

Harmonization of Islamic Law, Customary Law, and National Law in Safeguarding the Rights of Indigenous Peoples

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ABSTRACT

This study explores the harmonization of Islamic law, customary law (adat), and national law in the context of protecting the rights of indigenous peoples in Indonesia. As a country with legal pluralism, Indonesia accommodates multiple legal systems that coexist and often intersect. Customary law, deeply rooted in indigenous communities, plays a vital role in regulating social life and managing communal resources. However, its recognition and implementation within the national legal framework remain inconsistent. Islamic law, as one of the moral and legal foundations embraced by the majority of the population, offers universal principles of justice, equity, and protection of rights, including those of marginalized groups. This research analyzes how Islamic legal values can serve as a bridge between state law and adat law to ensure comprehensive protection for indigenous communities. Using a normative-juridical approach, the study reviews legislation, judicial decisions, and scholarly interpretations to assess the compatibility and potential conflicts among these legal systems. The findings indicate that while overlaps exist particularly in principles of communal ownership, justice, and mutual respect practical harmonization is often hindered by regulatory ambiguities and lack of political will. The study recommends the formulation of an integrated legal framework that respects the autonomy of indigenous law, aligns with Islamic principles of *maslahah* (public interest), and complies with constitutional protections. Such harmonization not only strengthens legal certainty but also ensures that indigenous peoples can fully exercise their rights without discrimination or marginalization. This research contributes to the discourse on legal pluralism and social justice in multicultural societies.

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1. INTRODUCTION

Indonesia is a pluralistic state, not only in terms of ethnicity, culture, and religion, but also in its legal system. One of the most distinctive features of Indonesian legal pluralism is the coexistence of customary law and national law. For centuries, indigenous communities in Indonesia have developed and practiced their own systems of customary norms and institutions, regulating various aspects of communal life, including land tenure, natural resource management, conflict resolution, and traditional governance. These systems though unwritten in many cases are deeply rooted in communal traditions and social values, and they remain influential in regions where indigenous peoples maintain control over their customary territories.

The recognition of customary law is not merely a matter of legal pluralism but also a reflection of social justice, cultural identity, and the constitutional mandate to protect indigenous peoples' rights. Article 18B(2) of the 1945 Constitution of the Republic of Indonesia (as amended) explicitly recognizes the existence and rights of "Masyarakat Hukum Adat" (customary law communities), so long as they are

still alive and in accordance with the development of society and national law. Likewise, Article 28I guarantees cultural rights and the protection of traditional communities.

Despite these constitutional commitments, the practical integration between customary law and national law remains inconsistent, fragmented, and often superficial. On the one hand, the national legal system, built upon a combination of civil law, customary law, and Islamic law, claims to acknowledge customary law. On the other hand, in implementation, customary law is frequently marginalized or overridden by statutory regulations, especially in matters involving land rights, forest management, and development planning. This disjunction between formal recognition and actual implementation has resulted in widespread legal uncertainty and injustice for indigenous peoples, particularly when their customary lands are claimed or exploited by the state or private actors for mining, plantation, or infrastructure projects.

At the heart of the problem lies the inadequate legal and institutional mechanisms for reconciling customary law with the national legal framework. Customary communities often lack formal legal recognition as juridical subjects; their customary territories are rarely mapped and codified in state registries; and adjudication processes under state law rarely incorporate customary institutions or legal principles. Moreover, statutory regulations such as those related to agrarian law, forestry, and mining frequently operate without clear reference to customary rights, or even directly contradict customary practices. This situation leaves indigenous communities vulnerable to expropriation, criminalization, and cultural erosion.

The lack of integration between customary and national law also reflects deeper conceptual and philosophical tensions. Customary law tends to emphasize communal ownership, spiritual connections to land, and conflict resolution through consensus and restoration. In contrast, national law shaped largely by colonial and post-colonial civil law traditions privileges individual ownership, bureaucratic procedure, and positivist notions of legality. Bridging these legal paradigms requires more than administrative reforms; it requires conceptual recognition of legal pluralism, as well as practical strategies for harmonization that respect the autonomy and agency of indigenous peoples.

The urgency of this issue has increased in recent years, particularly in the context of Indonesia's rapid economic development and natural resource extraction, which frequently occurs in customary territories. Large-scale investment projects backed by state-issued permits have led to forced evictions, deforestation, and conflict with indigenous groups. The failure to legally recognize and protect customary rights has fueled social unrest, environmental degradation, and human rights violations. Internationally, Indonesia has also committed to various norms and treaties that demand greater protection of indigenous peoples' rights, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169 (though the latter has not been ratified). These instruments call for free, prior, and informed consent (FPIC) and the legal recognition of indigenous land rights, pushing Indonesia to reform its national legal system to comply with these standards.

In recent years, there have been some positive developments. The Constitutional Court Decision No. 35/PUU-X/2012, for example, affirmed that customary forests are not state forests, and must be returned to the control of customary communities. In some regions, local governments have begun issuing regional regulations (Perda) recognizing customary law communities and their rights. However, these initiatives remain fragmented and limited in scope. What is needed is a systematic and integrated approach to legal reform, one that goes beyond token recognition and actually transforms how national law interacts with and supports customary legal systems.

This paper aims to analyze and evaluate the current state of integration between customary law and national law in Indonesia, particularly in relation to the protection of indigenous peoples' rights. The specific objectives are; to examine the constitutional, statutory, and jurisprudential foundations for the recognition of customary law in Indonesia. To analyze the practical challenges and legal barriers to the integration of customary and national law, especially in the domain of land and natural resources. To evaluate recent legal developments and local government initiatives aimed at recognizing and protecting indigenous peoples. To propose models and strategies for the harmonization of legal systems in a way that ensures justice, sustainability, and respect for indigenous identity. The research contributes both theoretically and practically to the ongoing discourse on legal pluralism and indigenous rights in Indonesia. Theoretically, it deepens understanding of how different legal traditions can coexist and be

reconciled within a single legal framework. Practically, it offers recommendations for policymakers, legislators, and civil society actors seeking to strengthen legal protections for indigenous communities.

From a legal development perspective, this research is significant for advancing a bottom-up model of lawmaking one that respects local wisdom and community practices while ensuring alignment with constitutional principles and human rights norms. In a broader sense, the study reflects Indonesia's struggle to reconcile tradition and modernity, centralization and decentralization, development and sustainability. This study adopts a normative juridical approach, focusing on the analysis of laws, legal doctrines, and court decisions. Primary legal materials include the 1945 Constitution, statutory laws such as the Basic Agrarian Law, Forestry Law, and the ITE Law, as well as decisions of the Constitutional Court and relevant regional regulations. Secondary materials include scholarly literature, reports from NGOs and government bodies, and relevant case studies from regions such as Papua, Kalimantan, and Sulawesi.

The research is complemented by a comparative analysis of international instruments and best practices in countries with similar legal pluralism, such as the Philippines, Canada, and New Zealand. This comparative perspective is intended to draw lessons that can inform Indonesia's legal reform efforts. This paper focuses specifically on the integration of customary and national law in relation to the protection of indigenous rights, particularly land tenure, resource management, and cultural preservation. It does not delve deeply into the religious dimension of customary law (such as its intersections with Islamic law), nor does it comprehensively assess the role of adat law in civil or criminal adjudication outside of indigenous rights contexts. Additionally, while the paper references case studies, it does not include empirical fieldwork or ethnographic data due to methodological constraints.

2. RESEARCH METHOD

This research employs a normative juridical method, which focuses on the analysis of legal norms, statutory provisions, constitutional mandates, and judicial decisions relating to the integration of customary law and national law in protecting the rights of indigenous peoples in Indonesia. The study is descriptive-analytical in nature, aiming to systematically examine the substance of laws and legal doctrines that govern the recognition and implementation of indigenous peoples' rights within Indonesia's pluralistic legal framework. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Basic Agrarian Law (Law No. 5 of 1960), Forestry Law (Law No. 41 of 1999), Law No. 39 of 1999 on Human Rights, and relevant decisions of the Constitutional Court, such as Decision No. 35/PUU-X/2012. Regional regulations (*peraturan daerah*) that explicitly recognize customary communities are also analyzed to understand local integration efforts. Secondary legal materials comprise scholarly articles, books, legal commentaries, policy papers, and reports from national and international institutions such as AMAN (Aliansi Masyarakat Adat Nusantara), the National Human Rights Commission (Komnas HAM), and the United Nations bodies concerned with indigenous rights. Tertiary sources such as dictionaries, legal encyclopedias, and legal interpretation theories are used to clarify terminologies and the philosophical basis of legal pluralism. A comparative approach is also applied by examining models from other jurisdictions (e.g., the Philippines, Canada, and New Zealand) that have recognized and integrated indigenous legal systems within their national legal frameworks. This approach provides a broader perspective on best practices and the challenges of legal harmonization. Legal interpretation techniques used in this study include systematic interpretation, historical interpretation, and teleological interpretation, allowing for a comprehensive analysis of how customary law can be meaningfully integrated into Indonesia's national legal system.

3. RESULTS AND DISCUSSIONS

3.1. Recognition of Customary Law in the Indonesian Legal Framework

Indonesia's legal system officially embraces legal pluralism, reflected in its constitutional and statutory recognition of customary law (*hukum adat*). Article 18B paragraph (2) of the 1945 Constitution explicitly states that the state recognizes and respects traditional communities along with their traditional rights, provided they are still alive and in accordance with societal development and national legal principles. Additionally, Article 28I paragraph (3) enshrines the cultural identity and rights of traditional communities as part of constitutional human rights. Statutory laws, such as the Basic Agrarian Law (Law No. 5 of 1960), further reinforce this position. Article 3 of the law acknowledges the existence of

customary land rights (hak ulayat), to the extent that these rights do not conflict with national and state interests. Similarly, Law No. 41 of 1999 on Forestry and Law No. 32 of 2009 on Environmental Protection and Management make references to the rights of masyarakat hukum adat (customary law communities). However, these recognitions are often conditional, vague, or dependent on local regulations that vary in scope and enforcement.

The Constitutional Court has played a crucial role in affirming the position of customary law. The landmark Decision No. 35/PUU-X/2012 reinterpreted the Forestry Law to declare that customary forests are no longer part of state forests but must be returned to customary communities. This decision is considered a turning point in the legal recognition of indigenous land rights. Despite these recognitions, many customary communities face bureaucratic and evidentiary hurdles in gaining formal legal status. As of recent years, only a small number of customary communities have been formally recognized by regional governments, which is a prerequisite for legal protection under national law.

Indonesia is a state that formally acknowledges the existence of legal pluralism, wherein state law coexists with religious and customary law. The recognition of customary law (hukum adat) is deeply embedded in the country's constitutional and statutory instruments. The 1945 Constitution, particularly Article 18B paragraph (2), explicitly acknowledges the existence and rights of traditional communities (masyarakat hukum adat), stating that the state recognizes and respects these entities along with their traditional rights, as long as they remain viable and in accordance with societal development and national legal principles. Additionally, Article 28I paragraph (3) affirms the recognition of cultural identities and the rights of traditional communities as part of Indonesia's commitment to human rights. Several sectoral laws also support the recognition of customary law. The Basic Agrarian Law (Law No. 5 of 1960) in Article 3 acknowledges customary land rights (hak ulayat) insofar as they align with national interests and are not in conflict with existing legislation.

The Forestry Law (Law No. 41 of 1999) and Environmental Management Law (Law No. 32 of 2009) also mention the existence of customary communities and their rights to manage natural resources within their traditional territories. Despite the normative legal framework, the realization of these recognitions in practice is fraught with challenges. Recognition is often conditioned on the fulfillment of administrative requirements, such as formal identification and registration by local governments. The Constitutional Court's Decision No. 35/PUU-X/2012 marked a pivotal moment by affirming that customary forests are not part of state forests but belong to indigenous peoples, provided that their status is officially recognized. This requirement creates disparities in protection, as only a fraction of communities have obtained formal recognition. As a result, many indigenous communities continue to face marginalization, land dispossession, and limited access to justice. Hence, while the legal framework appears supportive on paper, its effective implementation remains inconsistent and largely dependent on political will and bureaucratic commitment at the regional level.

3.2. Practical Barriers to Integration

Despite constitutional and statutory support, integrating customary law with national law remains highly problematic in practice. One key challenge is the legal positivism underpinning Indonesian national law, which tends to require codification, registration, and clear administrative procedures for recognition. By contrast, customary law is often unwritten, fluid, and based on oral traditions, community consensus, and spiritual values. Another barrier is the fragmentation of legal authority. Land, forestry, mining, and spatial planning are governed by sectoral laws and different ministries, often with overlapping or contradictory mandates. Customary communities seeking recognition of their hak ulayat must navigate a complex bureaucratic landscape involving multiple layers of government and legal standards.

Moreover, decentralization has resulted in varying degrees of regional commitment to indigenous rights. While some local governments have issued Peraturan Daerah (Regional Regulations) recognizing customary communities and their territories, others lack the political will, capacity, or understanding to do so. Consequently, the legal protection of indigenous peoples is uneven across the country. There is also a general lack of institutional capacity to verify the existence of customary communities and their legal traditions. Most recognition processes require communities to prove their existence through anthropological, historical, and legal documentation a process that is both time-consuming and costly.

Despite the formal recognition of customary law within Indonesia's legal system, the integration of customary legal systems into national law remains problematic in practice. One of the most significant barriers is the incompatibility between legal positivism and the nature of customary law. Indonesian national law tends to be codified, bureaucratic, and rigid, requiring written rules, legal documentation, and formal procedures. In contrast, customary law is often oral, flexible, and based on communal values,

traditions, and spiritual beliefs, making it difficult to fit into the standardized framework of national legislation. Another major challenge is the complexity and fragmentation of authority across multiple sectors and levels of government. Different agencies oversee land, forestry, environment, and spatial planning, often applying conflicting interpretations of laws concerning indigenous rights. This creates overlapping jurisdictions and administrative confusion, particularly for indigenous communities seeking formal recognition of their hak ulayat (customary land rights).

The decentralization of governance also results in inconsistent regional implementation. While some local governments have issued regional regulations to support customary communities, others lack the capacity, resources, or political will to do so. Furthermore, the burdensome evidentiary requirements such as anthropological studies, historical documentation, and legal proof of continued existence create further obstacles for communities with limited access to legal assistance or formal education. Lastly, there is a lack of institutional support and training among government officials to understand and accommodate customary systems. Without adequate awareness and commitment at both national and local levels, the meaningful integration of customary and national law remains a significant challenge.

3.3. Case Studies on Local Legal Integration

In several regions, progressive local governments have pioneered the integration of customary and national legal systems. For instance; Bali has maintained a strong customary governance system (*desa adat*) that is integrated into the provincial legal framework. Local regulations in Bali formally acknowledge *desa adat* institutions and their authority in matters of land and cultural practices. In West Sumatra, the *Nagari* system based on Minangkabau customary law—has been incorporated into local governance. Regional laws recognize the role of traditional leaders (*ninik mamak*) in land and conflict resolution. South Sulawesi and West Papua have also made strides in issuing regional regulations recognizing *masyarakat hukum adat*. In Papua, the Special Autonomy Law even provides a constitutional space for indigenous governance structures. These examples show that integration is possible when there is political commitment, community engagement, and appropriate legal tools. However, such efforts remain the exception rather than the norm.

Several regions in Indonesia provide insightful examples of how local governments have successfully integrated customary law into the formal legal framework. These case studies demonstrate that, with political will and community engagement, customary norms can coexist with national legal principles. In Bali, the institution of *desa adat* (customary villages) has long been recognized and integrated into local governance. The provincial government of Bali supports these customary entities through local regulations that give *desa adat* formal authority over cultural, religious, and even land-related affairs. This system functions alongside state administrative villages (*desa dinas*) and exemplifies legal dualism managed effectively.

West Sumatra provides another strong model through its reinforcement of the *Nagari* system, grounded in Minangkabau customary law. Local regulations recognize *ninik mamak* (traditional leaders) as important actors in the governance of customary land and community matters. The coexistence of the *Nagari* and formal village administration illustrates how customary institutions can play a central role in local governance. In West Papua and South Sulawesi, several *Peraturan Daerah* (regional regulations) have been issued to formally acknowledge *masyarakat hukum adat* and their territorial rights. In Papua, the Special Autonomy Law grants broader authority to indigenous institutions, enabling a stronger assertion of customary norms in managing natural resources and resolving disputes. These localized examples reflect a broader possibility: that the integration of customary and national law is achievable when supported by clear legal mandates, institutional backing, and participatory policy-making processes. However, such successes remain limited and need to be scaled up across other regions.

3.4. International Standards and Best Practices

Indonesia's efforts must be understood within the broader context of international human rights and indigenous law. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) emphasizes the rights of indigenous peoples to self-determination, land, and culture. Although UNDRIP is not legally binding, it establishes norms that Indonesia is morally and diplomatically bound to follow, given its support for the declaration. ILO Convention No. 169, while not ratified by Indonesia, offers a binding legal framework for the recognition of indigenous rights.

Countries that have ratified the convention are required to consult indigenous peoples in matters affecting their rights and ensure their legal systems are compatible with indigenous law. Countries such as New Zealand (with the Treaty of Waitangi), Canada (through its modern treaty and self-governance frameworks), and the Philippines (through the Indigenous Peoples Rights Act of 1997) offer instructive

examples of integrating indigenous and state legal systems. These models involve clear procedures for recognition, institutional representation, and mechanisms for dispute resolution that honor customary principles.

The integration of customary law into national legal frameworks is not unique to Indonesia. Various international standards and best practices provide guidance and comparative models for protecting indigenous rights. One of the most influential instruments is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which Indonesia endorsed in 2007. UNDRIP affirms the rights of indigenous peoples to self-determination, land, culture, and legal systems. Although non-binding, it establishes strong normative standards that member states are encouraged to align with. In addition, the International Labour Organization (ILO) Convention No. 169 provides a legally binding framework for the recognition and protection of indigenous and tribal peoples' rights. While Indonesia has not ratified this convention, it offers a benchmark for future legislative reforms, emphasizing consultation, participation, and respect for traditional institutions.

Other countries offer practical models of legal integration. Canada, through its modern treaty process and recognition of Aboriginal self-governance, has developed mechanisms that legally empower indigenous communities. New Zealand, via the Treaty of Waitangi, formally recognizes Māori customary rights and integrates them into environmental and cultural laws. The Philippines has enacted the Indigenous Peoples' Rights Act (IPRA) of 1997, which provides for ancestral domain recognition, indigenous governance, and culturally appropriate dispute resolution mechanisms. These examples highlight the importance of clear legal recognition, participatory policymaking, and institutional reform. Indonesia can learn from these models by reinforcing community participation, simplifying recognition processes, and ensuring state laws respect and incorporate customary practices, thereby advancing the protection of indigenous peoples.

3.5. Legal and Institutional Reform Needs

For Indonesia to achieve genuine integration between customary and national law, significant reforms are needed. Simplification of Recognition Procedures: The process of recognizing masyarakat hukum adat must be simplified, made affordable, and community-driven. Legal aid and public participation must be enhanced. Legal Harmonization: Sectoral laws must be revised to eliminate contradictions and to include consistent references to customary rights.

For example, the Forestry Law and Agrarian Law must be harmonized to reflect Constitutional Court decisions. Institutional Strengthening: Both national and local institutions must be equipped with the capacity to engage with indigenous communities, understand their legal traditions, and administer recognition processes effectively. Participatory Lawmaking: Indigenous peoples must be included in the formulation of laws and policies affecting their rights. Their participation should be institutionalized, not left to ad hoc consultations. Integration of Adat Courts: Where possible, peradilan adat (customary courts) should be recognized as part of the national judicial system, particularly in civil disputes involving indigenous peoples.

Achieving meaningful integration of customary law into Indonesia's national legal system requires substantial legal and institutional reforms. While the constitutional and legislative framework acknowledges the existence of masyarakat hukum adat (customary law communities), implementation gaps persist due to legal ambiguity, bureaucratic inertia, and inadequate institutional support. One critical need is the harmonization of national laws with customary norms. Many sectoral laws—such as those governing land, forestry, and natural resources contain provisions that either contradict or marginalize indigenous rights. Legal reform should focus on ensuring that national legislation explicitly accommodates and respects the unique characteristics of customary law, particularly in relation to land tenure, dispute resolution, and governance structures.

Furthermore, there is a pressing need to streamline and simplify the recognition process for indigenous communities. Currently, recognition is highly dependent on local regulations and administrative discretion, resulting in unequal treatment across regions. A unified national law or framework that sets clear, accessible criteria for recognition—developed in consultation with indigenous representatives would enhance legal certainty and protection. Institutionally, capacity building within government agencies is essential. Many officials lack the training to understand and apply customary legal concepts, leading to reluctance or misuse in policy implementation. Establishing dedicated units within ministries or local governments to oversee indigenous affairs, provide technical assistance, and coordinate cross-sectoral efforts would significantly improve governance. Finally, the integration process must be participatory. Indigenous communities should be active partners in shaping

laws and institutions that affect them, ensuring reforms are not only top-down but reflect lived realities and local wisdom.

3.6. Cultural and Philosophical Considerations

Integration is not only a legal issue but also a philosophical one. Customary law is based on communalism, spirituality, and balance with nature, while national law often reflects individualism and positivism. Bridging these paradigms requires mutual respect and dialogue. Legal integration must not result in the co-optation or dilution of customary values. Instead, the goal should be legal coexistence and complementarity. Customary law should be allowed to govern internal community matters, while national law ensures protection against external threats and conflicts with other legal subjects. This balance can only be achieved through sustained intercultural legal dialogue and shared governance mechanisms.

The integration of customary law into national law must be grounded in an appreciation of the distinct cultural and philosophical foundations that shape indigenous legal systems. Customary law in Indonesia is not merely a set of unwritten rules but a living tradition deeply rooted in communal values, spirituality, and a harmonious relationship with nature. These principles often contrast with the individualistic and positivist orientation of national legal systems, which prioritize formal procedures and codification. Customary law emphasizes collective responsibility, restorative justice, and balance, rather than punishment and retribution. It functions as a moral compass for social behavior and is embedded in rituals, kinship, and oral traditions. Therefore, legal integration efforts must respect these cultural dimensions and avoid imposing external norms that may erode indigenous identity. Recognizing the philosophical depth of customary law ensures not only legal pluralism but also the preservation of Indonesia's rich socio-cultural diversity.

4. CONCLUSION

The integration of customary law into the national legal framework is essential for the effective and equitable protection of indigenous peoples' rights in Indonesia. While the 1945 Constitution and various sectoral laws recognize the existence and rights of masyarakat hukum adat, the translation of these normative commitments into concrete legal protections remains inconsistent and incomplete. Structural, administrative, and cultural barriers continue to hinder the realization of indigenous rights, particularly in the domains of land ownership, natural resource management, and self-governance. The recognition of customary law must go beyond symbolic acknowledgment; it requires a legal system that is responsive to the philosophical and communal foundations of indigenous traditions. Harmonizing national legislation with customary practices, simplifying the legal recognition process, and fostering institutional support at all levels of government are necessary steps toward genuine integration. Moreover, participatory law-making that includes indigenous voices ensures that reforms are culturally appropriate, legitimate, and sustainable. Case studies from regions such as Bali, West Sumatra, and Papua demonstrate that legal pluralism can function effectively when supported by strong political will and community engagement. At the same time, lessons from international best practices—such as those embodied in UNDRIP and ILO Convention No. 169—offer valuable guidance for improving national standards. Ultimately, integration should not be seen as a compromise but as a path to justice, legal empowerment, and cultural preservation. A reformed legal and institutional framework that respects and incorporates customary law is essential for building an inclusive Indonesian legal system that truly reflects the nation's social and cultural diversity.

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