



Harmonization of Padan Arrangements In the Batak Toba Traditional Communities in The National Legal System

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Abstract. The Constitution of The Republic of Indonesia recognizes and respects the customary law community units that are spread across Indonesia. Customary law society with its local wisdom. One of the indigenous peoples in Indonesia is the Toba Batak Customary Law Community. The Toba Batak Customary Law Community has a philosophy of life and rules regarding the course of their social life known as Padan. Padan is more precisely a sacred vow or promise that should not be broken that was made since the time of time of our ancestors. The harmonization between the Padan system and the National law was made in order to realize justice and legal certainty which has noble characteristics. This legal research is normative juridical law research in relation to statutory and conceptual approach methods. The aim of this research is to harmonize it into one of Indonesia's positive laws.

Keywords: Batak's Customary Law Community, Padan, Agreement

1. Introduction

The norms that live in society contain what things humans can and cannot do. These rules and norms govern human attitudes and behavior in essence to maintain balance and regularity of interests in social life. Norms (laws) that themselves exist in society are then known as "Ubi Societas, Ibi Ius" which means where there is society, there is law.[1] As a rule or social norm which is the result of a social interaction of the community. As explained by C.F. Von Savigny who stated that the law was not made, but grew by itself in people's lives.

Regarding the existence of indigenous peoples in Indonesia, it is regulated in Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945) which states that the State recognizes and respects customary law community [2] units along with 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 (NKRI). Legal recognition of customary law communities as referred to in Article 18 B of the 1945 Constitution of the Republic of Indonesia, Austin argues that this recognition applies to members of an independent political society. Members of the community recognize the sovereignty or supernity possessed

by the person or law-making institutions concerned. Thus, according to him, customary norms will only apply as law if the law wants or expressly states the enforceability of these habits.

The terms and concepts in the regulation of Customary Law Communities will be studied with a theoretical study of the concept, Customary Law Communities associated with the concept of Traditional Society and the concept of recognition, protection and empowerment of Customary Law Communities. Indigenous Law Society in Dutch is called "Rechtsgemeenschap". Dutch pioneers of customary law studies such as Cornelis Van Vollenhoven and Bernard Ter Haar only used the term rechtsgemeenschap. The word *gemeenschap* itself means a society or association whose members are bound by shared identities, bonds and responsibilities. In his book entitled "Beginnels en Stelsel van Adatrecht" Ter Haar has argued that in its development community groups that still have characteristics as an association are territorially based. Along with the progress that allows for geographical mobility and inter-ethnic marriage, genealogical based community groups lose their character as an alliance such as administering government, possessing wealth and spiritual bonds.[3]

Furthermore, customary law communities have also been regulated in the TAP MPR Number IX/MPR/2001 Concerning Agrarian Development and Natural Resource Management. Indigenous peoples with all their local wisdom are still recognized by the State as long as they do not conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia as the philosophy of life as a state. The recognition of the existence and existence of these Indigenous Peoples by the State is also due to the fact that currently the rights of traditional Customary Law Communities have not been fully protected which has resulted in their being marginalized, and it is possible for social conflicts and agrarian conflicts to occur in customary areas so efforts to recognize, protect and empower them are necessary.

Clashes regarding the norms that apply in the Customary Law Community with Indonesian National Law are also currently occurring which often occur, there is a need for harmonization and legal regulation. Through a Press Release Number 180/SP/HM.01.02/POLHUKAM/11/2022 the Coordinating Ministry for Political, Legal and Security Affairs admitted itself that the protection of Indigenous Peoples had not been optimally implemented by the State, due to overlapping arrangements regarding Indigenous Law Communities starting of the Constitution, Sectoral Laws, Implementing Regulations, and Regional Regulations which cause legal uncertainty.

The Customary Law Community is proof that humans cannot live and maintain their own life which is a manifestation of the Gregoriusnes instinct, namely the instinct to live with other people or in groups with other humans.[4] Humans in their lives together with other humans, so that it requires the existence of a basic norm which becomes a limitation (Disclaimer) so that humans are aware of the rights and obligations of each of them, so as to create an orderly, safe and peaceful condition.

One of the Customary Law Communities in Indonesia is the Batak Customary Law Community. The Batak tribe is one of the major tribes in Indonesia. The Batak tribe itself has 6 (six) sub-tribes consisting of the Toba Batak, Karo Batak,

Simalungun Batak, Pakpak Batak, Angkola Batak, and Mandailing Batak. The six sub-tribes spread throughout the world were initially centered and occupied their respective main areas on the mainland of North Sumatra Province. This research discusses the legal system related to the Toba Batak Tribe. The Toba Batak tribe has always had customs that are still passed down by their ancestors which guide social activities in the Toba Batak community.[5]

The relationship among the Toba Batak Customary Law Community between members of the community can be seen from the opinion of Hans Kelsen who stated "man is a social being" [6] which means that humans are social creatures, meaning creatures that are destined to live in togetherness with others in society. The existence of rules or norms is something that is inherent when humans interact with other humans in society. These rules or norms contain provisions regarding the obligation to behave in a certain way.[7]

In everyday life, in general, the Toba Batak Customary Law Community has a high commitment to cultural values and customs. We can see this from how they consistently adhere to the cultural values inherited from their ancestors. As revealed in the following advice: "Omputta na di jolo martungkot siala gundi, adat na pinukka ni parjolo ingkon ihuthonon ni parpudi", which means that all the rules that have been set by the ancestors must be obeyed and obeyed and carried out from generation to generation.[8] Moreo ver, the Toba Batak Customary Law Community recognizes the adage "Togu urat ni bulu, toguan urat ni padang. Togu ni dok ni uhum, toguan ni dok ni padan" which means the bamboo roots are stronger, the weeds roots are still stronger. The firmer the legal order, the stronger the promises that have been made. The Toba Batak Customary Law Community has long believed solemnly that all Padan (agreement/contract) that has been made must be upheld. Those who have made Padan will receive a curse and mis fortune if they dare to violate the Padan that has been made.

Padan has been in effect since our ancestors which is still valid today among the Toba Batak Customary Law Community indicating that Padan is not just an ordinary promise, but rather a bond relationship that is sacred and sacred and firmly binding and ongoing for the maker and for their descendants. The Padan made by the Toba Batak Customary Law Society is diverse, including issues of clan, same-sex marriage, inheritance, position and position in the family, and so on. Thus, Padan has been transformed into a law that is binding and must be obeyed by the maker.

Recognition of the existence of the Toba Batak Customary Law Community in many respects is still not fully institutionalized. This can be seen from the many problems experienced by the Indigenous Peoples as a minority group so far whose position is vulnerable and weak from various aspects of life (economic, legal, socio-cultural, and human rights). Besides that, the Indigenous Peoples are increasingly marginalized in the process of national development because they have not been fully given recognition of adat/ulayat land belonging to the Toba Batak Customary Law Community, and most importantly, there are still conflicts regarding the norms that apply in the Toba Batak Customary Law Community with positive Indonesian National law regulations.

2. Problems

Based on the background that has been presented above, legal issues that will be discussed in this study arise as follows:

- a. What is the existence of Padan in the Batak community?
- b. Can a positive law be made against Padan by the state?

3. Method

One thing that distinguishes the science of law and the social sciences is that law is not included in the number of behavioral sciences. Legal science is not descriptive but prescriptive. The object of the science of law is coherence between legal norms and legal principles, between legal rules and legal norms, as well as coherence between individual acts and non-behaviors with legal norms.[9] So this type of legal research is a type of normative legal research, which aims to examine positive legal provisions in this case criminal law as a source of law.

Furthermore, Moris L Cohen expressed the opinion of Peter Mahmud Marzuki who stated "Legal Research is the process of finding the law that governs activities in human society. Legal research essentially starts from human curiosity expressed in the form of problems or questions, where each of these legal problems and questions requires an answer and will gain new knowledge that is considered true. Apart from that, this legal research is a doctrinal research that provides or produces a systematic explanation of the legal norms or principles governing a certain category.[10]

In legal research there are several approaches. With this approach, researchers will get information from several aspects regarding the issue being tried to find answers. The approaches used in legal research are the statute approach, the case approach, the historical approach, the comparative approach, and the conceptual approach. This legal research uses a statute approach, then the legal norms/rules are explained through existing legal concepts so that this research also uses a conceptual approach, besides that this legal research also conducts a review of court decisions dropped in the process of seeking justice in a case so that this legal research also uses a case approach.

As Peter Mahmud Marzuki's opinion regarding the approaches used in this legal research are as follows:

- a. Statute Approach; This is done by examining all laws and regulations related to the legal issues being handled. For research for practical activities, this legal approach will open up opportunities for researchers to study whether there is consistency and suitability between laws and regulations. Researchers need to look for the legal ratio and ontological basis of a law.
- b. Conceptual Approach; carried out by departing from the views, the doctrines that developed in the science of law. By studying the views and doctrines in

the science of law, researchers will find ideas that give rise to legal notions, legal concepts, and legal principles that are relevant to the issue at hand.

- c. Case Approach; This is done by examining cases related to the issues at hand which have become court decisions that have permanent legal force. The case can be a case that occurred in Indonesia or in other countries. The main study in the case approach is the ratio decidendi, namely the court's considerations in arriving at a decision.[11]

4. Discussion

4.1 The Existence of Padan as an Agreement in the Toba Batak Customary Law Community in the National Legal System

Before discussing the harmonization of the Padan which functions as law in the Toba Batak Customary Law Community with the National legal system, it must first be emphasized again regarding the existence and position of the Toba Batak Customary Law Community as an entity. In this case, in the opinion of Jimly Ashidique, who gave an interpretation of Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is necessary to pay attention to the rules for the form of recognition granted by the State which is a basic concept or pillar of customary law as follows: To the existence of a customary law community and its traditional rights; The recognized existence is the existence of customary law community units; The customary law community is indeed alive (still alive); In a certain environment (lebensraum); Such acknowledgment and respect are given without neglecting the appropriate criteria for humanity in accordance with the level of development of the nation's existence; This recognition and respect must not reduce the meaning of Indonesia as a country in the form of the Unitary State of the Republic of Indonesia (NKRI).[12]

In everyday life, there is often a relationship between someone and someone else. This relationship is called civil relations. Various motives that underlie a person to enter into civil relations with another person, be it to meet the needs of each party through the concept of buying and selling, accounts payable, leasing, grants, inheritance, and so on. Legal actions where a person promises to another person or two people promise each other to carry out something, while the agreement itself is a source of engagement besides the law.[13]

The law governing civil relations in general in the national legal system is regulated in Article 1338 Burgerlijk Wetboek (BW) or known as the Civil Code, hereinafter referred to as BW. Agreements in BW are regulated in article 1338 BW as follows: "All agreements made legally apply as laws for those who make them. An agreement cannot be withdrawn other than by agreement of both parties or for reasons stated by law to be sufficient for this. An agreement must be implemented in good faith."

Article 1338 BW explains the binding power of the agreement for those who make it. The agreement is binding for the parties just as the law is binding for the parties. An agreement can be qualified according to the legal requirements or not of

an agreement as stipulated in Article 1320 BW: (1). Agree those who bind themselves; (2). Their ability to make a deal; (3). A certain cause (thing); and (4). A cause that is lawful (causa that is permissible). The first and second conditions are referred to as subjective conditions because these two conditions must be met by legal subjects. While the third condition and fourth condition are referred to as objective conditions because these two conditions must be fulfilled by the object being made into the agreement.[14] Non-fulfillment of subjective conditions will result in an agreement being cancelled. The point is that the agreement becomes void if someone requests cancellation while the objective conditions are not fulfilled will result in the agreement being null and void. This means that from the beginning it was considered that an agreement had never been born and there had never been an agreement.

The birth of an agreement that gives rise to legal consequences between the two parties can be seen in the opinions and theories that exist as follows: [15]

a. Statement Theory;

Teaching that agreement occurs when the will of the party receiving the offer states that he accepts the offer, for example when dropping a ballpoint pen to express acceptance. The weakness is very theoretical because it is assumed that the agreement will occur automatically;

b. Delivery Theory:

Teaches that agreement occurs when the stated will is sent by the party receiving the offer. The downside is how can it be known? It could be that even though it has been sent, the party that offers it is not known.

c. Knowledge Theory:

Teaches that the party offering should already know that his offer is accepted (even though the acceptance has not been received and is not directly known). The weakness is how can he know the contents of the receipt if he has not received it.

d. Acceptance Theory:

Teaching agreement occurs when the offering party receives an answer directly from the opposing party.

Agreements made even verbally (not in writing) are still valid as an agreement, so in this case if there is something that can cause a loss to one of the parties making the agreement (contract) there must be a legal umbrella to handle and cover so that justice can be realized in it for the parties who enter into a civil agreement. In the life of the Batak Customary Law Community, they also recognize the existence of Padan as a binding agreement between the parties who make it. Even in Padan, the validity of an agreement is binding on future generations. More precisely, Padan is a pledge agreed upon by people who promise based on mutual agreement. Padan in the Toba Batak Customary Law Community is based on the Sian Dos Ni Roha agreement and by the generosity of both parties who respect each other. Thus, Padan is not in the understanding of the agreement as is the agreement in the National Legal System (BW). This is because a violation of Padan is not the same as a violation in a national civil agreement (default). Because Padan is stronger than the law itself, because

violations against Pa dan are not only borne by the offender of the Padan but also up to the next generation of descendants.

The next example known by the Toba Batak Customary Law Community for making a Padan (Pajongjong Padan/Oath) is "Dengke ni Sabulan tu Tonggina tu Tabona, Manang Ise Ose Padan tu Puripurna Tumagona". This phrase literally means: "The fish from Sabulan is tasty and delicious, whoever breaks the oath will perish and vanish (die)". Philosophically, this string of sentences has a magical-religious smell, the consequence of violating a contract is getting karma- destruction and death.[16] Entering into an agreement with the Toba Batak Customary Law Community, as explained by the Head of the Center for Documentation and Study of Batak Culture at HKBP Nommensen University, Manguji Nababan, aims to create social order and order. In the past, Padan's contractual ties were very real in upholding commitments which were reflected in the harmony between words and deeds. Because of that, the value of keeping promises has actually transformed in the Toba Batak Customary Law Society. This is because there is a link between culture and the consequences of violations through punishment or fairly harsh sanctions. Padan is private and secret, spoken without witnesses but sometimes by presenting witnesses, both human witnesses and agreements witnessed by nature. If Padan is said at night, the witness is the moon, which is known as "Padan Marbulan", and if it is said during the day, the witness is the sun, which is referred to as "Padan Mawari". This proves that the ancestors of the Toba Batak Customary Law Community understood that the regularity of life that will bring prosperity to humans is determined by the harmony of the macro-cosmos with the micro-cosmos of the relationship between nature and humans.

Harmonization of Padan with the National Legal System is something that needs to be accommodated. In this regard, there has been harmonization between the Customary Law System and the National Legal System in the Supreme Court Jurisprudence Number 179K/Sip/1961 on October 23, 1961 where the Supreme Court in its preamble stated that "Based on humanity and general justice, it is also based on the nature of equality of rights between women and men, in several decisions took a stand and considered it as a living law throughout Indonesia that the daughters and sons of a person who inherit are jointly entitled to inheritance in the sense that the son's share is equal to the share of the daughter and that the daughter is the heir jointly with the son and gets the same share as the son".

The application of Padan as a binding agreement in the Toba Batak Customary Law Community is also a component in the legal system as expressed by Lawrence Friedman who stated that law is a system consisting of 3 (three) components, namely: First; Legal Substance, namely the norms and rules used institutionally along with the behavior patterns of actors in the legal system; Second, Legal Structure, namely institutions whose job is to enforce the law such as the Police and the Judiciary; and Third, Legal Culture, namely the customary legal culture, views, ways of acting and thinking in the general public which can influence social forces according to a certain direction of development.[17] Thus, the harmonization between Padan and the national legal system is still in one corridor in forming an orderly, safe and prosperous society.

The state can give authority to local governments (pemda) to issue regulations regarding the existence and all matters relating to existing Padan in the context of protecting customary rights.

4.2 Role Model of The Padan Implementation Mechanism and its Relation to the National Legal System

Regarding the question of when this Padan was created and why this Padan was created, each Padan has its own history. Some are due to disputes/disputes over property and land over authority (especially in ancient times there were very frequent wars between huta and huta, clan and clan to fight for power). Padan is also used in the exchange of children, for example, in the clan A, all the children are only boys, while the clan B, all the children are only girls. An example is the Padan between Nainggolan and Siregar. Padan can also be created because of a disgrace. Some Padan even apply legal provisions as in the following advice: "Padan ni hahana, Padan ni anggina, Jala Padan ni anggina, padan ni hahana" which means "Pledge of brother is also pledge of sister and pledge of sister is also pledge of brother"

Padan can be compared to law, but the binding power of Padan is stronger than the binding power of law. The existence of Padan proves that the Toba Batak Indigenous People themselves have a stronger entity than the law itself. As the law in the National Legal System, if there is a violation of the rule of law that has been made by the State, sanctions will be imposed on anyone who violates it. The sanctions imposed by the State can be in the form of imprisonment or confinement or imposition of material sanctions (fine, forced money, etc.). Meanwhile, in Padan which binds all the Toba Batak Customary Law Community units, so for anyone who violates the Padan that has been made, it is tantamount to nullifying the existence of the Toba Batak Customary Law Community itself. Even in an even more noble matter, violating Padan is tantamount to negating the existence of the violator as a whole human being.

The occurrence of disputes or conflicts based on various things. However, most of the disputes or conflicts that occur in a relationship between one individual and another stem from a feeling of dissatisfaction with the norms or rules that apply. Whereas in the case of disputes or conflicts, settlement mechanisms can be used using customary law, one of which is Padan. This is because the local wisdom contained therein will be more easily understood and understood by those in conflict. This is because local wisdom has regulated the systems and procedures for preventing and resolving social conflicts, the process of implementing mediation in preventing social conflicts, the strategies carried out by traditional leaders in preventing social conflicts, the justice system in resolving social conflicts, and the types of sanctions imposed on perpetrators who trigger social conflict.[18]

Wise and prudent conflict prevention is not something that just happens, but is a social project that must be fostered and directed so that social harmony, tolerance and mutual understanding and respect can be created between one community and another. This is possible because the concept of customary law has been taught to all members of indigenous peoples since childhood, so that the materials or content in

these rules have been understood and understood by the community. Padan as a sacred agreement that can be implemented into everyday life, even for everything that has been made in Padan, it will be very impossible not to be obeyed by the Toba Batak Customary Law Community who uphold their customary law. Thus Padan becomes a solution in any disputes that may arise from the relationship between the Toba Batak people. Philosophically, if something has been made the Padan, it cannot be denied at any time as long as the Toba Batak Customary Law Community entity is established and institutionalized. However, along the way, several cases were found of people violating the Padan that had been promised by their ancestors. In the future, it is certain that there will be sanctions both given by customary institutions and sanctions given by the Al mighty. The customary sanction is a mechanism for trying to restore the magical balance that so far has existed in a Padan. The customary sanction is an attempt to neutralize the shocks that occur as a result of violations against Padan. Customary sanctions function as a stabilizer to restore balance between the outer and inner worlds for the Toba Batak Customary Law Community. In the opinion of Emile Durkheim who said that social reactions in the form of punishment or sanctions really need to be carried out, because it has the intention of holding maintenance so that the traditions of traditional beliefs become unshakable so that community stability can be realized. In traditional Indonesian cosmic thinking, what is important is prioritizing the creation of a balance between the world of birth and the world of the unseen, between the whole human group and an individual person, between community members and friends.[19]

The customary sanction that can be given as a result of a clear violation of the Padan is that the violator will be ostracized, even banished from an entity of the Toba Batak Customary Law Community. For example, if a man with the Silaban surname marries a woman with the Silaban surname, then that person will usually be expelled from his clan entity or in other words that person can no longer use the Silaban surname, so that his kinship in association with the entity is lost.

5. Conclusion

Customary law still applies and lives in the community. The Toba Batak Customary Law Community has a binding pledge between parties known as Padan. The validity of this Padan is not the same as an agreement or engagement in the national legal system. Padan is more essentially binding in every member of the Toba Batak Customary Law Community who highly upholds their customs. The harmonization of the arrangements regarding Padan into the national legal system is more towards State recognition of indigenous peoples as a single living and developing entity. The implementation of Padan in the Toba Batak Customary Law Community has taken place in the days of our ancestors and is still being preserved today. Padan that has been made is the basis for living and socializing for all descendants of the Batak tribe until now. This Padan can also be subject to customary sanctions ranging from exile until some one who has violated the Padan is no longer recognized as a Batak tribe. In the future it is necessary to accommodate customary law norms into the national legal system. With regard to Padan, a kind of guidance can be made by the State in terms of

its existence so that these regulations are more sustainable. The state is obliged to protect indigenous peoples' entities as well as the rules that apply to these indigenous peoples. It is necessary to establish the level of the Toba Batak Indigenous People themselves regarding the forum or institution for enforcing their customary rules. This becomes an executive power that can provide an understanding that every Batak person must comply with it. Given the current globalization has gradually eroded the customs that exist in Indonesia.

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