

Integration of Customary Law in Marital Disputes in Indonesian Religious Courts

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Abstract—This research examines the integration of customary law in the resolution of marital disputes in Indonesian Religious Courts using a normative legal approach and secondary data sources. Indonesia, with its rich cultural heritage and ethnic diversity, has strong customary traditions that influence various aspects of life, including marriage and family. Religious Courts in Indonesia not only adhere to Islamic law but also consider customary law prevailing in the community to achieve substantive justice. The secondary data in this study includes legislation, court decisions, academic literature, official documents, and legal databases. The analysis is conducted through the identification, interpretation, and evaluation of legal norms and court decisions related to the integration of customary law. The research findings indicate that the integration of customary law is crucial in ensuring that court decisions are accepted by the community, reflect local values, and maintain social harmony. This study concludes that a sensitive and inclusive approach to customary law in religious courts can enhance public trust in the judicial system and provide more holistic justice.

Keywords— Religious Courts, Customary Law, Marital Disputes, Substantive Justice.

I. INTRODUCTION

Religious Courts in Indonesia play a crucial role in resolving marital disputes, such as divorce, property division, and child custody.[1] Customary law often plays a significant role in this process, given the ethnic and cultural diversity in Indonesia.[2] The integration of customary law in religious courts, particularly in Indonesian marriage law, is necessary to achieve substantive justice that reflects the integration of local and religious values.[3]

Indonesia, with its extraordinary cultural richness, has various customary traditions that characterize the nation. [4], including aspects of marriage and family. Each ethnic group has its own customary rules and processes. In carrying out its functions, the Religious Court must consider and respect the customary laws prevailing in the community.[5]

The integration of customary law within religious courts ensures that decisions are not only legally just but also accepted by the community. This includes recognition of customary marriage processes, property division rules, and child custody rights, often influenced by local customs. Normative conflicts can arise between customary law and Islamic law, such as with divorce, which is considered taboo in some customs but clearly regulated in Islamic law, causing confusion in areas with strong adherence to customary law.

Additionally, the lack of well-documented customary laws necessitates judges to have deep knowledge of local customs to make appropriate decisions, leading to inconsistencies in law enforcement. Community perception is also critical; sometimes, communities do not accept court decisions that disregard their customary laws, leading to dissatisfaction.

Therefore, the judicial system must be sensitive and inclusive towards customary law. In divorce and property division cases, religious courts often consider customary law, such as in Minangkabau society, where high heritage property is not divided in a divorce but remains within the female

lineage, reflecting justice according to the local cultural context.

Customary law also influences decisions regarding child custody, as seen in Bali and West Nusa Tenggara, where grandparents often play a significant role in child-rearing post-divorce. Religious courts respect this role as a holistic approach to the child's best interests. Customary marriages, with their specific processes and rules, are also recognized by religious courts. For example, marriages in Javanese society that involve a series of customary ceremonies are considered in religious court decisions, demonstrating a commitment to integrating local values into the legal process.

By considering these customary factors, religious courts provide decisions that are not only legal but also rooted in the social and cultural realities of the community. This approach demonstrates the flexibility and openness of the legal system in accommodating cultural differences, ensuring decisions reflect the best interests of all parties, thereby enhancing public trust in the judicial system.

II. LITERATURE REVIEW

Customary Law and Islamic Law

Customary law in Indonesia is a collection of norms and practices that have been accepted and practiced by customary communities for generations. [6]. Islamic law, which forms the basis of religious courts, also has rules that govern marriage and family. These two legal systems often coexist, although there are times when normative conflicts arise between them.

Religious Courts and Jurisdiction

Religious Courts have exclusive jurisdiction to handle cases related to marriage for Muslims [7]. In practice, Religious Courts do not only apply Islamic law but also consider the customary law prevailing in the community where the case originates. This aims to provide decisions that

are not only legally just but also socially accepted by the parties involved.

III. METHODS

This research employs a normative legal approach utilizing secondary data sources to examine the integration of customary law in resolving marital disputes in Indonesian Religious Courts [8]. The secondary data includes legislation, court decisions, academic literature, official documents, and legal databases. The research begins with formulating the problem: how customary law is integrated into the resolution of marital disputes. Subsequently, secondary data is collected from various reliable sources. Document analysis is conducted through the identification, interpretation, and evaluation of legal norms and related court decisions. The analysis results are used to draw conclusions about the effectiveness of integrating customary law in achieving substantive justice, followed by the preparation of a research report that includes background, methodology, results and discussion, and recommendations. This approach allows for systematic and structured research to understand the role of customary law in the religious judicial system in Indonesia.

IV. RESULT AND DISCUSSION

Integration of Customary Law in Divorce and Property Division Cases in the Indonesian Religious Court System

In divorce cases, religious courts often face challenges in considering customary law related to the division of joint property. For example, in the Minangkabau society, which follows a matrilineal kinship system, customary laws significantly influence the division of property [9], there are specific rules regarding “harta pusaka tinggi” (ancestral property). In this context, “harta pusaka tinggi” is not divided as part of the property division in a divorce but remains within the female lineage. [10].

Religious courts do not only function as institutions that strictly apply Islamic law but also as entities that must be sensitive and adaptive to the diverse customs in Indonesia. Therefore, Religious Courts are allowed to integrate provisions of customary inheritance, which have a bilateral inheritance system. [9]. Decisions that respect customary law in accordance with Islamic teachings in the division of joint property in divorce cases help maintain social harmony and uphold the traditional and religious values respected by the community. This approach has been applied in customary law inspired by Sharia, as accepted by judges in Aceh in decisions related to the division of joint property. [11].

Child Custody

In child custody cases, customary law often significantly influences religious court decisions, particularly in communities that highly respect the role of grandparents in child-rearing. Religious courts, when considering child custody, often recognize and respect the role of grandparents as part of a more holistic and culturally sensitive approach.

The decision to grant custody to grandparents, or at least significantly involve them in the child's upbringing, reflects a

respect for the customary values long upheld by the community. This also helps maintain the emotional stability and well-being of the child, as they remain in a familiar and supportive family environment. By considering these customary factors, religious courts provide decisions that are not only legal but also deeply rooted in the social and cultural realities of the community.

This approach demonstrates the flexibility and openness of the legal system in accommodating cultural differences, ensuring that decisions truly reflect the best interests of the child. Thus, religious courts play a crucial role in balancing the application of Islamic law and respect for customary law, ultimately enhancing public trust in the judicial system.

Customary Marriage System

The customary marriage system, which includes specific processes and rules, is often recognized and respected by religious courts. In Javanese society, for example, marriage involves a series of customary ceremonies that hold particular meaning and value[12]. When disputes arise in such marriages, religious courts do not rigidly apply Islamic law but also consider the customary elements that have become an integral part of the marriage process.

Religious courts understand that the customary processes and rules in marriage significantly impact the status and relationships between the parties involved. Therefore, in resolving marriage disputes, the court will consider various relevant customary aspects, such as dowry, wedding ceremonies, and the role of the extended family. By respecting and accommodating these customary elements, religious courts strive to reach decisions that are just and in accordance with the social and cultural context of the community[12].

This approach demonstrates the commitment of religious courts to integrating local values into the legal process, ultimately helping to maintain harmony and public trust in the judicial system. Thus, religious courts function not only as enforcers of law but also as custodians of rich traditions and cultures, ensuring that decisions are not only legally valid but also accepted and respected by the community.

Challenges of Integrating Customary Law

Normative Conflicts

Normative conflicts between customary law and Islamic law are one of the main challenges in Indonesia's legal system. Customary law, which varies in each region and is often deeply rooted in local traditions, frequently holds views that are quite different from Islamic law on certain issues. For instance, in some customary communities in Indonesia, divorce is considered taboo [13] and very difficult to obtain because divorce is seen as damaging to social harmony and the extended family. In contrast, under Islamic law, divorce is recognized as a right of both husband and wife, with clear procedures and provisions to protect the rights of both parties. This discrepancy creates conflict and confusion at the community level, especially in areas that still strongly adhere to customary law. This normative conflict demands efforts to harmonize the laws in a manner that is sensitive to local values while still respecting the principles of Islamic law. Such

efforts require ongoing dialogue between traditional leaders, religious scholars, and the government to reach a mutual understanding that can be accepted by all parties.

Lack of Codification of Customary Law

The lack of codification of customary law is a significant issue in the application of law in Indonesia [14]. Customary law, which is passed down orally from generation to generation, is often not well documented, making it difficult to refer to as a legitimate legal source. When legal cases require the consideration of customary law, judges face substantial challenges due to the absence of comprehensive and standardized documentation. Consequently, judges must have deep knowledge of local customs, which is not always possessed by all judges [15]. This lack of codification also leads to inconsistencies in law enforcement, where judges' decisions can vary greatly depending on their personal interpretation of the prevailing customs. To address this issue, systematic efforts are needed to document and codify customary law. This would not only facilitate judges in making fair and consistent decisions but also help preserve cultural heritage and local traditions within the context of modern law.

Community Perception

The community's perception of court decisions that disregard their customary law often becomes a source of dissatisfaction and rejection. Communities that highly value and adhere to customary law feel that their identity and values are ignored when court decisions do not consider or override the applicable customary rules. This can lead to a deep sense of injustice and dissatisfaction among the litigants, which in turn can result in the rejection of court decisions. This dissatisfaction not only impacts the cases at hand but can also undermine public trust in the legal system as a whole. To mitigate this tension, it is important for the judicial system to be more sensitive and inclusive towards customary law in the decision-making process. This can be achieved through closer dialogue and cooperation between legal authorities and customary leaders, as well as specialized training for judges to understand and appreciate customary law. In this way, court decisions can be more accepted by the community, reflecting a more holistic justice and respecting the cultural diversity of Indonesia.

V. CONCLUSION

The integration of customary law in resolving marital disputes in Indonesian religious courts is a crucial step towards achieving substantive justice. Despite various

challenges, this integration allows religious courts to issue decisions that are more aligned with local values and more acceptable to the community. Further efforts are needed to address normative conflicts and enhance the understanding and documentation of customary law to make this integration more effective.

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