

Reconceptualising the Adat Law in Indonesian Legal System

Muhamad Syamsudin^a, ^aLecturer of Faculty of Law Universitas Islam Indonesia, address: Jl.Tamansiswa No. 158 Yogyakarta, Email: m.syamsudin@uii.ac.id

This article aims to analyse the development of Adat law in Indonesia. Adat law is a component of the legal system alongside Western law and Islamic law. However, when analysed from the development of study on the concept, it is far behind Western Law and Islamic Law. This condition indicates that Adat law will remain left behind and alienated by the scholars in the future. The results of this study show that the concept of Adat law in Indonesia still refers to the Western law concept of Adat law, thus resulting in the western concept of Adat law. Even though this study has successfully presented the modern concept of Adat law systematically, the result of this study has not been able to reveal and touch the core aspect of Adat law, which is the sense that embodies the cultural values of Indonesia. Thus, there is a need for a new orientation on the concept of Adat law within the framework of National Law Studies of Indonesia.

Key words: *Reconceptualization of Adat Law, Indonesian Legal System.*

Introduction

Sociologically, three legal systems have been implemented in Indonesia, Western Law (Dutch), Islamic Law, and *Adat* Law. Among those three, the study development of *Adat* Law is underdeveloped compared to Western Law and Islamic Law. This condition indicates that *Adat* Law will continue to be underdeveloped and most likely alienated by scholars in the future. The reason for this problem is most likely to be disorientation of the concept of *Adat* Law. From a different perspective, it is also the result of lack of materials available as well as the unity of the study's theme. This article seeks to respond to the situation, and to provide direction and a thoughtful contribution, as well as further develop the studies and teachings of *Adat* law, which are still present in the faculties of law in Indonesia, especially those who have a correlation to the concept of *Adat* Law.



The need for a judicial review on the concept of *Adat* Law is necessary towards understanding the expert on *Adat* law in Indonesia. This is because the concept of *Adat* law that is studied by Bachelor of Law students in Indonesia still refers to the western understanding of *Adat* Law that began in 1894. This understanding was created by a Dutch eastern literature expert Snouck Hurgonje. This study was further developed by a professor from the University of Leiden in the Netherland named C Van Vollenhoven who has a Bachelor of Literature and Law. Most recently the study on the *Adat* law undertaken by ter Harr which provides a positive reflection of *Adat* law (Koesnoe, 1992: 35).

Historically ideas about *Adat* law came from tradition experts, or the men of letters, and the philosophers of Indonesia or the local *Adat* law expert. However, with effort from western scientists who studied it from the basis of western social sciences, the *Adat* law which was pioneered by the tradition expert or poets and the philosophers, become irrelevant. As time progressed, law scholars and law studies enthusiasts in Indonesia disregarded the traditional expert's view. In the 1920s, C. van Vollenhoven warned that the knowledge of the *Adat* Law is born from the people in the nation themselves, and that is to be expected (Vollenhoven, 1928: 173-174). Furthermore, he stated that modern law studies on *Adat* law has its foundations in Indonesian law, which has existed and developed before the western people arrived (Vollenhoven, 1993:791).

The concept of *Adat* Law has been developed and presented by the West using social approaches. This has not fulfilled a sense of law for Indonesian citizens because it has not been based and sourced from the cultural values of Indonesia. This situation has resulted in the rise of groups of Indonesian scholars and law bachelors attempting to integrate the two studies in accordance with an Indonesian perspective of life. Which would result in the concept of *Adat* Law with ideological and national patterns taken into account. This idea is a manifestation of professor M. Koesnoe from the Faculty of Law in the Universitas Airlangga Surabaya.

For analytical purposes, this article proposes the problems as follows: (1) what is the concept of *Adat* Law based on Local *Adat*? (2) What is the concept of *Adat* Law based on Western Law Studies? (3) What is the concept of *Adat* Law based on the National Law Studies of Indonesia?

The Concept of *Adat* Law According to the Local *Adat* Law Studies

In general, the law experts agree that the term *Adat* came from the Arabic word *aadah* or *awaaid* (tradition) if plural (Alkalali, 1987: 4). However, there are *Adat* Law experts that doubt the word's Arabic origin, and refer to the Sanskrit word *adhi*.

The effort of defining this concept of *Adat* was started by the native *Adat* experts and Muslim *Adat* experts. The effort undertaken by the native *Adat* experts to explain the concept of *Adat* includes the relation to other terms such as *resam*, thus forming a compound word *Adat-resam*. The experts have not determined specifically the origin of the word *resam*, whether it is a native language that is included in the Malay language, or came from a foreign term. *Resam* has a common translation as good behaviour; which is what people always upheld and practiced, and thus there is an obligation for the people to continue to do this. The term *Adat-resam* was determined long ago and people still differentiate between these two terms. The difference is that *resam* is merely good behaviour, while *Adat* is something that is more constricting. The term *Adat-resam* is a development and can mean a *resam* that is constricting towards the society to embrace (Abidin 1976: 56).

The difference between the terms *Adat* and *resam* is visible in the proverb in Aceh that shows them their rightful place, which is *reusam bak laksamana, Adat bak peunteu meureuh, hukoum bak syah kuala*. In its development, the meaning of the term *Adat-resam* slowly fades and weakens. The term *Adat-resam* in practice is also not well known. In general, people only use the term *Adat* to refer to good behaviour in society. Even in practice, people still use the term *Adat* related to the behaviour as *Adat-kebiasaan* instead of *Adat-resam*. (Koesnoe, 1992: 38).

In some ethnic groups, there are several categories of *Adat*, with each one of them having a certain meaning from those concepts. For example, below are the categories of *Adat* found in the people of Minangkabau, Bugis, and Bali.

Within the Minangkabau community, there are two categories of main *Adat*, first is the *Adat sabana Adat*; and the second one is *Adat pusaka usang* (Koesnoe, 1992: 42-44). *Adat sabana Adat* is an *Adat* that is not a fabrication of the human mind. This type of *Adat* exists in every event of the universe and the source of ideas for the human to bring order to humanity. As an example, the saying found in the *gurindam* in Minangkabau below:

Nan setitek jadikan lawiek (turns a drop to an ocean)

Nan sekepal jadikan gunung (turns a fistful to a mountain)

Alam terkambang jadikan guru (to make experience as your teacher)

Adat Pusaka is an *Adat* that is the fabrication of the human mind since the land before time. This *Adat* is a result of drawing from natural events, which in the teachings of *Adat* in Minangkabau is formulated as *alam terkambang jadikan guru*. *Adat Pusaka* is also often referred to as "*Adat Pusaka Usang*" as a result of it being the ancestors' thought, cultivation, and invention, which is then passed onto the generations of people of today. By any means, *Adat Pusaka* abide the change and that is formulated in the saying of Minangkabau: *sekali*

aye gadang, sekali tepian beranja, sekali raja baganti, sekali Adat baubah. Therefore, the *Adat* experts in Minangkabau differentiate between *Adat Pustaka* in the categories below:

- 1) *Adat istiAdat*, the main principle of *Adat*;
- 2) *Adat nan terAdat*, a more concrete *Adat* that people prefer more in its application;
- 3) *Adat nan diAdatkan*, *Adat* in the form of decision by the society, through discussion as a filling for *Adat pusaka*.

According to Hadikusuma (1990: 10-11) and from the description above; it is clear that there are 4 (four) stages of *Adat* in the Minangkabau society which are:

- 1) *Adat sabana Adat* (the truest form of *Adat*), a type of *Adat* that persist through the heat and rain. This *Adat* is created by Allah, as seen in the saying “*ikan Adatnya berada di air, air Adatnya membasahi, pisau Adatnya melukai*”. Thus, this *Adat* is the natural behaviour as a result of it being the permanent will of Allah, as it should be. This shows that the teaching of this *Adat* has a correlation to the laws of Allah (*sunnatullah*) spread throughout the universe. This *Adat* is something that should be in accordance with the flow and moral, with religion, with humanity, with the time and space. It is the law of the universe, something that is constant wherever and whenever (universal), like the *Adat* of water turning things wet, the fire burns, etc.
- 2) *Adat Istiadat*, Which is *Adat* as a guide made by the ancestors. In Minangkabau, people believe that it comes from Ninik Katamanggungan and Ninik Parpatih nan Sabatang in Balai Balairung Periang Padang Panjang. As in the saying *negeri berpenghulu, suku berbuah perut, kampung bertua, rumah bertungganai, diasak layu dibubut mati*. Thus, *Adat istiadat* is the guide of behaviours that has been traditional to embrace since the ancestors’ time until the generations today. Despite it being traditional, in general, this *Adat* is not easy to change.
- 3) *Adat nan diAdatkan*, which is *Adat* as a guideline formed by the whole discussion of headmen, elderly, and philosophers in the *Adat* council based on the flow and morals. This provision may change according to time and place. Therefore, each nation has its view on flow and morals. It is common to say in a proverb: *lain ladang lain belalang, lain lubuk lain ikannya, lain orang lain kepala, lain pula hatinya*.
- 4) *Adat nan terAdat*, which is an *Adat* on how to behave based on mimicking each other in society. Because of this behavior becoming a habit, it is considered unjust to be left out. For example, in the Minangkabau society, it has been a tradition that if a relative has died or to welcome a distinguished guest, they come wearing a black outfit.

In the *Adat* Bugis community, *Adat* is known as *ade’* or *ada’*. There are five categories of *Adat*, as described in *Lontara’ Sukkukna’ Wajo*, which are: (1) *ade’ pura ouro*; (2) *ade’*

assituruseng; (3) *ade' maraja ri arungngo*; (4) *ade' abiasang ri wantue*; dan (5) *ade' taro anang* (Abidin, 1983: 125-131). Those five categories can be explained as follows:

- 1) *Ade' pura ouro* is a fixed *Adat*, which is not allowed to be changed. This is because it has been agreed upon by the king and the people to be practiced and held, and it has been presented to the *Dewata Yang Esa*. If the requirement is changed or broken, the nation will fall apart for they have violated justice and disavow to the truth;
- 2) *Ade' assituruseng* is an *Adat* that is set based on the agreement by the king and the people, which can change if the practice turns out flawed or unable to fulfill the community's needs. The change can be done through community discussion;
- 3) *Ade' maraja ri arungngo* is an *Adat* that is applicable to the king and nobles, which comes from *ade' assituruseng*, that has been deemed flawless thus practiced by king and nobles. For example, if the king wants to hold a ceremony or build a house, the king has to butcher a buffalo and gather the people to help him and provide food and drinks to those people who help and gather;
- 4) *Ade' abiasang ri wantue* is an *Adat* that is applicable to all people based on the common agreement that has been deemed flawless and has to be continuously practiced;
- 5) *Ade' taro anang* is an *Adat* born from the thought of the elderly that means: *Illuka taro Datu telluka taro Ade'*, *Illuka taro Sde telluka taro Anang*, *Illuka taro Anang telluka taro ta ma ega* (The invalidation of the king's statement does not invalidate the statement of *Adat* Wielder Council, the invalidation of *Adat* Wielder Council's statement does not invalidate the statement of the *Adat* Elders, the invalidation of *Adat* Elders' statement does not invalidate the statement of the common people). Thus the decision of the people, is above all decision.

In the Balinese community, there are three known categories of *Adat* which are, *gama*, *sima* and *pararem* (Koesnoe, 1978: 14-18). Among those three, the most well-known is *Adat sima*, which is an *Adat* that has a limited application on a certain village or a group of villages. Those three categories of *Adat* are as below:

- 1) *Gama* is a category of *Adat* whose rank is the highest, it is abstract and common. Every member of Balinese society upholds this *Adat* and put their efforts into practicing it. *Adat* in this category is qualified as something constitutive. This *Adat* is the foundation of teachings and basic aspects of living in a community, thus it is very hard to change. As something constitutive, the practice of teachings and aspects of life is done through interpretation thus providing the answer to problems found in the Balinese community in all situations and conditions;
- 2) *Sima* is the second ranking category of *Adat* after *gama*. This *Adat* gives form and guides on practicing *gama* in every condition and situation. Thus *sima* may change according to place, time, and condition. This *Adat* is the constitutive operating procedure of *gama*.

With *sima* those in *gama* can be practiced. Thus, this category of *Adat* qualifies as institutive.

- 3) *Pararem* is the category of *Adat* on the third or the lowest rank. This *Adat* gave directions on the practice of daily life in a concrete situation. This *Adat* is flexible and able to quickly change in order to adapt to the time, place, and situation constraint. Its flexible nature allows *Adat sima* to morph in its concentricity. Thus *Adat* in this third rank is the relative one, which is an *Adat* in the form of real or concrete practice in daily life within a community.

The explanation on three categories of *Adat* in Bali above are as follows. In the Balinese community, one acts in accordance with their view on humanity, life, and the world. This is part of the teachings and aspects on how a person can achieve sustainability both in this world and in the afterlife. Its name is *gama*. From *gama* comes the foundation which contains guides on how to act which is *sima* and is different from one place to the other. The many differences and the complications from actual problems from daily life influence the practice of the guides from *sima*. This demands a concrete answer, which in reality is shown by decisions taken towards concrete problems, which in this form is called *pararem*. Because *Adat pararem* has a relation to reality and practice, in its practice, specific conditions and situations are overlooked thus making this *Adat* truly factual and operational (*desa, kala, and patra*).

Meanwhile, the effort undertaken by a Muslim *Adat* expert (fiqh expert) is done by Jalaludin from Trusan, Aceh in 1630 M. His writings titled *Safinatul Hukaam Fi Tahlisil Khasam* explain that the meaning of *Adat* is as follows:

Adat Law is a continuation of the past and future, on existence and non-existence, that is constantly visible. There are no such depth of vision, as the fire burns those who touch it, the edge hurts those who strike it, and the food satiates those who eat it, and the light shines on those who are dark because the gathering will grow within it.

According to Koesnoe, Jalaludin's statement on *Adat* in 1630 M, shows that *Adat law* is not the same as realistic behavior. It is indeed visible in the description that *Adat law* acts as a 'continuation' only in what has become a habit. But the continuation is not the habit itself. *Adat law* in the perspective of Jamaludin exists in a different plane outside its empirical reality which is inside the mind.

According to the works by the experts on *Adat*, both authentic and Muslim, the term *Adat* is more known rather than *Adat Law*. In order to know what *Adat* is, it is visible in proverbs, metaphors, *seloka*, and other terms used in relation to *Adat*. However, those materials are hard to be found and proved whether it truly came from their mind.

In general, the concept of *Adat*, means to act as the order in the society by holding onto a common goal in order to achieve daily community association. At this stage, the construction of the theoretical concept of *Adat* Law by local *Adat* experts is visible.

Muslim *Adat* experts also tried to connect the concept of *Adat* with *shari'a* (*fiqh*). The connection is reflected in poetry, old sayings, as well as proverbs. In the proverb from Aceh for example, the relation of *Adat* and *shari'a* can be described as resembling *dhat* and *sifat*. In Minangkabau for example, there is an old saying that *syara' mengata Adat memakai, syara' disunggi Adat dipangku*.

The Concept of *Adat* Law According to the Western Law Studies

During the end of the 19th century, the study on *Adat* Law entered a new stage, which is completely different from the previous one. The focus on defining *Adat* Law is an entirely new thing. This research was pioneered by Snouck Hurgonje, and is continued by Vollenhoven (1928). In actuality, the focus on defining *Adat* Law was a reaction towards people who wanted to ignore and even change the law of Indonesian people, which is *Adat* Law with Western Law (Dutch). *Adat* Law was considered more of a set of fantasy rules, with most of them not inherently clear and frowned upon by the ruler (Soedarso, 1998: 2).

In constructing their views on *Adat* Law, the expertise is rooted in western scientific thinking. Empirical material is used with a social science methodology. The perspective of social science is further used to determine the concept of *Adat* Law. During the time Snouck Hurgonje was in Aceh, it already existed and was implemented widely by the common people, or by the scholars in Aceh (Sudiyat, 1981: 42).

Snouck Hurgonje is famous for his research in Aceh and Gayo, as well as his knowledge of Islam in terms of both theory and practice. His knowledge is underpinned because he previously studying Islam in Mekkah. His research differentiates between *Adat* Law and religious law (Islam), the common law and noble law, practiced law and written law. Hurgonje criticised the *reception in complex* theory which is defended by Van Den Berg. Van Den Berg notes that the thought of the primary source of *Adat* Law is *Fiqh* Law (*shari'a*) (Soedarso, 1998:3).

The term *Adat* Law by Hurgonje (1990) has the translation of *Adatrecht*, which is an introduction and beginning of the recognition of *Adat* Law as the law of native Indonesian people by the society of Western Law studies. *Adatrecht* has the meaning of *Adat*, which has legal consequences. These legal consequences became the central measure of Hurgonje's definition. From this definition, habits and behaviour in the Aceh community that has legal

consequences are qualified as law. This concept later acquires the name *Adat* Law, which is *Adat* that has legal consequences.

Hurgonje's (1981) idea has attracted western law scholars to further study, especially on the *Adat* that has legal consequences. One bachelor of law and eastern literature rose, which is C. van Vollenhoven. In giving an explanation to the western studies, Vollenhoven (1925: 3) stated that: 'whoever enters the Indonesian law system as a jurist, shall face an entirely different law system compared to what he saw in the Netherland. In Indonesian society, unwritten law called *Adat* Law (*Adatrecht*) is *Adat* (unwritten) that has consequences, thus qualified as a law'.

The views of Vollenhoven, commenced the next step of thinking and the execution of *Adat* Law from the perspective of modern science. Van Vollenhoven has his roots in reality with strong evidence. His theory has continued finding conclusions in many fields of law as well as several questions both basic and detailed.

Vollenhoven (1993) research on the *Adat* law titled *Het Adatrech van Nederlandsch-Indie* consists of three volumes, collected from 1919-1931. The first volume is an orientation study on the world of *Adat* Law in Indonesia, which shows the basic problems and introductions to *Adat* Law. The second volume is an introduction to *Adat* Law studies, which identifies the problems in each place. The third volume talks about the development of *Adat* Law where it identifies required studies on *Adat* Law.

Vollenhoven's (1981) standpoint that the students, among which is ter Haar, later continue. The basics of law studies as developed by ter Harr still correlates what Van Vollenhoven has stated, but what he has provided is further development and improvement directed towards the study of positive law studies.

According to ter Haar, (1978) to know about *Adat* Law, is found only in the decisions of the law enforcers on the problems solved both within and outside the dispute. This involves knowing about, the structural constraints embraced by the community, and the life values within the community.

For ter Haar, (1978) studying the scientific *Adat* Law, the enforcers' decisions are crucial. According to ter Haar, this is a question of the past; whether or not *Adat* law are habits that have legal consequences, simply *Adat* with a penalty, or something that exists on a normative plane, with certain emphasis.

The decision as a foundation to know the *Adat* law, as stated by ter Haar (1978) brings consequence to the effort of understanding *Adat* Law. The consequence is that in order to



initiate the *Adat* Law, several concrete statements by the law enforcer need to be collected. This process is promoted to reach a general conclusion contained in statements that enable understanding of the meaning of *Adat* law, regarding legal issues implied in those decisions. It seems that ter Haar has his influence from the teachings of western law studies regarding 'fixed jurisprudence' to understand what is in a substantive line of *Adat* law.

Using this theory by ter Haar, the study of *Adat* Law has gained substance as a positive law study on *Adat*. Holding onto the discipline of western studies on customs that are thriving in the society, ter Haar concludes that *Adat* Law is a literature study on the *Adat* law enforcer.

Because of ter Harr's effort, *Adat* Law has been conceptualised through positive law studies development, that uses the western positive law studies model. Ter Harr is the *steembouwer van net Adatrech*" or the developer of the *Adatrecht* system, meaning that ter Haar has built *afsluitsel van het verleden en een bouwsteen voor de toekomst* or 'closure for the past and the building blocks for the future'. As stated by Djokosutomo in his lecturers in 1053-1954 (Koesnoe, 1992: 55).

In 1924, Sekolah Tinggi Ilmu Hukum built in Jakarta. *Adat* Law, which has gained basic theories constructed by van Vollenhoven is a subject. This law study is under the provision of ter Haar as the professor. Through ter Haar, the educated scholars in Indonesia witnessed a new stage of thinking regarding the concept of *Adat* Law that gave birth to the study of *Adat* law in the framework of national law studies. This was begun by placing *Adat* Law as a national law ideology in 1928.

The Concept of *Adat* Law Based on the National Law Studies of Indonesia

The result of the study on *Adat* Law according to *Adat* experts and western studies, gave birth to a new approach to the concept of *Adat* Law that points towards the concept of *Adat* Law in the framework of national Law studies of Indonesia. The background approach for this study is the movement of Indonesian independence at that time. Thus the first impression that shows is the concept of law that is very ideological. It means that the concept of *Adat* Law has its formation in the framework of national ideology, which is a belief that *Adat* Law is truly a law from the people of Indonesia.

The ideological view on *Adat* Law was initiated in the year 1926 at the first Youth Congress of Indonesia. During the First Congress, decisions could not be formulated, and this continues with the Second Congress on October 28th, 1928. In that congress, the statements of congress regarding its belief on the idea of unity in Indonesia were emphasised. The statements were as follows: 'to present the belief of unity of Indonesia is strengthened by addressing the

foundation of unity which are: will, history, language, *Adat* law, education, and leadership' (Koesnoe, 1992).

Koesno (1992) explains the function and content of this statement and role of *Adat* law in the concept of ideology. This is *Adat* Law acts as one of the bases of unity in Indonesia. In that statement, *Adat* Law has its recognition as a law that is the common legal system from the people and unites the Indonesian people as one nation. This is in accordance with a flourishing point of view that time in the political studies circle, which is that a nation is only a nation if it has its legal system, which is different from the other nation. As the binder for Indonesian nation, *Adat* Law is not visible on its different statements, which varies from one place to the other.

The birth of foundation and belief in Indonesian law is related to the education that the congressmen has had for a period of time in Sekiloh Tinggi Hukum, which was built in 1924 in Jakarta. The subject was *Adat* Law. One of the people who formulate the statement is Mohammad Yamin. Vollenhoven's (1981)

In June-August 1945, a more definitive ideological formulation of *Adat* Law that included National *Adat* Law Philosophy, National *Adat* Theory, and Foundation Law occurred. Those three formulations could be monitored in the trial report of BPUPKI under the leadership of Dr. Radjiman Widyodiningrat Koesnoe, 1992). Soekarno stated that the philosophy of Indonesia has its base in national *Adat* philosophy called 'Pancasila'. In short, it is a country of mutual association Haar, (1978). M. Yamin also stated this philosophy contains the same aspects as what have been stated by Soekarno.

In discussing the theory of nationalism, Soepomo (*Adat* law expert) argued that the nation and its people are one. Based on this statement, the sovereignty of the people, according to *Adat* law theory, gave birth to integralism, which is a country in which the nation and people function as a unit and the sovereignty belongs to the people.

The concept of *Adat* Law portrayed prior to July 1945 is the maturation of an ideology based on the perspective of *Adat* Law as stated in 1928. All of those are still efforts of trying to formulate more clearly on the body of ideology, which they believe and embrace as well as to fight for the political reality in Indonesia. The ideological formation maturity of *Adat* Law at that time has also initiated a prototype of juridical formula in the form of a nation's history known as Piagam Jakarta. In Piagam Jakarta, the formulation relates to philosophical law, which the Indonesian people embrace regarding the national theory and its purpose.

Adat Law in its ideological conception as mentioned in the statement of Youth Congress in 1928 until 1945 has, for the first time, a relation to philosophical law and the basic law of



national pride in Indonesia. *Adat* law can be considered as a legal value of Indonesian culture, a law which organises the legal system of Indonesia as a whole, as a legal guideline that became the foundation of unity in Indonesia.

From the ideological conception on *Adat* Law in its further development, which precisely took place on August 17th, 1945, *Adat* Law is truly a national concept in the form of an independent Indonesia according to *Adat* Law (Rahardjo, 1977). The difference between *Adat* Law since August 17th, 1945 with the one before, is that previously this was not the national perspective of Indonesia. Instead this was a perspective by several people and leaders who were members of PPKI, and had been formed by the government during the Japanese colonisation. Since August 17th, 1945, even though there are many similar people, the people have had different positions and quality as the shaper of UUD 1945 as an independent country.

In such position and quality, the view that the *Adat* Law embraces, is the official perspective of the founding fathers of Indonesia, and not only a mere spirit or ideology of a group or a person. Their opinion became the government's institutional idea, and the view and foundation of the country on what is positive law in Indonesia.

Since then, the view on Hukum *Adat* has the same consideration as the view on national law. The National Law on *Adat* Law aside from being a theory, also has the enforcing power as Positive Law in terms of aspects related to the basics of legal system in Indonesia.

In its national conception on *Adat* Law, it provides explanation on these sections: Philosophy of National *Adat* Law, Theory of State Law according to *Adat* that the nation upholds and the Basics of National Legal System according to the philosophy and theory (Koesnoe, 1992).

The View on National *Adat* Law has its reflection on the three documents, which are contained in the preamble of The Constitution, the Content of Constitution, and its Description. The first one is about the law and its shape, the second one is about the system, and the third is about its basics (Koesnoe, 1992). Koesnoe (1992) further proposes several notes on what *Adat* Law is in the national philosophical framework, which is the required law criteria to determine whether or not *Adat* is considered a law. Here it needs to be emphasised that the common definition of law as used in the thinking of *Adat* Law is unusable. *Adat* Law cannot use penalty as its main criterion. In addition, it has to favour personal interest.

Adat Law as stated by several circles both from the west and the *Adat* society is something that manages and brings order to the community. The practice of bringing order in daily life if compared with the practice of western law, is contrary to how it works. Because the law always begins from the preference of law in community, the definition of *Adat* law, needs to



take into account the community's preference. Preference for the law is a preference that reflects the cultural value of Indonesian people (Abdurrahman, 1978).

The next thing that requires addressing is the birth of *Adat* law has no documentation in written law. In this case, the construction of *Adat* law in the national framework has shown gradual development. Koesnoe explains those developments as follows: first, the basic concept of *Adat* law in the national framework that has a relation to the National Spirit. That aspect has its place as the statement of national cultural values of Indonesia, which has a relation to law aspects. Second, *Adat* law has always correlated with all people of Indonesia, especially the indigenous groups. In this case, *Adat* Law is not a fabrication of one specific elite group of Indonesia, for example, the juridical society, thus its source is not the written law but rather the statement of preference on the law by the Indonesian people within Indonesian culture. Third, the preference for *Adat* law is because it has the universal trait of humanity. This means that *Adat* Law is visible as a normative principle, because it has an abstract nature and is not concrete and empirical in form. Fourth, *Adat* law is visible as a manifestation of real behaviour in the society, in terms of one-time-only behaviour (*einmalig*) or in habits, as well as in the form of statements that have the possibility of being written. Fifth, in giving the definition on *Adat* law, there is also a need of a double definition. This includes the formal definition and material definition or substantial definition. The development of *Adat* Law study, in this case, has a relation to the preamble of the constitution and its description. From this point, *Adat* Law is visible as its statement in the description of the constitution as unwritten law, which includes basic laws as well as its practice and details. This view produces consequences, and maintains that *Adat* Law can be manifested in written law, as long as it is still a preference of custom by the people (Koesnoe, 1992).

In its relation with the constitution, this view will see the constitution as a written manifestation of the people's law that is unwritten. This view does not deviate from the thriving view, by the description of the constitution, it is possible that 'spirit' manifests into the written law.

In the description of the constitution, it contains an emphasised explanation that the "spirit" that embodies its implementer determines every written rule. What the spirit means in the constitutional system is the preference of law by the people (*Adat* law). The main aspects has are described in the preamble and explanation of the constitution, that has its roots in the value of the nation's culture. From written law in the form of constitution, the source, which many believed to be basic custom or "spirit", is none other than *Adat* Law.



Conclusion

The concept of *Adat* Law known by most of the law scholars in Indonesia still refers to the Western Law Studies approach on *Adat* Law, thus the concept shown is the western concept. Even though this study is systematically and contemporary regarding the concept of *Adat* Law, it has not been able to reveal and touch the spiritual aspects of *Adat* Law, which is the preference that embodies the cultural value of Indonesia. Thus, it takes a new orientation to build the concept of *Adat* Law in the framework of National Law Studies of Indonesia. This concept was initiated by the youths of Indonesia in 1928. With the formation of Sumpah Pemuda in 1928, it can be implied that since that year, the pioneers of the national movement in Indonesia have had the concept of ideological *Adat* Law; that is *Adat* law as the base of unity and dreams of the law of independent Indonesia.

The concept of *Adat* Law according to Western Law Studies, which follows the categorisation of *Adat* Law in a different zone, (there are 19 zones of *Adat* law). However, the concept of *Adat* Law referred by the pioneers of the national movement in Indonesia emphasises more on the uniformity of *Adat* Law as a nation-wide law of Indonesia, which gave birth to Pancasila and the constitution in its development, as the foundation and constitution of independent Indonesia. This concept essentially is an escalation of the values and principles of *Adat* Law that is local, to be the framework of Indonesian National Law. The concept of *Adat* Law in the framework of Indonesian National Law is still at the stage of forming, and requires further work.



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