

Critical Analysis of Customary Law and Community Welfare

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ABSTRACT

This study aims to critically analyze the role of customary law in improving community welfare, as well as how customary law is accommodated or confronted with the national legal system in the context of development. The method used is the Systematic Literature Review (SLR), which allows researchers to compile and synthesize information from various academic sources systematically, structured, and critically. The research process begins with the formulation of research questions, literature selection based on inclusion and exclusion criteria, evaluation of source quality, to narrative synthesis of the main themes that emerge from the literature, such as customary-based natural resource management, protection of local community rights, and state recognition of customary law. The results of the study show that customary law, as an unwritten legal system that is flexible and contextual, plays an important role in maintaining cultural identity, resolving conflicts, and managing resources sustainably. Although recognized in the constitution, customary law faces external challenges such as modernization and pressure from state law, as well as internal challenges such as potential discrimination and cultural commodification. Therefore, it is necessary to update customary law to be more inclusive and adaptive, as well as harmonious integration with national law supported by government policies, customary leaders, and civil society. This study emphasizes the importance of strengthening customary law as a strategic element in realizing the welfare of indigenous communities in a just and sustainable manner.

Keywords:customary law, community welfare, sustainable development, indigenous peoples.

INTRODUCTION

Customary law is an unwritten legal system that grows and develops from social practices, cultural values, and traditions of local communities. In Indonesia, customary law existed long before the arrival of the colonizers and before the implementation of a national legal system based on European law or Western law. Therefore, customary law is considered a "living law"—law that lives in society—because its existence is very close to the social and cultural dynamics of the community concerned.¹ Customary law reflects local values, such as mutual cooperation, deliberation, communal justice, and balance between humans and nature. The norms contained in customary law are usually not standardized in written form, but are understood and obeyed collectively. For example, the procedures for distributing inheritance, resolving conflicts, or managing land and natural resources are carried out based on customs that have been recognized for generations by the customary community. In addition, customary law is also considered

¹ Praditha, D. G. E. (2023). Hukum Kearifan Lokal: Suatu Pengantar Hukum Adat.



a form of local wisdom, because it is able to adapt to environmental conditions, spiritual values, and the social system of the community.² The mechanism is flexible and prioritizes peaceful resolution of problems through consensus rather than through harsh sanctions as in formal law. Therefore, customary law not only functions as a rule, but also as part of the cultural identity of the community that continues to live, despite facing challenges from the formal legal system, globalization, and social change. This law functions as a support for social order and is often the foundation for local community-based development. As part of cultural identity, customary law not only regulates relationships between individuals, but also becomes a means of maintaining social order and balance between humans and the environment.³

In the context of community welfare, customary law plays a very important role, especially in areas that still uphold traditional social structures. In areas like this, customary law not only functions as a system of rules, but also becomes the main mechanism in regulating social, economic, and environmental life. One of its main roles is seen in the management of natural resources, where indigenous peoples regulate the use of forests, land, and water collectively and sustainably based on customary rules that have been passed down from generation to generation. This creates economic equality and prevents internal conflict. In addition, customary law strengthens social solidarity through values such as mutual cooperation, deliberation, and mutual assistance, which become a social safety net in facing life's difficulties.⁴ In resolving disputes, customary law prioritizes a family and consensus approach, so that the process is faster, more efficient, and accepted by the community. No less important, customary law also maintains local morality and cultural identity which are the foundation for an ethical and harmonious community life. Thus, the existence of customary law contributes directly to the welfare of society, both in material, social, and spiritual aspects. Dispute resolution mechanisms, distribution of natural resources, and governance of customary land are often based on the principles of customary law. However, along with the development of the era and modernization, the existence of customary law faces serious challenges, both in terms of formal recognition in the national legal system and in terms of effectiveness in responding to the increasingly complex needs of society (Wayan Resmini).

There is still debate about the extent to which customary law is able to promote community welfare, especially in the face of globalization pressures, agrarian conflicts, and development policies that sometimes conflict with local values. On the one hand, customary law is considered to have great potential in creating a just and sustainable social order because it is rooted in community values and the historical experiences of local communities. However, on the other hand, the process of modernization and globalization often brings new values that are not always in line with the principles of customary law. For example, development practices that are oriented towards macroeconomic growth often ignore the rights of indigenous peoples to land and natural

² Yunimar, Y. (2023). Penyelesaian Sengketa Ekonomi Adat Minang: Perspektif Hukum Ekonomi Syariah. *Saqifah: Jurnal Hukum Ekonomi Syariah*, 8(2), 63-72.

³ Rannu, D. A., Santoso, E., Cherieshta, J., Natasha, M. B., & Young, J. (2023). Perlindungan warisan budaya: Peran hukum adat dalam pemeliharaan budaya lokal. *Innovative: Journal Of Social Science Research*, 3(5), 543-553.

⁴ Nisa, K., Azwir, A., & Muhazir, M. (2024). Mediator Non-Hakim di Aceh: Menelisik Peran Peradilan Adat Dalam Penyelesaian Kasus Sengketa. *lentera*, 6(2), 146-165.

resources that they have managed for generations.⁵ This gives rise to increasingly complex agrarian conflicts, where customary law is often not recognized or weakened by state regulations or investment interests. In addition, the formal and rigid national legal system is often unable to accommodate the flexibility and local wisdom inherent in customary law. In this condition, a big question arises: is customary law still relevant and strong enough to protect the rights and improve the welfare of indigenous peoples amidst the flow of global change? This debate is important to examine critically in order not only to understand the position of customary law in the national legal order, but also to explore its potential for transformation in creating more inclusive social justice.⁶ On the other hand, there are also many cases where customary law has become a tool for protecting local communities from resource exploitation and social marginalization. In various contexts, customary law has shown its resilience in defending the rights of indigenous peoples to land, forests, water, and other resources that are the mainstay of their lives. When the state or private parties expand in the name of development or investment, indigenous peoples are often in a vulnerable position due to the weak formal legal protection of their traditional rights. However, customary law is present as a social shield that provides legitimacy to communities to defend their customary territories and lifestyles. For example, in several cases in Indonesia, indigenous communities have succeeded in rejecting the development of large-scale plantations or mining because they were able to demonstrate ownership and management of the territory based on customary law that has been in effect for hundreds of years. In addition to being a form of protection for living space, customary law also strengthens cultural identity and social solidarity, which ultimately becomes important capital in the fight against various forms of marginalization. Therefore, in certain conditions, customary law is not only a cultural heritage, but also an instrument of resistance and empowerment of local communities to maintain their welfare independently⁷

This study aims to conduct a critical analysis of the role of customary law in the context of community welfare, with a primary focus on how customary law is maintained, accommodated, or even confronted within the framework of national law and development. As a legal system that lives and develops in society, customary law plays an important role in regulating social interaction, natural resource management, and dispute resolution at the local level. However, in the development of the era, especially with the entry of modernization, globalization, and national development policies, customary law is often cornered, ignored, or even contradicts the applicable formal legal regulations. Therefore, this study seeks to dig deeper into how customary law adapts or survives amidst these challenges, as well as how it is integrated or even confronted by the more dominant national legal system. In addition, this study will also explore the impact of the meeting between customary law and development policies on the socio-economic conditions of indigenous communities. Many indigenous communities live in dependence on natural resources that they manage based on customary law, and changes

⁵ Ananta, R. (2024). *Rekonstruksi Kebijakan Hukum Agraria Terhadap Status Tanah Eks Keraton Kasunanan Surakarta Hadiningrat Berbasis Nilai Keadilan Sosial* (Doctoral dissertation, Universitas Islam Sultan Agung (Indonesia)).

⁶ Praditha, D. G. E. (2023). *Hukum Kearifan Lokal: Suatu Pengantar Hukum Adat*.

⁷ Warda, N., Faqih, A., Kurniawan, A., Nurshadrina, D. S., Widyaningsih, D., & Kusumandari, S. A. (2024). *Mengisi Kekosongan dalam Sistem Perlindungan Sosial di Papua: Pentingnya Perlindungan Sosial Adaptif untuk Membangun Ketangguhan Orang Asli Papua* (No. 4143).

or neglect of this system often have significant social impacts, such as economic injustice, land grabbing, and social marginalization. This study will examine how customary law can function as a tool to maintain the social and economic welfare of indigenous communities, while protecting their rights in the face of development that often does not pay attention to local values. Thus, the main objective of this study is to provide a more comprehensive understanding of how customary law can play a role in creating community welfare, as well as to analyze the challenges faced by customary law in the context of evolving national development.

METHODS

This study uses the Systematic Literature Review (SLR) method as the main approach in exploring and analyzing various scientific studies relevant to the topic of customary law and community welfare. SLR was chosen because it is able to compile and synthesize information from various sources systematically, structured, and critically, resulting in a deep understanding of the issues being studied. The initial step in this method begins by formulating research questions that are the focus of the study, such as what is the role of customary law in improving community welfare, how customary law is accommodated or confronted by the national legal system, and what are the challenges faced by customary law in the context of development.⁸ Furthermore, researchers identify and select various literature from trusted academic sources, such as scientific journals, books, proceedings, and research reports, using predetermined inclusion and exclusion criteria, for example in terms of theme relevance, methodology quality, and publication time span. After the literature is collected, the next stage is to critically evaluate the quality of each study to ensure that only credible sources are used in the analysis. Important data from each literature were then extracted and categorized based on the main themes that emerged, such as customary-based resource management, protection of local community rights, state recognition of customary law, and its impact on the social and economic aspects of society. Synthesis was carried out narratively to reveal important patterns, research gaps, and the contribution of customary law in creating community welfare. Through this approach, the research not only seeks to map existing academic discourses, but also conducts a critical analysis of the sustainability and relevance of customary law in facing the challenges of globalization, agrarian conflicts, and development policies. Thus, the SLR method provides a strong scientific foundation in evaluating the dynamics of the relationship between customary law and community welfare comprehensively.

RESULTS AND DISCUSSION

Basic Concepts of Customary Law

Customary law is a legal system that grows and develops from cultural values and customs that live in society, especially in traditional communities in Indonesia. It is not formed by a formal legislative institution, but rather arises naturally from social practices that are carried out repeatedly and are considered binding by members of society. This law reflects local values, social norms, and cultural wisdom that are passed down from generation to generation and serve as guidelines for regulating relations between individuals, between groups, and between humans and their surroundings. In the context of Indonesian law, customary law is recognized as existing, as reflected in Article 18B of the 1945 Constitution which states that the state recognizes and respects

⁸ ERMA, W. (2021). *Studi literatur: Etnosains dalam pembelajaran sains* (Doctoral dissertation, UIN Raden Intan Lampung).

customary law community units and their traditional rights as long as they are still alive and in accordance with the development of the times and the principles of the unitary state of the Republic of Indonesia.⁹

The main characteristics of customary law include being unwritten, flexible, and highly contextual. It is not written down in formal legal documents, but lives in the collective memory of the community, through oral traditions, cultural symbols, and everyday social practices. In addition, customary law tends to prioritize restorative justice rather than retributive justice. This means that conflict resolution in customary law focuses more on restoring social relations and harmony, rather than on punishment alone. Customary law also has a communal nature, where rights and responsibilities are seen more in a collective framework, rather than an individual one. Therefore, in customary law, rights to land, forests, and natural resources are often customary or shared property. Another advantage of customary law is its ability to adapt to social change, although it remains deeply rooted in traditional values. This flexibility makes customary law able to survive and continue to be relevant in people's lives to this day¹⁰

Customary law and state law (or positive law) are two different legal systems in terms of their sources, nature, and method of application. Customary law originates from customs, cultural values, and local wisdom that live in society and develop from generation to generation. It is unwritten, flexible, and highly contextual, because it adapts to the norms and social needs of a particular community. Enforcement of customary law is usually carried out through deliberation mechanisms and a family approach, and aims to restore harmony and social balance, not simply by imposing sanctions. Its restorative and communal nature emphasizes the importance of common interests and harmony in society. In contrast, state law or positive law is law that is made and enforced by official state institutions, such as the legislature and executive. This law is written, systematic, and applies generally throughout the country's jurisdiction without regard to the local cultural context.¹¹ Enforcement of positive law is carried out by state officials such as the police, prosecutors, and judges, with mechanisms that are formal, procedural, and based on the hierarchy of laws and regulations. The main purpose of positive law is generally to create order, legal certainty, and universal protection of individual human rights. Thus, the fundamental difference between the two lies in the origin, form, enforcement approach, and values underlying its validity. Although different, both have important roles and can complement each other in forming a legal system that is fair, inclusive, and rooted in the reality of society¹²

In the modern context, customary law experiences very complex dynamics, along with rapid social, political, economic, and cultural changes. On the one hand, customary law is still alive and practiced by many customary communities in various regions,

⁹ Sudirman, S., Yunus, A., & Arif, M. (2021). Implementasi Nilai-Nilai Hukum Adat Dalam Mewujudkan Hukum Yang Bersendikan Kearifan Lokal. *Journal of Lex Generalis (JLG)*, 2(1), 89-106.

¹⁰ Moniaga, R. R. G. W. (2024). PERLINDUNGAN HUKUM HAK-HAK MASYARAKAT ATAS TANAH ADAT DI TENGAH MODERNISASI. *LEX ADMINISTRATUM*, 12(4).

¹¹ Rannu, D. A., Santoso, E., Cherieshta, J., Natasha, M. B., & Young, J. (2023). Perlindungan warisan budaya: Peran hukum adat dalam pemeliharaan budaya lokal. *Innovative: Journal Of Social Science Research*, 3(5), 543-553.

¹² Ariefiani, E. (2024). *Urgensi Penegakan Hukum Dalam Putusan Hakim Pada Perkara Pidana Berbasis Hukum Progresif* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

especially in areas where the social structure is still strong and upholds traditional values. On the other hand, customary law also faces various challenges that can threaten its sustainability, such as interventions in national development policies, the dominance of positive law, the pressure of globalization, and the increasingly weak regeneration of customary leaders among the younger generation. Modernization often brings values of individualism and materialism that conflict with the principles of communal and natural balance in customary law. As a result, some people have begun to abandon customary law practices because they are considered irrelevant or not economically profitable¹³

However, there are also many cases where customary law has successfully transformed and adapted to the times. Several indigenous communities have even developed their customary legal systems so that they can dialogue with national law and obtain formal legal recognition, either through regional regulations, recognition of customary areas, or court decisions. In various places, customary law is also used as a basis for sustainable natural resource management, resolution of agrarian conflicts, and environmental conservation. This shows that customary law is not a static system or stuck in the past, but has the potential to develop and adapt without losing its identity. This dynamic process also shows that the sustainability of customary law is highly dependent on political support, formal legal recognition, and the collective awareness of indigenous communities themselves to maintain and renew traditional values that are relevant to current needs. Thus, customary law in the modern era is not only a cultural symbol, but also an important instrument in creating social justice, ecological sustainability, and the independence of local communities amidst the flow of globalization.¹⁴

Several recent studies relevant to the topic of customary law and community welfare in Indonesia provide significant insights. Nurhadi Ahmad Juang et al. (2023) in their study entitled *The Urgency of Protection and Empowerment of Customary Law Communities in Business Practices (Perspective of Presidential Decree No. 60/2023)* stated the importance of integrating the principles of Human Rights (HAM) in business policies to achieve inclusive and sustainable welfare. This study shows how policies involving indigenous communities can provide more equitable social and economic benefits. Sempo, Rompas, and Gerungan (2024) in their study *Rights of Customary Law Communities in the Midst of Modernization Reviewed from Article 18B Paragraph (2) of the 1945 Constitution* examined the recognition of the rights of indigenous peoples in the face of modernization. They concluded that the recognition and protection of indigenous peoples' rights by the state is very important to maintain their welfare and the sustainability of their culture in the midst of globalization. Darisera, Letedara, Latue, and Rakuasa (2024) in their study entitled *Reconstruction of Customary Law in Environmental Law Enforcement in Indonesia* revealed that customary law has an effective role in sustainable natural resource management, although its recognition in the national legal system is often inconsistent. Saswoyo and Hadi Pura (2023) in their study entitled *The Urgency of Promulgating the Draft Law on Customary Law Communities as a Form of Citizen Welfare* examine the urgency of ratifying the Draft Law on Customary

¹³ Syarif, K. A. (2024). Hubungan Sosiologi Hukum Dan Hukum Adat Di Banda Aceh. *EDUSOS: Jurnal Edukasi dan Ilmu Sosial*, 1(02), 52-58.

¹⁴ Azhari, D. (2024). *Komparasi Otoritas Hukum Adat dan Hukum Positif dalam Adat Beseang Masyarakat Suku Sasak Perspektif Maqasid Syariah* (Doctoral dissertation, Universitas Islam Indonesia).

Law Communities, which they consider important to provide legal protection for indigenous peoples and improve their welfare in the context of state law.

These studies provide a clear picture of how customary law can support the well-being of indigenous peoples, despite challenges in terms of recognition and implementation in national legal systems.

Customary Law as a Social System

Customary law has a very important function in maintaining social order and strengthening the cultural identity of the community. As a system of norms born from local values and customs that are passed down from generation to generation, customary law plays a role in regulating the behavior of community members to be in harmony with the prevailing social order. Through social sanction mechanisms and dispute resolution based on deliberation, customary law is able to prevent and reduce conflict, and restore disturbed relationships between individuals or groups. Because of its restorative and consensus-based nature, customary law tends to be more accepted and respected by indigenous communities than state law, making it effective in creating a sense of security, order, and harmony in everyday life¹⁵

In addition, customary law also functions as a guardian of collective cultural identity. In the midst of globalization and cultural homogenization, customary law is an important instrument that maintains the identity of a community, because it contains philosophical values, cultural symbols, and ways of life that reflect the unique character of a society. Through the practice of customary law, the younger generation is taught to understand and appreciate the heritage of their ancestors, both in terms of respect for nature, social relations, and moral values. Thus, customary law is not only a tool for regulating social life, but also an inseparable part of the cultural system that maintains the continuity of community identity over time. In the context of a multicultural country like Indonesia, the existence of living and respected customary law is an important foundation for the development of a just, inclusive society rooted in the richness of local culture. Customary figures play a central role in the social structure of society, especially in communities that still uphold traditional values and customary legal systems. They not only function as symbolic leaders, but also as guardians of values, spiritual connectors, conflict mediators, and determiners of the direction of social life in their communities. Traditional figures usually obtain their position not solely because of formal power, but because of the character, wisdom, and trust given by the community. In many traditional communities, this role is inherited from generation to generation or determined through a deliberation process involving community members. Therefore, traditional figures are often considered as representations of local wisdom that lives and develops with its community.¹⁶

In daily life, traditional leaders perform important functions as leaders in traditional ceremonies, protectors of cultural values, and managers of social norms that form the basis of order in society. They also play a role in resolving disputes according to custom, with an approach that emphasizes deliberation, restorative justice, and the restoration of social relations. In addition, traditional leaders are key actors in the decision-making process related to customary land, natural resources, and relations

¹⁵ Harmaini, H., Supeno, S., Sari, F. K., Kusaimah, K., & Antoni, E. (2024). Petatah Petitih sebagai Pedoman Etika dalam Hukum Adat. *Legalitas: Jurnal Hukum*, 16(2), 133-142.

¹⁶ Rahman, A., Setiasih, A. P., & Meritasari, D. P. R. (2024). *Ragam Mozaik Kearifan Lokal Nusantara-1*. Suluah Kato Khatulistiwa.

between groups within the community. In the modern context, traditional leaders have also begun to take on a more strategic role, especially in fighting for legal recognition of the rights of indigenous peoples, bridging communication with the government, and protecting the community from exploitation by outside parties that are contrary to customary principles. However, the role of traditional leaders also faces challenges along with changing times.¹⁷ West Kalimantan Cultural Values Preservation Center. The influence of outside culture, declining appreciation for traditional values, and weak regeneration of traditional leaders are issues that threaten the continuity of their authority. However, many traditional figures have managed to adapt to these dynamics, even collaborating with formal institutions to fight for the interests of their communities. Therefore, traditional figures remain important figures in maintaining the continuity of customary law, strengthening cultural identity, and ensuring that development does not sacrifice local values that have been passed down from generation to generation.

Customary conflict resolution mechanisms are dispute resolution systems rooted in local values, norms, and customs that have been passed down from generation to generation in indigenous communities. This system is usually non-formal, participatory, and restorative, where the main goal is not only to determine who is wrong and who is right, but to restore social harmony that has been disrupted by conflict. Conflict resolution is carried out through a deliberation forum led by traditional figures, such as village elders, tribal chiefs, or traditional institutions that have high social legitimacy in the eyes of the community. In this forum, all parties involved are given the opportunity to express their opinions, express their complaints, and explain the problems openly, honestly, and ethically.¹⁸ The customary deliberation process is usually carried out in stages, starting with family mediation, then continuing to the village or customary institution level if no agreement is reached. Sanctions or decisions imposed in the resolution of customary conflicts not only consider legal aspects, but also moral, social, and spiritual aspects. For example, the perpetrator can be asked to make a public apology, provide symbolic compensation, or perform certain customary rituals to restore relationships between individuals or between the perpetrator and the community. This approach shows that customary-based conflict resolution does not rely on coercion or rigid punishment, but on efforts to rebuild trust and balance within the community. The main advantages of this mechanism are its affordability, speed, and proximity to local values, which make it more acceptable and respected by the community than formal legal resolution. However, this mechanism also faces challenges, especially in dealing with complex cases or cases concerning the rights of vulnerable groups such as women and children, who sometimes do not receive maximum protection within the customary framework. Therefore, in the current context, it is important to encourage synergy between customary mechanisms and the national legal system so that conflict resolution can be carried out fairly, inclusively, and rooted in the cultural values that live in the community.¹⁹

¹⁷ Johansen, P., Natsir, M., & Juliatri Widi Wulandari, B. (2019). *Adat dan hukum adat pada komunitas adat di kabupaten Kutai Barat provinsi Kalimantan Timur*. Balai Pelestarian Nilai Budaya Kalimantan Barat.

¹⁸ Dirkareshza, R., Novyana, H., Surahmad, S., & Nurhalizah, A. (2024). Penyelesaian Sengketa pada Masyarakat Hukum Adat Urug melalui Studi Etnografi. *Jurnal Ilmiah Ilmu Sosial*, 10(2), 218-226.

¹⁹ Adlina, N. (2025). *Efektivitas Penyelesaian Perkara Perdata di Lembaga Adat Tuha Peut ditinjau Menurut Qanun Aceh No 9 Tahun 2008 Tentang Pembinaan Kehidupan Adat*

Social Welfare: Social and Economic Perspectives

Well-being in the global context is generally defined through quantitative indicators such as income, education, health, and the human development index (HDI). This approach emphasizes material achievements and the efficiency of socio-economic systems, as used by international institutions such as the UN or the World Bank. Meanwhile, in the local context, especially in indigenous communities, well-being is interpreted more holistically and contextually. It includes social harmony, connectedness to nature, the availability of traditional resources such as customary land, and the preservation of culture and spiritual values. The measure of local well-being is not only economic, but also emphasizes the balance of life in the community. Therefore, it is important to combine these two approaches so that development policies can truly reflect the needs and aspirations of communities at the grassroots level. Indicators of indigenous peoples' well-being: economy, education, health, environment, and social participation.²⁰

Indigenous communities face various challenges in achieving prosperity, both socio-economically and culturally. One of the main challenges is marginalization, where they often have difficulty accessing education, health services, and adequate infrastructure. In addition, development policies that often ignore local wisdom can add to the difficulties, especially related to customary land rights and natural resource management that are threatened by external exploitation. In addition, globalization and modernization bring threats to their cultural identity, which can be eroded by external cultural influences. Without recognition of their cultural and ecological rights, indigenous communities risk losing their identity and falling into structural poverty despite being rich in natural resources. To overcome these challenges, an inclusive development approach is needed, which respects their customary rights and the sustainability of their culture and ecology.

The Relationship between Customary Law and Welfare

One real example that shows the relationship between customary law and welfare is the management of natural resources based on custom in various customary communities in Indonesia, such as in customary forests or customary areas. Indigenous communities in many areas, such as the Dayak Tribe in Kalimantan, the Minangkabau Tribe in Sumatra, and the Toraja Tribe in Sulawesi, have long managed their natural resources with principles based on customary law. In this customary law system, there are rules that govern the use and preservation of natural resources, such as land, forests, and water, with the aim of ensuring that such use does not damage the ecosystem and can provide sustainable benefits for future generations.²¹ In many customary communities, customary land or customary areas are not only considered as economic

dan Istiadat (Studi di Kecamatan Mutiara Kabupaten Pidie (Doctoral dissertation, UIN Ar-Raniry Banda Aceh).

²⁰ Arrizal, L. D. (2022). *Pengaruh Indeks Pembangunan Manusia (IPM), Produk Domestik Regional Bruto (PDRB), dan Pengangguran terhadap Tingkat Kemiskinan di Provinsi Kalimantan Tengah tahun 2014-2021* (Bachelor's thesis, Fakultas Ekonomi dan Bisnis uin jakarta).

²¹ Lubis, A. F. (2022). Peluang Revitalisasi Hukum Adat sebagai Sumber Kearifan Lokal: Potensi Pengembangan Ekonomi Lokal sebagai Upaya Kedaulatan Negara. *Public Service and Governance Journal*, 3(2), 89-107.

resources, but also as part of cultural and spiritual identity. Customary law regulates who has the right to manage the land and how natural resources such as forests and rivers are used wisely, with the principle of natural balance and social obligations to maintain environmental sustainability. For example, in some areas, indigenous communities set hunting bans at certain times or regulate land use rotations to prevent over-exploitation that can damage the environment. The link between customary law and well-being in this context is very clear. When indigenous communities can manage their natural resources based on customary laws that have been inherited, they not only maintain the sustainability of nature, but also strengthen their social and economic resilience. For example, customary forest management based on the principle of sustainability allows communities to continue to obtain forest products, such as agricultural products and wood, without damaging the ecosystem. This supports the economic well-being of indigenous communities, because they have sufficient resources for their daily lives, as well as maintaining social stability within the community.²² However, this sustainability is often threatened by national development policies or commercial projects that do not take customary law into account. For example, the development of large-scale plantation industries or mining that occurs on customary land often ignores the rights of indigenous communities and destroys the ecosystems they manage. When rights to customary land or natural resources are taken or controlled by outsiders without involving indigenous communities, their well-being is threatened, both economically and socially. In some cases, indigenous peoples have to fight to defend their rights through legal channels or through political advocacy. Through these examples, it is clear that customary law plays an important role in maintaining the welfare of indigenous peoples, especially in terms of fair and sustainable management of natural resources. The relationship between customary law and welfare can be seen in how the customary legal system maintains a balance between the use of nature and the preservation of culture, which in turn supports the economic and social stability of customary communities (Prasetya, NH, et al. 2024).

Customary law plays an important role in the distribution of justice and access to resources in indigenous communities. Customary law regulates the management of natural resources, such as customary land, collectively and fairly, ensuring that resources are used for the common good and preventing oppression by certain individuals or groups. For example, in land and forest management, customary law guarantees that every member of the community has fair access rights, as well as maintaining the sustainability of nature. In addition, customary law also protects vulnerable groups, such as women, in terms of resource distribution, as well as creating social justice and ecosystem balance. Challenges arise when state policies or capitalist practices ignore customary principles, threatening social justice and indigenous peoples' access to their resources. Therefore, customary law plays an important role in ensuring sustainable management and distributional justice in indigenous communities. Tensions between customary law and state policies in development projects.²³

²² Apricia, N. (2022). Hak Negara Dan Masyarakat Hukum Adat Atas Hutan Adat. *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan*, 1(7), 1255-1262.

²³ Kusniati, R. (2022). *Transformasi Hukum Internasional ke dalam Hukum Nasional Terkait Hak Masyarakat Hukum Adat atas Pembagian Keuntungan (Access and Benefit Sharing) Pemanfaatan Sumber Daya Genetik: Studi Perbandingan Antara Indonesia dan Thailand* (Doctoral dissertation, DOKTOR ILMU HUKUM).

Challenges and Criticisms of the Implementation of Customary Law

Marginalization of customary law occurs when national legal systems ignore or do not recognize customary law that applies in local communities. State laws that are often uniform and formal often conflict with customary law, especially related to customary land rights and the management of natural resources that are managed collectively. Indigenous peoples often have difficulty obtaining justice because state laws do not accommodate their customary systems, considering them illegitimate or informal. In addition, globalization and state policies that prioritize individual or corporate ownership often ignore local values, causing indigenous peoples to lose their legal autonomy. Although some countries have begun to recognize customary law, its implementation is still limited and often contradicts national law, which is detrimental to the welfare of indigenous peoples.

Customary law, although intended to maintain social harmony and the preservation of cultural values, sometimes contains the potential for discrimination, especially against certain groups such as women and minorities in indigenous communities. In some indigenous communities, women's rights are often limited, especially in terms of inheritance, land ownership, and roles in decision-making. In many indigenous cultures, only men have the right to inherit customary land or be involved in the management of natural resources, even though women play an important role in the family and community economy. In addition, women are often not given equal rights in decision-making in social structures, even though they are active in the social and cultural life of the community. In addition, customary law can also discriminate against minority groups, such as people from different tribes, religions, or backgrounds.²⁴ In some cases, members of the community who do not follow customs or have different identities are often treated unfairly, with their rights restricted, especially in access to natural resources or customary land. This can exacerbate social inequality and marginalization for those considered "outsiders." Therefore, although customary law serves to maintain the continuity of tradition, it is important to moderate or update customary law to be more inclusive and respect the basic rights of all members of society, regardless of gender, ethnicity, or other background.²⁵

The commodification of indigenous culture is one of the major challenges in the implementation of customary law, where traditions and natural resources that were previously protected for social and cultural interests are now treated as commodities for economic gain. This process often occurs in the tourism industry, where customary rituals, arts, or natural resources are exploited to attract visitors, without considering the sustainability of the culture and nature. This can lead to the loss of cultural meaning and control of indigenous peoples over their resources. In addition, commodification often has a negative impact on the welfare of indigenous peoples because they lose control over the resources that they have managed sustainably. Criticism of the implementation of customary law arises when the law is considered incapable of protecting culture from market pressures and economic exploitation. Therefore, it is important to maintain a

²⁴ Yunidar, M. (2025). *Bahasa, Budaya, dan Masyarakat: Perspektif Sociolinguistik Kontemporer*. Kaizen Media Publishing.

²⁵ Gorby, A., Hamdi, M., Mulyati, D., & Arsad, R. (2023). Implementasi Kebijakan Tanah Adat Dan Hak-Hak Adat Di Atas Tanah di Provinsi Kalimantan Tengah. *Perspektif*, 12(4).

balance between preserving local wisdom and avoiding the exploitation of indigenous culture.²⁶

Revitalization and Integration of Customary Law

Preserving customary law in the era of globalization faces major challenges due to modernization and the application of state laws that often conflict with customary principles. Efforts to maintain the sustainability of customary law include legal recognition of the rights of indigenous peoples within the national legal framework, educating the younger generation about the importance of customary law, and using technology to document customary traditions. Collaboration with national and international institutions and empowerment of customary-based economies are also important to ensure that the rights of indigenous peoples are respected. In addition, legal advocacy and inclusive policy-making by the government will strengthen the position of customary law, encourage protection of land and natural resource rights, and maintain the sustainability of indigenous peoples' culture in Development.²⁷

Synergy between customary law and state policy is essential to improve the welfare of indigenous peoples. Legal recognition of indigenous peoples' rights, such as rights to customary land, and the integration of customary principles into national development policies are crucial initial steps. The government must listen to the aspirations of indigenous peoples through open dialogue to ensure that the policies taken are in accordance with local needs. Custom-based economic empowerment, such as culture-based tourism, can help improve welfare without damaging their culture. In addition, a participatory approach to decision-making and protection of the rights of women and vulnerable groups is also very important. By conducting continuous monitoring and evaluation of policies, this synergy can create sustainability, social justice, and cultural protection which ultimately improves the quality of life of indigenous peoples.²⁸

The role of civil society and NGOs is very important in strengthening the position of customary law. They advocate for the recognition of indigenous peoples' rights, such as rights to land and natural resources, and provide education and empowerment so that indigenous peoples can protect their rights. NGOs also act as mediators between indigenous peoples and stakeholders, as well as documenting customary rights violations to raise public awareness. They build international networks to support indigenous peoples' rights and are involved in formulating policies that are more in their favor. Synergy between indigenous peoples, NGOs, and the government is very important to create sustainability and social justice for indigenous peoples.²⁹

²⁶ Gorby, A., Hamdi, M., Mulyati, D., & Arsad, R. (2023). Implementasi Kebijakan Tanah Adat Dan Hak-Hak Adat Di Atas Tanah di Provinsi Kalimantan Tengah. *Perspektif*, 12(4).

²⁷ Vindy, A., & Subroto, A. (2024). Efektivitas Hukum Adat Sasi Dalam Pelestarian Sumber Daya Alam Pada Masyarakat Ambon: The Effectiveness of Sasi Customary Law in Preserving Natural Resources in the Ambon Community. *Dialogia Iuridica*, 15(2), 078-099.

²⁸ Rubi, R., Maulana, M. C. R., Yulrisnanda, M. F., Saripudin, A., & Syamsudin, S. (2024). Dinamika Hukum Dalam Pengaturan Masyarakat Hukum Adat Ditinjau Dari Sistem Hukum Nasional. *Iuris Studia: Jurnal Kajian Hukum*, 5(3), 861-869.

²⁹ Sempo, R., Rompas, D., & Gerungan, M. (2024). Hak Masyarakat Hukum Adat di Tengah Modernisasi Ditinjau dari Pasal 18B Ayat (2) UUD 1945. *Jurnal Hukum Adat*, 15(1), 45-58.

CONCLUSIONS

Customary law is an unwritten legal system that emerged from the cultural values, traditions, and customs of indigenous Indonesian communities. Flexible and contextual, this law emphasizes restorative justice, deliberation, and communal interests. Customary law plays an important role in maintaining cultural identity, resolving conflicts, and managing natural resources fairly and sustainably. Although recognized in the constitution, customary law faces challenges from modernization, state law, and commercialization that can threaten the rights and autonomy of indigenous communities. In addition, internal challenges such as discrimination and cultural commodification also need to be addressed. It is necessary to update customary law to be more inclusive and adaptive, as well as synergy between customary law and national law, supported by government policies, customary leaders, and civil society. In this way, customary law can continue to contribute to creating welfare and a just and sustainable social order.

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