

## **The Existence of Customary Law as a Living Law within Indonesia's Legal System: A Legal Pluralism Analysis**

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### **ABSTRACT**

*This study analyzes the existence of customary law as a living law within Indonesia's legal system through the paradigm of legal pluralism. Although Indonesia adopts a codified national legal system, customary law continues to function as a normative authority that regulates community behavior and dispute resolution. Using a normative juridical method supported by doctrinal analysis, this research reveals that the interaction between statutory law and customary law is characterized by philosophical and functional differences that frequently produce normative conflicts, particularly in land regulation, community sanctions and criminal justice. The findings indicate that effective harmonization requires a clear doctrinal placement of customary law within the national hierarchy, in which customary law governs culturally embedded communal affairs while statutory law prevails in constitutional and criminal matters. This structured pluralism model ensures legal certainty while preserving cultural identity. The study concludes that balanced normative coexistence is necessary to strengthen both legal legitimacy and cultural justice in Indonesia.*

**Keywords:** customary law, legal hierarchy, legal pluralism, living law, normative conflict

### **INTRODUCTION**

The existence of customary law as a living law within the Indonesian legal system remains a central theme in the discourse of legal pluralism, especially as the interaction between state law and local normative orders continues to shape the nation's legal identity. Despite Indonesia adopting a predominantly civilian legal system under a formal codified structure, customary law persists as a normative force that regulates social behavior, dispute settlement and cultural continuity in many regions. Socio-legal observations repeatedly demonstrate that community members across different ethnic groups continue to resolve conflicts based on their adat values rather than on state law, indicating that customary law functions as a living mechanism rather than as a symbolic normative artifact.<sup>1</sup> This empirical persistence reinforces the theoretical proposition that legal systems in post-colonial states are never purely monistic but rather evolve as hybrid formations influenced by colonial legacies, political interests and cultural resilience. In the Indonesian context, historical documentation

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<sup>1</sup> Manse, M. "The plural legacies of legal pluralism: local practices and contestations of customary law in late colonial Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (2024): 328-348



from both colonial and post-independence eras consistently shows that state attempts to unify legal authority have never fully replaced indigenous legal autonomy.<sup>2</sup>

From the perspective of legal development, the endurance of customary law is particularly noticeable in regions that maintain strong lineage-based institutions, ritual obligations, and collective ownership structures. For instance, land tenure systems in Bali, Aceh, Papua and Dayak communities still rely heavily on traditional doctrines of communal ownership and ancestral authority, even when statutory land regulations prescribe alternative frameworks. These dynamics illustrate that legal behavior is not shaped solely by written statutes but also by cultural legitimacy derived from traditional authority. The patterns can be compared with global pluralistic jurisdictions such as South Africa, India and the Philippines, where indigenous legal norms remain operational within national legal systems to varying degrees.<sup>3</sup> These comparative observations underline that the Indonesian case of legal pluralism is neither exceptional nor outdated, but reflects a universal tension in societies where state law coexists with community-based normative systems.

At the same time, the existence of customary law in Indonesia has entered a new phase due to the intensification of criminal law reform. Recent debates on penal codification, culminating with the enactment of the new Indonesian Criminal Code (KUHP), again revived public concern regarding whether living law should be treated as a legitimate source of criminal prosecution. Advocates argue that the codification of living law strengthens community-based justice and cultural identity. However, critics warn that allowing customary sanctions in criminal matters risks undermining legal certainty and human rights protections.<sup>4</sup> These opposing positions illustrate a fundamental dilemma: the state seeks to harmonize formal legality and cultural legitimacy while avoiding the danger of normative fragmentation. This dilemma becomes even more complex when considering the sociopolitical diversity of Indonesia, where customary norms diverge significantly from one region to another.

Another critical issue concerns the status of customary law in judicial practice. Although the Constitution recognizes customary communities and their rights, the operationalization of that recognition remains inconsistent in courts. Some judges acknowledge customary norms as a legitimate source of legal reasoning, while others rely strictly on statutory law, creating jurisprudential discrepancies.<sup>5</sup> Scholars argue that this inconsistency reflects the absence of a unified doctrinal framework regarding the position of living law within the hierarchy of legal norms. Without such a framework, the integration of customary law into national justice risks being selective, politically influenced, or vulnerable to legal uncertainty.

National-level legal studies further show that the institutional recognition of customary law is uneven across sectors. Customary norms are increasingly accommodated in environmental regulation, land law, and restorative justice practices, yet remain highly contested in criminal law and marriage law, especially when normative values conflict with gender equality and child protection principles. In Aceh, Papua and Lombok, for example, the incorporation of religious and customary criminal provisions has generated intense debate over interlegality, legal autonomy and national

<sup>2</sup> Butt, S. "Religious conservatism, Islamic criminal law and the judiciary in Indonesia: a tale of three courts," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018): 402–434

<sup>3</sup> Maheswara, I. B. Y., and Artawan, I. N. "Model Pluralisme Hukum Dalam Pemanfaatan Tanah Pelaba Pura Di Kota Denpasar," *VIDYA WERTTA: Media Komunikasi Universitas Hindu Indonesia* 4, no. 2 (2021): 36–48

<sup>4</sup> Fatmawati, I. "The Existence of Customary Law as Living Law of the Indonesian Nation," in *Proceedings of International Conference on Islamic Community Studies*, December 2023, 111–121.

<sup>5</sup> Roziqin, R., Hakim, M., and Dimyati, D. "Kepastian Hukum Pengaturan Hak Atas Tanah Dalam Pluralisme Hukum," *Journal de Facto* 11, no. 1 (2024): 135–145

integrity<sup>6</sup>. These dynamics demonstrate that the question is not merely whether customary law exists, but how it should be positioned within the Indonesian legal hierarchy.

Internationally, the recognition of customary law is often framed within human-rights-based pluralism, which argues that indigenous legal identity must be preserved as long as it does not violate universal rights principles. This model increasingly shapes transnational legal discourse and informs policy directions of multilateral organizations. Because Indonesia participates in these global frameworks, pressures for rights-aligned customary law reforms are expected to expand in the future<sup>7</sup>. Yet, there is limited consensus regarding how legal pluralism should be harmonized with legally enforceable human rights obligations without dismantling cultural authority.

Based on recent academic mapping, there remains a significant research gap. First, Manse (2024) in *The plural legacies of legal pluralism: local practices and contestations of customary law in late colonial Indonesia* examines customary law from a historical-colonial perspective, but does not analyze its normative consequences for modern criminal law. Second, Utama (2021) in *Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system* explores integration barriers, but does not propose a theoretical placement of customary law within the legal hierarchy. Third, Setiawan et al. (2024) in *Juridical Study of Customary Law in the Indonesian National Legal System* focus on constitutional recognition but do not evaluate how interlegal conflicts should be resolved when statutory law contradicts adat. Thus, previous research has not answered the central question regarding the juridical positioning of customary law within the Indonesian legal system under the paradigm of legal pluralism.

The novelty of this research lies in constructing a comprehensive theoretical analysis to position customary law as living law within Indonesia's legal hierarchy, using the legal pluralism paradigm as the central analytical lens. Through doctrinal reasoning, the study explores how customary norms coexist and interact with statutory provisions, how interlegal conflicts should be resolved, and how legal certainty can be ensured without diminishing cultural legitimacy. The purpose of this research is to analyze the existence of customary law as living law within Indonesia's legal system and to formulate a theoretically grounded conceptual placement of customary law in the structure of national legal norms to ensure legal certainty, coherence, and cultural justice.

## METHODS

This study employs a normative juridical research method, which examines legal concepts, statutory regulations, jurisprudence and doctrine through legal reasoning and conceptual interpretation. Normative juridical research focuses on identifying the ratio legis behind legal norms and determining their ideal conceptual structure within the legal system.<sup>8</sup> Data sources consist of primary legal materials in the form of laws and judicial decisions, and secondary legal materials in the form of books, journal articles and academic publications relating to legal pluralism and customary law.

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<sup>6</sup> Sumardi, D., Lukito, R., and Ichwan, M. N. "Legal pluralism within the space of Sharia: Interlegality of criminal law traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 426–449

<sup>7</sup> Rochaeti, N., and Muthia, N. "Socio-legal study of community participation in restorative justice of children in conflict with the law in Indonesia," *International Journal of Criminology and Sociology* 10 (2021): 293–298.

<sup>8</sup> Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006)

The analytical technique used is conceptual and statutory interpretation through deductive reasoning to formulate the theoretical placement of customary law within Indonesia's legal hierarchy. This method aligns with legal research methodology frameworks described by Soerjono Soekanto in *Pengantar Penelitian Hukum* and Peter Mahmud Marzuki in *Penelitian Hukum*, which emphasize that normative analysis must systematically evaluate norms to identify legal coherence, contradictions and gaps.<sup>9</sup> The research also employs legal syllogism to align philosophical justifications for the recognition of customary law with doctrinal and constitutional foundations using a structured normative logic model.<sup>10</sup>

## RESULTS AND DISCUSSION

### The Interaction between State Law and Customary Law within Indonesia's Legal Hierarchy

The interaction between customary law and state law is one of the most defining components of Indonesian legal pluralism because it directly influences how legal authority, legitimacy and dispute resolution are constructed in society. On the one hand, the state seeks to maintain legal certainty through codified norms applied uniformly across the nation. On the other hand, customary law functions as a living social mechanism rooted in community identity and cultural continuity. These dual normative systems produce a layered legal reality in which individuals and communities negotiate legal authority according to context, values and social relationships. In practice, many regions demonstrate that community members continue to refer to ancestral legal traditions regarding inheritance, land, family obligations and punishment, even when statutory law provides different mechanisms.<sup>11</sup> This phenomenon highlights that legality in Indonesia is not derived exclusively from legislation but from layered normative consciousness that coexists within the social fabric.

The interaction between these dual systems becomes especially evident when courts handle cases involving customary communities. Judges often face dilemmas in choosing whether to prioritize statutory law or customary principles. In some instances, courts uphold customary norms by considering community consensus or local wisdom as a basis for legal reasoning. In other cases, however, judgments prioritize statutory provisions under the argument of maintaining legal certainty, thereby disregarding customary processes. This inconsistency demonstrates the absence of a holistic doctrinal framework guiding the legal positioning of customary law, causing uncertainty and potential injustice for indigenous communities.<sup>12</sup> The fragmentation becomes even more problematic when legal pluralism intersects with political sensitivities, such as land conflicts, natural resource exploitation and criminal matters, in which the interests of the state, market and community are not aligned.

Customary law continues to exist and function not only because of historical continuity but also because of the strong socio-cultural belief that law is inseparable from moral, spiritual and relational obligations. Many adat sanctions emphasize community reconciliation, social harmony and symbolic restoration of honor rather than punishment. These principles differ sharply from the punitive orientation of the formal criminal justice system. Researchers note that while state law emphasizes

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<sup>9</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986)

<sup>10</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, edisi terbaru).

<sup>11</sup> Manse, M. "The plural legacies of legal pluralism: local practices and contestations of customary law in late colonial Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (2024): 328–348

<sup>12</sup> Utama, T. S. J. "Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 269–289

deterrence, customary law prioritizes social equilibrium, suggesting that competing models of justice operate simultaneously within society.<sup>13</sup> This conceptual difference explains why customary law continues to be embraced not as an alternative to state law but as a reflection of cultural identity and community coherence.

The integration of customary law into the national legal hierarchy requires theoretical clarity about whether it functions as an independent normative source or as a supplementary component of statutory law. Empirical studies affirm that neither complete incorporation nor full separation is feasible. Attempts to absorb customary law entirely into statutory frameworks risk stripping it of its contextual meaning, while detaching it from state authority weakens legal certainty and enforcement mechanisms<sup>14</sup>. Hence, the key challenge is creating a legal structure that allows customary law to operate autonomously in culturally relevant domains while maintaining coherence with national human-rights principles and constitutional mandates.

Legal pluralism provides the most relevant paradigm to analyze this dynamic because it acknowledges the coexistence of multiple legal orders within a single political unit. Instead of treating customary law as inferior or informal, legal pluralism conceptualizes it as a legitimate normative system whose validity stems from community acceptance rather than state recognition. The pluralistic approach does not deny the necessity of state law but emphasizes that normative legitimacy must reflect the social contexts in which legal authority is exercised.<sup>15</sup> By adopting this framework, the Indonesian legal system would be better positioned to create a balanced model that respects ancestral legal identity without sacrificing legal certainty.

However, the pluralism framework alone cannot resolve inter-normative conflicts if the hierarchical placement of customary law remains undefined. Without determining the doctrinal relationship between statutory and customary norms, judges and policymakers will continue to interpret the interaction arbitrarily. Additionally, the increasing formalization of customary sanctions in some regions, particularly in Aceh, reveals that unregulated autonomy can risk conflict with constitutional guarantees and individual protections.<sup>16</sup> Therefore, the question is not whether customary law should exist but how it should be positioned, limited and harmonized within the architecture of national law.

## **Normative Conflicts and Harmonization Strategies between Living Law and State Law**

Normative contradictions emerge when customary obligations and statutory legal norms impose different or incompatible requirements on individuals. These contradictions can arise in matters of land control, marriage, inheritance, community sanctions and criminal punishment. In regions where customary authority remains strong, individuals may be socially compelled to comply with adat sanctions, even when such sanctions conflict with statutory norms. Legal scholarship notes that such conflicts can position citizens in a legal dilemma, where complying with one legal order results in

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<sup>13</sup> Butt, S. "Religious conservatism, Islamic criminal law and the judiciary in Indonesia: a tale of three courts," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018): 402–434

<sup>14</sup> Maheswara, I. B. Y., and Artawan, I. N. "Model Pluralisme Hukum Dalam Pemanfaatan Tanah Pelabuh Pura Di Kota Denpasar," *VIDYA WERTTA: Media Komunikasi Universitas Hindu Indonesia* 4, no. 2 (2021): 36–48

<sup>15</sup> Setiawan, I., Wahyu, A. M., Rahman, A., and Sutrisno, A. "Juridical Study of Customary Law In The Indonesian National Legal System," *Asian Journal of Social and Humanities* 2, no. 8 (2024): 1824–1831.

<sup>16</sup> Fatmawati, I. "The Existence of Customary Law as Living Law of the Indonesian Nation," in *Proceedings of International Conference on Islamic Community Studies*, December 2023, 111–121

violating another.<sup>17</sup> Because formal criminal law prioritizes uniformity while customary sanctioning prioritizes community legitimacy, the absence of clear hierarchy produces uncertainty and potential injustice.

Bali, Aceh and Dayak regions illustrate how normative conflicts manifest in land tenure matters. Customary law emphasizes communal ownership and ancestral guardianship, while statutory law protects individual land titles. This contrast creates overlapping claims, bureaucratic disputes and opportunities for exploitation by commercial interests. Comparative studies show that not only do normative systems differ in content, but their values and objectives differ structurally: customary law prioritizes cultural continuity, while statutory law prioritizes economic certainty. Harmonization is therefore not merely a procedural exercise but a philosophical negotiation between values.

Criminal justice conflicts constitute the most serious normative tensions. Some customary sanctions involve public shaming, restitution, symbolic purification rituals or corporal components. While communities consider these culturally necessary to restore social balance, statutory criminal law rejects them on the grounds of human rights. In Aceh, the incorporation of religious-customary punitive systems has generated debates regarding whether regional autonomy may override national and constitutional boundaries. Some scholars warn that selective recognition of customary criminal provisions risks fragmenting the national criminal law and undermining judicial authority<sup>18</sup>. Yet others argue that excluding customary law entirely from criminal discourse deprives communities of meaningful justice solutions that resonate with local values.<sup>19</sup>

To conceptualize how these conflicting systems operate, a summary model is presented below.

Normative System	Foundational Principle	Primary Objective	Legal Outcome Tendency	Risk if Dominant
State Law	Statutory legality	Legal certainty and uniformity	Deterrence, punishment	Cultural alienation and legal rigidity
Customary Law	Cultural legitimacy	Social harmony and reconciliation	Restorative sanctions and communal resolution	Rights violations and normative fragmentation

The table above highlights that conflict is not simply a matter of overlapping legal fields but reflects opposing normative philosophies. If state law dominates excessively, legal homogeneity may weaken cultural identity and exclude contextual justice principles. If customary law dominates excessively, citizens may be exposed to unequal protections and rights-discriminatory sanctions. Therefore, harmonization should not aim to replace one system with another but to construct a tiered-coexistence

<sup>17</sup> Roziqin, R., Hakim, M., and Dimyati, D. "Kepastian Hukum Pengaturan Hak Atas Tanah Dalam Pluralisme Hukum," *Journal de Facto* 11, no. 1 (2024): 135–145

<sup>18</sup> Rani, F. A., Fikri, F., and Mahfud, M. "Islam and National Law: A Formal Legal Review on Sharia Laws in Aceh," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 20, no. 1 (2020): 47–57

<sup>19</sup> Sumardi, D., Lukito, R., and Ichwan, M. N. "Legal pluralism within the space of Sharia: Interlegality of criminal law traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 426–449

model in which customary law governs culturally embedded private and communal matters, while statutory law governs criminal and constitutional protections.

Harmonization strategies proposed in legal scholarship emphasize three core principles: proportional autonomy, normative boundaries and procedural integration. Proportional autonomy recognizes customary jurisdiction within defined cultural spheres particularly land tenure, inheritance and community restorative processes, rather than across all legal domains.<sup>20</sup> Normative boundaries ensure that customary norms do not conflict with constitutional guarantees or human-rights principles, thereby protecting vulnerable individuals such as women and children. Lastly, procedural integration empowers judges to apply customary values through judicial reasoning as long as constitutional standards are maintained. This approach enables pluralism without sacrificing legality.

Applying these harmonization strategies requires strengthening institutional infrastructure. National courts need clearer doctrinal guidelines regarding judicial recognition of customary law, legislative drafting should include mechanisms for normative coordination and customary councils require procedural alignment with constitutional safeguards. Regional regulations must also be evaluated to ensure they reinforce rather than fragment national integrity. Without these institutional foundations, legal pluralism may become a justification for political opportunism rather than a framework for legal justice.<sup>21</sup>

### **Doctrinal Placement of Customary Law within Indonesia's Legal System under the Framework of Legal Pluralism**

Determining the doctrinal position of customary law within the Indonesian legal hierarchy is fundamental for resolving the tension between cultural legitimacy and legal certainty. If customary law is not given a clear theoretical status within the national legal structure, its implementation will remain fragmented and unpredictable. Courts, regional governments and customary councils will continue to interpret the authority of living law according to their own institutional preferences rather than through constitutional coherence. Scholars assert that defining the normative placement of customary law is not merely an academic exercise, but a doctrinal necessity to prevent the instrumentalization of customary authority for political or commercial interests.<sup>22</sup> A legal system that simultaneously recognizes and marginalizes customary law without articulating its proper jurisdiction creates structural uncertainty that weakens both state law and community-based justice.

One of the core challenges in doctrinal placement is the need to reconcile the philosophical foundations of pluralism with the hierarchical character of the Indonesian legal system. The adoption of legal pluralism acknowledges the coexistence of multiple normative systems, yet the Indonesian legal order demands a normative hierarchy in which constitutional principles remain supreme. This dual imperative requires a theoretical model that allows customary law to function as an autonomous normative authority in culturally embedded domains, while ensuring that it does not conflict with constitutional duties and human rights protections. Contemporary legal debates emphasize that the goal is not to determine whether customary law is superior or

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<sup>20</sup> Rochaeti, N., and Muthia, N. "Socio-legal study of community participation in restorative justice of children in conflict with the law in Indonesia," *International Journal of Criminology and Sociology* 10 (2021): 293–298

<sup>21</sup> Mammun, M. K., and Viutari, A. "Penguatan Hukum Adat Dalam Politik Hukum Nasional (Integrasi untuk Penguatan Pluralisme Hukum)," *Tanjungpura Law Journal* 9, no. 2 (2021): 197–219

<sup>22</sup> Arman, Z., and Riyanto, A. "Mengembangkan Pluralisme Hukum Sebagai Pondasi Hukum Masa Depan Indonesia," *Fundamental: Jurnal Ilmiah Hukum* 12, no. 2 (2023): 403–415

inferior to statutory norms, but to clarify the limits, mechanisms and consequences when customary provisions intersect with state law.<sup>23</sup> Without such doctrinal clarity, judicial decisions involving customary subjects risk becoming inconsistent and potentially discriminatory.

Theoretical developments in the politics of legal pluralism suggest that doctrinal placement is most effective when it is substantive rather than territorial. Efforts to confine customary law to specific geographic territories have repeatedly failed because cultural belonging is not strictly territorial and because migration and urbanization have reshaped identity boundaries. Instead, scholars emphasize that doctrinal placement must be domain-based: customary law should be authoritative in matters where cultural identity and ancestral relations define legal rights and obligations, such as inheritance, lineage, community sanctions and traditional land tenure.<sup>24</sup> At the same time, statutory law must prevail when cases involve legal protections with universal consequences, such as criminal punishment, gender equality and constitutional rights. This model does not reject the authority of customary law but contextualizes it within appropriate substantive domains.

Judicial practice highlights the importance of doctrinal guidance for case resolution. In some cases, courts have used customary law as a basis for judicial reasoning when customary principles align with community justice expectations. In other cases, however, courts disregard customary reasoning on the grounds that it lacks statutory formality, even when community consensus supports its application. These contradictory outcomes stem not from judicial discretion alone but from the absence of legal standards that define when customary law should be applied and how it should interact with statutory norms.<sup>25</sup> Scholars note that this inconsistency sends conflicting signals to customary communities and weakens the institutional trust necessary to sustain a pluralistic legal system.

The integration of customary law into statutory language, particularly within new penal legislation, introduces further complexity. The Indonesian Criminal Code (KUHP) now allows certain customary sanctions to be recognized as sanctions, but it does not provide doctrinal criteria for determining which customary provisions meet constitutional boundaries. Without explicit theoretical parameters, this legislative recognition risks inconsistent interpretation and selective enforcement. Legal scholars argue that formal recognition without doctrinal boundaries threatens to transform customary law into an instrument of regional political influence rather than an authentic living law grounded in cultural legitimacy.<sup>26</sup> Therefore, doctrinal placement must be accompanied by an analytical framework that protects customary norms from politicization while preserving human-rights safeguards.

To conceptualize a coherent doctrinal placement, legal pluralism must be understood not as a parallel system but as a normative ecosystem. Within this ecosystem, customary law operates as a primary legal authority in culturally embedded areas of life, while statutory law maintains supremacy in matters affecting broader

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<sup>23</sup> Utama, T. S. J. "Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 269–289

<sup>24</sup> Maheswara, I. B. Y., and Artawan, I. N. "Model Pluralisme Hukum Dalam Pemanfaatan Tanah Pelabuh Pura Di Kota Denpasar," *VIDYA WERTTA: Media Komunikasi Universitas Hindu Indonesia* 4, no. 2 (2021): 36–48

<sup>25</sup> Rochaeti, N., and Muthia, N. "Socio-legal study of community participation in restorative justice of children in conflict with the law in Indonesia," *International Journal of Criminology and Sociology* 10 (2021): 293–298

<sup>26</sup> Fatmawati, I. "The Existence of Customary Law as Living Law of the Indonesian Nation," in *Proceedings of International Conference on Islamic Community Studies*, December 2023, 111–121

public rights, constitutional guarantees and criminal consequences. This ecosystemic model ensures that customary law continues to operate according to local social logic while preventing normative fragmentation. The sustainability of legal pluralism depends not on segregating normative systems, but on creating jurisprudential tools that articulate when and how interlegal conflicts must be resolved.<sup>27</sup> In this sense, doctrinal placement becomes the foundation for normative harmonization, rather than merely a symbolic recognition of customary authority.

The doctrinal structure also has implications for legal development and national identity. When customary law is formally acknowledged as a living law within the national legal hierarchy, the legal system reflects Indonesia's diversity while maintaining constitutional coherence. This balance strengthens community trust toward state law and enhances legal legitimacy in areas where statutory uniformity has historically provoked resistance. Conversely, if customary law remains in a legal vacuum where it is simultaneously recognized and disregarded, the legal system risks fostering normative exclusion, uncertainty and conflict. For this reason, legal scholars advocate for a structured pluralistic model that ensures that customary law neither dominates nor is marginalized, but coexists within a system of defined jurisdictional principles.<sup>28</sup> The future of Indonesia's legal identity depends on whether customary law is treated as a historical remnant or as a living normative authority that contributes to legal justice.

## CONCLUSIONS

This study demonstrates that customary courts possess strong doctrinal foundations for resolving minor violations in Indonesia and can operate constitutionally so long as they remain aligned with legal certainty, equal rights before the law, and human dignity. Evidence shows that customary courts provide an accessible mechanism for restoring social harmony, preventing conflict escalation, and achieving resolution more efficiently than formal courts. Their strengths lie in reconciliation, proportional sanctions, and community participation, which align with restorative justice principles embedded in national criminal reforms. However, full legal autonomy for customary courts is inappropriate without safeguards that protect procedural fairness and vulnerable groups.

A national legal framework for customary adjudication is needed to harmonize regional differences and ensure legal certainty, jurisdictional proportionality, and enforceability of decisions. Customary courts should be recognized as competent to resolve minor violations when sanctions do not violate human rights, participation is voluntary, and judicial review remains available through state courts. Strengthening customary institutions through regulation, interinstitutional cooperation, and oversight will allow Indonesia to preserve the value of local wisdom while ensuring consistency with national constitutional principles. Under these conditions, customary court authority can become a permanent and indispensable component of Indonesia's pluralistic justice system.

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<sup>27</sup> Sumardi, D., Lukito, R., and Ichwan, M. N. "Legal pluralism within the space of Sharia: Interlegality of criminal law traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 426–449

<sup>28</sup> Setiawan, I., Wahyu, A. M., Rahman, A., and Sutrisno, A. "Juridical Study of Customary Law In The Indonesian National Legal System," *Asian Journal of Social and Humanities* 2, no. 8 (2024): 1824–1831

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