

Dzuriyat Kesultanan Banten v Sultan Banten: Suatu Sengketa Hukum Antar Tata Hukum tentang Pewarisan Tahta Kesultanan Banten = Dzuriyat Kesultanan Banten v Sultan Banten: Conflict of Laws Issues in the Succession of the Bantenese Throne

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Abstrak

Pluralisme hukum di Indonesia, di mana hukum perdata Barat, Islam, dan Adat berlaku secara bersamaan, tidak dapat dipisahkan dari pembahasan dan perkembangan Hukum Antar Tata Hukum Intern (HATAH Intern), suatu cabang ilmu hukum yang terkadang dicap sebagai hukum yang kuno karena asal-usul kolonialnya. Perkembangan HATAH Intern dapat kita lihat dalam kasus *Sultan Banten*, di mana majelis hakim pada ketiga tingkat peradilan agama mempertanyakan apakah hukum Islam atau hukum Adat yang berlaku terhadap suatu klaim historis atas tahta Kesultanan Banten. Dengan mengkonsiderasi berbagai faktor, termasuk sosial, kultural, politik, dan sejarah untuk menentukan hukum yang berlaku, pertimbangan-pertimbangan ketiga majelis hakim dalam *Sultan Banten* menunjukkan bahwa HATAH Intern masih relevan. Tulisan ini akan menganalisis *Sultan Banten* dari beberapa aspek, mengeksplorasi klaim pewarisan tahta berdasarkan hukum adat, pluralisme yurisdiksi, pluralisme hukum, beserta pengaturan-pengaturan tidak tertulis yang terdapat dalam HATAH Intern mengenai pewarisan. Selain menggunakan sumber hukum konvensional seperti peraturan perundang-undangan, putusan-putusan pengadilan, dan literatur hukum, tulisan ini juga membahas beberapa karya studi sejarah dan antropologi yang relevan agar mencapai pendekatan yang lebih holistik dalam menganalisis *Sultan Banten*.

Legal pluralism in Indonesia, where European, Islamic, and Adat private law stand side-by-side as three distinct systems of private law, has set continual discussion and development of Indonesian internal conflict of laws, a field of law thought by some to be defunct due to its colonial roots. The continuous development of internal conflict of laws could be witnessed in *Sultan Banten*, where judges at all three levels of the religious courts throw their heads back and forth to answer the question of whether Islamic or Adat law applies over a man's historic claim over the throne of the Sultanate of Banten. Having considered a plethora of factors including social, cultural, political, and historical to determine which law is applied, the considerations brought by the judges in *Sultan Banten* shows that Indonesian internal conflict of laws is alive and well. This work will analyse *Sultan Banten* through several aspects, exploring the claimant's historic claims based on an adat rule of succession, Indonesian jurisdictional pluralism, legal pluralism, as well as the many rules ascribed by the Indonesian conflict of laws, specifically those pertaining to inheritance and the doctrine of characterisation. Aside from conventional sources of law such as statutes, treatises, and case law, this work will also take into account historical and anthropological studies relevant to the substance of the case in order to achieve a more holistic approach in analysing *Sultan Banten*.