The Illusion of Integrating Customary Law into Indonesia's Contract Law System on the Communal Sanctions Policy Forum

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ABSTRACT

The Indonesian legal system is characterized by pluralism, where customary law exists alongside formal national law. Although customary law is normatively recognized, its integration into the national contract law system remains limited. This study aims, first, to analyze the normative integration of customary law and contract law in Indonesia; second, to compare the practice of customary law integration in Indonesia with Malaysia; and third, to formulate an ideal model for integrating customary law and contract law systems in the context of communal sanctions. The research employs normative legal methods with a threefold analytical approach are statutory, conceptual, and comparative. The findings indicate that, first, the integration of customary law into Indonesia's contract law system is still primarily normative and not operational, as reflected in the application of the *kasepekang* sanction, which demonstrates a dualism between communal customary law and individualistic national contract law, resulting in legal uncertainty and potential injustice. Second, comparative analysis with Malaysia shows that although both countries recognize customary law, Indonesia lacks adequate operational mechanisms, whereas Malaysia implements constitutional, legislative, and judicial approaches that are more effective in contractual practice. Third, the ideal integration model in Indonesia requires transforming communal sanctions into mechanisms that are transparent, proportional, and restorative, aligned with human rights principles and contractual justice.

Introduction

Legal history demonstrates an increasingly intricate evolution of legal systems, transforming from a mere instrument for maintaining social order into a structured and sophisticated framework. The formation of a state's legal system is inherently inseparable from the historical trajectory and legal culture that emerge and develop within its society. Variations in legal culture have led states to adopt either written or unwritten legal systems.[1] In societies that rely on unwritten law, customary

[1] Simon Halliday et al., "How Does Legal Culture Matter for Climate Mobilities? A Case Study in an Unplanned Coastal Settlement in Urban Mozambique," *Social & Legal Studies* 34, no. 5 (October 16, 2025): 652–72, https://doi.org/10.1177/09646639241288822

practices institutionalized within the community are gradually formalized and articulated into legal norms. Conversely, in societies characterized by advanced literacy traditions, the pursuit of legal certainty has encouraged the development of written legal systems, both in codified and formally uncodified forms.[2]

In this context, customary law emerges as the product of a long, organic process embedded in the lived experiences of society. It is shaped by values, norms, and traditions transmitted across generations, while also being influenced by specific geographical, social, and cultural conditions.[3] The existence of customary law is not merely symbolic; it serves practical functions in regulating various aspects of life, including marriage, inheritance, the imposition of sanctions, and the peaceful resolution of disputes.[4] Despite the growing dominance of national legal systems in modern state governance, customary law continues to endure and be practiced across many regions as an integral component of collective identity. This persistence underscores that customary law holds not only historical significance but also ongoing relevance in sustaining social equilibrium and a shared sense of justice.[5]

Indonesia is one of the countries that embraces a pluralistic legal system, where multiple legal frameworks coexist and develop simultaneously within society.[6] In this context, the state has formally recognized the existence of customary law through various legal instruments. This recognition is reflected, for instance, in Article 18B paragraph (2) of the 1945 Constitution, which affirms that the state respects customary law communities and their traditional rights, provided they remain alive and consistent with societal development as well as the principles of the Unitary State of the Republic of Indonesia.[7] Further reinforcement comes from Law No. 6 of 2014 on Villages, which grants legitimacy to the existence of

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[2] Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H Noho, and Aga Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems," *Cogent Social Sciences* 8, no. 1 (December 31, 2022), https://doi.org/10.1080/23311886.2022.2104710

[3] Irfan Sabarilah Hasim et al., "Vernacular Cultural Landscape of the Tangtu (Inner Baduy) in Kanekes Village, South Banten, Indonesia," *Journal of Asian Architecture and Building Engineering*, February 22, 2026, 1–25, https://doi.org/10.1080/13467581.2026.2631907

[4] Johnson Ifeanyi Okeke, "Customary Arbitration: Religion, Culture, and Law in Igboland," *Critical Research on Religion* 11, no. 2 (August 10, 2023): 205–21, https://doi.org/10.1177/20503032231174210

[5] Irgi Setiawan et al., "Juridical Study of Customary Law In The Indonesian National Legal System," *Asian Journal of Social and Humanities* 2, no. 8 (May 30, 2024): 1824–31, https://doi.org/10.59888/ajosh.v2i8.317

[6] Saldi Isra, Ferdi Ferdi, and Hilaire Tegnan, "Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia," *Hasanuddin Law Review* 3, no. 2 (August 12, 2017): 117, https://doi.org/10.20956/halrev.v3i2.1081

[7] Angga Alfiyan, Mohammad Jamin, and Adriana Grahani Firdausy, "Reformulation of Living Law or Customary Law in Regional Regulations of Districts/Cities through a Constitutional Approach," in *Proceedings of the 3rd International Conference on Law, Economics & Good Governance (ICLAW 2025)* (Atlantis Press, 2025), 504–12, https://doi.org/10.2991/978-2-38476-519-5_40

customary villages as part of the local governance system.[8] Customary law can be regarded as a legal system because it fulfills the essential elements of substance, structure, and legal culture. It exists within the community, is enforced by customary institutions, and is legitimized by cultural values and religio-magical beliefs. Its constitutionally recognized status as an integral part of the national legal system ensures that it holds a legitimate and significant position in maintaining legal pluralism in Indonesia.[9]

Customary law systems exist in both written and unwritten forms. Written customary law serves as the primary guideline for governance and social life within customary villages, including contractual practices such as lending agreements.[10] Within customary law, provisions typically regulate the mechanisms of borrowing, interest rates, repayment terms, and sanctions for violations. The practice of lending agreements in customary communities illustrates the coexistence of customary law and national law.[11] Generally, contract law in Indonesia is governed by the 1847 Civil Code (*Kitab Undang-Undang Hukum Perdata, KUHPerdata*), which is an adoption of the *Dutch Burgerlijk Wetboek (BW*) compiled during the colonial period in the Dutch East Indies. Despite being over a century old, the substantive provisions of the *KUHPerdata* remain the primary reference for the formation and execution of agreements. Articles 1754 to 1769 of the *KUHPerdata* specifically address lending agreements. Article 1754 stipulates that a lending agreement is not merely an act of borrowing but constitutes a legal bond between two parties, carrying rights and obligations recognized by law. The lender provides consumable items, such as money, rice, sugar, fuel, or other goods that are depleted through use which the borrower is obliged to return not in the identical physical items but in equivalent quantity and type. Therefore, such agreements are legally binding, with the borrowed object being consumable, and

[8] Haiqin Fan and Xiang Li, "Research on the Evolution of the Governance Logic of Ethnic-Minority Villages from the Perspective of Tourism Development—A Case Study of Longjing Village, Guizhou Province," *Sustainability* 15, no. 4 (February 9, 2023): 3187, https://doi.org/10.3390/su15043187

[9] Hari Triasmono and Ahmad Sholikhin Ruslie, "Comparison between Customary Legal Systems and Modern Legal Systems in the Context of Globalization," *International Journal of Law and Society (IJLS)* 3, no. 1 (May 1, 2024): 24–33, https://doi.org/10.59683/ijls.v3i1.76

[10] Stellah Lubinga et al., "Barriers to Informal Social Protection in Uganda: Insights from Beneficiaries of Village Savings and Loan Associations," *International Journal of Social Economics*, September 15, 2025, 1–16, https://doi.org/10.1108/IJSE-08-2024-0639

[11] Sirman Dahwal and Zico Junius Fernando, "The Intersection of Customary Law and Islam: A Case Study of the Kelpeak Ukum Adat Ngen Ca'o Kutei Jang in the Rejang Tribe, Bengkulu Province, Indonesia," *Cogent Social Sciences* 10, no. 1 (December 31, 2024), https://doi.org/10.1080/23311886.2024.2341684

repayment is made with items of the same kind and amount rather than the exact physical object.[12]

However, within the context of customary law, such agreements are not necessarily formalized in writing or through official institutions; they are often based solely on oral consensus witnessed by customary leaders. Nevertheless, if a dispute cannot be resolved through customary mechanisms, the parties may escalate the matter to the formal legal system.[13] This practice, therefore, creates a space for potential harmonization between customary law and national law. Despite this, the coexistence of multiple legal systems within a single country produces a reality of legal pluralism that does not always operate smoothly.[14] Differences in norms, values, and forms of sanctions between customary and national law often generate tensions, particularly when the two systems conflict.[15] These tensions are not merely theoretical but also practical, as each legal system is founded on distinct legitimacy, objectives, and enforcement mechanisms. National law tends to prioritize legal certainty, uniformity, and enforcement through formal state institutions, whereas customary law relies on sanctions established by the community as a form of social control. These sanctions may include physical punishment, penalties on property, or religio-magical consequences, depending on the nature of the customary norm violated.[16]

One issue reflecting this tension can be observed in the enforcement of sanctions for legal violations, whether as a response from the community or the state toward individuals who breach the law.[17] In this context, the contrast between formal sanctions and customary sanctions becomes particularly evident. Under the Civil Code (*KUHPerdata*), in the event of a breach of contract, Article 1239 stipulates that any obligation to act or refrain from acting that is not fulfilled by the debtor must be remedied through compensation for costs, damages, and interest. This provision underscores that sanctions in civil law are compensatory in nature, oriented toward

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[12] Sri Mulyani et al., "Comparative Analysis of Regulations on IT-Based Money Lending and Borrowing Services in Indonesia and Vietnam," *Wseas Transactions On Environment And Development* 20 (November 27, 2024): 689–700, https://doi.org/10.37394/232015.2024.20.66

[13] Theresa Langenmayr, David Seidl, and Violetta Splitter, "Interdiscursive Struggles: Managing the Co-existence of the Conventional and Open Strategy Discourse," *Strategic Management Journal* 45, no. 9 (September 19, 2024): 1696–1730, https://doi.org/10.1002/smj.3599

[14] Achmad Hariri, Satria Unggul Wicaksana, and Samsul Arifin, "A Critical Study of Legal Positivism As a Legal System in a Pluralist Country," *KnE Social Sciences* 2022 (2022): 563–71, https://doi.org/10.18502/kss.v7i15.12131

[15] Laurens Bakker, "Custom and Violence in Indonesia's Protracted Land Conflict," *Social Sciences & Humanities Open* 8, no. 1 (2023): 100624, https://doi.org/10.1016/j.ssaho.2023.100624

[16] Orien Effendi, "The Challenge of Indonesian Customary Law Enforcement in the Coexistence of State Law," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 55, no. 2 (June 14, 2022): 173, https://doi.org/10.14421/ajish.v56i1.1033

[17] Alexandra Hofer, "The EU's 'Massive and Targeted' Sanctions in Response to Russian Aggression, a Contradiction in Terms," *Cambridge Yearbook of European Legal Studies* 25 (December 11, 2023): 19–39, https://doi.org/10.1017/cel.2023.9

restoring the material losses suffered by the creditor, and enforced through formal legal mechanisms that prioritize legal certainty. In contrast, customary law recognizes communal and restorative sanctions, which aim not only to penalize the offender but also to restore social equilibrium within the community.[18] From this perspective, a contractual breach is not merely regarded as a violation between two parties but also as a disruption of trust and harmony within the community. Consequently, the sanctions imposed may include customary fines or obligations to offer formal apologies, reflecting the community's emphasis on reconciliation and the restoration of social balance.[19]

One example of customary sanctions still practiced in Indonesia is the application of *kasepekang* in Bali. *Kasepekang* is a form of social sanction that entails the social ostracism of individuals deemed to have violated customary norms or community agreements.[20] In certain instances, this sanction is applied in civil contexts, including lending and borrowing agreements. In customary village loan cases, *kasepekang* is often imposed on parties who fail to fulfill their obligations, regardless of the underlying reasons, intent, or socio-economic conditions of the debtor. Consequently, the sanction can create an imbalance between the moral objectives of customary law and its social effects, producing collective exclusion that may exceed the bounds of fairness.[21] The enforcement of *kasepekang* in loan agreements illustrates a fundamental divergence between the paradigms of customary law and modern contract law. Under customary law, a contractual breach is not merely considered a private matter between individuals but also a violation of broader social order. Therefore, sanctions imposed are not solely economic in nature but carry social and moral dimensions as well.[22]

Although customary law has been normatively recognized within the national legal system, including in civil law practices, its integration has not been fully realized in practice. In many cases, such as the application of *kasepekang* in lending agreements, there is a clear mismatch between the mechanisms of customary law

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[18] I Wayan Wahyu Wira Udytama et al., "Analysis of Breach of Contract Dispute Resolution Through Litigation and Non-Litigation Pathways," in *Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)* (Atlantis Press, 2024), 654–59, https://doi.org/10.2991/978-2-38476-315-3_89

[19] Ning Zhang et al., "Exploring Confucian Culture's Impact on Corporate Debt Default Risk: An Ethical Decision-Making Approach," *Journal of Business Ethics* 198, no. 2 (May 19, 2025): 467–84, https://doi.org/10.1007/s10551-024-05765-1

[20] Desak Gde Dwi Arini and I Nyoman Subamia, "Legal Protection of Tourist Insurance on Watersport of Tanjung Benoa Bali," in *Proceedings of the 3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)* (Paris: Atlantis Press SARL, 2023), 532–45, https://doi.org/10.2991/978-2-494069-93-0_64

[21] Halilul Khairi et al., "Traditional in Modern: The Existence of Village Governance Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 1 (June 30, 2024): 121–35, https://doi.org/10.30631/alrisalah.v25i1.1781

[22] Philip Sales, "Constitutional Values In The Common Law Of Obligations," *The Cambridge Law Journal* 83, no. 1 (March 3, 2024): 132–57, https://doi.org/10.1017/S0008197324000011

and the formal contract law system. Customary law continues to operate within its own social sphere, while state law functions separately through formal legal procedures.[23] This situation suggests that the integration often claimed is more symbolic than operational. Consequently, the incorporation of customary law into Indonesia's contract law system can be seen as an illusion of integration, where normative recognition is not accompanied by operational acknowledgment of communal sanctions within the framework of national legal policy. This underscores the need for a policy reconstruction capable of bridging the gap between customary law and modern contract law in a more substantive manner.[24]

To understand the extent to which such integration can be realized, it is essential to examine practices in other countries with similar legal pluralism. One illustrative example is Malaysia, which also recognizes the existence of customary law within its national legal system as a reflection of its ethnic and cultural diversity. In this context, the Malaysian Constitution provides a legal basis for the recognition and protection of customary law, particularly for indigenous communities in Sabah and Sarawak, as well as the Orang Asli communities on Peninsular Malaysia. [25] Normatively, Article 76(1) of the Malaysian Constitution empowers Parliament to enact legislation related to the recognition of customary law, especially concerning the interests of indigenous communities in Sabah and Sarawak. Additionally, Article 153 stipulates special rights for the Malay and Bumiputera groups, including protection of customary land and natural resources. For the Orang Asli in Peninsular Malaysia, recognition of customary law is accommodated through specific legislative instruments, such as the Orang Asli Act of 1954, which guarantees their traditional rights, including land ownership.[26]

Thus, both Indonesia and Malaysia demonstrate normative recognition of customary law within their respective national legal systems. However, this comparison also indicates that the primary challenge does not lie in formal recognition, but in the operational integration of customary law into the modern legal framework, including in the realm of contract law. Consequently, Malaysia's experience can serve as a comparative reflection to assess the extent to which the

[23] Muhamad Yofhan Wibianto, Hartiwiningsih Hartiwiningsih, and I Gusti Ayu Ketut Rachmi Handayani, "Real Justice, Real Impact with the Prosecutors in Action," *Journal of Human Rights, Culture and Legal System* 5, no. 3 (December 16, 2025): 1015–41, https://doi.org/10.53955/jhcls.v5i3.804

[24] Asman Asman, "Harmonisation of Dayak Customary Sanctions with Islamic Law: The Case Study of Dimly Lit Cafe in West Kalimantan," *Al-Mazaahib: Jurnal Perbandingan Hukum* 13, no. 1 (June 2, 2025): 29–52, https://doi.org/10.14421/al-mazaahib.v13i1.4101

[25] Flavia Ary Sahwa and Tharshini Sivabalan, "Meneroka Isu Perkahwinan Bawah Umur Dari Perspektif Undang-Undang Perkahwinan Adat Di Sarawak," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 8, no. 4 (April 30, 2023): e002279, https://doi.org/10.47405/mjssh.v8i4.2279

[26] Bagoes Wiryomartono, "Urbanism, Place and Culture in the Malay World: The Politics of Domain from Pre-Colonial to Post Colonial Era," *City, Culture and Society* 4, no. 4 (December 2013): 217–27, https://doi.org/10.1016/j.ccs.2013.05.004

integration of customary law in Indonesia remains symbolic, while simultaneously providing insights for the formulation of a more substantive and implementable integration model.[27]

Several studies have examined the integration of customary law and national law, both from the perspective of legal pluralism and in the context of constitutional recognition of customary law communities. However, there remains a gap in research that specifically addresses this integration within the domain of contract law, particularly concerning the application of communal sanctions in civil agreements. Most existing studies tend to focus on normative recognition and the existence of customary law, without thoroughly investigating how the values and enforcement mechanisms of customary sanctions are operationalized within the national contract law system. For instance, research by Budi Prakosa Adi (2025) indicates that proper integration of customary law and national law can strengthen legal legitimacy, enhance the effectiveness of conflict resolution, and maintain social harmony amid modernization challenges. However, this study focuses primarily on criminal law rather than contract law.[28] Similarly, Yohanna Y. R. Watofa et al. (2025) emphasize that integrating customary and national law can be employed to address legal issues, particularly those concerning the rights of indigenous communities.[29] Bartoven Vivit Nurdin et al. (2023) note that customary sanctions serve as a control mechanism against deviant behavior, though their study does not explore in depth whether the application of these sanctions conflicts with the national legal system.[30] Furthermore, Mizaj Iskandar Usman et al. (2025) argue that customary law influences the formation of national law.[31] Rossa Ilma Silfiah et al. (2024) assert that customary law and national law constitute an inseparable unity, with customary law serving as a material source for the development of national legislation.[32]

From these studies, a significant gap remains regarding the practice of imposing communal sanctions under customary law, particularly when such sanctions

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[27] Ganjar Kurnia et al., "Local Wisdom for Ensuring Agriculture Sustainability: A Case from Indonesia," *Sustainability* 14, no. 14 (July 19, 2022): 8823, https://doi.org/10.3390/su14148823

[28] Budi Prakosa Adi, "Creating Synergy between Restorative Customary Law Values and the Retributive National Legal System," ed. A.M. Fauzi et al., *SHS Web of Conferences* 221 (September 10, 2025): 03002, https://doi.org/10.1051/shsconf/202522103002

[29] Yohanna Y. R. Watofa et al., "Integration of Customary Law and State Law in Resolving Natural Resource Conflicts in Indigenous Areas," *Journal of the American Institute* 2, no. 8 (August 26, 2025): 1212–19, https://doi.org/10.71364/178dhm07

[30] Bartoven Vivit Nurdin et al., "Customary Sanctions: Social Control of Rural Development," *Jurnal Bina Praja* 15, no. 2 (August 2023): 325–37, https://doi.org/10.21787/jbp.15.2023.325-337

[31] Mizaj Iskandar Usman et al., "Adultery Offenses in Indonesia's New Penal Code: Examining the Influence of Islamic and Customary Law," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (April 13, 2025): 73, https://doi.org/10.31958/juris.v24i1.13208

[32] Rossa Ilma Silfiah et al., "Customary Law and Islamic Law Existence in the Reform of National Criminal Law," *Journal of Law, Politic and Humanities* 4, no. 5 (July 3, 2024): 1201–12, https://doi.org/10.38035/jlph.v4i5.465

conflict with the principles and provisions of national contract law. This raises critical issues concerning the legitimacy, effectiveness, and alignment of customary legal mechanisms with the formal legal system. Communal sanctions, such as *kasepekang* in Bali or social fines in other indigenous communities, emphasize restoring social balance, reinforcing community norms, and rehabilitating relationships among members. However, their implementation often occurs outside the formal legal framework, creating legal uncertainty for parties involved in contracts, especially in the context of economic modernization and increasingly individualistic business relationships. This misalignment demonstrates that the integration of customary law into Indonesia's contract law has largely been symbolic or normative, without full operationalization. While the Constitution and regulations such as the Village Law provide legitimacy for customary law, formal recognition mechanisms for communal sanctions in contracts remain minimal. As a result, although customary law is acknowledged as a material source for the formation of national law, its practical application in contractual disputes is not always feasible, leaving potential conflicts between customary norms and modern contract norms. Therefore, a holistic, evidence-based legal policy reform is needed, one that not only recognizes customary law declaratively but also ensures that communal sanctions can be applied legitimately and fairly within the framework of modern contract law.

Research Method

This study is normative legal research. The methodology employed includes the statute approach, conceptual approach, and comparative approach. The statute approach is used to analyze relevant legal regulations, particularly the Civil Code (*KUHPerdata*) as the legal foundation for contracts, as well as customary law norms applied in Balinese customary villages, including the regulation of *kasepekang* sanctions in the *awig-awig*. The conceptual approach examines legal concepts developed in doctrinal literature, such as legal pluralism, breach of contract, substantive justice, and the notion of an illusion of integration in the relationship between customary law and contract law. Meanwhile, the comparative approach is applied to compare policies regarding the integration of customary law into national law, specifically in the implementation of communal sanctions between Indonesia and Malaysia.[33] The legal materials utilized in this research consist of primary, secondary, and tertiary sources. Primary legal materials include relevant legislation and customary law norms. Secondary materials comprise academic literature, journals, and prior research related to legal pluralism and contract law. Tertiary materials consist of legal dictionaries and encyclopedias that support conceptual understanding. Data collection was conducted through library research. The collected legal materials were then classified and analyzed using a qualitative, descriptive-analytical method. The analysis involved legal reasoning and

[33] Abdul Kadir Jaelani, Anila Rabbani, and Muhammad Jihadul Hayat, "Land Reform Policy in Determining Abandoned Land for Halal Tourism Destination Management Based on Fiqh Siyasah," *El-Mashlahah* 14, no. 1 (2024): 211–38, https://doi.org/10.23971/el-mashlahah.v14i1.8051

argumentation to examine the gap between the normative recognition of customary law and its implementation within Indonesia's contract law system, enabling conclusions that are relevant to the research problem.[34]

Results and Discussion

Normative Construction of Customary Law Integration within Indonesia's Contract Law System

Hans Kelsen pioneered the theory of legal positivism, emphasizing the separation of law from social, moral, and political elements, and recognizing it as a set of written rules organized hierarchically within an autonomous legal system. Kelsen argued that law must be normative and should not be influenced by values or social norms outside formal legal rules.[35] His theory views law as a system of norms that requires enforcement, without regard to external factors such as customs or societal practices. This positivist approach has had a significant influence in Indonesia, particularly within the national legal system, which is based on a hierarchy of legislation with the Constitution as the supreme law. However, this approach has limitations in accommodating legal pluralism in Indonesia, where customary law continues to play an important role in community life, especially in certain regions.[36] In contrast, Friedrich Carl von Savigny argued that law is not solely created by the state but grows and develops from the collective consciousness and spirit of the people.[37] From this perspective, customary law reflects the social, cultural, and moral values inherent in a community, making its existence inseparable from the social context in which it operates. Therefore, customary law in Indonesia holds not only historical significance but also plays a crucial role in shaping the national legal identity.[38]

Within Indonesia's legal system, the normative recognition of customary law is affirmed in Article 18B(2) of the 1945 Constitution, which states that the state acknowledges and respects customary law communities and their traditional rights, provided they remain in existence and align with the principles of the Unitary State of the Republic of Indonesia. This provision demonstrates that, constitutionally, customary law holds legitimacy as part of the national legal

[34] Anila Robbani, Raffy Arnanda Faturrohman, and Ahmad Hananul Amin, "Optimization of Income Tax Revenue in Land and Building Rights Transfer Transactions," *Journal of Justice Dialectical* 2, no. 1 (June 24, 2024): 28–42, https://doi.org/10.70720/jjd.v2i2.38

[35] Syofyan Hadi and Tomy Michael, "Hans Kelsen's Thoughts about the Law and Its Relevance to Current Legal Developments," *Technium Social Sciences Journal* 38 (December 9, 2022): 220–27, https://doi.org/10.47577/tssj.v38i1.7852

[36] Firdaus Arifin et al., "Recognition of Customary Norms Within the Framework of Indonesian Legal Positivism," *Khazanah Hukum* 7, no. 1 (2025): 92–104, https://doi.org/10.15575/kh.v7i1.39409

[37] Peilin Liu, Can Zeng, and Ruirui Liu, "Environmental Adaptation of Traditional Chinese Settlement Patterns and Its Landscape Gene Mapping," *Habitat International* 135 (May 2023): 102808, https://doi.org/10.1016/j.habitatint.2023.102808

[38] Liu, Zeng, and Liu.

system. However, such recognition remains largely normative and has not been fully translated into operational integration, particularly within the domain of contract law.[39] In practice, Indonesia's contract law system, still predominantly shaped by a positivist paradigm, tends to view legal relationships as individualistic, focusing on legal certainty and the restitution of material losses. As a result, the communal values that characterize customary law are insufficiently accommodated. This is evident in the absence of mechanisms that explicitly recognize or integrate communal sanctions in the resolution of contractual disputes, including cases of default in lending agreements.[40]

This phenomenon is vividly illustrated in the practice of *kasepekang* in Bali. *Kasepekang* is a form of customary sanction that entails social ostracism of individuals deemed to have violated community norms or agreements. In certain cases, this sanction is also applied in civil contexts, including lending and borrowing agreements. In such situations, a debtor who fails to fulfill their repayment obligations is not only considered in breach of contract but is also seen as violating the social trust within the customary community.[41] Within the Balinese customary law system, *kasepekang* is classified as one of the most severe social sanctions because it directly results in the individual's exclusion from both social and religious life in the community. Although debt and credit are considered civil matters under national law, in the context of Balinese customary villages, such issues can evolve into broader social and moral concerns, prompting the imposition of customary sanctions. This demonstrates that, under customary law, contractual breaches are not merely regarded as private relationships between individuals but also as violations of the social and spiritual order of the community.[42]

The imposition of *kasepekang* in debt-related cases is generally based on several key indicators. *First*, a violation of customary commitments, particularly when the debt arises in the context of traditional activities such as ceremonies or the use of communal village funds, whereby default is seen as a breach of sacred

[39] Lutfi El Falahy, Giyarsi Giyarsi, and Budi Birahmat, "Customary Land Rights in Positive Law (Agrarian Law) and Islamic Law in Indonesia," *Jurnal Kawakib* 5, no. 02 (December 30, 2024): 106–13, https://doi.org/10.24036/kwkib.v5i02.227

[40] Hariri, Unggul Wicaksana, and Arifin, "A Critical Study of Legal Positivism As a Legal System in a Pluralist Country."

[41] Merry Elisabeth Kalalo, Betsy Anggreni Kapugu, and Deizen Rompas, "Protection of Traditional Cultural Expressions of the North Sulawesi Community Against Unauthorized Use for Commercial Purposes," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (June 30, 2025): 7857–78, https://doi.org/10.31941/pj.v24i2.6675

[42] Sri Wahyu Kridasakti et al., "The Legitimacy Crisis of Customary Villages Under Indonesia's Village Law," *Sriwijaya Law Review* 9, no. 2 (July 31, 2025): 432–56, https://doi.org/10.28946/slrev.v9i2.3998

responsibilities.[43] *Second*, refusal to resolve disputes through customary mechanisms (paruman) is considered noncompliance with the awig-awig and a disregard for the values of harmony, honesty *(satya*), and community solidarity *(pawongan). Third*, actions that cause social unrest, such as open conflict or tension among community members, are viewed as disturbing the principle of kerahayuan or social balance. *Fourth*, the presence of deceit or bad faith in executing the agreement strengthens the moral legitimacy for imposing customary sanctions. *Fifth*, acts that damage communal sanctity, such as misuse of funds affecting the performance of religious ceremonies at the pura also justify the sanction. Sixth, the offender has been warned and given the opportunity to fulfill their obligations but continues to act defiantly. Finally, absence from paruman without a valid reason is considered an act of defiance against customary authority.[44]

These indicators show that the basis for imposing *kasepekang* is not merely juridical but is deeply embedded with moral, social, and religio-magical dimensions characteristic of Balinese customary law.[45] However, in practice, the application of this sanction often overlooks individual factors such as the cause of default, the socio-economic conditions, or the good faith of the party involved. This suggests that the sanctions imposed do not fully reflect the principles of substantive justice, particularly when they result in broad social ostracism without proportionality in enforcement.[46] Such circumstances indicate that customary sanction mechanisms in the community are not yet harmoniously integrated with the principles of national contract law, which emphasize legal certainty and the protection of individual rights.[47] Consequently, the practice of imposing *kasepekang* in the context of lending agreements reinforces the argument that the integration of customary law into Indonesia's contract law system remains largely illusory an illusion of integration where normative recognition of customary law is not accompanied by regulatory frameworks or implementation mechanisms capable

[43] Kennedy Manduna, "Extractive Industries Indigenisation, Displacement and Vulnerabilities: The Case of Arda Transau, Zimbabwe," *The Extractive Industries and Society* 14 (June 2023): 101223, https://doi.org/10.1016/j.exis.2023.101223

[44] Mahesti Hasanah et al., "Customary Institutions and Village Governance in Indonesia: A Comparative Study," *South East Asia Research* 33, no. 1 (January 2, 2025): 68–86, https://doi.org/10.1080/0967828X.2025.2483169

[45] I Ketut Ardhana and Ni Wayan Radita Novi Puspitasari, "Adat Law, Ethics, and Human Rights in Modern Indonesia," *Religions* 14, no. 4 (March 24, 2023): 443, https://doi.org/10.3390/rel14040443

[46] Derita Prapti Rahayu et al., "Legal Effectiveness of Business Contracts in Tin Mining: Socio-Legal and Governance Challenges in Corporate–Community Relations in Indonesia," *Resources Policy* 111 (December 2025): 105767, https://doi.org/10.1016/j.resourpol.2025.105767

[47] I Gusti Ngurah Anom and I Gusti Bagus Hengki, "Reconstruction of Standard Agreement Ethics in Bank Credit Agreements: Integration of Human Rights and Local Wisdom of Bali," *Contrarius Series: Law & Social Justice* 1, no. 1 (January 17, 2026): 107–17, https://doi.org/10.53955/cslsj.v1i1.38

of bridging the paradigmatic gap between customary law and modern contract law.[48]

Examples of this can be seen in cases where *kasepekang* sanctions were applied for defaults in lending agreements. *First*, in Desa Adat Pujungan, a community member who borrowed Rp45 million from the village customary fund failed to repay the loan, avoided summons, and rejected the paruman decision. This was deemed a violation of the awig-awig and a disruption to village harmony, resulting in a three-year *kasepekang* sanction involving social ostracism and loss of access to customary services. *Second*, in Desa Adat Canggu, a borrower of Rp85 million from the banjar's savings and loan group failed to meet installment obligations, refused responsibility, and rejected customary dispute resolution mechanisms. His actions triggered social conflict within the community, leading the paruman agung to impose a four-year *kasepekang* sanction, fully restricting participation in customary and social activities. *Third*, in Desa Adat Paselatan, long-standing loan defaults at the Village Credit Institution (LPD) that remained unresolved despite leniency resulted in the imposition of *kasepekan*g. This sanction not only involved social exclusion but also included the loss of status as a community member and restricted access to religious and social services. Collectively, these cases demonstrate that loan defaults under customary law are perceived not merely as contractual breaches but also as violations of social norms and community harmony, resulting in communal sanctions with broad social implications.[49]

The three cases in Bali illustrate that, in practice, the relationship between customary law and national contract law does not operate within a framework of harmonious integration but rather as a form of separated dualism. Normatively, customary law is recognized under Article 18B(2) of the 1945 Constitution, and in the context of contract law, the principle of freedom of contract should theoretically allow space for the inclusion of local values, including communal sanctions. However, empirical reality shows that this recognition is not accompanied by operational mechanisms capable of substantively integrating the two legal systems.[50]

From the perspective of contract law, a breach of contract constitutes a violation of agreed obligations, typically resolved through compensatory mechanisms such as damages, interest, or specific performance. This approach is individualistic and

[48] Romi Adetio Setiawan, "Impact of Islamic Jurisprudential on Traditional Financial Customs and Legal Integration in Indonesia," *Journal of Islamic Thought and Civilization* 13, no. 2 (December 6, 2023): 195–209, https://doi.org/10.32350/jitc.132.13

[49] Yogi Yasa Wedha et al., "Unraveling the Complex Policies Regulating Conflicts of Interest and Criminal Corruption," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (March 17, 2025): 33–59, https://doi.org/10.53955/jhcls.v5i1.486

[50] George Mousourakis, "The Enduring Legacy of Indigenous Legal Traditions," in *Springer Textbooks in Law* (Springer Charm, 2025), 273–98, https://doi.org/10.1007/978-3-031-94669-1_10

focuses on the restitution of economic loss In contrast, in the three cases mentioned, breaches were not only seen as contractual violations but also as violations of social trust and community harmony, triggering the imposition of *kasepekang*, a communal and exclusionary sanction. This paradigm mismatch reveals that there is no common ground between sanction mechanisms under national contract law and those under customary law.[51] The state legal system does not recognize *kasepekang* as a legitimate sanction in contractual dispute resolution, whereas the customary community continues to treat it as a primary instrument for maintaining social order. Consequently, legal fragmentation arises, where a single act of default can produce two distinct forms of response: formal resolution under contract law and social resolution under customary law.[52]

This phenomenon reflects what is termed the illusion of integration, a situation in which customary law is normatively recognized within the national legal system, yet substantive integration in practice fails to occur.[53] The existing integration remains largely symbolic, with no acknowledgment of communal sanction mechanisms within the framework of contract law. This is evident in the cases discussed, where *kasepekang* continues to be enforced by customary communities but lacks legitimacy within the formal legal system, and may even conflict with national legal principles such as individual rights protection and proportionality of sanctions.[54] Moreover, this situation carries significant implications for legal certainty and justice. From the perspective of contract law, a debtor is only obliged to fulfill their performance or compensate for losses; however, under customary practice, they may face far harsher social sanctions with broad consequences, including exclusion from social and religious life.[55] This imbalance demonstrates that the absence of clear integration creates space for

[51] Maralda H. Kairupan, "Navigating The Labyrinth Of State-Owned Enterprises Disputes In Indonesia: A Quest For Effective Resolution Mechanisms," *Transnational Business Law Journal* 4, no. 2 (August 30, 2023): 103–22, https://doi.org/10.23920/transbuslj.v4i2.1541

[52] Muhammad Rustamaji, Shalih Mangara Sitompul, and Wan Mohd Khairul Firdaus, "Regulations on Criminal Sanctions for Bribery in Corruption Cases," *Contrarius* 1, no. 3 (October 29, 2025): 172–90, https://doi.org/10.53955/contrarius.v1i3.213

[53] Filippo Venturi, "Reconstructing Criminalisation. Regulatory Crimes and the Authoritarian Foundations of Modern Substantive Criminal Law," *Criminal Law and Philosophy*, December 3, 2025, https://doi.org/10.1007/s11572-025-09771-w

[54] Ajidar Matsyah et al., "Cultural Continuity and Legal Adaptation: The Evolution of Suluh in Aceh's Conflict Resolution System," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (June 11, 2025): 101, https://doi.org/10.31958/juris.v24i1.13272

[55] Ahmad Awwad Albnian, "The Impact of Debt Collection Abuse of Right on the Debtor's Obligations," in *Frontiers of Human Centricity in the Artificial Intelligence-Driven Society 5.0. Studies in Systems, Decision and Control* (Springer Charm, 2024), 897–905, https://doi.org/10.1007/978-3-031-73545-5_79

injustice, as individuals can be subjected to sanctions outside the formal legal framework without adequate protective mechanisms.[56]

Thus, the normative framework for integrating customary law into Indonesia's contract law system remains partial and has not achieved substantive integration. This condition reinforces the argument that the incorporation of customary law into the national contract law framework remains an illusion of integration, where recognition exists merely at a symbolic level, without accompanying regulations or implementation mechanisms capable of bridging the paradigm gap between customary law and modern contract law. Therefore, a reconstruction of legal approaches is needed, one that is more inclusive and contextual so that the integration of customary law can move beyond normative acknowledgment and be realized concretely in the practice of contract law in Indonesia.[57]

A Comparative Study on the Integration of Customary Law into the Contract Systems of Indonesia and Malaysia

In Southeast Asia, particularly within Indonesia and Malaysia, legal systems have evolved in a pluralistic manner, reflecting diverse ethnic and cultural backgrounds as well as distinct colonial legacies.[58] Both nations acknowledge customary law as an integral component of societal identity, one that remains vital and is actively practiced in daily life.[59] Within this context, customary law functions not merely as a set of social norms, but as a comprehensive value system governing interpersonal and communal relationships, including matters of economics and exchange. Nevertheless, this legal pluralism does not inherently culminate in a harmonious integration within their respective national legal frameworks, as each country employs a different approach in positioning customary law amidst the dominance of modern state law.[60]

In Indonesia, the recognition of customary law is anchored in a robust constitutional foundation through the 1945 Constitution, particularly Article 18B paragraph (2), which affirms that the state recognizes and respects customary law

[56] I Gede Agus Kurniawan, Lourenco de Deus Mau Lulo, and Fradhana Putra Disantara, "IUS Constituendum of Expert Advisor in Commodity Futures Trading: A Legal Certainty," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (April 4, 2023): 31–45, https://doi.org/10.29303/ius.v11i1.1170

[57] Wedha et al., "Unraveling the Complex Policies Regulating Conflicts of Interest and Criminal Corruption."

[58] Thomas Sealy et al., "South and Southeast Asia: Deep Diversity under Strain," *Religion, State and Society* 50, no. 4 (August 8, 2022): 452–68, https://doi.org/10.1080/09637494.2022.2126258

[59] Loso Judijanto, "Customary Law as a Pillar of Identity and Sustainability: A Review of Its Dynamics, Challenges, and Relevance in the Era of Modernization," *International Journal of Global Sustainable Research* 3, no. 11 (November 30, 2025): 787–804, https://doi.org/10.59890/ijgsr.v3i11.96

[60] Pan Mohamad Faiz et al., "Big Man, Bag or Ballot Box? Upholding Legal Pluralism through Noken as a Traditional System of Voting in Elections in Papua, Indonesia," *Legal Pluralism and Critical Social Analysis* 55, no. 3 (September 2, 2023): 339–65, https://doi.org/10.1080/27706869.2023.2274167

communities and their traditional rights.[61] This provision is frequently interpreted as a manifestation of the state's commitment to legal pluralism and an acknowledgment of the socio-cultural diversity thriving within society. Nevertheless, such recognition is not absolute but subject to specific conditions: customary law communities must remain in existence, align with societal developments, and not contravene the principles of the Unitary State of the Republic of Indonesia.[62] In practice, this conditional nature gives rise to challenges in interpretation and implementation, as the state retains substantial discretionary authority to determine the continued relevance of a customary community and its norms. Consequently, this constitutional recognition often remains confined to a normative and symbolic level, lacking the operational legal instruments necessary to bridge the existence of customary law with the positive legal system.[63]

This condition becomes particularly evident within the context of contract law, where the Indonesian legal system remains heavily influenced by the Civil Code (Burgerlijk Wetboek), which is rooted in the European civil law tradition.[64] This system emphasizes the principles of freedom of contract, consensualism, and legal certainty, all of which are oriented toward individualistic relationships among legal subjects. The rigid nature of this codification, being generally closed to unwritten norms, severely restricts the space for integrating customary law.[65] The communal values characteristic of customary law—such as social equilibrium, deliberation, collective responsibility, and community-based restoration—do not easily translate into formal contractual structures that prioritize individual rights and obligations. Furthermore, communal sanctions, such as customary fines or alternative social mechanisms, hold no recognized position within the state's contract law system; consequently, they cannot be utilized as legally valid instruments for remedy.[66]

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[61] Sapto Hermawan et al., "Constitutionality of Indigenous Law Communities in the Perspective of Sociological Jurisprudence Theory," *Jurnal Jurisprudence* 11, no. 2 (March 28, 2022): 282–96, https://doi.org/10.23917/jurisprudence.v11i2.12998

[62] Livia Holden, "Cultural Expertise and Legal Pluralism in the United Kingdom, France, and Italy," *Legal Pluralism and Critical Social Analysis* 56, no. 2 (May 3, 2024): 171–92, https://doi.org/10.1080/27706869.2024.2372744

[63] Yahya Ahmad Zein et al., "Indigenous, Diversity, and the Future of Human Rights in Regional Legal Systems," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (August 28, 2025): 581–607, https://doi.org/10.53955/jhcls.v5i2.573

[64] Bambang Eko Turisno et al., "Beyond Textual Reform: A Semiotic and Feminist Critique of Indonesian Civil Code," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 38, no. 7 (October 9, 2025): 2261–91, https://doi.org/10.1007/s11196-025-10314-8

[65] Istianah Zainal Asyiqin, M. Fabian Akbar, and Muhammad Daffa Auliarizky Onielda, "The Principle of Self-Submission in Sharia Economic Dispute Resolution: A Critical Examination through Friedman's Legal System Theory," *Jambura Law Review* 7, no. 2 (July 12, 2025), https://doi.org/10.33756/jlr.v7i2.27075

[66] Rahayu et al., "Legal Effectiveness of Business Contracts in Tin Mining: Socio-Legal and Governance Challenges in Corporate–Community Relations in Indonesia."

Furthermore, the absence of explicit regulations concerning the integration of customary law into contract law restricts the role of the judiciary in accommodating these values.[67] Judges are generally bound by the written provisions of the Civil Code, leaving highly restricted room to consider customary law as a legal source in the resolution of contractual disputes.[68] This situation creates a gap between the living law that evolves within society and the state law enforced by the government. Consequently, although customary law is normatively recognized within the Indonesian legal system, its practical integration remains limited and has yet to adequately address the needs of customary communities, particularly in the context of contractual relations and the application of communal sanctions[69]

In contrast to Indonesia, Malaysia has developed a more flexible mixed legal system by integrating elements of common law, customary law, and Islamic law.[70] Through the Civil Law Act 1956, Malaysia formally adopted English common law principles as the foundation for civil and commercial matters, including contract law. Nevertheless, this adoption does not preclude the existence of customary law as a living and relevant component of the broader legal system.[71] The Federal Constitution of Malaysia provides a robust legal basis for the recognition of customary law. Article 76 paragraph (1) grants Parliament the authority to enact legislation pertaining to the interests of customary communities, particularly in Sabah and Sarawak. This demonstrates that the recognition of customary law is not merely symbolic, but is reinforced by a legislative framework that enables its more concrete implementation.[72] Furthermore, Article 153 of the Federal Constitution of Malaysia safeguards the special rights of the Malay and Bumiputera populations, including in matters of land ownership and access to natural resources. This provision illustrates that customary law is inextricably

[67] Tariq K. Alhasan, "Integrating <scp>AI</Scp> Into Arbitration: Balancing Efficiency With Fairness and Legal Compliance," *Conflict Resolution Quarterly* 42, no. 4 (June 9, 2025): 523–34, https://doi.org/10.1002/crq.21470

[68] Rebecca Emiene Badejogbin, "Judicial Discretion: Problematizing the Ascertainment and Application of Customary Law by Formal Courts and Relevant Theories (Nigeria and South Africa)," *Legal Pluralism and Critical Social Analysis* 54, no. 2–3 (September 2, 2022): 252–77, https://doi.org/10.1080/27706869.2022.2119024

[69] Felipe Alexandre de Lima et al., "From Power to Sustainability? Unpacking the Role of Justice in Agricultural Commodity Supply Networks," *Journal of Operations Management* 71, no. 4 (June 12, 2025): 550–74, https://doi.org/10.1002/joom.1372

[70] Muhammad Azam et al., "Harmonizing Contemporary International Commercial Law with Sharia-Based National Legal Systems: A Comparative Study of Pakistan, Turkey, Indonesia, Malaysia, and Saudi Arabia," *MILRev: Metro Islamic Law Review* 4, no. 2 (September 1, 2025): 1074–96, https://doi.org/10.32332/milrev.v4i2.11334

[71] Maged Shebaita, "The General Principles of Law Recognised by Civilised Nations in Islamic Law," *Liverpool Law Review* 46, no. 2 (August 28, 2025): 219–43, https://doi.org/10.1007/s10991-025-09384-2

[72] Asnawi Mubarok et al., "The Relationship Of State Law And Customary Law:," *Jurnal Jurisprudence*, December 18, 2023, 188–204, https://doi.org/10.23917/jurisprudence.v13i2.2914

linked to economic dimensions and resource control, which in practice also carries implications for contractual relations, particularly concerning transactions involving customary land.[73]

The recognition of customary law in Malaysia is further reinforced through specific legislation such as the Aboriginal Peoples Act 1954, which governs the rights of the Orang Asli communities in Peninsular Malaysia. This statute provides protection for land rights, cultural practices, and community governance grounded in customary law. Through this instrument, customary law is not merely recognized, but its implementation is actively facilitated by the state.[74] Within the context of contract law, Malaysia utilizes the Contracts Act 1950 as its regulatory foundation. In contrast to a rigid codification system, the nature of the common law permits judges to consider customary practices as part of established custom or usage when interpreting contracts. This affords a more flexible space for the integration of customary law into contractual relations, even if it is not always explicitly articulated in written regulations.[75]

Comparatively, Indonesia tends to experience what may be termed an "illusion of integration" a condition wherein customary law is recognized normatively yet lacks a substantive role within formal legal practice.[76] Communal sanctions, which constitute a crucial element of customary law, such as customary fines or alternative social mechanisms, are not recognized as part of the remedial framework within state contract law. This engenders a significant divergence between the living law that evolves within society and the state law enforced by the government.[77] Conversely, Malaysia demonstrates a more pragmatic approach by facilitating an operational space for customary law within its national legal framework, encompassing constitutional, legislative, and judicial avenues.[78] Consequently, this comparative study indicates that the successful integration of customary law relies not solely upon normative recognition, but also upon the

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[73] Mohamad Ismail Bin Mohamad Yunus, "The Conceptualization of Legal Harmonization Approach in Malaysia," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 1 (March 28, 2023): 45–74, https://doi.org/10.25041/fiatjustisia.v17no1.2508

[74] Isabel Inguanzo, "Autonomy of Indigenous Peoples in the Federation of Malaysia: A Tale of Three Institutional Settings," *Territory, Politics, Governance* 12, no. 5 (May 27, 2024): 591–609, https://doi.org/10.1080/21622671.2022.2056077

[75] Turisno et al., "Beyond Textual Reform: A Semiotic and Feminist Critique of Indonesian Civil Code."

[76] Vicki Dwi Purnomo, Bambang Joyo Supeno, and Edy Lisdiyono, "The Role of Customary Law in the Development of National Law in the Modern Era," *Formosa Journal of Sustainable Research* 3, no. 10 (October 28, 2024): 2143–54, https://doi.org/10.55927/fjsr.v3i10.11945

[77] Kuel Jok, "International Criminal Law and Customary Law for Punishment of the Perpetrators of International Crimes in South Sudan," *International Annals of Criminology* 61, no. 3–4 (December 23, 2023): 265–91, https://doi.org/10.1017/cri.2023.21

[78] Youcha Alassane Touré et al., "Recognition of the Constitution, Laws and Regulations, Customary Law, and Islamic Law in the Indonesian and Malaysian Legal Systems," *Amorti: Jurnal Studi Islam Interdisipliner*, October 31, 2025, 151–60, https://doi.org/10.59944/amorti.v4i4.558

legal system's capacity to functionally accommodate pluralism. Malaysia's experience can serve as a substantial lesson for Indonesia in transforming the recognition of customary law from a mere symbolic gesture into an effective legal instrument, particularly concerning contract law and the application of communal sanctions.[79]

Integrating Customary Law into Indonesia's Contract Law System on the Communal Sanctions Policy Forum

Communal sanctions, specifically the *kasepekang* sanction within customary communities in Indonesia, particularly in Bali, represent a form of social ostracism directed at individuals deemed to have severely violated customary norms. This sanction fundamentally arises from the community's need to maintain social equilibrium, harmony, and the integrity of customary values thriving within society.[80] In this context, *kasepekang* functions not merely as a punitive instrument, but also as a mechanism of social control encompassing moral and religious dimensions. Nevertheless, alongside the growing awareness of human rights and the dynamics of legal reform in Indonesia, the practice of this sanction has begun to encounter critical scrutiny. The *kasepekang* sanction is deemed to potentially violate fundamental human rights principles, such as the principle of non-discrimination, the right to be heard, and the right to social participation in community life. In many instances, sanctioned individuals are not always provided with adequate opportunity to defend themselves, while the social ramifications of the sanction can extend to exclusion from religious, social, and even administrative activities. Consequently, the relationship between customary law and human rights frequently occupies a tense and problematic position.[81]

This tension becomes increasingly complex when juxtaposed with the national contract law system, which upholds the principles of legal certainty, proportionality, and the protection of individual rights. From a contract law perspective, a breach of contract should ideally be resolved through compensatory mechanisms strictly confined to the relationship between the involved parties.[82] However, in customary law practice, such a breach can trigger collective social sanctions that transcend the boundaries of the contractual relationship. This

[79] Linda Yanti Sulistiawati, "Halfway There: Indonesia's Adat Law towards Right of Nature Frameworks, Case-Based Reflections from Indonesia, the Philippines and Malaysia," 2025, https://doi.org/10.2139/ssrn.5930995

[80] Ahmad Diaz Makmur et al., "Exploring The Interconnection Between Ethics and Religion: Its Contribution to Social Harmony," *International Journal of Islamic Thought and Humanities* 4, no. 2 (September 1, 2025): 292–301, https://doi.org/10.54298/ijith.v4i2.526

[81] Aniceto Masferrer, "The Decline of Freedom of Expression and Social Vulnerability in Western Democracy," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 36, no. 4 (August 12, 2023): 1443–75, https://doi.org/10.1007/s11196-023-09990-1

[82] Seng Hansen, "Legal Case Study on Indent House Purchasing in Indonesia," *Journal of Property, Planning and Environmental Law* 18, no. 1 (February 16, 2026): 20–40, https://doi.org/10.1108/JPPEL-03-2025-0026

condition signifies an imbalance between the objective of preserving social harmony within customary law and the protection of individual rights under national law. Formulating an ideal policy regarding communal sanctions in customary law is imperative—not to eradicate customary law, but to harmonize it with the principles of national contract law and justice. Such reconstruction also serves as an integral effort to ensure the sustainability of customary law within the paradigm of a modern rule-of-law state.[83]

Communal sanctions within customary law, including *kasepekang*, hold legitimacy within the local context as a social mechanism to preserve harmony; however, at the national and international levels, their application cannot be isolated from human rights principles and the foundational tenets of national contract law. The necessity for this reconstruction is grounded in the need to integrate the customary and contract law systems, driven primarily by *first*, the absence of corrective mechanisms in instances of wrongful sanction imposition; *second*, the discriminatory and exclusionary impacts upon family members uninvolved in the violation; and third, the potential for abuse of power by customary leaders who may utilize *kasepekang* as an instrument of social repression. In the absence of such reconstruction, customary law risks becoming a tool of domination that undermines substantive justice. Therefore, an approach is required that enables customary law to remain viable and evolve, while concurrently aligning with the values of justice and the principles of the national contract law framework.[84]

Therefore, this study formulates several ideal policy models regarding communal sanctions for resolving breaches of contract within loan agreements, serving as an effort to integrate customary law with the national contract law framework. *First*, the procedure for imposing sanctions must be more transparent and equitable. In practice, the procedure for imposing the *kasepekang* sanction frequently occurs behind closed doors, lacks adequate documentation, and relies predominantly on oral deliberations within the paruman (customary assembly) forum. This condition poses a risk of engendering legal uncertainty and creates avenues for subjectivity in decision-making. Conversely, procedural transparency constitutes a fundamental element in establishing legal legitimacy, not only within the state legal system but also within customary law communities. From the perspective of contract law, transparent and accountable procedures are integral to the principles of legal certainty and good faith in the execution of an agreement. Any contractual breach, including default in a loan agreement, ought to be

[83] Stephanie Law et al., "Private Law, Private International Law and Public Interest Litigation," *Global Constitutionalism* 13, no. 1 (March 19, 2024): 1–12, https://doi.org/10.1017/S2045381724000017
[84] I Wayan Wahyu Wira Udytama and Ni Komang Sutrisni, "The Transformation of Balinese Customary Law in Addressing Human Rights Challenges: A Socio-Legal Perspective," *Contrarius Series: Law & Social Justice* 1, no. 2 (March 10, 2026): 99–105, https://doi.org/10.53955/cslsj.v1i2.126

resolved through mechanisms that are clear, rational, and accountable. Consequently, the lack of transparency in the imposition of customary sanctions potentially contradicts the fundamental principles of contract law, which necessitate procedural clarity and the protection of the rights of the involved parties.[85]

Therefore, the reconstruction of the mechanism for imposing the *kasepekang* sanction must prioritize the principles of transparency, participation, and accountability to align with the values of national contract law. *First*, there must be a mandatory requirement for official documentation during every paruman (customary assembly), accompanied by minutes and official records as a systematic recording method that can serve as a future reference. *Second*, the presence of independent witnesses or monitors is necessary during the customary decision-making process, drawn either from community members outside the disputing parties or from other neutral entities. Within the context of contract law, the existence of these independent parties can be viewed as a safeguard for objectivity, aligning with the principles of justice and the equality of arms in dispute resolution. *Third*, the public's right to know the legal and moral considerations underlying the imposition of the sanction must be acknowledged. This transparency is crucial not only for building social trust within the customary community but also for ensuring that the imposed sanctions do not exceed the limits of proportionality as stipulated in contract law principles. Consequently, this procedural reconstruction drives the transformation of the customary sanction mechanism from a closed and exclusive system into one that is more transparent, participatory, and accountable. This integration simultaneously demonstrates that customary law and contract law need not exist in opposition; rather, they can complement each other, provided they are founded upon the principles of justice, legal certainty, and the protection of individual rights. Through this approach, the integration of customary law into the contract law system ceases to be illusory, advancing instead toward a more substantive and operational form.[86]

Second, the reconstruction of an ideal model for customary sanction policy also demands that sanctions be imposed proportionally to the severity of the violation, rather than being absolute in nature. In this context, the duration of the sanction must be limited and not applied permanently, but rather calibrated to the degree of the offense committed. Furthermore, there must be mechanisms for periodic evaluation as well as opportunities for the restoration of the offender's social

[85] Kenneth G. Huang, Nan Jia, and Yeyanran Ge, "Forced to Innovate? Consequences of United States' Anti-Dumping Sanctions on Innovations of Chinese Exporters," *Research Policy* 53, no. 1 (January 2024): 104899, https://doi.org/10.1016/j.respol.2023.104899

[86] Ardianto Budi Rahmawan, Alyca Azka Nariswari, and Afnan Zahidatush, "Administrative Sanctions Governance Reform: Optimizing the Application of Administrative Sanctions in Indonesia," *Arena Hukum* 18, no. 1 (April 30, 2025): 73–101, https://doi.org/10.21776/ub.arenahukum2025.01801.4

status upon the conclusion of the sanction period, ensuring that the sanction does not culminate in total and sustained ostracism. Such an approach signifies a paradigm shift from a repressive and exclusive model of punishment toward one that is more corrective and rehabilitative. From a contract law perspective, this transformation is highly relevant, as it aligns with the principle that a breach of contract is not intended to inflict excessive punishment, but rather to restore the equilibrium of the legal relationship between the parties.[87]

Therefore, the proportional and restricted application of sanctions is imperative to ensure that the legal ramifications of a violation do not exceed the resulting damages. Consequently, this model aligns with the principles of good faith, proportionality, and the equilibrium of the parties within the national contract law system. These three principles underscore that any contractual breach must be resolved equitably and without excessive measures, while consistently safeguarding fundamental individual rights. Within this framework, the integration of customary sanctions into the contract law system is no longer construed as an extreme form of social punishment, but rather as a corrective mechanism designed to restore the legal relationship while concurrently preserving social harmony in a balanced manner.[88]

Third, strengthening deliberation as a restorative mechanism constitutes a crucial element in reconstructing the customary sanction model. Customary deliberation should not function exclusively as a decision-making tool culminating in the imposition of sanctions, but rather as a forum for restoring social relations within the community. In this context, deliberation must be repositioned as a forum that not only assesses fault but also facilitates reconciliation among the involved parties. Customary deliberation can serve as a space for mediation and negotiation between the offender and the aggrieved party, a means to uncover the underlying motivations and context of the violation, and a forum for formulating proportional social accountability. Consequently, dispute resolution does not terminate with the imposition of sanctions, but extends to efforts aimed at restoring social relations and trust within the community.[89]

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[87] Sarah Shannon et al., "'It's like a Reverse Robin Hood—We All Know They Can't Pay': How Court Actors Navigate the Logics of Monetary Sanctions," *Criminology* 63, no. 1 (February 21, 2025): 26–57, https://doi.org/10.1111/1745-9125.12400

[88] Bisrat Teklesilassie Yazew and Getachew Kassa, "Punishing Criminals Indigenously: Perspectives from Customary Law and Social Relationship Practices of Afar Pastorals along the Lower Awash Valley," *Cogent Social Sciences* 9, no. 2 (December 15, 2023), https://doi.org/10.1080/23311886.2023.2273337

[89] Budiyanto Budiyanto and Yustus Pondayar, "Conceptualizing the Integration of Restorative Justice in Environmental Crimes into Customary Criminal Justice," *Journal of Law, Environmental and Justice* 4, no. 1 (February 5, 2026): 124–60, https://doi.org/10.62264/jlej.v4i1.204

This approach aligns with the principle of restorative justice, which emphasizes restoration over punishment. From a contract law perspective, this restorative approach is equally relevant, as the resolution of a breach of contract fundamentally aims to restore the equilibrium of the legal relationship between the parties, rather than merely imposing sanctions. Therefore, the integration of customary deliberation as a restorative mechanism can reinforce a more humanistic, participatory, and equitable resolution of contractual disputes. Consequently, customary deliberation transforms from a model of "judgment" into a social "healing space" that not only preserves community harmony but also aligns with the principles of modern contract law and the values of restorative justice.[90]

Fourth, the transformation of the customary communal sanction model is directed toward restorative and reintegrative approaches. This approach enables the offender to issue a public apology, provide restitution or social contributions, and engage in forms of customary social service, such as karya bakti (community service). Consequently, sanctions are no longer oriented toward permanent ostracism, but rather toward efforts to restore social relations fractured by the violation. This approach further prevents long-term stigmatization and creates space for the restoration of dignity, for both the offender and the community as a whole. Restorative and reintegrative approaches position justice not merely as punishment, but as the healing of social fractures and the reintegration of the offender into community life. Within this framework, the resolution process for violations is conducted through several stages. *First*, social dialogue among the offender, the victim, their families, and the community serves as an effort to cultivate a mutual understanding of the violation that occurred. *Second*, the formulation of restorative measures, which may be material in nature, such as restitution, or symbolic, such as a public apology. *Third*, reintegration efforts, wherein offenders demonstrating good faith are afforded the opportunity to gradually resume participation in customary activities.[91]

From John Braithwaite's perspective, this approach is known as reintegrative shaming, which constitutes a form of social sanction emphasizing the condemnation of the act rather than the perpetrator. Upon fulfilling their accountability, the offender is no longer subjected to stigmatization; rather, they are reaccepted as an integral member of the community. Within the context of contract law, this approach aligns with the objective of resolving breaches of

[90] Didik Sukriono et al., "Local Wisdom as Legal Dispute Settlement: How Indonesia's Communities Acknowledge Alternative Dispute Resolution?," *Legality : Jurnal Ilmiah Hukum* 33, no. 1 (April 15, 2025): 261–85, https://doi.org/10.22219/ljih.v33i1.39958

[91] Muhammad Firdaus, Chryshnanda Dwilaksana, and Muhammad Daffa Auliarizky Onielda, "Shifting Polri's Law Enforcement Strategy: Restorative Justice for Public Trust," *Jurnal Media Hukum* 30, no. 2 (October 31, 2023): 153–70, https://doi.org/10.18196/jmh.v30i2.18628

contract, which is not exclusively punitive but rather seeks to restore the equilibrium of the legal relationship between the parties. Therefore, the integration of restorative and reintegrative models into customary sanctions can serve as a bridge connecting the communal values of customary law with the principles of justice inherent in national contract law. Through this approach, dispute resolution engenders not only legal certainty but also a more substantive and sustainable form of justice.[92]

Based on the reconstructed models formulated to determine an ideal policy model for communal sanctions as an effort to integrate customary law into the national contract law system, it is evident that such integration cannot be achieved solely through normative recognition; rather, it necessitates a substantive and operational transformation.[93] This reconstruction emphasizes the imperative of adjusting customary sanction mechanisms to align with modern legal principles, particularly concerning proportionality, transparency, accountability, and respect for human rights. Through this approach, communal sanctions are no longer positioned as absolute and exclusive punitive instruments, but rather as corrective, restorative, and reintegrative mechanisms aimed at restoring social equilibrium and the legal relationship between the parties. Within the context of contract law, this approach aligns with the principle that the resolution of a breach of contract must be directed toward the restitution of damages and the restoration of equilibrium in legal relations, rather than the mere imposition of repressive sanctions.[94] Consequently, the proposed ideal model not only bridges the paradigmatic divergence between customary law and national contract law but also transforms their relational dynamic from a fragmented state into a more integrative one. This simultaneously demonstrates that the "illusion of integration" can be overcome through a policy reconstruction capable of accommodating the communal values of customary law within the national legal framework in a more equitable, proportional, and sustainable manner.[95]

Conclusion

Based on the preceding analysis, it can be concluded that, *first*, the normative construction of integrating customary law into the Indonesian contract law system

[92] Rustamaji Muhammad et al., "The Reduction of Criminal Justice Policy in Indonesia: Justice versus Virality," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (July 31, 2025): 442–72, https://doi.org/10.53955/jhcls.v5i2.637

[93] Bambang Ali Kusumo et al., "Corporate Crime Prevention Through Sustainable Governance and Regulatory Reform," *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 3 (October 11, 2025): 616–40, https://doi.org/10.53955/jsderi.v3i3.168

[94] Mohammad Rifat Ahmmad Rashid et al., "Enhancing Land Management Policy in Bangladesh: A Blockchain-Based Framework for Transparent and Efficient Land Management," *Land Use Policy* 150 (2025): 107436, https://doi.org/https://doi.org/10.1016/j.landusepol.2024.107436

[95] Ali Kusumo et al., "Corporate Crime Prevention Through Sustainable Governance and Regulatory Reform."

reveals a tension between a positivistic approach emphasizing formal legal certainty and a sociological perspective acknowledging law as a reflection of societal values, wherein customary law is constitutionally recognized yet lacks operational integration within contractual practice. The phenomenon of applying the kasepekang sanction in cases of default demonstrates that this integration remains illusory (an "illusion of integration"), driven by a dualism between communal customary law and individualistic national contract law, which subsequently generates legal uncertainty and potential injustice. *Second*, the comparative study between Indonesia and Malaysia indicates that although both nations recognize customary law within their pluralistic legal systems, Indonesia tends to situate it at a normative level without the support of operational mechanisms in contract law, rendering its integration limited. Conversely, Malaysia adopts a more flexible approach through a combination of constitutional, legislative, and judicial practices that enable customary law to function more effectively in contractual relations, thus providing a model of more functional integration compared to the "illusion of integration" experienced in Indonesia. *Third*, the ideal model for integrating customary law into the Indonesian contract law system demands the transformation of communal sanctions into mechanisms that are more transparent, proportional, and grounded in a restorative-reintegrative approach. This must align with human rights principles and the tenets of justice within contract law, thereby overcoming the illusory nature of an integration that has heretofore been purely normative.

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