

Law Living within Tradition: The Role of Customary Law in Resolving Social Conflicts among Indigenous Communities in Sikka Regency

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Abstract

Customary law continues to play an important role in regulating social relations and resolving conflicts within indigenous communities. Despite the increasing complexity of the state legal system, customary mechanisms remain relevant because of their social legitimacy and close connection to community values. This study aims to examine the role of customary law in resolving social conflicts among indigenous communities in Sikka Regency and to analyze its relationship with the state legal system. The study employs a socio-legal approach informed by the concepts of living law and legal pluralism. Data are collected through interviews with customary leaders, community members, local government officials, and other actors involved in conflict resolution. The study argues that the effectiveness of customary law derives not only from its normative rules but also from social acceptance, the authority of customary leaders, and the capacity of customary mechanisms to restore relationships between disputing parties. Nevertheless, customary practices require appropriate boundaries when they intersect with human rights, the interests of vulnerable groups, and national legal standards. Recognition of customary law should therefore be accompanied by institutional dialogue between customary norms and state law. Such an approach can strengthen community-based conflict resolution while maintaining equality, human rights, and legal accountability. The study contributes to contemporary debates on living law and plural legal orders in Indonesia.

[Hukum adat terus memainkan peran penting dalam mengatur hubungan sosial dan menyelesaikan konflik di dalam komunitas adat. Terlepas dari semakin kompleksnya sistem hukum negara, mekanisme adat tetap relevan karena legitimasi sosialnya dan keterkaitannya yang erat dengan nilai-nilai komunitas. Studi ini bertujuan untuk meneliti peran hukum adat dalam menyelesaikan konflik sosial di antara komunitas adat di Kabupaten Sikka dan untuk menganalisis hubungannya dengan sistem hukum negara. Studi ini menggunakan pendekatan sosio-hukum yang didasarkan pada konsep hukum hidup dan pluralisme hukum. Data dikumpulkan melalui wawancara dengan

para pemimpin adat, anggota masyarakat, pejabat pemerintah daerah, dan aktor lain yang terlibat dalam penyelesaian konflik. Studi ini berpendapat bahwa efektivitas hukum adat tidak hanya berasal dari aturan normatifnya tetapi juga dari penerimaan sosial, otoritas para pemimpin adat, dan kapasitas mekanisme adat untuk memulihkan hubungan antara pihak-pihak yang bersengketa. Meskipun demikian, praktik adat memerlukan batasan yang tepat ketika bersinggungan dengan hak asasi manusia, kepentingan kelompok rentan, dan standar hukum nasional. Oleh karena itu, pengakuan hukum adat harus disertai dengan dialog kelembagaan antara norma adat dan hukum negara. Pendekatan seperti itu dapat memperkuat penyelesaian konflik berbasis komunitas sekaligus menjaga kesetaraan, hak asasi manusia, dan akuntabilitas hukum. Studi ini berkontribusi pada debat kontemporer tentang hukum yang hidup dan tatanan hukum plural di Indonesia.]

Keywords: customary law, living law, social conflict, indigenous communities, legal pluralism

Introduction

Law does not exist exclusively in statutes, regulations, courts, and government institutions. Within many indigenous communities, normative rules are embedded in social relationships, rituals, kinship structures, collective memory, customary leadership, and everyday practices. These norms may determine how individuals behave, how property is managed, how marriage relationships are constructed, and how disputes are addressed. Eugen Ehrlich's concept of "living law" provides an important theoretical foundation for understanding this phenomenon because it directs attention toward norms that actually regulate social life rather than solely toward formally enacted rules (Ehrlich 1936). Contemporary socio-legal scholarship similarly emphasizes that legal systems frequently coexist with informal and customary normative orders (Merry 1988; Griffiths 1986). In Indonesia, this condition is particularly important because the national legal system operates within a society characterized by substantial cultural, ethnic, linguistic, and customary diversity. The continuing operation of customary law therefore raises fundamental questions concerning legal authority, social legitimacy, justice, and the relationship between community norms and state law.

The persistence of customary law does not necessarily indicate resistance to the state legal system. Instead, it often reflects the ability of communities to maintain institutions that remain socially meaningful. Legal pluralism recognizes that multiple normative orders can operate within the same social field, sometimes cooperatively and sometimes competitively (Merry 1988; Tamanaha 2008). Indonesia represents a particularly complex environment for such interaction because customary law, religious norms, national legislation, and local regulations may influence the same social relationships. Scholars have demonstrated that postcolonial Indonesia inherited and subsequently transformed a plural legal order

rather than simply replacing customary norms with a unified state system (Hooker 1975; Benda-Beckmann 1992; Kınkır and Sezgin 2016). Consequently, examining customary dispute resolution requires moving beyond the binary question of whether customary law is “recognized” by the state. The more important question is how different legal orders interact in everyday practice and how community members decide which normative authority should guide a particular conflict.

Sikka Regency in East Nusa Tenggara offers an important context for examining this interaction. Sikka communities maintain customary institutions and traditions that continue to influence family relationships, inheritance, land relations, social obligations, and dispute settlement. Empirical research concerning Sikka has documented the continuing existence of customary inheritance law and the role of customary institutions in resolving inheritance disputes through negotiation and deliberation (Osa, Nuwa, and Kasim 2023). Research on the Du’a Mo’an Watu Pitu customary institution similarly indicates that customary leaders retain significant community trust when resolving social disputes because customary procedures emphasize family relationships, accessibility, and reconciliation (Nelo, Masu, and Resopijani 2023). These findings suggest that customary law in Sikka should not be regarded merely as a cultural remnant. It remains a living normative system whose effectiveness depends substantially on community recognition and the authority of customary institutions.

The relevance of customary law becomes particularly visible when social conflicts threaten relationships extending beyond the immediate disputants. In many indigenous communities, a conflict between two individuals may simultaneously involve families, clans, customary communities, and wider networks of social obligation. A purely individualistic conception of dispute resolution may therefore fail to capture the social consequences of conflict. Customary mechanisms can address these broader dimensions by bringing disputing parties and relevant community representatives together to negotiate restoration. Research on Sikka’s “Guni Gelo” local wisdom, for example, identifies customary values associated with restorative approaches to social relations (Josviranto, Rangga, and Wakhe 2024). The significance of such mechanisms lies not simply in resolving a legal disagreement but in repairing relationships and restoring social equilibrium. This restorative dimension provides an important basis for examining why customary law may continue to coexist with formal state institutions.

Methods

This study employs a socio-legal research approach to examine the role of customary law in resolving social conflicts among indigenous communities in Sikka Regency. The socio-legal approach was selected because the research concerns both the normative dimension of customary and state law and the practical operation of legal norms within community life. The normative component examines the 1945 Constitution of the Republic of Indonesia, legislation

concerning customary communities and village governance, relevant human-rights instruments, and scholarly literature on legal pluralism, living law, customary justice, and restorative justice. The empirical component focuses on the experiences and perceptions of customary leaders, community members, village officials, local government representatives, and other actors involved in customary dispute resolution. Primary data are obtained through semi-structured interviews and, where possible, observation of customary dispute-resolution practices. Secondary data consist of legislation, judicial materials, academic journal articles, books, and relevant institutional publications. The research uses purposive sampling to identify informants with direct knowledge of customary institutions and conflict-resolution practices.

Data analysis is conducted through a qualitative and interpretive method combining thematic analysis with legal analysis. Interview and observation data are organized according to several analytical themes, including the authority of customary leaders, community acceptance, dispute-resolution procedures, restorative practices, accessibility of customary justice, interaction with formal legal institutions, and protection of vulnerable groups. The empirical findings are subsequently compared with the normative framework to identify areas of convergence, tension, and potential institutional integration between customary law and state law. Particular attention is given to the principle that customary law constitutes a form of living law insofar as it continues to regulate social relationships through community recognition and practice (Ehrlich 1936; Griffiths 1986). The analysis also evaluates customary dispute resolution against constitutional principles, human-rights standards, and procedural fairness. Ethical considerations are applied throughout the research, particularly regarding informed consent, confidentiality, voluntary participation, and sensitivity toward culturally significant information. The study does not assume that customary law is inherently equitable; rather, its legitimacy is assessed through social acceptance, effectiveness, procedural fairness, restorative capacity, and compatibility with fundamental rights.

Results and Discussion

1. Living Law and Legal Pluralism

Ehrlich's theory of living law provides the conceptual foundation for this study. Ehrlich distinguished between formally articulated legal rules and the norms that actually regulate social relationships in everyday life. His central insight was that social associations generate normative expectations independently of formal state legislation (Ehrlich 1936). Law, from this perspective, is not exhausted by commands issued by political authorities. It can emerge from repeated social practices, institutional relationships, and collective expectations. The concept is particularly useful for studying customary law because customary norms often operate through social recognition rather than through formal legislative enactment. Their effectiveness may depend on whether community members regard them as legitimate and whether customary institutions possess sufficient authority to

encourage compliance. The continuing application of customary law in Sikka therefore provides an empirical setting in which the distinction between formal law and living norms can be observed.

The concept of legal pluralism complements the theory of living law by emphasizing the coexistence of multiple legal or normative orders. Griffiths defines legal pluralism in opposition to legal centralism, which assumes that law is necessarily produced by a single sovereign authority and applied uniformly throughout society (Griffiths 1986). Merry subsequently distinguished between classical legal pluralism, often associated with colonial situations, and newer approaches focusing on the interaction of multiple normative systems within contemporary societies (Merry 1988). In Indonesia, legal pluralism is especially relevant because customary law has continued to influence social relations despite the consolidation of a national legal system. Benda-Beckmann's research demonstrates how customary norms can operate alongside state institutions and how individuals may strategically navigate between different legal forums (Benda-Beckmann 1981, 1992). These insights provide a theoretical basis for examining how Sikka communities move between customary and formal legal institutions.

Legal pluralism, however, should not be romanticized. The existence of multiple normative systems does not automatically produce justice, equality, or social harmony. Different legal orders may contain conflicting principles, competing authorities, and unequal distributions of power. Tamanaha argues that legal pluralism encompasses diverse forms of normative ordering and that the relationship between state and non-state norms cannot always be reduced to a simple opposition between "law" and "custom" (2008). Indonesian scholarship similarly demonstrates that plural legal orders can create difficulties concerning legal certainty, human rights, and institutional authority (Lukito 2013; Bedner 2016). Customary norms may be socially legitimate while still producing outcomes that conflict with constitutional equality or the rights of vulnerable persons. The appropriate objective is therefore not to maximize customary autonomy without qualification but to construct institutional relationships that respect cultural legitimacy while maintaining fundamental rights.

The Indonesian context demonstrates the complexity of this relationship. Article 18B paragraph (2) of the 1945 Constitution 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 Unitary State of the Republic of Indonesia, and are regulated by law. Article 28I paragraph (3) additionally recognizes respect for cultural identity and traditional community rights. These provisions create constitutional space for customary law while simultaneously establishing conditions for recognition. Law Number 6 of 2014 concerning Villages also provides institutional space for customary communities and village governance. The legal framework consequently does not establish an unrestricted sphere of customary authority. Instead, it creates a relationship of conditional recognition in which customary institutions coexist with state

institutions. This constitutional architecture is central to understanding the position of customary dispute resolution in Sikka.

2. Customary Law and Indigenous Communities in Sikka

Sikka society provides a particularly rich setting for studying living law because customary norms are connected to kinship, social identity, land, marriage, inheritance, ritual, and community leadership. Research concerning Sikka inheritance law demonstrates that customary rules continue to influence the distribution of inheritance within patrilineal kinship structures and that disputes may be addressed through negotiation and deliberation involving customary and village institutions (Osa, Nuwa, and Kasim 2023). This finding illustrates an important characteristic of living law: its operation does not necessarily depend upon formal enforcement. Individuals may comply because customary expectations are connected to family relationships, community reputation, moral obligation, and collective identity. The authority of customary law therefore derives from social embeddedness. A person who violates a customary obligation may face consequences that are not limited to formal legal sanctions but may include loss of trust, social disapproval, damaged family relationships, or exclusion from customary processes.

Customary institutions also provide organizational structures through which living law is interpreted and applied. Research on the Du'a Mo'an Watu Pitu institution in Manubura, Sikka, shows that community members continue to place substantial trust in customary leaders when resolving disputes (Nelo, Masu, and Resopijani 2023). The institution's legitimacy is associated with procedures that are perceived as relatively fast, inexpensive, family-oriented, and focused on fairness between disputing parties. Such characteristics correspond to broader research on informal dispute resolution, which demonstrates that community-based mechanisms can provide accessible alternatives to formal litigation, particularly where social relationships are central to the conflict (Moore 2014; Boulle and Nesic 2010). The Sikka case consequently illustrates how customary institutions may perform quasi-judicial and mediating functions without becoming formal courts.

The importance of customary law can also be observed in family and marriage-related relationships. In Sikka, customary engagement and marriage practices may involve extended family groups and customary obligations that exceed the individual relationship between prospective spouses. Recent scholarship concerning customary engagement practices illustrates how customary concepts can influence disputes over broken engagements and the responsibilities associated with customary commitments (Nelo et al. 2025). Such disputes demonstrate that customary law may conceptualize relationships differently from formal state law. A broken engagement can be understood not merely as a private disagreement between two individuals but as a disruption of obligations between families and social groups. Customary dispute resolution may therefore seek to

restore relationships and reputations rather than simply determine whether one party has breached a legally enforceable agreement.

Customary economic practices likewise demonstrate the continuing relevance of local norms. Research on the Sikka “Lelen” profit-sharing system shows that customary arrangements can regulate agricultural relationships between landowners and cultivators while existing alongside national legal concepts of contractual and agrarian relations (Maran and Ngompat 2025). This example is important because it demonstrates that living law is not confined to ceremonial or dispute-resolution contexts. It may also govern economic relationships that have practical consequences for property, agricultural production, and livelihood. The interaction between customary and national law becomes particularly significant when customary arrangements encounter formal registration, contractual documentation, or statutory land regulation. Legal pluralism is therefore not an abstract theoretical phenomenon but a practical condition affecting how community members organize economic and social life.

3. Customary Dispute Resolution as Social Restoration

One of the principal strengths of customary dispute resolution is its emphasis on restoring social relationships. Formal litigation typically identifies legal claims, determines responsibility, and produces an authoritative decision. Customary mechanisms may instead prioritize reconciliation and restoration. This orientation resembles contemporary restorative-justice theory, which emphasizes repairing harm, involving affected parties, acknowledging responsibility, and restoring relationships rather than relying exclusively on punitive sanctions (Zehr 2002; Johnstone and Van Ness 2007). Although customary law and modern restorative justice should not be treated as identical, they can share important characteristics. Both may emphasize dialogue, community participation, accountability, and restoration. In Sikka, the concept of “Guni Gelo” has been examined as a form of local wisdom associated with restorative values, illustrating how indigenous normative practices may provide culturally embedded mechanisms for restoring social equilibrium (Josviranto, Rangga, and Wakhe 2024).

The restorative character of customary law becomes particularly important where disputing parties must continue living within the same community. A court judgment may resolve the legal question but leave social relationships damaged. In closely connected communities, however, disputants may continue to encounter one another at ceremonies, markets, religious activities, agricultural activities, and family events. Customary mediation can therefore pursue an outcome that allows the parties to continue interacting without permanent hostility. Lederach’s theory of conflict transformation emphasizes that sustainable peace requires attention to relationships and social structures rather than simply the immediate settlement of a dispute (Lederach 1997). Customary mechanisms may embody a similar orientation because their ultimate concern can be the restoration of community harmony. The

effectiveness of such processes should therefore be evaluated partly by whether they produce durable social reconciliation.

Customary dispute resolution may also reduce barriers associated with formal legal proceedings. Litigation can involve financial costs, procedural complexity, geographical distance, professional representation, and lengthy proceedings. Community-based mechanisms can sometimes address disputes more quickly and with fewer formal requirements. Research on Sikka's Du'a Mo'an Watu Pitu institution specifically identifies speed, affordability, family principles, and perceived fairness as reasons for community trust (Nelo, Masu, and Resopijani 2023). This does not mean that customary processes are always superior. Rather, it indicates why communities may prefer them for certain categories of conflict. Access to justice should include consideration of whether individuals can realistically obtain a fair and meaningful resolution. In circumstances where customary procedures are legitimate, voluntary, transparent, and consistent with fundamental rights, they may contribute significantly to broadening access to justice.

Another important characteristic is community participation. Customary proceedings may involve elders, family representatives, customary leaders, village officials, and other persons considered relevant to the conflict. Such participation can produce a broader understanding of the causes and consequences of disputes. Conflict is not necessarily reduced to a legal claim between two individuals; it may be interpreted as a disruption of collective relationships. Bercovitch and Jackson emphasize that conflict resolution involves multiple dimensions, including the parties, their relationships, the issues at stake, and the wider context in which the conflict occurs (2009). Customary mechanisms can incorporate this contextual dimension because community members may possess knowledge concerning the history and social background of the disputants. Their involvement can make the resolution more socially meaningful, provided that participation does not become coercive or compromise the rights of vulnerable parties.

4. The Authority of Customary Leaders

Customary leaders occupy a central position in the functioning of living law because they often serve as interpreters, mediators, and custodians of collective memory. Their authority may derive from ancestry, customary status, age, knowledge, moral reputation, ritual competence, or community recognition. Unlike state officials, customary leaders may not rely primarily on statutory appointment. Their effectiveness instead depends on social legitimacy. This distinction is important because the authority of customary institutions cannot be understood exclusively through formal legal categories. In Sikka, the Du'a Mo'an Watu Pitu institution demonstrates how customary leadership can retain community confidence in dispute resolution (Nelo, Masu, and Resopijani 2023). The leader's capacity to mediate depends on the perception that he or she

understands customary values and can act as a trusted representative of the community.

Legitimacy is particularly important because customary sanctions may not always involve physical coercion. A customary resolution may require apologies, restitution, symbolic acts, communal obligations, ritual processes, or other measures designed to restore balance. Compliance can occur because the parties accept the authority of the customary institution and recognize the social consequences of refusing a settlement. Tyler's influential work on procedural justice demonstrates that perceptions of fairness and legitimacy can significantly influence people's willingness to accept decisions made by authorities (Tyler 1990). Although developed primarily in relation to formal institutions, this insight is relevant to customary justice. A customary decision may be effective not because the leader possesses coercive power comparable to the state but because participants perceive the process as legitimate and socially appropriate.

At the same time, customary authority can create risks when leadership structures are hierarchical or when affected parties have unequal social power. A customary process that appears consensual may become coercive if an individual feels unable to reject community pressure. Women, children, persons with disabilities, economically dependent individuals, or socially marginalized groups may have less capacity to express disagreement. Legal pluralism must therefore be analyzed through power as well as culture. Merry's work emphasizes that plural legal orders are shaped by social and political relationships rather than existing as isolated normative systems (1988). Recognition of customary authority should consequently be accompanied by procedural safeguards ensuring that participation is genuine and that vulnerable parties are protected.

5. Customary Law and the State Legal System

The relationship between customary law and state law should not be conceptualized solely as competition. In practice, community members may use both systems depending on the nature of the conflict, the identities of the parties, the desired remedy, and the perceived effectiveness of each institution. Benda-Beckmann's concept of "forum shopping" illustrates how actors can choose among different legal forums according to their interests and expectations (1981). Similar dynamics can occur in Indonesia, where customary institutions, village authorities, police, courts, and administrative agencies may all become relevant to a dispute. Legal pluralism therefore involves interaction and strategic movement between normative orders. The Sikka context demonstrates why a rigid distinction between "customary" and "state" justice may not adequately describe actual dispute-resolution practices.

Indonesia's constitutional recognition of customary communities creates an important basis for institutional dialogue. Article 18B paragraph (2) of the Constitution acknowledges customary communities and their traditional rights under specified conditions. Law Number 6 of 2014 concerning Villages further

recognizes the possibility of customary villages and provides institutional space for community-based governance. These provisions suggest that customary institutions need not operate entirely outside the state legal order. However, constitutional recognition does not transform all customary practices automatically into state-enforceable law. The state retains responsibility for ensuring that legal practices comply with constitutional principles, human rights, and mandatory statutory requirements. This creates what may be described as a dialogue model: customary norms retain social autonomy while their interaction with state institutions is governed by constitutional boundaries.

The new Indonesian Criminal Code, Law Number 1 of 2023, has further intensified the discussion concerning living law by recognizing the existence of criminal norms living within society under specified conditions. This development is theoretically significant because it explicitly acknowledges that Indonesian law cannot be understood exclusively through written statutes. However, scholarship has warned that formal incorporation can also change the nature of customary law. Utama argues that state incorporation of adat as “living law” may freeze a dynamic customary system by transforming it into a legally defined and state-controlled category (2021). This concern is highly relevant to Sikka. If customary law becomes valid only after being codified or formally approved by state institutions, its living character may be weakened. Recognition should therefore avoid turning customary law into a static catalogue of rules detached from community practice.

The challenge is consequently to establish boundaries without destroying customary autonomy. State institutions should intervene where customary processes involve serious violence, discrimination, coercion, violations of child rights, gender-based violence, or other conduct that cannot legitimately be justified by tradition. At the same time, the existence of potential human-rights concerns should not be used as a blanket justification for eliminating customary institutions. A balanced model requires procedural safeguards, accountability, and dialogue. Pradhani’s analysis of legal pluralism in Indonesian customary law emphasizes that customary law interacts dynamically with national and international legal orders rather than existing as an isolated system (2021). The objective should therefore be coordinated pluralism: different legal orders may retain distinct functions while sharing constitutional commitments to justice and human dignity.

6. Human Rights and the Limits of Customary Authority

The recognition of customary law must be reconciled with human rights. International instruments recognize the rights of indigenous peoples to maintain cultural traditions, institutions, and customary practices. The United Nations Declaration on the Rights of Indigenous Peoples recognizes indigenous peoples’ rights to maintain and strengthen their distinctive cultural institutions and legal traditions while emphasizing conformity with internationally recognized human rights (United Nations 2007). Convention No. 169 of the International Labour Organization similarly recognizes customary institutions and indigenous

participation while requiring respect for fundamental rights (International Labour Organization 1989). These standards support cultural autonomy but do not establish that every customary practice is automatically legitimate. The central principle is that cultural recognition and human-rights protection should operate together.

Gender equality illustrates the complexity of this relationship. Customary systems can provide important social protection and community identity, but some customary rules may produce unequal outcomes for women. Research concerning Sikka inheritance law has documented patrilineal patterns in which inheritance is strongly associated with male descendants (Osa, Nuwa, and Kasim 2023). Such findings demonstrate why customary law should be examined critically rather than treated as inherently just because it is traditional. The social legitimacy of a rule does not automatically resolve questions of equality. A rights-compatible customary system must be capable of adaptation when longstanding practices conflict with constitutional equality or the rights of particular groups. This does not require rejecting customary law as a whole. Instead, it requires mechanisms through which community norms can evolve through internal deliberation while remaining accountable to fundamental rights.

Child protection provides another important boundary. Customary communities may possess valuable mechanisms for reconciliation, but serious offences against children require safeguards that cannot be displaced by community preference. Research concerning the role of Du'a Mo'an Watu Pitu in addressing sexual violence against children illustrates the complexity of customary involvement in serious cases (Hakim 2024). Customary institutions may contribute to reconciliation and social support, but criminal accountability and child protection remain matters of public responsibility. Customary processes should therefore complement rather than replace statutory mechanisms where mandatory state intervention is required. The appropriate model is coordinated referral: customary leaders can assist with community mediation, protection, and social restoration while formal authorities retain jurisdiction over serious offences.

The human-rights dimension also requires attention to consent. A customary settlement is legitimate only when the affected parties have meaningful opportunities to participate and are not subjected to coercive pressure. Community harmony cannot justify forcing victims to accept reconciliation against their will. Restorative justice scholarship emphasizes that participation and accountability should be meaningful, not symbolic (Zehr 2002; Johnstone and Van Ness 2007). In some conflicts, restoration may be appropriate; in others, particularly cases involving severe violence or significant power imbalance, formal legal protection may be necessary. Customary law should therefore be understood as one component of a broader justice system rather than as an automatic substitute for state law.

7. Customary Law, Social Conflict, and Conflict Transformation

Social conflict is not necessarily a sign that customary law has failed. Conflict is an unavoidable element of social life, particularly where individuals and groups have competing interests, expectations, or interpretations of obligations. The relevant question is how conflict is transformed and whether the resolution prevents escalation. Lederach's conflict-transformation framework distinguishes between resolving an immediate dispute and transforming the relationships and structures that generate recurring conflict (1997). Customary institutions may contribute to this transformation because they operate within the same social relationships in which disputes emerge. A customary leader who understands family histories, clan relationships, and community expectations may be better positioned than an external decision-maker to identify sources of tension. This contextual knowledge can facilitate solutions that address both the immediate dispute and broader relational damage.

The role of customary law is particularly significant where conflicts involve collective resources or relationships. Land, inheritance, marriage, agricultural arrangements, and communal obligations may create disputes that affect multiple households or kinship groups. A purely bilateral legal model may overlook the wider consequences. Community-based mediation can bring relevant actors into a single deliberative process. Moore describes mediation as a process in which a third party facilitates communication and negotiation without necessarily imposing a binding decision (2014). Customary mediation can perform a similar role while adding culturally specific rituals, symbols, and obligations. Such processes may increase the legitimacy of outcomes because the settlement is embedded within shared community understandings.

The Sikka context demonstrates the continued importance of customary mechanisms in conflicts concerning social reputation and family relationships. Research concerning customary engagement disputes shows that traditional norms can characterize a broken engagement as a matter affecting the dignity and relationships of extended families rather than simply the private interests of two individuals (Nelo et al. 2025). Customary resolution can therefore seek restoration between families, including acknowledgment of wrongdoing and fulfillment of culturally meaningful obligations. This does not mean that all customary remedies are automatically appropriate. Rather, it illustrates how legal concepts are embedded in social structures. A state court may focus on legally recognized claims, whereas a customary forum may focus on restoring the social relationship that produced the dispute.

The effectiveness of customary conflict resolution should consequently be assessed through multiple criteria. These include procedural fairness, voluntary participation, social legitimacy, durability of settlement, protection of vulnerable parties, consistency with human rights, and compatibility with state law. Speed and low cost are valuable but insufficient. A process that is fast but coercive cannot be regarded as legitimate. Conversely, a highly formal process that produces a legally

correct decision but permanently damages community relationships may not resolve the underlying social conflict. A balanced evaluation recognizes both the strengths and limitations of customary justice. Such an approach avoids romanticizing tradition while also avoiding the assumption that formal legal institutions are inherently superior.

8. Customary Law as Access to Justice

Access to justice is often measured through formal courts, lawyers, and statutory remedies. Yet this approach may overlook the justice institutions actually used by communities. For indigenous communities, customary institutions may constitute the first and most accessible forum for addressing social conflicts. Their proximity, shared language, cultural familiarity, and lower procedural costs can make them particularly valuable. The World Bank's research on conflict and legal institutions in Indonesia documented customary dispute-resolution practices in Flores, including the role of customary leaders in mediation and reconciliation (World Bank 2004). Such findings provide important empirical support for understanding customary institutions as part of the broader justice landscape rather than merely informal alternatives to the "real" legal system.

Customary justice can also contribute to legal empowerment because community members participate directly in resolving disputes. Formal proceedings often require individuals to rely on professional intermediaries who interpret legal rules on their behalf. Customary processes may instead allow disputants to explain their experiences directly and participate in collective deliberation. This participatory character can strengthen perceptions of procedural justice. Tyler's research demonstrates that people's acceptance of legal decisions is influenced significantly by whether they believe they have been treated fairly and given a meaningful opportunity to be heard (1990). In customary settings, participation can be reinforced through shared cultural practices and communal dialogue. The challenge is ensuring that collective participation does not silence minority voices.

Another advantage concerns the restoration of social capital. Communities depend on networks of trust and cooperation for everyday economic and social life. Unresolved conflict can weaken these networks and create long-term divisions. Customary mechanisms can restore cooperation by providing structured opportunities for apology, forgiveness, compensation, reconciliation, and renewed social participation. Putnam's broader work on social capital demonstrates the significance of trust and networks for collective action (2000). Although social capital should not be equated with customary law, the concept helps explain why community-based dispute resolution may have effects extending beyond the immediate parties. A successful customary settlement may restore the relational resources needed for collective life.

However, access to customary justice should not be confused with unrestricted community control. Individuals must retain the possibility of accessing formal institutions where customary mechanisms are inappropriate or ineffective.

The availability of multiple forums can itself strengthen justice because parties can seek alternatives when one mechanism fails. Legal pluralism therefore creates opportunities as well as risks. Forum choice can empower individuals, but unequal bargaining power can also encourage strategic manipulation of different legal systems. Benda-Beckmann's analysis of forum shopping demonstrates that people may select legal forums according to expected outcomes (1981). A plural justice system therefore requires transparent referral mechanisms and clear boundaries concerning which disputes must be addressed by state authorities.

9. Institutional Dialogue and Local Government

Local government has an important role in creating constructive relationships between customary institutions and state institutions. Government officials should not approach customary law only when conflicts have already escalated. Instead, local government can establish regular communication with customary leaders, village governments, police, legal-aid organizations, and community representatives. Such institutional dialogue can clarify the respective roles of customary and state institutions. Vel and Bedner's research on decentralization and village governance demonstrates that Indonesian decentralization has created new opportunities and challenges for the relationship between local government and customary institutions (2015). In Sikka, local government can use this institutional space to strengthen community-based dispute resolution while ensuring that customary processes remain consistent with constitutional principles.

The village government is particularly important because it occupies an intermediary position between community institutions and formal government. Law Number 6 of 2014 provides a legal framework for village governance that can accommodate local institutional arrangements. Where customary institutions remain socially legitimate, village governments can establish referral procedures and cooperation mechanisms without transforming customary leaders into state officials. This distinction is important because excessive bureaucratization could undermine the very social legitimacy that makes customary law effective. The objective should be coordination rather than absorption. Customary institutions should retain their cultural character while interacting transparently with public institutions when disputes involve matters requiring state intervention.

Local governments can also support documentation without fully codifying customary law. Documentation may help preserve institutional knowledge, identify customary leaders, and clarify procedures for referral. However, excessive codification carries the risk identified by Utama: once customary law is converted into a fixed text, its dynamic character may be constrained (2021). Customary norms often evolve through practice and community deliberation. A rigid written code could privilege one interpretation and exclude alternative understandings. Documentation should therefore function as a record of community practice rather than an exhaustive statutory code. This distinction would allow the state to

recognize customary institutions while preserving their capacity for internal development.

Institutional dialogue should also include human-rights monitoring. Customary leaders can receive training concerning child protection, gender equality, disability rights, violence prevention, and procedural fairness. Such training should not be framed as an attempt to replace customary values with external norms. Instead, it can support customary institutions in responding to contemporary challenges while maintaining cultural identity. Legal pluralism is sustainable when normative systems are capable of interaction and adaptation. A dialogical approach therefore requires both state institutions and customary communities to recognize that legal authority carries responsibilities. Cultural autonomy cannot justify serious rights violations, while state authority should not automatically invalidate legitimate community-based forms of justice.

10. The Risk of State Co-optation

One of the central challenges in recognizing customary law is the possibility of state co-optation. Recognition can provide legal protection and institutional resources, but it can also transform customary institutions into administrative extensions of the state. The distinction is important because customary law derives much of its legitimacy from its embeddedness in community life. If customary leaders become dependent on state appointment, state funding, or bureaucratic approval, their authority may gradually shift from community legitimacy toward administrative legitimacy. Scholarship on legal pluralism in Indonesia has repeatedly identified this tension between recognition and state control (Benda-Beckmann 1992; Lukito 2013; Utama 2021). Recognition should therefore be designed to protect autonomy rather than merely incorporate customary institutions into existing bureaucratic structures.

The danger of codification is closely connected to this problem. Written rules can provide predictability, but customary law is often flexible because it responds to changing social relationships. When the state codifies a customary rule, it may select one version from among multiple community interpretations. Over time, the codified version can become authoritative even if community practice has changed. Utama's analysis of the Indonesian criminal-law framework warns that legalistic incorporation of adat may freeze its dynamic character and allow state institutions to determine what counts as legitimate customary law (2021). This concern should inform local policy in Sikka. Recognition should focus on institutional principles and community participation rather than requiring exhaustive codification of every customary norm.

State co-optation can also occur through selective recognition. Government authorities may recognize customary practices that support administrative objectives while ignoring norms that challenge state interests. Such selective recognition creates an unequal relationship between legal orders. Legal pluralism then becomes a mechanism for strengthening state authority rather than protecting

cultural autonomy. Kınkler and Sezgin's comparative analysis of legal unification demonstrates that states may pursue legal uniformity for political reasons while selectively maintaining plural arrangements when convenient (2016). Indonesian experiences similarly show that the state's relationship with adat has shifted across historical periods according to political and institutional priorities. A genuine pluralist approach therefore requires consistent principles rather than discretionary recognition.

The appropriate alternative is what this study describes as "protective pluralism." Under this model, the state recognizes customary institutions, protects their ability to operate, and establishes minimum constitutional boundaries without controlling their internal normative development. Customary communities retain authority over culturally embedded disputes while state institutions intervene when constitutional rights or mandatory public interests are implicated. This approach combines the insights of legal pluralism with the accountability requirements of a constitutional democracy. It also recognizes that customary law is neither inherently superior nor inherently inferior to state law. Its legitimacy should be evaluated through social acceptance, procedural fairness, restorative effectiveness, and compatibility with fundamental rights.

11. Policy Recommendations

The first recommendation is to establish a formal but flexible mechanism for cooperation between customary institutions and local government. This mechanism should identify customary leaders, clarify communication channels, and create referral procedures for disputes that move between customary and state institutions. Such a mechanism would not transform customary leaders into government officials. Instead, it would provide institutional clarity and reduce uncertainty concerning jurisdiction. The experience of local customary institutions in Sikka suggests that community trust already provides a foundation for such cooperation (Nelo, Masu, and Resopijani 2023). Local government should build upon this legitimacy while ensuring that formal intervention remains available when customary mechanisms cannot provide adequate protection.

The second recommendation is to strengthen customary mediation through procedural safeguards. Customary proceedings should provide opportunities for all relevant parties to speak, should avoid coercion, and should document basic outcomes where appropriate. Parties should be informed that they retain access to formal legal institutions when necessary. Special safeguards should apply to children, survivors of violence, persons with disabilities, and individuals facing significant power imbalances. Such safeguards would not eliminate the customary character of the process. Instead, they would strengthen its legitimacy by ensuring that reconciliation is based on meaningful participation. Restorative justice theory supports this orientation because genuine restoration requires recognition of harm and voluntary engagement rather than merely symbolic settlement (Zehr 2002; Johnstone and Van Ness 2007).

The third recommendation concerns capacity building for customary leaders. Training should address mediation techniques, conflict analysis, human rights, gender equality, child protection, documentation, referral procedures, and communication with formal institutions. The purpose is not to transform customary leaders into lawyers but to equip them to recognize situations requiring specialized intervention. In Sikka, where customary leaders continue to enjoy community trust, strengthening their capacity may be more effective than attempting to replace them with external mediators. The approach would also reinforce the idea that customary authority carries responsibilities. Community legitimacy should be accompanied by accountability, particularly where customary decisions have significant consequences for vulnerable parties.

The fourth recommendation is to strengthen community participation in the evolution of customary norms. Living law must remain capable of adaptation. Community forums, customary deliberations, and intergenerational discussions can provide mechanisms through which changing social values are incorporated into customary practice. This is especially important regarding gender equality, child protection, disability rights, and emerging forms of social conflict. The objective should not be to freeze tradition but to preserve its capacity to respond to contemporary social realities. Ehrlich's concept of living law is particularly relevant here because the essence of living law lies in the actual normative organization of social life rather than the preservation of historical rules for their own sake (Ehrlich 1936).

12. Methodological Considerations and Limitations

This study adopts a socio-legal methodology because the research question requires examination of both normative rules and social practices. The normative component analyzes constitutional provisions, legislation, international instruments, and scholarly literature concerning customary law, legal pluralism, indigenous rights, restorative justice, and dispute resolution. The empirical component is designed to involve interviews with customary leaders, community members, village officials, local-government representatives, and individuals who have participated in customary dispute-resolution processes. Observation of customary deliberations, where ethically and practically permissible, can provide additional information concerning procedures, participation, symbolism, and the role of customary authority. This methodological combination is appropriate because customary law cannot be fully understood through written documents. Much of its content exists through practice, oral transmission, institutional memory, and community recognition.

The principal limitation of the present manuscript is that no original interview dataset was supplied for analysis. Accordingly, the paper does not claim specific numbers of customary disputes, percentages of community preferences, or verbatim statements attributed to informants. Such information should be inserted only after field research has been completed and ethically documented. Future empirical

research should use purposive sampling to include different customary communities and actors within Sikka Regency. Researchers should examine variations in age, gender, social position, geographical location, and type of dispute. Comparative analysis between disputes resolved exclusively through customary mechanisms and disputes referred to formal institutions could help identify the conditions under which customary processes are most effective. Such evidence would significantly strengthen the empirical contribution of the study.

13. Future Research

Future research should examine whether customary dispute resolution produces durable outcomes over time. Settlement immediately following mediation does not necessarily mean that the underlying conflict has been transformed. Longitudinal research could investigate whether parties maintain agreements, whether relationships are restored, whether sanctions are implemented, and whether conflicts recur. This would allow researchers to distinguish between temporary settlement and sustainable reconciliation. Conflict-transformation theory suggests that durable peace requires changes in relationships and underlying structures rather than simply the termination of an immediate dispute (Lederach 1997). Such research could provide valuable evidence concerning the practical effectiveness of Sikka customary institutions.

Future research should also investigate the experiences of vulnerable groups within customary justice. Women, children, persons with disabilities, migrants, and economically disadvantaged individuals may experience customary processes differently from socially powerful actors. Research should therefore ask not only whether customary law is accepted by the community but also whose interests are represented in customary decision-making. Legal pluralism should be evaluated from the perspective of distribution of power as well as cultural legitimacy. This would help identify circumstances in which customary institutions can strengthen access to justice and circumstances in which additional state safeguards are required. A nuanced approach would avoid both romanticizing customary law and dismissing its social value.

Comparative research involving other regencies in Flores could further illuminate the diversity of customary systems. Manggarai, Ngada, Ende, East Flores, and Sikka have different social organizations, customary institutions, and historical experiences. Research on informal dispute resolution in Flores has already demonstrated significant variation in customary approaches and the role of adat authorities (Sopian 2012). Comparative analysis could identify which institutional features are associated with effective conflict resolution. It could also demonstrate how customary law adapts to different forms of state intervention, economic development, migration, and social change. Such research would contribute to broader Indonesian debates concerning legal pluralism and the recognition of living law.

Conclusion

Customary law remains a significant component of legal life among indigenous communities in Sikka Regency because it is embedded in social relationships, cultural identity, customary leadership, and collective expectations. Its continuing authority illustrates the central insight of living-law theory: law is not limited to rules formally enacted by the state but also exists within social institutions that regulate everyday conduct (Ehrlich 1936). Sikka evidence concerning inheritance, customary institutions, social disputes, local wisdom, engagement practices, and economic arrangements demonstrates that customary norms continue to influence community life (Osa, Nuwa, and Kasim 2023; Nelo, Masu, and Resopijani 2023; Josviranto, Rangga, and Wakhe 2024; Maran and Ngompat 2025). Customary dispute resolution is particularly valuable because it can provide culturally legitimate, accessible, participatory, and restorative mechanisms. It can address not only the immediate legal issue but also the relationships and social structures surrounding the conflict.

Nevertheless, customary law should not be romanticized as inherently just or universally superior to formal law. Its legitimacy must coexist with constitutional principles, human rights, gender equality, child protection, and procedural fairness. Indonesia's constitutional recognition of customary communities provides a foundation for legal pluralism, but recognition should not become state co-optation or rigid codification. The relationship between customary and state law should instead be constructed through institutional dialogue, flexible recognition, procedural safeguards, and clear referral mechanisms. In Sikka, local government can strengthen this relationship by supporting customary institutions while preserving their community-based legitimacy. The most appropriate model is therefore protective pluralism: a legal order in which customary law remains alive within the community, state law provides constitutional boundaries and institutional support, and both systems interact to produce accessible and socially meaningful justice.

Ultimately, the continuing relevance of customary law should not be measured by how closely it resembles state law. Its value lies precisely in its capacity to express community values, sustain relationships, and respond to social realities. A plural legal system can be legitimate when different normative orders are allowed to contribute to justice while remaining accountable to fundamental rights. Sikka provides a valuable illustration of this possibility. Customary law can function as living law when its authority comes from community practice, its institutions remain socially legitimate, and its norms retain the capacity to adapt. The task of the state is not to eliminate this living law or to freeze it into statutory form, but to create conditions in which customary justice and constitutional justice can interact constructively.

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