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Tension Between Recognition and Administration in the Arrangement of Customary Villages in Maluku

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Abstract

This study aims to analyze the arrangement of customary villages within the Indonesian legal system by examining the tension between the recognition approach and the administrative approach, as well as its implications for legal certainty and the legitimacy of customary law communities, particularly in Maluku. This research employs an empirical legal method with a socio-legal approach, integrating normative analysis of laws and regulations with empirical data obtained through interviews and document studies. The findings indicate that, conceptually, the arrangement of customary villages is based on a recognition approach that is declarative in nature, where the state acknowledges the existence of customary law communities as pre-existing legal subjects. However, in practice, the administrative approach tends to dominate, causing recognition to depend on bureaucratic procedures and formal state determination. This condition leads to a shift from declarative recognition to constitutive recognition, resulting in tensions between state law and the social realities of indigenous communities. Furthermore, empirical findings in Maluku reveal diverse conditions of customary law communities, ranging from those that remain substantively strong to those experiencing fragmentation and stagnation, which cannot be fully accommodated by uniform regulatory frameworks. In conclusion, the arrangement of customary villages in Indonesia still faces both conceptual and practical challenges due to the dominance of administrative approaches that are not fully aligned with the principle of recognition. Therefore, a reconstruction of customary village governance is necessary by positioning recognition as the primary foundation, supported by adaptive and context-sensitive administrative mechanisms based on the social realities of customary law communities. This approach is expected to ensure legal certainty while maintaining the social legitimacy and sustainability of indigenous communities within the national legal system.

Keywords

Customary Villages, Recognition, Administration, Customary Law Communities, Legal Pluralism



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Introduction

The relationship between the state and indigenous communities has long been a central issue in the development of law and governance, particularly in countries characterized by social and legal pluralism such as Indonesia.¹ The existence of diverse socio-cultural systems, along with locally rooted governance structures, presents both opportunities and challenges in designing a legal framework that is capable of accommodating such diversity.² In this context, the question of how the state recognizes, regulates, and interacts with customary law communities becomes a crucial point of inquiry, as it reflects the broader tension between uniform state administration and the plurality of living legal systems in society.³

Recognition of customary law communities (*Masyarakat Hukum Adat*, MHA) is one of the fundamental issues in the development of law and governance in Indonesia. In the constitutional framework, the existence of customary law communities obtains legitimacy through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that the state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. This provision emphasizes that recognition of indigenous peoples is not a gift from the state, but recognition of entities that historically existed before the formation of the modern state.⁴

In the development of laws and regulations, the recognition was then emphasized through Law Number 6 of 2014 concerning Villages which introduced the concept of Customary Village as a form of recognition of the rights of origin of customary law communities.⁵ The law marks a paradigm shift from a centralistic approach to a recognition and subsidiarity approach, where the state no longer plays a key role in shaping the governance structure, but rather recognises the social and legal systems that have lived in indigenous peoples.⁶ Normatively, this framework provides ample space for indigenous peoples to manage governance and resources based on their values, norms, and institutions.⁷

However, in practice, the arrangement of Customary Villages still faces various significant challenges. Many customary law communities that sociologically still exist and have strong social legitimacy, but have not yet received administrative recognition

¹ Dudung Abdullah, "Hubungan Pemerintah Pusat dengan Pemerintah Daerah." *Jurnal Hukum Positum* 1, no. 1 (2016): 83-103.

² Septi Nur Wijayanti, "Hubungan Antara Pusat dan Daerah dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014." *Jurnal Media Hukum* 23, no. 2 (2016): 186-199.

³ Bambang Ariyanto, "Pengelolaan Hubungan Pusat dan Daerah dalam Penanganan Pandemi Covid-19." *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 8, no. 2 (2020): 37-57.

⁴ Aris Adiarto, "Pengakuan dan Perlindungan Masyarakat Hukum Adat Terhadap Perolehan Hak Atas Tanah Adat." *Satya Dharma: Jurnal Ilmu Hukum* 3, no. 1 (2020): 1-15.

⁵ Achmad Hariri, "The Politics of Law Concerning the Tenure of Village Head Reviewed From the Constitutionalism Perspective," *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 5, no. 1 (2020): 33-42.

⁶ Heru Purnomo, "Rekognisi Sebagai Hak Istimewa Desa." *WICARANA* 1, no. 2 (2022): 119-132.

⁷ Muhammad A. Rauf, "Politik Hukum Pembentukan Desa Adat dalam Sistem Pemerintahan di Indonesia." *De Lega Lata: Jurnal Ilmu Hukum* 1, no. 2 (2016): 413-429.

as Customary Villages.⁸ This condition reflects a fundamental tension between the substantive approach to recognition and the administrative approach that tends to be procedural, formalistic, and uniform. State policies often require administrative criteria that are not fully aligned with the social realities of diverse and dynamic customary law communities.⁹ Furthermore, the administrative approach in the arrangement of Customary Villages often ignores the local characteristics of indigenous peoples. Standardization of recognition procedures, such as territorial boundaries, population density, and formal institutional forms, has the potential to marginalize communities that have historically had flexible and culturally based systems of government. This tendency to formalize is contrary to the spirit of recognition carried out within the framework of national law.¹⁰

Various previous studies have shown that the issue of recognition of customary law communities is not only related to normative aspects, but also implementive. Komari emphasized that recognition of indigenous peoples often goes hand in hand with the process of marginalization due to the dominance of the development paradigm.¹¹ Meanwhile, Hariri shows that from the perspective of legal pluralism, the existence of various legal systems in society is not always harmoniously integrated in the state legal system.¹²

In addition, Rato and also Luqman and Shodiqin¹³ emphasized that customary law as a *living law* still faces obstacles in its integration into the national legal system, while Adnyani et al. show that there is ambiguity in the policy of recognizing customary law communities.¹⁴ Vel and Bedner, and Vel, Zakaria, and Bedner also emphasized that the process of recognizing indigenous peoples is often political and depends on the configuration of power at the local level.¹⁵ These findings show that there is a gap between normative recognition and implementation that has not been

⁸ Prisca Maria Mbura Lake, "Strategi Penataan Desa Menjadi Desa Adat (Studi Kasus Desa Nilulat, Kecamatan Bikomi Nilulat)". *Jurnal Riset Ekonomi dan Manajemen* 15, no. 4 (2024): 51-62.

⁹ Lahmuddin Zuhri, Hanuring Ayu, and Roli Febrianto. "Desa Rasa Desa Adat: Peran Nilai Lokal Penyusunan Peraturan Desa di Kabupaten Sumbawa (Studi di "Desa Atas Awan" Desa Tepal)." *Journal of Rural and Development* 12, no. 1 (2024): 31-41.

¹⁰ Anak Agung Gede Agung Indra Prathama, "Desa Adat Sebagai Subyek Hukum dalam Struktur Pemerintahan Provinsi Bali." *Jurnal Yustitia* 16, no. 1 (2022): 62-70.

¹¹ Komari Komari. "Between Recognition and Exclusion: Indigenous Peoples' Rights in Asia's Development Policies." *Asia-Pacific Journal on Religion and Society* 8, no. 2 (2024): 62-74.

¹² Achmad Hariri, and Basuki Babussalam. "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia." *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146-170.

¹³ Dominikus Rato, "Revitalisasi Peradilan Adat Pada Masyarakat Ngada Berbasis Kearifan Lokal." *Yustisia* 4, no. 2 (2015): 335-348. *See also* Amira Luqman, and Muhammad Shodiqin. "Ethnic and Religious Tensions: Legal Mechanisms for Conflict Resolution in Indonesia's Multi-Ethnic Society." *Indonesian Minority Justice Review* 1, no. 3 (2024).

¹⁴ Ni Ketut Sari Adnyani, Gede Marhaendra Wija Atmaja, and I Ketut Sudantra, "Four Conditions for Recognition of Traditional Society in the Constitution" *Journal of Indonesian Legal Studies* 6, no. 2 (2021): 307-332.

¹⁵ Jacqueline Vel, and Adriaan W. Bedner. "Decentralisation and Village Governance in Indonesia: The Return to the *Nagari* and the 2014 Village Law." *The Journal of Legal Pluralism and Unofficial Law* 47, no. 3 (2015): 493-507. *See also* Jacqueline Vel, Yando Zakaria, and Adriaan Bedner. "Law-Making as a Strategy for Change: Indonesia's New Village Law." *Asian Journal of Law and Society* 4.2 (2017): 447-471.

fully explained in the context of the arrangement of Customary Villages. However, previous studies have not specifically examined the tension between the recognition approach and the administrative approach in the context of customary village structuring, especially in areas with strong customary characteristics such as Maluku. Therefore, this study seeks to fill this gap by providing a more contextual analysis of how these tensions occur and affect governance practices at the local level.

Theoretically, this study uses three main approaches. *First*, the concept of the state of law in contemporary developments is not only interpreted as a formal legal certainty, but also as a normative framework that is able to accommodate the diversity of legal systems in society.¹⁶ *Second*, the theory of recognition, particularly the one developed by Axel Honneth, emphasizes that justice is not only concerned with distribution, but also the recognition of a group's identity, rights, and social values.¹⁷ *Third*, the theory of legal pluralism highlights the existence and interaction of various legal systems in one social space, while showing the potential for conflict of norms and overlapping authority if not managed integratively.¹⁸ The integration of these three perspectives provides a comprehensive analytical framework in understanding the complexity of the arrangement of Customary Villages. This research offers a scientific novelty by integrating the perspective of the state of law, recognition theory, and legal pluralism to analyze the tension between recognition and administrative approaches in the arrangement of Customary Villages. In contrast to previous research that tended to examine the issue partially, this study placed it in one integrated analytical framework and applied it to the socio-legal context in Maluku.

Empirically, this problem is evident in Maluku Province, where customary law societies known as “*Negeri*” have existed long before the formation of the modern state. During the New Order period, many *Negeri* experienced transformation into administrative villages which had an impact on changes in the government structure and the weakening of customary institutions. In the reform era, the policy of re-recognition through the Customary Village scheme has not been completely consistent, as it often places recognition as a bureaucratic process that requires certain administrative criteria. This condition raises various problems, such as the fragmentation of customary institutions, leadership dualism between village governments and customary institutions, and social conflicts at the local level.

Based on this description, this study aims to analyze the tension between the recognition approach and the administrative approach in the arrangement of Customary Villages by making Maluku the main locus of the research. This research is directed to examine how the tension between recognition and administrative

¹⁶ Lukman Ansar, Hasmiyati Hasmiyati, and Muhammad Tryas Budi Firamulia. “Pengaruh Pemikiran Brian Z. Tamanaha tentang *Socio Legal Positivism* terhadap Proses Pengambilan Putusan Hakim.” *Jurnal Ar-Risalah* 3, no. 2 (2023): 71-80.

¹⁷ Axel Honneth, “Recognition as Ideology.” In *Recognition and Power: Axel Honneth and the Tradition of Critical Social Theory* (Cambridge, UK: Cambridge University Press, 2007): pp.323-347.

¹⁸ Achmad Hariri, and Basuki Babussalam. “Legal pluralism: Concept, theoretical dialectics, and its existence in Indonesia.” *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146-170.

approaches is manifested in the practice of customary village structuring, as well as to analyze the implications of these tensions on the process of recognition and sustainability of customary law communities.

This study uses a normative-empirical legal research design (socio-legal approach) that integrates doctrinal legal analysis with empirical data to examine law not only as a norm (*law in books*), but also as a social practice (*law in action*). In recent developments, the socio-legal approach is understood as an interdisciplinary method that connects normative analysis with empirical reality to produce a more comprehensive understanding of the law.¹⁹ This research is exploratory with the aim of identifying legal problems, social conditions, and institutional dynamics in the governance of Customary Villages in Maluku. The normative approach is carried out through legislative, conceptual, and analytical approaches by examining various relevant regulations, including Law Number 6 of 2014 concerning Villages, as well as the concept of the state of law, recognition theory, and legal pluralism. Meanwhile, the empirical approach uses qualitative methods to understand the implementation of legal norms in social practice, as used in various contemporary legal studies that emphasize experiential analysis of legal subjects.²⁰

This research was conducted on indigenous communities (*Negeri*) in Maluku Province with the technique of determining informants using purposive sampling, namely the selection of informants based on relevance and knowledge of the research object.²¹ The data used consisted of primary data obtained through in-depth interviews, as well as secondary data sourced from laws and regulations, academic literature, and legal documents. Data collection techniques are carried out through document studies and interviews using source triangulation to ensure the validity of the data, as commonly used in current qualitative research.²² Data analysis was carried out qualitatively-descriptively-analytically through the stages of data reduction, categorization, and inductive conclusion drawing to identify the gap between normative recognition and empirical implementation, especially related to the tension between the recognition approach and the administrative approach in the arrangement of Customary Villages.

Tensions between Recognition and Administration in the Framework of Customary Village Arrangements

The arrangement of Customary Villages in the Indonesian legal system is basically built on two main approaches that intersect, namely the recognition

¹⁹ See Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie, eds. *Routledge Handbook of Socio-Legal Theory and Methods*. (London: Routledge, 2019).

²⁰ See Tody Sasmita Jiwa Utama, "Impediments to Establishing Adat Villages: A Socio-Legal Examination of the Indonesian Village Law." *The Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 17-33.

²¹ Ilker Etikan, Sulaiman Abubakar Musa, and Rukayya Sunusi Alkassim. "Comparison of Convenience Sampling and Purposive Sampling." *American Journal of Theoretical and Applied Statistics* 5, no. 1 (2016): 1-4.

²² Sunardi Purwanda, and Andi Sri Rezky Wulandari. "Socio-Legal Studies: Methodical Implications of Legal Development in Indonesia." *Al-Adl* 16, no. 2 (2023): 152-163.

approach and the administrative approach.²³ The recognition approach places customary law communities as the subject of laws that have existed historically and sociologically, so that the state is obliged to recognize and protect its existence.²⁴ On the contrary, the administrative approach places Customary Villages within the framework of a formal government system that demands the existence of certain procedures, requirements, and bureaucratic mechanisms as a prerequisite for recognition.²⁵

In a normative framework, the two approaches are not actually designed to contradict each other, but rather to complement each other.²⁶ Recognition provides a basis for legitimacy for the existence of customary law communities, while the administrative approach serves as an instrument to integrate these communities into the national government system.²⁷ However, in practice, the relationship between the two approaches does not always run harmoniously. Instead, what happens is the emergence of tension, where the administrative approach is often more dominant than the recognition approach, thus shifting the meaning of recognition itself.²⁸

These tensions become even more complex when faced with the social realities of customary law societies that are dynamic, diverse, and cannot always be simplified within a uniform administrative framework. In this context, the arrangement of Customary Villages is not only an administrative legal issue, but also concerns how the state understands and accommodates the diversity of social and legal systems that live in the community.²⁹ Therefore, to understand these tensions more comprehensively, it is necessary to analyze the normative design of customary village regulation in the national legal system, as well as how the design is implemented in practice, especially in the context of Maluku.

Normative Design of Customary Village Arrangement in the National Legal System

²³ Gregorius Sahdan, "Transformasi Penyelenggaraan Pemerintahan Desa." *GOVERNABILITAS (Jurnal Ilmu Pemerintahan Semesta)* 3, no. 2 (2022): 116-131.

²⁴ Muhammad April, Muammar Alkadafi, and Muh Said. "Hukum Adat dalam Penyelenggaraan Pemerintahan Desa Adat di Kabupaten Siak Provinsi Riau dan Provinsi Bali." *Jurnal Hukum Ius Quia Iustum* 30, no. 2 (2023): 396-419.

²⁵ Retno Kus Setyowati, "Pengakuan Negara Terhadap Masyarakat Hukum Adat." *Binamulia Hukum* 12, no. 1 (2023): 131-142.

²⁶ Muhammad Rifki Amirudin, and Grace Tjandra Leksana, "Perubahan Desa dan Penerapan Kebijakan Orde Baru di Blitar Barat (1969-1983 an)." *Historia Madani* 8, no. 1 (2024): 124-138

²⁷ See Purnomo, "Rekognisi Sebagai Hak Istimewa Desa."

²⁸ Sampean Sampean, Ekawati Sri Wahyuni, and Sofyan Sjaf. "Paradoks Undang-Undang Nomor 6 Tahun 2014 Tentang Desa : Konstruksi dan Transformasi Sosial Komunitas Adat Ammatoa Kajang". *Thesis*. (Bogor: IPB University, 2019). See also Ekawati Sri Wahyuni, and Sofyan Sjaf. "The Paradox of Recognition Principles in Village Law in Ammatoa Kajang Indigenous Community." *Sodality: Jurnal Sosiologi Pedesaan* 7, no. 3 (2019): 195-211; Sampean Sampean, and Sofyan Sjaf. "The Reconstruction of Ethnodevelopment in Indonesia: A New Paradigm of Village Development in the Ammatoa Kajang Indigenous Community, Bulukumba Regency, South Sulawesi." *Masyarakat: Jurnal Sosiologi* 25, no. 2 (2021): 159-192.

²⁹ Mirza Satria Buana, "Living Adat Law, Indigenous Peoples and the State Law: A Complex Map of Legal Pluralism in Indonesia." *International Journal of Indonesian Studies* 1, no. 3 (2016): 104-119.

Normatively, the arrangement of Customary Villages in the Indonesian legal system is built in a tiered and integrated regulatory framework, consisting of Laws, Government Regulations, and Ministerial Regulations as operational instruments.³⁰ To clarify the relationship between these levels of regulation, the regulatory framework for the arrangement of Customary Villages in the national legal system can be described as follows:

TABEL 1. Structuring of Customary Villages

Stages	Legal Basis	Main Process	Notes
1	Law No. 6 of 2014 (Articles 96–111)	1. Recognition of the community Customary law 2. Rights of origin 3. Criteria (Article 97)	Becoming the normative basis for the recognition of customary law communities
2	Government Regulation No. 43 of 2014 jo. Government Regulation No. 47 of 2015 (Articles 30–31)	1. Identification 2. Assessment of Customary Villages 3. Involvement of customary institutions	The initial stage of verifying the existence of indigenous peoples
3	Domestic Seal Regulation No. 1 of 2017 (Articles 28–62)	1. Village inventory 2. Village deliberations 3. Administrative verification	Administrative process for the determination of Customary Villages
4	Regional Regulations	1. Determination of Customary Villages 2. DPRD Approval 3. Registration by the Governor	Formal legitimacy at the regional level
5	Traditional Village	1. Integration in the national system 2. Local self-government 3. Formal recognition	The final result is in the form of recognition of Customary Villages in the national legal system

Source: Processed by the author based on Law No. 6 of 2014, Government Regulation No. 43 of 2014 as amended by Government Regulation No. 47 of 2015, and Minister of Home Affairs Regulation No. 1 of 2017.

Law Number 6 of 2014 concerning Villages is the main foundation that places Customary Villages as a form of state recognition of the unity of customary law communities that have the right of origin.³¹ This is explicitly reflected in Article 1 number 1 and number 6 which distinguish between Village and Customary Village, as well as in Article 6 which affirms that village consists of Village and Customary Village as two entities that have an equal position in the village government system.

³⁰ Eduardo Erlangga Drestanta, “Customary Village (*Desa Adat*) and Inter-ethnic Fragmentations in Seram Island, Maluku.” *Archipel. Études Interdisciplinaires Sur le Monde Insulindien* 105 (2023): 91-113.

³¹ See Rauf, “Politik Hukum Pembentukan Desa Adat dalam Sistem Pemerintahan di Indonesia.”

Furthermore, in Articles 96 to 111, the Village Law provides a clear normative construction regarding the recognition and determination of Customary Villages. Article 96 emphasizes that the government, provincial governments, and district/city governments organize customary law community units to be designated as Customary Villages. Meanwhile, Article 97 formulates the criteria that must be met, namely: (a) the customary law community is still alive, (b) in accordance with the development of the community, and (c) it does not contradict the principles of the Unitary State of the Republic of Indonesia. This provision shows that the recognition of Customary Villages normatively departs from the empirical existence of customary law communities as *living law*, not from administrative construction alone.

This normative construction is then further described in Government Regulation Number 43 of 2014 as amended by Government Regulation Number 47 of 2015. In Article 30 paragraph (1), it is emphasized that the determination of Customary Villages is carried out through the stages of identifying existing villages and assessing villages that can be designated as Customary Villages. Article 30 paragraph (2) adds that the process is carried out by local governments by involving customary institutions or the like, which shows that the recognition approach is still maintained through the involvement of indigenous actors in the verification process.

Furthermore, Article 31 regulates the stages of determining Customary Villages administratively, starting from the determination by the regent/mayor, then outlined in the draft Regional Regulation, which must then obtain a registration number from the governor and the village code from the central government before being definitively determined. This series of stages shows that even though the recognition departs from the existence of customary law communities, the determination process is still placed in a layered and integrated administrative framework in the national government system.

However, a more significant paradigm shift can be seen at the level of technical regulation through the Regulation of the Minister of Home Affairs Number 1 of 2017 concerning Village Planning. In Articles 28 and 29, the arrangement of Customary Villages is constructed as part of village arrangement in general, where the local government conducts an inventory of villages that already have a village code as the basis for determination. Furthermore, Article 61 emphasizes that the change of village status to a Customary Village is carried out on the initiative of the village government through village deliberations, which are then submitted to the regent/mayor.

This provision shows a change in the starting point in the arrangement of Customary Villages, from what was originally based on the unity of customary law communities as stipulated in the Village Law, to based on administrative villages that already exist in the government system.³² In other words, the customary law community is no longer the initial subject in the recognition process, but rather an object that must adjust to the administrative structure of the village.

³² Bambang Adhi Pamungkas, "Pelaksanaan Otonomi Desa Pasca Undang-Undang Nomor 6 Tahun 2014 Tentang Desa," *Jurnal USM Law Review* 2, no. 2 (2019): 210-229.

Thus, when viewed systematically, the framework for the arrangement of customary villages shows a normative flow as follows: first, at the level of the Law, the arrangement of customary villages is based on the approach of recognition of the unity of customary law communities as a subject of law that has existed historically and sociologically; second, at the level of Government Regulations, the approach began to be integrated into the administrative mechanism through the stages of identification, study, and determination involving local governments; and third, at the Ministerial Regulation level, the arrangement of Customary Villages has undergone a transformation into an administrative process of changing the status of the village that places the village as the starting point, not the customary law community.

This tiered construction shows that conceptually there is a single regulatory system, but there is a substantial paradigm shift from recognition to administration. This shift is not only technical, but also has an impact on the meaning of recognition itself, where recognition of customary law communities, which was originally substantive and based on social reality, transforms into administrative recognition that is procedural and technocratic. As a result, in the practice of customary village arrangement, customary law communities are no longer fully positioned as recognized subjects, but rather as entities that must meet the administrative requirements determined by the state.

Discrepancy in the Implementation of Customary Village Arrangement in the Context of Maluku

When compared to the normative construction described earlier, the results of the study in Maluku show that there is a significant discrepancy between the design of the arrangement and the practice of its implementation. Normatively, Law Number 6 of 2014 concerning Villages emphasizes that the arrangement of Customary Villages must depart from the existence of a unitary customary law community that is "still alive" and has a social, institutional, and legal norm system that functions in society.³³ This formulation conceptually reflects a declarative approach, which is a form of legal recognition that does not create a new status, but rather affirms an empirically existing existence in social reality. In this framework, the state functions as a *recognizing authority*, not as a *constituting authority*.

However, in practice in Maluku, the process of structuring Customary Villages actually shows a different tendency. The approach used emphasizes more on the fulfillment of administrative procedures as a prerequisite for recognition, so that the existence of Customary Villages becomes dependent on determination actions by the state. This pattern reflects the constitutive approach, which is a legal action that creates a new legal status through an administrative decision. Thus, the existence of Customary Villages is no longer solely determined by their existence in social reality, but by formal recognition of the state that is administrative.

³³ Michaela Budiman, *Contemporary Funeral Rituals of Sa'dan Toraja: From Aluk Todolo to "New" Religions*. (Prague: Karolinum Press, 2013).

This shift from a declarative to a constitutive approach is the key to understanding the discrepancy between norms and practices in the arrangement of Customary Villages. At the normative level, recognition of customary law communities departs from the principle of recognition of *existing* living laws.³⁴ However, at the implementation level, the recognition is reduced to an administrative process that places the state as the determinant of existence. As a result, a recognition that should be substantive turns into an administrative formality.

This condition is reflected in the practice of structuring Customary Villages in various regions in Maluku. In West Seram Regency, for example, the structuring process is carried out through an administrative mechanism in the form of filling out questionnaires and preparing a collective Regent Decree. However, the existence of the document cannot be clearly verified at the community level, even some Negeri that they have never received or known about the determination. This shows that the recognition process is not based on empirical verification of the existence of customary law communities as mandated in Article 97 of the Village Law, but rather on the fulfillment of administrative formalities. In the constitutive framework, this condition places administrative documents as the main source of legality, while social realities become less taken into account.

If reviewed from the provisions of Government Regulation Number 43 of 2014 jo. Government Regulation Number 47 of 2015, especially Article 30 and Article 31, the determination of Customary Villages should be carried out through the stages of identification and study involving customary institutions. This mechanism is essentially meant to ensure that recognition remains rooted in the empirical conditions of society. However, findings on the ground show that the involvement of indigenous peoples in the process is still very limited, so that a mechanism that should be participatory has turned into a top-down administrative procedure. In this context, the approach used no longer strengthens recognition, but rather emphasizes the dominance of the state in determining the existence of customary law communities.

Furthermore, the implementation in Central Maluku shows that the problem of structuring Customary Villages is not only administrative, but also related to the social complexity of customary law communities. Conflicts related to the legitimacy of *the parenthetical house*, customary boundaries, and claims between communities show that the "still alive" criterion cannot be applied mechanically. In a declarative approach, such conditions should not be a reason to delay recognition, since the existence of customary law societies does not depend on the perfection of their social structure. However, in practices that tend to be constitutive, the conflict is actually used as a basis for postponing the establishment of Customary Villages, so that recognition becomes dependent on the fulfillment of ideal administrative conditions.

Meanwhile, in Ambon City, although there has been recognition of the State through regional regulations, the process of determining Customary Villages has not

³⁴ Mohammad Jamin, and Sahid Teguh Widodo. "Reformulation of a Legal Policy Affirming Recognition of Indigenous Community Units." *International Journal of Innovation, Creativity and Change* 11, no. 8 (2020).

been fully integrated in the national administrative system, especially related to the village code. This condition shows the dualism between declarative recognition at the regional level and administrative recognition at the national level. In other words, a community can be recognized socially and even by local law, but it has not yet gained full legitimacy in the national legal system because it has not met the constitutive administrative aspects.

When associated with the Regulation of the Minister of Home Affairs Number 1 of 2017, these empirical findings further clarify the dominance of the constitutive approach in the arrangement of Customary Villages. The arrangement that should depart from the unity of customary law communities actually starts from the existing administrative village, so that indigenous peoples are positioned as objects of the process of changing the status of the village. This shows that the approach used is no longer based on recognition of existing legal subjects, but on adjustments to the administrative structure of the state.

From the perspective of legal pluralism, this condition reflects the dominance of state law that tends to subordinate customary law to a uniform administrative framework. In fact, customary law as *living law* has social legitimacy that cannot be completely reduced to state law.³⁵ When the administrative constitutive approach is used as the only mechanism of recognition, there is a structural tension between state law and customary law that is difficult to resolve. Thus, it can be concluded that the discrepancy between the normative design and the implementation of the arrangement of Customary Villages in Maluku is rooted in a paradigm shift from a declarative approach to a constitutive approach. At the normative level, recognition of customary law communities is declarative, which affirms the existence of existing legal subjects. However, at the implementation level, the recognition shifts to constitutive, which makes the state the party that shapes and determines the existence of customary law communities through administrative mechanisms.

This condition ultimately strengthens the argument that the arrangement of Customary Villages in Maluku has not been fully able to bridge the gap between the self-governing *community* and *local self-government*. Instead of being an instrument of recognition that strengthens the existence of customary law communities, the existing mechanism has the potential to shift the meaning of recognition itself, from recognition of social reality to formation through administrative procedures. In this context, the state no longer functions as a confessor, but rather as a former, which is conceptually contrary to the basic principle of recognition in customary law societies.

The Failure of a Uniform Approach in the Context of Legal Pluralism

The findings of the study show that the *uniform approach* in the arrangement of customary villages is not able to accommodate the diversity of conditions of customary law communities. Conceptually, the uniform approach departs from the assumption that all village entities, including Customary Villages, can be governed through the

³⁵ Hengki Andora, "Desa sebagai unit pemerintahan terendah di Kota Pariaman." *Jurnal Ilmu Hukum* 2, no. 2 (2013): 146-163.

same administrative mechanism. This approach places uniformity as a key principle in governance, with the aim of creating legal certainty and administrative efficiency.³⁶ However, in the context of customary law societies, this assumption becomes problematic, because it ignores the basic character of indigenous peoples which are plural, contextual, and rooted in the social dynamics that are distinctive in each region.

From the perspective of legal pluralism, customary law societies cannot be understood as static and uniform entities, but as a living social system that develops according to the historical, cultural, and ecological context of each community. Therefore, the application of a uniform approach in the arrangement of Customary Villages has the potential to reduce this complexity to a rigid administrative framework, so that it is unable to capture the true social reality. In the Indonesian context, the diversity of customary law communities has long been recognized as part of the social structure inherent in the life of the nation and state. However, in policy practice, such diversity is often confronted with the logic of administrative standardization that demands conformity to the categories and procedures established by the state.³⁷ The tension between social plurality and administrative uniformity is one of the main problems in the arrangement of Customary Villages.

This phenomenon becomes even more real when viewed in the context of Maluku Province. As a region with strong historical roots and customary-based social structures, customary law communities in Maluku show very diverse characteristics, both in terms of institutions, leadership systems, and social dynamics that develop in it. On the one hand, there are communities that are still alive intact with an effectively functioning customary institutional system; on the other hand, there are communities that experience internal conflicts related to leadership legitimacy and territorial boundaries; There are even communities that have experienced degradation due to past policies that integrate them into the structure of administrative villages. This condition shows that the existence of customary law communities in Maluku cannot be understood singularly, but must be seen as a dynamic spectrum, influenced by historical, political, and state policy factors. This diversity also shows that a uniform structuring approach is inadequate to answer the complexity of existing social realities. In many cases, the application of the same administrative model ignores local peculiarities and deepens the tension between the country's legal norms and the social practices of indigenous peoples.

The diversity of these conditions shows that customary law communities in Maluku cannot be positioned as homogeneous entities, but rather as complex, dynamic, and layered social realities. Therefore, a uniform policy approach is not only inadequate, but also has the potential to produce inaccuracies in the process of structuring Customary Villages. In this context, understanding the variation in the

³⁶ Nadya Dwi Cahyani, and Indri Fogar Susilowati. "Kajian Yuridis Pengakuan Masyarakat Hukum Adat di Wilayah IKN dalam Upaya Memberikan Perlindungan Hak atas Tanah Masyarakat Hukum Adat." *Novum* 4, no. 1 (2023): 37-50.

³⁷ Yance Arizona, Muki Trenggono Wicaksono, and Jacqueline Vel. "The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia." *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 487-506.

conditions of customary law communities is important as a basis for formulating policies that are more contextual and responsive. To clarify the variation in these conditions, the mapping of customary law communities in Maluku can be seen in the following table:

TABLE 2. Mapping of Customary Law Communities in Maluku Province

Region	Condition & Form	Key Issue	Status/Typology
Ambon City	Negeri – still exists	Revitalization needed before formal recognition	Not finalized – Existing (Stuck)
West Seram	Negeri/Dusun – fragmented	Identity contestation due to migration and overlapping claims	Unclear – Contentious
Central Maluku	Negeri – substantively strong	Internal customary conflicts delay formalization	Delayed – Existing (Pending)
North Seram	Dusun (ex-Negeri) – historical	Institutional weakening due to New Order policies	Stalled – Disrupted

Source: Empirical Data Observations in the West Seram Regency, Central Maluku Regency and Ambon City, compiled and analyzed by Authors

Based on the Table 2, it can be seen that customary law communities in Maluku are in a diverse spectrum of conditions, which not only shows variations in the level of existence, but also shows the complexity of the social, historical, and institutional relations that surround them. This spectrum reflects the existence of social and legal plurality that cannot be reduced to a single category, thus demanding an analytical approach that is able to capture these dynamics more comprehensively. In the perspective of legal pluralism, as stated by Tamanaha, law cannot be understood as a single monolithic system, but as a configuration of various systems of norms that live, interact, and influence each other in a certain social space. Thus, the existence of customary law societies cannot be separated from the context of the plurality of legal systems inherent in people's lives.

The implication of this view is that uniform policies are not only inadequate, but conceptually contrary to the reality of legal pluralism itself. A uniform approach presupposes the homogeneity of social and legal conditions, when in reality customary law communities are in very contextual and different conditions. Therefore, the application of a uniform approach in the arrangement of Customary Villages has the potential to result in simplification of complex social realities, so that the resulting policies lose relevance to the empirical conditions of the community.

However, the administrative approach used in the arrangement of Customary Villages tends to adopt a standardization logic rooted in the modern bureaucratic paradigm, which emphasizes uniformity of procedures, formal certainty, and administrative control. From a governance theory perspective, this approach is often ineffective in the context of societies with high social diversity, as it is unable to

accommodate specific and contextual local needs. Furthermore, overly procedural approaches tend to shift the focus of policy from the substance of recognition to the fulfillment of administrative requirements, so that the structuring process becomes technocratic and less sensitive to social realities.

In the context of customary law communities, the consequence of this approach is the marginalization of customary law as *living law*. Griffiths asserts that the laws that live in society have a different basis of legitimacy than state law, because they are sourced from social practices recognized and practiced by the community itself.³⁸ Therefore, attempts to subordinate customary law to the legal framework of the state through a uniform administrative mechanism are not only ineffective, but also have the potential to eliminate the essence of customary law itself. In this situation, customary law is no longer seen as an autonomous legal system, but rather as an object that must be adjusted to the standards of state law.

Furthermore, from the perspective of recognition theory, this condition indicates a failure to realize substantive recognition. Recognition of customary law communities should not stop at the formal aspect, but must be able to provide space for the sustainability of the social and legal system that lives in the community. However, when such recognition is limited by rigid administrative mechanisms, what happens is what scholars call administrative *misrecognition*, which is a condition in which formal recognition is given, but is substantively ineffective in ensuring the existence and function of customary law communities³⁹

In the context of Maluku, this phenomenon can be seen clearly from the number of Negeri that sociologically meet the criteria as customary law communities, but cannot be designated as Customary Villages because they are hampered by uniform administrative requirements. This condition shows that the state, through its administrative approach, indirectly limits the recognition of indigenous peoples by setting standards that are not always relevant to social realities. As a result, customary law communities that should be the subject of recognition are instead placed as objects of the administrative process.

Thus, it can be emphasized that the failure of the arrangement of Customary Villages is not solely caused by weaknesses in policy implementation, but is more fundamental to the inaccuracy of the paradigm used in designing the policy. The uniform approach adopted in the arrangement of Customary Villages is not in line with the principles of legal pluralism, recognition theory, and adaptive governance approaches. On the contrary, this approach actually strengthens the dominance of state law over customary law, as well as deepens tensions between the two in practice.

³⁸ Hanif Nurcholis, "Pemerintahan Desa: Unit Pemerintahan Palsu Dalam Sistem Administrasi Negara Republik Indonesia." *Jurnal Politica* 5, no. 1 (2014): 1-19.

³⁹ Jiwa Utama, "Impediments to Establishing Adat Villages: A Socio-Legal Examination of the Indonesian Village Law."

Re-Knitting the Arrangement of Customary Villages in the Perspective of Recognition and Administration

The governance of diversity has become a central concern in contemporary state administration, particularly in societies characterized by complex socio-cultural structures such as Indonesia.⁴⁰ The presence of indigenous communities with their own systems of norms, institutions, and territorial arrangements presents a unique challenge for the state in designing policies that are both inclusive and effective.⁴¹ These communities are not merely objects of regulation, but represent living legal traditions that continue to shape social order and governance practices at the local level.⁴²

At the same time, the evolution of modern state systems has been closely associated with the need for administrative order, standardization, and legal certainty.⁴³ This often results in the development of uniform governance frameworks aimed at ensuring efficiency and control across diverse regions.⁴⁴ However, such uniformity tends to overlook the diversity of local realities, particularly in regions where customary law communities maintain strong socio-cultural and institutional identities.⁴⁵ As a consequence, tensions frequently arise between the logic of administrative standardization and the need to accommodate locally embedded governance systems.⁴⁶

In Indonesia, this tension is further shaped by historical shifts in governance paradigms, ranging from centralized administrative control to more decentralized and recognition-based approaches in the post-reform era.⁴⁷ While decentralization has opened space for the acknowledgment of indigenous communities, the mechanisms used to formalize such recognition often remain rooted in bureaucratic procedures.⁴⁸

⁴⁰ Reimar Schefold, "The domestication of culture: Nation-building and ethnic diversity in Indonesia." *Bijdragen tot de taal-, land-en volkenkunde* 154, no. 2 (1998): 259-280. See also Ridwan Arifin, Siti Hafsyah Idris, Tajudeen Sani, and Ngaboawaji Daniel Nte. "Aceh Under Syari'ah: Faith, Law, and Society". *Indonesia Discourse* 1, no. 1 (2024): 1-36; Fatima Zahra Hassan, Mariam Salma Fathy, and Emma de Boer. "Religious Justice and Indigenous Rights: A Theological Exploration of Indigenous Struggles in Indonesia." *Indonesian Theological Justice Review* 1, no. 3 (2024).

⁴¹ Tania Murray Li, "Articulating Indigenous Identity in Indonesia: Resource Politics and the Tribal Slot." *Comparative Studies in Society and History* 42, no. 1 (2000): 149-179. See also Chip Fay, et al. "Emerging Options for the Recognition and Protection of Indigenous Community Rights in Indonesia." In *Land and Development in Indonesia: Searching for the People's Sovereignty* (Singapore: ISEAS Yusof Ishak Institute, 2016), pp.91-112.

⁴² Lilis Mulyani, *Traditional Communities in Indonesia: Law, Identity, and Recognition*. (Oxfordshire, UK: Taylor & Francis, 2022).

⁴³ See Stein Kristiansen, and Linda Sulistiawati. "Traditions, Land Rights, and Local Welfare Creation: Studies from Eastern Indonesia." *Bulletin of Indonesian Economic Studies* 52, no. 2 (2016): 209-227.

⁴⁴ Muhammad Sujahri, Andi Gau Kadir, and Nurlinah Nurlinah. "Analisis Hubungan Pemerintah Pusat dan Daerah: Studi Kasus Perimbangan Keuangan Kota Makassar." *Government: Jurnal Ilmu Pemerintahan* 3, no. 1 (2010): 37-42.

⁴⁵ See Wijayanti, "Hubungan Antara Pusat dan Daerah dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014."

⁴⁶ Wijayanti.

⁴⁷ See Purwanda, and Wulandari. "Socio-Legal Studies: Methodical Implications of Legal Development in Indonesia."

⁴⁸ See Abdullah, "Hubungan Pemerintah Pusat dengan Pemerintah Daerah."

This creates a paradox in which recognition is formally granted, yet substantively constrained by rigid administrative requirements that do not fully reflect the lived realities of customary law communities.⁴⁹

These dynamics highlight the need for a more balanced and context-sensitive approach in managing the relationship between the state and customary law communities.⁵⁰ It is within this broader context that the issue of structuring Customary Villages becomes particularly significant, as it represents a concrete arena where the interaction between recognition and administrative approaches is negotiated and contested.⁵¹ Re-knitting the arrangement of Customary Villages is a conceptual necessity that cannot be avoided in the context of the dynamics of relations between the state and customary law communities in Indonesia.⁵² This need arises in response to the ongoing tension between the recognition and administrative approaches, as well as the failure of a uniform approach to accommodate a plurality of customary law communities with different social, cultural, and historical characteristics.⁵³ This condition shows that the problems in the arrangement of Customary Villages are not only technical-implementive, but also touch on the epistemological aspect, namely how the concept of recognition itself is understood and operationalized in the national legal system⁵⁴

Normatively, the arrangement of Customary Villages is built on the basis of recognition of customary law communities as historical and sociological legal subjects (*self-governing communities*), which are then integrated into the framework of the village government system (*local self-government*). In this framework, recognition is declarative, that is, the state does not create a customary law society, but only affirms the existence that has lived and developed in social reality. This conception is in line with the development of contemporary legal pluralism theory which views law as the result of the interaction of various norm systems living in society, not solely as a product of the state.⁵⁵

However, empirical reality shows a different tendency. The results of the study in Maluku show that in the practice of structuring Customary Villages, the administrative approach is actually more dominant than the recognition approach. The structuring process often begins with the existing administrative village structure,

⁴⁹ Richard Timotius, "Revitalisasi Desa dalam Konstelasi Desentralisasi Menurut Undang-Undang Nomor 6 Tahun 2014 tentang Desa." *Jurnal Hukum & Pembangunan* 48, no. 2 (2018): 323-344.

⁵⁰ See Jiwa Utama, "Impediments to Establishing Adat Villages: A Socio-Legal Examination of the Indonesian Village Law."

⁵¹ See Rauf, "Politik Hukum Pembentukan Desa Adat dalam Sistem Pemerintahan di Indonesia."

⁵² Syahriza Alkohir Anggoro, and Tunggul Anshari Setia Negara. "The Struggle for Recognition: Adat Law Trajectories under Indonesian Politics of Legal Unification." *International Journal on Minority and Group Rights* 29, no. 1 (2021): 33-62.

⁵³ See Muhammad Bintang Pratama, Muhammad Adib Afiq, and Savira Auril. "The Philosophical Dilemma of the Implementation of Justice Theory: Problems in Utilizing Land Rights between the Amungme Indigenous Tribe and PT Freeport Indonesia." *UIR Law Review* 4, no. 2 (2020): 23-39.

⁵⁴ Emmanuel Dalle Mulle, and Mona Bieling. "Autonomy Over Independence: Self-Determination in Catalonia, Flanders and South Tyrol in the Aftermath of the Great War." *European History Quarterly* 53, no. 4 (2023): 641-663.

⁵⁵ Lia Sartika Putri, "Village Authority and the Issuance of Village Regulation." *Jurnal Legislasi Indonesia* 13, no. 2 (2016): 161-176.

then followed by efforts to adjust the elements of customary law communities. This pattern reflects a paradigm shift from a declarative approach to a constitutive approach, where the recognition of Indigenous Villages becomes dependent on formal state action through administrative and procedural mechanisms.⁵⁶

This shift has significant implications for the change in the meaning of confession itself. In the declarative approach, the state functions as the party that recognizes the existence of customary law communities, while in the constitutive approach, the state actually plays the role of the party that determines and shapes the existence. In recent studies on indigenous peoples' rights, this condition is often understood as a form of *paradox of recognition*, where the state formally provides recognition, but substantively still restricts it through rigid administrative instruments⁵⁷

In the context of Maluku, this phenomenon can be seen from various customary village arrangement practices that focus more on fulfilling administrative requirements than substantive verification of the existence of customary law communities. This emphasis on administrative aspects often ignores the social realities, customary institutional structures, and local values that live in the community. These findings are in line with various recent studies that show that administrative recognition that is not based on social reality has the potential to cause injustice, ineffectiveness, and even delegitimization of the customary law community itself.⁵⁸

The empirical findings were strengthened through interviews with traditional leaders in various Negeri in Maluku, including Negeri Hutumuri and Negeri Rutong in Ambon City, Negeri Nuanea, Negeri Masiulan, Rumah Olat traditional leaders in Central Maluku, as well as Eti, Negeri Kaibobu, and Negeri Morekau. These indigenous leaders basically have the same hope, namely that the state provides clear and responsive legitimacy to the existence of their customary law communities. For them, recognition is not enough to be normative, but must be realized in the form of concrete legitimacy that is able to answer real needs at the local level.

Furthermore, the results of the interviews show that the unclear status and slow process of administrative recognition have caused various real problems. Among them are the emergence of mutual suspicion, unilateral claims to territory and resources, and potential conflicts between customary law communities and governments and investors. In fact, in some cases, these conditions also trigger horizontal conflicts

⁵⁶ Andy Omara, "Does the Current Regional Autonomy Support Legal Pluralism in Indonesia?," *Jurnal Mimbar Hukum* 23, no. 2 (2011): 420-429.

⁵⁷ Zainurohmah Zainurohmah, Salim Noer Mahmudi, and Jihan Alfarisi. "Ensuring Legal Certainty for Customary Law Communities in Indonesia: Analyzing the Ratification Process of the Customary Law Communities Bill." *Contemporary Issues on Interfaith Law and Society* 3, no. 1 (2024): 177-202.

⁵⁸ Muhammad Rezani, Ferdinan Salim, and Fijaini Fijaini. "Pergeseran Legitimasi Balian dalam Local Indigenous Governance di Desa Hinas Kanan." *Jurnal Administrasi Publik dan Pembangunan* 2, no. 1 (2021): 21-35; Betha Rahmasari, Ariza Umami, and Tirta Gautama. "Pengaruh Hukum Adat dalam Pengaturan Pemerintahan Desa: Perspektif Normatif." *Muhammadiyah Law Review* 7, no. 2 (2023): 60-77. See also Bagus Edi Prayogo, et al. "Increasing Legal Capacity for Communities in the Context of Realizing a Village of Law Awareness and Child Friendly." *Indonesian Journal of Advocacy and Legal Services* 1, no. 1 (2019): 65-78.

between the communities of the country itself. This shows that the issue of recognition not only has an impact on the formal legal aspect, but also has direct implications for social stability and relationships between communities.

In the perspective of recognition theory, this condition reflects the failure of institutional recognition, where the state has not been fully able to provide recognition that guarantees the dignity and sustainability of the collective identity of indigenous peoples.⁵⁹ Recognition that should be substantive is instead reduced to an administrative procedure that is insensitive to the local social and cultural context. Meanwhile, in the framework of legal pluralism, this phenomenon shows that a dialogical relationship between state law and customary law has not been established, so that the two tend to be in an unbalanced position.

Furthermore, in the perspective of contemporary legal pluralism, the interaction between state law and customary law should not be placed in a subordinate relationship, but rather in a dialogical and interactive relationship.⁶⁰ This approach emphasizes the importance of recognizing the diversity of legal systems that live in society, as well as the need for mechanisms that are able to bridge these interactions in an adaptive and contextual manner. Therefore, various cutting-edge studies encourage the existence of an institutional design that is not only based on administrative standardization, but also pays attention to the social dynamics and local values of indigenous peoples.⁶¹

Thus, the dominance of the administrative approach in the arrangement of Customary Villages in Maluku not only reflects the problem of policy implementation, but also shows the limitations in operationalizing the concept of legal pluralism within the framework of public policy. The state still tends to maintain a bureaucratic logic that emphasizes uniformity, while customary law societies require an approach based on specific social, historical, and cultural contexts. In this framework, the rearrangement of *Customary Villages* is not intended to replace the basic concept of recognition of indigenous law communities, but rather to re-establish a proportional relationship between recognition and administration. The administrative approach is still needed as an instrument in the modern system of government, but it must be placed as a means of supporting the recognition process, not as the main determinant of the existence of customary law communities.

Thus, the arrangement of Customary Villages is ideally understood as a declarative recognition process, which is then strengthened by adaptive and contextual administrative mechanisms. This kind of approach will not only provide legal

⁵⁹ See Honneth, "Recognition as Ideology." In *Recognition and Power: Axel Honneth and the Tradition of Critical Social Theory*

⁶⁰ Suci Flambonita, "The Concept of Legal Pluralism in Indonesia in the New Social Movement." *Jurnal Analisa Sosiologi* 10, no. 3 (2021): 361-373.

⁶¹ See David Fernandes Martin, *Rethinking the design of Indigenous organisations: the need for strategic engagement*. (Canberra, ACT: Centre for Aboriginal Economic Policy Research (CAEPR), The Australian National University, 2003). See also Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy." *American Journal of International Law* 92, no. 3 (1998): 414-457.

certainty, but also be able to maintain social legitimacy and the sustainability of the existence of customary law communities in the Indonesian national legal system.

Conclusion

The arrangement of Customary Villages in the Indonesian legal system shows that there is a tension that has not been fully resolved between the recognition approach and the administrative approach. Conceptually, the recognition approach places customary law communities as subjects of existing law and must be recognized and protected by the state. In practice, however, such recognition is often limited by administrative mechanisms that require formal procedures and determinations from the state. This condition shows that the problem of structuring Customary Villages is not only related to technical aspects, but also concerns the way the state understands and operationalizes the meaning of recognition in the national legal system. In the context of Maluku, this tension is increasingly visible when it is associated with the empirical condition of customary law communities. Field data shows that there are variations in the conditions of the existence of customary law communities in various regions, ranging from those that are still alive and substantively strong, to those that have experienced fragmentation, even stagnation due to historical and administrative factors. In Ambon City, for example, customary law communities still exist but the arrangement has not been fully determined, so it is in an "existing but stuck" condition. Meanwhile, in West Seram, there is a fragmentation of identity and population mobility that has given rise to contestation, so that the status of the arrangement becomes unclear. In Central Maluku, the substantive strength of indigenous peoples is still maintained, but the restructuring process has been delayed due to internal conflicts. As for North Seram, Central Maluku Regency, historical factors and past policies also affect the disruption of the existence of indigenous peoples, so that the arrangement experiences more complex obstacles.

The findings show that the social realities of customary law communities are very diverse and cannot be standardized in a single regulatory model. However, the regulations governing the arrangement of Customary Villages still tend to use a uniform approach and depart from the same administrative concept. This uniform approach causes a discrepancy between legal norms and factual conditions in the field, so that recognition that should be declarative shifts to constitutive and depends on state bureaucratic mechanisms. The dominance of the administrative approach ultimately reveals a paradox in the practice of recognition, where the state formally recognizes the existence of customary law communities, but substantively restricts them through rigid and non-adaptive regulatory instruments. This shows that the arrangement of Customary Villages has not been fully able to integrate state law with the social reality of plural customary law communities. Thus, the arrangement of Customary Villages needs to be directed at efforts to re-establish a balanced relationship between recognition and administration based on empirical data of customary law communities. An administrative approach is still necessary, but it must be structured flexibly, contextually, and no longer uniformity-oriented. Through an

approach that integrates declarative recognition with adaptive regulations, the arrangement of Customary Villages is expected to be able to provide legal certainty while maintaining the social legitimacy and sustainability of customary law communities in the Indonesian legal system.

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References

- Abdullah, Dudung. "Hubungan Pemerintah Pusat dengan Pemerintah Daerah." *Jurnal Hukum Positum* 1, no. 1 (2016): 83-103.
- Adianto, Aris. "Pengakuan dan Perlindungan Masyarakat Hukum Adat Terhadap Perolehan Hak Atas Tanah Adat." *Satya Dharma: Jurnal Ilmu Hukum* 3, no. 1 (2020): 1-15.
- Adnyani, Ni Ketut Sari, Gede Marhaendra Wija Atmaja, and I Ketut Sudantra, "Four Conditions for Recognition of Traditional Society in the Constitution" *Journal of Indonesian Legal Studies* 6, no. 2 (2021): 307-332.
- Amirudin, Muhammad Rifki, and Grace Tjandra Leksana, "Perubahan Desa Dan Penerapan Kebijakan Orde Baru di Blitar Barat (1969-1983 an)." *Historia Madani* 8, no. 1 (2024): 124-138
- Andora, Hengki. "Desa Sebagai Unit Pemerintahan Terendah di Kota Pariaman." *Jurnal Ilmu Hukum* 2, no. 2 (2013): 146-163.
- Anggoro, Syahriza Alkohir, and Tunggul Anshari Setia Negara. "The Struggle for Recognition: Adat Law Trajectories under Indonesian Politics of Legal

- Unification.” *International Journal on Minority and Group Rights* 29, no. 1 (2021): 33-62.
- Ansar, Lukman, Hasmiyati Hasmiyati, and Muhammad Tryas Budi Firamulia. “Pengaruh Pemikiran Brian Z. Tamanaha tentang *Socio Legal Positivism* terhadap Proses Pengambilan Putusan Hakim.” *Jurnal Ar-Risalah* 3, no. 2 (2023): 71-80.
- April, Muhammad, Muammar Alkadafi, and Muh Said. “Hukum Adat dalam Penyelenggaraan Pemerintahan Desa Adat di Kabupaten Siak Provinsi Riau dan Provinsi Bali.” *Jurnal Hukum Ius Quia Iustum* 30, no. 2 (2023): 396-419.
- Arifin, Ridwan, Siti Hafsyah Idris, Tajudeen Sani, and Ngaboawaji Daniel Nte. “Aceh Under Syari’ah: Faith, Law, and Society”. *Indonesia Discourse* 1, no. 1 (2024): 1-36.
- Ariyanto, Bambang. “Pengelolaan Hubungan Pusat dan Daerah dalam Penanganan Pandemi Covid-19.” *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 8, no. 2 (2020): 37-57.
- Arizona, Yance, Muki Trenggono Wicaksono, and Jacqueline Vel. “The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia.” *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 487-506.
- Buana, Mirza Satria. “Living Adat Law, Indigenous Peoples and the State Law: A Complex Map of Legal Pluralism in Indonesia.” *International Journal of Indonesian Studies* 1, no. 3 (2016): 104-119.
- Budiman, Michaela. *Contemporary Funeral Rituals of Sa’dan Toraja: From Aluk Todolo to “New” Religions*. (Prague: Karolinum Press, 2013).
- Cahyani, Nadya Dwi, and Indri Fogar Susilowati. “Kajian Yuridis Pengakuan Masyarakat Hukum Adat di Wilayah IKN dalam Upaya Memberikan Perlindungan Hak atas Tanah Masyarakat Hukum Adat.” *Novum* 4, no. 1 (2023): 37-50.
- Creutzfeldt, Naomi, Marc Mason, and Kirsten McConnachie, eds. *Routledge Handbook of Socio-Legal Theory and Methods*. (London: Routledge, 2019).
- Dalle Mulle, Emmanuel, and Mona Bieling. “Autonomy Over Independence: Self-Determination in Catalonia, Flanders and South Tyrol in the Aftermath of the Great War.” *European History Quarterly* 53, no. 4 (2023): 641-663.
- Drestanta, Eduardo Erlangga. “Customary Village (*Desa Adat*) and Inter-ethnic Fragmentations in Seram Island, Maluku.” *Archipel. Études Interdisciplinaires Sur le Monde Insulindien* 105 (2023): 91-113.
- Etikan, Ilker, Sulaiman Abubakar Musa, and Rukayya Sunusi Alkassim. “Comparison of Convenience Sampling and Purposive Sampling.” *American Journal of Theoretical and Applied Statistics* 5, no. 1 (2016): 1-4.
- Fay, Chip, et al. “Emerging Options for the Recognition and Protection of Indigenous Community Rights in Indonesia.” In *Land and Development in Indonesia: Searching for the People’s Sovereignty* (Singapore: ISEAS Yusof Ishak Institute, 2016), pp.91-112.
- Flambonita, Suci. “The Concept of Legal Pluralism in Indonesia in the New Social Movement.” *Jurnal Analisa Sosiologi* 10, no. 3 (2021): 361-373.
- Hariri, Achmad, and Basuki Babussalam. “Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia.” *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146-170.

- Hariri, Achmad. "The Politics of Law Concerning the Tenure of Village Head Reviewed From the Constitutionalism Perspective," *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 5, no. 1 (2020): 33-42.
- Hassan, Fatima Zahra, Mariam Salma Fathy, and Emma de Boer. "Religious Justice and Indigenous Rights: A Theological Exploration of Indigenous Struggles in Indonesia." *Indonesian Theological Justice Review* 1, no. 3 (2024).
- Honneth, Axel. "Recognition as Ideology." In *Recognition and Power: Axel Honneth and the Tradition of Critical Social Theory* (Cambridge, UK: Cambridge University Press, 2007): pp.323-347.
- Jamin, Mohammad, and Sahid Teguh Widodo. "Reformulation of a Legal Policy Affirming Recognition of Indigenous Community Units." *International Journal of Innovation, Creativity and Change* 11, no. 8 (2020).
- Jiwa Utama, Tody Sasmita. "Impediments to Establishing Adat Villages: A Socio-Legal Examination of the Indonesian Village Law." *The Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 17-33.
- Kingsbury, Benedict. "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy." *American Journal of International Law* 92, no. 3 (1998): 414-457.
- Komari, Komari. "Between Recognition and Exclusion: Indigenous Peoples' Rights in Asia's Development Policies." *Asia-Pacific Journal on Religion and Society* 8, no. 2 (2024): 62-74.
- Kristiansen, Stein, and Linda Sulistiawati. "Traditions, Land Rights, and Local Welfare Creation: Studies from Eastern Indonesia." *Bulletin of Indonesian Economic Studies* 52, no. 2 (2016): 209-227.
- Lake, Prisca Maria Mburu. "Strategi Penataan Desa Menjadi Desa Adat (Studi Kasus Desa Nilulat, Kecamatan Bikomi Nilulat)." *Jurnal Riset Ekonomi dan Manajemen* 15, no. 4 (2024): 51-62.
- Li, Tania Murray. "Articulating Indigenous Identity in Indonesia: Resource Politics and the Tribal Slot." *Comparative Studies in Society and History* 42, no. 1 (2000): 149-179.
- Luqman, Amira, and Muhammad Shodiqin. "Ethnic and Religious Tensions: Legal Mechanisms for Conflict Resolution in Indonesia's Multi-Ethnic Society." *Indonesian Minority Justice Review* 1, no. 3 (2024).
- Martin, David Fernandes. *Rethinking the design of Indigenous organisations: the need for strategic engagement*. (Canberra, ACT: Centre for Aboriginal Economic Policy Research (CAEPR), The Australian National University, 2003).
- Mulyani, Lilis. *Traditional Communities in Indonesia: Law, Identity, and Recognition*. (Oxfordshire, UK: Taylor & Francis, 2022).
- Nurcholis, Hanif. "Pemerintahan Desa: Unit Pemerintahan Palsu Dalam Sistem Administrasi Negara Republik Indonesia." *Jurnal Politika* 5, no. 1 (2014): 1-19.
- Omara, Andy. "Does the Current Regional Autonomy Support Legal Pluralism in Indonesia?." *Jurnal Mimbar Hukum* 23, no. 2 (2011): 420-429.
- Pamungkas, Bambang Adhi. "Pelaksanaan Otonomi Desa Pasca Undang-Undang Nomor 6 Tahun 2014 Tentang Desa." *Jurnal USM Law Review* 2, no. 2 (2019): 210-229.
- Pratama, Muhammad Bintang, Muhammad Adib Afiq, and Savira Auril. "The Philosophical Dilemma of the Implementation of Justice Theory: Problems in Utilizing Land Rights between the Amungme Indigenous Tribe and PT Freeport Indonesia." *UIR Law Review* 4, no. 2 (2020): 23-39.

- Prathama, Anak Agung Gede Agung Indra. "Desa Adat Sebagai Subyek Hukum dalam Struktur Pemerintahan Provinsi Bali." *Jurnal Yustitia* 16, no. 1 (2022): 62-70.
- Prayogo, Bagus Edi, et al. "Increasing Legal Capacity for Communities in the Context of Realizing a Village of Law Awareness and Child Friendly." *Indonesian Journal of Advocacy and Legal Services* 1, no. 1 (2019): 65-78.
- Purnomo, Heru. "Rekognisi Sebagai Hak Istimewa Desa." *WICARANA* 1, no. 2 (2022): 119-132.
- Purwanda, Sunardi, and Andi Sri Rezky Wulandari. "Socio-Legal Studies: Methodical Implications of Legal Development in Indonesia." *Al-'Adl* 16, no. 2 (2023): 152-163.
- Putri, Lia Sartika. "Village Authority and the Issuance of Village Regulation." *Jurnal Legislasi Indonesia* 13, no. 2 (2016): 161-176.
- Rahmasari, Betha, Ariza Umami, and Tirta Gautama. "Pengaruh Hukum Adat dalam Pengaturan Pemerintahan Desa: Perspektif Normatif." *Muhammadiyah Law Review* 7, no. 2 (2023): 60-77.
- Rato, Dominikus. "Revitalisasi Peradilan Adat Pada Masyarakat Ngada Berbasis Kearifan Lokal." *Yustisia* 4, no. 2 (2015): 335-348.
- Rauf, Muhammad A. "Politik Hukum Pembentukan Desa Adat dalam Sistem Pemerintahan di Indonesia." *De Lega Lata: Jurnal Ilmu Hukum* 1, no. 2 (2016): 413-429.
- Rezani, Muhammad, Ferdinan Salim, and Fijaini Fijaini. "Pergeseran Legitimasi Balian dalam Local Indigenous Governance di Desa Hinas Kanan." *Jurnal Administrasi Publik dan Pembangunan* 2, no. 1 (2021): 21-35.
- Sahdan, Gregorius. "Transformasi Penyelenggaraan Pemerintahan Desa." *GOVERNABILITAS (Jurnal Ilmu Pemerintahan Semesta)* 3, no. 2 (2022): 116-131.
- Sampean, Sampean, and Sofyan Sjaf. "The Reconstruction of Ethnodevelopment in Indonesia: A New Paradigm of Village Development in the Ammatoa Kajang Indigenous Community, Bulukumba Regency, South Sulawesi." *Masyarakat: Jurnal Sosiologi* 25, no. 2 (2021): 159-192.
- Sampean, Sampean, Ekawati Sri Wahyuni, and Sofyan Sjaf. "Paradoks Undang-Undang Nomor 6 Tahun 2014 Tentang Desa: Konstruksi dan Transformasi Sosial Komunitas Adat Ammatoa Kajang". *Thesis*. (Bogor: IPB University, 2019).
- Schefold, Reimar. "The domestication of culture: Nation-building and ethnic diversity in Indonesia." *Bijdragen tot de taal-, land-en volkenkunde* 154, no. 2 (1998): 259-280.
- Setyowati, Retno Kus. "Pengakuan Negara Terhadap Masyarakat Hukum Adat." *Binamulia Hukum* 12, no. 1 (2023): 131-142.
- Sujahri, Muhammad, Andi Gau Kadir, and Nurlinah Nurlinah. "Analisis Hubungan Pemerintah Pusat dan Daerah: Studi Kasus Perimbangan Keuangan Kota Makassar." *Government: Jurnal Ilmu Pemerintahan* 3, no. 1 (2010): 37-42.
- Timotius, Richard. "Revitalisasi Desa dalam Konstelasi Desentralisasi Menurut Undang-Undang Nomor 6 Tahun 2014 tentang Desa." *Jurnal Hukum & Pembangunan* 48, no. 2 (2018): 323-344.
- Vel, Jacqueline, and Adriaan W. Bedner. "Decentralisation and Village Governance in Indonesia: The Return to the *Nagari* and the 2014 Village Law." *The Journal of Legal Pluralism and Unofficial Law* 47, no. 3 (2015): 493-507.

- Vel, Jacqueline, Yando Zakaria, and Adriaan Bedner. "Law-Making as a Strategy for Change: Indonesia's New Village Law." *Asian Journal of Law and Society* 4.2 (2017): 447-471.
- Wahyuni, Ekawati Sri, and Sofyan Sjaf. "The Paradox of Recognition Principles in Village Law in Ammatoa Kajang Indigenous Community." *Sodality: Jurnal Sosiologi Pedesaan* 7, no. 3 (2019): 195-211.
- Wijayanti, Septi Nur. "Hubungan Antara Pusat dan Daerah dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014." *Jurnal Media Hukum* 23, no. 2 (2016): 186-199.
- Zainurohmah, Zainurohmah, Salim Noer Mahmudi, and Jihan Alfarisi. "Ensuring Legal Certainty for Customary Law Communities in Indonesia: Analyzing the Ratification Process of the Customary Law Communities Bill." *Contemporary Issues on Interfaith Law and Society* 3, no. 1 (2024): 177-202.
- Zuhri, Lahmuddin, Hanuring Ayu, and Roli Febrianto. "Desa Rasa Desa Adat: Peran Nilai Lokal Penyusunan Peraturan Desa di Kabupaten Sumbawa (Studi di "Desa Atas Awan" Desa Tepal)." *Journal of Rural and Development* 12, no. 1 (2024): 31-41.
