CHALLENGES AND EXPECTATIONS FOR THE IMPLEMENTATION OF
CUSTOMARY LAW (COMPARATORY ASPECTS OF INDONESIA AND OMAN)

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Abstract

Focusing on the connection between customary law and human rights concepts, this study seeks to examine the difficulties and potential solutions surrounding the recording, regulation, and application of customary law in Oman and Indonesia. This study compares and contrasts two nations, Oman and Indonesia, using a normative and comparative method. Literature reviews, statutory rules, official papers, and policies pertaining to law are all sources of legal information. According to the study’s findings, the most significant problems include a lack of documentation of customary law, clashes between customary law and human rights principles, and difficulties in incorporating customary law into the country’s legal system. A portion of the suggested remedy is to bring formal law and customary law into closer alignment, and another element is to increase indigenous people’s involvement in the legislative and judicial processes.
I. Introduction

The intricate web of cultural, historical, and governmental influences that constitutes customary law's connection to national legal systems (Mamu et al., 2024). The local legal environment in nations like Oman and Indonesia is heavily influenced by "customary" law. The ways in which these governments acknowledge and incorporate these customary rules into their contemporary legal systems provide a fertile area for research into these connections. The social fabric of the archipelago of Indonesia has always included Indonesian customary law. Traditional legal systems in Indonesia are highly decentralised and influenced by the rich cultural variety found throughout the country's many islands (Muzakir, 2022). From land conflicts to marital troubles, these rules have governed everyday life in both rural and urban places. During the colonial era, Dutch historians like Snouck Hurgronje and Cornelis van Vollenhoven formally acknowledged these regulations, seeing "adat" as a crucial part of social control in Indonesian societies (Syamsudin, 2017). As a key force that often fills gaps left by national laws, "customary law" in many regions of Indonesia continues to thrive despite the constraints of modernity and national legal reform (Harahap et al., 2023).

The national laws of Oman, on the other hand, are heavily impacted by the country's Islamic values and monarchical system. Sharia law serves as the foundation of the law, while the State Constitution formulates the framework for government and the legal procedures (Rautenbach, 2019). But the Sultanate also understood that certain regions' customs were important, especially in more rural areas where tribal traditions and older methods of conflict settlement were still in use. State institutions sustain cultural continuity via the coexistence of formal legal systems and these customary behaviours. The legislative framework of Indonesia is based on a patchwork of rules that are collectively referred to as "customary law" and on state-instituted national legislation. "Customary law" is an integral part of Indonesian culture, yet it differs substantially from one part of the archipelago to another, mirroring the ethnic variety of the nation. Aspects of everyday life, community ties, and local issues are governed by these customary rules, which are generally unwritten and handed down from generation to generation (Zainurohmah et al., 2024). In addition, the Republic of Indonesia's formal legal system incorporates civil, criminal, and state administrative law, and it was founded on the 1945 Constitution of the Unitary State of the Republic of Indonesia (Asshiddiqie, 2006). The civil law system, which developed in Indonesia in response to the demands of contemporary government while attempting to respect long-established "customary" traditions, is based on principles originally established by the Dutch colonial government.

The legal system of Oman, which is based on monarchical authority and heavily influenced by Islamic law, is structured differently. Royal Decree codifies the Basic Law of the State, which functions similarly to a constitution and lays forth the framework of administration. It addresses topics such as citizen rights and responsibilities, monarchical succession, and the division of powers (Law, 1996). All Omani laws are based on Islamic Sharia law, which has an impact on civil and criminal law as well as family and personal law. Traditional
conflict resolution techniques may coexist with the official legal system in Oman since the country recognises both Sharia and customary law in certain tribal and rural groups (Sheline, 2021). The following table provides a comprehensive overview of the elements that make up customary law:

### Table 1
**Basics of Indonesian and Omani Customary Law**

<table>
<thead>
<tr>
<th>Country</th>
<th>Article Number</th>
<th>Basic Law</th>
<th>Article Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>Article 18B</td>
<td>The 1945 Constitution of the Republic of Indonesia</td>
<td>As long as indigenous peoples continue to live and as long as society progresses and the principles of the Unitary State of the Republic of Indonesia are governed by law, we must acknowledge and protect their customary rights.</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Article 28I</td>
<td>The 1945 Constitution of the Republic of Indonesia</td>
<td>Abolish all forms of discrimination in government and the law and ensure that all people's human rights are respected. Furthermore, it stresses the importance of indigenous peoples’ cultural identities and the need to acknowledge and respect them.</td>
</tr>
<tr>
<td>Oman</td>
<td>Article 2</td>
<td>Basic Law of the State (Royal Decree No. 101/1996)</td>
<td>Having Islamic Sharia law serve as the foundation for Oman’s legal system and Oman’s official religion.</td>
</tr>
<tr>
<td>Country</td>
<td>Article Number</td>
<td>Basic Law</td>
<td>Article Contents</td>
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<tr>
<td>Oman</td>
<td>Article 10</td>
<td>Basic Law of the State (Royal Decree No. 101/1996)</td>
<td>Protecting cultural and historical artefacts, upholding national traditions, and fostering intellectual and artistic advancement are all part of this.</td>
</tr>
<tr>
<td>Oman</td>
<td>Article 17</td>
<td>Basic Law of the State (Royal Decree No. 101/1996)</td>
<td>States categorically that no person is subject to discrimination because of their gender, race, colour, national origin, religion, sect, place of residence, or social position and outlaws bias in hiring and firing practices.</td>
</tr>
</tbody>
</table>

Article 18B of the Republic of Indonesia Constitution from 1945 acknowledges and accords due regard to indigenous peoples and their traditional rights, stressing the significance of preserving cultural uniqueness while being a part of the Unitary State. By reiterating the importance of cultural identity and indigenous peoples and by outlawing all types of discrimination, Article 28I fortifies this stance and ensures the preservation of human rights. Royal Decree No. 101/1996 defined the Basic Law of the Sultanate of Oman, which offers diverse direction while sharing some similarities. Article 2 lays the groundwork for Islamic law as the foundation for legislation and declares Islam as the official religion, demonstrating the profound impact of religion on state policy and law. Support for cultural and scientific advancement and nondiscrimination in legal proceedings are guaranteed under Article 10 and Article 17, respectively, demonstrating Oman’s dedication to cultural heritage preservation and egalitarian legal norms.

Both nations’ legal systems include and honour cultural and religious aspects within their governmental frameworks, as can be seen by a comparison of the two nations. Oman places Islamic sharia at the centre of all legal matters, in contrast to Indonesia’s more diverse approach to customary law, which permits substantial regional differences. Recognising customary law in different national legal systems presents a range of
obstacles and possibilities. By valuing and incorporating long-established conventions and traditions, this kind of acknowledgment has the potential to strengthen social bonds. The result is a method of government and law enforcement that takes local cultures into account, which is usually better received. Conflicts between customary practices and human rights principles or difficulty in codifying unwritten conventions are examples of the kinds of obstacles that might arise when attempting to incorporate customary law. National laws meant to defend individual rights sometimes clash with customary practices, which often stem from extremely ancient traditions and aren't always in line with current ideas of fairness and equality. Some indigenous communities' gender roles and inheritance practices, for instance, may be at odds with global norms for gender equality.

Documenting and assembling unwritten customary law into official legislation is also fraught with technological and legal challenges. Because customary law is often upheld and enforced via informal means, such as daily interactions, it is difficult to express in a clear and generally applicable legal language. It may take a lot of time and energy to map out the cultural backdrop of the relevant customary law, but the effort is well worth it. Furthermore, not all areas have the necessary judicial infrastructure to consistently interpret and administer customary law, which may be a challenge when trying to adopt it in larger institutions. Other major challenges include sufficient funding, properly trained judges and police officers, and public understanding of customary law's place in the official legal system.

As a result, recognising and integrating customary law is about more than just laws; it also touches on larger issues of socialisation, education, and cultural adaptation, all of which need the active participation of all parts of society. In light of the above, the research question is as follows: (1) When formalising customary law, how can nations like Oman and Indonesia resolve the tension between traditional legal norms and universal human rights principles? (2) How do the national judicial systems of Oman and Indonesia deal with the technical and institutional issues that arise when dealing with the documentation, legislation, and implementation of customary law?

2. Research Methods

Based on the questions and ideas that were posed for this study, it may be classified as normative legal research. Normative legal research relies primarily on secondary data sources in order to conduct studies (Benny Irawan et al., 2024). Secondary legal materials refer to books, articles, journals, papers, and relevant data (Belardo Prasetya Mega Jaya et al., 2024). The research strategy is a combination of philosophical and analytical methods, with an emphasis on logical, critical, and philosophical perspectives; the study culminates in a conclusion that seeks to generate new discoveries to address the identified primary issue (Ishaq, 2017).
The purpose of this research is to examine the legal and legislative frameworks of both nations to see how they handle situations when universal human rights principles and local customs are at odds with one another. This study takes a philosophical stance in its examination of human rights, customary law, and the ethics and moral principles upon which it is based, raising questions about the continued usefulness of such traditions in today's interconnected world. Research may evaluate the integration or conflict of customary law with national laws that safeguard human rights using the analytical method, which also allows for a critical examination of current legislation. This study endeavours to provide a thorough understanding of how customary law interacts with the official legal system in Oman and Indonesia. It aims to shed light on the challenges of current customary law implementation and suggest viable remedies.

3. Results and Discussion

The Concept of Customary Law and Universal Human Rights Principles in the Process of Formalizing Customary Law Between Indonesia and Oman

Human rights and customary law in Oman and Indonesia reveal the intricate interplay between local practices and international principles. Diverse customary law in Indonesia is a reflection of the country's cultural diversity. To ensure that behaviours are in line with global human rights standards while also respecting and preserving cultural uniqueness, customary law is being integrated into national legal systems (Pujayanti et al., 2024). Concerns like gender equality and children's rights highlight the difficulty of striking a balance between honouring tradition and protecting individual rights. Legislative processes in Indonesia often use mediation and negotiation to produce laws that amicably merge these two aspects (Muhtar et al., 2024).

On the other hand, customary law is considered in Oman alongside Sharia law, to the extent that it does not contradict Islamic precepts. This establishes parameters within which sharia law must be applied to traditional customs (Law, 1996). Particularly when it comes to matters that are clearly governed by Islamic law, like marriage and inheritance, this tends to restrict the use of customary law. In Oman, traditional leaders and clerics engage in conversation to integrate customary law into a larger legal framework while also ensuring that customary law implementation is in line with religious beliefs. Formalising customary law in countries like Oman and Indonesia sometimes runs counter to global human rights ideals. The cultural and ethnic variety of Indonesia's tens of thousands of islands gives rise to "customary" law's significant significance in the country's legal system and social administration. Recognised in the 1945 Constitution, particularly after revisions granted indigenous peoples' rights broader status, Indonesia's local and sometimes unwritten customary law governs several facets of daily life.

Boaventura de Sousa Santos and other legal scholars stress the significance of indigenous peoples' rights and the preservation of cultural traditions by incorporating customary law within the country's legal system (Tamanaha, 2017). In contrast, customary law is still an important part of life in Oman, but the Constitution, as outlined in Royal Decree No.
101/1996, establishes Sharia principles as the foundation of state law, which in turn influence how formal law is integrated with customary law. The interpretation of sharia, which clearly governs topics like justice, inheritance, and family, is strongly tied to the formalisation of customary law in this nation due to the importance of religion on law (Muhtar & Kasim, 2023). But, particularly in rural regions and among certain tribes, there is still space for traditional traditions that do not clash with Sharia. Conflicts between human rights standards (such as civil rights and gender equality) and customary practices (such as law) emerge when the former contradicts the latter. International standards on equality and child protection may run counter to culturally accepted customs like early marriage and the matrilineal system among certain indigenous groups in Indonesia. In their work to formalise customary law, experts like Sally Engle Merry stress the need to mediate between global and local norms in order to save culturally significant yet human rights compliant local norms from extinction (Goodale, 2024).

A difficult but essential process of formalisation is underway in Indonesia between the ideas of customary law and human rights (Muhtar, Maranjaya, et al., 2023). In light of the recent constitutional amendment that reaffirmed indigenous peoples' rights, Indonesia, a country rich in cultural variety, acknowledges customary law within its constitutional framework. This demonstrates the acknowledgement of customary law as a crucial tool for communal government and as a component of national identity. Conflicts between customary law and international human rights principles, such as those pertaining to gender equality or children's rights, might make integration more difficult. Conversation and legislation that incorporates customary law into the national legal system without lowering human rights standards are common ways to resolve problems between human rights and customary norms. On the other hand, Sharia principles serve as the primary legal foundation of Oman, where customary law and human rights coexist. The formalisation of customary law must be in harmony with wider interpretations of Sharia, which often limit specific customary activities that may not be in line with Sharia principles, even if Sharia does uphold certain customary ideas (Nikolaus Siegfried, 2000). Here we see the fine line that exists between conformity to established religious principles and reverence for local customs. Further evidence of the Sultan's stranglehold over the legal system, particularly its treatment of human rights and customary law, is the concentration of legislative, executive, and judicial authority in his hands.

The international community has noted that Oman has significant difficulties in safeguarding basic freedoms like assembly, association, and speech in the country's approach to human rights. Civil and political liberties are delicate subjects that the government actively monitors, notwithstanding efforts at modernization and growth, such as those implemented by Sultan Qaboos (who reigned from 1970 to 2020) (Alkhussi et al., 2019). As an example of the constraints on free speech, it is absolutely forbidden to criticise the Sultan. Human Rights Watch and Freedom House have found that human rights in Oman still have a long way to go, despite some progress (Human Rights Watch Submission to the Universal Periodic Review of Oman | Human Rights Watch, 2020). Land rights, marriage, inheritance, and communal institutions are often impacted by customary law in Indonesia, which differs substantially among ethnic groups and regions.
When traditional practices run counter to human rights standards, such as gender inequality in inheritance or land ownership, it becomes difficult for the state to implement changes without eradicating the cultural values that uphold these traditional rules. One example of how Indonesia has sought to reconcile these divergences is through the inclusion of indigenous peoples’ rights in the 1945 Constitution of the Unitary State of the Republic of Indonesia, as well as through other constitutional amendments and more inclusive laws that seek to integrate human rights with traditional principles.

Oman, on the other hand, takes a different tack by incorporating Sharia law into customary law; there, customary law must conform to officially recognised Islamic norms. This does allow for certain local laws and customs, such as dispute settlement and resource management, but these are severely constrained if they go against more literal interpretations of Sharia. There is a great deal of centralised control by the Omani government over all political and legal matters, including the incorporation of customary law into the national legal system. Despite Oman's progress towards modernization—including the adoption of a constitution defining fundamental rights—Sharia doctrines continue to cast a shadow on customary law diverse political and legal systems, as well as foreign influences on local traditions, have led Indonesia and Oman to adopt diverse approaches to the problem of reconciling customary law with international human rights norms.

As a democratic nation with a diverse population, Indonesia has proactively amended its constitution and passed new laws to incorporate international human rights norms into its legal system (Suwito et al., 2023). To achieve this goal of bringing customary law into line with human rights concepts like equality and justice, this strategy calls for increased openness in law enforcement and more community involvement in the legislative process (Rs et al., 2023). Indonesia has taken an active role in promoting indigenous peoples’ rights by signing a number of UN human rights accords that call on all nations to uphold universal principles in their own legal systems and policymaking.

In contrast, Oman takes a more traditional stance when it comes to integrating Sharia law with customary law and international human rights norms. Traditional customs that do not conform to rigid interpretations of Sharia are often curtailed, notwithstanding the Sultanate's advancements in modernising the state and its laws. By implementing changes like making the court system more transparent and better managing human rights complaints, Oman has also sought to enhance its worldwide reputation when it comes to human rights. Nevertheless, the government continues to carefully examine civil rights, including freedom of speech, and interprets international human rights norms through the prism of more stringent domestic legislation.

Recognising and respecting customary law within boundaries that do not violate human rights is an important part of this effort, and both nations are under pressure from the international community and human rights advocacy organisations to do more to preserve and promote human rights. Adapting international standards to local social, cultural, and religious settings is a problem that demands a careful and inclusive approach. In their respective national legal systems, Indonesia and Oman show how traditional
norms and global standards might interact with the difficulty of harmonising customary law with international human rights principles. As part of its dedication to democracy and pluralism, Indonesia aims to bring together its diverse customary law system with contemporary human rights concepts via legislative discourse and community engagement. In Oman, the prevalent Islamic traditions place constraints on modernization and human rights, which are met by a more conservative approach to integrating common law inside the Sharia framework.

The two nations’ experiences in balancing international demands with domestic pressures teach us a lot about the challenges and opportunities of balancing customary law with human rights. A flexible and responsive strategy that values cultural diversity while also defending human rights at all levels is required to navigate this process. It is also necessary to integrate Islamic principles with the needs and interest of the local community (Irma Suryani, 2023). Both Indonesia and Oman are making meaningful contributions to global dialogues on domestic reform and the role of customary law in contemporary society by maintaining their participation in these dialogues and working to reconcile these concepts with universally acknowledged human rights principles.

**Technical and Institutional Challenges Faced in Documentation, Legislation, and Application of Customary Law in the National Justice Systems of Indonesia and Oman**

Concerning customary law, the recording, codification, and application of customary law within the national judicial systems of Oman and Indonesia are fraught with difficulty. Both nations are working to incorporate their different legal systems with their customary legal practices, which are often oral traditions handed down through many generations without writing. On top of being difficult from an administrative and technological standpoint, this procedure also brings to light more fundamental questions about the realisation of justice in a society that has traditionally depended on different customary norms and regulations.

Furthermore, due to the country’s ethnic and cultural variety, Indonesia has very complicated issues when it comes to recording and enacting customary law. Land usage, family law, and dispute resolution are just a few areas where Indonesia's diverse customary law comes into play, thanks to the country’s more than 17,000 islands and hundreds of ethnic groups.

Problems in describing regulations that are often situational and contextual, a lack of funding, and restricted access to rural areas are common obstacles to documenting these laws (Maria Farida Indrati Soeprapto, 1998). To add to that, local sensitivities must be considered by customary law legislation inside the national legal framework to make sure it complies with the constitution and human rights norms both at home and abroad.

Similar but distinct difficulties in recording and incorporating customary law exist in Oman. In a Sharia-dominated absolute monarchy, the incorporation of customary law often requires a rigorous interpretation of Sharia law. Finding a middle ground between
national laws based on Sharia and customary law may be challenging, particularly in rural regions and among specific tribes. Here, we face obstacles such as religious organisations’ reluctance to reform and the difficulty of codifying long-established customary law into a uniform and all-encompassing body of legislation.

Institutions in charge of customary law in both nations often face capacity issues and a lack of specialised expertise when it comes to administering and applying customary law within the larger court system. Because of this, there has to be more of an effort to teach and develop capacity so that those who are responsible for applying customary law have both the legal knowledge and a thorough grasp of the traditions involved. Indigenous communities face a social justice threat if these issues are not resolved in a fair and equitable manner within national judicial systems. The following table makes it more apparent:

<table>
<thead>
<tr>
<th>Technical and Institutional Challenges</th>
<th>Indonesia</th>
<th>Oman</th>
</tr>
</thead>
<tbody>
<tr>
<td>Documentation</td>
<td>Information about customary law procedures is difficult to acquire and organise due to cultural and ethnic variety.</td>
<td>Oman has comparable difficulties to Indonesia due to its large ethnic and cultural diversity.</td>
</tr>
<tr>
<td>Legislation</td>
<td>Harmonizing customary law with national law requires a complex and time-consuming legislative process.</td>
<td>Integration of customary law within the Sharia legal framework requires consistency with institutionalized religious interpretations.</td>
</tr>
<tr>
<td>Application</td>
<td>Local implementation of customary law continues to face challenges owing to misunderstandings and opposition.</td>
<td>The preponderance of Sharia law and stringent governmental regulation of the legal system often impede the implementation of customary law.</td>
</tr>
</tbody>
</table>

Cultural and ethnic diversity in Indonesia has resulted in a wide range of customary law practices, which poses a significant difficulty to documenting customary law in the nation. Land rights and conflict resolution are two areas where indigenous Papuan groups rely on customary law. However, thorough recording is typically challenging due to the dispersed nature of indigenous groups throughout inaccessible regions. Another issue that arises in legislation is the disparity between national law and customary law. It is not uncommon
for legal reforms to be lengthy and contentious when attempting to harmonise customary law with national law. For instance, there has been much back-and-forth on how to update the Agrarian Law to better protect private property rights and those of indigenous peoples.

Because Sharia law is so preeminent in Oman's legal system, applying customary law presents more of a hurdle. Many parts of life are explicitly governed by Sharia law, including the family, inheritance, and the court. Consequently, conformity with established religious interpretations is necessary for the incorporation of customary law into the Sharia legal system. When it comes to conflict resolution, for instance, Sharia law and customary law may disagree on the best practices and consequences. Strict governmental control of the legal system, which tends to prioritise formal law, might hinder the implementation of customary law when conflict emerges.

There are substantial obstacles to the documentation of customary law in both nations because of the difficulty in accessing and comprehending customary practices, which are often local and unwritten. For instance, Papua and the Maluku islands' customary law documentation projects face significant challenges owing to infrastructural and geographical limitations in Indonesia. In a similar vein, government entities in Oman have challenges while trying to access indigenous people residing in rural or desert regions in order to collect and record customary law. Making inclusive policies and enforcing laws that are just for indigenous peoples are both made more difficult by these documentation issues.

Complexities including a number of cultural, political, and legal issues manifest in the institutional and technological obstacles in customary law recording, legislation, and implementation in Oman and Indonesia. The cultural and geographic variety of Indonesia poses substantial obstacles when it comes to documentation. Comprehensive documentation of customary law practices is challenging due to the dispersed nature of indigenous populations throughout inaccessible interior regions and islands. Furthermore, due to the vast differences in the interpretation and implementation of customary law from one community to another, the documentation process is further complicated by the fact that customary law is often oral and unwritten. This causes a chasm to open up between national law and customary law, necessitating a protracted and often contentious legislative procedure to close.

Sharia law's hegemony and the government's stranglehold on the judicial system, in contrast, are more central to the difficulties in Oman. Consistency with institutionalised religious interpretations is necessary for the absorption of customary law into the Sharia legal system. However, when customary law disagrees with stricter Sharia precepts, its area of operation is sometimes limited. Judicial judgements often favour formal laws governed by the government over more local and traditional customary law, which impacts the implementation of customary law when the government has a strong hand in the judicial process.
An inclusive strategy that includes indigenous populations is essential for overcoming this obstacle. Efforts to include indigenous peoples’ perspectives into legal documentation, policymaking, and the application of customary law have recently taken centre stage in Indonesia. The government can better comprehend indigenous peoples’ concerns and goals, and back initiatives to record and acknowledge customary laws more thoroughly, via continuous communication and engagement with indigenous communities. Addressing the obstacles of applying customary law also requires judicial reform that promotes justice and greater access for indigenous peoples.

The Sultanate of Oman should follow suit and do the same by increasing the representation of indigenous people in government and the legal system. In order to establish a mutual understanding on how to apply customary law within the context of Sharia law, the government might encourage more transparent communication between ulama, traditional leaders, and government agencies. Another important step in guaranteeing the recognition and effective protection of indigenous peoples’ rights is expanding their access to legal services and the judicial system.

Overcoming institutional and technological obstacles in the documentation, legislation, and implementation of customary law in Oman and Indonesia requires a comprehensive strategy centred on indigenous involvement. Both nations can do more to ensure indigenous peoples’ rights are protected and that justice is served by their legal systems if they work together more closely with indigenous peoples and other interested parties.

4. Conclusion

When it comes to the recording, regulation, and implementation of customary law, Indonesia and Oman have comparable but distinct issues within the framework of the intricate interaction between customary law and human rights concepts. Inconsistencies and gaps persist despite attempts to incorporate customary law into national legal systems. The only way to tackle these problems head-on is with a community-based strategy that includes indigenous peoples in both the policymaking and legal procedures. Furthermore, stakeholders should engage in open and inclusive discourse to further the harmonisation of formal law with customary law. By doing so, both Oman and Indonesia may take practical measures to include human rights concepts into their national legal frameworks while also acknowledging and protecting customary law.


