

## The Intersection Of Customary Law And National Land Law In The Settlement Of Land Disputes In Indonesia

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Article Info	ABSTRACT
<p><b>Keywords:</b> Customary Law, National Land Law, Land Disputes</p>	<p>Customary land disputes in Indonesia reflect the complex relationship between customary law and state law, which often creates tensions and injustices for indigenous peoples. This research aims to explore the interaction between the two legal systems, with a focus on the recognition of indigenous peoples' customary rights in land dispute resolution. Legal Pluralism Theory is used as the main framework to analyze how customary law and formal law interact, collaborate, or clash. Data collected through interviews, legal documents, observations, and focus group discussions (FGDs) are analyzed to identify the challenges faced by indigenous peoples in obtaining their land rights. The results are expected to provide strategic recommendations on more inclusive and adaptive legal mechanisms, as well as customary land conflict resolution strategies based on distributive justice and social harmony. The research also emphasizes the importance of customary mediation as an alternative solution that is more responsive to local needs. By adopting a decentralized and participatory approach, this research will offer a more comprehensive picture of the dynamics of customary land conflicts in Indonesia, and strengthen the policy foundation to support social justice and the protection of indigenous peoples' rights.</p>
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### INTRODUCTION

Land disputes in Indonesia, especially those relating to customary land, are particularly complex issues as there is often tension between customary law and state law. This conflict is rooted in the incompatibility between the traditional rights of indigenous peoples, which are governed by customary law, and the formal legal policies of the state, which prioritize national interests. This issue affects the equitable distribution of resources as well as social harmony between indigenous peoples and the state. Studies show that land disputes often involve broad social, legal and economic dimensions. Data from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (BPN) shows that in 2020, there were more than 4,000 cases of land disputes relating to customary rights and customary land, of which around 20% focused on the intersection between customary law and national land law.

Customary land in Indonesia presents a rich diversity, reflecting the various cultures, traditions and local wisdom systems of the archipelago's diverse ethnic groups. For example, customary land in Papua is known for its clan-based communal management

system, while Minangkabau customary land in West Sumatra carries the philosophy of “hak ulayat nagari.” On the other hand, Dayak customary land in Kalimantan is managed with a clan-based approach. “On the other hand, Dayak customary land in Kalimantan is managed with a local wisdom approach aimed at preserving the environment. Each region has different regulations, norms and values in managing customary land, which often conflict with government policies in the context of national development.

The legal basis relating to customary land disputes in Indonesia includes Article 18B Paragraph (2) of the 1945 Constitution, which recognizes and respects the existence of customary law communities and their traditional rights, as long as the community is still alive and in line with social development. In addition, Law No. 5/1960 on Agrarian Principles (UUPA) provides an important basis for the implementation of land management, especially Article 3 which regulates customary rights and similar rights for indigenous peoples, as long as they are in line with national interests. Constitutional Court Decision No. 35/PUU-X/2012 also strengthened the recognition of customary forests as part of indigenous peoples' rights, which is a significant step in the protection of customary rights.

However, as Chalfin (2023) points out in an African study, tensions between formal and customary law often hinder communities' access to land rights, especially when traditional elements are not properly accommodated in national policies. This is also the case in Indonesia, as pointed out by Prasetyo and Hartini (2023), who emphasize the importance of recognizing ulayat rights as part of the collective identity of indigenous peoples. Research by Oliveira et al. (2023) in Brazil and Purwanto (2023) in Indonesia also show that although customary law is considered more responsive to local needs, customary mediation mechanisms often do not receive adequate recognition in the formal legal system. In addition, Kusumawardani and Rahmawati (2022) in *Indigenous Peoples' Customary Land Disputes in Indonesia: Legal and Political Perspectives* examines the conflicts that arise between customary law and state law in Indonesia, and discusses the challenges in resolving customary land disputes through formal legal mechanisms. Basri (2021) also underlines the importance of integrating customary mediation in resolving land disputes involving indigenous peoples, as explained in the journal *Legal Pluralism and Mediation of Land Conflicts in Indigenous Communities in Indonesia*.

This problem further demonstrates the gap in research on the effectiveness of customary mediation in resolving land disputes involving multiple actors. Despite the important role of customary mediation, there are still few studies evaluating how the integration of customary mechanisms with the formal legal system can lead to more sustainable and equitable solutions. As mentioned by Cheng et al. (2024) in Southeast Asia, integrative approaches between customary law and formal law often face various institutional and political barriers. Therefore, further research is needed regarding the potential and challenges of synergy between these two legal systems, especially in the context of indigenous peoples in Indonesia, which has unique characteristics and challenges compared to other countries.

John Rawls, in his 1971 theory of distributive justice, emphasized the significance

of fairness in the distribution of resources, which is particularly relevant in the context of adat land disputes. The adat-based redistribution approach proposed by Tambunan in 2023 aims to reduce social inequality and promote justice for indigenous peoples. Adat-based mediation can provide more adaptive and inclusive solutions in resolving land conflicts, as found in research by Balasubramanian in 2023 in India.

Legal Pluralism theory provides a crucial basis for analyzing the interaction, collaboration or even conflict between customary law and state law in the resolution of customary land disputes. In this context, the theory emphasizes the importance of recognizing the various legal systems that exist, allowing for a more inclusive and equitable approach in dealing with land disputes. This is particularly relevant for indigenous peoples in Indonesia, who have their own legal systems that are not always in line with state law. In addition, research by Halversen (2024) in Latin America highlights the importance of a multicultural approach to land management, where collective rights, such as common ownership, are recognized as part of more progressive policies. However, these issues are often trapped in modern colonial logics that limit indigenous territorial control to formal dimensions.

Therefore, it is very important to explore how the integration between customary law and formal law can provide a more effective and equitable solution in resolving land disputes, especially those involving indigenous peoples. Given the challenges faced by indigenous peoples in obtaining their rights to customary land, this research has a high urgency to identify and formulate legal mechanisms that are more inclusive and adaptive. Through the approaches of Legal Pluralism theory, Distributive Justice theory, and Social Harmony theory, it is hoped that the solutions found can not only create peace and justice for indigenous peoples, but also strengthen the foundation of social justice in Indonesia, as well as mitigate the potential for social conflicts that can undermine national stability.

## METHOD

Customary land disputes in Indonesia reflect the complexity of the interaction between customary and formal law, often leading to social conflict. Therefore, an adaptive and inclusive approach is essential to ensure the protection of indigenous peoples' rights in the context of social justice. Through the application of Legal Pluralism theory, this research will explore the dynamics of law in a culturally diverse society. It is hoped that the results of this research can provide strategic recommendations to resolve conflicts based on local wisdom and create social harmony.

### Contribution

This research aims to explore the dynamics of customary land disputes in Indonesia, especially in the context of the relationship between customary law and formal law. From an academic perspective, this approach contributes to the development of Legal Pluralism theory, as expressed by Merry (1988), which emphasizes the importance of interaction between the state legal system and customary law in diverse societies. Practically, the results of this research are expected to provide recommendations regarding adaptive and inclusive legal mechanisms, as well as customary land conflict

resolution strategies based on distributive justice and social harmony. This is in line with Rawls' (1971) view of justice as fairness, which emphasizes the importance of inclusive policies to protect vulnerable groups, including indigenous peoples, in order to create a fairer legal system that is sensitive to their needs.

### **Decentralization**

This research uses a decentralized approach to understand and resolve customary land disputes by emphasizing local wisdom and customary diversity in various regions. The research locations are focused on areas with documented cases of customary land disputes, such as Papua with clan customary land, West Sumatra with nagari customary rights, and Kalimantan with Dayak customary land. This choice of location is in line with Antlov's (2003) study, which highlights the importance of locality-based approaches in decentralizing governance and resource management. Case studies were chosen to explore specific conflicts that reflect the variety of customary law localities in Indonesia, in line with Bowen's (2000) view that case studies can provide an in-depth understanding of the socio-cultural dynamics within customary systems and their interaction with formal law. This approach also takes into account the social and cultural dimensions of decentralization, by involving indigenous peoples and local leaders as the main subjects of research, as outlined by Warren (1998) who emphasizes the importance of empowering indigenous peoples in the decentralization process.

### **Jurisdiction**

This research emphasizes the importance of the jurisdictional aspect through analysis of the interaction between formal law and customary law, as well as the challenges that arise in their integration. A review of legal documents such as the 1945 Constitution Article 18B Paragraph (2), UUPA Article 3, and Constitutional Court Decision No. 35/PUU-X/2012 is the first step to understanding the basis for recognition of customary land. The 1945 Constitution Article 18B Paragraph (2) provides the foundation for the recognition of customary law, as long as it does not conflict with national interests, while UUPA Article 3 confirms the recognition of customary rights which is often hampered by differences in interpretation between customary law and formal law. A study by Fitzpatrick (2005) highlights this conflict, where the recognition of customary law in the formal system often leads to the marginalization of indigenous peoples. This study also discusses the integration between customary and formal law using the theoretical framework of Legal Pluralism (Tamanaha, 2008), which emphasizes that law is a product of society, including customary law. Challenges in legal hierarchy, where formal law is often considered superior, become one of the main obstacles in creating harmony between legal systems. Implementation practices show that although Constitutional Court Decision No. 35/PUU-X/2012 affirmed that customary forests are not state forests, indigenous peoples' claims to their lands are still often rejected.

The research also examined mediation mechanisms, both through formal institutions and customary channels, to understand the effectiveness of legal integration. The use of data triangulation from interviews, legal documents, observations and FGDs, as well as a participatory approach involving indigenous peoples, local leaders and the government, was

adopted to strengthen the validity of the findings. As recommended by Kamphorst (2017), triangulation not only strengthens validation, but also bridges differences in perspectives between stakeholders, thus providing a comprehensive picture of jurisdictional dynamics in customary land conflicts.

## DISCUSSION

This research reveals that there is often conflict between customary law and formal law due to the incompatibility of the basic principles of the two legal systems. Communal-based customary law often conflicts with individualistic formal law, which exacerbates social conflict especially in areas where customary rights have not been formally recognized (Prasetyo and Hartini, 2023; Oliveira et al., 2023). This relates to Article 18B Paragraph (2) of the 1945 Constitution and Article 3 of the UUPA which recognizes the rights of indigenous peoples as long as they do not conflict with national interests. In this context, adat-based mediation has proven effective in resolving land conflicts, especially in communities with strong local wisdom. However, the lack of formal legal recognition of the results of customary mediation is a major obstacle to its implementation (Basri, 2021; Cheng et al., 2024). Constitutional Court Decision No. 35/PUU-X/2012 provides a basis for legal recognition of customary mechanisms, but strengthening the legality of mediation outcomes is still needed.

Furthermore, the integrative approach between customary law and formal law shows great potential for creating inclusive and equitable solutions, as demonstrated in several studies in Indonesia and other countries (Halversen, 2024; Purwanto, 2023). This integration is supported by Law No. 6/2014 on Villages, which recognizes the existence of customary law in local resource management. The Legal Pluralism theory approach is also effective in understanding the interaction between the two legal systems, which creates space for legal diversity in indigenous communities (Kusumawardani and Rahmawati, 2022; Chalfin, 2023). The legal basis lies in Article 28I of the 1945 Constitution which guarantees respect for the cultural identity of indigenous peoples.

Furthermore, adat-based redistribution has proven effective in reducing social inequality and strengthening peace among indigenous peoples (Tambunan, 2023; Balasubramanian, 2023). This is in line with Article 33 Paragraph (3) of the 1945 Constitution, which emphasizes that the earth, water and natural resources must be utilized for the greatest prosperity of the people. However, several obstacles, such as the lack of collaboration between government sectors and policymakers' low understanding of the importance of local wisdom, hinder the resolution of conflicts over customary land (Basri, 2021; Cheng et al., 2024). In this context, Presidential Regulation No. 88/2017 serves as a basis for regulating land tenure settlements in forest areas, although its implementation requires stronger synergy across sectors.

## CONCLUSION

Handling customary land conflicts requires a strategic approach that combines customary and formal law. This can be done by increasing the capacity of customary institutions through legal training and mediation based on local wisdom, so that



customary leaders are able to collaborate with formal institutions in resolving disputes. In addition, the importance of policy harmonization must be considered through the development of local regulations (Perda) that recognize customary rights in accordance with Constitutional Court Decision No. 35/PUU-X/2012, accompanied by the establishment of regular dialogues between indigenous peoples, government and the private sector to prevent new conflicts. A multi-sectoral approach also needs to be implemented by involving non-governmental organizations, academics and businesses, and integrating environmental and sustainability issues, especially in sensitive areas such as Papua and Kalimantan. The development of an integrated mediation system should be implemented by establishing an independent mediation institution capable of accommodating customary and formal law in a balanced manner. This system can be strengthened by utilizing digital technology to document cases and mediation processes in a transparent manner. Legal procedures also need to be simplified to make it easier for indigenous peoples to make claims to their land, including by providing national guidelines that can be adopted by local governments. Implementation of legal recognition of customary lands should be swift and effective, supported by training for law enforcement officials to increase cultural sensitivity. Ongoing research is a crucial step in assessing the effectiveness of mediation approaches and conflict management over customary land. By formulating an evaluation framework to measure the success of the integration between customary and formal law, it is hoped that the resulting solutions can be implemented in an inclusive and equitable manner. The implementation of these recommendations is expected to resolve customary land disputes, strengthen social stability, and maintain and preserve local wisdom values in Indonesia.

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