

**PENGANTAR
KEDALAM
HUKUM ADAT INDONESIA
(ringkasan isi kuliah)**

**INTRODUCTION
INTO
INDONESIAN ADAT LAW
(outline of a course of lectures)**

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collection



CHAPTER I

ADAT and ADAT LAW.

1. GENERAL

Before considering various aspects of our subject, first and foremost one question should be posed: What is ADAT?

In the writings on Indonesian Adat law, prior to and after the Second World War, very few authors focussed their attention on the above question. In my opinion however, the answer to it is very important. Since Adat law represents only one aspect of Adat (custom) as a whole, the answer to the question what Adat is, will aid us in finding explanations for the cases that may emerge from research in Adat law.

Therefore, the first thing we are going to discuss here is what Adat, as accepted and felt in the Indonesian community, really is.

2. WHAT IS ADAT?

The word "ADAT" originates from the Arabic.⁴⁾ But in the regional as well as in the Indonesian language the meaning of this term is not unfamiliar anymore. In the national as well as in regional languages the meaning of this term differs from its original Arabic meaning. In Indonesia this word is often used by itself, but can also be used in composites, e.g. "adat - istiadat" or "adat - kebiasaan".

What is the meaning of the word "adat" and its composites? First of all we will state here the views given by some authors, to be followed by our own.

According to Snouck Hurgronje, one should distinguish between the meaning of Adat in the Malayan dialect and in Minangkabau dialect. For the Malayan dialect he gave the meaning of "adat-istiadat" as being "the whole of human institutions".

In the Minangkabau dialect the composite is used to indicate a definite category of institutions, as distinct from other categories which are indicated with other kinds of composites (e.g. "adat nan diadatkan" or "adat nan teradat") or other expressions.⁵⁾

Snouck Hurgronje warns us that the meaning of this word is far from constant. To give an example: some hold that "adat istiadat" covers

"the whole of the ancient laws and customs set up by the ancestors, as distinct from what is set up by later generations and which is seen as more amenable to change", while to others that composite means "not what is given by itself, but what is determined by agreement (mufakat) and which for this reason cannot claim the absolute respect of "adat sabana adat" (the true unalterable adat)".⁶⁾

From Snouck Hurgronje's exposition the exact meaning of Adat is not clear. Here that author only attempts to explain the meaning and the sense of the word "Adat" in its relation to "istiadat" and "sabana adat".

Hazairin formulates "Adat" as being the "sediment of ethics in the community".⁷⁾

Kusumadi Pudjosewojo has a different view, emphasizing upon "the moment" when a certain conduct becomes Adat. Kusumadi says: "it is also possible that at first a certain line of action was followed out of habit which, gradually instilled in the community concerned, gave a feeling of propriety, and that finally this line of action has become Adat."⁸⁾

The same author mentions the conditions for a certain conduct to become custom, and secondly for that custom based on a sense of propriety, to become considered compulsory.

In my opinion, from the views stated on what Adat actually is, Hazairin is the only one who has given a clear cut formulation of what Adat is. He bases his definition upon ethics and thus to him Adat is a sediment of ethics.

Before I come to my own view concerning the nature of Adat, first I would like to examine some questions about:

- a. the varieties of Adat as known in some regions of Indonesia.
- b. material sphere of validity.

The answers to these two questions will later clarify the meaning of what is called Adat by the various authors, cited above.

3. THE VARIETIES OF ADAT

What will be discussed here concerns only the varieties as found in a few regions. This because, as far as I know, the most detailed divisions are found in Minangkabau, and next to that among the Sasak in Lombok. The specification of Adat as known by the Minangkabau Adat experts falls into: ⁹⁾

A. Adat sabana Adat

B. Adat which is not sabana Adat.¹⁰⁾

"Adat sabana Adat" can be explained as follows:

According to the Adat experts in Minangkabau, this type of Adat is absolute; meaning thereby that it is of universal application, not subject to time or place or individual discrimination.¹¹⁾ Regarding the content of the "Adat sabana Adat" there are two views among Adat experts. One holds that "Adat sabana Adat" only consists of natural law and the other holds that "Adat sabana Adat", besides being natural law, also covers the laws of nature.¹²⁾

About "Adat sabana Adat" not much is known yet by those who record Adat law; therefore, a vast area of Adat law still needs to be explored. In the Minangkabau "Adat which is not sabana Adat" is classified as follows:¹³⁾

- a. adat istiadat -- (custom in general)
- b. adat jang teradat -- (specific custom)
- c. adat jang diadatkan -- (custom by acceptance/decision).

"Adat istiadat" serves as a guideline for the community. It is not easy to change and it is observed throughout the area of Minangkabau.¹⁴⁾

"Adat jang teradat" as interpreted by the Adat experts is a certain mode of behaviour, practised and repeated in a certain case of Adat. It varies from place to place.¹⁵⁾

"Adat jang diadatkan" indicates a certain mode of behaviour which, because of circumstance and development or passage of time, needs to be accepted as Adat.¹⁶⁾

Especially "Adat istiadat" is, according to the Minangkabau, a guideline of life for the community and has to be known and understood by each and every member of the community who has to observe it faithfully in the day to day pursuits in life.

Besides the threefold division of "Adat which is not sabana adat" mentioned above, there is also another specification:¹⁷⁾

- a. Adat djahiliah
- b. Adat islamiah.

"Adat djahiliah" is the Adat which is contrary to the sjariah of Islamic religion. This definition is made in order to indicate that, after the arrival of Islamic religion, Adat deriving from the ancestors, from the viewpoint of the Islamic teaching, is considered as damnation.¹⁸⁾

On the other hand, Adat which is based upon Islamic teaching or which is in accordance with the teaching of Islam, is called "Adat Islamiah".¹⁹

This latter classification of Adat as explained above, as far as I know, is not significant yet for the purpose of our study of Adat. This classification is important only for studies regarding Adat change in the Minangkabau community.

A somewhat detailed classification of Adat can also be found in the Sasak community of Lombok. The classification of Adat in this case concerns rituals which are connected with a certain belief. According to the Adat experts of this region ritualistic Adat can be classified into three categories i.e.:²⁰)

- a. Adat governing life (adat hidup)
- b. Adat governing the month (adat bulan)
- c. Adat governing death (adat mati)

"Adat hidup" governs activities to be undertaken by the community in dealing with events of stages in a person's life. For instance, birth and coming of age.

"Adat bulan" comprises activities to be performed by the community at the coming of months, which according to the belief of the community are considered "auspicious" or "unauspicious". In other words, months that are conducive to happiness or those incurring bad luck in the community.

"Adat mati" covers activities dealing with the death of a member of the community.

This specification of Adat can be found only so far as it is related to a certain belief. Adat governing other fields is, in my opinion, not classified and is only known as plain "Adat", without any further qualification.

The Adat of Sasak - according to my investigations - makes a difference between "adat" and "tjara".²¹) In my opinion, however, in this context "Adat" means guideline, whereas "tjara" denotes the execution of the guide-line.

The distinction between "adat" and "tjara" is also found in Javanese communities. But less clear is what "adat" in this context actually implies.

There are some who hold that "Adat" is a certain behaviour which is observed by the public at large and which is consistent and extant, from ancient times up to the present; thus becoming established custom. There

are others believing that "Adat" is the same as "habit" (kebiasaan) connected to a certain situation. Others again interpret it as "guideline of life".

"Tjara" generally denotes execution of a certain clear cut "guideline"; it is a known procedure which is followed to translate a certain "guideline" into reality.

In daily social intercourse various terms connected with the word "Adat" are being used with many connotations which are far from clear. Often a certain behaviour is called "adat istiadat", whereas the same thing on an other occasion, may be termed "adat kebiasaan". It is in this field that a deeper study should be made; since an accurate knowledge on what is really meant and felt by a certain community as being "Adat" is very important in determining the place and meaning of "Adat law" as part of the whole body of Adat.

4. THE MATERIAL SPHERE OF VALIDITY.

The influence of Adat on people living in a community governs all strata of life, such as the field of interrelationship between human beings in general and that between the members of the community in particular, the field of business-relationship as well as that of common interest, of community structure, of ethics, of belief and religion etc. All these merge into a peaceful and orderly rhythm of life. The force or impulse which brings about such a condition on the Adat community is due to this very "Adat" itself.

There is hardly any sphere of life where Adat does not penetrate.²² Therefore, in a traditional community there is no aspect of life which is not under its sway.

5. THE FOUNDATION ON WHICH ADAT FUNCTIONS IN THE COMMUNITY.

The functioning of Adat in a community by and large depends upon a delicate feeling of harmony among its members which leads to a strong effort of the community members to maintain accurately the execution of the prevailing ethical code. This renders in daily life the feeling of shame (malu), and the fear of causing disgrace or "siriq": the basis for the functioning of Adat. In a traditional community great care is taken to cause no embarrassment or disgrace or "siriq". This has become a very strong pattern, taught by parents to their children unceasingly.

"Loosing face" is an event or a situation which is strongly felt as a most upsetting experience by the traditional community.²³⁾

Therefore, a delicate ethical feeling is considered to be of utmost importance wherever "the feeling of shame" may become involved. Thus, the traditional way of upbringing stresses the cultivation of this sensitivity.²⁴⁾

Besides the above teaching, which is not based upon coercion, there are also Adat institutions which, as they developed recently, are not averse from the use of coercion to enforce the Adat. This is to preserve and to protect the Adat which is intricately bound up with the quiet and order of the society as a whole.²⁵⁾

6. CONCLUSION.

The conclusion then as to what Adat is - as derived from the above observations - is: Adat is the whole body of teachings and their observance which governs the way of life of the Indonesian people and which has emerged from the people's conceptions of man and world.

In this connection "Adat" is the "path of life" of the Indonesian people, welling up from its sense of ethics.

As a path of life in the community the experts classify Adat into:²⁶⁾

1. Adat comprising all institutions that are interrelated, thus resembling a chain of prescriptions.
2. Adat in the form of regulations and special directives to observe a certain rule in the institution concerned.
3. All what is meant to interpret, or to make provisions for gaps in ad 1. and ad 2.

These distinctions can be named as follows:

- a. "adat istiadat" which refers to the set of series of the Adat institutions as a whole.
- b. "adat jang teradat" which refers to a particular observance of the Adat institutions according to time, place and circumstance.
- c. "adat jang diadatkan" covering the decisions of the Adat functionaries, wherever "adat istiadat" or "adat jang teradat" do not, or do obscurely make provisions for a given case.

7. ADAT LAW.

Does what is commonly called "Adat law" exist?

Adat has many aspects, such as regarding morals, correctness, belief or religion etc. Therefore, the question should rather be formulated thus: "Is there in Adat also an aspect of law?"

The answer to this question depends upon the answer to the question: "what is law?".

Western scholars at the beginning looked upon this aspect by basing their opinion upon the teaching and definition of law commonly accepted in the western world.²⁷⁾

They coined a notion which is known as "Adat law".²⁸⁾ This notion was introduced by Snouck Hurgronje, and later on adopted by van Vollenhoven.

8. WHAT IS ADAT LAW?

Since the time of van Vollenhoven until now the answer to this question is in a state of continuous flux.

Western scholars have paved the way to select which part of "Adat" can be accepted as "Adat law".

To decide which part of "Adat" can be given the name of "Law", van Vollenhoven considers the existence of sanction in its widest sense as the criterion.²⁹⁾

According to Ter Haar, only Adat which is expressed in the decisions of Adat legal functionaries can be accepted as "Law".³⁰⁾

What is the opinion of the Indonesian scholars themselves? Only some of them will be quoted below:

Kusumadi Pudjosewojo made a distinction between Adat law in the Dutch law system ("Adatrecht") and Adat law as it occurs in the law system of Independent Indonesia since 1945 ("Hukum Adat"). That author's opinion is that the Dutch "Adatrecht", as created by van Vollenhoven, has been abolished. On the other hand, Kusumadi Pudjosewojo takes the same stand as Ter Haar in that Adat law the Adat which is enforced by Adat functionaries in their decisions.³¹⁾

For Supomo the decision whether a certain Adat can be considered as law depends upon the traditional feeling of law and as such it is a living law that has become manifest for the people.³²⁾

Djojodigoeno states that in defining Adat law one should distinguish a formal and a material definition. Adat law in its formal sense is all law which is not derived from written law. In its material sense, Adat law is essentially norms which can be concluded from certain sources and which emerge directly (as expression of Indonesian culture, i.e.) as expression of the sense of justice in business-like (as against emotional) social relations. The sources, referred to above, are divided in two categories: authority of the government or its agencies and authority of the people itself. Decisions of legal functionaries are the chief expression of the former category, whereas the customary behaviour of the people itself, in business-like social interrelations, is predominant in the latter category.³³⁾

What is called "Adat law" has in my opinion existed since antiquity. Only it's being severed from "Adat" and the attachment of the word "law" is a recent phenomenon.

For a clear definition of Adat law, we distinguish first the material definition and the formal definition.

In its material sense, by Adat law I understand that part of Adat which is the direct expression of the sense of justice (keadilan) and propriety (kepatutan) of the people with regard to social relations.³⁴⁾

Here, four things have to be investigated in the first place:

1. what is Adat
2. how is the content of the sense of justice and propriety
3. how are their manifestations
4. which part of Adat is related to the sphere of social relations.

In its formal sense, Adat law can be defined as the part of Adat which is manifested in the whole of institutions, rules and decisions about social relations which are accepted by the adat community concerned as ordering their society.

9. THE POSITION OF ADAT LAW IN ADAT.

"Adat" governs all spheres of life. "Adat law" is only a part of "Adat" i.e. that part which reflects the sense of what is just (adil) and proper (patut) in the field of social relations. Adat law is therefore situated in that portion of Adat which settles only problems of social relations in the light of justice and propriety.