

ANALYSIS OF THE LEGAL BASIS FOR THE FULFILLMENT OF CUSTOMARY DEFAULT SANCTIONS (Contract Agreement)

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Abstract

This research aims to examine more deeply the fulfillment of default sanctions through customary law from a positive legal aspect. This is intended to get a clear picture of how the sanctions of default are applied through customary law and views in positif law. This research is a type of doctrinal normative research (*doctrinal reseach*), the selection of the type is based on several understandings and opinions of the author, This research uses a legal comparative approach, a conceptual approach (*conceptual approach*), and a case *approach* (*case aproach*). A comparative approach to legislation is also very necessary because as a legal country that adheres to *the Civi law system*, laws are the main source of law (*rule based*). A comparison of laws was carried out by examining all laws and related regulations in this study. This study explains that customary law has an important role in the arrangement of treaty contracts in indigenous peoples of Indonesia. As a cultural heritage recognized in the 1945 Constitution, customary law provides a basis for the implementation of agreements, especially those carried out orally based on mutual trust. Principles such as freedom of contract, consensualism, legal certainty, and good faith are important foundations for the validity of contracts in customary and national law.

Keywords: Customary Law, Sanctions, Default, Positive Law.

Introduction

Customary law in Indonesia is a cultural heritage that predates the emergence of the modern legal system. As a form of unwritten law, customary law regulates people's lives based on traditional values, norms, and habits that are carried out from generation to generation. Formal recognition of the existence of customary law is stated in Article 18B paragraph (2) of the 1945 Constitution, which states that *"the state recognizes and respects the unity of customary law communities and their traditional rights, as long as it is alive and in accordance with the principles of the Unitary State of the Republic of Indonesia."*

Customary norms are often considered a source of living law because they reflect the values, beliefs, and habits of the local community. However, customary norms do not have the same legal force as positive law, so their position is often questioned in the context of formal contractual contracts. For example, the