

Strengthening the Institutionalization of Customary Law in Indonesia's Judicial System: An Integrative Legal Framework Approach

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Abstract

This study explores the institutional strengthening of customary law within Indonesia's pluralistic judicial system, focusing its integration across key legal areas, including criminal law, civil law, and agrarian regulations. It clarifies the legal foundations supporting the recognition of customary law, from constitutional mandates to the concept of living law in the new Criminal Code, while analyzing the strategic roles of customary institutions in community-level dispute resolution. The research identifies structural and regulatory obstacles to their integration into the state justice system, such as jurisdictional conflicts, modernization pressures, and the lack of formal enforceability for customary decisions. Using a normative juridical method with statute, conceptual, and comparative approaches, and the study demonstrates that customary institutions provide restorative, culturally grounded mechanisms that complement formal adjudication in both civil disputes and criminal matters. The novelty of this research lies in its proposed operational model for integrating customary law into the formal judicial system. The findings reveal a systemic gap where constitutional recognition fails to translate into procedural enforceability, triggering a legitimacy crisis in local dispute resolution. Moreover, the study reveals that the fragmented nature of customary mechanisms, lacking a standardized integration pattern, limits the potential for restorative justice of customary law to reduce the burden on formal courts. This article argues that reinforcing customary law across the spectrum to contribute to a more contextually responsive and socially legitimate judicial system.

Keywords: *Customary Dispute Resolution; Institutional Strengthening; Legal Pluralism; Restorative Justice.*

1. INTRODUCTION

Indonesia is a home to a rich diversity of cultures, ethnicities, and social structures, reflected not only in its demographic composition but also in the normative systems that govern social life. Within this context, the Indonesian legal system embraces a pluralistic framework in which state law operates alongside customary norms that have originally evolved within local communities. Customary law is not merely an alternative set of social regulations but a normative order that reflects the collective identity, values, and

historical continuity of Indigenous communities.¹ While customary law continues to be integrated into national legislation, it remains essential to preserve and promote local knowledge within the society. Initiatives aimed at promoting it should continue to be implemented.² Over generations, customary norms have maintained their relevance by providing a consensus-based system of dispute resolution, ensuring social cohesion and addressing conflicts in culturally appropriate ways. This enduring vitality highlights the need to strengthen the institutional position of customary law within the Indonesia's broader judicial framework. As a living system, customary law dynamically adapts to the social needs and moral expectations of the communities that uphold it, making it a critical component of Indonesia's legal pluralism.³

Indonesia's legal pluralism was formally affirmed through constitutional reform. The Second Amendment to the 1945 Constitution (UUD 1945) explicitly recognizes customary communities and their traditional rights under Article 18B paragraph (2), which mandates the state to respect and uphold Indigenous legal entities as long as they remain viable and consistent with national principles.⁴ Furthermore, Article 28I paragraph (3), guarantees the protection of cultural identity and traditional rights as integral component of human rights. Together, these provisions establish a constitutional foundation for recognizing of customary law within Indonesia's legal system. However, this recognition has not been consistently reflected in statutory instruments capable of institutionalizing customary adjudication. Significant discussions about the management of the natural resources and the status of communities governed by customary law are closely tied to the safeguarding of these groups.⁵

Institutionalizing customary law (*hukum adat*) within the criminal justice system is essential to bridge the gap between formal legal structures and the lived sense of justice in society. Through the lens of legal pluralism, the state's monopoly on punishment is challenged by the fact that indigenous communities possess their own effective mechanisms for maintaining social order. The urgency in the criminal context arises from the limitations of the retributive justice model, which often prioritizes procedural punishment over the restoration of communal harmony. By integrating restorative customary sanctions into the judicial hierarchy, the legal system can address "victimless" or communal crimes in a way that heals social divides rather than simply isolating the offender.⁶

Legal provisions further reinforce the role of customary norms in adjudication. Article 28 of Law No. 4 of 2004 and Article 5 paragraph (1) of Law No. 48 of 2009 on Judicial Power mandate judges to explore, follow, and understand the values of law and

¹ Tri Astuti Handayani and Andrianto Prabowo, "Analisis Hukum Pidana Adat Dalam Hukum Pidana Nasional," *Jurnal Hukum Ius Publicum* 5, no. 1 (2024): 89–105, <https://doi.org/10.55551/jip.v5i1.95>.

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

³ Pahrudin Azis et al., "Perbandingan Lembaga Penyelesaian Sengketa: Litigasi Dan Non-Litigasi," *Qanuniya : Jurnal Ilmu Hukum* 1, no. 2 (2024): 11–21, <https://doi.org/10.15575/qanuniya.v1i2.896>.

⁴ Nella Sumika Putri, "Memikirkan Kembali Unsur 'Hukum Yang Hidup Dalam Masyarakat' Dalam Pasal 2 Rkuhp Ditinjau Perspektif Asas Legalitas," *Indonesia Criminal Law Review* 1, no. 1 (2021): 60–72, <https://scholarhub.ui.ac.id/iclrAvailableat:https://scholarhub.ui.ac.id/iclr/vol1/iss1/5>.

⁵ I Gusti Agung Mas Rwa Jayantiari et al., "The Rights of Customary Law Communities to Resources: The Relationship of Coexistence of State Law and Customary Law," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (2021): 188–98.

⁶ Dian Ekawaty Ismail et al., "The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice," *Jambura Law Review* 5, no. 02 (2023): 220–234, <https://doi.org/10.33756/jlr.v5i2.11682>.

justice as they are practiced in society. However, these provisions do not explicitly grant authority to customary courts as formal judicial bodies. In criminal law, tensions are heightened due to the doctrinal commitment to *lex scripta*, *lex certa*, and the principle of *nullum delictum nulla poena sine lege*, which prohibits unwritten criminal norms from forming the basis of criminal sanctions.⁷ Consequently, integrating customary criminal norms into formal criminal procedures faces significant doctrinal challenge, especially where customary sanctions intersect with the national Criminal Code (KUHP).

Despite these normative constraints, empirical evidence shows that customary adjudication remains a key method of dispute resolution in many regions of Indonesia.⁸ Communities frequently prefer customary processes due to their accessibility, cultural relevance, and oriented toward restoring social harmony.⁹ Customary judicial mechanisms typically employ restorative justice, prioritizing the repair of social relationships over punitive measures.¹⁰ However, the practical application of customary criminal norms raises two key questions: (1) whether customary norms constitute “material” customary criminal law or simply “formal” mechanisms for handling violations, and (2) how should customary remedies for acts not classified as crimes under the KUHP be integrated into the national legal system.

The integration of customary adjudication into the national judiciary faces several structural challenges. These include: (a) the lack of legal mechanisms for recognizing customary decisions within the national legal framework; (b) the divergences between consensus-based customary norms and the procedurally formal nature of state law; and (c) the absence of clear regulation defining the relationships between state courts and customary forums, particularly regarding the enforcement of customary decisions. These obstacles create uncertainty and impede the full realization of constitutional recognition. The relevance of strengthening customary law is uniquely critical in criminal matters because it addresses the “legal vacuum” where state law feels alien or oppressive to local values. In many criminal cases involving indigenous peoples, rigid statutory law often results in “*legalistic injustice*,” where acts deemed criminal by the state may be seen as necessary or neutral by the community. Strengthening the position of customary law allows the judiciary to adopt a more pluralistic approach, recognizing adat offenses (*delik adat*) as legitimate grounds for alternative dispute resolution. This shift is urgent to prevent the over-criminalization of traditional practices and to ensure that the criminal justice system respects the cultural identity and autonomy of diverse ethnic groups.¹¹

Several studies on customary law have highlighted various perspectives regarding its application, making it an interesting area for further research. A study conducted by A. Imam Al Muttaqin et al., titled “Legal Pluralism in Kalimantan: A Study of the Dual Application of Criminal Law and Customary Law in Dayak Society”,¹² focuses on

⁷ Tolib Setiadi, *Intisari Hukum Adat Indonesia Dalam Kajian Kepustakaan* (Bandung: Alfabeta, 2008). p.10

⁸ Rahmi Murniawati, “Eksistensi Peradilan Adat Dalam Penyelesaian Sengketa Di Sumatera Barat,” *UNES Journal of Swara Justisia* 7, no. 3 (2023): 1116–24, <https://doi.org/10.31933/ujsj.v7i3.417>.

⁹ Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia* (Bandung: Mandar Maju, 1992).p.15.

¹⁰ Pupu Sriwulan Sumaya, “Keadilan Restoratif Dalam Sistem Hukum Adat Di Indonesia,” *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 2 (2024): 1136–43, <https://doi.org/10.38035/jihhp.v5i2.3308>.

¹¹ Agus Widjajanto et al., “Decolonising Restorative Justice in Indonesia : A Comparative Study across Customary Law Traditions,” *Legality: Jurnal Ilmiah Hukum* 33, no. 2 (2025): 470–492.

¹² A Imam Al Muttaqin et al., “Legal Pluralism in Kalimantan : A Study of the Dual Application of Criminal Law and Customary Law in Dayak Society,” *East Asian Journal of Multidisciplinary Research (EAJMR)* 4, no. 7 (2025):

legal pluralism in Kalimantan, specifically the dual application of formal criminal law (KUHP) and Dayak customary law in resolving criminal cases. The study examines three real-world cases in West Kutai, Mempawah Hulu, and Sengah Temila, aiming to propose an integrated legal framework that incorporates customary practices into the national legal system. This would facilitate inclusive justice for the Dayak communities that while evaluating the success of concurrently applying criminal law and customary law in achieving inclusive justice, and reflecting the social dynamics for the Dayak communities that view customary law as part of their cultural identity and conflicts resolution practice. The findings indicate that customary mechanisms such as fines and the 'pati nya' ceremony are effective in restoring social harmony but may conflict with the formal legal system.

Another study by Rabiah Z. Harahap titled "The Role of Customary Institutions in the Enforcement of Customary Law in the Modern Era",¹³ examines the role of traditional institutions in enforcing customary law today, identifying elements that impact their effectiveness, and proposing ways to enhance their function within the national legal framework. The study concludes that traditional institutions remain crucial for settling conflicts, preserving local knowledge, and promoting social cohesion in communities adhering to customary law. However, their efficacy has decreased as a result of modernization, urbanization, reduced public compliance, and restricted legal acknowledgment. This research suggests that enhancing customary institutions requires institutional support, a clearer regulatory structure, and their collaborative integration of customary law with statutory law to achieve balanced and equitable legal pluralism that respects customary values while evolving with national law.

While existing research remain fragmented and fail to offer an integrated model linking constitutional recognition with judicial implementation, this article seeks to fill that gap by presenting holistic analysis of customary law within Indonesia's pluralistic legal system. Previous literature have often analyzed these issues in isolation, without offering an integrative framework that links constitutional mandates, institutional constraints, restorative practices, and practical challenges within the judicial system. Accordingly, this study aims to: (1) examine the legal foundations supporting the recognition of customary law within the national judiciary; (2) analyze the strategic role of customary institutions in dispute resolution; (3) identify structural and regulatory obstacles hindering the strengthening of customary institutions; and (4) propose integrated strategies for enhancing the institutional role of customary law, ensuring alignment with national legal certainty.

Methodologically, this study employs a normative juridical approach, incorporating statutory, conceptual, and comparative methods. The legal materials consist of primary, secondary, and tertiary legal sources. The analysis employs qualitative legal research, applying deductive reasoning. This form of research delves deeply into positive legal norms, principles, and doctrines, using logical and systematic interpretation without relying on statistical tools..¹⁴This approach involved doctrinal analysis, statutory interpretation, and a comprehensive literature review. Primary legal materials include

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¹³ Rabiah Z Harahap, "The Role of Customary Institutions in the Enforcement of Customary Law in the Modern Era," *Fox Justu : Jurnal Ilmu Hukum* 16, no. 01 (2026): 145-52.

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017).p.75

constitutional provisions, statutory norms, and legal principles relevant to the resolution of customary disputes, while secondary sources consist of academic works and theoretical commentaries. This descriptive-analytical method facilitates a systematic assessment of the interaction between customary norms and formal judicial mechanisms. In conclusion, this study highlights the importance of strengthening customary institutions, not only to enhance access to justice but also to support culturally appropriate dispute resolution and ensure the continuity of Indonesia's diverse legal heritage.

2. ANALYSIS AND DISCUSSION

2.1. The Legal Basis for the Recognition of Customary Law within the Judicial System

Indonesia, as a nation with an eastern legal identity and culture, not only recognizes codified laws but also values the existence of unwritten regulations based on the ethical consensus of its people.¹⁵ The recognition of customary law within Indonesia's judicial system rests on a strong and explicit juridical foundation found across several national legal instruments. This foundation reflects the principle that customary law is not an external or peripheral element but an inherent component of Indonesia's pluralistic legal identity. However, despite the breadth of normative recognition, a significant gap remains between constitutional and statutory acknowledgment and their actual implementation in practice. Customary law communities in Indonesia have existed long before the formation of kingdoms or the modern Indonesian state. These communities, organized by territorial and genealogical ties, maintain their own internal governance structures, collective property, identifiable memberships, and the capacity to act as autonomous legal subjects. Their long historical continuity demonstrates that customary communities and their laws constitute an integral and longstanding part of Indonesia's normative order.¹⁶

The first and most fundamental legal basis for the recognition of customary law is the Constitution of the Republic of Indonesia (UUD 1945). Although the Constitution does not explicitly define "customary law communities," the constitutional amendments of 2000 introduced explicit clauses recognizing their existence and rights.¹⁷ Article 18B paragraph (2) affirms that "*the state recognizes and respects the units of customary law communities along with their traditional rights as long as they remain alive and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.*" Likewise, Article 28I paragraph (3) asserts that "*the cultural identities and traditional rights of Indigenous peoples shall be respected in accordance with the development of times and civilization.*" Together, these provisions provide constitutional legitimacy for the incorporation of customary law into the

¹⁵ Yenny Febrianty et al., "The Limitations of Living Law in Indonesian Criminal Law Reform: An Effort To Realize Justice," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 2 (2023): 196–208, <https://doi.org/10.29303/ius.v11i2.1232>.

¹⁶ Mochamad Adib Zain, "Peran Desa Adat Dalam Merumuskan Dan Mengimplementasikan Ketentuan Pidana Berasal Dari Hukum Yang Hidup Dalam Masyarakat Sebagaimana Diatur Dalam Kuhp Baru," *Urnal Rechtsvinding: Media Pembinaan Hukum Nasional* 12, no. 1 (2023): 22–35, <https://doi.org/https://dx.doi.org/10.33331/rechtsvinding.v12i1.1101>.

¹⁷ Husein Alting, *Dinamika Hukum Dalam Pengakuan Dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah* (Yogyakarta: LaksBang PRESSindo, 2010).p.31

national legal system and affirm customary norms as part of the Indonesian culture and legal heritage.¹⁸

The recognition of customary law is further strengthened in the realm of criminal law through the Criminal Code (Law No. 1 of 2023). This new code marks a significant departure from the classical doctrine of legality by introducing the concept of “*the living law*” (*hukum yang hidup dalam masyarakat*). Article 2 (1) acknowledges that living law may serve as a basis for criminal liability. According to the elucidation of Article 2 (2), the living law is expressly identified as customary law, thereby granting it formal recognition within criminal jurisprudence.¹⁹ Nevertheless, the application of customary criminal law is subject to strict limitations: it applies only in the regions where such norms are recognized, and only insofar as they do not contradict national legislation, universally accepted legal principles, Pancasila values, or human rights. Moreover, the elucidation requires that customary criminal norms be formally recognized through regional regulations (*peraturan daerah*).²⁰ In relation to sanctions, Article 66 stipulates that customary sanctions may only function as *additional* sanctions, not as primary punitive measures. This provision demonstrates that while customary law is recognized, it is not positioned as an autonomous punitive system within national criminal law. Law is not limited to state law, but encompasses various systems of norms that exist and operate simultaneously within society, including customary law. As a theoretical foundation, this perspective rejects the rigid doctrine of legal monism and acknowledges that the effectiveness of law depends heavily on the extent to which those rules are rooted in the sociological values of local communities. By positioning customary law as an integral component of the national legal structure, legal pluralism provides conceptual legitimacy for strengthening the autonomy of customary law communities in relation to state law, which is often technocratic and detached from local realities.²¹

Conceptually, strengthening the position of customary law through the lens of legal pluralism is necessary to address the tension between formal legal certainty and substantive justice. Legal pluralism emphasizes the existence of “inter-system dialogue” that allows state law to absorb local wisdom in order to resolve conflicts that are not covered by the positive law approach, especially in the restorative and communal dimensions. This integration is not merely a symbolic recognition, but a strategic necessity for creating an inclusive and democratic justice system. Without the institutional strengthening of the position of customary law, the national legal system will continue to experience a crisis of legitimacy because it fails to reflect the reality of the plurality of norms that govern people’s daily lives.²² In the field of land and agrarian regulation, recognition of customary law is also explicitly articulated in Law No. 5 of 1960 on Basic Agrarian Principles (UUPA). Article 5, together with General Elucidation III (1), asserts that agrarian law in Indonesia is grounded in “Indigenous customary law” (*hukum adat*) as long as it does not conflict with national interests. This establishes customary land law, its institutions, and its underlying principles as

¹⁸ Relexi Bayo et al., “Pengakuan Masyarakat Adat Dalam Peraturan Perundang Undangan Di Indonesia,” *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 1 (2023): 1–11, <https://doi.org/https://doi.org/10.38156/jihwp.v1i1.87>.

= Yoserwan Yoserwan, “Eksistensi Hukum Pidana Adat Dalam Hukum Pidana Nasional Setelah Pengesahan Kuhp Baru,” *UNES Law Review* 5, no. 4 (2023): 1999–2013, <https://doi.org/10.31933/unesrev.v5i4.577>.

²⁰ Maulana Halim Putra et al., “The Position of Customary Criminal Law in Law No. 1 of 2023 on the Criminal Code,” *International Journal of Law and Society* 2, no. 3 (2025): 170–79, <https://doi.org/10.62951/ijls.v2i3.686>.

²¹ Achmad Hariri and Basuki Babussalam, “Legal Pluralism: Concept, Theoretical Dialectics, And Its Existence In Indonesia,” *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146–170, <https://doi.org/10.21580/walrev.2024.6.2.25566>.

²² Lindie Mokgadi, “Access To Justice In Plural Legal Systems: A Case Study Of Customary And State Law Integration In Sub-Saharan Africa,” *Journal of Law, Policy and Global Development* X, no. X (2025): 36–48.

foundational to the national system of land rights. The customary conception of land, communal ownership, and the local wisdom embodied in Indigenous agrarian practices are therefore integral to the development of Indonesia's modern national land law.²³

The recognition of customary institutions also extends to the realm of local governance. Law No. 32 of 2024 on Regional Government provides additional normative support for the recognition and empowerment of customary institutions within local administrative structures. In practice, several regional governments have enacted regional regulations to formalize customary institutions, regulate their authority, and integrate them into local governance.²⁴ However, the effectiveness of these measures varies widely and is often dependent on local political will. As a result, the institutional strengthening of customary law remains uneven, with many initiatives still sectoral and lacking national integration

The cumulative recognition of customary law in these various legal instruments highlights the enduring existence and relevance of customary institutions in Indonesia. Foundational scholars such as Van Vollenhoven emphasized that customary law communities in the Indonesian archipelago have existed for centuries and maintain their own coherent normative systems.²⁵ Similarly, Snouck Hurgronje described customary law as fundamentally communal, contrasting sharply with Western legal traditions that emphasize individualism. These scholarly insights underscore that Indonesia's legal identity is inherently pluralistic, and that customary law continues to function as an essential form of social regulation for many communities, even amid the modernization and industrialization. Despite these comprehensive legal foundations, the practical implementation of customary law within the national judicial system remains constrained. The persistence of doctrinal conflicts, particularly concerning the principles of *lex scripta*, *lex certa*, and *nullum delictum nulla poena sine lege*, combined with the limited recognition of customary courts and the inconsistent integration of regional regulations, continues to inhibit the effective institutionalization of customary law. Thus, although the normative framework is robust, the main challenge lies in operationalizing these constitutional and statutory commitments in a manner that harmonizes customary autonomy with national legal certainty.²⁶

The gap between constitutional recognition and institutional implementation in Indonesia creates what may be described as a "legality paradox," in which the state rhetorically recognizes customary law while administratively limits its scope. Although Article 18b paragraph (2) of the 1945 Constitution mandates state recognition and respect for indigenous peoples, the absence of an integrative omnibus law has fragmented that recognition into overlapping sectoral regulation. As a result, Indigenous judicial institutions operate without a clear status within the hierarchy of National Judicial Power. This weakens the enforceability of customary rulings and reduces such institutions to informal mediation mechanism rather than an independent judicial entity. Furthermore, the qualification of customary law through phrases such as "as long as they are alive

²³ Setyo Utomo, *Nilai-Nilai Kearifan Lokal Hukum Adat Dalam Hukum Tanah Nasional* (Pontianak: Universitas Panca Bhakti, 2018).p.12

²⁴ Betha Rahmasari et al., "Interseksi Hukum Dan Ekonomi: Analisis Komprehensif Terhadap Dinamika Regulasi Dan Dampaknya Terhadap Pertumbuhan Ekonomi," *Muhammadiyah Law Review* 7, no. 2 (2023): 61–77, <https://doi.org/10.24127/mlr.v7i2.2767>.

²⁵ Deri Ardiansyah et al., "Formulasi RPP Pelaksanaan Pidana Adat Sebagai Upaya Harmonisasi Penerapan Hukum Adat Guna Mewujudkan Kepastian Hukum," *Jurnal Hukum Dan HAM Wicarana* 3, no. 1 (2024): 11–22, <https://doi.org/10.57123/wicarana.v3i1.64.konseptual>, dan kasus. Hasil penelitian ini menunjukkan bahwa hak konstitusional Masyarakat Hukum Adat (MHA

²⁶ Tody Sasmita Jiwa Utama, "Hukum Yang Hidup' Dalam Rancangan Kitab Undang- Undang Hukum Pidana (Kuhp): Antara Akomodasi Dan Negasi," *Masalah-Masalah Hukum* 49, no. 1 (2020): 14–25.

“and” in accordance with the principles of the Republic of Indonesia” often functions as a tool of state control that reduces the autonomy of indigenous peoples. Provisions in the new Criminal Code (Law No. 1 of 2023) which requires the codification of customary law into regional regulations (Perda) as the basis of criminal legality, it risks turning off the dynamic and organic nature of the living law. This shows that the national legal system remains trapped in a rigid paradigm, under which customary law is treated as legitimate only after being “tamed” through bureaucratic procedures. As a result, the restorative justice potential of indigenous institutions is often overlooked in the process of technocratic integration.

2.2. The Role of Customary Legal Institutions in Dispute Resolution

The importance of local wisdom management is of great significance to indigenous communities. Indigenous communities view the management of local wisdom as an endeavor that holds both spiritual significance and cultural heritage.²⁷ Customary legal institutions play a strategically significant role in resolving disputes at the community level. Their function extends beyond the dispute settlement, as they also serve to maintain social stability, reinforce local cultural values, and promote communal harmony.²⁸ Unlike the formal judicial system, which is generally characterized by legalistic procedures and punitive orientations, dispute resolution through customary institutions is participatory, restorative, and deeply contextualized within the cultural practices of local communities. This context-sensitive character enables customary law to address conflicts in ways that resonate more meaningfully with community expectations and moral frameworks.

In practice, various regions across Indonesia employ diverse forms of customary dispute-resolution mechanisms rooted in longstanding traditions. In Bali, for example, *Desa Pakraman* (customary village institutions) possess authority to adjudicate violations of customary norms and communal ethics. Within Indigenous communities in Papua, tribal leaders or customary elders frequently mediate disputes concerning *ulayat* land or intergroup tensions.²⁹ Among Dayak communities in Kalimantan, a dual structure of *Lembaga Adat Besar* and *Lembaga Adat Kecil* is used to address different categories of disputes, ranging from domestic matters to broader communal conflicts. Meanwhile, in regions of East and West Nusa Tenggara, customary deliberation forums (*musyawarah adat*) are commonly relied upon to resolve cases involving domestic violence, breaches of marriage customs, and interpersonal disputes. These examples illustrate the diversity and resilience of customary adjudication across Indonesia’s multicultural landscape.³⁰ The diversity of customary dispute-resolution mechanisms from *Desa Pakraman* in Bali and the *Gampong* and *Laot* customary courts in Aceh to the tribal institutions in Papua and Kalimantan shows that the role of customary institutions in Indonesia remains fragmented, without a standardized pattern of integration into the national judicial system. These variations in procedure and jurisdiction frequently generate legal uncertainty, as the legitimacy of customary decisions relies heavily on localized recognition or non-uniform regional regulations rather than a coherent national framework. The absence of such synchronization means that the role of customary institutions as instruments of restorative justice cannot be systematically

²⁷ Muhammad Akbar et al., “The Progressive Legal Perspective Of Legal Justice In Customary Dispute Resolution Related To Natural Resources,” *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 2 (2023): 226–36.

²⁸ Soerjono Soekanto, *Hukum Adat Di Indonesia* (Jakarta: Raja Grafindo Persada, 2007).p.17

²⁹ Dewa Made Rasta, “Tindak Pidana Adat Di Bali Dan Sanksi Adatnya,” *Yustitia* 13, no. 2 (2019): 1–11, https://ojs.unr.ac.id/index.php/yustitia/article/view/398?utm_source=chatgpt.com.

³⁰ Diva Rafi Anjani et al., “Customary Land Conflicts Between Dayak Indigenous Law And State Law In Indonesia,” *Awang Long Law Review* 8, no. 2 (2026): 654–59.

optimized. Consequently, their potential to reduce the case burden on formal courts is significantly constrained by procedural obstacles and the lack of formal recognition for the enforcement of customary decisions by state judicial authorities.

The strategic advantage of customary legal institutions lies in their orientation toward restorative justice. Instead of focusing on punishment, customary processes aim to restore social balance disrupted by wrongdoing. Perpetrators are expected not only to take responsibility but also to engage in reconciliation with victims and the broader community through apologies, symbolic restorative rituals, payment of customary compensation (*denda adat* or *adat pengganti*), and commitments to avoid future violations.³¹ The process is typically conducted through inclusive deliberations involving customary leaders, religious figures, family members of both parties, and community representatives. This communal approach enhances the legitimacy of decisions and reinforces adherence to community values. In Bali, for instance, violations of customary norms are commonly resolved through meetings facilitated by the *bendesa adat*, where the parties articulate grievances and seek consensus-based solutions. Although such decisions are not formal legal documents, they possess significant moral authority because they arise from collective agreement and strong adherence to customary values. This indicates that the effectiveness of customary law does not depend on written codification but on the communal legitimacy and internal coherence of customary norms.

The function of customary institutions as instruments of justice reflects a humanistic and sustainable legal philosophy. The aim is not retribution but the restoration of equilibrium within the community. In this sense, customary law serves as a culturally grounded form of alternative dispute resolution (ADR), providing mechanisms that align with Indonesia's multicultural realities. Its restorative and deliberative character often enables forms of justice that are faster, more accessible, and more culturally relevant than those available within the formal judicial system.³² Nevertheless, the role of customary legal institutions is not without challenges. These challenges include the limited formal recognition granted by state law, the potential for discriminatory or unequal application of customary sanctions, the lack of documentation and procedural standardization, and concerns regarding compatibility with universal human rights principles, particularly in matters of gender equality and child protection. Such concerns underscore the need for a more systematic synergy between customary institutions and the national legal system. Stronger coordination would enable customary justice to operate more effectively while ensuring that substantive justice is achieved without compromising human rights and constitutional guarantees.³³

2.3. Challenges in Strengthening Customary Legal Institutions within the Judicial System

Customary law, which has historically served as a vibrant source of guidance and solutions within the social fabric of Indonesian society, is gradually diminishing in its practical influence. In contemporary practice, indigenous populations in Indonesia

³¹ Djamanat Samosir et al., "Relevance Of The Establishment Of Customary Justice In The Justice Legal System In Indonesia," *Jurnal Hukum Justice* 1, no. 1 (2023): 30–39.

³² Rikardo Simarmata, "Kedudukan Dan Peran Peradilan Adat Pasca-Unifikasi Sistem Peradilan Formal," *Undang: Jurnal Hukum* 4, no. 2 (2021): 281–308, <https://doi.org/10.22437/ujh.4.2.281-308>.

³³ Jessica Aurelia et al., "Tantangan Dan Potensi Peradilan Adat Sebagai Access to Justice Melalui Pengakuan Hukum Adat Dalam UUD 1945," *Jurnal Ilmiah Wahana Pendidikan* 10, no. 8 (2021): 167–86. the actual number of HF hospitalizations remains > 1 million annually. More than 80 % of patients who are hospitalized are initially seen in the emergency department (ED)

frequently encounter challenges when customary law intersects with statutory law.³⁴ As an archipelagic state characterized by diverse ethnic groups, customary communities, and rich local wisdom, Indonesia faces inherent complexities in integrating customary legal institutions into the national judicial system. Although various legal instruments, including the Constitution, formally recognize Indigenous peoples and their rights, the operationalization of this recognition remains inconsistent and fragmented.

The longstanding reliance of Indonesian society on customary deliberation and traditional mechanisms for disputes resolution demonstrates that customary law continues to function as an accessible and culturally grounded avenue for resolving conflicts.³⁵ This reality indicates a significant potential for customary institutions to contribute meaningfully to the broader system of justice. Nevertheless, the implementation of the new national Criminal Code (KUHP), which is scheduled to take full effect in 2026, introduces additional complexity. Article 2 (1) acknowledges the continued validity of “the law living in society,” thereby allowing individuals to be sanctioned based on customary norms. While this provision confirms the relevance of customary law, it also requires that such customary norms be situated within a reasonable framework that respects Indonesia’s cultural diversity and acknowledges that customary law is deeply rooted in the legal consciousness of local communities.³⁶

The institutional strengthening of customary law within Indonesia’s judicial system may be understood through three pivotal theoretical lenses: legal pluralism, the “living law,” and progressive law. First, drawing upon John Griffiths’ Theory of Legal Pluralism, law is not a monolithic system monopolized by the state under legal centralism, but rather as a complex set of legal orders interacting within a single social space. In the Indonesian context, the existence of customary law communities, with their internal governance structures and *ulayat* (communal) land rights, reflects a form of “deep” legal pluralism that demands state recognition without stripping these entities of their organic identity.³⁷ Second, Eugen Ehrlich concept of “Living Law” provides a sociological foundation for understanding the role of customary law, affirming that effective law is found not merely in written laws but in norms that actually observed in social life. This perspective is consistent with the concept of “Living Law” (Living Law) in the new Indonesian Criminal Code (Law No. 1 of 2023), under which Indigenous ethical values may function as a source of criminal liability because they reflect a more authentic collective legal consciousness than technocratic formal law.³⁸ Third, the philosophy of progressive law Satjipto Rahardjo, emphasizes that “the law is for human being, not man for the law”. This perspective calls for a shift away from rigid legal positivism toward substantive justice and social harmony. Within this framework, the strengthening of indigenous institutions as instruments of restorative justice represents

³⁴ Ismail et al., “The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice.”

³⁵ Nur Husni Emilson et al., “Penguatan Hukum Adat Dan Kelembagaan Adat Dalam Penyelesaian Masalah Hukum Berdasarkan Keadilan Restoratif Ditinjau Dari Perspektif Hukum Dan Hak Asasi Manusia,” *Jurnal Kepastian Hukum Dan Keadilan* 4, no. 2 (2022): 148–57, <https://doi.org/10.32502/khk.v4i2.5559>.

³⁶ Moh Fajrin Ky Husain Husain et al., “Dinamika Penyelesaian Konflik Air Oleh Lembaga Adat Pitungotahigi Di Desa Bora Kecamatan Sigi Kota Kabupaten Sigi,” *JSIP: Jurnal Studi Inovasi Pemerintahan* 1, no. 1 (2024): 75–90.

³⁷ Achmad Hariri and Basuki Babussalam, “Legal Pluralism: Concept, Theoretical Dialectics, And Its Existence In Indonesia,” *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146–170.

³⁸ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, Trans. Walter L. Moll (Cambridge: Harvard University Press, 1936).p.68

a concrete expression of progressive law, as it prioritizes the restoration of social and humanitarian balance over mere retributive punishment.³⁹

However, Indonesia's vast geography and ethnic diversity have produced a multiplicity of customary systems, posing substantial challenges to the coherent application and institutional strengthening of customary law. One example can be observed in Sumbawa Regency, where Regional Regulation No. 09 of 2015 recognizes the Lembaga Adat Tana Samawa (LATS) as the institution responsible for preserving and developing the region's customary values.⁴⁰ While intended as a mechanism for strengthening customary identity, the regulation has been criticized by segments of local Indigenous communities who feel that its formulation implicitly excludes or marginalizes the existence of other customary groups. The institutionalization of LATS through regional legislation has therefore raised concerns about representativeness and inclusivity, demonstrating that formal recognition, if not carefully managed, may inadvertently generate tensions within customary communities themselves.⁴¹

A different challenge emerges in Aceh, where multiple forms of customary courts operate simultaneously, such as the Peradilan Adat Laot and the Peradilan Adat Gampong (village customary courts). These institutions differ in jurisdiction, procedural mechanisms, and the types of cases they handle. Existing guidelines on Acehnese customary courts predominantly emphasize village-level adjudication, while the mechanisms governing Laot (maritime) customary courts, particularly in relation to disputes among fishers and violations of maritime customary norms, remains insufficiently elaborated. This disparity highlights the lack of comprehensive documentation and harmonization across customary judicial practices, resulting in procedural uncertainty and potential overlaps of authority.⁴²

Beyond regional variations, customary law also faces structural challenges in relation to national law. Customary norms arise from traditional values and community-specific moral frameworks. They are inherently territorial and apply only within the social boundaries of the communities that uphold them. In contrast, positive law derives from formal, written regulations enacted by the state and is designed to apply uniformly across national territory. This fundamental difference often generates conflicts, especially in the governance of natural resources. Disputes over customary land (*tanah ulayat*) frequently involve tensions between state regulations and local customary claims. Such conflicts reveal deeper policy disharmony, particularly when state-driven regulatory frameworks contradict Indigenous norms that have long governed the stewardship of land and natural resources.

These challenges reflect the broader difficulties of institutionalizing customary law within a national legal framework that prioritizes standardization, codification, and formal legality. The forthcoming implementation of the KUHP 2023 may further complicate this landscape, as the coexistence of national criminal norms with diverse customary criminal sanctions risks generating inconsistencies and gaps in legal protection. If left unaddressed, this tension may widen the divide between national law and the

³⁹ Akbar et al., "The Progressive Legal Perspective Of Legal Justice In Customary Dispute Resolution Related To Natural Resources."

⁴⁰ Hadibah Z Wadjo, "Penerapan Hukum Adat Dalam Penyelesaian Perkara Anak," *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2020): 1–10, <https://doi.org/10.7176/jlpg/93-17>.

⁴¹ Jasardi Gunawan and Irawansyah Irawansyah, "Eksistensi Kelembagaan Lembaga Adat Tana Samawa (LATS) Dalam Penolakan Rancangan Peraturan Daerah (RANPERDA) Masyarakat Hukum Adat Di Sumbawa," *JUPE: Jurnal Pendidikan Mandala* 7, no. 1 (2022): 162–68, <https://doi.org/10.58258/jupe.v7i1.3001>.

⁴² Zaki Ulya and Meta Suryani, "Re-Structuring Institutional Panglima Laot As Customary Sea Court Judge in Aceh," *Jurnal RechtsVinding* 12, no. 3 (2023): 443–458.

living customary law of local communities, thereby weakening the institutional standing of customary legal institutions.⁴³In practice, law cannot function in isolation from the social context in which it operates. The realization of legal order, is one of the law's objectives; that depends not only on formal state institution, but also on the development of a supportive legal culture within society. Strengthening community participation in upholding legal norms is therefore essential to maintaining social order.⁴⁴Overall, the complexity of Indonesia's cultural diversity, the uneven regional recognition of customary institutions, procedural inconsistencies, conflicts between customary and state regulations, and the doctrinal challenges presented by the new criminal code constitute significant obstacles to strengthening customary legal institutions. Addressing these issues requires not merely legal reform, but a deeper harmonization between state law and the socio-cultural realities of Indigenous communities across the archipelago. Active community involvement is crucial in ensuring that shared legal principles and standards are implemented in a manner that support, rather than disrupt the social stability.⁴⁵

2.4. Strategies for Strengthening Customary Legal Institutions within the Judicial System

Strengthening the position and role of customary legal institutions within Indonesia's national judicial system requires comprehensive and sustainable strategies. These efforts must address legal, institutional, human resource, and socio-cultural dimensions, as customary law constitutes an essential part of community life and reflects the lived legal consciousness of Indigenous peoples. As the primary duty-bearer, the state bears responsibility for facilitating and reinforcing customary institutions to ensure that they can operate effectively within a pluralistic legal framework. Several key strategies may be pursued to achieve this objective.⁴⁶This study proposes an integrated model of institutional strengthening based on five pillars.

First, the codification and documentation of customary law constitute a critical step in institutional strengthening. Customary norms have historically been transmitted orally from one generation to the next, making them vulnerable to distortion or loss due to social change. Codification enables these norms to be formalized in written form, whether through village regulations, regional regulations, or community-based legal documents, while preserving their core substance. The purpose of codification is not to rigidify customary law or diminish its flexibility, but to provide a clear legal reference that can be used by state officials, scholars, and community actors. Authenticity must remain central to this process; therefore, active participation of customary communities is essential to ensure that codified norms accurately reflect local values and lived practices. This indicates that the local communities are deeply concerned that such actions may depart from their shared norms and values and, in turn, disturb social stability.

⁴³ Ahmad Syafii, *Sistem Keamanan Dan Ketertiban Masyarakat Berbasis Teknologi Informasi* (Yogyakarta: Deepublish, 2020).p.56

⁴⁴ Nurhasan and Bunyamin, "The Role of Local Wisdom in Realizing The Principle of Environmental Sustainability Principles in Indonesia," *Litigasi* 26, no. 1 (2025): 382–408, <https://journal.unpas.ac.id/index.php/litigasi/article/view/19691>.

⁴⁵ Erniwati Erniwati et al., "Customary Sanctions for Strengthening Moral Order and Social Harmony in South Sumatra Communities," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 2 (2025): 417–37, <https://doi.org/10.18860/j-fsh.v17i2.32262>.

⁴⁶ Dina Rahmita et al., "Analisis Komparatif Sistem Hukum Adat Dan Hukum Positif Dalam Harmonisasi Kebijakan Publik Di Indonesia," *Presidensial: Jurnal Hukum, Administrasi Negara, Dan Kebijakan Publik* 2, no. 1 (2025): 107–20, <https://doi.org/10.62383/presidensial.v2i1.456>.

Second, institutional integration between customary bodies and the formal legal system should be developed without compromising the autonomy and cultural characteristics of each institution. One way to promote such integration is through the establishment of coordination forums or memoranda of understanding (MoUs) between customary institutions and state bodies, such as district courts, the police, and public prosecutors. This collaboration helps prevent jurisdictional conflicts and creates synergy in handling cases involving Indigenous communities. For example, in matters involving customary violations with criminal implications, customary institutions can serve as partners in mediation or restorative processes, while formal authorities maintain their law enforcement function. This integration may be further strengthened through the development of dual-track mechanisms, whereby cases are first addressed through customary processes before entering the formal judicial system, unless the customary resolution fails to satisfy standards of fairness or adequately resolve the dispute.

Third, improving the capacity of human resources within customary institutions is essential for ensuring effective dispute resolution. Training and legal education should be provided to customary leaders, tribal chiefs, and members of customary institutions. These trainings programs should cover the fundamentals of national law, human rights principles, civil and criminal law, human rights principles, civil and criminal law, as well as mediation and conflict resolution skills. With enhanced capacity, customary actors will be better equipped to bridge the gap between local values and national legal standards. They can function as mediators who understand both normative systems, thus minimizing institutional conflicts. Moreover, customary leaders with knowledge of formal law hold stronger bargaining power in negotiations with state authorities and in advocating for Indigenous rights within public policy forums.

Fourth, formal legal protection for decisions issued by customary institutions must be strengthened to ensure their legitimacy and enforceability. This can be achieved through the enactment of regional regulations (*Perda*) explicitly recognizing the existence and authority of customary institutions in resolving specific types of disputes. Such regulations enable customary decisions to be formally recognized and taken into account within the judicial process. Formal recognition also enhances legal certainty for customary communities, ensuring that decisions grounded in local values are respected and protected by the state. Several regions, such as Papua, Kalimantan, and parts of Sumatera, have begun developing local regulations that incorporate customary adjudication into the regional legal framework. These practices should be replicated and expanded in other regions with strong customary communities.

Fifth, the development of multicultural legal education represents a long-term strategy essential for the sustainability of Indonesia's pluralistic legal system. Legal education in Indonesia has long emphasized Western, positivistic legal paradigms, often sidelining Indigenous knowledge systems. Incorporating customary law into legal curricula would broaden the perspectives of law students, legal practitioners, and policymakers. Such education would highlight that justice can be achieved not only through formal judicial processes but also through deliberative and restorative mechanisms rooted in local wisdom. Multicultural legal education also has the potential to dismantle negative stereotypes surrounding customary law and to foster jurist and scholars who appreciate the plurality of Indonesia's legal landscape.

3. CONCLUSION

Customary law is a fundamental pillar of Indonesia's pluralistic legal system, functioning as a community based framework for dispute resolution that is deeply rooted in local wisdom and social harmony. Although its existence is formally recognized by Article 18B (2) of the 1945 Constitution and further accommodated in the new Criminal Code (Law No. 1 of 2023) through the concept of "living law," its practical implementation remains inconsistent. Customary institutions often face marginalization within the formal judicial structure due to structural challenges, including jurisdictional conflicts, the absence of standardized documentation, and persistent stigmas that portray these institutions as outdated. The urgency of strengthening customary institutions is particularly evident in criminal law, where customary norms can bridge the gap between rigid state legality and the living sense of justice within communities.

Strengthening the position of customary law is essential to prevent "legalistic injustice" and the over-criminalization of traditional practices, as customary mechanisms offer restorative forms of justice that prioritize the repair of social ruptures over mere punishment. By providing a culturally grounded form of alternative dispute resolution, customary law helps ensure that justice remains accessible, participatory, and responsive to the moral frameworks of diverse ethnic groups across the archipelago. To transform customary law from a symbolic cultural element into a substantive component of the national justice system, a coherent strategy is required, involving codification, institutional synergy, and capacity building. This includes the formal recognition of customary decisions through regional regulations (*Perda*) in order to strengthen legal certainty and their enforceability within the state judiciary system.

Furthermore, the integration of multicultural legal education is crucial for dismantling negative stereotypes and fostering a new generation of legal practitioners who appreciate the plurality of Indonesia's legal landscape. At the policy level, both central and local governments must facilitate capacity-building programs for customary functionaries and improve bureaucratic synchronization to ensure that decisions made by customary institutions possess recognized executory power among law enforcement agencies. From a legislative standpoint, the mandate of Article 2 of the New Criminal Code necessitates the enactment of a comprehensive framework law on customary law communities to prevent the codification of 'living law' into regional regulations from diminishing the inherent dynamism and authenticity of customary norms.

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