

# Psychological Analysis of Customary Law as The Spirit For Indigenous People of Bengkulu City Indonesia

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# 1 Psychological Analysis of Customary Law as The Spirit For Indigenous People of Bengkulu City Indonesia

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## Abstract

**Introduction:** The only historical tradition of Indonesian law is customary law. For the indigenous people of Bengkulu City, customary law is the representation of the people spirit. Law is the representation of a nation's spirit. Customary law is a living law as it represents the real feeling of the law believed by the people. Bengkulu customary law is one of the inherited cultural law as a tool to regulate the life of the indigenous people. One of the characters of customary law is that the ability to always consider the psychological state of the people so that the implementation of the law will be based on the feeling of justice and the need of law within the society. Every act done by indigenous people is mainly based on some factors, including psychological factor. It is in line with the fact that psychology as the science about psychic or human behavior. Therefore, it strongly relates to the study of law, where psychology view law as the representation of human behavior.

**Material and methods:** It was research which employed primary and secondary material, with descriptive qualitative as the research method.

**Finding:** Volkgeist is the spiritual manifestation or a spirit of a group of people. Society is empirical. It makes society is different from one another. Volkgeist is the terminology for something psychological and spiritual which were inherited and operated in some entities as language, folklore, custom, and behavior. The correlation between psychology and customary law is represented by the customary law of Bengkulu City. Law is formed from the given ratio and behavior in human. Behavior in human consist of motoric, perceptive, and cognitive aspects. The process also represents the customary law formation at Bengkulu City. It starts from human's thinking, will, and behavior as the psychological manifestation of the indigenous people spirit of Bengkulu as customary law includes the implementation of psychology from each individual of which work, idea, and sense also included.

**Conclusion:** Volkgeist is a terminology with inherent psychological and spiritual meaning which is operated and manifested in the form of language, folklore, custom, and behavior. Related to that psychological aspect, the indigenous people of Bengkulu City are obedient to the customary law as the law contains ethical values and norms which well reflected the ethical wisdom. The ethical wisdom is a reference engraved on the spirit of the people. Values, norms, and cultural wisdom are the reflection of the way of thinking and psychological structure of indigenous people at Bengkulu City. It is because the customary law is the implementation of the society's psychological aspects, which includes work, idea, and sense.

**Keywords:** *Psychology, Customary Law, People Spirit, Indigenous People*

## Introduction

The only historical tradition of Indonesian law is customary law<sup>1</sup>. In this modern era, Indonesian still have their respect for customary law. The existence of indigenous people in Indonesia is attached on the 1945 Constitution of the Republic of Indonesia<sup>3</sup> the second amendment in article 18 B section (2) and article 28 I section (3)<sup>3</sup>. Customary law is the law regulates relationship among the people as custom, habit, and morality in the indigenous community as it is obeyed and defended by the people, also the law with sanctions for violation determined by the authority holder and decision makers such as leader and judge<sup>2</sup>. Particularly for indigenous people at Bengkulu city, the regulation is explained in the local government regulation of Bengkulu No. 29/2003 about the implementation of Bengkulu City Custom.

On the indigenous people of Bengkulu City, customary law is the reflection of people spirit. Law is the psychological reflection of a nation. Law is not the will of a state or something derived from God's law. Instead, it is something we can seek from social life. There is no exact

form and substance of the law. It fully depends on social development<sup>3</sup>. Customary law is a living law as it represents the people feeling<sup>4</sup>. However, custom with sanctions is the one defined as (customary) law<sup>5</sup>.

Customary law is a form of inherited culture of law which is used to manage the life within the indigenous community. As customary law commonly represented as a habit, the law tends to be unwritten law. The other character of the customary law is the ability of the law to pay attention and consider the psychological condition of society. It makes the function and application of the law are based on the feeling of justice and the need for law among society. Every behavior and action of people must be based on the psychological factor.

It can be seen that the customary law of Bengkulu city is the representation of the people spirit which is integrated into the representation of the psychological state of each individual in the indigenous community. Law is a product of a human spiritual process. Therefore, psychology is strongly linked to the law itself. It is in line with the term of Psychology, which means the science about spiritual and behavior aspect of human. It relates to the study of law where psychology views the law as the reflection of human behavior<sup>7</sup>. Psychology doesn't directly learn the human spirit or mind as the abstract character of the object. However, psychology limits the study on the manifestation of spiritual and mental in the form of behavior. Therefore, psychology can be defined as a science which learns about behavior and mental process of human<sup>8</sup>. This way, the law is unconsciously infiltrating the scope of psychology, particularly social psychology<sup>9</sup>.

Based on the description above, the **psychological analysis** about **customary law as the people spirit** on **indigenous people** at the **Bengkulu City of Indonesia**.

#### **Material and method**

The research employed primary and secondary material. Primary material gained through research about the empirical fact of human behavior documented in the form of behavior records. Meanwhile, the secondary material was gained through literary study<sup>10</sup>. Descriptive qualitative was used as the research method<sup>11</sup>.

#### **Finding**

##### **A. Psychological analysis of customary law as the people spirit (volksgeist)**

People are not able to inherit the customary law from the people before them without looking back to the history of their ancestor. It emphasizes the importance of cultural tradition as revealed in some studies about law and social development<sup>12</sup>. The importance of cultural tradition through historical approach in law was stated by Savigny that *"Das Recht wird nicht gemacht est ist und wird mit dem volke"* which means that **law is not instantly made yet grow and develop** in the national spirit<sup>13</sup>.

The close historical view which became the icon of Savigny did not instantly change law into something stiff and out of date. In this case, the law is dynamic as the product of national spirit which always moves to the direction of the people interest. Law is formed through a long journey, from the bottom to the top. Law is a fundamental value of national spirit, not the randomly made value. Those concepts gave Savigny idea to deliver the concept of volksgeist (national spirit) when he learned about the law of a nation.

Volksgeist, **volksseele, nationalgeist, geist der nation, or volkscharakter** are **known as national character**. It can also be literally translated into the spirit of a nation. According to Herder, volksgeist is the manifestation of the people spirit. People or society is something empiric. It makes a society is different from one another. Every society has its character, especially for the indigenous people or society. Volksgeist is a psychological and spiritual terminology which inherent and operates in some entities such as language, folklore, custom, and behavior<sup>14</sup>.

The importance of customary law might never be clearly formulated and firmly stated by the leader. Therefore, Savigny defines it as the law of people or *volksrecht* which exist comprehensively under the spiritual consciousness of the society<sup>15</sup>. In this case, Margareth Gruter mentioned that the existence of people behavior in law is not limited as the customary law which is rooted in people idea. Instead, it has been programmed deep inside human idea, so that it is believed as the result of biological evolution of human.

**B. Psychological analysis on the customary law of indigenous people at Bengkulu city**

The correlation between psychology and customary law as the spirit of the people is represented on the customary law of Bengkulu city. The customary law is a kind of custom in people's social life. It began when human come to the world, made family, and lived as a community, and then as a nation. By looking at the development, the law is formed since the process of God giving idea and behavior to human<sup>17</sup>.

Behavior is stuck on people and represented by the motoric, perceptive, and the cognitive function as an individual. God creates human and gifted it with the mind or thought to well behave. The continuous behavior which forms individual habit can be spontaneously accepted by society as a form of custom. Besides, as a social being, a human cannot avoid the consequence of social interaction which may influence the other individual. Habit can be formed into custom by means of social interaction. Therefore, the habit can be slowly transformed into a custom which reflects people feeling (indigenous people of Bengkulu City). The society makes the custom as a valid regulation which should be obeyed by all of the society members and makes this into a customary law<sup>18</sup>. The process shows the creation of customary law of Bengkulu city which begin from people idea, behavior, and will as the psychological manifestation on indigenous people spirit of Bengkulu City.

It is clear that customary law is one of the living and cultural aspects of Indonesia as a nation. It is because the spiritual structure and way of thinking which are well reflected in the customary law itself. According to Soepomo, by looking at the Indonesian (indigenous people of Bengkulu City) spiritual structure and way of thinking, the customary law is represented into some characters such as follow<sup>19</sup>:

1. Communal

Based on customary law, a human is a creature within a social bond with a strong communal feeling. Indigenous people prioritize togetherness without ignoring individual deed.

2. Religious

The customary law has a religious value which is strongly related to Indonesian living aspects, of which the people believe in something magical and evaluate religious aspect as a real aspect in life.

3. Concrete

The system and management of Indonesian customary law is concrete. It means that people use a concrete symbol to represent their behavior and action as the representation of someone's will.

4. Visual

The relationship over law can only be determined by a visual bond. The actualization of these values is integrated and true between saying and action.

The psychological aspects are also included in the customary law aspects, such as<sup>20</sup>:

1. Reality aspect, which means that custom is always respected in any condition repeatedly and continuously to be obeyed and applied in everyday life.
2. Psychological aspect means that after believing that the custom is constant and continuous, people should also believe that the custom has its legal force and give the legal obligation to the people (*opinion juris necessitatis*).

Related to those psychological aspects, the indigenous people of Bengkulu city are obedient to the customary law as the law contains the ethical value, and also the applied norms which are able to reflect the cultural wisdom value. It engraved as the reference for the society. Those ethical values are saved on the philosophical system of the indigenous people of Bengkulu City as *Syara*' based custom. *Syara*' is based on *Kitabullah* or the holy Quran. It proves that society has a religious way of thinking, or the belief of something sacred, also the assumption that every individual is an integral part of society. An individual deed is synchronized with the social deed.

Meanwhile, the prohibited norms in customary law society of Bengkulu City are *Cempalo mulut* (make someone else embarrassed), *Cempalo tangan* (damaging, ruining, vandalism), *Cempalo mato*, make a social call, adultery, social etiquette, land ownership, the duty to keep the environment, also etiquette in taking other's goods. The customary penalty usually in a form of apologies, *setawar dingin*, and customary fines<sup>21</sup>.

The norms, values, and customary wisdom are the reflection of spiritual structure and way of thinking of indigenous people with the customary law of Bengkulu City. It is because customary law is also the implementation of psychology from the indigenous customary society which includes work, idea, and sense.

#### **Conclusion**

Psychological analysis on customary law as the spirit in indigenous people of Bengkulu City Indonesia showed that there is an integrated relation between *volkgeist* and customary law of Bengkulu citizen. *Volkgeist* is the terminology with psychological and spiritual meaning which inherent and operates as some entities such as language, folklore, custom, and behavior. The behavior has stuck on human which is represented through motoric, perceptive, and cognitive function and formed a single totality as a human. Related to those aspects of psychology, the indigenous people of Bengkulu City are obedient to the customary law, as the law contains ethical value and norms which reflects the cultural wisdom and strongly engraved on people spirit. The values, norms, and cultural wisdom are the reflection of spiritual structure and the way of thinking of indigenous people of Bengkulu City. It is because the customary law is the implementation of psychology on every individual of a group of customary society in a form of work, idea, and sense.

#### **Conflict of interest**

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