

Positivism Legal Controversy: Dilemma Carok as Madura's Culture through Indigenous Dispute Settlement in Indonesia

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Abstract : The Indonesia's Constitution in Article 18b explained that the state recognizes and respects indigenous peoples and their traditional rights that are guaranteed by the law. Despite already guaranteed its existence; in practice such indigenous law is often considered contrary to positive law by legal experts. It is because of legal positivism paradigm which requires the written law as the main reference for the settlement of legal disputes. Carok's culture is one of the indigenous cultures of Madura to resolve legal disputes that still thrives until today. Carok's culture is in outside the legal process, and through a fight between the disputing parties until one dies. On the other hand, the legal positivism does not give place to accommodate Carok as indigenous dispute settlement, until it must be solved through trial. This way of settlement has not been successfully satisfying the indigenous people, thus although it has been done through its verdict in the trial, but Carok still be used by them. From the explanation above, Carok's culture must be accommodated as the main settlement process and legal process of law as the alternative to the effectiveness of dispute resolution in Madura Indonesia.

Keywords : carok, dispute settlement, legal positivism, madura's culture

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