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ACTUALIZATION OF CUSTOMARY LAW (LIVING LAW) AS A FORM OF LEGAL REFORM IN INDONESIA

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Abstract

The nation is the most important entity in a country; without it, there can be no state. In other words, the nation is the fundamental element of a state. The life of a nation is closely tied to its culture, as Aristotle put it, "zoon politicon," a social creature, whereby social interactions lead to agreements that eventually generalize into culture. Similarly, according to Hans Kelsen, a figure in positivism, law originates from societal interactions. In fact, customary law is an ideal source of law because laws already existing within society are unlikely to encounter significant resistance, unlike laws imposed by rulers, which tend to face considerable opposition from the populace.

Keywords: *nation, law, customary law*

I. INTRODUCTION

The legal system in Indonesia adheres to the civil law system. Though it cannot be explicitly proven extrinsically, it can be said that the legal system carries the characteristics of civil law. Historically, Indonesia's legal system can be traced back to the 1945 Constitution, before it was amended. In the original text, the explanation of Article 1 of the 1945 Constitution extrinsically mentions that Indonesia's legal system is a rechtsstaat, which implies that customary law does not apply in Indonesia. However, in practice, customary law is recognized. With the amendments to the 1945 Constitution and the insertion of explanations in Article 3 stating that Indonesia is a state under the rule of law, the specific legal system is not mentioned. This ambiguity has led to confusion regarding which legal system Indonesia follows.

On the other hand, Indonesia's cultural construction is highly diverse and shares similarities with Anglo-Saxon culture in England, but due to imperialism, Indonesia was forced to adopt imperialist laws. This, ontologically, does not align with Indonesian culture.

The legal system embraced by Indonesia can be explicitly traced back to the explanation in the original 1945 Constitution, where it is referred to as rechstaat. Indonesia was a Dutch colony that adopted civil law, hence automatically making it a country with a civil law legal system. In theory, the legal systems of the world (civil law and common law) have undergone a very long evolution, but not all countries have experienced a relatively long legal evolution, such as the formation of legal systems (civil law and common law) in colonial countries like England, France, and the Netherlands. For example, there is no longer an evolution of the legal system of colonial countries, and they will automatically follow the colonial legal system because, in theory, the legal system will be influenced by the colonial power. For instance, countries like Malaysia, Africa, India, and Indonesia adhere to a legal system that is a blend of common law and civil law (Peter De Cruz,2013). As stated by Peter Mahmud Marzuki (2008),

former colonies of continental European countries adhere to the civil law system (Peter Marzuki, 2008).

The presence of colonialism fundamentally influences the legal system adopted by its colonized nations, though not necessarily implemented subversively. It is in this context that legal configurations occur, ultimately resulting in legal pluralism (Cruz, 2018).

Then emerged a movement to seek a middle ground between the two major poles of legal systems, namely civil law and common law. The presence of a legal system that aligns with the character of the Indonesian nation becomes imperative. The Pancasila State Legal System in Indonesia seems to have not yet found a final formulation; it still abstracts itself in the shadow of the dominant legal system, namely civil law/rechstaat. In the 1945 Constitution, it is clearly stated that Indonesia declares itself as a legal state, although there is no explicit explanation of which legal system is adopted (rechstaat, the rule of law, or the Pancasila legal system). On the other hand, Pancasila serves as the ideology and foundation of the state; therefore, there is a need for the formulation of an Indonesian legal system through the deconstruction of the Pancasila ideology so that Pancasila not only remains an ideology but also serves as a legal system adopted in Indonesia. Pancasila can be placed as a primatic postulate, where Pancasila is positioned as a balancer among existing legal systems. The Pancasila legal system can be considered as an alternative legal system rooted in the noble values of the nation, a legal system relevant to a pluralistic society, namely legal pluralism, which is a configuration between common law that upholds substantive justice, civil law that recognizes procedural justice, and the Pancasila legal system that upholds social justice. Thus, the prismatic substance of Pancasila law can be realized, with justice as its ultimate goal.

The process of legal reform has actually been underway for a long time. However, the aspirations for the formation of national law in all aspects of community life, nationhood, and statehood have not been fully achieved. The formation of national law referred to here is the establishment of national legislative regulations which are the product of legislative bodies, based on values that are alive in society and recognized as law (living law) (Astomo, 2014).

Steven Winduo even stated that without customary law, humans cannot survive for more than 50,000 years (Sofyan, 2018)how

II. PROBLEM FORMULATION

Based on the previous introduction, this research examines the following legal issues:

1. How the Historical Legal School as a Stream in Legal Philosophy?
2. How does Legal Philosophy Influence the Formation of Law?

III. RESEARCH METHODS

Qualitative research is a scientific approach that focuses on gaining in-depth understanding of social, cultural, or human behavioral phenomena through the collection and analysis of non-numeric data, such as interviews, observations, or textual analysis. This method is well-suited for comprehending the complexity and context of topics such as the realization of customary law as a form of legal reform in Indonesia. The research title "Realization of Customary Law (Living Law) as a Form of Legal Reform in Indonesia" suggests a focus on how customary law, which is the traditional legal system of Indonesian indigenous communities, continues to evolve and be actualized within the context of modern national law.lives.

IV. RESULTS AND DISCUSSIONS

1. School of Historical Law as a Stream in Legal Philosophy

Legal Positivism views law as authoritative commands, emphasizing legal certainty without questioning whether the law is just or not. The Historical School regards law as a product of society, highlighting the aspect of justice but paying less attention to the element of legal certainty. The Utilitarian School sees utility as the primary goal of law, thus neglecting the element of justice. Sociological Jurisprudence, also known as Functional Anthropological perspective, views the essence of law from its function, hence giving less attention to the aspect of justice.

The term customary law originates from the word "adatrecht" used by Snouck Hurgronje and adopted as a juridical technical terminology by van Vollenhoven. Subsequently, the term customary law was recognized during the Dutch East Indies era under the provision of Article 11 of the Algemene Bepalingen van Wetgeving voor Indonesia (AB) with the terminology "godsdientige wetten, volksinstellingen en gebruiken," the provision of Article 75 paragraph 3 of the Reglement op het Beleid der Regeling van Nederlands Indie (RR) with the terminology "Instellingen en gebruiken des volks," and according to the provision of Article 128 of the Wet op de Staatsinrichting van Nederlandsch Indie or Indische Saatsregeling (IS) the terminology "godsdientige wetten en oude herkomsten" was used, and based on the provision of Stb. 1929 Number 221 jo Number 487, the terminology "adatrecht" was lastly used (Mulyadi, 2013: 226).

The tendency of legal science undoubtedly reduces the ability of legal science to develop and to address its problems. The existence of integrative legal science is a necessity. This is because of the weaknesses found in purely theoretical (normative) legal science and purely applied (empirical) legal science. The integrality of science is the opposite of specialization in science. Specialization of science in the development of science is evidence of progress because science becomes increasingly rich. However, specialization of science in legal science becomes sterile and superficial. Legal science may develop, but it cannot capture the more comprehensive essence of the realities faced. It is as if a blind person grasping the tail of an elephant is thought to be the portrayal of the elephant or as if only seeing one side of a currency and forgetting the other side (Khambali, 2014)

The historical school is a reaction to the 18th-century Rationalism – Universalism. The French Revolution – cosmopolitan mission. Prohibition for judges to interpret the law because the law is considered perfect. Emerged in line with the Nationalism movement in Europe. If legal scholars previously focused on the individual, the historical school focuses on the national spirit (volksgeist).

As for the figure of the historical legal school Friedrich Karl von Savigny (1770-1861), he had the following teachings: First, he analogized the emergence of law with language. Second, he rejected the way of thinking of the Natural Law School followers. Third, law arises from the spirit of the nation (volksgeist). Fourth, law is not made but grows and develops alongside society. Meanwhile, the teachings of Puchta (1798-1846) regarding the historical legal school are as follows: Law can consist of customs, statutes, legal knowledge from legal experts. The nation in terms of ethnic and national identity. The legal beliefs living within the spirit of the nation must be ratified through the general will of society by the state.

The stream of Sociological Jurisprudence (functional law) has a significant influence on the legal practice in Indonesia, particularly in the context of legal development as one practical aspect of legal practice. However, in addition to the influence of Sociological Jurisprudence, long before that, the influence of legal positivism and historical schools had already been present in Indonesia since colonial times.

The influence of the new functional law concept began to develop in Indonesia around the 1970s, especially during the New Order era. Mochtar Kusumaatmaja adapted Sociological Jurisprudence for the purpose of legal development in Indonesia, and as a result, a philosophical thought known as "Legal Concept as a Means of Social Renewal" emerged. This legal concept officially became the philosophical foundation for legal development policies in Indonesia, as stated in MPR Decree Number IV of 1973. Sociological Jurisprudence emerged as a synthesis of the conflict between two legal thought streams within the realm of Legal Philosophy, namely legal positivism and the historical school.

The living law, also known as the social law, refers to a set of principles and norms that arise with the emergence of society. Law cannot exist without society. Law is created by society, and it serves to meet the needs of society. Therefore, for Eugen Ehrlich, state law (state law) is not an independent entity from social factors. State law must consider the living law that has developed and grown in the life of society. In relation to this, Eugen Ehrlich states: "*Rules of law were not lifeless constructions which existed independently of the social reality. On the contrary, they are parts of the "living", i.e. functioning and effective order of social communications, which protect certain interests privileged by society and discriminates those interests that are denounced and disapproved by society. Society itself engenders a general order of societal relations, which later is put into legal forms by social groups and individuals who act thereby in the capacity of lawmakers (in the broader meaning, as specified above)* (Hadi, 2018).

F.K. von Savigny states that law is one aspect of culture that lives within a society. Therefore, law is found in society and not created by those in power. Law is a reflection of the unique spirit and foundation of a nation, differentiating one nation from another. Law is not a product of nature or God, but can be traced in the pulse of society. Law is an essential part of society and nation's life (Hadi, 2018).

	Positive Law	Living law
form	written	unwritten
adjective	Independent	non- Independent
form	Laws and regulations	customs, traditions, religious norms, and so on.
formation	Command with authority	Discovered in society
Punishment	Norma Primer	It is not necessary.
Source of Law	The desire of the master	Interaction of life in society
Purpose	Legal security	Justice
Duress	Established by the State Institution.	Community awareness
Enforcement	juridical	sociology

2. The Effect Of Legal Philosophy In The Formation Of Law

For the Indonesian people, building a national legal system is a serious issue that needs to be urgently updated. In relation to this, at least three factors influence this, as stated by Lili Rasjidi, which are:

1. There are not enough legal experts who pay attention to conceptual legal issues.
2. Among legal experts who pay attention to this matter, there are still differences in views about the concept and scope of law as a system.
3. Both issues are also supported by various issues that have a significant impact on the development of law in implementing its function, both from internal factors and external factors.

Pancasila as a state philosophy was obtained from value sources within the context of a dynamic historical cultural journey of a nation. The formation of value sources covered in the national philosophy system has been running for a long time, involving not only the elite and the privileged, but also society. For the Indonesian nation, the Pancasila philosophy is part of the Eastern philosophy system that promotes its values as a theistic system – religious.

Therefore, according to Cicero, where there is a society, there is law (where there is a society, there is a legal system). Law is made by man to regulate every human interaction among themselves.

3. Legal Development

According to Moch. Koesnoe, in the Constitution and Basic Law 1945, there are fundamental values of our national legal system, which are legal ideas and part of the legal ideals of our country's law. In summary, these fundamental values include: (1) The first fundamental value: law is a protective (protective) rather than a mere rule-making authority. (2) The second fundamental value: law creates social justice for all Indonesian people. Social justice is not just a goal, but also a concrete guideline in making legal regulations, (3) The third fundamental value: law is from the people and contains the characteristic (Khambali, 2014).

Therefore, the development of Indonesian law must go through a deep understanding of humanity. Prof. Notonagoro shows the essence of humanity in an integral way. The fundamental essence of humanity in the Republic of Indonesia, which is based on Pancasila as a monopluralistic (monistic) entity, is interpreted by Notonagoro as a being that simultaneously possesses three aspects of nature as follows: (1) Monodual structure: that is, humanity as a being composed of body and soul, (2) Monodual nature: that is, humanity as an individual and a social being, and (3) Monodual status: that is, humanity as a being that stands alone and a being created by God Almighty.(Anshori, 2008)

Law of customary law covers all aspects of social organization within a customary community. Customary communities are bound together by their respective legal systems, which have their own structures, tools, and functions. The legal system has members who feel connected to each other, united, and full of solidarity. The legal system is formed based on genealogical and territorial factors. Genealogical factors bind people along lines of descent. Based on descent lines, there is a legal system organized according to the descent of the father (patrilineal), mother (matrilineal), and both (parental). Territorial factors bind members of the legal system based on their relationship to a particular territory. The legal system based on territory includes villages, districts, and federations of villages. A village community is formed when a place of residence is shared by a group of people in a particular area. A district community is formed when there are several places of residence in a particular area and with a

certain degree of autonomy, each governed by a leader, where the places of residence are part of a community that has its own boundaries and government, as well as its own jurisdiction. A federation of villages is formed when the village communities are complete with their own government and territory and are located near each other and have an agreement to protect common interests by forming a joint government (Abubakar, 2013).

The nationalist demands for the United States of the Republic of Indonesia have forced the legal system to be based on genetic factors to remain hidden, and this is not the case for the social structure based on territorial factors such as Nagari in Minangkabau and Subak in Bali. The existence of traditional legal systems as a legal system in the region, which is legally formal in a jurisdictional sense, has a strong foundation(Abubakar, 2013).

In the process of lawmaking by political institutions, the role of political power is crucial. Politically, institutions are formally given the authority to create law, but they are merely an instrument of the political power group. The political power can be seen from two sides: the formal political power held by the political institutions, such as the President, the House of Representatives, and other state institutions, and the informal political power from the political infrastructure, such as political parties, public figures, community organizations, self-government institutions, professional organizations, and others. Therefore, it can be concluded that the creation of legal products arises from the influence of political power through political processes within the state institutions that are given the authority for it. As mentioned earlier, the strong theories of law that have a significant impact on the concepts and implementation of law in Indonesia is the legal positivism theory. The influence of this theory can be seen from the dominance of the concept of codification of law in various types of law that apply in Indonesia, even extending to the international and traditional legal systems (Lili Rasjidi, SH., 2003).

Even Law No. 10 of 2004 of the Republic of Indonesia on the Formulation of Regulations, in Chapter X, stipulates the participation of the community, as regulated in Article 53: "The community has the right to give oral or written input in the preparation or discussion of Legislative Bills and Regional Regulations (Salam, 2009).

As a result of monopoly and centralization of power in the central government, the country becomes capitalist and authoritarian in implementing its powers. This can be understood sociologically, as the state/government, as one of the interacting entities in a larger social system, can have its own desires and goals. Therefore, deconstruction efforts are an attempt to restore the format and legal development fragments in Indonesia (Azmi, 2011).

It is necessary to carry out legal deconstruction, which involves pruning unprofitable branches of law, and then following it up with reconstruction, based on several logical reasons. These reasons include:

a. The state has dominated and suppressed the rights of the people/community that should be facilitated by the state in order to achieve the full potential of the people's prosperity;
b. The state, which should protect and support the people in obtaining access to natural resources, in fact does not do so and often becomes an opponent of the people, causing injustice;
c. The national law, which is based on the understanding of modern positive law, has dominated the law of the people, and tends to suppress the law of the people/customary law that should be facilitated to grow and develop into a source of national law;

d. There is a concentration of power by the central government/state over regions, or traditional and autonomous communities.

The underlying structure of power in society, including governance, is a rigid hierarchy that is not easily responsive to public demands. Therefore, a movement must be initiated to make this structure more responsive, democratic, human-centered, and then ready to be held accountable (Fendri, 2011).

Based on the three components, the National Legal Development Foundation (BPHN) has evolved it into five (five) components as follows:

1. Legal Subject Matter (Law Substance) is heavily dependent on the legal policy developed, which differs from one period to the next and covers:
   a. Legal Planning;
   b. Law Creation;
   c. Legal Research, and
   d. Law Development.
2. Legal Personnel, who have the task and function:
   a. Legal Promotion;
   b. Legal Application;
   c. Legal Enforcement, and
   d. Legal Services.
3. Legal Infrastructure, which includes physical aspects;
4. Legal Culture, which is followed by the general public, including their officials;
5. Legal Education.

In accordance with the three fundamental components of law-making, in order for the law to be functional and even serve as a catalyst for social change in the midst of society, support from various disciplines of science is required. Therefore, the law can truly become a medium in dealing, acting, and taking action in various fields of life, both for society and for the government itself. This is in line with the constitutional mandate, where in the explanation it is stated that Indonesia is a state based on law (a state governed by law). The law that governs is the servant of the rule of law as stated in the opening of the constitution (Fendri, 2011).

The roots of thinking require consideration of unwritten/customary criminal law, which has already been legalized since long ago. This can be seen from several provisions stated in legal regulations. In Article 5, sub-paragraph b of Law No.1/DRT/1951, it is stated that: The civil law material and, for a certain period of time, the civil criminal law that has been in force for the people of the local self-government and the people who were previously tried by customary courts, still applies to these people, with the meaning that any act that, according to the law, must be considered a criminal act, but is not considered a crime in the civil criminal law books, is still punishable with a penalty not exceeding three months in prison and/or a fine of five hundred rupiah, which is a replacement penalty if the customary law punishment is not followed by the accused and the replacement is considered adequate by the judge according to the seriousness of the offense, and if the customary law punishment, according to the judge's understanding, exceeds the limit with a curfew or fine mentioned above, then the offense charged can be punished with a replacement penalty of up to ten years in prison, with the meaning that customary law, according to the judge's understanding, is no longer in accordance with the above, and any act according to the law that has a similarity in the civil law, is

considered a crime with the same penalty as the penalty that is most similar to the criminal act (Sambas, 2009).

The Constitution of the Republic of Indonesia, as stipulated in Article 20 of the Basic Law of 1945, states that the House of Representatives (DPR) holds the power to draft laws, but this power is not exclusive to the DPR. Instead, the DPR's law-making power must be discussed and agreed upon with the President, as per Article 20 of the Basic Law of 1945. Moreover, the President also has the right to submit draft laws to the DPR, as per Article 5 of the Basic Law of 1945. Therefore, it can be concluded that the legislative body responsible for drafting laws is the DPR in conjunction with the President, to further elaborate on the provisions already established by the Constitution (Ajie, 2016).

Pancasila is a set of principles in Indonesian national law, which means that national law must be developed to: (a) maintain the integrity of the nation, both in terms of ideology and territory; (b) based on efforts to build democracy and oligarchy simultaneously; (c) based on efforts to build social justice for all Indonesian people; and (d) based on the principle of religious tolerance that is conducive to peace. Pancasila is the highest source material that determines the content of law and serves as a philosophical basis for the constitutionality of legal norms (Ajie, 2016).

According to Soedikno Mertokusumo in his book "Putera," the law regulates events but often its implementation has evolved significantly, while the law itself has not yet changed. Therefore, it is not surprising that legal principles lag behind the facts, meaning that the law is outdated relative to the situation. The law referred to here is written law or legislation. Changes in legislation must go through procedures, so they cannot be made at any time to adapt to the situation (Astomo, 2014).

In the case of Anis Ibrahim, the formation of law in the context of a monarchy will follow the social-political structure of each country. For countries that adopt authoritarian political systems, the formation of law will reflect authoritarian characteristics. However, when the legislative process is placed within the context of a democratic country's social-political structure, compromise from conflicts of values and interests in society is likely to occur (Astomo, 2014).

Indonesia has its own legal system, which is based on values, culture that grows in Indonesian society, and is rooted in the identity of the Indonesian people and nation. As Karl Von Savigny said, law is not made, but grows and develops with the people (das recht wird gemacht, est ist und wird mit dem volke). Therefore, in the formation of law and the legal system in Indonesia, it must be based on and anchored in the values and culture of Indonesian life and culture, namely Pancasila, which was established by founding fathers as the philosophy and foundation of the state of Indonesia. Consequently, legal principles and the legal system in Indonesia must refer to the legal concept (rechtsidee) of Pancasila (Prasetyo, 2014)

The presence of the four legal systems should provide a path for the Indonesian people to establish their own national law based on values contained in Indonesian society and nation. This is a law built from the discovery, development, adaptation, even compromise of existing systems. In other words, Indonesian law should be sourced from Indonesian soil itself. This means that Indonesian law must reflect the spirit of the people and the nation [volkgeist] of Indonesia (Prasetyo, 2014).

In the development of the Indonesian legal system, it is necessary to dig and understand values that grow in Indonesian society. Therefore, the law that is to be built is not static and rigid, but dynamic law that is updated continuously according to the needs and desires of the community. This means that Indonesia follows a living law, where the desires of the people are the source of the development and updating of the law. This is in line with the perspective of sociological jurisprudence, which states that good law is law that is in line with the living law within society (Prasetyo, 2014).

Aruan Sakidjo, Bambang Poernomo In terms of sociology, and more accurately from an anthropological perspective, as argued by legal scholars such as Van Vollenhoven, Ter Har, Idema, it can be inferred that the Dutch Criminal Code or KUHP, which originates from the Netherlands, is no longer suitable for the Indonesian people. In the KUHP, many acts that, according to the size of the Indonesian nation, should be punishable by law, are not punishable in the KUHP, such as issues related to alms or incest (Rahmat, 2015).

Understanding this assumption, it is clear that the effort to study and excavate the law of adat and the values that live in the Nusantara society is so important. This thinking also received support, such as from Roeslan Saleh who said that "... the application of adat law, especially, needs attention. There are things that can be organized and eventually systematized in such a way that they become part of criminal law in general, which can be included in things that can reduce the guilt of the accused/defendant, or even things that ultimately allow the actions of the accused/defendant, things that in the criminal law curriculum include things that are part of the curriculum of material law and the curriculum of guilt." Reimon Supusesa. (Abdullah, 2015).

The customary law is classified as unwritten law, which encompasses customs and practices that emerge and are followed and respected continuously, even passing down through generations among indigenous communities where customary law grows and develops. This diversity will give rise to different value systems among various ethnic groups in dealing with and resolving issues within their communities, including those related to dignity and morality, as not only those directly involved in the case but also the wider community is involved.

In accordance with the provisions of Article 18 B paragraph 2 of the 1945 Constitution of the Republic of Indonesia, the State acknowledges and respects the customary law and traditional rights of indigenous communities as long as they are still alive and consistent with the development of the Nation and the principles of the Unitary State of the Republic of Indonesia as regulated by law. Similarly, Article 28 I paragraph 3 states that cultural identity and traditional rights of communities are respected in accordance with the development of the times and civilization.

In the Annex of Law No. 17 of 2007 on the Long-Term Development Plan 2005-2025, letter G, it is stated that in the era of reform, efforts to establish a national legal system are continued, covering several aspects: First, the development of legal substance, both written and unwritten laws, has a mechanism for creating a better national legal system according to development needs and societal aspirations... Second, the full participation of all components of society with a high legal consciousness is required to support the formation of a legal system as stipulated.

If we trace back to the basic constitution of Law No. 1945 Constitution, it is clear that with the amendment of Article 4, it has been explicitly stated in Article 18B that (1) the State recognizes and respects special or unique regional governments that are governed by special laws. (2) The State recognizes and respects traditional communities and their legal institutions,

along with their traditional rights, as long as they are still alive and in line with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

In the material of Article 18B paragraph (2) of the 1945 UUD, it can be normatively taken as four (four) elements that must be considered as prerequisites for the existence and validity of customary law communities in Indonesia, which in their own right will identify values that are alive and recognized as customary law in the customary community concerned. The first element is "as long as it is alive." In the customary community concerned, there are those who cannot maintain their lives, as a result of a decline in life, seeking life in other places or regions, so that as an individual with others, they do not have a blood tie. As a result, the customary law that has been the basis of their life for a long time gradually becomes obscure, eventually disappearing completely.

The second element in the Pasal formula is "in accordance with the development of society." This can be interpreted as meaning that traditional rules cannot contradict the progress of society today, which cannot prevent them from participating in global life. The third element that must be fulfilled in the full realization of the customary law entity is "the principle of the Unitary State of the Republic of Indonesia." This principle has already been established and must be possessed by every customary law community. The law applied in the community is indeed a manifestation of a pure embodiment of traditional customs that have been implemented in a downward manner. The Unitary State of the Republic of Indonesia must become a primary goal in the context of promoting the existence of customary law and customary communities.

The last component that serves as the basis for the legal community in accordance with the stipulated law is "as regulated by law." In the perspective of the author, this term is one of the most dangerous keys in the existence of customary law. This is because in reality, customary law is averse to written law and is dynamic, living and growing within the community. The four elements in the formulation of the law are at least constitutional in recognizing the existence of customary law and its law as well. Fulfillment of the four conditions results in the customary law system remaining in accordance with the established legal order, subject to legal sanctions for contractual psychological relationships.

V. CONCLUSION

The legal science in question has a weakness in capturing the more profound truths of the reality faced. Legal issues of a conceptual nature still do not attract much attention from scholars. The influence of the positivist legal thought and legal historism has been present in Indonesia since the colonial era. The influence of Sociological Jurisprudence began to develop in Indonesia around the 1970s, particularly during the New Order period. The development of law in Indonesia must be based on a deep understanding of human nature. Customary law deals with the arrangement and regulation of society in a traditional community. The state becomes capitalist and authoritarian in exercising its authority, and the deconstruction of legal practice that is less profitable is carried out through the pruning of legal branches, followed by reconstruction.

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