

Dynamics of Customary Law in the Context of a Unitary State: A Case Study of Customary Areas in Konawe Regency

^{1*}Hasjad

^{1*} Lakidende Unaaha University, Indonesia

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Email :
hasjad@unilaki.ac.id

ABSTRACT

This study aims to examine how customary law operates within the Unitary State of the Republic of Indonesia (NKRI), particularly in the customary areas of Konawe Regency, Southeast Sulawesi. Customary law is a legal system that thrives and continues to evolve within indigenous communities, often intertwined with state law. This study uses a juridical-sociological approach to examine how customary law is applied in community life, as well as how the state recognizes and incorporates customary law into the official legal system. The results show that although customary law still plays a role in resolving disputes and regulating social relations, the presence of state law, changes in societal structure, and government policies often diminish its influence. Furthermore, the lack of official recognition of customary territories has also impacted public trust in customary law. Therefore, efforts are needed to strengthen the role of customary law through appropriate policies and clear legal recognition, so that customary law can coexist alongside national law within the framework of the NKRI.

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INTRODUCTION

Indonesia is a country with a variety of legal systems that have developed within its society. One legal system deeply rooted in Indonesian history and culture is customary law. Customary law is a set of social rules that live, develop, and are passed down from generation to generation within indigenous communities. This law not only regulates relationships between indigenous peoples but also reflects local and spiritual values that form the basis of community life. In the constitution, customary law is officially recognized. Article 18B paragraph (2) of the 1945 Constitution states that the state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. This provision shows that the state provides space for customary law to exist as long as it does not conflict with the basic principles of the state and human rights. However, in practice, this recognition often results in conflicts between the legitimacy of customary law and the supremacy of state law.

Amidst the influence of globalization, development progress, and the introduction of positive law (*ius constitutum*), the position of customary law is often neglected. Changes in social and economic structures, as well as the existence of state legal regulations, often align with prevailing customary norms. This situation presents indigenous communities with a dilemma in maintaining their legal identity. Customary law, which was once used to resolve disputes and regulating social life, are now starting to be replaced by a state legal system that appears more formal and expensive.

One region that demonstrates this dynamic is Konawe Regency in Southeast Sulawesi Province. This regency has a long history linked to indigenous communities, particularly the Tolaki ethnic group, which still maintains its customary structures and legal institutions. In Tolaki society, the customary value system is known as "Sara," an unwritten legal code followed to resolve conflicts and regulate social life. However, Tolaki customary law now faces various challenges, such as unclear recognition of customary territories, development pressures, and state legal intervention that often fails to address the real needs of indigenous communities.

This research is important because it demonstrates the tension between customary law and state law in the context of regional autonomy and national development. The dynamics of customary law in Konawe Regency can provide a small glimpse into the broader issue of customary law's place within the national legal system. Is customary law merely a romanticized cultural symbol, or is it truly considered a legal system that remains relevant in contemporary Indonesian society?

On the one hand, customary law provides flexibility and adaptability to changes in local communities. Values such as deliberation, restorative justice, and the restoration of interpersonal relationships are the primary attractions of customary law in resolving differences. However, on the other hand, state law focuses more on formal procedures, legal certainty, and generally applicable principles, which sometimes conflict with existing traditional values. This creates tension between the two legal systems, which coexist but are not always balanced.

Furthermore, the existence of customary law is also closely related to the recognition of customary territories and the collective rights of indigenous communities. In Konawe Regency, many customary territories still lack official state recognition, either through regional regulations or certification by authorized management bodies. This unclear legal status of customary territories has weakened the role of customary law in various areas, such as natural resource management, resolving land disputes, and protecting local culture.

Another issue that arises is the lack of written records and regulations regarding customary law. As a result, many rules and methods for resolving conflicts remain only in the memories of customary leaders. This reliance on oral traditions makes customary law vulnerable to change, especially if the younger generation no longer understands or values the customary system as part of their identity. Through a case study in Konawe Regency, this research seeks to understand in-depth how customary law interacts, changes, and adapts amidst the dominant influence of state law.

Using a legal and social approach, this research not only examines written legal regulations but also examines social practices and power dynamics that influence the implementation of customary law in the field. This research will also

This paper explains how indigenous communities, customary institutions, and local governments collaborate in the context of recognizing, protecting, and strengthening customary law.

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Thus, this initial section provides a foundation for understanding the complex relationship between customary law and state law within the framework of the Unitary State of the Republic of Indonesia. It is hoped that this research will yield recommendations that are not only theoretical but also applicable in designing legal policies that are inclusive, just, and sensitive to the diversity of local laws that constitute the wealth of the Indonesian nation.

METHOD

This research uses an approach juridical-sociological (socio-legal research) which aims to understand the interaction between customary law and state law in the context of the lives of indigenous peoples in Konawe Regency. This approach was chosen because the character of customary law is living law, namely law that lives and develops in society, which cannot be analyzed only through positive legal texts, but must also be analyzed through an understanding of social practices, cultural values, and local power structures.

In general, this research is descriptive in nature. Descriptive qualitative with a primary focus on depicting the reality of customary law in practice, as well as how it is recognized, enforced, or confronted within the state legal system. Qualitative research was chosen to gain a deeper understanding of the meanings, perceptions, and experiences of indigenous communities and related actors regarding the existence of customary law in their territories.

Data analysis was carried out qualitative, with steps of data reduction, data presentation, and inductive conclusion drawing. Data from interviews and observations will be categorized based on main themes such as recognition of customary law, implementation of customary norms, conflicts between customary law and state law, and the role of the state in accommodating customary law. The researcher uses triangulation analysis to validate research results, namely by comparing information from various data sources (resources, documents, and observations) to obtain results that are credible and can be academically accounted for.

RESULTS AND DISCUSSION

The Existence of Customary Law of the Tolaki Community in Konawe Regency

The Tolaki indigenous people of Konawe Regency have a customary legal system called Sara Tolaki. This legal system has existed for a long time and regulates various aspects of community life, such as dispute resolution, inheritance distribution, inter-community relations, and environmental management. Within the Tolaki customary legal system, structures such as Pu'u, Meantu'u, and Tolea play a crucial role in enforcing customary rules.

The results of interviews with traditional leaders and village officials in Amonggedo and Wawotobi Districts show that customary law is still used as a basis for resolving various problems, such as disputes over inherited land, land boundaries, and cases of defamation or violations of social norms. Problems are resolved through collective deliberation and the search for solutions, rather than harsh punishment. Sanctions typically include customary fines, apologies, or demands to perform rituals aimed at restoring social relations.

However, the strength of Tolaki customary law is now under threat from the national legal system. Many younger generations no longer understand customary values and prefer to resolve problems through the police or the courts. This is due to modernization, changes in social structures, and the lack of official documents on customary law that can serve as formal legal references.

The Tolaki people are one of the large ethnic groups living in Southeast Sulawesi, including Konawe Regency. Since pre-independence, they have had their own social and legal system, known

as Sara Tolaki. Sara refers to the rules, values, and legal procedures that apply in Tolaki society, governing all aspects of social life, from personal affairs and customary law to traditional government affairs. This customary legal system is managed by traditional institutions with high authority to regulate and resolve various issues that arise within the community.

Today, Tolaki customary law remains strong in several rural areas of Konawe Regency, particularly those far from cities or industrial areas. There, customary law serves as the primary system for resolving disputes between residents, dividing inherited land rights, settling family matters, and performing traditional and religious rituals. Dispute resolution is carried out through deliberations led by traditional leaders such as Pu'utobu, Meantu'u, or Sara figures. The results of these deliberations are morally and socially sound, as they are based on the principles of justice, balance, and harmony within the community.

One of the hallmarks of Tolaki customary law is its focus on restoring social relations, rather than simply imposing punishment. When a customary violation occurs, the perpetrator is not immediately subjected to harsh punishment, but is instead encouraged to correct the mistake by apologizing, paying a customary fine (*bantala*), or performing a ritual involving the entire community. This approach significantly helps prevent protracted conflict and strengthens community unity.

However, Tolaki customary law also faces various challenges. Modern developments, the influence of positive law, and the dominance of the state government system have diminished the role of customary law. Many younger generations no longer understand customary law due to the lack of systematic development and the diminishing written records of these customary norms. On the other hand, the more formal and legally binding state legal system is often chosen as the primary alternative for resolving legal issues, particularly in urban areas. Furthermore, the lack of official recognition by local governments of Tolaki customary territories and institutions further weakens the position of customary law in the public sphere.

To date, Konawe Regency has not yet enacted a regional regulation that specifically recognizes the existence of the Tolaki indigenous people and their rights. This leaves customary law without legal certainty of protection from the state. Despite this, efforts by indigenous communities, academics, and civil society organizations continue to push for the recognition and restoration of Tolaki customary law. Through training activities, the collection of customary law documents, and the writing of academic papers related to draft regional regulations on indigenous peoples, Tolaki customary law still has the opportunity to survive and be strengthened within a unitary state system that respects diverse legal forms.

Tension between Customary Law and State Law

Although customary law is recognized in the constitution, its implementation in practice is often challenging. Clashes between customary law and state law sometimes occur, particularly in issues of customary land and natural resource management. One prominent case occurred in the Konawe region, a conflict between indigenous communities and a nickel mining company over land claimed as customary land. In this case, the Tolaki indigenous community claimed that the land was part of their ancestral territory and had been collectively managed by the community. However, because there was no official recognition through a customary land rights certificate or regional regulations regarding customary land, their claim could not be legally substantiated. Meanwhile, the company actually had permits from the local government through the HGU or IUP schemes.

This conflict demonstrates the imbalance between formal state law and customary law, which is oral and collective. Local governments and law enforcement officials tend to ignore customary law because it is unwritten and lacks a formal legal basis within the national legal system. Yet, indigenous communities possess significant social power in claiming rights to the land. The

Tolaki people are one of the large ethnic groups living in Southeast Sulawesi, including Konawe Regency. Since before Indonesian independence, the Tolaki people have had their own social and legal system, known as Sara Tolaki. Sara refers to the rules, values, and practices that govern Tolaki life, encompassing both personal and legal matters, as well as traditional village governance. This legal system is implemented by traditional institutions with significant authority to resolve various community issues.

Tolaki customary law remains strong in several rural areas of Konawe Regency, especially those far from cities or industrial areas. There, customary law serves as the primary system for resolving conflicts between residents, distributing inherited land rights, regulating family relationships, and administering local rituals and religious practices. Disputes are resolved through deliberations led by traditional leaders such as Pu'utobu, Meantu'u, or Sara figures. Decisions made in these deliberations are morally and socially valid, as their primary foundation is justice, balance, and harmony within the community.

One of the hallmarks of Tolaki customary law is the restorative principle, which emphasizes the restoration of interpersonal relationships. When a customary law violation occurs, the perpetrator is not immediately punished harshly, but is instead forced to make amends through an apology, a customary fine (bantala), or participation in a customary ritual involving the entire community. This approach has proven effective in preventing protracted conflicts and strengthening social ties at the community level. However, Tolaki customary law also faces many challenges.

Modern developments, the introduction of positive law, and the dominance of state government have diminished the role of customary law. Many younger generations no longer understand customary rules due to a lack of systematic knowledge development and the scarcity of written records of these customary norms. On the other hand, more formal and robust state law is often the primary option for resolving disputes, particularly in urban areas. Furthermore, the lack of official recognition from the local government of Tolaki customary territories and institutions also weakens the position of customary law in the public sphere.

To date, Konawe Regency has not yet enacted a specific regional regulation recognizing the Tolaki customary law community and its rights. This leaves customary law, in its formal legal aspects, relatively marginal and lacking clear legal protection from the state. Despite these challenges, various efforts by indigenous communities, academics, and civil society organizations continue to support the recognition and restoration of Tolaki customary law.

Weak Formal Recognition of Indigenous Territories

One of the major challenges facing customary law in Konawe Regency is the lack of official recognition of customary territories. To date, there are no regional regulations specifically addressing the recognition and protection of the Tolaki customary law community. This poses a significant obstacle to efforts to strengthen the position of customary law. Official recognition of customary territories is crucial because it provides the legal basis for protecting the collective rights of indigenous communities, such as rights to land, natural resources, and culture. Without this recognition, indigenous communities are vulnerable to eviction, irresponsible use of natural resources, and social injustice. Documentary research shows that Konawe Regency has not yet issued a regional regulation concerning indigenous communities or a mechanism for recognizing indigenous communities. Efforts to strengthen customary law are often hampered at the policy level due to the lack of a strong political role from the local government. This is despite the Minister of Home Affairs Regulation Number 52 of 2014 providing guidance on the recognition of indigenous communities by local governments.

The main problem facing the Tolaki indigenous people in Konawe Regency is the lack of official government recognition of their customary territories. These customary territories are a

crucial part of the customary legal system because they are where customary rules apply, both physically and symbolically. Without formal recognition, customary laws lose their legal basis and are vulnerable to revocation by other parties, including the government or large corporations. To date, Konawe Regency has not had a regional regulation (Perda) that regulates the recognition and designation of customary areas. This leaves indigenous communities without a strong legal basis to reclaim their land. This contradicts constitutional regulations, such as Article 18B paragraph (2) of the 1945 Constitution, as well as various derivative regulations such as Law No. 6 of 2014 concerning Villages and Minister of Home Affairs Regulation No. 52 of 2014 concerning the recognition and protection of customary law communities. This lack of recognition has caused many problems in the lives of indigenous communities, particularly related to land conflicts and natural resource management. Land that has been controlled by custom for decades or even hundreds of years can easily be considered state land or converted into industrial land. In interviews with customary leaders in Uepai and Wongeduku Districts, they expressed concerns about the absorption of customary land for business interests without the consent of the local community. Furthermore, the lack of recognition also causes customary institutions to lose their power to regulate their citizens.

Customary decisions regarding boundary disputes or land violations are often disrespected by outsiders due to the lack of a strong legal basis. As a result, customary institutions are weakening and community trust in customary law is declining. Compounding the situation is the lack of data and documentation regarding Tolaki customary territorial boundaries. Mapping of customary territories remains limited and has not been integrated with government or National Land Agency (BPN) data. Efforts by indigenous communities to create their own maps of customary territories often lack official government support. Therefore, increasing recognition of customary law requires strategic steps, including formal recognition of customary territories through clear and participatory regional regulations. This is not only legally important but also demonstrates the state's respect for the existence of indigenous communities. Without such recognition, customary law will continue to be unequal, and indigenous communities will be unable to assert their rights fairly and respectfully.

Transformation of Customary Legal Values in the Modern Era

Tolaki customary law has not always been consistent. In some cases, customary legal values have changed along with social shifts and technological advancements. For example, in resolving marriage or divorce issues, traditional institutions used to make all decisions. Now, many people prefer to resolve these issues through religious courts. However, some people still perform customary rituals after receiving an official court decision. Changes have also occurred in sanctions. Previously, customary sanctions involved fines in the form of rice, chicken, or pork. Now, these have shifted to cash fines. This demonstrates that customary law is able to adapt to community needs while still upholding local wisdom. However, this change also presents challenges. There are concerns about the decline of spiritual values within customary law due to the commercialization of customary sanctions. Some customary leaders have stated that customary fines are now increasingly viewed solely as material values, rather than as educational tools for the community. The customary law of the Tolaki people in Konawe Regency does not remain the same. It continues to evolve with the times, social changes, and external influences such as modernization. Urbanization, and the introduction of the state legal system. These changes in values are evident in various aspects, including regulations, institutions, and the way communities understand and apply customary law.

One of the most visible changes is the shift in how disputes are resolved. Previously, all forms of conflict were handled entirely through customary forums led by traditional leaders, such as Meantu'u or Pu'utobu. However, today, communities increasingly integrate dispute resolution through state legal channels, such as the police and the courts. For example, in cases of family disputes or violations of social norms, communities still involve customary institutions, but the

customary decision is then recorded and communicated to the village or regulated according to positive law. Changes have also occurred in the form of customary sanctions. Previously, violations of customary norms were subject to fines in the form of goods such as agricultural produce, livestock, or heirlooms. However, today, sanctions are more often in the form of cash, the amount of which is adjusted according to socio-economic conditions. While this approach is more practical, some customary leaders worry that the spiritual and symbolic values of customary sanctions are being lost, replaced by more material approaches.

Another change is in the way customary values are passed down. Younger generations are becoming less familiar with customary law due to limited oral teaching and a lack of written explanations. Customary institutions, which previously served as places to learn customary values and rules, are now losing their influence, especially in areas that have become urban or influenced by foreign cultures.

The Role of Traditional Institutions and Regional Government

Customary institutions play a crucial role in maintaining the sustainability of customary law. In several villages in Konawe, customary institutions are still actively providing customary education, training the younger generation in customary law, and mediating conflicts within the community. However, this role remains limited due to inadequate support from regional regulations and inadequate budgets. Meanwhile, the local government has not demonstrated a full commitment to the development of customary law. Although there are units that handle culture or community empowerment, their primary focus is on ceremonial events rather than developing the substance of customary law. Lack of communication between the government and customary institutions also hinders the development of inclusive policies.

Customary institutions play a vital role in maintaining and enforcing customary law in the Tolaki community in Konawe Regency. These institutions consist of traditional figures such as Pu'utobu, who serve as customary leaders, Meantu'u, who serve as advisors, and Tolea, who mediate disputes. They wield moral and social influence in resolving various issues within the community. Their duties include upholding traditional values, leading customary rituals, and acting as mediators in resolving social conflicts that cannot be resolved through formal legal means. In practice, customary institutions remain active in several customary villages in Konawe, particularly in resolving family disputes and land boundary disputes. Inheritance, violations of customary norms, and even managing traditional ceremonies. However, the role of these customary institutions is limited to communities that still maintain traditional social structures. In more modern areas or those closer to government centers, the role of customary institutions is diminishing, as they are dominated by village bureaucracies and state legal institutions.

On the other hand, local governments play a crucial role in recognizing, empowering, and integrating customary institutions into the local governance system. However, this role has not been optimally implemented. The Konawe Regency Government lacks a clear and structured policy to formally protect and empower customary institutions. The absence of regional regulations (Perda) recognizing customary law communities leaves customary institutions in an informal environment, unrecognized by the state's administrative and legal systems. The lack of funding and institutional support from local governments also limits the ability of customary institutions to carry out their duties effectively and sustainably. Various functions, such as providing customary education to the younger generation, preserving customary archives, and fostering customary law, are disrupted by the lack of structural support. Cooperation between customary institutions and local governments is essential to creating an inclusive legal system. The government can involve customary institutions in local mediation processes, culture-based village development, and drafting regulations that take

local values into account. With strong synergy, customary law and state law will no longer be at odds but can work together to serve justice and order for indigenous communities.

CONCLUSION

This research shows that the customary law of the Tolaki people in Konawe Regency remains strong as a living system of norms, particularly in regulating social relations, resolving disputes, and preserving local cultural values. This customary law is implemented through customary institutions such as Sara Tolaki and remains a moral and social guideline for indigenous communities, particularly in rural areas that still maintain traditional structures. However, customary law faces several serious challenges within the context of a unitary state.

Tensions arise between customary law and state law due to differences in perspectives, systems, and the basis of legal authority. Formal national legal systems, often based on written documents, often align with customary law, which is based on oral tradition, collective tradition, and local contexts. This leads to conflict in determining the authority to resolve disputes, particularly in cases of customary land, social violations, and natural resource management. One of the main issues weakening the position of customary law is the lack of official recognition of customary territories by local governments. The absence of Regional Regulations (Perda) defining customary law communities and their boundaries leaves customary law without a strong legal basis to counter external influences, such as mining companies and government policies. As a result, indigenous peoples' claims to land and authority often go legally unrecognized.

On the other hand, customary legal values have also changed over time. Customary legal practices are now beginning to adapt to modern social situations, such as shifting sanctions from tangible goods to cash, and integrating customary settlements with the formal legal system. These changes demonstrate customary law's ability to adapt, but they can also lead to the loss of spiritual and symbolic values within customary culture. Customary institutions continue to play a crucial role in maintaining the sustainability of customary law, although their capacity is limited due to a lack of support from local governments. Local governments should act as facilitators in strengthening local law, but have yet to demonstrate sufficient political and regulatory commitment to protect the rights and existence of indigenous communities. Thus, it can be concluded that the dynamics of customary law within the context of a unitary state demonstrate a tension between local legitimacy and formal state law. To address this issue, strategic steps are needed, including formal legal recognition of indigenous communities, strengthening customary institutions, and legal policies that integrate local principles into the national legal system in a fair, proportional, and participatory manner.

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