

# The Impact of Legal Pluralism in the Dynamics of Human Rights Protection and its Implications for the Development of the National Legal System in Indonesia

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## ABSTRACT

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This research aims to analyze the impact of legal pluralism on the protection of human rights and examine its implications on the development of the national legal system in Indonesia in order to find a concept that bridges the diversity of the system with the principle of justice. The type of research used is normative law that focuses on the study of legal norms, principles, and doctrines through a statutory approach and a conceptual approach. Secondary legal materials collected through literature studies are analyzed qualitatively with a deductive thinking pattern to produce systematic and logical conclusions related to the problem being studied. Legal pluralism in Indonesia manifests in the interaction between state law, customary law, and religious law that apply simultaneously and provides a choice for people to choose norms that suit their interests. The existence of this diverse system has a positive impact on the recognition of indigenous peoples' rights and access to substantive justice, but on the other hand it triggers legal uncertainty and potential human rights violations due to the dominance of state law or the practice of forum shopping. The development of the national legal system responds to this reality through efforts to harmonize regulations, as seen in the constitutional recognition of the unity of customary law communities and the integration of living law in the new Criminal Code. Legal reform is directed at the establishment of a system that is no longer centralistic, but is able to accommodate local values in order to achieve a balance between national interests and the protection of the rights of minority groups.

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## 1. INTRODUCTION

Legal pluralism is an inseparable reality of the legal system in Indonesia, where the existence of customary law, religious law, and state law run side by side in people's lives (Putra, 2025). This situation reflects the social, cultural, and value diversity that lives and thrives in a pluralistic Indonesian society (Hasmita et al., 2026). The recognition of legal pluralism is not only sociological, but also has a juridical basis in the 1945 Constitution of the Republic of Indonesia, especially Article 18B paragraph (2) which affirms that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia (Sari, 2023).

The diversity of the legal system has consequences for law enforcement practices that are not always uniform because each system has different principles, procedures, and legitimacy. Customary law develops based on the habits that live in society, religious law is rooted in religious normative teachings, while state law is formed through a formal legislation process. These differences often cause overlapping norms and uncertainties in the application of law, especially in the fields of inheritance, agrarian law, and social dispute resolution. This condition shows that legal pluralism presents complexity in legal practice, because not all problems can be solved through one legal system alone.

Legal pluralism is also closely linked to the protection of human rights, especially in relation to the recognition of the rights of indigenous peoples and minority groups. Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia emphasizes that cultural identity and the rights of traditional communities are respected in line with the times (Bayo et al., 2023). This arrangement provides a legal basis for the protection of the collective rights of indigenous peoples, including rights to land, natural resources, and cultural heritage. The presence of legal pluralism in this case opens up space for the recognition of substantive justice that is closer to the needs of local communities, although in practice there are still often inequality between state law and the law that lives in society.

The interaction between these various legal systems also poses challenges in maintaining a balance between justice, legal certainty, and utility. State law often has a dominant position in formal structures, especially in the regulation of natural resources and development policies, while customary law has strong social legitimacy at the community level. The recognition of customary law communities in various laws and regulations such as the Basic Agrarian Law, the Forestry Law, and the Village Law shows that there are state efforts to integrate legal pluralism into the national legal system (Setyowati, 2023). The reality on the ground shows that the relationship between these legal systems does not always run harmoniously and often leads to conflicts of interest.

The implications of legal pluralism also affect the direction of the development of the national legal system which cannot be carried out uniformly without paying attention to the diversity of norms that live in society. The national legal system is required to be able to accommodate these various legal sources in order to remain responsive to the needs of the community while ensuring the protection of human rights fairly and equitably. The constitutional recognition of legal pluralism and its regulation in various laws shows that the development of national law in Indonesia moves within the framework of integration between state law and non-state law. Failure to harmonize legal pluralism has the potential to cause regulatory disharmony and weaken public trust in the law as a means of justice.

This study aims to analyze the impact of legal pluralism on the protection of human rights and examine its implications for the development of the national legal system in Indonesia, so that a concept can be found that is able to bridge the diversity of the legal system with the principles of justice and legal certainty.

## 2. METHODS

This research uses a type of normative legal research that focuses on the study of legal norms, principles, and doctrines that apply in the Indonesian legal system. Normative legal research aims to find legal rules, legal principles, and legal concepts that are relevant in answering the problems being studied (Askin & Masidin, 2023). The main character of this research lies in the use of secondary legal

materials as the main source, such as laws and regulations, court decisions, and legal literature related to the issue of legal pluralism and human rights.

The approaches used in this study include a statutory *approach* and a *conceptual approach*. The legislative approach is carried out by examining various regulations related to legal pluralism and the protection of human rights in Indonesia. The conceptual approach is carried out through the analysis of legal concepts, theories, and doctrines that develop in the scientific literature. The use of these two approaches allows for a deeper understanding of the substance of the law as well as the conformity between the prevailing norms and the evolving legal practice.

The data collection technique in this study is carried out through library *research* which focuses on the collection of secondary legal materials. The legal materials used consist of law books, scientific journals, and official documents relevant to the research topic. Literature studies are carried out by identifying, reviewing, and classifying various written sources in order to obtain a strong theoretical and normative foundation in analyzing the problems studied.

The data analysis technique was carried out qualitatively using the normative analysis method. This analysis is carried out through the process of interpreting and deciphering legal materials in a systematic, logical, and structured manner. The data that has been collected is analyzed using a deductive thinking pattern, which is by placing legal norms as the main premise which is then associated with the problem being studied to produce relevant conclusions. This analysis process also involves the interpretation of legal theories and related doctrines in order to gain a deep understanding of the issues being studied.

### 3. FINDINGS AND DISCUSSION

#### **Forms and Characteristics of Legal Pluralism in the Legal System in Indonesia**

Legal pluralism in the legal system in Indonesia is evident in the existence of several legal systems that apply simultaneously in people's lives. The most important form can be seen from the recognition of three major legal systems, namely customary law, religious law, and state law, each of which has its own application space. Customary law exists as a legal system that is born from community habits and inherited from generation to generation, religious law is rooted in religious teachings adopted by the community, while state law is formed through a formal legislation mechanism. These three forms coexist and do not negate each other, so that legal pluralism is a tangible picture of the layered legal structure in the life of Indonesian society (Aditya, 2019).

The form of legal pluralism is also seen in the existence of customary law as a law that lives in the midst of local communities and is still carried out in various aspects of social life. Customary law not only serves as a social norm, but also as a dispute resolution mechanism that has strong legitimacy at the community level. The applicability of customary law is often unwritten, but it has binding force that is recognized by local communities. This position shows that legal pluralism in Indonesia is not only present in formal form, but also in the form of real and ongoing social practices in daily life.

Another form of legal pluralism is seen in the application of religious law, particularly in certain areas such as marriage, inheritance, and sharia economics. Religious law has a space for legality in the national legal system through recognition in laws and regulations, especially those related to people's personal lives. The presence of religious law as part of the legal system shows that legal pluralism is not only cultural, but has also been integrated into the formal legal structure of the state. This shows that the national legal system opens up space for the application of religious norms within certain limits in accordance with applicable provisions (Apaut & Fallo, 2025).

Legal pluralism is also reflected in the interaction between state law and non-state law that takes place in the practice of dispute resolution. In various cases, people do not always rely on state law as the only mechanism for solving problems, but also use customary law or religious law. This condition indicates the existence of a form of legal pluralism that is operational, in which various legal systems are used simultaneously in the practice of social life. This interaction creates space for a diversity of legal mechanisms that can be chosen according to the needs of the community.

The next form of legal pluralism can be seen in the state's recognition of the law that lives in society or is often referred to as living law. This recognition shows that law is not only understood as a written rule made by the state, but also includes the norms that develop in society. The existence of living law shows that the national legal system is not closed, but open to other sources of law that come from social practices. This form strengthens the position of legal pluralism as part of a legal system that recognizes the diversity of norm sources (Azami, 2022).

Legal pluralism also appears in the form of dividing the law enforcement space based on certain fields. In several fields such as family law and inheritance, the application of customary law and religious law is still very dominant. In other fields such as administrative law and formal criminal law, state law has become more dominant. This division shows that legal pluralism is present in the form of differentiation in the field of law, where each legal system has its own space of applicability according to its characteristics. This situation creates a legal structure that is not uniform, but is divided based on the functions and needs of the community.

Another form of legal pluralism can be seen from the choice of the use of the legal system by the community in dealing with legal problems. The community has the freedom to determine the legal system to be used, whether customary law, religious law, or state law, depending on the situation and interests faced. This choice shows that legal pluralism is not only in the form of diversity in the system, but also in the form of diversity in the practice of using the law itself. This situation shows that the legal system in Indonesia is not single, but open to various forms of norms that live and develop in society (Hariri & Babussalam, 2024).

The characteristics of legal pluralism in the legal system in Indonesia can be seen from the existence of more than one legal system that lives and applies simultaneously in the same social space. This situation shows that the law is not single, but consists of various sources of norms that have different legitimacy bases, both from the state, religion, and community customs. Each legal system has its own way of regulating behavior and social relations, so that this diversity is the main characteristic of legal pluralism. This situation shows that the law in Indonesia develops in a layered structure and is not centralized on a single authority.

Another characteristic is seen in the ongoing interaction between different legal systems. State law, customary law, and religious law do not run separately, but intersect in the practice of people's lives. This interaction can be complementary, mutually adjustable, and even contradictory in certain cases. This kind of relationship shows that legal pluralism is not just static diversity, but is a process that continues to move according to social changes and societal needs (Kherid, 2021).

The next characteristic can be seen from the flexibility in the application of the law. Society is not always absolutely bound to one legal system, but has the space to use legal norms that are considered most appropriate to the situation at hand. This flexibility shows that law in plural systems is not rigid, but rather adaptive to social conditions. This situation shows that legal pluralism provides space for legal adjustment to the values and needs of diverse societies.

The characteristics of legal pluralism can also be seen from the potential for overlapping norms between legal systems. Differences in principles and rules in each legal system often led to conflicts or inconsistencies in their application. This situation can lead to uncertainty about which law should be used in a particular event. This overlap shows that legal pluralism not only presents diversity, but also brings consequences in the form of complexity in law enforcement (Bahri, 2024).

Another characteristic appears in the difference in the level of power or dominance between legal systems in a given field. In some areas of law, state law has a stronger position because it is supported by formal structures and law enforcement officials. In other fields, customary law or religious law can have greater influence because it has a strong social legitimacy in society. This difference in the level of dominance shows that legal pluralism does not run in a balanced manner, but is influenced by social, political, and state policy factors.

The characteristics of legal pluralism can also be seen from the existence of underlying value principles, such as the principles of humanity, equality, and selectivity in accepting legal norms. These principles show that the diversity of law does not mean that all norms can be applied indefinitely, but

that they must still be adapted to nationally recognized values. This shows that legal pluralism remains within the framework of the basic values of the state which is a guideline in the formation and application of law (Fajrin & Triwijaya, 2019).

The next characteristic can be seen from the nature of legal pluralism which reflects the social reality of pluralistic Indonesian society. Cultural, religious, and social structure diversity are the main factors that shape the diversity of the legal system. Law is not only understood as a formal rule, but also as a reflection of the social life of the community. This situation shows that legal pluralism is a direct consequence of the diversity of society, so it cannot be eliminated, but must be managed in order to provide justice and order in common life.

### **The Impact of Legal Pluralism on Human Rights Protection in Indonesia**

Legal pluralism in the Indonesian legal system has a very broad impact on the protection of human rights because the existence of various legal systems opens up space for the recognition of the diversity of values and identities of society. The diversity of customary law, religious law, and state law allows the recognition of the rights of certain groups such as indigenous peoples who have their own value system in regulating their social life. The recognition provides an opportunity for more substantive human rights protection because the laws used are closer to the social realities and needs of local communities. This situation suggests that legal pluralism can strengthen respect for collective rights and cultural identities that are often not optimally accommodated in formal state law (Febrianto & Meta, 2025).

Another positive impact can be seen in the ability of legal pluralism to create flexibility in the protection of human rights. A diverse legal system allows people to choose a dispute resolution mechanism that is considered fairer and in accordance with the values adhered to. This option provides broader access to justice, especially for groups who may have difficulty accessing the formal justice system. Customary law mechanisms, for example, are often simpler, faster, and deliberation based, so that they are able to provide a sense of justice that is more acceptable to the local community. This flexibility reinforces the principle of substantive justice that is part of the protection of human rights.

The impact of legal pluralism is not always positive because differences in legal systems often create uncertainty in the protection of human rights. Overlapping norms and differences in standards between legal systems can lead to confusion in determining the applicable law in a case. This uncertainty has the potential to harm certain individuals or groups, especially when there is a conflict between customary law, religious law, and state law. This condition shows that legal pluralism can create gaps in the protection of human rights due to the absence of uniformity of protection standards (Lintang, 2025).

Another problem arises when there is a power imbalance between the existing legal system. State law often has a dominant position in formal structures, so it can override customary law and the interests of local communities. This situation has an impact on the neglect of indigenous peoples' rights, especially in natural resource management and development. Some state policies even tend to prioritize economic-oriented national interests over the protection of indigenous peoples' rights, resulting in conflicts and human rights violations.

Another negative impact can be seen from the practice of legal elections or shopping forums that can be used for certain purposes. Individuals or groups can choose the legal system that is most advantageous to them without considering the principles of justice that should be upheld. This phenomenon can result in injustice for other parties who do not have the same access or ability to choose the legal system. This kind of practice shows that legal pluralism can be abused to undermine the protection of human rights as a whole (Panjalu, 2024).

Legal pluralism also affects the difference in interpretation of human rights values, especially between religious law and modern human rights principles. Such differences in interpretation can lead to debates about the limits of individual rights and collective interests. In some cases, certain norms in religious or customary law may be considered inconsistent with universal principles of human rights, thus creating challenges in reconciling the two. This difference shows that legal pluralism is not only

related to the diversity of systems, but also to the difference in paradigms in understanding human rights.

The influence of legal pluralism on the protection of human rights can also be seen from the existence of strong and weak classifications of legal pluralism. Strong legal pluralism usually leaves a large space for the enactment of non-state laws, so that the protection of rights can be more diverse and contextual. Weak legal pluralism actually shows the dominance of state law that has the potential to ignore the rights of certain communities, and can even lead to marginalization and structural impoverishment. This difference shows that the impact of legal pluralism on human rights is highly dependent on how the relationship between the legal systems is regulated and implemented in practice (Pradhani, 2021).

### **Implications of Legal Pluralism on the Development of the National Legal System in Indonesia**

The implications of legal pluralism on the development of the national legal system in Indonesia show that the process of legal formation and reform cannot be carried out uniformly, but must pay attention to the diversity of legal systems that live in society. The existence of customary law, religious law, and state law requires an inclusive approach to legal development in order to be able to accommodate various values that are developing. This reality makes the development of national law not only oriented towards the formation of written rules, but also on the recognition of social norms that have long lived and are adhered to by society (Sukmana et al., 2024).

Legal pluralism encourages the development of a national legal system that is more responsive to the needs of society. The legal system that is built can no longer be rigid and centralistic, but must be able to adapt to social changes and cultural diversity. The existence of non-state laws such as customary law can be a source of inspiration in formulating legal policies that are more in line with local conditions. This approach allows the law to develop progressively and is inseparable from the social realities faced by society.

Another implication can be seen in the need for harmonization between the various existing legal systems. The development of national law faces challenges in the form of overlapping norms and conflicts between different legal systems. This condition requires alignment efforts through the formation of laws and regulations that are able to bridge these differences. The harmonization process is a very crucial part so that the national legal system still has legal certainty without ignoring the diversity of norms that live in society (Surya, 2023).

The need for unification and codification of law is also part of the implications of legal pluralism in the development of national law. Some areas of law still show a strong pluralistic pattern, such as civil law which consists of a variety of different legal systems. This condition encourages efforts to reform the law through the drafting of regulations that are more integrated and applicable nationally, without eliminating local values that are still relevant. This process shows that the development of national law moves between the need for uniformity and the recognition of diversity.

The implications of legal pluralism are also closely related to national legal politics that determine the direction of legal development in Indonesia. Recognition of customary law and other legal systems has been regulated in the constitution, but its implementation is often not optimal. The dominance of state law in practice often leads to the marginalization of customary law, so the development of national law needs to be directed at strengthening the position of non-state law in order to create a balance between legal systems. This integration effort is part of the strategy to create a more equitable and inclusive legal system.

The influence of legal pluralism also encourages the formation of a national legal system based on the value of social justice. Legal development is not only aimed at creating legal certainty, but also to ensure justice for all levels of society, including minority groups and indigenous peoples. The interaction between various legal systems provides an opportunity to develop a more humanist legal concept oriented towards the welfare of the community at large. This shows that legal pluralism can be the foundation for building a legal system that is not only formalistic, but also substantive (Wahyuni, 2024).

Legal pluralism requires continuous legal reform so that the national legal system is able to adapt to the times. Social changes, globalization, and the interaction between national law and international law have further expanded the space for legal pluralism. This condition requires the national legal system to continue to make adjustments through regulatory updates, improving the quality of legal institutions, and strengthening public legal awareness. The development of national law eventually becomes a process that continues to develop, along with the changing needs and values that live in Indonesian society.

The regulation of legal pluralism in Indonesia's national legal system can be traced through various laws and regulations that explicitly and implicitly recognize the existence of more than one legal system. The 1945 Constitution of the Republic of Indonesia provides a constitutional basis through the recognition of the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society. This recognition shows that the national legal system is not built alone, but rather makes room for the existence of local norms. This reality shows that legal pluralism has been part of the national legal construction since the beginning of the formation of the state, so that legal development cannot be separated from the diversity of constitutionally recognized legal sources (Kherid, 2021).

The existence of Law Number 39 of 1999 concerning Human Rights also strengthens the position of legal pluralism in relation to the protection of people's rights. This law affirms that human rights are inherent in every individual without exception, including indigenous groups that have their own legal system. The recognition of collective rights shows the state's efforts to accommodate legal pluralism within the framework of human rights protection. This arrangement shows that national law is not only oriented to individuals, but also to communities with different social and cultural characteristics (Estede et al., 2025).

The strengthening of legal pluralism is also seen in regulations related to regional autonomy, especially through Law Number 2 of 2021 concerning amendments to the Papua Special Autonomy Law. This regulation provides broader authority for regions to regulate and manage their own interests based on local values, including recognition of customary law as part of the legal system that lives in the community. This recognition shows that the state provides space for the application of laws in accordance with regional characteristics, so that legal pluralism is not only recognized normatively, but also implemented in local government policies (Reumi, 2023).

The regulation of legal pluralism is also reflected in the renewal of the national criminal law through the new Criminal Code (KUHP). In the Criminal Code, there is a recognition of the law that lives in society as one of the bases in determining the acts that can be punished. This provision shows the integration between state law and customary law in the national criminal law system. However, the implementation of this recognition still faces various challenges, such as the lack of clear criteria for the recognition of customary norms and the potential dominance of state law over the laws that live in the community (Wahyudhi et al., 2025).

The regulation in the field of inheritance law also shows the strong pluralism of law in Indonesia, where there is the application of customary inheritance law, Islamic inheritance law, and civil inheritance law at the same time. This condition is recognized in judicial practice that gives authority to different judicial institutions in accordance with the legal system used. This diversity provides space for the community to choose the legal system that is considered most appropriate, but at the same time also raises problems in the form of legal uncertainty and potential conflicts between norms (Anggraeni, 2023).

Regulations related to the recognition of indigenous peoples in various laws and regulations show that there are efforts by the state to balance national interests and the rights of local communities. In practice, policies oriented to national interests often clash with the rights of indigenous peoples, especially in the management of natural resources. This situation shows that although legal pluralism has been recognized in various regulations, its implementation still faces challenges in realizing equitable justice for all groups of people (Silehu & Sidik Sunaryo, 2025).

The existence of legal pluralism in these various laws shows that the development of the national legal system in Indonesia is moving towards the integration of various existing legal sources. The recognition of customary law, religious law, and state law in various regulations shows that the national legal system is not monolithic, but is open to the diversity of norms that live in society. This condition requires continuous harmonization efforts so that legal pluralism can run in balance and be able to provide certainty and justice for all people.

#### 4. CONCLUSION

Legal pluralism in Indonesia, which includes state, customary, and religious laws, creates a layered legal structure that provides space for the recognition of local identities while posing challenges in the form of disparities in standards for human rights protection and overlapping norms. This diversity demands the development of an inclusive and responsive national legal system that is able to integrate various sources of law living in society to ensure substantive justice without sacrificing legal certainty. Harmonious integration between formal law and *living law* is the main key in minimizing conflict of norms and strengthening public trust in the national legal system as a whole.

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