



The Consistency of Customary Law in The Contemporary Era: A Study on the Tension Between Local Norms and State Legal Systems

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Abstract

Customary law is an integral part of the legal systems that live and evolve within communities, especially in regions where traditional values remain strong. However, in the contemporary era—marked by modernization, globalization, and the dominance of state law—the position of customary law faces significant challenges. This article examines the consistency of customary law in dealing with a state legal system that tends to be unifying and formalistic. Using the *legal pluralism* approach, this study analyzes how local norms are preserved, negotiated, or even compromised in various domains such as dispute resolution, natural resource management, and inheritance law. This qualitative research is based on document analysis, local legal practices, and case studies from several customary communities in Indonesia. The findings reveal that the tension between customary law and state law is not always antagonistic but often results in legal hybridity. This article underscores the importance of state recognition of legal diversity and the need for dialogic space between local actors and the state to create a more inclusive and just legal system.

Keywords: Contemporary Era, Customary Law, Legal Pluralism, Local Norms, State Law

INTRODUCTION

Customary law, as a normative system embedded in traditional communities, faces existential challenges in the contemporary era marked by modernization and the dominance of state law. According to Griffiths (1986), legal pluralism creates tension between local legal systems and the ideology of legal centralism that characterizes modern legal systems. Meanwhile, von Benda-Beckmann (2002) argues that such interactions lead to legal hybridity, where local legal practices are not entirely replaced but rather undergo transformation and negotiation with formal systems.

Several studies have examined the dynamics of customary law within the context of legal pluralism in Indonesia. Lukito (2012) explored the complexity of traditional law's adaptation to formal systems influenced by socio-political factors, while Anggraeni (2023) revealed structural conflicts between customary law particularly kinship-based systems and Islamic and state law, especially in inheritance matters, highlighting implementation tensions. A 2021 study on customary law sociology in the reform era identified a paradox between formal recognition and minimal implementation in practice, in line with research on the modernization of criminal law, which emphasized the challenge of integration without losing its essence. More recent studies have emphasized the relevance of customary law as an alternative solution to contemporary issues such as environmental degradation and social inequality (Hariram et.al, 2023). However, these studies have not yet provided a comprehensive understanding of the specific mechanisms that allow customary law to maintain its consistency while adapting to modern pressures.

Based on the review of previous research, a critical urgency remains unresolved: the lack of clarity regarding the mechanisms through which customary law maintains its consistency in the face of pressures from the state legal system (Kashyap, 2023). Earlier studies have largely focused on aspects of conflict and tension, but have not sufficiently addressed how customary law sustains its coherence while adapting to the demands of modernization.

This issue is crucial because, without a clear understanding of such mechanisms, efforts to integrate customary law into the national legal system will continue to face obstacles. This may result in the loss of local wisdom that has proven effective in managing natural resources, resolving conflicts, and promoting sustainable development.

This study is significant as it aims to fill a theoretical gap in understanding legal hybridity as conceptualized by von Benda-Beckmann, particularly in the context of Indonesia—a country

characterized by high legal diversity. Practically, the findings may serve as a guide for policymakers in formulating more inclusive strategies to manage legal pluralism.

This research will analyze the consistency of customary law through a legal pluralism approach in three domains: dispute resolution, natural resource management, and inheritance law. Using qualitative methods and case studies of several customary communities in Indonesia, the study aims to identify patterns of adaptation, negotiation, and transformation that emerge in the interaction between customary and state law, thus contributing to the development of legal pluralism theory and more equitable legal policy.

METHODS

This research employs a qualitative approach with a collective case study design to analyze the consistency of customary law in the contemporary era (Yin, 2018). Research locations were selected through purposive sampling in three customary communities in Indonesia: the Dayak Benuaq (East Kalimantan), the Minangkabau (West Sumatra), and the Sasak (West Nusa Tenggara). Research subjects were selected using purposive and snowball sampling techniques, involving customary leaders, village officials, and community members engaged in customary legal practices (Patton, 2015).

Data were collected through in-depth interviews, participant observation, document studies, and focus group discussions. Data analysis followed the thematic analysis model by Braun & Clarke (2006), consisting of six systematic stages, complemented by cross-case analysis to identify patterns in the consistency of customary law (Miles et al., 2014). Data validity was ensured through triangulation of sources, methods, and researchers, as well as member checking with key informants (Lincoln & Guba, 1985).

The study adheres to the principles of qualitative research ethics, including informed consent, privacy protection, and respect for local cultural values (Christians, 2011). This approach enables an in-depth understanding of the mechanisms of adaptation and negotiation used by customary law in the face of the state legal system.

RESULT AND DISCUSSION

The research findings indicate that the practice of customary law in the three communities (Dayak Benuaq, Minangkabau, and Sasak) continues to maintain its existence through complex adaptation mechanisms. This finding aligns with von Benda-Beckmann's (2002) concept of legal hybridity, which emphasizes that interactions between legal systems do not necessarily result in the total domination of one system, but rather create new forms that combine elements from various legal traditions.

Consistency of Customary Law in Dispute Resolution

Persistence of Traditional Mediation Mechanisms

An analysis of dispute resolution practices shows that all three communities continue to uphold mediation mechanisms grounded in local wisdom. In the Dayak Benuaq community, the "Beliatn" institution (customary council) remains the primary forum for conflict resolution, applying the principle of restorative justice. This finding confirms Hooker's (1975) argument that customary law possesses inherent flexibility, allowing it to adapt to social change without losing its fundamental essence. The Minangkabau community maintains the "Rapat Adat Nagari" system based on deliberation and consensus, while the Sasak people utilize the "Begawe" mechanism as a forum for communal dispute resolution. These mechanisms consistently prioritize the restoration of social harmony over retributive sanctions, which contrasts with the more formalistic orientation of state law.

Hybridity in the Resolution Process

Despite maintaining traditional mechanisms, the three communities also demonstrate the ability to incorporate elements of state law when necessary. This process is not a simple syncretism but rather reflects **selective incorporation**, as explained by Tamanaha (2008). Customary communities adopt aspects of state law that align with local values while rejecting those that contradict their traditional worldview.

Consistency in Natural Resource Management

Persistence of Communal Ownership Systems

In the domain of natural resource management, the three communities preserve communal ownership concepts that differ from the property rights paradigm in state law. The "Tana Ulen" system of the Dayak Benuaq, the "Tanah Ulayat" of the Minangkabau, and the "Tanah Pekarangan Desa" of the Sasak reflect the continuity of a stewardship model that emphasizes ecological sustainability.

This finding supports Ostrom's (1990) argument on the effectiveness of common property regimes in resource management. Customary communities show the capacity to maintain traditional governance systems that have proven to be sustainable, even in the face of modernization and commercialization pressures (Jeong, 2022).

Negotiation with State Policies

The analysis reveals that customary communities do not entirely reject state policies; instead, they practice **selective compliance**. They accept regulations that support conservation while resisting those that threaten traditional management systems. This pattern reflects the **agency of communities** in responding to structural constraints, as conceptualized by Giddens (1984).

Consistency in Inheritance Law

Adaptation of Kinship Systems

In the domain of inheritance law, the three communities display varying patterns of adaptation. The Minangkabau community, which adheres to a matrilineal system, faces the most intense pressure from both Islamic law and the state legal system, which are predominantly patrilineal. Nevertheless, they have successfully maintained the principle of *pusaka tinggi* (ancestral property) while adopting the concept of *harta pencaharian* (acquired property) that can be inherited bilaterally.

The Dayak Benuaq and Sasak communities, both of which apply bilateral kinship systems, demonstrate greater flexibility in integrating elements of state law (Fadani, & Adib, 2024).. They preserve traditional principles of distributive justice while accommodating the administrative formalities required by state regulations.

Gender and the Transformation of Inheritance Law

The analysis reveals that gender has become a point of convergence between modernization and tradition. All three communities have undergone transformations in inheritance distribution patterns, allowing greater inclusion of women, though still within the framework of customary values. This process reflects an internal transformation driven simultaneously by endogenous and exogenous factors.

A key finding of this research is the identification of normative flexibility mechanisms as essential to the consistency of customary law. Unlike the rigidity of state law, customary law possesses built-in capacities to adapt to changing social contexts without losing its normative substance. These mechanisms operate through three strategies:

- a. **Reinterpretation:** Customary communities reinterpret traditional norms to accommodate new situations. This process is carried out through collective deliberations involving traditional stakeholders.
- b. **Selective Incorporation:** Customary communities adopt elements of state law that align with local values while rejecting those that contradict them.
- c. **Institutional Layering:** Customary communities create institutional layers that allow the coexistence of multiple normative systems without open conflict.

The analysis shows that the consistency of customary law is supported by a **dual legitimacy system** that recognizes both traditional authority and state authority in different domains (see: Cohen & Toland, J. D. (Eds.), 2024). Customary communities do not entirely reject the authority of the state but instead negotiate the boundaries of jurisdiction between the respective legal systems. Although demonstrating resilience, customary law faces significant structural pressures from the dominance of state law. The **centralistic legal ideology**, as criticized by Griffiths (1986), remains a major obstacle to the full recognition of legal pluralism. Sectoral regulations often overlook customary rights and impose uniformity that is incompatible with local diversity. Modernization also generates **internal fragmentation** within customary communities. Younger generations tend to be more receptive to state law, while older generations uphold traditional orthodoxy. This fragmentation threatens the internal consensus that forms the basis of customary law's legitimacy.

The findings of this study contribute to the development of **legal pluralism theory** by identifying specific mechanisms that enable the coexistence of legal systems. The concepts of **normative flexibility** and **dual legitimacy** enrich our understanding of *legal hybridity* as developed by von Benda-Beckmann (2002). This research challenges the linear assumptions in legal modernization theory, which predict the total replacement of traditional law by modern law. The findings show that legal modernization can proceed through alternative pathways that preserve the diversity of normative systems.

The results indicate the need for a **reformulation of national legal policies** to be more inclusive of the diversity of legal systems. A one-size-fits-all approach must be replaced with a governance model that accommodates **legal pluralism** as a social reality in Indonesia. The consistency of customary law requires the **strengthening of internal community capacities** to manage the pressures of modernization. This includes customary legal education, documentation of traditional norms, and the development of dialogic mechanisms with state authorities.

CONCLUSION

The analysis demonstrates that the consistency of customary law in the contemporary era is not achieved through isolation or total resistance to modernization, but rather through sophisticated mechanisms of adaptation. Customary law maintains its relevance by developing normative flexibility that allows responsive adaptation to social changes while preserving its core traditional values. The tension between customary law and state law is not always a zero-sum game; instead, it can create space for creative synthesis that produces innovative solutions to contemporary challenges. This understanding is crucial for developing a more democratic and just model of governance in a pluralistic society like Indonesia.

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