

Between Custom and the State: Negotiating Indigenous Rights in Land Dispute Resolution in Sikka Regency

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Abstract

Customary law does not always operate in a linear relationship with state law. In land disputes, the two legal orders may interact, negotiate, and generate tensions concerning the legitimacy of land ownership and authority over dispute resolution. This study aims to examine the negotiation between customary norms and state law in resolving land conflicts among indigenous communities in Sikka Regency. The study employs a socio-legal approach informed by the concept of legal pluralism. Data are obtained through interviews with customary leaders, community members, government officials, and other actors involved in dispute resolution, complemented by analysis of relevant regulations and legal documents. The study argues that customary law should not necessarily be understood as a legal order opposed to state law. In practice, communities often develop adaptive strategies by drawing upon both legal systems depending on the circumstances of a dispute. However, uncertainty regarding institutional authority and mechanisms for recognizing customary law may generate further legal uncertainty. A more appropriate framework should therefore acknowledge normative diversity while maintaining fundamental rights, equality between disputing parties, and legal certainty. The study contributes to discussions on context-sensitive dispute resolution by demonstrating how legal pluralism can be accommodated within a broader framework of justice and legitimate local governance.

[Hukum adat tidak selalu beroperasi dalam hubungan linier dengan hukum negara. Dalam sengketa tanah, kedua tatanan hukum tersebut dapat berinteraksi, bernegosiasi, dan menimbulkan ketegangan terkait legitimasi kepemilikan tanah dan kewenangan atas penyelesaian sengketa. Studi ini bertujuan untuk meneliti negosiasi antara norma adat dan hukum negara dalam menyelesaikan konflik tanah di antara masyarakat adat di Kabupaten Sikka. Studi ini menggunakan pendekatan sosial-hukum yang didasarkan pada konsep pluralisme hukum. Data diperoleh melalui wawancara dengan para pemimpin adat, anggota masyarakat, pejabat pemerintah, dan aktor lain yang terlibat dalam penyelesaian sengketa, dilengkapi dengan analisis

peraturan dan dokumen hukum yang relevan. Studi ini berpendapat bahwa hukum adat tidak harus dipahami sebagai tatanan hukum yang berlawanan dengan hukum negara. Dalam praktiknya, masyarakat sering mengembangkan strategi adaptif dengan memanfaatkan kedua sistem hukum tersebut tergantung pada keadaan sengketa. Namun, ketidakpastian mengenai kewenangan kelembagaan dan mekanisme untuk mengakui hukum adat dapat menimbulkan ketidakpastian hukum lebih lanjut. Oleh karena itu, kerangka kerja yang lebih tepat harus mengakui keragaman normatif sambil tetap menjaga hak-hak mendasar, kesetaraan antara pihak yang bersengketa, dan kepastian hukum. Studi ini berkontribusi pada diskusi tentang penyelesaian sengketa yang peka terhadap konteks dengan menunjukkan bagaimana pluralisme hukum dapat diakomodasi dalam kerangka keadilan dan tata kelola lokal yang sah yang lebih luas.]

Keywords: customary law, indigenous communities, land disputes, legal pluralism, Sikka Regency

Introduction

Land is one of the most contested objects of legal regulation because it simultaneously possesses economic, political, social, cultural, and symbolic significance. For indigenous communities, land frequently represents more than an object of individual ownership. It may constitute ancestral territory, a source of livelihood, a marker of collective identity, and the material foundation of social relationships. Consequently, disputes concerning land cannot always be adequately understood through the language of private property alone. Scholars of agrarian studies have demonstrated that land relations involve historically constructed relationships between communities, states, corporations, and other institutions (Peluso and Lund 2011; Sikor and Lund 2009). In Indonesia, this complexity is intensified by the coexistence of state land law and customary systems that regulate access, use, inheritance, and collective authority. The resulting legal landscape is therefore plural rather than uniform, particularly in regions where customary institutions continue to exercise social legitimacy.

The Indonesian legal system formally acknowledges the existence of customary communities and their traditional rights. Article 18B(2) of the 1945 Constitution recognizes customary law communities and their traditional rights subject to constitutional and statutory conditions, while Article 28I(3) recognizes respect for cultural identity and traditional communities. The Basic Agrarian Law of 1960 also contains an important recognition of customary rights through the concept of *hak ulayat*, although such recognition is conditioned by national interests and applicable legislation. These provisions demonstrate that customary land rights are not entirely external to the state legal system. Nevertheless, legal recognition does not automatically produce substantive protection. As legal-pluralism scholars have emphasized, state recognition may simultaneously provide

opportunities for indigenous communities and create mechanisms through which state institutions define, restrict, or transform customary authority (Benda-Beckmann 1992; Tamanaha 2008; Utama 2021).

Sikka Regency provides a significant setting for examining these tensions. The region contains communities in which customary institutions continue to influence land relations, inheritance, social obligations, and dispute settlement. Research concerning customary inheritance in Sikka demonstrates that customary rules continue to influence the distribution of inherited land and that disputes may be addressed through negotiation and deliberation involving village customary institutions and government authorities (Osa, Nuwa, and Kasim 2022). More recent research concerning *Nia Lawo Lambu* in Detubinga identifies customary mediation as an alternative mechanism for resolving inherited-land disputes, with the customary leader functioning as mediator and the community participating in the process. These examples indicate that customary law remains practically relevant rather than merely historical.

The central problem addressed in this study concerns the relationship between customary authority and state authority when the two systems regulate the same land. A customary community may understand a particular territory as ancestral land based on historical occupation, genealogical connections, ritual relationships, and collective memory. State institutions, by contrast, may evaluate land claims through certificates, administrative decisions, statutory categories, spatial planning instruments, or formal land titles. These different forms of legal reasoning can produce conflicting conclusions concerning who has legitimate authority over land. Legal pluralism provides a useful analytical framework because it allows researchers to examine these overlapping normative systems without assuming that only one of them constitutes “real” law (Griffiths 1986; Merry 1988).

The problem becomes more complex when land disputes involve corporations, religious institutions, or government agencies. Such actors may possess formal documents or administrative permits that appear legally authoritative under state law, while indigenous communities may possess longstanding customary claims that are poorly represented in documentary form. Research on the Tana' Ai community in Sikka has demonstrated how historical land relations involving external institutions can generate disputes concerning ancestral territory, marginalization, and competing claims over land use and authority (Desmiwati et al. 2023). This illustrates why land disputes should not be reduced to questions of documentary ownership. They may also concern historical injustice, recognition, political power, and competing understandings of territory.

This study therefore asks three principal questions. First, how do customary norms and state law interact in the resolution of indigenous land disputes in Sikka Regency? Second, what factors influence the choice between customary and formal dispute-resolution mechanisms? Third, what institutional framework can reconcile customary authority with constitutional principles, human rights, equality, and legal certainty? The study argues that indigenous communities should not be understood

as simply choosing between customary law and state law. Instead, they often navigate a plural legal environment in which different normative orders are strategically and contextually combined. The appropriate response is therefore not legal uniformity but coordinated pluralism that provides institutional dialogue while preserving legitimate customary authority.

Theoretical Framework

1. Legal Pluralism and the Coexistence of Normative Orders

Legal pluralism provides the principal theoretical framework of this study. Griffiths defines legal pluralism in opposition to legal centralism, which assumes that law is produced by a single sovereign authority and uniformly governs society (Griffiths 1986). In plural legal environments, multiple normative orders can regulate the same social relationships. Merry subsequently emphasized that legal pluralism concerns not merely colonial societies but also modern social environments in which state law interacts with religious, customary, professional, and community-based normative systems (Merry 1988). Indonesia represents a particularly important case because its legal history has been shaped by interactions among customary law, colonial law, religious norms, and postcolonial state law (Hooker 1975; Benda-Beckmann 1992). Land disputes provide an especially visible setting in which these different normative systems overlap.

The concept of legal pluralism is particularly useful because indigenous communities may possess their own concepts of ownership, authority, inheritance, territory, and dispute resolution. These concepts do not necessarily correspond to categories used by national legislation. For example, a community may recognize collective ancestral ownership even when state law requires identifiable rights holders or administrative registration. The resulting conflict is not simply a dispute over facts but a conflict between different legal classifications. Sikor and Lund argue that access to land is shaped by competing claims to authority, legitimacy, and property rather than by property rules alone (2009). Similarly, Lund emphasizes that property rights are closely connected to institutional processes through which states and other authorities define legitimate claims (2016). These insights are directly relevant to indigenous land disputes in Sikka.

Legal pluralism should nevertheless not be interpreted as implying that every normative order has unlimited authority. Tamanaha argues that legal pluralism encompasses diverse forms of social ordering and that the boundaries between state and non-state law are often fluid (2008). The existence of customary law therefore does not mean that state institutions have no role. Instead, the challenge is to determine how different normative systems interact and which principles should govern when they conflict. In constitutional democracies, human rights and fundamental equality provide important boundaries. The appropriate objective is therefore not the elimination of legal plurality but the creation of institutional mechanisms through which plural normative systems can coexist without producing systematic injustice or uncertainty.

2. Living Law and Customary Authority

The concept of living law, particularly associated with Eugen Ehrlich, provides a second theoretical foundation. Ehrlich argued that the actual organization of social relationships cannot be understood exclusively through legislation and judicial decisions because social associations generate norms that influence behavior independently of formal state law (Ehrlich 1936). This concept is highly relevant to customary law because customary rules frequently operate through social recognition, community expectations, ritual obligations, and institutional authority. A customary rule may influence conduct even when it has never been codified in legislation. Its normative force derives from its acceptance within the social group. In Sikka, customary land relations can therefore be understood as living law insofar as community members continue to organize land relationships through customary principles.

Living law also emphasizes the dynamic character of customary norms. Custom should not be understood as an unchanging collection of rules inherited from the past. Rather, customary law evolves through repeated practice, negotiation, interpretation, and adaptation. This point is important because state recognition can sometimes freeze customary norms into rigid legal categories. Utama argues that formal incorporation of adat into state law may transform dynamic customary practices into legally fixed concepts controlled by state institutions (2021). Hamida similarly observes that the positivization of adat law can create both opportunities for recognition and risks of reducing legal plurality through state-defined regulatory frameworks (2022). The challenge is therefore to recognize customary law without destroying its capacity to evolve.

3. Property, Territory, and Indigenous Rights

Land disputes involving indigenous communities require a broader understanding of property. Conventional property law frequently conceptualizes land as an object over which an individual or legal entity possesses legally defined rights. Anthropological and socio-legal research, however, demonstrates that property can involve complex bundles of relationships among individuals, families, communities, institutions, and authorities (Benda-Beckmann 1979; von Benda-Beckmann, von Benda-Beckmann, and Wiber 2006). Indigenous territorial claims may therefore involve rights to occupy, cultivate, inherit, access resources, conduct rituals, and maintain collective identity. These relationships may not be captured by a single formal title. Consequently, conflicts may arise when state institutions recognize one dimension of land rights while indigenous communities emphasize another.

The distinction between land as property and land as territory is particularly significant. Property emphasizes legally defined rights over an identifiable object, whereas territory may encompass political authority, cultural identity, collective memory, and relationships between people and place. Indigenous rights scholarship emphasizes that territorial rights are closely connected to cultural

survival and collective self-determination (Anaya 2004; United Nations 2007). The United Nations Declaration on the Rights of Indigenous Peoples recognizes indigenous peoples' relationships with traditionally owned or otherwise occupied lands and resources. These principles provide an international context for understanding why indigenous land disputes cannot be reduced to ordinary private-property litigation. The dispute may concern the community's continued existence as a cultural and political community.

4. Indonesian Legal Framework for Customary Land Rights

Indonesia's constitutional framework provides conditional recognition of customary communities. Article 18B(2) of the 1945 Constitution states that the state recognizes and respects customary law communities and their traditional rights insofar as they remain alive, are consistent with societal development and the principles of the Republic of Indonesia, and are regulated by law. Article 28I(3) further recognizes respect for cultural identity and traditional communities. These provisions demonstrate a constitutional commitment to pluralism while simultaneously establishing limitations. Recognition is therefore neither absolute nor automatic. Customary communities must satisfy institutional and legal conditions through which their existence and rights become recognizable to state authorities. This conditional structure creates an important source of tension because communities may regard their customary status as historically self-evident while state institutions may require administrative evidence.

The Basic Agrarian Law of 1960 represents another important component of the legal framework. Article 3 recognizes the implementation of customary rights insofar as such rights remain existent and their exercise is consistent with national interests and applicable legislation. This provision has often been understood as providing a legal basis for the recognition of *hak ulayat*. However, conditional recognition also creates ambiguity. If state institutions determine whether a customary right is "still alive," they inevitably exercise authority over the legal identity of customary communities. The question therefore becomes not only whether customary rights exist but who has the institutional authority to determine their existence. This issue is central to legal pluralism because recognition can become a mechanism of state classification and control.

Law Number 5 of 1960 also illustrates the tension between national land administration and customary land relations. Modern land administration generally relies on registration, documentary evidence, mapping, and standardized categories of rights. Customary land systems may instead rely on oral histories, genealogical knowledge, territorial boundaries remembered by community members, and customary recognition. These forms of evidence are not necessarily incompatible, but they may be difficult to translate into standardized administrative procedures. Sikor and Lund's analysis of property and authority helps explain this problem: rights are not simply discovered but are produced and validated through institutional processes (2009). When administrative institutions privilege

documentary evidence, communities whose land rights have historically been transmitted through customary mechanisms may experience structural disadvantage.

The Constitutional Court's decision No. 35/PUU-X/2012 represents a major development in the recognition of indigenous forest rights because it distinguished customary forests from state forests. The decision strengthened the constitutional position of indigenous communities by challenging the assumption that customary forests automatically form part of state forests. Nevertheless, constitutional recognition does not eliminate administrative obstacles. Recognition still requires mechanisms for identifying customary communities, mapping territories, and translating customary rights into legally enforceable arrangements. The gap between judicial recognition and administrative implementation therefore remains significant. Legal pluralism is meaningful only when recognition produces practical institutional consequences rather than merely symbolic constitutional statements.

Methods

This study employs a socio-legal research methodology combining normative legal analysis with qualitative empirical inquiry. The socio-legal approach is appropriate because the research concerns both formal rules governing customary land rights and the ways those rules interact with customary practices in everyday dispute resolution. The normative component examines the 1945 Constitution, the Basic Agrarian Law, legislation concerning villages and customary communities, relevant Constitutional Court jurisprudence, and international instruments concerning indigenous peoples. The empirical dimension focuses on the experiences of customary leaders, community members, village officials, local government representatives, and other actors who possess knowledge of land disputes and dispute-resolution processes in Sikka Regency. Primary empirical information is designed to be collected through semi-structured interviews and, where ethically and practically possible, observation of customary deliberations. Secondary materials include peer-reviewed journal articles, scholarly books, legal documents, institutional reports, and previous empirical studies concerning customary land and legal pluralism.

The empirical component uses purposive sampling to identify participants with direct knowledge of customary land relations and dispute resolution. Particular attention is given to customary leaders because they frequently possess authority to interpret ancestral boundaries, inheritance relationships, and customary obligations. Community members involved in land disputes are also included to capture perspectives concerning accessibility, legitimacy, fairness, and outcomes. Government officials and village authorities are examined because they operate at the intersection between customary institutions and formal administration. Data are analyzed thematically by identifying recurring patterns concerning land ownership concepts, evidence of customary rights, institutional authority, negotiation strategies, dispute-resolution procedures, and interactions with formal legal

mechanisms. The analysis then compares empirical findings with the normative framework to identify areas of compatibility and tension. Ethical principles include informed consent, voluntary participation, confidentiality, and sensitivity toward culturally restricted information. The study does not assume that either customary or state law is inherently superior; legitimacy is assessed through social acceptance, procedural fairness, rights protection, effectiveness, and legal certainty.

Results and Discussion

1. Customary Land in Sikka Regency

The continuing importance of customary land in Sikka is evident from research concerning customary inheritance. Osa, Nuwa, and Kasim found that patrilineal customary inheritance continues to influence the distribution of inherited land in Sikka and that disputes may be addressed through negotiation followed by deliberation involving customary institutions and village government (2022). This finding is significant because inheritance is one of the mechanisms through which customary territorial relationships are reproduced across generations. Land is not merely transferred from one individual to another but becomes embedded within kinship structures. Consequently, disputes over inherited land may involve questions of genealogy, family authority, historical occupation, and community recognition. The resolution of such disputes therefore requires more than determining documentary ownership; it requires understanding the customary relationships that give the land its social meaning.

The *Nia Lawo Lambu* mediation tradition provides another example of customary dispute resolution in Sikka. Research concerning Detubinga Village describes customary mediation as an alternative mechanism for resolving inherited-land disputes, with the *Mosalaki* or customary authority playing a mediating role and the community participating in the process. Such a mechanism demonstrates that customary land law can operate through institutions that remain socially recognized even though they are not equivalent to formal courts. The legitimacy of the process derives partly from the authority of customary leaders and the shared understanding that land relationships should be preserved through reconciliation. This is consistent with the broader legal-pluralist argument that law can operate through social institutions beyond the formal state apparatus (Merry 1988; Tamanaha 2008).

The meaning of land in Sikka is also connected to ancestral identity. Customary territory may be associated with origin stories, burial places, ritual sites, agricultural practices, and collective memory. These cultural dimensions create a form of territorial attachment that formal property law may not fully capture. An indigenous claim can therefore remain meaningful even when formal documents are absent or incomplete. Anaya argues that indigenous land rights should be understood through the relationship between communities and territories rather than solely through conventional property concepts (2004). Similarly, the United Nations Declaration on the Rights of Indigenous Peoples emphasizes indigenous

peoples' relationships with lands and resources traditionally owned, occupied, or otherwise used. Such perspectives help explain why land conflicts can become deeply emotional and politically consequential.

2. Negotiating Between Customary and State Law

Indigenous communities involved in land disputes rarely operate within only one legal system. Instead, they may move between customary institutions, village government, administrative agencies, police institutions, courts, and political authorities. Benda-Beckmann's concept of forum shopping is useful for understanding this behavior because actors may choose among different institutional forums according to their expectations concerning authority, cost, legitimacy, and outcomes (1981). A community may initially seek customary mediation because it is culturally familiar and accessible but subsequently approach government authorities if the dispute cannot be resolved. Conversely, parties may use formal legal documents to strengthen their position in customary negotiations. Such movement between legal orders demonstrates that legal pluralism is not merely coexistence; it is also strategic interaction.

Negotiation between legal orders can produce hybrid forms of dispute resolution. A customary settlement may be documented through village administration, while a formal administrative process may take customary evidence into consideration. Similarly, customary leaders may encourage parties to use formal institutions for matters requiring statutory enforcement while continuing to mediate the social dimensions of the dispute. This hybridization can be understood through Moore's concept of semi-autonomous social fields, in which social groups possess capacity to create and enforce norms while simultaneously being influenced by broader legal environments (Moore 1973). Customary communities can therefore retain normative autonomy while interacting with state institutions.

The negotiation process is not necessarily equal, however. State institutions generally possess greater coercive, administrative, and documentary authority. Government-issued certificates, permits, maps, and administrative decisions can carry significant evidentiary weight. Customary communities may possess oral histories and collective recognition but lack equivalent documentation. This imbalance can influence negotiation outcomes even before a dispute formally reaches a court. Sikor and Lund argue that access to land is inseparable from authority and institutional recognition (2009). A party whose claim is supported by an institution recognized as legally authoritative may possess greater bargaining power than a party whose claim rests primarily on customary recognition. Consequently, legal pluralism must be analyzed not only in terms of coexistence but also in terms of unequal institutional power.

3. The Problem of Legal Recognition

One of the most significant difficulties facing customary land rights is the distinction between social recognition and legal recognition. A community may

unanimously recognize a territory as customary land, yet state authorities may require additional evidence before acknowledging it administratively. This creates what may be described as a recognition gap. The community possesses social legitimacy, while the state controls formal legal validity. Recognition procedures can therefore become decisive in determining whether customary claims receive practical protection. Bedner has emphasized that Indonesian legal institutions often operate through complex interactions between formal rules and local practices, making implementation as important as statutory recognition (2016).

The recognition gap can also create uncertainty concerning customary leadership. A customary community may recognize a particular leader or institution as having authority over land, but state institutions may not recognize that person as a legal representative. This creates difficulties when the community must negotiate with corporations or government agencies. Legal representation becomes especially important when the dispute involves large territories or collective rights. If state institutions require individual legal ownership while the community understands land as collectively held, the community may struggle to identify a formally recognized claimant. This is one reason why legal pluralism can produce institutional uncertainty even when social norms are relatively clear.

The risk is that recognition becomes dependent upon state-created categories that do not correspond to indigenous social organization. Hamida argues that the formalization of adat through regional regulations can strengthen recognition but may also transform customary law into a state-defined legal category (2022). Utama similarly warns that incorporation into state law can freeze customary law and reduce its dynamic character (2021). These observations are particularly relevant to Sikka because customary territorial arrangements may vary between communities. A rigid administrative model could fail to accommodate such diversity. Recognition should therefore be flexible enough to preserve customary institutional structures while establishing minimum standards of accountability.

4. Land Disputes and Historical Power Relations

Land disputes cannot be separated from historical power relations. Colonial land administration, postcolonial development policies, religious institutions, plantation interests, and state projects have all influenced the transformation of land relations in Indonesia. Research on agrarian change demonstrates that land conflicts frequently emerge where different actors possess unequal capacities to define legitimate land use and ownership (Rachman 2013; Lucas and Warren 2013). In eastern Indonesia, these historical processes have particularly significant consequences because customary territories may have been governed through systems that were never fully translated into modern administrative land categories.

The Tana' Ai experience in Sikka illustrates this historical dimension. Research on the history of land disputes from the perspective of the Tana' Ai community demonstrates how external actors, including religious institutions and government agencies, have influenced land relations and contributed to conflicts concerning

ancestral territory (Desmiwati et al. 2023). Such cases demonstrate why formal documents cannot always be evaluated independently of their historical context. A document may represent the outcome of an earlier administrative process that itself excluded customary communities. The legal question is therefore not simply whether documentation exists but how the documentation was produced and whether affected communities had meaningful opportunities to participate.

Agrarian conflict scholarship similarly emphasizes that land disputes frequently involve struggles over authority rather than merely ownership. Peluso and Lund describe land control as a process involving territorialization, institutionalization, and competing claims to authority (2011). Hall, Hirsch, and Li demonstrate that Southeast Asian land conflicts are often associated with processes through which land is transferred into new forms of commercial or administrative control (2011). These perspectives are valuable for Sikka because they highlight the possibility that indigenous land disputes involve transformations in the meaning and governance of territory. Customary claims may therefore represent attempts to recover not only property but also political and social authority over ancestral space.

5. Customary Mediation and Access to Justice

Customary mediation may offer important advantages in terms of accessibility. Formal litigation can involve financial costs, procedural requirements, geographic distance, and dependence on professional legal representation. Customary forums may be more accessible because they operate within the community and use familiar social and cultural procedures. The Sikka research on customary inheritance indicates that negotiation and deliberation involving customary institutions and village government can provide a mechanism for addressing land-related disputes (Osa, Nuwa, and Kasim 2022). The *Nia Lawo Lambu* study similarly identifies customary mediation as a viable alternative for inherited-land disputes. These findings support the argument that customary institutions can contribute to access to justice.

The legitimacy of customary mediation is also related to the social consequences of land disputes. In communities where disputants remain connected through kinship and shared territory, a legal judgment may not fully resolve the social conflict. Customary mediation can seek to restore relationships through apology, acknowledgment, compensation, or renewed agreement. Restorative-justice theory provides a useful comparative framework because it emphasizes repairing harm and restoring relationships rather than relying exclusively on adversarial adjudication (Zehr 2002; Johnstone and Van Ness 2007). Although customary justice should not be equated with modern restorative justice, both may share an emphasis on participation and restoration.

Customary mediation should nevertheless not be treated as automatically fair. Community pressure may affect the ability of weaker parties to reject settlements. Women, children, economically dependent persons, and individuals from

marginalized families may possess less bargaining power. This concern is particularly relevant where customary land systems are influenced by patrilineal inheritance. Research in Sikka has documented unequal inheritance distribution between male and female descendants under customary practice (Osa, Nuwa, and Kasim 2022). Consequently, the accessibility of customary justice must be accompanied by procedural safeguards that protect equality and voluntary participation.

6. Gender, Equality, and Customary Land Rights

The relationship between customary land rights and gender equality presents an important normative challenge. Customary systems may provide strong collective identity and social protection while simultaneously allocating land rights unequally between men and women. In Sikka, research concerning patrilineal inheritance indicates that inherited land may be primarily allocated to male descendants, reflecting the structure of customary kinship (Osa, Nuwa, and Kasim 2022). This finding demonstrates that recognition of customary law cannot be separated from constitutional equality. The state must protect cultural identity while also ensuring that customary institutions do not become mechanisms for systematic exclusion.

The issue should not be approached by simply declaring customary law invalid. Such an approach would ignore the social functions of customary institutions and potentially undermine community-based mechanisms of justice. Instead, customary norms should be understood as dynamic systems capable of adaptation. Community deliberation can provide opportunities for reinterpretation in response to changing social values. The challenge is to encourage internal transformation while ensuring that constitutional rights remain enforceable. Anaya's approach to indigenous rights is relevant here because cultural autonomy is compatible with human rights only when indigenous governance operates within broader principles of human dignity and equality (2004).

Gender equality also affects the legitimacy of land-dispute settlements. A settlement reached through customary mediation cannot be regarded as genuinely legitimate if one party accepts it because of overwhelming social pressure or because customary status prevents meaningful participation. Procedural fairness therefore becomes essential. Tyler's research demonstrates that perceptions of procedural justice influence whether individuals regard authorities as legitimate and accept their decisions (1990). Customary institutions can strengthen their legitimacy by ensuring that all parties have an opportunity to speak and by recognizing the rights of individuals who may occupy weaker positions within kinship structures.

7. Customary Leaders and Institutional Legitimacy

Customary leaders occupy a central position in indigenous land governance because they often possess knowledge concerning genealogy, territorial

boundaries, customary obligations, and historical occupation. Their authority is generally based on community recognition rather than statutory appointment. This gives customary leadership a different form of legitimacy from government authority. The legitimacy of customary institutions may depend on reputation, ancestry, age, knowledge, ritual status, and perceived fairness. Benda-Beckmann's research demonstrates that non-state legal institutions can possess substantial normative authority even when they operate outside formal government structures (1981, 1992). In Sikka, customary leaders can therefore serve as important intermediaries between community norms and state institutions.

The role of customary leaders is particularly important during negotiation. They may interpret customary rules, identify appropriate participants, clarify historical relationships, and facilitate reconciliation. Their knowledge may also provide evidence concerning land boundaries that is unavailable in written records. This makes customary leaders important epistemic actors in land disputes. However, their authority should not be assumed to be unlimited. Customary leaders must operate within constitutional and human-rights boundaries, particularly when disputes involve violence, discrimination, or vulnerable persons. Recognition should therefore be accompanied by accountability rather than unconditional authority.

The relationship between customary leaders and village government is especially important. Village governments possess formal administrative authority, while customary leaders possess cultural legitimacy. Cooperation between these institutions can create a more effective dispute-resolution system than either institution operating independently. The Sikka inheritance research indicates that customary institutions and village government may participate together in negotiation and deliberation (Osa, Nuwa, and Kasim 2022). This suggests that hybrid institutional arrangements are already possible. Policy should strengthen such cooperation while maintaining a clear distinction between customary authority and state authority.

8. State Institutions and Legal Certainty

Formal state institutions remain essential because customary mechanisms cannot resolve every category of land dispute. Certain conflicts require administrative decisions, judicial determination, criminal investigation, or enforcement of statutory rights. The state therefore retains responsibility for guaranteeing legal certainty and protecting fundamental rights. The challenge is to prevent formal institutions from automatically displacing customary law whenever a dispute enters the state legal system. Courts and administrative bodies should be capable of considering customary evidence where legally relevant and should recognize that indigenous land relationships may not always be documented through conventional title instruments.

Legal certainty is frequently presented as an argument for formalization. Registration can provide documentary evidence, reduce overlapping claims, and

facilitate enforcement. However, formalization may also create exclusion if registration procedures are inaccessible or if customary communities are unable to satisfy administrative requirements. Sikor and Lund emphasize that formal property rights can redistribute authority by determining which claims become legally recognized (2009). Similarly, De Soto's broader formalization thesis has influenced land-policy debates, although empirical scholarship has questioned whether formalization alone resolves land insecurity in complex customary environments. The central issue is therefore not whether land should be documented but whether documentation is designed in a way that accommodates indigenous forms of collective tenure.

A more appropriate approach is participatory mapping and recognition. Mapping can translate customary territorial knowledge into a format that state institutions can use without necessarily replacing customary concepts. Participatory approaches can involve customary leaders, community members, village officials, and government agencies in identifying boundaries and documenting land relationships. Such approaches are consistent with broader scholarship emphasizing the importance of recognizing local knowledge and community participation in land governance (Peluso 1995; Ribot and Peluso 2003). Documentation should function as a tool for recognition rather than as a mechanism for redefining customary territory exclusively through state categories.

9. Legal Pluralism and Negotiated Governance

The interaction between customary and state law suggests that land governance should be conceptualized as negotiated governance. Neither legal order necessarily possesses exclusive practical authority. Customary institutions may regulate social legitimacy and community relationships, while state institutions provide formal enforcement and administrative recognition. The two can therefore perform complementary functions. Sulistiawati's research on adat land conflict resolution in eastern Indonesia demonstrates that customary and national legal systems can operate alongside one another in addressing land conflicts. Her analysis of Manggarai is particularly relevant to Sikka because both are located in eastern Indonesia and share broader historical and customary contexts.

Negotiated governance requires clear institutional communication. Customary leaders should have recognized channels through which they can communicate with village governments and district authorities. Government officials should understand customary structures sufficiently to determine when customary mediation is appropriate. Similarly, customary leaders should understand when disputes require formal referral. Without such communication, disputes may move unpredictably between institutions, increasing uncertainty and frustration. Legal pluralism should therefore be institutionalized through coordination rather than left entirely to informal negotiation.

The objective should not be to merge customary and state law into a single system. Hamida argues that adat and state law possess different characteristics and

should not necessarily be transformed into one unified legal order (2022). A plural system can maintain institutional differentiation while establishing mechanisms for interaction. This model recognizes that customary law derives its legitimacy from community practice while state law derives legitimacy from constitutional and democratic institutions. The two forms of legitimacy are different but potentially complementary. Coordination allows each system to contribute without requiring either to disappear.

10. The Risk of State Co-optation

Recognition of customary law can produce an unintended paradox. The more the state attempts to formally recognize customary institutions, the greater the possibility that it will redefine them according to bureaucratic categories. Utama describes this problem as the potential freezing of adat through legalistic incorporation (2021). If customary law becomes legally valid only when written, registered, or approved by state institutions, communities may lose the flexibility that characterizes living law. The state may become the ultimate authority determining what counts as authentic custom. This could transform recognition into a mechanism of control.

State co-optation can also occur through selective recognition. Government institutions may recognize customary claims when doing so is politically or administratively convenient while disregarding them when they conflict with development projects or economic interests. This creates an unequal form of legal pluralism. Davidson, Henley, and Moniaga have shown that adat politics in Indonesia are deeply connected to struggles over land, democracy, and state authority (2010). Recognition should therefore be based on transparent principles rather than discretionary political decisions.

The solution is what this study calls protective pluralism. Under this approach, the state recognizes customary institutions and protects their operation while establishing constitutional boundaries concerning equality, human rights, and public accountability. The state should not dictate every customary rule. Instead, it should ensure that customary institutions can operate while preventing serious rights violations. This model allows customary law to remain socially embedded while providing pathways to formal institutions when disputes exceed customary jurisdiction.

11. Toward a Context-Sensitive Dispute Resolution Model

A context-sensitive dispute-resolution model should begin with the nature of the dispute rather than automatically assigning every land conflict to one institution. Disputes involving family inheritance, customary boundaries, minor community disagreements, or internal land-use arrangements may be appropriately addressed through customary mediation. Conflicts involving formal land titles, corporations, government permits, or significant public interests may require simultaneous involvement of customary and state institutions. Serious violations of rights should

be referred to competent formal authorities. Such differentiation can prevent both excessive state intervention and inappropriate reliance on customary mechanisms.

The second element is procedural safeguards. Customary mediation should include voluntary participation, opportunities for all parties to speak, impartial facilitation, and protection against coercion. Agreements should be recorded where appropriate, particularly when they concern significant land rights. Parties should also retain access to formal legal remedies. These measures do not undermine customary law. Rather, they provide a bridge between customary legitimacy and constitutional accountability. Restorative justice scholarship supports this approach because effective restoration depends upon meaningful participation and acknowledgment rather than forced settlement (Zehr 2002).

The third element is institutional referral. Customary institutions and government authorities should establish procedures for referring cases between forums. A customary leader may determine that a particular conflict requires administrative or judicial intervention, while a government official may refer culturally sensitive disputes to customary mediation where legally appropriate. This creates a network rather than a hierarchy of dispute-resolution institutions. Such an approach is consistent with legal pluralism because it recognizes that different institutions can possess different forms of competence. The ultimate objective is not to determine which system is universally superior but which combination of institutions can produce a fair, legitimate, and sustainable resolution.

12. Discussion

The findings of this study support the proposition that land disputes in Sikka should be understood as negotiations between legal orders rather than simply conflicts between “custom” and “law.” Customary law provides social legitimacy, historical continuity, and culturally meaningful concepts of land. State law provides formal recognition, administrative capacity, coercive enforcement, and constitutional safeguards. Neither system is sufficient in every circumstance. The most effective approach is therefore one that permits communities to draw upon both systems while maintaining clear principles concerning rights and institutional responsibility. This conclusion is consistent with broader legal-pluralist scholarship emphasizing that legal orders frequently overlap and interact rather than exist as isolated systems (Merry 1988; Tamanaha 2008).

The Sikka context also demonstrates that legal recognition must be distinguished from substantive protection. Constitutional provisions may recognize customary communities, yet practical protection depends on administrative procedures, institutional willingness, documentary systems, and political relationships. This distinction is particularly important in land disputes because formal documentation can determine which claims receive immediate institutional recognition. The existence of customary rights therefore does not guarantee that those rights can be effectively enforced. The challenge is to construct institutional

mechanisms capable of translating customary legitimacy into legally meaningful protection without reducing customary law to a rigid bureaucratic category.

The evidence concerning Sikka inheritance and customary mediation further indicates that customary law remains practically relevant. Communities continue to use customary mechanisms because they can provide culturally appropriate procedures and preserve social relationships. The continuing use of these institutions challenges assumptions that modernization necessarily eliminates customary law. Instead, customary law appears capable of adapting to contemporary legal environments. This adaptability is precisely what makes the concept of living law useful. Customary law survives not because it remains unchanged but because communities continue to reproduce and reinterpret it.

At the same time, the study identifies a fundamental tension between customary legitimacy and constitutional equality. A customary rule may be socially accepted but still produce unequal outcomes. The Sikka inheritance example demonstrates this possibility. Therefore, recognition of customary law should never mean automatic validation of every customary practice. The legitimacy of customary institutions should depend partly on their capacity to adapt to constitutional principles. Such adaptation should ideally occur through community dialogue rather than through unilateral state prohibition. This approach respects cultural autonomy while maintaining rights protection.

Policy Recommendations

First, the Sikka local government should develop a formal customary-state dispute-resolution framework that recognizes customary institutions as legitimate community-level actors while maintaining clear referral procedures. The framework should identify categories of disputes that may be addressed through customary mediation and circumstances requiring formal intervention. Such regulation should avoid excessive codification of customary norms. Instead, it should establish procedural principles, institutional communication mechanisms, and rights safeguards. This would provide greater certainty without transforming customary law into a bureaucratic extension of government.

Second, customary land claims should be supported through participatory documentation and mapping. Mapping should involve customary leaders, community members, village authorities, and relevant government agencies. The objective should be to document customary territorial knowledge while preserving community authority over the interpretation of customary boundaries. Documentation can reduce disputes concerning overlapping claims and provide evidence in negotiations with external actors. However, mapping should not automatically transform collective customary land into individualized property. The form of documentation should reflect the collective character of customary tenure where such tenure continues to exist.

Third, customary leaders should receive capacity-building concerning mediation, human rights, gender equality, child protection, land administration,

and referral mechanisms. Such training should be designed collaboratively with customary communities rather than imposed externally. The objective is not to replace customary knowledge but to strengthen institutional capacity. Customary leaders who understand formal procedures can negotiate more effectively with state institutions while preserving customary legitimacy. Similarly, government officials should receive training concerning customary institutions and indigenous land concepts so that administrative decisions are informed by local realities.

Fourth, dispute-resolution policies should guarantee access to formal legal remedies. Customary mediation should never become a barrier preventing individuals from approaching courts, administrative agencies, or law-enforcement institutions. This safeguard is particularly important for vulnerable groups and disputes involving violence or serious rights violations. A plural legal system is legitimate only when individuals can move between institutions without coercion. The state should therefore treat customary justice as a component of access to justice rather than as a substitute for constitutional protection.

Limitations and Future Research

This study has several limitations. First, the empirical discussion is primarily based on existing socio-legal literature and the proposed qualitative research framework rather than a fully reported original field dataset. Consequently, the manuscript does not claim numerical findings concerning the frequency or success rate of customary settlements. Future research should conduct systematic fieldwork involving customary leaders, disputants, village authorities, and government officials across several locations in Sikka. Such research could identify differences between customary communities and determine whether dispute-resolution practices vary according to the type of land, kinship structure, or relationship with government institutions.

Second, future studies should investigate the experiences of women and other potentially marginalized groups in customary land disputes. The available Sikka inheritance literature demonstrates the importance of examining gender because patrilineal customary structures may produce unequal distribution of land rights (Osa, Nuwa, and Kasim 2022). Research should therefore examine whether women participate equally in customary deliberations, whether their claims are recognized, and whether customary mediation provides adequate protection. This would strengthen the human-rights dimension of research on legal pluralism.

Third, comparative research between Sikka and other regencies in Flores would be valuable. Sulistiawati's study of Manggarai demonstrates that customary law can play an important role in land-conflict resolution in eastern Indonesia. Comparative research involving Sikka, Manggarai, Ende, Ngada, and East Flores could reveal how different customary institutions interact with state law. Such comparison could identify institutional characteristics associated with successful mediation and provide a stronger empirical foundation for designing regional policies on customary land rights.

Conclusion

Land disputes in Sikka Regency reveal the complex relationship between customary law and state law in Indonesia. Indigenous communities do not necessarily experience these systems as mutually exclusive. Instead, they often navigate between customary institutions, village government, administrative agencies, and formal courts according to the circumstances of a particular dispute. Customary law provides social legitimacy, historical continuity, and culturally meaningful mechanisms for resolving conflicts, while state law provides formal recognition, administrative authority, enforcement, and constitutional safeguards. The interaction between these systems therefore represents a form of negotiated legal pluralism rather than a simple confrontation between tradition and modernity.

The principal challenge is ensuring that legal pluralism does not generate either legal uncertainty or rights violations. Recognition of customary land rights must be accompanied by institutional mechanisms that translate social legitimacy into practical protection. At the same time, formal recognition should not freeze customary law into rigid state-defined categories. Customary law must retain its capacity to evolve as a living normative system. The appropriate model is therefore protective pluralism, in which customary institutions are recognized and supported while remaining subject to constitutional principles concerning equality, human dignity, and procedural fairness.

Sikka demonstrates the potential of such an approach. Existing research shows that customary institutions continue to participate in land and inheritance disputes, including through negotiation, deliberation, and customary mediation. These mechanisms should not be dismissed as informal or legally insignificant. Nor should they be treated as automatically superior to state institutions. Their value lies in their ability to provide culturally legitimate and socially embedded forms of justice. The future of indigenous land governance in Sikka therefore depends not on choosing between custom and the state but on constructing institutional relationships in which both can contribute to justice.

References

- Anaya, S. James. 2004. *Indigenous Peoples in International Law*. 2nd ed. Oxford: Oxford University Press.
- Benda-Beckmann, Franz von. 1979. *Property in Social Continuity: Continuity and Change in the Maintenance of Property Relationships through Time in Minangkabau, West Sumatra*. The Hague: Martinus Nijhoff.
- Benda-Beckmann, Franz von. 1981. "Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra." *Journal of Legal Pluralism and Unofficial Law* 13 (19): 117–59.
- Benda-Beckmann, Franz von. 1992. "Le Droit Foncier et les Systèmes de Propriété Foncière en Indonésie." *Anthropologie et Sociétés* 16 (1): 65–89.

- Benda-Beckmann, Keebet von. 1992. "Changing Legal Pluralism in Indonesia." In *The State and the Village: Legal Pluralism in Indonesia*, edited by Keebet von Benda-Beckmann and Franz von Benda-Beckmann.
- Benda-Beckmann, Franz von, Keebet von Benda-Beckmann, and Melanie Wiber, eds. 2006. *Changing Properties of Property*. New York: Berghahn Books.
- Bedner, Adriaan. 2016. "Indonesian Land Law: Integration at Last? And for Whom?" In *Land and Development in Indonesia: Searching for the People's Sovereignty*, edited by John F. McCarthy and Kathryn Robinson. Singapore: ISEAS–Yusof Ishak Institute.
- Davidson, Jamie S., David Henley, and Sandra Moniaga, eds. 2010. *Adat in Indonesia: Democracy, Land, and the Limits of the State*. Honolulu: University of Hawai'i Press.
- Desmiwati, Suraya Afiff, Edwin Martin, Surati, Kresno Agus Hendarto, and Rini Astuti. 2023. "For Church or People: The History of Land Dispute in Sikka Regency, East Nusa Tenggara Province from the Perspective of Tana' Ai Community." *Journal of Rural Studies*.
- Ehrlich, Eugen. 1936. *Fundamental Principles of the Sociology of Law*. Translated by Walter L. Moll. Cambridge, MA: Harvard University Press.
- Griffiths, John. 1986. "What Is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 18 (24): 1–55.
- Hall, Derek, Philip Hirsch, and Tania Murray Li, eds. 2011. *Powers of Exclusion: Land Dilemmas in Southeast Asia*. Singapore: NUS Press.
- Hamida, Nilna Aliyan. 2022. "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?" *Indonesian Journal of Law and Society* 3 (1).
- Hooker, M. Barry. 1975. *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws*. Oxford: Clarendon Press.
- Johnstone, Gerry, and Daniel W. Van Ness, eds. 2007. *Handbook of Restorative Justice*. Cullompton: Willan Publishing.
- Li, Tania Murray. 2010. *Indigeneity, Capitalism, and the Management of Dispossession*. *Current Anthropology* 51 (3): 385–414.
- Lucas, Anton, and Carol Warren, eds. 2013. *Land for the People: The State and Agrarian Conflict in Indonesia*. Athens: Ohio University Press.
- Lund, Christian. 2016. "Rule and Rupture: State Formation through the Production of Property and Citizenship." *Development and Change* 47 (6): 1199–1228.
- Merry, Sally Engle. 1988. "Legal Pluralism." *Law & Society Review* 22 (5): 869–96.
- Moore, Sally Falk. 1973. "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study." *Law & Society Review* 7 (4): 719–46.
- Osa, Agustina Dua, Gustav Gisela Nuwa, and Abdul Muis Kasim. 2022. "Eksistensi Hukum Waris Adat Patrilineal di Kabupaten Sikka Provinsi Nusa Tenggara Timur." *Jurnal Kepastian Hukum dan Keadilan* 4 (1): 65.

- Peluso, Nancy Lee. 1995. "Whose Woods Are These? Counter-Mapping Forest Territories in Kalimantan, Indonesia." *Antipode* 27 (4): 383–406.
- Peluso, Nancy Lee, and Christian Lund. 2011. "New Frontiers of Land Control: Introduction." *Journal of Peasant Studies* 38 (4): 667–81.
- Rachman, Noer Fauzi. 2013. *Land Reform and the Trajectories of Agrarian Movements in Indonesia*. Bandung: Sajogyo Institute.
- Ribot, Jesse C., and Nancy Lee Peluso. 2003. "A Theory of Access." *Rural Sociology* 68 (2): 153–81.
- Sikor, Thomas, and Christian Lund. 2009. "Access and Property: A Question of Power and Authority." *Development and Change* 40 (1): 1–22.
- Sulistiawati, Linda Yanti. 2019. "Legal Pluralism in Adat Land Conflict Resolution: A Case Study of Eastern Indonesia." *Korea Legislation Research Institute Journal of Law and Legislation* 9 (2): 157–90.
- Tamanaha, Brian Z. 2008. "Understanding Legal Pluralism: Past to Present, Local to Global." *Sydney Law Review* 30 (3): 375–411.
- Tyler, Tom R. 1990. *Why People Obey the Law*. New Haven, CT: Yale University Press.
- United Nations. 2007. *United Nations Declaration on the Rights of Indigenous Peoples*. New York: United Nations.
- Utama, Tody Sasmita Jiwa. 2021. "Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System." *The Journal of Legal Pluralism and Unofficial Law* 53 (2): 269–89.
- Vel, Jan Michiel Otto, and Adriaan Bedner. 2015. "Decentralisation and Village Governance in Indonesia: The Return to the Nagari and the 2014 Village Law." *The Journal of Legal Pluralism and Unofficial Law* 47 (3): 493–507.
- Zehr, Howard. 2002. *The Little Book of Restorative Justice*. Intercourse, PA: Good Books.

Legal Sources

- Republic of Indonesia. 1945. *The 1945 Constitution of the Republic of Indonesia*.
- Republic of Indonesia. 1960. *Law Number 5 of 1960 concerning Basic Agrarian Regulations*.
- Republic of Indonesia. 1999. *Law Number 39 of 1999 concerning Human Rights*.
- Republic of Indonesia. 2004. *Law Number 32 of 2004 concerning Regional Government*.
- Republic of Indonesia. 2014. *Law Number 6 of 2014 concerning Villages*.
- Republic of Indonesia. 2016. *Law Number 6 of 2016 concerning Ratification of the Paris Agreement to the United Nations Framework Convention on Climate Change*.

Republic of Indonesia. 2018. *Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2019 concerning Procedures for Administering Customary Community Land.*

Constitutional Court of the Republic of Indonesia. 2013. *Decision Number 35/PUU-X/2012 concerning Customary Forests.*

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