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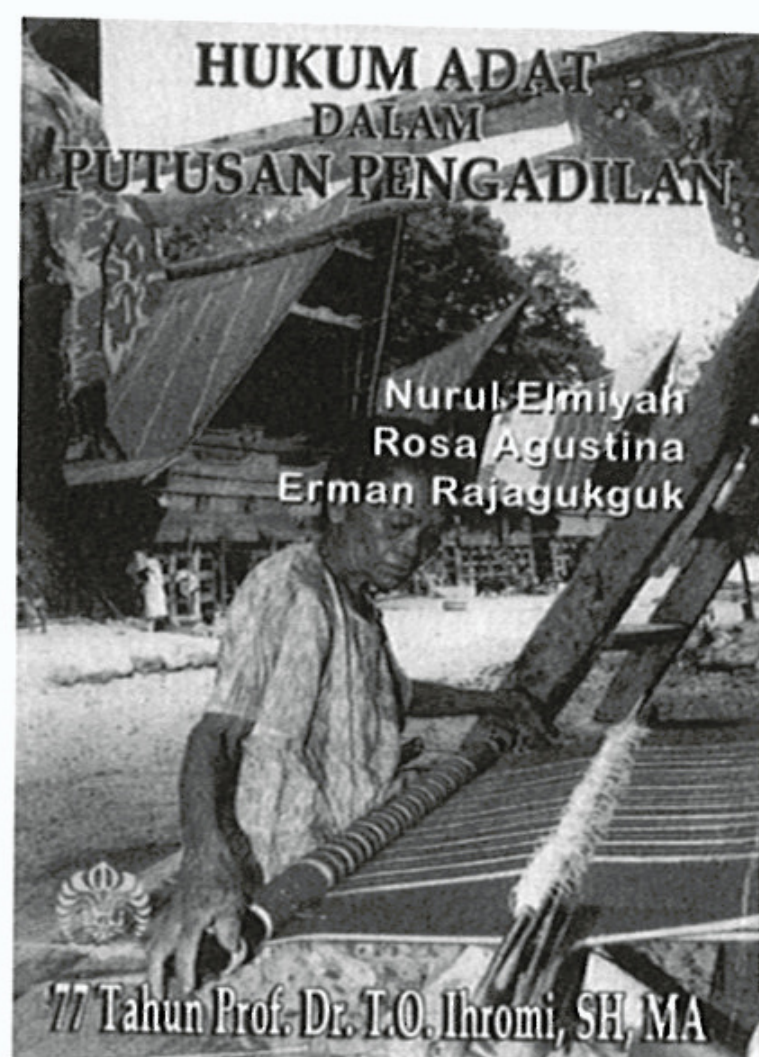
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# HUKUM ADAT DALAM PUTUSAN PENGADILAN (ADAT LAW IN COURTS' DECISIONS)

Wenny Setiawati



This little book is proven to be not so lightweight after the reading. At first, the number of page which is only 74 pages gave the feeling of light reading material, but the opposite result took place. Since this book was filled with court decisions on the various cases related to customary legal system, so the reader would need all of his focus in understanding the hidden lines within the reading.

Written and published as a honorary to the late Professor Dr. T.O. Ihromi, SH, MH. an expert in anthropology law and social sciences, this book focused on how customary law has influenced the legal system in Indonesia. The development of the customary society after reformation era has shown the existence of the

customary society as part of Indonesia society, in which the customary law included in the legal system of the nation. Therefore, this book intended to show the existence of customary law in the legal system especially in the court decisions.

This book consists of three chapters, which is the reason for its lightweight. The first chapter is describing the role of court in the development of customary society. The second chapter is talking about the court's standing in customary inheritance law. The last chapter is about court decision on other issues.

The role of the court in the development of customary society as discussed in the first chapter is describing how judges in court have an obligation of finding the law (*rechtsvinding*) in which are to to know about facts and laws, and also took consideration about the needs and values before making a decision on the case. One way of this *rechtsvinding* is by implementing customary law in the case instead of civil law, as shown in the case of *Masudiaty v. Gusti Lanang Rejeg* (No. 3191 K/Pdt/1984), where the judge proceed the case of promise to wed between a man and a woman. The District Court judge made the decision in favor to the claimant, in this case the woman promised to be wed, and decided that the man in this case must carry on the promise to wed and also redress the woman with customary sanction. The respondent then brought the case to the Appellate Court which made an opposite decision by using the civil law on promise to wed which does not establish a right to claim. Finally the claimant brought the case to the Supreme Court. The Supreme Court judge made decision based on the customary laws which acknowledge the existence of promise to wed and that the claimant had a legal standing to bring the case before the court in the case the man who promised to wed the woman tried to avoid the promise.

The second chapter of this book is filled with court decisions form various courts and extensive customary laws which are different in every region. Each case is discussed in a descriptive way on how each court made its deci-



sion, and how the consideration can be variant between district court, appellate and Supreme Court. Through the cases, we can see the judge in every level has apprehended the customary law in deciding the case in regard to customary society, which not only the positive laws applied to such case but also the customary laws. One interesting point as shown in the case of Usman Cs. v. Maran Iman Nasution Cs. (No. 415 K/Sip./1970) where in the dispute over inheritance between the descendants and the siblings of the late Malim Djoni. The Supreme Court in its decision stated that the 'give and transfer' on the inheritance by the late Malim Djoni to his siblings is done accordingly and not in the violation of any laws. Because the 'give and transfer' was intended to soften the customary laws, especially the Tapanuli customary laws which in prior time does not recognize a daughter's right to inherit, but with this 'give and transfer', the daughter can inherit from the parents. This case show the evolving of customary laws, the combination of the national law as in civil law, with the customary laws, perceived a better decision for parties in dispute, where the judge has to made a fair and just decision for both parties.

The third chapter of this book covers some cases of customary laws outside beside inheritance, for example the case of annulment of engagement, promise to wed, unlawful possession of properties, all cases related to Batak's customary laws. All cases in third chapter are discussed with the same method as cases in the second chapter.

For people with interest in customary laws in Indonesia or even the anthropology of Indonesia, this book would give a new perspective on how the customary laws existed side by side with the national laws. The construction of national laws is definitely cannot be in segregation with the customary laws. The customary society lives and abides by the customary values; hence the law making would always take into account on how the law would affect the customary society. And for the law students, this book would give a deeper understanding on how the judge make a decision over cases related to customary laws. This would give a comprehensive knowledge on how such cases were solved in the court and would help the students in the future practice.

Once again this book is a light reading for a deeper comprehension, enjoy the reading.

**Title** : HUKUM ADAT DALAM PUTUSAN PENGADILAN  
**Writers** : Nurul Elmiyah, Rosa Agustina, Erman Rajagukguk  
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