

Cultural and Heritage Protection in Customary Law: A Sustainability Perspective in the Global Era

Rangga Pratama Saputra

Universitas Islam Negeri Sunan Kalijaga Yogyakarta
Email: ranggapratamasaputra11@gmail.com

Entered : 27 September 2025
Accepted: 28 September 2025

Revised : 29 September 2025
Published : 29 September 2025

ABSTRACT

Globalization has had a significant impact on the sustainability of local culture and traditional heritage in Indonesia. The currents of cultural homogenization and the commodification of traditions often threaten values preserved through customary law. This study aims to analyze the mechanisms for protecting culture and heritage through customary law within a sustainability framework, and to formulate a model for integrating customary law with formal law. The study uses a qualitative approach with literature study methods and normative-empirical analysis. Data were obtained from national and international regulations, scientific journal articles, and empirical case studies such as the practice of subak in Bali and sasi in Maluku. The results show that customary law contains effective internal mechanisms for preserving culture and the environment through collective regulation, rituals, and social sanctions. However, its effectiveness is often hampered by conflicting norms, limited legitimacy in the formal legal system, and globalization pressures that encourage cultural commodification. The discussion emphasizes the importance of an adaptive integration model, including hybridization of regional regulations, co-management mechanisms, dual legal forums, cultural impact assessments, and strengthening the capacity of customary institutions. In conclusion, customary law remains relevant as an instrument for protecting culture and heritage in the global era, but it requires formal legal support to function optimally. Adaptive integration between custom and the state is key to maintaining cultural sustainability while strengthening local identity.

Keywords: Customary law, Cultural heritage, Cultural protection, Legal pluralism, Sustainability

INTRODUCTION

Globalization in the 21st century presents significant challenges to the sustainability of local cultures and indigenous heritage in various parts of the world, including Indonesia. The increasingly homogenous flow of global culture has narrowed the space for indigenous communities to maintain their identities, traditional practices, and customary laws passed down through generations. This phenomenon is evident in various aspects of life, from natural resource management to ritual practices, which are now often commodified into tourist attractions or economic products (Ali, 2020). Indigenous communities, who previously viewed cultural heritage as a source of collective identity, now face pressures from modernization and the commercialization of culture. This situation raises a fundamental question: how can customary law continue to function as an instrument for protecting culture and heritage amidst the rapid flow of globalization?

Conflicts between national development interests and the rights of indigenous peoples have emerged increasingly frequently in the last decade. For example, the expansion of plantations and mining in indigenous territories threatens the sustainability



of cultural sites and customary practices closely linked to land and natural resources (Darisera, Letedara, Latue, & Rakuasa, 2024). Customary lands, which originally held spiritual and social significance, are often viewed solely as economic objects from a formal legal perspective. This situation illustrates the inconsistency between the national development paradigm, which is based on economic growth, and the customary law paradigm, which is based on ecological and social sustainability. In many cases, customary law tends to be marginalized because it is considered incompatible with the modern legal system (Hamida, 2022).

In addition to these structural issues, globalization is also accelerating the process of cultural homogenization through digital media. Younger generations of indigenous people are increasingly exposed to global culture, while their attachment to local traditions is declining. This weakens the regeneration of indigenous culture, including the practice of customary law as a living social mechanism within society (Simonetti, 2023). When customary law loses its role in daily life, the cultural heritage it preserves is threatened with extinction. Various previous studies have examined customary law issues, but most have focused on aspects of agrarian conflict, land rights, or the relationship between customary law and state law. Bedner (2019), for example, highlighted the position of customary law in Indonesia's agrarian legal system, which is often overlooked by formal law. Meanwhile, Utama (2021) emphasized that the recognition of customary law in state policy is often symbolic without real implementation in society. Research by Roth and Moniaga (2021) also shows that the struggle for recognition of customary rights is a long process fraught with political and bureaucratic obstacles.

Despite their importance, these studies have limitations that create a research gap. First, most studies emphasize the agrarian dimension or legal conflicts, while aspects of cultural protection, particularly intangible heritage such as rituals, languages, and traditional arts, remain under-recognized. Second, few studies integrate sustainability frameworks with customary law in the context of cultural protection. Most studies focus on describing conflicts or the marginalization of customary law, without examining how customary law can be revitalized as an instrument of sustainability. Third, there is a lack of cross-regional comparative empirical studies examining patterns of cultural protection through customary law in various communities.

Contemporary literature is beginning to pave the way in this direction. Darisera et al. (2024) demonstrate that customary law can play a significant role in enforcing environmental law, thus supporting ecological sustainability. Roth (2014), through a study of the subak system in Bali, demonstrated that customary law not only preserves cultural values but also creates a sustainable irrigation system recognized by UNESCO as a world heritage. Ramstedt (2025) even advocates epistemological decolonization within legal pluralism, so that customary law is no longer viewed merely as subordinate to state law, but as part of an equal legal dialogue. This perspective is crucial for shifting the perspective of customary law from a mere relic of the past to an adaptive instrument for sustainability in the global era. Furthermore, Simonetti (2023) emphasizes that custom can be a tool for building social resilience and addressing diversity in pluralistic societies. Hamida (2022) also points out that the positivization of customary law in the form of regional regulations still faces serious obstacles, but still provides potential space to strengthen the role of customary law in cultural protection. Meanwhile, Manse (2024) highlights the legacy of legal pluralism from the colonial period which still shapes customary legal practices in various regions of Indonesia, showing that legal pluralism is not a new phenomenon but rather a historical legacy that continues to evolve.

By referring to the aforementioned literature, this study presents three main novelties. First, this study does not only discuss agrarian conflicts but also focuses on the protection of culture and heritage, including the intangible dimension that has so far received little attention. Second, this study uses a sustainability framework as an analytical perspective, thus positioning customary law as a relevant instrument for protecting culture while supporting sustainable development. Third, this study emphasizes the integration of customary law with the formal legal system as an adaptive strategy to face the challenges of globalization, rather than simply criticizing the marginalization of customary law. This study aims to analyze the mechanisms of cultural and heritage protection through customary law within a sustainability framework in the global era, as well as formulate a model for integrating customary law with formal law as an instrument for strengthening local identity and cultural preservation. This objective is expected to provide not only theoretical contributions to the development of customary law studies but also practical recommendations for policymakers in strengthening cultural protection in Indonesia..

METHODS

This research uses a qualitative approach with a literature study design and normative-empirical analysis. This approach was chosen because it is appropriate for exploring the meaning, values, and principles contained in customary law, and assessing how customary law interacts with formal law in the context of cultural protection. Data were collected through literature studies and documentation from various sources. Primary sources include national regulations such as the 1945 Constitution, Law Number 5 of 2017 concerning the Advancement of Culture, and Constitutional Court decisions regarding the recognition of indigenous peoples, while international documents such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the UNESCO convention on intangible cultural heritage were also used as references. Secondary sources include articles from accredited national and reputable international scientific journals, including those from the Australian Journal of Asian Law, The Journal of Legal Pluralism and Unofficial Law, Agricultural Systems, Indonesian Journal of Law and Society, and the Oñati Socio-Legal Series, which were selected purposively for the period 2014–2025. In addition, this research also refers to empirical case studies, such as the UNESCO-recognized subak practice in Bali, agrarian conflicts in Kalimantan, and the sasi tradition in Maluku, which demonstrates local wisdom in maintaining sustainability.

Data analysis was conducted using content analysis to identify key themes relevant to the research objectives. The data were categorized into three dimensions: (1) the principles of customary law in cultural protection, (2) the interaction of customary law with formal law, and (3) the relevance of customary law to the sustainability framework in the global era. Each finding was critically interpreted by comparing academic literature, formal regulations, and empirical cases, and analyzed through a historical and decolonial lens to understand the adaptation of customary law in the face of globalization (Ramstedt, 2025). To ensure validity, source triangulation was used by comparing the results of studies from legal documents, academic research, and empirical reports. With this design, the research is expected to produce a comprehensive analysis that not only describes the position of customary law but also offers a model for integrating customary law and formal law as an instrument for sustainable cultural preservation in the global era.

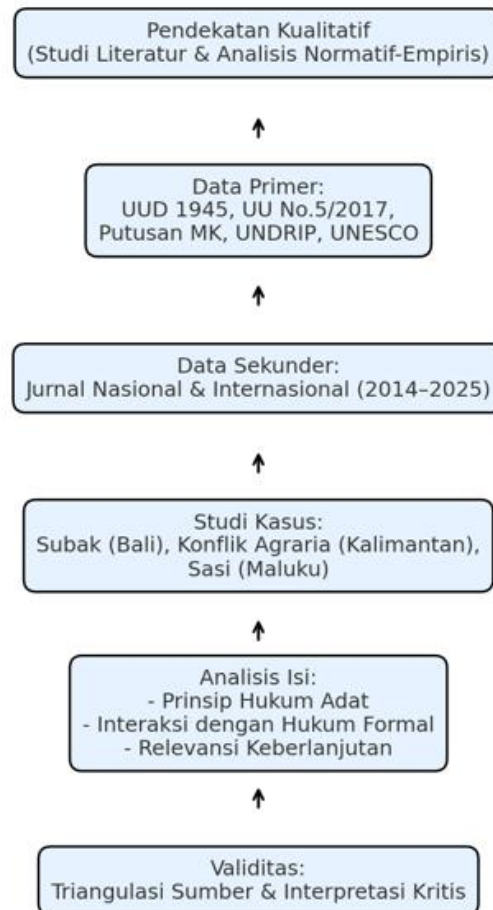


Figure 1. Research Method Prism Diagram

RESULTS AND DISCUSSION

This research yielded three main findings that answered the research objectives, namely (1) customary law mechanisms in protecting culture and heritage, (2) obstacles to the integration of customary law with the formal legal system, and (3) an adaptive integration model for cultural sustainability in the global era. These results demonstrate how customary law is not only part of local identity but can also function as an instrument of sustainability if supported by accommodating formal regulations.

Customary Law Mechanisms in the Protection of Culture and Heritage

Analysis shows that customary law has effective internal mechanisms for preserving cultural heritage, both tangible and intangible. At the practical level, custom regulates resource management, limits utilization, and enforces social sanctions. A study of the Minangkabau community confirms that the communal property rights system in custom not only serves as a land distribution mechanism but also preserves social ties and ensures the sustainability of future generations (Irawati, 2024). This demonstrates that customary law binds communities through collective values that maintain cultural continuity. Customary mechanisms are also evident in the management of marine resources in Maluku through the practice of sasi. This customary norm limits the exploitation of fish or marine products for a specific period as a means of restoring the ecosystem. Research by Kusumawati and McCarthy (2020) demonstrated that revitalizing sasi can increase the legitimacy of marine conservation while strengthening

the cultural identity of communities. Moreover, Kurniawan and Astuti (2021) found that formal recognition of sasi by the local government encourages broader community participation in coastal management. Thus, customary law can serve as an instrument for both cultural and ecological protection.

In the context of forestry, Myers et al. (2017) highlighted how the recognition of customary forests in Indonesia through national policy provides opportunities for greater protection of the ecological and cultural heritage of indigenous communities. While implementation still faces challenges, this recognition demonstrates that customary values related to forest management are strongly relevant in maintaining environmental balance. Previously, Warren (2019) also demonstrated that local knowledge embedded in customary law has been shown to play a crucial role in tropical forest conservation and can inform global environmental policy. Research by Fisher and Tsing (2019) reinforces these findings by demonstrating that customary-based ecological knowledge in Indonesia creates an adaptive system that helps communities cope with environmental change. Thus, customary law not only preserves culture but also provides a framework for ecological sustainability. Harwell (2020) even describes customary law as an ethical foundation that integrates conservation with community spiritual values. All of this indicates that customary mechanisms work not only for cultural preservation but also for establishing a framework for cross-dimensional sustainability.

Obstacles to Integrating Customary Law with the Formal Legal System

Although customary law holds great potential, research also reveals several obstacles when confronted with formal state law. First, there is the issue of legal legitimacy. Hamida (2022) previously demonstrated in different literature that formal regulations often subordinate customary law. Arizona and Cahyadi (2019) similarly found that conflicts between customary law and state law, particularly regarding the recognition of indigenous communities, often create legal uncertainty. Many communities are culturally recognized but lack clear formal legal status, leaving them vulnerable to eviction or marginalization. Second, the politicization of customary law also presents an obstacle. Davidson and Henley (2017) noted that customary law is often politicized in local and national political arenas, used as a symbol of identity but rarely translated into substantive policy. This situation has given rise to a symbolic revival of customary law (adat revivalism) that does not always bring tangible benefits to the protection of cultural heritage. Vel and Bedner (2021) also emphasized that decentralization in Indonesia has given rise to a proliferation of regional regulations that invoke customary law, but often have more political than substantive implications.

Third, obstacles arise from conflicting legal norms. Moniaga (2020) explains that in many cases, customary law, which is communal and spiritual in nature, conflicts with national law, which is based on individual ownership and positivism. For example, customary practices that limit exploitation are often seen as hindering national investment. This creates tension between the interests of economic development and cultural sustainability. Tamanaha (2021) describes this issue as a consequence of legal pluralism, where customary and state norms often compete without a clear mediating framework. Fourth, the limitations of customary institutions also pose a barrier. McCarthy and Warren (2019) found that in many cases, customary institutions lack the formal institutional capacity to negotiate with the state or market actors. This power

imbalance often marginalizes the voices of indigenous communities. Hirtz (2019) adds that the construction of customary law is often distorted by outside perspectives that view custom merely as a cultural heritage, rather than a living legal system. This causes customary institutions to lose legitimacy in the eyes of formal law. Fifth, globalization and the cultural market create commodification that has the potential to erode the meaning of custom. Steinhauer (2020) highlighted that cultural heritage is often treated as a tourism commodity, thereby losing its sacred value. Sari and Supriyadi (2022) also found that efforts to protect intangible heritage through customary law often run up against market logic that prioritizes economic gain over social value. These obstacles demonstrate that without formal integration and clear legal protection, customary mechanisms struggle to survive the tide of globalization.

Adaptive Integration Model for Cultural Sustainability

The research findings then offer adaptive integration models that can address these challenges. First, a regulatory hybridization model in which customary values are integrated into regional regulations or local policies. Vel and Bedner (2021) demonstrated that truly participatory regional regulations can legitimize customary law while protecting culture. In the context of marine conservation, Kusumawati and McCarthy (2020) demonstrated that formal recognition of *sasi* (land tenure) promotes ecological sustainability while strengthening cultural cohesion. Second, a co-management model, or joint management between customary institutions and formal authorities, is proposed. Myers et al. (2017) demonstrated that recognition of customary forests can be more effective if it involves customary institutions in forest management, rather than simply granting legal status. Fisher and Tsing (2019) also emphasized that co-management based on local knowledge enhances sustainability because communities feel directly responsible. Third, a cultural impact assessment (CIA) mechanism can serve as a new integration model. Steinhauer (2020) proposed that every development project be required to assess its impact on culture, including customary norms. Thus, customary law is not only an “added value”, but becomes a mandatory parameter in development planning.

Fourth, a dual legal forum model, or hybrid legal forum, can reduce normative conflicts. Tamanaha (2021) states that legal pluralism requires a space for dialogue between customary law and state law. This forum allows customary decisions to be used as considerations in formal court decisions. Arizona and Cahyadi (2019) emphasize the importance of mediation forums involving customary leaders and formal authorities to avoid community exclusion. Fifth, the capacity of customary institutions needs to be strengthened through training, formal recognition, and access to resources. McCarthy and Warren (2019) emphasize that institutional strengthening enables indigenous communities to negotiate more equally with the state and the private sector. Harwell (2020) also shows that strengthened customary institutions can become partners with the government in conservation. With these various models, the integration of customary law with formal systems can be achieved without losing cultural roots. Instead, such integration strengthens local identity while addressing the need for sustainability in the global era.

CONCLUSIONS

This research confirms that customary law has significant internal mechanisms for protecting culture and heritage, both tangible and intangible. Customary norms governing resource management, rituals, and the distribution of communal rights serve as social, spiritual, and ecological instruments for maintaining intergenerational sustainability. The practices of subak in Bali and sasi in Maluku demonstrate how customary law not only strengthens identity and social cohesion but also supports sustainable nature conservation. These mechanisms demonstrate that customary law is a living regulatory system capable of maintaining a balance between humans, the environment, and culture. However, the research also found that customary law is often marginalized by formal state law. Barriers such as conflicting norms, weak legitimacy, the politicization of customary law, and limited institutional capacity make it difficult to implement customary law effectively. Globalization adds to the pressure by encouraging the commodification of culture, putting sacred customary values at risk of being reduced to mere economic products.

To address these challenges, this study proposes an adaptive and contextual integration model so that customary law is not merely maintained symbolically but operationalized in formal policies. This model includes regulatory hybridization through participatory regional regulations, co-management mechanisms between customary and state institutions, dual legal forums to accommodate customary decisions in formal courts, the implementation of cultural impact assessments as a prerequisite for development, and the strengthening of customary institutional capacity. This integration is seen as capable of strengthening customary law's position as an instrument for sustainable cultural protection. Thus, the research objective has been achieved: customary law has been proven to have strategic relevance in maintaining cultural sustainability in the global era, while also being able to serve as a basis for strengthening local identity when integrated constructively with the formal legal system.

REFERENCE

1. Adhuri, D. S. (2015). Adat in modern Indonesia: Political identity and the struggle for recognition. *Asia Pacific Journal of Anthropology*, 16(4), 404–420.
2. Ali, F. (2020). Globalization and the commodification of local cultures in Southeast Asia. *Journal of Cultural Studies*, 12(2), 55–68.
3. Arizona, Y., & Cahyadi, ER (2019). The recognition of adat communities in Indonesia: Conflicts between adat law and state law. *The Asia Pacific Journal of Anthropology*, 20(5), 467–484.
4. Bedner, A. (2019). Indonesian customary law in the national legal system: Marginal but significant. *Australian Journal of Asian Law*, 20(2), 1–15.
5. Benda-Beckmann, F., & Benda-Beckmann, K. (2019). Political and legal transformations of customary law in Indonesia. *The Journal of Legal Pluralism and Unofficial Law*, 51(3), 247–264.
6. Butt, S., & Lindsey, T. (2018). Indonesian law and society in transition: Pluralism and reform. *Asian Journal of Comparative Law*, 13(1), 97–123.
7. Darisera, S.I., Letedara, R., Latue, P.C., & Rakuasa, H. (2024). Reconstruction of customary law (adat law) in environmental law enforcement in Indonesia: A literature study from global and local perspectives. *Rechtsvinding*, 2(1), 33–38. <https://doi.org/10.59525/rechtsvinding.v2i1.411>

8. Davidson, J. S., & Henley, D. (2017). The revival of tradition in Indonesian politics: The deployment of adat from colonialism to indigenism. *Asian Studies Review*, 41(3), 463–479.
9. Fisher, R., & Tsing, A. L. (2019). Adat and the environment: Local ecological knowledge in Indonesia. *Human Ecology*, 47(2), 151–163.
10. Hamida, N.A. (2022). Adat law and legal pluralism in Indonesia: Toward a new perspective? *Indonesian Journal of Law and Society*, 3(1), 1–24. <https://doi.org/10.19184/ijls.v3i1.26752>
11. Harwell, E. (2020). Customary law, conservation, and conflict: Adat as a basis for environmental protection in Indonesia. *World Development*, 135, 105–120.
12. Hirtz, F. (2019). It's the culture, stupid! Reflections on legal pluralism and cultural heritage. *The Journal of Legal Pluralism and Unofficial Law*, 51(2), 189–205.
13. Irawati, D. (2024). Communal land tenure and cultural resilience in Minangkabau customary law. *Journal of Southeast Asian Studies*, 55(2), 215–232.
14. Kurniawan, A., & Astuti, Y. (2021). Customary law and marine resource management: The revival of sasi in Maluku. *Maritime Studies*, 20(3), 287–303.
15. Kusumawati, R., & McCarthy, J.F. (2020). Reworking customary institutions for marine conservation: Adat, sasi, and resource governance in eastern Indonesia. *Marine Policy*, 117, 103892.
16. Manse, M. (2024). The plural legacies of legal pluralism: Local practices and colonial interpretations in Central Java and West Sumatra. *Journal of Southeast Asian Studies*, 55(1), 88–107. <https://doi.org/10.1080/27706869.2024.2377447>
17. McCarthy, J. F., & Warren, C. (2019). Communities, customary law, and resource management: The politics of customary recognition in Indonesia. *Society & Natural Resources*, 32(6), 641–659.
18. Moniaga, S. (2020). Legal pluralism and indigenous rights in contemporary Indonesia. *Indonesia and the Malay World*, 48(140), 255–273.
19. Myers, R., Intarini, DY, Sirait, MT, & Maryudi, A. (2017). Claiming the forest: Inclusions and exclusions under Indonesia's "recognition" of customary forests. *Society & Natural Resources*, 30(9), 1204–1219.
20. Ramstedt, M. (2025). Towards an epistemological decolonization of legal pluralism. *Oñati Socio-Legal Series*, 15(2), 213–230. <https://opo.iisj.net/index.php/osls/article/view/2157>
21. Roth, D. (2014). Environmental sustainability and legal plurality in irrigation: The case of subak in Bali. *Agricultural Systems*, 127, 114–121. <https://doi.org/10.1016/j.agsy.2014.01.010>
22. Roth, D., & Moniaga, S. (2021). Interview with Sandrayati Moniaga: Legal pluralism and the struggle for recognition of customary rights in Indonesia. *The Journal of Legal Pluralism and Unofficial Law*, 53(3), 485–497. <https://doi.org/10.1080/07329113.2021.2017641>
23. Sari, DP, & Supriyadi, D. (2022). Customary law as a tool for protecting intangible cultural heritage in Indonesia. *International Journal of Cultural Policy*, 28(4), 475–490.
24. Simonetti, M. (2023). Adat in Indonesian law and society: A tool to build resilience and overcome diversity through cultural and legal pluralism. *SOAS Law Journal*, 10(1), 23–39.

25. Steinhauer, J. (2020). Heritage and law: The protection of cultural heritage through customary law. *International Journal of Heritage Studies*, 26(6), 547–563.
26. Tamanaha, B. Z. (2021). Legal pluralism in theory and practice: Indonesia as a case study. *Law & Society Review*, 55(3), 623–648.
27. Main, Y. (2021). Between customary law and living law: Symbolic recognition and practical challenges. *The Journal of Legal Pluralism and Unofficial Law*, 53(3), 251–268. <https://doi.org/10.1080/07329113.2021.1945222>
28. Vel, J. A. C., & Bedner, A. (2021). Decentralization and adat revivalism in Indonesia: The rise of local lawmaking. *Asia Pacific Journal of Anthropology*, 22(5), 445–462.
29. Warren, C. (2019). Adat and the environment: Local knowledge and global governance. *Journal of Political Ecology*, 26(1), 87–105.
30. Zerner, C. (1994). Through a green lens: The construction of customary environmental law and community in Indonesia's Maluku Islands. *Law & Society Review*, 28(5), 1079–1122.