

Customary Law and Cultural Identity of South Kalimantan: Challenges and Opportunities in the Modern Era

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ABSTRACT

Customary law (hukum adat) constitutes an integral component of the cultural identity of South Kalimantan, particularly among Banjar communities and other local groups. As a living legal system transmitted across generations, customary law not only regulates social relations but also preserves collective values, norms, and local wisdom. This study examines the role of customary law in maintaining cultural identity in South Kalimantan while analyzing the challenges and opportunities it faces in the modern era. Using a normative-empirical legal approach, the research combines doctrinal analysis of relevant legislation with field-based observations and secondary data to explore how customary norms interact with state law, modernization, and globalization. The findings indicate that customary law continues to play a significant role in strengthening social cohesion, conflict resolution, and the preservation of cultural values such as deliberation, mutual cooperation, and harmony with nature. However, it also encounters challenges, including legal marginalization, declining intergenerational transmission, and pressures from economic development and formal legal systems. Despite these challenges, modernization offers opportunities for the revitalization of customary law through legal recognition, institutional integration, and community-based cultural education. The study concludes that strengthening the synergy between customary law and state law is essential to ensure the sustainability of cultural identity in South Kalimantan in the context of contemporary societal change.



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INTRODUCTION

Indonesia is widely recognized as a pluralistic society characterized by ethnic, cultural, and legal diversity. One of the most significant manifestations of this diversity is the existence of customary law (hukum adat), which has long functioned as a living legal system regulating social relations, resolving disputes, and preserving local values within indigenous and local communities. In South Kalimantan, customary law is closely intertwined with the cultural identity of the Banjar people and other local communities, shaping norms of behavior, social harmony, and community solidarity.

Indonesia is internationally acknowledged as a nation founded upon social, cultural, and legal plurality. This diversity is reflected in the coexistence of state law, religious law, and customary law (hukum adat), which together form the foundation of Indonesia's plural legal system. Among these, customary law represents one of the oldest and most deeply rooted normative systems, developed organically within local communities and maintained through collective social practices. In South Kalimantan, customary law plays a crucial role in shaping the cultural identity of the Banjar people and other local communities, serving not only as a regulatory framework for social behavior but also as a cultural instrument that preserves values, traditions, and local wisdom.

Customary law in South Kalimantan is not merely a set of unwritten rules, but a reflection of collective values such as deliberation, mutual cooperation, respect for elders and traditional leaders, and a balanced relationship between humans and nature. These values have historically contributed to social cohesion and conflict prevention at the community level. Through rituals, traditions, and customary institutions, cultural identity has been transmitted across generations, reinforcing a sense of belonging and continuity among community members.

Historically, customary law in South Kalimantan has functioned as a living law that governs various aspects of community life, including social relations, dispute resolution, land and natural resource management, and ceremonial practices. The norms embedded within customary law are closely connected to cultural values such as deliberation (musyawarah),

consensus-building, mutual cooperation (gotong royong), respect for traditional authorities, and the maintenance of social harmony. These values have contributed significantly to social stability and cohesion, enabling communities to manage conflicts peacefully and maintain a balanced relationship between humans and their environment. As such, customary law is inseparable from the cultural identity and collective memory of local communities.

Cultural identity in South Kalimantan is not merely expressed through language, arts, and rituals, but is also manifested in legal consciousness and normative behavior shaped by customary law. Through continuous practice and socialization, customary norms have traditionally been transmitted from one generation to the next, reinforcing a sense of belonging and continuity. Customary institutions and traditional leaders have played a key role in safeguarding these norms, ensuring that legal and moral values remain relevant within the social context of the community. In this way, customary law has served as both a legal mechanism and a cultural symbol that strengthens community identity.

However, the dynamics of the modern era have brought profound changes to Indonesian society, including in South Kalimantan. Processes of modernization, globalization, urbanization, and economic development have significantly transformed social structures, lifestyles, and patterns of interaction. The expansion of formal state law and bureaucratic governance has gradually reduced the space for the practical application of customary law, particularly in areas related to land rights, natural resource management, and dispute settlement. As a result, customary law is often perceived as less authoritative or relevant compared to statutory law, especially among younger generations who are increasingly influenced by modern legal norms and global cultural values.

The weakening of intergenerational transmission poses a serious challenge to the sustainability of customary law. Many young people are no longer actively involved in customary institutions or traditional practices, leading to a decline in knowledge and appreciation of local legal traditions. Additionally, the lack of formal legal recognition and documentation of customary norms has contributed to their vulnerability in the face of development projects and external legal interventions. In some cases, customary law is marginalized or overlooked in policy-making processes, resulting in conflicts between local communities and state or corporate actors.

However, the rapid development of modernization, globalization, and formal state legal systems has brought significant changes to social structures and legal awareness. Economic development, urbanization, and technological advancement have gradually transformed traditional patterns of life, often resulting in the marginalization of customary institutions. Younger generations tend to be less familiar with customary norms, while state law increasingly dominates legal regulation, leaving limited space for the practical application of customary law in everyday life.

Despite these challenges, the modern era also presents opportunities for the revitalization and strengthening of customary law. Constitutional recognition of indigenous communities, increasing awareness of cultural preservation, and the integration of local wisdom into sustainable development policies provide a strategic foundation for reaffirming the role of customary law. In South Kalimantan, customary law has the potential to contribute to inclusive governance, community-based conflict resolution, and sustainable natural resource management when harmonized with the national legal system. The modern era also presents significant opportunities for the revitalization and strengthening of customary law. The Indonesian Constitution and various legal instruments provide recognition of indigenous and traditional communities, opening space for the acknowledgment of customary law within the national legal framework. Furthermore, increasing global and national awareness of cultural preservation, legal pluralism, and sustainable development has highlighted the importance of local wisdom in addressing contemporary issues such as environmental degradation, social inequality, and community-based governance.

In the context of South Kalimantan, customary law holds strategic potential to support sustainable natural resource management, community-based conflict resolution, and participatory development. When integrated and harmonized with state law, customary norms can contribute to more inclusive and culturally sensitive legal policies. Modern tools such as legal documentation, education, and digital media can also be utilized to preserve and disseminate customary values, ensuring their relevance for future generations.

Therefore, an in-depth examination of customary law and cultural identity in South Kalimantan is essential to understand how traditional legal systems adapt to modern challenges while maintaining their core values. Analyzing the challenges and opportunities faced by customary law in the modern era is not only important for cultural preservation but also for strengthening Indonesia's plural legal system. Through this perspective, customary law can be positioned as a dynamic and adaptive system that continues to play a vital role in shaping cultural identity and promoting social harmony in contemporary society.

Based on this context, it is important to examine how customary law continues to function as a pillar of cultural identity in South Kalimantan amid modern societal changes. Understanding the challenges and opportunities faced by customary law is essential to formulate strategies that ensure its sustainability and relevance in the contemporary era, while simultaneously strengthening cultural identity and legal pluralism in Indonesia.

RESEARCH METHOD

This research employs normative (doctrinal) legal methodology using three analytical approaches:

1. Statutory Approach: Examining the 1945 Constitution, the Village Law, the Regional Government Law, and relevant regional regulations.
2. Conceptual Approach: Reviewing theories of the living law, legal pluralism, and customary law recognition.
3. Historical and Document Approach: Analyzing the historical development of Banjar customary law and existing documentary sources.

RESULT

The Concept of Customary Law and Cultural Identity

Customary law is a system of social norms that lives and develops within indigenous communities, functioning as a guideline for behavior and a regulator of social relations. Cultural identity refers to distinctive cultural characteristics that differentiate one community from another, encompassing values, traditions, customs, language, and symbols of social life.

From sociological and anthropological perspectives, customary law is not merely a set of normative rules but an expression of cultural identity inherently embedded in indigenous communities, as reflected in their daily practices and social structures.

Customary Law in South Kalimantan

The Existence and Function of Banjar Customary Law Badamai customary law is a traditional dispute resolution mechanism practiced by the Banjar community, based on deliberation, consensus, and principles of peace. This customary law remains relevant and continues to function as a social mechanism for maintaining order and harmony within the community.

Dayak Customary Law and the Recognition of Indigenous Law Communities

The customs and traditions of the Dayak community are also an integral part of the cultural structure of life in South Kalimantan. They are characterized by strong cosmological worldviews and value systems that emphasize harmonious relationships between humans and nature. Formal recognition of these indigenous communities continues to be pursued through regional regulations, such as Regional Regulation No. 2 of 2023 concerning the Recognition and Protection of Indigenous Law Communities in South Kalimantan.

Relevant National Legal Framework

The national legal framework demonstrates that customary law and cultural identity hold a legitimate and recognized position within the Indonesian legal system. This recognition is constitutional, normative, and judicial in nature; however, it still requires stronger implementation at the regional level. Therefore, synergy between national law and customary law is essential to ensure the sustainability of cultural identity and social justice for indigenous communities, including those in South Kalimantan.

a. The 1945 Constitution of the Republic of Indonesia

The constitutional foundation for the recognition of customary law and indigenous cultural identity is contained in Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects indigenous law communities and their traditional rights as long as they continue to exist and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia. This provision affirms that customary law is an integral part of the national legal system with constitutional legitimacy.

Furthermore, Article 28I paragraph (3) of the 1945 Constitution emphasizes respect for cultural identity and the rights of traditional communities as part of human rights that must be protected by the state. Thus, cultural identity and customary law are not merely regarded as social heritage but also as constitutional rights of citizens.

b. Law Number 6 of 2014 on Villages

The Village Law provides a strong legal basis for the recognition and strengthening of customary law through the concept of customary villages. This law acknowledges that customary villages possess original rights, customary institutional structures, and authority to regulate and manage community affairs based on living traditional values. In the context of South Kalimantan, this provision creates opportunities for integrating customary law into village governance, allowing customary practices to coexist alongside formal state law.

c. Constitutional Court Decision Number 35/PUU-X/2012

This Constitutional Court decision represents a significant milestone in the recognition of indigenous law communities, particularly in relation to natural resource management. The Court affirmed that customary forests are not state forests but belong to indigenous law communities, provided that their existence is still recognized.

This decision strengthens the position of customary law as a legal subject and provides protection for the traditional rights of indigenous communities, including those in South Kalimantan, where strong interdependence exists between indigenous peoples and their natural environment.

d. Law Number 39 of 1999 on Human Rights

The Human Rights Law provides protection for cultural identity and the rights of indigenous communities as part of human rights. The state is obliged to respect, protect, and fulfill these rights without discrimination. This provision reinforces the state's obligation not to neglect the existence of customary law in development policies and law enforcement practices.

e. Related Sectoral Laws

Several sectoral laws, including those governing environmental protection, agrarian affairs, and forestry, also contain provisions recognizing indigenous law communities. Although implementation often faces challenges, these sectoral regulations demonstrate normative recognition that customary law and local wisdom are essential elements in the sustainable management of natural resources.

Cultural Identity and Customary Law in South Kalimantan

Cultural identity in South Kalimantan represents the collective identity of the community formed through values, social norms, customs, beliefs, language, traditions, and life practices passed down from generation to generation, particularly among the Banjar people and other indigenous communities. This cultural identity is reflected in social relationship patterns, kinship systems, deliberative practices, religious attitudes, and worldviews that emphasize harmony between humans, society, and nature.

Such cultural identity functions as a guide for social behavior and as a distinguishing symbol that strengthens solidarity and social cohesion within the diverse cultural landscape of Indonesia. Customary law constitutes one of the main pillars shaping the cultural identity of South Kalimantan society. This identity is manifested in:

- a. customary ceremonies and indigenous rituals;
- b. family social structures and kinship customs;
- c. values of mutual cooperation and non-violent conflict resolution through deliberation and consensus;
- d. cultural symbols such as traditional clothing, music, and woodcarving arts.

These values form a distinctive cultural identity that remains influential to the present day.

Challenges in the Modern Era

Several major challenges faced by customary law and cultural identity in South Kalimantan include:

a. Globalization and Modernization

Globalization is a process of increasing interconnectedness and interdependence among countries, societies, and cultures through the exchange of information, technology, economic activities, political systems, and social values across geographical boundaries. Globalization accelerates cultural transformation, whereby external values enter local communities, exerting pressure on traditional customary law practices and shifting the priorities of younger generations.

b. Development and Economic Pressures

Development and economic pressures arise when physical development, industrialization, investment, and economic growth generate significant demands and impacts on social, cultural, and environmental conditions, particularly for indigenous and local communities. These pressures result from the expansion of infrastructure, natural resource exploitation, and efforts to increase economic productivity.

The exploitation of natural resources through investment, plantations, and mining often creates conflicts between customary law, national law, and corporate interests, particularly concerning land ownership and traditional living spaces.

c. Weak Formal Legal Recognition

Weak formal legal recognition refers to a condition in which the existence, rights, and practices of customary law or local social norms have not been fully acknowledged, protected, or effectively implemented within the state legal system, despite the presence of Constitutional Court decisions and the Village Law. In practice, implementation continues to face obstacles due to limited understanding, regulatory conflicts, and competing interests among village governments, district or municipal authorities, and indigenous communities.

Opportunities for Strengthening Customary Law and Cultural Identity

a. Strengthening Local Regulations

Strengthening local regulations is a systematic and sustainable effort carried out by regional governments in collaboration with communities to clarify, reinforce, and enhance the effectiveness of local legal instruments—such as regional regulations, executive regulations, and village policies—in recognizing, protecting, and developing local values, including customary law and cultural identity.

This effort does not merely involve the creation of new regulations but also includes harmonization between regional regulations and national law, affirmation of the legal status of customary law within the formal legal system, and enhancement of customary institutional capacity to ensure effective implementation in social and governmental practices. Regional regulations on the recognition and protection of indigenous law communities provide opportunities for revitalizing customary law through formal legal legitimacy.

b. Education and Cultural Revitalization

Education and cultural revitalization are closely interconnected and mutually reinforcing. Education serves as the primary medium for cultural revitalization, while cultural revitalization provides value-based content for education. Through education grounded in local culture, communities—especially younger generations—can understand, appreciate, and transmit cultural values as part of their collective identity and way of life.

In the context of customary law, education and cultural revitalization function as strategic instruments to sustain customary norms, strengthen cultural identity, and ensure that customary law remains relevant and functional in the modern era.

Collaboration between the State and Indigenous Communities

Collaboration between the state and indigenous communities is an equal, participatory, and sustainable form of cooperation between the government, as the holder of legal authority, and indigenous communities, as custodians of value systems, norms, and local wisdom. This collaboration aims to ensure fair and sustainable recognition, protection, and management of social, cultural, and natural resources.

Such collaboration positions indigenous communities not merely as objects of policy but as legal subjects with the right to actively participate in the formulation, implementation, and supervision of public policies affecting their customary territories, customary law, and cultural identity. Cooperation among government institutions, academics, and indigenous communities in developing regulations based on local wisdom can significantly strengthen the position of customary law within the formal normative legal framework.

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