

The Philosophy and Essence of Customary Law in Southeast Asia: Comparative Law Between Indonesia, Vietnam, And Thailand

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Abstract

Customary law in Indonesia, Vietnam, and Thailand plays a crucial role in preserving social harmony and local cultural values, despite facing challenges from modernization, differences in formal recognition, and pressures from national laws and government policies. This study aims to analyze the philosophy, essence, as well as the similarities and differences in the implementation of customary law in Indonesia, Vietnam, and Thailand, reflecting the cultural, social, and spiritual values of each society. The research employs a normative legal method with legislative, historical, comparative, and philosophical approaches to examine the philosophy, essence, and implementation of customary law in Indonesia, Vietnam, and Thailand through the study of legal documents, local traditions, as well as primary, secondary, and tertiary legal materials analyzed descriptively and qualitatively. The findings reveal that customary law in Indonesia, Vietnam, and Thailand reflects the cultural, social, and spiritual values of their communities through approaches of collectivity, harmony, and sustainability, particularly in resource management and local conflict resolution. In Indonesia, customary law formally recognized in the constitution emphasizes mutual cooperation and a harmonious relationship with nature, though it often clashes with formal law. Vietnam integrates Confucian values into customary law informally recognized at the community level, but it is frequently overshadowed by centralized state policies. Meanwhile, in Thailand, despite lacking official recognition, customary law rooted in Buddhist values remains respected as a social mechanism, especially among indigenous communities. All three countries face the challenges of modernization and globalization, which threaten the sustainability of customary law as a cultural identity and a means of maintaining social and environmental balance.

Keyword: Customary Law, Modernization, Collectivity, Harmony, Sustainability.

1. INTRODUCTION

Customary law in Southeast Asia is an integral part of the lives of its people, steeped in traditional values, local wisdom, and belief systems.¹ The region is made up of countries with diverse cultural backgrounds, religions, and governance systems, making it a rich place to explore the relationship between customary

¹ Ratih Lestarini, "The Sociological Perspective on The Study of The Living Law: Is It a Part of Legal Discipline or Social Discipline?," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (2023): 448–64, <https://doi.org/10.29303/ius.v11i3.1270>.

law and social dynamics.² Research on the philosophy and essence of customary law in three Southeast Asian countries, Indonesia, Vietnam, and Thailand, is important to understand how customary law plays a role in shaping identity and maintaining social harmony amidst the pressures of globalization and modernization. In Indonesia, the existence of customary law has been officially recognized in the national legal system. The 1945 Constitution through Article 18B paragraph (2) explicitly states that the state respects customary law communities as long as they are still alive and in accordance with the development of the times.³ However, this recognition does not necessarily facilitate the implementation of customary law, especially in the modern era dominated by positive law and globalization. As an archipelagic country with more than 17,000 islands and hundreds of ethnic groups, customary law in Indonesia has extraordinary diversity.⁴ For example, Minangkabau custom with its matrilineal system has different regulations from Javanese customary law which is more patriarchal. However, the similarities between Indonesian customary laws lie in the values of collectivity, harmony, and respect for nature. In many cases, customary law in Indonesia functions as a more effective dispute resolution than formal courts. For example, in the Dayak community of Kalimantan, custom is known as the jungle law system, where conflict resolution is carried out through deliberation involving customary elders. This mechanism is considered fairer because it takes into account the cultural context and social relations between the disputing parties.⁵ However, customary law often faces pressure from centralized government policies, such as in cases of land conflicts involving indigenous peoples and large companies. This condition raises serious challenges to maintaining the sustainability of customary law in Indonesia.⁶

² Sabrina Dwi Lestari and Abel Yap Shun Kit, "The Integration of Customary Law within the Framework of Indonesia's Constitutional Law in a Plural Society," *Nagara Law Journal* 1, no. 1 (2024).

³ Retno Kus Setyowati, "Pengakuan Negara Terhadap Masyarakat Hukum Adat," *Binamulia Hukum* 12, no. 1 (August 2023): 131–42, <https://doi.org/10.37893/jbh.v12i1.601>.

⁴ Harniwati Harniwati, "Hukum Adat Di Era Modernisasi," *Journal of Global Legal Review* 2, no. 1 (April 2024): 41–52, <https://doi.org/10.59963/jglegar.v2i1.328>. regulated in the 1945 Constitution. Customary law is the values that develop in society regarding truth and justice. In terms of legal substance, the 1945 Constitution expressly provides a place and basis for the application of legal norms and legal institutions originating from laws that live and apply in society (living live

⁵ Yosefina Daku, Kornelius Yosep P.Meka, and Adrianus Keriama Jawan, "Customary Communities In The Establishment Of Village Customary Institutions As An Alternative Dispute Settlement," *Jurnal Scientia* 12, no. 3 (2023).

⁶ Rika Fajrini, "Environmental Harm and Decriminalization of Traditional Slash-and-Burn Practice in Indonesia," *International Journal for Crime, Justice and Social Democracy* 11, no. 1 (March 2022): 28–43, <https://doi.org/10.5204/ijcjsd.2034>. this exemption should not be interpreted to mean that all traditional slash-and-burn practices are sustainable. Changes in habitat and sociocultural and economic conditions can render this once sustainable practice unsuitable in certain contexts and environments. This discussion on environmental harm from traditional slash-and-burn practices is not intended to call for a total ban of the practice nor does it suggest aggressive criminal law enforcement is required. This discussion is intended to clarify which practices we should protect and which ones should be addressed through various approaches to minimize harm. Such approaches should consider the local Indigenous communities as victims of ecological discrimination rather than perpetrators of environmental harm." "author": [{"dropping-particle": "", "family": "Fajrini", "given": "Rika", "non-dropping-particle": "", "parse-names": false, "suffix": ""}], "container-title": "International Journal for Crime, Justice and Social Democracy", "id": "ITEM-1", "issue": "1", "issued": {"date-parts": [{"2022", "3"}]}, "page": "28-43", "title": "Environmental Harm and Decriminalization of Traditional Slash-and-Burn Practice in Indonesia", "type": "article-journal", "volume": "11", "uris": [{"http://www.mendeley.com/documents/?uuid=84f2aa3f-0ba0-4808-8c2f-d253cd6fb145"}, {"http://www.mendeley.com/documents/?uuid=1eb2f3f2-9079-4b7d-ae02-1c79b49b5e24"}]}, "mendeley": {"formattedCitation": "Rika Fajrini, \"Environmental Harm and Decriminalization of Traditional Slash-and-Burn Practice in Indonesia,\" <i>International Journal for Crime, Justice and Social Democracy</i> 11, no. 1 (March 2022

Vietnam, despite its distinct history, also shows how customary law plays an important role in the lives of its people. The country has a traditional heritage influenced by Confucianism, Taoism, and folk religious practices that reflect collective values and harmony.⁷ One interesting aspect of Vietnamese customary law is its use in natural resource management. In rural areas, indigenous people still practice a communal land management system, where land is considered a common property that must be preserved for future generations. This system reflects a philosophy of sustainability that has been an integral part of local culture for centuries.⁸

However, modernization and global influences have also posed significant challenges to customary law in Vietnam. Economic reforms initiated in the late 1980s through the Doi Moi policy brought about major transformations in the structure of Vietnamese society.⁹ In this context, customary law is often considered irrelevant to the increasingly complex needs of modern society. For example, the shift from traditional agricultural systems to industrialization has caused many indigenous peoples to lose their land rights, which were previously protected by customary systems. However, efforts to maintain customary law remain, especially through support from civil society groups concerned with preserving culture.¹⁰

Thailand has a different customary law dynamic compared to Indonesia and Vietnam. As a country with a majority Theravada Buddhist population, religious values play an important role in shaping the philosophy of customary law in this country. This religious tradition places emphasis on moral values, social harmony, and respect for life.¹¹ One important example of the application of customary law in Thailand is in the settlement of community disputes, where monks are often invited to act as mediators. This approach reflects the high spiritual value of Thai customary law, which serves not only as a legal mechanism, but also as a way to reconcile human relations.¹²

Like Indonesia and Vietnam, Thailand also faces challenges in maintaining the relevance of customary law amid rapid social change. Modernization, urbanization, and ASEAN economic integration have brought great pressure on customary law systems.¹³ In some cases, customary law often conflicts with formal law, especially in terms of land and natural resource management. In the northern highlands of Thailand, for example, the Karen indigenous people face pressure from the government that is trying to replace their traditional systems with national law.¹⁴ Nevertheless, indigenous peoples in

7 Hong Van Vu, "The Influence of Taoism on the Folk Beliefs of the Vietnamese," *The Russian Journal of Vietnamese Studies* 6, no. 4 (December 2022): 51–60, <https://doi.org/10.54631/VS.2022.64-111099>.

8 Lolita et al., "The Existence of Customary Law Community's Rights (Hak Ulayat) Over Land in Kalimantan," *3rd Borneo International ...* 1, no. 1 (2023): 403–13.

9 Huan Dang, "A New Approach to Explain Policy Reforms in Vietnam during Đổi Mới by Developing and Validating a Major Policy Change Model for Vietnam" (Portland, OR, January 2000), <https://doi.org/10.15760/etd.611>.

10 Eka Susykwati, "The Existence Of Customary Law In The Legal System In Indonesia," *Journal of Adat Recht* 1, no. 1 (May 2024), <https://doi.org/10.62872/ygtdmb51>.

11 Tzu-Lung Chiu, "When Mahāyāna Meets Theravāda: The Position of Chinese Bhikṣuṇīs in Contemporary Myanmar," *Religions* 13, no. 7 (July 2022): 662, <https://doi.org/10.3390/rel13070662>.

12 Tak-ling Terry Woo, "Religion and Politics in the People's Republic of China: An Appraisal of Continuing Mistrust and Misunderstanding," *Religions* 10, no. 5 (May 2019): 333, <https://doi.org/10.3390/rel10050333>.

13 Rahma Putri Andini, Destri Maryam Suci Hawati, and Tin Rustini, "Analisis Kenampakan Sosial Di Negara-Negara Asia (Asia Tenggara, Asia Timur, Asia Selatan)," *Sindoro Cendikia Pendidikan* 10, no. 9 (2024), <https://doi.org/https://doi.org/10.9644/sindoro.v10i9.9443>.

14 Marco J. Haenssge et al., "The Impact of Conservation and Land Use Transitions on the Livelihoods of Indigenous Peoples: A Narrative Review of the Northern Thai Highlands," *Forest Policy and Economics* 157 (December

Thailand continue to fight for their rights, with support from local and international organizations.

Across the three countries, there are common patterns that can be observed in the philosophy of customary law in Southeast Asia. First, customary law in the region tends to emphasize collectivity and social harmony. These values are reflected in the way customary law is used to resolve conflicts, where community interests often take precedence over individual interests. Second, customary law is often associated with the spiritual relationship between humans and nature.¹⁵ In many indigenous communities, land, water, and forests are not only economic resources, but also have sacred meanings that must be respected. Third, customary law in Southeast Asia shows great flexibility, allowing communities to adapt to change without sacrificing the core of their traditions. However, it is also important to note significant differences between the three countries. In Indonesia, customary law is formally recognized in the national legal system, although its implementation remains challenging.¹⁶ In Vietnam, customary law is more informal and often runs parallel to formal law.¹⁷ Meanwhile, in Thailand, customary law is heavily influenced by religious values, which gives it a stronger spiritual dimension compared to the other two countries.¹⁸ These differences reflect the historical, cultural, and political context of each country, which must be considered in the analysis of customary law. Based on the background explanation above, the author is interested in conducting a study entitled “Philosophy and Essence of Customary Law in Southeast Asia: Comparison of Indonesia, Vietnam, Thailand”. The formulation of the problem in this study is: 1. How do the philosophy and essence of customary law in Indonesia, Vietnam, and Thailand reflect the cultural, social, and spiritual values of each society?. 2. What are the similarities and differences in the implementation of customary law in Indonesia, Vietnam, and Thailand?.

Research that discusses the characteristics of customary law in the framework of territoriality and legal culture of the community has actually been carried out by several previous researchers, including Osman (2024) who analyzed new factors of concern to the court, such as legal certainty and protection of human rights, in deciding the application of customary law in Africa.¹⁹ Another study was conducted by Carabajal, et. al. (2025) discussed the legal culture of local indigenous peoples in Latin America and the Caribbean, who experienced discrimination in the era of modernization.²⁰ Another study by Newme and Scaria (2025) focused on the role of customary law in relation to land in Zeme communities, which depend on subsistence economies, and the influence

2023): 103092, <https://doi.org/10.1016/j.forpol.2023.103092>.

15 Yulia Yulia et al., “Siri’na Pacce: A Form of Fulfilling Women’s Rights through the Conduct of Responsible Fisheries,” *Jambura Law Review* 5, no. 1 (2023): 76–97, <https://doi.org/10.33756/jlr.v5i1.17024>.

16 Takwim Azami, “Dinamika Perkembangan Dan Tantangan Implementasi Hukum Adat Di Indonesia,” *QISTIE* 15, no. 1 (May 2022): 42, <https://doi.org/10.31942/jqi.v15i1.6487>.

17 Anuradha Joshi, Wilson Prichard, and Christopher Heady, “Taxing the Informal Economy: The Current State of Knowledge and Agendas for Future Research,” *The Journal of Development Studies* 50, no. 10 (October 2014): 1325–47, <https://doi.org/10.1080/00220388.2014.940910>.

18 Surasak Jamnongsarn, “Reinterpreting Religious and Ethnic Music in Thailand,” *International Proceeding On Religion, Culture, Law, Education, And Hindu Studies* 1 (2022).

19 Fatima Osman, “Custom Versus Customary Law: Does South African Jurisprudence Draw the Distinction?,” *Journal of African Law* 68, no. 3 (October 29, 2024): 323–39, <https://doi.org/10.1017/S0021855324000159>.

20 María Inés Carabajal et al., “Lights and Shadows of Nature-Based Solutions in the Anthropocene: Perspectives from Indigenous Narratives in Latin America,” *Mitigation and Adaptation Strategies for Global Change* 30, no. 1 (January 30, 2025): 3, <https://doi.org/10.1007/s11027-024-10189-3>.

of social obligations, moral contexts and Western education on land perceptions and practices.²¹ Of the three previous studies above, this research is original because it focuses on discussions related to customary law in Southeast Asian countries that have not been reviewed by the three previous studies.

This research uses a normative legal method, which focuses on the study of legal norms that apply in society, both those originating from written regulations and those that exist in local traditions.²² This method is used to understand the philosophy and essence of customary law in Indonesia, Vietnam, and Thailand through an analysis of legal documents, doctrines, and traditions that underlie its implementation. Normative legal research is relevant to explore the relationship between customary law as a normative system and the cultural values that underlie it, thus providing a deep understanding of the role of customary law in the dynamics of society in Southeast Asia. This study adopts several approaches to support a comprehensive analysis. First, the statute approach is used to examine legal rules related to customary law in the three countries, such as the recognition of customary law in the Indonesian constitution, local policies in Vietnam, and regional regulations in Thailand. Second, a historical approach is taken to understand the background of the formation of customary law, including the influence of colonialism, religion, and social dynamics in the history of the three countries. This approach helps explain how customary law has evolved to the present day. Third, a comparative approach is used to compare the philosophy and implementation of customary law in Indonesia, Vietnam, and Thailand. This approach aims to find common patterns and differences that reflect the cultural characteristics of each country. Finally, a philosophical approach is applied to explore the basic values underlying customary law, such as justice, harmony, and sustainability, which are the foundation of customary law practices in the three countries. These approaches provide a rich analytical framework for understanding customary law as a unique legal and cultural phenomenon.²³

This study utilizes three types of legal sources to support the analysis. Primary legal materials include laws and regulations, customary law documents, and court decisions related to customary law in Indonesia, Vietnam, and Thailand. For example, Article 18B of the 1945 Constitution which regulates the recognition of customary law communities in Indonesia, as well as local regulations that support the existence of customary law in Vietnam and Thailand. Secondary legal materials consist of books, scientific journals, and previous research results that are relevant to the topic of customary law in Southeast Asia. This literature provides theoretical and contextual perspectives that enrich the analysis. In addition, tertiary legal materials such as legal encyclopedias and legal dictionaries are used to clarify important terms related to customary law.²⁴ Data collection in this study was carried out through several techniques. Document

21 Gaituang Newme and Suma Scaria, "Reconstructing Land Discourse: A Perspective of the Zeme Tribe of Northeast India," *Journal of Land and Rural Studies* 13, no. 1 (January 25, 2025): 28–45, <https://doi.org/10.1177/23210249241295512>.

22 Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 13th ed. (Jakarta: KENCANA, 2017).

23 Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris : Karakteristik Khas Dari Metode," *Fiat Justisia Jurnal Ilmu Hukum* 8, no. 1 (2014): 15–35.

24 Irwansyah, *Penelitian Hukum: Pilihan Metode Dan Praktik Penulisan Artikel*, 3rd ed. (Yogyakarta: Mira Buana Media, 2020).

study is the main method for examining various legal documents, including written regulations and customary rules that apply in society. This technique is complemented by a literature review, which includes analysis of books, journals, and scientific articles²⁵ which discusses the philosophy and implementation of customary law in Southeast Asia. In addition, legal doctrine analysis is used to understand the views of experts on customary law, thus providing a strong conceptual foundation in this study.

The collected legal material were analyzed using descriptive-qualitative methods. The analysis begins with legal material classification, where legal material is grouped based on themes such as the philosophy of customary law, the essence of customary values, and a comparison of implementation in Indonesia, Vietnam, and Thailand. Furthermore, the classified legal material is interpreted to understand the philosophical meaning of customary law and how these values are applied in people's lives. Comparative techniques are used to identify similarities and differences in customary law practices in the three countries, including factors that influence their relevance and sustainability.

The final stage of analysis is synthesis, where the results of the interpretation and comparison are formulated into conclusions.²⁶ This synthesis aims to provide a comprehensive overview of the philosophy and essence of customary law in Southeast Asia, while providing practical recommendations for its preservation and development in a modern context. With this analytical technique, the research is expected to produce findings that are relevant both academically and practically, and contribute to the development of understanding of customary law at the national and regional levels.

2. ANALYSIS AND DISCUSSION

2.1. Philosophy and Essence of Customary Law in Indonesia, Vietnam, and Thailand in Reflecting the Cultural, Social, and Spiritual Values of Society

Customary law is a direct reflection of the values that live in traditional societies. As a system of norms that grows and develops from local wisdom, customary law regulates various aspects of life, from human relations, management of natural resources, to spiritual practices.²⁷ In Southeast Asia, customary law plays an important role, especially in Indonesia, Vietnam, and Thailand, as a medium for maintaining social and spiritual harmony in society. These three countries have unique customary law philosophies, although there are fundamental similarities that indicate similar cultural roots. In Indonesia, customary law has an important position in the national legal system. Recognition of customary law is explicitly stated in Article 18B paragraph (2) of the 1945 Constitution, which states that the state respects customary law communities as long as their existence is in accordance with the development of the times and does not conflict with the principles of the Unitary State of the Republic of Indonesia.²⁸ This

25 Sugiyono, "Metode Penelitian Kuantitatif, Kualitatif, Dan R&D," Bandung: CV. Alfabeta, 2019.

26 Djam'an Satori and Aan Komariah, *Metode Penelitian Kualitatif* (Bandung: Alfabeta, 2014).

27 Wahyu Nugroho, "Relationship between Environmental Management Policy and the Local Wisdom of Indigenous Peoples in the Handling of Covid-19 in Indonesia," *Onati Socio-Legal Series* 11, no. 3 (2021): 860–82, <https://doi.org/10.35295/OSLS.IISL/0000-0000-0000-1193>.

28 Thea Farina et al., "Pengakuan Dan Perlindungan Hutan Adat Dalam Mewujudkan Hak Masyarakat Hukum Adat Di Provinsi Kalimantan Tengah," *UNES Law Review* 6, no. 3 (2024).

recognition provides formal legitimacy for customary law, although its implementation often faces obstacles, especially in the era of modernization.²⁹

The philosophy of Indonesian customary law is based on the values of collectivity, mutual cooperation, and harmony with nature.³⁰ In many customary communities, customary or communal land is not owned by individuals but by the community as a whole.³¹ This is clearly seen in the customary system of the Minangkabau people in West Sumatra, where customary land is inherited matrilineally. Land is not only seen as an economic asset but also as a symbol of sustainability and balance between previous, present and future generations. This philosophy reflects the close relationship between customary law and social values that emphasize the importance of sustainability and shared responsibility.³²

In the Dayak indigenous community in Kalimantan, customary law also reflects a strong spiritual essence. The relationship between humans and nature is seen as something sacred. Customary rituals such as *ngaruat bumi* are often performed to maintain harmony between humans, nature, and the spiritual world.³³ These practices show that customary law not only functions as a regulator of social relations but also as a means to maintain cosmic balance.³⁴ However, customary law in Indonesia often clashes with formal law, especially in cases of land disputes between indigenous peoples and large companies. This shows the challenges faced by customary law in maintaining its relevance amidst global economic pressures.³⁵

In Vietnam, customary law developed in different contexts but still reflects deep cultural values. Customary law in Vietnam is heavily influenced by Confucianism, Taoism, and folk beliefs, all of which emphasize the importance of social harmony, collectivity, and balance. In rural communities, customary law is used to regulate social relations and the management of natural resources.³⁶ For example, in traditional land management systems, land is considered a collective asset owned by the community, and its use should benefit all its members.³⁷ The philosophy of customary law in Vietnam is also rooted in the concept of sustainability and collective well-being. Before the Doi Moi economic reform in 1986, land and other resource management was largely governed

29 Nadya Asriyani Sjahrain, "Legal Challenges in Facing Land Ownership Disputes Due to Gentrification in Indonesia," *Estudiante Law Journal* 6, no. 2 (2024), <https://doi.org/https://doi.org/10.33756/eslaj.v6i2.27858>.

30 Dicky Eko Prasetyo, "Perlindungan Dan Pengakuan Hak Ulayat Masyarakat Adat Biak Papua," *Realism: Law Review* 2, no. 1 (2024): 54–82.

31 Elisabeth S. Telussa et al., "Pemanfaatan Tanah Ulayat Masyarakat Adat Di Maluku Dalam Kegiatan Investasi," *JSSH: Jurnal Sains, Sosial Dan Humaniora* 1, no. 2 (2021).

32 Irawati Irawati et al., "The Customary Law of the Communal Property and Sustainability in Coping with the Economic Impact of Covid-19 in Minangkabau Indigenous Peoples, Indonesia," *Journal of Law and Sustainable Development* 12, no. 1 (January 2024): e2548, <https://doi.org/10.55908/sdgs.v12i1.2548>.

33 Risladiba, "Nilai-Nilai Yang Terkandung Dalam Tradisi Masyarakat Dayak Hindu Budha Bumi Segandu Untuk Mewujudkan Good And Smart Citizen," *Jurnal Yaqzhan: Analisis Filsafat, Agama Dan Kemanusiaan* 6, no. 1 (July 31, 2020): 82, <https://doi.org/10.24235/jy.v6i1.6161>.

34 Muhammad Ruhly Kesuma Dinata et al., "Good Governance and Local Wisdom in Law Enforcement," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 2 (December 19, 2022): 227–42, <https://doi.org/10.24090/volksgeist.v5i2.6740>.

35 Jenny Kristiana Matuankotta and Eric Stenly Holle, "State Recognition and Respect for the Rights of Customary Law Communities in the Maluku Islands Region in the Exploitation of Forest Resources," *SASI* 28, no. 1 (April 2022): 107, <https://doi.org/10.47268/sasi.v28i1.852>.

36 Nguyễn Thị Hồng Minh and Cường Nguyễn Anh, "Specific Cultural Values Affect Basic Political Activities in Vietnam," *Cogent Social Sciences* 10, no. 1 (December 2024), <https://doi.org/10.1080/23311886.2024.2404622>.

37 Rosdalina Bukido et al., "Harmonization of Customary and Islamic Law in the Gama Tradition of the Muslim Mongondow Community of North Sulawesi," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (December 16, 2022): 239–54, <https://doi.org/10.18326/ijtihad.v22i2.239-254>.

by local traditions. However, the reform brought about major changes, including in terms of the relationship between customary law and formal law. State land policies introduced by the Vietnamese government often conflict with customary law traditions, causing tensions between the government and indigenous communities..³⁸ Nevertheless, the essence of customary law lives on in various informal forms, especially in rural communities that still hold fast to their traditions. Customary law in Vietnam reflects a harmonious relationship between humans and the environment, often manifested in sustainable agricultural practices and efficient water management. These values reflect a deep-rooted belief that humans are an integral part of nature, and that survival depends on the balance of the ecosystem..³⁹

In Thailand, customary law is heavily influenced by spiritual values and morality derived from Theravada Buddhism. Buddhism provides a strong philosophical foundation for customary law in the country, with an emphasis on harmony, respect for life, and non-violence..⁴⁰ In Thailand's indigenous communities, customary law is often used as a tool to resolve conflicts, involving monks as mediators. Monks are considered neutral moral figures, so they have the authority recognized by the community to help resolve land disputes, family problems, or other conflicts..⁴¹

Customary law in Thailand also reflects the spiritual relationship between humans and nature, especially in the Karen indigenous community in the northern highlands. Their customary legal system is based on the principle of balance between humans and the environment. The use of natural resources is carried out very carefully to ensure environmental sustainability..⁴² For example, the Karen indigenous people have customary rules that prohibit the felling of certain trees or excessive exploitation of forests. This philosophy reflects the view that humans do not only live for themselves but also have responsibilities to future generations..⁴³ However, customary law in Thailand faces major challenges, especially from modernization and government policies. The conflict between indigenous peoples and the government over forest management is one clear example of how customary law is often ignored in national decision-making..⁴⁴ Nevertheless, customary law continues to play an important role in maintaining the cultural and spiritual identity of indigenous communities in Thailand.

Although the cultural and historical contexts of Indonesia, Vietnam, and Thailand are different, there are fundamental similarities in the philosophy of customary law in all three countries. First, customary law emphasizes collectivist values, where the

38 Asnawi Mubarak et al., "The Relationship Of State Law And Customary Law:," *Jurnal Jurisprudence*, December 2023, 188–204, <https://doi.org/10.23917/jurisprudence.v13i2.2914>.

39 Suardi Mukhlis, Hermansyah, and Abdul Haris, "Application Of Customary Law In Preserving The Karampuang Traditional Forest," *Jurnal Ilmiah Administrasita* 12, no. 1 (June 28, 2021): 71–82, <https://doi.org/10.47030/administrasita.v12i1.321>.

40 Yeshey et al., "Religious Beliefs and Wildlife Value Orientations Influence Tolerance of Wildlife Impacts in Bhutan," *Human Dimensions of Wildlife* 29, no. 3 (May 2024): 300–318, <https://doi.org/10.1080/10871209.2023.2234389>.

41 A. Gunawan, "The Community Conflict Settlement With Customary Law And Local Wisdom Approaches And Law No. 7 Of 2012 Concerning Handling Of Social Conflicts," *Legal Brief* 11, no. 2 (2022): 834–43.

42 Benedict Kingsbury, "Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy," *American Journal of International Law* 92, no. 3 (July 1998): 414–57, <https://doi.org/10.2307/2997916>.

43 Dwi Suryahartati et al., "The Local Customary Law: The Contribution of Adat Law in Preserving the Lubuk Larangan in Jambi," *Jambe Law Journal* 4, no. 1 (2021): 43–68, <https://doi.org/10.22437/jlj.4.1.43-68>.

44 Rury Febrina et al., "Collaborative Governance in Recognizing Customary Law Communities And Customary Communal Land Rights in Kampar Regency," *Journal of Governance and Public Policy* 8, no. 2 (June 2021): PROOFREAD, <https://doi.org/10.18196/jgpp.v8i2.11104>.

interests of the community often take precedence over the interests of the individual.⁴⁵ Second, customary law reflects the spiritual relationship between humans and nature, where natural resources are considered assets that must be respected and preserved.⁴⁶ Third, customary law in all three countries has the flexibility to adapt to social change, although it often faces pressure from modernization and formal law.⁴⁷ However, there are also significant differences that reflect the cultural characteristics of each country. In Indonesia, customary law has formal recognition in the national legal system, although its implementation often faces obstacles.⁴⁸ In Vietnam, customary law operates more in the informal sphere as a complement to formal law.⁴⁹ Meanwhile, in Thailand, customary law is heavily influenced by Buddhist values, giving it a stronger spiritual dimension compared to the other two countries.⁵⁰

Overall, it can be understood that customary law in Indonesia, Vietnam, and Thailand is a direct reflection of the cultural, social, and spiritual values of their respective societies. The philosophy of customary law in these three countries emphasizes the importance of social harmony, the relationship between humans and nature, and respect for tradition. Despite the challenges of modernization and the pressure of formal law, customary law remains relevant as a medium for maintaining cultural identity and creating harmony in society. By exploring the philosophy and essence of customary law, we can understand how local traditions can be a bridge between the past and the future, and provide sustainable solutions to social and environmental challenges in the modern era.

2.2 The Similarities and Differences in the Implementation of Customary Law in Indonesia, Vietnam, and Thailand

In the implementation of customary law in Southeast Asian countries such as Indonesia, Vietnam, and Thailand, we can find some similarities and profound differences that reflect the way these three countries manage customary law as part of their legal systems. Customary law, as a legal system that originates from the customs and traditions of local communities, not only functions as a legal instrument but also as a guardian of cultural values that live in society.⁵¹ Although these three countries have different historical and social backgrounds, customary law in each country plays an important role in bridging the need to balance tradition with the demands of modernity.

45 Minxuan Huang, "Confucian Culture and Democratic Values: An Empirical Comparative Study in East Asia," *Journal of East Asian Studies* 24, no. 1 (March 2024): 71–101, <https://doi.org/10.1017/jea.2023.23>.

46 Harriet Harden-Davies et al., "Rights of Nature: Perspectives for Global Ocean Stewardship," *Marine Policy* 122 (December 2020): 104059, <https://doi.org/10.1016/j.marpol.2020.104059>.

47 Nyoman Gede Antaguna and I Nyoman Putu Budiarta, "Development of Balinese Customary Law in the Perspective of Local Wisdom "Tri Hita Karana"," *Sociological Jurisprudence Journal* 6, no. 2 (2023), <https://doi.org/10.22225/scj.6.2.2023.144-149>.

48 Abdul Ukas Marzuki, "Pancasila in the Perspective of Customary Law in Indonesia," *Al-Bayyinah* 8, no. 2 (2024): 222–42, <https://doi.org/10.30863/al-bayyinah.v8i2.7376>.

49 Emmanuel Pannier and Michaël Bruckert, "Social Regulatory Regimes in Northern Vietnam: How Interpersonal Network Norms, State Laws, and Market Rules Interact," in *The Palgrave Handbook of Political Norms in Southeast Asia* (Singapore: Springer Nature Singapore, 2024), 393–414, https://doi.org/10.1007/978-981-99-9655-1_23.

50 S. Assanangkornchai, "Religious Beliefs And Practice, And Alcohol Use In Thai Men," *Alcohol and Alcoholism* 37, no. 2 (March 1, 2002): 193–97, <https://doi.org/10.1093/alcalc/37.2.193>.

51 Kiki Kristanto, Christio Drakhma Dekapolis, and Isno Pandowo, "Customary Law as Part of the Reform Legal System in Indonesia," *Focus Journal Law Review* 3, no. 2 (November 2023), <https://doi.org/10.62795/fjl.v3i2.227>.

Through a study of the implementation of customary law in Indonesia, Vietnam, and Thailand, we can understand how customary law continues to develop despite being hampered by the challenges of globalization, modernization, and rapid social change. One of the main similarities in the implementation of customary law in Indonesia, Vietnam, and Thailand is the recognition of the role of customary law in maintaining social harmony at the local level.⁵² These three countries agree that customary law is an integral part of the life of indigenous communities, which functions to regulate relations between humans and humans, as well as between humans and nature.⁵³

In Indonesia, customary law has strong constitutional recognition. Article 18B paragraph (2) of the 1945 Constitution states that the state recognizes and respects the existence of customary law communities as long as they continue to exist and are in accordance with the times. In this context, customary law in Indonesia is not only part of the life of customary communities, but is also recognized as a legal entity that has the right to be regulated and protected by the state.⁵⁴ Likewise in Vietnam, although customary law is not explicitly recognized in the constitution, it still plays an important role in resolving disputes at the village and ethnic community levels. Customary law in Vietnam developed as a form of conflict resolution that is in accordance with the customs and traditions of local communities, especially among ethnic minorities such as the Tay, H'mong, and Dao.⁵⁵ Customary law here is more practical and directly connected to the lifestyle of the community which is very dependent on togetherness and collective management of natural resources.⁵⁶ In many communities, customary law is also used to resolve land and forest ownership issues which are often a source of conflict between indigenous communities and the government.⁵⁷

Thailand also has a similar structure in the implementation of customary law, although the country does not have explicit recognition of customary law in its constitution or legislation. Customary law in Thailand functions primarily in indigenous communities in rural areas and areas inhabited by ethnic minority communities such as the Karen, Hmong, and Akha.⁵⁸ In many cases, customary law is used as a faster and more efficient dispute resolution system compared to the formal legal system. One example of the application of customary law in Thailand is the use of mediation by traditional elders

52 Usman Al Farisi et al., "Negotiation Between Customary Law and Islamic Law: The Practice of Palang Pintu in The Traditional Marriage in The Betawi Muslim Community," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (December 31, 2023): 268–85, <https://doi.org/10.18860/j-fsh.v15i2.21241>.

53 Muhammad Fadli, "Pengakuan Dan Perlindungan Negara Terhadap Hukum Adat Dalam Mendorong Kepatuhan Hukum Berbasis Nilai-Nilai Budaya Lokal Di Indonesia," *Majalah Hukum Nasional* 54, no. 2 (2024), <https://doi.org/https://doi.org/10.33331/mhn.v54i2.896>.

54 Fadli.

55 Minh and Nguyễn Anh, "Specific Cultural Values Affect Basic Political Activities in Vietnam."

56 Ade Bagus Saswoyo and Margo Hadi Pura, "Urgensi Pengundangan Rancangan Undang-Undang Masyarakat Hukum Adat Sebagai Bentuk Kesetaraan Warga Negara," *Jurnal Suara Hukum* 5, no. 1 (August 19, 2023): 19–43, <https://doi.org/10.26740/jsh.v5n1.p19-43>. races, religions and languages, including the existence of indigenous and tribal peoples. In fact, there is injustice that is felt by a number of indigenous peoples in the form of a lack of protection and recognition by the state for the existence of indigenous and tribal peoples, such as the Kuningan Regency Government's decision not to recognize the application of the Sunda Wiwitan community as indigenous peoples (MHA

57 Agus Lanini et al., "The Formation of Customary Law Related to the Use of Natural Resources in the Lore Lindu Region," *Fiat Justisia: Jurnal Ilmu Hukum* 12, no. 3 (October 4, 2018): 181, <https://doi.org/10.25041/fiatjustisia.v12no3.1331>.

58 Kadek Wahyu Adi Pratama, "Recognition to the Customary Law of Indigenous Peoples in the ILO Convention 1989: Practices from Ecuador and Norway," *Indonesian Journal of International Law* 16, no. 3 (April 2019), <https://doi.org/10.17304/ijil.vol16.3.754>.

or community leaders in resolving social and land issues. Although not officially recognized, customary law is highly respected by the community and is often used as a means to maintain social integrity and maintain balance within the community.⁵⁹

Thus, despite differences in the form of recognition of customary law at the national level, these three countries agree that customary law is a very important mechanism in maintaining social stability and harmony in society. In all three countries, customary law plays an irreplaceable role in resolving social disputes, especially at the local level, and serves as a tool to preserve the cultural values of indigenous communities. Despite similarities in the recognition of the importance of customary law, the implementation of customary law in Indonesia, Vietnam, and Thailand shows very striking differences, both in terms of formal recognition and in its application in the national legal system. In Indonesia, the implementation of customary law has received quite strong formal recognition in the country's legal system. One of the main bases for this recognition is Article 18B paragraph (2) of the 1945 Constitution which regulates the recognition of indigenous communities.⁶⁰

In addition, customary law in Indonesia is also recognized in various laws and regional regulations. For example, Law No. 6 of 2014 concerning Villages gives authority to customary villages to regulate and manage the social life of their communities based on customary law.⁶¹ Recognition of customary law is also reflected in Law No. 41 of 1999 concerning Forestry, which recognizes the rights of indigenous peoples to their customary forests through Constitutional Court Decision No. 35/PUU-X/2012. In this decision, the Constitutional Court emphasized that customary forests are not part of state forests, providing a strong legal basis for indigenous peoples to manage their forests in accordance with their traditions and customary laws.⁶² However, although the recognition of customary law in Indonesia is quite strong on paper, implementation in the field is often hampered by conflicts involving economic, political, and development interests. In Vietnam, recognition of customary law is more limited and does not have an explicit legal basis like in Indonesia. Customary law in Vietnam generally operates informally and is more widely accepted in local contexts without official recognition from the government.⁶³ The Vietnamese government has placed a greater emphasis on a more centralized legal system and has often pitted development policies against the traditional rights of indigenous peoples. For example, in land management, government policies encouraging land privatization often clash with collective land management practices governed by customary law. This has led to tensions between indigenous peoples and

59 Loso Judijanto et al., "Comparative Analysis of the Use of Customary Law in Land Dispute Resolution: Case Study Approach," *Rechtsnormen Journal of Law* 2, no. 2 (April 2024): 112–20, <https://doi.org/10.55849/rjl.v2i2.796>.

60 Jawahir Thontowi, "Pengaturan Masyarakat Hukum Adat Dan Implementasi Perlindungan Hak-Hak Tradisional," *Pandecta: Research Law Journal* 10, no. 1 (June 2015), <https://doi.org/10.15294/pandecta.v10i1.4190>.

61 Uumbu Rauta, Titon Slamet Kurnia, and Arie Siswanto, "Telaah Teoretis Dan Yuridis Tukar Menukar Barang Milik Daerah Dengan Swasta," *Jurnal Hukum Ius Quia Iustum* 24, no. 2 (April 15, 2017): 232–54, <https://doi.org/10.20885/iustum.vol24.iss2.art4>.

62 Faiq Tobroni, "Menguatkan Hak Masyarakat Adat Atas Hutan Adat (Studi Putusan MK Nomor 35/PUU-X/2012)," *Jurnal Konstitusi* 10, no. 3 (2013).

63 Asnawi Mubarak et al., "The Relationship Of State Law And Customary Law:" which is conducted in the literature study in the form of relevant legal regulations and norms, especially in the Constitutional Court Judgment Number 35/PUU-X/2012

the government, as customary law is often not recognized in national policies, despite being highly respected at the community level.⁶⁴

Thailand also faces challenges in recognizing customary law in its national legal system. Although customary law is recognized in the social life of the community, the country does not have a clear policy or law that explicitly recognizes customary law as part of the national legal system.⁶⁵ In practice, customary law is often outside the scope of state law and is more of an unwritten rule that regulates the lives of indigenous peoples. Indigenous peoples in Thailand, especially in rural and mountainous areas, often rely on customary law to resolve land disputes, marriages, and other social issues.⁶⁶ However, when there is a conflict between customary law and state law, indigenous peoples often lose because the state has greater control over land and natural resource management. One example is the evictions that are often experienced by indigenous peoples who live in forest areas or areas considered as environmental protection areas by the Thai government.⁶⁷

These three countries face major challenges in preserving customary law amidst modernization and globalization. In Indonesia, although the recognition of customary law is regulated in the constitution and legislation, implementation in the field often does not run smoothly.⁶⁸ In general, in Indonesia, there is a difference between “Customary Law Society” and “Customary Law” although the difference between the two is not essential. Customary Law Society is simply an institutional unit of society that uses and implements customary law in organizing its community life. The existence of this Customary Law Society actually involves the important role of the state with the stipulation of the state by involving the role of the local government. Customary law specifically focuses more on the development of values and norms believed and practiced by certain communities.

Legal uncertainty, corruption, and strong economic interests often prevent indigenous peoples from fully obtaining their rights.⁶⁹ One example is land conflicts between indigenous peoples and large companies that often result in the decline of the legal status of customary land. Therefore, strengthening indigenous peoples’ institutions and stricter law enforcement are needed to ensure that customary law can function well in society.⁷⁰

64 Scott Forrest, “Indigenous Self-Determination in Finland: A Case Study in Normative Change,” *Polar Record* 42, no. 3 (July 2006): 229–38, <https://doi.org/10.1017/S0032247406005328>.

65 Nasir Katong, Sintya Paula Junaedy, and Debby Ch. Sendow, “Indigenous Peoples and Customary Law in Lolayan District, Bolaang Mongondow Regency in a Modern State,” *West Science Law and Human Rights* 1, no. 04 (October 2023): 247–55, <https://doi.org/10.58812/wslhr.v1i04.261>

66 Susykwati, “The Existence Of Customary Law In The Legal System In Indonesia.”

67 Baso Madiung, Sobirin, and Abdul Karim, “Conflict between Indigenous Peoples and Forest Concession Rights Holders in Customary Forest Management in Gowa Regency, South Sulawesi,” *International Journal of Law and Politics Studies* 5, no. 5 (September 2023): 18–25, <https://doi.org/10.32996/ijlps.2023.5.5.4>.

68 Dita Perwitasari Dicky Eko Prasetyo, Fradhana Putra Disantara, Nadia Husna Azzahra, “The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law,” *Rechtsidee* 8, no. 1 (2021): 4.

69 Marulak Togatorop, Moh. Hardiansyah, and Dawam Muzak, “Kepastian Hukum Hak Atas Tanah Masyarakat Hukum Adat Yang Masuk Dalam Kawasan Hutan,” *Adil: Jurnal Hukum* 12, no. 2 (January 12, 2022), <https://doi.org/10.33476/ajl.v12i2.2116>.

70 Munauwarah, “Konflik Kepentingan Dalam Perebutan Lahan Pertambangan Di Kabupaten Luwu Timur Antara Masyarakat Adat To Karunsi’e Dengan PT Value Indonesia,” *The Politics: Jurnal Magister Politik Universitas Hasanudin* 2, no. 2 (2016): 132–46.

In Vietnam, the biggest challenge is the incompatibility between centralized national policies and more decentralized, community-based customary law practices. Although customary law is respected by indigenous peoples, the Vietnamese government is more inclined to push development policies that prioritize state and economic interests.⁷¹ This has led to tensions between indigenous communities and the state, often leading to the neglect of indigenous peoples' rights to land and natural resources. To address this issue, Vietnam needs to develop more inclusive policies and provide space for indigenous peoples to participate in decision-making related to their rights.⁷² Thailand faces similar challenges, particularly related to land management and indigenous peoples' rights. Unclear legal status of indigenous lands and conflicts with environmental management policies that favor government interests have led to social tensions.⁷³ Although customary law is recognized in social practice, the integration of customary law into the country's legal system is still very limited. Thailand needs to develop a clearer policy on indigenous peoples' rights, as well as provide formal recognition of customary law in the national legal system to ensure its sustainability in the future.⁷⁴

Overall, the implementation of customary law in Indonesia, Vietnam, and Thailand shows similarities in respecting the important role of customary law in maintaining social and cultural harmony. However, differences in formal recognition of customary law and its application in national legal systems are also very striking. Indonesia has a strong legal basis for the recognition and protection of customary law, although implementation challenges remain. Vietnam and Thailand, although respecting customary law, face major obstacles in terms of recognizing and implementing customary law in their national legal systems. Therefore, these three countries need to work harder to find a middle ground that allows customary law to coexist with national law without losing its essence as a guardian of the cultural values of the community.

3. CONCLUSION

Customary laws in Indonesia, Vietnam, and Thailand reflect the cultural, social, and spiritual values of their communities through approaches of collectivity, harmony, and sustainability. In Indonesia, customary laws emphasize mutual cooperation and harmony with nature, as seen in the collective management of inherited customary land, demonstrating intergenerational responsibility. In Vietnam, customary laws are influenced by Confucianism and local beliefs, emphasizing collective well-being through practices such as traditional land management oriented towards ecosystem balance. Meanwhile, in Thailand, customary laws are rooted in Theravada Buddhist values, emphasizing harmony and spiritual responsibility towards nature, as practiced

71 Pratama, "Recognition to the Customary Law of Indigenous Peoples in the ILO Convention 1989: Practices from Ecuador and Norway."

72 Retno Kusniati, "Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?," *Jambe Law Journal* 7, no. 1 (2024): 169–93, <https://doi.org/10.22437/home.v7i1.350>.

73 Muhammad Hatta Roma Tampubolon, "Legal and Problematic Protection of Social Movements to The Tau Taa Wana Indigenous People," *Substantive Justice International Journal of Law* 3, no. 2 (December 2020): 147, <https://doi.org/10.33096/substantivejustice.v3i2.77>.

74 Yenny Febrianty, Hasliza Ghapa, and Asmida Ahmad, "Integration of Customary Law in The National Legal System Comparative Study of Malaysia and Indonesia," *SASI* 30, no. 4 (December 2024): 379, <https://doi.org/10.47268/sasi.v30i4.2303>.

by the Karen indigenous people through sustainable forest management. Despite the pressures of modernization and formal law, customary laws in these three countries remain a reflection of strong cultural identities and a means of maintaining social and environmental balance.

The similarities in the implementation of customary law in Indonesia, Vietnam, and Thailand lie in its function as a mechanism for resolving local conflicts and maintaining social harmony. These three countries utilize customary law to regulate community relations and natural resource management, although at varying levels of formality. However, there are significant differences in its recognition and application. Indonesia provides formal recognition of customary law through its constitution and laws, although its implementation is often hampered by conflicts with formal law. Vietnam recognizes customary law informally, especially at the ethnic community level, but often clashes with centralized state policies. In Thailand, customary law does not have formal recognition in national law, but is still respected as a social rule in indigenous communities, especially in resolving local disputes. All three countries face the challenge of modernization that has the potential to erode the existence of customary law in the face of the demands of globalization.

To ensure the sustainability of customary law in Indonesia, Vietnam, and Thailand, concerted efforts are needed to enhance formal recognition, empower indigenous communities, and integrate customary law into national legal systems without sacrificing its essence. Governments in these three countries can adopt an inclusive approach that respects local traditions while creating a legal framework that protects the rights of indigenous peoples. In addition, collaboration between indigenous communities, governments, and non-governmental organizations can encourage training, advocacy, and documentation of customary law as a way to strengthen its position amidst modernization. Thus, customary law can serve as a means of preserving culture as well as an effective tool for resolving social and environmental problems.

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