



## The Challenge of Customary Law Implementation in the Optimistic Law era in Saving Healthy Indonesian Environment



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### Abstract

This study aims to gain understanding from several scientific publications to answer the problem, namely the challenges of implementing customary law in the unitary State of the Republic of Indonesia, which has favourable laws for saving a healthy Indonesian environment. The author believes that every implementation of the law, both customary Laws and others, certainly has obstacles and challenges in this republic of Indonesia regardless of the goal of saving the environment and other factors. So to prove it, we have reviewed as many as 56 publications to back up all of them in answering this problem. Before we get an answer, of course, we will examine the number of documents that we get by relying on a phenomenological approach, namely getting answers from a large number of data through studies such as coding evaluation data and data interpretation to get correct and valid answers to the study questions after discussing the data findings, where the challenges in implementing customary law are found that the existence of positive law is more substantial even though customary law has received legal provisions and decisions of the supreme court. We suspect that customary law is an unwritten law where its implementation does not have strict legal sanctions compared to positive law, so its implementation is minimal. Thus the results of this study are helpful for further studies.

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## 1 Introduction

Many contend that standard regulation is the law of the past which is constantly situated to the past, so it is not reasonable for current life as it is today, which is entering the period of Globalization (Sibanda, 2010). This assessment, maybe, is not off-base yet. In addition, not altogether correct. It is supposed to be valid because it is perceived that standard regulation is conventional while living in the period of globalization requests all that is current. Not obvious because it just so happens that a few regulations and guidelines were shaped and presented from standard regulations. Moreover, standard regulation is additionally robust as per the elements of people who comply with the standard regulation. In the legitimate field, the substance of the conversation lies not in whether the law is customary due to the tradition of the past or not; however, in examining lawful issues, we are caught in understanding regulation from a procedural perspective, not regulation from multiple perspectives that satisfies a feeling of equity (Pound, 1921).

So it is not understood that there is a decrease in the importance of the law meaningfully (which satisfies a feeling of equity) in procedural regulation (Maerani & Nuridin, 2018). Particularly when human existence enters the period of globalization described by current and brimming with current difficulties and issues was essential. Globalization, overall, individuals comprehend is a cycle in human existence toward a general public that covers the whole globe (Bottoms & Tankebe, 2012). This cycle is made conceivable and worked with by technological progress, mainly correspondence and transportation innovation. The globalization cycle in its next venture was set apart by the fast improvement of the comprehension of private enterprise, to be specific the undeniably open and globalized job of business sectors, speculation, and creation cycles of transnational organizations, which was then reinforced by philosophy and another world exchange framework under a standard set by the association streamlined commerce universally. The course of globalization with the comprehension of free enterprise was then seen as the central "hypothesis" of the excursion of free enterprise, specifically modernization and advancement (Savage et al., 2020).

The theory of modernization and development is an idea of social change. Modernization as a social movement is revolutionary, a rapid change from tradition to modern (Inglehart, 2020). In addition, modernization is also complex (through many ways and disciplines), systematic, and becomes a global movement that will affect all human beings; through a gradual process toward homogenization (convergence) and a plurality, there is what is called political modernization, economic modernization, technological modernization, education modernization, including legal modernization, etc. However, these plural fields are actually in the context of homogenization. Modernization is concerned with (orientation) a better life, where modern science plays an important role (Blühdorn, 2020). Thus, globalization is not merely an economic phenomenon (many refer to the role of giant transnational corporations-TNCs) but is a symptom formed by the mutual influence of r-political, social, cultural, and economic factors. In such a context, rationalism and empiricism become the dominant approaches to dealing with or solving problems (Mol et al., 2020).

Everything irrational and not empirical is considered an entity that does not exist in people's lives. Rationalism and empiricism then became the benchmark of truth. It must be admitted that Globalization, its modernization, and the many theories that support it raise humanitarian problems: morals, ethics, decency, human rights, and others (Dussel, 2013). This happens, among others, because globalization, modernism, and rationalism tend to ignore "conscience," so "development" negates the existence of humans as creatures with a conscience and dignity that material things cannot measure. Thus, that development raises humanitarian problems here and there. Globalization in its journey also requires and will use the law as a tool to smooth out the many products of globalization and modernization (Kaplan & Haenlein, 2010; Cooper, 1993). The legal paradigm that fits this need is 'positive law.' Positive Law, through the principle of legality, requires a guarantee of certainty, and that certainty can only be obtained through rational thoughts (Prasetyo, 2019).

In the legal field, the substance of the law lies not in whether the law is traditional because of the legacy of the end or not, but in discussing legal issues, we are trapped in understanding law in a procedural sense, not the law in a substantive sense that fulfils a sense of justice (Portuese et al., 2017). So that it is not realized, there is a reduction in the meaning of the law substantively (which fulfils a sense of justice) into procedural law. Especially when human life enters the era of globalization is characterized by modern as well as full of contemporary challenges and problems. People generally understand that globalization is a process in people's lives toward a society that covers the entire globe (Lisdiyono & Mulyani, 2021). This process is made possible and facilitated by technological advances, especially communication and transportation technology. The globalization process in the next journey is marked by the rapid development of capitalism, namely the increasingly globalizing role of markets, investment, and production processes of transnational companies, which are then strengthened by the ideology and the new world trade order under a rule set by the global free trade organization (Fikriawan et al., 2021).

Thus, globalization is solely determined by an economic phenomenon (many of which refer to the role of transnational corporations-TNCs) but is a phenomenon formed by the joint influence of political, social, cultural, and economic factors (Keohane & Nye, 2020). In such a context, rationalism and empiricism become the dominant approaches to dealing with or solving every problem. Everything irrational and not empirical is considered an entity that does not exist in people's lives. Rationalism and empiricism then became the benchmark of truth. It must be admitted that globalization, its modernization, and several theories that support it raise humanitarian problems: morals, ethics, morality, human rights, and others. This happens, among others, because globalization, modernism, and rationalism tend to attract "conscience," so "development" denies the existence of humans as creatures who have a conscience, dignity and worth that cannot be measured by material things (McCloskey, 2010).

Thus, that development causes humanitarian problems here and there. Globalization in its journey also requires and will use the law as a tool to smooth out some of the products of globalization and modernization. The legal paradigm that fits this need is "positive law" (Carroll, 2011). Positive Law, through the principle of legality, requires assurance of certainty. That certainty can only be obtained through the rational thoughts of Max Weber, including the pioneers who saw the relationship.

The emergence of modern law and capitalism means Weber saw capitalism as the cause of changes in the type of law from traditional to modern. Capitalism demands a normative order (Carroll, 2011). The legal systems at that time concluded that only rational modern law, or formal rationality that was logical, provided the necessary considerations. Legalism supported the development of capitalism by providing a calculated and calculated atmosphere that arose in the era of globalization is a concept today. Firmly, Menski rejects the concept of "anti-pluralist," aka "unification visions," which seeks to unify the global vision of the globalized world under one American vision regarding legal, justice, and human rights issues (Holbrook, 2013).

Indonesia has for quite some time been an objective. It has for sure prevailed regarding sending a dream of all-inclusiveness of fundamental freedoms with worries about the particularistic side of common liberties that are more practical because regulation, equity, and fundamental liberties are plural (Frick, 2019). Indeed, even in Menski's view, the endpoint of globalization is a peculiarity of practically limitless variety, that is to say, indeed as "glocalization" and not the other way around, which is exceptionally unreasonable. So globalization remains forever inseparable from "glocalization" (majority). The variety of regulations that apply in Indonesia is a lawful necessity of a pluralistic culture. The realities show that a considerable amount of guidelines in their execution are not acknowledged by the local area. So public regulations that all gatherings should acknowledge should be formed in everyday details (Boonstra & Broekhuis, 2010).

Operational issues should be passed on going against the norm. The use of regulation in Indonesia is applied by regulation authorities with an Indonesian mentality, at the end of the day utilizing typical examples, as well as the Indonesian nation as beneficiaries, the more significant part of whom are still with abundance considerations or are shared and strict mysterious against legitimate disorder, separation, and treachery (Benhabib, 2018). As a matter of fact, as per legitimate specialists, excellent regulation ought to satisfy three circumstances, specifically: philosophical, juridical, and humanistic, maybe in any event, adding that it should be established and obtained from the country's way of life. The improvement of globalization has made the world's local area dubious of the idea of "worldwide unification," which was made to uniform the worldwide vision, which drives rose out of America and is anxious to make the world under the order of the American expert. Furthermore, it existed under the watchful eye of positive regulation (Joireman, 2008; Karnad, 2017; Le Bris, 2019). A conspicuous element of the progression of positivism is the assessment of this school which expresses that the wellspring of regulation is power, specifically the State. What is considered regulation is a composed rule made and passed by the state. Consequently, all principles outside the law are not regulations and do not have restricting power to apply and comply (Chimni, 2018).

#### *A great and healthy environment*

Because of Article 5, Paragraph (1) of the UUPH reads: "Everyone has the same rights to a proper and solid climate." In fact, in addition to having privileges, according to Article 6 Paragraph (1) of the UUPH: "everyone is obliged to follow the protection of ecological capabilities and prevent and defeat pollution and natural destruction (Chenwi et al., 2018). The right to a healthy environment Furthermore, Law Number 39 of 1999 concerning Human Rights, article 9, paragraph (3) states: "everyone has the right to a proper and solid climate" law on human rights. This is emphasized and strengthened in Article 28 H Paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which states, "Everyone has the right to live physically and mentally, to have a place to live, and to have a proper and proper place

to live. A healthy living climate and the privilege of getting a prosperous government". Great and Healthy Life" implies a climate that can empower people to grow ideally, as a unit, in harmony and balance (Sirgy, 2019).

This kind of guarantee allows everyone to ask the public authorities that "the integrity and strength of the climate must be considered and improved continuously, and it is also a commitment for the State to build a decent and prosperous life continually. A solid living climate for its residents and consistently make efforts to improve the environment and disinfection (Jensen, 2019). Tragically, more often than not, one can sense that the right to climate is just an unfilled message. Almost all urban areas, including the capital city of Jakarta, do not yet have optimal green open space (RTH), which upholds the nature of a decent and healthy metropolitan climate. Then, at that point, the lack of environmentally friendly waste management. Floods continue to occur in the capital city and various regions in Indonesia. An avalanche occurred. Likewise, with the various types of Environmental Rights that appear, the government bastards do not often think about them (Shahmohamadi et al., 2011; Radulescu & Radulescu, 2011; Paköz & Işık, 2022).

Davoudi et al. (2012), stated that the expected emotional freedom is the most comprehensive type of insurance for an individual. This right gives the holder of a legal case to claim his or her advantage in an appropriate and healthy climate considered, a case that can be enforced by lawful techniques, with legal security by different courts and instruments. Ozgul (2020), states that this freedom/claim has two distinct abilities, to be more specific; 1) The ability to guard is the right of an individual to protect himself from an impedance with his current situation that is detrimental to him; 2) The ability to execute is the right of a person to request a demonstration to be held to secure, rebuild or work on his current State. The primary capability relates to the option to protect oneself from disruptive external influences that damage the climate, and the following capability relates to requesting an activity so that the climate can be saved, rebuilt, or repaired, as has been required in Article 34 of the UUPH (Torriti et al., 2020).

Alternatively, according to Rangkuti, the right to a proper and healthy climate must be felt juridically and recognized through legal means to keep the law for local individuals in the field of nature. Therefore, according to him, the critical issue is how the right to a proper and healthy climate contained in the UUPH can be implemented. This primarily relies on specialists, and more precise guidelines are needed for this (Bertram, 2009).

For example, safeguarding these fundamental freedoms can be exercised as an option to take part in legitimate managerial techniques, such as formal cooperation review or the option to pursue regulatory options (authoritative state choice). Overall, if the local area can understand the right to a decent and healthy climate, following the laws and standards of divine nature, humanity and equality, and should ask for fulfilling these privileges. Individuals can sue public authorities, deputy leaders, officials, and even the President (Balkin, 2017). In the description and problems above, we want to gain deep resilience to the challenges faced in implementing customary law in the unitary State of the Republic of Indonesia, which has favourable laws to save the health of the Indonesian environment. We believe that supported by field studies published from various data sources; we only believe that we will be able to answer this problem validly and convincingly (DeVaney et al., 2018).

## 2 Materials and Methods

We repeat this study to review data published in various literature sources to support our hypothesis and questions, namely, the challenges faced in implementing customary law in countries with positive law efforts to protect a healthy environment (Ruggiano & Perry, 2019). The first thing we do is try to understand the core of the problem we are studying. Next, we decide on the relevant data to answer this problem. Then we searched for data with the help of electronic methods on several applications in the form of books and scientific journals; then we Malaysia, we filtered and shortened it until we found 50 relevant books to support the problem (Stuckey & Peyrot, 2020).

The review process that we carried out involved several steps, namely firstly coding the data, then an in-depth data evaluation system followed by interpretation so that we got the essence of answers from several existing data which we believe are following the phenomenological approach, namely an effort to understand something phenomenal from the data. This study relies entirely on secondary data such as scientific white that supports this study (Thorne, 2013). In designing this answer, we tried a qualitative approach where, with a literature review, we explained what the experts said: the challenges faced by those who implement customary law in state law are positive in the environmental theme. We took these steps to complete the study (Chauvette et al., 2019).

### 3 Results and Discussions

In this results section, the author will describe the results of a series of previous studies that have been published in several data sources, all of which is evidence that supports the opposition to the application of customary law in the area of positive state law to save the environment in Indonesia. The first study we collect is how challenging the fundamental role of customary law in realizing the rights of human beings and indigenous peoples is where fair governance of national and even international laws cannot be fulfilled as written. Their report raised customary law and its relation to positive law in a country from ancient times until now; it still gets blood were constitutional and international law, and they depend on each other but do not always depend on mutual recognition.

#### *Customary law and national law implementation*

In the mentioned section, the authors analyze how the role of customary law in national law, land rights, natural resources, and ancestral cultural heritage is the object that continues to be explored and ignores all customary laws that have always been a problem when the State proves he is more understanding and powerful (Tobin, 2014). This study also highlights how natural wealth, which was previously a diversity of laws and the basic principles of customary law and its influence on legal practices and ideas that they equate, but still justice for customary law remains a right that must be fought for because the legal regime is indeed not created to save customary law. At the end of the study, they also decided on customary law efforts for self-determination where land and other natural resources, as well as cultural heritage, are increasingly threatened by customary law, becomes a sensitive matter to fight for when the State already has a positive law for all problems in a country. Including Indonesia (Lelisari, 2021).

Sy's (2018), discoveries about the variety of customs and societies in the public eye in Indonesia are an undeniable need. Particularly in individuals of Jambi Province, which has a nearby uniqueness and is viewed as quite possibly of the most seasoned Malay clan on the planet. One of them is the Jambi Malay Customary Institution which stood immovably sometime before the presence of the Indonesian State. To oblige neighbourhood uniqueness and the privileges of native people groups, the Constitution of the Republic of Indonesia perceives and obliges networks and standard regulation in the unitary region of the Republic of Indonesia. The detailing of the issue from this examination is how the accuracy of Jambi Malay standard regulation and how the advancement of Jambi Malay standard regulation creates (Machmud, 2013). This study plans to decide the utilization of the territorial independence framework in Indonesia, the trustworthiness of Jambi Malay standard foundations, the degree to which Jambi Malay standard regulation was applied in the local independence time, and to decide Jambi Malay standard organizations in the local independence period (Beasley et al., 2005; Zhu et al., 2008).

The reason and commitment of this study are to determine the trustworthiness of Jambi Malay standard regulation in the time of local independence. This examination is a non-doctrinal exploration utilizing a legitimate methodology and humanistic regulation (Sulaiman, 2010). Results Based on research, the improvement of Jambi Malay standard regulation in the time of local independence was far superior to previously, for instance, in the utilization of standard regulation. During the New Order time, Law no. 5 of 1979 killed a few factions, naming, and elements of conventional pioneers, given the public authority's craving for consistency in the structure and construction of the town. Jambi Malay standard regulation was right around 100% settled in conventional foundations, just 2 cases in Sarolangun Regency which proceeded to the police. Institutionally, local independence is available to fortify conventional organizations, primarily speculation, and the capabilities and obligations of Jambi Malay standard foundations (Colfer, 2010).

#### *Customary law and expression in society*

Isdiyanto & Putranti (2021), uncovered in their review that individuals of Kampung Pitu clutch their customs and culture of beginning as of recently, even the quantity of heads of families who cannot be more than seven likewise still makes due up to this point. As a traditional customary society, individuals of Kampung Pitu have different types of Traditional Cultural Expression (TCE), which need serious consideration by the government. Regulation in Indonesia directs the security of EBT through Law No. 28/2014 concerning Copyright, so it can turn into the security of TCE for individuals of Kampung Pitu to stay supportable. This exploration is vital because relatively few customary networks keep up with their starting freedoms in the Special Region of Yogyakarta. This exploration utilizes a juridical-regulating approach and information assortment, both essential and optional, on the web and expressive subjective investigation. Pitu d town can be classified as Customary Law Communities with personality and conventional privileges over their starting points, so they should be safeguarded in their conservation (Bramantyo & Rahman, 2020).

Even though there are no guidelines or expectations from the Central to Regional levels concerning Pitu Village, Pitu Village has been assigned as an Intangible Cultural Heritage, so it has become the reason for security (Arizpe, 2013).

Evidence from Sulaiman (2016) examines the interaction of state law and customary law in tackling trawl in Indonesia. Fishing is utilized by the majority of the neighbourhood anglers in Indonesia, notwithstanding unlawful state and nearby regulations, as well as the more severe effect on the capability of the climate. This paper might want to resolve three main pressing concerns: what makes nearby networks utilize fishing? What steps should the public authority take in fighting fishing? What is the best communication between State and nearby regulations in the reaction to fishing? The paper infers that the utilization of fish cognizant cycle influence can not be isolated from the course of modernization; the fish legitimation will speed up monetary improvement for anglers. Locale Government is now moving to conceive an offspring-responsive strategy to control the arising effect (Rangkuti, 2020). However, the approach was brought into the world because of the local area the ideal connection transparency state regulation and nearby to communication with regards to complete one another.

#### *Law passing system and policies in Indonesia*

Sukadi (2011), discoveries were about the passing of the law in policing in Indonesia. The passing of the law does not mean there is no regulation; the law's demise is that the law is compelled to apply. The law legitimizes wrongdoing, and the execution of the law transforms into the undead, robots, and machines with controllers. The law should not simply assume formal legitimacy, which is brimming with procedural cycles that generally seek after lawful conviction. In any case, one must likewise have the option to look comprehensively at different issues that emerge amidst life. This implies that regulation is not simply restricted to an arrangement of rules yet additionally regulation as an arrangement of values. So, notwithstanding lawful sureness, it is likewise indistinguishable from the worth of equity in the public eye. Three things should be considered in implementing this regulation: lawful assurance, convenience, and equity. They are policing an endeavour to make the thoughts of equity, legitimate sureness, and social advantages a reality. The most common way of understanding these thoughts is the embodiment of policing (Bush, 2008).

Talking about the legal protection of a healthy environment related to indigenous peoples, one of which is a study in border areas where the principles of legal protection for the protection of customary rights and rights determine the ideal concept of protecting the rights of indigenous peoples (Kalalo, 2018). The results of their research show that the law on the protection of customary rights in border areas viewed from the philosophical aspect of the sociology of law is indeed not optimal and does not follow the Pancasila values created by the 1945 Constitution. Customary rights in border areas have not been implemented perfectly; ideally, for the protection of the rights of indigenous peoples in any area in Indonesia, it should be in sync and harmony with existing regulations, namely positive law, but because customary law is owned by the community when national law appears the number of customary law becomes not like authorities and often get unfair treatment (Postema, 2019).

When viewed from the aspect of government support, for example, in the policy of regulating customary forests after the decision of the constitutional court, where the problems that arise are the problems of government policies contained in laws and regulations, the implementation is often not following community expectations (Wiyono et al., 2021). It is inappropriate and creates problems in society that should not have happened, even though it has been stated in the forestry law's legal provisions and the constitutional court's decision.

However, all of this is contrary to the 1945 Constitution; therefore, binding legal force is still needed; thus, the legal standing and customary forest after a constitutional court decision must be in the territory of indigenous peoples while still paying attention to the rights of indigenous peoples as long as the reality is still under control helplessness (Utomo, 2014). So on the basis that it is against the national interest, all customary law is often ruled out even though it has been regulated by law. So, at the end of their study, it can be said that the forest that should be protected for the sake of the implementation of a healthy forest which is in front of customary law has finally become non-authentic again because of local wisdom towards goodness where wild plants and animals remain under government management which they sometimes miss that this is an area where indigenous peoples must participate in managing not only to receive impacts but become part of governance that is included in customary law and recognized in implementation (Situmorang et al., 2021).

## 4 Conclusion

In the conclusion section, we can summarize the main findings from a series of literature reviews to answer the question of this study, namely looking for scientific evidence that supports the challenging implementation of customary law in a country with favourable laws to save the environment. So actually, from the point of view of one tribe, both customary law and positive national law have the same position. However, in practice, it is certainly different, especially regarding healthy protection, and how customary law is owned by each region and belongs to the community; of course, it is tough to implement compared to the Law positive values maintained and implemented by the State. This happens because customary law has limitations and shortcomings compared to state law, which has all the tools in its implementation, especially in formulating an understanding of customary law for exports; of course, it has challenges because customary law itself is still in its infancy and is carried out by the community and immediately brings about the opposite.

With many things and is the nature of the law. So, in this case, the challenges faced in implementing customary law to protect environmental sustainability are efforts that must continue to be carried out, considering that saving environmental health is a complete task for all individuals, both countries and international talent communities. Therefore, this study considers that the problem of implementing customary law in the unitary State of the Republic of Indonesia still has provisions and protections that provide awareness to all parties to uphold the existence of customary law in addition to this size. Therefore, we expect input, encouragement, and feedback from the parties so that improvements in methods and implementation of the results of data analysis can be improved in the future.

### *Conflict of interest statement*

The authors declared that they have no competing interests.

### *Statement of authorship*

The authors have a responsibility for the conception and design of the study. The authors have approved the final article.

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