

Indigenous Land Rights and Human Rights Protection in Indonesia: A Civil Law Perspective on Legal Recognition and Remedies

Jamal Tubagus

Universitas Sintuwu Maroso Poso, Indonesia

Abstract. *Indonesia's land law rests on a persistent tension between the unitary, state-centred logic of Article 33(3) of the 1945 Constitution¹ and the plural, communal foundations of adat (customary) land tenure that predate the modern Indonesian state. This article examines how Indonesia's civil law framework recognises, or fails fully to recognise, the land rights of indigenous communities, generally referred to in Indonesian law as masyarakat hukum adat, and what remedies are available to communities whose customary land has been dispossessed, encroached upon, or left without adequate legal protection. Employing normative legal research that combines a statutory, conceptual, case, and comparative approach, the article traces the doctrinal foundations of customary land rights from colonial adatrecht scholarship through the 1960 Basic Agrarian Law, the 2012 Constitutional Court ruling on customary forests, and the most recent ministerial regulations on communal land registration. It then evaluates the civil, administrative, and constitutional remedies available domestically, alongside the persuasive force of international human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples and the International Covenant on Civil and Political Rights. The discussion is organised into two principal sections: first, an analysis of the legal recognition of indigenous land rights within Indonesia's civil law architecture, and second, an assessment of the legal remedies and human rights protection mechanisms open to affected communities. The article finds that recognition remains conditional, fragmented across sectoral regulations, and dependent on discretionary local-government action, while remedies are procedurally accessible in principle but practically difficult to obtain because of evidentiary burdens, the dominance of the positive land-registration system, and weak enforcement of judicial and constitutional rulings. The article concludes that a unified national law on indigenous peoples, harmonised with civil law doctrines of legal subjecthood and property, together with a rights-based and remedy-oriented enforcement mechanism, is indispensable if Indonesia is to close the gap between constitutional recognition and lived protection of indigenous land rights.*

Keywords: *Indigenous Land Rights; Civil Law; Human Rights Protection; Masyarakat Hukum Adat; Legal Remedies.*

Received: Aug 10, 2026 | **Revised:** Sept 11, 2026 | **Accepted:** Sept 20, 2026 | **Published Online:** Sept 25, 2026

Correspondence:

Name : Jamal Tubagus

Hercules63@ymail.com



1. Introduction

Land in Indonesia is never simply an economic asset; it is the material foundation of identity, cosmology, and social organisation for the hundreds of customary law communities that continue to occupy and manage ancestral territories across the archipelago. Long before the Indonesian state existed, adat communities in Sumatra, Kalimantan, Sulawesi, the Moluccas, and Papua had already developed sophisticated, locally legitimate systems for allocating, inheriting, and protecting land under principles of communal stewardship rather

¹Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1945 Constitution of the Republic of Indonesia), Art. 33(3).

than individual, alienable ownership.² Dutch colonial legal scholarship, most famously associated with the adatrecht school led by Cornelis van Vollenhoven, documented this plurality and gave it the name hukum adat, yet colonial administration simultaneously subordinated customary tenure to the colonial state's claims over so-called waste or unowned lands under the domeinverklaring doctrine. That colonial inheritance did not disappear with independence; it was absorbed, reworded, and in many respects perpetuated by the post-independence legal order, producing a structural ambivalence that still defines Indonesian land law today.³

The 1945 Constitution attempted to resolve this ambivalence by entrenching two propositions that, on their face, appear to pull in opposite directions. Article 33(3) vests in the state the right to control (hak menguasai negara) land, water, and the natural resources contained therein for the greatest benefit of the people, while Article 18B(2) obliges the state to recognise and respect customary law communities and their traditional rights, so long as these remain alive and consistent with the development of society and the principle of the unitary state.⁴ Article 28I(3) further situates cultural identity and the rights of traditional communities within the constitutional catalogue of human rights, signalling that indigenous land rights are not merely an agrarian policy question but a human rights question as well.⁵ The task of harmonising these provisions was left, in the first instance, to Law No. 5 of 1960 on Basic Agrarian Regulations, commonly known as the Basic Agrarian Law or UUPA, which remains the principal statute governing land rights in Indonesia's civil law system today.⁶

Article 3 of the Basic Agrarian Law recognises the exercise of hak ulayat, the communal right of customary law communities over their territory, but immediately qualifies that recognition with two conditions: the right must still exist in fact, and its exercise must not conflict with higher national and state interests based on national unity.⁷ This conditional formula has proven to be the single most consequential sentence in Indonesian indigenous land law, because it converts what could have been an unconditional constitutional guarantee into a discretionary, fact-dependent, and ultimately state-controlled recognition. Scholars have long observed that the practical effect of Article 3 has been to treat customary rights as a residual category, subordinate to the state's classification of land as state forest, state domain, or unregistered vacant land, rather than as a freestanding property right enforceable on its own

²Karso, "Natural Resources Governance and the Vulnerability of Indigenous Communities in Indonesia," *Frontiers in Political Science* 7 (2025), <https://doi.org/10.3389/fpos.2025.1601480>.

³Chairul Fahmi, Peter-Tobias Stoll, Shabarullah, Malahayati Rahman, and S. Syukri, "The State's Business Upon Indigenous Land in Indonesia: A Legacy from Dutch Colonial Regime to Modern Indonesian State," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 3 (2024), <https://doi.org/10.22373/sjhk.v8i3.19992>.

⁴1945 Constitution of the Republic of Indonesia, Art. 18B(2).

⁵1945 Constitution of the Republic of Indonesia, Art. 28I(3).

⁶Basic Agrarian Law of 1960, Art. 2.

⁷Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria [Basic Agrarian Law], Art. 3.

terms.⁸ The consequence, documented across dozens of local case studies, is a persistent vulnerability of indigenous communities to dispossession by concession holders, state agencies, and private investors operating under land-use permits that formally recognise no competing customary claim.⁹

A turning point in the doctrinal history of indigenous land rights came with the Constitutional Court's Decision No. 35/PUU-X/2012, which reviewed the constitutionality of several provisions of Law No. 41 of 1999 on Forestry.¹⁰ The Court held that customary forests (hutan adat) are not, and legally never were, state forests, and that their earlier classification as such was unconstitutional insofar as it ignored the existence of customary law communities holding rights over that territory.¹¹ The ruling has since been treated as the most authoritative judicial affirmation that customary communities are legitimate holders of territorial rights capable of being distinguished from, and asserted against, the state's general power of control.¹² Yet, as this article will show, the transformation of that constitutional principle into concrete, registrable, and defensible legal rights on the ground has been slow, uneven, and dependent on a patchwork of subsequent ministerial regulations and regional government decisions rather than on a single, comprehensive national law.¹³

The human rights dimension of indigenous land rights compounds the civil law analysis rather than standing apart from it. Loss of customary land frequently entails loss of livelihood, cultural continuity, and the physical infrastructure of community life, engaging rights recognised not only in the 1945 Constitution and Law No. 39 of 1999 on Human Rights but also in international instruments to which Indonesia has, in varying degrees, committed itself.¹⁴ The United Nations Declaration on the Rights of Indigenous Peoples, while not a binding treaty, has acquired substantial interpretive authority as a benchmark for evaluating state conduct toward indigenous communities, including the principle of free, prior, and informed consent before development activities affecting customary territory.¹⁵ Indonesia is also a party to the International Covenant on Civil and Political Rights, whose Article 27 protects the right of minorities to enjoy their own culture, and the International Covenant on Economic, Social

⁸Umar Ma'ruf, "Legal Protection of Indigenous Rights in Land Regulation in Indonesia," *International Journal of Advanced Science and Technology* 7 (2020): 1646–1652.

⁹Karso, "Natural Resources Governance and the Vulnerability of Indigenous Communities in Indonesia," *Frontiers in Political Science* 7 (2025), <https://doi.org/10.3389/fpos.2025.1601480>.

¹⁰Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan [Law No. 41 of 1999 on Forestry].

¹¹Constitutional Court of the Republic of Indonesia, Decision No. 35/PUU-X/2012, 16 May 2013, on the judicial review of Law No. 41 of 1999 on Forestry.

¹²"Human Rights of Indigenous People in Indonesia: A Constitutional Approach," *Journal of East Asia and International Law* 15, no. 2 (2022), <https://doi.org/10.14330/jeil.2022.15.2.10>.

¹³Aprilia Stefany Leliak, "Strengthening Legal Protection of Indigenous Peoples' Customary Land Rights in Indonesia's Disruption Era," *LITIGASI* 26, no. 2 (2026), <https://doi.org/10.23969/litigasi.v26i2.20032>.

¹⁴Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia [Law No. 39 of 1999 on Human Rights].

¹⁵United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (13 September 2007).

and Cultural Rights, whose Article 1 recognises the right of all peoples to freely dispose of their natural wealth and resources.¹⁶ These obligations do not automatically create domestically enforceable property rights, but they inform the interpretation of constitutional and statutory guarantees and place additional normative pressure on Indonesian courts and administrative agencies.¹⁷

Existing scholarship has examined indigenous land rights in Indonesia from several angles: as a problem of legal pluralism and the coexistence of state and customary normative orders,¹⁸ as a question of constitutional interpretation following Decision No. 35/PUU-X/2012,¹⁹ as a matter of international cultural and human rights law,²⁰ and as a series of localised case studies documenting disputes between customary communities and plantation, mining, or forestry concessionaires.²¹ What remains comparatively underexplored is a sustained civil law analysis that asks, specifically, how the doctrinal categories of Indonesia's private law of property, obligations, and legal subjecthood accommodate, or fail to accommodate, communal customary land rights, and what remedies those categories make available once dispossession has already occurred. This article seeks to fill that gap by reading the recognition and remedy questions together, on the premise that recognition without an accessible remedy is, in practical terms, indistinguishable from non-recognition.

Accordingly, this article addresses two interrelated research questions. First, to what extent does Indonesia's civil law framework, read together with constitutional and sectoral land legislation, recognise indigenous communities as legal subjects capable of holding communal land rights that are enforceable against the state and third parties? Second, what legal remedies, domestic and international, are realistically available to indigenous communities seeking recognition of, or compensation for the loss of, customary land, and how effective are those remedies in practice? The article proceeds in four further parts. Part II sets out the normative legal research method employed. Part III presents the results and discussion in two subchapters, the first addressing legal recognition and the second addressing legal remedies and human

¹⁶International Covenant on Civil and Political Rights, Art. 27.

¹⁷Chairul Fahmi, "Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms," *Journal of Southeast Asian Human Rights* 6, no. 1 (2022), <https://doi.org/10.19184/jseahr.v6i1.30242>.

¹⁸Robi Awaludin, Zuhraini, and Nurnazli, "Legal Pluralism and Indigenous Rights: The Case of the Indigenous Forest People of Jambi, Indonesia," *Rule of Law Studies Journal* 1, no. 1 (2025), <https://doi.org/10.64780/rolsj.v1i1.33>.

¹⁹"Human Rights of Indigenous People in Indonesia: A Constitutional Approach," *Journal of East Asia and International Law* 15, no. 2 (2022), <https://doi.org/10.14330/jeastil.2022.15.2.10>.

²⁰Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," *AlterNative: An International Journal of Indigenous Peoples* 20, no. 1 (2024): 157–166, <https://doi.org/10.1177/11771801241235261>.

²¹S. Bahri, Dina Paramitha, Hefni Putri, and Heribertus Richard, "Legal Protection for Customary Communities in the Settlement of Disputes over Land Tenure and Utilization with Oil Palm Plantation Entrepreneurs," *Awang Long Law Review* 8, no. 3 (2026), <https://doi.org/10.56301/awl.v8i3.2142>.

rights protection mechanisms. Part IV concludes with a synthesis of findings and recommendations for legal reform.

2. Research Methods

This article employs normative (doctrinal) legal research, a method well established in Indonesian legal scholarship for examining the internal coherence, hierarchy, and application of legal norms rather than the empirical behaviour of legal actors.²² The research combines four complementary approaches. The statutory approach (*pendekatan perundang-undangan*) is used to examine the relevant hierarchy of legal instruments, beginning with the 1945 Constitution and descending through the Basic Agrarian Law, Law No. 41 of 1999 on Forestry, Law No. 39 of 1999 on Human Rights, Government Regulation No. 24 of 1997 on Land Registration,²³ and the successive ministerial regulations on communal land rights, most recently Ministerial Regulation No. 14 of 2024.²⁴ The conceptual approach is used to clarify the doctrinal meaning of key civil law categories at stake in the analysis, including legal subjecthood (*subjek hukum*), communal property (*hak ulayat*), individual ownership (*hak milik*) under Article 20 of the Basic Agrarian Law, and tortious liability under Article 1365 of the Civil Code.²⁵

The case approach (*pendekatan kasus*) is used to analyse the reasoning and effect of Constitutional Court Decision No. 35/PUU-X/2012 and, where relevant, subsequent constitutional and administrative decisions touching on customary land recognition, treating these decisions as authoritative interpretations of otherwise open-textured statutory provisions.²⁶ The comparative approach is used more modestly, drawing on international human rights instruments and comparative indigenous-rights scholarship to situate the Indonesian framework within a broader normative landscape rather than to conduct a full comparative jurisdictional study. The primary legal materials examined include the Constitution, statutes, government and ministerial regulations, and the constitutional court decision identified above; the secondary legal materials consist of peer-reviewed journal articles, most of them published between 2019 and 2026, together with scholarly commentary on adat law, agrarian reform, and indigenous human rights; and tertiary materials, including legal dictionaries and encyclopaedic references, are used where necessary to clarify technical terminology.

Data collection was conducted through library-based research (*studi kepustakaan/library research*), drawing on a curated set of Indonesian and international peer-reviewed sources addressing indigenous land rights, legal pluralism, agrarian reform, and human rights

²²Sartika Intaning Pradhani, “Traditional Rights of Indigenous People in Indonesia: Legal Recognition and Court Interpretation,” *Jambe Law Journal* 1, no. 2 (2019): 177–205, <https://doi.org/10.22437/jlj.1.2.177-205>.

²³Government Regulation No. 24 of 1997 on Land Registration.

²⁴Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 on Procedures for the Determination of Communal Rights and Customary Land.

²⁵Basic Agrarian Law of 1960, Art. 20.

²⁶Constitutional Court of the Republic of Indonesia, Decision No. 35/PUU-X/2012, 16 May 2013, on the judicial review of Law No. 41 of 1999 on Forestry.

protection in Indonesia, supplemented by additional recent sources identified through systematic literature searching to ensure that the analysis reflects the most current scholarly and jurisprudential developments available at the time of writing.²⁷ The collected materials were analysed using a qualitative, descriptive-analytical method: legal norms and judicial reasoning were systematically identified, compared across instruments and time periods, and evaluated against the two research questions set out in Part I. Because this is a normative study, no primary empirical fieldwork, interviews, or survey data collection was undertaken; the article's claims about practical effectiveness are drawn from documented case studies and findings reported in the secondary literature rather than from original field observation. This limitation is acknowledged and is addressed, where relevant, by cross-referencing multiple independent sources describing similar patterns of outcome across different regions and community contexts.²⁸

3. Result and Discussion

3.1 The Legal Recognition of Indigenous Land Rights within Indonesia's Civil Law Framework

The starting point for any civil law analysis of indigenous land rights in Indonesia is the question of legal subjecthood: can a masyarakat hukum adat, as a collective, hold and exercise rights in the same manner as an individual or a corporate legal person under the Civil Code? Indonesian civil law traditionally recognises two categories of legal subject, natural persons (orang) and legal entities (badan hukum), and a customary law community fits comfortably into neither category as conventionally defined.²⁹ The Basic Agrarian Law resolves this difficulty pragmatically rather than doctrinally, by recognising hak ulayat as a sui generis communal right attached to the community as a social and territorial unit, exercised through its customary leadership, without requiring the community to first incorporate itself as a civil law legal entity.³⁰ This solution allows customary rights to be recognised in principle without forcing communities to abandon their own internal governance structures, but it also

²⁷Hengki Firmanda, Mahmud H. Wafi, Mark Woodward, Dina I. Supaat, Erlies S. Nurbani, and Sudjito, "Land as the Soul of the Nation: Implications of the Transition of Land Status in the Talang Mamak Customary Law Community," *Malaysian Journal of Syariah and Law* 12, no. 1 (2024): 148–156, <https://doi.org/10.33102/mjsl.vol12no1.484>.

²⁸A. Hidayat, O. Hospes, and Christian Termeer, "Uneven Recognition: A Comparative Study of Indigenous Communities' Struggle for Securing Customary Land Rights in Indonesia," *Land Use Policy* (2026), <https://doi.org/10.1016/j.landusepol.2026.108061>.

²⁹Betty Rubiati, "The Existence and Protection of Ulayat Rights in Indigenous Communities within the Framework of Positive Law in Indonesia," *Jurnal Poros Hukum Padjadjaran* 5, no. 2 (2024), <https://doi.org/10.23920/jphp.v5i2.1450>.

³⁰Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria [Basic Agrarian Law], Art. 3.

leaves the precise legal nature of the community's capacity to sue, to be sued, to register land, and to contract with third parties in a state of persistent doctrinal ambiguity.³¹

That ambiguity is compounded by the conditional language of Article 3 itself. Recognition depends on the community demonstrating, first, that its customary rights still exist in a living, factual sense, and second, that the exercise of those rights does not conflict with national interests.³² The first condition places an evidentiary burden squarely on the community: it must show continuity of customary institutions, territorial boundaries, leadership structures, and land-use practices, often against a state administration that has no obligation to assist in gathering that evidence and every incentive, where competing land-use permits already exist, to find the evidence insufficient.³³ The second condition is even more open-textured, since "national interest" is nowhere exhaustively defined and has historically been interpreted expansively to favour forestry concessions, mining operations, transmigration schemes, and, more recently, large-scale plantation and infrastructure development.³⁴ The cumulative effect is that recognition of hak ulayat functions less like the recognition of a pre-existing property right and more like the grant of a conditional administrative privilege, revocable in substance whenever the state's development priorities shift.³⁵

The 2012 Constitutional Court decision on customary forests represents the most significant civil law correction to this pattern to date. By declaring that customary forests fall outside the category of state forest, the Court effectively separated the question of forest governance from the question of land tenure, holding that the state's regulatory authority over forest resources under Article 33(3) of the Constitution does not, by itself, extinguish a community's underlying territorial right.³⁶ Read in civil law terms, the decision affirms that hak ulayat is not merely a policy concession granted by the forestry regime but a right that can be asserted against, and prevail over, an otherwise applicable sectoral classification.³⁷ Empirical accounts published in the years following the decision describe its administrative

³¹Asmadi Lubis, Runtung, M. Kaban, and Edy Ikhsan, "The Development of Recognition and Protection of the Customary Rights of Indigenous Peoples in Indonesia," *KnE Social Sciences* 8, no. 21 (2024), <https://doi.org/10.18502/kss.v8i21.14717>.

³²Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria [Basic Agrarian Law], Art. 3.

³³Elfira Zahwa Octavia, Mohammad Hamidi Masykur, and M. Fadil, "Legal Status of Former Customary Land Ownership Evidence after Its Validity Period Expires: Assessment of the Legal Certainty over Indigenous Peoples' Land Rights," *Law. Human. Environment* 6, no. 3 (2025), <https://doi.org/10.31548/law/3.2025.160>.

³⁴S. Bahri, Dina Paramitha, Hefni Putri, and Heribertus Richard, "Legal Protection for Customary Communities in the Settlement of Disputes over Land Tenure and Utilization with Oil Palm Plantation Entrepreneurs," *Awang Long Law Review* 8, no. 3 (2026), <https://doi.org/10.56301/awl.v8i3.2142>.

³⁵Umar Ma'ruf, "Legal Protection of Indigenous Rights in Land Regulation in Indonesia," *International Journal of Advanced Science and Technology* 7 (2020): 1646–1652.

³⁶Constitutional Court of the Republic of Indonesia, Decision No. 35/PUU-X/2012, 16 May 2013, on the judicial review of Law No. 41 of 1999 on Forestry.

³⁷"Human Rights of Indigenous People in Indonesia: A Constitutional Approach," *Journal of East Asia and International Law* 15, no. 2 (2022), <https://doi.org/10.14330/jeil.2022.15.2.10>.

implementation as slow but not negligible: by the early 2020s several hundred local regulations recognising specific customary communities had been enacted, and a smaller but growing number of customary forest areas had been formally excised from the state forest estate and registered in the community's name.³⁸ Nonetheless, the same accounts consistently report that implementation remains geographically uneven, heavily dependent on the political will of individual regional governments, and vulnerable to reversal where local elites or investors have competing interests in the same territory.³⁹

A further civil law complication arises from the individualistic architecture of Indonesia's land registration system, which was built primarily to accommodate individual and corporate ownership rather than communal tenure. Article 20 of the Basic Agrarian Law defines hak milik as the strongest and most complete right that a person may hold over land, modelled loosely on the Civil Code's concept of eigendom, and the registration system established under Government Regulation No. 24 of 1997 operates on a negative publication system with strong positive elements, under which a registered certificate creates a powerful, though rebuttable, presumption of ownership.⁴⁰ Customary land, by contrast, is frequently unregistered, held under oral or community-recognised evidence of tenure rather than a certificate, and used according to seasonal, rotational, or forest-based practices that do not map neatly onto the cadastral, parcel-based logic of the registration system.⁴¹ Once a third party succeeds in registering a certificate over land that a community has used for generations, the burden shifts dramatically: the community must now bring an active legal challenge to unwind an administrative act that enjoys the benefit of legal presumption, rather than the reverse.⁴²

Recognising this structural mismatch, the government has, since 2019, issued specific regulations directed at the registration of communal rights and customary land, first through Ministerial Regulation No. 18 of 2019 and, more recently, through Ministerial Regulation No. 14 of 2024, which sets out a dedicated procedure for the verification, determination, and registration of hak komunal and tanah ulayat.⁴³ These regulations mark an important doctrinal shift, because they create, for the first time, a registration pathway designed around communal rather than individual title, allowing a customary community to obtain a form of documentary

³⁸Aprilia Stefany Leliak, "Strengthening Legal Protection of Indigenous Peoples' Customary Land Rights in Indonesia's Disruption Era," LITIGASI 26, no. 2 (2026), <https://doi.org/10.23969/litigasi.v26i2.20032>.

³⁹A. Hidayat, O. Hospes, and Christian Termeer, "Uneven Recognition: A Comparative Study of Indigenous Communities' Struggle for Securing Customary Land Rights in Indonesia," Land Use Policy (2026), <https://doi.org/10.1016/j.landusepol.2026.108061>.

⁴⁰Basic Agrarian Law of 1960, Art. 20.

⁴¹Government Regulation No. 24 of 1997 on Land Registration.

⁴²D. Jinoto, "Legal Vacuum in Indigenous Peoples' Legal Representation Regarding Communal Land Rights," JUSTISI 12, no. 1 (2026), <https://doi.org/10.33506/js.v12i1.4701>.

⁴³Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 on Procedures for the Determination of Communal Rights and Customary Land.

recognition without first converting its territory into individually held parcels.⁴⁴ Scholarly assessments of the regulations, however, note that they remain subordinate, in legal hierarchy, to the Basic Agrarian Law's conditional formula, meaning that a community still must first satisfy the existence and non-conflict tests of Article 3 before it can even begin the registration process, and that the ultimate determination of a community's status continues to rest with a multi-agency verification team rather than with an independent judicial or quasi-judicial body.⁴⁵

Legal pluralism theory offers a useful interpretive lens for understanding why these tensions persist. Rather than treating adat law and state civil law as two hermetically separate systems, legal pluralism scholarship describes Indonesian land governance as a field in which multiple normative orders, state, customary, religious, and increasingly corporate or contractual, compete for authority over the same territory, with the state's law formally superior but practically only one voice among several.⁴⁶ Case studies from Jambi, for instance, document how the indigenous forest peoples of the region continue to apply customary rules of territorial stewardship in practice, negotiating a working coexistence with state forestry and plantation regulation even where the state's formal legal recognition of their rights remains incomplete or contested.⁴⁷ Similar dynamics have been documented among the Talang Mamak customary community, whose transition in land status illustrates both the possibility and the fragility of formal recognition once state-issued permits and customary claims come into direct conflict.⁴⁸

The Pubabu-Besipae case in East Nusa Tenggara illustrates the practical stakes of these doctrinal gaps particularly starkly. There, a customary community's long-standing occupation and cultivation of land came into direct conflict with a provincial government asset claim, resulting in forced eviction and the demolition of homes before the underlying legal status of the land had been conclusively resolved through either administrative verification or judicial

⁴⁴Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2019 on Procedures for the Determination of Communal Land Rights of Customary Law Communities and Communities within Specific Regions, as amended.

⁴⁵Betty Rubiati, "The Existence and Protection of Ulayat Rights in Indigenous Communities within the Framework of Positive Law in Indonesia," *Jurnal Poros Hukum Padjadjaran* 5, no. 2 (2024), <https://doi.org/10.23920/jphp.v5i2.1450>.

⁴⁶Robi Awaludin, Zuhraini, and Nurnazli, "Legal Pluralism and Indigenous Rights: The Case of the Indigenous Forest People of Jambi, Indonesia," *Rule of Law Studies Journal* 1, no. 1 (2025), <https://doi.org/10.64780/rolsj.v1i1.33>.

⁴⁷Robi Awaludin, Zuhraini, and Nurnazli, "Legal Pluralism and Indigenous Rights: The Case of the Indigenous Forest People of Jambi, Indonesia," *Rule of Law Studies Journal* 1, no. 1 (2025), <https://doi.org/10.64780/rolsj.v1i1.33>.

⁴⁸Hengki Firmanda, Mahmud H. Wafi, Mark Woodward, Dina I. Supaat, Erlies S. Nurbani, and Sudjito, "Land as the Soul of the Nation: Implications of the Transition of Land Status in the Talang Mamak Customary Law Community," *Malaysian Journal of Syariah and Law* 12, no. 1 (2024): 148–156, <https://doi.org/10.33102/mjsl.vol12no1.484>.

process.⁴⁹ Analyses of the case conclude that the absence of a swift, binding mechanism for determining customary status before enforcement action is taken against a community is one of the most serious structural deficiencies in the current framework, since it allows the state or a private party holding a competing permit to act first and defend its position in court only afterward, by which time the practical harm to the community, including loss of housing, crops, and burial grounds, is frequently irreversible.⁵⁰

A comparable pattern emerges in disputes between customary communities and oil palm plantation companies, where land tenure conflicts frequently arise because plantation permits (hak guna usaha) were issued by the state over territory that overlapping customary claims already covered, without the community's free, prior, and informed participation in that permitting process.⁵¹ Studies of these disputes emphasise that Indonesian civil law provides, in principle, several doctrinal tools for resolving such overlapping claims, including the possibility of annulling an administrative permit found to be defective in its issuance, and civil claims sounding in tort for damage caused by unlawful encroachment, yet in practice these tools are rarely deployed successfully by communities because of the cost, duration, and evidentiary demands of formal litigation relative to the resources available to a rural customary community.⁵² The result, several authors conclude, is a persistent asymmetry between the formal availability of legal recognition and remedy on paper and the practical capacity of indigenous communities to invoke that recognition before their land is irreversibly converted to another use.⁵³

Coastal and reclamation contexts add a further layer of complexity to the recognition question, since land created through reclamation is, in principle, new state land rather than pre-existing customary territory, yet reclamation projects frequently displace or restrict access to customary fishing grounds, tidal flats, and shoreline areas that communities had used and managed under customary rules for generations.⁵⁴ Analyses of coastal reclamation disputes note that Indonesian positive law offers only limited doctrinal traction for communities

⁴⁹Yesyurun Bonte, "Legal Protection of the Customary Rights of the Pubabu-Besipae Indigenous People," *Jurnal Indonesia Sosial Sains* 5, no. 6 (2024), <https://doi.org/10.59141/jiss.v5i06.1139>.

⁵⁰Yesyurun Bonte, "Legal Protection of the Customary Rights of the Pubabu-Besipae Indigenous People," *Jurnal Indonesia Sosial Sains* 5, no. 6 (2024), <https://doi.org/10.59141/jiss.v5i06.1139>.

⁵¹S. Bahri, Dina Paramitha, Hefni Putri, and Heribertus Richard, "Legal Protection for Customary Communities in the Settlement of Disputes over Land Tenure and Utilization with Oil Palm Plantation Entrepreneurs," *Awang Long Law Review* 8, no. 3 (2026), <https://doi.org/10.56301/awl.v8i3.2142>.

⁵²S. Bahri, Dina Paramitha, Hefni Putri, and Heribertus Richard, "Legal Protection for Customary Communities in the Settlement of Disputes over Land Tenure and Utilization with Oil Palm Plantation Entrepreneurs," *Awang Long Law Review* 8, no. 3 (2026), <https://doi.org/10.56301/awl.v8i3.2142>.

⁵³Asmadi Lubis, Runtung, M. Kaban, and Edy Ikhsan, "The Development of Recognition and Protection of the Customary Rights of Indigenous Peoples in Indonesia," *KnE Social Sciences* 8, no. 21 (2024), <https://doi.org/10.18502/kss.v8i21.14717>.

⁵⁴Hilman Syahrial Haq, "Legal Certainty and Protection of Indigenous Peoples' Land Rights Ownership on Land from Coastal Reclamation Based on Indonesian Positive Law," *Lex Journal: Kajian Hukum dan Keadilan* 9, no. 2 (2025), <https://doi.org/10.25139/lex.v9i2.10585>.

asserting customary rights over such areas, because the civil law concept of ownership presupposes a defined, registrable parcel of land, a concept poorly suited to fluid, tidally defined, or seasonally used customary fishing and gathering territories.⁵⁵ Taken together, these case studies from forestry, plantation, resettlement, and coastal contexts converge on a consistent diagnosis: Indonesia's civil law framework has moved, since 2012 in particular, from a position of near-total subordination of customary rights to one of conditional and fragmented recognition, but it has not yet developed a coherent, unified doctrine capable of treating masyarakat hukum adat as a legal subject on equal footing with individual and corporate landholders across all the contexts in which customary territory is at risk.⁵⁶

Recent comparative-institutional scholarship reinforces this diagnosis by showing that recognition outcomes vary enormously depending on which government body, and at which level, takes the lead in a given case. Where a proactive regional government has enacted a local regulation (peraturan daerah) formally recognising a specific customary community, that community's subsequent claims to registration and remedy tend to proceed more smoothly, because the regional regulation supplies at least a threshold answer to the "does the right still exist" question under Article 3.⁵⁷ Where no such regional regulation exists, communities are left to establish the existence of their customary rights essentially from first principles in whatever forum, administrative or judicial, first hears their claim, a process that studies describe as slow, resource-intensive, and highly dependent on the availability of supportive anthropological or historical documentation.⁵⁸ This unevenness is itself a civil law problem, not merely an implementation problem, because it means that the content of a community's property rights can differ significantly depending on the jurisdiction in which the community happens to be located, undermining the basic rule-of-law expectation that similarly situated rights-holders should be treated according to a consistent legal standard.⁵⁹

A final recognition-stage issue concerns the temporal durability of customary evidence once it has been accepted. Communities that succeeded, often decades ago, in obtaining some form of documentary or administrative acknowledgment of their customary land now face a

⁵⁵Hilman Syahril Haq, "Legal Certainty and Protection of Indigenous Peoples' Land Rights Ownership on Land from Coastal Reclamation Based on Indonesian Positive Law," *Lex Journal: Kajian Hukum dan Keadilan* 9, no. 2 (2025), <https://doi.org/10.25139/lex.v9i2.10585>.

⁵⁶I Nurjaya and R. Sulistyarini, "Political and Legal Rights of Indigenous Peoples in Efforts to Protect Customary Rights," *International Journal of Humanities Education and Social Sciences* 5, no. 2 (2025), <https://doi.org/10.55227/ijhess.v5i2.1293>.

⁵⁷A. Hidayat, O. Hospes, and Christian Termeer, "Uneven Recognition: A Comparative Study of Indigenous Communities' Struggle for Securing Customary Land Rights in Indonesia," *Land Use Policy* (2026), <https://doi.org/10.1016/j.landusepol.2026.108061>.

⁵⁸A. Hidayat, O. Hospes, and Christian Termeer, "Uneven Recognition: A Comparative Study of Indigenous Communities' Struggle for Securing Customary Land Rights in Indonesia," *Land Use Policy* (2026), <https://doi.org/10.1016/j.landusepol.2026.108061>.

⁵⁹D. Jinoto, "Legal Vacuum in Indigenous Peoples' Legal Representation Regarding Communal Land Rights," *JUSTISI* 12, no. 1 (2026), <https://doi.org/10.33506/js.v12i1.4701>.

further difficulty where that evidence has a limited validity period or has not been converted into a registered certificate under the newer communal registration procedures, exposing them to renewed uncertainty even after an initial recognition was achieved.⁶⁰ This problem illustrates a broader point about the architecture of Indonesian land law: because the system privileges registered, currently valid documentary title over historical or customary continuity, recognition achieved at one point in time does not necessarily translate into durable legal security, and communities may find themselves required to re-establish, periodically, a status that ought in principle to be a settled and permanent legal fact.⁶¹ The next subchapter turns from this recognition analysis to the question of what remedies, domestic and international, are available once recognition has failed, been delayed, or been overridden in practice.

3.2 Legal Remedies and Human Rights Protection Mechanisms for Indigenous Communities

Where recognition of customary land rights has failed, been delayed, or been overridden by a competing state or private claim, Indonesian law offers indigenous communities three broad categories of domestic remedy: administrative, civil, and constitutional. Each category is doctrinally available in principle, yet each is constrained in practice by structural features of the wider legal system that disproportionately disadvantage communities with limited financial, documentary, and institutional resources.⁶² The administrative pathway is generally the first and least costly avenue, proceeding through the verification and determination procedure established under Ministerial Regulation No. 14 of 2024, by which a multi-agency team assesses a community's claim of customary status and, if satisfied, issues a determination that can then be used to register communal rights or customary land under the national land registration system.⁶³ Where a community disagrees with an adverse administrative decision, or where a competing party has already obtained a registered certificate over the disputed land, it may challenge that administrative act before the State Administrative Court under Law No. 5 of 1986, seeking annulment of the underlying permit or certificate on the ground that it was issued in violation of applicable procedure or in disregard of a pre-existing customary right.⁶⁴

The civil pathway proceeds through the general courts under Law No. 2 of 1986, most commonly by way of a tort claim under Article 1365 of the Civil Code, which allows a party

⁶⁰Elfira Zahwa Octavia, Mohammad Hamidi Masykur, and M. Fadil, "Legal Status of Former Customary Land Ownership Evidence after Its Validity Period Expires: Assessment of the Legal Certainty over Indigenous Peoples' Land Rights," *Law. Human. Environment* 6, no. 3 (2025), <https://doi.org/10.31548/law/3.2025.160>.

⁶¹Elfira Zahwa Octavia, Mohammad Hamidi Masykur, and M. Fadil, "Legal Status of Former Customary Land Ownership Evidence after Its Validity Period Expires: Assessment of the Legal Certainty over Indigenous Peoples' Land Rights," *Law. Human. Environment* 6, no. 3 (2025), <https://doi.org/10.31548/law/3.2025.160>.

⁶²D. Jinoto, "Legal Vacuum in Indigenous Peoples' Legal Representation Regarding Communal Land Rights," *JUSTISI* 12, no. 1 (2026), <https://doi.org/10.33506/js.v12i1.4701>.

⁶³Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 on Procedures for the Determination of Communal Rights and Customary Land.

⁶⁴Law No. 5 of 1986 on State Administrative Courts (Peradilan Tata Usaha Negara), as amended.

who has suffered loss as a result of another person's unlawful act to claim compensation, provided the claimant can establish an unlawful act, fault, loss, and a causal link between the two.⁶⁵ Applied to indigenous land disputes, this doctrine allows a community, acting through its customary leadership or through individually authorised representatives, to claim damages against a company or state agency that has cleared, occupied, or otherwise damaged customary land without lawful authority, and in principle also to seek *restitutio in integrum* in the form of restoration of the land or cessation of the offending activity.⁶⁶ Analyses of the practical use of this remedy, however, consistently highlight two obstacles. First, the community must overcome the prior recognition problem described in the previous subchapter, since a court is unlikely to find an act unlawful *vis-à-vis* a right whose very existence remains legally uncertain, meaning that recognition and remedy are not sequential but deeply interdependent stages of the same legal struggle.⁶⁷ Second, the evidentiary and procedural demands of civil litigation, spanning legal representation, expert and historical evidence, and multi-year court timelines, frequently exceed what an under-resourced rural community can sustain, particularly where the opposing party is a well-capitalised corporate concession holder.⁶⁸

The constitutional pathway, exemplified by Decision No. 35/PUU-X/2012 itself, allows for judicial review of statutory provisions alleged to conflict with the 1945 Constitution's protection of customary rights, and has proven to be the single most transformative remedy available to indigenous communities collectively, since a favourable constitutional ruling operates *erga omnes* rather than being confined to the parties before the Court.⁶⁹ Yet constitutional review is a blunt and infrequent instrument: it can invalidate an unconstitutional statutory provision, as it did with several provisions of the Forestry Law, but it cannot itself adjudicate an individual community's specific boundary dispute, award compensation for a particular act of dispossession, or compel a reluctant regional government to enact the implementing regulation that would translate the constitutional principle into a registrable right on the ground.⁷⁰ Post-decision commentary has repeatedly noted the resulting implementation gap: more than a decade after the ruling, the great majority of customary forest area formally recognised nationwide still represents only a small fraction of the customary territory that communities and civil society organisations estimate to exist, precisely because the

⁶⁵Kitab Undang-Undang Hukum Perdata [Indonesian Civil Code], Art. 1365 (tort/unlawful act).

⁶⁶Law No. 2 of 1986 on General Courts, as amended by Law No. 49 of 2009, establishing the general jurisdiction within which civil land claims are adjudicated.

⁶⁷D. Jinoto, "Legal Vacuum in Indigenous Peoples' Legal Representation Regarding Communal Land Rights," JUSTISI 12, no. 1 (2026), <https://doi.org/10.33506/js.v12i1.4701>.

⁶⁸S. Bahri, Dina Paramitha, Hefni Putri, and Heribertus Richard, "Legal Protection for Customary Communities in the Settlement of Disputes over Land Tenure and Utilization with Oil Palm Plantation Entrepreneurs," *Awang Long Law Review* 8, no. 3 (2026), <https://doi.org/10.56301/awl.v8i3.2142>.

⁶⁹Constitutional Court of the Republic of Indonesia, Decision No. 35/PUU-X/2012, 16 May 2013, on the judicial review of Law No. 41 of 1999 on Forestry.

⁷⁰"Human Rights of Indigenous People in Indonesia: A Constitutional Approach," *Journal of East Asia and International Law* 15, no. 2 (2022), <https://doi.org/10.14330/jeil.2022.15.2.10>.

constitutional principle requires a further layer of administrative and, in many cases, judicial action before it produces a concrete, defensible entitlement for any specific community.⁷¹

Beyond these three domestic pathways, the human rights framework supplies an additional, complementary layer of protection and advocacy, even where it does not by itself create a directly enforceable property remedy under Indonesian civil law. Law No. 39 of 1999 on Human Rights establishes the National Human Rights Commission (Komnas HAM) with a mandate to receive complaints, conduct inquiries, and issue recommendations concerning alleged human rights violations, including violations connected to the deprivation of indigenous communities' land and livelihood, and its findings, while not binding in the way a court judgment is, carry considerable persuasive and political weight and are frequently cited in subsequent litigation and policy advocacy.⁷² At the international level, although Indonesia has not ratified International Labour Organization Convention No. 169, the principal binding treaty specifically addressing indigenous and tribal peoples' rights, it remains bound by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which have been invoked by scholars to argue that the state's obligations to protect minority cultural enjoyment and peoples' control over natural resources extend, by clear implication, to protection of the territorial basis on which that cultural and economic life depends.⁷³

The United Nations Declaration on the Rights of Indigenous Peoples, despite its non-binding character, has become an increasingly important interpretive reference point in Indonesian indigenous rights scholarship, particularly its articulation of the principle of free, prior, and informed consent, which holds that indigenous peoples should not be subject to development, resource extraction, or relocation on their traditional territory without their voluntary and informed agreement, obtained without coercion and prior to the commencement of the relevant activity.⁷⁴ Analyses applying this principle to Indonesian practice generally conclude that domestic law falls well short of the Declaration's standard: permitting decisions for forestry, plantation, and mining concessions typically require environmental and social impact assessments but do not require the affected customary community's consent as a precondition for the permit's validity, meaning that, as a matter of positive domestic law, a community's objection can be documented and considered but does not, by itself, block the

⁷¹Aprilia Stefany Leliak, "Strengthening Legal Protection of Indigenous Peoples' Customary Land Rights in Indonesia's Disruption Era," LITIGASI 26, no. 2 (2026), <https://doi.org/10.23969/litigasi.v26i2.20032>.

⁷²Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia [Law No. 39 of 1999 on Human Rights].

⁷³International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989), not ratified by Indonesia.

⁷⁴United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (13 September 2007).

issuance or continued validity of a competing permit.⁷⁵ Scholars applying international cultural rights instruments to the Indonesian context similarly argue that the protection of indigenous peoples' land cannot be meaningfully separated from the protection of their intangible cultural heritage, since ancestral territory frequently functions simultaneously as farmland, sacred site, and repository of customary law and oral history, so that loss of land is, in a very concrete sense, also loss of the material infrastructure through which cultural rights are practised and transmitted.⁷⁶

A transitional justice framing has also been proposed by scholars examining historical indigenous land dispossession in Indonesia, drawing an analogy between the mechanisms typically used to address mass historical injustice, truth-seeking, acknowledgment, reparation, and institutional reform, and the situation of customary communities whose territorial dispossession dates back, in many cases, to colonial-era or early post-independence state action rather than to a single recent, litigable event.⁷⁷ Proponents of this approach argue that ordinary civil litigation, structured around discrete, recent, individually attributable unlawful acts, is poorly suited to redressing dispossession that occurred generations ago under a different legal and political order, and that a dedicated transitional justice or reparative mechanism, potentially combining historical fact-finding commissions, negotiated land restitution, and formal state acknowledgment, would better match the scale and structure of the underlying harm than incremental case-by-case litigation.⁷⁸ This proposal remains, at present, largely aspirational in the Indonesian context, since no dedicated transitional justice mechanism for indigenous land dispossession has been enacted, but it usefully highlights a structural limitation of the existing remedy framework: civil and administrative remedies, as currently designed, are calibrated to redress specific, recent, and clearly attributable acts of dispossession, not the cumulative, multi-generational pattern of exclusion that many customary communities describe.

Access to justice barriers further compound the formal availability of the remedies described above. Indonesia's customary communities are disproportionately located in remote, forested, or coastal regions with limited access to legal aid services, courts, and land registration offices, and community leaders frequently lack the specialised documentary evidence, including historical maps, genealogical records, and expert anthropological reports,

⁷⁵Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," *AlterNative: An International Journal of Indigenous Peoples* 20, no. 1 (2024): 157–166, <https://doi.org/10.1177/11771801241235261>.

⁷⁶Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," *AlterNative: An International Journal of Indigenous Peoples* 20, no. 1 (2024): 157–166, <https://doi.org/10.1177/11771801241235261>.

⁷⁷Safrin Salam, "Human Right and Indigenous Peoples: Transitional Justice Approach," *International Journal of Scientific Research in Science and Technology* 9, no. 4 (2022), <https://doi.org/10.32628/ijsrst229411>.

⁷⁸Safrin Salam, "Human Right and Indigenous Peoples: Transitional Justice Approach," *International Journal of Scientific Research in Science and Technology* 9, no. 4 (2022), <https://doi.org/10.32628/ijsrst229411>.

that administrative and judicial decision-makers expect a claimant to produce.⁷⁹ The absence of a clearly designated legal representative for a customary community compounds this difficulty, since Indonesian civil procedure is built around individual or corporate litigants, and questions frequently arise as to who is authorised to bring or settle a claim on the community's behalf, how that authorisation should be evidenced, and how any resulting judgment or settlement binds individual community members who were not personally party to the proceeding.⁸⁰ Studies documenting these barriers consistently recommend the establishment of dedicated legal aid pathways, simplified evidentiary standards that give appropriate weight to oral and customary forms of proof, and capacity-building support for regional governments tasked with the initial verification of customary status, as practical measures capable of narrowing the gap between formal legal entitlement and actual remedy.⁸¹

Notwithstanding these structural obstacles, the trajectory of Indonesian law since 2012 does show a discernible, if uneven, movement toward stronger remedial protection. The succession from Ministerial Regulation No. 18 of 2019 to Ministerial Regulation No. 14 of 2024 reflects incremental refinement of the communal registration procedure in response to accumulated implementation experience, and the growing body of regional regulations recognising specific customary communities provides an expanding evidentiary foundation on which future claims can draw.⁸² Comparative-institutional research also suggests that communities able to combine several remedial pathways at once, pursuing regional government recognition, administrative registration, and civil or constitutional litigation in parallel, achieve materially better outcomes than communities relying on any single pathway alone, indicating that the practical effectiveness of Indonesia's remedy framework depends heavily on strategic, well-resourced, and sustained engagement across multiple institutions rather than on the formal design of any one remedy in isolation.⁸³ This finding carries an important implication for reform: strengthening any single remedial channel in isolation is unlikely to close the recognition-to-remedy gap; what is required is a coordinated framework in which administrative, civil, constitutional, and human rights mechanisms reinforce rather than duplicate one another.

⁷⁹D. Jinoto, "Legal Vacuum in Indigenous Peoples' Legal Representation Regarding Communal Land Rights," JUSTISI 12, no. 1 (2026), <https://doi.org/10.33506/js.v12i1.4701>.

⁸⁰Asmadi Lubis, Runtung, M. Kaban, and Edy Ikhsan, "The Development of Recognition and Protection of the Customary Rights of Indigenous Peoples in Indonesia," KnE Social Sciences 8, no. 21 (2024), <https://doi.org/10.18502/kss.v8i21.14717>.

⁸¹I Nurjaya and R. Sulistyarini, "Political and Legal Rights of Indigenous Peoples in Efforts to Protect Customary Rights," International Journal of Humanities Education and Social Sciences 5, no. 2 (2025), <https://doi.org/10.55227/ijhess.v5i2.1293>.

⁸²Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 on Procedures for the Determination of Communal Rights and Customary Land.

⁸³A. Hidayat, O. Hospes, and Christian Termeer, "Uneven Recognition: A Comparative Study of Indigenous Communities' Struggle for Securing Customary Land Rights in Indonesia," Land Use Policy (2026), <https://doi.org/10.1016/j.landusepol.2026.108061>.

4. Conclusion

The legal recognition of indigenous land rights and the remedies available to affected communities in Indonesia through the lens of the country's civil law framework, read together with its constitutional and human rights obligations. The analysis shows that Indonesian law has moved, particularly since Constitutional Court Decision No. 35/PUU-X/2012, from near-total subordination of customary rights to a position of conditional recognition, in which masyarakat hukum adat can, in principle, be acknowledged as holders of communal land rights capable of being distinguished from, and asserted against, both the state's general power of control and competing third-party claims. That recognition, however, remains structurally conditional, fragmented across sectoral regulations, and dependent on discretionary regional government action, producing significant variation in the practical content of indigenous land rights depending on where in Indonesia a given community happens to be located. The civil law categories of legal subjecthood and property, designed primarily around individual and corporate rights-holders, continue to accommodate communal customary tenure only imperfectly, notwithstanding the important, if incomplete, corrective introduced by the dedicated communal registration procedures adopted since 2019.

References

- Awaludin, Robi, Zuhraini, and Nurnazli. "Legal Pluralism and Indigenous Rights: The Case of the Indigenous Forest People of Jambi, Indonesia." *Rule of Law Studies Journal* 1, no. 1 (2025). <https://doi.org/10.64780/rolsj.v1i1.33>.
- Bahri, S., Dina Paramitha, Hefni Putri, and Heribertus Richard. "Legal Protection for Customary Communities in the Settlement of Disputes over Land Tenure and Utilization with Oil Palm Plantation Entrepreneurs." *Awang Long Law Review* 8, no. 3 (2026). <https://doi.org/10.56301/awl.v8i3.2142>.
- Bonte, Yesyurun. "Legal Protection of the Customary Rights of the Pubabu-Besipae Indigenous People." *Jurnal Indonesia Sosial Sains* 5, no. 6 (2024). <https://doi.org/10.59141/jiss.v5i06.1139>.
- Fahmi, Chairul. "Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms." *Journal of Southeast Asian Human Rights* 6, no. 1 (2022). <https://doi.org/10.19184/jseahr.v6i1.30242>.
- Fahmi, Chairul. "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia." *AlterNative: An International Journal of Indigenous Peoples* 20, no. 1 (2024): 157–166. <https://doi.org/10.1177/11771801241235261>.
- Fahmi, Chairul, Azka A. Jihad, Akihisa Matsuno, Faisal Fauzan, and Peter-Tobias Stoll. "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights." *Journal of Indonesian Legal Studies* 8, no. 2 (2023). <https://doi.org/10.15294/jils.v8i2.68419>.
- Fahmi, Chairul, Peter-Tobias Stoll, Shabarullah, Malahayati Rahman, and S. Syukri. "The State's Business Upon Indigenous Land in Indonesia: A Legacy from Dutch Colonial



- Regime to Modern Indonesian State.” Samarah: Jurnal Hukum Keluarga dan Hukum Islam 8, no. 3 (2024). <https://doi.org/10.22373/sjhh.v8i3.19992>.
- Firmanda, Hengki, Mahmud H. Wafi, Mark Woodward, Dina I. Supaat, Erlies S. Nurbani, and Sudjito. “Land as the Soul of the Nation: Implications of the Transition of Land Status in the Talang Mamak Customary Law Community.” Malaysian Journal of Syariah and Law 12, no. 1 (2024): 148–156. <https://doi.org/10.33102/mjsl.vol12no1.484>.
- Haq, Hilman Syahrial. “Legal Certainty and Protection of Indigenous Peoples’ Land Rights Ownership on Land from Coastal Reclamation Based on Indonesian Positive Law.” Lex Journal: Kajian Hukum dan Keadilan 9, no. 2 (2025). <https://doi.org/10.25139/lex.v9i2.10585>.
- Hidayat, A., O. Hospes, and Christian Termeer. “Uneven Recognition: A Comparative Study of Indigenous Communities’ Struggle for Securing Customary Land Rights in Indonesia.” Land Use Policy (2026). <https://doi.org/10.1016/j.landusepol.2026.108061>.
- “Human Rights of Indigenous People in Indonesia: A Constitutional Approach.” Journal of East Asia and International Law 15, no. 2 (2022). <https://doi.org/10.14330/jeail.2022.15.2.10>.
- Jamin, Mohammad, Abdul Kadir Jaelani, Duc Quang Ly, and Kerry Gershaneck. “Legal Protection of Indigenous Community in Protected Forest Areas Based Forest City.” Bestuur 10, no. 2 (2022): 198–212. <https://doi.org/10.20961/bestuur.v10i2.66090>.
- Jinoto, D. “Legal Vacuum in Indigenous Peoples’ Legal Representation Regarding Communal Land Rights.” JUSTISI 12, no. 1 (2026). <https://doi.org/10.33506/js.v12i1.4701>.
- Karso. “Natural Resources Governance and the Vulnerability of Indigenous Communities in Indonesia.” Frontiers in Political Science 7 (2025). <https://doi.org/10.3389/fpos.2025.1601480>.
- Leliak, Aprilia Stefany. “Strengthening Legal Protection of Indigenous Peoples’ Customary Land Rights in Indonesia’s Disruption Era.” LITIGASI 26, no. 2 (2026). <https://doi.org/10.23969/litigasi.v26i2.20032>.
- Lubis, Asmadi, Runtung, M. Kaban, and Edy Ikhsan. “The Development of Recognition and Protection of the Customary Rights of Indigenous Peoples in Indonesia.” KnE Social Sciences 8, no. 21 (2024). <https://doi.org/10.18502/kss.v8i21.14717>.
- Ma’ruf, Umar. “Legal Protection of Indigenous Rights in Land Regulation in Indonesia.” International Journal of Advanced Science and Technology 7 (2020): 1646–1652.
- Nurjaya, I, and R. Sulistyarini. “Political and Legal Rights of Indigenous Peoples in Efforts to Protect Customary Rights.” International Journal of Humanities Education and Social Sciences 5, no. 2 (2025). <https://doi.org/10.55227/ijhess.v5i2.1293>.
- Octavia, Elfira Zahwa, Mohammad Hamidi Masykur, and M. Fadil. “Legal Status of Former Customary Land Ownership Evidence after Its Validity Period Expires: Assessment of the Legal Certainty over Indigenous Peoples’ Land Rights.” Law. Human. Environment 6, no. 3 (2025). <https://doi.org/10.31548/law/3.2025.160>.
- “The Participation within Indigenous Land Management: Developments and Challenges of Indigenous Communities Protection.” Journal of Human Rights, Culture and Legal System 3, no. 1 (2023). <https://doi.org/10.53955/jhcls.v3i1.72>.
- Pradhani, Sartika Intaning. “Traditional Rights of Indigenous People in Indonesia: Legal Recognition and Court Interpretation.” Jambe Law Journal 1, no. 2 (2019): 177–205. <https://doi.org/10.22437/jlj.1.2.177-205>.

- Rubiati, Betty. "The Existence and Protection of Ulayat Rights in Indigenous Communities within the Framework of Positive Law in Indonesia." *Jurnal Poros Hukum Padjadjaran* 5, no. 2 (2024). <https://doi.org/10.23920/jphp.v5i2.1450>.
- Salam, Safrin. "Human Right and Indigenous Peoples: Transitional Justice Approach." *International Journal of Scientific Research in Science and Technology* 9, no. 4 (2022). <https://doi.org/10.32628/ijrst229411>.
- Yani, A., M. Arba, and Muhaimin. "Legal Protection for the Rights of Indigenous Peoples in the Exemption of Land Rights, According to Indonesian Law." *International Journal of Multidisciplinary Research and Growth Evaluation* 6, no. 3 (2025): 738–745. <https://doi.org/10.54660/ijmrge.2025.6.3.738-745>.
- Legal Instruments —
- 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945).
- Kitab Undang-Undang Hukum Perdata [Indonesian Civil Code].
- Law No. 5 of 1960 on Basic Agrarian Regulations (Undang-Undang Pokok Agraria).
- Law No. 41 of 1999 on Forestry.
- Law No. 39 of 1999 on Human Rights.
- Law No. 2 of 1986 on General Courts, as amended by Law No. 49 of 2009.
- Law No. 5 of 1986 on State Administrative Courts, as amended.
- Law No. 2 of 2012 on Land Procurement for Development in the Public Interest.
- Government Regulation No. 24 of 1997 on Land Registration.
- Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2019 on Procedures for the Determination of Communal Land Rights.
- Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 on Procedures for the Determination of Communal Rights and Customary Land.
- Constitutional Court of the Republic of Indonesia, Decision No. 35/PUU-X/2012, 16 May 2013.
- United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (13 September 2007).
- International Covenant on Civil and Political Rights (1966).
- International Covenant on Economic, Social and Cultural Rights (1966).
- International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989).