

LOCAL JUSTICE WITHOUT RECOGNITION: THE CRISIS OF LEGITIMACY OF MARIND CUSTOMARY JUSTICE

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Abstract

Papua customary justice is a vital expression of Indonesia's legal pluralism, serving as a community-based dispute-resolution mechanism grounded in restorative and collective values. This study examines the contemporary dynamics of the Marind customary court in South Papua and explores strategies to strengthen it amid legal modernization. Using an empirical juridical approach supported by document analysis and field observations, the research analyzes the interaction between customary norms and state law. The findings show that the Marind customary court remains socially legitimate and functionally relevant. Yet, its existence is constrained by normative tensions with national criminal law and formal land governance, resulting in legal uncertainty and the marginalization of customary authority. The dominance of oral tradition further increases institutional vulnerability in the context of generational change. To address these challenges, the study proposes integrated strategies, including participatory documentation of customary law, capacity building for customary authorities, and legislative harmonization, to secure formal recognition while preserving indigenous legal values.

Keywords: Customary Courts; Customary Law; Marind Indigenous People; Dispute Resolution.

INTRODUCTION

Customary law courts are traditional justice systems found in certain ethnic or community societies in Indonesia. (Muzakir, 2023) In Indonesia, customary justice, also known as adat law, has a long and complicated history. Over the centuries, this law has evolved alongside the country's cultures and traditions. (Putri & Jansen, 2021) Customary justice dates back to precolonial times, when indigenous peoples used their own laws and traditions to settle disputes and maintain order. Lesmana explained that for the unity of Indigenous Peoples, constitutional safeguards provide a solid legal foundation. However, for indigenous peoples to exist and survive, real efforts towards their own unity, as well as the state's efforts through legal instruments,

are necessary for revitalization. (Gunawan & Effida, 2023)

The Indonesian government recognizes and oversees customary justice through various legal and policy mechanisms. (Hutagalung & Gloriawati, 2022) Although not formally regulated in the Constitution, customary justice systems have been recognized by the government in the 1945 Constitution of the Republic of Indonesia and in Law No. 39 of 1999 on Human Rights. While there are still challenges that hinder efforts to preserve these customary courts, the recognition and regulation of customary courts by the Indonesian government is an important step in maintaining cultural diversity and ensuring that everyone has access to justice. (Citranu, 2021) Customary Courts have the function of reconciliation and dispute resolution. In



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accordance with Article 103 letter e, the authority to reconcile is given to the Customary Village to organize peace hearings through customary justice institutions.

Customary justice in Indonesia, particularly Papuan customary justice, faces several problems, one of the main ones being the incompatibility between Papuan customary law (the customary law of the Marind tribe) and general national law. This can lead to ambiguity in law enforcement and different interpretations of the two legal systems. Law 21/2001 on Special Autonomy for Papua Province sets out the basis for customary justice in Papua. The law stipulates that the province's cultural, adat, and social characteristics should be taken into consideration when running the government, including the justice system. (Yudistira, 2022) However, there are times when national legal principles, such as human rights and the protection of minorities, are incompatible with adat law. (Kuntadi, 2023)

This research is based on empirical data that shows the existence and problems of the Marind customary court. Based on data from the Merauke Regency Indigenous Peoples Institution, in 2020-2025, the Marind customary court resolved 73 criminal cases, including domestic violence (22 cases), ordinary persecution (12 cases), kangaroo theft (11 cases), and other customary violations. The majority of cases are resolved finally without involving state courts. However, the practice of customary justice faces a fundamental problem in the form of a conflict of norms between Article 18B paragraph (2) of the 1945 Constitution, which recognizes customary law communities, and Article 2 paragraph (3)

of Law No. 48 of 2009, which only recognizes state courts as legitimate judicial institutions. This conflict is even more evident in Article 51 paragraph (4) of the Papuan Special Autonomy Law which allows the district court to retry cases that have been decided by the customary courts, so that customary decisions become infinal and have the potential to violate the principle of *ne bis in idem* as recognized in the Supreme Court of the Republic of Indonesia Decision No. 1644 K/Pid/1988.

For this reason, this research departs from the assumption that the operation of adat courts is strongly influenced not only by the socio-cultural system of society, but also by the political economy system at work in legal issues and society. (Marizal, Aulia Pravasta Indrianingrum, & Hilman Rigel Nugroho, 2022) Such an explanation is relevant to discussing what has changed, developments, and challenges to the process of state recognition and its enforceability in society.

Customary courts were established as a first step to meet the needs of indigenous peoples and address community problems before a lawsuit was filed directly with the court. (Wahyuni, Mujiburohman, & Kistiyah, 2021) It is considered a non-litigation method of dispute resolution. Customary courts are very important for resolving community disputes because litigating in both first-instance and higher courts requires significant time and money. (Samaluddin, Nasrin, & Darmawan Wiridin, 2025) Therefore, customary law-also known as unwritten law-has gained a place in civil law practice. Therefore, what needs to be considered is how customary law is positioned in the Indonesian criminal procedure law system or how customary law functions in the judiciary. (Mohamad & Rideng, 2021)

Hilman Hadikusuma explains that customary criminal law reflects society as a whole, with each tribe having its own customary criminal law, adapted to local customs and often unwritten or uncodified. (A & Afrizal, 2023) This shows that customary criminal law reflects the unwritten life and traditions of each community or tribe, often differing by local custom, and that integrating community mediation with the formal legal system can help resolve conflicts between customary and national law. (Haq & Rachman, 2022)

Some previous research guides the research to be carried out and will serve as a reference and point in comparison. In this state-of-the-art, there will be several journals. The first research from Rikardo Simarmata. (Simarmata, 2021) In 2021, with the title *The position and role of customary courts after the unification of the formal justice system*. This study: Following the 1951 policy to unify the national justice system in 1951, customary courts remain active and are part of the customary law system. In fact, this policy removed the adat courts from the formal justice system. Customary courts continued to function after this period because the unification policy did not intend to end their existence; rather, it sought to remove the binding force of their decisions. The second research by Alexander in 2021, titled *Alternative dispute resolution in mediation of customary law disputes in Papua*. (Alexander, 2021) The results of the study show that the community chooses non-litigation settlements for reasons such as a relatively faster resolution, lower costs, and problem-solving conducted in a peaceful manner, namely through deliberation. Historically, Indonesian

society has strongly upheld the consensus approach, but it has sometimes been less effective. ADR development in Indonesia seems stronger than the reasons for the inefficiency of the judicial process.

Based on the above description, it was decided to research the challenges and opportunities of customary justice in the context of modernization, which is often rooted in the social, economic, and political transformations taking place in Marind indigenous communities. Modernization often brings changes in the social structure and traditional values of the Marind tribe, which can threaten the sustainability of the Papuan customary justice system. These changes can create internal conflicts between members of the indigenous community who choose to remain traditional and those who are more open to modernization. More and more people are recognizing the importance of the culture and traditions of the indigenous Marind people, including adat justice. This can help resolve other criminal cases, especially in the form of minor ones, by reusing existing local wisdom to address crime in society. (Tamanaha, 2021)

RESEARCH METHODS

This research employs an empirical juridical method with a case study approach to understand the dynamics and sustainability of the Marind customary court in the context of modernization. Primary data was obtained through in-depth interviews with traditional leaders, law enforcement officials, and members of the indigenous community, as well as direct observation of the practice of customary case settlement in the Merauke Regency and surrounding areas. Meanwhile, secondary data were collected through a literature review of laws and

regulations, including the 1945 Constitution, Law Number 21 of 2001 concerning Special Autonomy for Papua, Papua Perdasus Number 20 of 2008 concerning Customary Courts, as well as scientific literature and prior research results. All data were analyzed qualitatively to describe the reality of Marind customary courts, assess the challenges they face, and formulate strategies to preserve and strengthen them within the national legal system, grounded in local wisdom.

RESULTS AND DISCUSSION

1. The Dynamics of Customary Courts in the Marind Indigenous Community in the Modern Era

An important step towards sustaining the culture and identity of communities in Indonesia is revitalizing adat values. This process involves recognizing customary law and incorporating its principles in the national legal system. (Budi Priambodo, 2018) To ensure successful revitalization, several important elements must be considered in this context. Legal recognition and protection of customary values is essential. Studies show that the Marind indigenous people experience gender-based inequality of rights in customary inheritance law, which suggests that the Bill for the Protection of Indigenous Peoples should be passed. Clear local regulations are needed to safeguard adat values. In addition, it is crucial to provide training and education on adat law to community leaders and government officials so they better understand and apply adat values when making village regulations. (Rahmasari, Umami, & Gautama, 2023)

Criminal issues are not only recognized in modern criminal law. The customary law of southern Papua recognizes punishment as a means of addressing crime. As demonstrated by the practice of customary land disposal in Merauke, local wisdom in customary law shows how cultural values can be incorporated into people's daily lives. This local wisdom helps build customary law communities and helps resolve disputes. (Rumkel, 2020) Therefore, revitalizing customary values should actively involve indigenous communities, giving them a sense of ownership and responsibility for preserving their culture. (Qurbani, Hakim, & S.N, 2020)

To understand the dynamics of the revitalization of customary justice in the Marind community, it is important first to understand the socio-cultural foundations on which this system operates. Customary courts do not function in isolation; they are deeply embedded in the complex social structures, territorial organizations, and value systems that have governed the Marind people for generations. This contextual understanding provides the necessary framework to analyze how customary sanctions, including the most severe punishments, are legitimized in society and how they face challenges in the modern legal landscape.

The area of South Papua Province, which is better known as the Earth of Anim Ha (true man), includes the districts of Merauke, Boven Digoel, Asmat, and Mappi. Anim Ha is also the largest area and Indonesia's frontier region, bordering Papua New Guinea directly. The Marind Anim are the host tribe in this flatland. They inhabit the four cardinal directions and are divided into seven major clans:

Gebze, Kaize, Samkakai, Ndiken, Mahuze, Balagaize, and Basik-basik.

In this clan-based social structure, the Marind customary justice system operates on a hierarchy of sanctions that reflects both the seriousness of the offense and the community's commitment to maintaining social harmony. Recognition and respect for customary law values, especially regarding the role of women and inter-clan relations, directly shape the sanction mechanisms applied by customary courts. Understanding this hierarchical approach to sanctions is essential to analyzing how customary courts navigate between traditional punitive measures and the pressures of modern legal norms that increasingly question certain traditional practices.

The Malind people always recognize, appreciate, and respect the values of customary law in Animha land, especially for women, because, according to the Malind people, women can be both a source of conflict and a source of peace. According to one of the traditional community leaders of the Malind tribe, Mr. Kasimirus Kaize, for those who make serious violations, there is usually forgiveness twice, forgiveness by advising so that the perpetrator does not repeat his mistakes again and if the perpetrator still commits a violation and cannot be overcome, the punishment is death penalty so that there is no grudge between the two parties. Usually, this settlement is made through rituals or customary sitting. Once the adat offence has been resolved by the adat council (the four adat groups), the government may not protest the decision made by the adat council, as this is a customary offence that must be punished as a symbol that the culture or customs of ancestral communities are still embedded

in the Marind tribe. (*Interview with Tokoh Adat Suku Marind Bapak Kasimirus Kaize, 2023*)

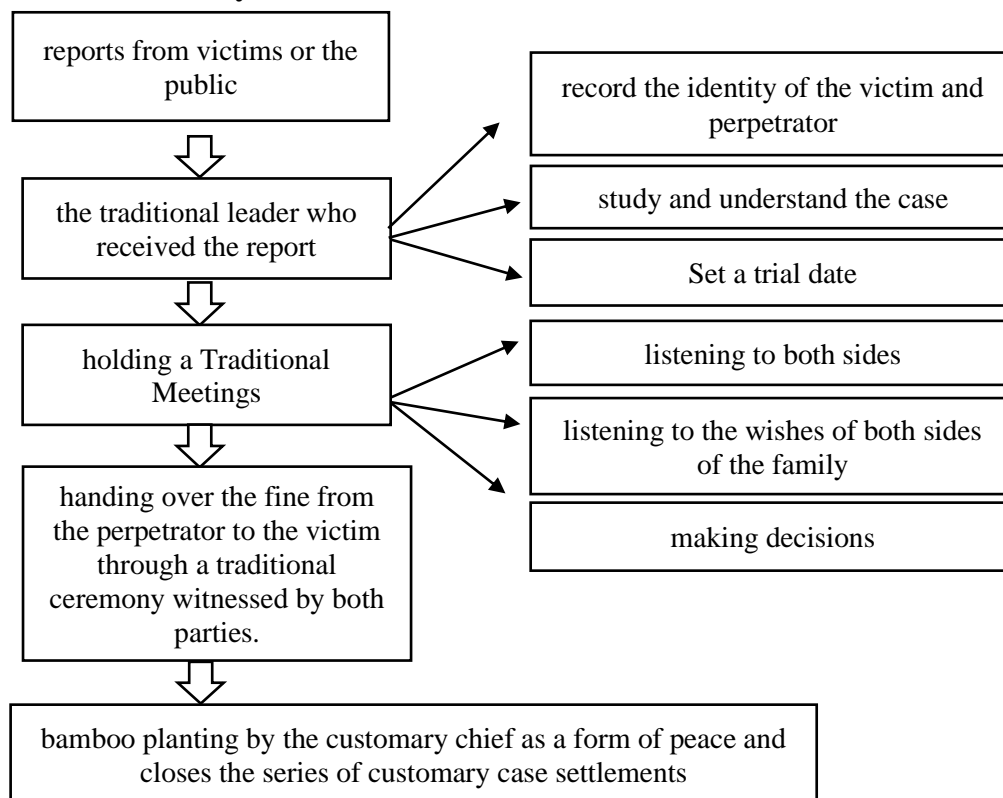
This traditional practice of the death penalty presents a significant point of tension in the modern era. Although the death penalty for serious customary violations reflects the Marind people's emphasis on collective harmony and the prevention of bloody hostilities between clans, this is in direct contradiction to Indonesia's contemporary human rights framework and criminal justice principles. The statement that 'the government may not protest decisions made by customary councils' expresses the assertion of customary sovereignty by the community, but this claim is in legal limbo, not fully recognized, nor does national law explicitly prohibit it. This ambiguity exemplifies the central dilemma of revitalizing customary justice: how to preserve cultural authenticity while adapting to constitutional principles that increasingly prioritize individual rights over collective sanctions. In practice, cases involving the death penalty are rarely executed in modern times, often ceremonially announced but not executed, or then referred to state courts when families seek legal recourse. This pragmatic adaptation shows how customary courts have evolved in response to modern pressures, even as indigenous leaders retain the rhetorical authority to impose the highest sanctions.

Marind customary justice is still very important for resolving various issues at the community level. Customary justice is a legal system based on traditional values that helps maintain social balance in resolving disputes. This function is carried out in the Marind indigenous community through the resolution of family conflicts,

customary violations, and the enforcement of social norms passed down from generation to generation. Customary courts safeguard local traditions, including law, culture, beliefs, and spirituality. Today, it

still plays an important role in resolving both civil and criminal cases. The Malind Tribe's customary justice mechanism is as follows:

Chart 1: Customary Justice Mechanism of the Marind-Anim Tribe in South Papua



The chart above explains the traditional justice system of the Marind tribe, in which the chief and community leaders play an important roles. The first stage begins with the victim reporting the problem to the community and continues until the case is resolved. In the Malind customary law community, there are many types of customary sanctions used in cases handled, ranging from the mildest to the most detrimental to the community. (Budi Novianto & Ade Saptomo, 2023) Sanctions are usually in the form of fines or involve special, customary rituals to resolve cases considered serious because the actions are very disturbing to the community. Recognition and respect for

the unity of indigenous peoples and their traditional rights, or quasi-recognition, philosophically implies recognition and respect for all orders and institutions (including the judiciary) that exist and are owned by indigenous peoples.

Customary criminal law focuses on the “disturbed balance”. As long as the balance of a customary society is disturbed, it will be sanctioned. Customary criminal law does not recognize the principle of legality as a positive norm because, in addition to its basic legal provisions, it does not recognize codification. (Lilik Mulyadi, 2013) In other words, customary criminal law does not recognize written law, although some

indigenous communities in Indonesia have recognized the codification of customary law. Emergency Law Number 1, Year 1951, addressed the incorporation of customary law into criminal law by unifying existing provisions. Even though the Swapraja Court has been abolished, the provisions of existing customary offenses must be maintained; technically, the court still handles these offenses under the procedural law. (Anggraeni & Saleh, 2024) The problem that still arises in the sanctioning of customary offenses is the imbalance between the sanctions provided by the Criminal Code and those imposed for customary offenses. In fact, among others, the criminal penalties for the perpetrators of criminal offenses in the Criminal Code are felt to be too light compared to the sanctions of customary criminal law in the past.

Local wisdom, which remains relevant amidst changing times, supports the sustainability of this role. (Rusdi Antara, Budiana, & Sadnyini, 2021) To reach a consensus, Marind customary courts prioritize community interests over individual punishment. For example, to resolve boundary violations, a traditional ceremony is often required to repair relations between clans. This process strengthens collaboration between community members and legally resolves conflicts. Therefore, customary justice serves as a social binder that keeps the Marind community values in place.

Marind customary courts do a lot more than resolve conflicts. They also help maintain customs. People are educated about the importance of maintaining harmony and following customary rules. For example, the younger generation is educated to respect traditional leaders and understand the consequences of breaking

conventions. (*Interview with Tokoh Adat Bapak Isaias Ndiken, 2023*) This role is crucial to maintaining the sustainability of adat in the midst of modernization that often threatens local traditions. By maintaining customary justice, Marind communities are protecting their cultural identity and raising awareness about the importance of customary law in their lives.

However, the continued functioning of Marind customary courts has also faced challenges, particularly due to the dominance of the formal legal system. However, the main factor that ensures that customary courts remain relevant is their ability to adapt to social change. With institutional recognition, cooperation between customary and formal law can ensure that Marind customary courts continue to play an important role in cultural heritage and as an effective tool for maintaining order and harmony in society. (*Interview with Tokoh Adat Suku Marind Bapak Kasimirus Kaize, 2023*)

As customary justice offers an approach that is in line with the cultural values of the Marind people, it is still the primary choice in dispute resolution. The restorative justice principles behind this system emphasize restoring relationships and balance within the community rather than simply punishing. Customary justice is more widely accepted in the community because of values such as cooperation, deliberation, and respect for traditional leaders. This is in contrast to the formal legal system, which is often considered too rigid and does not consider local culture. (Toomey, 2010)

Communities also appreciate customary justice because it better reflects their cultural identity and values. Indigenous people think that the enactment of customary law in a legal community is

based on the will of the community, not the will of the authorities. Decisions made by traditional leaders often refer to customary norms that have been in place for tens or even hundreds of years. This process not only provides a sense of justice but also strengthens solidarity among community members. This is in contrast to the formal legal system, which is sometimes seen as foreign and does not fully understand the socio-cultural dynamics of indigenous communities. (Nimani, Avdija, & Maluku, 2025) Thus, customary justice is an important instrument in maintaining the sustainability of the traditions and cultural identity of the Marind community.

Nonetheless, public acceptance of customary justice faces many problems. This is especially true for the younger generation, who have been affected by globalization and modernization. Some of them may consider the adat system archaic or irrelevant to current conditions. (Bwire, 2019) However, Marind customary justice can remain an important pillar in people's lives, with community support and recognition under formal law. This shows that customary justice is a way to honor cultural heritage that is still relevant in this day and age.

Often, the sustainability of customary law, including Marind customary justice, is affected by the national legal system. One of the main challenges is the sidelining of customary law in cases that the state deems strategic, such as land conflicts and natural resource management. Because it has formal legitimacy backed by the state apparatus, national law is usually stronger in these circumstances. As a result, decisions rooted in local customs are often ignored, even though they are better suited to the community's specific social and cultural circumstances. This creates a

feeling of injustice among traditional communities, who feel that their original rights are being marginalized. (Khuan, Sesario, & Kurniawan, 2025)

In addition, the lack of harmonization between the two systems often leads to conflicts between customary and formal law. In some situations, acts considered violations by adat are not recognized by formal law. On the other hand, cases considered serious by the state do not receive the same attention in the adat courts. (Darisera, Letedara, Latue, & Rakuasa, 2024) Legal culture itself is flexible and dynamic. This difference of opinion leaves indigenous communities confused, as they have to deal with two legal systems that have different rules and sanctions. Such legal conflicts can undermine the role of customary justice as an important component of local community life if there is no clear mechanism for integrating customary and formal law. (Saktiawan & Wiranto, 2025)

However, the recognition and strengthening of customary law within the national legal framework may open up opportunities for intervention by the formal legal system. Customary law communities consider disputes between individuals and groups to be matters that interfere with common interests and therefore must be resolved wisely through customary settlement processes. (Buana & Mamonto, 2023) Some regions in Indonesia, including Papua, have tried to use regional autonomy policies to support customary law. Customary rulings in formal law can be recognized, which is the first step towards a harmonious relationship between the two systems. The Marind customary courts can serve as an important component of the national legal system if they work well together. This

will protect the rights of indigenous peoples and enrich legal diversity in Indonesia.

The Marind customary court faces significant challenges due to its lack of official recognition in Indonesia's formal legal system. This lack of legal standing means that customary courts are not recognized as part of the legal system, limiting their capacity to handle cases. While indigenous communities continue to abide by customary rulings, they often lack the binding force of law in the eyes of the state. (Khamar Jahan Shaik, 2025) As a result, in certain cases, such as land disputes involving outsiders or large companies, customary court decisions are often ignored. This puts indigenous peoples in a vulnerable position, especially when dealing with external interests that are more legally powerful. The implementation of the law by communities in Indonesia is an important aspect in realizing an objective.

In addition, the lack of recognition undermines the legitimacy of customary courts in handling more complex cases, such as offenses involving cross-community communities or perpetrators who are not indigenous. In these circumstances, indigenous communities are often forced to refer cases to the formal legal system, which does not always understand local contexts and customs. This will weaken the function of customary justice and threaten community trust in conventional legal mechanisms. Therefore, formal recognition of adat courts through legislation and special autonomy policies is essential to maintain their sustainability and relevance in the face of the challenges of modernization and globalization. (Muslim, Rizkia, & Ahmad, 2025)

A strategic opportunity to build synergies between customary and national legal systems is to establish a more inclusive and efficient dispute resolution framework. Often, customary laws, such as the Marind customary court, are more relevant for resolving local issues, including customary land disputes, violations of customary norms, and internal community conflicts. By incorporating local mechanisms into the national legal system, cases like these can be resolved, taking into account local cultural norms and gaining formal legitimacy. Such collaboration strengthens the position of customary law and reinforces the national legal system with justice values based on local wisdom. (Setiawan, Muzaffar Wahyu, Rahman, & Sutrisno, 2024)

Collaboration between customary and formal law can also be facilitated through the development of hybrid mechanisms in dispute resolution. (Fidria, 2025) Humans must uphold and implement the rule of law in society. For example, cases involving indigenous peoples and outsiders can be resolved by combining customary and formal legal procedures, where the outcome of customary deliberations is complemented by a decision recognized by the district court. This procedure not only respects customary law but also ensures that the decision has the force of execution within the national legal system. This hybrid approach can be an effective model of synergy, especially in cases involving interests across communities or formal institutions. (Menkel-Meadow, 2020)

With good synergy, customary law will not only be seen as a separate legal system, but as an integral part of the national legal system. This can help reduce potential conflicts between the two

systems and create a more equitable sense of justice in society. In addition, recognizing customary law through this synergy can strengthen the position of indigenous peoples in maintaining their cultural identity and responding to the challenges of modernization that often threaten local traditions. (Bakri, 2024) Strong synergy will ensure that customary laws, such as the Marind customary court, can continue to play their role in the modern era without losing their essence.

The Malind indigenous community recognizes four kinds of crimes that must be avoided, including murder, rape (immoral), theft, and violation of territorial borders. (*Interview with Tokoh Adat Suku Marind Bapak Kasimirus Kaize, 2023*) These four crimes are classified as serious or minor, and sanctions must be applied regardless of whether the perpetrator is experiencing memory loss or is an adult. In addition to the crimes mentioned above, adultery committed by women and men is also considered the most serious crime. Once the adat council (four adat groups) has resolved the adat offenses, the government may not protest the decision,

as, according to adat, these are customary offenses that must be punished.

According to the Malind tribe, if someone commits theft, the punishment is either planting trees or paying a fine in the form of bananas (a type of fruit). This is categorized as a minor crime; in addition to theft, there are also other cases, such as land boundary violations. Criminal acts of rape and murder in the Marind language (yalmam) are categorized as serious cases, so if they occur, an execution hearing will be held. The death penalty will be carried out publicly or in front of the community. The punishment is usually carried out by beating with kupa (turkey stones) and paying a customary fine. From the above explanation, it can be seen that customary law also recognizes various types of criminal offenses related to property, life, decency, and honor. The resolution of each customary offense carries penalties ranging from fines to physical punishment to the death penalty. (*Interview with Tokoh Adat Bapak Isaias Ndiken, 2023*)

Data Table of Customary Offenses of the Marind-Anim Tribe in South Papua

Data Table 1 of Customary Offenses of the Marind-Anim Tribe in South Papua

No.	Types of Customary Offenses	Settlement Mechanism	Customary Sanctions	Causes
1.	Territorial Border Violations	Mediation through traditional leaders and tribal chiefs	Fines in the form of crops or livestock	Entering another customary territory without permission
2.	Adultery	extended family meeting led by a traditional leader	Paying customary fines in the form of beads or pigs	Sexual intercourse outside of marriage
3.	Theft	Customary deliberation with the involvement of victims and perpetrators	Return of stolen items and additional fines	Taking other people's property without permission

4. Murder	Customary hearing to determine liability and compensation	Large fines in the form of pigs, land, or lives	Acts of murder due to disputes or grudges
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Source: Indigenous Peoples Organization of Merauke Regency.

The table above shows the types of customary offenses recognized by the Marind indigenous community in South Papua, including violations of social norms, traditions, and local customary rights. Most customary offenses concern violations of the balance between community and nature, the basis of the Marind indigenous value system. For example, the destruction of natural resources or the encroachment of customary territories is considered a major threat to the sustainability of local ecosystems and their communities. To address these issues, customary punishments such as pig fines, sago, or restoration rituals are used to restore harmony and maintain respect for customary rules. In addition, this table shows that severe sanctions are available for serious offenses, such as murder or harassment. To maintain justice and deterrence, the Marind indigenous community imposes sanctions involving special customary rituals and large fines in such cases. However, enforcing them is difficult, especially when offenses involve people outside the community or cases under formal legal jurisdiction. (Budi Novianto & Ade Saptomo, 2023)

Customary Delicts has prompted an ongoing debate since the beginning of Indonesian independence about whether adat can be a source of law in the Indonesian constitution. Soepomo stated that Delik Adat is any act or event that greatly disturbs the inner strength of the community, any act or event that pollutes the inner atmosphere, which opposes the sanctity of society, is an offense against

society as a whole and the most serious offense is any offense that rapes the balance between the physical world and the supernatural world, as well as offenses that rape the basic structure of society. (Laia & Yasid, 2020)

The principle of restorative justice, as applied by the Marind indigenous community, is reflected in the customary sanctions listed in the table. For example, when tribes conflict, customary deliberation is used to reach an amicable agreement. This is usually accompanied by symbolic fines, such as giving away crops or livestock. This method strengthens community social relations and resolves conflicts. (*Interview with Tokoh Adat Bapak Isaias Ndiken, 2023*) Customary sanctions focus on restoring relationships and restoring social balance, in contrast to formal legal sanctions, which tend to be repressive. This shows how flexible and effective customary justice can be in addressing conflicts in context. This means that the customary law officers authorized to take concrete actions (customary reactions) to correct violations of the law are village peace judges or district control judges for all kinds of customary violations.

2. Strategies for Strengthening and Preserving Customary Courts in Marind Indigenous Communities

Field research reveals specific contradictions between customary law and the Criminal Code that directly impact society. First, related to the offense of adultery (yalmam), which according to Marind customary law is a serious violation with severe sanctions up to the death

penalty or a substantial customary fine, but in the old Criminal Code, Article 284 is only categorized as a complaint offense with a maximum prison threat of nine months. This disparity creates a practical dilemma in the field: data from the Merauke Regency Indigenous Peoples Institute shows that out of the 73 cases resolved by customary courts, there are 3 cases (4.1%) that are then brought to state courts because the parties concerned consider customary sanctions "excessive" and not in accordance with national law. Second, violations of customary land boundaries, which, according to Marind law, require ritual purification and compensation, but in national agrarian law require formal certificates and court decisions.

Given the diversity of cultures and legal systems in Indonesia, harmonizing customary justice with national law is a complex, multidimensional issue. Customary law, as a law that grows and develops in society, has different characteristics and values from the positive law established by the state. As a result, it is crucial to understand how these two legal systems can work together effectively. (Hamid Noor Yasin & Ade Saptomo, 2024)

The indigenous tribes in the Anim Ha customary area still strongly adhere to the customs and legal norms left by their ancestors to this day, despite minor changes in society. This has been the case since the formation of a community called a state, which produced formal national laws to unify the people. (Viqria, Zatadini, & Iqbal, 2023) There is pressure from the authorities/state on society, including indigenous tribes, to comply with formal rules established by the state, namely the Criminal Code (KUHP).

However, challenges arise when customary law lacks clear guidelines for its

implementation, as is the case with the laot customary court in Aceh, which still needs to strengthen its structure and mechanisms. In addition, Papua Special Regional Regulation (Perdasus) No. 20/2008 on Customary Courts in Papua regulates the jurisdiction, authority, and procedures of customary courts in Papua. (Silambi, Moenta, Patittingi, & Azisa, 2022) Customary courts are defined as peace courts within customary law communities, according to Article 1, point 8 of the Perdasus. They have the authority to examine and adjudicate customary civil disputes and criminal cases among members of the customary law community. (Reumi & Reumy, 2024) This suggests that, despite recognition, the application of customary law is often hampered by a lack of specific regulations.

Customary justice in Papua also faces challenges in harmonization with national law. Research shows that despite the recognition of customary law in the constitution, its implementation is often hampered by a lack of understanding and support from government authorities. (Ruslak Hammar, Wanma, & Balubun, 2022)

Currently, in empirical reality, various problems faced by indigenous peoples in Indonesia often arise when customary law clashes with positive law. Overcoming the gap between customary law as a living law and positive criminal law enacted by the state can be achieved in several ways, namely: first, through law formation. Ideally, although positive law is formed and compiled in a planned manner, the value of legal substance relies on the value of propriety and the value of obscurity formulated in customary law. The function of the law in this case, except for the role of law as social engineering, is to formalize

the values that the customary law community considers despicable acts into criminal acts. Thus, what is reprehensible according to society is also reprehensible in criminal law. Thus, there will be no conflict between the living law and the applicable law. For this reason, research by legal experts is needed to inform the development of criminal law. Second, through legal discovery. (Hamid Noor Yasin & Ade Saptomo, 2024)

Until now, Marind customary law has been largely oral, passed down from generation to generation through traditional leaders and community leaders, and never written down. Field observations conducted during customary court trials in Merauke Regency confirmed that oral traditions continue to dominate customary court practices. In some of the hearings observed, all decisions were communicated verbally, with no written records kept. Interviews with indigenous elders reveal that only a small percentage have ever documented customary rules in writing, and even then, those records are informal personal accounts. According to one of the indigenous leaders, oral traditions are seen as important because "our customary law lives in memory and practice, not in rigid writing, the indigenous must be able to breathe and adapt to each different case." This perspective reflects a fundamental tension in documentation efforts: on the one hand, oral traditions preserve the flexibility of customary law, but on the other hand, they create vulnerability to loss of knowledge and the risk of misinterpretation, especially when knowledge-holding elders die in the absence of systematic transmission to succeeding generations. This condition is even more urgent given the rapid

modernization and social change in the Marind community.

This is an important step in maintaining the continuity of traditions and increasing formal recognition of customary justice. While this technique can preserve the integrity of customary values, there is a risk of losing them due to modernization, migration, or social change. By recording customary law in writing, customary customs and procedures can be preserved and used as a reference for future dispute resolution. (Effendi, 2022)

To ensure that the outcome is comprehensive and acceptable to all stakeholders, the documentation process should involve many parties. Academics can contribute to the formation of customary laws that are easy to understand and based on the principles of formal law. Traditional leaders, on the other hand, serve as an important source of information on traditional values, practices, and applicable penalties. In addition, local governments should participate, particularly in providing administrative assistance and ensuring that the results of this documentation are incorporated into local policies, such as regulations or special autonomy.

In creating synergy between customary and national law, documenting customary law also has strategic value. With customary law in writing, cooperation in dispute resolution becomes more effective. For example, customary law documents can serve as guidelines to ensure contextual justice in accordance with local principles in cases involving indigenous peoples and outsiders. (Syamantha, Syahputra, &., 2025) In addition, it can strengthen the position of Marind's customary courts in the national legal system, providing better protection of indigenous peoples' rights.

Documenting customary law can also help indigenous communities feel more ownership and pride in their traditions. Marind communities will feel that their identity and values are valued when their customary laws are officially recognized. In addition, this process can help engage the younger generation in preserving traditions and understanding the importance of customary law as part of their cultural heritage. (Harniwati, 2024)

However, it is important to remember that this information should not change the importance or flexibility of customary law. By its very nature, customary law is subject to change by social change. Therefore, to ensure that customary law remains relevant and serves the community's needs, the documentation process should be guided by an approach that takes local values into account. Documenting Marind customary law can be a strong foundation for maintaining traditions and official recognition in the national legal system if done correctly.

In addition to formal legal aspects, traditional leaders should be trained in mediation techniques, as they are the primary mediators in community conflict resolution. This training could include skills in managing conflicts in a fair, effective, and restorative manner, as well as techniques for dealing with complex dispute situations. With strengthened mediation skills, Adat leaders can enforce Marind law, which relies on traditional leaders, especially in resolving conflicts and maintaining community harmony. (Alputila, Tajuddin, & Y. Badilla, 2023) However, amidst the dynamics of modernization and more interaction with formal law, it is important to enhance their capabilities through relevant training. An understanding of formal law, including how

international norms interact with international law, needs to be strengthened. Indigenous leaders can use this provision to defend customary law and serve as a link between indigenous communities and national legal systems. To achieve legal signing and certainty, it is necessary to have a good system of cooperation between institutions to increase the credibility and trust of the community, both within the customary sphere and in interactions with outside parties. This legal culture certainly has a significant influence on legal development. Education and training can improve the community's culture and legal awareness.

The ability to communicate with people from different cultures is important in facing the challenges of modernization. Marind communities usually interact with outsiders, such as governments, companies, or international institutions, during the era of globalization. Cross-cultural communication training can help traditional leaders convey traditional values to others without compromising their importance. In addition, they will be more open to different perspectives, which helps prevent potential cultural conflicts and fosters fruitful discussions. (Sihotang, Arifin, & Mac Thi Hoai Thuong, 2025)

Capacity-building programs should be implemented sustainably and involve multiple stakeholders. Training can be tailored to local needs by working with local governments, educational institutions, and non-governmental organizations. The program will be relevant and well-received if indigenous leaders are involved in a participatory approach in determining training materials. To determine how effective the training is for the role of traditional leaders in the community, regular evaluations are also needed.

By systematically improving their capabilities, adat leaders will be better able to face the challenges of modernization and help strengthen Marind's cultural identity. They can become agents of change, integrating customary traditions with the evolving dynamics of formal law and society. Ultimately, this will enhance the role of customary law as a critical component in keeping local values relevant despite changing times.

CONCLUSION

The conclusion of this study confirms two main findings. First, the Marind customary court still functions as a living and effective justice mechanism in resolving the internal conflicts of indigenous peoples by relying on the values of balance, restoration, and social harmony. However, this effectiveness is hindered by structural problems in including normative disharmony with national law that places customary courts in a subordinate position, thereby weakening legitimacy, increasing legal uncertainty, and eroding the younger generation's trust in customary justice mechanisms. Second, strengthening the Marind customary court requires a systemic strategy, including documenting customary law as a collective knowledge base, strengthening the capacity of indigenous actors to be able to interact equally with the formal legal system, and regulatory harmonization that integrates customary justice into the framework of the national justice system without eliminating its distinctive character. As input for further research, a comparative study across indigenous peoples is needed to identify the most adaptive model of integrating customary justice into the national legal system.

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