



ADOPTION OF ANAK ADAT OF THE MALIND TRIBE IN MERAUKE PAPUA

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ABSTRACT

Adoption is a common legal event in Indonesia, including in the Malind tribe in Merauke Regency. However, there is something unique in the customary of Malind tribe where there is a ritual of adopting an adult, even married person who come from outside the Malind tribe, known as anak adat. This study aims to determine the ritual procession of adoption of 'anak adat' according to the customary law of the Malind Tribe and to determine the implications that occur in connection with the adoption. The results of this research show that (1) The adoption of anak adat in the Malind Tribe is carried out with a traditional ritual that lasts all night and ends with the inauguration of the customary chief who is given the name and clan of Malind and a plot of land from the clan land to own. (2) The implication of the ritual of adopting anak adat creates rights and obligations for indigenous children in their status as members of the Malind indigenous community and results in a break in the kinship between the customary child and the previous tribe.

Keywords: Adoption, Customary Law, Malind Tribe

1. Introduction

As a rule of law, Indonesia adheres to a legal system which, according to Achmad Ali, is a *Mixed System*, where the legal system of legislation, customary law and Islamic law applies.¹ Customary law in the *Mixed System* adopted by Indonesia still exists in social life. This happens because Indonesia is a nation that is relatively still maintaining and maintaining local values and traditions. In practice (descriptive), people still use customary law to manage order in their environment. In prescription, customary law is used as a basis for determining statutory decisions or regulations. Its existence is also recognized but limited in its role.² The recognition of customary law in Indonesia is recognized by the 1945 Constitution of the Republic of Indonesia in Article 18 b paragraph (2) that:

¹ Ali, A. (2015). *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence) Volume 1 Pemahaman Awal*. Jakarta: Kencana Prenadamedia Group, h. 203

² Pide, A. S. M. (2014). *Hukum Adat Dahulu, Kini, Dan Akan Datang*. Jakarta: Kencana Prenadamedia Group, h. 75

"The state recognizes and respects indigenous peoples and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law"

In accordance with the main characteristics and characteristics of unwritten customary law in the sense that it is not promulgated in the form of statutory regulations, customary law grows and develops and is rooted in traditional culture as a real feeling of people's law in the daily life of the Indonesian people.

Indonesia is a multicultural country consisting of various ethnic groups, religions, beliefs, and different languages. As a multicultural country, Indonesia has very diverse ethnic groups. There are more than 1,300 ethnic groups in Indonesia if you refer to the 2010 population census data conducted by the Central Statistics Agency (BPS). All of these ethnic groups certainly have their own culture so that you can imagine how plural the culture is in Indonesia. Thus it can be seen the variety of customary laws in Indonesia.

Currently in Indonesia customary law is still alive in society, especially in rural communities who still maintain traditional values. In urban communities, especially in big cities, it can be said that customary law is starting to fade as a result of people's increasingly individualistic lifestyles. However, with the development of an era where the exchange of information became easier (including cultural exchange), foreign culture influenced the culture of the Indonesian people so that the original culture of the Indonesian people was increasingly threatened to be replaced by foreign culture. It can be said that customary law as part of the original culture of the Indonesian nation is a true reflection of the perspective of the Indonesian people, the original identity of the nation is in danger of being abandoned to be replaced by western law which is more individualistic.

Indigenous peoples have special characteristics as a group of people living in an area from generation to generation and continuously with a cultural system with distinctive customary rules that bind social relations between the various social groups in it. Apart from that indigenous peoples are determined by how they self-identify, but also by the way other parties, especially the State, treat them with all their apparatus.

Papua Province is divided into five customary areas (while the West Papua region is only divided into two customary areas, namely the Domberai area and the Bomberai customary area). The five indigenous Papuan territories are arranged based on the names of the districts with the capitals: Mamta, Saereri, Anim Ha, La Pago, and Mee Pago. The customary territory of Anim Ha (real human) includes the districts of Mearuke, Boven Digoel, Asmat, and Mappi.

The Malind tribe is a native of Merauke Regency. Generally they live in groups along the rivers that cross the Merauke Regency area. Their livelihoods are generally hunting, gathering, gardening. They inhabit the four cardinal directions with seven major clans, namely Gebze, Kaize, Samkakai, Ndiken, Mahuze, Balagaize, and Basik-basik.

As J. Van Baal wrote in his work, '*Dema, Description and Analysis of Malind Anim Culture*', the Malind tribe formerly believed in dema, which is a spirit that is believed to be able to manifest as anything in nature, whether human, animal, plant, or stone. . All universes originated from dema. This dema is in the form of supernatural powers in nature, or in the form

of spirits of the dead. All of this is also related to their concept of totemism.³ Hence there are nature demas that are worshiped apart from the totem demas themselves. There are dema who appear to humans in the form of humans as well or in the form of animals. Some are called *yorma* (ocean dema), *wonatai* (crocodile totem), *yawi* (coconut dema) and others.⁴

The Malind tribe has very close kinship relations and work hand in hand in everything. This close relationship in kinship can be seen from the style of life of the community which prioritizes social interests more than individuals. This can be seen, for example, if they get the results from hunting or gardening, they will share it for all family members.

In general, the customary law of the Malind Tribe also recognizes adoption. Although not similar to the law of adoption in the prevailing laws and regulations, customary law has its own procedures based on each customary territory. In the Malind tribe in Merauke adoption has also been known for a long time. The adoption of a child in the Malind Tribe can be from within the tribe (a member of the tribe) or from outside the tribe in the sense of someone who is in another tribe then appointed and given a clan by the Malind Tribe so that they become part of the Malind Indigenous Community, or better known as the term "anak adat".

The characteristics of the Malind tribe's indigenous children are at the age concerned at the time of their appointment, that is, they are usually adults according to the prevailing laws and regulations (over 21 years old), even married and having children. In addition, the adopted children also come from other tribes which have their own customs. The adoption initiative comes from the child's side, not from the parent's side.

2. Method

This type of research uses a socio-juridical type of research, namely field research supported by literature research, which examines the adoption of anak adat according to the customary law of the Malind Tribe and the implications associated with adopting this child. This type of research sees law as *law in action*, described as an empirical social phenomenon.⁵ The research emphasizes on field data as primary data. The data were extracted using the interview method which was equipped with a list of questions as a tool, then it was processed qualitatively and the results were presented descriptively and analytically.

3. Result

a. Overview of the Malind Tribe

The Malind tribe is an indigenous tribe who lives in the southern mainland of Papua Island. They called them the Malind anim, which can be interpreted as the Malind people. Today there is an understandable mistake in the community regarding the name of this tribe. Most people know him as Marind, who should be Malind. This mistake began in the Dutch colonial era because the tongue of the Dutch at that time was very difficult to pronounce the word Malind,

³ Totemism is the belief that certain animals or plants are considered to be creatures that have certain powers. For example, the eagle, wolf and tiger. These animals are respected and considered taboo to be hunted and eaten.

⁴ Profil Wilayah Adat Anim Ha. Tersedia online di <https://penghubung.papua.go.id/5-wilayah-adat/anim-ha/>. (diakses 7 Oktober 2019).

⁵ Ali, A. & Heryani, W. (2013). *Menjelajahi Kajian Empiris Terhadap Hukum*. Jakarta: Kencana Prenadamedia Group, h. 2

so they called it Marind. Until now, there are still many people who call it Marind rather than the original pronunciation of Malind.

Records of the Malind tribe began by Europeans more than a century ago along with the arrival of Europeans to the southern coast of Papua Island. It was told by Jan Boelaars that the Malind Tribe lived in a hut under a coconut tree that grew near the sea. Men, young and old gathered together in one big hut. The women lived together in one other hut with the children.⁶

Generally the Malind tribe is a nation of gatherers because at that time the source of food was very abundant provided by nature. Sago and coconut are the main dishes served together with pork, cassowary, wallabi or fish. Only *wati*⁷ which received special attention because it is a sacred plant used in various traditional rituals. *Wati* for the Malind Tribe is a symbol of authoritative male leadership, family dignity, wealth, and cultural identity.⁸

The Malind tribe itself is a large tribe in the sense that it is divided into 4 groups. Of these 4 groups, they are further divided into sub-tribes. As for the number of sub-tribes in it, there are at least 17 sub-tribes. The division of the four groups refers to the four cardinal directions, namely the mayo group, the imo group, the ezam group and the sosom group.⁹ Of the four groups, the 4 customary territories in the Malind Tribe.

The Malind tribe has a strong belief in Dema, a highly respected spiritual being. Van Baal explained it as follows;

*"Déma is not a word which is used lightly or carelessly. Its use is surrounded with awe and mystery. A corresponding atmosphere is deliberately created when telling a myth. Dema are the mythical storyfolk, and when a Malind wants to relate their adventures he lowers his voice to a mysterious whisper, interspersing his words with meaningful pauses or admiring clickings of his tongue, alternated with longdrawn-out whistles of amazement, and he slowly proceeds with his story, all the time emphasizing his words with impressive gestures."*¹⁰

In addition, the Malind Tribe is also an adherent of totemism which is an important part of the Malind Tribe culture and is still maintained today, even though the majority of them are Christian. This can be seen in the main clans of the Malind Tribe. There are 7 main clans in the Malind Tribe including Ndikend, Gebze, Mahuze, Basik-Basik, Kaize, Balagaize, and Samkakai. Each of the above clans has their own totem which they believe is sacred and still has a relationship with their ancestors so it must be maintained. The totem in the Malind Tribe is in the form of animals and plants which represent the symbols of each clan, namely the bird *ndik*¹¹ as the totem of the Ndiken clan, coconut tree for the totem of the Gebze clan, the sago tree for the totem of the Mahuze clan, the boar as the totem of the Basik-Basik clan, cassowary for the

⁶ Boelaars, J. (1986). *Manusia Irian Dahulu, Sekarang, Masa Depan*. Jakarta: Gramedia, h. 4

⁷ *Wati* or *kava-kava* is a plant with the Latin name *Piper Methysticum* which has an intoxicating effect. It can be consumed by chewing the roots directly or extracting them and then mixing them into drinks.

⁸ Dinas Kebudayaan Dan Pariwisata Kabupaten Merauke. (2013). *Tanah Malind Suatu Pendekatan Pemetaan Suku Bangsa*. Merauke: Dinas Kebudayaan Dan Pariwisata Kabupaten Merauke, Merauke, h. 204.

⁹ Interview with Ahmad Waros Gebze on June 19 2020.

¹⁰ Van Baal, J. (1966). *Dema. Description And Analysis Of Malind-Anim Culture (South New Guinea)*. Amsterdam: The Hague, h. 178

¹¹ Known as the Brolga or Australian Crane, which is a type of crane that lives on the beach which has the Latin name *Grus rubicunda*.

totem of the Kaize clan, *saham*¹² for the totem from the clan Samkakai, and crocodile for the totem from the clan Balagaize.

The Malind tribe adheres to a patrilineal kinship system, where the right to inherit property falls to the son, while for the girl it does not get a meaningful share because in the view of the Malind tribe, the daughter has become part of the family that marries her, so it is the responsibility of the family concerned.

Ulayat rights in the Malind Tribe are owned by clans (*bowand*) which are managed by the families within the clan. The customary ownership in the past was structured uniformly, but nowadays it often seems to overlap. All ulayat lands in Malind land have their respective names. The names of these lands are sacred in relation to family history, cultural historical sites, traces of ancestral travel, and the continuity of the country's worship songs.¹³ The inner relationship created between the ulayat lands and the Malind tribe itself can be said to be very close, because they think that the ulayat land and them are one unit.

b. Adoption of Children in the Malind Tribe

As in other indigenous communities in various places, the customary law of the Malind Tribe recognizes adoption and is sacred. The motivation for adoption in the Malind Tribe is similar to that of other existing tribes, mainly because there are no heirs. As previously explained, the kinship system adopted is a patrilineal system, so the existence of sons is very crucial in inheriting family assets so that assets do not fall out of the clan. This is in line with the motivation for adoption according to Ter Haar, namely:

- The motivation for adoption is due to the *fear of extinction of a family*.
- Fear of dying without children and very worried about losing his line of blood (*fear of dying childless and so suffering the extinction of the line of descent*).

There is also another motivation that causes the adoption of children in the Malind Tribe which is rarely found in other tribes, namely adopting children from the results of headhunting. When the inhabitants of a village went on their head to another village, they looted and beheaded the adults in that village. Before cutting off the head, the beheader asked the person whose name was being beheaded. The child of the person who was beheaded will then be taken home by the beheader, adopted as his child and given the name of his biological father (the person who was beheaded).

As explained by the source, Ahmad Waros Gebze¹⁴, a child who is adopted from the results of headhunting, as below:

“The child he adopted through the bloodshed was headhunting. In the past, we also went head-to-head in a village, where the village killed all its inhabitants, while his name he brought home, the name he gave to us, the head he brought home with the child he caught there he took for the child he took. The child who was brought home was the same as the real child because he was fighting for his life, to get that child. It is the same as the child he was born with, the same shape, the same rights.”¹⁵

¹² An animal that has another name wallabies, which is a marsupial mammal that resembles a kangaroo but with a slightly smaller physique. Has the Latin name *Marcopus agilis*

¹³ Dinas Kebudayaan Dan Pariwisata Kabupaten Merauke, *Op.Cit.* h. 83

¹⁴ Interviewees is a cultural practitioner and public figure of malind tribe

¹⁵ Interview with Ahmad Waros Gebze on June 19 2020.

The current practice of headhunting is no longer there, but children who are adopted from headhunting are still alive today. Children who are adopted from the results of headhunting after being appointed are then treated as natural children and are entitled to the same inheritance as biological children.

Regarding the adoption procession in the tradition of the Malind Tribe, according to an interview with Mas'ud Samin¹⁶, starting when a husband and wife agree that they want to take a child to become their child, who will carry their clan, it is obligatory in Malind custom to provide a place (a piece of land) for this child so that this child can earn a living from the place. The conditions that must be met by this married couple are the obligation to raise a pig from a baby until the pig is mature according to the time specified (usually several years) by the party who wishes to adopt the child and the party who will deliver the child. Apart from pork, the next requirement is that it is obligatory to plant food crops in the form of sweet potatoes, bananas, coconuts, sago and so on.

Several years later, when the agreed time has arrived, when the pig has grown and the plants have been planted, a traditional ceremony is performed to hand over the child to the family who will raise him. This traditional ceremony begins by establishing the *para-para*¹⁷ with three floors, where the first level is to place food products from the plants planted earlier, such as sago bananas, coconuts, and sweet potatoes. The second level is for the place for pigs that have been raised to such a large extent, and the third level is for the parties involved to sit down and talk about the procession of adopting this child. At this third level, the customary leader will then formalize that a certain plot of land will be owned and managed by the child to be adopted and at that time the child is officially handed over to his new family and must release his old clan and then must wear his new clan. After the customary leader inaugurates it, no one person can contend with the child's status in his new family. The consequence is that if someone dares to interfere with the child's status, they will receive customary sanctions, which is the death penalty.

As an expression of gratitude for the adoption of their child, the party who raised it then organized a nightly *nggatzi* party¹⁸. All villagers are invited to participate in the *Nggatzi* as a witness to the adoption of the child. The parents who raised this child would dance while carrying wood until dawn. When dawn comes, the adoptive parents will use the wood for *toki*¹⁹ the boar was then cooked and eaten together with all those present. Thus the adoption ceremony was completed.

From the explanation above, the ritual of adopting children in Malind customary law is concrete and visual. Concrete in character means that this customary law is clear, real, tangible. Meanwhile, visual means that customary law can be seen, open, not hidden. So that the legal relationship that applies in customary law is clear and cash, not obscure, it is clear to be witnessed, seen, known and heard by others, and it appears that the handover occurs.

¹⁶ Mas'ud Samin, Secretary of the Malind Imbuti Indigenous Peoples Organization.

¹⁷ A place for people to sit and relax made of wood. Usually made under a shady tree.

¹⁸ *Nggatzi* or *Nggathi* consists of two syllables, namely, *Nggat* which means dog, and *Hi* which means sound or sound. So it can be interpreted that *Nggatzi* or *Nggathi* means the sound of a dog. In general, it can be concluded that the *Nggatzi* ceremony is a series of traditional rituals in the form of dances in which dancers or people who follow the ritual make a sound or sound that resembles a dog. *Nggatzi* or *Nggat Hi*, is a traditional ritual performed by the Malind Tribe to be grateful for all events that occur within the tribe's environment.

¹⁹ *Toki* means to kill a pig by hitting it on the head

In principle, the adoption of children from tribes other than the Malind tribe is not a common thing and tends to be avoided by the Malind Tribe, especially when adopting children at an adult age, because they think that if the property of the Malind Tribe falls outside the tribe it is not a wise act. However, this does not mean that there is no possibility of adoption of children from other tribes. Based on an interview with Isayas Ndiken, a Malind cultural observer who is also the Head of the Culture and Tourism Office of Merauke Regency, adoption of children from other tribes can be done if those who are to be adopted as children have made great contributions to a Malind.²⁰

The adoption of children from other tribes who have grown up or who are known as anak adat at this time is arguably increasing. In a phenomenon like this the adoption initiative lies with the child who is about to be adopted. The motivations for them to be appointed are various. Some of them are motivated to want to become indigenous children because their ancestors once married a woman from the Malind tribe, which means that there is a desire from the heart to get recognition and become part of the indigenous Malind community. On the other hand, it cannot be denied that there are also those who are motivated to become indigenous children because of political interests, for example to become members of the legislature or regional heads.

c. Adoption Process for Anak Adat according to the Malind Tribe Customary Law

The legal basis for adopting anak adat in the Malind tribe comes from the Malind customary law itself. The adoption of indigenous children in the Malind Tribe has certain conditions. The ritual of adopting anak adat is carried out in a traditional party. This ritual is carried out according to the habits of the 4 groups that exist in the Malind Tribe. This is in accordance with the style of customary law, namely religion (magis-religius), in which the behavior and rules that exist in customary law are related to supernatural beliefs and are based on the teachings of Almighty God, both traditional beliefs and beliefs from outside.

As stated by Abdul Awal Gebze²¹ when following the ritual of adoption to become a customary child in 2015, as follows:

“The customary rituals or traditional processions in which I follow the traditional rituals in the Wayau area. Because my family adheres to the mayo class, I join the mayo ndaman. Mayo ndaman are those who usually wear white decorations on their faces. The customary process that is carried out is to prepare the things needed during the procession of traditional events in the form of areca, betel, then wati, then all the jewelry equipment that will be used during the traditional ritual procession, such as a headdress called an imbu, the imbu that is attached to it. a head made of woven cassowary feathers, then white mud (to decorate the face), then the loincloth we prepare the male loincloth made of woven mats. Those things that were prepared then we entered the afternoon where one night we were not allowed to sleep and we also had to fast, not to eat and not to drink until the morning, well in the morning that's the procession of adopting anak adat carried out by our families or parents who are responsible for us, namely those who adopt us as children of the Gebze clan, now the parents will accompany us and the customary procession will be

²⁰ Interview with Isayas Ndiken on June 30, 2020

²¹ The interviewees is a Malind's anak adat with the Gebze clan. Previously, was from the Banda ethnic group.

carried out by the customary leader of the mayo group, after that it means we officially become indigenous children. Indigenous Malind children from the Mayo ndaman group and we officially hold the Gebze clan."²²

Similar but not the same as Abdul Awal Gebze, Syahmuhar M. Zein²³ described the process of adopting a customary child that he experienced as follows:

"In 1999 there was a traditional event in Nasem. At that time the procession we were gathered and then made a camp on the beach. When in the morning we entered a camp there in Nasem on the beach, then we were told to fast, fast for one day, all day long we do not eat or drink in our respective tents. It was around 6 o'clock to enter and enter maghrib, so we were told to queue, a long line to get into (the term) the customary cage or place of traditional confinement. So start queuing to enter one by one. After that we were advised by the traditional elders all using the Malind language mixed with Indonesian until dawn, well after that it was continued with traditional events there, so that we could legally use that name with my given name, Ongeo Gebze."²⁴

From the narrative of the two sources above, it can be seen that the ritual of adopting a customary child requires things that need to be prepared, in accordance with the provisions of the indigenous groups in the area. Starting from the costumes worn, the food and drinks that will be consumed. Furthermore, there is a section where this customary child is advised by the traditional elders in one hut, advised here in the sense of being told about the values or life views of the Malind people so that in the future they can apply them in everyday life. The next part of this procession is confirmation so that it officially becomes a customary child which is marked by the naming and clan of Malind.

Ter Haar is known for his *Beslissingenleer* theory (decision theory) which reveals that customary law includes all the regulations that are incarnated in the decisions of legal officials who have authority and influence, and in their implementation they apply immediately and are obeyed wholeheartedly by them. which is governed by the decree. This decision can be in the form of a dispute, but it is also made based on harmony and deliberation. According to Ter Haar, *adat* will turn into "law" if there are decisions of legal functionaries, who have the authority to implement them immediately and wholeheartedly obey them.²⁵

The theory from Ter Haar, if we relate it to the ritual of adopting a customary child in the tradition of the Malind Tribe, will look appropriate, because in the ritual of adopting a customary child in the Malind Tribe the decision of the traditional elders to approve and legalize the adoption of this customary child is respected by the indigenous people .

With this appointment, it creates rights and obligations for those who are appointed. The rights received include the right to bear the clan and official status as the indigenous Malind child. As a customary child in the Malind tribe, the clan view has an important meaning because it is an acknowledgment from the Malind indigenous community that the person concerned has become a fellow Malind tribe. With this recognition, the person concerned has the right to be involved in various traditional events organized by the Malind indigenous people. Apart from

²² Interview with resource person Abdul Awal Gebze on July 1, 2020.

²³ The interviewees is an indigenous child from the Gebze clan. Previously, was from the Ternate ethnic. He currently works as a Commissioner for the General Elections Commission of Merauke Regency.

²⁴ Interview with Syahmuhar M. Zein on June 30, 2020.

²⁵ Pide, A. S. M. *Op. Cit.* h. 4

that, the rights obtained are the rights of the hamlet, which is the right to own and manage the hamlet of the clan that appointed them.

In line with the rights received, indigenous Malind children are also obliged to assume responsibility as Malind people. Mainly and most importantly is to maintain and practice the values of life that are believed by the Malind Tribe. Apart from that, there are also obligations in the form of the obligation to follow traditional rituals that are held, both traditional rituals such as marriage, ear piercing for girls, as well as traditional rituals for opening gardens and other traditional parties in the form of adoption of anak adat. Other obligations that must be obeyed are the obligation to take part in the customary procession, either making material contributions or giving thought or spiritual contributions.

By legally becoming a customary child of the Malind tribe, automatically their status in the previous tribe is lost. Those who previously had clans from other tribes are obliged to strip them off and only use the Malind clan that has been given. This is as stated by Abdul Awal Gebze²⁶ as the indigenous son of Malind and as explained by Isayas Ndiken²⁷ who is a cultural observer of Malind.

Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning Implementation of Adoption in Article 12 states that the conditions for adoption are:

- not yet 18 (eighteen) years old;
 - is an abandoned or neglected child;
 - are in family care or in a childcare institution; and requires special protection.
- (2) The age of the adopted child as referred to in paragraph (1) letter a includes:
- children under the age of 6 (six) years are the top priority;
 - children aged 6 (six) years until not yet 12 (twelve) years of age, as long as there is an urgent reason; and
 - children aged 12 (twelve) to not yet 18 (eighteen) years old, as long as the child requires special protection.

When compared with Article 12 of the Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning the Implementation of Adoption (PP 54/2007) with the adoption of indigenous children in the Malind Tribe, there are differences in the conditions for adoption. In PP 54/2007 it is clear that the requirements for adoption are 18 years of age and under, while the majority of the adoption of a person to be a customary Malind child is over 18 years old and even has a family and has children. Not to mention the requirements regarding the condition of children to be adopted as neglected children, or requiring special protection that is not relevant to the adoption of anak adat in the Malind Tribe.

For Eugen Ehrlich, the development of law is centered on society itself, not on the formation of law by the state, judges' decisions, or on the development of legal science. Eugen Ehrlich wants to convey that society is the main source of law. Law cannot be separated from society. On this basis, Eugen Ehrlich stated that *the living law* is a law that dominates life itself, even though it has not been included in a legal proposition.²⁸

²⁶ The interviewees is a Malind's anak adat with the Gebze clan. Previously, was from the Banda ethnic group.

²⁷ Interviewees is a malind cultural practitioner and public figure.

²⁸ Hadi, S. (2017). Hukum Positif Dan The Living Law (Eksistensi Dan Keberlakuannya Dalam Masyarakat), *DiH Jurnal Ilmu Hukum*, 13(26) 259-266. doi: <https://doi.org/10.30996/dih.v0i0.1588>

Looking at the situation above, it can be justified that in reality there is legal pluralism regarding adoption in Indonesia, as Paul Schiff Berman meant that *"those situations in which two or more state and non-state normative systems occupy the same social field and must negotiate the resulting hybrid legal space."*²⁹

d. Implications of Adoption of Indigenous Children in the Malind Tribe

The adoption of indigenous children in the Malind tribe only affects their traditional children. In this case, if someone who has been adopted as a customary child previously has a wife and children, it does not automatically become a customary child and also follows the head of the family. This means that if they want to join the Malind Tribe, they have to go through their own customary rituals.

The new status of being a Malind indigenous child has implications for their old status. The first is of course their membership status in their previous tribe. As has been said by Abdul Awal Gebze and Syahmuhar M. Zein that their status in their previous tribe has officially been broken, which means that the two informants are no longer entitled to the rights they had in their previous tribe. Abdul Awal Gebze explained it as follows:

"Automatically, if we have entered into the Malind indigenous children through traditional rituals, it means that our official status is already a child of the Malind Tribe, yes, no longer are we from the tribe of our previous parents, because yes we are already part of the Malind indigenous child, who have the same duties and responsibilities as other Malind indigenous children. From the Banda tribe here (Merauke) there is also an association from the Banda tribe but we go only to introduce friends or kinship but for ethnicity I don't think it's possible."

Meanwhile, according to the narrative from Syahmuhar M. Zein regarding the status in his old tribe, the informant is no longer a member of the Ternate tribe, but the relationship with the previous tribe does not immediately break. Syahmuhar M. Zein explains it as follows:

"No, not at all. Instead we become motorbikes there. I was the Head of the North Maluku Student Youth for Merauke Regency. This means that we also take a role there, not only in your father's family (Ternate), but also in my mother's family (Kei). I also belong to Jhon Kei's community organization in Merauke, Anak Muda Kei AMKAI."

From the explanation from the two sources above, it can be seen that being a Malind indigenous child means having to be willing to lose their status and rights to the previous tribe. Losing their status and rights in their previous tribe does not mean that the ties that have existed so far have been broken. The relationship between the Malind and the previous tribes is maintained, even the person concerned can act as an intermediary to further strengthen the relationship between the Malind and previous tribes in their daily life.

The adoption of a customary child has implications for the administrative status and civil registration because of the naming and clan of Malind. This means that the documents that have been published so far use the clan from the previous clan, while traditionally Malind they have been given a new clan. Responding to things like this can be done by changing all these

²⁹ Berman, P. S. (2008). Federalism and International Law through the Lens of Legal Pluralism. *Missouri Law Review*, 73(4) 1150-1184. Tersedia online pada <https://scholarship.law.missouri.edu/mlr/vol73/iss4/11/> (diakses 1 Juni 2020)

documents so that the Malind clan is added, or you can also use existing documents, provided that one day there are interests or problems related to the status of indigenous children. , it is obligatory to prove that the person concerned is indeed a customary child who has gone through a ritual procession of adopting a customary child in accordance with the customary law of the Malind Tribe. This proof is through a certificate issued by the Indigenous Peoples Organization (LMA) Malind. Regarding this matter explained by resource person Syahmuhar M. Zein as follows:

"For me, I will not change my birth certificate, but in black and white information, my legality as a customary child was given by the LMA. There is a statement from the LMA that I have followed the process under this customary name with this descendant but for filing. In administration I didn't change it, it's still the same as what my (biological) parents have given, yes, so it's adjusted accordingly."

4. Conclusion

The adoption of anak adat in the Malind tribe is carried out with a traditional ritual that lasts all night and ends with the inauguration of the customary leader who is given the name and clan of Malind and a plot of land from the clan land to own. The implication of the ritual of adopting anak adat creates rights and obligations for indigenous children in their status as members of the Malind indigenous community and results in a break in the kinship between the customary child and the previous tribe.

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