



# Pluralism in Health Law: Examining the Interplay between Customary and Formal Legal Systems in Indonesia and India

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## Abstract

**Introduction:** Legal pluralism in the health sector is an important issue in countries with high social and cultural diversity such as Indonesia and India. Both countries have dual legal systems that combine state formal law with customary law that lives in communities, and the regulation and implementation of health services in practice are often colored by overlapping authority, local cultural values, and differing views on the legitimacy of traditional healing. This phenomenon poses challenges in realizing justice, access, and equity in health services.

**Purposes of the Research:** This research aims to examine in depth the relationship and dynamics between the customary law system and the formal legal system in the context of health law in Indonesia and India. This study seeks to identify forms of interaction, potential conflicts, and opportunities for harmonization between the two legal systems in regulating traditional medicine practices and modern health services.

**Methods of the Research:** This research uses a qualitative approach with comparative study methods and normative legal analysis. Data was collected through literature studies and analysis of laws and regulations. This approach allows mapping the relationship between customary norms and formal law and their influence on national health policy.

**Results of the Research:** The results show that both Indonesia and India face similar challenges in integrating customary law systems with formal health laws. In Indonesia, customary law is constitutionally recognized but has not been fully integrated into health regulations. In India, traditional medicine systems such as Ayurveda and Unani gained stronger legal recognition. The study underscores the importance of an inclusive model of legal pluralism to ensure the protection of public health without neglecting local wisdom.

**Keywords:** Legal Pluralism; Health Law; Customary Law.

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## INTRODUCTION

Legal pluralism is an inevitable phenomenon in diverse societies, where various normative systems – both derived from state law and customary law – coexist and influence one another. Pluralism in the context of health law presents complex dynamics as it involves the medical, social, cultural, and spiritual aspects inherent in public health service practices<sup>1</sup>. Formal legal systems strive to uphold the principles of legality, patient safety, and professional ethical standards, while customary law preserves local values that govern traditional healing practices and social relations between healers and patients. Their

<sup>1</sup> Aditya Dilipkumar Patil et al., "Exploring Medical Pluralism as a Multifaceted Approach to Healthcare," *Indian Journal of Integrative Medicine*, 2024, <https://mansapublishers.com/ijim/article/view/4322>.

interaction often gives rise to issues regarding legal recognition, the legitimacy of treatment practices, and the protection of people's rights to health services that align with their beliefs and traditions. Therefore, research on legal pluralism in the health sector is essential to understand how legal systems can adapt to social diversity without disregarding the principles of justice and human rights<sup>2</sup>. The phenomenon of legal pluralism in the health sector cannot be separated from the social, cultural, and historical context of each country. Legal systems are not only shaped by modern state structures but also influenced by colonial legacies, social customs, and local values that have existed long before the establishment of state law. The existence of customary law and traditional practices in many cases persists because they are deeply rooted in the social and spiritual structure of society<sup>3</sup>. Therefore, to understand the complexity of legal pluralism in the health sector, it is important to examine countries with cultural diversity and a long legal history, such as practices in Asian countries namely Indonesia and India.

Indonesia and India are two countries that embody the real manifestation of evolving legal pluralism, shaped by cultural influences and colonial history. Both have legal systems derived from customary law and modern state law inherited from the colonial era. Customary law in Indonesia still plays an important role in community life, including in traditional healing practices such as jamu and spiritual-based treatment<sup>4</sup>. Meanwhile, the Indian legal system formally recognizes various healing traditions, such as Ayurveda, Siddha, and Unani, which have been integrated into national health policy. The colonial legacy of the British in India and the Dutch in Indonesia left behind a rational and bureaucratic formal legal system, but it did not completely erase the influence of customary norms and traditional practices<sup>5</sup>. Legal pluralism in these two countries demonstrates how modern legal systems must negotiate with social and cultural diversity in regulating aspects of public health.

The tension between formal health law and customary-based traditional healing practices is one of the central issues in the dynamics of legal pluralism. Formal legal systems tend to emphasize legality, medical standards, and scientific evidence as the basis for legitimizing health services. In contrast, traditional healing practices are rooted in cultural and spiritual values that cannot always be measured by a biomedical approach. These paradigm differences often create friction, especially when the state seeks to regulate traditional healing practices within the framework of positive law<sup>6</sup>. Centralized health regulations are often deemed insensitive to local contexts and disregard the social legitimacy of traditional healers. As a result, some communities experience limited access to health services consistent with their beliefs and culture. This situation underscores the need for a more inclusive legal approach so that the formal health system can coexist with traditional practices without excluding each other<sup>7</sup>.

In-depth analysis of the interaction between customary law and formal law in the health sector is crucial for formulating fair and sustainable public policies. These two legal systems

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<sup>2</sup> Sam F Halabi, "The Origins and Future of Global Health Law: Regulation, Security, and," *Georgetown Law Journal* 108 (2020).

<sup>3</sup> Tengku Keizerina, Devi Azwar, and Bazarova Dildora Baxadirovna, "Legal Pluralism in the Colonial Era: The Influence of Economic Globalization on the Elimination of Poenale Sanctie and Customary Law," *SASI* 31, no. 4 (2025), doi:10.47268/sasi.v31i4.3392.

<sup>4</sup> Raden Maya Febriyanti et al., "Knowledge, Attitude, and Utilization of Traditional Medicine within the Plural Medical System in West Java, Indonesia," *BMC Complementary Medicine and Therapies* 24, no. 1 (2024): 64, doi:10.1186/s12906-024-04368-7.

<sup>5</sup> Rochana Bajpai, "Pluralizing Pluralism: Lessons From, And For, India," *The Review of Faith & International Affairs* 20 (2022), doi:https://doi.org/10.1080/15570274.2022.2031046.

<sup>6</sup> Dilipkumar Patil et al., "Exploring Medical Pluralism as a Multifaceted Approach to Healthcare."

<sup>7</sup> Halabi, "The Origins and Future of Global Health Law: Regulation, Security, and."

should not be viewed as conflicting entities, but rather as social mechanisms that can complement each other in serving community needs. Through comprehensive research, common ground can be identified between local values and modern legal principles, enabling health policies to reflect social justice and respect cultural wisdom. This approach is also important to prevent the marginalization of traditional healing practices that have proven to play a role in community health systems. By understanding the interaction patterns of the two legal systems, governments can design regulations that are inclusive, adaptive, and in line with on-the-ground social realities. Ultimately, the harmonization of customary law and formal law will strengthen the legitimacy of national health law and improve the effectiveness of health services for all segments of society<sup>8</sup>.

Recognition of customary law in the constitution indicates the state's commitment to respecting the legal diversity that exists within society. However, in practice, this recognition has not been fully implemented in the health sector. National health regulations are still dominated by a biomedical approach derived from formal law, while the space for customary norms in regulating health services is very limited. This creates a gap between normative recognition and factual implementation on the ground. As a result, customary-based health practices often operate without adequate legal protection and are vulnerable to criminalization or stigmatization. This imbalance indicates the need for more responsive policies to the social and cultural context, so that the recognition of customary law is not merely symbolic but also functional in supporting an inclusive national health system<sup>9</sup>.

The conflict between the legality of traditional medicine and modern medical legal standards reflects the tension between two different legal and scientific paradigms. Modern medical law requires scientific proof, professional practice standards, and official licensing as the basis for legitimizing health services. In contrast, traditional medicine is based on empirical experience, community beliefs, and cultural heritage passed down through generations. When health regulations only recognize practices that meet modern medical criteria, many traditional healers find themselves in a legally unrecognized position – even though their services remain in demand by the community. This situation raises a dilemma between protecting patient safety and respecting the community's right to choose forms of treatment that align with their culture<sup>10</sup>. Therefore, a legal framework is needed that can bridge these differences without sacrificing aspects of safety, sustainability, and local wisdom in health services.

The right to health is a fundamental part of human rights that must be guaranteed without discrimination, including for indigenous communities who have their own knowledge systems and health practices. However, in reality, access to health services is often unequal because public policies still focus on a uniform, modern medical-centered service model. Indigenous communities frequently face geographical, social, and cultural barriers that prevent them from accessing health services that meet their local needs and values. The traditional healing practices they rely on often do not receive adequate legal recognition. This injustice has the potential to widen the health gap between indigenous communities and the general public. The state has a responsibility to ensure that the legal system and health policies are inclusive, respect cultural diversity, and guarantee equal

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<sup>8</sup> Keizerina, Azwar, and Dildora Baxadirovna, "Legal Pluralism in the Colonial Era: The Influence of Economic Globalization on the Elimination of Poenale Sanctie and Customary Law."

<sup>9</sup> Dilipkumar Patil et al., "Exploring Medical Pluralism as a Multifaceted Approach to Healthcare."

<sup>10</sup> *Ibid.*

access to health for all segments of society<sup>11</sup>. Formal health systems are generally designed based on a biomedical paradigm that emphasizes scientific rationality, efficiency, and universal medical standards. This approach often disregards local cultural values and traditional healing practices that have become an integral part of community life. Health is not only understood as a physical condition, but also as a balance of spiritual, social, and environmental aspects – which are sometimes not accommodated by modern health systems. As a result, national health policies often fail to reach the cultural dimensions of local communities and create a rift between medical institutions and traditional communities. The neglect of this cultural dimension not only reduces the effectiveness of health services, but also erodes public trust in state institutions. The integration of local values and traditional practices into formal health systems should be seen as an effort to strengthen the legitimacy and sustainability of health services at the grassroots level<sup>12</sup>.

Research on health law in formal legal systems has been extensively conducted, but most previous studies remain monographic and focus on substance that is not fully legally pluralistic in health issues. Research by Lukman Hakim et al., in the *Indonesian State Law Review*, analyzes the structural, constitutional, and institutional barriers to the recognition of customary law in Indonesia. While legal pluralism is recognized, its implementation is fragmented and conditional within a centralistic legal framework. The article concludes that constitutional reform and institutional support are needed to achieve a more just pluralistic legal order in Indonesia<sup>13</sup>. Furthermore, research by Gupteswar Patel in *Health Sociology Review* analyzes the challenges and context of implementing medical pluralism policies in India. Its primary focus is on how traditional systems of medicine (AYUSH: Ayurveda, Yoga, Unani, Siddha, etc.) are integrated into the biomedical/allopath-dominated public healthcare system. The article specifically highlights the institutional barriers, power relations, and regulatory issues that arise from the coexistence of these different systems<sup>14</sup>. And research by Umaira Hayuning Anggayasti et al., in the *Pan African Medical Journal* which focuses on the legal protection of traditional healing knowledge in Indonesia, which is a synthesis between local wisdom (through the theory of legal pluralism) and national regulations by highlighting how national regulations, such as Government Regulation Number 56 of 2022, recognize traditional healing knowledge<sup>15</sup>.

Based on the limitations of previous research, this study offers significant novelty as it explicitly conducts a comparative study between Indonesia and India, focusing specifically on the interaction between customary law systems and formal law systems in the health sector. Furthermore, this study explores the conflicts, coexistence, and jurisdictions arising from healing practices that are purely governed by customary norms or communities in both countries. The urgency of this research lies in the need for a more coherent and just legal framework. Given the unavoidable medical pluralism, failure to understand and regulate this legal interplay can create legal uncertainty for customary service providers,

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<sup>11</sup> Halabi, "The Origins and Future of Global Health Law: Regulation, Security, And."

<sup>12</sup> Keizerina, Azwar, and Dildora Baxadirovna, "Legal Pluralism in the Colonial Era: The Influence of Economic Globalization on the Elimination of Poenale Sanctie and Customary Law."

<sup>13</sup> Lukman Hakim, Qatrunnada Hamparan Melati, and Purnawan Dwikora Negara, "Integrating Adat Law in Indonesia: Challenges and Opportunities in a Centralized Legal Framework," *Indonesian State Law Review* 8, no. 1 (2025): 58–82, doi:10.15294/islrev.v8i1.19628.

<sup>14</sup> Gupteswar Patel, Caragh Brosnan, and Ann Taylor, "Understanding the Role of Context in Health Policy Implementation: A Qualitative Study of Factors Influencing Traditional Medicine Integration in the Indian Public Healthcare System," *Health Sociology Review* 32, no. 3 (2023): 294–310, doi:10.1080/14461242.2023.2210550.

<sup>15</sup> Umaira Hayuning Anggayasti, Marzellina Hardiyanti, and Aga Natalis, "Legal Protection of Traditional Medicine Knowledge in Indonesia: Integrating Local Wisdom and Modern Regulations," *Pan African Medical Journal* 51 (2025), doi:10.11604/pamj.2025.51.73.47755.

risks to patient safety, and barriers to achieving universal health access that recognizes cultural diversity and local knowledge systems. This study focuses on how customary law and formal law systems interact in the context of health policy regulation in Indonesia and India. It seeks to examine how these two legal systems shape the dynamics of recognition and legitimacy of traditional healing practices that have long been part of the social and cultural life of communities. Additionally, this study questions the extent to which a legal pluralism approach can be effectively applied to create a more inclusive, just, and locally relevant health legal system without disregarding modern medical standards.

This study aims to analyze the relationship and dynamics between customary law and formal law systems in the health sector in Indonesia and India, with a focus on how these two systems interact in regulating traditional healing practices and national health policies. Through a legal pluralism approach, this study seeks to identify the potential for legal harmonization that can strengthen recognition of local values while upholding medical safety standards. Furthermore, this study aims to make a theoretical contribution to the development of the concept of legal pluralism in the health field, as well as to offer practical recommendations for policymakers in designing more inclusive and contextual regulations.

## METHODS OF THE RESEARCH

This study uses a qualitative method with a normative-juridical and comparative approach. The normative-juridical approach is used to analyze the legal norms governing health systems – both in the context of formal law and customary law – by examining legislation, government policies, and relevant legal doctrines in Indonesia and India. Meanwhile, the comparative approach is used to compare how the two countries regulate the relationship between traditional healing practices and formal health systems within the framework of legal pluralism. Research data is obtained through library research covering primary, secondary, and tertiary legal sources, such as laws, international academic journals, health policy reports, and other scholarly publications. Data analysis is conducted in a descriptive-analytical manner by interpreting and comparing legal provisions and their implementation to identify patterns of interaction and gaps between customary and formal law systems. Through this approach, the study seeks to produce in-depth understanding of how legal pluralism can play a role in strengthening a just, inclusive, and contextual health system in Indonesia and India.

## RESULTS AND DISCUSSION

### A. The Dynamics of Interaction between Customary and Formal Legal Systems in Health Governance in Indonesia and India

The legal pluralism framework in the health systems of Indonesia and India reflects the efforts of both countries to accommodate the diversity of legal sources arising from their societies' history, culture, and social needs. Legal pluralism in Indonesia has developed from the recognition of customary law as stipulated in the constitution and various legislation, including in the health sector. This system enables the coexistence of state-based formal law and local norms that exist in society, particularly in traditional healing practices such as jamu and herbal medicine. However, although customary law is recognized normatively, its implementation in the health context is often limited by the dominance of the biomedical approach and centralistic regulations. This situation indicates that legal

pluralism in Indonesia remains declaratory and has not been fully operational in national health policies<sup>16</sup>.

Meanwhile, the form of legal pluralism in India is more institutionalized through a dual health system formally regulated by the state. The Indian government officially recognizes traditional medicine systems through the Ministry of AYUSH, which oversees Ayurveda, Yoga, Unani, Siddha, and Homeopathy. This integration shows that legal pluralism is not only recognized conceptually but also implemented in the structure of the national health bureaucracy. Nevertheless, challenges still arise in maintaining a balance between scientific legitimacy and cultural recognition, as traditional healing practices are still often viewed as subordinate to modern biomedicine<sup>17</sup>. Practices in both Indonesia and India demonstrate complex legal pluralism dynamics, where efforts to integrate customary values and formal legal systems are key to developing more just and contextual health policies.

The operational mechanisms between customary law and formal law in the context of health services in Indonesia run in parallel, yet often without effective coordination in practice. Formal law regulates health service delivery through legislative instruments such as Law Number 17 of 2023 on Health, which emphasizes modern medical standards, health workforce accreditation, and the safety of medicines and therapies. Customary law functions through social norms and intergenerational practices that govern how indigenous communities understand illness, healing, and life balance<sup>18</sup>. Traditional healing practices are often carried out informally by local healers without legal protection or state oversight, despite enjoying high social legitimacy within the community. This creates a gap between the formal health system, based on legality, and the customary system, based on belief and empirical experience. This situation demonstrates that the operational mechanisms of customary law in the health sector lack an institutional framework capable of effectively bridging the two systems<sup>19</sup>.

India demonstrates a more structured mechanism for operationalizing legal pluralism in the health sector through the formal recognition of traditional medical systems under the Ministry of AYUSH. This ministry serves as a coordinating body, establishing standards, licensing, and conducting scientific research to ensure that traditional practices such as Ayurveda, Siddha, and Unani remain compliant with public safety principles. Health regulation in India is thus dualistic, with a modern biomedical legal framework on the one hand and a separate legal framework for traditional systems on the other<sup>20</sup>. However, its implementation is not free from challenges such as budgetary imbalances, epistemological differences between biomedical and traditional systems, and issues of scientific authority. The interaction between formal and customary law in India demonstrates that legal pluralism can function operationally if the state provides institutional structures and legal mechanisms that accommodate both systems equally<sup>21</sup>. The implementation of customary law in Indonesia's health sector reflects the state's efforts to provide space for traditional

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<sup>16</sup> Hakim, Melati, and Negara, "Integrating Adat Law in Indonesia: Challenges and Opportunities in a Centralized Legal Framework."

<sup>17</sup> Sunil Kumar Verma et al., "Exploring Ayurveda: Principles and Their Application in Modern Medicine," *Bulletin of the National Research Centre* 48, no. 1 (2024), doi:10.1186/s42269-024-01231-0.

<sup>18</sup> Hakim, Melati, and Negara, "Integrating Adat Law in Indonesia: Challenges and Opportunities in a Centralized Legal Framework."

<sup>19</sup> Prilian Cahyani, "The Indonesian Traditional Healer Accountability in the Law and Culture Perspectives," in *1st International Conference on Indonesian Legal Studies (ICILS 2018)*, 2018.

<sup>20</sup> Verma et al., "Exploring Ayurveda: Principles and Their Application in Modern Medicine."

<sup>21</sup> Suman Chakrabarty and Kamrul Hossain, "Recognizing Indigenous Traditional Knowledge With Medicinal Value Within A Legal Framework: An Overview of The Issues And Challenges With Special Focus On India," *Man in India* 104, no. 1-2 (2024): 41-60, doi:10.47509/mii.2024.v104i01-2.03.

practices that have long existed in society. Law Number 17 of 2023 on Health affirms the recognition of traditional medicine as part of the national health system, positioning it as a complement to modern medical treatment. Under this regulation, the government is mandated to develop, supervise, and protect traditional healers through mechanisms of registration, certification, and testing of the safety and efficacy of their practices<sup>22</sup>. Nevertheless, these regulations still emphasize strong state control and have not fully represented the autonomy of customary law in determining healing standards based on local wisdom. As a result, many indigenous communities continue to practice traditional medicine informally because they feel that the state's legalization process does not fully align with their cultural values. This situation indicates a tension between the spirit of legal recognition and the social reality that demands flexibility and respect for customary authority<sup>23</sup>.

The practice of jamu serves as a concrete example of how customary law and traditional knowledge have gained recognition within the framework of national health law. Jamu, a cultural heritage recognized by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), is now regulated as part of standardized traditional medicine in health policies. Through the Ministry of Health, the government seeks to integrate jamu into health services via the Jamu Certification Facility, which aims to test its efficacy and safety based on scientific principles. However, this certification process is often viewed as a form of customary law modernization that risks eroding the spiritual values and local philosophy inherent in jamu. The greatest challenge is finding a balance between legal protection and preserving the cultural meaning of jamu as a symbol of the Indonesian people's collective identity. The implementation of customary law in traditional medicine requires a more participatory approach, so that the law does not merely regulate but also maintains the sustainability of local knowledge<sup>24</sup>. Next, the implementation of legal pluralism in India through the AYUSH system represents a concrete form of integrating modern and traditional law in national health governance. The Indian government has formally established the Ministry of AYUSH as a state institution responsible for the regulation, research, and education in the field of traditional medicine such as Ayurveda, Yoga, Unani, Siddha, and Homeopathy. The existence of this institution demonstrates strong legal recognition of the diversity of medical systems as part of national health policy<sup>25</sup>. The AYUSH system not only serves as a complement to biomedicine, but also enjoys a parallel legal basis through various laws and public policies. The state grants legal legitimacy to AYUSH practitioners and educational institutions through centrally regulated certification and licensing, making them part of the formal healthcare structure. This step demonstrates that legal pluralism in India has evolved toward more systematic and sustainable institutional integration<sup>26</sup>. The integration of the AYUSH system strengthens the legal recognition of traditional medicine, but its implementation still faces various normative and epistemological challenges. One of these is the disparity in resource allocation, with the biomedical system still dominating public health budgets, infrastructure, and research. Furthermore, there are issues in harmonizing practice standards between AYUSH and

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<sup>22</sup> Martin Ramstedt, "Towards an Epistemological Decolonization of Legal Pluralism: The Case of Indonesia," *Oñati Socio-Legal Series*, May 27, 2025, doi:10.35295/osls.iisl.2157.

<sup>23</sup> Achmad Hariri and Basuki Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia," *Walisono Law Review (Walrev)* 6, no. 2 (2024): 146-70, doi:10.21580/walrev.2024.6.2.25566.

<sup>24</sup> *Ibid.*

<sup>25</sup> Verma et al., "Exploring Ayurveda: Principles and Their Application in Modern Medicine."

<sup>26</sup> *Ibid.*

biomedical systems, particularly regarding safety, effectiveness, and scientific methodology. These tensions demonstrate that legal pluralism in India remains a negotiation between cultural recognition and the demands of modern rationality<sup>27</sup>. However, the existence of AYUSH serves as an important model in showing how law can function as a bridge between tradition and science, as well as between local beliefs and state policy. Thus, the implementation of legal pluralism in India provides valuable lessons that legal recognition of traditional health systems can strengthen social legitimacy and improve people's access to diverse and contextual health services<sup>28</sup>.

A comparison of the effectiveness of legal recognition of traditional healing practices in Indonesia and India reveals fundamental differences in institutional levels, policy integration, and social legitimacy. Recognition of traditional medicine in Indonesia remains declarative and limited to normative provisions in laws, without strong institutional support for implementation on the ground. The formal legal system places greater emphasis on medical supervision and standardization than on empowering indigenous communities as the primary actors of traditional knowledge. As a result, many local practitioners continue to operate outside the formal legal system, feeling under-represented by existing regulations<sup>29</sup>. On the other hand, in India, through the AYUSH system, traditional medicine has been successfully made an integral part of national policy with an independent legal and administrative structure<sup>30</sup>. These differences indicate that the effectiveness of legal recognition depends on the state's ability not only to regulate but also to institutionalize traditional practices within the public health system.

Based on the existing implementation in India, it shows higher effectiveness due to the presence of an operational legal framework and consistent political support for its traditional medicine systems. Through the integration of AYUSH into public services, people have legal access to alternative treatments that are recognized and supervised by the state. This model provides dual legitimacy – both scientific and cultural – which strengthens the position of traditional medicine amid the tide of medical modernization<sup>31</sup>. In contrast, in Indonesia, the lack of synchronization between central government policies and local dynamics often hinders the effectiveness of legal recognition of traditional practices such as herbal medicine and traditional healing. Weak coordination between health institutions, local governments, and indigenous communities also widens the gap between written law and social practice<sup>32</sup>.

Therefore, the comparison of these two countries shows that the success of legal pluralism in the health sector is largely determined by the extent to which formal law can embrace the values of local wisdom without reducing the autonomy and legitimacy of those

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<sup>27</sup> Yoganandham Govindharaj, "Integrating Indigenous and Western Medicine in India's Healthcare System: Addressing Noncommunicable Diseases and Assessing the Economic Efficacy of Herbal Medicine," *Degres Journal*, 2024, <https://www.researchgate.net/publication/382560880>.

<sup>28</sup> Bajpai, "Pluralizing Pluralism: Lessons From, And For, India."

<sup>29</sup> Febriyanti et al., "Knowledge, Attitude, and Utilization of Traditional Medicine within the Plural Medical System in West Java, Indonesia."

<sup>30</sup> K Madan Gopal, Suneela Garg, and K S Uplabdh Gopal, "Towards One Nation, One Health System: A Pragmatic Approach to Integrative Medicine," *Journal of the Epidemiology Foundation of India* 3, no. 2 (2025): 191-99, doi:10.56450/jefi.2025.v3i02.014.

<sup>31</sup> Ritu Priya and Chris M. Kurian, "Regulating Access and Protecting Traditional Health Knowledge through Intellectual Property Rights? Issues from a Holistic Health Systems Perspective," *Science, Technology and Society* 23, no. 3 (2018): 504-29, doi:10.1177/0971721818762937.

<sup>32</sup> Tamaulina Br. Sembiring et al., "The Challenge of Customary Law Implementation in the Optimistic Law Era in Saving Healthy Indonesian Environment," *International Research Journal of Management, IT and Social Sciences* 9, no. 4 (2022): 656-65, doi:10.21744/irjmis.v9n4.2147.

traditions. Institutional, political, and social barriers to creating synergy between customary law and formal law in the health sector arise from fundamental differences in power structures, legal paradigms, and social legitimacy. The health bureaucracies in Indonesia and India are still constitutionally dominated by a centralistic approach that positions state law as the sole authority, making it difficult for customary law to play a formal role in health policies. From a political perspective, development and modernization interests often sideline local values that are considered unscientific or inefficient in the context of public policy<sup>33</sup>. Meanwhile, socially, changing values among the younger generation, urbanization, and the dominance of the formal education system have also eroded trust in customary-based health practices. This gap is exacerbated by the underrepresentation of indigenous communities in decision-making institutions and the limited mechanisms for dialogue between legal systems. As a result, legal pluralism in the health sector often remains symbolic rather than a living, mutually reinforcing practice. Therefore, true synergy can only be achieved through institutional reform that recognizes customary law not as a subordinate, but as an equal partner in realizing justice and independence in public health<sup>34</sup>.

## **B. Legal and Regulatory Challenges in Recognizing Traditional Medicine in Indonesia and India**

The normative conflict between modern medical legal standards and traditional healing practices arises from underlying differences in epistemological principles and scientific legitimacy. Modern medical law operates based on scientific evidence, clinical trials, and universal safety principles that are strictly codified through laws and professional regulations. In contrast, traditional healing practices are rooted in empirical experience, spiritual beliefs, and intergenerational knowledge that cannot always be measured by biomedical parameters. In Indonesia, this tension is evident in the certification policies for traditional healers – where the state requires formal competency standards that are not fully relevant to the local cultural context. As a result, many traditional practitioners struggle to obtain legal status because the legal system does not accommodate the non-medical dimensions of their practices<sup>35</sup>. Meanwhile, normative conflicts in India have also emerged, despite the AYUSH system providing a formal legal framework for traditional practices. The main issue lies in the paradigm differences between Western scientific approaches and Eastern holistic healing methodologies. The Indian government has attempted to address this tension through integrative policies and collaborative research between AYUSH and biomedicine, but continues to face resistance from the conventional medical community. This normative conflict impacts not only legal legitimacy but also public perception of the validity of traditional medicine<sup>36</sup>.

The issues of legality, certification, and legal protection for traditional healers are among the main challenges in implementing legal pluralism in the health sector. While Indonesia's Law Number 17 of 2023 on Health has recognized the existence of traditional medicine, its legal mechanisms remain administrative and lack flexibility in accommodating the diversity of local practices. The certification and registration process for traditional healers often

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<sup>33</sup> Govindharaj, "Integrating Indigenous and Western Medicine in India's Healthcare System: Addressing Noncommunicable Diseases and Assessing the Economic Efficacy of Herbal Medicine."

<sup>34</sup> Ni Ketut Sari Adnyani et al., "The Constitutional Law in Contemporary Times: Comparison of India and Indonesia," *Jurnal Suara Hukum* 6 (2024).

<sup>35</sup> Anggayasti, Hardiyanti, and Natalis, "Legal Protection of Traditional Medicine Knowledge in Indonesia: Integrating Local Wisdom and Modern Regulations."

<sup>36</sup> Bajpai, "Pluralizing Pluralism: Lessons From, And For, India."

requires competency standards based on a formal medical approach, rather than on the wisdom and experience of indigenous communities. As a result, many traditional healers are reluctant to register because they feel the legal system does not understand their cultural context<sup>37</sup>. Furthermore, the absence of a dedicated institution to protect the rights of traditional healers leaves them vulnerable to criminalization or legal discrimination when their practices are deemed inconsistent with medical standards. This situation highlights the gap between legal recognition at the normative level and actual protection on the ground<sup>38</sup>.

India's legal framework, the AYUSH system, has provided a stronger legal basis and protection for traditional medicine practitioners. The government established professional councils under the Central Council of Indian Medicine (CCIM) and the Central Council of Homeopathy (CCH) to regulate the licensing, education, and professional ethics of traditional healers. This system ensures that practitioners have state-recognized legal legitimacy and provides protection against abuse or fraud in the alternative health sector. However, challenges remain regarding the equal status of AYUSH healthcare workers and conventional healthcare professionals, who still differ in terms of salaries, benefits, and professional recognition<sup>39</sup>. The certification process in India has also faced criticism for being overly bureaucratic and insensitive to local variations among traditional healing systems. In both Indonesia and India, issues of legality and legal protection for traditional healers highlight the need for more contextual legal reforms to ensure health policies truly reflect the principles of pluralism and social justice<sup>40</sup>.

A comparative study of India's Ministry of AYUSH and Indonesia's traditional medicine policies reveals significant differences in institutional frameworks, policy effectiveness, and the degree of integration into the national health system. The Ministry of AYUSH serves as a dedicated institution that systematically regulates, researches, and develops traditional medicine systems through structured policies, formal education, and state budget support. This approach has enabled India to achieve a relatively harmonious integration of traditional medicine and modern medicine within public services<sup>41</sup>. In contrast, in Indonesia, traditional medicine is recognized in Health Law No. 17 of 2023, but its implementation remains scattered across various institutions without strong coordination. The absence of a dedicated ministry or agency equivalent to AYUSH has led to traditional medicine policies being reactive, sectoral, and dependent on regional initiatives or specific research institutions. This limits the effectiveness of Indonesian policies to formal recognition, rather than functional integration within the national health system<sup>42</sup>. *Ministry of AYUSH* In terms of effectiveness, it shows more consistent performance because it has adequate legal, political, and financial support to strengthen the legitimacy of traditional medicine at both national and international levels. India has successfully positioned systems such as Ayurveda and Yoga not only as cultural heritage but also as part of global health diplomacy and the alternative health industry. Meanwhile, Indonesia is still struggling to balance the protection of local practices such as jamu with the demands of harmonization with global

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<sup>37</sup> Cahyani, "The Indonesian Traditional Healer Accountability in the Law and Culture Perspectives."

<sup>38</sup> Febriyanti et al., "Knowledge, Attitude, and Utilization of Traditional Medicine within the Plural Medical System in West Java, Indonesia."

<sup>39</sup> Verma et al., "Exploring Ayurveda: Principles and Their Application in Modern Medicine."

<sup>40</sup> Gopal, Garg, and Gopal, "Towards One Nation, One Health System: A Pragmatic Approach to Integrative Medicine."

<sup>41</sup> *Ibid.*

<sup>42</sup> Chakrabarty and Hossain, "Recognizing Indigenous Traditional Knowledge with Medicinal Value Within a Legal Framework: An Overview of The Issues and Challenges with Special Focus on India."

medical standards<sup>43</sup>. The lack of integrated scientific research, consistent certification of healthcare providers, and public financing mechanisms are major obstacles to developing a system comparable to AYUSH. This comparative study demonstrates that the effectiveness of integrative policies depends heavily on institutional clarity and political sustainability, with India demonstrating a more mature model than Indonesia in managing legal pluralism in the health sector<sup>44</sup>.

The legalistic approach, which places biomedicine as the sole standard for validating health practices, has drawn criticism for ignoring the diversity of epistemologies and cultural values in pluralistic societies. This legal model tends to define health narrowly based on scientific and clinical parameters, thus neglecting the social, spiritual, and ecological dimensions that underlie traditional healing systems<sup>45</sup>. In multicultural countries like Indonesia and India, policies that are too biomedical-oriented have the potential to create legal inequalities, where traditional health practices are positioned as alternative or even illegitimate. This single-minded approach also hinders innovation and collaboration between modern science and local knowledge, which can be mutually enriching in the context of community-based health services. Legalistic approaches often fail to recognize that the legitimacy of health practices stems not only from science but also from the trust and social acceptance of the user community. Therefore, a more pluralistic and contextual reform of the health law paradigm is needed to achieve epistemic and cultural justice within the national health system<sup>46</sup>.

Limited recognition of indigenous healing practices has significant social, cultural, and legal implications, particularly for communities where healing traditions are part of their collective identity. This creates disparities in access to healthcare services aligned with local values and weakens the social standing of traditional healers, who lose legitimacy under state law. The marginalization of indigenous practices has the potential to erode traditional knowledge passed down across generations, as it is deemed irrelevant to modern health standards<sup>47</sup>. Meanwhile, from a legal perspective, the lack of formal recognition makes indigenous healing practices vulnerable to criminalization, especially when confronted with rigid medical regulations. This misalignment between state legal norms and customary law can also create tensions between the state and local communities regarding authority and public trust. As a result, the health system becomes less inclusive and fails to reflect the socio-cultural diversity of the communities it serves. More substantial legal recognition of indigenous healing practices is crucial to ensure cultural protection and equity in national health services<sup>48</sup>.

Social and cultural legitimacy plays a crucial role in determining the success and sustainability of health policies, particularly in countries with diverse societies like Indonesia and India. Policies that focus solely on formal law without considering local social

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<sup>43</sup> *Ibid.*

<sup>44</sup> Gopal, Garg, and Gopal, "Towards One Nation, One Health System: A Pragmatic Approach to Integrative Medicine."

<sup>45</sup> Nicole Weydmann, "The Recovery of Healthcare: A Case Study of Javanese Medical Practices and Related Discussions about Pluralism in Healthcare," *Visions for Sustainability* 2020, no. 14 (2020): 66–82, doi:10.13135/2384-8677/4561.

<sup>46</sup> Sachin Saggarr et al., "Traditional and Herbal Medicines: Opportunities and Challenges," *Pharmacognosy Research* 14, no. 2 (2022): 107–14, doi:10.5530/pres.14.2.15.

<sup>47</sup> Monalisa Monalisa, Muhammad Fakhri, and Candra Perbawati, "Relevance of WHO Traditional Medicine Strategy (2014–2023) with Traditional Health Care Policy in the Perspective of National Law and International Law," *Asian Journal of Legal Studies* 1, no. 1 (2022): 25–34, doi:10.53402/ajls.v1i1.117.

<sup>48</sup> Yu Lee Park and Rachel Canaway, "Integrating Traditional and Complementary Medicine with National Healthcare Systems for Universal Health Coverage in Asia and the Western Pacific," *Health Systems and Reform* 5, no. 1 (2019): 24–31, doi:10.1080/23288604.2018.1539058.

values and practices often lack adequate public acceptance. In the health context, legitimacy is measured not only by compliance with regulations but also by the extent to which the public trusts and internalizes these policies in their daily lives<sup>49</sup>. Recognizing cultural values in policy formulation can create a sense of ownership that strengthens implementation at the grassroots level. For example, by involving traditional leaders or traditional medicine practitioners in health policy formulation, the government can build a bridge of trust that accelerates social acceptance of health programs. Social and cultural legitimacy are not merely additional aspects, but rather essential prerequisites for ensuring that health policies are truly effective and sustainable<sup>50</sup>.

The sustainability of health policies also depends heavily on the state's ability to adapt legal instruments to the diverse cultural values prevalent in society. When health laws are implemented with respect for local traditions, communities are more likely to adopt the policies without feeling a loss of cultural identity or autonomy. India's integration of local values into the AYUSH system exemplifies how social legitimacy can strengthen the effectiveness of national policies without creating cultural resistance<sup>51</sup>. In contrast, in Indonesia, weak social legitimacy for health regulations often creates a gap between policy and practice. The long-term absence of social legitimacy can weaken community participation and hinder innovation based on local knowledge<sup>52</sup>. Therefore, an approach that combines social, cultural, and legal legitimacy needs to be developed to ensure that health policies are not only normatively legitimate, but also accepted and implemented sustainably by the community.

### **C. An Inclusive Model of Health Law Harmonization through a Pluralist Approach in Indonesia and India**

Legal pluralism theoretically offers a conceptual framework capable of bridging the gap between formal state legal norms and non-state legal systems, including customary law, religion, and local social practices. In the context of health policy, legal pluralism serves as an integrative approach that recognizes the existence of multiple sources of legal authority within society. This approach rejects the monistic view that places state law as the sole source of legitimacy, and instead emphasizes the importance of epistemic equality between legal systems<sup>53</sup>. Through a framework of legal pluralism, health policies can be developed more adaptively, taking into account the socio-cultural context of the communities they serve. This is particularly relevant in multicultural countries like Indonesia and India, where traditional health practices and local beliefs continue to play a significant role in daily life. Legal pluralism is not only an academic concept, but also a practical foundation for creating an inclusive and responsive health system to societal diversity<sup>54</sup>.

Legal pluralism in health policy enables the realization of a collaborative governance model between the state and local communities. This theory emphasizes that recognition of various legal systems must be accompanied by coordination mechanisms that ensure the protection of human rights and medical safety standards without negating cultural autonomy. Legal pluralism in India is manifested through the recognition of the AYUSH

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<sup>49</sup> Dilipkumar Patil et al., "Exploring Medical Pluralism as a Multifaceted Approach to Healthcare."

<sup>50</sup> Halabi, "The Origins and Future of Global Health Law: Regulation, Security, and."

<sup>51</sup> Gopal, Garg, and Gopal, "Towards One Nation, One Health System: A Pragmatic Approach to Integrative Medicine."

<sup>52</sup> Hariri and Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia."

<sup>53</sup> *Ibid.*

<sup>54</sup> Priya and Kurian, "Regulating Access and Protecting Traditional Health Knowledge through Intellectual Property Rights? Issues from a Holistic Health Systems Perspective."

system as an integral part of national health policy. Meanwhile in Indonesia, the potential for integrating customary law into the health system has begun to gain attention through revisions to health regulations and the strengthening of jamu's role. This theoretical study also asserts that legal pluralism can enhance policy legitimacy by combining the state's normative validity and the community's social validity. However, its implementation requires a flexible legal framework that is sensitive to local dynamics to avoid conflicts between legal authorities. Legal pluralism can serve as a strategic paradigm to strengthen justice, efficiency, and sustainability in national health systems<sup>55</sup>. The implementation of an inclusive legal model that integrates customary values and modern medical standards opens opportunities to create a more adaptive and just health system. This model positions customary law not as an opponent of formal law, but as a partner in formulating policies that align with the needs of local communities. In the Indonesian context, customary values can be integrated into the licensing, certification, and supervision mechanisms for traditional medicine, so that these practices have legal legitimacy without losing their cultural roots. This integration can also strengthen public trust in the national health system, as it recognizes the existence of local knowledge as a legitimate part of the medical system. The application of modern medical standards remains necessary to ensure the safety, efficacy, and accountability of health services. The inclusive legal model must be designed to balance cultural recognition and legal certainty, so as not to cause inequalities or normative conflicts in practice<sup>56</sup>.

India's inclusive legal model has been implemented more systematically through the AYUSH integration policy, where traditional medical systems are regulated alongside biomedicine within a single national legal framework. This approach can serve as a model for Indonesia in developing a pluralistic yet coordinated health legal system, where each medical system has its own regulatory, financing, and research mechanisms. Implementing such a model also encourages collaboration between modern medical professionals and traditional healers through training, knowledge exchange, and scientific validation of local practices<sup>57</sup>. However, to ensure its success, strong political commitment and cross-sectoral regulatory institutions capable of harmonizing public health interests with cultural values are required. If managed properly, an inclusive legal model not only strengthens the effectiveness of health policies but also plays a role in preserving cultural heritage and expanding the reach of health services to indigenous and rural communities<sup>58</sup>. The legal harmonization strategy in the health sector requires the active involvement of local communities and the strengthening of cross-sectoral institutions as the primary foundation for creating an inclusive and adaptive legal system. The participation of indigenous communities allows health policies to be formulated based on real-world values, needs, and social practices, rather than solely through a centralized state legal approach. Involving indigenous leaders, civil society organizations, and traditional health workers in the decision-making process can enhance social legitimacy and prevent resistance to implemented policies<sup>59</sup>. Strengthening cross-sectoral institutions, such as collaboration between the Ministry of Health, research institutions, and customary bodies, is necessary to ensure efficient coordination and synergy between actors in policy implementation.

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<sup>55</sup> Bajpai, "Pluralizing Pluralism: Lessons From, And For, India."

<sup>56</sup> Cahyani, "The Indonesian Traditional Healer Accountability in the Law and Culture Perspectives."

<sup>57</sup> Halabi, "The Origins and Future of Global Health Law: Regulation, Security, And."

<sup>58</sup> Gopal, Garg, and Gopal, "Towards One Nation, One Health System: A Pragmatic Approach to Integrative Medicine."

<sup>59</sup> Sembiring et al., "The Challenge of Customary Law Implementation in the Optimistic Law Era in Saving Healthy Indonesian Environment."

Through this mechanism, formal and customary law can complement each other rather than eliminate each other. Thus, a legal harmonization strategy based on local participation and integrated institutions not only strengthens the effectiveness of health policies but also ensures that the national legal system reflects social justice and the cultural diversity of its communities<sup>60</sup>.

Legal principles such as substantive justice, public participation, and cultural recognition serve as important normative foundations for developing a pluralistic health system. Substantive justice emphasizes that the law must provide equal treatment, taking into account social and cultural contexts, rather than simply enforcing procedural uniformity. In the health context, this means that every group, including indigenous communities and traditional medicine practitioners, has the right to fair legal space within the national health care system. Public participation ensures that communities are not merely objects of policy but also active actors in designing and evaluating health regulations, thereby creating a sense of ownership and social legitimacy<sup>61</sup>. Meanwhile, cultural recognition plays a crucial role in protecting local values, knowledge, and practices that have long been the source of community health in various regions. These three principles, if consistently implemented, can create synergy between state law and social norms, resulting in an inclusive, contextual, and socially just health system for all levels of society<sup>62</sup>. Policy recommendations to strengthen the inclusiveness of health systems in Indonesia and India should focus on legal integration, institutional strengthening, and recognition of local culturally based health practices. Governments in both countries can adopt adaptive regulatory approaches that not only regulate formally but also provide space for social and customary mechanisms that have proven effective at the community level. A concrete step in Indonesia could be the development of a legal framework derived from Health Law No. 17 of 2023 that explicitly recognizes the role of traditional medicine in the national health care system<sup>63</sup>. Meanwhile, in India, consolidation between institutions within the AYUSH system is needed to improve coordination and accountability of cross-sectoral policies. Both countries are also advised to strengthen collaborative research between modern and traditional medical institutions to generate scientific evidence that can support the legitimacy of local practices. Furthermore, health worker education and training programs need to be geared toward cross-cultural understanding to make health services more responsive to social diversity. Through this strategy, inclusivity becomes not only a normative principle but also embodied in policy practices that ensure equity and access to health care for all levels of society<sup>64</sup>.

The theoretical and practical implications of a legal pluralism approach to the development of global health law lie in its ability to balance the universality of health norms with the diversity of socio-cultural contexts across countries. Legal pluralism theoretically challenges the positivistic paradigm that places state law as the sole source of legitimacy, asserting that an effective legal system must be rooted in the social realities of its society. In a global context, this encourages the emergence of a more flexible, collaborative, and sensitive model of health law to cultural differences and local healing traditions<sup>65</sup>. The

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<sup>60</sup> Dilipkumar Patil et al., "Exploring Medical Pluralism as a Multifaceted Approach to Healthcare."

<sup>61</sup> *Ibid.*

<sup>62</sup> Patel, Brosnan, and Taylor, "Understanding the Role of Context in Health Policy Implementation: A Qualitative Study of Factors Influencing Traditional Medicine Integration in the Indian Public Healthcare System."

<sup>63</sup> Hakim, Melati, and Negara, "Integrating Adat Law in Indonesia: Challenges and Opportunities in a Centralized Legal Framework."

<sup>64</sup> Bajpai, "Pluralizing Pluralism: Lessons From, And For, India."

<sup>65</sup> Dilipkumar Patil et al., "Exploring Medical Pluralism as a Multifaceted Approach to Healthcare."

application of this principle can strengthen international cooperation in the health sector through the exchange of legally and scientifically valid traditional knowledge. Legal pluralism also contributes to the creation of global policies that prioritize social justice, ensuring equal access to health for indigenous communities and vulnerable groups. Thus, this approach not only broadens the theoretical horizons of health law but also provides new directions for more inclusive, equitable, and sustainable global health governance.

## CONCLUSION

Legal pluralism in the health context of Indonesia and India shows that an effective legal system cannot rely solely on state formal norms, but must make space for the recognition and integration of local social and cultural values. Both countries face similar challenges in balancing modern medical standards and traditional health practices that have taken historical root. Indonesia is still in the stage of strengthening regulations and legal recognition for traditional medicine, while India has gone further by institutionalizing the AYUSH system as part of national policy. Nevertheless, both demonstrate the importance of social legitimacy and local community participation in building inclusive and sustainable health policies. The legal pluralism approach is key to understanding and managing the diversity of living laws in society without causing normative conflicts between customary law and state law. Legal pluralism offers a theoretical and practical foundation for the development of a more just and contextual global health system. Integrating local values, principles of substantive justice, and public participation in health policy-making is a strategic step to ensure that every individual, regardless of cultural background, has equal access to quality health services. Indonesia and India can serve as examples for other countries in implementing an inclusive legal model that harmonizes traditional values with modern medical standards. In this framework, health law reform must be directed at creating collaborative governance that is sensitive to social diversity. Thus, legal pluralism is not merely an academic concept, but also a main pillar in realizing social justice and universal health.

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