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Integration of Customary Law in The National Legal System Comparative Study of Malaysia and Indonesia

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Abstract

Introduction: *Customary law shapes and protects indigenous cultural identity and rights in the face of rapid modernity. However, customary law incorporation into national legal systems, notably in Malaysia and Indonesia, remains difficult. Both nations recognize and integrate customary law into their legal systems, but disparities in indigenous peoples' land, forestry, and natural resource management rights enforcement and protection exist.*
Purposes of the Research: *The study's main objectives are to (1) understand and evaluate customary law's inclusion into Malaysia and Indonesia's legal systems and (2) determine the best framework for this incorporation given the fast rate of modernization.*
Methods of the Research: *This research employs a normative juridical methodology with statutory and comparative approaches. Through a review of relevant laws and literature from both countries, this study seeks to identify and compare how customary law is integrated into the national legal systems of Malaysia and Indonesia.*
Results of the Research: *The research identified discrepancies in indigenous peoples' rights enforcement and protection, notably in land, forestry, and natural resource management, despite both countries adopting customary law into their legal systems. This research emphasizes the necessity for inclusive and participatory customary law incorporation into national legal systems. Customary law is important to these systems and is acknowledged, preserved, and respected. Scholars, attorneys, and legislators in both countries may utilize this study to protect indigenous rights.*

Keywords: Indonesia; Malaysia; Customary Law; Comparative.

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INTRODUCTION

Customary law shapes national legal systems in multicultural nations like Indonesia and Malaysia. Article 18B, paragraph (2), of the 1945 Constitution safeguards customary law communities as long as they follow Indonesian ideals. In Malaysia, customary law is acknowledged, although it is restricted and largely influenced by Islamic and common law. Both nations face the problem of integrating customary law into their legal systems without compromising principles such as justice, equality, and the rule of law.

This research compares Indonesia's and Malaysia's attempts to incorporate customary law into the national legal system, taking into account contextual disparities in recognition and application. Harmonizing heterogeneous customary rules with unifying national legislation is the largest problem in Indonesia. Malaysian customary law is frequently

replaced by Islamic or common law, which threatens indigenous tribes' cultural identity. This study should suggest ways to make both nations' legal systems more inclusive and equitable by showing these commonalities, variances, and obstacles.

Postmodern legal theory has broadened the scope of legal study and introduced innovative methods to legal communities in nations where modern theory had previously prevailed. There is a lot of disagreement among scholars on the study of traditional customary law.[1] Questions about the legitimacy of customary law and its role in the development of norms for the rule of law have prompted scholarly disagreements.[2]

For Indigenous peoples, customary law is the highest level of cultural understanding. All parts of human life are shaped and given meaning by customary law, which is a complex framework that extends beyond the judicial system and government as conventional and Western conceptions of law.[3] Any and all things that happen on or inside the exclusive domain of Indigenous peoples' land and water are subject to their customary law, which encompasses both human and non-human entities, as well as all locations on Earth.[4] All forms of life are bound together by customary law, which gives them a sense of purpose and meaning.[5]

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states, "The State recognizes and respects customary law community units and their rights." This provision acknowledges the existence of customary law in Indonesia's national legal system, as long as it remains alive and in line with society's development and the principles of the Unitary State of the Republic of Indonesia as regulated by law."[6] The state's acknowledgement of the unity of customary law communities and their traditional rights entails the automatic recognition of customary law, as customary law communities cannot exist without the standards that govern them. and the conventions of law.[7]

Regarding recognizing customary law communities from a human rights point of view, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia lists four legal clauses: (1) as long as they are alive; (2) in line with changes in society and time; (3) in line with the principles of the Unitary State of the Republic of Indonesia; and (4) as set by law. We have explained all this in relation to Article 18B above.[8] Reading these rules reveals that the law employs restricted recognition, necessitating the fulfillment of specific requirements before acknowledging the existence of communities with customary law.

According to Article 28, paragraph (3) of the Republic of Indonesia Constitution from 1945, "We respect the cultural identity and rights of traditional communities in line with

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[1] Juanjuan Yang and Tee Boon Chuan, '[Retracted] Evaluation and Analysis of Traditional Customary Law Based on the Perspective of Big Data', Computational and Mathematical Methods in Medicine 2022, no. 1 (2022): 5088630, https://doi.org/10.1155/2022/5088630.

[2] Grigory Tunkin, 'Is General International Law Customary Law Only?', European Journal of International Law 4 (1993): 534, https://heinonline.org/HOL/Page?handle=hein.journals/eurint4&id=556&div=&collection= .

[3] Amanda Kearney et al., 'Conceptualising Indigenous Law', in Indigenous Law and the Politics of Kincentricity and Orality, ed. Amanda Kearney et al. (Cham: Springer International Publishing, 2023), 1–30, https://doi.org/10.1007/978-3-031-19239-5_1.

[4] Zamroni Abdussamad et al., 'cultural Studies Approach To Legal Protection For Persons With Disabilities In Boalemo District', *Community Development Journal: Journal of Community Service* 4, no. 6 (11 December 2023): 11518–26, https://doi.org/10.31004/cdj.v4i6.16043.

[5] karlin Z. Mamu Et Al., 'Increasing Awareness Of Bantaran Communities In Maintaining The Lake's Sustainability Through The Use Of Local Wisdom-Based Fishing Tools', *Journal Of Mandiri Devotion* 3, no. 1 (25 January 2024): 137–42, https://bajangjournal.com/index.php/JPM/article/view/7295.

[6] Fakhry Amin et al., Legislative Science (Sada Kurnia Pustaka, 2023).

[7] Tuti Khairani Harahap et al., 'Introduction To Legal Science', Tahta Media Publisher, 30 May 2023, https://tahtamedia.co.id/index.php/issj/article/view/255.

[8] AH Asari Taufiqurrohman et al., 'The Role of Islamic Law, Constitution, and Culture in Democracy in the UAE and Indonesia', *AHKAM: Journal of Sharia Science* 24, no. 1 (2024).

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developments over time and civilization." This provision also pertains to groups governed by customary law. Thus, this article also stipulates obligations pertaining to the presence and privileges of communities governed by customary law (traditional community rights), so long as they are compatible with modern advancements. Article 32(1) and (2) of the Republic of Indonesia Constitution from 1945 read as follows: "(1) The State advances Indonesian national culture in the midst of world civilization by guaranteeing people's freedom to maintain and develop values in its culture." In addition to dealing with communities governed by customary law, the state also recognizes and protects regional languages and cultures as valuable national assets. This article guarantees communities governed by customary law the right to culture, including the ability to establish regional languages and cultural values.

The Malaysian constitution recognizes customary law, reflecting the ethnic and cultural diversity of the nation. In a number of sections pertaining to indigenous peoples' rights—specifically in Sabah and Sarawak and among Peninsular Malaysia's Orang Asli communities—the Malaysian Constitution acknowledges customary law.[9] Paragraph 1 of Article 76 of the Constitution of Malaysia grants Parliament the power to legislate in recognition and protection of customary law, particularly as it pertains to indigenous populations in the states of Sabah and Sarawak.[10] Additionally, the Malay and Bumiputera populations in Sabah and Sarawak have their particular rights regulated by Article 153. These rights include their customary land and natural resource rights. In Peninsular Malaysia, the constitution does not specifically mention the recognition of customary law for the Orang Asli community. However, special laws, such as the Orang Asli Act 1954 (Akta 134), ensure the rights and protection of the Orang Asli community, including their traditional lands.[11]

Recognizing customary law is an area where the legal systems of Malaysia and Indonesia are comparable. These two nations both acknowledge and incorporate customary law into their national legal systems.[12] Laws pertaining to property, marriage, and indigenous peoples' protection are among those that expressly acknowledge customary law in Indonesia. Meanwhile, Malaysia's constitution and corresponding laws recognize customary law primarily in relation to indigenous populations in Peninsular Malaysia, Sabah, and Sarawak, as well as the Orang Asli.

Table 1
Aspects of Customary Law in the Indonesian and Malaysian Legal Systems

Legal Aspect	Indonesia	Malaysia
Land	Fundamental Agrarian Principles Law No. 5 of 1960	The Sabah and Sarawak Land Ordinance enforces the Native Customary

[9] Nur Nasuha Binti Muhamad, Baharuddin Ahmad, and Rahmadi Rahmadi, 'A Review of Islamic Law on the Traditional Marriage Expenditure Demands of Modern Malay Society in Pekan Parit Yaani Johor, Malaysia' (PhD Thesis, UIN Sulthan Thaha Saifuddin Jambi, 2020).

[10] Flavia Ary Sahwa and Tharshini Sivabalan, 'Exploring the Issue of Child Marriage from the Perspective of the Customary Marriage Law in Sarawak', Malaysian Journal of Social Sciences and Humanities (MJSSH) 8, no. 4 (30 April 2023): e002279–e002279, https://doi.org/10.47405/mjssh.v8i4.2279.

[11] Bagoes Wiryomartono, 'Urbanism, Place and Culture in the Malay World: The Politics of Domain from Pre-Colonial to Post Colonial Era', City, Culture and Society 4, no. 4 (1 December 2013): 217–27, https://doi.org/10.1016/j.ccs.2013.05.004.

[12] Sri Wahyuni, 'Implementation of Interreligious Mixed Marriages Between Malaysian Malays and Kalimantan Dayak in the Sambas Border Area, West Kalimantan (Between Living Law and Indonesian Positive Law)', Al-Ahwal: Journal of Islamic Family Law 9 (2016): 31–46, https://doi.org/10.14421/ahwal.2016.09103.

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Legal Aspect	Indonesia	Malaysia
	Article 3 governs the recognition of the traditional rights of indigenous peoples. As long as it doesn't clash with national and state objectives, customary law may be a source of agricultural law (Article 5).	Rights (NCR) of the indigenous inhabitants of Sabah and Sarawak with respect to their traditional land use.
Forestry	Article 67 of Law No. 41 of 1999 on Forestry states that, if the regional administration acknowledges the existence of customary forests, customary law communities are entitled to use them.	In Malaysia, the National Forestry Act of 1984 establishes regulations for the preservation of forests traditionally used by indigenous tribes.
Natural Resources Management	Article 63 of Law No. 32 of 2009 on the Protection and Management of the Environment mandates the participation of indigenous peoples in environmental management.	The Quality of the Environment Act came into effect in 1974. We acknowledge the valuable contributions of indigenous peoples in safeguarding natural areas within their original territories.
Protection of the Rights of Indigenous Peoples	Article 6 of Law No. 39 of 1999 on Human Rights: Respect for and defense of indigenous peoples' rights in line with internationally accepted norms of traditional practice.	Article 153 of the Malaysian Federal Constitution guarantees the preservation of the traditional rights of the Sabah and Sarawak people, as well as the unique rights of the Malay and Bumiputera communities.
Cultural Protection	Article 25 of Law No. 5 of 2017 on Cultural Advancement asserts the cultural heritage of indigenous peoples as an integral component of national culture.	The Orang Asli people of Peninsular Malaysia have their traditional lands and culture safeguarded under the Orang Asli Act of 1954 (Act 134).

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Both Indonesia and Malaysia face the intriguing and complicated problem of incorporating customary law into their respective legal systems. When it comes to incorporating and reconciling local customs with domestic legislation, the two nations use distinct but complementary methods. The most pressing issue is finding a way to incorporate and harmonize local customary law, which differs from national law in many respects and is therefore difficult to implement.[13]

Several laws in Indonesia acknowledge and support the presence of customary law, which is a reflection of the way customary law is integrated into the national legal system.[14] But national law and customary law don't often agree, and that's particularly true when it comes to land, forests, and managing natural resources.[15] Sometimes, Indonesia fragments the integration pattern, recognizing customary law in specific contexts but not fully assimilating it into the national legal system. Because of this, achieving harmony and consistency between national law and customary law is not an effortless task.

However, integrating customary law into Malaysia's domestic legal system is a challenging task. Recognizing indigenous peoples' rights in Malaysia, particularly in Sabah and Sarawak, demonstrates attempts to integrate customary law into the country's legal framework. The disparities between national law and customary law, however, make uniform application and protection difficult.[16] Indigenous peoples in Malaysia are receiving more attention from integration policies, particularly with regard to land rights and cultural preservation.

The ideal framework for incorporating customary law into a country's legal system would accommodate the ever-increasing speed of change and the difficulties of the present. This integration should ideally include more thorough recognition and harmonization of national law with customary law. To achieve this goal, it is necessary to include indigenous groups in the process of creating and implementing policies. Additionally, the key to peaceful integration is the establishment of a process for efficient conflict resolution and the continuous preservation of customary rights. The implications of this study include a deeper understanding of the patterns of customary law integration in Malaysia and Indonesia, as well as the development of ideal structures to meet the challenges of a changing world.

The findings of this study may help academics, lawyers, and policymakers in both nations better safeguard the rights of indigenous peoples and create policies that are more welcoming to everyone. Beyond that, the findings of this study may serve as a valuable resource for addressing ongoing social and cultural changes, striking a balance between national law and customary law, and so on. Based on what you've read so far, the research question is as follows: (1) How has the national legal system in Malaysia and Indonesia incorporated customary law? (2) How can Malaysia and Indonesia best incorporate their customary laws into their rapidly modernizing legal systems?.

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[13] Datu Bua Napoh, 'Recognition of the Customary Land Law in the Constitution of Indonesia and Malaysia', Brawijaya Law Journal 2, no. 2 (2015): 1–1, https://doi.org/10.21776/ub.blj.2015.002.02.01.

[14] Fradhana Putra Disantara, 'The Concept of Indonesian Legal Pluralism as a Strategy for Facing the Era of Legal Modernization', Al-Adalah: Journal of Islamic Law and Politics 6, no. 1 (14 June 2021): 1–36, https://doi.org/10.35673/ajmpi.v6i1.1129.

[15] Ganjar Kurnia et al., 'Local Wisdom for Ensuring Agriculture Sustainability: A Case from Indonesia', Sustainability 14, no. 14 (January 2022): 8823, https://doi.org/10.3390/su14148823.

[16] Dominik M. Müller, 'islamic Politics And Popular Culture In Malaysia: Negotiating Normative Change between Shariah Law and Electric Guitars: Commendation 2014 Young Scholars Competition', Indonesia and the Malay World 43, no. 127 (2 September 2015): 318–44, https://doi.org/10.1080/13639811.2014.930993.

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METHODS OF THE RESEARCH

This study uses a method from normative juridical research to examine the rules, conceptions, and principles of law as they pertain to the incorporation of customary law into Malaysia and Indonesia's legal systems. This study makes use of both a legislative and a comparative methodology.[17] In order to understand how both nations' legal systems recognize and uphold customary law, we take a legal perspective and examine the relevant statutes and regulations. In the meantime, we compare and contrast Indonesia and Malaysia to determine how their customary law systems have integrated and how they've dealt with modernizing issues. Both primary and secondary legal resources were used in this study. Case judgments involving customary law and applicable laws and regulations in Malaysia and Indonesia constitute primary legal documents. Books, scholarly journals, and other pieces that address the incorporation of customary law within the framework of the national legal system are examples of secondary legal literature. Conducting document and literature studies, which include analyzing numerous legal sources and associated literature, can provide a thorough picture of the pattern of integration of customary law in the two nations. To conduct a qualitative analysis of legal documents, one must analyze, connect, and compare different relevant legal principles and ideas. Using this approach, the study aims to determine how to adapt customary law integration to modern times, thereby creating a more inclusive and harmonious national law.

RESULTS AND DISCUSSION

A. Patterns of Integration of Customary Law in Indonesia and Malaysia in the National Legal System

1. Patterns of Integration of Customary Law in Indonesia

The integration between customary law and state law in Indonesia has been the subject of complex and important discussion in the development of this country's legal system. From the perspective of the legal history school, this integration is not just a merger of two different legal systems, but also reflects the rich social, political and cultural dynamics in Indonesia. In a socio-legal context, this integration reflects efforts to build legal harmony that accommodates the diversity of society and strengthens the country's legal sovereignty. According to Hazairin, customary law communities are community groups that have all the necessary needs to be independent, including a legal system, organized leadership and an integrated living environment. They also have collective rights to land and water sources for all their members.[18]

The integration of customary law in Indonesia has become the concern of many legal experts and influential legal thinkers, especially in understanding the position of customary law in the national legal system. One important figure is Hazairin. He emphasized that customary law is not just local rules that apply in certain communities, but is an integral part of the social and cultural life of Indonesian society. Hazairin sees customary law as a manifestation of local sovereignty that represents the unique needs and aspirations of local

[17] Peter. Mahmud Marzuki, Legal Research (Jakarta: Kencana Prenada Media Group, 2011).

[18] Septya Hanung Surya Dewi, I. Gusti Ayu Ketut Rachmi Handayani, and Fatma Ulfatun Najicha, 'Position and Protection of Indigenous Peoples in Living in Customary Forests', Legislative Journal, 27 December 2020, 79–92, https://doi.org/10.20956/jl.v4i1.12322.

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communities. According to Hazairin, customary law communities not only have a legal system that lives and develops in accordance with local values, but also contains democratic principles and balance in the management of natural resources and social life.[19] Apart from Hazairin, Van Vollenhoven also made a major contribution to understanding customary law in Indonesia. He introduced the concept of "adat recht" which describes customary law as a dynamic living law, different from state law which is often rigid and uniform. Van Vollenhoven emphasized that customary law is original law that develops from people's daily lives, not from the product of formal legislation. For Van Vollenhoven, customary law needs to be maintained because it reflects the heterogeneous personality and culture of Indonesian society.[20]In this view, the integration of customary law into the national legal system must not be carried out top-down, but must respect the diversity and uniqueness of each indigenous community.

Prof. Satjipto Rahardjo also voiced the importance of customary law in the context of national legal development. He sees customary law as one of the pillars of the Indonesian legal system which is able to overcome the gap between formal state law and social reality in society. According to him, customary law has high flexibility and adaptability, which makes it relevant in various changing social situations. Rahardjo believes that in integrating customary law into the national legal system, the government must pay attention to local characteristics and not force legal homogenization which could actually result in social resistance..[21]

The integration of customary law into the Indonesian national legal system has been a long journey, influenced by various political, social and cultural factors. Since the colonial period, customary law has been recognized but to varying degrees depending on the policies of the colonial government in force. During the colonial period, customary law was faced with the domination of European law, where customary law was often considered lower or subordinate law. However, through several periods of colonial rule such as under Daendels, Raffles, up to the Van den Bosch era, customary law continued to exist and was recognized to a certain extent.

After independence, the existence of customary law was further strengthened by recognition in various national constitutions and laws. For example, in the 1945 Constitution of the Republic of Indonesia and the 1949 Constitution of the United States of Indonesia, customary law is recognized as part of the valid legal system in Indonesia. This recognition continued to develop until the 1960 Basic Agrarian Law, which explicitly states that agrarian law in Indonesia must be based on customary law as long as it does not conflict with national interests. This integration journey illustrates Indonesia's efforts to maintain a balance between the diversity of customary laws that exist in society and the need to build a more orderly and unique national legal system.

Table 2
Historical Period of Customary Law Integration in Indonesia

[19] Ilham Tohari, Siti Rohmah, and Ahmad Qiram As-Suvi, 'Exploring Customary Law: Perspectives of Hazairin and Cornelis Van Vollenhoven and its Relevance to the Future of Islamic Law in Indonesia', Ulul Albab: Journal of Islamic Legal Studies and Research 7, no . 1 (30 October 2023): 50–70, https://doi.org/10.30659/jua.v7i1.32600.

[20] Tohari, Rohmah, and As-Suvi.

[21] Muhammad Ikram Nur Fuady, 'Siri' Na Pacce Culture in Judge's Decision (Study in Gowa, South Sulawesi Province)', Fiat Justisia: Journal of Legal Studies 13, no. 3 (4 October 2019): 241–54, https://doi.org/10.25041/fiatjustisia.v13no3.1684.

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Period/Era	Description	Important Policies
Daendels era (1808-1811)[22]	Recognizes the existence of customary law, but is considered inferior to European law so it has no impact on changes to European law.	There are no important policies regarding customary law because the focus is on the dominance of European law.
Raffles Era (1811-1816)[23]	Review customary law through the formation of a commission for research and certain changes.	Regulations for The More Effective Administration of Justice in The Provincial Court of Java (1814). Resident as chief judge, customary court under the supervision of British law.
General Commission Era (1816-1830)[24]	There have been no significant changes in the development of customary law.	Continuing previous policies without major changes regarding customary law.
Van den Bosch Era (1830-1870)[25]	Inheritance law is starting to be influenced by Islamic law and customary law in managing land rights.	A mixture of Bramein and Islamic rules in inheritance law and land rights.
Age of Chr. Baud (1870-1900)[26]	Focus on protecting customary rights and attention to customary law, including academic studies by Indonesian sons in the Netherlands.	Dissertations by Kusumaatmadja (1922), Soebroto (1927), Endabumi (1927), and Soepomo (1929) studied customary law in various aspects, including land law and customary rights.
Post-Independence (1945-present)[27]	Customary law is recognized in various national constitutions and laws, with	Recognition in the 1945 Constitution of the Republic of Indonesia, 1949 RIS

[22] Daniel S. Lev, 'Colonial Law and the Genesis of the Indonesian State' (Brill, 2000), https://doi.org/10.1163/9789004478701_004.

[23] Franz von Benda-Beckmann and Keebet von Benda-Beckmann, 'Myths and Stereotypes about Adat Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles over Adat Law in Indonesia', 1 January 2011, https://doi.org/ 10.1163/22134379-90003588.

[24] During the Commission General period (1816-1830), after England handed back control over the Dutch East Indies to the Netherlands, no significant changes occurred regarding customary law. During this period, the Dutch colonial government tended to continue existing policies from the previous period without making innovations or major changes to the customary legal system that applied in society. The Commission General was created to restore order and stability after the British rule. In the context of customary law, the approach taken is more about maintaining the existing order, including maintaining the existence of customary law that was regulated during the Raffles era, but without making substantive efforts to integrate it further into the colonial legal system, seePG Toner and Stephen A. Wild, The Asia Pacific Journal of Anthropology 5, no. 2 (1 August 2004): 95–112, https://doi.org/10.1080/1444221042000247652.

[25] M. Misbahul Mujib, 'Socio-Historical Study of Customary Law in the Indonesian Constitution', Rule of Law: Journal of Legal Studies 4, no. 1 (1 June 2015): 200–218, https://digilib.uin-suka.ac.id/id/eprint/35595/.

[26] M. Alpi Syahrin, 'the Legal Tradition In Indonesia: Finding The Middle Way (History Aticle)', Sosiohumaniora: Journal of Social Sciences and Humanities 24, no. 3 (2022), http://repository.uin-suska.ac.id/69160/1/Histori%20Article%20Sosio%20Humaniora%20%28SINTA%202%29%20Dr%20Zulkifli%20M.Ag%20%281 %29.pdf.

[27] Ratno Lukito, '2. LAW AND POLITICS IN POST-INDEPENDENCE INDONESIA: A Case Study of Religious and Customary Courts', in Shari'a and Politics in Modern Indonesia, ed. Arskal Salim and Azyumardi Azra (ISEAS Publishing, 2003), 17–32, https://doi.org/10.1355/9789812305206-005.

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Period/Era	Description	Important Policies
	an emphasis on harmony between customary law and national law.	Constitution, 1950 UUDS, TAP MPRS No. II/MPRS/1960, the 1960 Basic Agrarian Law, and amendments to the 1945 Constitution of the Republic of Indonesia article 18B paragraph (2) which recognize customary law communities and their traditional rights.

The pattern of integration of customary law in Indonesia reflects an effort to maintain a balance between the customary law system which is rooted in the social life of local communities and the national legal system which is more formal and structured. From the colonial period to post-independence, customary law has experienced a complex journey. During the Dutch colonial period, customary law was recognized but was often seen as inferior law to European law. This was seen in the Daendels and Raffles periods, where customary law was still recognized but in a subordinate position to colonial law. Recognition of customary law was more partial and was used only to regulate local communities, without significant influence on the colonial legal order. After independence, recognition of customary law began to be more structured with the inclusion of customary law principles into the national legal framework. The 1945 Constitution in its transitional regulations recognizes the existence of customary law as long as there are no new regulations to replace it. This recognition is strengthened by a number of laws that reflect customary law principles in the regulation of land, forestry, natural resource management and the rights of indigenous peoples. For example, Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles recognizes customary law as a source of agrarian law as long as it does not conflict with national interests. This shows that although customary law is recognized, its application is limited by the framework of national interests. In the forestry aspect, Law no. 41 of 1999 concerning Forestry recognizes the rights of customary law communities to customary forests, but on condition that the existence of customary law communities is recognized by the regional government. This emphasizes that recognition of customary law remains dependent on formal verification and approval from state authorities. This arrangement reflects a sectoral pattern of integration, where customary law is recognized in certain contexts, but remains under the control of national law.

In the context of protecting the rights of indigenous peoples, Law no. 39 of 1999 concerning Human Rights and Law no. 5 of 2017 concerning the Advancement of Culture provides explicit recognition of the rights and culture of indigenous peoples. These rules not only recognize the existence of customary law, but also place customary law as an integral part of national cultural diversity that must be protected and preserved. However, this recognition still faces challenges in terms of implementation, especially in harmonization between customary law and national law which often differ in principles and approaches. In this regard, the pattern of integration of customary law in Indonesia can be analyzed through several legal theories that explain the relationship between the

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customary law system and national law. One relevant theory is the theory of legal pluralism, which emphasizes that in one country there can be various legal systems that coexist.[28] Legal pluralism explains that in the Indonesian context, customary law, Islamic law and state law are three main legal systems that exist in parallel and are recognized in the national legal framework.[29]This theory emphasizes that the existence of customary law is not something separate from national law, but is part of a broader legal system. In the perspective of legal pluralism, recognition of customary law is part of a strategy to accommodate the diversity of laws that exist in society, while maintaining the sovereignty of state law.

Apart from that, recognition theory also plays an important role in understanding the integration pattern of customary law in Indonesia. This theory emphasizes the importance of formal recognition by the state of the existence and rights of customary law. In Indonesia, this recognition is seen in various laws governing land, forestry and natural resource management, where customary law is recognized as the basis for regulation within certain limits. Recognition theory as described by Fitzpatrick shows that although customary law is recognized, this recognition is often conditional and depends on compliance with national interests and applicable laws and regulations.[30]This reflects the hierarchical nature of the Indonesian legal system, where customary law is integrated into the national legal framework, but on condition that it does not conflict with state principles.

Legal modernization theory is also relevant in this analysis. Legal modernization refers to the process in which traditional legal systems are adapted or integrated into more modern and formal national legal systems.[31]In the Indonesian context, customary law has undergone a modernization process in various aspects, especially in terms of regulating land and natural resources. However, this process often creates challenges because there are fundamental differences between the principles of customary law which are communitarian and collective in nature and the principles of national law which are more individualistic and formal.[32]Legal modernization also reflects how the state tries to regulate customary law to suit national development and modernization goals, which often leads to conflicts between the interests of indigenous peoples and the interests of the state.

Through a combination of legal pluralism, recognition theory, and legal modernization, we can understand that the pattern of integration of customary law in Indonesia is the result of efforts to harmonize the dynamics of traditional law with the needs of a modern state. This process is not always smooth and often faces challenges in the form of conflicts of interest and incompatibility of principles between customary law and national law. However, this pattern also shows flexibility in the Indonesian legal system which allows for the continuation of customary law in the context of a country that is developing and moving towards modernization.

2. Patterns of Customary Law Integration in Malaysia

[28] Geoffrey Swenson, 'Legal Pluralism in Theory and Practice', International Studies Review 20, no. 3 (1 September 2018): 438–62, https://doi.org/10.1093/isr/vix060.

[29] Murdan Murdan, 'Legal Pluralism (Customary and Islamic) in Indonesia', Court: Journal of Islamic Legal Studies 1, no. 1 (2016), https://doi.org/10.24235/mahkamah.v1i1.573.

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Malaysian customary law is an ancient body of legislation that is based on long-established community practices, beliefs, and mores. Indigenous communities, such as the Orang Asli of Peninsular Malaysia and the indigenous peoples of Sabah and Sarawak, rely heavily on customary law to govern their daily lives and the relationships between members of their community, including economic, social, and cultural spheres. Malaysian law acknowledges customary law, even if its function has evolved with the rise of contemporary and national legal systems. This is especially true in cases involving customary property, marital practices, and customary groups' social organization.

There are a number of luminaries in the field of Malaysian customary law who have done vital work expanding our knowledge of customary law and its place in contemporary Malaysian law. A prominent person is MB Hooker, a renowned legal scholar who has studied Islamic and Southeast Asian customary law, particularly as it pertains to Malaysia. Hooker analyzes the interplay between state law, which is based on the English legal system, and customary law in various social and political settings. Hooker brought attention to these concerns about indigenous peoples' rights and the management of customary lands, among other areas where national law and customary law disagree.[33]

Tan Sri Professor Ahmad Ibrahim is another important person; he was an early researcher of Malaysian customary and Islamic law. As an integral aspect of local communities' cultural history, he stressed the need for acknowledging and honoring customary law. Ahmad Ibrahim believes that indigenous peoples should view customary law as an integral part of their efforts to achieve social justice, rather than viewing it as an independent system from state law. Particularly in the states of Sabah and Sarawak, he has helped promote the recognition of indigenous peoples' rights and customary land laws.[34]

Aside from that, if you want to know how customary law in Malaysia works, you need to read Zainal Abidin Abdul Wahid's research. Zainal Abidin's research heavily influences the everyday lives of indigenous peoples, particularly in relation to marriage, land ownership, and kinship. Customary law, he stressed, is nevertheless an important part of indigenous peoples' identities and values, despite its marginalization in national legal systems.[35] These three individuals, who bring a wealth of experience and perspectives to the table, are responsible for the evolution of customary law discourse in Malaysia. They reached a consensus that indigenous peoples must fight for social justice and cultural preservation in the face of rapid globalization by preserving and incorporating customary law into the larger legal system. At the same time, unlike its Southeast Asian neighbors, Malaysia's history of integrating customary law with national law has distinctive features. Malaysia's customary law, which is a reflection of the country's multiethnic population, acknowledges and incorporates indigenous tribal law (Orang Asli), Malay customary law (Adat Perpatih and Adat Temenggung), and community customary law in Sabah and Sarawak. Here, colonial rule from the United Kingdom informs both the national legal system and customary law.

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Land rights, natural resource management, and indigenous cultural preservation are three areas where Malaysia's constitution and legislation explicitly recognize customary law.[36] Peninsular Malaysian customary law only partially acknowledges traditional matters like marriage, inheritance, and land management. Of paramount importance, however, is the acknowledgment of customary law in the Malaysian states of Sabah and Sarawak, which have constitutionally guaranteed particular autonomy in the regulation of indigenous populations' customary law.

In Malaysia, the pattern of integration is not uniform; national law is founded on common law, while customary law is acknowledged in certain circumstances.[37] The fact that there is room for deeply ingrained local legal traditions in Malaysia is a reflection of the country's attempts to manage legal diversity within the context of a contemporary state. This integration process is also influenced by government policy, which aims to ensure national legal consistency while balancing indigenous people's rights with national economic objectives.

Table 3
Historical Period of Customary Law Integration in Malaysia

Period/Era	Description	Important Policies
British Colonial Period (1786-1957)[38]	England's system of legal dualism acknowledged customary law within certain bounds established to ensure compatibility with preeminent English law. Sharia courts were established, albeit with little jurisdiction.	The establishment of Common Law as the primary law and the British Resident System (Pangkor Agreement of 1874) with little room for customary law and Sharia.
Pre-Independence Period (1957)[39]	Malay customary law is nearing completion, especially in the areas of family law and customs.	The Sharia Court Law in Peninsular Malaysia and the Land Code Law (Land Code 1965), which govern traditional land rights in Sarawak and Sabah.
Post-Independence Period (1957-present)[40]	National law recognizes and gives special authority to customary law, particularly in Sabah and Sarawak. Sharia	The Land Ordinance (Sabah) and the Native Courts Ordinance (Sarawak) acknowledge traditional land

[36] Madeline Henry Luyan and Gaim James Lunkapis, 'Native Costumary Rights Conflict in Kampung Imahit Tenom, Sabah: Indigenous Land Rights Conflict (Native Costumary Rights) of Kampung Imahit, Tenom, Sabah', GEOGRAPHY 4, no. 1 (25 April 2016): 69–79, https://ojs.upsi.edu.my/index.php/GEOG/article/view/1913.

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Period/Era	Description	Important Policies
	courts are gaining more power in two areas: family law and Malay traditions.	rights in Sabah and Sarawak, respectively. Sharia courts have jurisdiction over succession and family law.

Malaysia's style of customary law integration stands out for navigating the country's rich ethnic and cultural diversity. Traditional law in Malaysia encompasses not only the Malay people but also indigenous groups of Peninsular Malaysia, Sabah, and Sarawak, including the Orang Asli people of Peninsular Malaysia.[41] Policies in Malaysia explicitly govern the incorporation of customary law by recognizing the rights of indigenous peoples, particularly in the areas of land, forestry, and cultural preservation. This integration of customary law is more structural in nature.

As part of this pattern of integration, the Sabah and Sarawak Land Ordinance, which governs Native Customary Rights (NCR) in the Sabah and Sarawak territories, acknowledges customary land rights. Because of this legislation, indigenous communities in these two areas may continue to care for the traditional lands that have been in their families for many centuries. Here, formal arrangements protect customary land rights by incorporating Sabah and Sarawak's customary law into the country's legal system. Despite being subject to more extensive and formal legal regulation, this incorporation acknowledges customary law as a component of the country's legal system.

Furthermore, the National Forestry Act of 1984 governs the historic reliance of indigenous communities on trees. This statute acknowledges the significance of indigenous peoples' roles in forest management and use, particularly in preserving ecological harmony. This arrangement exemplifies the respect for indigenous groups' local knowledge and the incorporation of customary law, particularly in relation to traditional methods of managing natural resources, into national policy.[42] Here we see a practical application of integration that seeks to keep national policy modernization and heritage preservation in perfect agreement with one another.

Additionally, the Environmental Quality Act of 1974 highlights the importance of indigenous tribes' roles in protecting the environment. In addition to outlining the technical requirements for environmental protection, this statute emphasizes the significance of indigenous peoples' participation in preserving their ancestral lands.[43] As part of wider national objectives, this rule incorporates customary norms pertaining to environmental protection, demonstrating an integration pattern that blends traditional values with current legal requirements.

The Orang Asli Act of 1954 (Act 134) governs the preservation of the Orang Asli people's traditional lands and culture in Peninsular Malaysia, providing more protection for

[41] Julia Nelson, Nur Muhammed, and Rosmalina Abdul Rashid, 'Native Customary Rights: Does It Hold the Future of Sarawak's Natives?', Journal of Forest and Environmental Science 32, no. 1 (2016): 82–93, https://doi.org/10.7747/JFES.2016.32.1.82.

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indigenous communities in Malaysia. This document formally acknowledges the Orang Asli people's right to exist and exercise their cultural and traditional customs, as well as their customary territory. Although it is still subject to formal restrictions, this legislation allows the Orang Asli community's customary law to persist within the national legal framework.

The Federal Constitution of Malaysia specifically protects the customary rights of the Sabah and Sarawak communities, as well as the Malay and Bumiputera groups, under Article 153. This acknowledgement embodies a constitutional stance that regards customary law as integral to the preservation of national identity and integrity.[44] This pattern of integration demonstrates that Malaysia has a system in place that permits customary law to coexist alongside national law while yet ensuring that national interests are given precedence.

A more structured national legal system is necessary, but Malaysia's pattern of customary law integration demonstrates a balance between recognizing local traditions and that goal. While ensuring that customary law does not clash with national legal principles, laws in Malaysia acknowledge and incorporate customary law in certain instances, formally recognizing the rights of indigenous peoples. This integration allows for the preservation and continued application of customary law within the framework of modernization and national growth.

B. Ideal Construction of Customary Law Integration in Indonesia and Malaysia in Facing Continuously Growing Modernization

Modernization and growth provide ever-increasingly complicated obstacles to the incorporation of customary law in Malaysia and Indonesia. Customary law is a powerful mirror of local communities' social and cultural identities in both nations. However, incorporating customary law into the national legal system is a hurdle in and of itself when faced with contemporary circumstances that require unified legislation and efficient administration. On the one hand, customary law must preserve its distinctiveness and the local knowledge it contains. However, the state is pushing for a more streamlined legal system that can adapt to the ever-shifting social, economic, and political climate.

In Indonesia, customary law is often only partially and sectorally incorporated into the country's legal system. It is clear that there was an effort to accommodate local variation since several pieces of legislation and regulations, like the Basic Agrarian Law and the Forestry Law, acknowledged customary law. Having said that, execution is often haphazard and uncoordinated. When it comes to land, for instance, the Basic Agrarian Law acknowledges indigenous peoples' traditional rights; yet, conflicts with national interests, such as development or investment projects, often make it difficult to put this law into practice.[45] Disputes over the nature and extent of customary rights have been further exacerbated by divergent views between the federal and state administrations.[46] When more formal national law is involved, such as in a land or resource dispute, customary law often

[44] Nazri Muslim and Azizi Umar, 'Malay Royal Institutions According to the Federal Constitution within the Context of Ethnic Relations in Malaysia', Akademika 87, no. 1 (2017): 35–48, https://doi.org/10.17576/akad-2017-8701-03.

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takes a back seat.[47] Nobody seems to have figured out how to resolve the long-running conflict between national development goals and initiatives to safeguard indigenous peoples' rights.

However, indigenous groups in Indonesia have also seen a change in the value system as a result of industrialization. The logic of individualism and capitalism, which are products of modernity, can supersede the common principles that underpin customary law.[48] One example of this is when oil palm plantations or mining take place on indigenous peoples' territory, leading to conflicts between the tribes and companies.[49] Consequently, contemporary economic pressures have weakened customary law, rendering it ineffective as a guardian of society's common rights. Given that modernity has a tendency to erode traditional systems, the question of how customary law might survive arises.

In Malaysia and other countries, there are parallels and differences in the difficulties encountered by customary law integration. Local laws and ordinances in Sabah and Sarawak, two states in Malaysia, give customary law a lot of weight. Sabah and Sarawak's recognition of Native Customary Rights (NCR) exemplifies the successful incorporation of customary law into the national legal framework with explicit safeguards. However, practical implementation in the field often leads to challenges. Despite the recognition of customary land rights, indigenous tribes often encounter challenges when attempting to establish their claims via legal means. When protecting their territory from potential exploitation or conversion, indigenous tribes may face bureaucracy and verification procedures that are both lengthy and difficult to understand.[50] Despite acknowledging customary law, state officials may not always support indigenous peoples' interests, particularly in cases involving massive undertakings like infrastructure construction or resource extraction.

Another problem in Malaysia is that customary law provides varying degrees of protection to Peninsular Malaysia, Sabah, and Sarawak. Although their rights were secured by the Orang Asli Act of 1954, the indigenous peoples of Peninsular Malaysia, including the Orang Asli, still face discrimination and persecution. Customary law is less respected among the Orang Asli than it is in Sarawak and Sabah.[51] Consequently, areas with special autonomy provide more protection for indigenous peoples than territories under central administration; this exemplifies the structural disparity in the recognition of customary law. This issue demonstrates the inconsistent application and frequent influence of political and economic interests on customary law, despite its official recognition.

Applying the philosophy of legal pluralism, we may examine how Indonesia and Malaysia have idealized the incorporation of customary law in light of the increasing difficulties posed by modernity. Multiple, officially acknowledged legal systems may

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coexist inside a single nation, according to this notion. As a framework for the integration of customary law, the legal pluralism approach allows for the preservation of customary law alongside a more contemporary national legal system. Proponents of legal pluralism view the plurality of legal systems as a reflection of society's heterogeneity, not as a threat to the cohesion of state law. So, rather than leading to unification or subordination of customary law under national law, integration of customary law recognizes and harmonizes customary law while respecting local features.

Several laws in Indonesia have officially acknowledged legal pluralism; for example, the Basic Agrarian Law and the Forestry Law both recognize and accommodate the presence of customary law in land and forestry legislation. However, in practice, this integration typically occurs solely within specific sectors. For instance, despite acknowledgment of indigenous peoples' traditional rights, government policies that put an emphasis on development and economic interests often impede the actualization of these rights. While we acknowledge customary law, larger political and economic agendas often impact its enforcement. The greatest obstacle to the integration of customary law in Indonesia is ensuring its public acknowledgement, protection, and honor in all development and natural resource policies.

Customary law integration in Malaysia follows a similar process, but with a few key distinctions. The Sabah and Sarawak Land Ordinance is one of many laws that control the Native Customary Rights (NCR) process, which in turn gives customary law in Sabah and Sarawak broader recognition. This acknowledgment safeguards indigenous peoples' traditional land rights, but they often face legal obstacles when trying to prove their claims. The primary hurdles to the realization of these rights are the intricacy of bureaucratic procedures and the difficulty of verification. Decision-makers at the state level often disregard the concerns of indigenous people, especially when they view major initiatives as crucial to the national interest. This demonstrates that governmental authority, which generally prioritizes development objectives, often dominates the execution of customary law, despite its integration into the national legal system.

Changes to legal legislation in both nations reflect the increasing dynamics of customary law integration. As an example, the Republic of Indonesia's 1945 Constitution, via an amendment to Article 18B, acknowledges the presence of communities governed by customary law and the traditional rights enjoyed by them. Nevertheless, its recognition is subject to certain conditions, including that the customary law does not interfere with national interests and supports communal development. Sabah and Sarawak more widely recognize customary law, but the 1954 Orang Asli Act provides very limited legal protection to Peninsular Malaysia's Orang Asli population. By making these adjustments, it is clear that both countries are attempting to strike a balance between honoring traditional knowledge and incorporating it into a more streamlined national legal system. The question of how to prevent the myriad of new social and economic demands from overshadowing customary law is the primary obstacle to modernization. To really include customary law in this setting, it is necessary to actively include indigenous groups in the decision-making and policy-making processes that affect their daily lives, rather than only recognizing them formally. Even when the world around us becomes more contemporary, customary law must be flexible enough to adjust to new circumstances without compromising the core principles upon which it is based. As a result, indigenous

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communities must be more than just the targets of government policy; they must also have a voice in shaping the recognition and implementation of their customary law.

In order to build an ideal framework that incorporates the presence and distinctiveness of customary law into the national legal systems of both Indonesia and Malaysia, it is necessary to take into account a number of critical factors pertaining to the integration of customary law in both nations. In addition to official recognition, indigenous groups must actively participate in this integration through complete harmonization. Here is a more detailed breakdown of the possible approaches to accomplishing this integration.

The first and most important step is to formally acknowledge and safeguard customary law. More specific legislation is required to make this acknowledgment a reality, rather than just stating it expressly in the constitution and statutes as part of the national legal system. This law safeguards the rights of indigenous peoples, including those to their traditional lands, natural resource extraction, and cultural preservation. In particular, when it comes to claiming and settling property disputes, legally binding processes that are inclusive, freely accessible, and nondiscriminatory are necessary to supplement the recognition of customary law. It is critical to ensure that indigenous communities can assert their rights without encountering undue bureaucratic hurdles.

The second point is to harmonize national law with customary law. We must construct a legal framework to align national law with customary law principles. This framework must address land, forestry, and natural resource concerns in particular. The greatest obstacle to this harmonization is incorporating more modern national legal norms while preserving significant local features in customary law. Furthermore, it is critical to enhance conflict resolution processes that include indigenous peoples' perspectives and knowledge in decision-making. Therefore, the harmonization process creates synergies by bringing together two separate legal systems.

Third, for the incorporation of customary law to function properly, indigenous populations must actively participate in formulating policies. Legislation, regional rules, and development strategies should all prioritize indigenous peoples' direct participation in decision-making processes pertaining to their rights. A special commission or consultative forum with indigenous community leaders is required to make this a reality. This forum aims to incorporate the opinions and concerns of indigenous groups into all decision-making processes. Also, every program or initiative that affects indigenous peoples' daily lives must adhere to the FPIC concept of free, prior, and informed consent. By adhering to this idea, we honor indigenous peoples' freedom to choose their own fate.

Fourth, in order to meet the problems posed by modernity, customary law must change and develop. Changing this cannot mean doing away with the core principles that define customary law. The management of natural resources and customary lands may benefit from the incorporation of contemporary knowledge and technology, while indigenous populations can continue to exercise authority over their own territory. Sustainable management of customary forests or custom-based eco-tourism are two examples of local value-based economic strategies that might help communities strike a balance between the past and the present. In addition to its applicability to sustainable economic growth, this modification of customary law is pertinent to environmental preservation.

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Fifth, in order for customary law rules to function efficiently, effective systems for implementation and oversight must be strengthened. It is imperative that local governments take a more active role in confirming and acknowledging customary rights, particularly when dealing with the sometimes convoluted and bureaucratic claims procedures. Moreover, it's critical to monitor the implementation of customary law laws, and to scrutinize and improve any procedures that hinder indigenous peoples from exercising their rights. To maintain justice and equity when handling issues involving customary law, it is necessary to increase institutional capacity in both customary courts and district courts.

Sixth, it is imperative that indigenous groups and the general public get educated and have a greater understanding of the law. There has to be a concerted effort to educate indigenous communities about their legal rights so that they can stand firm in the face of modernity. More than that, we need to support public education initiatives that stress the significance of customary law in maintaining our nation's cultural and social character. In order to better actualize the integration of customary law into the national legal system, it is believed that this campaign will generate broad popular support for the preservation of customary rights.

Formal recognition, thorough harmonization, active engagement of indigenous groups, and adaptability to the problems of modernity are all necessary steps toward fully incorporating customary law into the national legal systems of Malaysia and Indonesia. It is believed that by taking these measures, customary law will be able to survive and thrive, contributing to the growth of fair and inclusive legislation. We need an all-encompassing and ever-changing strategy to address the modernization-related difficulties associated with the incorporation of customary law into the expanding national legal systems of Malaysia and Indonesia. Keeping traditional law and more contemporary national law in harmony requires official acknowledgment, effective harmonization, and the active engagement of indigenous groups.

Despite problems such as discrepancies in interpretation, uneven execution, and the dominance of economic interests, attempts to develop an ideal integration pattern must nevertheless include the distinctive culture and local values contained in customary law. In accordance with the principle of legal pluralism, effective integration may bring about harmony between diverse localities and national needs, enabling customary law to adapt to new circumstances. We anticipate that efforts to tighten regulations, safeguard customary rights, and raise knowledge and education about the law will foster a synergy between national law and customary law, enabling them to work together to promote justice and social welfare in the contemporary world.

CONCLUSION

This study draws attention to the incorporation of customary law into Malaysia and Indonesia's legal systems, and it finds that both nations face formidable obstacles when trying to reconcile customary law with their development agendas. The application of customary law is sometimes inadequate and uneven, particularly when it comes to reconciling indigenous peoples' rights with the demands of economic growth, despite the official acceptance of customary law. This highlights the critical need to include indigenous populations in policymaking processes by providing them with the opportunity for active participation. Incorporating customary law into legal systems helps indigenous communities maintain their cultural identity while also ensuring that culturally significant

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natural resources remain in their hands.As the pace of modernization increases, it is critical that future governments consider how to incorporate customary law while preserving traditional knowledge and values. We need further studies to figure out how to update customary law so it can deal with contemporary issues without losing its fundamental values. One possible way to do this is to use technology that helps indigenous communities become more self-sufficient and economically prosperous. This study calls for policy changes that elevate indigenous peoples' status in national and international societies via inclusive and long-term economic growth, rather than only addressing the formalities of acknowledging customary law.

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