

CUSTOMARY LAND CONFLICTS BETWEEN DAYAK INDIGENOUS LAW AND STATE LAW IN INDONESIA

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Abstract

Indonesia's legal system is characterized by legal pluralism, in which state law coexists with customary law (adat) practiced by indigenous communities. Despite constitutional recognition and supportive judicial decisions, conflicts over customary land persist, particularly among Dayak indigenous communities in Kalimantan. These conflicts largely arise from structural incompatibilities between state land law—centered on administrative legality, formal registration, and written evidence—and customary law, which is grounded in communal ownership, oral traditions, and social legitimacy. This article analyzes conflicts between Dayak customary law and state law in the governance of customary land from a legal anthropology perspective. It examines the operation of Dayak customary law as a living law, identifies the causes and forms of conflict with state legal regimes, and assesses the implications of these conflicts for customary land governance and legal certainty. The research employs a qualitative legal-anthropological approach. Data were collected through in-depth interviews with customary leaders, community members, and relevant stakeholders, complemented by participant observation and document analysis. The data were analyzed using descriptive and interpretative methods, drawing on the concepts of legal pluralism and semi-autonomous social fields. The findings demonstrate that Dayak customary law remains effective in regulating land control, use, and dispute resolution at the community level. However, conflicts persist due to the dominance of formal state legal mechanisms that marginalize customary authority in land administration, licensing, and development processes. Normative recognition of indigenous rights alone has proven insufficient to secure legal protection for customary land. The study argues that substantive integration of customary institutions into state land governance frameworks is essential to reduce conflict, enhance legal effectiveness, and ensure meaningful protection of indigenous land rights.

Keywords: legal pluralism; customary land; Dayak customary law; legal anthropology

INTRODUCTION

Indonesia is characterized by legal pluralism, in which state law coexists with various forms of customary law (*adat law*) that continue to govern social relations within local communities. Customary law functions not merely as a cultural heritage, but as a living normative system (*living law*) that regulates land tenure, conflict resolution, and social order. In many indigenous societies, land is not perceived solely as an economic commodity, but rather as a collective, social, and spiritual entity that is intrinsically linked to community identity and survival (Soekanto, 2007; Pospisil, 1971). From the perspective of legal anthropology, law is understood as a social institution embedded in power relations, cultural values, and social practices, rather than merely as a set of formal rules enacted by the state (Malinowski, 1926; Moore, 1973). This perspective underscores the importance of living law in understanding how communities regulate themselves autonomously, whether independently of or alongside the state legal system. Accordingly, customary law remains highly relevant for analyzing contemporary legal conflicts, particularly in societies marked by legal pluralism such as Indonesia.

Previous studies on customary land rights in Indonesia have generally focused on normative recognition by the state, particularly following constitutional developments and judicial decisions. A number of scholars emphasize the significance of constitutional recognition of indigenous peoples as stipulated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as well as the Constitutional Court Decision Number 35/PUU-X/2012, which affirms that customary forests are not part of state forests (Mahfud, 2019; Butt & Lindsey, 2018). These studies represent the most significant contributions of prior research insofar as they provide a formal legal foundation for the recognition of customary land rights and doctrinal clarity within the state legal framework. Nevertheless, despite normative progress, numerous empirical studies demonstrate that such legal recognition has not automatically translated into effective protection of customary land. Existing research continues to document widespread agrarian conflicts involving indigenous communities, corporations, and state authorities, particularly in resource-rich regions (Li, 2014; Safitri, 2013). Most prior studies tend to emphasize legal texts, policies, or court decisions, while devoting limited attention to how customary law operates in practice at the local level when confronted with state law and corporate interests.

These limitations are particularly evident in the context of Dayak customary law in Kalimantan. Although several studies have acknowledged the existence of Dayak customary institutions and customary land tenure systems, customary law is often treated as a static set of cultural norms rather than as a dynamic legal system that continuously negotiates with state law. As a result, there remains a significant gap in understanding how conflicts between Dayak customary law and state law are experienced, interpreted, and managed in everyday legal practice by indigenous communities themselves.

This research seeks to address this gap by examining conflicts between Dayak customary law and state law in the governance of customary land from a legal anthropology perspective. Unlike previous studies that emphasize normative recognition, this article focuses on empirical legal practices, power relations, and conflict negotiation mechanisms between customary institutions and state authorities. The novelty of this research lies in its analysis of customary law as a *semi-autonomous social field* that actively interacts with, resists, and adapts to state legal interventions (Moore, 1973). By identifying the limitations of existing legal recognition frameworks and highlighting the lived realities of legal pluralism, this study aims to contribute both theoretically and practically to the discourse on indigenous land rights. The significance of this research lies in its effort to clarify the roots of legal conflict between customary law and state law and to formulate a more socially and culturally sensitive understanding of land governance that recognizes the legitimacy of indigenous legal systems. Accordingly, this article seeks to analyze how Dayak customary law functions in the governance of customary land, why conflicts with state law persist, and how such conflicts can be understood within the framework of legal anthropology.

RESEARCH METHODS

This research adopts a qualitative approach grounded in the perspective of legal anthropology to examine conflicts between Dayak customary law and state law in the governance of customary land. The scope of the study is limited to the management of customary land within Dayak indigenous communities in Kalimantan, with the research object focusing on legal interactions, overlapping authorities, and the dynamics of conflict between customary institutions and state legal mechanisms. The focus of the study encompasses the operation of Dayak customary law, the causes and forms of conflict with state law, and the mechanisms employed to resolve such conflicts.

Operationally, customary law is defined as the norms, institutions, and sanctions that are lived, recognized, and practiced by Dayak communities, whereas state law refers to statutory regulations, administrative decisions, and land governance policies. Conflict is understood as disputes arising from

competing legal claims and overlapping authorities. The research was conducted in selected Dayak customary territories experiencing land-related conflicts, with informants consisting of customary leaders, affected community members, local government officials, and relevant civil society actors selected through purposive sampling.

The primary research materials include customary norms, legal documents, policy archives, and community narratives, supported by research instruments such as interview guides, observation notes, and document analysis tools. Data were collected through in-depth interviews, participant observation, and document analysis, and subsequently analyzed using qualitative descriptive and interpretative techniques. The analytical process involved data reduction, data display, and conclusion drawing, guided by key concepts in legal anthropology, particularly legal pluralism and semi-autonomous social fields.

RESULT AND DISCUSSION

The Function of Dayak Customary Law in the Governance of Customary Land

The findings of this study indicate that Dayak customary law continues to function as a living legal system in the governance of customary land. Customary land is regulated through communal norms, the demarcation of ancestral boundaries, and collective decision-making processes under the authority of customary institutions. These institutions possess strong social legitimacy, as their authority is derived from tradition, community recognition, and continuously practiced norms. This finding reinforces the legal anthropological perspective that views law not merely as state-enacted norms, but as social practices embedded in the everyday life of society (Malinowski, 1926; Pospisil, 1971). In contrast to state land law, which relies heavily on formal documentation, Dayak customary law emphasizes collective memory, oral agreements, and customary markers. This empirical reality demonstrates that customary law can operate independently of formal state recognition and remain effective in regulating land relations at the community level.

The study further reveals that conflicts between Dayak customary law and state law primarily arise from overlapping claims of authority over land. State-issued permits for plantations, forestry, and mining activities frequently encompass customary land territories, thereby triggering disputes between indigenous communities, corporate actors, and government authorities. While the state legal system prioritizes administrative legality and written evidence, customary law is grounded in communal recognition and historical occupation of land. Previous studies have generally positioned constitutional recognition and judicial decisions as the primary solutions to indigenous land conflicts (Mahfud, 2019; Butt & Lindsey, 2018). However, the findings of this research demonstrate that such normative recognition has not been effective in preventing conflicts at the local level. The persistence of these conflicts exposes the limitations of prior doctrinal approaches that assume legal certainty can be achieved solely through statutory regulations and court rulings, without due consideration of implementation practices and administrative realities on the ground (Safitri, 2013).

Negotiation and Interaction between Customary Institutions and State Authorities

Another significant finding indicates that Dayak customary institutions do not position themselves in absolute opposition to state law. Instead, these institutions actively engage in negotiation processes with state authorities and corporate actors. Customary leaders frequently pursue mediation efforts through dialogue, customary hearings, and coordination with local government officials. These practices reflect the adaptive nature of customary law as a *semi-autonomous social field*, capable of responding to external legal pressures without losing its internal normative authority (Moore, 1973).

This finding differs from earlier studies that often depict customary law as a static or change-resistant system. Empirically, Dayak customary law demonstrates flexibility and strategic engagement, indicating that conflict is not merely a legal confrontation but rather an ongoing process of negotiation between different legal systems. The study also reveals that customary dispute resolution mechanisms are perceived by community members as more legitimate and accessible than formal legal procedures. Customary sanctions emphasize the restoration of social harmony rather than punitive or repressive measures. These mechanisms reinforce collective responsibility and social cohesion, which constitute fundamental values within Dayak society. In contrast to prior research that positions litigation and administrative remedies as the primary means of resolving customary land disputes, this study demonstrates that exclusive reliance on state legal processes often exacerbates conflict. The marginalization of customary mechanisms risks undermining community trust and diminishing the effectiveness of conflict resolution efforts.

Legal Implications of the Conflict between Dayak Customary Law and State Law

The findings of this study carry significant legal implications for the governance of customary land within Indonesia's plural legal system. First, the persistence of conflict despite formal constitutional and judicial recognition demonstrates that normative recognition alone is insufficient to guarantee legal certainty for indigenous communities. The gap between recognition in legal texts and protection in legal practice reflects structural weaknesses in state law, particularly its reliance on administrative formalism that is incapable of accommodating non-documentary forms of legal authority inherent in customary law.

Second, these findings indicate that state land law, as currently implemented, tends to operate within a centralized and positivistic legal paradigm that prioritizes written evidence, licensing, and cadastral registration. This paradigm systematically marginalizes customary legal systems that are grounded in oral traditions, collective memory, and social legitimacy. As a result, customary land frequently becomes legally invisible within state administrative processes, thereby creating opportunities for land dispossession through mechanisms that are formally lawful yet substantively unjust. This condition raises fundamental questions concerning the principles of justice and equality before the law, particularly for communities whose legal systems differ from the rationality underpinning state law.

Third, this study affirms the legal implication that customary law functions as a semi-autonomous legal order capable of regulating land relations and resolving disputes independently of the state structure. The sustained effectiveness and legitimacy of Dayak customary institutions challenge the assumption that the state holds a monopoly over lawmaking and law enforcement. These findings reinforce the theory of legal pluralism and imply the necessity of shifting state legal approaches from a model of domination toward a model of coordination—one that recognizes customary institutions as legitimate legal actors rather than merely cultural entities.

Fourth, the research reveals that the exclusion of customary dispute resolution mechanisms from the formal framework of land governance undermines conflict resolution efforts. From a legal perspective, this demonstrates that integrating customary institutions into formal dispute resolution processes has the potential to enhance legal effectiveness and social compliance. Accordingly, legal reform must move beyond symbolic recognition toward procedural integration, for example by acknowledging customary decisions as legally relevant outcomes or by involving customary leaders within formal land dispute mediation structures.

Finally, the findings imply the need to reconceptualize the meaning of legal certainty within the context of legal pluralism. Legal certainty should not be understood solely as adherence to formal procedures, but also as the capacity of law to reflect social realities and to provide outcomes that are predictable and legitimate for affected communities. Failure to substantively integrate customary law into land governance risks perpetuating legal uncertainty, social conflict, and public distrust in state institutions.

In this context, the conflict between Dayak customary law and state law is not merely a local or technical issue, but rather a broader legal problem concerning the legitimacy, adaptability, and inclusiveness of the national legal system. Addressing this conflict requires a paradigmatic shift in legal policy—from formal recognition to functional integration—thereby strengthening the role of customary law as an essential component of Indonesia's plural legal order.

CONCLUSION

This study concludes that the conflict between Dayak customary law and state law in the governance of customary land fundamentally stems from a structural incompatibility between a living, community-based legal system and a state legal framework that is formalistic and administratively oriented. Although state law has formally recognized the existence of indigenous peoples and their customary rights, such recognition remains largely symbolic in practice and has not been translated into effective legal protection at the operational level. As a result, legal certainty over Dayak customary land continues to be undermined by administrative practices that fail to accommodate the authority of customary law.

From a legal anthropological perspective, this research demonstrates that Dayak customary law functions as an effective legal system with strong legitimacy in regulating land relations and resolving disputes autonomously. Accordingly, the persistence of conflict should not be interpreted as a weakness of customary law, but rather as a limitation of state law in responding to the realities of legal pluralism. These findings address the research objectives by affirming that conflict arises not from the absence of law, but from the dominance of a singular legal paradigm that marginalizes alternative legal orders.

The practical implications of these findings point to the necessity of shifting land governance policies from mere formal recognition toward substantive legal integration. State institutions need to develop mechanisms that recognize customary land boundaries, integrate customary institutions into land administration and dispute resolution processes, and treat customary decisions as legally relevant outcomes. Such measures have the potential to enhance legal effectiveness, strengthen social legitimacy, and prevent conflicts in indigenous territories.

Future research is recommended to pursue comparative cross-community studies to examine the application of legal integration models across diverse socio-cultural contexts. In addition, further empirical inquiry into the administrative implementation of customary land recognition may contribute to the formulation of a more inclusive and responsive land governance framework. By advancing a context-sensitive understanding of legal pluralism, this study is expected to offer both theoretical and practical contributions to the reform of indigenous land law in Indonesia.

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REFEENCES

Bavinck, M., Pellegrini, L., & Mostert, E. (2014). Conflicts over natural resources in the global South: Conceptual approaches. *Routledge Handbook of Environmental Justice*.

Benda-Beckmann, K. von. (2001). Legal pluralism and social justice in economic and political development. *IDS Bulletin*, 32(1).

_____, F. von, Benda-Beckmann, K. von, & Griffiths, A. (2009). *The power of law in a transnational world: Anthropological enquiries*. Berghahn Books.

Butt, S., & Lindsey, T. (2018). *Indonesian law*. Oxford University Press.

Colchester, M. (2011). Indigenous peoples, land and reform in Indonesia. *Forest Peoples Programme Working Paper*.

Cotula, L. (2007). Legal empowerment for local resource control: Securing local resource rights within foreign investment projects in Africa. *Law, Environment and Development Journal*, 3(1).

Fitzpatrick, D. (2007). Land, custom, and the state in post-Suharto Indonesia: A foreign lawyer's perspective. *Journal of Indonesian Social Sciences and Humanities*, 1, 1–27.

_____, McWilliam, A., & Barnes, S. (2008). Property and justice in Timor-Leste: The social dynamics of land conflict. *Asian Studies Review*, 32(1).

Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law*, 18(24).

Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat Indonesia*. Bina Ilmu.

Hooker, M. B. (1975). *Legal pluralism: An introduction to colonial and neo-colonial laws*. Oxford University Press.

Ibrahim, J. (2012). *Teori dan metodologi penelitian hukum normatif*. Bayumedia.

Li, T. M. (2014). *Land's end: Capitalist relations on an indigenous frontier*. Duke University Press.

Mahfud MD. (2019). *Konstitusi dan hukum dalam kontroversi isu*. Rajawali Pers.

Malinowski, B. (1926). *Crime and custom in savage society*. Routledge & Kegan Paul.

Marzuki, P. M. (2014). *Penelitian hukum*. Kencana.

McCarthy, J. F. (2010). Processes of inclusion and adverse incorporation: Oil palm and agrarian change in Sumatra, Indonesia. *Journal of Peasant Studies*, 37(4).

Merry, S. E. (1988). Legal pluralism. *Law & Society Review*, 22(5).

Moore, S. F. (1973). Law and social change: The semi-autonomous social field as an appropriate subject of study. *Law & Society Review*, 7(4), 719–746.

Peluso, N. L., & Lund, C. (2011). New frontiers of land control. *Journal of Peasant Studies*, 38(4).

Pospisil, L. (1971). *Anthropology of law: A comparative theory*. Harper & Row.

Rahardjo, S. (2006). *Hukum dalam jagat ketertiban*. UKI Press.

Safitri, M. A. (2013). *Hukum agraria dan masyarakat adat*. HuMa.

Soekanto, S. (2007). *Antropologi hukum*. RajaGrafindo Persada.

Sikor, T., & Lund, C. (2010). *The politics of possession: Property, authority, and access to natural resources*. Wiley-Blackwell.

Situmorang, V. M. (2018). *Peradilan hubungan industrial*. Bumi Aksara.

Sumardjono, M. S. W. (2001). *Kebijakan pertanahan antara regulasi dan implementasi*. Kompas.

Von Benda-Beckmann, F. (2002). Who's afraid of legal pluralism? *Journal of Legal Pluralism and Unofficial Law*, 34(47), 37–82.

Von Benda-Beckmann, F., von Benda-Beckmann, K., & Griffiths, A. (2009). *The power of law in a transnational world*. Berghahn Books.

Wignarajah, D. (2015). Customary land tenure and legal pluralism. *Asian Journal of Law and Society*, 2(1), 35–54.

Yin, R. K. (2014). *Case study research: Design and methods*. Sage Publications.