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Adat Court in the Context of Supply Chain Legal Pluralism Management in Indonesia

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***Abstract*— The Indonesian supply chain legal system in which there are three recognized laws, namely the customary supply chain legal system, the Islamic supply chain legal system and Western law, the three laws are mutually sustainable with each other to achieve the same goal, but in the course of the three laws follow the rules contained in the law. Scholars call this supply chain legal Plurarism. The issue of supply chain legal pluralism is the resolution of customary disputes through adat courts, which formally there is no supply chain legal juridical formal in Indonesia. Researchers will try to examine the position of Adat Court in the context of supply chain legal pluralism in Indonesia and know the practice of Adat courts in Indonesia.Supply chain legal pluralism launches criticism of what John Griffiths called the ideology of supply chain legal centralism. Supply chain legal centralism interprets the law as "state law" which applies uniformly to all people who are in the country's jurisdiction. Thus, there is only one law and its judicial institution that is enforced in a country, namely state law and state justice. As is well known, the main problems of state justice are the achievement of the principle of fast, simple and light, convoluted dispute resolution, accumulation of cases and the significant cost of the parties makes the role of adat justice very necessary. The types of problem solving offered by the formal supply chain legal system also sometimes get different views and are considered inadequate and lack the sense of justice of the people who still hold their own supply chain legal traditions. In practice, customary courts in some regions still function well, especially for areas that are very thick with customary law and their communities are still subject to customary law. As in Minangkabau, the traditional court is known as the Density of Nagari Adat, in Aceh known as the traditional court of Sarak Opat, the local government also supports the existence of a customary court by establishing regional regulations which limit the disputes which must be tried in an adat court or court country.**

***Keywords*—** *Supply chain legal pluralism, Adat Court, Customary Law*

1. Introduction

When In more assertive, the conception of plural society has been stated by Geertzas society divided into subs system which is stand themselves and each of them bonds into primodial bond is bond which comes from congenital factor. The bond is defined as a feeling born from "something is considered to exist" in the social life [1]. The bond include cognagition: their family, relative, or etnic, racial similarity or type of nation common language or certain dialect, regionalism, sect and even certain habits. [1]

The Indonesian supply chain legal system there are three recognized laws, namely the customary supply chain legal system, the Islamic supply chain legal system and Western law, the three laws are mutually sustainable with each other to achieve the same goal, but in the course of the three laws follow the rules contained in the law [2]. Scholars call it supply chain legal plurarism, according to John Griffits, supply chain legal pluralism is the existence of more than one orderly law in force in a social area[2]. An Indian scientist named Pooja Parmar[3], has a similar opinion about this pluralism:

> *"*Most simply, supply chain legal pluralism is the recognition of the simultaneous coexistence of multiple normative worlds, with the state being only one among other creators of supply chain legal meaning. These worlds of right and wrong, of lawful and unlawful, of valid and void are constantly create[d] and maintain[ed] by those who inhabit them through common understandings, rituals, language, myths, strong interpersonal obligations and commitments."

Tylor gives restrictions that culture is complex whole included knowledge, belief, art, moral, law and custom and other abilities and

[1] Geertz, Clifford 1981 Abangan Santri dan Priyayi dalam Masyarakat Jawa, Pusaka Jaya, p. 105-157.

[2] Van Vollenhoven, sebagaimana dikutip dalam buku "*Hukum Adat dan Modernisasi Hukum*" (Terbitan FH UII, 1998; p. 169)

[3] Pooja Parmar, *Indigenity and Supply chain legal Pluralism in India, (Cambridge Studies In Law And Society), 32 Avenue of the Americas*, New York, First Publish 2015, p. 6.

habits learned by man as the members of society[4]. The reality shows that Indonesian society is multi-etnic society with its population around 226 million by the end of the new order, it is multicultural society. There were 300 etnics and diffent languages in this case called the largest archipelago in the world group. It was roughly estimated that there was 82,2 % people consist of 14 big ethnic group. It is also means that traditional rural, coast and etnhical society lived together with metropolitan society.[5]

The level of supply chain legal pluralism differs from one region to another [3]. The view of supply chain legal pluralism can explain how diverse laws jointly regulate a case, it cannot be denied that other supply chain legal systems outside state law that live in society are recognized and defended by the community, so through the view of supply chain legal pluralism, it can be observed how all systems these laws operate together in everyday life[6]. Laws that do not originate in the state play an important role in daily life. At the institutional level there are various types of dispute resolution institutions in addition to the State Court [4]. Disputes adjusted by institutions whose authority is based on adat, religion or other social institutions[7].

Every society throughout the world has a supply chain legal system in the territory of his country [5]. There is no nation that does not have a national supply chain legal system. National law of the nation is a reflection of the culture of the nation concerned, because law is the mind of the nation and grows from the nation's supply chain legal awareness, the law will appear from the reflection of the nation's culture[8]. Including Indonesia, which in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, affirms itself as a state of law as well as having a supply chain legal system. Interestingly, As explained above, Indonesia adheres to three supply chain legal systems at once which live and develop in the life of society and the state administration namely the civil supply chain legal system, customary supply chain legal system, and Islamic supply chain legal system [6]. The civil supply chain legal system which has the character of "written law"[9], developed in Indonesia during the Dutch colonial period and has survived to the present time affecting the current supply chain legal products [7]. Even though the colonial period ended 72 years ago, the impact can still be felt to this day considering that some Dutch colonial civil law products still exist [8]. Indonesia has a characteristic that is customary law as original law that grows and develops from the habits of the people which greatly influences the process of law enforcement in Indonesia, and customary law is very diverse in Indonesia.

Customary law as explained earlier is a reflection of the nation's personality is the embodiment of the nation's soul from century to century[10]. Blackstone also defined common law in relation to the ‘‘unwritten law’’ of custom, saying that common law included general customs, particular customs, and certain particular laws. But Blackstone goes on to say that only general customs are ‘‘the common law, properly so called.’’[11]Similarly, James Carter argues that Austin’s definition of law is actually a definition of legislation: ‘‘It properly defines legislation – that is, law consciously enacted by men.’’[12] Carter himself strongly contrasts law with legislation and asserts that all law is custom. Friedrich Hayek sharply distinguishes the spontaneous order of markets from the deliberately designed order of organizations; he then argues that common law and custom are examples of spontaneous order while legislation is an example of designed order[13]

The customs that are owned by the regions vary, although the basis and nature are one, namely Indonesia. The Indonesian people are therefore said to be Bhinneka Tunggal Ika, which means different, but still one. This custom always develops and always follows the development of society and is closely related to the traditions of the people [9]. Custom is thus the sediment

[4] Tylor, E.B. 1871, Primitive Culture, Researches into The Development of Mythology Philosophy, Religion, Languages Art and Custom, London,Jhon Murray

[5] Wasino, Indonesia,From Pluralism To Multicultural,Paramitha Journal, July 2013, p.152.

[6] Sulistyowati Irianto, *Sejarah dan Perkembangan Pemikiran Pluralisme Hukum dan Konsekuensi Metodologisnya.* Kumpulan Karya Ilmiah Dalam: *Pluralisme Hukum, Sebuah Pendekatan Interdisiplin,* (Jakarta: Huma, 2005), p.59

[7] *Ibid,* p. 53.

[8] Anto Sumarman, *Hukum Adat Perspektif Sekarang dan Mendatang*, (Yogyakarta: Adi Cita Karya Nusa, 2003), p. 1.

[9] Written law is a law that has been written and stated in the statutory regulations of the State both codified or not codified, for example: Criminal law is written in the Criminal Code, Civil law written in the Criminal Code

[10]Surojo Wignjodipuro, *Pengantar dan Azas-Azas Hukum Adat*, Gunung Agung, Jakarta, 1982, p. 1.

[11] Blackstone’s Commentaries, vol. 1, Introduction section 3.

[12] Carter, Law: Its Origin, Growth, and Function (New York: G. P. Putnam, 1907), p.182.

[13] Hayek, Law, Legislation, and Liberty, vol. 1 (Chicago: University of Chicago Press, 1973), p. 72–94.

(contemplation) of decency in the community, the truth of which has received general recognition in the community [10]. Customs in fact already existed in ancient times, namely the pre-entry of Hinduism into Indonesia.

Development in the field of law, statements often arise, whether in its formation will use customary law materials which are the laws themselves? or does it use foreign law? There are some scholars who doubt about the ability of customary law to be the basis or basis of national law [11]. This opinion is based on the argument that customary law is an ancient law, and is often called primitive law, which is only suitable for use in underdeveloped societies. This opinion raises the consequence that customary law is no longer suitable when used as law for modern civilization society [12].

Customary dispute settlement can be done either conventionally through the court (litigation) or through alternative dispute resolution mechanisms outside the court (non litigation). Procedures for settling civil disputes through the court are based on the Het *Herzienne Indonesische Reglement* (HIR) which applies to the jurisdiction of Java and Madura, and *Rechts Buitengewesten* (RBg) for jurisdictions outside Java and Madura, as positive procedural civil law. The procedural law governing court proceedings is binding and compelling (must not be distorted) for the parties that apply it, in this case both for the parties seeking justice and for law enforcement, in this case the judge and supply chain legal counsel of the parties who litigate [13].

Non-litigation customary dispute resolution institutions are usually referred to as adat court which is a peace justice institution between members of customary law communities in customary law communities[14], the authors use the term adat adat even though it is not regulated in Law No.48 of 2009 concerning Power Justice (hereinafter referred to as the Law on Judicial Power) because the term customary justice has been known for a long time before its regulation by the Dutch Colonial and was regulated in the supply chain legal system in Indonesia until 1951.[15]

One theory of the formation of customary justice is implicit in the decision theory (*beslissingenleer)* of Ter Haar. In essence, this theory states that except for the less important part of customary law, namely village regulations and king's decisions, customary law is the overall rules determined in decisions that have authority (*gezaghebbend*) which are realized in the implementation without whats happening what else[16]. Ter Haar's statement actually does not define customary law but rather emphasizes that the applicable customary law originates from the decisions of the ruling officials in a community (such as customary leaders, judges, rallies, traditional land trustees, religious officials and village officials) both inside and outside the dispute in an indigenous community [14]. Civil judges, including civil service officials and customary leaders must start from their function in resolving disputes and adjudicating according to the law [15].

So in Indigenous communities in some areas, settlement of cases in community life is still largely resolved through adat dispute resolution institutions and adat Courts. The aim is to create peace and harmony in people's lives, not to determine defeat and victory, for example in the people of Aceh, solving many cases in community life through traditional institutions [16]. The aim is to create peace and harmony in people's lives, not to determine defeat and victory. Historical facts show that colonialism in the past caused European law to dominate the supply chain legal system in many former colonies including Indonesia. Formally this institution is not recognized [17]. A sense of justice that is not fulfilled by the formal supply chain legal system, for example judges in deciding cases (adat cases) are obliged to explore and understand the values of law and justice that live in the community (applicable customary law) are not fulfilled [18].

The Emergency Law No. 1 of 1951 gradually abolished the existence of self-governing courts and traditional courts that had previously been recognized in the colonial supply chain legal system. The limitation or elimination of the existence of private court and customary courts is getting stronger with the birth of Law No. 19 of 1964 concerning the Basic Provisions of Judicial Power. But its existence is very important to overcome the problems of adat and the accumulation of cases in the district court, therefore researchers want to examine the position of customary justice in the context of pluralism in Indonesia and its practice in Indonesia.

Based on the description above, in this study the researchers limited two problems, namely:

1. What is the position of Adat Court in the context of supply chain legal pluralism in Indonesia?

[14] Sudikno Mertokusumo, *Mengenal Hukum*, (Yogyakarta: Liberti, 1999), p.3. (Fatur Rahman, Eksistensi Peradilan Adat Dalam Peraturan Perundang-undangan di Indonesia, Jurnal Hukum Samudra Keadilan Volume 13 No.2 Juli-Desember 2016)

[15] Efa Laela Fakhriah, *Eksistensi Hakim Perdamaian Desa Dalam Penyelesaian Sengketa di Pengadilan Negeri*, Jurnal Sosiohumaniora Vol.18 No.2 Juli 2016, p. 92.

[16]Otje Salman Soemadiningrat, Rekonseptuaisasi Hukum Adat Kontemporer, Alumni, 2015, p. 120.

2. What is the general pattern of adat dispute resolution mechanisms in several customary courts in Indonesia?

2. Literature Review or Previous Studies

If examined from its history, the term 'customary justice' has agreed to its agreement before Indonesia's independence, higher through legislation during the Dutch East Indies government. Currently there are five types of justice, namely *the Gubernnement-rechtspraak*, *Indigenous* Courts (*Inheemsche Rechtspraak*), *Swapraja* Courts (*Zelfbestuurrechtspraak*), Religious Courts (*Godsdienstige Rechtspraak*) and Supply chain legal Courts Existence of the colonial court since the Dutch have existed. this is regulated in article 130 *Indische Staatsregeling*, a basic regulation in the Dutch government that determines in addition to the trials by the Dutch government, and is allowed to apply in the regional courts which are directly under the Dutch East Indies government and the Swapraja court. Definition of Adat Courts The term "justice" (*rechtspraak*) basically means "discussion of law and justice" conducted by the court system (consultative) to settle cases outside the court and / or before the court. When talking about customary law, it is called "Customary Law Courts" or "Customary Courts" only[17].

Traditional justice can be carried out individually by members of the community, by family or neighbors, Chairperson of Relatives or Chief Adat (Adat Judge), Chairperson of the Village (Judge of the Village) or by administrators of the organization's association. Likewise customary justice can be carried out by official Judicial Bodies, namely the State Courts such as by the General Courts (District Courts, High Courts and or Supreme Courts), Religious Courts, State Administrative Courts or Military Courts as regulated in the Law on Courts in Environments General Judiciary (Law No.13 of 1965) and Law on the Supreme Court (Law No.14 of 1985)

Resolving cases of dispute peacefully is a traditional Indonesian supply chain legal culture. What is meant by this effort to settle a peaceful case is that in the days of the Dutch East Indies it was called 'Adat Justice' (*Dorpsjustitie*), as regulated in Article 3a RO (*Rechterlijke Organisatie*) mentioned that: (1) All cases according to customary law meant the authority of judges from small supply chain legal community (Village Judges) continue to be tried by these Judges. (2) Provisions in the paragraph upfront do not reduce the right of litigation to submit a case at any time to the Judges referred to in the provisions of article 1, 2 and 3 (higher judges) (3) Judges referred to in paragraph (1) adjudicate cases according to customary law, they may not pass sentence. Furthermore, it was stressed that besides the state courts there were no longer any trials that were conducted by non-state court bodies. Settlement of cases outside the court on the basis of peace or through referees (arbitrage) is still permissible [19].

The old supply chain legal basis for the implementation of customary justice before the State Court is the old Article 75 RR 46 which states that if the Governor General does not treat European legislation for the Bumiputera group does not declare voluntarily submitting to European civil law, then for the Bumiputera group, Judges must do customary (civil) law, if adat law does not conflict with the basic principles of justice that are commonly used [20]. But if the rules of customary law contradict the foundations of justice or if the case concerned is not customary customary law rules, then it must use the general principles of civil law and European commercial law as a guide[18]. If in examining a case the Judge considers that the customary law used is contrary to the principles of justice and propriety that are generally recognized or according to the term Raffles as long as it does not contradict the "universal and acknowledged principles of natural justice" then based on Article 75 paragraph (3) jo paragraph (6) of the old RR, then the customary law can be set aside. As said by Prof. Dr. Mr. R. Soepomo[19], that:

> "Judges, according to their functions, are even obliged to consider whether the existing customary law rules that are familiar with the matter being confronted are still in harmony or are in conflict with the new social reality (sociale *werkelijkheid*) related to the growth of new situations in society."

Bushar Muhammad further explained that the causes of indigenous peoples prefer to resolve adat offenses through adat justice are: A supply chain legal action or an offense if resolved through adat courts, violations that cause disruption to the balance and peace of the community can be resolved immediately[20]. Settlement through adat justice is not the same as settlement through positive law because settlement through adat

[17] Hilman Hadikusuma,. *Pengantar Ilmu Hukum Adat Indonesia, Mandar Maju, Bandung, , 2014,* p. 237.

[18] *Ibid*, Hilman Hadikusuma, p. 238.

[19] Tolib setiady, *Intisari Hukum Adat Indonesia Dalam Kajian Kepustakaan*, Alfabeta, Bandung , 2013, p. 369.

[20] Bushar Muhammad, , *Asas-Asas Hukum Adat Suatu Pengantar*, Pradnya Paramita, Jakarta. 1976, p. 55.

regarding criminal justice always weighs social and cultural values as well as a sense of justice and propriety that live in indigenous peoples, whereas settlement through positive law regarding criminal punishment of perpetrators generally only imposes a type only basic crime.

I Made Widnyana[21] stated about the settlement carried out through adat that: Criminalization by criminal judges on offense (adat) is felt to be less reflective of social and cultural values as well as a sense of justice and propriety that lives in the indigenous peoples concerned, because in general they only impose criminal types principal only. This is seen as not being able to restore the disturbed balance of the cosmos, because to restore it can only be done through fulfilling customary obligations [21].

The position of traditional justice in the national civil justice system has a long history. Distinction in the public or private sphere arises when the verdict of an adat court is in contact with that of the national justice system. Until now, the interaction between the two has not been ideal, both at the level of norms and practice [22]. The unification policy of the judiciary has become one of the causes of the customary justice which is slowly being abandoned. The Judicial Power Law opens up the possibility of peaceful settlement of civil cases as a spirit manifested in the civil justice system [23]. Therefore, it needs to be assessed from the supply chain legal-normative side regarding the existence of adat courts and empirically through the implementation of these rules in the Indonesian civil justice system[22]

In the article Adat Judge Asks for State Recognition[23], Deputy Chairman of the North Jakarta District Court Lilik Mulyadi (who was in office at the time) explained that adat institutions are recognized in the Indonesian justice system. His confession can be seen from judges who have explored adat values when making decisions. Furthermore, Lilik said that the resolution model is that if a case is finished in an adat institution, then the case is considered finished. If it doesn't turn out well, then proceed to the national court [24].

Other laws that accommodate implicit recognition of customary law are listed in Law No. 4 of 2014 concerning Villages, which regulates Customary Village Regulations. Adat Village Regulations are adjusted to customary law and customs norms that apply in Adat Village as long as they do not conflict with the provisions of the legislation. Provisions regarding Indigenous Village Regulations only apply to traditional villages. However, please note, the provisions on Villages also apply to Customary Villages as long as they are not regulated in any special provisions regarding Customary Villages. The regulation and administration of the Adat Village Government shall be carried out in accordance with the original rights and customary law in force in the surviving Adat Village and in accordance with the development of the community and not in conflict with the principle of the administration of the Adat Village Government in the principles of the Unitary State of the Republic of Indonesia.

The Adat Village Government carries out the functions of the Adat Village Consultation and Deliberation in accordance with the original arrangement of the Adat Village or is formed in accordance with the initiative of the Adat Village community. Article 103 of Law No. 6 of 2014 concerning Villages (hereinafter referred to as the Village Law) regulates the authority of Indigenous Villages based on original rights which include:

a. governance arrangements and implementation based on original arrangement;
b. regulation and management of customary or customary territories;
c. preservation of the cultural and social values of the Adat village;
d. settlement of customary disputes based on customary law in force in the Customary Village in an area that is in harmony with the principles of human rights by prioritizing settlement by deliberation;
e. the holding of a tribal peace court hearing in accordance with the provisions of the legislation;
f. maintenance of peace and order of the Customary Village community based on customary law in force in the Customary Village;

3. Research Materials and Method

The method of approach used in this research is normative juridical is descriptive analytical specifications, with the technique of Collecting Study Data Collection by collecting data in the form of legislation, literature studies and other documents relating to shared assets in order to obtain theories and information in the form of formal law.

[21] I Made Widnyana, *The Living Law As Found In Bali*, Fikahati Aneska, 2012, p. 5.

[22] Tody Sasmitha Jiwa Utama, Sandra Dini Febri Aristya, *KAJIAN TENTANG RELEVANSI PERADILAN ADAT TERHADAP SISTEM PERADILAN PERDATA INDONESIA,* https://jurnal.ugm.ac.id/jmh/article/view/15910/10519

[23] https://www.hukumonline.com/berita/baca/lt5257f9f8c5981/hakim-adat-minta-pengakuan-dari-negara, 04/04/2019

The analytical method used in this study is qualitative juridical, namely by reviewing data based on supply chain legal aspects without using diagrams or statistics and then given descriptively in regular and logical sentences. Then the primary data is used as secondary data support to draw conclusions based on applicable laws and regulations[24].

4. Result and Discussion

Position of Customary Courts in the Context of Supply chain legal Pluralism in Indonesia

Supply chain legal pluralism as explained is defined as the diversity of laws, not only state and customary law but also includes customary and religious law. The idea of supply chain legal pluralism as a concept began to bloom in the 1970s along with the science of supply chain legal anthropology. In theory, supply chain legal pluralism can be divided into two types. The first type of pluralism is commonly called "relative" (vanderlinen), "weak" pluralism (Jhon Griffiths) or "state law" pluralism (Woodman) [25], referring to a supply chain legal construction in which dominant rule of law gives space, either implicitly or explicitly , for other types of law such as customary law and religious law. State law validates and recognizes the existence of other laws and includes them in state law. If the existence of supply chain legal pluralism depends on the recognition of state law, this condition is called "weak supply chain legal pluralism"[26]. Meanwhile, the second type called "strong" or descriptive pluralism (Jhon Griffits) or in Woodman's term is called "in" pluralism, supply chain legal pluralism refers to a situation in which two or more supply chain legal systems coexist with each of their basic legitimacy and validity. A condition can be said to be strong supply chain legal pluralism, if each of the diverse supply chain legal systems is autonomous and its existence does not depend on state law[27].

Emil Ola Kleden writes about the weak and strong supply chain legal pluralism in Indonesia as follows:[28]

> "the new era, where the state is very afraid, represents a state of weak pluralism, where state law is above all. While in the reformation era in 1998, which was marked by the devolution of power or the actual transfer of power by the Central Government (Jakarta) to a lower level of government, represented a strong pluralism in which customary law and sharia law began to take place in the public sphere. "

At this time the new supply chain legal pluralism approach considers the old approach cannot be used anymore. In this redefinition it is shown that laws from various levels and various worlds move into infinite territory and there is strong interaction, contestation and mutual adoption between international, national and local law. Transnational law is created[29].Pluralism in a new perspective can be formulated as follows:

> "..its mainly undestood as the coexistence of state, international and transnational law anda analysis remain limites to the question of wether such transnational connection influence state law at the national level[30]

Article 36 A of the 1945 Indonesian Constitution confirms that the symbol of the State is Garuda Pancasila with the motto Unity in Diversity. This has an important meaning, as Jimly Asshidiqie said, so far it has never been regulated, so the mention of Garuda Pancasila as a state symbol is only based on unwritten conventions[31]. According to Wertheim, Unity in Diversity means "unity and difference" is the official motto of the Republic of Indonesia. This expression expresses a strong desire, not

[24] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, PT. Radja Grafindo Persada, Jakarta: 1995, p. 19.

[25] Gordon R Woodman, *Mungkinkah Membuat Peta Hukum, dalam Tim Huma, Pluralisme Hukum, sebuah Pendekatan Interdisplin*, Jakarta, Ford Foundation-Huma, 2005 p. 152.

[26] Jhon Griffits, *Memahami Pluralisme Sebuah Deskripsi Konseptual, dalam Tim Huma Pluralisme Hukum Pendekatan Interdisplin*, Jakarta, Ford Foundation-Huma, 2005 p.74-75.

[27] Kurnia Warman, *Kedudukan Hukum Adat Dalam Realitas Pembangunan Hukum Agraria*

[28] Emil Ola Kleden, *Masyarakat Adat dan Pyoyek Pembangunan di Merauke, Jakarta, Epistema Institue*, 2012, p. 140-141.

[29] Sulistyowati Irianto, *Pluralisme Hukum Dalam Perspektif Global, Jurnal Law, Society and Development,* Vol. 1 No.3 Agustus 2007, p. 3.

[30] Benda-Beckman F, K Benda-Beckmann and Anne Griffiths, *Mobile People Mobile Law. Expanding Supply chain legal relations in Contracting World USA*: Ashgate 2005, p. 6.

[31] Jimly Asshiddiqie, *Konsolidasi Naskah UUD NKRI 1945*, Yasrif Watampone, Jakarta, 2003,p.80

only among political leaders but also among various layers of the population, to achieve unity, even though there is a heterogeneous character in the newly formed society that will require the same cultural characteristics that underlie herterogenity. [32]

The view of supply chain legal pluralism can explain how diverse laws together regulate a case [25]. It is undeniable that other supply chain legal systems outside state law that live in society are recognized and defended by the community, so through the view of supply chain legal pluralism it can be observed how all these supply chain legal systems operate together in daily life[33]. Laws that do not originate in the state play an important role in daily life [26]. At the institutional level there are various types of dispute resolution institutions in addition to the State Court. Disputes adjusted by institutions whose authority is based on adat, religion or other social institutions. [34]

Indonesia as a democratic state of law, in general has three forms or fields of law that live in society, customary law, religious law and positive law. Hundreds of years before the Dutch entered to colonize and bring their supply chain legal order model to Indonesia, this nation already had their own supply chain legal order, that law was called adat law [27]. Customary law is a collection of social rules that are made and maintained in which this law is one of the incarnations of the Indonesian soul from century to century which is owned by different regions, ethnic groups of Indonesia. The Indonesian Nation is called Bhineka (different among the tribes of the nation), Tunggal Ika (but still one too, namely its basic and Indonesian nature), the conception of customary law is assumed to have existed, lived and grew among Indonesian people[35].

The State of Indonesia as a state of law implements several supply chain legal systems such as civil law, common law, Islamic law and customary law. This reality shows the existence of supply chain legal pluralism in the application of the national supply chain legal system [28]. The practice of plural law has indeed been in effect since independence. Customary law is enforced in Indonesia because customary law is original law that was born from culture and lives in the midst of Indonesian society. Van Vollenhoven in his book *Het Adatrecht van Nederlandsch,* customary law is the overall rules of behavior that apply to the sons of the earth and foreigners who have coercion and sanctions, and are not codified. Meanwhile, Islamic law was implemented in Indonesia since the entry of Islam in the archipelago [29]. The majority of Indonesia's population adheres to Islam, so Islamic law or Islamic law dominates the law of the Indonesian population, especially in terms of marriage law, inheritance law and family law[36]

Basically, supply chain legal pluralism launches criticism of what John Griffiths called the ideology of supply chain legal centralism. Supply chain legal centralism interprets the law as "state law" which applies uniformly to all people who are in the country's jurisdiction[37].. Thus, there is only one law and its judicial institution that is enforced in a country, namely state law and state justice. As is well known, the main problems of state justice are the achievement of the principle of fast, simple and light, convoluted dispute resolution, accumulation of cases and the significant cost of the parties makes the role of adat justice very necessary [30]. The types of problem solving offered by the formal supply chain legal system also sometimes get different views and are considered inadequate and lack the sense of justice of the people who still hold their own supply chain legal traditions;

In most Indonesians there is a tendency to resolve disputes in a peaceful manner. This method is recognized as effective in resolving disputes or disputes. As well as being able to eliminate feelings of revenge[38], as well as

[32] Wartheim WF, Masyarakat Indonesia dalam Transisi Studi Perubahan Sosial, Tiara Wacana, Jakartam 1999, p. 6.

[33] Sulistyowati Irianto, *Sejarah dan Perkembangan Pemikiran Pluralisme Hukum dan Konsekuensi Metodologisnya.* Kumpulan Karya Ilmiah Dalam: *Pluralisme Hukum, Sebuah Pendekatan Interdisiplin,* (Jakarta: Huma, 2005), p. 59.

[34] *Ibid,* p. 53.

[35] Riskon As Shiddiqiue, http://syariah.uin-malang.ac.id/index.php/komunitas/blog-fakultas/entry/antara-hukum-adat-hukum-agama-dan-hukum-positif (31/12/2019)

[36] Teguh Prasetyo, 2013, Hukum dan Sistem Hukum Berdasarkan Pancasila, Yogyakarta: Media Perkasa, p. 75.

[37] Anonim, Laporan Khusus :Hukum Adat di Persimpangan Jalan, Buetin Komisi Yudisial, Vol.IV, Vol.1 agustus 2009, p. 32.

[38] *Ahmadi Hasan, Penyelesaian Sengketa Melalui Upaya (Non Ligitasi) Menurut Peraturan*

formal law causes a lack of adaptability in absorbing the needs of a sense of justice of the local community [31]. role in creating order security and peace. the existence of adat justice has become increasingly important amidst the state's situation which has not yet been able to fully provide case settlement services through formal channels to remote villages. In addition, the capacity of formal justice is also heavy due to a very serious case buildup [32].

So customary justice is very necessary because the essence of Adat Court is based on peace within the customary law community. The supply chain legal spirit of this principle is actually in accordance with the characteristics of customary law which tends to prioritize the balance (*evenwicht* or harmonie) of cosmic life. The relevance of this statement can be seen from Soepomo's opinion as quoted by Bushar Muhammad[39]. The essence of customary justice is in line with Pancasila, as the concept of unity or harmony, especially the third principle, Indonesian Unity [33].

Mechanisms for the Settlement of Customary Disputes through Customary Courts in Indonesia

In practice, customary justice is often clashed with formal law, where historical facts show that colonialism in the past caused European law to dominate the supply chain legal system in many former colonial countries including Indonesia. However, even though this institution is formally not recognized, in reality, this mechanism becomes another alternative that is often pursued by justice seekers, especially in societies that are still based on traditional patterns of life with norms that become the order [34]. A sense of justice that is not fulfilled by the formal supply chain legal system, can sometimes be fulfilled by traditional justice mechanisms which in the framework of the applicable supply chain legal system are informal justice[40].

Traditional Nagari Padang Density

The practice mechanisms for resolving civil disputes in traditional justice in Kerapatan Nagari Padang are as follows:

Minangkabau is a traditional environment in the province of West Sumatra and its surroundings. The understanding of Minangkabau is not exactly the meaning of West Sumatra. This is because the word Minangkabau contains more socio-cultural meanings, while the word West Sumatra contains more geographical administrative meanings [35]. Thus it can be understood that, Minangkabau is located in the administrative geography of West Sumatra and also extends out of the West Sumatra region, namely the western part of Jambi's geographical area. Both of these are included in the Minangkabau socio-cultural environment because the socio-cultural community is generally the same as the people in West Sumatra[41].

Nagari adat density (KAN) is an institution of density from ninik mamak that has been inherited from generation to generation as long as adat functions to preserve adat and resolve disputes between sako and pusako. [42] The density of the nagari adat (KAN) is the highest institution in the Minangkabau nagari adat, proposed[43].

Article 1 point (15) of the Regional Regulation of the Province of West Sumatra Number 16 of 2008 concerning Ulayat Land and Utilization states:

"The Nagari Indigenous Density (KAN), or another similar name, is the highest representative institution of nagari consultation and customary nagari existing and passed down through the generations as long as adat among the people in West Sumatra, then in this regional regulation abbreviated KAN".

Nagari adat density (KAN), is the highest council in Nagari, various unresolved issues at the lower level are decided in Nagari adat density (KAN) [44]. Ratification of the density of

Perundang-Undangan, Jurnal AL-BANJARI Vol. 5, No. 9, Januari – Juni 2007

[39] Mohammad Jamin, Eksistensi Peradilan (desa) Adat, berdasarkan dengan Undang-undang, UNS press, Surakarta, 2016, p. 2.

[40] Eva Achjani Zulfa, *EKSISTENSI PERADILAN ADAT DALAM SISTEM HUKUM PIDANA INDONESIA*, http://bphn.go.id/data/documents/lampiran_makalah_dr._eva_achjani,_sh.,mh.pdf, p.1.

[41] Helmy Panuh, *Op.Cit*, p. 15.

[42] Sofjan Thalib, *Studi Pelaksanaan Pemerintahan Nagari Dan Efektifitasnya Dalam Pelaksannan Pemerintah Di Sumatera Barat*, Batlibang, Padang, 2002, p. 36.

[43] Idrus Hakimi, *Pegangan Penghulu, Bundo Kandung Dan Pidatoalua Pasambahan Adat* di *Minangkabau*, Remaja Karya, Bandung, 1988, p. 59.

[44] Interview : Bapak HS. Datuak Marah Bangso, Wali Nagari Kinali Kabupaten Pesaman Barat, pada tgl 17/09/2019

the nagari adat (KAN) regarding a problem is the highest endorsement, in this case certainly related to adat issues.

Article 1 Number 13 Bylaw No. 2/2007 Concerning the Principals of the *Nagari* Government explained that the *Nagari* Indigenous Density Institution (KAN) is a *mamak ninik* density institution that has existed and has been passed down through generations as long as adat functions to preserve the adat preservation and to resolve disputes between *sako* and *pusako* in *nagari*. This explains that the *Nagari* Indigenous Density (KAN) is believed to solve the sako and pusako affairs that occur in the community. However, in reality in the dispute resolution process, *Nagari* Adat Density (KAN) did not immediately accept the dispute to be resolved in *Nagari* Adat Density (KAN), but was first asked to be resolved in deliberations at the family, clan and input level. As the traditional proverb says *karuah in pajaniah, kusiuk is salasaikan*, but if one of the parties to the dispute is not or feels less satisfied with the decision received, then rises to a higher level namely the Density of Nagari Adat (KAN) to help resolve the dispute[45].

Traditionally the resolution of disputes that occur in indigenous communities is resolved by the term maxim minang *bajanjang naiak batanggo* down. Bajanjang naiak means that every dispute needs to be resolved through the lower paliang level process first. As from the house level, then it is settled or deliberated at the Nagari Adat Density institution or called KAN. *Batanggo* is down, meaning that the results of deliberations or the results of dispute resolution by ninik mamak or the person who is in the land is expected to be obeyed by the disputing party.

As explained earlier, the settlement of disputes on high heirlooms must be settled from the lowest level first [36]. Starting from the level of the house, village, tribe and finally the nagari level. In this case the *mamak* houses of both parties were first settled [37]. If it is not resolved, then proceed to the head of the *pariuk* in the tribe, if it is still not resolved, then the dispute will proceed to the adat *nagari* (KAN) density by submitting an application first [38].

Lembaga Adat *Sarak Opat*

To maintain the enactment of customary law in the community, it is needed an adat institution [39]. In the Gayo Community in Central Aceh District, this traditional institution is called *Sarak Opat.* This institution was created by the community to regulate relations between individuals and community groups [40]. Based on Article 1 letter d of the Central Aceh District Qanun Number 9 of 2002 concerning *Gayo* Customary Law, it states that an adat institution is a customary social organization formed by a certain customary law community [41], has certain territories and assets of its own and has the right and authority to regulate and administer and settling matters related to *Gayo* custom[46].

The existence of the *Sarak Opat* in Central Aceh District was initially based on the Decree of the Regent of the Central Aceh Region, on March 15, 1992, Number 045/12 / SK / 92 concerning the *Gayo* Indigenous Institution in Central Aceh District, where the composition of the *Sarak Opat* was stipulated as stated in Article 4 , 5, 6 and 8.

In Article 4 of the Regent's Decree, the existence of Sarak Opat is explained at the regional / district, sub-district and village levels. Then in Article 5, it is explained that the Sarak Opat, consisting of the Regent Head of the Region as Reje, Chairperson of the Indonesian Ulema Council of Central Aceh Regency (now the Ulama Consultative Council) as *Imuem*, Chairperson of the Customary and Cultural Institution (LAKA) of the Central Aceh Branch as Petue and the Council of Central Aceh Regional Representatives of the Central Aceh Regency Level II as the People In Article 6, it was mentioned about the Sarak Opat at the district level consisting of: Camat as Reje, Chairperson of the Indonesian Ulema Council as Imuem, Chairperson of the Customary and Cultural Institutions as *Petue* and District Community Leaders as the people (even agreed) [42].

In the Gayo community, this traditional institution functions as a regulator, organizer and guardian of community harmony. In the Gayo Customary Law system there is no distinction between criminal law and civil law [43], so that all disputes that occur in the

[45] Interview: Bapak Dt. Majo Setyo, Penghulu Suku Koto Paliang pada tgl 17/03/2019

[46] Syukri, *Sarak Opat, Sistem Pemerintahan Tanah Gayo dan Relevansinya Terhadap Pelaksanaan Otonomi Daerah,* (Jakarta: Hijri Pustaka Utama, 2006), p. 126.

community if resolved by custom are resolved through the Sarak Opat adat institution[47].

Specifically in Article Article 9 paragraph (1) of Central Aceh Regency Qanun Number 10 of 2002 Concerning Gayo Customary Law, it is explained that *Sarak Opat* is located as a container for the Gelung Preje (Regency), District and Village Governments as a forum for deliberation / consensus consisting of *Reje, Imem, Petue* and Rayat Even Mupakat. In the people of Central Aceh Regency, if a problem occurs, *Sarak Opat* acts as an institution for solving problems, this has been practiced for generations, if there is a dispute between communities it will be resolved through the *Sarak Opat* Customary Institution. In the case of sharing property, if it cannot be resolved by deliberation by husband and wife and family parties, then the resolution of the problem is left to *Sarak Opat.*

In practice in Central Aceh, the role of the *Sarak Opat* Institute in resolving disputes over shared assets still plays a role, and the community trusts their problems to be resolved by *Sarak Opat*. Solution to the problem through *Sarak Opat* is based more on the familial aspects of deliberation to reach consensus. On the other hand, *Sarak Opat* usually knows about the origin of the assets obtained by the husband and wife during marriage, which are inherited assets and which is shared property, because *Sarak Opat* itself is a village official.

5. Conclusion

Supply chain legal pluralism launches criticism of what John Griffiths called the ideology of supply chain legal centralism. Supply chain legal centralism interprets the law as "state law" which applies uniformly to all people who are in the country's jurisdiction. Thus, there is only one law and its judicial institution that is enforced in a country, namely state law and state justice. As is well known, the main problems of state justice are the achievement of the principle of fast, simple and light, convoluted dispute resolution, accumulation of cases and the significant cost of the parties makes the role of adat justice very necessary. The types of problem solving offered by the formal supply chain legal system also sometimes get different views and are considered inadequate and lack the sense of justice of the people who still hold their own supply chain legal traditions.

In practice, customary courts in some regions still function well, especially for areas that are very thick with customary law and their communities are still subject to customary law. As in Minangkabau, the traditional court is known as the Density of Nagari Adat, in Aceh known as the traditional court of Sarak Opat, the local government also supports the existence of a customary court by establishing regional regulations which limit the disputes which must be tried in an adat court or court country.

[47] Darmawan, *Penyelesaian Pembagian Harta Bersama Dalam Hal Terjadinya Perceraian Pada Masyarakat Gayo di Kabupaten Aceh Tengah,* (Desertasi Universitas Sumatera Utara, 2015), p. 206.

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