

The Status of Adat Law in Traditional Courts: Between Validity and Legitimacy in the Eyes of National Law

Olyvia Rosalia¹, Dwi Nurahman²

¹ Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi, Indonesia

² Universitas Mitra Indonesia

Email: olyviarosalia@gmail.com

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ABSTRACT

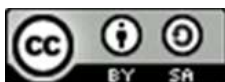
This study examines the position of customary law within Indonesia's customary courts, exploring the delicate balance between legality and legitimacy from the perspective of national law. Customary law holds a significant place in Indonesia's pluralistic legal system, recognised constitutionally and through various statutes such as Law Number 6 of 2014 on Villages and Law Number 48 of 2009 on Judicial Power. However, its practical enforcement and integration remain challenged by legal ambiguities and limited formal recognition, particularly concerning customary courts' jurisdiction and authority. This research employs a normative legal approach, analysing relevant legislation, constitutional provisions, and judicial decisions to understand how customary law navigates between formal legality and the social legitimacy derived from indigenous communities. The findings reveal that while customary law is socially and culturally legitimate within indigenous societies, it often occupies a marginalised position within the state legal framework. Customary courts play a crucial role in mediating disputes and preserving indigenous identity, yet face constraints due to their limited legal empowerment. The study also highlights the need for comprehensive legal reforms and policies that enhance customary law's status, promote cooperation between customary and state legal systems, and respect cultural diversity. Comparative insights from other pluralistic jurisdictions further underscore the potential for harmonising customary and national law to achieve justice and social cohesion in Indonesia.

Keywords: Customary law, customary courts, legality, legitimacy, Indonesia, pluralistic legal system, indigenous rights, legal pluralism.

INTRODUCTION

Indonesia stands as a remarkable example of legal diversity, with its framework shaped by the cohabitation of multiple legal systems. The nation's legal pluralism is characterised by the simultaneous presence of state law, Islamic jurisprudence, and long-standing customary law—commonly referred to as hukum adat. This latter form of law, deeply intertwined with the cultural heritage of indigenous groups, is not merely a set of norms but a reflection of community identity and historical continuity. Unlike formal legal codes, adat law emerges from communal experience and is upheld through lived practice, particularly among traditional societies. As such, it demands careful and respectful consideration within the broader pursuit of a just and inclusive national legal order.

The continuing relevance of customary law is perhaps most evident in the enduring role of adat courts, which remain active in many regions across the archipelago. Though these courts operate outside formal legal institutions, their authority is rarely questioned



within the communities they serve. Rooted in consensus-building, moral reasoning, and traditional wisdom, the processes employed by adat courts are often perceived as fairer and more immediate than those of formal judicial proceedings. For many local residents, resolving disputes through such community-based mechanisms offers not only cultural resonance but also practical efficiency. Nevertheless, despite their social recognition, adat courts have yet to be fully incorporated into Indonesia's formal legal framework, particularly regarding questions of procedural validity and enforceable authority under national law.

Although foundational legal instruments such as the Constitution and specific laws acknowledge the existence and rights of indigenous populations—including their traditional dispute resolution methods—such recognition tends to be fragmented and lacks the systematic integration needed for uniform application. The absence of a coherent regulatory structure defining the jurisdiction, composition, and legal status of adat courts at the national level has resulted in significant inconsistencies. This disjunction between grassroots legitimacy and formal legal recognition often leads to situations where decisions respected by local communities are not given weight within state institutions. Thus, the customary legal system finds itself in a liminal space—socially accepted yet legally ambiguous.

At the core of this tension lies the issue of validity. Customary laws, by their very nature, are seldom codified or formally recorded. Their oral and flexible character, while culturally meaningful, does not easily align with the requirements of formal legal reasoning. Judges and law enforcement officials operating within the framework of state law often struggle to accommodate or reference adat rulings in their decisions due to this lack of documentation and standardisation. This structural incompatibility has tangible consequences, especially when indigenous communities encounter external parties or state apparatuses that are either unaware of or dismissive toward local customary norms. Hence, the question of adat law's validity transcends legal theory and directly impacts the protection and recognition of indigenous rights on the ground.

Despite these legal constraints, the social authority of customary law within local communities remains remarkably strong. Its legitimacy is not derived from formal enactment by state bodies, but from the collective acceptance and historical continuity within the society that lives by it. The adjudicative processes of adat courts, involving respected elders, communal deliberation, and culturally relevant principles, foster decisions that are both morally binding and practically effective. This form of legitimacy—rooted in tradition and social cohesion—often provides a stronger foundation for compliance and restoration than formal legal channels. However, this popular legitimacy frequently collides with the expectations and requirements of national law, revealing a complex dialectic between state-centred legal validation and community-based moral authority.

The juxtaposition of legal validity and societal legitimacy underscores the pressing necessity for a thoughtful reconciliation between the state's legal apparatus and indigenous legal traditions. Harmonisation, in this context, must not be interpreted as an attempt to assimilate or dominate, but rather as a means of creating a respectful coexistence in which both systems are recognised on equitable terms. Such an approach would enable the national legal system to more accurately reflect the lived realities of its diverse population. With effective legal accommodation, disputes between these systems

could be reduced, and indigenous communities would benefit from equal protection under the law without compromising their cultural autonomy.

Against this multifaceted backdrop, there arises a compelling need to explore more deeply the position of customary law within the adat justice system—especially regarding its perceived legitimacy and formal legal status under national law. Such scholarly engagement is essential, not merely as an academic exercise but as a foundation for legal reform that is both context-sensitive and justice-oriented. By examining this intersection critically, it becomes possible to envision a more cohesive legal landscape—one in which customary norms are neither marginalised nor romanticised, but acknowledged as a vital component of Indonesia's evolving legal identity.

METHODS

This study employs a normative legal research method (also known as doctrinal legal research). The primary focus of this approach is on examining legal principles, statutes, and scholarly opinions related to customary law and its status within the national legal system. This method relies on reviewing existing legal materials rather than collecting empirical data, aiming to provide a thorough and systematic analysis of the applicable legal framework and doctrines pertinent to the research topic. Several legal approaches underpin this normative research. Firstly, the statute approach is utilised to analyse relevant constitutional provisions and legislation, including the 1945 Constitution, laws governing customary law, judicial authority, and indigenous communities. Secondly, the conceptual approach facilitates an in-depth exploration of key concepts such as legal validity, legitimacy, and legal pluralism. Thirdly, the historical approach traces the evolution of customary law's position in Indonesia's legal history, providing context for its current status. Optionally, a comparative approach may be introduced to examine how other pluralistic legal systems address similar issues, thus enriching the analysis.

In normative legal research, legal materials form the foundational basis for analysis and argumentation. This study classifies legal materials into three main categories to ensure a systematic and comprehensive examination. Firstly, primary legal materials consist of binding legal sources that serve as the principal references within the national legal system. These include the 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945), which enshrines the recognition of indigenous communities and their customary rights; legislation such as Law Number 6 of 2014 concerning Villages (Undang-Undang Nomor 6 Tahun 2014 tentang Desa), Law Number 48 of 2009 concerning Judicial Power (Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman), and other statutes governing customary law and indigenous peoples. Additionally, judicial decisions from the Constitutional Court (Mahkamah Konstitusi) and the Supreme Court (Mahkamah Agung) are reviewed for legal interpretations regarding the status of customary law within the national judicial framework. Regional regulations (Peraturan Daerah) addressing customary law at the local level are also considered to capture the application of customary legal principles in practice.

Secondly, secondary legal materials provide interpretative, analytical, and theoretical support for the primary sources. These comprise scholarly books, academic journal articles, theses, dissertations, and expert opinions that explore the legitimacy, validity, and pluralistic nature of customary law within Indonesia's legal system. Such

literature enriches the study by offering historical context and critical perspectives. Lastly, tertiary legal materials include reference tools such as legal dictionaries, encyclopaedias, and glossaries. These resources aid in clarifying terminology and concepts relevant to the legal discourse, ensuring precise and consistent use of language throughout the research. This categorisation of legal materials enables a thorough and well-grounded normative analysis, which is essential for addressing the research questions regarding the legal position of customary law within Indonesia's national legal order in terms of both validity and legitimacy.

Data collection is conducted through library research, entailing a systematic review of legal documents, official publications, and academic literature. The process involves sourcing statutory texts and case law from official government databases and reputable legal repositories. Additionally, peer-reviewed journals and academic databases are utilised to gather contemporary analyses and doctrinal discussions relevant to customary law and its legal recognition. The analysis is carried out using a descriptive-analytical technique, wherein the legal materials are carefully described and critically examined to uncover their implications on the position of customary law in the national legal system. The study compares and contrasts customary legal norms with statutory provisions, assessing both their legal validity and societal legitimacy. Conceptual analysis is employed to clarify complex legal notions, enabling a nuanced understanding of the interplay between state law and customary practices.

This research is both analytical and prescriptive in nature. It not only describes the current legal status of customary law and customary courts but also provides recommendations on how legal integration might be improved. The prescriptive element advocates for a harmonised legal framework that respects customary practices while ensuring compliance with national law, aiming to foster justice and legal certainty for indigenous communities. The choice of a normative legal research method is deliberate, given the study's emphasis on legal norms, doctrines, and statutory interpretation rather than empirical investigation. The method is particularly suitable for examining the intricate relationship between customary law's legitimacy within local communities and its formal validity in national law. By focusing on normative analysis, the study aims to contribute to the discourse on legal pluralism and the formal recognition of indigenous legal systems within the Indonesian legal order.

RESULTS AND DISCUSSION

1. Analysis of the Position of Customary Law within the National Legal System

The position of customary law within Indonesia's national legal system is characterised by a profound complexity that reflects the country's pluralistic legal culture. The 1945 Constitution of the Republic of Indonesia explicitly recognises the existence and rights of indigenous communities (*masyarakat adat*) and their customary laws (*hukum adat*), granting them a constitutional footing. Despite this, the practical integration of customary law into the formal legal system remains fraught with difficulties. This is largely because Indonesia's legal framework is dominated by statutory law, which often operates on principles and structures that differ significantly from those found in customary systems. Consequently, customary law is frequently marginalised or subordinated when it conflicts with national legislation, particularly in cases where customary practices diverge from state policy or legal norms.

Moreover, the pluralistic nature of the Indonesian legal order means that multiple legal systems coexist: state law, customary law, and religious law. This pluralism offers theoretical space for customary law to flourish; however, in practice, it creates overlapping jurisdictions and legal ambiguities that hinder clear legal certainty. This tension is particularly evident in regions where indigenous communities seek to assert their customary rights, often in areas such as land tenure, natural resource management, and dispute resolution. The state's inconsistent recognition and enforcement of customary law contribute to legal uncertainty for these communities, undermining their autonomy and traditional governance structures.

Nonetheless, there have been positive developments in recent decades aimed at strengthening the role of customary law. Legislative reforms, such as Law Number 6 of 2014 concerning Villages, explicitly acknowledge the authority of village governments and customary institutions in managing local affairs, thereby opening avenues for customary law to regain prominence. This evolving legal landscape offers both opportunities and challenges: opportunities to reinforce legal pluralism and indigenous rights, and challenges to harmonise customary law with national legal standards without eroding its cultural distinctiveness. This section aims to unravel these intricate dynamics and assess the prospects for customary law's sustainable integration within Indonesia's national legal system.

2. The Legality of Customary Law from a Juridical Perspective

From a juridical perspective, the validity or legality of customary law hinges on its formal recognition and conformity with the national legal framework. Indonesia's legal system incorporates customary law primarily through legislation and judicial decisions that define its scope and limitations. For instance, Law Number 6 of 2014 concerning Villages acknowledges the authority of village governments and customary institutions in governing customary affairs. Similarly, Law Number 48 of 2009 on Judicial Power recognises the existence of customary courts, albeit with limited jurisdiction and authority.

Despite such recognitions, customary law's legal status remains ambiguous. It is often treated as subordinate to statutory law, and its provisions can be overridden when found inconsistent with national legislation or constitutional principles. The formal legal system requires customary courts and customary law practices to comply with procedural rules and substantive norms established by the state, which may not always align with indigenous customs. This juridical framework raises critical questions about the extent to which customary law can be deemed legally binding and enforceable within Indonesia's courts.

The Supreme Court (Mahkamah Agung) and the Constitutional Court (Mahkamah Konstitusi) have played significant roles in shaping the legal contours of customary law by interpreting the constitution and statutes in ways that both support and limit customary law's applicability. For example, judicial decisions have sometimes reinforced customary rights, particularly regarding land and natural resources, but have also emphasised the supremacy of national legislation in resolving conflicts. This dual approach underscores the juridical tension between recognising customary law's validity and maintaining legal uniformity and sovereignty. Thus, this analysis critically examines how the national legal system negotiates the formal legitimacy of customary law and the institutional challenges inherent in this process.

3. The Legitimacy of Customary Law from Social and Cultural Perspectives

Beyond formal legality, the legitimacy of customary law is fundamentally rooted in its social and cultural acceptance by indigenous communities. Customary law's authority derives from its deep embedding within the lived experiences, traditions, and values of the people who observe it. This social legitimacy manifests through communal consensus, traditional leadership, and the practical effectiveness of customary norms in regulating social behaviour, resolving disputes, and maintaining harmony within indigenous societies.

Customary law reflects centuries-old practices and is intrinsically connected to the cultural identity and worldview of indigenous peoples. It governs vital aspects such as land tenure, marriage, inheritance, and local governance, providing a legal framework that resonates with communal values and social expectations. Its legitimacy is thus continuously reinforced by the community's ongoing participation and adherence, creating a dynamic and evolving system of law that remains relevant and responsive to local needs.

However, the relationship between customary law's social legitimacy and state law's legal authority is often fraught with conflict. The state's imposition of uniform legal standards can undermine customary practices, leading to alienation and resistance among indigenous groups. In some instances, customary law is perceived as incompatible with modern notions of human rights or national development goals, further complicating its legitimacy in the eyes of state authorities. This dissonance raises fundamental questions about whose authority should prevail and how to balance respect for cultural diversity with the need for legal consistency and protection of universal rights.

This section explores these tensions by analysing the ways in which social and cultural legitimacy sustains customary law despite its precarious legal status. It also considers the implications for policy and legal reform aimed at harmonising indigenous customary governance with national legal frameworks in a manner that respects both legal integrity and cultural autonomy.

4. The Role of Customary Courts in Bridging Legality and Legitimacy

Customary courts represent a pivotal mechanism through which the often conflicting realms of formal legality and cultural legitimacy intersect. These courts, embedded within indigenous communities, function primarily as traditional forums for dispute resolution based on long-established customary principles. Their existence embodies the living practice of customary law, providing culturally sensitive and contextually appropriate means of addressing conflicts, restoring social harmony, and reinforcing communal values. Unlike state courts, which are guided by codified laws and formal procedures, customary courts operate through consensus-building, mediation, and the moral authority of customary leaders.

Despite their critical role in maintaining social order within indigenous populations, customary courts face significant obstacles in securing formal recognition and authority within the national legal framework. The Indonesian judiciary system provides limited jurisdiction and legal backing for these courts, often resulting in their decisions being overlooked or challenged by state legal institutions. This legal marginalisation

undermines the effectiveness and authority of customary courts, restricting their capacity to enforce rulings or protect indigenous rights comprehensively.

Nevertheless, customary courts persist as essential institutions, negotiating the delicate balance between upholding traditional legitimacy and adapting to the requirements of national legal standards. Their role extends beyond mere conflict resolution; they act as cultural custodians and key actors in preserving indigenous identity amidst modernisation pressures. By facilitating dialogue between state and customary legal systems, customary courts contribute to the gradual harmonisation of plural legal orders, fostering greater inclusivity and respect for cultural diversity within Indonesia's broader legal landscape.

5. Legal and Policy Implications of the Position of Customary Law

The intricate relationship between legality and legitimacy of customary law carries substantial implications for Indonesia's legal and policy frameworks. Firstly, it necessitates legislative reforms that clearly articulate the status, scope, and enforceability of customary law within the national legal system. Current laws such as Law Number 6 of 2014 on Villages and Law Number 48 of 2009 on Judicial Power provide foundational recognition, yet they fall short of establishing comprehensive and consistent legal protection for customary norms and institutions. Strengthening these laws could involve codifying customary rights more explicitly and granting customary courts enhanced judicial authority.

Policy-wise, recognising the dual dimensions of customary law requires a multi-faceted approach that respects indigenous autonomy while ensuring compliance with national legal principles. Policymakers must prioritise collaboration with indigenous communities, incorporating their perspectives and knowledge in legal drafting and implementation processes. Capacity-building programs aimed at customary institutions and courts could empower them to function effectively within the national legal environment, fostering mutual respect and cooperation between customary and state legal actors.

Furthermore, policy frameworks should address conflicts arising from overlapping jurisdictions and legal uncertainties by developing dispute resolution mechanisms that integrate customary and national legal principles. This integration can enhance legal certainty, protect indigenous rights, and promote social cohesion. Ultimately, such reforms will contribute to a more pluralistic and inclusive legal system that upholds justice both in formal legality and cultural legitimacy.

6. Comparative Analysis with Customary Law Practices in Other Countries

An examination of how other pluralistic legal systems handle customary law offers valuable insights for Indonesia's ongoing legal development. Countries such as Malaysia, South Africa, and Canada provide instructive examples of constitutional and legal recognition of customary law, albeit with varying degrees of integration and autonomy. In Malaysia, for instance, customary laws of indigenous peoples are acknowledged within the federal legal framework, with special provisions allowing customary courts to adjudicate certain matters. South Africa's Constitution explicitly recognises customary law as a source of law, subject to the Constitution's principles, facilitating coexistence between customary and statutory laws. Canada's approach incorporates indigenous legal

traditions through negotiated self-government agreements and recognition of Aboriginal title.

These international experiences demonstrate the importance of formalising customary law's status through constitutional and legislative measures, ensuring it operates in harmony with national legal standards. They also highlight the necessity of fostering ongoing dialogue and partnership between state authorities and indigenous communities to reconcile potential conflicts and promote legal pluralism. By adapting best practices and lessons learned from these countries, Indonesia can advance its legal recognition of customary law in ways that safeguard indigenous rights, enhance legal clarity, and strengthen cultural diversity within its judicial system.

The findings of this study resonate with and extend the conclusions drawn in several recent scholarly works concerning the role and recognition of customary law within pluralistic legal systems. For instance, Nugroho (2021) emphasises the persistent legal ambiguities surrounding customary courts in Indonesia, noting that while constitutional provisions acknowledge customary law, the practical enforcement remains inconsistent due to jurisdictional overlaps and limited statutory support. This aligns closely with our analysis, which highlights the tension between the social legitimacy of customary law and its constrained legal authority under national law.

Moreover, comparative studies such as those by Mbatha (2019) on South Africa's recognition of customary law underline the importance of constitutional entrenchment and legislative clarity in empowering customary institutions. Mbatha's research reveals that constitutional recognition paired with procedural safeguards allows for better integration and coexistence of customary and state legal systems. This supports our recommendation that Indonesia could benefit from similar reforms to enhance the efficacy and legitimacy of its customary courts.

Recent empirical research by Lee and Kumar (2023) on indigenous legal pluralism in Southeast Asia further corroborates the necessity of collaborative governance frameworks. Their findings indicate that inclusive policymaking, which actively involves indigenous communities, fosters greater acceptance and sustainability of customary legal systems. This complements our study's advocacy for participatory legal reform processes that respect cultural diversity while ensuring legal certainty.

Together, these studies reinforce the critical need for Indonesia to move beyond symbolic recognition of customary law toward substantive legal and institutional reforms. By situating our findings within this broader scholarly discourse, the study contributes to an evolving understanding of how pluralistic legal orders can balance legality with cultural legitimacy, ensuring justice for indigenous populations in contemporary legal frameworks.

CONCLUSIONS

This study has highlighted the complex and multifaceted position of customary law within Indonesia's national legal system, situated at the intersection of legality and legitimacy. While the 1945 Constitution and various statutory laws formally recognise the existence and role of customary law, its practical application remains challenged by legal ambiguities, limited enforcement mechanisms, and jurisdictional conflicts with

state law. Customary law continues to derive its legitimacy primarily from the social and cultural acceptance of indigenous communities, where it functions as a vital framework for governance, dispute resolution, and identity preservation. Customary courts serve as crucial institutions bridging the gap between the formal legal system and indigenous customary practices. However, their limited recognition and authority within the national judiciary underscore the ongoing tension between respecting customary autonomy and maintaining legal uniformity. Addressing this tension requires comprehensive legal reforms that strengthen the status of customary law and courts, alongside policies fostering collaboration between state and customary legal actors.

Comparative analysis with other pluralistic legal systems demonstrates that meaningful integration of customary law is achievable through constitutional recognition, legislative clarity, and participatory governance. For Indonesia, embracing legal pluralism that respects both national sovereignty and cultural diversity is essential for ensuring justice and social cohesion. Future research and policy development should focus on refining the legal framework and institutional support for customary law, thereby promoting a balanced coexistence of legal systems that uphold both legality and legitimacy in the eyes of all stakeholders.

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