

# Analyzing minor theft resolution under Nias customary law: a legal pluralism perspective from South Nias

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## ABSTRACT

This study analyzes the resolution of minor theft cases under Nias customary law in Oragua Hili Village, South Nias Regency, from a legal pluralism perspective. The research aims to examine how customary dispute resolution mechanisms operate at the village level and how they interact with the formal legal system in Indonesia. This study employs an empirical juridical approach with a qualitative method. Data were collected through in-depth interviews with selected informants and supported by document analysis. The findings indicate that minor theft cases are resolved through a deliberative process known as *orohu*, which emphasizes consensus, social harmony, and restorative justice. From a legal pluralism perspective, this mechanism reflects the coexistence and interaction between customary and national legal systems. While customary law demonstrates effectiveness in terms of accessibility, efficiency, and community acceptance, challenges remain regarding legal certainty, procedural consistency, and potential bias in decision-making. This study contributes to legal scholarship by providing empirical insights into the functioning of customary law within a plural legal system and highlights its relevance in contemporary discussions on restorative justice and access to justice. The findings also suggest the need for better integration between customary and formal legal frameworks to enhance fairness and legal certainty.

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## 1. INTRODUCTION

The existence of customary law in Indonesia reflects the diversity of legal systems that coexist within society. As a pluralistic legal system, Indonesia recognizes not only state law but also living law practiced by local communities. Customary law continues to play a significant role in regulating social behavior and resolving disputes, particularly in rural areas where access to formal legal institutions may be limited (Hernawan, 2020; Sihombing, 2021). In this context, customary law serves not only as a normative framework but also as a mechanism for maintaining social order and community harmony.

Despite its relevance, the resolution of minor criminal offenses, such as minor theft, often presents practical challenges within the formal legal system. Formal procedures tend to be time-consuming, costly, and less accessible to local communities. As a result, communities frequently rely on informal mechanisms rooted in local traditions to address such issues. In many cases,

these mechanisms emphasize consensus, reconciliation, and restoration rather than punishment, reflecting principles of restorative justice (Marbun, 2021; Prabowo, 2023).

From a regulatory perspective, the recognition of customary law in Indonesia is supported by the Constitution and various legal frameworks that acknowledge the existence of indigenous communities and their traditional rights. However, the relationship between customary law and national law remains complex. While customary mechanisms offer flexibility and cultural relevance, they often lack formal standardization and legal certainty, raising questions about their position within the broader legal system (Nasution, 2022). This situation illustrates the reality of legal pluralism, where multiple legal systems interact and sometimes overlap.

Previous studies have examined the role of customary law in dispute resolution and its contribution to restorative justice (Hernawan, 2020; Sihombing, 2021). However, these studies have not specifically analyzed how minor theft cases are resolved at the micro-level of village governance in Nias, nor have they explored the interaction between customary mechanisms and formal legal frameworks in practice. In particular, empirical research focusing on South Nias remains limited, especially in understanding how local values shape dispute resolution processes.

Therefore, this study aims to analyze the resolution of minor theft cases under Nias customary law in Orahua Hili Village, South Nias Regency, from a legal pluralism perspective. This research seeks to examine the mechanisms of dispute resolution, the role of traditional leaders, and the interaction between customary and national law. By doing so, this study contributes to the development of legal scholarship, particularly in the fields of legal pluralism and restorative justice, by providing context-specific empirical insights into the functioning of customary law in contemporary society.

## 2. METHOD

This study employs an empirical juridical approach with a qualitative research design. The research was conducted in Orahua Hili Village, South Nias Regency, from January to March 2025.

Data were collected through in-depth interviews, observation, and document analysis. A total of six informants were selected using purposive sampling, including traditional leaders, village officials, and community members involved in dispute resolution.

To ensure validity, triangulation techniques were applied by comparing data from multiple sources. Data analysis followed the interactive model of data reduction, data display, and conclusion drawing (Miles et al., 2014).

In addition to primary data, this study utilizes secondary data from academic literature. The articles analyzed in depth include Hernawan (2020), Sihombing (2021), Marbun (2021), and Nasution (2022), which discuss customary law, restorative justice, and legal pluralism. These articles were analyzed thematically to identify key concepts and theoretical frameworks relevant to the study. The analysis also serves to strengthen the theoretical foundation and support the interpretation of empirical findings.

This study has limitations, including potential subjectivity in informant selection and limited generalizability due to the focus on one village. However, these limitations are addressed through triangulation and in-depth qualitative analysis.

## 3. RESULTS AND DISCUSSION

### 3.1 Mechanism of Resolving Minor Theft Cases

The findings indicate that minor theft cases in Orahua Hili Village are resolved through a deliberative process known as orohu, which emphasizes consensus and social harmony. This mechanism involves both the victim and the offender and is facilitated by traditional leaders.

An informant stated:

“In resolving theft cases, both parties are brought together to reach an agreement that restores harmony.”

This process reflects a restorative approach, where the focus is not on punishment but on repairing social relationships and preventing further conflict. Such practices are consistent with community-based dispute resolution models that prioritize reconciliation over litigation (Wibowo, 2019; UNODC, 2020). From a legal pluralism perspective, this mechanism illustrates how

customary law functions alongside formal legal systems in addressing disputes at the local level (Benda-Beckmann, 2019).

### 3.2 Role of Traditional Leaders

Traditional leaders serve as mediators and decision-makers in resolving disputes. Their authority is derived from community trust and cultural legitimacy.

“People follow the decisions of traditional leaders because they are considered fair.”

This indicates that compliance is based more on social acceptance than formal enforcement. The role of traditional leaders aligns with findings that emphasize the importance of legitimacy and trust in community-based legal systems (OECD, 2019; Simanjuntak, 2020).

However, reliance on personal authority also raises concerns regarding consistency and accountability. The absence of standardized procedures may result in variations in decision-making, depending on the influence of individual leaders (World Bank, 2020).

### 3.3 Sanctions and Restorative Justice

The sanctions applied in minor theft cases are predominantly restorative, including compensation and reconciliation between the parties.

“The offender must return the goods and reconcile with the victim.”

This approach demonstrates that the primary goal is to repair harm rather than impose punishment. It aligns with restorative justice principles, which emphasize reintegration and the restoration of social balance (Daly, 2016; Marbun, 2021).

Analytically, this indicates that customary sanctions function not only as a legal response but also as a mechanism of social control, reinforcing communal values and preventing recurring conflict (Prabowo, 2023).

### 3.4 Effectiveness of Formal Legal Mechanisms and Customary Law

From the perspective of national law, acts involving falsification or document manipulation are regulated under Article 263 of the Indonesian Criminal Code. However, its effectiveness in resolving community-level disputes remains limited.

An informant explained:

“If the case is brought to formal law, it takes a long time and is complicated, so people prefer customary settlement.”

This statement reflects the practical challenges of formal legal processes, which are often perceived as time-consuming and less accessible. Although Article 263 provides legal certainty and formal sanctions, its application tends to focus on punishment rather than the restoration of social relationships.

Furthermore, while civil claims are theoretically intended to restore victims' rights, their practical effectiveness is often limited. As noted by one respondent:

“Even if it goes to court, not all victims can easily recover their losses.”

This suggests that civil remedies may not always provide substantive justice, particularly due to procedural complexity, costs, and limited access to legal resources. Similar findings have been reported in studies on access to justice, which highlight structural barriers in formal legal systems (World Bank, 2020; Nasution, 2022).

In contrast, customary law offers a more accessible and immediate resolution mechanism. The *orohu* process allows for direct negotiation and agreement, enabling faster restoration of both material losses and social relationships. However, despite its effectiveness, customary law also faces limitations. The absence of formal procedural standards may lead to inconsistent decisions, and there is a potential risk of bias, particularly when social relations influence outcomes.

This raises concerns regarding accountability and fairness, especially in cases where power dynamics within the community affect the resolution process. Therefore, while customary law promotes social harmony, it does not always guarantee procedural justice in a formal legal sense.

Comparatively, similar dispute resolution mechanisms exist in other regions, such as *gampong* institutions in Aceh and *desa adat* in Bali, which also emphasize consensus and restorative justice (Sihombing, 2021). However, each system operates within distinct cultural frameworks, highlighting the importance of context-specific analysis.

From a legal pluralism perspective, these findings demonstrate the coexistence of formal and informal legal systems in Indonesia. While national law provides legal certainty and formal protection, customary law offers flexibility and cultural relevance. Therefore, stronger integration between these systems is necessary to ensure both fairness and accessibility in dispute resolution.

#### 4. CONCLUSION

This study demonstrates that the resolution of minor theft cases under Nias customary law in Orahua Hili Village operates through a deliberative mechanism (*orohu*) that emphasizes consensus, restorative justice, and social harmony. In line with the research objectives, the findings show that customary law functions effectively at the community level due to its accessibility, efficiency, and strong social legitimacy, particularly through the role of traditional leaders as mediators. However, the study also finds that while formal legal mechanisms, including Article 263 of the Indonesian Criminal Code and civil remedies, provide legal certainty, they are often less effective in delivering practical and immediate justice for local communities. In contrast, customary mechanisms offer faster and more socially accepted solutions, although they face limitations related to procedural consistency and potential bias. These findings confirm the existence of legal pluralism, where customary and national legal systems coexist and interact in resolving disputes. This study contributes to legal scholarship by providing empirical insights into the role of customary law within a plural legal system and highlights the need for better integration between formal and informal legal mechanisms to ensure both fairness and accessibility. Future research is recommended to explore comparative studies across different regions and to examine policy frameworks that support the institutional recognition of customary law in Indonesia.

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