

SACRALISM OF CUSTOMARY LAW IN MARRIAGE: LOCAL AND NATIONAL LEGAL CONTESTATION IN INDONESIA

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Abstract: Indonesia's legal framework has yet to formally recognize customary marriages within its Marriage Law, leaving indigenous communities without adequate legal protection despite their cultural and spiritual significance. Customary law communities, such as the Tengger community in Probolinggo and the Sedulur Sikep community in Pati, hold sacred beliefs and rituals tied to their ancestral heritage, resulting in a tension between customary and national legal systems. This study aims to address this gap by exploring the legitimacy of customary marriages and proposing legal reforms to accommodate their recognition. Using a qualitative descriptive approach, data were collected through observations, documentation, and interviews with members of the selected indigenous communities. The findings reveal three key insights: Indigenous communities adhere strongly to traditional marriage rituals as a continuation of ancestral values; the sacralism of customary marriage holds greater significance for these communities than national law, as it ensures legitimacy in the eyes of their ancestors; and the absence of legal recognition and protection for customary marriages by the state perpetuates legal and social marginalization. This study emphasizes the importance of adopting a legal pluralism perspective to bridge the gap between customary and national legal frameworks. It recommends reformulating Indonesia's Marriage Law to include provisions recognizing the legitimacy and formal registration of customary marriages, ensuring harmony between cultural preservation and legal protection.

Kerangka hukum Indonesia belum secara formal mengakui perkawinan adat dalam Undang-Undang Perkawinan, sehingga masyarakat adat tidak memiliki perlindungan hukum yang memadai meskipun mereka memiliki makna budaya dan spiritual. Komunitas hukum adat, seperti komunitas Tengger di Probolinggo dan komunitas Sedulur Sikep di Pati,

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memegang teguh kepercayaan dan ritual yang terikat pada warisan nenek moyang, sehingga menimbulkan ketegangan antara sistem hukum adat dan sistem hukum nasional. Studi ini bertujuan untuk mengatasi kesenjangan ini dengan mengeksplorasi legitimasi perkawinan adat dan mengusulkan reformasi hukum untuk mengakomodasi pengakuan mereka. Dengan menggunakan pendekatan deskriptif kualitatif, data dikumpulkan melalui observasi, dokumentasi, dan wawancara terhadap anggota komunitas adat terpilih. Temuan ini mengungkapkan tiga temuan utama: Masyarakat adat sangat memegang teguh ritual perkawinan tradisional sebagai kelanjutan nilai-nilai leluhur; sakralisme perkawinan adat mempunyai arti yang lebih penting bagi komunitas ini dibandingkan hukum nasional, karena hal ini menjamin legitimasi di mata nenek moyang mereka; dan tidak adanya pengakuan dan perlindungan hukum terhadap perkawinan adat oleh negara melanggengkan marginalisasi hukum dan sosial. Kajian ini menekankan pentingnya mengadopsi perspektif pluralisme hukum untuk menjembatani kesenjangan antara kerangka hukum adat dan kerangka hukum nasional. Artikel ini merekomendasikan perumusan ulang Undang-Undang Perkawinan Indonesia untuk memasukkan ketentuan-ketentuan yang mengakui legitimasi dan pencatatan formal perkawinan adat, memastikan keselarasan antara pelestarian budaya dan perlindungan hukum.

Keywords: sacralism; contestation; customary law; marriage.

INTRODUCTION

The legitimacy of marriage among indigenous peoples are not clearly regulated by the Law no. 1 of 1974 concerning marriage. The article 2 requires marriage based on their respective religions and beliefs, while its legitimacy requires the registration of marriage itself. Meanwhile, many indigenous peoples adhere to religions unrecognized by the state. They are followers of the faith, totaling 12 million from 187 groups of believers spread across 13 provinces (Kemendagri, 2017). They practice customary law and ancestral beliefs as the legal basis for marriage, while in civil registration, the national law applies. The controversy over customary law and national law has always colored the process of national law legislation (Yasona Laoly, Berita Satu, 2019). Such condition needs attention and further explanation, so that the customary law can be accommodated in the national law.

Customary law among indigenous peoples' marriage has a very high value and binds their marriage legitimacy before the ancestors. The sacralism of customary law occurs in the form of rituals with very high values and binding the legitimacy of marriage before the ancestors. Some rituals, called "*Lari Kawin*" in the Luhu tribal community (Ismail Kaliki, 2016), "*Pasuwitan*" in the *Sedulur Sikep* indigenous community (Rosyid, 2019), and "*Jalan Hadad*" in the *Ngaju Dayak* indigenous peoples (Sadiani, 2017) are series of sacred rituals in marriage. Harmony between the ritual practices and the customary law shows that the indigenous peoples have their own marriage rules which are believed to bring order to their

survival. As stated by Ter Haar, indigenous peoples are the organized communities with the stronger customary law than the national law (Buya Suryaningrat, 1985).

The preliminary studies on the dominance of sacralism of customary law over the national law, have examined three problems, namely: *First*, the study on the strength of social system of indigenous peoples (Atlas et al., 2021; Mulrennan & Bussi res, 2018; Pandanwangi et al., 2018); *Second*, the study on the community efforts to maintain the social system of indigenous communities in the midst of a swift current of change (Becerra, 2020; Missimer et al., 2017; Zeng et al., 2020); *Third*, the study on the hierarchical social structures regulating the relationships and binding the interactions of indigenous peoples (Chernyak-Hai, Halabi, and Nadler 2014; Samaha and Gimeno 2020; TenHouten 2017). Based on these studies, it is clearly proven that the indigenous peoples emphasize the values of traditional sacralism from their ancestors as a great belief to bind their existence and to maintain their social system eternally from generations to generations. Nevertheless, these studies have not pay attention to the contestation of the customary law against the national law in customary marriages.

Many studies have discussed the functions of customary law and its integration into the social system of indigenous peoples. However, the relationship between these laws and its contestation in the customary marriage process have not explained. So, this paper particularly reveals the nobility of customary law sacralism values being applied to regulate the indigenous peoples' way of life. Moreover, it examines how the customary law deals with the national law. Regarding to this phenomenon, three questions can be formulated, namely: 1) How the contestation of sacralism is among the customary law and the national law. 2) What factors are behind it. 3) What implications are over the domination of sacralism? Finally, this contestation produces a pattern of legal pluralism relationship between customary law, religious law and state law in Indonesia.

This paper refers to an argument that the contestation of the customary marriage law against the national law is strongly determined by the sacred values of the customary law as a great belief that binds indigenous peoples. This shows that these values become very important and substantial to be accommodated in the national law. Thus, its contestation refers to three points, namely: a strong belief system within the values of ancestral heritage, a strong and hereditary social system within indigenous peoples, and a difficulty to obtain the national legal protection due to the complexity of legal requirements and bureaucracy. This means that the formulation of national policies needs to accommodate local values having been practiced by the indigenous peoples.

RESEARCH METHOD

The subjects of this research were *Tengger* indigenous community, Probolinggo and *Sedulur Sikep* indigenous community, Pati. The researchers chose this communities because they have strong characteristics in upholding the sacralism of customary law. However, they have differences in some points. The *Tengger* peoples still want to interact with both local and

foreign tourists. In contrast, the *Sedulur Sikep* peoples tend to be introverted from general public relations and reject population administration to maintain the sacredness of their Saminism teachings.

This study is a kind of qualitative research by using primary, secondary and legal sources of data. Primary data were obtained from observations and interviews with *Tengger* and *Sedulur Sikep* indigenous peoples, namely the traditional shaman of *Tengger* community, the traditional elders of *Sedulur Sikep* community, and several indigenous peoples who have married traditionally. These peoples were selected based on their directly role involved in traditional marriages, so that the legitimacy of data can be accounted for. Whereas the secondary data were obtained from both the Indonesian Central Agency on Statistics and the results of previous studies. The legal material in this study is Law no. 1 of 1974 concerning marriage.

The process of research started from determining the location, the access to research and research timeline when there was a traditional marriage ritual, so that the researchers could witness the rituals of traditional marriage as well as could interact with the informants. Then, the researchers determined the informants, prepared the instruments and made a check list for observation. At the field, the researchers directly observed the activities and social interactions of the indigenous peopless when carrying out their traditional marriage rituals. Interviews were conducted with a number of informants, namely Bapak Supoyo as a traditional *Tengger* shaman, Bapak Iruk as a traditional elder of *Sedulur Sikep*, Lela and Wibisono as a married couple who married different religions and Bapak Sudarto as an apparatus in Baturejo Village, Pati.

All obtained data will be categorized and analyzed. Doing this stage, the researchers referred to Spradley's analytical technique namely domain analysis, taxonomic analysis and componential analysis (Sugiyono, 2014). Domain analysis was used to obtain general overview of *Tengger* and *Sedulur Sikep* indigenous peoples. Whereas taxonomic analysis was applied to describe detailed domains of their customary marriage rituals. Finally, a componential analysis was used to explain the particular characteristics of each internal structure within their customary marriage law by contrasting the elements in order to know the different characteristics of customary marriages among two communities. The analysis was delivered descriptively and analytically to answer the questions in this study.

RESULT AND DISCUSSION

Sacralism of Tenggerese Traditional Marriage Rituals

In Indonesia, the indigenous peoples amount approximately 70 million peoples, scattering into 2371 indigenous communities. (Alliance of Indigenous Peoples of the Archipelago, 2018). Customary law is an unwritten rule living and existing in indigenous peoples as their ancestral heritage (Silambi et al. 2022). Although as a written rule, customary law is still recognized within certain limits and consensus (Manullang 2021). At the same time,

it becomes the official law in Indonesia and the material for formulating the national law (Sulastriyono and Intaning Pradhani 2018). It is understood as a living law in society (Jayanuarto et al. 2020). In this case, customary law has philosophical, juridical, and sociological powers that make it alive (Syahbandir et al. 2021). It is conditioned as a solution to the legal vacuum which does not contradict to legislation that has the same function and purpose as Indonesian positive law (Arliman 2018). Thus, customary law is stated as an order of normative rules and is flexible with rules being made and accepted by the community (Hamzah, Putra, and Zulkarnain 2020).

The Tenggerese live in five villages, on the slopes of Mount Bromo, namely Wonokitri village, Ngadisari village, Ngadas village, Ranu Pani village, and Argosari village, Sukapura sub-district, Probolinggo. 8058 peoples of the total population are Hindus (BPS Kab. Probolinggo, 2018). They adhere to customary law, including customary marriages. In the process of marriage, the Tenggerese have a very high sacred values, within the *Pawiwahan* ritual led by a shaman (Supoyo, informant, 2021). *Wiwaha Samskara* is a marriage ceremony to enter the *grihastha asrama* level of life in order to continue the lineage and to fulfil obligations perfectly. *Samskara* is glorious, and is aimed at achieving the life goal of *Moksartham Jagadhita Ya Ca Iti Dharma*, that is the achievement of life welfare and true happiness. This is described in a book of *Arjuna Wiwaha*, as well as is embedded in the letter of *Wiwaha Samskara*, which reads:

"Sasi wimbha haneng gatha mesi banyu, and the holy foreigner nirmala mesi wulan, iwa mangkana rakwa kiteng kadadin, ring angmbeki yoga kiteng sakala".

Like the shadow of the moon in a jar of water, only in clean and calm water, the shadow of the moon is visible. Likewise, He will appear (*maraga sukma*) to peoples who have pure and holy soul. (Veda Smerti 11.26.)

In principle, the marriage of the Tenggerese peoples is endogamous. They are only allowed to marry other Tenggerese peoples. Moreover, their marriage must be carried out based on *Tengger* traditional rituals otherwise "*karma*" will happen. If there are outside parties who want to marry a *Tengger* woman or man, they must first become a *Tengger* citizen and change their residence to become Tenggerese by having an identity Card (KTP) and Family Card (KK) from a village in *Tengger*. Their address and religion must be changed and equated with *Tengger* peoples, namely Hinduism. This is required because their traditional rituals become a mandatory procession of marriage among *Tengger* peoples (Supoyo as shaman, informant, 2021). For example, in the marriage of Lela and Wibisono, these two informants have different ethnicities, religions and rituals. Lela is a Hindu *Tengger* peoples while Wibisono is a Javanese Muslim. They got married using the traditional rituals of *Tengger* peoples. Wibisono gave up his religion and changed his residence to become a Tenggerese. They married using traditional *Tengger* rituals (*Wiwaha Samskara*) and were led by a traditional shaman (Lela, informant, 2021).

Having carried out all marriage rituals and he was legal as a husband, Wibisono returned to his religion and perform his Islamic religious worship, such as the five daily

prayers, Friday prayers, Ramadan fasting, *Eid al-Fitr* and *Eid al-Adha* prayers. To carry out this worships, he must go to the mosque located very far from where he lives, because the majority of this community are Hindus and there is no mosque in some villages of Bromo. Overall, the Tenggerese peoples do not mind religious differences among the spouses, but the important thing is that all Tengger traditional rituals must be carried out. So, the sacralism of customary law is positioned above religious and state law (Wibisono, informant, 2021)

Sacralism of Traditional Marriage Ritual of *Sedulur Sikep*

The same thing also happened to *Sedulur Sikep* peoples who carried out the marriage rituals based on the sacralism of *Samanism* teachings. These teachings underlie their concept of religion, where it is considered as "*gaman*" (weapon). It means that the religion can be realized when the man and woman's gammas are met in the *Pasuwitan* ritual. So, marriage is a sacred bond between men and women in a relationship witnessed by God in order to perfect their religion (Icuk, Customary Elders, Informants, 2021).

Pasuwitan is a traditional marriage ritual, where there is sexual intercourse between a man and a woman in a booth witnessed by the God. According to the teachings of *Sedulur Sikep*, their marriage is legal when they have practiced *Pasuwitan*. In this ritual, the prospective groom is allowed to live together (*nyuwito*) in the prospective bride's family home in order to know each other and to serve at her house. They are allowed to live together in the bride's house like husband and wife although they have not married yet. The legitimacy of *Nyuwito* ritual is shown by a harmony and they have had sexual intercourse. Afterwards, the prospective groom says to the prospective bride's parents "*turun atau anak sampeyan asli wedok lan wis ngerti gawene*", meaning that she is the real girl and he has successfully married her. Conversely, if there is no conformity, then the marriage is canceled and cannot be proceeded to the next stage (Icuk, Customary Elder, Informant, 2021).

The legitimacy of customary marriages and legal certainty by registering marriages are two different things. The legitimacy of the traditional marriage of *Sedulur Sikep* is shown by the success of the *Nuwito* ritual. Meanwhile, marriage registration is not required for them because marriage is the sacral ritual between the groom and the bride which is witnessed by God. The state does not have any interests. If the *Nyuwito* ritual has been successfully carried out, they are legal to become husband and wife. All matters relating to household obey the ancestral customs of *Sedulur Sikep*. (Adila 2020; Nurdin and Adzkiya' 2021) Marriage will be maintained as long as they strongly hold the life order. They will get *karma* (punishment) from God and nature when they commit bad deeds. On this basis, the marital relationship becomes lasting without divorce and they always feel happy (Masrikah, informant, 2021).

Contestation of the Customary Marriage Law Against the National Marriage Law

Both *Tengger* and *Sedulur Sikep* indigenous peoples do not consider that the national marriage law has the implication for the legitimacy and sacredness of their customary

marriages, so it is ignored in the contestation of customary marriages. The spiritual values and sacredness of the entire series of customary rituals become the most important substance compared to the formalization and legalization offered by national law. According to Iruk, the traditional elder of *Sedulur Sikep*, marriage is a matter between a man and a woman, witnessed by the God, so it has nothing to do with the state" (Iruk, informant, 2021).

Formalization to achieve the state legalization of marriage seems to be troublesome in the process of bureaucracy and administration of marriage registration which requires residency files. Moreover, it does not bring significant implications for them. In some cases, the *Sedulur Sikep* peoples mostly do not have identity and family cards because the *Saminism* teachings requires them not to have any relations with the governance (Hari Bakti, 2017). They do not adhere to six religions recognized by the state. Otherwise, they adhere Adam, but their religion cannot be listed on their identity card because the Adam religion is not recognized by the state (Sudarto, informant 2021). Contestation in a country has a close relationship with the political and social system of society, in which the government plays an important role in creating it (Farrell 2020). It occurs in various aspects of life, such as in domestic matters (Palo, Åkesson, and Löfberg 2019), state and religious life (Nesbitt 2020a). Contestation in religious spaces has been going and continues till now, as a result of various struggles for identity in the public sphere (Khan 2013). In society, contestation is interpreted as a social practice with an attitude of refusing and disagreeing with values, norms and practices, which creates an attitude dichotomy ((Blarel & Ebert, 2015). (Nesbitt, 2020) states that contestation has a power dimension focusing on the object of conflict. It is then seen as the effort to the problem of developing life values by adjusting to the era development (Deitelhoff 2020).

According to (Sapriallah et al., 2020), there are three patterns of contestation namely : 1) Dynamic and active contestation among society. 2) Patterned and descriptive contestation that produce horizontal conflicts. 3) Dialectical contestation as the foundation for realizing common interests. Similarly, contestation in a social life with all aspects of life proceeds by arbitration, deliberation, justification and conflict (Wiener 2017). The contestation is explicitly and implicitly carried out through abandonment and contention. In this case, it is considered as a game involving government norms that can produce social change (Reed and Burrell 2019). This change involve differences in social and cultural collectivity (Hayward 2011), which includes changes in dynamic phenomena regarding practices and cultural arrangement in a particular location ((Featherstone & Korf, 2012)

Discussion

The concept of sacralism implies the correlative conception of the nature of thought and action. It is related to religious experiences that contain spiritual values, holiness and rituals (Suteja 2011). In various cultures, natural sites and social life have sacred meaning. This sacralism then means bound (Valk 2015). (Trinkuniene, 2011) states that it is manifested in secular, religious, and modern forms. In addition, it is determined by religious plurality,

developing social society, and acceptance of old beliefs. For certain cultures, sacralism occurs not due to its truth, but its involvement in the inconclusive struggle between holiness and secularity, reason and revelation, as well as mythical and philosophical conceptions (Banbaji 2021). Furthermore, it is based on legitimacy with personal beliefs, including a shift from the sacred in space to the sacred in time (Sawicki 2021). Indeed, sacralism is interpreted differently in each culture. However, it is generally manifested in human behaviors, feels (Mavelli 2020), emotions and characteristics of the bounded place (Levi & Kocher, 2013)(Lai et al., 2013). Human intervention has a role in creating a place or space where giving meaning and religious cultural experience with tangible matters such as objects, relics, images and statues, as well as intangible ones such as symbols, myths, rituals, and natural phenomena (Dewsbury and Cloke Paul 2009). Moreover, spiritual values also play a role in traditional institutional arrangements to protect sacred sites and social activities from inappropriate behaviors (Rutte 2011). It is based on the sacredness of human life and the desire to relieve suffering (Dopelt et al. 2021). In addition, it is closely related to sacred things of the sacred part itself. It is social-symbolically covered within the concept of doctrine, practice and stories existing in societies (Pruss 2021).

Traditional marriages among *Tengger* and *Sedulur Sikep* communities have been guided by the sacralism of customary law which has been institutionalized for generations, as ancestral teachings. It has been bounded as a great belief system unseparated from the existence of indigenous peopless. State law cannot intervene its existence in determining the legitimacy of customary marriage. This phenomenon has been motivated by three factors, namely the strong belief system on the ancestral heritage values, the strong social system in indigenous peopless from generations to generations, and the difficulties of receiving legal protection from the national law due to the complicated requirements as well as the legal bureaucracy.

The belief system of indigenous peopless is very strong and based on moral, ethical and beliefs principles inherited from their ancestors. So, conflict tends to occur between the customary law and the national law (Latifah Nasution, 2017). Durkheim states that a society is sacred due to the peoples's belief to have a collective consciousness. It is also motivated by an idea that society is the spirit of belief (Pabbajah et al. 2021). Worships in the rituals or celebrations in the society are not directed to the Totems or the Gods, but to keep individuals from forgetting the importance of clans. In addition, these rituals give a meaning that the sacred thing has very high values (Abbott, 2019; Greenwood, 2013; Horii, 2019; Pickering, 2009). It is known that indigenous peopless have a very strong social system built from generation to generation as a preserved ancestral heritage. It performs a function to integrate moral, ethical, cultural and social values to build harmony. Talcott Parson explains that a social system consists of structures and functions organizing individuals in a society to be bound and integrated (Talcott Parson, 1961; Gerhardt, 2017; Ormerod, 2020; Rusydiyah & Rohman, 2020; Tribe, 2007; Weiss & Gomes Net, 2021). Marriage among indigenous peopless builds a sacred relationship between several families and binds them to strengthen

their relations. So, traditional marriage becomes the main milestone to build a strong indigenous community.

In other side, the function of law for the community is to regulate their life order so that their rights and interests can be fairly protected (Didiek R. Mawardi, 2015; R. Mawardi, 2015; Saleh et al., 2020; Soemitro, 1980). Indonesian marriage law recognizes the legitimacy of marriage from two points, namely: 1) It should be based on certain religion and belief 2) it should be based on the state legitimacy. The first legitimacy places marriage based on certain religious rituals, which are formally recognized by the state. Meanwhile, the legitimacy of traditional marriages is not based on certain religious rituals, but more on the sacralism of traditional rituals within their great beliefs. So, the legitimacy of this customary marriage is still unable to be accommodated in line with the legitimacy of marriage based on religion and belief, as regulated in the national marriage law. Consequently, customary marriages cannot be registered at the civil registry office as well as the indigenous peoples do not obtain legal certainty over their marriages. Furthermore, this case result in the status of children and their other civil statuses, such as inheritance and joint property in marriage. As a cultural aspect, customary law is considered based on the conditions of current development and the closest uniformity that applies as national law (Tahali 2018). In addition, based on the perspective of legal pluralism, customary law dynamically continues to interact not only with national and international law, but also with the role of information and communication technology in bridging these relations (Pradhani 2021). Therefore, (Lastuti Abubakar, 2013) states that the customary law becomes dynamically relevant to the development and characteristics of a society.

Based on the previous results of studies, there are two characteristics of the local law when contesting with the national law. *First*, the customary law only becomes the local law that cannot be accommodated in the national law (Marhama, Pupu ; Sudirman 2018; Ningsih 2020; Sukerti and Ariani 2018; Suryani and Raus 2021; Wagianto 2017). *Second*, the national law is superior to the customary law, so that sacralism on it slowly fades and disappears. It only remains the formalistic traditional rituals (Sodiq 2016; Umar 2014). Therefore, this study tries to offer new characteristics that accommodate the sacralism of customary law in marriage into the national marriage law by reformulating the legitimacy of marriage in the national marriage law using the perspective of legal pluralism.

This research produces recommendations to accommodate the customary marriage law to the national marriage law by reformulating it using a legal pluralism approach. This approach offers a perspective of law enforcement based on the community pluralism. Diversity in society determines diversity in its laws (Benda-Beckmann and Turner 2018; Dancer 2021; Griffiths 2015; Sani 2020; Swenson 2018). In fact, indigenous peoples as parts of the Indonesian nation should be governed by local law, religious law and also state law. Legal pluralism can accommodate customary marriage law, so that it can be accepted as part of national law, especially in terms of the legitimacy of marriage. The state should admit the

legitimacy of every marriage based on the sacralism of customary marriage law. Indeed, the peoples should record it in order to obtain legitimacy for their customary marriage.

CONCLUSION

In general, the sacralism of customary law in marriage among the indigenous peoples does not contradict with the provisions contained in Law no. 1 of 1974. This study reveals that the space for the legitimacy of marriages based on religion and belief actually has been provided by law. However, the law needs to broaden the meaning interpretation of religion and beliefs, so that the national law can recognize the sacralism of customary law as a belief system. The state as an institution mandated by law to provide legalization and legal certainty for every marriage in Indonesia, including customary marriages, can be present to record customary marriages. The value of justice, expediency and legal certainty can be completely constructed to provide legal protection for indigenous peoples in Indonesia. This study confirms the previous studies which mostly dichotomize both the national law and the customary law as the local law in regulating the legitimacy of customary marriages. In fact, both the national marriage law and the customary marriage law should be in line with both the legal needs of indigenous peoples and the objectives of national marriage law. So, legal pluralism can be the right approach to harmonize these two laws for indigenous peoples in Indonesia. The national marriage law can be reformulated by completing the concept of marriage legitimacy namely accommodating the legitimacy of customary marriages. In addition, this research still has restriction because it only examines the customary marriage of *Tenggerese* and *Sedulur Sikep* peoples. This restriction is due to the limited time and access to the other indigenous peopless in Indonesia. Therefore, it is necessary to carry out further comparative research due to the numerous characteristics of indigenous peoples in Indonesia. In addition, research on indigenous peoples is very interesting to be conducted to reveal hidden realities of theirs. This is important to map the local potentials still being practiced by the communities in various regions. [W]

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