

Changes in Malay Traditional Law From A Sociological and Legal Anthropological Perspective

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Info Articles	Abstract
Article History Received : 2020-09-07 Revised: 2020-09-17 Published: 2020-09-30 Keywords: <i>Malay Customary Law, Sociology of Law, Legal Anthropology, Social Change, Globalization, Modernization, National Law</i>	This study aims to analyze changes in Malay customary law from the perspectives of legal sociology and legal anthropology, and to identify the factors influencing these changes. Malay customary law, as living law, is a system of norms that grows and develops within society, regulating various aspects of life such as marriage, inheritance, and social relations. Over time, customary law has undergone transformation due to the influence of Islam, colonialism, modernization, and globalization. This study uses a deductive method with a normative approach based on a review of relevant literature and legal materials. The research results show that Malay customary law has undergone both normative and socio-cultural shifts. From a legal sociology perspective, these changes are influenced by the dynamics of social structures and the dominance of state law, often resulting in customary law being subordinate to positive law. Meanwhile, from a legal anthropology perspective, these changes occur due to transformations in values, lifestyles, and cultural interactions within the community. Nevertheless, Malay customary law remains a cultural identity that continues to adapt to the needs of modern society. Thus, changes in Malay customary law represent a form of adaptation to changing times, but also pose challenges in maintaining the continuity of traditional values. Therefore, synergistic efforts between the community, government, and customary institutions are needed to preserve the existence of customary law in national legal life.

I. INTRODUCTION

Malay customary law is a cultural heritage that has existed in society since ancient times. These customary rules govern various aspects of community life, such as marriage, inheritance, deliberation, and conflict resolution. Customary law not only serves as a guideline for daily life but also reflects the values of local wisdom and a strong Malay cultural identity.

However, with the passage of time, the introduction of national laws, the influence of globalization, and social and economic changes, customary law has begun to shift. Some customary rules are no longer enforced as they once were, and some have even been abandoned as they are deemed inappropriate to current conditions. On the other hand, there are also

community efforts to maintain customary law by adapting it to current developments.

These changes are important to study to understand how customary law adapts to social change. In this regard, sociological and legal anthropological approaches can be used to examine the relationship between society and customary law more broadly. Through these approaches, we can understand how societies shape and change laws based on their evolving needs.

Therefore, this paper is prepared to discuss changes in Malay customary law from the perspective of sociology and legal anthropology, as well as to understand the factors that cause these changes.

II. RESEARCH METHODS

The conclusions drawn in this study were drawn using a deductive method, namely by drawing conclusions from general understandings to specific matters. In this case, concepts derived from the Sociology of Law and Legal Anthropology were used as the basis for analysis to understand the phenomenon of changes in Malay customary law. Through this process, conclusions were obtained that illustrate how Malay customary law norms have changed along with social, cultural, and societal dynamics, and how these changes can be understood within the framework of normative legal science.

III. RESULTS AND DISCUSSION

A. Research result

Based on the results of a study of various legal materials and literature, it was found that Malay customary law, as a living law in society, has undergone significant changes in line with social, cultural, and national legal system developments. From a Sociology of Law perspective, these changes are influenced by the dynamics of social structure, modernization, and the interaction of indigenous communities with the more formal state legal system. Malay customary law, previously steeped in traditional and collectivist values, now tends to adapt to the needs of an increasingly complex and heterogeneous society.

Normatively, Malay customary law remains recognized within the national legal system, but in practice, it is often subordinated to positive law. This is evident in the limitations on the scope of its application, particularly when it conflicts with higher-level laws. Thus, Malay customary law is no longer the primary guideline for resolving disputes within the community, but rather serves as a complement or alternative in certain circumstances.

From a legal anthropology perspective, changes in Malay customary law are also influenced by the transformation of cultural values and social patterns. Globalization, urbanization, and increased social mobility have shifted people's perspectives on customs. Previously held in high regard, such as deliberation, local wisdom, and respect for customary structures, have begun to shift toward a more pragmatic and individualistic approach.

Furthermore, variations in the level of sustainability of Malay customary law were found across regions. In some areas, customary law remains strongly maintained and forms an integral part of community life, while in others, its function has declined and even begun to be abandoned. This indicates that the existence of Malay customary law is highly dependent on the level of public awareness and support from local customary institutions and the government.

Thus, the results of this study indicate that changes in Malay customary law have occurred not only in normative aspects, but also in social and cultural aspects. These changes represent a form of adaptation to changing times, but also pose challenges in maintaining the authentic values embodied in Malay customary law.

B. Discussion

1. Understanding Malay Customary Law

Malay customary law is defined as a collection of legal rules, norms, and principles that have grown and developed through generations in Malay society. These laws reflect the values, culture, and philosophy of life of the Malay people and have historically been applied to regulate social, economic, and religious relations within the community. These customary laws are local, unwritten, and may differ from one region to another, although there is a common thread that binds

them together. Malay customary law is a legal system that has been in effect in Indonesia for a long time [Abdullah, I. (2001). "The Use and Misuse of Culture: Resolving Ethnic Conflict in Indonesia." Indonesian Anthropology, Volume 25, Number 66].

According to Sukardi's book "The Indonesian Legal System," customary law is defined as all regulations or norms, both written and unwritten, derived from the customs or habits of Indonesian society and governing behavior in social life. Malay customary law is a general law that binds a society and is derived from the customs that have developed within that society. Malay customary law is also defined as the customs or regulations adhered to by Malay society. Customs usually originate from ancestors and are preserved to the present day or serve as guidelines for community life. Malay customary law plays a vital role in Malay culture, both in religious and social functions. Custom also serves as the legal and governmental basis of the Malay Sultanate.

Malay customary law has different sources and purposes than Western and Islamic law. It is unknown exactly when Malay customary law began to apply in Indonesia, but when compared to Western and Islamic law, Malay customary law is the oldest. The source of Malay customary law is the customs or habits of the Malay people themselves. Malay customary law is not only written but also unwritten. Malay customary law norms are passed down from generation to generation. Malay customary law is also found in various historical documents, such as the 4 Kanun Melaka Laws, the Kanun Pahang Laws, the Ninety-Nine Codes, and the Kanun Brunei Laws. Malay customary law has several purposes. First, Malay customary law serves to maintain the integrity of Islamic teachings and connect humans with God. Second, Malay

customary law plays a role in maintaining social relations between individuals and groups within Malay society.

Furthermore, Malay customary law plays a role in maintaining order and harmony in Malay society. It also serves as the legal and administrative foundation of the Malay Sultanate. The concept of Malay ethnoscience states that the death of a village child grieves, and the death of a fellow countryman grieves. This is a custom that emphasizes the primacy of customs and traditions shared by all levels of society in social, national, and state life. Conversely, the phrase "customary law does not die when a child dies" implies that customary law must be maintained even at the expense of the family.

2. Changes that Occurred in Malay Customary Law

Changes in Malay customary law occurred due to several important interrelated factors. First, the influence of Islam, which entered the Malay region in the 13th century, brought about a major transformation in customary law, which had previously been heavily influenced by local beliefs. With the arrival of Islam, many customary laws were adapted to conform to Sharia principles, particularly regarding marriage and inheritance.

This makes Malay customary law a blend of traditional values and Islamic teachings. Furthermore, the period of European colonization also had a significant impact on Malay customary law. The colonizers introduced a written and formal Western legal system, forcing customary institutions and traditional rules to adapt to the more rigid colonial legal system. This colonization also changed social structures and land ownership patterns, which in turn influenced the implementation of customary law. Furthermore, developments and modernization have brought about equally

significant changes. Society is now more exposed to formal education, technology, and national laws that further regulate daily life [Abdullah, I. (2015). *Construction and Reproduction of Culture*. Yogyakarta: Pustaka Pelajar].

Therefore, customary law practices regarding marriage, inheritance, and the recognition of customary rights have begun to be largely adapted to existing national laws. Nevertheless, Malay customary law remains a vital part of the community's cultural identity, continually adapting to remain relevant amidst dynamic social and legal changes.

a. The Influence of Islam

The entry of Islam into the Malay region brought significant changes to the structure and content of customary law. According to Taufik Abdullah in *Islam and Society: Reflections of Indonesian History* (2006), the Islamization process does not immediately replace old customs, but rather adapts gradually. One important historical example is the marriage of Putri Selaro Pinang Masak to Datuk Paduko Berhalo, a cleric who spread Islam. This event became a symbol of collaboration between custom and Islamic law, which became known as the principle of "Adat Basandi Syarak, Syarak Basandi Kitabullah."

In practice, customary laws that explicitly conflict with Islamic law are beginning to be abolished or adjusted. For example, the matrilineal inheritance system widely adopted by the Minangkabau people is slowly being replaced by the Islamic inheritance system, particularly in areas more influenced by the ulama. According to Azra (2002) in his book *Jaringan Ulama (Ulama Network)*, this process is also influenced by the increasing authority of ulama within the social structure of society.

b. The Influence of Colonization

Changes in Malay customary law were also directly influenced by Dutch colonial policies. In the early colonial period, the Dutch adopted a compromising stance and continued to recognize customary law as part of the pluralistic legal system in the Dutch East Indies. However, starting in 1904, this policy changed. Colonial rule began imposing the European civil law system on the indigenous population, particularly in civil matters such as inheritance and marriage.

Customary Law in the Context of Colonialism explains that the Dutch abolished several customary practices deemed inconsistent with modern European legal principles, such as dispute resolution based on customary deliberation, and replaced them with formal court procedures. This dislocated the role of traditional customary institutions such as the *ninik mamak* (headmen) and *penghulu* (headmen).

c. Development of the Times and Modernization

The modern era brings new challenges to the existence of customary law. Globalization, formal education, and openness to information have made Malay society more connected to national and international values. In many cases, customary law has been adjusted to be relevant to the national legal system, for example through the recognition of customary law in the constitution and regional regulations.

Customary law is now recognized in various state policies, but in a filtered and codified form. On the one hand, this provides formal protection for customary law, but on the other hand reduces its flexibility as a living legal system [Ahimsa-Putra, HS (Ed.). (2007). *Malay Society and Malay Culture in Change*. By HM Lutfi. Yogyakarta: Center for the Study and Development of Malay Culture].

d. Changes in Customary Practices

Changes are also very evident in everyday practices such as marriage, inheritance, and kinship systems.

- 1) Weddings: The tradition of asking for marriage and proposing has now been replaced by introductions via social media. Traditional processions are still maintained, but are more symbolic and merge with popular culture, including the use of modern decoration services.
- 2) Inheritance: Inheritance was once divided according to customary law based on family agreements or specific lineages. Now, many families have adopted the principles of the Compilation of Islamic Law (KHI) or even referred disputes to religious courts.
- 3) Kinship System: Inter-ethnic marriages and population movements have led to the emergence of new, more flexible family forms that do not always follow the traditional patrilineal or matrilineal system.
3. Sociological and Legal Anthropological Perspectives on Changes in Malay Customary Law

Changes in Malay customary law cannot be separated from the social, cultural, and historical context of its society. In the sociology of law approach, law is understood not only as a formally applied written norm, but also as a social institution that reflects the structure, values, and dynamics of society. Similarly, legal anthropology views law as part of a culture that develops from the practices, beliefs, and symbols within a particular society. Therefore, changes in Malay customary law are seen as the result of a complex interaction between internal and external factors that influence Malay society over time [Hadikusuma, Hilman.

(1980). Principles of Understanding Customary Law. Bandung: Alumni].

1. The Influence of Islam: Integration and Reinterpretation

From a legal sociology perspective, the entry of Islam into Malay society had a major influence on the structure of customary law. Traditional law, which was previously secular and based on local wisdom, is starting to adapt to the principles of Islamic law. This process is not frontal or conflict, but is integrative. In Minangkabau society, for example, the Basandi Syarak Adat philosophy, Syarak Basandi Kitabullah, has developed, which shows the synchronization between customary norms and Islamic law. This integration occurs gradually through social interaction between traditional leaders and ulama, as well as through the mediation of traditional and religious institutions. In legal anthropology, this is referred to as legal cultural accommodation, where external elements (Islam) are accepted as long as they can be adapted to the local cultural framework.

2. Colonization and Colonial Legal Intervention Dutch Colonization

Had a significant influence on the legal structure in the Malay lands. Initially, the colonial government still recognized the existence of customary law, but since the enactment of the Regeringsreglement of 1854 and the Indische Staatsregeling of 1925, there has been an effort to unify the law, leading to the application of Dutch law in various regions. From a sociological perspective, this reflects the dominance of state law over local law. In many cases, customary institutions that were previously authorized to resolve disputes (such as penghulu, ninik mamak, etc.) began to lose their function as the community began to access formal institutions such as district courts. This led to

a displacement or shift of legal authority from the community to the state, as explained by Satjipto Rahardjo in his thinking on law as a tool of social engineering.

3. Modernization and Globalization

In the context of modernization, legal sociology explains that changes in economic systems, education, and information technology have caused collective customary values to shift toward individual values. For example, in matters of inheritance, customary law previously prioritized a collective inheritance system based on lineage (patrilineal or matrilineal). Today, many Malay families are adopting inheritance systems based on Islamic law or national law. This demonstrates the growing legal pluralism within Malay society, where individuals can choose which legal norms they wish to follow.

From a legal anthropology perspective, these changes can be understood as a result of changes in the social structure of society, including kinship patterns, production systems, and cultural rituals. For example, traditional wedding ceremonies, which were once very sacred and lengthy, have now been simplified or replaced with more modern ones to suit the demands of the times. Traditional ceremonies that were once attended by the entire village community have now been replaced by simple receptions, sometimes even shared only through social media [Isjoni. (2012). *Malays in a Changing Age*. Yogyakarta: Pustaka Pelajar].

4. Institutional Changes and the Role of Legal Actors

Previously, customary institutions such as the *ninik mamak* assembly, the *penghulu* (headman), and traditional leaders held absolute power in deciding customary matters. However, these institutions now play a more symbolic role or are limited to

ceremonial occasions. Many legal cases, such as customary land disputes, divorces, and inheritance disputes, are brought to district courts or formal mediation institutions. This reflects the institutionalization of state law, which is slowly eroding the function of customary law. According to research published by the Indonesian Institute of Sciences (LIPI) and the Research and Development Agency of the Ministry of Law and Human Rights, many customary institutions in Indonesia are currently experiencing stagnation due to a lack of regulatory support and minimal regeneration of customary leaders.

5. Field Facts and Related Studies

Research conducted by Zainuddin Ali (2021) in his book *Anthropology of Law* notes that Malay customary law currently finds itself in a dilemma between preservation and abandonment. In some cases, such as in Riau and Jambi, customary law is still used to resolve customary land disputes, but in large cities, customary law is barely functional. Meanwhile, the journal *Kajian Hukum dan Masyarakat* (Law and Society Studies) from Andalas University (2022) states that Malay customary communities have begun to revitalize customary institutions, but this is still limited to certain areas with strong customary community strength [Kansil, Christine ST (1985). *History of the Struggle for the Indonesian National Movement*. Jakarta: Erlangga].

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Changes in Malay customary law are the result of complex social and cultural dynamics, inextricably linked to the influence of Islam, colonialism, and the changing times and globalization. From a sociological perspective, these changes reflect the transformation of

Malay society's social structure and values, which have evolved over time. The arrival of Islam resulted in the integration of sharia values into custom, creating a distinctive and religious form of customary law. Conversely, colonialism led to the marginalization of customary law due to the dominance of colonial state law.

From a legal anthropological perspective, customary law is understood as part of a culture that is constantly changing and adapting to the social context of its society. Changes in marriage practices, inheritance, and kinship systems demonstrate how Malay customary law has adapted to technological developments, lifestyles, and modern family structures. Although customary law has weakened in some contexts, in a number of regions it persists as a cultural identity and communal law.

B. Suggestion

Based on the results of this study, it is recommended that more systematic efforts be made to maintain the existence of Malay customary law amidst the development of modern society. The government is expected to strengthen customary law through regulations that are more responsive to it, so that it is not only formally recognized but also implemented concretely within the national legal system. Furthermore, synergy between customary institutions, the government, and the community is needed to maintain the values of local wisdom embodied in Malay customary law.

From the perspective of the Sociology of Law and Legal Anthropology, it is crucial to raise public awareness, especially among the

younger generation, of the value and function of customary law as part of cultural identity. Therefore, education and outreach regarding Malay customary law need to be continuously conducted through various media and educational institutions.

Furthermore, future researchers are advised to expand this research using an empirical approach to obtain a more comprehensive picture of Malay customary law practices in the field. This is crucial to complement normative studies and thus contribute more deeply to the development of legal science, particularly in understanding the dynamics of customary law in a constantly changing society.

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