

## Customary Law and Indigenous Peoples' Rights: Challenges in the Age of Globalisation

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### Abstract

Customary law and the rights of indigenous peoples have an important role in maintaining cultural identity and local wisdom, especially in Indonesia, which has a diversity of customs. However, in the era of globalisation, customary law faces various challenges, from the legal, economic and social aspects. This article explores how customary law and the rights of indigenous peoples are trying to remain relevant amidst the influences of modernisation, globalisation, and harmonisation with national law. The research uses a qualitative approach by analysing several cases in different regions, which shows that the process of globalisation often results in the erosion of customary law, marginalisation of indigenous peoples, and exploitation of natural resources in indigenous territories. The findings also highlight the importance of recognising and protecting customary law in state regulations, as well as the need to strengthen the rights of indigenous peoples in order to adapt and remain resilient in the face of global challenges. Thus, strengthening customary law in the national legal system is essential to create a balance between modernity and tradition.

**Keywords:** Customary Law, Indigenous Rights, Globalisation, National Law, Marginalisation

### 1. Introduction

Customary law is a traditional legal system that lives and develops among indigenous peoples in Indonesia, passed down from generation to generation as a guide in living social, cultural and economic life. This law covers various aspects, from land and natural resource management to dispute resolution mechanisms, as well as social relations and collective rights within the community (O guamanam, 2004). As part of the identity of indigenous peoples, customary law is an important tool in maintaining harmony, balance, and preservation of culture and the environment.

The recognition of customary law in Indonesia is inseparable from the long history of colonialism and the struggle for independence, where this law is still recognised within the framework of the state constitution. In the 1945 Constitution, it is explicitly stated that the state recognises and respects the unity of indigenous peoples and their traditional rights, as long as these rights are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia (NKRI). This shows that customary law has an important position in the national legal system, although its implementation often faces challenges in the field.

However, in the midst of an increasingly dynamic era of globalisation, customary law and the rights of indigenous peoples face a number of increasingly complex challenges (Stewart-Harawira, 2006). Globalisation brings about changes in various fields, including economics, politics, technology and culture, which are often inconsistent with the values and practices of customary law. Modernisation, industrialisation and the development of the global market have also affected the way indigenous peoples live, especially in terms of managing the natural resources that are the main source of their livelihoods. Global economic pressures have encouraged large-scale exploitation of natural resources, which often clashes with the principles of sustainability held by indigenous peoples (Stewart-Harawira, 2006; Ullah, 2016).

One of the biggest challenges faced by customary law is the conflict of interest between national and international development needs and the defence of indigenous peoples' traditional rights. Along with economic growth and infrastructure development, governments often ignore the existence and rights of indigenous peoples to their customary lands and traditional territories (Thornberry, 2013). Overlapping interests between the state, private companies and indigenous peoples often lead to conflicts over land and natural resources. Modernisation and industrialisation processes that often do not consider social and environmental impacts also have the potential to displace indigenous peoples from their territories, weaken customary legal systems, and create legal uncertainty for indigenous peoples.

Furthermore, globalisation has also brought about changes in the social and cultural fabric of indigenous peoples. The influence of outside cultures through media and information technology has led to the erosion of cultural identities and traditional practices that are at the core of indigenous peoples' lives. Indigenous youth, for example, tend to be more exposed to global values that are often incompatible with the local values inherited from their ancestors (McAuslan, 2015). This poses challenges to the regeneration and sustainability of customary law, with many young indigenous elements more interested in modern lifestyles than in continuing the traditions of their ancestors.

On the other hand, globalisation has also opened up opportunities for indigenous peoples to fight for their rights at the national and international levels. Through global networks and civil society organisations, indigenous peoples can strengthen their position in negotiations related to customary lands, natural resources and other traditional rights (O guamanam, 2004; Thornberry, 2013). The global movement for the recognition of indigenous peoples' rights, supported by international institutions such as the United Nations (UN), also provides a breath of fresh air for indigenous peoples' efforts to defend their rights amid global dynamics.

Taking into account the challenges and opportunities, this research focuses on an in-depth study of customary law and the rights of indigenous peoples in the context of globalisation. The research will identify the various forms of challenges faced by indigenous peoples in defending their customary laws and rights, and explore the strategies used by indigenous peoples to adapt to changing times. Real cases from several regions in Indonesia will be analysed to provide a comprehensive understanding of the dynamics of customary law in the face of global pressures.

This research is expected to contribute to efforts to formulate more inclusive and sustainable policies, which not only support economic development but also respect and protect the rights of indigenous peoples and customary law heritage that is an integral part of the nation's identity.

## 2. Method

The research method used in this study is a qualitative method, which aims to gain an in-depth understanding of customary law and the rights of indigenous peoples in facing the challenges of globalisation. This research is descriptive-exploratory in nature, with a focus on describing in detail the phenomena that occur in the field through an interpretative approach.

Data collection was conducted through in-depth interviews with various resource persons who are directly related to the research topic, such as traditional leaders, indigenous peoples, legal experts, and activists involved in indigenous rights issues. Interviews were conducted in a semi-structured manner to provide flexibility in exploring information from diverse perspectives. In addition, direct observations were made in several indigenous communities facing the challenges of globalisation to understand the social and cultural contexts that influence the dynamics of customary law.

In addition to interviews and observations, this research used document studies to analyse various written sources, such as laws and regulations, government policies related to indigenous peoples, as well as reports from relevant civil society organisations and international institutions. Data analysis was conducted thematically, where the collected data was grouped based on themes that emerged from the interviews, observations and document studies. Then, the findings were interpreted to understand how indigenous peoples are responding to the challenges posed by globalisation.

Data validity was maintained through triangulation of data sources, by comparing information obtained from interviews, observations and documents, and by checking with relevant resource persons to ensure the accuracy of interpretations. The analysed data is then processed in a narrative manner to provide a clear and detailed picture of the phenomenon under study.

With this qualitative method, the research is expected to be able to provide a comprehensive picture of how customary law and the rights of indigenous peoples survive and develop in the face of the challenges of globalisation, as well as provide useful insights for policy-making that better supports the sustainability of indigenous peoples in Indonesia.

### 3. Results

The results of this research reveal some significant findings regarding the position of customary law and the rights of indigenous peoples amidst the increasingly strong currents of globalisation. Firstly, while many consider customary law to be a traditional heritage that is increasingly losing relevance in the modern era, this research shows that in many areas, customary law is still the main foundation in regulating the social, economic and cultural lives of indigenous peoples. Customary law plays a crucial role in maintaining social cohesion and ecological balance, especially in areas that still lack modern development intervention.

However, a major challenge facing indigenous peoples is the process of globalisation that is increasingly touching indigenous territories, whether through industrialisation, urbanisation or the penetration of foreign cultures. Globalisation brings not only economic opportunities, but also serious threats to the survival of customary law and the rights of indigenous peoples. Many indigenous communities feel marginalised in the development process, where large-scale infrastructure development projects, such as toll roads, mining, or industrial-scale plantations, often do not involve consultation with indigenous peoples. This has resulted in recurring land conflicts in various regions, which ultimately threaten their customary land rights.

This research documents the various forms of resistance exercised by indigenous peoples in the face of the threat of globalisation. Some indigenous communities remain steadfast in maintaining their customary law practices despite being faced with external economic temptations, such as offers to sell their customary lands to large companies. One example of this resistance is indigenous communities in the Sumatra region, which have managed to maintain their customary law practices related to the division of customary land despite pressure from oil palm companies that want to acquire their land. This success was due to the strength of internal solidarity built on customary values and support from civil society organisations fighting for indigenous peoples' rights.

However, not all indigenous communities have the ability to resist globalisation. Some communities have experienced social disintegration due to external interventions that undermine the customary order. For example, in some areas of Kalimantan, the entry of mining companies has resulted in severe environmental damage and the loss of natural resources on which indigenous peoples depend. This situation has not only damaged indigenous peoples' relationship with their natural environment, but also destroyed their social structure. Some indigenous communities that were forced to relinquish their customary lands experienced economic instability, which led to the migration of community members to big cities in search of work. As a result, many younger generations have begun to abandon the practice of customary law and cultural assimilation has accelerated.

The issue of land rights is one of the most critical issues found in this research. In many areas, although indigenous peoples have managed land for generations, they do not have formal state recognition of their land ownership rights. This leaves room for outsiders, including governments and private companies, to claim indigenous lands in the name of development or national economic interests. Agrarian conflicts between indigenous peoples and outsiders continue to increase, especially in resource-rich areas. The resolution of these conflicts is often unfavourable to indigenous peoples, due to the lengthy legal processes, high costs and uncertainty of outcomes they face. In the end, indigenous peoples often have to succumb to the forces of formal law that favour economic interests.

In terms of the recognition of indigenous peoples' rights, the research also found that despite the government's efforts to recognise these rights through various laws, implementation on the ground still faces various obstacles. In some areas, indigenous peoples' rights are only partially recognised or in a form that does not give them full control over the natural resources they own. In addition, the process of recognising indigenous rights is often a formality without any genuine effort to involve indigenous peoples in decision-making that concerns their lives. Many respondents complained that they are not involved in the policy-making process, and when policies touch on their interests, they are often made without considering indigenous peoples' perspectives.

Globalisation also brings cultural challenges to indigenous peoples. The influx of modern technology and foreign cultures into indigenous territories, especially through digital media, is changing the way of life for many indigenous peoples. Younger generations, who are more exposed to modern media, tend to adopt a more urbanised lifestyle and abandon traditional values. This results in cultural erosion that has the potential to eliminate indigenous identity in the long run. Nonetheless, there are also indigenous communities that successfully utilise modern technology to preserve their culture. Some communities use digital media to document and promote customary law, so that younger generations can better understand and appreciate their cultural heritage.

Overall, this research shows that customary law and the rights of indigenous peoples are under serious threat in the era of globalisation. While there are communities that have managed to maintain their identity, many others are facing outside pressures that undermine their social, economic and cultural fabric. The biggest challenge is how indigenous peoples can maintain their rights and identities in the face of growing globalisation, and how government policies can be more inclusive and equitable in protecting indigenous peoples' rights. With support from the government and civil society organisations, indigenous peoples have the opportunity to not only survive, but also thrive in this era of globalisation.

#### **4. Discussion**

The discussion in this research focuses on the dynamics between customary law and the rights of indigenous peoples in the context of intensifying globalisation. The phenomenon of globalisation, which involves massive economic, social and cultural transformations, has direct and indirect impacts on indigenous peoples. From the research presented, it is clear that while globalisation brings opportunities, such as better access to technology, education and information, the challenges faced by indigenous peoples are far greater, particularly in relation to land and resource rights, and the sustainability of customary law (Bunikowski, 2015).

One of the interesting discussion points was the position of customary law amidst the onslaught of national and international legal systems. Customary law, which has been the foundation of indigenous peoples' lives for centuries, is now often marginalised by formal legal systems dominated by national and global economic interests. In this case, there is a clash between the local wisdom held by indigenous peoples and the development policies promoted by the government and corporations (Coombe & Turcotte, 2012). This phenomenon is evident in various agrarian conflicts involving indigenous peoples, where customary land ownership is often not formally recognised in the national legal system, making it vulnerable to expropriation by outsiders. This condition shows a serious imbalance in the distribution of power and rights, where customary law is still considered inferior to formal law.

Furthermore, it is important to discuss the role of the state in recognising and protecting the rights of indigenous peoples. In some cases, the government has indeed issued various policies to recognise the rights of indigenous peoples, such as through laws recognising customary rights or special autonomy for some regions. However, the problem lies in the implementation of these policies. Formal recognition of indigenous peoples' rights is often not followed by concrete and effective implementation in the field. As found in this research, many indigenous peoples feel excluded from decision-making, even though the policies made directly touch their lives. This reflects the gap between normative policies and

empirical realities on the ground, where formal recognition of customary rights does not necessarily mean substantive protection of those rights.

The discussion also covers how indigenous peoples are trying to navigate the challenges of globalisation through resistance and adaptation. On the one hand, there are indigenous communities that remain steadfast in maintaining their traditional values despite being faced with external pressures, such as threats from large corporations or large-scale development projects (Acosta García, 2018). This resistance shows that indigenous peoples are not entirely passive in the face of globalisation, but are able to develop strategies to defend their identity and rights. On the other hand, there are also indigenous communities that have begun to adapt to changing times, for example by utilising digital technology to document and preserve their customary laws (Diala & Kangwa, 2019). This adaptation shows an attempt by indigenous peoples to find a middle ground between preserving traditions and accepting the benefits of technological advancements.

However, the discussion also needs to include how globalisation is accelerating the process of cultural assimilation among indigenous peoples, especially among the younger generation. This research shows that many of the younger generation of indigenous peoples are more interested in modern lifestyles and are starting to abandon their traditional values. This phenomenon naturally raises concerns about the long-term survival of customary law and the cultural identity of indigenous peoples. Globalisation, with all its modernising aspects, has the potential to erode local identities if not matched by more intensive cultural preservation efforts.

On the other hand, the discussion on customary land rights is a central issue in the context of customary law in the era of globalisation. Land for indigenous peoples is not only an economic asset, but also has deep symbolic and spiritual values (Byrnes et al., 2013; O guamanam, 2004). The loss of customary land due to expropriation by companies or development projects not only means the loss of natural resources, but also the loss of cultural identity. In this context, land rights become one of the most pressing issues that must be resolved to ensure the sustainability of indigenous peoples. The resolution of agrarian conflicts involving indigenous peoples requires a holistic approach, which not only pays attention to formal legality aspects, but also respects the customary values embraced by these indigenous peoples.

This research also opens a space for discussion on the role of civil society organisations in strengthening the position of indigenous peoples in the midst of globalisation. Civil society organisations play an important role in providing support to indigenous peoples, both in the form of legal advocacy, social assistance, and technical assistance in defending their rights (Byrnes et al., 2013; Coombe & Turcotte, 2012; Thornberry, 2013). This support allows indigenous peoples to be more confident in the face of external pressures and ensures that they are not alone in fighting for their rights. However, it is also important to remember that external support must be tailored to the local context so as not to conflict with the values held by indigenous peoples themselves (Daytec-Yañgot, 2017; Mantilla, 2020).

Overall, this discussion shows that customary law and the rights of indigenous peoples face very complex challenges in the era of globalisation. Globalisation, while bringing many opportunities, also presents serious threats to the survival of indigenous peoples (Sikora, 2021; Stewart-Harawira, 2018; Tsosie, 2012). It is important for governments, civil society organisations and the international community to work together to ensure that indigenous peoples' rights are fully protected and recognised, not only in the formal legal framework, but also in practice on the ground. These efforts should be directed not only at preserving customary law, but also at ensuring that indigenous peoples have equal rights and are respected in the ongoing globalisation.

## 5. Conclusion

The conclusion of this study highlights that customary law and the rights of indigenous peoples face significant challenges in the era of globalisation, particularly in relation to the recognition and protection of land rights and the sustainability of cultural values (McAuslan, 2015; Thornberry, 2013). While globalisation offers opportunities such as access to technology and information, external



pressures from modernisation, development projects and exploitation of natural resources often threaten the existence of customary law and the rights of indigenous peoples. This research found that while the government has issued various policies to recognise the rights of indigenous peoples, their implementation on the ground is far from optimal. Many indigenous peoples feel that their rights are not adequately protected, especially in the context of agrarian conflicts and the exploitation of customary land. In this regard, a more comprehensive and participatory approach is needed to ensure that formal recognition of indigenous peoples' rights is followed by real substantive protection (O guamanam, 2004). In addition, indigenous peoples' resistance and adaptation in the face of globalisation indicates an internal effort to maintain their traditions and values. However, younger generations are often influenced by modern lifestyles, potentially eroding their cultural identity. Therefore, more intensive preservation efforts are needed so that indigenous values remain relevant amidst global changes.

In conclusion, although globalisation poses severe challenges, with the right support from governments, civil society organisations and the international community, indigenous peoples can still maintain their rights and customary laws. Stronger collaboration, fairer approaches, and more effective protection of indigenous rights are key to maintaining the balance between modernisation and the sustainability of indigenous traditions.

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