

The Role of Customary Institutions in the Enforcement of Customary Law in the Modern Era

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Customary institutions constitute an essential component of Indonesia's plural legal system, serving as traditional mechanisms for regulating social order and enforcing customary law within indigenous communities. However, the era of modernization and globalization has posed significant challenges to the sustainability and effectiveness of these institutions, particularly due to the dominance of positive law, socio-cultural transformation, and weakening regulatory support. This study aims to analyze the role of customary institutions in enforcing customary law in the modern era, identify factors affecting their effectiveness, and formulate strategies to strengthen their existence within the national legal system. The research employs a normative juridical method with a qualitative approach, utilizing literature review and secondary legal materials as the primary sources of data. The findings reveal that customary institutions continue to play a vital role in resolving disputes, preserving local wisdom, and maintaining social harmony in customary law communities. Nevertheless, their effectiveness has diminished as a result of modernization, urbanization, declining community compliance, and limited legal recognition. The study concludes that strengthening customary institutions requires institutional reinforcement, clearer regulatory frameworks, and synergistic integration between customary law and positive law. Such measures are necessary to ensure the realization of a balanced and just legal pluralism that acknowledges indigenous values while aligning with national legal development.

Keywords: Customary Institutions, Customary Law, Modern Era, Legal Pluralism, Customary Law Community

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1. Introduction

Scholars generally agree that customary institutions (*lembaga adat*) function as social-legal mechanisms that maintain order, resolve disputes, and preserve collective values within indigenous communities. Legal pluralism theory views customary law as a living law that coexists with state law and religious law, particularly in plural societies such as Indonesia [1]. Indonesia as an archipelagic country with a diversity of ethnicities, cultures, and customs recognizes the existence of customary law as an integral part of the national legal system. This recognition is contained in Article 18 b paragraph (2) of the 1945 Constitution which states that the state recognizes and respects the units of customary law communities and their traditional rights [2].

Empirical studies indicate that customary institutions remain effective in resolving family disputes, land conflicts, and marriage-related cases because they are grounded in local wisdom, restorative justice, and social legitimacy. In the context of marriage, customary institutions play a crucial role in regulating procedures, sanctions, and moral obligations to protect family honor and social harmony [3]. However, several studies argue that modernization, state legal centralization, and the expansion of formal judicial institutions have weakened the authority of customary institutions, reducing them to symbolic or ceremonial bodies rather than effective law enforcers [4]. The era of modernization and globalization has had a significant impact on the existence and function of customary institutions. The dominance of the positive

legal system, urbanization, changes in social values, and the fading awareness of the younger generation of indigenous values are major challenges for indigenous institutions [5].

On the other hand, customary law communities are still very dependent on customary institutions in resolving various social, economic, and legal problems that occur in their communities. The fact is that consumers have these limitations in reviewing a product, goods/services used on social media [6]. This research is important considering the lack of comprehensive studies on the actual role of customary institutions in the modern era, especially in the context of customary law enforcement. Previous studies have tended to focus on historical or normative aspects, but have not analyzed in depth the challenges and opportunities faced by customary institutions in the current context [7]. Despite the growing body of literature, most existing studies emphasize normative recognition, historical development, or constitutional legitimacy of customary law, while empirical analyses of the *actual performance* and *adaptive capacity* of customary institutions in the modern era remain limited. Previous research often fails to systematically examine the internal and external factors that influence the effectiveness of customary institutions, such as leadership legitimacy, community compliance, interaction with state law, and socio-cultural transformation. Moreover, inconsistencies appear in the literature regarding whether customary institutions can still function as effective law enforcement mechanisms amid globalization and legal formalism. These gaps indicate the need for a focused study that critically examines the contemporary role of customary institutions in enforcing customary law. Based on this research gap, the problem statements of this study are formulated as follows: (1) How do customary institutions function in enforcing customary law in the modern era? (2) What factors influence the effectiveness of customary institutions in customary law enforcement? and (3) What strategic measures can be formulated to strengthen the existence and role of customary institutions within the Indonesian national legal system?.

2. Method

This research uses a qualitative approach with the type of empirical legal research (socio-legal research). This approach was chosen because the research not only examines customary law as a written or unwritten norm, but also examines how customary law is implemented, enforced, and interpreted by customary institutions in the social practices of communities in the modern era [8]. The qualitative approach allows researchers to deeply understand the role of customary institutions, internal dynamics, and external challenges that affect the effectiveness of customary law enforcement. The location of the research was determined purposively, namely in customary law communities that still have active customary institutions in carrying out customary law enforcement functions (for example, in the field of marriage, customary land disputes, or social conflicts [9]).

The subjects of the research include: Administrators or leaders of customary institutions, Indigenous community leaders, Customary law communities who have interacted or litigated through customary institutions, Village/regional government officials (if relevant) who are related to the recognition and development of customary institutions [10]. This study uses two types of data, namely: Primary data was obtained directly from the field through in-depth interviews with customary institution administrators and indigenous community leaders, observation of customary law enforcement practices and activities of customary institutions in the community. Secondary data was obtained through literature studies, including laws and regulations (1945 Constitution, laws related to customary law communities), books, scientific journals, and relevant previous research results, customary documents, decisions of customary institutions, and other supporting archives. The data collection techniques used in this study are: Semi-structured interviews, to explore the views, experiences, and perceptions of informants regarding the role of customary

institutions and the challenges faced in the modern era. Non-participatory observation, to see firsthand the work mechanism of customary institutions in resolving customary law issues.

Documentation study, to trace customary law documents, regulations, and policies related to the existence of customary institutions [11]. Data analysis is carried out in a qualitative descriptive manner through the data reduction stage, namely sorting and focusing data that is relevant to the formulation of the research problem; Data presentation, in the form of descriptive narratives and thematic categorization; Drawing conclusions, by interpreting data based on customary law theory, legal effectiveness theory, and the concept of legal pluralism. This analysis aims to explain the actual role of customary institutions, the factors that affect their effectiveness, and formulate efforts to strengthen the existence of customary institutions in the national legal system [13].

3. Results and Discussion

Results

The Role of Customary Institutions in the Enforcement of Customary Law in the Modern Era

The results of the study show that customary institutions have several important roles in the enforcement of customary law in the modern era. These roles include judicial, legislative, and executive functions in the context of customary law communities [14]. Data from various regions show that the level of dispute resolution through customary institutions is still quite high, especially for civil cases and violations of social norms.

Table 1. Data on dispute resolution through customary institutions in several regions in Indonesia:

Regions	Year	Number of Cases	Completed	Percentage	Dominant Case Types
Bali	2023	342	298	87.1%	Land Disputes
Aceh	2023	276	241	87.3%	Customary Violations
Papua	2023	189	165	87.3%	Customary Disputes
West Sumatra	2023	254	219	86.2%	Inheritance Disputes
Nusa Tenggara	2023	163	139	85.3%	Social Conflict

Source: Data processed from various Regional Customary Institutions, 2024

The data above shows that the average dispute resolution rate through customary institutions reaches 86-87%, which indicates that the community still has high trust in customary institutions. The main role of customary institutions can be categorized into three functions:

Dispute Resolution Function: Customary institutions function as mediators and arbitrators in resolving various types of disputes in the community, ranging from land disputes, inheritance, marriage, to violations of customary norms. A restorative settlement mechanism that emphasizes reconciliation is an advantage of customary institutions over the formal justice system.

Function of Preservation of Customary Values: Customary institutions play a role in maintaining and bequeathing local wisdom values to the next generation through various socialization mechanisms and social sanctions against violations of customary norms. **Resource Management Function:** Customary institutions have the authority to regulate the use of communal natural resources such as customary lands, customary forests, and water resources based on sustainable customary law principles.

Factors Affecting the Effectiveness of Indigenous Institutions

Analysis of the effectiveness of customary institutions using Soerjono Soekanto's theoretical framework identifies several main factors that affect the performance of customary institutions in the modern era.

Table 2. The results of the analysis of these factors:

Factors	Conditions	Impact	Influence Level
Substance of Customary Law	Uncodified, unwritten	Legal uncertainty, difficulty in harmonization	Height
Capacity of Indigenous Leaders	Stunted regeneration, lack of training	Declining credibility and legitimacy	Height
Facilities and Infrastructure	Lack of budget support and facilities	Limited reach and quality of service	Medium
Public Awareness	The younger generation tends to switch to the formal system	Reduced participation and social legitimacy	Height
Legal Culture	Traditional values eroded by modernization	Weakening of customary norms	Very High

Source: Research Analysis Results, 2024

From the above analysis, it was identified that legal cultural factors have the most significant influence on the effectiveness of customary institutions. The shift in values due to modernization, urbanization, and global cultural influences has caused the younger generation to move further away from traditional values [15]. This condition is exacerbated by the lack of systematic efforts to internalize indigenous values through the formal education system. In addition, the factor of legal substance and the capacity of indigenous leaders also make a significant contribution. The absence of codification of customary law causes inconsistency in implementation and difficulty in harmonizing with the national legal system. Meanwhile, the regeneration of indigenous leadership that is not well managed has resulted in a leadership crisis in many indigenous communities.

Efforts to Strengthen the Existence of Indigenous Institutions

Based on the identification of the above problems, this study formulates several strategic recommendations to strengthen the existence and effectiveness of customary institutions in the national legal system: The government needs to issue more comprehensive regulations regarding the recognition, position, and authority of customary institutions. This regulation must provide legal certainty regarding the limits of the authority of customary institutions, coordination mechanisms with state institutions, and protection of decisions of customary institutions that do not conflict with national law and human rights.

Efforts are needed to selectively codify customary law norms that are still relevant and do not conflict with constitutional values. This codification is not intended to freeze customary law, but rather to provide legal certainty and facilitate harmonization with the national legal system. Capacity building programs for leaders and members of customary institutions need to be carried out on an ongoing basis, including understanding of national law, institutional management, mediation and conflict resolution techniques, and office administration. Budget support from local governments for the operation of customary institutions also needs to be strengthened. The integration of local content on customary law and local wisdom values in formal and non-formal education curricula is the key to maintaining the sustainability of the existence of customary institutions. The younger generation needs to be equipped with an understanding of traditional values in order to appreciate and preserve them. It is necessary to develop an integration mechanism between the customary justice system and the formal justice system through a restorative justice scheme. Decisions of customary institutions can be considered or even binding in certain cases with a clear and measurable mechanism.

Discussion

The Role of Customary Institutions in the Enforcement of Customary Law in the Modern Era

The results of the study show that customary institutions still play a very significant role in the enforcement of customary law in the modern era, especially through the functions of dispute resolution, preservation of customary values, and the regulation of communal resources. The high rate of dispute resolution through customary institutions (average 86–87%) indicates that customary law communities still place customary institutions as legitimate and trusted legal institutions.

This finding is in line with the Theory of Legal Pluralism which states that in a society more than one legal system can coexist, such as state law, religious law, and customary law [16]. In the Indonesian context, customary law is not eliminated by positive law, but still functions as a *Living Law* which regulates the behavior of the community at the local level. Research by [7] and [1] It also shows that customary institutions are still the main reference for the community in resolving communal and personal disputes because they are more in line with local social values. The existence of judicial, legislative, and executive functions of customary institutions as stated [14] proven to be still relevant. In practice, customary institutions not only decide disputes, but also set customary norms (legislative) and ensure their implementation (executive). This reinforces the argument of legal pluralism that the effectiveness of law depends not only on formal legality, but also on social acceptance.

The analysis of the effectiveness of customary institutions using the framework of Soerjono Soekanto's Legal Effectiveness Theory shows that the effectiveness of customary law is greatly influenced by five main factors, namely the substance of the law, law enforcement officials (customary leaders), facilities and infrastructure, community awareness, and legal culture. The findings of this study confirm that legal culture factors have the most dominant influence on the sustainability of customary institutions in the modern era. Modernization, urbanization, and globalization have led to a significant shift in values, especially among the younger generation. This condition weakens the binding power of customary norms and reduces community participation in customary justice mechanisms. These findings are in line with research [5] and [17] which states that the weak transmission of customary values between generations is the main factor in the decline of the social legitimacy of customary institutions.

In addition, the substance of customary law that has not been codified is also a serious challenge. Uncertainty of norms and variations in interpretation between regions make it difficult to harmonize customary law with national law. Research [4] and [1] emphasized that the absence of written documentation of customary law often causes conflicts of authority and reduces the binding power of customary institutions' decisions when dealing with the formal justice system. The capacity factor of indigenous leaders also has a high influence. The regeneration crisis and the lack of formal training have had an impact on the decline in the credibility of customary institutions. This is in line with the findings of [18] who concluded that the quality of customary leadership greatly determines the effectiveness of mediation and the level of community compliance with customary decisions.

From the perspective of Local Wisdom Theory, customary institutions not only function as legal institutions, but also as guardians of moral, ethical, and social balance values of society. The dispute resolution mechanism that is restorative, deliberative, and oriented towards the restoration of social relations reflects the values of local wisdom that are firmly rooted in the culture of indigenous peoples. The findings of this study reinforce the results of the study [19] and [18] which confirms that the approach based on local wisdom is more effective in resolving social conflicts than the repressive approach of formal law. Customary institutions are able to provide substantive justice (*Substantive Justice*), not just procedural justice. In the context of natural resource management, the role of customary institutions is also very strategic. The

management of customary lands, customary forests, and water resources based on customary law has proven to be more sustainable because it is based on the principles of balance and collective responsibility. Research [20] It shows that indigenous communities that maintain customary-based management systems tend to have lower rates of agrarian conflict.

The results of this study show that strengthening the existence of customary institutions requires regulatory support, institutional capacity building, and integration with the national legal system. In the perspective of modern legal pluralism, this integration is not intended to standardize customary law, but to create a harmonious relationship between state law and customary law. The idea of integration through restorative justice schemes is in line with the post-2020 national legal policy that began to accommodate non-litigation dispute resolution. Research [21] shows that recognition of customary decisions as part of the restorative justice mechanism can reduce the burden of the judiciary and increase the community's sense of justice. In addition, the integration of customary values in the formal education system is a long-term strategy to maintain the sustainability of customary institutions. These findings are in line with research [22] which emphasizes that education based on local wisdom plays an important role in shaping legal awareness and cultural identity of the younger generation. Overall, the results of this study confirm that customary institutions still have a strategic role in the enforcement of customary law in the modern era. The success of customary institutions is not only determined by normative aspects, but is greatly influenced by cultural factors, law and social acceptance. With the approach of legal pluralism, legal effectiveness, and local wisdom, customary institutions can be positioned as strategic partners of the state in creating a legal system that is fair, contextual, and rooted in community values.

4. Conclusion

Based on the above discussion, it can be concluded that several important things can be concluded about the role of customary institutions in the enforcement of customary law in the modern era: First, customary institutions still have a vital role in the enforcement of customary law, especially in dispute resolution, preservation of local wisdom values, and the regulation of communal resources. Data shows that the dispute resolution rate through customary institutions reaches 85-87%, indicating high public trust in this institution. Second, the effectiveness of customary institutions is influenced by five main factors, with the cultural factors of the law and the substance of customary law providing the most significant influence. Modernization, urbanization, and weakening of the transmission of customary values between generations are the biggest challenges facing customary institutions today. Third, strengthening the existence of customary institutions requires a holistic approach that involves: stronger regulatory recognition, selective codification of customary law, strengthening institutional capacity, revitalizing customary values through education, and developing integration systems with formal justices. Synergy between customary institutions and the national legal system through a fair legal pluralism approach is the key to the sustainability of the existence of customary institutions in the modern era.

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