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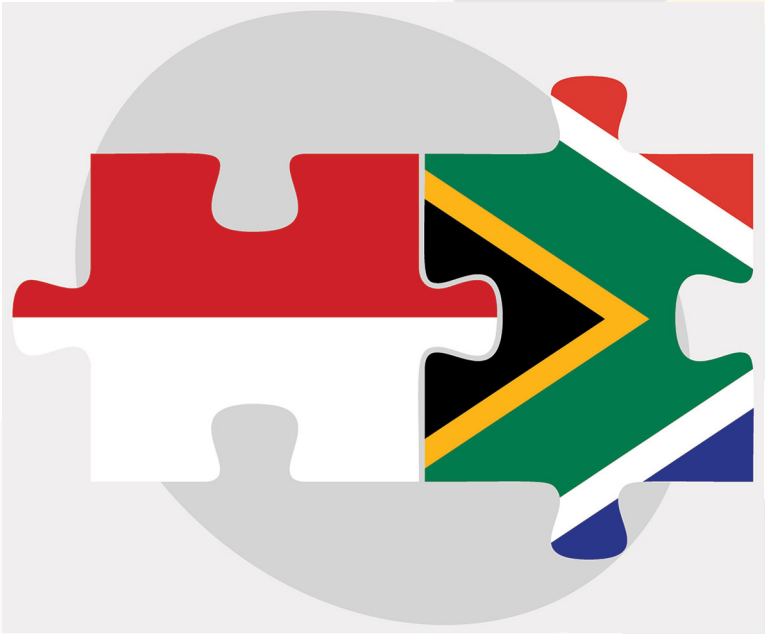

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Customary Law in Modern Legal Systems: Lessons from Indonesia and South Africa

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Abstract

This normative legal research focuses on the role and integration of customary law within the constitutional frameworks of Indonesia and South Africa. The study aims to understand how customary law has evolved and is currently applied within these countries' modern legal systems. It employs an analytical descriptive methodology to scrutinize the positive legal norms of customary law and its constitutional incorporation. The research reveals that customary law is a pivotal component in both nations. It serves as a foundational element of statehood and an integral part of the legal systems recognized by their constitutions. In Indonesia, the founding fathers acknowledged customary law as essential to the nation's identity and diversity. This perspective was further entrenched during the reform era. Similarly, South Africa's Constitution acknowledges and safeguards customary law, reflecting the Indigenous Peoples' legal system based on their traditions and customs. However, the study identifies significant challenges in the practical application of customary law. These include conflicts with national positive law, difficulties resolving issues among Indigenous communities, and the complexities of integrating traditional and modern legal systems. These obstacles highlight the necessity for a careful and balanced approach in formulating and implementing regulations related to customary law within the broader context of contemporary law and constitutional provisions. The findings of this research provide essential insights for policymakers and scholars. It underscores the necessity of comprehending the complexities of applying customary law within diverse socio-legal contexts, such as those in Indonesia and South Africa. The study concludes that acknowledging and respecting the unique characteristics of customary law, while addressing its integration challenges, is crucial for its effective implementation in modern legal frameworks.

Keywords: customary law, comparative analysis, Indonesia, South Africa, constitutional integration, legal challenges

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El derecho consuetudinario en los sistemas jurídicos modernos: lecciones de Indonesia y Sudáfrica

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Resumen

Esta investigación jurídica se centra en el papel del derecho consuetudinario y su integración en los marcos constitucionales de Indonesia y Sudáfrica y pretende comprender cómo ha evolucionado y cómo se aplica actualmente dentro de los sistemas jurídicos modernos de estos países. Se emplea una metodología analítica descriptiva para examinar las normas jurídicas positivas del derecho consuetudinario y su incorporación constitucional. La investigación revela que el derecho consuetudinario es un componente primordial de ambas naciones, ya que sirve como elemento fundamental de la condición de Estado y como parte integral de los sistemas legales reconocidos por sus constituciones. En Indonesia, los padres fundadores reconocieron que el derecho consuetudinario era esencial para la identidad y la diversidad, perspectiva que se afianzó durante la era de la reforma. En Sudáfrica, la Constitución reconoce y salvaguarda el derecho consuetudinario, el cual refleja el sistema jurídico de los pueblos indígenas basado en sus tradiciones y costumbres. Sin embargo, se señalan importantes desafíos para la aplicación práctica del derecho consuetudinario, incluidos los conflictos con el derecho positivo nacional, las dificultades para resolver problemas entre comunidades indígenas y las complejidades de la integración de sistemas legales tradicionales y modernos. Estos obstáculos ponen de relieve la necesidad de adoptar un enfoque cuidadoso y equilibrado en la formulación y la aplicación de reglamentos relacionados con el derecho consuetudinario en el contexto del derecho contemporáneo y las disposiciones constitucionales. Los hallazgos proporcionan elementos esenciales para los formuladores de políticas y los académicos involucrados con estos temas y subrayan la necesidad de comprender las complejidades que entraña la aplicación del derecho consuetudinario en diversos contextos sociojurídicos, como Indonesia y Sudáfrica. Se concluye que es importante reconocer y respetar las características singulares del derecho consuetudinario cuando se abordan los problemas de su integración y aplicación efectiva en los marcos jurídicos modernos.

Palabras clave: derecho consuetudinario, análisis comparativo, Indonesia, Sudáfrica, integración constitucional, desafíos jurídicos

Introduction

Legal sociology highlights the role of early human legal systems in various civilizations and their binding norms.[1] The unwritten, negotiable, and relational nature of customary law, along with the diversity of normative beliefs and practices within Indigenous peoples, significantly influences the development of modern legal systems.[2] Customary law is a crucial concept in a nation's legal system and constitution, as is the case in Indonesia and South Africa, renowned for their diverse tribes, cultures, and languages.[3]

Indonesia and South Africa both recognize customary law in their constitutions, but face challenges in integrating it into modern legal systems. Indonesia's constitution recognizes customary courts and traditional rights of Indigenous peoples, but conflicts arise between customary law and positive national law, particularly land rights and natural resources. South Africa's 1996 Constitution explicitly recognizes customary law but faces challenges in balancing traditional cultural identity with individual rights, particularly in gender equality and individual freedom. The integration process remains challenging, particularly in balancing tradition and modern democratic values. The constitutional guarantees and state recognition of customary law and its legal communities have been affirmed in Indonesia's Constitution. This is further reflected in Article 18A(1) of the 1945 Constitution, which directs the government to consider regional uniqueness and diversity: "(1) The State recognizes and respects local government units of a special nature regulated by law. (2) The State recognizes and respects Indigenous peoples' unity and traditional rights as long as they are alive and follow the development of society and Indonesia, as stipulated by law."

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1 Paul Kuruk, "The Role of Customary Law Under Sui Generis Frameworks of Intellectual Property Rights in Traditional and Indigenous Knowledge," *Indiana International & Comparative Law Review* 17, no. 1 (January 1, 2007): 67–118, https://doi.org/10.18060/17531.

2 Janine Ubink, "Customary Legal Empowerment in Namibia and Ghana? Lessons about Access, Power and Participation in Non-State Justice Systems: Customary Legal Empowerment in Namibia and Ghana," *Development and Change* 49, no. 4 (July 2018): 930, https://doi.org/10.1111/dech.12415.

3 Indonesia is home to more than 300 ethnic groups, and each province has its own language, ethnic makeup, religion, and history. In addition, many cultural influences stem from differences in heritage. Indonesians are a mixture of Chinese, European, Indian, and Malay. See Commisceo Global, "Indonesia - Language, Culture, Customs and Business Etiquette," July 20, 2023, https://www.commisceo-global.com/resources/country-guides/indonesia-guide. South Africa has 11 official languages, including English, Afrikaans, Ndebele, North Sotho, South Sotho, Swazi, Tsonga, Tswana, Venda, Xhosa, and Zulu. As a multicultural country, it has diverse ethnic groups, making it difficult to generalize etiquette and culture due to its diverse population. See Commisceo Global, "South Africa - Language, Culture, Customs and Etiquette," July 20, 2023, https://www.commisceo-global.com/resources/country-guides/south-africa-guide.

Article 18B (2) of the 1945 Constitution mandates a pluralist constitution, considering customary law as a guide for modern social life.[4] The 1945 Constitution consists of both written and unwritten basic laws, with unwritten law being a synonym for customary law, as explained by Soepomo.[5] This assertion shows that customary law is addressed in the country's constitution.[6]

The Judicial Power law has introduced refinements, maintaining consistency in overseeing customary law and promoting strong legal pluralism.[7] The Indonesian constitution provides constitutional guarantees and acknowledges customary law, as outlined in Article 18A(1) of the 1945 Constitution, emphasizing regional specificity and diversity. Meanwhile, Article 18B (1-2) outlines: "(1) The State recognizes and respects local government units of a special nature regulated by law. (2) The State recognizes and respects the unity of society's customary law and traditional rights as long as Indigenous people are alive and follow the development of society and Indonesia, which are regulated by the law."

Article 18B (2) of the 1945 Constitution mandates a pluralist constitution, considering customary law for modern social life. However, conflicts arise between customary and national laws, particularly regarding land and natural resource rights. Indonesia's Constitution needs revisions to protect Indigenous peoples' rights.

In South Africa, customary law developed in a context influenced by colonial settlers dating back to 1652, eventually evolving into the 1996 South African Constitution.[8] Therefore, customary law is dynamic, and its form can vary among different groups of people and across time.[9] Focusing on a small area or identifying similarities in customary law can narrow its scope, allowing for more specific lines of inquiry

4 Iwan Erar Joesoef, "The Idea of Customary Law Community Representation in the Regional Representative Council," *Unnes Law Journal* 6, no. 1 (April 30, 2020): 119–20, https://doi.org/10.15294/ulj.v5i2.26984.

5 Soerojo Wignjodipoero, *Pengantar Dan Asas-Asas Hukum Adat* (Jakarta: PT Toko Gunung Agung, 2014), 78.

6 See Republic of Indonesia, Provisional Constitution of the Republic of Indonesia 1950 §104(1) *jis.*, 32, and 43.

7 "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in a society." See Republic of Indonesia, Law of the Republic of Indonesia Number 48 of 2009 Concerning Judicial Power 2009, § 5(1).

8 Devon Wall, "Customary Law in South Africa: Historical Development as a Legal System and Its Relation to Women's Rights," South African History Online, 2014, https://www.sahistory.org.za/article/customary-law-south-africa-historical-development-legal-system-and-its-relation-womens.

9 Ntebo L Morudu and Charles Maimela, "The Indigenisation of Customary Law: Creating an Indigenous Legal Pluralism Within the South African Dispensation: Possible or Not?," *De Jure Law Journal* 54, no. 1 (2021): 56–57, https://doi.org/10.17159/2225-7160/2021/v54a4.

in the South African legal system.[10] The law of evidence in South Africa has been amended to include a refusal clause, reflecting the country's democratization. The new Constitution of 1996 integrates customary law into the legal system, promoting, among other values, human dignity, equality, and non-racialism, transforming it from a common law to a constitutional law.[11]

The South African Constitution, particularly Sections 211 and 212, formally recognizes customary law and its traditional leadership structures. The constitutional framework gives legal standing to customary law, provided it does not conflict with constitutional rights, including the principles outlined in the Bill of Rights. This inclusion allows customary law to coexist with common law while protecting individual rights, balancing traditional practices with modern legal standards.

So far, the main problems related to customary law in South Africa can be summed up into three main points, namely:[12] **(1)** its dynamic and heterogeneous nature, which leads to legal uncertainty due to varying applications across different communities; **(2)** the ambiguity this creates in defining citizens' rights and obligations; and **(3)** the potential for conflict between customary law principles and national or international legal standards, particularly in the areas of human rights and gender equality.[13]

Anthony C. Diala and Bethsheba Kangwa, in their research, "Rethinking the Interface between Customary Law and Constitutionalism in Sub-Saharan Africa" (2019),[14] focused on how customary law in Sub-Saharan Africa, particularly South Africa, is undergoing changes under the influence of modern constitutions. This study highlights the dynamics between customary law and constitutional values, especially regarding human rights and gender equality. Despite the constitutional recognition of customary law, efforts to reform it often require adjustments to safeguard individual

10 Fatima Osman, "The Consequences of the Statutory Regulation of Customary Law: An Examination of the South African Customary Law of Succession and Marriage," *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 22, no. 1 (2019): 3–4, https://doi.org/10.17159/1727-3781/2019/v22i0a7592.

11 Republic of South Africa, The South African Constitution.

12 Kgopotso Maunatlala and Charles Maimela, "The Implementation of Customary Law of Succession and Common Law of Succession Respectively: With a Specific Focus On the Eradication of The Rule of Male Primogeniture," *De Jure Law Journal* 53 (2020), https://doi.org/10.17159/2225-7160/2020/v53a3.

13 Ndulo, "African Customary Law, Customs, and Women's Rights," *Indiana Journal of Global Legal Studies* 18, no. 1 (2011): 87, https://doi.org/10.2979/indjglolegstu.18.1.87.

14 Anthony C. Diala and Bethsheba Kangwa, "Rethinking the Interface between Customary Law and Constitutionalism in Sub-Saharan Africa," *De Jure Law Journal* 52, no. 1 (2019): 189–206, https://doi.org/10.17159/2225-7160/2019/v52a12.

rights, potentially altering the fundamental nature of customary law. This study addresses the need to maintain a balance between cultural autonomy and modern democratic values. The main difference with our study is that it focuses more on the influence of colonialism on customary law norms in South Africa, while our study places more emphasis on the comparison between Indonesia and South Africa in terms of the integration of customary law into the modern constitutional system.

Fatima Osman, in an article titled "The Consequences of the Statutory Regulation of Customary Law: An Examination of the South African Customary Law of Succession and Marriage" (2021),[15] highlights how the regulation of customary law in South Africa, especially in the context of marriage and inheritance, has changed customary norms. Despite the official recognition of customary law, this study underscores the frequent displacement of communal customary values by applying common law principles. For instance, the regulation of inheritance rights in customary law has undergone significant changes due to the influence of positive laws that prioritize individual interests over communal interests. This is in contrast to our research, which focuses more on the comparative integration of customary law in Indonesia and South Africa, as well as the challenges of its implementation in a modern context.

Zainurohmah et al., in "Ensuring Legal Certainty for Customary Law Communities in Indonesia" (2024),[16] discuss how customary law remains an integral part of the Indonesian legal system despite facing major challenges, especially in the conflict between customary law and national positive law. This study focuses on the ratification of the Indigenous Peoples Bill and efforts to provide legal certainty for Indigenous Peoples. The difference with our research is that Zainurohmah's research is more focused on the Indonesian context only, whereas our study analyzes the comparison between Indonesia and South Africa in dealing with the integration of customary law within the framework of constitutional law.

Customary law in Indonesia and South Africa faces challenges due to history, legal systems, and constitutions. In Indonesia, customary law is an integral part of the national legal system, while South Africa faces a common law-based legal system. Both countries struggle to apply customary law in modern contexts, particularly

15 Osman, "The Consequences of the Statutory Regulation."

16 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 (January 31, 2024): 177–202, https://doi.org/10.15294/ciils.v3i1.78878.

in areas such as human rights and gender equality. This research aims to map the landscape of customary law in Indonesia and South Africa, analyzing its maintenance and enforcement, and addressing challenges and conflicts. The results will help develop strategies for integrating customary law into contemporary legal systems and provide valuable lessons for other countries.

Research Methods

This research is a type of normative legal research, which emphasizes the study of positive legal norms, particularly those found in constitutional and statutory regulations. It primarily uses secondary legal materials such as legislation, court decisions, and scholarly commentary. The research applies both a historical and comparative approach,[17] focusing on the development and contemporary application of customary law in Indonesia and South Africa. The analysis will be conducted using a descriptive-analytical method, examining how customary law is recognized, integrated, and applied within each country's modern legal system, with particular reference to Section 211 of the South African Constitution and relevant Indonesian statutory and judicial frameworks. Legal theories concerning pluralism, legal legitimacy, and state recognition of indigenous norms will be employed to assess the relationship between customary law and national legal systems.[18]

The need to analyze the interaction between customary law and modern legal systems in Indonesia and South Africa justifies the choice of normative legal research as the methodology for this study. This approach allows the study to examine the positive legal norms, such as legislation and constitutional provisions, that formalize and regulate the application of customary law in these countries. The use of a historical approach is essential to understanding the evolution of customary law and its adaptation to modern governance, while the comparative approach is critical for identifying similarities and differences in how Indonesia and South Africa have integrated customary law into their legal frameworks.

[17] The historical approach aims to understand philosophical changes in legal systems by comparing one country's laws with those of other countries, a philosophical activity involving the intellectual conceptions behind foreign legal institutions. See William Ewald, "Comparative Jurisprudence (II): The Logic of Legal Transplants," *The American Journal of Comparative Law* 43, no. 4 (1995): 503, https://doi.org/10.2307/840604.

[18] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011), 22.

By utilizing descriptive-analytical methods, this study can dissect relevant laws and regulations while drawing connections to broader legal theories and practices of law enforcement. The rationale behind this methodological choice is to provide a thorough understanding of how customary law operates in different socio-legal contexts and how it continues to evolve in response to national and international legal standards. This method facilitates a detailed and comparative analysis, guaranteeing a thorough exploration and evaluation of the complexities and nuances of the integration of customary law.

Perspectives on Customary Law in Indonesia and South Africa through a Historical Legal System and Constitutional Lens

Indonesian Context

The term "customary law" (*adatrecht)* was first introduced by Snouck Hurgronje, a Dutch jurist, in his book *De Atjehers*.[19] At first, this term was not well-known to many. However, the use of the term "*adatrecht*" increased after van Vollenhoven popularized it in his book *Het Adatrecht van Nederland-Indie*.[20] Throughout the latter half of the 19th century, the terms "*de gebruiken, gewoonten en godsdienstige instellingen der inlanders* (customs and religious institutions of the Indigenous people)" were used by the colonial administration in developing the legal system.[21]

The process of discussing the 1945 Constitution by the Investigating Committee for Preparatory Work for Independence (BPUPKI) shows that the 1945 Constitution was based on ideals rooted in the distinctive spirit of the Indonesian nation, as well as the experience of customary statehood that the Indonesian people have practiced. This can be seen in the speeches of Soekarno, Soepomo, and even Muhammad Yamin. Sukarno expressed the spirit of the Indonesian nation from all existing groups into five basics, namely Pancasila, where Soekarno said: "Together, we are looking for a 'philosophische grondslag'; we are looking for a 'Weltanschauung' that we all agree on. I say again, agree! [A philosophical foundation] that brother

[19] Jan Brugman, "Snouck Hurgronje's study of Islamic law," in *Leiden Oriental Connections 1850-1940*, ed. Willem Otterspeer (Leiden: Brill, 1989), 82–93, https://doi.org/10.1163/9789004610071_008.

[20] Yanis Maladi, *Antara Hukum Adat Dan Ciptaan Hukum Oleh Hakim (Judge Made Law)* (Yogyakarta: Mahkota Kata, 2009), 22.

[21] Yanis Maladi, "Eksistensi Hukum Adat Dalam Konstitusi Negara Pasca Amandemen UUD 1945," *Jurnal Hukum & Pembangunan* 41, no. 3 (September 3, 2011): 450, https://doi.org/10.21143/jhp.vol41.no3.254.

Yamin approves, that Ki Bagoes approves, that Ki Hadjar approves, that brother Sanoesi approves, that brother Abikoesno approves, that brother Lim Koen Jian approves. In short, we are all looking for one mode."[22]

Soepomo stated that the basis and structure of the state were related to the legal history (*rechtsgeschichte*) and social institutions of the state itself. Therefore, the development of the Indonesian state must be adjusted to the existing social structure of Indonesian society, as argued by Soepomo at the BPUPK meeting: "Indeed, the basis and form of the structure of a state are closely connected with the legal history of the 'rechtsgeschichte' and the social institutions of the 'sociale structuur' of that country. Therefore, what is good and fair for one country is not necessarily good and fair for another because circumstances are different. Each country has its special features concerning the history and pattern of its people."[23]

Muhammad Yamin also stated that the basis of the state could be the composition of the customary law state: "From the current civilization of the people, and the composition of the subordinate customary law state, we collect and collect the essence of state governance that can become the basis of the State."[24]

One form of customary constitutional law that characterizes Indonesian statehood is the principle of deliberation. Deliberation is needed so state administrators can fulfill their duties to realize social justice, following the people's ideals. Soepomo stated: "The administration of the native Indonesian state, which still exists in villages such as Java and Sumatra, involves leaders who uphold unity and balance in society. The village head responsible for carrying out justice must form a sense of justice and the ideals of the community. The chief 'holds the custom' and consults with his people, maintaining the inner bond between the leader and the people."[25]

Yamin also emphasized that the principle of deliberation is the nature of the original Indonesian civilization, even before the entry of Islam. It is the principle

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22 Idaman, "Relasi Kuasa-Pengetahuan Dalam Sistem Ketatanegaraan Di Kerajaan Konawe Abad Ke-XVII: Telaah Epistemologi Siwole Mbatohu," *Halu Oleo Law Review* 3, no. 1 (March 31, 2019): 135, https://doi.org/10.33561/holrev.v3i1.6076.

23 Laga Sugiarto and Riski Febria Nurita, "Pandangan Negara Integralistik Sebagai Dasar Philosofische Gronslag Negara Indonesia," *Jurnal Cakrawala* 9, no. 1 (June 2018): 64, https://doi.org/10.26905/idjch.v9i1.1986.

24 Jean Gelman Taylor, *Indonesia: Peoples and Histories* (New Haven, Conn.: Yale University Press, 2003), 285–86.

25 Mohamad Yamin, *Naskah Persiapan Undang-Undang Dasar 1945. Jilid Pertama*, 1 (Jakarta: Sekretariat Negara Republik Indonesia, 1959), 29–30.

of deliberation that composes society and statehood based on joint decisions, namely: "Indonesia is a very Islamic country that prioritizes consultation and a special pattern for its implementation. It is linked to the country's history, as it has a long history of civilization since the formation of villages, communities, and the arrangement of land rights based on joint decision-making. This consensus eliminates the individual base and promotes an organized society for the common good and the people's interests."[26]

Soekarno, Soepomo, and Yamin highlighted the importance of customary constitutional law in Indonesian statehood. Article 18 of the 1945 Constitution acknowledges these laws, divides Indonesia into territories, establishes a legitimate government system, and considers rights of origin. Related to customary law, communities, and customary constitutional law are regulated in Article 18B: "(1) The State recognizes and respects special units of local government regulated by law. (2) The State recognizes and respects the unity of Indigenous peoples and their traditional rights as long as they are alive and follow the development of society and the principles of the Unitary State of the Republic of Indonesia, which are stipulated by the law."[27]

Recognizing and respecting special local government units requires enacting customary constitutional law and ensuring privileged structures do not face imprecise provisions. Recognizing Indigenous peoples' unity at the village, nagari, clan, and broader levels can contradict unitary state principles, forming legal pluralism.[28] Indonesia's customary law, long recognized as a cornerstone of social and legal governance, is deeply rooted in the country's constitutional history. This rich legal tradition, however, has evolved through various constitutional regimes. The recognition of customary law can first be seen in the 1945 Constitution, particularly in Article 18B, which formally acknowledges customary law and Indigenous peoples' rights. However, this recognition is part of a longer historical trajectory that includes significant developments during the Konstitusi Republik Indonesia Serikat (RIS) and the UUDS 1950.

The RIS Constitution (1949–1950), established during Indonesia's brief period as a federal state, acknowledged the existence of customary law but placed it within a broader federal framework that emphasized the relationship between the central

[26] Yamin, 29-30.
[27] Results of the Second Amendment to the 1945 Constitution.
[28] Michael D. A. Freeman and Dennis Lloyd, *Lloyd's Introduction to Jurisprudence*, 7th ed (London: Sweet & Maxwell, 2001), 919.

government and the regions. The federal structure allowed for greater regional autonomy, including the recognition of local customs and traditions in law. This period saw the beginnings of legal pluralism in the Indonesian context, where customary law coexisted with state law. Yet, the federal experiment was short-lived, with Indonesia soon transitioning back to a unitary state under the Provisional Constitution of 1950 (UUDS 1950).

Under the UUDS 1950, the emphasis on regional diversity persisted, and customary law held significant sway in local governance and legal practices. However, customary law was still considered secondary to national law and subject to the overarching authority of the central government. This tension between national and customary law began to surface more clearly, particularly as modernization and national integration efforts progressed.

A significant development in the treatment of customary law occurred during the constitutional amendments of 1999–2002, which were a direct response to the reformation era following the fall of Suharto. During these amendments, extensive debates emerged regarding the role of customary law in Indonesia's legal system. These debates centered on the balance between respecting Indigenous traditions and aligning customary practices with national legal standards, particularly in terms of human rights and equality. Ultimately, the amendments to the 1945 Constitution solidified the recognition of customary law in Article 18B, provided that it aligns with national interests and society's development.

Thus, Indonesian customary law regulation has been marked by a historical progression from recognition within a federal framework to subordination under a unitary system, and finally to conditional recognition in the modern era. This historical evolution underscores the complexities of integrating customary law into a national legal framework while respecting the diverse cultural and legal traditions that define Indonesia's identity.

South African Context

South African customary law is a legal system rooted in the traditions and cultural practices of Indigenous communities. It is officially recognized and protected under Section 211 of the South African Constitution. Rather than treating law as separate

from society, this legal system reflects and evolves with the everyday social norms and values of the people it governs.[29]

Recognition of customary law comes through the South African Constitution under Section 211, although there is no "textual relationship between the definition of customary law and the communities recognized in Section 31(1)."[30] The application of African Customary Law (ACL) is subject to the Constitution and the laws that specifically govern it. The Bill of Rights protects South African Customary Law, including freedom, belief, opinion, language, culture, and collective rights. These rights are subject to the Constitution and can only be limited by Section 36, a general restriction clause.[31]

The Constitution protects the ACL, recognizing its role in traditional leadership and court appeals. This concept emerged in South Africa after colonial settlers arrived in 1652. Theophilus Shepstone created indirect rules and official customary law, combining native customs with English procedures.[32] The Northern Republic of South Africa (Transvaal and Free State) does not allow or accommodate African customary law systems separate from Republican law.[33]

Zulu possessions in 1879 and 1906 significantly impacted South African law, leading to assimilation and slavery, while the Cape Colony had customary law with citizenship.[34] Colonial concerns over inheritance practices, particularly polygamy and dowry, led to the creation of the Customary Administration Act of 1927 in South Africa after 1910.[35] South Africa transitioned to a constitutional democracy

[29] Richard Anthony Benton, "Griffiths, Anne: Customary Law in a Transnational World: Legal Pluralism Revisited," in *Conversing with the Ancestors: Concepts and Institutions in Polynesian Customary Law* (Te Matahauariki Institute, University of Waikato, 2006), 298.

[30] See Chapter 12, Section 211-212, The Department of Justice and Constitutional Development, The South African Constitution. See also, Es Nwauche, "Affiliation to a New Customary Law in Post-Apartheid South Africa," *Potchefstroom Electronic Law Journal* 18, no. 3 (April 12, 2015): 575, https://doi.org/10.4314/pelj.v18i3.04.

[31] Wieland Lehnert, "The Role of the Courts in the Conflict Between African Customary Law and Human Rights," *South African Journal on Human Rights* 21, no. 2 (January 2005): 245, https://doi.org/10.1080/19962126.2005.11865135.

[32] Martin Chanock, *The Making of South African Legal Culture, 1902-1936: Fear, Favour, and Prejudice* (Cambridge; New York: Cambridge University Press, 2001), 245–46, https://doi.org/10.1017/CBO9780511495403.

[33] Chanock., 270.

[34] See South African History Online, "The Zulu Kingdom and the Colony of Natal," South African History Online, July 21, 2023, https://www.sahistory.org.za/article/zulu-kingdom-and-colony-natal.

[35] Monica De Souza, "When Non-Registration Becomes Non-Recognition: Examining the Law and Practice of Customary Marriage Registration in South Africa," *Acta Juridica* (2013), 256.

in 1993, ensuring full recognition of customary law in both the High and the Commissioner's courts through Article 11 of the Act.[36]

During negotiations, leaders contested the status of ACL and cultural recognition. The Supreme Constitution would allow for judicial review and amendments, focusing on gender equality and addressing ACL principles that give more authority to men. Indigenous leaders requested an exemption from the ACL in the Zimbabwean Constitution Bill of Rights, ratified in 1994, 1996, and 1997. South Africa's complex legal system, influenced by colonialism and apartheid, has led to conflicts in customary law.[37] The 1996 Constitution allows the coexistence of customary law, but challenges remain in balancing cultural identity and tradition while protecting individual rights. The sustainability of customary law depends on future challenges.

Comparison between Indonesian and African Customary Law (Review of History, Legal System, and Constitution Aspects)

Indonesia and South Africa share a rich culture and unique customary law system, but differ in history, treatment, and integration into national legal systems. Table 1 compares the treatment of customary law in Indonesia and South Africa.

Indonesia and South Africa recognize customary law in their constitutions, but their use and relevance differ. Indonesia maintains its customary law in various contexts, particularly among Indigenous peoples, while South Africa struggles to align it with modern democratic principles and human rights. To maintain relevance and fairness, Indonesia must adopt an inclusive and collaborative approach, document and preserve Indigenous knowledge, and educate the wider public about the importance of customary law and rights. South Africa must work harder to ensure customary law does not conflict with human rights and modern democratic principles, requiring progressive reform or interpretation. The key to recognizing and applying customary law is respecting tradition and history while ensuring fair treatment of all citizens, including Indigenous peoples.

[36] T. W. Bennett, *Customary Law in South Africa* (Lansdowne: Juta, 2004), 77.
[37] See Otto Saki and Tatenda Chiware, *The Law in Zimbabwe* (Hauser Global Law School Program, 2007).

Table 1. Comparison of Characteristics of Customary Law in Indonesia and South Africa

	Indonesia	South Africa
Constitution and Customary Law	Article 18B of the 1945 Constitution provides recognition and protection for Indigenous peoples and their traditional rights.	The South African Constitution protects and recognizes customary law under Sections 211 and 212.
The Role of Customary Law	Customary law acts as a living law that grows and develops following the dynamics of Indigenous peoples.	Customary law has its source in the practices, traditions, and customs of the people.
History and Colonial Influence	Customary law in Indonesia existed before the colonial era and has survived despite various changes and outside influences.	The development of customary law occurred mainly after 1652, when colonial settlers arrived in South Africa.
Reform and Recognition of Customary Law	The reform era has revived the importance of customary law as an integral part of Indonesia's identity and cultural diversity.	South Africa's transition process to constitutional democracy has included intensive negotiations on the role and place of customary law in modern society.
Integration of Customary Law into the National Legal System	Customary law has formed the basis for many aspects of law and social governance in Indonesia.	The final constitution, passed in 1996 and enacted in early 1997, allowed customary law to coexist with common law.

Source: Own elaboration

Implementation and Challenges of Indonesian and South African Customary Law in the Contemporary Legal System and Constitution

Implementation and Challenges of Customary Law in the Contemporary Indonesian Legal System

The constitution is a fundamental document that outlines the formation of a state, its ideals, goals, and the principles upon which life is based.[38] The 1945 Constitution of Indonesia emphasizes nationalism, togetherness, and brotherhood, reflecting

[38] Ahmad Ahmad, "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 5, no. 2 (October 28, 2021), https://doi.org/10.35308/jic.v5i2.2547.

the country's culture. This contrasts with Western individualism, highlighting the importance of these values in the nation's culture and fostering a sense of care for its people.[39]

The 1945 Indonesian Constitution was crafted with the nation's unique values and customs, reflecting the unique constitutional experiences of the Indonesian people.[40] As stated by Soepomo in the BPUPKI discussion meeting, "the basis and structure of the state are related to the legal history (*rechtsgeschichte*) and social institutions of the state itself."[41] The Indonesian state must adapt to its social structure, reflecting the nation's determination to create a state that reflects local identity and wisdom. Constitutional rights are protected through provisions from the 1945 Constitution, laws, government regulations, and international conventions.[42]

Indonesia, a country based on the rule of law, has a diverse legal system consisting of civil, customary, and Islamic systems. The civil law system, developed during the Dutch colonial period, influences existing legal products and is still in force today.[43] In criminal law, *Wetboek van Strafrechts* (WvS) is still valid through Law 1 of 1947 as a guide in the criminal field (Criminal Code). In civil law, *Burgerlijke Wetboek* (BW), the Civil Code, and *Wetboek Van Kopenhandel* (WvK), the Commercial Law Code, are still valid. In addition, in the field of civil procedure, *Herzien Inlandsch Reglement* (HIR), *Rechtsreglement voor de Buitengewesten* (RBg), and *Reglement op de Burgerlijke Rechtsvordering* (RR) are also still in force and have not changed.[44]

The Indonesian Constitution acknowledges customary law, influenced by the 1950 Provisional Constitution. The state government prioritizes legal certainty, utilizing societal law sources. Despite challenges, customary law is effective in local communities, with more people obeying it.[45]

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39 Nurdinah Muhammad, "Resistensi Masyarakat Urban Dan Masyarakat Tradisional Dalam Menyikapi Perubahan Sosial | Muhammad | Substantia: Jurnal Ilmu-Ilmu Ushuluddin," *Substantia: Jurnal Ilmu-Ilmu Ushuluddin* 19, no. 2 (2017), https://jurnal.ar-raniry.ac.id/index.php/substantia/article/view/2882.

40 Maladi, "Eksistensi Hukum Adat."

41 Ahmad Zazili, "Pengakuan Negara Terhadap Hak-Hak Politik (Right To Vote) Masyarakat Adat Dalam Pelaksanaan Pemilihan Umum (Studi Putusan Mahkamah Konstitusi No.47-81/Phpu.A-Vii/2009)," *Jurnal Konstitusi* 9, no. 1 (May 20, 2016): 135, https://doi.org/10.31078/jk916.

42 Maladi, "Eksistensi Hukum Adat."

43 Sigit Somadiyono, "Perbandingan Sejarah Positivisme Hukum Di Indonesia Sebagai Penentu Politik Hukum Dimasa Yang Akan Datang," *Legalitas: Jurnal Hukum* 12, no. 1 (June 25, 2020): 13, https://doi.org/10.33087/legalitas.v12i1.191.

44 Sri Hajati, Ellyne Dwi Poespasari, and Oemar Moechthar, *Pengantar Hukum Indonesia* (Surabaya: Airlangga University Press, 2018), 91.

45 Itok Dwi Kurniawan and Hassan Suryono, "Eksistensi Hukum Adat Masyarakat Kampung Naga (Hukum Nasional, Hukum Waris Adat, Hukum Tanah Adat, Dan Hukum Pernikahan Adat)," *Jurnal Hukum dan Pembangunan Ekonomi* 6, no. 1 (January 2, 2018): 271–87, https://doi.org/10.20961/hpe.v6i1.17992.

Indonesian jurists, particularly from Western countries, are studying customary law, a legal system that has been present in Indonesia for thousands of years. This system regulates social, economic, and political life, and its principles, structure, and values are being researched. However, the position of customary law in Indonesia is increasingly marginalized due to changing times and changes in society's problems.[46]

Cornelis van Vollenhoven is renowned for categorizing Indonesian customary law into specific regional groupings, often referred to as *adat* law circles.[47] His seminal work on customary law (*adatrecht)* has greatly influenced the understanding and organization of Indonesia's legal traditions. Literature is inconsistent about how many territories he identified.

While some sources cite 23 customary law environments, others frequently reference 19 territories. This discrepancy likely arises from different interpretations or adaptations of Van Vollenhoven's original work. More recent legal discussions commonly reference the 19-territory division, while some historical sources uphold the 23-territory framework.

Thus, whether referring to 19 or 23 regions, the Indonesian constitution continues to recognize customary law as an essential component of national legislation, helping to ensure legal certainty and protect the rights of Indigenous peoples. This recognition enables these *adat* regions to be included in national legal frameworks while respecting their local governance structures.[48] For example, there is often a conflict between the traditional rights of Indigenous peoples and the interests of investors who use the framework of state law.[49] The Indonesian legal system's

[46] Zaka Firma Aditya, "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Konstribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (May 15, 2019): 37, https://doi.org/10.33331/rechtsvinding.v8i1.305.

[47] Cees Fasseur, "Colonial dilemma: Van Vollenhoven and the struggle between adat law and Western law in Indonesia," in *The revival of tradition in Indonesian politics*, ed. Jamie S. Davidson and David Henley (London: Routledge, 2007), 70–87.

[48] A non-uniform understanding of the definition of customary law, constraints on integrating customary law with national law, and a lack of resources to ensure the protection of customary law at the local level remain among the challenges yet to be settled. See I Ketut Sudantra, "Urgensi Dan Strategi Pemberdayaan Peradilan Adat Dalam Sistem Hukum Nasional," *Journal of Indonesian Adat Law (JIAL)* 2, no. 3 (December 1, 2018): 122–46, https://doi.org/10.46816/jial.v2i3.10.

[49] Ahmad Heru Romadhon et al., "Dinamika Pranata Pemerintahan Desa Adat Dalam Dimensi Hukum Tata Negara," *Jurnal Hukum Media Bhakti* 2, no. 2 (February 27, 2020), https://doi.org/10.32501/jhmb.v2i2.25.

Western-influenced civil law model and political focus on codification and unification have led to the decline of customary law and its institutions.[50]

Indonesia's customary law is declining due to perceived outdatedness, leading to conflicts between Indigenous peoples and state law. This issue is exacerbated by the perception of land tenure based on customary rights versus public interests. The author discusses the implementation of customary law in the contemporary Indonesian legal system.

In the current context, there have been significant legal advancements that support the continued relevance of customary law, including the recognition of legal standing for Indigenous communities in high-profile cases brought before the Constitutional Court and the Supreme Court.

Indigenous communities often claim that government regulations have harmed their interests in these cases, which often involve disputes over land rights, natural resources, and environmental protections. Notably, the Constitutional Court has pivotally upheld the rights of Indigenous peoples, ensuring the respect of their customary laws and traditions within the broader framework of Indonesian law. For instance, the Constitutional Court's decision in 2012 regarding forest land rights was a landmark case that reaffirmed the role of customary law in protecting Indigenous land claims.

Moreover, the granting of legal standing to Indigenous groups has empowered these communities to challenge regulatory actions that may infringe upon their traditional rights. This aspect of legal pluralism reflects a more contemporary understanding of the interaction between formal state law and customary law, highlighting a more integrated legal system where customary law continues to be a vital force. The recognition of Indigenous peoples' legal standing serves as a counterpoint to the notion of decline and demonstrates how customary law actively shapes legal outcomes in modern Indonesia.

In addition, the contemporary Indonesian legal system has incorporated legal pluralism not only as a theoretical construct but as a practical reality, where multiple

[50] H. Lahaji et al., *Diskursus Hukum Islam Di Indonesia*, vol. 1 (Gorontalo: Buku-Buku Karya Dosen IAIN Sultan Amai Gorontalo, n.d.).

legal systems coexist. This dynamic interaction between customary law and state law reflects an ongoing process of negotiation, adaptation, and mutual influence.

The implementation of customary law in Indonesia's legal system is a complex and relevant challenge despite its recognition as a legal source. First, one of the main challenges is the conflict between customary law and positive law or nationally applicable laws.[51] Sometimes, there is a clash between customary law norms and values with more general legal provisions regulated by the state. This can raise questions about which priority should be taken in resolving disputes or legal issues. Second, implementing customary law also challenges harmonizing with the principles of human rights guaranteed in the Constitution.[52] Sometimes, customary law practices may conflict with human rights principles, such as gender equality or individual freedom. Therefore, a balanced and compromising approach is needed to ensure customary law does not violate individual human rights.

One major difficulty in integrating customary law into the national legal system is the heterogeneity of Indonesian society, where each Indigenous group may have its own set of traditions and laws. This heterogeneity poses challenges for developing a unified national legal system incorporating diverse local practices. The spectrum of customary law ranges from universal norms, which may be broadly applicable and thus more easily integrated into national law, to highly specific practices that exist only within small, localized communities. The state's overarching legal framework may find these localized customs too distinct or specialized to effectively integrate them.

Mochtar Kusumaatmadja's legal theory offers a potential solution by suggesting a dual approach.[53] He suggests integrating customary laws with universal values or broader applicability into the national legal system, as they offer shared principles that align with the general values of Indonesian society. However, for customary laws with particular characteristics, Kusumaatmadja advocates for their accommo-

[51] Nabilah Apriani and Nur Shofa Hanafiah, "Telaah Eksistensi Hukum Adat Pada Hukum Positif Indonesia Dalam Perspektif Aliran Sociological Jurisprudence," *Jurnal Hukum Lex Generalis* 3, no. 3 (March 17, 2022): 231–46, https://doi.org/10.56370/jhlg.v3i3.226.

[52] Retno Mawarini Sukmariningsih, "Penataan Lembaga Negara Mandiri Dalam Struktur Ketatanegaraan Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 26, no. 2 (November 11, 2014): 194, https://doi.org/10.22146/jmh.16039.

[53] Nor Fadillah, "Tinjauan Teori Hukum Pembangunan Mochtar Kusumaatmadja Dalam Undang-Undang Ibu Kota Negara (IKN)," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 11, no. 1 (August 24, 2022): 45–65, https://doi.org/10.14421/sh.v11i1.2559.

dation within regional legal systems. Local governments can codify and enforce these specific customary laws through mechanisms like provincial or regency/city regulations, ensuring their respect and harmony with broader national laws.

Customary law faces challenges due to its gradual abandonment by its adherents, economic development, urbanization, and globalization. This erosion of traditional practices, particularly among younger generations, threatens their relevance in Indigenous communities. Modernity, state law centralization, and traditional leaders' diminishing roles all contribute to this decline. To ensure its relevance, efforts to integrate customary law into the national legal system must consider its evolving role.

Furthermore, the challenge of customary law in contemporary Indonesian legal systems is the lack of understanding and awareness of customary law among legal stakeholders, including judges, prosecutors, and lawyers.[54] The principles of customary law may be misinterpreted by certain parties, which can adversely influence decision-making processes. Safeguarding Indigenous peoples' rights presents significant challenges due to limitations such as scarce resources, ongoing conflicts, and systemic injustices.

Finally, another important challenge is the sustainability and adaptation of customary law in an era of modernization and globalization.[55] Indonesian society's social, economic, and cultural changes affect the customary legal order. Therefore, it is important to ensure that customary law remains relevant, responsive, and adaptable to changing times without compromising Indigenous peoples' values and cultural identity.

Implementation and Challenges of Customary Law in the Contemporary South African Legal System

South Africa's constitution recognizes customary law as a legally recognized source of law, ensuring that courts apply it if applicable. Customary law, a long-standing system in African societies, respects traditional institutions and leadership roles. The Human Rights Charter protects this law, ensuring freedom and expression.

[54] Rianto Simangunsong and Herlina Panggabean, "Penyelesaian Kasus Kecelakaan Lalu Lintas Oleh Anak Dibawah Umur Melalui Restorative Justice," *Tapanuli Journals* 4, no. 1 (2022): 60–77.

[55] Wahyu Nugroho, "Kebijakan Pengelolaan Tambang Dan Masyarakat Hukum Adat Yang Berkeadilan Ekologis," *Jurnal Konstitusi* 15, no. 4 (January 15, 2019): 816, https://doi.org/10.31078/jk1547.

South Africa's multicultural structure influences legal pluralism, with common and African customary law coexisting to address multicultural needs. Governments and the judiciary must collaborate to ensure harmony and equality.[56]

African customary law, influenced by political forces, has been deconstructed and expanded. South Africa is divided into old and new orders, reflecting the legacy of colonialism. Universities should reform the curriculum system to constitutionalize customary law as a living law and remove colonial influences.

However, the Constitution does not explicitly relate customary law to a recognized community, indicating a lack of direct connection.[57] Applying ACL is subject to the South African Constitution and legislation specifically governing it. This means that even if customary law is recognized, its application still depends on the provisions and limitations stipulated in the Constitution and related laws. Ensuring that recognition of customary law remains following the principles and values set out in the wider legal system is important.[58]

The South African Constitution protects ACL in the Bill of Rights, ensuring its existence and maintenance within the country's human rights context. Traditional institutions, prestige, and leadership responsibilities are considered when customary law is acknowledged. South Africa seeks to incorporate customary law into its contemporary legal system, addressing challenges related to its interaction with common law and the protection of individual rights. The ultimate goal is to achieve jurisprudential equality between the two legal systems, adopting humanistic values and incorporating the African dimension of justice into common law. Adherence to the interpretive paradigm can drive restorative justice and curricula that respect African/South African values. This approach can instill a new spirit in South African laws and constitutions, promoting an inclusive legal system consistent with diverse African/South African values.

56 Frank Kayitare, "Respect of the Right to a Fair Trial in Indigenous African Criminal Justice Systems: The Case of Rwanda and South Africa," Master's thesis, University of Pretoria, 2004.

57 Monique Deveaux, "Liberal Constitutions and Traditional Cultures: The South African Customary Law Debate," *Citizenship Studies* 7, no. 2 (July 2003): 161–80, https://doi.org/10.1080/1362102032000065955.

58 Ahmad Abed Alla Alhusban et al., "The Regulatory Structure and Governance of Forensic Accountancy In The Emerging Market: Challenges and Opportunities," *Journal of Governance and Regulation* 9, no. 4 (2020): 149–61, https://doi.org/10.22495/jgrv9i4art13.

Conclusion

Based on the discussion above, several things can be concluded: First, in Indonesia and South Africa, customary law has an important role as the foundation of statehood and legal systems recognized by the constitution. In Indonesia, the founding fathers, such as Soekarno, Soepomo, and Yamin, emphasized the importance of customary constitutional law as an integral part of Indonesia's identity and cultural diversity. Although customary law in Indonesia has faced challenges and neglect, the reform era has strengthened the importance and recognition of customary law as a vital element in Indonesia's legal structure and constitution. Meanwhile, in South Africa, customary law is an unmodified legal system developed by Indigenous peoples based on their traditions and customs. The South African Constitution recognizes traditional authority and customary law, and through statutes and court decisions, customary law is protected and recognized as part of individual and collective rights. Although customary law in both countries faces challenges and change over time, recognition and respect for customary law remain significant in the context of each country's diversity and cultural identity.

Second, the challenges of implementing customary law in Indonesia and South Africa in contemporary legal systems and constitutions remain deep and complex. Both countries have a diversity of ethnic, cultural, and complex legal systems, which influence efforts to maintain a balance between traditional values with justice and the protection of human rights. In Indonesia, the complexity lies in the conflict between customary law and national positive law, while in South Africa, the main challenge is achieving harmony between traditional and modern legal systems and protecting individual rights. Implementing customary law in these two countries requires a careful and balanced approach to maintain the balance of culture and individual rights while ensuring justice and fair protection in today's evolving laws and constitutions.

References

Aditya, Zaka Firma. "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Konstribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (May 15, 2019): 37–54. https://doi.org/10.33331/rechtsvinding.v8i1.305.

Ahmad, Ahmad. "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945." *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 5, no. 2 (October 28, 2021). https://doi.org/10.35308/jic.v5i2.2547.

Alhusban, Ahmad Abed Alla, Haitham A. Haloush, Hashem Alshurafat, Jebreel Mohammad Al-Msiedeen, Ali Abdel Mahdi Massadeh, and Rawan J. Alhmoud. "The Regulatory Structure and Governance of Forensic Accountancy In The Emerging Market: Challenges and Opportunities." *Journal of Governance and Regulation* 9, no. 4 (2020): 149–61. https://doi.org/10.22495/jgrv9i4art13.

Apriani, Nabilah, and Nur Shofa Hanafiah. "Telaah Eksistensi Hukum Adat Pada Hukum Positif Indonesia Dalam Perspektif Aliran Sociological Jurisprudence." *Jurnal Hukum Lex Generalis* 3, no. 3 (March 17, 2022): 231–46. https://doi.org/10.56370/jhlg.v3i3.226.

Bennett, T. W. *Customary Law in South Africa*. Lansdowne: Juta, 2004.

Benton, Richard Anthony. "Griffiths, Anne: Customary Law in a Transnational World: Legal Pluralism Revisited." In *Conversing with the Ancestors: Concepts and Institutions in Polynesian Customary Law*. Te Matahauariki Institute, University of Waikato, 2006.

Brugman, Jan. "Snouck Hurgronje's study of Islamic law." In *Leiden Oriental Connections 1850-1940*, edited by Willem Otterspeer, 82-93. Leiden: Brill, 1989. https://doi.org/10.1163/9789004610071_008.

Chanock, Martin. *The Making of South African Legal Culture, 1902-1936: Fear, Favour, and Prejudice*. Cambridge; New York: Cambridge University Press, 2001. https://doi.org/10.1017/CBO9780511495403.

Commisceo Global. "Indonesia - Language, Culture, Customs and Business Etiquette." July 20, 2023. https://www.commisceo-global.com/resources/country-guides/indonesia-guide.

Commisceo Global. "South Africa - Language, Culture, Customs and Etiquette." July 20, 2023. https://www.commisceo-global.com/resources/country-guides/south-africa-guide.

Deveaux, Monique. "Liberal Constitutions and Traditional Cultures: The South African Customary Law Debate." *Citizenship Studies* 7, no. 2 (July 2003): 161–80. https://doi.org/10.1080/1362102032000065955.

Diala, Anthony C., and Bethsheba Kangwa. "Rethinking the Interface between Customary Law and Constitutionalism in Sub-Saharan Africa." *De Jure Law Journal* 52, no. 1 (2019): 189–206. https://doi.org/10.17159/2225-7160/2019/v52a12.

Ewald, William. "Comparative Jurisprudence (II): The Logic of Legal Transplants." *The American Journal of Comparative Law* 43, no. 4 (1995): 489–510. https://doi.org/10.2307/840604.

Fadillah, Nor. "Tinjauan Teori Hukum Pembangunan Mochtar Kusumaatmadja Dalam Undang-Undang Ibu Kota Negara (IKN)." *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 11, no. 1 (August 24, 2022): 45–65. https://doi.org/10.14421/sh.v11i1.2559.

Fasseur, Cees. "Colonial dilemma: Van Vollenhoven and the struggle between adat law and Western law in Indonesia." In *The Revival of Tradition in Indonesian Politics*, edited by Jamie S. Davidson and David Henley, 70–87. London: Routledge, 2007.

Freeman, Michael D. A., and Dennis Lloyd. *Lloyd's Introduction to Jurisprudence*. 7th ed. London: Sweet & Maxwell, 2001.

Hajati, Sri, Ellyne Dwi Poespasari, and Oemar Moechthar. *Pengantar Hukum Indonesia*. Surabaya: Airlangga University Press, 2018.

Idaman. "Relasi Kuasa-Pengetahuan Dalam Sistem Ketatanegaraan Di Kerajaan Konawe Abad Ke-XVII: Telaah Epistemologi Siwole Mbatohu." *Halu Oleo Law Review* 3, no. 1 (March 31, 2019): 132–56. https://doi.org/10.33561/holrev.v3i1.6076.

Joesoef, Iwan Erar. "The Idea of Customary Law Community Representation in the Regional Representative Council." *Unnes Law Journal* 6, no. 1 (April 30, 2020): 119–42. https://doi.org/10.15294/ulj.v5i2.26984.

Kayitare, Frank. "Respect of the Right to a Fair Trial in Indigenous African Criminal Justice Systems: The Case of Rwanda and South Africa." Master's Thesis, University of Pretoria, 2004.

Kurniawan, Itok Dwi, and Hassan Suryono. "Eksistensi Hukum Adat Masyarakat Kampung Naga (Hukum Nasional, Hukum Waris Adat, Hukum Tanah Adat, Dan Hukum Pernikahan Adat)." *Jurnal Hukum dan Pembangunan Ekonomi* 6, no. 1 (January 2, 2018): 271–87. https://doi.org/10.20961/hpe.v6i1.17992.

Kuruk, Paul. "The Role of Customary Law Under Sui Generis Frameworks of Intellectual Property Rights in Traditional and Indigenous Knowledge." *Indiana International & Comparative Law Review* 17, no. 1 (January 1, 2007): 67–118. https://doi.org/10.18060/17531.

Lahaji, H., Kamaruddin, Abdul Haris Abbas, Aida Humaira, and Muh. Fudhail Rahman. *Diskursus Hukum Islam Di Indonesia*. Vol. 1. Gorontalo: Buku-Buku Karya Dosen IAIN Sultan Amai Gorontalo, n.d.

Lehnert, Wieland. "The Role of the Courts in the Conflict Between African Customary Law and Human Rights." *South African Journal on Human Rights* 21, no. 2 (January 2005): 241–77. https://doi.org/10.1080/19962126.2005.11865135.

Maladi, Yanis. *Antara Hukum Adat Dan Ciptaan Hukum Oleh Hakim (Judge Made Law)*. Yogyakarta: Mahkota Kata, 2009.

Maladi, Yanis. "Eksistensi Hukum Adat Dalam Konstitusi Negara Pasca Amandemen UUD 1945." *Jurnal Hukum & Pembangunan* 41, no. 3 (September 3, 2011): 450–64. https://doi.org/10.22146/jmh.16235.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2011.

Maunatlala, Kgopotso, and Charles Maimela. "The Implementation of Customary Law of Succession and Common Law of Succession Respectively: With a Specific Focus On

the Eradication of The Rule of Male Primogeniture." *De Jure Law Journal* 53 (2020). https://doi.org/10.17159/2225-7160/2020/v53a3.

Morudu, Ntebo L, and Charles Maimela. "The Indigenisation of Customary Law: Creating an Indigenous Legal Pluralism Within the South African Dispensation: Possible or Not?" *De Jure Law Journal* 54, no. 1 (2021). https://doi.org/10.17159/2225-7160/2021/v54a4.

Muhammad, Nurdinah. "Resistensi Masyarakat Urban Dan Masyarakat Tradisional Dalam Menyikapi Perubahan Sosial | Muhammad | Substantia: Jurnal Ilmu-Ilmu Ushuluddin." *Substantia: Jurnal Ilmu-Ilmu Ushuluddin* 19, no. 2 (2017). https://jurnal.ar-raniry.ac.id/index.php/substantia/article/view/2882.

Ndulo. "African Customary Law, Customs, and Women's Rights." *Indiana Journal of Global Legal Studies* 18, no. 1 (2011): 87–120. https://doi.org/10.2979/indjglolegstu.18.1.87.

Nugroho, Wahyu. "Kebijakan Pengelolaan Tambang Dan Masyarakat Hukum Adat Yang Berkeadilan Ekologis." *Jurnal Konstitusi* 15, no. 4 (January 15, 2019): 816–35. https://doi.org/10.31078/jk1547.

Nwauche, Es. "Affiliation to a New Customary Law in Post-Apartheid South Africa." *Potchefstroom Electronic Law Journal* 18, no. 3 (April 12, 2015): 568–92. https://doi.org/10.4314/pelj.v18i3.04.

Osman, Fatima. "The Consequences of the Statutory Regulation of Customary Law: An Examination of the South African Customary Law of Succession and Marriage." *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 22, no. 1 (2019). https://doi.org/10.17159/1727-3781/2019/v22i0a7592.

Republic of Indonesia. Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, 2009.

Republic of Indonesia. Provisional Constitution of the Republic of Indonesia 1950, 1950.

Republic of South Africa. *Constitution of the Republic of South Africa, 1996*. Pretoria: Government Printer, 1996.

Romadhon, Ahmad Heru, Isnin Harianti, Nabilah Rohyana, and Melisa Agustina. "Dinamika Pranata Pemerintahan Desa Adat Dalam Dimensi Hukum Tata Negara." *Jurnal Hukum Media Bhakti* 2, no. 2 (February 27, 2020). https://doi.org/10.32501/jhmb.v2i2.25.

Saki, Otto, and Tatenda Chiware. *The Law in Zimbabwe*. Hauser Global Law School Program, 2007.

Simangunsong, Rianto, and Herlina Panggabean. "Penyelesaian Kasus Kecelakaan Lalu Lintas Oleh Anak Dibawah Umur Melalui Restorative Justice." *Tapanuli Journals* 4, no. 1 (2022): 60–77.

Somadiyono, Sigit. "Perbandingan Sejarah Positivisme Hukum Di Indonesia Sebagai Penentu Politik Hukum Dimasa Yang Akan Datang." *Legalitas: Jurnal Hukum* 12, no. 1 (June 25, 2020): 13–26. https://doi.org/10.33087/legalitas.v12i1.191.

South African History Online. "The Zulu Kingdom and the Colony of Natal." July 21, 2023. https://www.sahistory.org.za/article/zulu-kingdom-and-colony-natal.

Souza, Monica De. "When Non-Registration Becomes Non-Recognition: Examining the Law and Practice of Customary Marriage Registration in South Africa." *Acta Juridica*, 2013, 239–72.

Sudantra, I Ketut. "Urgensi Dan Strategi Pemberdayaan Peradilan Adat Dalam Sistem Hukum Nasional." *Journal of Indonesian Adat Law (JIAL)* 2, no. 3 (December 1, 2018): 122–46. https://doi.org/10.46816/jial.v2i3.10.

Sugiarto, Laga, and Riski Febria Nurita. "Pandangan Negara Integralistik Sebagai Dasar Philosofische Gronslag Negara Indonesia." *Jurnal Cakrawala* 9, no. 1 (June 2018). https://doi.org/10.26905/idjch.v9i1.1986.

Sukmariningsih, Retno Mawarini. "Penataan Lembaga Negara Mandiri Dalam Struktur Ketatanegaraan Indonesia." *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 26, no. 2 (November 11, 2014): 194–204. https://doi.org/10.22146/jmh.16039.

Taylor, Jean Gelman. *Indonesia: Peoples and Histories*. New Haven, Conn.: Yale University Press, 2003.

Ubink, Janine. "Customary Legal Empowerment in Namibia and Ghana? Lessons about Access, Power and Participation in Non-State Justice Systems: Customary Legal Empowerment in Namibia and Ghana." *Development and Change* 49, no. 4 (July 2018): 930–50. https://doi.org/10.1111/dech.12415.

Wall, Devon. "Customary Law in South Africa: Historical Development as a Legal System and Its Relation to Women's Rights." South African History Online, 2014. https://www.sahistory.org.za/article/customary-law-south-africa-historical-development-legal-system-and-its-relation-womens.

Wignjodipoero, Soerojo. *Pengantar Dan Asas-Asas Hukum Adat*. Jakarta: PT Toko Gunung Agung, 2014.

Yamin, Mohamad. *Naskah Persiapan Undang-Undang Dasar 1945. Jilid Pertama*. 1. Jakarta: Sekretariat Negara Republik Indonesia, 1959.

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 (January 31, 2024): 177–202. https://doi.org/10.15294/ciils.v3i1.78878.

Zazili, Ahmad. "Pengakuan Negara Terhadap Hak-Hak Politik (Right To Vote) Masyarakat Adat Dalam Pelaksanaan Pemilihan Umum (Studi Putusan Mahkamah Konstitusi No.47-81/Phpu.A-Vii/2009)." *Jurnal Konstitusi* 9, no. 1 (May 20, 2016): 135–62. https://doi.org/10.31078/jk916.