

## **Recognition of Customary Norms Within the Framework of Indonesian Legal Positivism**

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### **ABSTRACT**

The recognition of customary norms within Indonesia's legal system continues to face challenges due to the dominance of legal positivism, which emphasizes legal certainty through codified regulations. Although Article 18B (2) of the 1945 Constitution acknowledges the existence of indigenous legal communities, its implementation within the national legal system remains limited and conditional, leading to legal uncertainty for indigenous groups. This study aims to analyze how customary norms are recognized within Indonesia's positive legal system and to identify the challenges and opportunities in harmonizing these two legal frameworks. This research employs a normative legal method with a conceptual and statutory approach, analyzed qualitatively using a descriptive-analytical framework. The findings reveal that customary law remains marginalized within the national legal system due to inconsistencies in regulations and court rulings, as well as the absence of a clear harmonization mechanism. The implications of this study emphasize the need for more inclusive legal reforms, enhanced capacity-building for law enforcement officials, and a stronger role for Indigenous communities in legal policymaking. These measures are expected to strengthen the recognition of customary law within the national legal system, contributing to greater substantive justice for Indigenous communities.

Keywords: Indigenous legal communities, Indonesian legal system, Legal pluralism, Legal positivism, Recognition of customary norms

### **ABSTRAK**

Rekognisi norma adat dalam sistem hukum Indonesia masih menghadapi tantangan akibat dominasi positivisme hukum yang menekankan kepastian hukum melalui aturan tertulis. Meskipun Pasal 18B ayat (2) UUD 1945 telah mengakui eksistensi masyarakat hukum adat, implementasinya dalam sistem hukum nasional masih terbatas dan bersyarat, sehingga menimbulkan ketidakpastian hukum bagi komunitas adat. Penelitian ini bertujuan untuk menganalisis bagaimana norma adat direkognisi dalam sistem hukum positif Indonesia serta mengidentifikasi tantangan dan peluang dalam mengharmonisasikan kedua sistem hukum tersebut. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan konseptual dan perundang-undangan, serta dianalisis secara kualitatif dengan pendekatan deskriptif-analitis. Hasil penelitian menunjukkan bahwa hukum adat masih mengalami marginalisasi dalam sistem hukum nasional akibat inkonsistensi dalam regulasi dan putusan pengadilan, serta belum adanya mekanisme harmonisasi yang jelas. Implikasi dari penelitian ini menegaskan perlunya reformasi hukum yang lebih inklusif, peningkatan kapasitas aparat penegak hukum, serta penguatan peran masyarakat adat dalam perumusan kebijakan hukum. Dengan langkah-langkah tersebut, diharapkan hukum adat dapat memperoleh rekognisi yang lebih kuat dalam sistem hukum nasional guna mewujudkan keadilan yang lebih substantif bagi masyarakat adat.

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Kata kunci: Masyarakat hukum adat, Rekognisi norma adat, Positivisme hukum, Pluralisme hukum, Sistem hukum Indonesia

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## **INTRODUCTION**

Indonesia, as a nation with diverse ethnicities and cultures, possesses a pluralistic legal system in which customary law continues to play a significant role in regulating societal life (Maghfirah et al., 2022). As a form of law that has organically developed within Indigenous communities, customary norms have long been recognized as a legitimate source of law, even before the introduction of modern legal systems through colonialism. However, the evolution of the national legal system, which is predominantly positivistic and emphasizes codification and formalization, has created challenges in effectively accommodating customary norms (Iskandar et al., 2022). The dominance of legal positivism in Indonesia's statutory framework, inherited from the Continental European legal tradition, prioritizes legal certainty through written regulations, often sidelining the flexibility and dynamic nature of customary law, which is not always explicitly documented. As a result, despite constitutional and sectoral regulatory recognition of customary law, its implementation within the formal legal system remains problematic, particularly in legislative, judicial, and administrative aspects (Effendi, 2022).

In this context, the recognition of customary norms within the framework of legal positivism is a pressing issue, particularly in balancing legal certainty with substantive justice for Indigenous communities (Wahome & Ng'ang'a, 2020). The primary challenge lies in how customary norms can be accommodated within the positive legal system without losing their contextual and locally rooted characteristics. On the other hand, there is concern that formally adopting customary norms into the positive legal system may lead to their reduction in essence due to codification and standardization requirements (Ubink, 2018).

Although customary law has received constitutional recognition within Indonesia's legal system, its implementation continues to face various normative and practical challenges (Rizka Fakhrurozi & Erwin Syahrudin, 2022). One of the primary issues is legal uncertainty in the application of customary norms, which arises from the absence of codification and differing interpretations between customary law and positive law. In many cases, customary norms are not explicitly accommodated within national regulations, creating ambiguity in their application by law enforcement authorities and judicial institutions (Matuankotta, 2020). Additionally, conflicts between customary norms and national legal regulations frequently emerge, particularly in the contexts of agrarian law, dispute resolution, and indigenous rights. The national legal framework, which is predominantly based on legal positivism, often fails to provide adequate space for the flexibility of customary norms, which are dynamic and contextually rooted in local values (Nugroho et al., 2019).

Furthermore, there are inherent limitations within the positivist legal paradigm in accommodating customary norms, as positivism emphasizes legality based on formal and written rules. This approach risks marginalizing substantive justice for Indigenous communities, whose legal systems are rooted in values and social consensus. As a result, although customary law remains a living practice within society, its validity within the national legal system is frequently questioned, particularly when juxtaposed with the principle of legal certainty, which serves as a fundamental pillar of positivism (Hariri et al., 2022).

This study aims to analyze how customary norms are recognized within Indonesia's predominantly positivist legal system and to identify the challenges that arise in integrating customary law into the framework of positive law. Although various legal instruments, including the Constitution and sectoral laws, have acknowledged the existence of customary law, its practical implementation often encounters obstacles. These challenges include the lack of clear legal mechanisms for accommodating customary norms, inconsistencies in court rulings related to customary law, and the tendency of positive law to prioritize written statutes over unwritten legal sources (Wala, 2023). Therefore, this study not only seeks to understand the extent to which customary law can be accommodated within the national legal system but also to formulate an approach that allows for the recognition of customary norms within the framework of legal positivism without diminishing their substantive and intrinsic values.

Furthermore, this research aims to explore recognition models that can be applied within Indonesia's legal system to strengthen the legitimacy of customary norms in legislation, judiciary, and public administration. By examining the dynamic relationship between customary law and positive law, this study seeks to provide both conceptual and practical contributions toward developing a more inclusive legal system that is responsive to legal pluralism. Ultimately, the findings of this research are expected to serve as a valuable reference for policymakers, academics, and legal practitioners in designing more just and contextually appropriate legal policies for Indigenous communities in Indonesia.

The relationship between customary law and positive law has been the subject of extensive legal research, particularly within the context of legal pluralism in Indonesia. Numerous studies have highlighted the existence of customary law and its role in society from historical, sociological, and anthropological perspectives, like the research done by (Iskandar et al., 2022) and (Saputra & Yuspin, 2022). However, these studies are generally descriptive and have yet to comprehensively examine concrete mechanisms for recognizing customary norms within a predominantly positivist legal system. Some research focuses on the constitutional and legislative status of customary law but does not thoroughly explore how it can be effectively integrated into the national legal system without experiencing a reduction in its intrinsic values, like the research done by Diala and Kangwa (Diala & Kangwa, 2019). Additionally, previous studies have been limited in identifying the practical obstacles encountered in applying customary norms within judicial institutions and public administration. Furthermore, although various approaches to legal pluralism exist in the literature, there is no consensus on the most effective model for recognizing customary norms within the positive legal system while preserving their dynamic and contextual nature. Most studies continue to emphasize the dichotomy between customary and positive law without offering concrete solutions to harmonize both legal systems (Weeks, 2016).

This study offers a significant academic contribution by highlighting the novelty of recognizing customary norms within the framework of Indonesian legal positivism. Unlike previous research, which is largely descriptive or normative, this study seeks to develop a conceptual approach that bridges the dichotomy between customary law and positive law without compromising their essential characteristics. The novelty of this research lies in its proposed model for recognizing customary norms, which considers legal certainty within a positivist system while simultaneously accommodating the flexibility of customary law rooted in local wisdom. The justification for this research is based on the urgency of developing a national legal system that is more adaptive to the diversity of living legal norms within society. The imbalance between rigid

positive law and dynamic customary law necessitates a new approach capable of harmonizing both without causing normative distortion. Furthermore, the practical relevance of this research is evident, given the persistent disparities in the recognition of customary law across various sectors, particularly in judicial and legislative domains.

## **RESEARCH METHOD**

This study utilizes normative research, or doctrinal legal research, to analyze written legal norms and explore the integration of customary norms into Indonesia's legal positivist framework. In addition to the literature review and doctrinal analysis, this study incorporates case law analysis of judicial decisions involving customary law, such as land disputes and inheritance cases (Asriadi et al., 2023). Furthermore, interviews with legal professionals, including judges and legal scholars, were conducted to gain practical insights into how customary norms are interpreted and applied within Indonesia's judicial system. This normative research aims to examine the applicable legal rules and provide a normative interpretation of the reconstruction of customary law within the national legal system. This approach involves conducting the research through a literature review, examining legislation, court rulings, and relevant legal theories (Griffiths, 2017).

The approaches used in this research are the statute, conceptual, and case approaches. We use the statute approach to analyze the written legal rules in Indonesia, specifically those about customary law and the principles of legal positivism. Legal literature outlines the concepts of customary law and legal positivism from the perspective of legal theory, utilizing the conceptual approach. Meanwhile, the case approach examines specific cases where customary norms contribute to resolving legal disputes and their application within the positive legal system.

This study employs a qualitative approach with data collection techniques consisting of literature review, legal document analysis, and case law examination to assess the interplay between customary law and legal positivism in judicial practice. The collected data is analyzed using a deductive approach, where statutory provisions, court rulings, and doctrinal perspectives are systematically compared to identify patterns, contradictions, and gaps in the application of customary law. This analytical process enables the formulation of recommendations for reconstructing customary norms within Indonesia's legal positivist framework.

The primary sources of data collected include legislation about customary law and positive law, court decisions that incorporate elements of customary law, and academic works and books on legal theory. All these primary and secondary legal sources serve as the foundation for constructing the legal analysis and arguments presented (Yasin & Saptomo, 2024). We conduct qualitative data analysis using a deductive method, examining existing regulations and legal theories to establish connections between customary law and the principles of legal positivism. We compare various legal regulations, doctrines, and relevant court decisions in the analysis, then synthesize them to provide recommendations for reconstructing customary norms within the framework of legal positivism (Mongush, 2021). The study also includes a critical evaluation of the current literature and legal practice gaps and how this research contributes to filling those gaps.

## **RESULTS AND DISCUSSION**

### **The Theory of Legal Positivism and Customary Law in Empirical Practice**

Hans Kelsen pioneered the theory of legal positivism, emphasizing the separation of law from social, moral, and political elements and its recognition as written rules organized hierarchically within an autonomous legal system. Kelsen stated that law should be normative, not influenced by values or social norms outside formal legal rules (Hadi & Michael, 2022, p. 74). Kelsen's theory views law as a set of norms that require enforcement, disregarding external factors like customs or societal habits. This approach has a significant influence in Indonesia, especially in the national legal system, which is based on a hierarchy of legislation with the constitution as the highest foundation. However, this positivistic approach has limitations in accommodating the legal pluralism in Indonesia, where customary law still plays an essential role in people's lives, especially in certain regions (Rahardjo, 2006, p. 110).

Article 18B (2) of the 1945 Constitution recognizes legal pluralism in the Indonesian legal system, acknowledging the existence of customary law as long as it does not conflict with the fundamental principles of state law. This acknowledgment demonstrates that customary law holds a significant position within the framework of national law, particularly in the context of Indigenous communities that still use customary norms as the main guide in their daily lives. Customary law reflects the values, morality, and social structure specific to certain communities, in contrast to positive law, which is more universal and standardized (Falahy et al., 2024). Thus, although the theory of legal positivism plays a significant role in forming the national legal system, the recognition of legal pluralism through customary law demonstrates the complexities present in the Indonesian legal system.

However, empirically, legal studies show a discrepancy between the constitutional recognition of customary law and its application in judicial practice. Court practices often ignore or sideline customary norms, particularly where customary and national laws conflict. For example, in many agrarian disputes involving customary land, judges usually prefer to apply national agrarian law rather than consider customary norms within the relevant community (E. Handayani & Suparno, 2023). This reveals a discrepancy in the implementation of customary law, ultimately resulting in injustice for Indigenous communities whose legal norms fail to receive adequate consideration.

Excessive dependence on the principles of legal positivism also creates dilemmas in the judicial system. Judges often feel bound by written law, leading them to overlook the social and cultural context in which customary norms develop. For example, in disputes related to the division of inheritance, particularly Indigenous communities, the relevant customary norms are often not fully considered because the courts prefer to apply moral national laws (Şóyemí, 2023). This indicates that although customary law is recognized at the normative level, its application in concrete cases is often inconsistent.

This research also shows that the current national legal framework only provides effective mechanisms to accommodate the flexibility and adaptability of customary law without compromising the fundamental principles of national law. Customary law is dynamic and responsive to social changes, but positivist legal systems often must help accommodate these changes. The national legal system usually fails to recognize customary norms, which are still highly relevant to local communities, as legitimate law. This leads to tensions between formal law and living customary norms in many land disputes or customary rights cases (Helianny et al., 2023).

Furthermore, the case studies analyzed in this research demonstrate that judges frequently need help balancing legal positivism principles with the obligation to respect customary norms.

Although customary norms are often relevant in dispute resolution, judges tend to set them aside to maintain consistency with national law. The land dispute in West Sumatra is a significant example of this tension, as local customary law recognizes customary or play land. Still, national agrarian law ultimately categorizes it as state land (Murniwati et al., 2024). Such decisions indicate a dissonance between the customary norms practiced by the community and the more formal and rigid principles of national law.

On the other hand, some judges have made efforts to integrate customary norms into court decisions. However, uncertainty in applying customary law and a lack of clear legal guidelines often limit these efforts. For instance, judges in certain regions facing cases related to customary law sometimes hesitate to use customary norms as the basis for their decisions due to the absence of a clear national legal framework that supports the application of customary norms at the level of Indonesian courts (S. Handayani et al., 2023). Therefore, to accommodate customary norms without causing conflicts with positive law, we need a more inclusive legal framework and clear guidelines for judges.

Overall, this research shows that despite the constitutional recognition of customary law and its significance in Indonesian society's social practices, its implementation within the national legal system still faces numerous challenges. Dependence on the principles of legal positivism, which prioritizes written rules, often overlooks the local context and social dynamics represented by customary law. Therefore, the Indonesian legal system requires reconstruction and reform to more effectively integrate customary law, fostering a legal system that is inclusive and responsive to the country's cultural and social pluralism.

### **Harmonization of Customary Law and Dependence on the Principles of Legal Positivism**

Indonesia's legal system heavily relies on legal positivism, emphasizing codified laws over unwritten customary norms (Suriadiata, 2024). While Article 18B (2) of the 1945 Constitution acknowledges legal pluralism, customary law remains marginalized in judicial practice. Courts frequently default to national statutes rather than consider customary dispute resolution mechanisms, leading to legal inconsistencies and social discontent (Setiawan et al., 2024).

The interpretation of the research results indicates that excessive reliance on written law creates a dissonance between formal law and customary law. Indonesian society's social dynamics shape customary law's development, making it inseparable from its social life. However, when the court disregards customary norms to maintain consistency with the principles of legal positivism, it leads to the marginalization of the rights of indigenous peoples. Judges often overlook highly relevant customary norms, prioritizing favorable legal provisions (Moansadok et al., 2024).

In addition, the results of this research show that the current national legal framework needs to be more flexible to accommodate the dynamic nature of customary law. Customary law is naturally adaptive to local customs and social changes, while formal law tends to be rigid and standardized, making it difficult for both systems to coexist harmoniously. In Indonesia, the positivist legal approach's rigidity often fails to capture the complex social realities of a society that relies on customary norms for conflict resolution. National agrarian law often sidelines local customary practices governing communal land rights, leading to legal decisions that fail to reflect the needs and customs of the local community (Effendi, 2022).

Through the interpretation of these results, it is clear that the positivist legal system in Indonesia has limitations in accommodating the pluralistic legal landscape in the country.

Customary norms, often unwritten and social, present challenges for systems that prioritize codification and formality. This reveals a critical gap in the legal framework. However, the constitution recognizes customary law, and the mechanisms that allow for a viable integration of customary law into the national legal system still need to be improved. In particular, little explicit guidance or judicial precedent offers a coherent model for applying customary law in cases that directly conflict with written law.

Furthermore, these findings highlight the difficulties judges face in balancing the demands of positivist legal principles with the realities of customary practices in the communities where they adjudicate. In many cases, judges tend to apply national law, even when applying customary norms, which would be more appropriate to achieve justice in a specific cultural context. This is mainly due to the need for clear legal guidelines instructing judges on consistently interpreting and applying customary law with the formal legal system. The lack of integration between formal and customary law reflects deeper structural issues within the Indonesian legal system, which still struggles to accommodate the diversity of legal norms across the country (Marta et al., 2019).

The interpretation of the study's results emphasizes the need for a better legal system that balances formal written law with the flexibility required to respect and integrate customary norms. Excessive dependence on legal positivism currently sidelines customary law and often results in decisions that do not consider Indonesian society's diverse social and cultural realities. This research contributes to the ongoing debate about legal pluralism in Indonesia by highlighting the limitations of positivism and advocating for a more inclusive approach that can bridge the gap between national law and local legal traditions.

### **Contribution to Legal Theory and Implications for Judicial Practice**

This study contributes significantly to developing Indonesian legal theory, particularly in legal pluralism and integrating customary law into legal positivism. Theoretically, the results of this research challenge the dominance of legal positivism, which focuses on written law as the sole legitimate source of law. In Indonesia, this approach needs to be revised to address the legal pluralism in society, where unwritten customary law still holds strong social legitimacy, especially within indigenous communities. Given the tendency of legal positivism to overlook unwritten social norms, this research underscores that the mere formal recognition of customary law in the constitution and legislation does not guarantee its practical application in judicial practice.

The findings of this research have significant practical implications for the field's legal implementation, especially in terms of how the national legal system accommodates customary norms. One of the main practical implications is more explicit legal guidelines for judges to integrate customary norms into court decisions. Currently, the courts often need help balancing formal national legal provisions and the customary norms in local communities. The uncertainty in the application of customary law leads to inconsistencies in court rulings, which ultimately affect justice for Indigenous communities. This research suggests more explicit guidelines to guide judges in interpreting and applying customary norms, ensuring they align with national legal principles and respect the existing social context (Meidy, 2022).

Furthermore, this research emphasizes the importance of legal practitioners understanding legal pluralism. Legal practitioners operating in regions with solid indigenous communities must profoundly understand the applicable customary norms and their alignment with national law (Prasetio et al., 2021). This understanding is necessary for the court to avoid difficulties in resolving

customary law disputes, and the potential for injustice towards Indigenous communities will persist. Therefore, this research contributes to developing more inclusive policies by emphasizing the importance of strengthening legal capacity to accommodate Indonesia's plurality of legal norms.

This research reinforces the argument that a pluralistic legal system requires a more flexible and inclusive approach, as stated by Rahardjo in the context of legal theory (Rahardjo, 2006, p. 125). The positivist legal approach, which tends to be rigid and normative, cannot capture the social diversity present in Indonesia, where customary law continues to play an essential role in conflict resolution within indigenous communities (Prasojo, 2015). This research shows that the Indonesian legal system needs reform to create a legal framework that is more responsive to the needs of society without sacrificing the consistency and fairness of national law.

More broadly, this research also provides important implications for policymakers. Legal reform that allows for better integration between customary law and national law must be a priority, especially in creating a fair and inclusive legal system for all layers of society. By strengthening the legal foundation that recognizes customary norms and provides precise mechanisms for their application, Indonesia can develop a legal system that reflects the socio-cultural diversity of its society while maintaining the integrity of national law.

The results of this research open up opportunities for further in-depth studies related to the integration of customary norms within the national legal system, especially in the context of legal pluralism in Indonesia. We recommend conducting broader and more detailed research on the model of customary law reconstruction, which can be applied more effectively and fairly in various regions of Indonesia. Considering the complexity of the relationship between customary law and positive law, further research should be more specific in exploring cases in multiple areas with substantial cultural diversity. Studies like this will be constructive in identifying patterns of issues that arise about the application of customary law in the courts and providing more comprehensive practical recommendations for legal reform. Furthermore, additional research could adopt a comparative approach among countries with similar pluralistic legal systems.

Countries like South Africa, India, and Canada—each with a long-standing tradition of legal pluralism—offer valuable insights into different models of integrating customary law into formal legal systems (Lawal Arowolo, 2019). South Africa, for instance, has constitutionally recognized customary law as an equal component of its legal system, with courts applying customary norms provided they align with constitutional principles (Coutsoudis, 2023). India, while acknowledging customary law within its personal law framework, has faced challenges in balancing it with statutory regulations, particularly in matters of gender equality and property rights (Ojogbo & Edu, 2022). Canada has adopted a reconciliation-based approach, progressively integrating indigenous legal traditions through self-governance agreements and constitutional provisions such as Section 35 of the Constitution Act, 1982 (Baskatawang, 2023). By examining these models, Indonesia can develop a legal framework that harmonizes customary law with national legislation without diminishing its core values. Establishing clear constitutional safeguards, judicial guidelines, and participatory mechanisms for indigenous communities—similar to those in Canada and South Africa—could enhance legal certainty while preserving substantive justice. A comparative legal analysis of these jurisdictions would thus provide concrete policy recommendations for Indonesia, ensuring a more inclusive and responsive legal system. This approach will give Indonesia a broader understanding of various models of integrating customary law and national legal systems worldwide. For example, South Africa has a legal framework that explicitly recognizes customary



law in its judiciary while still maintaining the supremacy of constitutional law, which can serve as a reference in Indonesia's legal system development (Subroto, 2022).

In addition, further research needs to involve interdisciplinary perspectives, such as legal anthropology, sociology, and political science, to provide a more holistic understanding of the relationship between customary law and positive law. As a legal system deeply connected to social and cultural norms, customary law can be analyzed from a formal legal perspective and an anthropological viewpoint that can explain the social and cultural meanings behind each customary norm (Firmansyah et al., 2021). This interdisciplinary research will facilitate a more profound comprehension of the everyday practices of customary norms and their potential adaptation to the national legal system, all while maintaining their cultural authenticity (Rahardjo, 2006, p. 140).

Further research can explore broader aspects of national legal policy, focusing on policy reforms to create more effective mechanisms for integrating customary norms. This research could evaluate existing policies and identify legislative weaknesses that hinder the application of customary norms in courts. Thus, future research can significantly contribute to improving legal policies in Indonesia, both from a theoretical perspective and practical implementation in the field. Future research also needs to consider the influence of globalization on the development of Indonesian customary law. In the context of rapid modernization and globalization, customary law faces new challenges, including pressure from international law and global standards related to human rights and trade. Further research could highlight how customary law can endure and evolve amid these global changes and how national legal systems can adapt in a way that continues to respect the existing legal pluralism. More comprehensive and in-depth future research will significantly contribute to developing pluralistic legal theory and its application within the Indonesian legal system. These studies, incorporating diverse approaches and broad perspectives, will enhance the academic discussion on legal pluralism and offer concrete solutions for policymakers and legal practitioners in Indonesia.

### **Legal, Social, and Technical Implications**

This research has important implications across various dimensions, including legal, social, and technical aspects, particularly in integrating customary norms into Indonesian legal positivism. From a legal perspective, this research's findings indicate that the Indonesian legal system requires significant reform to accommodate legal pluralism better. The current national legal framework, heavily influenced by the principles of legal positivism, often needs to consider the customary norms within local communities. This creates injustice, especially for indigenous communities that still heavily rely on customary law in their daily lives. This research underscores the need for a more transparent mechanism that accommodates customary law in the judicial system while upholding the fundamental principles of national law (Winardi, 2020). Therefore, we need to revise the legislation and develop explicit guidelines for legal practitioners to handle cases involving customary norms.

From a social perspective, this research highlights the importance of a more genuine recognition of the cultural and legal pluralism that exists in Indonesia. Customary law reflects the cultural identity and particular values of local communities, and neglecting it within the formal legal system can lead to the loss of identity and the community's trust in the justice system. We hope that better integration between customary and national law will foster a more inclusive sense of justice for Indonesian society without neglecting the legal traditions deeply ingrained in the community's

lives. This is important for maintaining social stability and community cohesion, especially in areas that rely heavily on customary norms (Nurjaya, 2016).

From a technical perspective, this research highlights the need for capacity building within the Indonesian judicial system to address legal pluralism. The lack of training for judges and legal practitioners on customary norms and their harmonious integration into the national legal framework poses a significant challenge to the integration of customary law. Legal practitioners often need more guidelines to interpret and apply customary norms, which are usually unwritten and vary from region to region. To address this issue, it is necessary to develop a more comprehensive training program for legal practitioners to deeply understand legal pluralism and the best ways to integrate it into the judicial process.

Furthermore, from a technical standpoint, customary law's documentation and codification system require more attention. Many customary norms have not been well documented, which leads to difficulties in ensuring consistency in their application in court. Legal practitioners and policymakers will significantly benefit from developing a national database that records various customary norms from all regions in Indonesia, providing them with accessible resources (Kuntadi, 2023). This step will strengthen the technical foundation in applying customary law in the courts, reducing legal uncertainty and inconsistency in rulings.

Overall, this research's legal, social, and technical implications indicate that the Indonesian legal system needs to be more inclusive and responsive to the diversity of customary law. Comprehensive reform is necessary to create mechanisms that allow customary law to function alongside national law while upholding the principles of justice and legal consistency. Thus, better integration between customary law and national law will benefit the legal system and indigenous communities and social stability as a whole.

## **CONCLUSION**

This study reaffirms that the recognition of customary law within Indonesia's legal system continues to face significant conceptual and practical challenges. The dominance of legal positivism has relegated customary law to a secondary legal source with restricted and conditional applicability. Although Article 18B(2) of the 1945 Constitution formally acknowledges indigenous legal communities, its practical implementation remains inconsistent due to judicial discrepancies and the absence of a clear mechanism for harmonizing customary and positive law. From a theoretical perspective, a rigid positivist legal paradigm is no longer sufficient to accommodate the legal pluralism that defines Indonesia's legal landscape. Recognizing customary law must go beyond mere formal acknowledgment; it should preserve its substantive values and essence. Comparative studies demonstrate that various countries have successfully integrated customary law into their legal frameworks, striking a balance between legal certainty and substantive justice for Indigenous communities. Socially and ethically, the marginalization of customary law risks deepening the exclusion of indigenous communities and escalating conflicts over land and natural resources. Therefore, the recognition of customary law is not solely a legal matter—it is also a question of social justice, human rights, and environmental sustainability. To move forward, Indonesia must pursue more inclusive legal reforms. This includes establishing a systematic mechanism to harmonize customary and positive law, enhancing legal practitioners' capacity to understand legal pluralism, and strengthening indigenous institutions. Furthermore, a

participatory approach to policymaking is essential to ensure that Indigenous voices shape legal frameworks rather than being subjected to a top-down process. By embracing these measures, Indonesia can develop a more responsive and equitable legal system that truly reflects its rich legal diversity. Future research should explore context-specific models for integrating customary law, assess the effectiveness of existing legal pluralism mechanisms in comparable jurisdictions, and examine the socio-political dynamics that influence the implementation of indigenous rights in Indonesia.

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