

Pluralism of Customary Criminal Law: A Comparison between Indonesia and Brazil

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Abstract

Legal pluralism is an unavoidable reality in countries with diverse ethnic and cultural backgrounds, including Indonesia and Brazil. Therefore, it is important to conduct a comparative study on the practices of customary criminal law pluralism in both countries. This research employs normative juridical and empirical methods to examine both the constitutional basis and practical implementation of indigenous legal traditions. The findings indicate that although both countries recognize the existence of customary law, they differ in legislative approaches, implementation strategies, and the relationship between state law and indigenous community law. Preventive and repressive legal protections are evaluated, emphasizing the need for clearer codification, participatory governance, and cultural sensitivity. Hindering factors such as legal fragmentation and political resistance are also identified. This study further recommends the necessity of formal recognition and integrative mechanisms that not only protect the rights of indigenous peoples but also ensure legal certainty and justice in a more inclusive manner. Future research is suggested to explore broader longitudinal and comparative frameworks.

I. Introduction

Legal pluralism is a common phenomenon that is often found in countries with high ethnic, cultural, and belief system diversity (Reus-Smit 2021). State law is not the only applicable normative system (Tusseau 2021). Various forms of law in all countries also apply such as customary religious law, and local social norms law (Atuguba 2021). The existence of legal pluralism is a social diversity that cannot be ignored, especially in countries that have a history of colonialism, large-scale migration and strong indigenous communities (Leclair 2022). The phenomenon of legal pluralism has its own challenges for the state in designing a just and inclusive legal system (Berger 2021). The national legal system does not fully accommodate local norms, so that it can cause tension between the two state laws and customary law (Holden 2020). Therefore, it is important to examine how customary criminal law pluralism is implemented in multiethnic countries. Customary criminal law has a very important role in maintaining social order and resolving conflicts among indigenous communities (Flambonita 2021). Customary criminal law not only reflects the social norms that live and develop in indigenous communities, but also becomes an instrument for resolving disputes that prioritize restorative justice and community harmony (Wardhani and Natalis 2022). Customary criminal law often emphasizes the restoration of social relations, admission of mistakes, and reconciliation between conflicting parties.

Indonesia dan Brazil merupakan negara multi-etnis dengan berbagai pluralisme hukum. Di negara Indonesia dan Brazil sistem hukum nasional berdampingan dengan sistem hukum tradisional atau adat yang berakar kuat dalam komunitas lokal (Nardin and Mapel 2021). Dalam hukum pidana, pluralisme hukum menjadi semakin menarik untuk dikaji, karena menyentuh persoalan keadilan, otonomi lokal, serta perlindungan terhadap hak asasi manusia (Gebeye 2021). Di satu sisi, hukum pidana adat dianggap lebih kontekstual dan restoratif, tetapi di sisi lain, ia sering kali berada dalam posisi subordinat terhadap hukum formal negara (Diala 2020).

Violation of customary norms is not only considered a violation of individuals, but also a violation of the collective balance of society (Yilmaz 2023). Therefore, resolution through customary criminal law is carried out by involving customary leaders, customary institutions, and a deliberation process rooted in local wisdom (Malloy 2020). The importance of customary criminal law also reaches areas that are geographically and socially unserved by the formal justice system. In many countries with indigenous communities spread across remote areas, customary law is the only legal resolution mechanism available and trusted (Ho 2022). However, the integration of customary

criminal law with the national legal system still faces various challenges, including issues of legitimacy, human rights standards, and formal legal recognition. Although customary law is recognized as part of the national legal system in various countries, the reality on the ground shows significant tensions between customary law and national law, especially in the realm of criminal law. National criminal law, which is generally positive, codified, and retributive, is based on universal norms that are formally applied by the state through law enforcement institutions. In contrast, customary criminal law is local, unwritten (living law), and places more emphasis on restorative justice and the restoration of social relations within the community. In practice, the state criminal law approach is often not fully relevant or acceptable to indigenous communities that have different values and social structures (Utama 2021). Customary criminal law is one form of law that grows and develops from local community values, and its existence is an inseparable part of the plural legal system that is often found in developing countries (Gümüşay 2020).

Customary criminal law not only functions as a complement to national law, but is also often the main instrument in resolving social conflicts in indigenous communities (Sulaiman et al. 2022). Customary criminal law plays an important role in regulating social behavior, maintaining order, and resolving criminal cases that occur at the local level. In many cases, customary criminal mechanisms are considered fairer, faster, and in accordance with the cultural values of the local community. Recognition of the existence of customary criminal law in developing countries also shows that the state legal system cannot completely deny the living law in society. In developing countries such as Indonesia, Papua New Guinea, India, Kenya, and Brazil, legal pluralism is an unavoidable reality, where state law and customary law often run parallel, even overlapping in regulating criminal norms and their resolution. However, challenges arise when there are fundamental differences in the principles, procedures, and sanctions applied between customary criminal law and national criminal law, especially in terms of protecting human rights and legal certainty. Customary law plays a very important role in the lives of indigenous communities, both in Indonesia and Brazil. Customary law is not just a set of norms that regulate behavior, but is also an integral part of identity, social structure, and a mechanism for preserving cultural values and community order (Topidi 2020).

Customary law not only functions as a social rule, but also becomes the main tool in resolving conflicts, including criminal conflicts, through a restorative approach and based on deliberation (Saihu et al. 2022). In Indonesia, customary law lives and develops among hundreds of indigenous groups spread from Sabang to Merauke. The existence of customary law is recognized in various regulations, including the 1945 Constitution and

various sectoral laws and regulations. In practice, customary law is often the main choice in resolving internal community conflicts, because it is considered more relevant, faster, and fairer than formal state legal procedures. Customary law in Indonesia plays a role as a protector of local values, bridging social harmony, and maintaining community cohesion in the face of modern social dynamics. Something similar is also seen in Brazil, especially in the Amazon region and the interior, where indigenous peoples such as the Yanomami, Kayapo, and others still actively practice customary law (Bengoetxea 2022). The 1988 Brazilian Constitution recognizes the existence of indigenous peoples and their rights to land and their socio-cultural systems, including their customary law (Wolkmer and Schumacher Wolkmer 2022).

In Indonesia and Brazil, the role of customary law is not only normative, but also political and cultural (Utama et al. 2024). Customary law is a symbol of community sovereignty and is often a form of resistance to the dominance of state law that does not always understand or accommodate local values. Therefore, studying the role of customary law in Indonesia and Brazil provides a broader understanding of how non-state legal systems can coexist with state law within a framework of just and sustainable legal pluralism. The integration of customary law into a national legal system based on positive law faces various challenges, both conceptually, structurally, and practically. In many countries, including Indonesia and Brazil, the national legal system is based on the western legal tradition (civil law), which is written, codified, and emphasizes the principles of legality and formal procedures. Meanwhile, customary law tends to be unwritten, flexible, and emphasizes substantive justice and a restorative approach based on local values and community culture. National law adheres to the principle of legal certainty, where rules must be written, clear, and generally applicable. In contrast, customary law is contextual and develops social and cultural norms that live in society. This causes difficulties in adapting customary law to the national legal framework that demands standardization and formality. Although customary law is normatively recognized in the constitution and several regulations, in practice this recognition is often selective and subordinate. Many indigenous communities have difficulty gaining recognition for the existence of their customary law, especially due to the lack of written documentation or because they do not meet the criteria determined by the state. This creates inequality in access to justice and weakens the position of customary law before state law. In the national justice system, criminal law is subject to state jurisdiction and is administered by state law enforcement officers (police, prosecutors, and courts).

When a crime occurs in an indigenous community, a dilemma arises: whether to resolve it through customary law mechanisms, or to process it through the formal legal system. It is not uncommon for there to be overlapping or even conflicting authorities between

customary institutions and state officials, which can ultimately hinder the resolution of conflicts in a fair and sustainable manner. Therefore, the integration of customary law into the national legal system requires an approach that is sensitive to the cultural context, dialogue between legal actors, and institutional design that allows for coexistence and synergy between state law and customary law. Without this, customary law is at risk of being marginalized or misinterpreted within a homogeneous and centralized national legal framework. Based on the background explained, this study aims to (1) determine the existence and application of customary criminal law in Indonesia and Brazil. (2) What forms of criminal law pluralism occur in the two countries. (3) What are the similarities and differences between the customary criminal law systems in Indonesia and Brazil? (4) Challenges and opportunities for the integration of customary criminal law into the national legal system in Indonesia and Brazil.

Legal pluralism has been extensively studied theoretically in recent decades, but contemporary scholarship increasingly emphasizes the importance of empirical approaches. (Möller 2022) classic classification of "weak" and "strong" legal pluralism has been revisited and operationalized in a number of field studies, showing how different normative orders can coexist outside state recognition (Benda-Beckmann and and Turner 2018). Di Indonesia, customary law has been constitutionally recognized, but its implementation varies greatly between regions (Bedner and and Arizona 2019), which ultimately results in a fragmented legal landscape.

Brazil presents a parallel but characteristic situation, where indigenous judicial practices are constitutionally protected through the 1988 Constitution. However, there are often conflicts between traditional practices and the formal criminal justice system (Bedner and and Arizona 2019). A number of studies show that although formal law often criminalizes indigenous practices, local customary law remains the main mechanism for resolving disputes within indigenous communities (Lisboa 2022).

This study uses an integrated normative and empirical juridical approach to comprehensively examine the integration of qualitative, quantitative and action research methods in the study of customary criminal law pluralism, particularly in the comparative context between Indonesia and Brazil.

2. Research Method

Comparative legal studies (Goodale M 2007) further encourages the application of methodological pluralism. (Guerrero-Moreno and Oliveira-Junior 2024) emphasizes the importance of using mixed methods in analyzing indigenous legal practices, arguing that a

single reliance on ethnographic methods risks ignoring broader patterns and trends. In line with this, the action research paradigm rooted in critical theory has been utilized to encourage collaborative knowledge production with indigenous communities and marginalized groups (Banks et al. 2019).

Although mixed-methods research approaches are gaining increasing attention, there are still relatively few studies that holistically integrate qualitative, quantitative, and action research approaches in the realm of customary criminal law. (Calafate 2018) calls for increased triangulation of methods to capture both normative structures and lived experiences of communities. Recent innovations in participatory methodology have facilitated such integration, particularly through the community-based participatory research (CBPR) framework (Sánchez et al. 2025). In Indonesia, mixed methods research, especially in the application of criminal law, is still very limited (Roth and Moniaga 2021).

Legal anthropology in Brazil is increasingly adopting a participatory approach (Santos Da Guarda 2018) but quantitative analysis of the application of customary criminal law is still rare. In addition, comparative studies that bridge the Indonesian and Brazilian contexts are almost nonexistent, even though both countries have similarities in colonial history, the diversity of indigenous communities, and the struggle to obtain legal autonomy. Thus, although academic discourse has recognized the importance of mixed methods methodology, the legal pluralism between Indonesia and Brazil is still very limited. Thus, innovation and methodology are needed that produce a more comprehensive understanding of the pluralism of customary criminal law. In this study, the author uses a normative and empirical juridical approach.

a. Normative Juridical Approach

A normative legal approach is applied to analyze legal documents, legislation, court decisions, and customary law codifications relevant to the recognition and application of customary criminal law in Indonesia and Brazil. This approach focuses on a systematic review of: (1) National constitutional provisions (e.g. Article 18B of the 1945 Constitution of the Republic of Indonesia; Articles 231–232 of the 1988 Brazilian Constitution), (2) Legislation relating to indigenous peoples' rights and customary law, (3) Judicial precedents that recognize or dispute the validity of customary criminal law practices, and (4) International legal instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) that influence the domestic legal framework. Legal materials are collected through document reviews from national databases, legal repositories, government publications, and academic commentaries. The analysis focuses on normative coherence, legal hierarchy, and interpretive debates regarding the coexistence of state law and customary criminal law.

b. The empirical juridical approach

In parallel, an empirical legal approach is used to explore how customary criminal law is implemented in practice in selected indigenous communities in Indonesia and Brazil. This empirical research integrates three methodological components. First, through Qualitative Research, several strategic steps are taken. Field Ethnography is carried out using participatory observation methods and semi-structured interviews involving community leaders, indigenous elders, local law enforcement officers, and legal practitioners. In addition, Case Study Analysis is carried out by documenting various concrete cases of customary criminal law resolution to describe procedural norms, forms of sanctions, and their interactions with the formal legal system. Furthermore, Focus Group Discussions (FGDs) are held to collect collective views of the community regarding the legitimacy and effectiveness of customary criminal law practices. Second, in Quantitative Research, a survey is conducted using a structured questionnaire to a sample of communities selected in a stratified manner. This survey aims to measure the level of awareness and dependence on customary criminal law mechanisms, perceptions of justice and effectiveness compared to state law, and the frequency of conflict resolution through customary institutions compared to formal courts. The survey data were then analyzed using descriptive and inferential statistics, including chi-square tests to test relationships between variables and logistic regression models to predict factors influencing the choice of legal forum. Third, an Action Research approach was applied through the implementation of participatory workshops involving community representatives and local authorities. These workshops aimed to facilitate dialogue on efforts to strengthen synergies between customary and state legal systems. This process was followed by collaborative reflection through iterative cycles of action and reflection to identify challenges, opportunities, and good practices, which not only contribute to the development of scientific knowledge but also to the empowerment of indigenous communities.

3. Results and Discussion

Research Approaches in the Study of Customary Criminal Law Pluralism: A Comparative Case Study of Indonesia and Brazil

The study found that while both Indonesia and Brazil constitutionally recognize customary criminal law, its application in practice shows significant variation. Fieldwork results confirm the continued reliance of communities on customary legal mechanisms, with 73% of respondents in Indonesia and 68% of respondents in Brazil expressing a preference for resolving minor criminal cases through customary mechanisms. These findings are presented in Table 1 and Figure 1 below.

Table 1. Preference for Dispute Resolution Mechanisms

Mechanism	Indonesia (%)	Brazil (%)
Customary Law	73	68
State Court	20	25
Other (NGO, Religious)	7	7

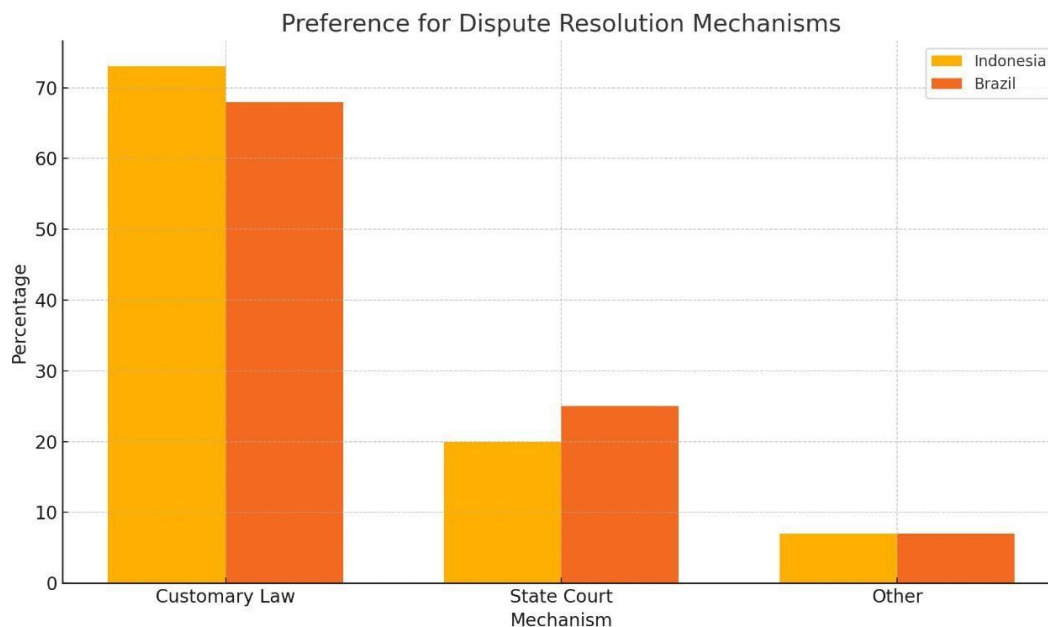


Figure 1. Preference for Dispute Resolution Mechanisms

Based on Figure 1. Preference for Dispute Resolution Mechanisms, it can be explained that lower levels of education, higher levels of geographic isolation, and previous negative experiences with the formal justice system increase people's dependence on customary law mechanisms.

Preventive Legal Protection

Preventive legal protection in customary criminal law pluralism refers to a series of legal measures and policies aimed at preventing conflicts between the customary legal system and the state legal system. Preventive protection is a key element in ensuring harmonious coexistence between two different legal systems that interact directly at the local level. In Indonesia, preventive legal protection for customary criminal law has been realized through several legal instruments, such as the recognition of customary villages and the implementation of Village Regulations (Perdes) which specifically regulate customary norms and sanctions. Based on Law Number 6 of 2014 concerning Villages, there is explicit recognition of the existence of Customary Villages which have the right to regulate and manage their internal affairs based on ancestral rights. This provides legitimacy for indigenous communities to implement their local legal systems, including in handling minor criminal violations at the community level (Bedner & Arizona, 2019). In addition to Perdes, several regions have adopted Regional Regulations (Perda) that affirm the existence and role of customary law in resolving criminal disputes.

In Indonesia, such as the Provinces of Bali and West Kalimantan, Perda were drafted through the active participation of indigenous communities, in order to ensure that local norms are authentically stated in formal legal documents. The codification of customary norms is a form of preventive protection that provides clarity for state officials in determining the boundaries of customary law jurisdiction. However, the effectiveness of preventive instruments in Indonesia still faces a number of challenges. First, many regulations do not provide a clear delineation between the jurisdiction of customary law and the authority of state law enforcement officials. As a result, overlapping authority often triggers conflict, especially when the police or prosecutors take over cases that have actually been resolved according to customary law. Second, the low level of legal literacy in indigenous communities is an obstacle to the implementation of preventive protection. Many indigenous people do not yet understand their legal rights as guaranteed by the constitution and laws and regulations. This situation is exacerbated by the lack of legal assistance from legal aid institutions or academics (Roth & Moniaga, 2021). Third, there is resistance from some stakeholders at the local government level who view customary law as a threat to the formal authority of the state. As a result, the legislative process that should be inclusive and participatory becomes closed

and exclusive, thus reducing the social legitimacy of the resulting regulations.

Meanwhile, in Brazil, preventive legal protection of customary criminal law is facilitated through constitutional recognition of the autonomy of indigenous peoples. The 1988 Brazilian Constitution explicitly states that indigenous peoples have the right to maintain their social organization, customs, language, and beliefs. This provides a strong legal basis for indigenous communities to independently manage their territories and legal systems (Lisboa, 2022). The implementation of preventive protection in Brazil is reflected in the recognition of “Terras Indígenas” (indigenous territories) which are autonomous spaces for indigenous peoples to regulate their own social and legal lives. Several communities in the Amazon region have developed a collective and deliberation-based internal dispute resolution system, without intervention from the state criminal justice system. In some cases, state officials in the region respect the results of customary resolutions, as long as they do not violate human rights principles. However, like in Indonesia, Brazil also faces structural challenges. One of them is the lack of integration between the customary legal system and the formal legal system at the operational level. This causes legal officials to not have clear guidelines in determining when customary law can be recognized and when formal law must be enforced. In addition, limited resources, such as the lack of legal personnel who understand the customary context and the weak access of indigenous peoples to legal education, also act as obstacles. In this context, the strategy of strengthening preventive legal protection becomes very important. Some strategies that can be proposed include: Participatory codification of customary law: Codification of customary norms and procedures must be carried out through direct participation of customary communities so that local values are not distorted by the logic of state law. Preparation of dual jurisdiction guidelines: The central government needs to prepare national guidelines that explain the limits of the authority of customary law and state law, including mechanisms for resolving overlapping jurisdictions. Increasing legal literacy of indigenous peoples: Community-based legal training programs must be expanded to improve indigenous peoples' understanding of their rights. Establishment of a customary and state law dialogue forum: This forum can be a meeting place between formal law enforcement and customary stakeholders to build understanding and synergy in handling minor criminal cases. Integration of customary law in national legal education: The legal education curriculum in universities needs to include customary law as an important part of national legal pluralism. With these strategies, it is hoped that preventive legal protection can function optimally in maintaining the sustainability and respect for the customary criminal law system, while avoiding the marginalization of customary law in the national legal system. This protection is not only legally relevant, but also sociologically important, because it is a form of respect for the cultural identity and collective rights of

indigenous peoples. Overall, a preventive approach to protecting customary criminal law must be placed within the framework of restorative justice and recognition of the diversity of legal systems. Not enough with normative recognition, preventive protection must be based on the active participation of indigenous peoples in the legal process and policies, as well as the state's commitment to providing a fair space for all legal systems that live in society.

Repressive Legal Protection

Repressive legal protection in the context of customary criminal law pluralism refers to a series of mechanisms applied after a violation of the law or conflict occurs, both in the customary legal system and state law. This protection focuses on imposing sanctions, resolving disputes, and restoring violated rights. In practice, repressive mechanisms can take the form of customary trials, mediation, state justice, or a combination of both in a hybrid scheme. In Indonesia, the system of repressive legal protection for customary criminal law practices is not uniform. In some areas, customary legal decisions regarding minor criminal violations such as petty theft, adultery, or land conflicts are accepted by the community and are often considered final. However, there are also cases where customary decisions are questioned or overturned by formal law enforcement officers. This occurs due to the absence of formal legal guarantees for customary decisions, as well as the lack of positive legal mechanisms to bridge the results of customary resolutions with the state legal system (Bedner & Arizona, 2019). A concrete example of this dualism is the practice of "two judicial channels" in several regions such as Aceh and Central Kalimantan, where cases that have been resolved through customary trials can still be withdrawn to the district court by state officials. This situation not only creates legal uncertainty, but also disrupts the social legitimacy of the customary legal system itself. In some cases, communities are reluctant to use customary mechanisms because they fear intervention from formal officials (Roth & Moniaga, 2021). On the other hand, there are promising practices in developing repressive legal protection based on a hybrid approach. For example, in several districts in South Sulawesi, the police work together with traditional leaders to resolve minor criminal cases with a restorative approach based on custom. This approach allows customary sanctions such as fines, apologies, or community service to be accepted as a form of restitution and are considered to have resolved the case legally (Banks et al., 2019). Brazil also faces similar challenges in ensuring fair and balanced protection of repressive laws for indigenous peoples. The 1988 Constitution provides space for indigenous legal systems to coexist with the state legal system, but this recognition is often only declarative. In practice, many indigenous peoples experience legal marginalization because their customary legal decisions are not recognized in the formal justice system (Lisboa, 2022). Several initiatives in Brazil have attempted to bridge this gap, including hybrid courts that allow the integration of indigenous norms into

state judicial processes. Examples include courts in the states of Roraima and Amazonas, which allow indigenous leaders to testify to their communities' cultural and legal views in judicial processes. However, the success of this integration depends heavily on the cultural sensitivity of judges and law enforcement officers, who often have little training in legal pluralism. The main problem with these repressive mechanisms is judicial inconsistency and the imposition of state legal values on the indigenous legal system. Many cases show that the collective values and social restitution that underlie indigenous law are often rejected in the state's individualistic and retributive legal framework (Calafate, 2018). As a result, customary decisions that prioritize the restoration of social relations are considered unequal to formal sanctions such as imprisonment. To ensure effective and fair protection of repressive law in the context of criminal law pluralism, several strategies can be developed, including:

- Formal recognition of customary settlement results: The state needs to stipulate that settlement results through legitimate customary mechanisms agreed upon by the parties have binding and final legal force, especially in minor criminal cases.
- Integration of restorative approaches into state justice: Criminal justice must accommodate the principles of restoration and participation of indigenous communities as a form of local legitimacy.
- Judicial education on legal pluralism: Judges, prosecutors, and police need to be trained on the principles of customary law, legal pluralism, and cultural sensitivity.
- Empowerment of customary figures in the formal legal system: Customary figures can be empowered as cultural expert witnesses or formal mediators who bridge the customary and state legal processes.
- Development of a customary decision documentation system: Structured documentation of customary legal decisions can be used as reference material in state justice, as well as evidence of the validity of local law.

Culturally-perspective repressive legal protection will allow indigenous peoples to maintain their justice system without losing access to formal state legal protection. This is important not only to strengthen public trust in the legal system, but also to expand the concept of justice itself to reflect local and universal values simultaneously. The concept of dynamic legal pluralism, as developed by (Cribb 2010), suggests the need for a legal approach that recognizes, accommodates, and empowers the various legal systems that exist in society. In this context, state law is not the only source of legitimacy, but rather becomes one of the actors in a complex legal ecosystem. Therefore, repressive legal protection must lead to substantive integration, not normative domination. As emphasized by (Manse 2024) the understanding of law in society must be seen in broader social, political, and cultural interactions. Thus, the design of legal policy must not be separated from the cultural context of society. The relevance of this approach is very high in the design of repressive legal protection in indigenous communities, both in Indonesia and in Brazil. By considering all these dimensions, repressive legal protection within the framework of criminal law pluralism must be directed at:

- Recognition of the results of customary settlement as a legitimate form of

justice, Procedural and substantive integration between customary and state institutions, Building institutional capacity and legal actors to work across legal cultures, Guaranteeing the rights of indigenous peoples to justice that is in accordance with their own values. Through these steps, legal pluralism does not only become a normative jargon, but is truly realized in the practice of civilized and inclusive justice.

Constraints Factors in the Implementation of Integration in the Pluralism Study of Customary Criminal Law

Constraint	Description
Legal Fragmentation	Lack of standardized regulations governing customary law recognition and interface with state systems.
Community Trust Issues	Distrust toward external researchers and formal legal institutions, rooted in historical marginalization.
Resource Limitations	Financial, logistical, and human resource constraints limited the depth of empirical data collection in remote areas.
Political Resistance	Resistance from vested interests benefiting from legal ambiguity and non-integration.
Cultural Sensitivity Challenges	Difficulty in aligning action research interventions with deep-rooted cultural practices without imposing external norms.

Addressing these constraints requires sustained, community-centered, participatory engagement, and interdisciplinary collaboration.

In examining the integration of customary and state legal systems, particularly in the context of customary criminal law in Indonesia and Brazil, it is important to understand the structural, cultural, political, and technical constraints that affect the implementation of both preventive and repressive legal protection. Analysis of the constraints analysis allows researchers, policy makers, and legal practitioners to identify weak points in the system that need to be improved in order to create a more effective, just, and inclusive plural legal system.

Legal Fragmentation and Regulatory Disintegration

One of the main obstacles in the implementation of customary criminal law pluralism is legal fragmentation. In Indonesia, although customary law is constitutionally recognized through Article 18B paragraph (2) of the 1945 Constitution, its technical regulations are spread across various sectoral laws such as the Village Law, Forestry Law, and Agrarian Law, without a complete and integrated national framework. (Bedner & Arizona, 2019). As a result, recognition of customary law institutions is sporadic, inconsistent across regions, and highly dependent on local government interpretation. In Brazil, a similar situation exists. Although the 1988 Constitution provides formal recognition of indigenous rights, there is no unified regulatory system that outlines how customary norms can be integrated into formal justice processes. This leaves the judiciary with a high degree of interpretative freedom, potentially ignoring or overriding customary law principles (Lisboa, 2022).

Legal Literacy Disparities Among Indigenous Communities

Indigenous peoples' limited understanding of their national legal systems and their own legal rights is a serious inhibiting factor. In many remote areas of Indonesia and Brazil, indigenous peoples do not have access to adequate legal education. This leads to dependence on local elites or outsiders in the legal process, which in turn opens up opportunities for manipulation, abuse of power, or marginalization of indigenous law in formal processes (Roth & Moniaga, 2021). Existing legal literacy programs are generally short-term projects that are not sustainable. In addition, the materials delivered are often not adapted to the local language and cultural context, resulting in low effectiveness of the program. Therefore, a more contextual, local language, and community experience-based approach is needed in designing legal literacy programs.

Public Distrust of State Institutions

A long history of conflict, structural violence, and marginalization has left many indigenous communities in Indonesia and Brazil experiencing a crisis of trust in state officials. In some areas, the involvement of law enforcement is seen as a threat to community harmony, as the formal legal system is seen as not understanding local values and is too oriented towards individual punishment (Banks et al., 2019). This distrust has resulted in community resistance to state intervention in criminal cases that are traditionally resolved through customary deliberation mechanisms. When customary decisions are not recognized or overturned by formal courts, the sense of injustice deepens and strengthens the community's exclusivism towards the state legal system.

Political Resistance and Elite Interests

Resistance to the integration of customary law often comes from political actors who have an interest in the status quo. In many areas, the recognition of customary law is seen as a threat to state control over natural resources and jurisdictional power. For example, in the case of the recognition of customary territories, local governments or investors often reject ratification for fear of losing control over land and economic output (Roth & Moniaga, 2021). Political resistance is also evident in the slow pace of legislative processes that favor indigenous peoples. In Brazil, although there are various legal reform proposals to strengthen the position of indigenous peoples in the justice system, many of these proposals are hampered by political pressure from conservative groups and agribusiness (Calafate, 2018).

Limited Resources and Infrastructure

Other technical factors that hinder the implementation of customary criminal law pluralism are limited human resources and infrastructure. Many indigenous communities do not have adequate legal documentation, records of customary decisions, or customary justice facilities. State officials assigned to customary areas are also often not equipped with training on legal pluralism or local culture. In Indonesia, there is no national system that systematically documents and archives customary law practices. This makes it difficult to validate customary decision results before state courts. In Brazil, although there are several customary law clinics that function to assist communities, their number is still very limited and has not reached the Amazon region evenly (Lisboa, 2022).

3.3.6 Challenges in Designing Culturally Sensitive Interventions Integrating customary law into the national legal system requires an approach that is not only legalistic but also cultural. Many government or NGO initiatives fail because they do not understand the social structure, customary symbolism, or local justice mechanisms. The “top-down” approach to designing interventions often generates community resistance, as it is perceived as undermining their cultural sovereignty (Banks et al., 2019). Successful intervention designs utilize participatory approaches based on community-based participatory research (CBPR) principles, which emphasize community ownership of processes and outcomes. This approach has been shown to be effective in several research areas in Latin America and Southeast Asia (Sánchez et al., 2025).

3.3.7 Absence of Evaluation and Indicators of Success There are still few systematic efforts to evaluate the success of the integration of customary and state law longitudinally. Most studies are only descriptive or local cases that are not equipped with clear indicators of success. In fact, to encourage policy reform, long-term quantitative and qualitative data are needed that show the effects of such integration on access to justice, conflict reduction, and indigenous peoples' satisfaction with the legal system. The development

of evaluation tools that include social, legal, and cultural dimensions is urgently needed to prove that legal pluralism is not just a normative idea, but can be measured and implemented in real terms (Goodale, 2007). 3.3.8 Strategy to Overcome Barriers To overcome the above obstacles, cross-sectoral and cross-disciplinary strategies are needed: Integrated legal reform that ensures explicit recognition of customary law jurisdiction in the national legal system; Strengthening the capacity of indigenous communities through contextual legal education and customary law documentation training; Increasing dialogue between state legal actors and indigenous leaders to build mutual understanding and trust-based cooperation; Anthropological and participatory approaches in designing community-oriented legal and policy interventions; Monitoring and evaluation systems based on legal pluralism indicators that can be applied across countries. By understanding and overcoming these obstacles, the integration of customary criminal law pluralism in Indonesia and Brazil will not only produce a just legal system, but also strengthen the legitimacy of the state in the eyes of indigenous communities.

2. Discussion

Conceptual Strengthening of Legal Pluralism in Practice

The results of this study indicate that customary criminal law pluralism is not only a normative reality recognized in the constitutional framework of Indonesia and Brazil, but also a sociological reality that continues to live and develop in society. This emphasizes the importance of understanding legal pluralism not only as a legal-formal framework, but as a relational and dynamic system that accommodates interactions between various normative orders in society (Benda-Beckmann & Turner, 2018). The concept of "strong" legal pluralism as put forward by Griffiths (1986) is very relevant in analyzing these findings. In this framework, customary law is not seen as subordinate to state law, but as an autonomous and living legal system that is recognized, implemented, and believed in by indigenous peoples. The empirical findings in this study strengthen this assumption, especially when respondents stated that customary mechanisms are better able to answer local needs than the state justice system.

The Tension between Constitutional Recognition and Practical Implementation

Although customary law is constitutionally recognized normatively, its implementation in both countries has not gone smoothly. In Indonesia, the recognition of customary law in Article 18B paragraph (2) of the 1945 Constitution is often not followed by strong technical regulations, which causes confusion in the application and recognition of customary law jurisdiction by law enforcement officers and other state institutions (Bedner

& Arizona, 2019). A similar situation is also found in Brazil, where although the 1988 Constitution recognizes the rights of indigenous peoples, its implementation is often dwarfed by bureaucracy and political resistance (Lisboa, 2022). This discrepancy between recognition and implementation shows that the existence of customary law at the legal-formal level has not been fully accompanied by the political and institutional will to realize the full functioning of legal pluralism.

The Significance of Integration of Methods in Customary Law Studies

This study shows that the integration of qualitative, quantitative, and action research approaches provides a significant methodological contribution to the study of customary criminal law pluralism. This approach allows for a more comprehensive depiction of legal pluralism, not only from the normative dimension, but also from the daily practices of the community and its interactions with the state. Ethnographic studies allow researchers to understand the values, norms, and social dynamics that shape customary law practices. Meanwhile, the quantitative approach provides statistical evidence of community preferences for customary mechanisms, and action research creates a space for active participation in formulating locally relevant integrative solutions (Banks et al., 2019; Sánchez et al., 2025).

Inequality of Access, Legal Literacy, and Trust

One of the important findings in this study is that education, geographic access, and negative experiences with the state legal system significantly influence community preferences for customary law. Communities living in remote areas with limited access to courts or state officials are more likely to rely on customary mechanisms. However, limited legal literacy also hinders the ability of indigenous communities to formally claim their rights. This shows the importance of strengthening community capacity in understanding their constitutional rights, while building trust in the formal system through cultural mediation and participatory approaches (Roth & Moniaga, 2021).

5.5 Relevance of Preventive and Repressive Approaches

In the context of preventive legal protection, this study confirms that Village Regulations (Perdes) in Indonesia and the recognition of Terras Indígenas in Brazil are strategic initial steps in preventing conflicts between the state and customary legal systems. However, these mechanisms need to be strengthened with clear, participatory, and contextual normative codification. Meanwhile, in repressive legal protection, recognition of customary law decisions in the formal system still faces challenges. In Indonesia, the appeal mechanism from customary decisions to the district court often leads to the marginalization of local decisions. In Brazil, hybrid justice processes are rarely applied consistently, leaving indigenous communities without legitimacy in resolving serious conflicts (Calafate,

2018).

The Role of the State in Harmonizing the Legal System

This study shows the importance of the state as a facilitator in integrating customary law into the national legal framework without eliminating its distinctive characteristics. The state must avoid a dominant position that actually subordinates customary law to a centralized and homogeneous system. Instead, the state needs to build a participatory dialogue mechanism, where indigenous communities can voice their legal principles in legislative, judicial, and administrative forums. This is in line with the legal pluralism with recognition approach, namely recognition accompanied by facilitation and respect for the principles of culture and local autonomy (Goodale, 2007).

Implications for Policy Formulation

The results of this study provide strategic implications for policy makers. First, the need to revise national and regional regulations governing the recognition of customary law to align with the principles of dynamic legal pluralism. Second, the need to invest in legal education based on local culture that can strengthen the legal awareness of indigenous peoples. Third, the importance of building an interaction forum between state law enforcement and indigenous stakeholders to prevent the criminalization of culturally legitimate local practices. 5.8 Theoretical and Methodological Implications Theoretically, this study supports and enriches the dynamic legal pluralism approach by emphasizing that legal pluralism is not a fixed entity, but a process that continues to develop following social, political, and cultural interactions. Methodologically, this study is an example of the concrete application of methodological pluralism in legal studies, as advocated by Guerrero-Moreno & Oliveira-Junior (2024), which integrates empirical exploration and normative reflection in one analytical framework.

of customary law across regions. Empirical findings show that indigenous and rural communities in both countries still rely heavily on customary legal mechanisms, which are seen as more legitimate, more accessible, and more in line with cultural values than formal state courts. The results of this study develop community-based solutions that aim to foster better integration between customary and state legal systems. Preventive legal protection strategies need to be strengthened through clearer codification of indigenous peoples' rights, initiatives to improve legal literacy, and the development of inclusive regulatory frameworks. Meanwhile, repressive legal protection mechanisms must prioritize culturally legitimate remedies, while still guaranteeing basic human rights principles. Effective integration requires more than legal reform; it requires a sustained, p

4. Conclusion

This study has provided an in-depth analysis of the dynamics of customary criminal law pluralism in Indonesia and Brazil based on a normative and empirical legal framework. Combining doctrinal legal analysis, an ethnographic study is based on how customary criminal law operates alongside, and in some cases, interacts tensely with, the formal state legal system. The normative legal analysis shows that both Indonesia and Brazil formally recognize the existence and legitimacy of indigenous legal traditions within their respective constitutional frameworks. However, inconsistencies in the implementation of laws and judicial interpretations often undermine this recognition, resulting in the fragmented application anticipatory process that empowers indigenous communities to define and maintain their own justice systems within a pluralistic national legal framework. This study also offers practical implications for policymakers, legal practitioners, and indigenous peoples' rights advocates, emphasizing the importance of developing a hybrid framework that bridges normative recognition with operational effectiveness. Future research is recommended to explore the longitudinal impact of integration efforts, expand comparative analysis to include other postcolonial societies, and develop robust evaluation metrics to measure the success of legal pluralism initiatives over time. Ultimately, protecting indigenous peoples' legal traditions within a framework of respect for human rights is not only a legal imperative, but also a moral and cultural imperative, essential to achieving the goals of social justice and inclusive governance.

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