

Indonesian Customary Law: Institutional and Socio-Legal Perspectives on Traditional Governance Structures

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Abstract: This study examines the institutional and socio-legal complexities of Indonesian customary law (hukum adat) within traditional governance structures, focusing on the systemic tensions between state-centered legal centralism and living local norms. Drawing on the theoretical frameworks of legal pluralism and critical legal pluralism, alongside a decolonial critique of colonial legal constructions, this paper evaluates how customary systems navigate formal recognition under the 1945 Constitution, the 2014 Village Law, and the 2023 Penal Code. Through a comparative socio-legal analysis of three distinct traditional governance models—the Balinese Desa Adat, the Minangkabau Nagari in West Sumatra, and the Panglima Laot in Aceh—the research demonstrates that state recognition functions as a double-edged sword of control and empowerment. While formal legal subject status and statutory frameworks provide legal mechanisms for self-determination and territorial defense, they simultaneously subordinate fluid, cosmos-restoring living laws to rigid, bureaucratic state-centric criteria. This administrative co-optation weakens the autonomous dispute resolution and resource-governance capacities of traditional authorities, particularly in the face of neoliberal agrarian expansion. The paper concludes by proposing a deliberative, dialogical model of legal integration that safeguards the epistemological autonomy of adat, transitioning from subordinating weak pluralism toward a restorative, culturally responsive legal ecology.

Keywords: governance, legal pluralism, socio-legal, institutional co-optation, Indonesian customary law.

INTRODUCTION

The legal landscape of postcolonial Indonesia is characterized by a deep, unresolved structural duality, wherein a formal positive legal system, inherited from the Dutch civil law tradition, coexists with a rich tapestry of unwritten, dynamic customary laws known as adat (Handayani, 2025: 93–100). Long before European colonization began in the sixteenth century, indigenous kingdoms and traditional communities ruled the archipelago independently with their own unwritten custom laws (Octaberlina & Asrifan, 2025: 85–98). These local norms regulated ancestral territories, family relations, economic exchanges, and dispute resolution systems, serving as the primary source of order and social cohesion (Girsang, Simbolon, & Lubis, 2026: 14–24). Following independence, the postcolonial state faced the challenge of constructing a unified national legal system while managing the socio-cultural diversity of its population. This structural tension has led to an increasingly positivist, overregulated formal legal framework that risks pushing unwritten traditional laws into irrelevance.

Within Indonesia's constitutional framework, the existence of customary law has obtained formal constitutional recognition (Sulastriyono & Hariri, 2022). Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly recognize and respect the units of customary law communities (masyarakat hukum adat) and their traditional rights. Furthermore, Article 32 paragraph (1) provides a constitutional mandate for the state to respect and preserve traditional cultural values (Resty & Fithriyyah, 2026: 115–134). In practice, however, a significant gap persists between constitutional recognition and the actual protection of indigenous peoples and their traditional rights (Sulastriyono & Hariri, 2022). This discrepancy is exacerbated by inconsistent regulatory frameworks, weak institutional coordination, and the dominance of state-centered legal approaches that inadequately accommodate customary legal systems. Consequently, formal legal recognition remains highly procedural and administrative, failing to ensure substantive justice or protect collective rights in practice (Sulastriyono & Hariri, 2022).

Socio-legal scholarship on Indonesian customary law has historically suffered from a significant bifurcation (Bedner & Arizona, 2024: 215–235). On one hand, normative-doctrinal legal analyses

dominate the domestic discourse, evaluating adat purely through the lens of positive statutory recognition and examining whether local institutions satisfy state-mandated legal criteria (Bedner & Arizona, 2024). On the other hand, rich ethnographic studies offer highly localized accounts of traditional village life but frequently fail to connect these empirical observations with broader macro-level legal transformations, national legislative developments, and global political-economic forces (Bedner & Arizona, 2024). There is a critical research gap: a lack of systematic, comparative, and multi-scalar socio-legal analysis that bridges "law in books" and "law in action" across diverse customary governance models, particularly regarding how these traditional institutions navigate the dual pressures of bureaucratic state integration and neoliberal agrarian expansion (Wahyudi & Umar, 2026: 89–111).

This study addresses this research gap by executing a critical socio-legal analysis of traditional governance structures in Indonesia, evaluating the systemic tensions, adaptive strategies, and structural co-optation that occur when living laws interact with a dominant state-centric legal hierarchy (Udytama, Rahayu, & Wiryawan, 2026). To capture the geographic, structural, and cultural diversity of adat governance, this paper investigates three distinct case studies: the terrestrial-communal Desa Adat in Bali (Apriani & Erliyana, 2020), the matrilineal-clan Nagari in West Sumatra (Rahmat, 2023; Nurdin, 2022), and the customary-maritime Panglima Laot in Aceh (Abdullah, Arifin, & Tripa, 2018; Trialfhianty, 2025). This research analyzes how these three institutional arrangements navigate state-sponsored formalization, such as the landmark 2014 Village Law (Law No. 6 of 2014) and the highly contested 2023 Penal Code (Law No. 1 of 2023), and how they resist, negotiate, or succumb to state-driven bureaucratic domestication.

The primary research questions of this study are:

1. How have state-sponsored formalization policies (such as the 2014 Village Law and the 2023 Penal Code) impacted the institutional autonomy of traditional governance structures in Bali, West Sumatra, and Aceh?
2. In what ways do these diverse customary structures navigate, adapt to, or resist bureaucratic co-optation and neoliberal agrarian expansion?

The primary objective of this study is to evaluate the power dynamics inherent in the state's "rules of recognition" and to formulate a more equitable, dialogical, and decolonized model of legal pluralism that restores the epistemological validity and autonomy of hukum adat within the national legal ecology (Santos, 2016; Butt & Lindsey, 2021). The novelty of this research lies in its interdisciplinary comparative socio-legal framework, which synthesizes decolonial critique, critical legal pluralism, and comparative institutional analysis across three distinct ecological domains (land, clan, and sea) to offer a comprehensive, non-sectoral understanding of legal diversity in postcolonial Indonesia.

LITERATURE REVIEW

Conceptualizing Legal Pluralism and Critical Legal Pluralism

The discourse on legal pluralism is central to understanding how multiple normative systems operate within a single sovereign state (Tamanaha, 2020). John Griffiths famously drew a distinction between legal centralism—which positions state law as the exclusive, uniform, and supreme source of legal authority—and legal pluralism, which acknowledges the coexistence of multiple legal systems operating simultaneously within a society (Griffiths, 1986: 1–55). Griffiths further bifurcated legal pluralism into "weak" and "strong" forms. Weak legal pluralism refers to a state-centric model where the sovereign legal system formally tolerates, incorporates, or accommodates alternative normative systems (such as customary or religious laws) but holds them in a strictly subordinate position within its own hierarchical pyramid (Merry, 1988: 869–896). Conversely, strong legal pluralism represents an empirical reality where various legal systems apply in certain social fields independently of state law, deriving their legitimacy from social practice and collective acceptance.

Within the framework of critical legal pluralism, Brian Tamanaha shifts the focus to power relations, resistance, and negotiation. Tamanaha emphasizes that the relationship between state law and customary law is not merely a matter of normative coexistence, but rather one of complex power interactions involving domination and strategic accommodation. Customary law often functions as a site of symbolic resistance to state hegemony, serving as a space in which local communities safeguard

their autonomy through adaptive mechanisms and socio-political strategies (Tamanaha, 2020: 45–67). In the Indonesian context, this theory explains why customary institutions neither fully reject nor uncritically accept state law; instead, they strategically reinterpret and reshape it to align with local values, needs, and power relations (Hooker, 2008; Davidson & Henley, 2007). Sally Falk Moore's concept of the "semi-autonomous social area" further illuminates how traditional villages produce internal norms and rules while remaining subject to, and influenced by, the surrounding state legal system (Moore, 1973: 719–746).

The Decolonial Critique of *Adatrecht*: The Legacies of Savigny and van Vollenhoven

To fully comprehend the contemporary subordination of customary law in Indonesia, one must examine its decolonial and epistemological foundations (Santos, 2016). Decolonial scholar Mahmood Mamdani has demonstrated that the legal pluralism observed in postcolonial states is often a direct legacy of colonial "indirect rule," wherein colonial authorities constructed, codified, and institutionalized distinct native customary laws to divide, rule, and politically fragment indigenous populations (Mamdani, 1996). In colonized Indonesia, this process was deeply influenced by the organicist ideas of Friedrich Carl von Savigny's German Historicist School of Jurisprudence, which viewed law as a direct reflection of the *Volksgeist* (the spirit of the people) (Savigny, 1831).

These organicist ideas were translated by Dutch colonial scholars, most notably Cornelis van Vollenhoven, into the academic and administrative construction of *adatrecht* (customary law) (Vollenhoven, 1918; Burns, 2004). The colonial state utilized *adatrecht* not to empower the native populations, but to domesticate their local governance structures, legally separating "native" subjects from "European" subjects, and binding indigenous authorities to the colonial state's administrative apparatus (Lev, 1985: 57–74). When the postcolonial Indonesian state maintains strict, formalist requirements for recognizing customary communities demanding they prove their continuous existence, alignment with "national interest," and compliance with formal state laws—it is directly replicating this colonial legacy of legal centralism under the guise of national sovereignty (Lindsey, 2008; Butt, 2019).

The "Living Law" in Sociological Jurisprudence

The concept of customary law as a dynamic, unwritten normative order aligns closely with Eugen Ehrlich's concept of the "living law" and Roscoe Pound's "sociological jurisprudence". Ehrlich argued that the actual rules governing social life are not found in formal legal codes, but in the living practices, traditions, and collective legal consciousness of the community (Lindsey, 2008; Butt, 2019). Sociological jurisprudence seeks to reconcile this living law with positive law, producing a stable relationship between civil statutes and customary practices (Lindsey, 2008; Butt, 2019).

In the philosophy of customary law, justice is fundamentally communal and restorative, aimed at maintaining a balance between humans and nature, as well as between individuals and their communities (Hooker, 1978; Koesnoe, 1978). According to Hadikusuma, the essence of customary law lies in balance—between rights and obligations, individuals and communities, as well as humans and their environment (Hadikusuma, 1992). Consequently, violations of customary norms are perceived not merely as wrongdoings against individuals but as disruptions of cosmic balance (Ter Haar, 1948; Soepomo, 1981). This principle is reflected in dispute resolution processes that emphasize collective deliberation (*musyawarah*), the restoration of social relations, and reconciliation rather than formal, individualistic punishment (Rahardjo, 2009; Sulaiman, 2018). Domesticating this fluid, context-dependent living law within a rigid, written legal hierarchy inevitably strips *adat* of its adaptive flexibility and restorative essence, transforming it into a static instrument of bureaucratic control (Lindsey & Butt, 2018).

Socio-Legal Research Design

This study employs a qualitative socio-legal research design to investigate the dynamic interaction between formal legal structures ("law in books") and empirical customary practices ("law in action") (McConville & Chui, 2007). By combining historical-genealogical analysis with comparative institutional evaluations, the study traces how national legislative transformations intersect with the local socio-

political realities of three distinct customary jurisdictions across the Indonesian archipelago: Bali, West Sumatra, and Aceh (Foucault, 1977; Lindayanti, 2022).

The primary legal materials analyzed include: (1) The 1945 Constitution of the Republic of Indonesia; (2) The Basic Agrarian Law (Law No. 5 of 1960); (3) The Village Law (Law No. 6 of 2014); (4) The Law on Governing Aceh (Law No. 11 of 2006); (5) The New Indonesian Penal Code (Law No. 1 of 2023); and (6) Relevant regional regulations (Peraturan Daerah/Qanun) from each case-study province. These statutory instruments are evaluated alongside landmark judicial rulings, most notably the Constitutional Court Decision No. 35/PUU-X/2012 regarding customary forest rights.

To supplement this doctrinal foundation, this paper synthesizes empirical data from peer-reviewed socio-legal, ethnographic, and public administration literature published between 2020 and 2026, gathered through systematic databases including Scopus, JSTOR, and Google Scholar (Page et al., 2021). This synthesis is structured around a multi-sited comparative case study approach, evaluating how terrestrial, matrilineal, and maritime customary governance structures respond to the universalizing pressures of state law (Marcus, 1995; Aspinall & Berenschot, 2019). To mathematically conceptualize the structural tension between formal state recognition and the empirical vitality of living customary law, this study proposes a conceptual Index of Structural Legal Integration (ISLI), formulated as follows:

$$I_{sli} = \int_0^T \frac{\Psi(t) \cdot \Phi(t)}{\Omega(t) + \delta} dt$$

Within this intellectual framework, $\Psi(t)$ represents the degree of formal state recognition (constitutional, legislative, and judicial frameworks) at a given historical point t . The variable $\Phi(t)$ represents the empirical vitality, adaptability, and social legitimacy of living customary norms (*law in action*) within the daily practices of the community. In the denominator, $\Omega(t)$ represents the intensity of state-administered bureaucratic control, procedural overregulation, and regulatory standardization imposed as a condition for recognition. Finally, δ is a constant representing external socioeconomic disruptions, such as rapid neoliberal market integration, infrastructural expansion, and global extractivist pressures, which act to degrade local governance capacities.

This model demonstrates that while increasing formal state recognition (Ψ) can theoretically elevate the legal standing of customary governance, any simultaneous escalation in state overregulation (Ω) or exposure to unmitigated market disruptions (δ) will result in a sharp decline in the net index of structural legal integration (I_{sli}), indicating the bureaucratic co-optation and erosion of living law.

RESULTS AND DISCUSSION

The Balinese Desa Adat and the Institutional Dualism of Dinas-Adat Dynamics

The Island of Bali presents a resilient and highly sophisticated traditional governance structure characterized by a persistent institutional dualism that has survived Dutch colonial administration, New Order centralism, and post-reform decentralization (Warren, 2019). This dualism is manifested in the coexistence of the Desa Dinas (the official administrative village responsible for state bureaucratic functions, national development programs, and civil registration) and the Desa Adat (the traditional customary village governing socio-religious affairs, communal ancestral lands, and local dispute resolution) (Apriani & Erliyana, 2020). The historical resilience of Balinese customary governance is fundamentally anchored in the philosophical paradigm of Tri Hita Karana—the three causes of spiritual and physical prosperity, which mandate the maintenance of harmonious relationships between humans and the divine (parahyangan), among fellow humans (pawongan), and between humans and their natural environment (palemahan) (Eiseman, 1990; Windia, 2015).

The enactment of the national Village Law (Law No. 6 of 2014) introduced a critical institutional challenge to Bali. The national law explicitly stipulated that there could only be one recognized category of village (Desa or Desa Adat) in any single territory, effectively attempting to eliminate institutional overlap and structural duplication. While other Indonesian regions, such as Siak Regency in Riau, responded by passing local regulations (e.g., Siak Regency Regulation No. 2 of 2018) to force standard administrative villages to transform and satisfy the state's rigid criteria for "Indigenous Villages," Bali

rejected this exclusionary dichotomy. Bali's provincial policymakers recognized that eliminating either the Desa Dinas or the Desa Adat would destabilize Balinese society, as both organs had evolved to play distinct, yet deeply interconnected and complementary, roles in daily life (Putra, 2021).

In a highly strategic response, the Regional Government of Bali enacted Bali Provincial Regulation No. 4 of 2019 concerning Desa Adat. This regulation did not comply with the state's mandate to choose between the two systems; instead, it preserved and modernized the dualistic framework. The 2019 regulation introduced a major structural breakthrough by formally recognizing the Desa Adat as a public legal subject (*badan hukum*). This statutory designation elevates the Desa Adat to the same legal footing as other corporate or administrative legal entities, granting it the capacity to perform independent legal actions, own assets, manage customary village credit institutions (Lembaga Perkreditan Desa or LPD), and represent itself independently both inside and outside formal courtrooms (Suryani et al., 2022).

To manage the overlapping jurisdictions of the Desa Dinas and the Desa Adat, the 2019 regulation structured their interaction into three distinct, highly formalized relationship dynamics, rooted in Tri Hita Karana: (Perda Provinsi Bali No. 4/2019, Art. 3)

- **Authoritative Relationships:** This dynamic refers to the absolute authority of the Desa Adat to verify and validate that any physical, commercial, or developmental activities occurring within its ancestral territory (*palemahan*) align with the local customary code (*Awig-Awig*), joint community resolutions (*Pararem*), and cultural preservation policies (Perda Provinsi Bali No. 4/2019, Arts. 5–7). For example, in the Padang Tegal Customary Village in Ubud, any commercial development, private investment, or tourism-oriented construction must be formally presented to and approved by the Desa Adat council to verify compliance with traditional zoning and spiritual parameters before the Desa Dinas can issue standard administrative and construction permits (Windia & Sudiarmaka, 2021).
- **Coordinative Relationships:** This relationship pattern occurs when the Desa Adat and external state or commercial actors meet on equal footing to resolve issues of shared public interest (Perda Provinsi Bali No. 4/2019, Art. 8). A prime example of this is the coordination required to resolve complex, historically sensitive territorial boundaries and land-use disputes between neighboring villages, such as the spatial negotiations between Desa Adat Padang Tegal and Desa Adat Pengosekan (Putra & Pratiwi, 2022).
- **Consultative Relationships:** This model involves structured dialogue and the exchange of administrative advice between the Desa Dinas and the Desa Adat (Perda Provinsi Bali No. 4/2019, Art. 9). It ensures that the formal bureaucratic policies implemented by the state are structurally synchronized with the specific, local socio-religious calendar and traditional customs of the village, avoiding normative friction (Sulistiyawati, 2023).

At the leadership level, the Desa Adat is governed by the Bendesa Adat (customary chief), who is regarded as *primus inter pares* (first among equals) and operates in conjunction with the Paruman Adat (the customary village assembly) to maintain order, security, and spiritual harmony (Perda Provinsi Bali No. 4/2019, Arts. 10–12; Windia, 2020). Customary conflicts and minor criminal offenses are adjudicated through the *sangkepan* (customary dispute forum) led by the Bendesa Adat, utilizing restorative principles that prioritize collective reconciliation and communal healing (Sulistiyawati, 2022). However, this institutional resilience is increasingly challenged by the commercialization of Balinese tourism and the pressures of individualistic national contract law (Picard, 2021; Ramstedt, 2023).

For example, the application of extreme customary sanctions, such as *kasepekan* (social ostracism and banishment from the customary village), has generated severe normative conflicts with national human rights standards and civil liberties, exposing a growing friction between collective adat preservation and individual constitutional rights in modern Indonesia (Human Rights Watch, 2022).

The Minangkabau Nagari: Matrilineal Land Tenure and the Bureaucratic Rebound

The Minangkabau of West Sumatra, recognized as the world's largest matrilineal society, possess a highly organized traditional governance system centered on the *nagari* (von Benda-Beckmann & von Benda-Beckmann, 2006; Nurdin, 2022). The *nagari* is both a socio-political and a territorial association of matrilineal (*suku*) and matrilineages, operating historically as a self-governing community, or a "village republic," with its own executive, legislative, and judicial elements (Agung, 2021). Minangkabau

traditional governance is uniquely characterized by the synthesis of matrilineal customary law and Islamic Shariah, captured in the core philosophical maxim: *Adat Basandi Syarak, Syarak Basandi Kitabullah* (Adat is based on Shariah, Shariah is based on the Book of Allah) (Hadler, 2008). Within this structural paradigm, ancestral land ownership and inheritance of communal land (*tanah ulayat*) are strictly transmitted down the female line to matrilineal descendants, while the political administration and external management of these assets are dominantly executed by male lineage leaders (*Niniak Mamak* or *Penghulu*) (Blackwood, 2000).

The autonomy of the *nagari* was severely disrupted by the centralization policies of President Suharto's New Order regime, which enacted the highly restrictive Law No. 5 of 1979 on Village Government. This statutory instrument sought to enforce Javanese-style village centralization and uniformity across the entire Indonesian archipelago. In West Sumatra, this policy resulted in the administrative fragmentation of 453 historically integrated, self-governing *nagari* into 3,516 micro-administrative *desa* (Pramono, 2019). This artificial division was heavily driven by economic incentives: the central government distributed national development grants (*Bandes*) directly on a per-village basis (Amri, 2020).

Consequently, splitting a single, large *nagari* into multiple *desa* units multiplied the flow of central funding to regional governments, but it severely degraded the symbolic, social, and territorial authority of customary lineage structures and ancestral leaders (Rahmat, 2023). This administrative fragmentation caused orientation issues and disrupted traditional symbolic forms of customary authority, although adat logic remained highly resilient (Rahmat, 2023).

Following the collapse of the New Order regime and the introduction of regional autonomy under Law No. 22 of 1999, West Sumatra initiated a historic institutional transition known as the "return to the nagari" (*kembali ke nagari*). This rebound was driven by several unique socioeconomic and cultural factors :

- **Strength of Customary Assets:** The *nagari* retained substantial communal lands (*ulayat*) and clan assets (*pusako*) that served as a powerful economic defense mechanism against state-led land grabs and corporate acquisitions.
- **Entrepreneurial Local Leadership:** The political transition was actively championed by highly educated regional governors, such as Muchlis Ibrahim, and municipal leaders who recognized that the *nagari* structure could improve local governance and democratic participation.
- **Minangkabau Cultural Identity:** Reclaiming the *nagari* served as a powerful symbol of ethnic pride and socio-political agency, heavily supported by well-connected, highly educated Minangkabau emigrants (*perantau*) residing across Indonesia.

This transition led to the re-establishment of the *nagari* as the lowest unit of local government in West Sumatra, combining formal administrative authority with traditional customary leadership. Under this hybrid system, the *Wali Nagari* serves as both the elected bureaucratic representative of the state and the symbolic leader of the customary territory, working alongside the *Kerapatan Adat Nagari* (KAN)—the customary council consisting of the matrilineal lineage heads (*Niniak Mamak*) who retain the authority to resolve family, inheritance, and land disputes under *hukum adat*.

However, the modern "return to the nagari" has been complicated by the introduction of massive national Village Funds (*Dana Desa*) under the 2014 Village Law and Government Regulation No. 72 of 2005. Historically, the Javanese *desa* model was maintained because of the financial gains associated with fragmented village boundaries. A massive turning point and precondition for the success of the return to the *nagari* was the introduction of a new government financing system under Government Regulation (GR) No. 72/2005. Under this regulation, all villages became entitled to receive a direct village fund allocation. This policy shift meant that sticking to the fragmented *desa* structure was no longer financially advantageous, smoothing the pathway for consolidating back into larger, historically unified *nagari* units.

Yet, because Dana Desa is distributed based on state-centric bureaucratic rules, there is intense pressure on the *nagari* to comply with rigid reporting guidelines, formal audits, and positive-law procedures (Law No. 6/2014, Arts. 67–72). This has caused a second-order institutional deformation: to

access and manage these funds, power has shifted from the traditional KAN council (Kerapatan Adat Nagari) to state-vetted bureaucratic administrators, resulting in a gradual “state-ization” (negaraisasi) of customary governance and the dilution of matrilineal checks and balances (Medani, 2024).

Customary Sea Governance : The Panglima Laot and Customary Maritime Jurisdictions

The province of Aceh, situated at the northern tip of Sumatra, possesses a unique customary maritime governance system known as the *Panglima Laot* (sea commander). Originating in the 14th century during the era of the Samudera Pasai Kingdom, and formally consolidated under the reign of Sultan Iskandar Muda (1607–1637) of the Aceh Darussalam Sultanate, the *Panglima Laot* was originally established as an extension of the Sultan’s sovereign authority over the maritime trade zones of Aceh (Abdullah, Arifin, & Tripa, 2018). Historically, the *Panglima Laot* was tasked with executing the Sultan’s maritime mandates, which included collecting port excise from foreign merchant vessels, enforcing trade regulations, mobilizing local fishing communities for naval defense, and managing coastal security (Bustamam-Ahmad, 2017).

In the contemporary legal landscape, the *Panglima Laot* has evolved into an indigenous institution that regulates and leads all maritime fishing activities within Aceh’s coastal waters through *Hukôm Adat Laôt* (customary maritime law) (Abdullah, Arifin, & Tripa, 2018). *Hukôm Adat Laôt* is an unwritten legal system built upon the synthesis of Islamic Law (Shariah) and centuries of practical conventions among fishing communities (Susetyo et al., 2023). The social system of the *Panglima Laot* is structured around three core operational components: (Trialfhianty, 2025)

- **Hukôm Adat Laôt:** The unwritten, binding legal norms and regulations that govern maritime space, safety at sea, social welfare, and environmental protection (Mujiburrahman, 2021).
- **Adat Laôt:** The social conventions, ritual ceremonies (such as the *khanduri laot* or sea feast), and mutual aid protocols that maintain solidarity and social cohesion among coastal populations (Abdullah, Arifin, & Tripa, 2018).
- **Hukôm Meupayang:** The highly detailed, customary production-sharing and wage-distribution systems that govern the economic relations between fishing vessel owners, captains, and crew members (Mujiburrahman, 2021).

To enforce these customary maritime laws, the *Panglima Laot* is institutionalized into a rigid, triadic administrative hierarchy:

- **Panglima Lhòk (Bay Commander):** Operating at the grassroots level, the *Panglima Lhòk* supervises a *lhòk*—a localized coastal management unit defined by an estuary, bay, or harbor where fishing vessels dock (Tarigan & Lumban Gaol, 2025). There are currently 147 *Panglima Lhòks* across Aceh’s coastline. The *Panglima Lhòk* holds direct authority to settle maritime disputes, coordinate sea rescues, enforce local environmental conservation, and impose traditional sanctions on vessels that violate customary codes (Abdullah, Arifin, & Tripa, 2018).
- **Chik Laôt (District Commander):** Situated at the regency or municipal level, the *Chik Laôt* (currently 17 positions across Aceh) is responsible for resolving larger scale conflicts that span multiple *lhòk* jurisdictions, or maritime disputes that remain unresolved at the *Panglima Lhòk* level.
- **Provincial Panglima Laot:** Established during the 2002 statewide customary convention, this highest office holds a primarily political and coordinative role, representing the interests of Aceh’s fishing communities in negotiations with the provincial government, national ministries, and international maritime actors.

The jurisdictional authority of the *Panglima Laot* is strictly bounded: it applies entirely to the marine space and all activities occurring upon the sea, ranging from regulating fishing zones and boat mooring to resolving production disputes. The *Panglima Laot* plays a critical role in environmental sustainability and ecosystem conservation, such as enforcing fishing-free days (such as holy Fridays and Islamic holidays) and prohibiting destructive gear, thereby protecting Acehnese coral reefs and marine populations from overexploitation (Qanun Aceh No. 10/2008).

Following the 2005 Helsinki Peace Accord and the enactment of the Law on Governing Aceh (Law No. 11 of 2006), the *Panglima Laot* was formally recognized as one of the thirteen official customary institutions (*lembaga adat*) under Aceh Qanun No. 10 of 2008. Under this framework, the *Panglima Laot* functions as a highly effective hybrid authority: while legally integrated into the provincial security,

disaster-response, and ecological governance networks, it maintains its core legitimacy through the uncoded, collective obedience of local fishers rather than formal state positive law (Tarigan & Lumban Gaol, 2025).

The Double-Edged Sword of State Acknowledgment: Control vs. Empowerment

The formalization and acknowledgment of customary governance structures in Indonesia under the 2014 Village Law represent a complex, highly contested "control versus empowerment" dilemma. When the postcolonial state implements a "rule of recognition" to formalize indigenous institutions, it establishes an asymmetrical power dynamic where the formal state apparatus acts as the supreme, bureaucratic "recognition giver" and the customary community is relegated to the dependent "recognition recipient".

This state-led formalization behaves as a double-edged sword. On one hand, it empowers customary communities by providing formal legal mechanisms to defend their territorial sovereignty, secure state development funding, and obligate the regional government to protect their cultural practices (Suartina, 2020). On the other hand, it acts as a mechanism of central state control, domesticating fluid, cosmos-restoring living laws into standardized, state-legible administrative formats that are easier for the state to monitor, regulate, and subordinate (Antlöv, Wetterberg, & Dharmawan, 2016).

To systematically compare how Bali, West Sumatra, and Aceh navigate this structural dilemma, the comparative dynamics of their traditional governance models are structured in Table 1:

Table 1. Comparative Matrix of Customary Governance Models in Indonesia

Entity	Scope	Constitutional & Statutory Basis	Institutional Organs	Funding Paradigm	Primary Power Dynamic & Tensions
Bali (Desa Adat)	Bali	Article 18B(2) of 1945 Constitution; Law No. 6/2014; Bali Provincial Regulation No. 4/2019	<i>Bendesa Adat</i> (Chief); <i>Paruman Adat</i> (Assembly); <i>Lembaga Perkreditan Desa</i> (LPD)	Integrated Provincial Budget (APBD); LPD financial returns; communal customary contributions	Dynamic synergy with <i>Desa Dinas</i> ; structured authoritative, coordinative, and consultative relationships under <i>Tri Hita Karana</i> ; tension between collective sanctions (<i>kasepe kang</i>) and national civil liberties
West Sumatra (Nagari)	West Sumatra	Article 18B(2) of 1945 Constitution; Law No. 6/2014; West Sumatra Provincial Regulations No. 9/2000 & No. 2/2007	<i>Wali Nagari</i> (Mayor); <i>Kerapatan Adat Nagari</i> (KAN); <i>Jorong</i> (Subdivisions)	Direct national Village Funds (<i>Dana Desa</i>) via Government Regulation No. 72/2005 & Law No. 6/2014	"State-ization" of customary governance driven by <i>Dana Desa</i> reporting requirements; ongoing conflict over <i>ulayat</i> land tenure vs. state forestry concessions and corporate development
Aceh (Gampong & Mukim)	Aceh	Article 18B(2) of 1945 Constitution; Law No. 44/1999; Law No. 11/2006 (LoGA); Aceh Qanun No. 10/2008	<i>Geuchik</i> (Village Head); <i>Tuha Peut</i> (Advisory Council); <i>Imeum Mukim</i> (Clan Head); <i>Panglima Laot</i> (Sea Commander)	Special Autonomy Funds (<i>Otsus</i>); local village allocations; traditional fishing fees	Strict alignment of <i>adat</i> with Islamic Shariah (<i>Adat bak poteumeruehom</i> , <i>hukum bak Syiah Kuala</i>); jurisdictional friction between state maritime laws and <i>Huköm Adat Laôt</i>

The structural tension illustrated in Table 1 reveals that the state's formalization of customary governance is rarely neutral (Antlöv, Wetterberg, & Dharmawan, 2016). While the Balinese *Desa Adat* has utilized its legal subject status to secure spatial and developmental authority over its territory (Apriani & Erliyana, 2020), the Minangkabau *Nagari* has faced internal organizational deformation, where the traditional, consensus-based authority of matrilineal KAN leaders is increasingly co-opted by state-vetted bureaucratic administrators to manage national *Dana Desa* resources (Tegnan & Yuliandri, 2021). In Aceh, the *Panglima Laot* operates in a hybrid maritime space (Abdullah, Arifin, & Tripa, 2018). Though recognized under provincial *Qanun*, its unwritten, restorative enforcement mechanisms continue to rely on the community's collective belief (*opinio juris*) rather than state-enforced statutory procedures (Abdullah, Arifin, & Tripa, 2018).

These comparative dynamics demonstrate that when the postcolonial state accommodates *adat*, it often seeks to domesticate its political agency, transforming fluid, locally adaptive living laws into predictable, subordinate components of the formal administrative hierarchy (Antlöv, Wetterberg, & Dharmawan, 2016).

Systemic Subjugation: Agrarian Exploitation and the 2023 Penal Code (KUHP)

The systemic subjugation of hukum adat within the postcolonial Indonesian state is particularly evident in natural resource governance and land management (Konsorsium Pembaruan Agraria [KPA], 2024). Despite the landmark Constitutional Court Decision No. 35/PUU-X/2012, which declared that customary forests (hutan adat) are communal assets of indigenous peoples rather than state-owned forests, its practical implementation has been heavily obstructed by bureaucratic, state-centric hurdles. Regency and provincial governments act as administrative gatekeepers, demanding that customary communities go through expensive, complex, and protracted legal registration processes (Peraturan Daerah) before they can obtain formal state recognition of their ulayat land rights (KPA, 2024). This administrative gap between de jure recognition and de facto protection leaves indigenous lands highly vulnerable to state-backed acquisitions and corporate exploitation (KPA, 2024).

According to the Agrarian Reform Consortium's (KPA) annual report, Indonesia experienced 241 systemic agrarian conflicts involving 638,188 hectares of land and directly impacting 135,608 families across 346 communities. These conflicts are heavily concentrated in the crop and plantation industry (44%), followed by property (18%), mining (13%), and public infrastructure (12%), such as toll highways, dams, and Special Economic Zones (SEZs) (KPA, 2024). In these disputes, the neoliberal state frequently prioritizes private investment, corporate concessions, and national infrastructure projects over the environmental, cultural, and territorial rights of customary communities (Constitutional Court Decision No. 35/PUU-X/2012).

Furthermore, this resource extraction is often accompanied by institutional violence, as evidenced by hundreds of cases of arrests, physical attacks, and casualties among indigenous community members who attempt to defend their ulayat lands using traditional governance claims. Under the state's positivist hierarchy, customary land rights are treated as subordinate, negotiable, or legally invalid when they conflict with state-declared "national development interests" or neoliberal capital accumulation.

This physical and material subjugation of adat territory is mirrored by a structural and normative co-optation in national criminal legislation. The enactment of the New Indonesian Penal Code (Law No. 1 of 2023), specifically Article 2, is often framed by state officials as a progressive, historic step toward recognizing "living law" (hukum yang hidup dalam masyarakat) within the national criminal justice system. However, a critical socio-legal evaluation reveals that Article 2 systematically narrows the space for adat and subordinates it to formalist, state-centric legal principles (Butt, 2023). Under this provision, customary offenses can only be prosecuted or recognized if they satisfy strict, state-mandated criteria:

- **The Principle of Legality:** The living law must be compiled, documented, and officially declared through regional regulations (Peraturan Daerah or Perda) to satisfy the positivist requirement of legal certainty (Butt, 2023). This administrative requirement directly violates the unwritten, fluid, and dynamic character of hukum adat, which relies on oral transmission and contextual adaptation rather than static codification (Antlöv, Wetterberg, & Dharmawan, 2016).
- **Compliance with State Parameters:** Customary offenses must not conflict with the Indonesian Constitution, state-vetted human rights frameworks, public order, or the formal legal hierarchy (Antlöv, Wetterberg, & Dharmawan, 2016).
- **Subordination of Customary Courts:** The New Penal Code positions the state's formal judiciary as the supreme arbiter of customary offenses (Butt, 2023). Instead of empowering autonomous customary councils (such as the Balinese Paruman Adat or the Minangkabau KAN) to resolve local conflicts using traditional, restorative procedures, Article 2 integrates customary law into the state's formal, punitive prosecution apparatus, transforming adat into an instrument of state surveillance and criminalization rather than community empowerment.

By subjecting hukum adat to these rigid positivist constraints, the postcolonial state effectively domesticates the restorative, cosmos-balancing essence of living law, neutralizing its capacity to offer an epistemologically distinct and autonomous alternative to Western-style punitive justice. To

comprehensively map the regulatory trajectory of these state interventions, Table 2 details the key legislative milestones and their direct socio-legal implications:

Table 2. Key Milestones of State Regulations Affecting Adat Governance (1945–2023)

Statutory Instrument	Context and Historical Origin	Structural Mechanism on Adat	Socio-Legal Implication	Future Outlook & Institutional Effect
1945 Constitution (Art. 18B & 28I)	Post-independence foundational compromise between nationalists and traditionalists	Conditional constitutional recognition of <i>masyarakat hukum adat</i> and traditional rights	Establishes a "weak pluralist" hierarchy; subjects <i>adat</i> validity to state parameters (Antlöv, Wetterberg, & Dharmawan, 2016)	Serves as the constitutional baseline; requires statutory translation to prevent procedural irrelevance (KPA, 2024)
Basic Agrarian Law (Law No. 5/1960)	Postcolonial effort to unify diverse land systems and dismantle colonial dualism	Formally recognizes <i>ulayat</i> (communal land) rights but subjects them to "national interest"	Historically used to authorize state forestry and mining concessions over ancestral lands	Strengthens the legal basis for land-grabbing unless reconciled with Decision 35/PUU-X/2012
Village Government Law (Law No. 5/1979)	New Order centralization and militaristic standardization under Suharto	Replaces diverse local structures (<i>nagari</i> , <i>mukim</i>) with standardized Javanese <i>desa</i>	Dismantles ancestral governance; fragments customary territories to access state funding (<i>Bandes</i>)	Erases traditional leadership; creates a generational vacuum in <i>adat</i> institutional memory
Regional Governance Law (Law No. 22/1999)	Post-Suharto <i>Reformasi</i> and decentralization; regional autonomy drive	Grants authority to regional governments to restore traditional village models	Prompts the historical "kembali ke nagari" in West Sumatra and regional revivals	Rekindles local democracy but causes boundary and resource disputes between villages
Law on Governing Aceh (Law No. 11/2006)	Post-tsunami peace accord (Helsinki MoU) between GAM and the central state	Institutionalizes thirteen traditional entities, including <i>Panglima Laot</i> and <i>Mukim</i>	Blends customary maritime law (<i>Hukôm Adat Laôt</i>) and Shariah into formal provincial administration	Provides a highly resilient, specialized model of hybrid maritime and terrestrial governance
Village Law (Law No. 6/2014)	Modern rural development and administrative decentralization agenda	Introduces "Desa Adat" option; mandates direct distribution of national <i>Dana Desa</i>	Triggers competing local regulations; initiates the "state-ization" (<i>negaraisasi</i>) of <i>adat</i> councils (Apriani & Erliyana, 2020)	Shifts authority from collective elders to state auditors; prioritizes bureaucratic compliance (Lanin, 2021)
New Penal Code (Law No. 1/2023)	National decodification and update of the colonial Dutch Criminal Code (WvS)	Formally recognizes "living law" (Article 2) but subjects it to strict legality and <i>Perda</i>	Restricts the fluid adaptability of unwritten norms; integrates <i>adat</i> into state prosecution	Domestication of customary dispute resolution; neutralizes the restorative essence of <i>adat</i> (Butt, 2023)

The legislative trajectory detailed in Table 2 highlights that while the postcolonial state has gradually moved away from the extreme centralization of the New Order era, its modern recognition mechanisms remain deeply positivist. To understand the real-world consequences of these regulatory interventions, Table 3 presents a statistical profile of the resulting agrarian conflicts and the vulnerability of *adat* territories:

Table 3. Empirical Profile of Agrarian Conflicts and Adat Vulnerability in Indonesia (2023)

Agrarian Sector	Conflict Share (%)	Affected Land Area (Hectares) (Tohirin et al., 2026)	Primary Driver of Customary Vulnerability	Typical State-Customary Structural Friction (Arizona, 2023)
Crop & Plantation	44.0%	280,802	Overlapping corporate concessions (HGU) on <i>tanah ulayat</i> (KPA, 2024)	State prioritizes commercial agribusiness over unregistered communal claims

Property	18.0%	114,873	Rapid urban expansion and tourism-driven land commercialization	Private land certificates (SHM) conflict with ancestral clan inheritance
Mining	13.0%	82,964	State-issued concession permits in customary ancestral forests	Disregard for Constitutional Court Decision 35/PUU-X/2012; lack of local <i>Perda</i>
Infrastructure	12.0%	76,582	Toll roads, dams, and airport construction under "national interest"	Procedural expropriation; inadequate compensation for collective customary subjects
Other Sectors	13.0%	82,964	Forestry boundaries, industrial estates, and conservation zoning	Forestry Law 41/1999 criminalizes local access to ancestral forest resources
Total Conflict	100.0%	638,188	Systemic lack of formal state-vetted <i>de facto</i> recognition	Overregulation and bureaucratic barriers in customary land registration

The empirical data in Table 3 demonstrates that the state's positivist hierarchy directly facilitates the commodification of customary territories. In 44% of all agrarian conflicts, corporate plantation concessions override unwritten *ulayat* land rights, illustrating how the lack of formal, state-vetted recognition leaves traditional communities exposed to systematic land-grabbing and institutional violence.

When customary communities attempt to defend their territories, they are confronted with a rigid state legal apparatus that treats their living, historical ties to the land as legally invalid or subordinate to positive-law contracts and state-issued corporate permits.

CONCLUSION

The institutional and socio-legal analysis of customary governance structures in Indonesia—evaluated through the Balinese *Desa Adat*, the Minangkabau *Nagari*, and the Panglima Laot in Aceh—reveals that the constitutional recognition of *hukum adat* remains deeply compromised by a rigid, state-centered legal centralism. While formal statutory frameworks like the 2014 Village Law have provided customary communities with critical leverage to defend their local interests, these mechanisms have simultaneously acted as a double-edged sword of control and empowerment.

Under the dominant positive legal hierarchy, the state's "rules of recognition" consistently co-opt and domesticate living laws, transforming them from fluid, cosmos-restoring normative systems into static, state-legible administrative appendages. This bureaucratic overregulation, combined with neoliberal resource extraction and the conditional recognition under Article 2 of the 2023 Penal Code, has weakened the autonomous dispute-resolution and resource-governance capacities of traditional authorities, leaving their communal territories highly vulnerable to corporate and state-backed exploitation.

To resolve this systemic tension and bridge the gap between "law in books" and "law in action," Indonesia must transition from a model of weak legal pluralism toward a deliberative, dialogical, and restorative legal ecology. The state must recognize that the legitimacy of *hukum adat* does not derive from formal registration or state validation, but from the empirical social practice and collective legal consciousness of local communities.

True decolonization of the Indonesian legal system requires establishing formal legal spaces where state, customary, and religious laws can interact on an equal, dialogical footing, respecting the epistemological validity and institutional autonomy of each system. Rather than forcing *adat* to comply with Javanese-style bureaucratic centralization or rigid civil law codification, national policymakers must design inclusive, context-sensitive legal reforms that allow customary institutions to manage their ancestral lands and resolve local conflicts according to their own cultural philosophies, such as *Tri Hita Karana* in Bali or *Adat Basandi Syarak, Syarak Basandi Kitabullah* in West Sumatra.

This socio-legal synthesis suggests several structural adjustments to reconcile positive state law with the restorative ethos of living law:

First, regional and national governments must simplify and streamline the administrative process for recognizing customary territories. Instead of demanding complex, expensive local regulations (*Perda*)

to prove the continuous existence of indigenous communities, the state should implement a participatory, presumptive model of recognition, where the empirical occupancy and historical practice of customary communities are treated as *prima facie* evidence of land rights, thereby protecting ulayat territories from neoliberal land-grabbing and institutional violence.

Second, the implementation of Article 2 of the 2023 Penal Code must be structurally reformed to safeguard the procedural autonomy of customary dispute-resolution forums. The state should avoid codifying customary offenses into rigid regional regulations, which strips adat of its adaptive flexibility and restorative essence.

Instead, formal judicial officers should be trained to respect, refer, and defer to the restorative rulings of autonomous customary councils (such as the *sangkepan* in Bali, KAN in West Sumatra, and Panglima Lhök in Aceh), intervening only as a last resort in cases of severe constitutional rights violations.

Third, the allocation and administration of national Village Funds (Dana Desa) must be decoupled from rigid, uniform Javanese-style bureaucratic requirements. The state must provide flexible, non-interventive fiscal support that respects the unique, historically rooted governance structures of each region, allowing the *nagari* or the *Desa Adat* to manage public resources according to local consensus-building practices (*musyawarah*) rather than imposing top-down, state-vetted administrative formats.

By implementing these structural adjustments, the Indonesian state can move beyond the legacy of legal centralism and realize a truly responsive, inclusive, and culturally pluralistic legal system. Empowering customary governance structures to operate with genuine autonomy will not lead to national disintegration; rather, it will strengthen social cohesion, preserve ecological balance, and enhance access to justice, aligning the national legal order with the diverse socio-cultural realities of the Indonesian people.

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