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SASI

Customary Law for Equitable Spatial Planning: Preventing Social Bankruptcy and Enhancing Community Welfare

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Abstract

Introduction: *This study examines the role of customary law as an instrument for equitable spatial planning in preventing socio-economic bankruptcy and enhancing the welfare of indigenous communities in Indonesia. As a living and dynamic legal system, customary law embodies values of ecological balance, deliberation, and restrictions on land conversion without community consent. However, in practice, many regional spatial planning policies have failed to integrate customary norms, resulting in spatial conflicts and social disintegration.*

Purposes of the Research: *The research aims to analyze how customary law can serve as both a normative and practical foundation for equitable spatial planning, and how integrating local values can prevent social bankruptcy while strengthening the welfare of indigenous peoples.*

Methods of the Research: *This study employs a normative-juridical approach combined with socio-legal analysis to examine the interaction between statutory law and customary practices in spatial management, supported by case studies of customary land conflicts in Salang Tungir Village (Deli Serdang Regency) and Aras Napal Village (Langkat Regency).*

Results of the Research: *Findings indicate that neglecting customary law norms in spatial planning leads to the loss of community access to productive spaces, weakens local economies, and triggers social conflicts. Conversely, applying customary law in spatial planning – through recognition of customary rights, consent mechanisms, and active community participation – fosters spatial justice and enhances community welfare. This study introduces the concept of "customary law-based spatial planning," which integrates local values with principles of social and ecological justice in national spatial planning policies, offering a framework for more inclusive and sustainable development.*

Keywords: Customary Law; Spatial Planning; Social Bankruptcy; Community Welfare.

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INTRODUCTION

Customary law is the historical and social root of Indonesian society, containing norms and values of local wisdom related to the management of living space. The existence of customary law not only reflects cultural identity, but also has a practical function in maintaining the balance between humans and nature[1]. In the modern era, spatial planning as an instrument of development often ignores the socio-customary dimension and only prioritizes economic or technical administrative interests. As a result, spatial conflicts and social vulnerability have become common phenomena in many areas, especially in regions

[1]A. M. M. Nasoha, A. N. Atqiya, D.A. Rahmawati, Z.L. Az-zahra, & N. Shafira, "Integrasi Nilai Pancasila dalam Sistem Hukum Konstitusi Indonesia: Implikasi terhadap Perlindungan Hukum Adat", *Politika Progresif: Jurnal Hukum, Politik Dan Humaniora*, 1, no.4, (2024): 47–59. https://doi.org/10.62383/progres.v1i4.931

inhabited by indigenous communities[2]. By emphasizing equitable spatial planning through customary law, the state and communities can jointly design more effective protection mechanisms to prevent social collapse (social bankruptcy) while simultaneously enhancing the welfare of indigenous peoples.

Philosophically, the relationship between humans and their living space cannot be reduced to merely an economic relationship or the utilization of resources, but rather is an existential relationship that reflects the cultural, spiritual, and collective identity values of a community[3]. From the perspective of indigenous peoples, land and living space are manifestations of the will of their ancestors and symbols of the balance between humans, nature, and the Creator. Living space is not only a place to live or an economic area, but also an arena for cultural rituals, traditional knowledge systems, and social institutions that maintain harmony among community members[4]. When this space is unilaterally converted without recognition of customary norms, what is lost is not only economic assets, but also cultural legitimacy and the value system that supports the social sustainability of the community. The loss of customary space means the loss of life orientation, which in the long term can trigger social bankruptcy, namely the collapse of solidarity, ecological balance, and communal welfare[5].

Since its inception, the Indonesian state has laid the legal and moral foundations for state administration on the values of social justice and common welfare as enshrined in the Preamble to the 1945 Constitution of the Republic of Indonesia[6]. The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia affirms the state's goal to "protect the entire Indonesian nation and all of Indonesia's bloodshed, promote general welfare, educate the nation, and participate in implementing world order based on independence, eternal peace, and social justice." The value of "social justice for all Indonesian people" is the philosophical basis for all public policies, including in the management of space and natural resources[7]. The Constitution also guarantees the right of the people to a good and healthy environment and the right to recognition of local cultures through Article 18B paragraph (2), which states that "the state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia."

This principle is further elaborated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "the land, water, and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people." The concept of "controlled by the state" does not mean that the state has absolute ownership of all natural resources, but rather signifies a mandate to regulate, manage, and distribute the benefits of natural resources fairly. Within this framework, the state is obliged to ensure that spatial planning, whether on land, sea, or air, is carried out with due regard

[2] D. G. E. Praditha, "*Local Wisdom Law: An Introduction to Indigenous Law*," (Malang: Literasi Nusantara Abadi, 2023)

[3] Fenny Bintarawati, "*Customary Law in Indonesia*," (Jakarta: Penerbit Lawwana, 2024).

[4] S. T. Sandriani, H. Hariyadi, & W. Rizkidarajat, "Peran Komunitas Seni Mural Soloissolo dalam Pembentukan Ruang Publik di Surakarta", *Jurnal Penelitian Inovatif,* 5, no.1, (2025): 235–246. https://doi.org/10.54082/jupin.572

[5] A. Y. Tamburaka "*Customary Land, Mining, and CSR*," (Jakarta: CV. Azka Pustaka, 2025).

[6] I. Syahriar & J. Bazarah, "Social Justice in the Indonesian Legal State." *Dedikasi: Jurnal Ilmiah Sosial, Hukum, Budaya,* 26, no. 1, (2025): 41-54

[7] I. G. N. Santika, "Kedudukan Pancasila dalam Peraturan Perundang-Undangan di Indonesia", *IJOLARES: Indonesian Journal of Law Research,* 1, no.2, (2023): 47-51, https://doi.org/10.60153/ijolares.v1i2.24

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for the rights and roles of the community, including customary law communities that have a long-standing system of spatial management based on local wisdom[8].

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Customary law has become an integral part of the Indonesian legal system. The 1960 Basic Agrarian Law confirmed this position through Article 3, which states that "the implementation of customary rights and similar rights of customary law communities, insofar as they still exist, must be in such a way that they are in accordance with national and state interests, and must not conflict with higher laws and regulations[11]." This provision shows that the state recognizes the rights of customary law communities to their land and living space. This recognition is not merely a formality, but forms the basis for equitable spatial planning that integrates customary values and the aspirations of local communities.

The existence of customary law in Indonesia's spatial planning system is not a new concept, but has been an integral part of traditional spatial management based on local wisdom. Before the advent of modern regulations, indigenous peoples had their own mechanisms for regulating spatial zoning, such as the division between residential land, agricultural land, protected areas, and sacred spaces. This structure not only reflects ecological efficiency, but also social and spiritual balance that serves to maintain harmony between humans and nature. This principle is in line with the concept of sustainable spatial justice, which is spatial planning that is not only economically efficient but also socially and ecologically fair. Thus, the revitalization of customary law values is an important prerequisite for the creation of equitable and sustainable spatial planning in Indonesia.

However, in contemporary practice, spatial planning is often implemented using a top-down approach that places the state as the sole dominant actor. This pattern results in the marginalization of local communities, including indigenous communities, in the planning and decision-making processes[12]. This phenomenon weakens the social legitimacy of spatial policies and creates what experts refer to as spatial disenfranchisement, namely the disconnection of communities from their rights to their own living space. When customary norms are not legally recognized, communities have no basis for defending their rights to manage customary lands, giving rise to potential conflicts and economic marginalization

[8] Y. A. Hasan, M., Marwan Mas, & Andi Tira, "*Pengantar Ilmu Hukum*", (Jakarta: Prenada Media, 2026)

[9] I.Zulkarnain, dan R. Priskap. "Implikasi Kebijakan Pemerintah Atas Pengakuan Dan Perlindungan Terhadap Masyarakat Hukum Adat Dalam Pemanfaatan Sumber Daya Alam di Provinsi Jambi", *Datin Law Jurnal* 4, no. 1 (2023): 1–22, https://doi.org/10.36355/dlj.v4i1.968.

[10] R.K. Setyowati, "Pengakuan Negara Terhadap Masyarakat Hukum Adat,". *Binamulia Hukum* 12, no.1, (Juli 2023) :131-142, DOI: 10.37893/jbh.v12i1.601

[11] R. A. Saragih, R. Sembiring, S. Suhaidi, & S. L. Andriati, "Legal Analysis of Customary Forest Ownership and Management by Indigenous Peoples: (A Study of the Tombak Haminjon Customary Forest in Pandumaan Village and Sipituhuta Village, Humbang Hasudutan Regency)." *Locus Journal of Academic Literature Review,* 2 no. 3, (2023): 243–260. https://doi.org/10.56128/ljoalr.v2i3.141

[12] Rahmawati, "*Public Policy (Theory and Political Analysis*)," (Jakarta: YPAD Publisher, 2025)

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that lead to social bankruptcy[13]. In this context, customary law should function as a corrective mechanism against state power so that spatial policies do not violate the principle of substantive justice.

Customary law communities have very close spiritual, social, and economic ties to the space in which they live. Space is not merely an economic asset, but also a symbol of identity, a source of value, and a social institution. The patterns of customary land management practiced by indigenous communities are generally collective and oriented towards ecological sustainability. Land use is adapted to customs and traditions, such as land rotation systems, the division of customary conservation zones, and the prohibition of excessive exploitation. This system has proven capable of maintaining a balance between human needs and the needs of nature[14].

Space is an ecological entity that has certain carrying capacities and limitations. In the context of indigenous communities, control over space is not only related to land ownership, but also to resource management systems that maintain ecosystem sustainability[15]. When there is a shift from traditional management patterns to exploitative economic patterns, for example by opening commercial plantations or settlement projects without considering environmental capacity, the ecological balance is disrupted. This environmental damage ultimately results in decreased land productivity, loss of livelihoods, and the emergence of a new form of social bankruptcy, namely the destruction of local economic and cultural structures due to the loss of access to living space[16].

Law Number 26 of 2007 on Spatial Planning stipulates that spatial planning shall be carried out based on the principles of integration, sustainability, and justice. Article 65 paragraphs (1) and (2) affirm the right of communities to participate in the preparation of spatial plans. However, in practice, the principle of indigenous community participation is often ignored. Spatial plans drawn up by local governments often do not include customary areas on official maps, rendering customary territories invisible and without legal recognition. As a result, indigenous peoples lose the legal basis for defending their customary lands when faced with large-scale economic interests.

The customary land conflict in Salang Tungir Village, Namorambe District, Deli Serdang Regency is a clear example of the failure to integrate customary law into the regional spatial planning system. The indigenous people in this region have managed customary land for generations, which is the source of their economic livelihood based on agriculture and non-timber forest products. However, in the process of drafting the Deli Serdang Regency Spatial Plan, these customary areas were not explicitly included in the administrative spatial map. As a result, some of the areas were converted into commercial plantations and residential development projects without public consultation based on customary deliberation. This situation reflects a violation of the principle of participation as mandated in Article 65 paragraph (2) of Law Number 26 of 2007 on Spatial Planning, which stipulates

[13] A.R.R Sahara & S.S. Clarissa, Eksistensi Hukum Adat Dalam Mempertahankan Kearifan Lokal di Era Modern", *Jurnal Multidisiplin Teknologi dan Arsitektur,* 1, no. 2, (November 2023), https://doi.org/10.57235/motekar.v1i2.1308

[14] A.R.C.Putra, & J.N. Saly, "Kehormatan Dan Keadilan Melihat Hukum Adat Dalam Masyarakat Modern", *Journal Central Publisher,* 1, no.5, (2023) :383–389. https://doi.org/10.60145/jcp.v1i5.102

[15] A. Mubarok, A. Alviana, F. P. Marselina, M. A. B. Febriansyah, S. Shabrina, & T. I Gayatri, "Protection of indigenous peoples' land rights in the era of regional autonomy: Challenges and opportunities," *Almufi Journal of Social and Humanities*, 1, no.2, (2024): 69-77.)

[16] H. Bauder, & R. Mueller, "Westphalian Vs. Indigenous Sovereignty: Challenging Colonial Territorial Governance", *Geopolitcs*, 28, no.1, (2023), https://doi.org/https://doi.org/10.1080/14650045.2021.1920577

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that the community has the right to know about spatial plans and to participate in the drafting process.

A similar situation occurred in Aras Napal Village, Langkat Regency, where approximately 242 hectares of customary land that had long been managed by the community was declared a state forest area based on an administrative decision by the Ministry of Environment and Forestry. This decision was made without any customary consultation mechanism, causing resistance from the community who felt that their traditional rights had been ignored. This conflict illustrates the overlap between state law and customary law in terms of spatial control. In fact, Article 3 of Law Number 5 of 1960 on Agrarian Principles explicitly recognizes the existence of customary rights as long as they still exist and their implementation does not conflict with national interests[17].

The two cases above demonstrate the weak harmonization of laws between Law Number 5 of 1960 on Agrarian Principles, Law Number 26 of 2007 on Spatial Planning, and sectoral forestry policies. This lack of synchronization between norms and practices has led to unclear legal protection of the customary rights of indigenous peoples. Normatively, national law recognizes the existence of indigenous peoples; however, administratively, spatial policies tend to marginalize them. This disharmony not only creates legal uncertainty but also erodes spatial justice, which should guarantee equal access to space and the benefits of space.

Within the framework of sustainable development, a development paradigm that emphasizes economic growth without regard for spatial justice actually results in inequality and social marginalization. Large projects such as industrial estates, mines, and tourism often ignore the rights of indigenous peoples who have lived in these areas for generations. As a result, social exclusion and spatial displacement occur, widening the socio-ecological gap between regions[18]. The concept of "spatial justice" is that space is not only a physical container, but also a social product laden with political and economic meaning; thus, spatial justice requires the proportional distribution of benefits and responsibilities among community groups[19].

The integration of customary law into the spatial planning system is crucial in achieving a balance between development, social justice, and environmental sustainability. This approach is not merely a romanticization of customary values, but rather an institutional strategy capable of strengthening the legitimacy of local law within public policy. Local governments, through regional regulations on the recognition and protection of customary law communities, can facilitate synergy between regional spatial plans and customary territory maps. Such efforts have been successfully implemented in several regions, such as Malinau Regency and Kapuas Hulu, where regional regulations recognize customary land rights and integrate them into modern spatial planning systems. Conversely, the absence of similar integration mechanisms, as reflected in the case studies of Salang Tungir and Aras Napal, demonstrates how the neglect of customary law in spatial planning policies contributes to social bankruptcy, manifested in agrarian conflicts, social disintegration, and

[17] M. Siahaan, "*Hukum Acara Mahkamah Konstitusi Republik Indonesia*" (Jakarta: Sinar Grafika, 2022)

[18] Supriyadi, G.D.H. Wibowo, & G. Asmara. "Application of the Adat Principles Barenti ko Syara', Syara'Barenti ko Kitabullah in Sumbawa Regency, "*International Journal of Scientific Research and Management (IJSRM),* 11, no. 04 (2023): 408–410. https://doi.org/10.18535/ijsrm/v11i04.lla2.

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the weakening of indigenous peoples' access to their living space, thereby underscoring the urgency of integrating customary law into the national spatial planning system.

Based on the above description, this research is important to reexamine the role of customary law as an instrument of equitable spatial planning that can prevent social bankruptcy and promote community welfare. The integration of customary law into spatial policy is not only a normative necessity, but also an ethical and ecological necessity in order to build an inclusive and sustainable national spatial plan. Without recognition of customary space, the constitutional objectives mandated by The 1945 Constitution of the Republic of Indonesia to achieve social justice and prosperity for the people will remain nothing more than empty slogans.

The practice of integrating customary law into spatial planning systems has shown positive results in several regions, such as Malinau and Kapuas Hulu, where *hak ulayat* are formally recognized and used as a basis for spatial planning, thereby minimizing social conflicts and safeguarding the welfare of indigenous communities. In contrast, the case studies of Salang Tungir Village (Deli Serdang Regency) and Aras Napal Village (Langkat Regency) demonstrate the real consequences of neglecting customary law in spatial planning. In both locations, the absence of formal recognition of customary territories led to land conversion without customary deliberation mechanisms, eroding community access to productive living spaces, triggering agrarian conflicts, and weakening local socio-economic structures. This situation directly reflects the phenomenon of "social bankruptcy," in which communities lose control over their resources, social solidarity declines, and community welfare is threatened. Thus, these cases empirically underscore the urgency of integrating customary law into national spatial planning policies—not merely as symbolic recognition, but as a crucial mechanism to prevent social collapse, strengthen local economies, and build a just and sustainable spatial order.

METHODS OF THE RESEARCH

This study employs a normative juridical method combined with a socio-legal approach to explain the interaction between positive legal norms and the social practices of customary law in spatial management.[20] The normative juridical approach is conducted by examining relevant legal instruments, including Law Number 26 of 2007 on Spatial Planning, Law Number 6 of 2014 on Villages, Law Number 32 of 2009 on Environmental Protection and Management, as well as Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which recognizes and respects the existence of customary law communities along with their traditional rights. Meanwhile, the socio-legal approach is used to understand how these legal norms operate in social reality, particularly through case studies of customary land conflicts in Salang Tungir Village (Deli Serdang Regency) and Aras Napal Village (Langkat Regency). Data were collected through interviews with customary leaders and affected community members, field observations, and a review of local documents related to the management and status of customary land. Normative data in the form of laws and regulations were analyzed to identify the principles, authorities, and obligations of the state in spatial planning, and were then linked with empirical data from the case studies to assess the gap between legal norms and practices in the field. The results of this analysis are used to explain patterns of conflict, the resulting social impacts, and to

[20] Muhaimin, "*Metode Penelitian Hukum*", (Mataram University Press, Mataram, 2020)

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formulate findings regarding the urgency of integrating customary law into the spatial planning system.

RESULTS AND DISCUSSION

A. The Role of Customary Law in Equitable Spatial Planning

In the traditions of indigenous communities in Indonesia, customary law functions not only as a system of social norms, but also as an ecological mechanism that maintains balance between humans and the environment. Patterns of spatial utilization regulated by customary law usually reflect principles of sustainability and social justice, in which each element of space has its own value and function[21]. For example, in many indigenous communities in Sumatra and Kalimantan, there is a division of space into residential zones (inherited residential areas), production zones (agricultural areas, gardens, or non-timber forest products), and protected zones (sacred forests or conservation areas that must not be disturbed)[22]. This type of arrangement is not merely technical in nature, but reflects a philosophy of living in harmony with nature, where humans are considered part of the ecosystem, not its rulers. These principles are emphasized in various academic studies, one of which is by Maria S.W. Sumardjono, who stresses that indigenous peoples have a system of spatial control that is regulated through social consensus and strong local norms, thus becoming a form of "spatial planning based on local wisdom" that effectively maintains the ecological and social sustainability of their communities[23].

The basic principles of customary law in spatial management contain high ecological ethical values, such as humans must adapt to nature (*manunggaling kawula lan alam in Javanese tradition*), ecological balance as a condition for sustainable living, moderate use without greed, and prohibition of land conversion without the consent of the indigenous community[24]. These values, when integrated into national spatial planning policies, can strengthen the principle of spatial justice as mandated in Article 2 letter f of Law Number 26 of 2007 concerning Spatial Planning, which emphasizes that spatial planning must be based on the principles of justice, sustainability, and protection of community rights. Thus, customary law is not merely a cultural heritage, but also a normative instrument that can support sustainable development, especially in the context of preventing spatial inequality and social conflict resulting from spatial planning policies that ignore the rights of local communities[25]. Customary law essentially has a highly adaptive and contextual internal mechanism for regulating human relations with their living space. One of the main advantages of the customary law system is its ability to resolve spatial disputes through customary forums or traditional deliberative institutions that are oriented towards social reconciliation, rather than simply winning or losing legal decisions. This type of resolution process is faster, cheaper, and in line with the local values held by the community[26]. Thus,

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[21]. K. J. Mahadewi, "Disharmonisasi Regulasi Tata Ruang dalam Perlindungan Hak Ulayat di Bali dalam Perspektif Undang-Undang Pokok Agraria", *Acta Comitas: Jurnal Hukum Kenotariatan,* 10 no. 03, (2025) : 612-626, https://doi.org/10.24843/AC.2025.v10.i03.p12

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[23] I. H. J. Ridwan, & Achmad Sodik, "*Hukum Tata Ruang: Dalam Konsep Kebijakan Otonomi Daerah*". (Nuansa Cendekia : Bandung, 2023)

[24] N. N. T. Partini, "Peran Hukum Adat dalam Penegakan Hukum dan Penyelesaian Sengketa", *Virtue Jurisprudence, 2, no.* 2, (2024) :192-201, https://jurnal.usp.ac.id/index.php/virtue-jurispudence/article/view/180

[25]. T. P. Alfath, & I. N. Padli, "Penerapan Asas-Asas Hukum Adat dalam Pembangunan Infrastruktur yang Berkeadilan", *Arena Hukum*, 14 no. 1, (2021) :150-163, DOI: https://doi.org/10.21776/ub.arenahukum.2021.01401.8

[26] B. Pratiwi, P. F. Soeparan, & W. Wibisono, "Peran Hukum Adat dalam Penyelesaian Sengketa Agraria di Indonesia: Kajian Empiris dengan Metode Komparatif", *Hakim: Jurnal Ilmu Hukum Dan Sosial*, 2, no.4, (2024): 807-822, https://doi.org/10.51903/hakim.v2i4.2187

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the existence of customary law is able to maintain the social resilience of local communities, because the decisions produced are more easily accepted by all parties to the dispute. Customary settlement mechanisms also prevent prolonged conflicts that have the potential to weaken the economy of indigenous communities, especially when the dispute relates to natural resources that are the economic mainstay of indigenous families and communities.

If customary norms and institutions are formally recognized in spatial planning documents such as Regional Spatial Plans and Detailed Spatial Plans, then strategic decisions related to land use change, building permits, and area management must take into account the approval of local customary institutions[27]. This recognition creates synergy between state law and customary law, in which customary institutions act as moral and social guardians of spatial policy. In this context, customary law functions as a social control mechanism that is able to ensure that development does not only favor the economic interests of the elite, but also takes into account the ecological and social justice of local communities. The integration of the principle of "customary institution approval" or free, prior, and informed consent in spatial planning is very important as a form of protection for the rights of indigenous peoples over their customary territories[28].

The involvement of indigenous communities in spatial planning processes should not be limited to formal administrative consultations. Indigenous peoples need to be positioned as subjects of planning, i.e., actors who help determine policy direction and have bargaining power equal to that of the government and business actors. When indigenous communities are recognized as subjects, rather than mere objects of development, spatial policies can be designed in a participatory and equitable manner[29]. This will strengthen the social legitimacy of the resulting spatial policies, as they will be born out of an inclusive process that respects local wisdom. In addition, this approach has the potential to reduce the potential for social conflict that often arises from feelings of marginalization due to top-down policies that are insensitive to local social structures and indigenous values.

However, in practice, many local governments have not fully adopted customary law principles into local spatial planning regulations. Provisions regarding the participation of indigenous peoples are generally still general in nature and are only included as an administrative formality, without any substantive clauses that make the decisions of customary institutions one of the legal bases for spatial planning. As a result, the voices of indigenous peoples are often ignored in strategic decision-making, such as land use conversion, mining permits, or industrial zone expansion. This situation shows that the integration of customary law into the national spatial planning system still faces structural obstacles, both in terms of regulations, institutions, and development paradigms that are still oriented towards economic growth alone, rather than socio-ecological balance.

B. Application of Customary Law to Prevent Socio-Economic Bankruptcy

Socio-economic bankruptcy in indigenous communities is a complex phenomenon that is not only related to economic loss, but also to the destruction of the social, cultural, and

[27] H. Baha, I. Badshah, A. Rehman, S. Ullah, & U. Khan, "Dareemat: A Mechanism of Arbitration and Dispute Resolution Among Pashtuns in Zhob, Pakistan", *Legal Pluralism and Critical Social Analysis*, 55 no.1, (2023) : 97–116,https://doi.org/10.1080/27706869.2023.2188016

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[29] Enala, F. A. Mana, M. N. Prasetya, & A. F. Adam, "Pemberdayaan Masyarakat Adat dalam Pengambilan Keputusan Pembangunan Lokal di Kabupaten" *Jurnal Pengabdian dan Inovasi*, 2, no. 01, (2025) : 8-17, https://doi.org/10.31595/lindayasos.v7i2.1647

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spiritual structures of indigenous communities. This type of bankruptcy occurs when communities lose access to productive spaces, customary lands, and natural resources that have supported their livelihoods. In the context of customary law, space is not merely an economic asset, but a symbol of collective identity and a source of social legitimacy[30]. Therefore, when customary space is seized or converted without the consent of the indigenous community, what occurs is not only material poverty, but also "social bankruptcy," a condition in which the values of solidarity, mutual cooperation, and balance with nature are eroded by a capitalist system that treats land as a commodity. This phenomenon often arises as a result of the denial of customary norms in spatial planning policies and the weak formal recognition of the customary rights of indigenous peoples[31].

One concrete example of this socio-economic bankruptcy can be seen in the case of Aras Napal Village, Langkat Regency, where approximately 242 hectares of customary land that had been managed by the community for generations was declared a state forest area by the Ministry of Environment and Forestry. This decision was made without customary deliberation and without considering the traditional rights of the community, which has long depended on non-timber forest products and subsistence agriculture. As a result, the community lost access to their main source of livelihood and faced significant socio-economic pressure. This conflict highlights the overlap between state law and customary law jurisdictions, where the lack of recognition of local norms leads to spatial injustice. In fact, Article 3 of the 1960 Basic Agrarian Law explicitly recognizes the existence of customary rights as long as they still exist and their implementation does not conflict with national interests.[9] The lack of synchronization between Law No. 5 of 1960 on Basic Agrarian Principles, forestry policy, and Law Number 26 of 2007 on Spatial Planning demonstrates the weak harmonization of laws that should form the basis of spatial justice at the local level.

Salang Tungir Village, Namorambe Subdistrict, Deli Serdang Regency, where indigenous peoples lost their customary rights due to the failure to record customary territories on regional spatial planning maps. When permits for plantation and settlement development were issued, the community did not have a strong legal negotiating position to defend their land rights. The conversion of land use was carried out without a public consultation mechanism based on customary deliberation, which is an important principle as mandated in Article 65 paragraph (2) of Law Number 26 of 2007 concerning Spatial Planning. This condition reflects the weak mechanism of community participation in spatial policy, especially for indigenous communities who socially do not have access to administrative processes. As a result, indigenous peoples not only lose productive land, but also experience social disintegration due to the loss of their economic resources and communal identity.

If customary law is used as a baseline or normative basis in spatial policy, then customary norms such as the prohibition of land use change without community consent, the principle of ecological balance, and benefit-sharing mechanisms will serve as instruments of protection for indigenous peoples. This principle is in line with the concept of free, prior, and informed consent, which requires the consent of indigenous communities before any changes are made to the use of space in their territories. Thus, customary law not only serves as a complement to state law, but also as a moral and social safeguard against potentially exploitative development policies. The application of customary law as the basis for spatial

[30] A. Wibowo, "*Hukum Kepailitan",* (Jakarta: Penerbit Yayasan Prima Agus Teknik, 2025).
[31] R. Saija, "*Perspektif Pailit dalam Perusahaan,* (Yogyakarta: Deepublish, 2024)

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management can also ensure that development proceeds in accordance with the values of social justice and environmental sustainability as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the earth, water, and natural resources contained therein are controlled by the state and used to the greatest extent possible for the prosperity of the people[32]. Regional spatial planning policies that recognize customary law may include substantive clauses that make customary decisions a valid requirement in every land use conversion process. This means that if such decisions do not obtain customary approval, development policies may be canceled due to procedural flaws. This kind of integration will strengthen the social legitimacy of spatial planning laws and foster a sense of justice at the community level. This model can also reduce the risk of agrarian conflicts and strengthen community trust in local government. In this context, customary institutions act as public oversight partners that ensure spatial planning decisions do not deviate from the principles of social justice and environmental sustainability[33].

Nevertheless, various studies indicate that the recognition of local norms in spatial planning remains largely at the level of normative discourse and has not been fully translated into concrete implementation at the regional level. The absence of derivative regulations that explicitly make customary decisions and institutions a legal basis in spatial planning policies often results in customary law being marginalized in practice. This condition is reinforced by a development paradigm that is still top-down and oriented toward short-term investment interests, as well as political resistance from actors who benefit from a centralistic pattern of spatial control. In addition, limitations in the capacity and resources of local governments including insufficient understanding of customary law among officials and cultural challenges in aligning customary mechanisms with formal bureaucratic procedures constitute serious obstacles to the integration of customary law. In such circumstances, indigenous communities are once again placed in a vulnerable position regarding socio economic marginalization, as they lack adequate legal power to defend their living spaces. Therefore, harmonization between national law and customary norms is required through a legal pluralism approach, in which formal and non-formal legal systems complement each other in building a just and equitable spatial order. By ensuring that indigenous peoples retain control over their living space through the recognition of customary law integrated into spatial planning policies, the risk of social bankruptcy can be minimized. Indigenous peoples who have security over their living space will be able to maintain a resilient and sustainable local economy and prevent dependence on fragile external economic systems[34]. Moreover, the application of customary law as an instrument of equitable spatial planning will also strengthen social cohesion, increase ownership of public policy, and ensure that development is in line with human values and environmental sustainability.

C. Integration of Customary Law in Spatial Planning Policy to Improve Welfare

The integration of customary law into spatial planning policy is one of the strategic efforts to realize equitable and sustainable development at the local level. This integration means

[32] V. A. Firnaherera, & A. Lazuardi, "Pembangunan Ibu Kota Nusantara: Antisipasi Persoalan Pertanahan Masyarakat Hukum adat", *Jurnal Studi Kebijakan Publik*, 1, no.1, (2022): 71-84, https://doi.org/10.21787/jskp.1.2022.71-84.

[33] B. Ter Haar, "*Hukum Adat di Indonesia*", (Jakarta: Nuansa Cendekia, 2024).

[34] L. Hakim, E. Rochima, & S. Wyantuti, "Implementasi kebijakan dan realisasi rencana tata ruang Kec. Garut kota di Kab. Garut: Studi Analisis Kebijakan" *Jurnal Ekonomi Dan Kebijakan Publik*, 12, no.2, (2021): 163-175, https://jurnal.dpr.go.id/index.php/ekp/article/view/1938

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that customary norms, institutional structures, and decision-making mechanisms are not only formally recognized but also institutionalized into the regional spatial planning system, such as the Regional Spatial Plan and the Detailed Spatial Plan. Thus, indigenous peoples are no longer placed as objects who merely accept government decisions but as active subjects who have the authority to determine the direction of the use of their living space[35].

Spatial planning policies should be designed to preserve the sustainability of indigenous peoples' living spaces by taking into account the social and ecological values contained in customary norms[36]. One concrete form of this integration is the establishment of productive customary zones, which are areas legally recognized as indigenous peoples' economic spaces based on community agreements. These zones serve as a guarantee for the economic sustainability of indigenous peoples, where activities such as traditional agriculture, community-based ecotourism, and non-timber forest product management can be carried out in a sustainable manner. The establishment of productive indigenous zones is also in line with the principle of spatial justice, namely that every community has the same right to enjoy, manage, and utilize its living space without experiencing structural exclusion by state policies or private investment[37].

The case that occurred in Salang Tungir Village, Namorambe District, Deli Serdang Regency, illustrates the importance of this integration. The indigenous community in the area has traditionally managed customary land as agricultural land and customary forest areas, which are their main sources of livelihood. However, because the customary area is not explicitly listed on the administrative map of the Deli Serdang Regency Spatial Plan, part of the area has been converted into commercial plantations and housing projects without a public consultation mechanism involving indigenous institutions. As a result, the community has lost part of their living space and traditional economic resources. This situation demonstrates the weak legal position of indigenous peoples due to the lack of integration of customary norms into formal spatial policies. If customary norms are used as the legal basis for spatial planning policies, any land conversion process should require customary consent or free, prior, and informed consent as a condition for the validity of development decisions in indigenous territories. A similar phenomenon can be observed in Aras Napal Village, Langkat Regency, where approximately 242 hectares of customary land were claimed as state forest by the Ministry of Environment and Forestry without going through customary deliberation mechanisms. Through interviews with local residents and customary leaders, it was revealed that there was significant resistance and social conflict due to the disregard of *ulayat* rights. This case reflects the disharmony between state law and customary law in land control, even though Article 3 of the 1960 Basic Agrarian Law explicitly recognizes the *ulayat* rights of indigenous communities as long as they still exist and do not conflict with national interests[38]. This case reflects a lack of harmony between

[35] Fatimah, & F. Nataly, "Strategi Komunikasi Aliansi Masyarakat Adat Nusantara (Aman) Dalam Memperjuangkan RUU Masyarakat Hukum Adat", Jurnal Ilmiah Komunikasi (JIKOM) STIKOM IMA, 14, no.03, (2022) :116-124, http://jikom.uima.ac.id/jurnal-stikom/index.php/jikom1/article/view/254

[36] A. K. Sudiana, "Pengaturan Integrasi Kearifan Lokal dalam Penataan Lingkungan di Provinsi Bali", *Jurnal Hukum Saraswati*, 7, 01, (2025): 933-945.

[37] M.A. Adnan, T.M. Simbolon, R.A. Turnip, A. Sunarto, "Perlindungan Hukum Dalam Pemanfaatan Ruang Atas Dan Ruang Bawah Tanah Berdasarkan Undang-Undang Penataan Ruang", *Kerta Semaya,* 13 no.4, (2025): 501-513, https://doi.org/10.24843/KS.2025.v13.i04.p01

[38] A. R. Bustomi, D. A. Sugianto, & F. Z. Juniawan, "Politik Hukum dalam Pengelolaan Sumber Daya Alam: Antara Kepentingan Negara dan Hak Masyarakat Adat", *Hutanasyah: Jurnal Hukum Tata Negara*, 4, no. 1, (2025): 89-100, https://doi.org/10.37092/hutanasyah.v4i1.1191

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the legal sectors agrarian, forestry, and spatial planning which should be based on the principle of recognizing and protecting the rights of indigenous peoples. If customary norms are incorporated into regional spatial planning regulations, then mechanisms such as customary deliberation will become legally binding instruments in every process of planning, supervision, and transfer of spatial functions.

A protective customary participation model can be adopted in local regulations so that spatial decisions affecting customary rights are not only formally consulted, but also ratified through decisions by local customary institutions. In this system, customary institutions have a social control function over spatial policies, ensuring that spatial use does not threaten the socio-ecological sustainability of the community. Such models have been implemented in several regions, such as West Papua and Central Kalimantan, where local regulations recognize customary areas as separate spatial units in spatial planning. With this protective participation model, local governments can avoid spatial conflicts, increase the legitimacy of public policies, and encourage substantive community participation[39].

The successful integration of customary law into spatial planning policies in several other regions serves as a lesson and evidence that this model can be applied more broadly. For instance, in Malinau, North Kalimantan, and Kapuas Hulu, West Kalimantan, local governments have officially recognized customary territories in their Regional Spatial Plans and involved customary institutions in all stages of spatial planning and oversight. This integration not only strengthens the legitimacy of public policies but also promotes meaningful community participation, protects hak ulayat, and maintains the socio-ecological balance of the communities. The successes in these two regions demonstrate that a customary participation mechanism grounded in recognition, protection, and consultation based on free, prior, and informed consent can serve as a model for other areas, including Deli Serdang and Langkat, to prevent spatial conflicts, strengthen local economies, and achieve just and sustainable development.

The integration of customary law also has a significant economic impact. With formal recognition of productive customary zones, communities can obtain legal certainty in managing their resources. This opens up opportunities for communities to develop sustainable economic models such as organic farming, sustainable forest management, and culture-based tourism. When communities have control over their space, they will be more motivated to preserve the environment because their economic sustainability depends on the balance of the ecosystem. This integration is not only about recognizing rights, but also about economic empowerment and strengthening sustainable local social structures.

Thus, the integration of customary law into spatial planning policies has not only a symbolic function, but also a practical one in preventing social conflict, strengthening the local economy, and maintaining environmental balance. Local governments should make customary institutions strategic partners in the preparation of Regional Spatial Plans and Detailed Spatial Plans. Regulations requiring customary approval before changes in land use are made can serve as a preventive mechanism against land grabbing and the socio-economic bankruptcy of indigenous communities. If this paradigm is applied consistently, regional spatial planning will be more equitable, sustainable, and reflective of the values of Pancasila, which places the common good above the interests of individuals or corporations.

[39] M. A. Adnan, A. Sunarto, R. N. Siregar, & A. Khair, "Perlindungan Hukum Dalam Pemanfaatan Ruang Vertikal: Ruang Atas Dan Ruang Bawah Tanah," *AMU Press*, 1, no.4, (2025): 1-83, https://ejournal.amertamedia.co.id/index.php/press/article/view/571

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CONCLUSION

Customary law plays a strategic role as an instrument for just spatial planning, capable of preventing socio-economic marginalization and promoting community welfare through recognition of communal land rights (*hak ulayat*) and customary deliberation mechanisms. When customary norms are integrated into formal spatial planning policies, such as Regional Spatial Plans (*Rencana Tata Ruang Wilayah*) and Detailed Spatial Plans (Rencana *Detail Tata Ruang*), development decisions become more legitimate and sustainable, as they consider local values and ecological balance. Cases in Salang Tungir Village, Deli Serdang Regency, and Aras Napal, Langkat Regency, demonstrate that neglecting customary law in spatial planning results in loss of community access to productive spaces and triggers social conflicts. Therefore, integrating customary law into spatial policy is crucial for ensuring spatial justice, safeguarding socio-economic resilience, and realizing constitutional mandates as stipulated in Article 18B paragraph (2) of the 1945 Constitution and Article 3 of Law Number 5 of 1960 on Basic Agrarian Principles, which recognize the existence of communal land rights as long as they remain alive and aligned with national interests.

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