

Adat and Land Law in a Plural System: A Study of Forestry Regulations and Indonesian 'Legal Development'

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Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=20528887&lokasi=lokal>

Abstrak

This thesis asks what is wrong with legal development in Indonesia? Adat law, forestry law and land law are used as primary vehicle of analysis, because adat law is the oldest form of law existing in Indonesia and is still widely followed especially among the rural population, still the majority of people in Indonesia. Statutes regarding forestry and land are the formal laws which have the most profound effect on adat law communities. The thesis finds, first, that formal law enforcement in Indonesia is disappointing and this has led to a popular mistrust of the formal legal system. Second, it finds most of the population are still unfamiliar with formal legal norms. This is the result of a clash between, on the one hand, the conceptual notions relied upon by Indonesian government in establishing the law (based on assumption that 'the people will follow the law'), and, on the other, those norms central to adat law ('the law will follow people's customs'). This fundamental conflict in grundnorm inevitably leads to disputes in connection with land, particularly in forest areas. These are made worse because rights are not properly enforced and dispute settlement procedures are ineffective. As a result the Indonesian land and forestry law regime is dysfunctional. This has adverse impacts on rural populations, especially adat law communities, in the sense that their land-related rights are weak, ignored or ineffective. The thesis recommends that the formal law-making process should be reformed to better adopt a key element of adat law-making process, that is, public acceptance, through improved consultation and public education. More specifically in relation to land and forestry law, the thesis recommends that formal law expressly acknowledge and protect adat communities and their adat land rights, especially, communal interests in land (ulayat rights). This should be done by new provisions that would: have binding force; allow formal registration of such interests; exclude adat forestland from the definition of state forestland; and acknowledge adat communities as legal persons.