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Conceptual Reconstruction of Legal Diversity in the National Legal System as an Effort to Realize Substantive Justice in a Multicultural Society

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Abstract: *This study aims to reconstruct the conceptualization of legal diversity in the national legal system as an effort to realize substantive justice in Indonesia's multicultural society, however, in legislative and judicial practice, the legal centralism paradigm and positivistic approach still dominate, which places state law as the sole normative authority. The study employs a normative juridical method, utilizing a statutory and conceptual approach, to analyze the normative construction of legal pluralism, the problems of norm conflict and regulatory disharmony, and the inconsistency in the recognition of customary law and religious law in judicial practice. The study results indicate that the recognition of legal diversity remains sectoral and conditional, and as a result, it has been unable to guarantee substantive justice for vulnerable groups. This research proposes a model of constitutional legal pluralism based on the Pancasila Rule of Law, which positions the constitution as the meeting point for harmonizing state and non-state law and restructuring the relationship between legal certainty and substantive justice within the national legal system.*

Keywords: *Legal diversity, legal pluralism, substantive justice*

Introduction

Indonesia as a nation-state is built on the undeniable reality of social diversity, both in terms of ethnicity, religion, language, and value systems that exist in society. This diversity is not only an anthropological fact, but also a legal fact, because from the beginning (Muhammadun, 2025). Additionally, Article 28I paragraph (3) of the 1945 Constitution emphasizes respect for the rights and cultural identity of traditional tribes.The presence of religious law and customary law in social practice, and state law runs simultaneously and often intersects. In this context, the concept of legal pluralism becomes relevant to explain that the legal system is never singular (Djunatan, 2023). The idea of living law, as introduced by Eugen Ehrlich, shows that laws that live in society are often more effective in regulating social behavior than positive laws formed by the state (Zarianto, 2025). Thus, legal diversity in Indonesia is an objective reality rooted in social and constitutional structures, not merely an academic construct.

However, the integration of legal diversity into the national legal system faces serious structural challenges. Although the constitution recognizes plurality, the formation of legislation is still dominated by a centralistic paradigm that positions state law as the sole source of normative legitimacy (Sodiqin & Al-Robin, 2021). The principle of the hierarchy of laws and regulations, as stipulated in Law Number 12 of 2011, is often understood rigidly, thus positioning customary or religious legal norms as subordinate without a clear integration mechanism (Rikardo, Purwadini, & Maharany, 2024). As a result, conflicts between state and non-state laws are inevitable, particularly in issues of land, marriage, and natural resource management (Kristiani, 2020). This regulatory disharmony is exacerbated by inconsistent court decisions, which sometimes recognize customary law as living law but at other times ignore it in the name of formal legal certainty (Mayasari, 2017). This situation indicates the absence of an established conceptual model for managing legal diversity systematically.

From a theoretical perspective, the dominance of positivistic approaches that emphasize legal centralism, as criticized by John Griffiths, has limited the ability of the national legal system to respond to the complexities of a multicultural society (Sukmana, Susilawati, Chairijah, Heriyanto, & Wuisang, 2024). Formal legal certainty is often positioned as the highest value, even though Article 28D paragraph (1) of the 1945 Constitution guarantees not only legal certainty but also protection and fair treatment. It is where the concept of substantive justice gains relevance as a critique of formalistic legalism (Rahmanto, 2025). John Rawls's thinking on justice as fairness emphasizes that justice must be measured by its impact on the most vulnerable groups (Triyudiana, 2024). In the Indonesian context, an overly formal approach often leads to the marginalization of indigenous communities or religious minority groups because positive law does not fully accommodate the normative systems they adhere to (Nugroho, 2022). Therefore, substantive justice demands more meaningful recognition of the plurality of legal systems.

The conceptual weakness in the current regulation of legal diversity is evident in the sectoral and partial nature of recognition. Recognition of indigenous legal communities in Article 18B paragraph (2) of the 1945 Constitution is limited by the phrase "as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia," which, in practice, is often interpreted restrictively by legislators and law enforcement officials (Bayo, Wijaya, & Hadi, 2023). As a result, a gap exists between normative implementation at the level of laws and administrative policies and constitutional norms. The lack of a thorough theoretical foundation is reflected in this contradiction capable of bridging the relationship between state and non-state law in a coherent, harmonized design. Methodologically, this situation creates a research gap because there is no conceptual formulation that systematically integrates legal diversity into the architecture of a constitutionally based national legal system.

The urgency of conceptual reconstruction of legal diversity is growing in light of national legal systems being impacted by globalization and the growth of transnational law. A flexible and inclusive legal system is necessary due to the interaction between national and international law, especially as it relates to human rights. Article 1 of the 1945 Constitution, paragraph (3) states that Indonesia must be understood as a legal state that

respects social justice rather than just a formal rechtsstaat, as mandated in the Preamble to the 1945 Constitution (Aituru & Andrias, 2023). Within the framework of the Pancasila State of Law, the management of legal diversity is not a threat to unity, but rather a prerequisite for the legitimacy of the law itself (Purwono, 2024). Conceptual reconstruction must formulate a constitutionally based integrative model capable of harmonizing customary law, religious law, and state law without negating the normative autonomy of each.

Based on this overall description, the fundamental problems that arise are how the construction of legal diversity in the current national legal system is understood and operationalized, why this construction has not been able to realize substantive justice for a multicultural society, and what the ideal conceptual reconstruction model is so that the recognition of legal pluralism does not stop at the constitutional declarative level. These questions are not only normative but also philosophical and sociological, as they concern the relationship between the state, society, and law as an instrument of justice. Therefore, this research aims to formulate a new conceptual framework that positions legal diversity as an integral element of the national legal system to ensure the realization of substantive justice as guaranteed by the constitution.

Methodology

The study of legal norms as a systematic framework made up of laws and regulations, court rulings, and legal doctrines is the focus of this research, which employs a normative juridical research technique, by placing law as an autonomous norm but still analyzed within its philosophical and conceptual framework. The approach used includes a statute approach, namely by systematically examining constitutional provisions such as, in addition to a number of laws and regulations pertaining to the acceptance of indigenous legal communities and legal pluralism, to determine uniformity, harmonization, and possible conflicts of norms in the country's legal system; and a conceptual approach, namely by examining the doctrines, theories, and thoughts of scholars regarding legal pluralism, legal centralism, living law, and substantive justice to build theoretical arguments and formulate a conceptual reconstruction of legal diversity that is coherent and constitutionally based.

Result and Discussion

Normative Construction of Legal Diversity in the National Legal System

The normative construction of legal diversity in the Indonesian national legal system is rooted in constitutional foundations that explicitly and implicitly recognize the plurality of legal systems. The 1945 Constitution's Article 1, Paragraph 3 states that Indonesia is a state of law, which in modern doctrine is not only interpreted as a state subject to formal law, but also as a state that guarantees justice, protection of human rights, and respect for values that live in society (Hidayat, 2017), must be carefully read in conjunction with the principle of the rule of law (Hadi, 2022). Furthermore, According to Article 28I, paragraph 3 of the 1945 Constitution, the rights and cultural identities of indigenous communities are respected in accordance with the progress of civilization and the times (Nababan & Anggusti, 2025). Meanwhile, Article 28D paragraph (1) of the 1945 Constitution guarantees fair legal certainty, which contains a dimension of substantive justice. A systematic reading

of these norms demonstrates that legal pluralism is not an anomaly, but rather an inherent part of Indonesia's constitutional design.

Legislation governing communities governed by customary law exhibits broad normative recognition in a number of legal domains. For instance, Law Number 5 of 1960's Article 3 on Basic Agrarian Regulations acknowledges customary rights and comparable rights as long as they are actual and their application does not contradict with the interests of the country. Customary villages may be recognized as governmental bodies based on ancestral rights under the Villages Law Number 6 of 2014. Law Number 41 of 1999, as amended, permits the forestry industry to recognize customary forests upon the establishment of a community regulated by customary law (Rubi, Maulana, Yulrisnanda, Saripudin, & Syamsudin, 2024). However, these regulatory patterns tend to be sectoral and conditional, as recognition often relies on complex administrative procedures. It suggests that, despite normative recognition, customary law remains within the framework of state control.

In legislative and judicial practice, there are sometimes discordant dynamics between customary law, religious law, and state law. According to Law Number 1 of 1974 regulating Marriage, Article 2 paragraph (1) permits religious law as the foundation for a lawful marriage, but still places it within the framework of state administration. In judicial practice, recognition of customary law or religious law often depends on the interpretation of judges, which, on the one hand, can strengthen legal pluralism, but on the other hand, creates inconsistent decisions (Setyowati, 2023). In this context, the theory of living law proposed by Eugen Ehrlich is relevant in explaining that living law in society often operates alongside state law. However, the dominance of state law in the legislative process indicates that integration between legal systems has not yet been established in a comprehensive normative design.

An analysis of the hierarchy of norms as stipulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation shows that formally recognized sources of law are limited to certain types and levels of regulations, ranging from the 1945 Constitution to regional regulations. Within this structure, customary law and religious law are not explicitly placed within this hierarchical structure, so their existence depends on recognition through legislation or court decisions. The implication of this hierarchical structure is the normative subordination of non-state law to state law. However, according to Article 18B paragraph (2) of the 1945 Constitution, recognition of indigenous legal communities has an equal constitutional basis within the framework of constitutional supremacy. This tension demonstrates a conceptual problem in placing non-state law within the pyramidal structure of the national legal system (Rahmasari, Umami, & Gautama, 2023).

A fundamental problem in the normative formulation of legal diversity is the conflict between the idea of legal certainty and the acknowledgment of living law. Although fair legal certainty is guaranteed by Article 28D paragraph (1) of the 1945 Constitution, in reality, legal certainty is frequently understood formally as adherence to written norms. This approach tends to ignore the dynamics of social norms that live and develop in society. However, from the perspective of legal pluralism as put forward by John Griffiths, law is

never singular and always exists in a plural configuration. When state law demands uniformity for certainty, while society upholds customary or religious norms as part of its collective identity, tension arises between legal centralism and legal pluralism (Wibisana, Udjan, & Solfian, 2024). This situation implies the marginalization of local norms if they are not accommodated within the formal system.

Systematically and critically, the normative construction of legal diversity in the Indonesian national legal system demonstrates a duality between constitutional recognition and centralized regulatory practices. On the one hand, the constitution provides strong legitimacy for legal pluralism through Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution; on the other hand, the hierarchical structure of norms and legislative practices still places state law as the sole center of authority (Salam, Suhartono, Nurcahyo, Karim, & Bason, 2024). The imbalance produces uncertainty in implementation and has the potential to hinder the realization of substantive justice. Therefore, mapping this normative construction is important as a basis for further analysis to assess the extent to which the national legal system has truly integrated legal diversity in a coherent and constitutional manner.

Theoretical and Practical Problems in Managing Legal Diversity

The theoretical and practical challenges in managing legal diversity in Indonesia are inextricably linked to the dominant paradigm of legal centralism, which positions the state as the sole source of legitimate legal authority. According to This paradigm is reflected in the evolution of the national legal system, according to Law Number 12 of 2011's Article 7 paragraph (1) regarding the Formation of Legislation, which is based on a hierarchy of statutory rules. Within this framework, law is understood primarily as written norms established by state institutions, thus positioning customary and religious law as social norms that only have binding force if adopted or recognized by statutory regulations. Yet, The 1945 Constitution's Article 18B, paragraph (2) recognizes indigenous legal communities and their customary rights. The tension between this centralistic construction and the constitutional mandate demonstrates an inconsistency between the principle of the rule of law in Article 1 paragraph (3) of the 1945 Constitution and legislative practices that remain oriented toward legal unification and uniformity.

This dominance of legal centralism has given rise to normative conflicts and regulatory disharmony in various sectors. For instance, sectoral policies in forestry, mining, and investment, which are founded on the idea of state control over The 1945 Constitution's Article 33, paragraph (3) on natural resources sometimes clashes with Law Number 5 of 1960's Article 3 on Basic Agrarian Regulations, which recognizes customary rights. Conflicts between indigenous populations and the government or companies frequently result from differences in how the term "governed by the state" is interpreted. This disharmony is exacerbated by regulations that require administrative determination of the existence of indigenous communities before their rights are recognized, making constitutional recognition conditional and bureaucratic. This situation highlights a fragmented regulatory landscape that lacks a single, cohesive design to handle an overlapping legal system.

In judicial practice, the inconsistency in the recognition of customary law and religious law increasingly exposes implementation problems. On the one hand, judges can use a progressive approach by considering existing laws within society as a source of material law, in line with the principle of justice contained in Article 28D paragraph (1) of the 1945 Constitution. However, on the other hand, court decisions often reject the application of customary law on the grounds that it lacks a written normative basis or is deemed to conflict with higher-level laws. The situation creates uncertainty for customary law communities and religious groups in fighting for their rights. This inconsistency reflects the absence of clear conceptual guidelines regarding the position of non-state law within the national legal system, thus leaving judges with a significant amount of discretion.

Theoretically, this problem is also related to the dominance of a positivistic approach that understands law solely as written norms that apply because they are established by a competent authority. The approach tends to ignore the sociological dimension of law as stated in the theory of legal pluralism, which asserts that more than one normative system can apply within a single social space. When a positivistic approach is rigidly applied in a multicultural society, state law has the potential to eliminate local norms that are still alive and effective. In fact, The 1945 Constitution's Article 28I, paragraph 3, upholds traditional communities' rights and cultural identities. Thus, criticism of legal positivism is relevant in demonstrating that formal legal certainty is not always synonymous with justice.

The impact of these problems is evident in the obstacles to the realization of substantive justice and the protection of vulnerable groups. Indigenous communities, religious minorities, and local communities often face structural barriers in obtaining recognition of their rights to land, natural resources, and cultural practices. When state law is applied without considering the social context and local values, what results is an imbalance in power relations that disadvantages politically and economically weaker groups, requires non-discriminatory treatment and responsiveness to the specific needs of certain groups. Theoretical and practical problems in managing legal diversity indicate a substantial discrepancy between the national judicial system's application of constitutional principles. Although the 1945 Constitution's Article 18B paragraph (2) and Article 28I paragraph (3) offer a foundation for acknowledging legal pluralism, legislative and judicial practices are still dominated by a centralistic and positivistic paradigm that places state law as the sole authority. Regulatory disharmony, inconsistent decisions, and inadequate protection for vulnerable groups reflect the urgency of conceptual reconstruction to integrate legal pluralism within the framework of a just state based on the rule of law. Without such reconstruction, legal diversity will remain at the constitutional declarative level without effective operational power in realizing substantive justice.

Conceptual Reconstruction of Legal Diversity Based on Substantive Justice in the Pancasila Legal State

The conceptual reconstruction of legal diversity based on substantive justice in a Pancasila-based state, based on law, must begin with a paradigm shift, namely, from a subordinative model to an integrative model between state law and non-state law. This integrative model does not position customary and religious law as inferior norms

dependent entirely on administrative recognition. Within this framework, the state retains its function of regulating and guaranteeing constitutional rights, but does not monopolize the sources of normative legitimacy. Concrete action that can be taken is to formulate norms in laws that explicitly recognize customary and religious law as material sources of law that can be applied directly by judges as long as they do not conflict with the 1945 Constitution and human rights, without requiring complicated recognition procedures.

The conceptualization of normative harmonization in the national legal system requires a more systemic design than mere sectoral recognition. Harmonization cannot be achieved simply through technical synchronization between regulations; it must be built on constitutional principles that place legal pluralism as the basis for the creation of laws. Law Number 12 of 2011 governing the Formation of Legislation must therefore be amended by adding a mandatory legal diversity impact assessment (DIA) in every draft law, particularly those concerning land, natural resources, marriage, and regional government. Another concrete action is to establish national guidelines for harmonizing customary law and state law that can be used as a reference by ministries, regional governments, and judicial institutions to prevent regulatory fragmentation.

Restructuring the relationship between legal certainty and substantive justice is a central aspect of this reconstruction. Article 28D paragraph (1) of the 1945 Constitution guarantees fair legal certainty, so certainty cannot be separated from the dimension of justice. In the reconstructive model, legal certainty is understood as certainty that is responsive to social plurality, not as a uniformity of norms. Concrete actions that can be taken include expanding the space for progressive interpretation in judicial practice by strengthening judge training on legal pluralism and substantive justice, and encouraging the Supreme Court to issue Circulars or Supreme Court Regulations providing guidelines for the application of customary and religious law as living law. It ensures legal certainty is maintained through clear guidelines without sacrificing substantive justice.

The constitutional framework as the basis for reconstruction must be systematically read. The Pancasila Rule of Law cannot be interpreted solely as a formal legal system, but rather as a rule of law that upholds social justice, as mandated by the Preamble to the 1945 Constitution. Therefore, the reconstruction of legal diversity must prioritize the values of social justice and respect for human dignity. Concrete actions that can be taken include incorporating the principle of recognizing legal pluralism into the academic text of each draft law and strengthening the role of the Constitutional Court in conducting judicial reviews of laws that potentially ignore the rights of indigenous peoples and minority groups.

The theoretical implication of this reconstruction is the emergence of a model of constitutional legal pluralism, which positions the constitution as the meeting point for various legal systems existing in society. This model rejects both state absolutism and limitless normative relativism, as all legal systems must remain subject to constitutional values and human rights. Practically, it implies the need for unified protection laws for indigenous peoples that are comprehensive and non-sectoral, eliminating reliance on partial regulations in the agrarian, forestry, or village sectors.

Conceptual reconstruction of legal diversity based on substantive justice demands institutional transformation and legal culture. Reform occurs not only at the normative level but also in administrative and judicial practices. Strategic concrete actions include the establishment of customary-based mediation mechanisms recognized in the judicial system, the integration of national data on indigenous peoples as a basis for public policy, and strengthening local community participation in the legislative process, in line with the principle of transparency as stipulated in Article 5(g) of Law Number 12 of 2011. With these steps, legal diversity is no longer seen as an obstacle to national integration, but rather as a constitutional foundation for realizing substantive justice in a Pancasila State of Law.

Conclusion

However, at the implementation level, it is still dominated by the legal centralism paradigm and a positivistic approach that places state law as the sole normative authority. This condition gives rise to normative conflicts, regulatory disharmony, and inconsistent judicial practices in recognizing customary and religious law as part of the national legal system. As a result, the recognition of legal pluralism often stops at the constitutional declarative level without effective operational power, thus not fully capable of realizing substantive justice for a multicultural society. Therefore, the conceptual reconstruction of legal diversity is an academic and constitutional necessity to reorganize the relationship between legal certainty and substantive justice within the framework of the Pancasila Rule of Law.

In line with these conclusions, it is recommended that lawmakers reformulate legislative policies by making legal pluralism a principle in the creation of laws and rules, such as the amendment of Law Number 12 of 2011 and the drafting of extensive legislation pertaining to the preservation and acknowledgment of indigenous legal communities. Guidelines for applying living law as a source of material law must be strengthened by judicial institutions, particularly the Supreme Court and the Constitutional Court, provided that doing so does not violate human rights or the constitution. To comply with the requirements of Article 18B paragraph (2) of the 1945 Constitution, the government must also establish a systemic normative harmonization mechanism, increase the involvement of indigenous legal communities in the legislative process, and streamline administrative recognition processes. With these steps, legal diversity will not only be recognized normatively but also operationalized concretely to guarantee substantive justice in Indonesia's multicultural society.

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