

Comparison between Customary Legal Systems and Modern Legal Systems in the Context of Globalization

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ABSTRACT: *The transformation of traditional legal systems is an essential issue in the context of globalization that affects the sustainability of conventional and modern legal systems. A comparison between these two legal systems can provide valuable insights into efforts to understand the impact of this transformation. This research aims to analyze the differences and similarities between customary legal systems and modern legal systems in the context of globalization and to understand the impact of the transformation of traditional legal systems on society and legal policy. This type of research is comparative research with a qualitative approach. Data was obtained from document studies, interviews and literature studies. Data analysis in this research was carried out using a comparative method, namely comparing data received from the customary and modern legal systems. The research results show that the transformation of traditional legal systems in the context of globalization has given rise to new dynamics between customary and contemporary legal systems. The pressure of globalization makes traditional legal systems adapt to modern legal standards, threatening the validity of customary legal systems. However, globalization also opens the door to changes in traditional legal systems, creating complexity when comparing the two legal systems.*

Transformasi sistem hukum tradisional merupakan isu penting dalam konteks globalisasi yang mempengaruhi keberlangsungan sistem hukum adat dan modern. Perbandingan antara kedua sistem hukum ini dapat memberikan wawasan yang berharga dalam upaya memahami dampak transformasi tersebut. Penelitian ini bertujuan untuk menganalisis perbedaan dan persamaan antara sistem hukum adat dan sistem hukum modern dalam konteks globalisasi, serta untuk memahami dampak transformasi sistem hukum tradisional terhadap masyarakat dan kebijakan hukum. Jenis penelitian ini adalah penelitian komparatif, dengan pendekatan

kualitatif. Data diperoleh dari studi dokumen, wawancara, dan studi literatur. Analisis data dalam penelitian ini dilakukan dengan metode komparatif, yaitu membandingkan data yang diperoleh dari sistem hukum adat dan sistem hukum modern. Hasil penelitian menunjukkan transformasi sistem hukum tradisional dalam konteks globalisasi memunculkan dinamika baru antara sistem hukum adat dan sistem hukum modern. Tekanan globalisasi membuat sistem hukum tradisional beradaptasi dengan standar hukum modern, mengancam keberlakuan sistem hukum adat. Namun, globalisasi juga membuka pintu bagi perubahan dalam sistem hukum tradisional, menciptakan kompleksitas dalam perbandingan antara kedua sistem hukum tersebut.

Keywords: *Legal System, Customary Law, Modern Law, Globalization.*

I. INTRODUCTION

Along with the dynamics of globalization which increasingly expand the reach of human interaction in various fields, the transformation of traditional legal systems is becoming an increasingly relevant and complex issue. The legal system, as an institutional framework that regulates society's life, reflects a group or community's values, norms and beliefs. However, in this era of globalization, traditional legal systems are often faced with intense pressure to adapt to the demands and standards introduced by more dominant modern legal systems.

It is essential to understand the transformation of traditional legal systems by comparing customary and modern legal systems to see how their interaction influences social, political, and economic dynamics at the local, national, and international levels. As a bridge between the past and the future, a deep understanding of this transformation process is crucial for preserving legal diversity, respecting human rights, and promoting justice amidst the complex challenges of globalization.

Traditional legal systems, or what are often referred to as customary legal systems, have deep roots in the history and culture of a society. In various parts of the world, customary law systems are the foundation for conflict resolution, environmental maintenance, and regulation of social life. For instance, the customary law systems of indigenous tribes in America are used to settle disputes within the community, while the customary laws of African tribes guide land ownership and inheritance. Similarly, the customary laws that are still implemented by indigenous peoples in Asia, including Indonesia, play a crucial role in maintaining social order and resolving conflicts. These customary legal systems are usually based on oral traditions, social practices, and hierarchies of power in contrast to modern legal systems which are often based on written laws, legislation, and formal judicial institutions. ¹

On the other hand, modern legal systems, ² often identified with continental legal systems or common law, have become the dominant standard in international interactions, especially in trade, investment and diplomatic relations. This modern legal system developed in response to the complexity of increasingly advanced and diverse societies by establishing universal principles such as the supremacy of law, human rights, and property protection.

However, the encounter between customary and modern legal systems often results in tension and conflict. Globalization, with its inevitable information, trade, and migration flows, has accelerated interactions between various legal systems in different parts of the world. This raises the question of how traditional legal systems can survive and adapt in the face of homogenization pressures brought by the dominance of modern legal systems.

A comparison between customary and modern legal systems in the context of globalization is essential for analyzing the impact and implications of the transformation of traditional legal systems. The customary legal system evolved in the face of globalization, the challenges faced in maintaining the continuity of the conventional legal system amidst the dominating flow of globalization, and the modern legal system responds to the existence of the customary legal system in the context of human rights and social justice. 3

The problems above highlight the complexity of comparing customary and modern legal systems in the context of globalization. By understanding this background, you can deepen your insight into the challenges and opportunities faced in maintaining legal diversity, promoting justice, and respecting human rights in this increasingly connected era of globalization.

II. METHOD

The type of research used for this study is comparative research or comparison between customary and modern legal systems. This research can involve analyzing the differences, similarities and impacts of transformations in the two legal systems. The research approach used is qualitative. This approach allows researchers to profoundly deepen their understanding of customary and modern legal systems through case studies, interviews, observations and document analysis. Data for this research can be obtained from various sources, including Legal documents such as laws, regulations and court decisions; Interviews with relevant legal experts, stakeholders and legal practitioners; And scientific journal literature related to the transformation of traditional legal systems in the context of globalization. Data collection can be done through a literature study to collect information from various related sources. Interviews with respondents who are experts in traditional and modern legal fields. Direct observation of the implementation of customary legal systems and modern legal systems in the field. Analysis of related legal documents. Data analysis in this research was carried out using a comparative method, namely comparing data obtained from the customary and modern legal systems. Analysis can include identifying differences, similarities, challenges, and opportunities to transform traditional legal systems in the context of globalization. Qualitative analysis methods can also be used to interpret research findings. By applying comprehensive research methods, it is hoped that researchers can produce an in-depth understanding of the transformation of traditional legal systems in the context of globalization from a comparative perspective between customary legal systems and modern legal systems.

III. RESULT AND DISCUSSION

Origins and Characteristics of Traditional and Modern Legal Systems

Since prehistoric times, humans have developed legal systems to regulate their social life. Customary and modern legal systems are two different approaches to governing society. Customary law systems, or traditional laws, are based on values, norms, and beliefs passed down from generation to generation within a community. On the other hand, modern legal systems are usually based on written laws enforced by state institutions.

The history of customary law systems can be traced back to prehistoric times when humans lived in small communities with simple social structures. Customary law was developed to resolve conflicts, regulate land ownership, and maintain societal order. The main characteristics of a customary legal system are its flexibility and adaptability to societal changes. Customary law is often unwritten and local, allowing for significant variation between communities.

On the other hand, modern legal systems develop along with the development of more complex states and governments. Modern law tends to be more formal, with rules in written documents such as constitutions, codes, and regulations. The main characteristics of contemporary legal systems are formality and standardization. Modern law often tries to achieve justice and equality by applying the same rules to everyone.

These two legal systems have adapted to social, political and economic developments. Customary law often faces challenges from modern governments who try to replace it with more formal written law. Despite this, customary law persists in many societies as an essential part of their cultural identity. On the other hand, modern law continues to change and develop along with societal values and technology changes.

Analysis of traditional and modern legal systems often involves various scientific disciplines such as legal anthropology, sociology, and comparative legal science. An anthropological approach helps understand customary law's origins and values, while legal sociology helps understand how the law functions in society. Comparative law makes it possible to compare various legal systems worldwide and appreciate their differences and similarities.

The concept of modernization is also an essential factor in analysing legal systems. Modernization refers to how society moves from traditional social, political and economic structures to more modern and organized ones. In a legal context, modernization often means replacing customary law with more formal and centralized written law. However, modernization can also accommodate customary law elements considered by modern values.

Legal hegemony is a concept that refers to the dominance of one legal system over another in a society. ⁴ In many cases, modern law tends to dominate customary law due to support from the government and institutions of power. However, in some cases, customary law still plays a vital role in resolving local conflicts and maintaining traditional culture.

Legal pluralism refers to various legal systems operating simultaneously in a society. Legal pluralism reflects the complex realities of modern societies that often consist of diverse ethnic, religious and cultural groups. Legal pluralism challenges the idea that one legal system should dominate another and encourages recognizing and respecting the diversity of laws within a society.

Analysis of traditional and modern legal systems involves deeply understanding their history, characteristics, and adaptability. Through anthropological, sociological and comparative approaches, we can understand how these two systems interact with society's social, political and economic developments. Concepts such as modernization, legal hegemony, and legal pluralism help us understand the complex dynamics of legal systems in increasingly advanced societies.

The Impact of Globalization on Traditional Legal Systems

Globalization has significantly impacted traditional legal systems in various parts of the world. As a subchapter that explores the impact of globalization on traditional legal systems, it is essential to understand that globalization includes the exchange of goods and services across borders and the exchange of values, ideas and culture.

In a legal context, globalization has introduced new ideas about justice, human rights, and good governance, which often conflict with the values and practices of traditional legal systems. For example, the concept of human rights may conflict with certain customary practices that may violate the rights of individuals in that society.

Legal anthropology helps understand how cultural values in traditional legal systems, such as the indigenous legal systems of the Maori in New Zealand or the tribal legal systems of the Native Americans, can change or be affected by the influence of globalization. For example, the values of capitalism and individualism promoted by economic globalization may replace the collectivist values underlying customary law in these traditional societies.

The sociology of law helps us understand how changes in political and economic systems brought about by globalization can affect the recognition and application of customary law, which refers to the unwritten rules and practices developed and followed by a particular community over a long period. Globalization often causes changes in the social and political structure of a society, which in turn can affect the authority and legitimacy of customary law.

Comparative legal science makes it possible to compare how traditional legal systems adapt or survive in various countries' globalisation contexts. For example, some countries may choose to integrate elements of customary law into their national legal systems in response to demands for respect for cultural diversity.

The concept of modernization plays a vital role in understanding how globalization affects traditional legal systems. Modernization often triggers the replacement of customary law with more formal and centralized written law, which is more consistent with the modern values promoted by globalization.

Legal hegemony is also essential in analysing globalisation's impact on traditional legal systems. Globalization often results in the dominance of modern or Western law over traditional law in affected societies. This can lead to a decline in the legitimacy and application of customary law.

Legal pluralism is becoming increasingly relevant in globalization because society is becoming increasingly diverse in terms of culture, ethnicity and religion. Legal pluralism demands recognition of the various legal systems operating in a society, including customary law, and challenges the hegemony of modern law.

The impact of globalization on traditional legal systems is complex and varies depending on the cultural, political and economic context of each society. Analysis using approaches from legal anthropology, legal sociology, and comparative legal science, as well as the concepts of modernization, legal hegemony, and legal pluralism, makes it possible to understand the dynamics of change in the traditional legal system in this era of globalization.

Challenges and Opportunities in the Reconstruction of Traditional Legal Systems

Traditional legal systems experience complex and diverse challenges in the era of globalisation. The traditional legal system, or customary law, is integral to a society's cultural heritage passed down from generation to generation. However, globalization brings significant changes in values, norms and social structures that can affect customary law's recognition, application and continuity. On the other hand, globalization also opens up opportunities to utilize legal diversity in creating an inclusive and sustainable framework. 8

The main challenge faced in maintaining the traditional legal system is the influence of modernization. The modernization process often threatens the continuity of the traditional legal system by replacing it with more formal and centralized written law. Modernization refers to social, political, and economic changes that have changed from conventional social structures to more modern and organized ones. In a legal context, this often means replacing customary law with positive law based on written laws.

Also, modern or Western law hegemony is a big challenge in maintaining the traditional legal system. The dominance of contemporary law in societies affected by globalization can reduce the legitimacy and application of customary law. The government and institutions of power often support the application of modern law as part of modernization and development efforts, which can threaten the existence of traditional law.

Changes in cultural values and norms are another challenge in maintaining traditional legal systems in the era of globalization. The influence of imported global values, such as individualism, capitalism and consumerism can erode the cultural values that underlie traditional legal systems. This can lead to a value conflict between traditional law and the values promoted by globalization, complicating efforts to maintain the integrity of customary law.

Loss of local knowledge also poses a significant challenge in maintaining traditional legal systems. Knowledge of conventional legal systems can be lost due to a lack of research,

documentation, and maintenance. Demographic changes, such as rural-to-urban migration, can also lead to the loss of local knowledge of customary law, weakening the foundations of the legal system.

However, amidst these challenges, there are opportunities to utilize legal diversity to create inclusive and sustainable frameworks. One key opportunity is strengthened recognition of traditional law as an essential part of cultural heritage and a valuable legal resource. Formal recognition of customary law can provide the legitimacy needed to maintain and develop the legal system.

Integrating traditional legal elements into the national legal system is also essential to maintaining the conventional legal system. National legal systems can integrate traditional legal values and norms into national positive law to create a more inclusive framework. This integration can be done by forming policies and regulations that accommodate traditional legal values and standards.

Strengthening research and education on traditional law is essential in maintaining and developing the conventional legal system. More in-depth research into customary law's history, values, norms and practices can provide a better understanding of the legal system. Education about traditional law can also increase awareness of preserving and respecting their cultural heritage.

Collaboration between traditional and modern legal systems can also create a model of cooperation that respects legal diversity in society. This approach allows for exchanging knowledge, best practices, and solutions that combine elements of both legal systems. This kind of collaboration can result in a more inclusive and sustainable framework that recognizes and respects legal diversity in an increasingly globally connected society. 11

Empowering local communities is also essential in maintaining and developing traditional legal systems. Local communities can be encouraged to play an active role in maintaining and developing their traditional laws. Empowering local communities through education, training and institutional support can enable them to maintain conventional legal systems in rapid change.

By adopting a multidisciplinary approach and considering the concepts of modernization, legal hegemony, and legal pluralism, society can identify challenges and opportunities in maintaining and developing traditional legal systems in this era of globalization. In doing so, they can create inclusive and sustainable frameworks that respect and leverage legal diversity in an increasingly globally connected society.

IV. CONCLUSION

The transformation of traditional legal systems in the context of globalization has given rise to new dynamics in comparing customary and modern legal systems. Under the influence of globalization, conventional legal systems often experience pressure to adapt to the legal standards and practices that are more dominant in contemporary legal systems. This can lead to a decline in the applicability and relevance of customary legal systems in a society increasingly influenced by global norms. Meanwhile, globalization

also opens the door for the entry of new elements into the traditional legal system, both through the influence of modern law and through intercultural interactions. On the other hand, comparisons between customary and contemporary legal systems become more complex due to the need to assess the balance between preserving cultural heritage and meeting global demands for justice, human rights and sustainability. Thus, the transformation of traditional legal systems in the context of globalization influences comparisons between customary and modern legal systems by raising questions about law's adaptability, relevance and diversity in this increasingly connected era.

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