

Legal Aspects of the Implementation of Customary Laws in Enforcement in the Raja Ampat Marine Conservation Area in Raja Ampat, Southwest Papua

¹Meity Mongdong, ²Vieta Imelda Cornelis, ³Sri Astutik, ⁴Noenik Soekorini
^{1,2,3,4} Dr. Soetomo University, Indonesia
meity.r4@gmail.com

ABSTRACT

Indonesia, as the world's largest archipelago, has enormous marine resource potential, but the main challenge it faces is weak law enforcement in maintaining ecosystem sustainability. Raja Ampat, known as the center of marine biodiversity in the world, faces serious threats in the form of illegal fishing, hunting of protected species, and excessive exploitation of resources. The urgency of this research lies in the gap between the proven effectiveness of customary law and the limited legitimacy of formal state law. The main question asked is to what extent customary law can serve as an instrument for enforcing marine conservation law within the framework of the national legal system. This study uses a normative legal method with a statute and conceptual approach. Primary legal materials consist of legislation, court decisions, and regional regulations, while secondary legal materials consist of academic literature and previous research results. Data collection techniques were carried out through literature studies with qualitative analysis using deductive logic. The results of the study show that customary law, particularly the practice of sasi in Raja Ampat, has proven effective in increasing coral cover, improving fish biomass, and reducing violations by up to 90%. However, this effectiveness has not yet gained strong formal legitimacy in the national legal system. Constitutional recognition of customary law is still normative and is not yet supported by clear operational regulations. The conclusion of this study emphasizes that the integration of customary law into the national legal system through a co-management model is a strategic step to strengthen marine conservation. The practical implication is the need for regulations that support the role of indigenous peoples in monitoring, while theoretically this study enriches the study of legal pluralism. Further studies are recommended to explore the long-term impact of integrating customary law on the welfare of coastal communities and the resilience of marine ecosystems.

Keywords: Customary law; Marine conservation; Legal pluralism.

Introduction

Indonesia is the largest archipelagic country in the world with an area of 7.81 million km², consisting of 2.01 million km² of land, 3.25 million km² of water, and 2.55 million km² of Exclusive Economic Zone (EEZ). With 17,504 islands, Indonesia has enormous potential in terms of coastal and marine resources, both living and non-living. This potential covers economic, ecological, and socio-cultural aspects that form the basis of life for millions of coastal communities. According to BPHN (2024), around 16.42 million people in Indonesia depend on coastal areas for their livelihoods. Indonesia's marine wealth even makes the country one of the world's centers of biodiversity, especially in the Southwest Papua region.

The contribution of the marine sector to the national economy is very significant. Data from the Ministry of Maritime Affairs and Fisheries (KKP) shows that as of September 2024, the value of Indonesia's fishery exports reached USD 4.23 billion with a volume of 1.02 million tons. The main commodities include shrimp with a value of USD 1.18 billion or 28.1% of total exports, as well as Tuna-Skipjack-Tongkol (TCT) and Squid-Cuttlefish-Octopus (CSG), which have experienced significant growth (KKP, 2024). However, despite this great potential, Indonesia still faces serious problems such as overfishing, destructive fishing, and low-

fishermen's welfare (BRIN, 2024). This situation shows the imbalance between marine resource potential and sustainable fisheries management.

Globally, community-based fisheries management practices have proven to be more successful in preserving ecosystems than conventional approaches. The experiences of countries in the South Pacific, the Philippines, and Malaysia show that integrating local wisdom into natural resource management systems strengthens ecosystem sustainability (Rokhmin Dahuri, 2011). Indonesia itself has a rich and diverse tradition of customary law, with more than 300 ethnic groups that have a system of natural resource management that has been passed down from generation to generation. Traditions such as Sasi Laut in Maluku and Papua, Awig-Awig in Bali, Panglima Laut in Aceh, and Mane'e in Talaud have proven to be capable of preserving resources while strengthening the social identity of indigenous peoples (Rokhmin Dahuri, 2011).

In the context of Papua, customary law plays a central role in maintaining coastal ecological balance. Indigenous peoples not only have customary rights over land, but also over marine areas and coral reefs. The communal ownership system of coastal areas forms the basis for marine resource management regulated by customary law, including the practice of Sasi, which limits the use of resources to allow for ecosystem recovery. This practice shows that customary law is highly effective in conserving marine resources and is an important social instrument in maintaining the sustainability of indigenous peoples' livelihoods (Vindy & Subroto, 2024).

However, a fundamental issue that arises is the position of customary law in the national legal system. Although Article 18B paragraph (2) of the 1945 Constitution explicitly recognizes the unity of customary law communities and their traditional rights, its implementation at the operational level often encounters obstacles. Law enforcement officials often question the legitimacy of customary law because it is unwritten and can be interpreted differently. This creates a dilemma in law enforcement, particularly in the field of water conservation, where state law has not been able to address all issues in the field (Sri Astutik et al., 2025).

The case in Raja Ampat illustrates this complexity. The region, known as the "heart of the world's coral triangle" with 600 species of coral, 1,396 species of fish, and habitats for turtles and cetaceans, faces serious threats in the form of illegal fishing, hunting of protected species, and exploitation of natural resources for development (Erdmann & Allen, 2005; Sumule, 2021). Formal law enforcement efforts show significant limitations. Police data show that only 5% of fisheries violation cases were successfully prosecuted in 2011 (Kombes Pol. Sudirman, 2011). This highlights weaknesses in the state's law enforcement system.

In contrast, indigenous community patrols in the Raja Ampat conservation area have proven to be more effective. For example, in the Kawe Marine Conservation Area, community-based patrols have succeeded in reducing violations by 90%, increasing coral cover by 6% and fish biomass by 21% over a five-year period (YKAN, 2005). This fact shows that customary law is not only a social system, but also a concrete ecological mechanism. However, the issue of legality remains because customary rules do not have strong formal legitimacy in the eyes of the state. The debate over the validity of applying customary rules in conservation is one of the central issues in this study.

Previous studies confirm that customary law is still used and recognized, but its existence often causes dualism with positive law (Fahrul Razi, 2019; Supian et al., 2018). In the context of Papua, this dualism is evident because despite the existence of a legal basis such as Law No. 21 of 2001 on Special Autonomy for Papua, its implementation is hampered by limited resources, institutional capacity, and inter-agency coordination (Suharyo, 2008). Thus, there is a research gap in assessing the extent to which customary regulations can be

empowered as instruments for enforcing conservation law at the local level that have formal legitimacy.

The urgency of this research lies in the need to find common ground between customary law and state law. Customary law has proven to have high social legitimacy, while state law has formal legitimacy. The two need to be integrated so that law enforcement in marine conservation areas is more effective. If this gap is not bridged, conflicts between indigenous peoples and state officials will continue, leading to the weakening of marine ecosystem protection in Raja Ampat. In other words, the sustainability of marine conservation depends not only on technical ecological aspects but also on the legal legitimacy underlying its management (Indonesian Constitutional Court, 2012).

This study aims to identify the legal basis that supports the role of indigenous peoples in monitoring marine resources and to analyze the state's recognition of customary law in the management of conservation areas. Using a normative legal research approach through a statute approach and conceptual approach, this article examines national regulations such as the 1945 Constitution, the Papua Special Autonomy Law, and other sectoral regulations. The analysis is conducted by examining the compatibility of customary law practices with the principles of the Indonesian rule of law.

The main contributions of this article are twofold. First, theoretically, this study enriches the study of legal pluralism in Indonesia by highlighting the interaction between customary law and state law in the context of marine conservation. Second, practically, this article offers recommendations for regulatory and institutional strengthening so that customary law can be recognized as an integral part of the national legal system. Thus, this study not only contributes to the development of legal science, but also provides relevant policy implications for the management of marine conservation in Southwest Papua.

Through this discussion, the article seeks to provide a new perspective on the integration of customary law into the national legal system as a solution to the weak enforcement of conservation laws in coastal areas. By promoting a cooperative approach between the state and indigenous peoples, this study encourages a more participatory, contextual, and equitable model of law enforcement. The results of this research are expected to serve as a reference in formulating conservation policies based on local wisdom that are formally recognized by the state.

Finally, this article emphasizes that the protection of marine biodiversity in Raja Ampat is not only an ecological issue, but also a legal issue. The integration of customary law into the national legal system is an urgent necessity to realize sustainable water conservation. With a strong conceptual framework, this study is expected to open up space for academic and policy dialogue to strengthen the position of customary law as a pillar of environmental preservation in Indonesia.

Research Methods

This research method uses a normative legal research design with a qualitative approach. This method was chosen based on the research objective, which focuses on analyzing legal norms, principles, and doctrines that govern the relationship between customary law and national law in the management of water conservation. The normative approach was chosen because it is relevant for addressing legal issues systematically through the study of legal documents and literature, rather than through empirical data (Marzuki, 2013; Soekanto, 2010). The type of research used is normative research that focuses on literature studies to examine legislation, court decisions, and legal doctrines related to the applicability of customary law in the enforcement of conservation law. This approach allows researchers to examine the legal and conceptual foundations that support the role of

indigenous peoples in the supervision of marine resources (Ibrahim, 2007). The research approaches used are the statute approach and the conceptual approach. The statute approach is used to identify relevant legislation, such as Article 18B paragraph (2) of the 1945 Constitution, Law Number 21 of 2001 concerning Special Autonomy for Papua, and various sectoral regulations in the field of marine affairs and conservation. Meanwhile, the conceptual approach was used to examine the views of legal experts as a conceptual basis for understanding the position of customary law in the national legal system.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation, jurisprudence, and regional regulations related to conservation in Southwest Papua. Secondary legal materials include legal literature, scientific journals, and expert opinions on legal pluralism and customary law. Tertiary legal materials include legal dictionaries, encyclopedias, and legal indexes that support the search for primary and secondary sources. The data collection procedure was carried out through a literature study by inventorying all relevant laws, regulations, court decisions, and literature. After that, classification was carried out based on the formulation of the problem, then the legal materials were systematized to facilitate analysis. Legal data processing was carried out qualitatively, with an emphasis on the interpretation of legal texts and doctrines, rather than quantitative calculations.

Data analysis used descriptive-analytical techniques with a deductive logic approach. The general premise was national legal provisions (Andik Mannulusi, et al., 2025), while the specific premise was customary law practices in water conservation management in Raja Ampat. Through this method, the study produced conclusions explaining the extent to which customary law has legal legitimacy in the national legal system, as well as how its integration with state law can strengthen the enforcement of marine conservation law (Marzuki, 2013; Ibrahim, 2007).

Results and Discussion

Integration of Customary Law in the Enforcement of Marine Conservation in Raja Ampat

Raja Ampat is known as one of the areas with the highest marine biodiversity in the world, with more than 1,500 species of fish and 537 types of hard coral representing 75% of the world's coral (Erdmann & Allen, 2005). This condition places Raja Ampat as a global marine conservation center as well as a natural ecological laboratory. However, this ecological wealth is under serious threat from illegal and destructive fishing practices and the exploitation of protected marine life. Police data show that only about 5% of 109 marine violation cases in 2011 were prosecuted, indicating the weakness of the country's law enforcement system (Kombes Pol. Sudirman, 2011). This fact indicates a fundamental gap between the potential of natural resources and the ability of formal regulations to protect them.

The existence of customary law is constitutionally recognized in Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects customary law communities (Abriantinus, et al., 2025). The existence of customary law, particularly the practice of *sasi*, offers an alternative solution that has proven effective in maintaining the sustainability of marine resources. *Sasi* is a temporary customary prohibition on the harvesting of certain marine products or biota to allow for ecosystem recovery. In the Kawe conservation area, community patrols based on customary law have been able to reduce violations by 90%, increase coral cover by 6% and fish biomass by 21% (YKAN, 2005). These results far exceed the effectiveness of state laws, which tend to be procedural, slow, and

expensive. Thus, customary law has proven to be not only a cultural tradition, but also a real ecological instrument in maintaining the sustainability of marine resources.

Previous research gaps show that although customary law has been constitutionally recognized through Article 18B paragraph (2) of the 1945 Constitution, its implementation remains weak. Fahrul Razi's (2019) study on Nagari customary courts and Supian et al. (2018) on Malay customary law in Jambi confirm the dualism between customary law and positive law. This condition reflects a similar problem in Papua, where normative recognition of customary law is not followed by operational legitimacy. Customary law is still considered subordinate to state law, even though its effectiveness in the field is actually higher.

The urgency of this research lies in the need to bridge the gap between the social legitimacy of customary law and the formal legitimacy of state law. The Constitutional Court, through Decision No. 35/PUU-X/2012, has emphasized that customary law is living law that can be used as a source of law as long as it does not conflict with the 1945 Constitution and the principles of human rights. However, without more operational derivative regulations, this recognition remains symbolic. Thus, the findings of this study reinforce the importance of integrating customary law into the national legal system as a strategic step in marine conservation.

An analysis of national regulations shows that there is actually a sufficiently strong legal basis to accommodate customary law. Article 18B paragraph (2) of the 1945 Constitution, Law No. 21 of 2001 on Special Autonomy for Papua, and Raja Ampat Regent Regulation No. 66 of 2007 on Regional Marine Conservation Areas form the basis for recognizing the role of indigenous peoples. However, weaknesses lie in inconsistent implementation and a lack of institutional support and human resources in the region. This is in line with the findings of Suharyo (2008), who highlights the limited capacity of indigenous institutions and local governments to manage conservation collaboratively.

The field context shows that the customary ownership system in Papua, including ownership rights, usage rights, and eating rights, has long been the basis for marine resource management. This practice confirms that indigenous peoples have internal legal mechanisms capable of regulating the distribution and sustainable use of resources (Sudiyat, 1981; Kertasapoetra, 2001). However, conflicts arise when these customary practices clash with universal and formal state laws. For example, state officials often do not recognize customary sanctions as part of legitimate law enforcement, even though socially these sanctions are effective and accepted by the community.

Further discussion shows that customary law functions not only as a social norm but also as an ecological legal system. Vindy and Subroto (2024) assert that *sasi* has proven effective in preserving natural resources by limiting excessive exploitation. Within the framework of legal pluralism theory, the existence of customary law in Raja Ampat is clear evidence that a legal system that exists within a community can run parallel to the state legal system. Therefore, this study supports the argument that the integration of customary law and state law must be carried out using a cooperative approach, rather than a competitive one.

The findings also show that the success of indigenous community patrols in Raja Ampat is not only related to the enforcement of customary norms, but also to the high level of social legitimacy. This legitimacy stems from the community's emotional and spiritual attachment to the sea as a collective living space. The concept of customary rights, which covers land, sea, and coral reefs, shows that the relationship between Papuan communities and nature is cosmological in nature, not merely economic (Sirait, 2016; WALHI, 2020). This distinguishes customary law from state law, which tends to be utilitarian and procedural.

The practical implication of this finding is that marine conservation in Raja Ampat cannot rely solely on state law. A co-management model that integrates the power of customary law with formal legal instruments is needed. This approach is in line with practices in the Philippines and Malaysia, where community-based management has proven to be more sustainable than top-down models (Dahuri, 2011). Thus, the integration of customary law is not only important for Papua, but can also become a national and even international model for community-based conservation management.

Theoretically, these findings enrich the study of legal pluralism by emphasizing that customary law is not merely a complement, but an integral element of the national legal system. The recognition of living law as affirmed by the Constitutional Court needs to be strengthened with clearer sectoral regulations. Without this, customary law will remain marginalized despite its high effectiveness in the field. Therefore, this study makes a theoretical contribution by showing that the effectiveness of law does not always depend on formality, but also on social legitimacy.

The practical contribution of this study is to provide recommendations for policymakers to strengthen the regulatory framework that supports the participation of indigenous peoples. Clear regulations on community patrol mechanisms, customary sanctions, and coordination with state officials will strengthen the effectiveness of conservation. In addition, support for human resources, training, and incentives for indigenous peoples will strengthen the capacity of customary institutions to manage conservation in a sustainable manner.

Criticism of the state's overly legalistic approach is that it often ignores the social and cultural context of local communities. This study shows that effective law enforcement in Papua cannot be separated from recognition of indigenous peoples' social systems. In other words, customary law must be treated as a partner, not a competitor, in the national legal system. This is in line with the concept of substantive justice, which emphasizes that justice must be in accordance with the values and norms that exist in society (Rawls, 1971).

Field observations show that state officials who do not understand customary law values actually cause social disruption when they repressively enforce positive law. Therefore, an integrative and participatory approach is needed in enforcing conservation laws. State officials must act as facilitators of dialogue between customary law and national law, not merely as enforcers of formal law. In this way, law enforcement can be harmonious and fair, while also preserving the sustainability of marine ecosystems.

A critical analysis of this study confirms that formal recognition of customary law must be followed by clear implementation mechanisms. Without this, customary law will remain marginalized even though its existence is constitutionally recognized. In the context of Raja Ampat, the support of local government, non-governmental organizations, and the international community is essential to strengthen the position of customary law. This multi-stakeholder collaboration is key to ensuring that marine conservation can be effective and sustainable.

The conclusion from these results and discussions is that customary law in Raja Ampat has high social legitimacy and clear ecological effectiveness, but still faces limitations in formal legitimacy. Integrating customary law into the national legal system through a cooperative approach is a strategic solution that can improve the effectiveness of conservation law enforcement. This research provides a theoretical contribution to the study of legal pluralism and a practical contribution to community-based conservation policy. Thus, these findings are relevant not only for Papua, but also for the development of marine conservation policy at the national and global levels.

Conclusion

This study shows that customary law, particularly the practice of sasi in Raja Ampat, has high social legitimacy and has proven effective in maintaining the sustainability of marine ecosystems. However, the effectiveness of customary law has not yet gained full formal legitimacy in the national legal system. Existing regulations such as Article 18B paragraph (2) of the 1945 Constitution and the Papua Special Autonomy Law have provided a legal basis, but their implementation remains weak due to institutional and resource constraints.

These findings have important implications for the theory of legal pluralism, namely that living law can run parallel to and even be more effective than state law in certain contexts. In practical terms, the results of this study confirm that the integration of customary law into the national legal system through cooperative mechanisms will strengthen the effectiveness of water conservation law enforcement. The co-management model involving the state and indigenous peoples is a relevant approach to overcoming the limitations of positive law.

The scientific contribution of this research lies in strengthening the theoretical framework of legal pluralism and substantive justice, by positioning customary law not merely as a social norm, but as an ecological legal instrument that has direct implications for the sustainability of natural resources. In addition, this research enriches the discourse on the integration of customary law into the national legal system, particularly in the field of environmental law and conservation.

A suggestion that can be made to relevant institutions is the need to strengthen more explicit derivative regulations regarding the mechanism for applying customary law in water conservation. Local governments and law enforcement agencies need to encourage customary institutions to function formally within the framework of the national legal system. Areas of research that still need to be explored include the effectiveness of multi-stakeholder collaboration, the role of non-governmental organizations in strengthening the legitimacy of customary law, and empirical studies on the long-term impact of the application of customary law on community welfare and marine ecosystem conservation.

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