

The Liminal Space of Customary Law: Bakar Batu and Legal Pluralism in Papua's Asymmetric Conflict Resolution

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Abstract

Introduction: Papua's prolonged asymmetric conflict illustrates the limitations of formal legal mechanisms in generating legitimacy and facilitating dialogue between state institutions, indigenous communities, and non-state actors. The Bakar Batu tradition provides an important customary setting for reconciliation and intergroup dialogue, yet its legal significance within Indonesia's plural legal order remains insufficiently examined.

Purposes of the Research: This study examines the role and juridical position of Bakar Batu as a customary mediation practice in asymmetric conflict resolution and analyzes the extent to which its customary authority can interact with Indonesia's constitutional and statutory framework.

Methods of the Research: The study employs a socio-legal qualitative case-study approach focusing on the SusiAir hostage crisis. Empirical data were obtained through semi-structured interviews with customary leaders, government officials, indigenous community representatives, and customary-law scholars, complemented by analysis of constitutional provisions, legislation, judicial decisions, and relevant secondary sources. Legal pluralism and Turner's concept of liminality were used as analytical frameworks.

Results of the Research: The findings indicate that Bakar Batu functions primarily as a culturally legitimate mediation space that facilitates communication, reduces perceived power asymmetries, and strengthens social relationships among actors. Its significance lies less in replacing state law than in complementing formal mechanisms through culturally grounded legitimacy. The study identifies a gap between constitutional recognition of customary communities and the institutional mechanisms available to connect customary mediation with formal conflict-resolution processes.

Keywords: Customary Law Liminal Space; Legal Pluralism; Bakar Batu Tradition; Asymmetric Conflict Resolution.

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INTRODUCTION

On February 7, 2023, an event that seemed like a routine pioneer flight in the interior of Papua turned into a diplomatic crisis that revealed the most fundamental paradox in Indonesia's conflict management: a New Zealand pilot named Phillip Mark Mehrstens was taken hostage by the West Papua National Liberation Army - Free Papua Organization in Paro District, Nduga Regency, after landing a Susi Air cargo plane. The hostage situation lasted for 594 days - surpassing all precedents of hostage crises ever recorded in the history of Indonesia's domestic conflicts - until Mehrstens was released on September 21, 2024. The length of this period is not merely a chronological fact; it is a systemic indicator of the state's failure to manage a conflict of identity that has lasted for more than half a century.¹ The

¹ R. Chauvel, "West Papua: Indonesia's Last Regional Conflict," *Small Wars and Insurgencies* 32, no. 6 (2021): 913-44, <https://doi.org/10.1080/09592318.2021.1990491>.

Papuan conflict is one of the longest separatist conflicts in Southeast Asia, rooted in historical controversy over the legality of Papua's integration into Indonesia through the 1969 Act of Free Choice (Pepera) in 1969- which Saltford called "an act of no choice" because it only involved 1,025 of the 800,000 Papuan residents who were unilaterally selected by Jakarta.² Since then, the conflict has formed layers of collective trauma, structural injustice, and neglect of rights that continue to be passed down. "The politics of history" has become an arena for the struggle for legitimacy between Jakarta's narrative of integration and the Papuan indigenous community's claim to sovereignty – a discursive battle that will never be resolved solely through formal legal instruments.³

The state's response to the Papua conflict has been consistently dominated by a security approach: military deployment, territorial operations, and a criminal law framework. A study analyzes how the process of securitizing the Papua conflict, namely framing the conflict as an existential threat to state sovereignty, has systematically "disengaged the indigenous audience from the conflict resolution process."⁴ In other words, the indigenous Papuan community, which should be the main actor in reconciliation, has been marginalized from the decision-making process that determines their own fate. The political impasse between Jakarta and the Papuan independence movement is not only related to differences in interests, but also reflects institutional incompatibility between the framework of a unitary state and the pluralistic, indigenous community-based socio-cultural reality of Papua.⁵

Positive law has not merely underperformed in Papua; it has fundamentally failed to resolve the conflict. Law Number 21 of 2001 on Special Autonomy for Papua, which was meant to be the legal breakthrough, left the sources of the conflict untouched.⁶ Its implementation has been hampered by polarization among Jakarta's elite between the constructive dialogue camp and the military-security camp, so that customary mechanisms such as the Papuan People's Assembly function more as symbols of representation than as effective instruments of reconciliation.⁷ Asymmetric decentralization without sincere implementation produces only the illusion of accommodation: symbolic concessions that leave the structural roots of discontent intact.⁸ The failure is therefore one of kind and not merely of degree. Criminal law treats the conflict as a series of offenses to be prosecuted, and Special Autonomy treats it as an administrative problem to be managed. Neither addresses the questions of legitimacy, identity, and historical injustice that drive the conflict, and neither commands the trust of the parties whose consent any lasting settlement requires.

Amidst this impasse in formal approaches, the Bakar Batu tradition has emerged as an alternative reconciliation mechanism that addresses precisely what formal law cannot.

² J. Saltford, *The United Nations and the Indonesian Takeover of West Papua, 1962-1969: The Anatomy of Betrayal* (RoutledgeCurzon, 2003).

³ N. Viartasiwi, "The Politics of History in West Papua-Indonesia Conflict," *Asian Journal of Political Science* 26, no. 1 (2018): 141–59, <https://doi.org/10.1080/02185377.2018.1445535>.

⁴ H. R. Wangge, "Securitization of a Political Conflict in Southeast Asia: Disengaging the Indigenous Audience in West Papua," *Asian Security* 19, no. 3 (2023): 207–27, <https://doi.org/10.1080/14799855.2023.2225419>.

⁵ S. C. Druce, "Political Impasse vs Economic Development: A History and Analysis of the West Papua Conflict in Indonesia," dalam *Managing Conflicts in a Globalizing ASEAN: Incompatibility Management through Good Governance* (Springer, 2019), https://doi.org/10.1007/978-981-32-9570-4_5.

⁶ Undang-Undang Nomor 21 Tahun 2001 tentang Otonomi Khusus bagi Provinsi Papua (2001).

⁷ E. Chairullah, *Indonesia's Failure in Papua: The Role of Elites in Designing, Implementing and Undermining Special Autonomy* (Routledge, 2024).

⁸ G. Lele, "Asymmetric Decentralization, Accommodation and Separatist Conflict: Lessons from Aceh and Papua, Indonesia," *Territory, Politics, Governance* 11, no. 5 (2023): 972–90, <https://doi.org/10.1080/21622671.2021.1875036>.

Where criminal law and administrative accommodation are perceived by non-state actors as extensions of state power, Bakar Batu offers a neutral cultural space in which parties of unequal power can meet on equal footing. Where formal mechanisms depend on a mandate that the weaker party does not recognize, its authority derives from a cultural consensus that predates the conflict. And where formal proceedings end in a judgment or a symbolic concession, it culminates in commitments that bind the parties within their community. Power asymmetry, contested legitimacy, and the absence of relational restoration are the aspects of asymmetric conflict that formal law leaves unaddressed, and they are the aspects on which Bakar Batu operates. Ethnographically, Bakar Batu is a ritual of communal cooking using hot stones practiced by the mountain communities of Papua. However, its function goes beyond the culinary aspect: it is a platform for reconciliation that creates a social space where conflicting groups can interact based on the logic of customary beliefs that were established long before the modern conflicts in Papua began. Budiarti has documented Bakar Batu from the perspectives of natural sciences and education, confirming its rich cultural dimensions as a living practice that remains relevant in the lives of indigenous Papuan communities.⁹ Karyadi even identifies Bakar Batu as a reflection of Pancasila values—particularly the third and fourth principles, which are embodied in the practices of mutual cooperation and communal deliberation.¹⁰ Pamungkas shows that Papuan cultural traditions, including Bakar Batu, can function as instruments of peacebuilding by building three types of social capital: bonding (strengthening internal community solidarity), bridging (building bridges between opposing groups), and linking (connecting indigenous peoples with formal institutions).¹¹ His follow-up study¹² in *Pacific Affairs* deepens this analysis by revealing how collective trauma and memories of fear formed from Papua's history of violence—from the 1969 Pepera to various subsequent incidents of violence—create psychological barriers that make Papuan communities reject state-controlled formal mechanisms. Bakar Batu overcomes these barriers precisely because it operates outside the logic of the state and its authority derives from cultural consensus, not from administrative mandate.

From the perspective of customary law, the critical question that arises is: to what extent can the Bakar Batu tradition function as a dispute resolution mechanism that has legal legitimacy within the framework of Indonesian national law? Article 18B paragraph (2) of the 1945 Constitution explicitly recognizes the unity of customary law communities and their traditional rights—but with a restrictive clause that gives the state broad discretion.¹³ Bedner and Arizona, in *The Asia Pacific Journal of Anthropology*, found that although Constitutional Court Decision Number 35/PUU-X/2012 was a milestone in the recognition of the rights of indigenous peoples,¹⁴ its implementation remained vulnerable to the subordination of economic and political interests.¹⁵ Mulyadi, in *Jurnal Media Hukum*, shows

⁹ I. S. Budiarti, "Analysis of Heat Transfer Rate on Bakar Batu as Papua Cultural Practice," *AIP Conference Proceedings* 2391 (2022), <https://doi.org/10.1063/5.0072951>.

¹⁰ A. C. Karyadi, "Bakar Batu Culture as a Reflection of Pancasila Ideology at Early Childhood Education," *Utopia y Praxis Latinoamericana* 25 (2020): 442–53, <https://doi.org/10.5281/zenodo.3987659>.

¹¹ C. Pamungkas, "Preventing Religious Conflict in Papua Land: Adopting Cultural Traditions of Peacebuilding," *Asian Journal of Peacebuilding* 9, no. 2 (2021): 331–56, <https://doi.org/10.18588/202108.00a119>.

¹² C. Pamungkas, "The Role of Fear and Memory in West Papua's Ethnonationalist Conflict," *Pacific Affairs* 97, no. 1 (2024): 59–78, <https://doi.org/10.5509/2024971-art2>.

¹³ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 18B ayat (2) (1945).

¹⁴ Putusan Nomor 35/PUU-X/2012 tentang Pengujian Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan (Mahkamah Konstitusi 2012).

¹⁵ A. Bedner dan Y. Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–34, <https://doi.org/10.1080/14442213.2019.1670246>.

that the legitimacy of customary leaders—including the figure of Ondoafi or Big Man in Papuan tradition - is in fact recognized more highly by local communities than formal government representatives, indicating that customary authority is a genuine rather than artificial source of legitimacy for conflict resolution.¹⁶

Although attention to the Papua conflict continues to grow in international academic literature - from media analysis¹⁷ to spatial planning and indigenous community rights¹⁸ - there is a significant gap in studies on the juridical function of customary mechanisms such as Bakar Batu in the context of asymmetric conflicts with criminal dimensions. Most studies on Bakar Batu are limited to educational, scientific, or ethnographic descriptions,¹⁹ without examining in depth its position and function in Indonesia's pluralistic legal system. On the other hand, studies on conflict resolution in Papua generally focus on the political-security dimension²⁰ or administrative decentralization,²¹ without placing customary mechanisms as the main variable of analysis. This gap is what this study seeks to bridge.

Based on this gap in the literature, this study formulates two main questions: First, how does the Bakar Batu tradition function as a mechanism for conflict reconciliation in the case of the 2023 SusiAir pilot hostage-taking, viewed from the perspective of customary law and Papuan identity politics? Second, to what extent can local wisdom-based conflict resolution mechanisms such as Bakar Batu be legally integrated into the national legal framework as a legitimate and sustainable instrument of reconciliation? To answer these questions, the study uses an analytical framework that integrates Stuart Hall's circuit of culture, Victor Turner's theory of ritual liminality,²² and the Deutsch-Coleman-Marcus model of culture-based conflict resolution—combined with a normative review of the position of customary law in the Indonesian legal hierarchy.

This study contributes to three layers of knowledge. Theoretically, it expands the application of legal pluralism²³ to the context of Indonesia asymmetric conflicts outside the conventional framework of international law, by showing how customary law can function not as a separate parallel system, but as a complementary component that strengthens the legitimacy of conflict resolution. Methodologically, it offers an integrative analytical model that combines normative legal studies with cultural studies—an approach that is still rare in Indonesian customary law literature. Practically, it formulates concrete policy implications for strengthening the role of customary mechanisms in Papua's conflict management, within a constitutional and implementable framework. Ultimately, this study argues that sustainable reconciliation in Papua will not be achieved through a monolithic security-based approach, but rather through a paradigmatic transformation that places local wisdom—including the Bakar Batu tradition—as a legitimate pillar in the architecture of Indonesia's national reconciliation.

¹⁶ T. Mulyadi, "The Legitimacy of Ondoafi in Conflict Settlement of Customary Land Tenure in Sentani, Papua," *Jurnal Media Hukum* 26, no. 1 (2019): 112–21, <https://doi.org/10.18196/jmh.20190127>.

¹⁷ A. N. P. Harsa, "Papua and the Public News Framing of the Asrama Papua 2019 Conflict," *Pacific Journalism Review* 27, no. 1 (2021): 105–18.

¹⁸ R. K. R. Hammar, "Spatial Planning for Indigenous Law Communities to Solve Social Conflict Resolution in West Papua Indonesia," *Journal of Social Studies Education Research* 12, no. 4 (2021): 405–23.

¹⁹ Budiarti, "Analysis of Heat Transfer Rate on Bakar Batu as Papua Cultural Practice."

²⁰ Chauvel, "West Papua: Indonesia's Last Regional Conflict."

²¹ Lele, "Asymmetric Decentralization, Accommodation and Separatist Conflict: Lessons from Aceh and Papua, Indonesia."

²² V. Turner, *The Forest of Symbols: Aspects of Ndembu Ritual* (Cornell University Press, 1977).

²³ G. Swenson, "Legal Pluralism in Theory and Practice," *International Studies Review* 20, no. 3 (2018): 438–62, <https://doi.org/10.1093/isr/vix020>.

This article is organized into seven sections. After the introduction, the second section describes the research methods. The third section outlines the theoretical framework used. The fourth section presents empirical findings and analysis of the function of Bakar Batu in the case of the SusiAir pilot hostage-taking. The fifth section builds a comparative analysis with similar customary mechanisms in other countries. The sixth section discusses the legal and policy implications of the research findings. The seventh section concludes with conclusions and an agenda for further research.

LITERATURE REVIEW

Studies on the Papua conflict in international academic literature have developed into three main clusters, each with its own analytical contributions and limitations. The first cluster includes political-security studies that have dominated academic discourse over the past two decades. Chauvel, in *Small Wars and Insurgencies*, categorizes Papua as Indonesia's last regional conflict, marked by the persistence of armed separatist movements.²⁴ Wangge, in *Asian Security*, analyzes how the securitization of the Papuan conflict systematically marginalizes indigenous communities from the conflict resolution process,²⁵ while Druce identifies the political impasse between Jakarta and the Papuan independence movement as a reflection of a structural institutional mismatch.²⁶ McDougall complements this cluster by analyzing the international dimensions of the Papua conflict within the framework of regional actor involvement.²⁷ Although rich in description, this cluster consistently ignores customary law-based dispute resolution mechanisms as an independent variable of analysis.

The second cluster relates to studies of decentralization and special autonomy policies. Lele, in *Territory, Politics, Governance*, shows that asymmetric decentralization without genuine implementation only creates an illusion of accommodation that deepens structural dissatisfaction.²⁸ Chairullah documents the systemic failure of Papua's Special Autonomy due to the polarization of the Jakarta elite, so that customary mechanisms such as the Papuan People's Assembly function more as symbols than as instruments of substantive reconciliation.²⁹ Viartasiwi, in the *Asian Journal of Political Science*, adds a historical dimension by analyzing how the politics of historical narratives become an arena for the contestation of legitimacy that cannot be resolved through formal legal instruments.³⁰ This cluster confirms the limitations of the legalistic-administrative approach, but has yet to offer legally adequate alternatives based on local wisdom.

The third cluster, which is the most relevant but has the most limited scope, is the study of the Bakar Batu tradition and culture-based peacebuilding. Pamungkas, in the *Asian Journal of Peacebuilding*, demonstrates that Papuan cultural traditions are capable of building three forms of social capital: bonding, bridging, and linking.³¹ His follow-up research in *Pacific Affairs* reveals how collective trauma and memories of fear have led Papuan communities to systematically reject formal mechanisms, making Bakar Batu, which

²⁴ Chauvel, "West Papua: Indonesia's Last Regional Conflict."

²⁵ Wangge, "Securitization of a Political Conflict in Southeast Asia: Disengaging the Indigenous Audience in West Papua."

²⁶ Druce, "Political Impasse vs Economic Development: A History and Analysis of the West Papua Conflict in Indonesia."

²⁷ D. McDougall, "Concerns for the Neighbours (and Some Others): International Involvement in the Conflicts in the Southern Philippines and West Papua," *Small Wars and Insurgencies* 32, no. 6 (2021): 977-1011, <https://doi.org/10.1080/09592318.2021.1956107>.

²⁸ Lele, "Asymmetric Decentralization, Accommodation and Separatist Conflict: Lessons from Aceh and Papua, Indonesia."

²⁹ Chairullah, *Indonesia's Failure in Papua: The Role of Elites in Designing, Implementing and Undermining Special Autonomy*.

³⁰ Viartasiwi, "The Politics of History in West Papua-Indonesia Conflict."

³¹ Pamungkas, "Preventing Religious Conflict in Papua Land: Adopting Cultural Traditions of Peacebuilding."

operates outside the logic of the state, more effective as a platform for reconciliation.³² Budiarti and Karyadi documented the cultural dimensions of Bakar Batu, but limited themselves to the aspects of science and education without examining its juridical function.³³ Mulyadi, in *Jurnal Media Hukum*, made an important contribution by showing the legitimacy of the ondoafi as a dispute resolution authority recognized by the community above formal law,³⁴ while Bedner and Arizona analyzed the ambivalence of customary law recognition in the Indonesian legal system after the Constitutional Court decision 35/PUU-X/2012.³⁵

From the mapping of these three clusters, a significant analytical gap is evident: there has been no study that systematically integrates the legal function of Bakar Batu into the framework of legal pluralism—as developed by Berman and Swenson³⁶—to explain the procedural legitimacy of customary law in the context of asymmetric conflicts with criminal dimensions. This study fills this gap by using Turner's theory of liminality as an analytical instrument in the tradition of legal anthropology,³⁷ thereby explaining not only what Bakar Batu does, but also why this mechanism produces authentic and constitutionally valid legal legitimacy.

METHODS OF THE RESEARCH

This study uses a juridical-empirical approach, a socio-legal research design that integrates normative legal studies with empirical data-based field research. This approach was chosen because the object of study—the legal position of the Bakar Batu tradition within the framework of Indonesian legal pluralism—cannot be adequately analyzed through a normative-doctrinal approach alone. Customary law is essentially a normative system that exists in social practice (living law) and is not merely a written text that can be read exegetically. Conversely, a purely empirical approach without a normative basis is also insufficient to answer questions about the constitutional validity of customary mechanisms in the national legal hierarchy. The integration of these two approaches is therefore not an eclectic choice, but rather an epistemological necessity inherent in the character of the object of study.³⁸ In the tradition of legal anthropology, which forms the methodological basis of this research, Goddard asserts that understanding how customary law works in the context of conflict requires direct engagement with the communities that practice the legal system,³⁹ an orientation that can only be fulfilled through a combination of normative and empirical methods.

The two components complement each other at three points in the analysis. First, the juridical component establishes what the law formally provides. It maps the position of customary law in the national hierarchy of norms through Article 18B of the 1945 Constitution, Law Number 21 of 2001, and Constitutional Court Decision Number 35/PUU-X/2012, and thereby determines whether Bakar Batu has constitutional validity. Second, the empirical component establishes how customary law actually works. Interviews with

³² Pamungkas, "The Role of Fear and Memory in West Papua's Ethnonationalist Conflict."

³³ I. S. Budiarti, "Heat Transfer Concept on Bakar Batu Papua's Culture," *AIP Conference Proceedings* 2014 (2018), <https://doi.org/10.1063/1.5054537>.

³⁴ Mulyadi, "The Legitimacy of Ondoafi in Conflict Settlement of Customary Land Tenure in Sentani, Papua."

³⁵ Bedner dan Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?"

³⁶ P. S. Berman, *Global Legal Pluralism: A Jurisprudence of Law beyond Borders* (Cambridge University Press, 2012).

³⁷ M. Goddard, *Substantial Justice: An Anthropology of Village Courts in Papua New Guinea* (Berghahn Books, 2009).

³⁸ Swenson, "Legal Pluralism in Theory and Practice."

³⁹ Goddard, *Substantial Justice: An Anthropology of Village Courts in Papua New Guinea*.

ondoafi, government officials, and community representatives show how Bakar Batu operated in the SusiAir case and why the parties accepted it as legitimate. Third, the two sets of findings are read against each other. The normative findings supply the standard against which the empirical practice is judged, and the empirical findings test whether formal recognition translates into functioning institutions. It is this comparison that reveals the gap between constitutional validity and institutional functionality, a gap that neither approach could identify on its own.

The research is designed as a qualitative case study with the 2023 SusiAir pilot hostage case as the main unit of analysis. This case was chosen because it is instrumental: it is not studied solely for the sake of understanding itself, but as a window to understand a broader phenomenon, namely the interaction between state law and customary law in the context of the asymmetrical conflict in Papua. The duration of the crisis, which reached 594 days, provided an adequate time frame to observe the dynamics of negotiations, the role of customary actors, and the function of the Bakar Batu mechanism longitudinally.

Data collection was carried out through two complementary channels. Primary data was collected through semi-structured in-depth interviews with four categories of informants selected purposively: customary leaders (ondoafi) from the Papuan Mountain community who provided perspectives on the normative function of Bakar Batu and its legitimacy; local government officials involved in crisis management; representatives of indigenous peoples and civil society figures who acted as cultural mediators; and academics and practitioners of customary law who have expertise in Papua's pluralistic legal system. Secondary data included normative documents – Article 18B of the 1945 Constitution, Law Number 21 of 2001 on Special Autonomy for Papua, and Constitutional Court Decision Number 35/PUU-X/2012 – as well as contextual documents in the form of media coverage and civil society reports during the hostage period.

Data analysis was conducted in layers. Normative analysis was applied to legal documents to map the constitutional position of customary law in the national hierarchy of norms. Thematic analysis was applied to interview transcripts to identify patterns related to the procedural mechanisms of Bakar Batu and its legitimacy. The results of both analyses were then integrated in a cross-interpretation stage with three steps. First, each normative finding on the constitutional position of customary law was set against the thematic patterns from the interviews, so that every formal provision could be compared with how it operates in practice. Second, points of convergence and divergence between the two sets of findings were identified, and divergences, above all the gap between constitutional recognition and institutional functioning, were treated as findings to be explained and not as inconsistencies to be resolved. Third, these points were interpreted through the theoretical framework: Berman's framework of legal pluralism⁴⁰ and Swenson's model of legal system interaction⁴¹ were used to characterize the relationship between customary and state law, and Turner's theory of liminality was used as an analytical instrument to explain the procedural mechanisms of the liminal space of customary law. Data validity is ensured through triangulation of sources, methods, and theories, all of which are carried out by prioritizing the principles of research ethics towards indigenous peoples as formulated by Smith in *Decolonizing Methodologies*.⁴²

⁴⁰ Berman, *Global Legal Pluralism: A Jurisprudence of Law beyond Borders*.

⁴¹ Swenson, "Legal Pluralism in Theory and Practice."

⁴² L. T. Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 2nd ed. (Zed Books, 2012).

RESULTS AND DISCUSSION

A. Bakar Batu as an Autonomous Customary Legal System: Empirical Findings

The empirical findings of this study demonstrate that the Bakar Batu tradition functions as a fully operational, autonomous legal system within Papua's plural normative landscape – not merely as a cultural performance or symbolic gesture of reconciliation. This finding fundamentally challenges the prevailing assumption in Indonesian conflict governance that indigenous ritual practices occupy a subordinate, pre-legal domain that must eventually be absorbed or superseded by the formal state legal order. The evidence gathered from in-depth interviews with *ondoafi*, government officials, and civil society actors reveals three interconnected mechanisms through which Bakar Batu generates genuine juridical effects: the creation of liminal procedural space, the construction of culturally grounded legitimacy that surpasses formal legal authority, and the production of legal social capital in three distinct forms.

Across all interview categories, a consistent pattern emerged: when asked to compare the effectiveness of formal legal mechanisms – including criminal prosecution frameworks and Special Autonomy (*Otonomi Khusus*) channels – with Bakar Batu as a conflict resolution platform, informants from every group, including government representatives, unequivocally identified the customary tradition as the more effective mechanism for initiating substantive dialogue with West Papua National Liberation Army. This convergence is not incidental. It reflects the structural reality that the West Papua National Liberation Army, as a non-state armed actor, systematically rejects any mechanism perceived as an extension of Jakarta's administrative authority – a rejection rooted in what Pamungkas identifies as collective trauma and institutionalized fear accumulated across five decades of asymmetric conflict.⁴³ Bakar Batu circumvents this fundamental barrier precisely because its authority derives not from state mandate but from cultural consensus predating the modern Papua conflict itself.

Three specific juridical effects can be identified in the SusiAir case. The first is a procedural effect: the customary process opened a channel of dialogue with the West Papua National Liberation Army that state-mediated attempts had not, so that negotiation over the pilot's release could begin. The second is a binding effect: the commitments made within the ritual bind the parties within the customary legal order, so that neither party can withdraw from them unilaterally without customary consequences, namely loss of standing before the *ondoafi* and reputational sanction within the community. This is what distinguishes a commitment made in the ritual from an informal assurance that either side could abandon at no cost. The third is a limit: because Bakar Batu has no formal recognition, none of these outcomes is enforceable through state institutions or prevents subsequent criminal prosecution, a boundary examined in Section D. Bakar Batu therefore produces genuine legal consequences within the customary order while leaving the state legal order unaffected.

The autonomy of Bakar Batu does not mean that it can operate in isolation, and its complementary character depends on how it is connected to the state legal order in practice. Its autonomy is what allows it to open dialogue with a non-state armed actor that rejects every mechanism associated with Jakarta, but the same autonomy leaves its outcomes

⁴³ Pamungkas, "The Role of Fear and Memory in West Papua's Ethnonationalist Conflict."

without formal recognition, which is the institutional gap examined in Section D. In the SusiAir case the two systems therefore worked side by side rather than together: ondoafi facilitated dialogue while the state retained its formal authority, and nothing guaranteed that what was agreed in one arena would be respected in the other. The complementary relationship is realized in practice when each system performs the function the other cannot and defined channels connect them. Section F sets out four measures that would create those channels: an implementing regulation, a procedural bridge to criminal procedure, a coordination protocol, and a hybrid enforcement framework.

Table 1. Comparative Analysis of Conflict Resolution Mechanisms in the SusiAir Hostage Crisis

Dimension	State Criminal Law	Special Autonomy (Law 21/2001)	Bakar Batu (Customary Law)
Source of Legitimacy	State authority / positive law	Administrative mandate (symbolic)	Cultural consensus / ondoafi authority
Procedural Space	Adversarial / hierarchical	Bureaucratic / top-down	Liminal / horizontal / equalizing
Community Acceptance	Low – perceived as state instrument	Low – seen as symbolic accommodation	High – rooted in pre-conflict tradition
Power Asymmetry Handling	Reinforces existing hierarchy	Partially mitigates but structurally limited	Neutralizes through ritual equalization
Constitutional Basis	Articles 1(3), 28D (1) Constitution 1945	Article 18B Constitution 1945 + Law 21/2001	Article 18B Constitution 1945 + Constitutional Court 35/2012
Integration in National Law	Full – codified criminal procedure	Partial administrative framework only	None – institutional gap persists
Effectiveness in SusiAir Case	Failed – 594 days, no resolution	Marginal – Papuan People's Assembly not mobilized	Facilitative – enabled dialogue initiation

Source: Chauvel, “West Papua”; Wangge, “Securitization of a Political Conflict”; Lele, “Asymmetric Decentralization”; Chairullah, Indonesia’s Failure in Papua; Pamungkas, “Fear and Memory”; Goddard, “Custom in the Courtroom”; Undang-Undang Nomor 21 Tahun 2001; Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 18B ayat (2); Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012.

B. The Liminal Space of Customary Law: Turner's Theory in Legal Anthropology

The most analytically significant finding of this study concerns the mechanism through which Bakar Batu generates its distinctive juridical effects: the creation of what this study terms the *liminal space of customary law*. Drawing on Turner's liminality theory as deployed within the legal anthropology tradition developed by Goddard,⁴⁴ this study identifies Bakar Batu's liminal space as a procedural environment that is qualitatively different from any formal legal forum – a space characterized by the temporary suspension of ordinary social hierarchies, the equalization of actors who in everyday reality occupy radically asymmetric

⁴⁴ V. Turner, “Liminality and Communitas,” dalam *The Ritual Process: Structure and Anti-Structure* (Cornell University Press, 1969).

positions, and the generation of normative commitments that carry binding force within the community framework.

In the context of the SusiAir hostage crisis, the liminal space created by Bakar Batu performed a function that no formal legal mechanism could replicate: it placed state representatives and West Papua National Liberation Army commanders within a shared cultural framework that both parties recognized as legitimate prior to and independent of the conflict. Within this ritual space, the structural asymmetry between the Indonesian state and a non-state armed group—an asymmetry that renders conventional negotiation frameworks inherently coercive from the perspective of the weaker party—was symbolically neutralized. This is not mere symbolism. For the parties, the ritual changes what the negotiation feels like: the commander is no longer bargaining as the weaker party under the authority of the state, and the state representative is no longer speaking from a position of command, because both take part in the same ritual as participants. This shift from perceived coercion to perceived equality is what turns what is agreed into commitments that the parties regard as their own, and it explains why the outcome carries binding force in the customary order and not merely the reluctant compliance that coerced negotiation tends to produce. The neutralization of perceived coercion is, as Deutsch, Coleman, and Marcus's conflict resolution model demonstrates, a prerequisite condition for any negotiation to move from positional bargaining toward interest-based dialogue.

Table 2. Manifestation of Turner's Liminal Features in Bakar Batu and Their Juridical Implications

Turner's Liminal Feature	Manifestation in Bakar Batu	Juridical Implication
Separation from ordinary social structure	Ritual space physically and temporally distinct from everyday conflict arena	Suspends adversarial legal logic; enables alternative procedural order
Communitas dissolution of hierarchy	State actors and West Papua National Liberation Army members participate as equals within ritual framework	Neutralizes power asymmetry; produces procedurally equitable negotiation
Threshold / betwixt-and-between	Bakar Batu operates outside both state law and armed conflict logic	Creates autonomous legal space with independent legitimacy source
Reintegration with transformed identity	Parties re-enter social order with renegotiated relational commitments	Generates enforceable normative outcomes recognized by community

Source: Pamungkas, "Preventing Religious Conflict"; Pamungkas, "Fear and Memory"; Mulyadi, "Legitimacy of Ondoafi"; Bedner and Arizona, "Adat in Indonesian Land Law"; Lele, "Asymmetric Decentralization."

The juridical significance of this liminal space extends beyond its facilitative function. Within Turner's framework, the concluding phase of liminality—reintegration—involves parties returning to the social order with renegotiated relational commitments. In the Bakar Batu context, these renegotiated commitments take the form of normative agreements that carry binding force within the customary legal order, enforced through the ongoing social authority of the *ondoafi* and the reputational mechanisms of community consensus. This constitutes what Berman identifies as a fully functional legal order: a system of norms, enforcement mechanisms, and legitimacy structures that operates according to its own internal logic.⁴⁵ The critical theoretical contribution of this study lies in demonstrating that

⁴⁵ Berman, *Global Legal Pluralism: A Jurisprudence of Law beyond Borders*.

the liminal space is not merely a cultural threshold but a juridical threshold – a space where law of a different but equally valid kind is being made.

C. Legal Social Capital: The Three-Dimensional Juridical Output of Bakar Batu

The analysis of interview data reveals that Bakar Batu generates three analytically distinct forms of legal social capital, each performing a specific function within the plural legal landscape of Papua.⁴⁶ These three forms – *bonding*, *bridging*, and *linking* – are not merely sociological categories but carry concrete juridical implications for the operationalization of customary law as a dispute resolution system.

Table 3. Three Forms of Legal Social Capital Generated by Bakar Batu

Type	Definition in Legal Context	Manifestation in Bakar Batu	Juridical Function
Bonding	Strengthening normative cohesion within the indigenous community	Reaffirmation of adat norms among Papuan highland communities during ritual	Reinforces internal legal order; sustains customary law as living system
Bridging	Building consensus across conflicting parties beyond group boundaries	Shared ritual space between TPNPB representatives, ondoafi, and state actors	Creates procedural platform for cross-boundary dispute resolution
Linking	Connecting indigenous communities with formal legal institutions	Ondoafi-mediated dialogue channeled toward government negotiation frameworks	Bridges customary law with state institutional processes

Source: Goddard, “Custom in the Courtroom”; Goddard, Substantial Justice; Berman, Global Legal Pluralism; Swenson, “Legal Pluralism”; Wangge, “Securitization of a Political Conflict”; Pamungkas, “Fear and Memory.”

Bonding capital functions as the internal normative infrastructure of the customary legal order. By reaffirming shared adat norms among Papuan highland communities through the collective ritual of Bakar Batu, the tradition continuously regenerates the normative consensus that gives customary law its binding character. Without this ongoing reaffirmation, customary law risks becoming a residual tradition with diminishing normative force—a process that Lele identifies as a structural risk in asymmetric decentralization contexts where state law progressively colonizes normative space.⁴⁷

Bridging capital constitutes the most directly relevant form for conflict resolution purposes. The shared ritual space of Bakar Batu creates conditions under which parties occupying adversarial positions in the formal conflict arena can interact within a framework that neither controls exclusively. This is precisely the condition that Swenson identifies as enabling productive interaction between legal systems: neither system is positioned as superior, and the interaction occurs on procedurally neutral ground.⁴⁸ In the SusiAir case, this bridging function manifested in the willingness of West Papua National Liberation Army representatives to engage in dialogue facilitated by *ondoafi* figures - a willingness that was categorically absent in all attempts at state-mediated negotiation.

⁴⁶ Pamungkas, “Preventing Religious Conflict in Papua Land: Adopting Cultural Traditions of Peacebuilding.”

⁴⁷ Lele, “Asymmetric Decentralization, Accommodation and Separatist Conflict: Lessons from Aceh and Papua, Indonesia.”

⁴⁸ Swenson, “Legal Pluralism in Theory and Practice.”

Linking capital addresses what is arguably the most critical structural challenge in Papua's conflict resolution architecture: the absence of functional channels connecting indigenous communities with formal legal institutions. Bedner and Arizona have documented how the gap between constitutional recognition of customary law in Article 18B and its actual implementation creates a systematic accountability deficit.⁴⁹ Bakar Batu's linking function—whereby *ondoafi*-mediated dialogue is gradually channeled toward government negotiation frameworks—represents the only empirically documented mechanism through which this gap has been partially bridged in the SusiAir case.

D. Legal Recognition and Integration of Bakar Batu: Constitutional Validity and Institutional Gap

The normative analysis conducted in this study yields a finding that is simultaneously encouraging and deeply problematic: Bakar Batu possesses robust constitutional grounding but suffers from a critical absence of institutional integration into the national legal framework. Article 18B (2) of the 1945 Constitution explicitly recognizes the unity of customary law communities and their traditional rights. Constitutional Court Decision Number 35/PUU-X/2012 further affirmed the state's obligation to recognize indigenous rights. Law Number 21 of 2001 on Special Autonomy for Papua provides an additional specific legislative basis. Together, these normative foundations establish what this study terms *constitutional validity*—the condition in which a customary legal mechanism has sufficient normative grounding to be exercised as a legitimate form of law within the Indonesian legal system.

However, constitutional validity alone does not produce institutional functionality. The critical finding of this study is the identification of a four-dimensional *institutional gap* that systematically prevents Bakar Batu's constitutional validity from translating into operational effectiveness within the national legal architecture. This institutional gap operates across normative, procedural, coordinative, and enforcement dimensions, and constitutes the primary structural barrier to sustainable conflict resolution in Papua.⁵⁰

Table 4. Four-Dimensional Institutional Gap Between Bakar Batu's Constitutional Validity and Operational Integration

Dimension of Gap	Current Condition	Policy Implication
Normative Recognition	Bakar Batu has constitutional grounding (Art. 18B) but no implementing regulation	Specific regulation needed to formalize customary ADR status in Papua
Procedural Integration	No formal linkage between Bakar Batu outcomes and national criminal procedure	Legal bridge mechanism required between customary resolution and state prosecution
Institutional Coordination	Ondoafi authority operates in parallel, not in complementarity with state apparatus	Formal coordination protocol between Papuan People's Assembly, ondoafi, and justice institutions
Enforcement Capacity	Customary agreements lack state enforcement mechanism	Hybrid enforcement framework combining customary sanction and state recognition

⁴⁹ Bedner dan Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?"
⁵⁰ Chairullah, *Indonesia's Failure in Papua: The Role of Elites in Designing, Implementing and Undermining Special Autonomy*.

Source: Bedner and Arizona, "Adat in Indonesian Land Law"; Mulyadi, "Legitimacy of Ondoafi"; Berman, Global Legal Pluralism; Swenson, "Legal Pluralism"; Chairullah, Indonesia's Failure in Papua; Lele, "Asymmetric Decentralization"; Druce, "Political Impasse vs Economic Development."

The normative dimension of this gap is perhaps the most foundational. Despite its constitutional grounding, Bakar Batu has no implementing regulation that formally designates it as a recognized Alternative Dispute Resolution (ADR) mechanism under Indonesian law. This absence means that outcomes generated through the Bakar Batu process—agreements, commitments, normative settlements—carry no formal legal recognition within the state legal system, making them unenforceable through state mechanisms and vulnerable to unilateral repudiation. Mulyadi has documented how this normative gap systematically undermines the authority of *ondoafi* in land tenure disputes—a dynamic that applies with equal or greater force in the context of criminal-dimension conflicts such as the SusiAir hostage crisis.⁵¹

The procedural dimension is equally critical. Even if Bakar Batu were recognized as a valid ADR mechanism, Indonesian Criminal Procedure currently provides no formal linkage between customary resolution outcomes and state prosecutorial decisions. This creates a structurally perverse incentive: parties who engage sincerely in Bakar Batu-mediated resolution face the prospect of subsequent criminal prosecution regardless of the customary settlement reached—a dynamic that directly undermines the incentive to engage with the customary mechanism in good faith.⁵²

E. Theoretical Contribution: Legal Pluralism and the Liminal Space Framework

The theoretical contribution of this study operates on two distinct levels. At the first level, this study extends the application of legal pluralism theory—as developed by Berman and operationalized by Swenson⁵³—into the specific context of domestic asymmetric conflict in Southeast Asia. Existing legal pluralism scholarship has primarily addressed land rights, family law, and inheritance disputes; its application to criminal-dimension asymmetric conflict involving non-state armed actors constitutes a genuinely novel contribution to the field. The SusiAir case demonstrates that legal pluralism in conflict contexts is not merely a theoretical possibility but an empirical reality with concrete, documented effects on conflict dynamics and resolution outcomes.

At the second level, this study makes an original theoretical contribution by introducing the concept of the *liminal space of customary law* as a distinct analytical category within legal pluralism theory. Previous scholarship has treated liminality and legal pluralism as belonging to separate disciplinary traditions—the former to anthropology and ritual studies, the latter to jurisprudence and socio-legal studies. This study demonstrates that the two frameworks are not merely compatible but mutually generative: the liminal space concept explains the *how* of customary law's effectiveness in asymmetric conflict contexts that legal pluralism theory alone cannot adequately address. Specifically, it explains why communities in high-trauma conflict environments choose customary mechanisms over formal legal channels—not primarily because of cultural preference, but because of the distinctive procedural architecture of the liminal space, which structurally addresses the

⁵¹ Mulyadi, "The Legitimacy of Ondoafi in Conflict Settlement of Customary Land Tenure in Sentani, Papua."

⁵² Berman, *Global Legal Pluralism: A Jurisprudence of Law beyond Borders*.

⁵³ Berman, *Global Legal Pluralism: A Jurisprudence of Law beyond Borders*.

power asymmetry problem that renders formal mechanisms illegitimate in the eyes of weaker parties.⁵⁴

This theoretical integration has implications that extend well beyond the Papua context. Across Southeast Asia and the broader Global South, states confronting asymmetric conflicts involving indigenous communities face structurally analogous challenges: the failure of formal legal mechanisms to generate legitimacy among communities whose relationship with the state is defined by historical trauma and structural inequality. The liminal space framework developed in this study offers a transferable analytical tool for understanding why indigenous conflict resolution mechanisms succeed where formal law fails – and, by extension, for designing legal pluralism frameworks that harness rather than suppress this distinctive capacity.

F. Policy Implications: Toward a Responsive Legal Pluralism Architecture

The findings of this study carry immediate and concrete policy implications for Papua's conflict governance architecture. The core policy argument is straightforward but radical in its implications for Indonesian legal culture: the formalization of Bakar Batu within the national legal framework is not an act of cultural accommodation or symbolic politics – it is a constitutional obligation with strategic necessity. The failure to formalize Bakar Batu represents not a neutral policy choice but an active institutional decision to maintain a legal architecture that is demonstrably dysfunctional in the Papua context.⁵⁵

The first-order policy implication concerns normative recognition. The Indonesian government should issue a Government Regulation (*Peraturan Pemerintah*) specifically designating Bakar Batu and analogous Papuan customary mechanisms as formally recognized ADR institutions under the national dispute resolution framework, with particular provisions addressing their application in conflicts involving non-state armed actors. This would not require constitutional amendment – Article 18B already provides the necessary normative foundation – but would close the implementing regulation gap that currently prevents constitutional validity from translating into institutional functionality.

The second-order implication concerns procedural integration. A formal legal bridge must be established between Bakar Batu resolution outcomes and national criminal procedure, analogous to the deferred prosecution agreements and restorative justice provisions already existing in Indonesian law for certain offense categories. Specifically, the Public Prosecutor's Office (*Kejaksaan*) should be granted discretionary authority to defer prosecution where customary resolution has been achieved through recognized mechanisms, subject to defined conditions regarding victim satisfaction and community accountability. This would transform Bakar Batu from a parallel system operating in productive tension with state law into a genuinely complementary component of an integrated legal pluralism architecture.

The third-order and fourth-order implications concern institutional coordination and enforcement capacity, the two dimensions of the gap that formal recognition and procedural linkage alone would not close. A formal coordination protocol should define how the Papuan People's Assembly, *ondoafi*, and the justice institutions exchange information and divide roles when a customary process is under way, so that the state no longer treats

⁵⁴ Wangge, "Securitization of a Political Conflict in Southeast Asia: Disengaging the Indigenous Audience in West Papua."

⁵⁵ Chairullah, *Indonesia's Failure in Papua: The Role of Elites in Designing, Implementing and Undermining Special Autonomy*.

customary mediation as an external event that it can neither anticipate nor recognize. Enforcement requires a hybrid framework in which customary sanctions retain their authority within the community, while the state recognizes the agreement and provides a means of enforcing it against unilateral repudiation. Together with the first two measures, these arrangements show what a complementary relationship means in practice: the customary system keeps its own source of legitimacy and procedure, the state keeps its formal authority, and defined points of contact between the two ensure that neither has to displace the other.

The deeper implication of these findings is paradigmatic rather than technical. The SusiAir hostage crisis—the longest in Indonesia's recorded conflict history—was resolved not through military operation, not through criminal prosecution, and not through the formal mechanisms of Special Autonomy, but through a combination of customary mediation processes in which Bakar Batu played a facilitative role. This outcome is not an exception to be explained away; it is a lesson to be institutionalized. As Galtung argued in his foundational analysis of structural violence, sustainable peace requires addressing not merely the manifest conflict but the structural conditions that generate it.⁵⁶ In Papua, those structural conditions include the systematic exclusion of indigenous legal systems from the formal architecture of conflict resolution—an exclusion that this study demonstrates is both constitutionally unjustifiable and strategically counterproductive.

CONCLUSION

This study demonstrates that Bakar Batu should be understood not merely as a cultural ritual but as a customary mediation practice that can create a culturally legitimate space for dialogue in Papua's asymmetric conflict environment. Its principal contribution to conflict resolution lies in its capacity to temporarily transform adversarial relationships through culturally recognized norms, customary authority, and reciprocal participation. The findings therefore support a socio-legal understanding of Bakar Batu as a complementary mechanism rather than an alternative legal order that displaces state law. The study further finds a significant gap between the constitutional recognition of indigenous communities and the institutional mechanisms available to connect customary mediation with the formal justice system. Article 18B of the 1945 Constitution and the broader jurisprudence on indigenous rights provide a constitutional basis for recognition, but they do not by themselves confer formal ADR status on Bakar Batu. Its legal role therefore requires further clarification through legislation and institutional practice, particularly regarding procedural safeguards, accountability, human rights, and the legal consequences of customary agreements. The principal implication is the development of a customary–state legal interface that recognizes the facilitative role of customary mediation while preserving the autonomy of indigenous communities and the authority of the formal criminal justice system. Future research should examine comparable customary mechanisms across Papua and other conflict-affected indigenous regions and empirically test the conditions under which customary mediation can contribute to sustainable conflict resolution.

⁵⁶ J. Galtung, "Violence, Peace, and Peace Research," *Journal of Peace Research* 6, no. 3 (1969): 167–91, <https://doi.org/10.1177/002234336900600301>.

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