Domestication Of Customary Law: Critique of Legal Centralism in Government Regulation Number 5 Of 2025 Concerning Procedures and Criteria for Determining Living Law in Society from the Perspective of Weak Legal Pluralism

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ABSTRACT

This study aims to analyze the position of customary law in the national legal system following the enactment of Government Regulation Number 55 of 2025 Concerning Procedures and Criteria for Determining Living Law in Society. Using John Griffiths' legal pluralism theoretical framework, this study examines whether the regulation grants full autonomy to customary law or strengthens the dominance of state law. The method used is normative juridical with a conceptual approach. The research findings indicate that GR 55/2025 tends to be categorized as weak legal pluralism. This is because recognition of customary law still relies heavily on state-acknowledged validation, where customary norms are only considered valid to the extent they do not conflict with national interests and statutory regulations. This article concludes that despite codification efforts, the relationship between state law and customary law remains hierarchical and unequal.

Keywords: GR 55/2025; Customary Law; Weak Legal Pluralism; Living Law.

I. Introduction

Government Regulation No. 5 of 2025, which dictates the "Procedures and Criteria for Determining Living Law," (hereinafter abbreviated as GR 55/2025), is often presented as a victory for legal pluralism. However, from a critical perspective, it serves as a mechanism for legal centralism. It transforms customary law, which is naturally fluid and oral, into a rigid, state-determined artifact. The paradox of recognizing customary law in Indonesia reached a crucial point with the issuance of

GR 55/2025. On the one hand, this regulation is claimed to be a form of state respect for the existence of customary law communities; but on the other, it works as an instrument of domestication that reduces the original authority of local norms to a mere administrative subsystem of the state. This phenomenon confirms legal scholars' concerns about the persistence of legal centralism hiding behind the cloak of pluralism.

Theoretically, GR 55/2025 falls into the trap of weak legal pluralism. As Griffiths (1986) emphasized, weak pluralism is merely a subtle form of legal centralism, in which the state acts as the sole curator determining the validity of competing norms. The recognition granted is conditional and repressive, creating a hierarchy in which customary law is only "allowed" to exist as long as it is willing to be transformed into positive law through the mechanism of Regional Regulations.

A fundamental criticism arises from the fact that this formalization often ignores the fluid and dynamic nature of customary law. Nurhardianto (2021) argues that when the state enforces standardization of customary law, it is actually committing "character assassination" of local wisdom in the interest of legal unification. Furthermore, this integration is often driven by political-economic motives to facilitate investment penetration into customary territories. Benda-Beckmann & Benda-Beckmann (2023) highlight that administrative recognition is often used as a tool to control local community resistance to national strategic projects.

Therefore, GR 55/2025 should not be seen as "empowerment," but rather as a form of state co-optation of indigenous peoples' sovereignty. This article will examine how this subordination mechanism works and why it actually widens the gap between the state's procedural justice and the substantive justice of indigenous peoples. The existence of customary law in Indonesia has always existed in a dialectical tension between constitutional recognition and the reality of legal unification. The introduction of GR 55/2025 marks a new chapter in the state's efforts to restructure the status of indigenous peoples. However, theoretically, this policy has sparked debate about the sovereignty of local norms before positive law. Looking back at the discourse on the sociology of law, legal pluralism is divided into two main spectrums: strong pluralism, which recognizes the full independence of local norms,

and weak pluralism, which positions state law as the sole "umbrella" that validates other norms (Griffiths, 1986). The phenomenon in Indonesia often falls into the second model, where the state acts as a curator for the application of customary law. As noted in recent research, the integration of customary law into formal systems often erodes indigenous values for the sake of formal legal certainty (Nurhardianto, 2021). The implementation of GR 55/2025 is seen as a manifestation of the state's desire to standardize customary law through administrative mechanisms. This is crucial to examine because it concerns the constitutional rights of indigenous communities, who are often marginalized by national strategic projects protected by formal law.

Problem Formulation What is the position of customary law in the national legal structure based on GR 55/2025? And Why is GR 55/2025 classified as a weak legal pluralism model?

This study uses a normative juridical legal research method (doctrinal research), namely research focused on examining the application of rules or norms in positive law (Soekanto & Mamudji, 2019). The approach used is a statute approach to dissect the material content of GR 55/2025, and a conceptual approach to analyze it using the theory of legal pluralism. The main data sources come from primary legal materials (statutory regulations) and secondary legal materials (scientific journals and books). Data analysis was conducted qualitatively using deductive techniques to draw specific conclusions regarding the degree of recognition of customary law.

John Griffiths (1986) distinguishes legal pluralism into two forms: strong and weak legal pluralism. Weak legal pluralism is a form of legal centralism in which the state recognizes the existence of other legal systems (such as customary or religious law), but its validity depends entirely on the validation and recognition of state law (Bedner, 2021). In this model, customary law does not stand autonomously, but rather falls under the state's legal hierarchy. The state acts as the sole "source of legitimacy," where local norms are considered valid only if they align with the values and procedures established by the central government (Tamanaha, 2021). The Indonesian Constitution, through Article 18B paragraph (2) of the 1945 Constitution, provides the basis for recognizing the unity of customary law communities. However, this recognition is limited by the conditions "as long as they are still alive," "in

accordance with societal developments," and "the principles of the Unitary State of the Republic of Indonesia." This limitation theoretically creates opportunities for the emergence of policies that are subordinate to local wisdom for the sake of legal unification (Wignjosoebroto, 2022).

II. Discussion

2.1. Revealing the Position of Customary Law in GR 55/2025 in the Form of Formalization and Subordination to State Law

Based on an analysis of the material content of GR 55/2025, the position of customary law within the national legal structure demonstrates a restrictive pattern of formalization. Although this PP was enacted with the aim of providing legal certainty for indigenous communities, several indicators place customary law in a subordinate position. GR 55/2025 stipulates that customary law is only considered legally binding once it has been inventoried and established through a state legal instrument in the form of a Regional Regulation. Without this administrative determination, the existence of customary norms is not formally recognized in the national justice system. This aligns with Nurhardianto (2021) view that when customary law is forced into state administrative procedures, it loses its original plasticity.

In GR 55/2025, customary law is only recognized if it does not conflict with higher-level laws and "national strategic interests." This clause grants the state extensive discretionary powers to revoke customary norms if they are deemed to impede development projects or central government policies. This phenomenon is characteristic of weak legal pluralism, where the state maintains absolute control over competing norms (Benda-Beckmann & Benda-Beckmann, 2023). The position of customary law in GR 55/2025 is not as a parallel legal system, but rather as a complementary system integrated under positive law. Thus, the position of customary law post GR 55/2025 remains in the shadow of legal centralism, where the autonomy of indigenous communities is limited by the rigid boundaries of state sovereignty (Fuo, 2022).

To analyze how GR 55/2025 reflects weak legal pluralism, we first need to understand its basic premise. In legal theory, weak legal pluralism occurs when a

state recognizes the existence of another legal system (such as customary law or religious law), but the validity of that system depends entirely on the recognition and control of state law. Customary law is only considered valid to the extent "permitted" by formal law. The following is a narrative of the norms and articles in GR 55/2025 that illustrate this phenomenon:

A. Conditional Recognition (Articles 4 and 5 GR 55/ 2025)

Article 4 and 5 in GR 55/2025 affirms that "Living Law in Society" is recognized as a basis for criminal punishment. However, the narrative in Article 4 demonstrates a weak pluralistic character because it stipulates formal requirements: compliance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general legal principles recognized by the community of nations; and recognition and implementation by the local Customary Law Community. Here, state law acts as a "filter." If a customary norm is deemed to conflict with state moral standards, it is automatically invalidated. This demonstrates a hierarchy in which state law holds the highest authority.

Furthermore, Article 5 of GR 55/2025 states that Customary Crimes within Living Law in Society must meet the following criteria:

a) unlawful or conflict with Living Law in Society;
b) punishable by the fulfillment of obligations;
c) are not regulated in the Criminal Code; and
d) applies to any person who commits a customary crime within the customary law area.

B. Formalization through Regional Regulations (Article 6 of GR 55/2025)

One of the strongest characteristics of weak legal pluralism in GR 55/2026 is the obligation to codify customary law into Regional Regulations, as directed by Article 6, which states that provisions regarding types of Customary Criminal Acts that meet the criteria referred to in Article 5 are regulated by Regional Regulations. This shifts the nature of customary law from being flexible, oral, and dynamic to being rigid and written (positivization). When customary law must be incorporated into Regional Regulations, it loses its "authentic" essence and becomes part of the state bureaucracy.

C. Limitations of the Content of Regional Regulations Regarding Customary Law (Article 10 GR 55/2025)

Article 10 GR 55/2025 states that Regional Regulations concerning customary criminal acts must at least contain provisions regarding:

a) the name of the Customary Law Community;
b) the boundaries of the territory of the Customary Law Community;
c) prohibited acts/acts that violate customary obligations;
d) procedures for handling and resolving Customary Crimes;
e) procedures for fulfilling local customary obligations; and
f) sanctions in the form of fulfilling local customary obligations.

2.2. Rationalization of GR 55/2025 as Weak Legal Pluralism

The classification of GR 55/2025 as weak legal pluralism is based on the hegemonic nature of the relationship between state law and customary law. According to the theory put forward by John Griffiths, weak pluralism occurs when the state recognizes legal pluralism but maintains its position as the highest center of authority (Griffiths, 1986). The following is an in-depth analysis of the rationale for this classification:

The main characteristic of weak legal pluralism in GR 55/2025 is the requirement for "official recognition" for customary law to have legal-formal binding force. Under this regulation, customary norms are not considered self-validating laws, but must undergo a process of identification, verification, and determination by state institutions. As explained by Bedner (2021), pluralism in Indonesia is often “top-down,” where the state defines what “customary law” is according to its own criteria, which often differ from the sociological realities on the ground.

GR 55/2025 contains a strict limitation clause, stating that customary law must not conflict with national interests and statutory regulations. This clause demonstrates that state law functions as a filter that determines the survival or demise of local norms. Tamanaha (2021) emphasizes that in a system of weak legal pluralism, state law has "absolute superiority." If there is a conflict between customary norms and strategic state policies, the customary norms must

automatically be overridden or adjusted. This emphasizes that equality between legal systems never exists.

The process of classifying customary law into written regulations (such as the Regional Regulation mandated by GR 55/2025) constitutes a form of "positivization of customary law." According to Nurhardianto (2021), when dynamic and unwritten customary law is forced into the rigid, written format of state law, it essentially loses its essence as customary law and transforms into state law. This is a concrete manifestation of weak legal pluralism: the state "swallowing" customary law into its own legal bureaucracy.

The primary motivation for GR 55/2025 is often to create legal certainty to support an investment climate and development. However, this has resulted in the marginalization of indigenous peoples' original autonomy. In their recent study, Benda-Beckmann & Benda-Beckmann (2023) note that state recognition of local laws is often merely an administrative tool to facilitate the integration of indigenous territories into the global market. Therefore, such recognition is not a form of respect for diversity (strong pluralism), but rather a strategy of state control (weak pluralism).

III. Conclusion

GR 55/2025 is a legal instrument that solidifies Indonesia's position within the spectrum of weak legal pluralism. While customary law is recognized, this recognition is conditional and subordinate. The state retains full control over the validation of norms, so customary law functions only as a subservient subsystem within the national legal framework for the purposes of development and administrative unification.

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