

INTEGRATING CUSTOMARY LAW AS LIVING LAW IN INDONESIA'S NATIONAL LEGAL SYSTEM: CHALLENGES AND INSTITUTIONAL GAPS

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ABSTRACT

Customary law in Indonesia remains a living system that reflects community values, social ideals, and conceptions of justice. However, its position within the national legal framework continues to generate tension, particularly due to the dominance of statutory law, which prioritizes formal rationality and legal certainty. This study aims to examine how the interaction between customary law and national law is constructed and implemented in Indonesia, as well as to identify the factors that hinder their effective integration. Using a normative legal research method based on a systematic review of secondary legal materials, this study analyses legal doctrines, statutory regulations, and relevant scholarly works concerning legal pluralism. The findings reveal that, despite formal recognition, the integration of customary law into the national legal system remains fragmented. Limitations within legal institutions, legislative frameworks, and judicial practices contribute to inconsistencies in accommodating customary law-based disputes. This study argues that the lack of clear operational mechanisms and institutional support has resulted in suboptimal legal outcomes, particularly in ensuring justice for communities governed by customary norms. By highlighting both structural constraints and potential avenues for reform, this research contributes to the discourse on legal pluralism by proposing a more coherent approach to harmonizing customary and national law, aimed at achieving justice, legal certainty, and respect for Indonesia's diverse legal traditions.

Keywords: living law; legal integration; indigenous communities ;plural legal system; customary law

ANALISIS INTEGRASI HUKUM ADAT SEBAGAI HUKUM YANG HIDUP DALAM SISTEM HUKUM NASIONAL INDONESIA : ANALISIS HUKUM NORMATIF

ABSTRAK

Hukum adat di Indonesia tetap menjadi sistem hukum yang hidup (*living law*) yang merefleksikan nilai-nilai masyarakat, cita hukum, dan konsepsi keadilan. Namun, posisinya dalam kerangka hukum nasional masih menimbulkan ketegangan, terutama akibat dominasi hukum positif yang menekankan rasionalitas formal dan kepastian hukum. Penelitian ini bertujuan untuk mengkaji bagaimana relasi antara hukum adat dan hukum nasional dikonstruksikan dan diimplementasikan di Indonesia, serta mengidentifikasi faktor-faktor yang menghambat integrasi keduanya secara efektif. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan studi kepustakaan terhadap bahan hukum sekunder, yang mencakup doktrin hukum, peraturan perundang-undangan, serta literatur terkait pluralisme hukum. Hasil penelitian menunjukkan bahwa meskipun hukum adat telah memperoleh pengakuan secara formal, integrasinya dalam sistem hukum nasional masih bersifat fragmentaris. Keterbatasan dalam kelembagaan hukum, kerangka legislasi, serta praktik peradilan menyebabkan inkonsistensi dalam mengakomodasi perkara berbasis hukum adat. Penelitian ini berargumen bahwa ketiadaan mekanisme operasional yang jelas serta dukungan institusional yang memadai telah menghasilkan luaran hukum yang belum optimal, khususnya dalam menjamin keadilan bagi masyarakat yang tunduk pada norma adat. Dengan mengidentifikasi kendala struktural sekaligus peluang reformasi, penelitian ini berkontribusi dalam pengembangan wacana pluralisme hukum melalui perumusan pendekatan yang lebih koheren dalam harmonisasi hukum adat dan hukum nasional, guna mewujudkan keadilan, kepastian hukum, serta penghormatan terhadap keberagaman tradisi hukum di Indonesia.

Kata kunci: hukum yang hidup; integrasi hukum; hak-hak masyarakat adat; sistem hukum plural; harmonisasi hukum; hukum adat

INTRODUCTION

Customary law functions as a societal scale to assess the degree of goodness or badness, right or wrong, propriety or impropriety, and appropriateness or inappropriateness of an action or event within the community. Therefore, customary law

serves as a guideline for upholding and preserving ethics, decency, order, morality, and traditional values in communal life. Customary law is often referred to as the "original law" because it originates from the life of indigenous communities, arising from their real needs, and reflecting the collective sense of justice that lives and develops within soci-

ety. Additionally, customary law is not rigid but adaptable to societal changes (Supian, 2018).

Customary traditions, as a foundation closely intertwined with the daily lives of the community, possess authority and dignity that serve as the main pillars of customary governance (Hazim et al., 2023). From the perspective of legal anthropology, society as a legal subject faces conflicts arising from differences in values, norms, or interests among ethnic, religious, or political groups. These conflicts are also influenced by issues of discrimination in how the central government regulates and treats local communities, often referred to as "politics of neglect" by Bodley. This neglect occurs when the government disregards, displaces, or even eradicates the values and legal norms of local communities, including their religious and traditional practices, through the centralization of state law. In this regard, this study combines a normative legal approach with a legal anthropological perspective. While the normative approach is used to analyze legal frameworks and statutory regulations, the anthropological perspective is employed to understand customary law as a living system embedded in social practices. This integration is essential to bridge the gap between law in books and law in action. One significant form of neglect is the disregard for the rights of indigenous communities. This neglect is often a result of infrastructure development, mining, and the expansion of palm oil plantations or industrial forests. For instance, the conflict in Besipae illustrates how the provincial government of East Nusa Tenggara (NTT) disregarded the legal status of indigenous lands when it invited the Besipae community to discuss a livestock farming project in collaboration with foreign nationals. The Besipae indigenous people have not recognized the legal status of the land involved. Another example is the Supreme Court's decision in case Number 458 K/TUN/LH/2024, which rejected a cassation filed by the Awyu indigenous community regarding the development of a palm oil plantation and factory on 36,094 hectares of land in Fofi District, Boven Digoel Regency, Papua. This decision further demonstrates the neglect of indigenous communities and customary law by the government and national legal system. These conflicts demonstrate a widening gap between formal legal recognition and actual legal protection, thereby necessitating a more operational and coherent approach to integrating customary law as living law within Indonesia's legal system.

The ideal national legal system should have dynamic norms that protect and promote the welfare of the Indonesian people. In the concept of the na-

tional legal system, the "rule of professional law," "rules of political law," and "rules of traditional law" must coexist within each legal system. Customary law is one of these subsystems. Customary law supports the creation and application of legal products, including legislation, judicial decisions, presidential regulations, regional regulations, and others. Although numerous studies have examined the recognition and existence of customary law within Indonesia's legal system, most of them remain at a conceptual and normative level. Limited attention has been given to how customary law as living law is operationally integrated within legal institutions, legislative frameworks, and judicial practices. Therefore, this study offers a different approach by focusing not only on the recognition of customary law but also on the mechanisms and institutional challenges of its integration within the national legal system.

In practice, however, the government, through legal products, often overrides the collective rights of indigenous communities to their customary territories for state interests, sidelining indigenous rights. These territories are then exploited by private entities through licensing schemes, ignoring the rights and local wisdom of indigenous communities in those areas. The challenge lies in integrating living customary law into the national legal system. The solution to this challenge is to ensure that living customary law is effectively integrated into Indonesia's national legal system, recognizing its dynamic and evolving nature, while ensuring the protection of indigenous peoples' rights and their cultural heritage.

Based on the above background, this study formulates the following research questions: (1) How is the integration of customary law as living law constructed and implemented within the Indonesian national legal system? (2) What factors hinder the effective integration of customary law within legal institutions and practices? (3) How can a more coherent approach be developed to strengthen the integration of customary law by combining normative legal and legal anthropological perspectives? This study aims to: (1) analyze the mechanism of integrating customary law as living law within the Indonesian national legal system; (2) identify the institutional and structural constraints that hinder such integration; and (3) formulate a more comprehensive approach to strengthening the position of customary law within the national legal framework.

METHOD

This research employs a normative legal research method aimed at examining the coherence and consistency of legal norms governing the integration of customary law as a living law within Indonesia's national legal system. The study is based on the analysis of primary legal materials, including Article 18B (2) of the 1945 Constitution and Articles 3 and 5 of Law No. 5 of 1960 on Basic Agrarian Law, as well as secondary legal materials such as legal doctrines, books, and scholarly journals. The approaches used in this research include the statutory approach, conceptual approach, and case approach, which are applied to analyse legal provisions, doctrines, and relevant judicial decisions. Analytically, this study examines the internal coherence of legal norms and evaluates the extent to which their formal recognition is institutionally operationalized in legal practice. In this context, the legal anthropology perspective is employed as an interpretative lens to understand customary law as living law, particularly in assessing the gap between normative frameworks and their social functioning. This research is strictly normative and does not involve empirical field data; any references to social phenomena or conflicts involving indigenous communities are used solely as contextual illustrations to support normative analysis.

RESULTS AND DISCUSSION

Challenges in the Integration of Customary Law into the National Legal System

Politically, according to Soetandyo Wignjosebroto, the existence and function of customary law have become increasingly marginalized, particularly when the struggle for national legal development is equated with efforts to create revolutionary law and subsequently build a legal system that functions as a tool to engineer society (Winardi, 2020). Since revolutionary law and law functioning as a tool of social engineering, in their concept, are implicitly considered as new laws that are anti-colonial and anti-radiation, it is understandable that customary law would not be classified within the category of law conceived as revolutionary law or social engineering law.

The idea of making Customary Law, or at least its principles, the core of the national legal system, as previously articulated in part of the 1928 Youth Pledge, has been abandoned. This opened up space for Western law and Islamic law to emerge as alternatives that could be nationalized as the country's

primary legal system. Since law is still heavily influenced by ethnic-local laws, the attempt to elevate Customary Law across socio-cultural and ethnic boundaries has proven to be more challenging than expected. Even though Customary Law still exists as the law of the people, its jurisdiction is confined to the realm of informal law (Pupu, 2025). It is upheld based on the strength and existence of the community, and the intensity of the cultural loyalty of its participants (supporters).

Demands to pay more attention to Customary Law have begun to resurface, not to be totally recognized as part of the national law, but to specifically play a role in various issues related to land dispute resolutions (Hastarini & Luthfan, 2022). When Customary Law no longer plays a significant role in the legal discourse in Indonesia, the people's land rights, which were previously well-protected under Customary Law and even under colonial law, have become vulnerable. While Customary Law may not play a role in resolving family or inheritance issues, it still plays an essential role in matters related to communal land rights and/or property ownership.

Soetandyo Wignjosebroto's view suggests that the legislative framework of the Republic of Indonesia can be said to lack enthusiasm when dealing with issues related to family law and inheritance law. However, this is not the case with land law. There may be an assumption that land-related issues are more neutral legal matters, and as such, religious law would not significantly obstruct government policies aimed at regulating them for national interests (Rato, 2021). In this matter, the national interest and the interests of local communities, which aim to survive based on customary law, will come into confrontation. When religious law does not sufficiently address issues of land and agrarian resources in general, the people will inevitably be compelled to fight for their interests based on customary law, which in this case must be re-established and reaffirmed.

Article 33, paragraph 2 of the 1945 Constitution of the Republic of Indonesia, which states that "land, water, and the natural resources contained therein are controlled by the state," has become a constitutional justification for diminishing the existence and authority of local communities with their customary law, in relation to controlling land, water, and other agrarian resources. The implementation of this constitutional provision, as outlined in Law No. 5 of 1960, as stated in Article 2, paragraph 1, clearly affirms the state's control over land, water, and natural resources contained therein, even with the phrase "for the greatest prosperity of the

people." Further, in Article 2, paragraph 2, it is stated that "the state's control is to be understood as granting authority to state officials to regulate and manage the allocation, use, supply, and maintenance of land, water, etc." Although Article 2, paragraph 3 states that "the authority referred to in Article 2, paragraph 2, must be used for the greatest prosperity of the people," it must all be understood in terms of "nationalism" and the legal state of Indonesia that is independent, sovereign, just, and prosperous.

In essence, Article 2 of the Basic Agrarian Law (UUPA) is a statement that all agrarian wealth, which was originally under the jurisdiction of Customary Law, has been "nationalized" into the jurisdiction of State Law. This nationalization is justified based on the collective rights of a free and sovereign nation. Although Article 5 of the UUPA normatively states that Customary Law applies, it also explicitly states its limitation as long as it does not conflict with national interests. As a result, in an increasingly capitalistic situation, which leads to the declaration of legal objects such as land being turned into neutral marketable objects, the existence of customary law becomes, in practice, sociologically insignificant. In land law, collective rights or customary land rights of indigenous communities are restricted or disguised with the phrase "as long as it still exists" because these rights are not marketable and cannot be sold (Fahmi & Armia, 2022). Therefore, these rights are dismantled to become marketable or tradable through capitalist and materialistic investment processes. The rights of indigenous communities are not abolished or displaced outright; rather, they are gradually reduced or diminished until they lose their substantive meaning. This occurs not for the sake of the law (*ipso jure / de jure*), but for the sake of the facts (*ipso facto / de facto*). Upon closer examination, the existence of indigenous legal communities appears to be extremely fragile. The reason is the scarcity of land and other agrarian resources for anyone who considers themselves a subject of Customary Law (Lubis et al., 2025). This scarcity does not primarily arise from the physical limitation of these resources, but rather from the difficulty of accessing them for those who are unwilling or unable to utilize national legislation. Such scarcity, which is not based on physical reality (*ipso facto / de facto*), but instead results from legal circumstances (*ipso jure / de jure*), poses a potential threat to national unity. As expressed by a figure from South Kalimantan, "It is better to be a Dayak than to be an Indonesian who cannot own a forest." Similarly, a young leader of the Indonesian Indigenous Peoples Al-

liance from West Java declared during a Civil Rights Seminar in Jakarta in 2007, "If the state does not recognize us, we will not recognize the state." Many people in the regions hope that the realization of decentralization in the governance structure of this country will help strengthen the existence of Customary Law. Even if Customary Law is not established in the form of national legislation, at the very least, it can be used as a material source of law by anyone dealing with land issues in the regions (Jayuska et al., 2025). Normatively, the recognition and legal protection of human rights, including those living as members of indigenous legal communities, implies that the state is obligated to guarantee, protect, and fulfil the economic, social, and cultural rights as stated in the Opening of the 1945 Constitution of the Republic of Indonesia, Preamble IV. This state obligation is a citizen's right, which is the essence of the rights and obligations of the state and citizens as theorized by the Social Contract Theory. In this era of globalization, where the boundaries of nation-states have become more blurred, the state is obligated to fulfil its duty to protect all Indonesian people and the entire territory of Indonesia (Elyta et al., 2023). This obligation is carried out to achieve the goals agreed upon in the national consensus on August 17, 1945, when the nation-state was founded: to promote the general welfare, to educate the life of the nation, and to participate in maintaining world peace.

Anthony Mason states that the starting point of the state's recognition and respect for the rights of legal communities, including their economic, social, and cultural rights, is closely related to their rights over land and natural resources, not only in the present but throughout time. This recognition is an acknowledgment of their existence and substantial substance because it is directly linked to their lives and livelihoods, especially with their well-being in the present and future. The social, cultural, and environmental habitat where these communities have lived for centuries and have integrated with their natural surroundings is central to this. In this regard, the first question about the existence, position, and status of indigenous communities can be answered normatively. The United Nations, through the International Covenant on Economic, Social, and Cultural Rights (ratified by Law No. 11 of 2005) and the International Covenant on Civil and Political Rights (ratified by Law No. 12 of 2005), has established frameworks that address these matters. In addition, there are the Indigenous Peoples Convention and the International Covenant on Indigenous and Tribal Peoples in sovereign countries.

Empirically, the existence of indigenous communities in Indonesia is not a matter of absence, but rather a problem of legal recognition and protection within the national legal system (Bernard et al., 2025). Previous studies indicate that indigenous peoples continue to experience marginalization, particularly in relation to their customary land rights, which are frequently overridden by state policies and corporate interests (Makuba, 2024). In this context, the state represented by governmental authorities and supported by business actors plays a dominant role in shaping legal narratives that often position indigenous communities as unlawful actors, such as illegal loggers or forest encroachers. This construction reflects a broader issue within the legal framework, where the recognition of indigenous peoples is not unconditional but subject to formal requirements imposed by the state. This issue becomes particularly evident in the constitutional formulation under Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects indigenous law communities and their traditional rights as long as they still exist and are in accordance with societal development and national principles.

Such formulation indicates a conditional recognition model, where the existence of indigenous communities is not assumed but must be proven based on criteria determined by the state. As a result, this provision creates legal ambiguity and raises critical questions regarding authority, standards of proof, and the position of indigenous peoples as legal subjects (Helmi et al., 2022). The discussion of these four requirements leads to confusion and legal uncertainty regarding the protection of indigenous communities as follows. First requirement: "As long as they are still alive or still exist" raises several questions: (a) Who has the authority to declare and prove that the indigenous community is still alive or still practicing its customs, the state (authorities) or the members of the indigenous community? (b) What evidence can be used to prove that the indigenous community is still alive or still exists? (c) What are the criteria that must be met to be considered that the indigenous community is still alive or still exists?

The first requirement, when considered from the reverse logic, means that the government or authorities can declare that the community does not exist or is considered non-existent. Using euphemistic language ("as long as they are still alive") implies that if the community is no longer alive, it is effectively dead until its existence is proven. If the indigenous community, as a founding element of the Unitary State, is considered dead, then the

state is, in effect, denying its own existence as a "Unitary State" that is still alive. The second requirement, "...in accordance with the development of time and civilization..." consciously and intentionally suggests that tribes or societies that do not conform to the development of time and civilization are not recognized as part of the Indonesian nation. If this is the case, then members of our society who still live in isolation, such as the Anak Dalam tribe, the Baduy Dalam, the Kubu-Lubu, and the Dayak living in the interior of Kalimantan, or the tribes in Papua who are still very simple and far removed from ultra-modern or even post-modern civilization, would not be recognized. Some of them cannot or have not learned to read and write, still wear traditional attire like the *koteka*, and bathe in pig fat. The Indonesian state, through its Constitution, neglects the existence of these indigenous legal communities. On the other hand, what about the members of society living in urban areas? Are they also considered indigenous people? Because they have been detached from their cultural roots, outside their *lebensraum*, and are no longer bound by traditional customs and customary law.

The third requirement, "...in accordance with the principles of the Unitary State of the Republic of Indonesia..." This requirement truly distances indigenous legal communities from the framework of the Unitary State of the Republic of Indonesia, as communities with local-ethnic characteristics are in contrast with the nation-state. These principles would be difficult to fulfil if indigenous communities are to be equated with the principles of a modern state. From any perspective management, institutional law, bureaucracy, and so on can an indigenous community meet these criteria to be recognized? The fourth requirement, "...regulated by law..." If the views of legal scholars on customary law are used as a reference, where customary law is considered the original law of the Indonesian people, mostly unwritten, then the fourth requirement that the regulation of the subject of customary law, which is unwritten, must be governed by written law means that lawmakers have prepared a "killing sword" to eliminate the subject of customary law. This killing sword is the law itself. Similarly, if we follow the view that customary law is a law that lives, grows, and develops in line with the development of its supporting community, then the determination of whether the subject of customary law is alive or dead is dictated by written law, which is contradictory to logic. These are two distinct matters with different characteristics and spirits, one determining the meaning of life, and the other acting in contradiction to law and human rights.

If Article 18B is applied, then this Constitution is internally inconsistent. Why? It is called internally inconsistent because in Article 27, Paragraph 1(1) it states: “All citizens are equal before the law and the government and must uphold the law and government without exception”; and in Paragraph 2 it states: “Every citizen has the right to work and a decent living for humanity.” If Article 18B, Paragraph 2, is applied, then it contradicts Article 27, Paragraph 1, which states that all citizens are equal before the law and government. If Article 18B, Paragraph 2 is applied, it would lead to discrimination between customary law communities and non-customary law communities. These constitutional contradictions and institutional limitations indicate that Indonesia’s current approach to integrating customary law remains fragmented and inadequate. In this context, a comparative perspective becomes relevant to identify alternative models that may offer more coherent mechanisms of integration. The Philippines adopts a legislative approach through the Indigenous Peoples’ Rights Act of 1997, which provides formal recognition of indigenous peoples and their customary laws, supported by institutional mechanisms. This model demonstrates the importance of statutory clarity and administrative support in ensuring implementation. In Canada, the recognition of indigenous law is constitutionally grounded and further developed through judicial decisions, allowing for a dynamic interpretation of legal pluralism, although it often depends on case-by-case adjudication. Meanwhile, New Zealand adopts a treaty-based approach, particularly through the Treaty of Waitangi, emphasizing partnership and negotiated recognition between the state and indigenous communities. These comparative experiences show that effective integration of customary law requires not only formal recognition, but also clear institutional mechanisms and consistent legal frameworks. In contrast, Indonesia’s approach remains fragmented and heavily dependent on conditional recognition, particularly as reflected in Article 18B of the 1945 Constitution. If all communities in Indonesia were considered customary law communities, it would contradict the principle of “customary law communities with their traditional rights,” because urban communities, as modern societies, do not have traditional rights.

Article 18B, Paragraph (2), in conjunction with Article 281, Paragraph (3), also contradicts Article 28A, which states, “Every person has the right to defend their life and livelihood.” If, in the case of these restrictions, the indigenous legal community refuses and there is unilateral coercion by the state,

followed by resistance from the indigenous legal community, can Article 28A protect the indigenous legal community that seeks to defend its life and livelihood? When the indigenous legal community seeks to make a living by scavenging industrial remnants to survive, and is labelled as a security threat, forest invader, and so on, how should the state respond? The state must make wise and thoughtful decisions and actions to avoid arrogance, domination, and exploitation, especially against its own indigenous legal communities. Currently, the state seems to favour capital owners rather than its own people. Wisdom in decision-making and government action is a powerful tool in protecting and preserving the existence of indigenous legal communities.

The Role of Customary Law in the Indonesian Legal System: Recognition, Transformation, and Contemporary Challenges

Customary law is a legal system that is recognized within social environments. The concept of living law emphasizes that law is not limited to written norms, but also includes values and practices that develop within society. This theoretical perspective is reflected in Article 18B (2) of the 1945 Constitution, which recognizes indigenous communities and their traditional rights. However, such recognition remains conditional, indicating a gap between the theoretical understanding of customary law as a living system and its limited accommodation within the formal legal framework.

In this context, the social system becomes the starting point for understanding customary law in Indonesia. Customary law emerges from patterns of individual behaviour involving actions and reactions that develop into reciprocal relationships within the community. These relationships gradually acquire binding force and evolve into social norms. Although these norms are not codified, they are recognized and upheld by the community as having legal force. Thus, customary law, despite being unwritten, functions as a living system of rules that regulates social order.

This study is situated within the framework of legal pluralism. As argued by John Griffiths, legal pluralism reflects the coexistence of multiple normative orders within a single social field, where state law does not constitute the sole source of legal authority. In the Indonesian context, the relationship between state law and customary law illustrates a form of limited or conditional pluralism, in which customary law is formally recognized but remains subordinated to state regulation. This condi-

tion explains the fragmented nature of its integration and underscores the need for a more coherent institutional framework. This theoretical perspective provides a basis for understanding the structural challenges in integrating customary law within Indonesia's national legal system.

Van Dijk mentions that customary law has three distinctive characteristics which are Customary law possesses a very traditional character, yet it is capable of change and adaptation (Siregar & Sitepu, 2018). The traditional nature implies that customary law is rooted in the will of ancestors who are highly revered. Therefore, many experts assume that customary law is an inseparable part of Indonesian culture. This assumption is often constructed through legends or stories passed down through generations, both written and unwritten. On the other hand, customary law can change and adapt to specific conditions arising from societal development. These changes typically occur not because of an official abolition or removal of a rule, but due to shifts in circumstances, place, time, or the emergence of new provisions decided by authoritative institutions. The ability to change and evolve is, in essence, a characteristic of unwritten, uncodified law, such as customary law.

Customary law has the characteristic of being alive and evolving, capable of keeping pace with legal changes throughout its historical journey. Customary law undergoes continuous changes through decisions made in the interest of the community, in accordance with the communal nature of customary law societies. Additionally, customary law is also plastic in nature, meaning that it is implemented by considering specific (particular) aspects. Since customary law is based on principles that outline the law in broad terms, it naturally allows for a flexible application, or in Djodjodigono's terms, it can accommodate specific matters in situations that form the basis of a legal issue. Thus, customary law has two complementary sides. On one hand, customary law is traditional, continuing the practices of ancestors, and tends to preserve established patterns. On the other hand, customary law is a living and evolving law, always able to adapt to societal developments. Additionally, customary law is open in nature, meaning it can accept other legal systems, provided the community involved deems that system appropriate or compatible (Kristanto et al., 2023). In this context, the national legal system is discussed. It is important to acknowledge that customary law in Indonesia is a crucial part of the national legal system, though it is not on equal footing with state law as regulated in formal legislation.

In the context of the Indonesian national legal system, customary law is constitutionally recognized in Article 18B, paragraph 2 of the 1945 Constitution, which states that the state recognizes and respects the unity of customary law communities along with their rights. This demonstrates that customary law still holds a place within the national legal system, although it does not replace the generally applicable state law. The development of this nature is the result of a harmonious interaction between the various legal systems in Indonesian society, particularly the living law, which operates between written law and unwritten law. Therefore, customary law can accept written law (statutory law) or other legal systems into its framework. Conversely, it is also possible for written legal materials to contain principles of customary law. In the context of developing national land law, customary law serves as a primary source for acquiring materials, such as concepts, principles, and legal institutions, to be formulated into written legal norms structured according to the customary legal system. This approach starts from two legal systems based on conventional perspectives: the customary law system and the national legal system. This is due to the fact that two legal institutions, customary law communities and the collective land rights of these communities, are central issues that are recognized under the national legal system. These two institutions relate to land law, which has been regulated since 1960 under the Basic Agrarian Law (UUPA), a product of national law, and therefore falls within the national legal system. With the enactment of the UUPA, its provisions automatically fall under its scope and are considered part of the national legal system. Although the UUPA represents customary law that has been sanitized or selected, both legal institutions continue to be recognized in the national legal framework. This is where the connection between the two legal systems, customary law and national law, lies. To clarify the position of customary law within the national legal system, the following conceptual framework illustrates the relationship between internal and external dimensions of customary law.

In the context of developing national land law, customary law serves as a primary and important source for obtaining its materials, such as concepts, principles, and legal institutions, which are to be formulated into written legal norms structured according to the customary legal system. The role of customary law as a primary and crucial source in the development of national land law is acknowledged in the preamble of the Basic Agrarian Law (UUPA), which states that national land law is

based on customary law. The concept underlying national land law is derived from customary law, particularly the communal-religious concept, which allows for the individual ownership of land with personal rights, while simultaneously encompassing the element of community. The communal-religious nature of the national land law concept is reflected in Article 1, paragraph 2, which states that the entire earth, water, and airspace, including the natural resources contained therein within the territory of the Republic of Indonesia, are the gift of God Almighty and belong to the Indonesian people as the nation's wealth. In customary law, ulayat land is the communal land of the members of the customary law community, but under national land

law, all land within the state's territory is considered to be the collective property of the Indonesian people who have united as the Indonesian nation. The religious aspect of this concept is demonstrated by the belief that the earth, water, airspace, and the natural resources within Indonesia are a divine gift to the Indonesian people.

In a customary law community, the concept of external and internal is recognized in customary law literature. The meaning of these terminologies refers to the right of control over the natural resources contained within a country as a divine gift, which, within the community of customary law, the community has the right to manage. This concept is more specifically explained in the following table:

Table 1. The Internal and External Concepts in Customary Law

Concept	Characteristics
Internal	The control and management of land and all forms of material and non-material natural resources are governed by the respective indigenous community without interference from external parties.
External (Outward-facing)	Based on indigenous law, it is possible for outsiders who wish to use land for management and control to do so by adhering to the customs and ethics practiced within the indigenous community. This involves paying a form of recognition fee or permission fee (before harvesting forest products. Once the use and management of the land is completed, a recognition payment is made as a token of acknowledgment after harvesting forest products. This payment serves to restore the magical balance, rather than being considered "compensation" or a "relinquishment fee" as typically used in negotiations in Manokwari and generally in Papua Province.

Source: Dominikus Rato (2021)

The distinction between internal and external dimensions of customary law, as illustrated in Table 1, reveals an inherent tension in the integration of customary law into the national legal system. The internal dimension reflects the autonomous authority of indigenous communities in managing their natural resources, which often operates independently from state intervention. In contrast, the external dimension demonstrates a conditional openness toward external actors, provided that they comply with customary norms and obligations.

This duality highlights a fundamental challenge in legal integration. While the national legal system tends to emphasize state control and formal regulation, customary law operates on community-based authority and relational obligations. As a result, the integration process is not merely a matter of formal recognition but requires a reconciliation between

these two distinct modes of legal governance. Therefore, the concepts presented in Table 1 are crucial in understanding why the integration of customary law often leads to tension, particularly in the context of land and natural resource management.

These characteristics are related to the goal of achieving community welfare, which continually evolves in accordance with societal needs. Indigenous law, in this context, is always associated with societal development and differs from statutory law, which is often rigid and formed through complex political processes. The functional role of indigenous law is reflected in the high level of compliance within communities, which contributes to minimizing legal conflicts. The integration of customary law as a living law within the national legal system therefore, represents an effort to balance national development interests with the protection of

indigenous rights, while strengthening legal substance, structure, and culture (Jayuska et al., 2025)

The legal institutions within indigenous law generally reflect the needs of relatively simple societies. However, their refinement and adjustment within the national legal system must not eliminate their essential characteristics. Instead, modernization should be carried out carefully to ensure compatibility with contemporary legal and societal developments. This includes respecting the constitutional position of indigenous communities, acknowledging their internal governance structures, and strengthening the role of customary leaders in dispute resolution and decision-making (Ariyani, 2024). In essence, the integration of indigenous law into the national legal system must consider all aspects that ensure the welfare of indigenous communities as a foundational element of the Indonesian nation. However, to move beyond normative recognition, a more structured and operational approach is required.

This study therefore, proposes an operational model for integrating customary law within the national legal system. First, legal institutions must provide clear procedural mechanisms for the application of customary law in judicial processes, including the involvement of customary leaders and expert witnesses. Second, evidentiary standards must be established to verify the existence and applicability of customary norms, such as community recognition, continuous practice, and expert validation. Third, measurable criteria are required to determine the recognition of indigenous communities, ensuring consistency and legal certainty. Through this model, the integration of customary law can shift from symbolic recognition toward practical implementation within the national legal system.

To further operationalize this model, several concrete mechanisms and indicators need to be elaborated. Each component of the proposed model must be supported by clear institutional arrangements. In the judicial context, procedural guidelines should be established to formally recognize customary leaders as expert witnesses and to integrate customary norms into judicial reasoning. This ensures that customary law is not merely acknowledged symbolically but is actively applied in legal decision-making processes.

Furthermore, the establishment of evidentiary standards requires clear and consistent criteria, including (i) recognition by the indigenous community, (ii) continuity of customary practices over time, and (iii) validation by customary authorities

or experts. These standards are essential to reduce ambiguity and prevent inconsistent interpretations in legal practice.

In addition, measurable indicators are necessary to evaluate the effectiveness of the proposed framework. These may include increased recognition of indigenous communities in legal decisions, consistent application of customary norms in judicial processes, and a reduction in conflicts related to customary land rights.

This framework is also informed by comparative experiences from other jurisdictions. For instance, the institutional mechanisms under the Indigenous Peoples' Rights Act of 1997 demonstrate the importance of administrative support, while the judicial recognition approach in Canada and the partnership-based framework in New Zealand highlight the need for consistency and sustained state commitment. These comparative insights strengthen the applicability of the proposed model within the Indonesian legal context.

CONCLUSION

The integration of customary law as a living law within Indonesia's national legal system remains structurally constrained despite its formal constitutional recognition. The conditional nature of Article 18B (2) of the 1945 Constitution places customary law in a subordinated position, resulting in inconsistencies between normative recognition and its practical implementation, particularly in the governance of land and natural resources. The absence of clear operational mechanisms, including institutional procedures, evidentiary standards, and criteria for recognizing indigenous communities, contributes to legal uncertainty and limits the effective application of customary law. This condition reflects a broader gap between the conceptualization of customary law as a living system and its accommodation within the national legal framework. A more structured approach is therefore required, including the development of procedural mechanisms within legal institutions, the establishment of consistent evidentiary standards, and the formulation of measurable criteria for the recognition of indigenous communities. These measures are essential to move beyond symbolic recognition toward a more functional and coherent framework, while maintaining a balance between legal certainty and substantive justice. Future research should further assess the institutionalization of this framework through empirical and comparative analysis to enhance its practical applicability.

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