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Legal Protection of Indigenous Land Rights: A Study of Customary Law Integration in National Legal

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Abstract

The protection of indigenous land rights is a crucial aspect in safeguarding the identity, culture, and economic sustainability of indigenous communities. This study examines the integration of customary law (hukum adat) into the national legal framework as a means to ensure legal certainty and justice for indigenous peoples. Using a normative juridical approach supported by statutory, conceptual, and case analysis, the research explores how national regulations accommodate the recognition, protection, and enforcement of customary land rights. The findings reveal that although the Constitution and several sectoral laws explicitly acknowledge the existence of customary law, their implementation is often hindered by overlapping regulations, weak institutional mechanisms, and the dominance of state-centered land policies. The study argues that effective integration requires harmonization between customary norms and national legislation, the establishment of participatory dispute resolution mechanisms, and the strengthening of institutional capacity to recognize and register indigenous territories. This research contributes to the discourse on legal pluralism by offering a framework for integrating customary law into national law without eroding its unique characteristics, thereby promoting both social justice and sustainable land management.

Keywords: Indigenous Land Rights, Customary Law, Legal Protection, Legal Pluralism, National Legal System

1. Introduction

Land for indigenous peoples has a meaning that goes far beyond economic value, because land is the main source of livelihood, cultural identity, and symbol of community sustainability (Berat, 1991). In the perspective of legal anthropology, customary lands not only serve as a medium of production to meet economic needs through agriculture, plantations, or fisheries, but also as a social space in which community interactions, traditions, and norms are carried out (Colchester, 2011). The tenure and management of land for indigenous peoples is collective and hereditary, which makes it a communal asset that is closely tied to the social structure and local customary legal system (Fitzpatrick, 2007). Therefore, losing access to indigenous lands can threaten the economic sustainability and social order of indigenous peoples, as well as weaken their resilience to environmental and global economic changes (Conway, 2023).

Furthermore, customary lands are at the core of indigenous peoples' cultural identity and ancestral heritage (Bwire, 2019). The spiritual relationship between indigenous peoples and their land is reflected in origin myths, religious rituals, and value systems that are inherited across generations (Moniaga, 2010). In many indigenous communities in Indonesia, land is not only seen as property, but as a living entity that has a mutual relationship with humans. This view reinforces the principle of stewardship or sustainable management that is oriented towards ecological balance, not just resource exploitation (Henley & Davidson, 2008). Therefore, customary lands are not just economic or legal objects, but symbols of historical sustainability, collective identity, and social legitimacy that are the basis of the existence of indigenous peoples in the midst of modernization (Mushinge & Mulenga, 2016).

Customary law is a system of norms that live and develop among indigenous peoples, which govern various aspects of life, including hereditary land ownership and management (Anaya, 1991). In the Indonesian context, customary law is recognized as part of the national legal system as stated in Article 18B paragraph (2) of the 1945 Constitution, which affirms the state's recognition of the unity of customary law communities and their traditional rights. Land regulation in customary law is generally communal, where land rights are held by groups or

communities and inherited from generation to generation by maintaining their social functions (Soepomo, 1982). This land tenure mechanism is based on the principles of sustainability and communal solidarity, which distinguishes it from the concept of individual land ownership in positive law (Van Vollenhoven, 1981).

In addition to being an instrument for regulating ownership, customary law also functions as a mechanism for managing natural resources based on local wisdom (Fahmi, 2024). This management pattern includes the division of use rights, the prohibition of land transfer outside the community without mutual agreement, and the obligation to preserve the environment (Burns, 2007). The sustainability of this system is possible because customary law is adaptive and flexible to social change, but still maintains the core values inherited by ancestors (Bedner & Arizona, 2019). Although recognition of customary law has been granted within the national legal framework, its practice often faces challenges due to overlapping regulations, the dominance of state law, and weak formal mechanisms for protecting customary land rights (Clarke & Jupiter, 2010).

The recognition of the existence of indigenous peoples in the Indonesian legal system has a strong foundation, both constitutionally and through sectoral laws and regulations. Article 18B paragraph (2) of the 1945 Constitution states that "The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law." This provision provides constitutional legitimacy to the existence of indigenous peoples and their customary legal system, including land rights inherited from generation to generation (Roldán Ortega, 2004). This recognition is in line with the principle of legal pluralism, where customary law becomes part of the national legal system as long as it does not conflict with the basic values of the constitution and applicable laws and regulations (Asshiddiqie, 2006).

In addition to the constitution, recognition of indigenous peoples is also reflected in various sectoral laws. Law No. 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA) recognizes customary rights as the right to control land by customary law communities, provided that its implementation does not conflict with national and state interests. On the other hand, this normative recognition is strengthened by sectoral regulations such as Law No. 6 of 2014 on Villages, which recognizes Customary Villages, and the Indigenous Peoples Bill which aims to provide more comprehensive protection of the rights of indigenous peoples (Arizona & Cahyadi, 2013). Although normative recognition is clear, implementation in the field still faces challenges, including the lack of mechanisms to verify the existence of indigenous peoples and weak harmonization between customary law and state law (Buana & Mamonto, 2023; Asnur et al., 2024).

Conflicts between customary law and national law in land tenure are often rooted in paradigm differences in understanding ownership rights and resource management (Westbrook, 2022). Customary law views land as a communal asset that is tied to social identity and inherited from generation to generation, while national law tends to position land as an object of individual or collective rights that can be formally registered through the state's administrative system (Bedner & Arizona, 2019). This paradigm difference often leads to disputes, especially when state policies, such as the granting of mining concessions or large-scale plantations, overlap with the customary territories of indigenous peoples that are not officially registered. In this context, customary law is often in a subordinate position, so that indigenous peoples lose access to land and resources that are the basis of their economy and cultural identity (Moniaga, 2010).

In addition, the overlap of regulations between national law and customary law further worsens the situation, accompanied by the dominance of state policies that favor large-scale investment and infrastructure development. The weak legal protection mechanism for customary lands is reflected in the lack of effective legal instruments to accommodate indigenous peoples' claims, both at the stage of land registration and dispute resolution (Butt & Lindsey, 2018). Existing dispute resolution mechanisms are often oriented towards positive law alone, without considering evidence and customary law practices that have been in place for centuries. As a result, land conflicts have become protracted, causing economic losses, environmental damage, and triggering social marginalization of indigenous peoples (Lubis et al., 2025).

The integration of customary law into national law is a strategic step to create legal certainty for indigenous peoples, considering the many cases of land disputes that arise due to differences in recognition between the two legal systems (Lestaluhu et al., 2025). Legal certainty is not only related to clarity of land ownership status, but also includes assurances that the rights of indigenous peoples are protected and recognized by the state within a positive legal framework (Fitzpatrick, 2007). With effective integration, indigenous peoples will have a strong legal basis in defending their customary territories, while the state gains legitimacy in managing natural resources without negating traditional rights. This is also in line with the principle of the rule of law, where all citizens, including indigenous communities, receive fair and equal legal treatment (Febrianty et al., 2024).

In addition to legal certainty, the integration of customary law into national law is also important to realize substantive justice and the protection of the rights of indigenous peoples. Justice in this context is measured not only by formal equality, but also by recognition of the uniqueness of cultural values and historically tested resource management systems (Bedner & Arizona, 2019). The protection of indigenous peoples' rights will be more effective if customary law norms are accommodated in laws and regulations and implemented through participatory institutional mechanisms, including in the process of spatial planning, granting business licenses, and dispute resolution (Satory et al., 2025). Thus, the integration of customary law into national law does not only function as a symbolic recognition, but becomes a real instrument in maintaining the social, cultural, and environmental sustainability of indigenous peoples.

Arizona and Cahyadi (2013) found that despite constitutional recognition of indigenous peoples' customary rights, their implementation on the ground is often weak due to complicated verification procedures, overlapping regulations, and low commitment of local governments in formally establishing customary territories. Meanwhile, the research of Bedner and Arizona (2019) examines the concept of legal pluralism in Indonesia and emphasizes that the integration of customary law into national law will only succeed if there is harmonization of norms and strengthening institutional capacity to recognize and enforce customary-based decisions. These findings show that there is a gap between normative recognition and the realization of the protection of customary land rights at the practical level.

Another study conducted by Moniaga (2010) highlights the close relationship between customary land rights and indigenous peoples' cultural identities, as well as the risk of cultural heritage loss if customary land is taken over without due process. Colchester (2011) in his study in various regions of Indonesia emphasized that legal protection mechanisms that combine customary law principles with state legal procedures can reduce land conflicts and strengthen the sustainability of resource management. These findings reinforce the argument that the study of the integration of customary law in national law is not only academically relevant, but also has significant practical implications in efforts to prevent the marginalization of indigenous peoples and manage natural resources sustainably.

2. Research Methods

This research uses a normative juridical approach, which aims to examine the legal norms that govern the protection of indigenous peoples' land rights and their integration into the national legal system. This approach is relevant because the focus of the research lies in the analysis of laws and regulations, legal doctrines, and court decisions related to the recognition and protection of customary rights. The research data was obtained through a study of primary legal materials, such as the 1945 Constitution, the Basic Agrarian Law, and sectoral regulations related to indigenous peoples; secondary legal materials in the form of books, journals, and research reports; as well as tertiary legal materials in the form of legal dictionaries and encyclopedias. This method allows researchers to identify legal conformities, overlaps, and gaps that affect the protection of customary land rights.

Data analysis was carried out qualitatively using statutory interpretation techniques and comparative analysis. Legal interpretation includes grammatical, systematic, and teleological interpretations to understand the meaning and purpose of customary land rights regulation in various regulations. Comparative analysis was carried out by comparing the mechanisms for the recognition and protection of indigenous peoples' rights in Indonesia with several other countries that implement legal pluralism systems, in order to find an effective integration model. The results of the analysis are expected to formulate conceptual and practical recommendations for the harmonization of customary law with national law, so as to achieve legal certainty, justice, and protection of indigenous peoples' rights in a sustainable manner.

3. Results and Discussions

Normative Recognition of Indigenous Peoples and Customary Rights

The recognition of customary law communities in Indonesia has a strong constitutional foundation through Article 18B paragraph (2) of the 1945 Constitution which states that "The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia". This provision is the result of an amendment to the 1945 Constitution which affirms the existence of indigenous peoples as legal subjects with collective rights to land and natural resources (Arizona & Cahyadi, 2013). Philosophically, this recognition departs from the understanding that customarily managed lands and resources are an integral part of the identity, culture, and sustainability of indigenous peoples' lives (Roy, 2004).

In addition to constitutional recognition, the Basic Agrarian Law (UUPA) of 1960 explicitly regulates the existence of customary rights in Article 3, which states that the implementation of customary rights and similar rights of customary law communities must be in accordance with national and state interests, and must not conflict with higher laws. This arrangement confirms that customary rights are recognized within the framework of national law, but also shows that there are restrictions in order to maintain the integration of state law (Harsono, 2008). Such restrictions are often a matter of debate, as their interpretation can place customary rights in a subordinate position to national development policies. The recognition of the rights of indigenous peoples is also contained in a number of sectoral laws. For example, Law Number 6 of 2014 concerning Villages regulates the existence of customary villages with authority based on the right of origin, including the management of customary areas. Law Number 41 of 1999 concerning Forestry recognizes customary forests as part of forests within the territory of customary law communities. In addition, Law Number 32 of 2009 concerning Environmental Protection and Management also places local wisdom as one of the principles in environmental management. This sectoral regulation shows the state's efforts to include customary principles in natural resource governance, despite its implementation often facing technical and political obstacles (Colchester, 2011).

However, the recognition is conditional, which in the context of the 1945 Constitution is interpreted as "as long as it is still alive" and "in accordance with the development of society". This phrase opens up a wide space of interpretation, both in terms of the existence of indigenous peoples and the boundaries of traditional rights that can be recognized by the state (Bedner & Arizona, 2019). In practice, governments often use restrictive interpretations to determine whether a community still meets the criteria as a customary law society (Erdika et al., 2024). This has caused many indigenous communities to lose legal legitimacy, even though sociologically and historically they still practice customary law and manage customary areas.

The conditionality of recognition also has implications for restricting the implementation of customary rights. For example, in forestry management, areas categorized as state forests often overlap with customary territories, and recognition of customary forests is only given if there is an official determination from the local government through local regulations (Ekawati, 2018). This procedure requires participatory verification and mapping which is not always easy to do, especially in the event of a dispute with the private sector or the government. As a result, many customary territories remain in an uncertain legal status (legal limbo), making them vulnerable to being claimed or managed by other parties without the consent of indigenous peoples.

Theoretically, normative recognition of indigenous peoples and customary rights in the constitution and sectoral laws should be the basis for strong legal protection. However, the nature of conditional recognition and implementation restrictions demand clarity of criteria, transparent verification mechanisms, and responsive institutions. Without reforms in this aspect, normative recognition tends to be symbolic and does not provide adequate legal certainty for indigenous peoples. Therefore, the integration of customary law into national law must be designed in such a way as not only to affirm the formal existence of indigenous peoples, but also to ensure the sustainability of their traditional rights in the midst of the dynamics of national development (Fitzpatrick, 2007).

Conflict between Customary Law and National Law

The conflict between customary law and national law in land regulation is rooted in a fundamental paradigm difference. Customary law views land as a communal asset that is owned and managed jointly for the benefit of all members of the indigenous community, with a management mechanism based on collective, spiritual, and ecological values (Soepomo, 1982). In contrast, national law, which is heavily influenced by Western legal concepts, tends to individualize land ownership through certification and registration of personal property rights (Fitzpatrick, 2007). This difference in orientation not only creates conceptual incompatibility, but also raises tensions in land tenure and utilization practices.

This disharmony becomes even more complex when the customary rights of indigenous peoples are not registered in the national land administration system. In Indonesia's positive legal framework, land rights that do not have formal evidence such as certificates are often considered weak before the law, even though customarily the ownership status is legal and recognized by the community (Bedner & Arizona, 2019). This condition makes indigenous peoples vulnerable to losing their territory, especially when there is overlapping claims with business license holders or registered land rights holders (In, 2025).

Land disputes between indigenous peoples and other parties often end up in court. However, court decisions tend to be more oriented towards positive law, emphasizing formal evidence such as land certificate documents, sale and purchase deeds, or official maps from government agencies (Moniaga, 2010). Customary evidence such as the testimony of customary elders, natural boundaries, or customary texts is often seen as not strong enough to form the basis for a verdict. As a result, indigenous peoples often suffer defeats in the litigation process despite having

strong social and historical legitimacy (Bwire, 2019). In addition, the application of national law often ignores customary-based dispute resolution mechanisms, which actually have advantages in terms of participation, social acceptance, and the restoration of relations between parties. In many areas, land disputes that could previously be resolved through customary deliberation have now shifted to litigation, which is formalistic and costly in nature. This change in settlement pattern not only shifts the role of customary institutions, but also reduces the space for the application of the principle of restorative justice that is a characteristic of customary law (von Benda-Beckmann, 2009).

Overall, the conflict between customary law and national law reflects structural problems in the Indonesian legal system that still adheres to a centralistic and positivistic paradigm. As long as the criteria for the recognition of customary rights depend on the formal evidentiary standards of state law, and as long as the land registration mechanism does not accommodate a system of communal control, the potential for conflict will continue to arise. Reform of land and judicial policies is needed to integrate customary evidence into formal legal procedures, so that the recognition of customary rights can run parallel to the national legal system without compromising the principle of substantive justice (Sembiring, 2018)

Model of Integration of Customary Law into Effective National Law

The integration of customary law into national law requires adequate harmonization of norms, one of which is through the revision of the Basic Agrarian Law (UUPA) and the establishment of the Indigenous Peoples Law. The revision of the UUPA is needed to strengthen the position of customary rights as an integral part of the national land rights system, not just a conditional exception (Harsono, 2008). Meanwhile, the establishment of the Indigenous Peoples Law will provide a comprehensive legal framework regarding criteria, recognition procedures, and mechanisms for the protection of indigenous rights, so that it no longer relies on sectoral interpretations that often cause disharmony (Arizona & Cahyadi, 2013).

One of the important technical steps in the process of recognizing customary rights is the implementation of a participatory mapping mechanism. This method allows indigenous peoples to map their territories in a participatory manner by involving local stakeholders, local governments, and mapping technical institutions (Chapin et al., 2005). Participatory mapping not only produces more accurate spatial data, but also serves as a means of empowering indigenous communities in strengthening their territorial claims. The integration of these mapping results into the national land information system will help prevent overlapping claims and strengthen legal certainty. In addition to territorial recognition, customary land dispute resolution requires a hybrid system model that combines state legal procedures and customary mechanisms (Febrianty et al., 2024). This model allows dispute resolution to be carried out first through customary deliberation with the principle of restorative justice, and if no agreement is reached, then proceed to a formal legal process (von Benda-Beckmann, 2009). This approach not only recognizes the existence of customary institutions, but also reduces the burden on the state judiciary, while increasing social acceptance of the resulting decisions (Buana & Mamonto, 2023)

Strengthening the role of local governments is also a key factor in this integration model. Local governments have geographical and social proximity to indigenous communities so that they are more responsive to local dynamics. Giving greater authority to regions to issue regional regulations for the recognition of indigenous peoples and establishing customary territories will accelerate the recognition process (Ekawati, 2018). However, this must be accompanied by increased technical capacity and human resources so that the implementation of customary-based policies can be carried out consistently and accountably. The active participation of indigenous peoples in the land policy formulation process is the main pillar of successful integration. Their involvement is not only important to guarantee the legitimacy of policies, but also to ensure that the resulting rules are truly aligned with local needs and values (Colchester, 2011). Thus, an effective integration model not only unites the two legal systems in the normative realm, but also builds participatory mechanisms that bridge the paradigm differences between customary law and national law (Roldán Ortega, 2004).

4. Conclusion

This study concludes that the legal protection of indigenous peoples' land rights in Indonesia still faces a gap between normative recognition and implementation on the ground. Although Article 18B paragraph (2) of the 1945 Constitution, UUPA, and various sectoral laws have provided recognition of customary rights, the conditional nature of recognition and disharmonization of regulations have resulted in weak guarantees of legal certainty. The paradigm difference between customary law that emphasizes communal ownership and national law that tends to individualize land rights further complicates the problem, especially when formal evidentiary mechanisms ignore evidence and customary practices. As a result, land disputes often lead to the loss of customary territories and the marginalization of the role of indigenous peoples in the management of their natural resources.

Therefore, the integration of customary law into the national legal system is of strategic urgency to ensure substantive justice and the sustainability of indigenous peoples' rights. An effective integration model requires the harmonization of norms through the revision of the UUPA and the establishment of the Indigenous Peoples Law, the strengthening of participatory mapping mechanisms for the verification of customary territories, and the establishment of a hybrid-based dispute resolution system that combines state legal procedures and customary mechanisms. Strengthening the role of local governments and the active participation of indigenous peoples in land policy formulation are determining factors for success. With these steps, it is hoped that legal certainty will be created that not only formally protects the rights of indigenous peoples, but also accommodates the cultural and ecological values contained in customary law.

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