majapahit, entered their period of expansion, customary law underwent a process of institutionalization. Increasingly complex power structures spurred the formation of more organized rules, yet customary law remained the foundation of social order. In Hindu-Buddhist kingdoms, customary law began to interact with religious norms and royal law, resulting in a syncretic legal system.

During this phase, customary law did not lose its standing; rather, it was strengthened through the legitimacy of the king's authority. The king and royal officials served as guardians of order, enforcing customary law with certain adjustments. The interaction between customary law and religious values demonstrates the ability of customary law to absorb external influences without losing its local identity.

The Islamization Phase: The Integration of Customary Law and Islamic Law

The next phase was marked by the arrival of Islam in the Indonesian archipelago beginning in the 13th century, which brought with it a new system of values and laws. However, as Ratno Lukito explains, the process of Islamization of the law in the Indonesian archipelago was not radical and did not replace customary law. Instead, customary law was preserved and integrated with the principles of Islamic law through a process of accommodation and adaptation.

In the areas of marriage and inheritance, for example, customary norms are adapted to Islamic teachings while still preserving the local social structure. This phenomenon demonstrates that customary law serves as a foundational framework that allows for the incorporation of new values. The integration of customary law and Islamic law reflects the flexibility of customary law and its ability to address the social and religious needs of the community.

The Late Pre-Colonial Period: The Restorative Justice System

Toward the end of the pre-colonial period, before colonial intervention became widespread, customary law had evolved into a relatively well-established system of justice. Dispute resolution was carried out through deliberation and consensus, involving customary leaders and community members.¹⁹ The main goal of this process is to restore social balance and community harmony, not merely to impose punishment. The customary sanctions imposed are social and moral in nature, such as customary obligations, compensation, or reconciliation between the parties. This pattern indicates that customary law already embodied the principles of restorative justice long before the concept became known in modern law. Justice in customary law is understood as the achievement of social order and harmony, not merely the enforcement of norms.

Historical Affirmation

¹⁸ Afifah, "Eksistensi Perlindungan Hukum Terhadap Pekerja Rumah Tangga Di Indonesia."

¹⁹ Manarisip, "Eksistensi Pidana Adat Dalam Hukum Nasional."

Based on this discussion, the history of Indonesian law during the pre-colonial phase confirms that customary law is a legal system that has developed gradually, in a structured manner, and is deeply rooted in the lives of the people of the Indonesian archipelago. Customary law serves not only as a tool for social regulation but also as a reflection of the cultural, religious, and social values of the community. Thus, customary law can be viewed as the precursor to the formation of Indonesia's pluralistic and contextual legal tradition.

The Implications of the Existence of Customary Law in the Indonesian Legal System

The existence of customary law during the pre-colonial era has had profound implications for the development of Indonesian law to this day. Customary law is not merely a historical fact; rather, it continues to influence the direction of the formulation, application, and reform of national law. These implications are evident in various dimensions, ranging from the structure of the legal system and the concept of justice to its normative recognition in the constitution.

One of the main implications of the existence of customary law is the formation of a pluralistic national legal system. This legal pluralism reflects Indonesia's diverse social reality, in terms of culture, customs, and value systems.²⁰ The recognition of customary law demonstrates that Indonesian law is not based solely on Western legal traditions, but also draws from local values that have long existed and evolved within society. Thus, Indonesia's national legal system possesses a distinctive character that sets it apart from the legal systems of other countries, namely the integration of state law, customary law, and religious law.

A further implication is evident in the growing emphasis on the concept of restorative justice in modern legal practice. The values embedded in customary law such as deliberation, balance, collective responsibility, and the restoration of social relationships serve as a key source of inspiration for criminal law reform and alternative dispute resolution mechanisms.²¹ In customary law, a violation is not viewed merely as an unlawful act, but as a disruption of the social balance that must be restored. This approach is once again relevant in the context of modern law, which seeks to reduce its punitive orientation and place greater emphasis on substantive justice and humanity.

Furthermore, the existence of customary law also has implications for its normative and constitutional recognition by the state. Article 18B, paragraph (2) of the 1945 Constitution of the Republic of Indonesia explicitly states that the state recognizes and respects customary law communities and their traditional rights, as long as they remain in existence and are consistent with societal developments and the principles of the Unitary State of the Republic of Indonesia. This recognition indicates that customary law is not positioned as a legal system that exists outside of state law, but rather as a legitimate and recognized part of the national legal order.

Another implication is the role of customary law in strengthening national legal identity and autonomy. By understanding customary law as the historical foundation of Indonesian law, it can be asserted that the national legal system does not rely entirely on colonial legal constructs. Customary law provides a foundation of legal values and philosophy rooted in the nation's own culture, thereby serving as an important reference

²⁰ Ahadi, "Efektivitas Hukum Dalam Perspektif Filsafat Hukum: Relasi Urgensi Sosialisasi Terhadap Eksistensi Produk Hukum."

²¹ Gunawan, "Eksistensi Kompilasi Hukum Islam Di Indonesia."

in the development of a legal system that is just, contextual, and aligned with the needs of the Indonesian people.

In practical terms, the existence of customary law also has an impact on dispute resolution at the local level. In various regions, customary-based dispute resolution mechanisms are still in use and have proven effective in maintaining social harmony. This demonstrates that customary law remains relevant and functional in addressing the legal issues of communities, particularly in areas with strong customary ties.

Thus, the implications of the existence of customary law are not merely historical in nature, but also encompass normative, sociological, and practical dimensions in the development of Indonesia's national legal system. Customary law is not merely a legacy of the past, but a source of values and inspiration that continues to contribute to the formation of an Indonesian legal system that is pluralistic, just, and rooted in the nation's identity.

The existence of customary law during the pre-colonial era has had far-reaching and profound implications for the formation and development of Indonesia's legal system to this day. Customary law not only served as the original legal system governing the societies of the Indonesian archipelago, but has also become a source of values and principles that continue to influence the direction of national legal policy. These implications can be seen in the way Indonesia's legal system is constructed, implemented, and developed within the context of a diverse society.

The first and most fundamental implication is the emergence of legal pluralism within the Indonesian legal system. The existence of customary law demonstrates that Indonesia's national law did not arise in a vacuum, but rather from a social reality that has long recognized the diversity of legal systems. This pluralism reflects the acknowledgment that more than one legal system coexists in Indonesian society: state law, customary law, and religious law. This situation underscores that Indonesia's national law is inclusive and contextual, as it is formulated with due consideration for the local values that are alive within society.

The second implication relates to the concept of justice upheld in the Indonesian legal system. Customary law views justice as an effort to restore disrupted social balance, rather than merely imposing punishment on the perpetrator. This orientation differs significantly from positive law, which tends to be retributive in nature. The values of deliberation, consensus, collective responsibility, and peace inherent in customary law make a significant contribution to the development of the concept of restorative justice. Currently, these principles are beginning to be adopted in various legal policies, particularly in the resolution of minor criminal cases and community-based social conflicts.

Furthermore, the existence of customary law also carries strong normative implications through its constitutional recognition by the state. The provision in Article 18B, paragraph (2), of the 1945 Constitution of the Republic of Indonesia affirms that the state recognizes and respects customary law communities and their traditional rights. This provision indicates that customary law is not merely a social phenomenon but holds a legitimate legal status within Indonesia's constitutional system. This recognition simultaneously affirms the state's obligation to protect and respect the existence of customary law as long as it remains in force and is consistent with the principle of a unitary state.

A further implication is the role of customary law in shaping national identity and legal autonomy. By making customary law one of the foundations of national law,

Indonesia has a legal system that is not entirely dependent on colonial legal traditions. Customary law provides fundamental values that reflect the nation's character, such as solidarity, balance, and social justice. Therefore, the development of a national legal system oriented toward customary values can result in a legal system that is better suited to the character and needs of the Indonesian people.

In practical terms, the existence of customary law also affects the effectiveness of law enforcement at the local level. In many regions, customary dispute resolution mechanisms are still in use and have proven effective in maintaining social harmony. Resolutions reached through customary institutions are often more readily accepted by the community because they are perceived as fair, swift, and in line with local values. This demonstrates that customary law remains relevant and serves a tangible function in supporting social order and justice.

Thus, the implications of the existence of customary law are not limited to historical aspects but also encompass normative, philosophical, sociological, and practical dimensions in the development of Indonesia's national legal system. Customary law is a living and functioning legal heritage, and it serves as an important source of inspiration in building an Indonesian legal system that is pluralistic, just, and rooted in the nation's cultural values.

Conclusion

In conclusion, customary law has served as the historical foundation of Indonesia's legal system, evolving through various socio-cultural and religious transformations while maintaining its essential values of justice, social harmony, and community participation. Its enduring existence has significantly shaped Indonesia's pluralistic legal framework, influenced the development of restorative justice, and gained constitutional recognition as an integral component of the national legal system. Therefore, customary law should not merely be regarded as a historical legacy, but as a living source of legal values that continues to contribute to the development of a more just, contextual, and culturally rooted Indonesian legal system.

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