

REVISITING SUSTAINABLE LAW WITHIN LEGAL PLURALISM: A NORMATIVE ANALYSIS OF THE RECOGNITION OF CUSTOMARY LAW IN JAYAPURA

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ABSTRACT

The objective of this study is to analyze the concept of sustainable law within the framework of legal pluralism and to examine the normative recognition of customary law, particularly in Jayapura. This research employs a normative juridical method, utilizing a statutory approach, a conceptual legal analysis, and a historical approach. The data sources are derived from library research. The findings indicate that although customary law has been formally recognized, its implementation is often constrained by the dominance of a hierarchical state legal system. This condition has led to the marginalization of customary law and the weakening of the role of indigenous communities in the management of natural resources. Indigenous communities, which possess social legitimacy over their territories, frequently lose their rights when confronted with state policies grounded in formal law. Moreover, although the Special Autonomy Law for Papua provides a framework for the protection of indigenous communities, its implementation remains suboptimal and tends to be formalistic in nature. Thus, it can be concluded that the integration of customary law into the national legal system is not only essential from the perspective of social justice, but also as a strategic approach to ensuring environmental sustainability. Furthermore, the normative regulation concerning the recognition of customary law in Indonesia, particularly in Jayapura, continues to face fundamental structural and conceptual challenges.

Key Words: *Living Lay, Legal Pluralism, Customary Law Recognition, Indigenous Peoples Rights*

1. Introduction

1.1. Background of The Problem

In the perspective of modern jurisprudence, law is no longer construed in a reductionist manner as merely a body of prescriptive norms rather it is understood as a system encompassing both normative and sociological dimensions. Within the normative framework, law is positioned as a set of systematically arranged rules, possessing a hierarchical structure and functioning to direct human behavior through instruments of commands, prohibitions, and sanctions. This view is consistent with the thought of Hans Kelsen, who conceptualized law as an autonomous system of norms, detached from moral, political, and empirical social realities, and grounded in formal validity within a layered and hierarchical legal order.¹ Along with the development of legal thought, a purely normative approach has been deemed insufficient to explain the complexity of law in social life. Law, in essence, also represents the social dynamics that surround it. Thus, law does not merely reflect the will of the state or authority, but

¹ Annisa Meidaniyasari, "Teori Hukum Normatif Dalam Perspektif Aliran Pemikiran Neo Kantian," *LEX RENAISSANCE* 10, no. 1 (2025): 1-29, <https://doi.org/https://doi.org/10.20885/JLR.vol10.iss1.art1>.

also constitutes an embodiment of values, social norms, and legal consciousness that live within society. In this context, law is understood as a socially constructed and inherently dynamic phenomenon, continuously evolving in response to changes in social structures, culture, and societal needs.²

From a sociological perspective, law functions both as an instrument of social control and as a means of social engineering. Law not only regulates behavior but also shapes and directs society toward objectives considered ideal. Consequently, law possesses a dynamic and adaptive character in relation to social change. In the context of an ever-evolving society, law is required to respond effectively and proportionately to shifts in values, norms, and social interests.³ A philosophical approach to law underscores that law cannot be separated from the values embedded within society. Law is not merely a mechanistic normative instrument, but also a reflection of human reasoning concerning justice, morality, and social order. Accordingly, law contains a reflective dimension that mirrors the social, cultural, and ideological conditions of the society in which it operates.⁴ In the development of the modern state, the concept of legal pluralism has increasingly demonstrated its relevance as an analytical approach to understanding the complexity of legal systems operating within society. Social reality reveals the existence of diverse normative orders that do not exclusively originate from the state, but also derive from customary law, religious law, and other social norms that develop autonomously. In this context, state law can no longer be positioned as the sole normative authority, but rather as one among multiple normative systems that interact within society.

Theoretically, legal pluralism rejects the paradigm of legal centralism, which views law as singular, uniform, and entirely state derived. As articulated by John Griffiths, legal pluralism refers to a condition in which more than one legal order exists and operates simultaneously within a single social field. He emphasizes that the legal reality of modern society is not monolithic, but instead consists of multiple overlapping and interacting legal systems.⁵ Therefore, state law often constitutes only one component of a broader normative structure. The normative recognition of customary law communities has been explicitly affirmed in the Constitution, particularly through Article 18B section (2) of the 1945 Constitution of the Republic of Indonesia, which stipulates that the State recognizes and respects units of customary law communities along with their traditional rights, insofar as they continue to exist, are in accordance with societal development, and are consistent with the principles of the Unitary State of the Republic of Indonesia.⁶ In addition, Article 28I section (3) of the

² Christiani Widowati, "Hukum Sebagai Norma Sosial Memiliki Sifat Mewajibkan," *ADIL: Jurnal Hukum* 4, no. 1 (2015): 150–67, <https://doi.org/https://doi.org/10.33476/ajl.v4i1.31>.

³ Ryantoro Diver Asjandar, "Law as a Mechanism for Shaping Social Behavior," *Sultan Adam: Jurnal Hukum Dan Sosial* 3, no. 2 (2025): 184–93, <https://doi.org/https://doi.org/10.71456/sultan.v3i2.1406>.

⁴ Anissa Nabilla and Irwan Triadi, "Philosophy of Law as the Foundation for the Formation of Legal Norms and Principles," *Media Hukum Indonesia (MHI) Published by Yayasan Daarul Huda Krueng Mane* 3, no. 4 (2025): 530–37, <https://doi.org/https://doi.org/10.5281/zenodo.17639976>.

⁵ John Griffiths, "What Is Legal Pluralism?," *Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>.

⁶ Yunita Syofyan, "Pengakuan Dan Perlindungan Masyarakat Hukum Adat Dalam Undang-Undang Pertanahan Dikaitkan Dengan Pembangunan Hukum Berbasis Hukum Adat,"

same Constitution affirms respect for cultural identity and the rights of traditional communities as part of human rights.⁷ This demonstrates that, constitutionally, customary law communities have obtained legitimacy as legal subjects whose existence is recognized within the Indonesian constitutional system.

However, such recognition is not absolute rather, it is subject to a number of conditional requirements, including the continued existence of these communities, their conformity with contemporary societal developments, and their consistency with the principles of the unitary state. In practice, these conditional elements often give rise to ambiguity and open the space for diverse interpretations, thereby undermining the optimal protection of the rights of customary law communities. Several studies have even indicated that such constitutional recognition tends to be declaratory in nature and has not fully provided effective guarantees for the protection of the traditional rights of customary law communities.⁸

The dynamics of national development, which are often oriented toward economic growth, frequently place customary law communities in vulnerable positions, particularly in conflicts over the control of natural resources, such as communal land (*ulayat* land) and customary forests. Although the State has provided normative recognition, its implementation within sectoral regulations and governmental practices continues to exhibit inconsistencies that hinder effective recognition and protection.⁹ This condition reflects a gap between the normative dimension (*das sollen*) and empirical reality (*das sein*).

From the perspective of legal politics, the recognition of customary law communities is closely related to the State's efforts to accommodate legal pluralism and to realize social justice for all Indonesian people. Such recognition encompasses not only a juridical dimension but also philosophical and sociological dimensions that position customary law communities as an integral part of the national legal system.¹⁰ Therefore, a comprehensive analysis is required to assess the extent to which constitutional recognition of customary law communities has been effectively implemented, as well as how the existing normative construction may be reconstructed to provide more substantive protection.

The concept of sustainable law has developed as a normative approach that positions law not merely as an instrument of regulation, but also as a means of ensuring the balanced sustainability of social, economic, and environmental life. This concept represents an extension of the idea of sustainable development, which emphasizes meeting the needs of the present generation without compromising the

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- Jurnal Sakato Ekasakti Law Review* 4, no. 3 (2025): 257–70, <https://doi.org/https://doi.org/10.31933/xhycp05>.
- ⁷ Relxi Bayo, Andy Usmina Wijaya, and Fikri Hadi, "PENGAKUAN MASYARAKAT ADAT DALAM PERATURAN PERUNDANG-UNDANGAN DI INDONESIA," *JURNAL ILMU HUKUM WIJAYA PUTRA* 1, no. 1 (2023): 1–11, <https://doi.org/https://doi.org/10.38156/jihwp.v1i1.87>.
- ⁸ Retno Kus Setyowati, "Pengakuan Negara Terhadap Masyarakat Hukum Adat," *Binamulia Hukum* 12, no. 1 (2023): 131–42, <https://doi.org/https://doi.org/10.37893/jbh.v12i1.601>.
- ⁹ Ikhsan Lubis et al., "Integrasi Hukum Adat Dalam Sistem Hukum Agraria Nasional: Tantangan Dan Solusi Dalam Pengakuan Hak Ulayat," *Tunas Agraria* 8, no. 2 (2025): 143–58, <https://doi.org/https://doi.org/10.31292/jta.v8i2.401>.
- ¹⁰ Frans Reumi, "Politik Hukum Pengakuan Eksistensi Masyarakat Hukum Adat: Telaah Kritis Undang-Undang Nomor 2 Tahun 2021," *PAPUA Law Journal* 7, no. 2 (2023): 84–92, <https://doi.org/https://doi.org/10.31957/plj.v7i2.2876>.

ability of future generations to meet their own needs. Conceptually, sustainable law is understood as a legal framework that integrates various norms, policies, and legal instruments to promote sustainability across different sectors of life. In this context, law no longer stands in isolation but becomes an integral part of a governance system that harmonizes environmental, social, and economic dimensions in a holistic manner. Legal scholarship emphasizes that the concept of *law for sustainability* constitutes an effort to construct legal and institutional frameworks capable of achieving a sustainable society through integrated and long term oriented decision making.¹¹ Recent developments further indicate that sustainable law has evolved into an interdisciplinary field encompassing various legal regimes, both at the national and international levels, in response to the complexity of global challenges.¹²

Within the context of diverse legal systems, the urgency of sustainable law becomes increasingly significant. Indonesia, as a country characterized by legal pluralism, demonstrates the coexistence of state law, customary law, and religious law that live and develop within society. On the one hand, this pluralism reflects a richness of values and local wisdom; on the other hand, it poses challenges in terms of normative harmonization and legal implementation. In such circumstances, sustainable law is required as an approach capable of bridging these various legal systems while ensuring their alignment with the principles of sustainability and social justice.

Furthermore, the urgency of sustainable law is closely linked to the increasing complexity of global challenges, such as climate change, environmental degradation, and social inequality. From the perspective of environmental law, the principle of sustainability has become a fundamental foundation that requires a balance between the utilization and conservation of resources. Accordingly, sustainable law functions not only as a regulatory instrument but also as a mechanism to ensure both intragenerational and intergenerational justice.

Within the framework of legal pluralism, the existence of multiple legal systems operating within society should be regarded as a strategic potential for strengthening sustainable law. Local values embedded in customary law, for instance, often contain principles of sustainability that align with modern concepts of environmental protection and ecological balance. Therefore, the integration between state law and the law that lives within society (*living law*) becomes an imperative in the development of a sustainable legal system.

From an implementation perspective, the urgency of sustainable law within the framework of legal pluralism can be concretely observed in regions where customary law continues to dominate, one of which is Jayapura. As part of the Papua region, Jayapura represents a society characterized by a strong attachment to customary law, particularly in matters of land tenure, social structure, and dispute resolution mechanisms. Various studies indicate that communal land rights (*hak ulayat*) in Jayapura are not merely understood as economic rights, but also as symbols of cultural and spiritual identity for indigenous communities, thereby occupying a highly

¹¹ John C. Dernbach and Joel A. Mintz, "Environmental Laws and Sustainability: An Introduction," *Journal Sustainability* 3, no. 3 (2011): 531-40, <https://doi.org/10.3390/su3030531>.

¹² Beate Sjøfjell, "Conceptualising Corporate Sustainability Law," *Transnational Legal Theory* 16, no. 3 (2025): 281-326, <https://doi.org/https://doi.org/10.1080/20414005.2025.2559542>.

fundamental position in their lives.¹³ This underscores that customary law in Jayapura is not merely normative in nature, but also encompasses profound philosophical and sociological dimensions.

The dominance of customary law in Jayapura is reflected in dispute resolution practices that tend to prioritize customary mechanisms over formal state law. A number of studies demonstrate that, in various cases particularly those related to customary land communities prefer settlement through customary deliberation and traditional institutions, as these are perceived to better represent substantive justice.¹⁴ The existence of customary judicial institutions further provides empirical evidence that customary legal systems continue to function effectively within local society.¹⁵

In terms of the relationship between customary law and state law, Jayapura illustrates a complex dynamic of interaction. On the one hand, the State, through various regulations, has recognized the rights of indigenous peoples, including through Papua's special autonomy policies. On the other hand, the implementation of such recognition continues to face significant challenges, including land tenure conflicts, overlapping regulations, and weak protection of indigenous rights.¹⁶ This condition reflects a persistent gap between normative recognition and empirical reality in legal practice. The dominance of customary law in Jayapura is also inseparable from the social structure of the community, which remains grounded in kinship systems and customary leadership, such as the role of the *Ondoafi* within the Sentani community. In practice, any legal action concerning customary land or communal interests must obtain approval from customary authorities, indicating that customary law possesses tangible binding force in social life.¹⁷ This further affirms that customary law in Jayapura not only exists but also functions as the primary legal system governing community life.

Thus, Jayapura may be positioned as a representative region characterized by the strong dominance of customary law within a pluralistic legal system. This condition renders Jayapura a strategic locus for examining how customary law operates, interacts with state law, and responds to the challenges of modernization and development. Based on the foregoing, an examination of law as both a normative system and a social reflection becomes essential. Such an inquiry is not only aimed at comprehensively

¹³ Tri Mulyadi, Muhammad Yusuf, and Hendrik Dengah, "Eksistensi Hak Ulayat Masyarakat Adat Di Kota Jayapura Dalam Konteks Ancaman Penyerobotan Tanah," *Jurnal Hukum, Politik Dan Ilmu Sosial* 4, no. 1 (2025): 175-86, <https://doi.org/https://doi.org/10.55606/jhps.v4i1.5553>.

¹⁴ Absari M. J. Welang, Yoan B. Runtunuwu, and Henry N. Lumenta, "Analisis Hukum Kedudukan Tanah Adat Di Papua," *Khatulistiwa: Jurnal Pendidikan Dan Sosial Humaniora* 5, no. 2 (2025): 373-81, <https://doi.org/https://doi.org/10.55606/khatulistiwa.v5i2.5795>.

¹⁵ Sara Ida and Magdalena Awi, "Para-Para Adat Sebagai Lembaga Peradilan Adat Pada Masyarakat Hukum Adat Port Numbay Di Kota Jayapura," *Jurnal Magister Hukum Udayana* 2, no. 1 (2013): 1-19, <https://www.neliti.com/publications/44095/para-para-adat-sebagai-lembaga-peradilan-adat-pada-masyarakat-hukum-adat-port-nu>.

¹⁶ Muhammad Musaad, "Perlindungan Hak Masyarakat Adat Papua Dalam Kerangka Otonomi Khusus," *PAPATUNG: Jurnal Ilmu Administrasi Publik, Pemerintahan Dan Politik* 5, no. 1 (2022): 80-87, <https://doi.org/10.54783/japp.v5i1.557>.

¹⁷ Karel V H Baransano, "Perlindungan Hukum Terhadap Pembeli Dalam Jual Beli Hak Atas Tanah Adat Pada Masyarakat Hukum Adat Suku Sentani Di Kabupaten Jayapura," *Jurnal Penelitian Ilmu-Ilmu Sosial* 02, no. 05 (2024): 336-45, <https://doi.org/https://doi.org/10.5281/zenodo.15703514>.

understanding the nature of law, but also at formulating legal approaches that are more responsive, adaptive, and just in addressing the dynamics of modern society. Accordingly, in depth research is required to analyze the existence and dynamics of customary law in Jayapura, both from normative and empirical perspectives, in order to understand its role within the national legal system as well as its contribution to the development of a more socially responsive legal order.

1.2. Formulation of the problem

1. How is the concept of sustainable law understood within the perspective of legal pluralism?
2. How is the normative framework governing the recognition of customary law in Indonesia, particularly in Jayapura?

1.3. Purpose of The Text

1. To analyze the concept of sustainable law within the perspective of legal pluralism
2. To examine the normative framework governing the recognition of customary law in Indonesia, particularly in Jayapura.

2. Research Method

This study employs a normative juridical research design, which positions law as a system of legal norms. Accordingly, the research is conducted through the examination of written legal norms, particularly statutory regulations. It is referred to as normative juridical research because law is conceived as an autonomous entity, whose existence is determined by its own internal logic rather than by external factors.¹⁸ This research is also categorized as library research or document study, as it primarily relies on secondary data obtained from library sources.¹⁹ The approaches utilized in this study include the statutory approach, the analytical and conceptual approach, and the historical approach. The statutory approach is applied to examine the prevailing positive legal norms.²⁰ The conceptual approach is employed to analyze legal doctrines, principles, and theories that are essential to the perspective of legal pluralism, particularly in relation to the normative analysis of the recognition of customary law.²¹ Meanwhile, the historical approach is used to explore the dynamics of customary law and the recognition of indigenous peoples within the development of Indonesian legal history, thereby contributing to an understanding of the evolving relationship between customary law and state law.²² The sources of data in this research are derived from library research. Primary legal materials consist of statutory

¹⁸ Zulfadli Barus et al., "Analisis Filosofis Tentang Peta Konseptual Penelitian Hukum Normatif Dan Penelitian Hukum Sosiologis," *Jurnal Dinamika Hukum* 13, no. 2 (2013): 307-18, <https://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/212>.

¹⁹ Muhaimin, *Metode Penelitian Hukum* (Mataram-NTB: Mataram University Press, 2020).

²⁰ Sidi Ahyar Wiraguna, "Metode Normatif Dan Empiris Dalam Penelitian Hukum: Studi Eksploratif Di Indonesia," *Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum* 3, no. 3 (2024), <https://doi.org/10.59818/jps.v3i3.1390>.

²¹ Muhammad Zainuddin and Aisyah Dinda Karina, "Use of Normative Juridical Methods in Proving the Truth in Legal Research," *Smart Law Journal* 2, no. 2 (2023): 114-23, <http://stikesyahoedsmg.ac.id/ojs/index.php/slj%0ASLJ>.

²² Sidi Ahyar Wiraguna, "Eksplorasi Metode Penelitian Dengan Pendekatan," *Lex Jurnal* 8, no. no 1 (2025): 66.

regulations, while secondary legal materials include legal literature, scholarly articles, and printed media. Through these sources, the author systematically compiles and integrates the relevant legal materials, with secondary sources serving as supporting references in the analysis.

3. Results and Discussion

3.1. The Concept of Sustainable Law from the Perspective of Legal Pluralism

Sustainable law constitutes a normative construct within the development of modern legal thought, positioning law as a strategic instrument to ensure the sustainability of human life, the environment, and social systems in an integrated manner. From this perspective, law is no longer understood merely as a static set of normative rules, but rather as a dynamic system oriented toward balancing economic, social, and ecological interests. Within the framework of legal pluralism, sustainable law presupposes the recognition of the diversity of legal systems that exist and operate within society. Legal pluralism itself is understood as a condition in which more than one legal system applies simultaneously within a given social order.²³ Accordingly, sustainable law cannot be constructed exclusively through state law; instead, it must integrate customary law as a *living law* that possesses social legitimacy.

In this context, the practice of customary law in Jayapura reflects strong sustainability values, particularly in the communal based management of natural resources and in fostering harmonious relationships between humans and the environment. Therefore, from a normative standpoint, sustainable law requires the recognition and integration of customary law as an inseparable component of the national legal system.

In order to be qualified as sustainable, a legal system must fulfill several substantive criteria. *First*, it must be integrative, meaning that it accommodates environmental, social, and economic dimensions simultaneously. In practice, customary law in Jayapura reflects such integration through the management of communal land (*ulayat land*), which embodies not only economic value but also social and spiritual dimensions. *Second*, it must ensure both intra-generational and inter-generational justice. Within customary communities, mechanisms for managing natural resources take into account sustainability for future generations, demonstrating a long-term orientation consistent with the principle of sustainability. *Third*, sustainable law must accommodate legal pluralism. In the study of customary law, it is emphasized that customary law does not operate in isolation but continuously interacts with state law and other legal systems within a complex configuration.²⁴ Such interaction indicates that legal sustainability can only be achieved through the harmonization of different legal systems. *Fourth*, it must ensure both effectiveness and social legitimacy. In this regard, customary law in Papua, including in Jayapura, continues to possess strong legitimacy because it is rooted in local values and deliberative mechanisms. In many cases, communities prefer resolving disputes

²³ Pupu Sriwulan Sumaya and Sejarah Artikel, "Konflik Antara Hukum Adat Dan Hukum Negara : Tantangan Penegakan Keadilan Dalam Masyarakat Adat," *MANIFESTO Jurnal Gagasan Komunikasi, Politik, Dan Budaya* 3, no. 2 (2025): 1-12, <https://doi.org/https://doi.org/10.61434/manifesto.v3i2.308>.

²⁴ Sartika Intaning Pradhani, "Pendekatan Pluralisme Hukum Dalam Studi Hukum Adat: Interaksi Hukum Adat Dengan Hukum Nasional Dan Internasional," *Undang: Jurnal Hukum* 4, no. 1 (2021): 81-124, <https://doi.org/https://doi.org/10.61434/manifesto.v3i2.308>.

through customary mechanisms rather than through formal state law.²⁵ Fifth, sustainable law must be adaptive and responsive to social dynamics. Although characterized as traditional, customary law demonstrates the capacity to adapt to social change, even though in practice it often encounters pressure from the dominance of formalistic state law.²⁶

Within the Indonesian legal system, the concept of sustainable law exhibits a high degree of relevance, particularly within the framework of legal pluralism. Indonesia is characterized by a plural legal system, in which state law, customary law, and religious law coexist within a single social order. This condition indicates that the development of national law cannot be carried out in a centralized manner, but must instead accommodate the diversity of legal systems that evolve within society.

However, in practice, the relationship between state law and customary law frequently reveals underlying tensions. Numerous studies indicate that, although customary law has obtained formal recognition, its implementation is often constrained by the dominance of a hierarchical state legal system.²⁷ This condition has resulted in the marginalization of customary law and the weakening of indigenous communities' roles, particularly in the management of natural resources.

In Jayapura, this phenomenon is reflected in various conflicts concerning *ulayat* (communal) land and natural resource governance. The lack of synchronization between state law and customary law demonstrates a gap between normative recognition and empirical implementation. Moreover, such disparities contribute to the marginalization of customary law communities within the national legal system.²⁸ From the perspective of sustainable law, this condition underscores the urgency of reconstructing a more inclusive and integrative national legal system. Sustainable law must be capable of bridging the relationship between state law and customary law through a substantive legal pluralism approach. Accordingly, the recognition of customary law should not be confined to the formal level but must also be concretely realized in policies and legal practices. Furthermore, the values embedded in customary law in Jayapura such as principles of ecological balance and the collective management of natural resources constitute strategic capital for achieving sustainable development. Therefore, the integration of customary law into the national legal system is not only essential from the standpoint of social justice, but also represents a fundamental strategy for safeguarding environmental sustainability.

²⁵ Kasim Abdul Hamid, "Pilihan Hukum Adat Dalam Penyelesaian Sengketa Di Tanah Papua," *Jurnal Ilmu Hukum Kyadiren* 1, no. 1 (2019): 54–64, <https://doi.org/https://doi.org/10.46924/jihk.v1i1.121>.

²⁶ Mirza Satria Buana, "Living Adat Law, Indigenous Peoples and the State Law: A Complex Map of Legal Pluralism in Indonesia," *International Journal of Indonesian Studies* 1, no. 3 (2016): 104.

²⁷ Anggi Purnama Harahap et al., "Legal Pluralism and Customary Justice in Indonesia: Reconstructing Adat Law under State Legal Dominance," *Littera Legis: Journal of Law, Society, and Justice* 1, no. 1 (2025): 1–16, https://journal.geminilittera.com/littera-legis/article/view/1?utm_source=chatgpt.com.

²⁸ Muhammad Mujab Nabil et al., "Analisis Ketiadaan Kepastian Hukum Bagi Masyarakat Adat Dalam Proyek Strategis Nasional Guna Mendorong Revisi Kebijakan Pembangunan Nasional Berdasarkan Prinsip Pluralisme Hukum," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 2, no. 3 (2025): 194–205, <https://doi.org/https://doi.org/10.62383/amandemen.v2i3.1060>.

3.2. The Normative Framework for the Recognition of Customary Law in Indonesia, particularly in Jayapura

The normative regulation concerning the recognition of customary law communities in Indonesia fundamentally reveals a contradiction between formal recognition and substantive limitations. Through various legal instruments, the State has conferred legitimacy upon the existence of customary law communities however, in practice, such recognition is constrained by a number of administrative requirements as well as by legal-political constructions that position customary law in a subordinate role to state law. Recognition and protection of customary law communities also implicitly encompass the acknowledgment of their institutional structures and governance systems established in accordance with local customary constitutional norms.²⁹

From a theoretical standpoint, the recognition of customary law within the national legal system continues to reflect the dominance of the legal centralism paradigm, wherein the State remains the primary authority in determining the validity of a legal system. Recognition of customary law communities across various national regulations has not been accompanied by a redistribution of legal authority, thereby leaving customary law under state control. Consequently, such recognition tends to be symbolic rather than substantive. Furthermore, the regulation of customary law dispersed across various sectoral regimes such as agrarian, forestry, and environmental law demonstrates significant normative fragmentation. This fragmentation gives rise to normative conflicts, resulting in legal uncertainty. The lack of synchronization among these regulations also creates overlapping authorities between the State and customary communities, ultimately weakening the position of customary law. In addition, the absence of optimal regulatory frameworks at the regional level further affects the capacity of customary law communities to preserve and sustainably manage environmental resources.³⁰

In the empirical context of Jayapura, these issues are evident in various conflicts over *ulayat* (communal) land tenure. Customary communities, which possess social legitimacy over their territories, often lose their rights when confronted with state policies grounded in formal law. Agrarian conflicts in Papua, including Jayapura, represent a consequence of the imbalance between the recognition of customary law and the economic development agenda supported by state law.³¹ From the perspective of customary law, land holds a fundamental position due to its fixed nature and its function as a primary source of livelihood. The relationship between customary law communities and land is inherently close, as land serves not only as a place of residence but also as the basis of life for community members.³² In Jayapura, this

²⁹ Frans Reumi, "Menakar Pengakuan, Perlindungan Dan Pengaturan Peradilan Adat Sebagai Hak Kekhususan Papua," *Amanna Gappa* 31, no. 1 (2023): 70–81, <https://journal.unhas.ac.id/index.php/agjl/article/view/26603>.

³⁰ Dicky Eko Prasetyo, "Perlindungan Dan Pengakuan Hak Ulayat Masyarakat Adat Biak Papua," *Realism: Law Review* 2, no. 1 (2024): 54–82, <https://doi.org/https://doi.org/10.71250/rlr.v2i1.25>.

³¹ Ludia Jemima I.R. Reumy dan Ruth Kambuaya, "Implementasi Hak Ulayat Masyarakat Hukum Adat Kota Jayapura Dalam Pembangunan Infrastruktur Tantangan Dan Solusi," *Jurnal Wacana Sosial Nusantara* 1, no. 4 (2025): 10–18, <https://doi.org/https://doi.org/10.5281/zenodo.18333818>.

³² Kristian V. Griapon and Samsul Ma'rif, "Pola Penerapan Hukum Adat Dalam Penyelenggaraan Pembangunan Di Wilayah Pembangunan III Grime Kabupaten Jayapura-

condition is reflected in various disputes concerning communal land and the utilization of natural resources. Customary communities are often placed in vulnerable positions when confronted with investment and development interests grounded in state law. Moreover, several studies indicate that although Papua's special autonomy policy provides a framework for the protection of indigenous communities, its implementation remains suboptimal and tends to be formalistic in nature.

Normatively, the recognition of customary law communities requires the fulfillment of several criteria, namely:

1. the continued existence of the customary community;
2. the presence of a clearly defined customary territory;
3. the continued application of customary law;
4. the existence of customary institutions; and
5. conformity with the principles of the State and human rights.

Furthermore, the mechanism for recognizing customary law communities, which requires administrative verification, has also become a subject of critique in legal scholarship. Such a top-down recognition process tends to overlook the social realities of customary communities and imposes formal standards that are not always aligned with local dynamics. In practice, this condition has resulted in many customary communities in Jayapura that exist *de facto* but have yet to receive *de jure* recognition. Therefore, initiatives by the Jayapura municipal government to facilitate the recognition of customary communities by involving local elements such as customary leaders or traditional authorities in determining customary territorial boundaries represent a more contextual and participatory approach.³³ Thus, the normative framework governing the recognition of customary law in Indonesia, particularly in Jayapura, continues to face fundamental structural and conceptual challenges. A reconstruction of the legal paradigm is required one that no longer positions customary law as subordinate, but rather as an autonomous and equal legal system within the framework of legal pluralism. Without such a paradigm shift, the recognition of customary law will remain largely symbolic and will be unable to provide effective protection for customary law communities.

4. Conclusion

Sustainable law, from the perspective of legal pluralism, requires the integration of state law and customary law. In the context of Jayapura, customary law plays a strategic role as a representation of sustainability values embedded within society. Therefore, strengthening and recognizing customary law constitutes an essential step toward realizing a just and sustainable national legal system and the normative framework governing the recognition of customary law in Indonesia is underpinned by a strong legal basis, both in the Constitution and in statutory regulations. However, in practice, such recognition remains largely formal and has not been fully implemented in a substantive manner. In the context of Jayapura, this condition

Papua," *Jurnal Wilayah Dan Lingkungan* 4, no. 1 (2016): 13, <https://doi.org/http://dx.doi.org/10.14710/jwl4.1.13-28>.

³³ Ayu Kurnia Utami, "Implementasi Peraturan Daerah Khusus (Perdasus) Provinsi Papua Nomor 23 Tahun 2008 Tentang Hak Ulayat Masyarakat Hukum Adat Dan Hak Perorangan Warga Masyarakat Adat Atas Tanah (Studi Kasus Kota Jayapura Dan Kabupaten Biak Numfor)," *Gema Kampus IISIP YAPIS Biak* 11, no. 2 (2016): 40-59, <https://doi.org/10.52049/gemakampus.v11i2.27>.

reflects a gap between normative recognition and empirical reality. On the one hand, customary law continues to exist and function effectively within society; on the other hand, state recognition of customary law remains limited and often fails to provide adequate protection. Therefore, legal reform is required to integrate customary law into the national legal system in a more comprehensive manner. Recognition of customary law communities should not be confined to administrative acknowledgment, but must also be realized through concrete protection of their rights, particularly in the management of natural resources.

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