

Access to Justice for Indigenous Communities: Strengthening Civil and Human Rights Protection within Indonesia's Legal System

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Abstract. *Indonesia's constitutional and statutory framework formally recognizes the existence of masyarakat hukum adat, or indigenous law communities, yet the practical realization of their civil and human rights within the national legal system remains fragmented, inconsistent, and heavily dependent on local political will. This article examines the structural, procedural, and cultural barriers that impede indigenous communities' access to justice, drawing on normative-juridical analysis of constitutional provisions, statutory instruments, Constitutional Court jurisprudence, and comparative socio-legal scholarship published over the past decade. The study finds that although the landmark Constitutional Court Decision Number 35/PUU-X/2012 affirmed that customary forests are distinct from state forests, the continued absence of an omnibus law on indigenous communities, protracted and inconsistent bureaucratic recognition procedures at the regional level, and weak inter-ministerial coordination continue to produce legal uncertainty that disproportionately disadvantages indigenous claimants. The research further demonstrates that formal judicial and administrative institutions often privilege documentary and cadastral proof over customary and oral forms of evidence, effectively marginalizing indigenous communities within the very proceedings meant to protect them. Comparative insights from restorative and hybrid justice models, including the Nagari customary justice system of West Sumatra and community-based legal aid schemes, illustrate how legal pluralism can be reconciled with due-process guarantees required under international human rights standards. The article concludes that strengthening access to justice for Indonesia's indigenous peoples requires simultaneous reform at the legislative, judicial, and institutional levels, complemented by capacity-building for legal aid providers and the meaningful incorporation of customary dispute-resolution mechanisms into the formal legal order.*

Keywords: *access to justice; indigenous peoples; masyarakat hukum adat; human rights; legal pluralism; Indonesia.*

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1. Introduction

Indonesia is one of the most ethnically and culturally diverse nations in the world, home to thousands of indigenous communities commonly referred to as masyarakat hukum adat, or indigenous law communities whose social, economic, and legal lives continue to be organized around customary norms that predate the modern nation-state.¹ These communities range from the matrilineal nagari governance structures of West Sumatra to the Ammatoa Kajang community of South Sulawesi, the forest-dependent communities of East Kalimantan, and the highland societies of Papua, each governed by distinct systems of adat law that regulate land

¹Z. Prasajo, "Indigenous Community, Customary Law and Multiculturalism in Indonesia," *Al-Albab* 2 (2015), <https://doi.org/10.24260/alalbab.v2i1.26>.

tenure, dispute resolution, marriage, inheritance, and communal governance.² Despite this remarkable pluralism, the Indonesian legal system, inherited substantially from Dutch colonial administrative structures and subsequently consolidated under a centralized, civil-law oriented state apparatus, has historically struggled to accommodate customary normative orders within its formal architecture of rights and remedies.³ The persistence of legal pluralism alongside a unitary state model has generated a structural tension that lies at the heart of contemporary debates on indigenous access to justice in Indonesia.

The 1945 Constitution, as amended, provides two principal constitutional anchors for indigenous recognition. Article 18B(2) obliges the state to recognize and respect indigenous law communities and their traditional rights, so long as these remain alive and in accordance with the development of society and the principles of the unitary state of the Republic of Indonesia, while Article 28I(3) affirms that the cultural identity and rights of traditional communities are to be respected in keeping with the progress of civilization.⁴ These provisions, however, are conditional rather than absolute: recognition is contingent upon a community satisfying criteria of continued existence, conformity with the principle of the unitary state, and consistency with prevailing legislation—criteria whose interpretation has historically been left to sectoral ministries and regional governments, producing what several scholars describe as a “constitutionality gap” between formal recognition and substantive enjoyment of rights.⁵

The trajectory of indigenous legal recognition in Indonesia has moved through several distinct phases. During the colonial period, the Dutch administration developed the doctrine of *adatrecht*, a body of customary law codified and studied extensively by scholars such as Cornelis van Vollenhoven, which nonetheless subordinated customary land rights to the colonial state’s domanial claims over uncultivated land.⁶ Following independence, the New Order government (1966–1998) pursued an aggressive program of legal and administrative centralization, treating adat communities primarily as objects of development policy rather than as bearers of enforceable rights, while simultaneously expanding state control over forest and

²Welhendri Azwar et al., "Nagari Customary Justice System in West Sumatra," *Jurnal Bina Praja* 11, no. 1 (2019): 53–62, <https://doi.org/10.21787/jbp.11.2019.53-62>.

³W. Reba, "The Existence of Indigenous Legal Community Rights and the Position in Indonesia Legal System," *Papua Law Journal*, 2018, <https://doi.org/10.31957/plj.v0i0.620>.

⁴Zidane Haikal Senoaji, Anang Setiawan, and Siska Diana Sari, "Protection of Indigenous Peoples in the Perspective of Human Rights in Indonesia: Realities, Problems and Solutions," *Activa Yuris: Jurnal Hukum* 1, no. 1 (2021), <https://doi.org/10.25273/ay.v1i1.10248>.

⁵W. Reba, "The Existence of Indigenous Legal Community Rights and the Position in Indonesia Legal System," *Papua Law Journal*, 2018, <https://doi.org/10.31957/plj.v0i0.620>.

⁶Carly May Boag, "A Comparative Study of the Legal Frameworks Facilitating Indigenous Land Management in Postcolonial Societies: Indigenous Australia and Indonesian Adat Law," *Brawijaya Law Journal* 3, no. 2 (2016): 125–150, <https://doi.org/10.21776/ub.blj.2016.003.02.03>.

mining concessions that frequently overlapped with customary territories.⁷ The fall of the New Order in 1998 and the subsequent era of Reformasi opened political space for indigenous rights advocacy, culminating in a series of legislative and judicial developments—including the 1999 Human Rights Law, the 1999 Forestry Law's partial acknowledgment of adat forests, and eventually the transformative 2012 Constitutional Court ruling—that have incrementally, if unevenly, expanded the legal visibility of indigenous communities.⁸

Constitutional Court Decision Number 35/PUU-X/2012, decided in response to a judicial review petition filed by the Alliance of Indigenous Peoples of the Archipelago, represents the most significant judicial intervention in this field. The Court held that customary forests (hutan adat) are not state forests but rather forests located within the territory of indigenous law communities, thereby severing the automatic subsumption of adat forest areas under state forestry authority that had prevailed since the 1999 Forestry Law.⁹ The decision has been widely celebrated as a watershed moment for indigenous land rights, yet its implementation has been markedly uneven: fewer than a small fraction of Indonesia's estimated tens of millions of hectares of customary territory have been formally registered as hutan adat in the years since the ruling, reflecting the persistence of bureaucratic, financial, and political obstacles at the regional level.¹⁰ The gap between constitutional pronouncement and administrative implementation illustrates a recurring theme in Indonesian indigenous rights discourse: judicial recognition, however doctrinally significant, does not automatically translate into accessible remedies for affected communities.

Quantitatively, the scale of the recognition gap remains substantial. Government and civil society estimates converge on the observation that Indonesia's indigenous and customary territories collectively span tens of millions of hectares, yet only a small proportion of this area has been formally registered as customary forest or otherwise granted secure legal status in the years following the 2012 Constitutional Court decision, leaving the large majority of indigenous communities dependent on informal, contested, or partial forms of tenure security

⁷M. Muhdar and Muhammad Tavip, "State Failure in Recognition and Protection of Indigenous Peoples over Natural Resource Access in East Kalimantan," *Asia Pacific Law Review* 27, no. 1 (2019): 127–143, <https://doi.org/10.1080/10192557.2019.1665921>.

⁸Katharine McGregor and Ken Setiawan, "Shifting from International to 'Indonesian' Justice Measures: Two Decades of Addressing Past Human Rights Violations," *Journal of Contemporary Asia* 49, no. 5 (2019): 837–861, <https://doi.org/10.1080/00472336.2019.1584636>.

⁹Herman Hidayat et al., "Forests, Law and Customary Rights in Indonesia: Implications of a Decision of the Indonesian Constitutional Court in 2012," *Asia Pacific Viewpoint* 60, no. 2 (2018), <https://doi.org/10.1111/apv.12207>.

¹⁰Yance Arizona and M. Wicaksono, "The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 487–506, <https://doi.org/10.1080/14442213.2019.1670241>.

that remain vulnerable to reclassification, concession overlap, or administrative reversal.¹¹ This disjuncture between the scale of customary territorial claims and the pace of formal legal recognition is not merely a matter of administrative backlog; it reflects deeper structural incentives within a political economy in which land and forest resources continue to generate substantial revenue for both government and private concessionaires, creating persistent institutional resistance to the reallocation of legal certainty toward indigenous claimants that a fully implemented recognition regime would entail. This gap is compounded by the continued absence of a comprehensive statutory framework specifically addressing indigenous law communities. A draft law on indigenous communities (Rancangan Undang-Undang tentang Masyarakat Hukum Adat, commonly abbreviated RUU MHA) has circulated within the House of Representatives for well over a decade without enactment, leaving indigenous recognition to be pursued through a patchwork of sectoral regulations—forestry, agrarian, environmental, and village governance laws—each applying its own criteria and procedures for recognizing customary rights.¹² Recent legislative research indicates that the draft law, if enacted, could offer a more comprehensive framework securing communal land rights, customary institutions, and freedom of belief, yet its prolonged deliberation reflects competing interests among government agencies, business actors, and indigenous rights advocates.¹³ In the interim, indigenous communities seeking legal protection must navigate an institutional landscape characterized by overlapping jurisdictions, inconsistent regional regulations (peraturan daerah) recognizing adat communities, and limited coordination between the Ministry of Environment and Forestry, the Ministry of Home Affairs, and the National Land Agency.

From a human rights perspective, Indonesia's obligations extend beyond domestic constitutional guarantees. As a state that voted in favor of the 2007 United Nations Declaration on the Rights of Indigenous Peoples and that has ratified both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, Indonesia bears international legal obligations to ensure indigenous peoples' access to effective remedies, free, prior and informed consent regarding development projects affecting their territories, and non-discrimination in the administration of justice.¹⁴ The 1999 Law on Human Rights and the establishment of the National Commission on Human Rights (Komnas

¹¹Yance Arizona and M. Wicaksono, "The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 487–506, <https://doi.org/10.1080/14442213.2019.1670241>.

¹²Wulan Krismawati and Ardeli Zena El Fareeha, "Legal Policy on the Recognition of Indigenous Peoples' Rights in the Draft Indigenous Peoples' Law," *Asian Journal of Law and Humanity* 5, no. 1 (2025): 17–32, <https://doi.org/10.28918/ajlh.v5i1.2>.

¹³Wulan Krismawati and Ardeli Zena El Fareeha, "Legal Policy on the Recognition of Indigenous Peoples' Rights in the Draft Indigenous Peoples' Law," *Asian Journal of Law and Humanity* 5, no. 1 (2025): 17–32, <https://doi.org/10.28918/ajlh.v5i1.2>.

¹⁴Jeremie Gilbert, "Litigating Indigenous Peoples' Rights: Strategies for Legal Empowerment," *Journal of Human Rights Practice* 12, no. 2 (2020): 301–320, <https://doi.org/10.1093/jhuman/huaa028>.

HAM) provide additional domestic mechanisms, yet these institutions possess limited enforcement authority and depend heavily on cooperation from other state organs to translate findings into binding remedies.¹⁵ Reports submitted to United Nations treaty bodies in recent years have continued to highlight concerns regarding the human rights implications of legislative changes—including expansive omnibus job-creation legislation—that streamline environmental permitting processes in ways that may weaken procedural protections previously available to communities affected by extractive and infrastructure projects.¹⁶

Against this backdrop, the concept of “access to justice” provides an analytically useful lens through which to evaluate the gap between formal recognition and substantive protection. Following the definition advanced by Bedner and Vel and adopted widely within Indonesian socio-legal scholarship, access to justice exists when people—particularly the poor and disadvantaged—are able to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards, rather than being limited to abstract entitlements without corresponding institutional pathways for enforcement.¹⁷ This definition deliberately encompasses both state judicial institutions and informal or customary dispute-resolution mechanisms, recognizing that in a legally plural society such as Indonesia, indigenous communities frequently pursue justice through community-based institutions—such as the Nagari customary councils of West Sumatra—that operate alongside, and sometimes in tension with, the formal court system.¹⁸

A further dimension of the introduction concerns the differentiated impact of access-to-justice barriers within indigenous communities themselves. Existing scholarship on the protection of indigenous peoples from a human rights perspective has noted that indigenous women, who frequently occupy customary roles as custodians of land-based knowledge and subsistence agriculture, face compounded disadvantages when customary institutions themselves reproduce internal hierarchies that limit their participation in dispute-resolution processes, while formal state institutions simultaneously fail to provide culturally accessible alternatives.¹⁹ This intersection between gender and indigenous status has received

¹⁵Eddy Riswanto and S. Suparno, "Advocate Legal Assistance as a Way of Protecting Human Rights," EAI, 2021, <https://doi.org/10.4108/eai.6-3-2021.2306199>.

¹⁶ Elida Rahajeng Puspitasari and Mohammad Hazyar Arumbinang, "Climate Justice and Legal Frameworks in Indonesia: Ensuring Equity for Marginalized Communities in Green Policy Implementation," IOP Conference Series: Earth and Environmental Science 1566 (2025), <https://doi.org/10.1088/1755-1315/1566/1/012029>.

¹⁷Daniel Brinks, "Access to What? Legal Agency and Access to Justice for Indigenous Peoples in Latin America," *The Journal of Development Studies* 55, no. 3 (2019): 348–365, <https://doi.org/10.1080/00220388.2018.1451632>.

¹⁸Welhendri Azwar et al., "Nagari Customary Justice System in West Sumatra," *Jurnal Bina Praja* 11, no. 1 (2019): 53–62, <https://doi.org/10.21787/jbp.11.2019.53-62>.

¹⁹Zidane Haikal Senoaji, Anang Setiawan, and Siska Diana Sari, "Protection of Indigenous Peoples in the Perspective of Human Rights in Indonesia: Realities, Problems and Solutions," *Activa Yuris: Jurnal Hukum* 1, no. 1 (2021), <https://doi.org/10.25273/ay.v1i1.10248>.

comparatively limited attention within Indonesian legal scholarship relative to the extensive literature on land and forest rights, suggesting an important direction for future doctrinal and empirical inquiry that this article, while not its central focus, seeks to flag for subsequent research. This article addresses the following central research problem: to what extent does Indonesia's current legal and institutional architecture provide indigenous communities with meaningful access to justice for the protection of their civil and human rights, and what reforms are necessary to close the persistent gap between constitutional recognition and lived legal experience? In pursuing this question, the article makes three principal contributions to the existing literature. First, it synthesizes recent developments—including 2023–2025 legislative deliberations on the draft indigenous communities law, evolving Constitutional Court jurisprudence, and emerging empirical data on legal aid service quality—that have not yet been comprehensively integrated within a single access-to-justice framework specific to indigenous communities. Second, it situates the Indonesian experience within comparative discussions of indigenous access to justice in Latin America and other legally plural jurisdictions, drawing out lessons regarding the relationship between legal agency and effective remedy. Third, it advances a set of concrete institutional recommendations addressing legislative, judicial, and legal-aid dimensions of reform, moving beyond the largely diagnostic character of much existing scholarship.

It is also important to situate this inquiry within the broader comparative literature on legal pluralism and access to justice, which has long recognized that formally plural legal systems—where state law coexists with religious, customary, or indigenous normative orders—present distinctive challenges for the design of accessible justice institutions. Indonesia's experience is instructive precisely because it combines an unusually high degree of substantive legal pluralism, encompassing adat law, Islamic law within the religious court system, and secular civil and criminal law, with a constitutional and administrative architecture that has historically struggled to formally reconcile these overlapping normative orders in a manner that provides claimants with predictable pathways to remedy.²⁰ Scholarship examining Indonesia's religious courts, for instance, has documented ongoing efforts to achieve what is termed substantive justice within a formally plural judicial architecture, offering potentially transferable institutional lessons for the parallel challenge of accommodating adat law within the broader justice system. The remainder of this article is organized as follows. The second section outlines the normative-juridical research methodology employed in this study. The third section presents the results and discussion, divided into two subchapters: the first examines the normative and institutional landscape of indigenous legal recognition in Indonesia, while the second analyzes the structural barriers to, and emerging pathways toward,

²⁰ N. Rodliyah, E. Murdiana, and R. Andreas, "Judicial Ijtihad in Religious Courts for Achieving Substantive Justice in Indonesia," *Journal of Law and Regulation Governance* 2, no. 3 (2025): 372, <https://journal.worldofpublication.com/index.php/jlarg/article/view/79>.

substantive access to justice for indigenous communities. The fourth section concludes with a synthesis of findings and policy recommendations.

2. Research Methods

This study employs normative-juridical research methodology (*penelitian hukum normatif*), a doctrinal approach widely used within Indonesian legal scholarship that treats law as a coherent system of norms to be analyzed through statutory interpretation, judicial reasoning, and conceptual synthesis, rather than through direct empirical fieldwork.²¹ The research draws upon three principal categories of legal materials. Primary legal materials include the 1945 Constitution and its amendments, relevant statutes—including Law Number 39 of 1999 on Human Rights, Law Number 41 of 1999 on Forestry as amended, Law Number 6 of 2014 on Villages, and Law Number 6 of 2023 concerning the stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation—together with implementing regulations issued by the Ministry of Environment and Forestry and the Ministry of Home Affairs, and the full text and legal reasoning of Constitutional Court Decision Number 35/PUU-X/2012 and subsequent related rulings. Secondary legal materials comprise peer-reviewed journal articles, dissertations, conference proceedings, and institutional reports published predominantly between 2018 and 2026, supplemented by classical socio-legal scholarship on Indonesian legal pluralism where necessary to establish historical and conceptual context. Tertiary materials, including legal dictionaries and statistical reports from Statistics Indonesia (*Badan Pusat Statistik*) and international organizations, are used to clarify terminology and to contextualize quantitative claims regarding the extent of customary forest recognition.

The analytical approach combines statutory interpretation (*pendekatan perundang-undangan*) with a case-based approach (*pendekatan kasus*) focused on Constitutional Court jurisprudence, and a comparative approach that situates Indonesian developments alongside indigenous access-to-justice scholarship from Latin America and other legally plural common-law and civil-law jurisdictions.²² Legal materials were collected through systematic searches of Indonesian legal databases, including the Constitutional Court's official decision repository and the Supreme Court's directory of decisions, alongside international academic databases and citation indices such as Google Scholar, Scopus, and Crossref, using search terms combining "access to justice," "indigenous peoples," "masyarakat hukum adat," "customary law," and "human rights" restricted primarily to publications from 2021 through 2026 to ensure the currency of the empirical and doctrinal claims discussed. Materials were screened for relevance, methodological credibility, and citation traceability, with verification of digital object identifiers conducted prior to inclusion.

²¹Sartika 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>.

²²Ahmad Dhiaulhaq and J. McCarthy, "Indigenous Rights and Agrarian Justice Framings in Forest Land Conflicts in Indonesia," *The Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 34–54, <https://doi.org/10.1080/14442213.2019.1670243>.

Data analysis proceeded through a qualitative-descriptive method involving three stages: first, systematic categorization of legal materials according to thematic clusters—constitutional recognition, land and forest rights, judicial and administrative procedure, legal aid and access mechanisms, and international human rights obligations; second, comparative analysis of doctrinal positions and empirical findings across the reviewed literature to identify areas of convergence, divergence, and unresolved tension; and third, synthesis of the findings into an integrated assessment of the state of indigenous access to justice in Indonesia, culminating in the formulation of policy-oriented recommendations. This methodological design is consistent with prior normative-juridical studies on indigenous rights in Indonesia, while extending the temporal scope of analysis to capture legislative and judicial developments through the middle of the current decade.²³

The study acknowledges certain limitations inherent in the normative-juridical method. Because the research relies on documentary and secondary sources rather than original fieldwork or interviews with affected indigenous communities, it cannot directly capture the lived experience of justice-seeking at the community level, an important dimension that has been more thoroughly explored in the socio-legal and anthropological literature cited throughout this article. The findings should therefore be read as a doctrinal and institutional mapping of the access-to-justice landscape, intended to complement rather than substitute for empirical, community-based research on indigenous legal consciousness and justice-seeking behavior.

To maintain analytical rigor and to ensure the currency of the empirical claims advanced in the following sections, priority was given to legal materials and peer-reviewed scholarship published between 2021 and 2026, while classical and foundational sources—including seminal work on Indonesian legal pluralism and the doctrinal history of *adatrecht*—were retained only where necessary to establish historical continuity or to explain the doctrinal origins of contemporary legal categories. Where more recent sources directly updated or qualified the findings of earlier scholarship, such as evolving interpretations of the 2012 Constitutional Court decision or the 2023 recodification of Indonesia's Criminal Code, the more recent source was treated as authoritative for purposes of describing the current state of the law, while earlier sources were cited primarily for historical and conceptual context.

3. Result and Discussion

3.1 The Normative and Institutional Landscape of Indigenous Legal Recognition in Indonesia

Indonesia's legal architecture for indigenous recognition can be characterized as a layered and sectoral system rather than a unified rights framework. At the apex sits the

²³Yoserwan, "Implications of Adat Criminal Law Incorporation into the New Indonesian Criminal Code: Strengthening or Weakening?," *Cogent Social Sciences* 9, no. 1 (2023), <https://doi.org/10.1080/23311886.2023.2289599>.

constitutional recognition contained in Articles 18B(2) and 28I(3), which several scholars have described as “conditional recognition” because the exercise of these rights is made dependent on continued satisfaction of criteria—existence, conformity with societal development, and consistency with the unitary state and prevailing legislation—that are neither self-executing nor uniformly interpreted across government agencies.²⁴ Beneath this constitutional layer, sectoral statutes each approach indigenous recognition from the standpoint of their respective regulatory domains: the Basic Agrarian Law of 1960 recognizes ulayat (communal customary land) rights insofar as they do not conflict with national interest; the Forestry Law, as reshaped by the 2012 Constitutional Court decision, distinguishes customary forests from state forests but requires prior recognition of the underlying indigenous law community through regional regulation before a customary forest claim can be registered; and the Village Law of 2014 permits the establishment of “customary villages” (desa adat) as an alternative form of village governance that incorporates customary institutions into the formal village administrative structure.²⁵

The variability of regional political will further compounds this sectoral fragmentation. Because the initial recognition of an indigenous law community’s legal existence is typically formalized through a regional regulation or head-of-region decree, the pace and likelihood of recognition depend heavily on the priorities of individual regional governments, the presence or absence of supportive regional legislators, and the extent to which local bureaucracies possess the technical capacity to conduct the community identification and boundary verification exercises that recognition requires.²⁶ Recent legislative research on the deliberation of the draft Law on Indigenous Communities highlights that this dependence on regional political discretion has produced starkly uneven outcomes across the archipelago: provinces such as West Sumatra, Central Kalimantan, and parts of Papua have adopted comparatively extensive regional regulations recognizing customary communities and their territories, while other provinces with equally significant indigenous populations have adopted few or no such regulations, leaving communities in those regions with substantially reduced practical access to the legal protections that recognition would unlock. This uneven regional landscape underscores why national-level legislative harmonization, rather than continued reliance on regional discretion, is widely regarded within the literature as the most promising avenue for reducing arbitrary variation in indigenous legal recognition outcomes. This sectoral fragmentation produces what Jayus and other constitutional scholars describe as a persistent

²⁴Jaja Ahmad Jayus, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum* 27, no. 1 (2020), <https://doi.org/10.18196/jmh.20200144>.

²⁵Willem Van Der Muur, "Forest Conflicts and the Informal Nature of Realizing Indigenous Land Rights in Indonesia," *Citizenship Studies* 22, no. 2 (2018): 160–174, <https://doi.org/10.1080/13621025.2018.1445495>.

²⁶Wulan Krismawati and Ardeli Zena El Fareeha, "Legal Policy on the Recognition of Indigenous Peoples' Rights in the Draft Indigenous Peoples' Law," *Asian Journal of Law and Humanity* 5, no. 1 (2025): 17–32, <https://doi.org/10.28918/ajlh.v5i1.2>.

“urgency” for a dedicated legal framework capable of harmonizing the criteria and procedures for indigenous community recognition across ministries.²⁷ In practice, recognition of an indigenous law community’s legal existence is typically initiated at the regional level through a multi-stage administrative process: identification and verification by a regional research team, often coordinated with academic institutions and civil society organizations; enactment of a regional regulation (*peraturan daerah*) or head-of-region decree formally recognizing the community’s existence and territorial boundaries; and subsequent registration with relevant ministries to unlock sector-specific rights, such as customary forest status or communal land certification.²⁸ Each stage introduces opportunities for delay, discretionary refusal, or contestation by competing claimants, including private concession holders and state agencies, with the consequence that formal recognition can take years or even decades to complete, if it is achieved at all.

The role of non-governmental organizations in facilitating this recognition process has been extensively documented. Arizona and Wicaksono’s empirical analysis of the legal recognition process for customary forests demonstrates that indigenous rights NGOs—most prominently the Alliance of Indigenous Peoples of the Archipelago (AMAN) and its network of provincial and local affiliates—have functioned as indispensable intermediaries, providing technical mapping expertise, legal drafting assistance, and political advocacy that many indigenous communities could not otherwise access given resource and capacity constraints at the community level.²⁹ This reliance on civil society intermediation, while pragmatically effective in securing individual recognition outcomes, raises structural concerns regarding the sustainability and equity of access to justice: communities located in regions with limited NGO presence, or lacking pre-existing relationships with advocacy networks, face substantially higher barriers to securing recognition than those embedded within well-resourced advocacy ecosystems.

Constitutional Court jurisprudence beyond the landmark 2012 decision has continued to shape, and at times complicate, the normative landscape. Subsequent rulings and legislative responses—including debates surrounding the 2020 Job Creation Law and its successor, Law Number 6 of 2023—have generated concern among human rights observers that the acceleration of environmental permitting procedures for national strategic projects may curtail the procedural safeguards, including environmental impact assessment requirements, that previously offered indigenous communities avenues to contest development projects affecting

²⁷Jaja Ahmad Jayus, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum* 27, no. 1 (2020), <https://doi.org/10.18196/jmh.20200144>.

²⁸Yance Arizona and M. Wicaksono, "The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 487–506, <https://doi.org/10.1080/14442213.2019.1670241>.

²⁹Yance Arizona and M. Wicaksono, "The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 487–506, <https://doi.org/10.1080/14442213.2019.1670241>.

their customary territories.³⁰ Civil society submissions to United Nations treaty-monitoring bodies have specifically identified cases such as the Rempang Island development project as illustrative of the tension between national development priorities and the free, prior and informed consent standards that Indonesia has endorsed at the international level, even as implementation of those standards within domestic law remains incomplete and contested.³¹

Regional case studies illustrate both the promise and the limitations of Indonesia's legal pluralism. The Nagari customary justice system of West Sumatra, examined in depth by Azwar and colleagues, represents one of the more institutionally robust examples of formally acknowledged customary dispute resolution, operating through village-level customary councils (Kerapatan Adat Nagari) that handle a substantial share of civil and minor criminal disputes through consensus-based mechanisms before, or instead of, referral to state courts.³² Comparable, though less formally institutionalized, arrangements exist among the Ammatoa Kajang community of South Sulawesi, whose customary governance structure continues to regulate land use and dispute resolution according to principles that predate, and in several respects diverge from, the national legal order, generating recurring questions regarding the appropriate boundary between customary jurisdiction and state judicial authority.³³ These case studies collectively demonstrate that customary justice institutions, where recognized and adequately resourced, can provide indigenous communities with dispute-resolution pathways that are more culturally congruent, geographically accessible, and procedurally familiar than distant and formalistic state courts—yet their legal status typically remains informal or semi-formal, dependent on regional political accommodation rather than secure statutory footing.

Recent doctrinal scholarship has extended this institutional analysis into the domain of criminal justice reform. Yoserwan's 2023 study of the incorporation of adat criminal law into Indonesia's New Criminal Code—enacted as Law Number 1 of 2023 and scheduled to take full effect in 2026—identifies both an opportunity and a risk: the Code formally accommodates customary criminal law as a source of substantive criminal norms in localities where it continues to live, yet imposes conditions and procedural requirements that may, paradoxically, constrain the very customary practices the provision purports to protect, by subjecting adat

³⁰ Elida Rahajeng Puspitasari and Mohammad Hazyar Arumbinang, "Climate Justice and Legal Frameworks in Indonesia: Ensuring Equity for Marginalized Communities in Green Policy Implementation," IOP Conference Series: Earth and Environmental Science 1566 (2025), <https://doi.org/10.1088/1755-1315/1566/1/012029>.

³¹ Mohammad Hazyar Arumbinang and Elida Rahajeng Puspitasari, "Integrating Indigenous Legal Traditions into Indonesia's Environmental Governance: Advancing Pathways to Ecological Justice," IOP Conference Series: Earth and Environmental Science 1566 (2025), <https://doi.org/10.1088/1755-1315/1566/1/012015>.

³² Welhendri Azwar et al., "Nagari Customary Justice System in West Sumatra," *Jurnal Bina Praja* 11, no. 1 (2019): 53–62, <https://doi.org/10.21787/jbp.11.2019.53-62>.

³³ M. Akbal and Firman Umar, "The Position and Rights of Indigenous People Ammatoa Kajang: A Perspective of Judicial Normative," *Proceedings of the International Conference on Social Science 2019 (ICSS 2019)*, <https://doi.org/10.2991/icss-19.2019.236>.

criminal norms to judicial screening for compatibility with the Pancasila state ideology and fundamental legal principles.³⁴ This tension exemplifies a broader pattern identified throughout the literature: legislative gestures toward accommodating legal pluralism frequently reintroduce centralized state control through qualifying conditions, oversight mechanisms, or discretionary administrative gatekeeping, thereby limiting the practical autonomy that formal recognition appears, on its face, to grant.

The 2023 recodification of Indonesia's Criminal Code, discussed further in the following subchapter, adds a further layer of normative complexity to the institutional landscape. By formally accommodating adat criminal law as a permissible source of substantive criminal norms in localities where it remains socially operative, the new Code represents the most significant statutory acknowledgment to date of customary normative authority beyond the land and forestry domains that have historically dominated indigenous rights discourse in Indonesia.³⁵ Whether this acknowledgment translates into meaningful institutional accommodation, however, will depend substantially on implementing regulations and judicial interpretation that remain, at the time of writing, still in the process of development ahead of the Code's full entry into force. A further institutional complication arises where indigenous customary territories overlap with state-designated conservation areas, a pattern documented in recent research examining land management conflicts within Kelimutu National Park in East Nusa Tenggara. That research found that the zoning of national park boundaries by relevant environmental agencies effectively closed off indigenous law communities' access to agricultural and plantation land they had cultivated for generations, notwithstanding constitutional and statutory recognition of ulayat rights, because conservation zoning regulations were promulgated and enforced without adequate consultation with, or accommodation of, the customary land uses already established within the affected area.³⁶ This pattern recurs across numerous conservation and forestry contexts nationwide: environmental regulation, however well-intentioned in its conservation objectives, frequently proceeds along an administrative logic that treats customary occupation as an exception to be managed or extinguished rather than as a pre-existing right to be affirmatively accommodated within protected-area governance frameworks, reproducing at the level of environmental law the same tension between formal recognition and administrative implementation that characterizes the broader indigenous rights landscape. Institutional recognition processes are further

³⁴Yoserwan, "Implications of Adat Criminal Law Incorporation into the New Indonesian Criminal Code: Strengthening or Weakening?," *Cogent Social Sciences* 9, no. 1 (2023), <https://doi.org/10.1080/23311886.2023.2289599>.

³⁵Yoserwan, "Implications of Adat Criminal Law Incorporation into the New Indonesian Criminal Code: Strengthening or Weakening?," *Cogent Social Sciences* 9, no. 1 (2023), <https://doi.org/10.1080/23311886.2023.2289599>.

³⁶Christiana Sri Murni, Yohanes Pande, and Bernadus B. Kelen, "Perlindungan Hukum terhadap Hak Pengelolaan dan Pemanfaatan atas Tanah oleh Masyarakat Hukum Adat yang Berada dalam Kawasan Taman Nasional Kelimutu," *RechtIdee* 18, no. 1 (2023): 117–140, <https://doi.org/10.21107/ri.v18i1.6130>.

complicated by their frequent inattention to internal social differentiation within indigenous communities. Human rights-oriented analyses of indigenous protection in Indonesia note that customary governance structures, while offering valuable dispute-resolution and land-management functions, are not internally homogeneous with respect to gender, age, or clan status, and that formal recognition procedures conducted at the level of the community as a whole risk entrenching internal power asymmetries by treating customary leadership structures as the sole authoritative voice of the community in dealings with state agencies.³⁷ Addressing this dimension of institutional design—for instance, by requiring documented evidence of inclusive community consultation as a precondition for regional recognition decrees—represents an underexplored but potentially significant refinement to existing recognition procedures. Taken together, the normative and institutional landscape reveals a system of indigenous legal recognition that is simultaneously expansive in constitutional aspiration and restrictive in administrative practice. Formal instruments—the Constitution, the 2012 Constitutional Court decision, sectoral statutes, and the new Criminal Code—collectively signal an unmistakable trajectory toward greater acknowledgment of indigenous legal personality and customary normative authority. Yet the persistent absence of a unifying statutory framework, the discretionary and resource-intensive character of regional recognition procedures, and the recurring reassertion of centralized oversight over customary institutions combine to produce a landscape in which recognition, even when formally granted, does not reliably translate into accessible, enforceable, and timely remedies for the communities it is meant to protect.

3.2 Barriers and Pathways to Substantive Access to Justice for Indigenous Communities

Building on the institutional mapping presented above, this subchapter examines the specific barriers that prevent formal recognition from translating into substantive access to justice, before turning to emerging pathways—legal aid reform, judicial digitalization, and hybrid dispute-resolution models—that offer partial, if incomplete, responses to these barriers. Following Brinks' influential framework distinguishing between formal legal agency and the practical capacity to mobilize law, this analysis treats access to justice not merely as the existence of legal remedies on paper, but as the realistic capacity of indigenous claimants to invoke, navigate, and obtain enforcement of those remedies within a reasonable time frame and at a reasonable cost.³⁸

³⁷Zidane Haikal Senoaji, Anang Setiyawan, and Siska Diana Sari, "Protection of Indigenous Peoples in the Perspective of Human Rights in Indonesia: Realities, Problems and Solutions," *Activa Yuris: Jurnal Hukum* 1, no. 1 (2021), <https://doi.org/10.25273/ay.v1i1.10248>.

³⁸Daniel Brinks, "Access to What? Legal Agency and Access to Justice for Indigenous Peoples in Latin America," *The Journal of Development Studies* 55, no. 3 (2019): 348–365, <https://doi.org/10.1080/00220388.2018.1451632>.

Participatory mapping and geospatial documentation have emerged as an important, technology-enabled complement to the legal and institutional reforms discussed throughout this article. Community-based mapping initiatives, frequently coordinated by indigenous rights NGOs in partnership with international conservation and land-tenure organizations, allow indigenous communities to produce georeferenced boundary documentation that can substitute, at least in part, for the documentary evidence that formal legal and administrative processes typically demand, thereby narrowing the evidentiary asymmetry described above without requiring communities to abandon customary modes of knowledge transmission in favor of purely textual documentation.³⁹ The effectiveness of participatory mapping as an access-to-justice tool, however, depends heavily on subsequent government willingness to accept community-generated spatial data as legally probative within registration and adjudication processes—an acceptance that remains inconsistent across ministries and regions, and that itself constitutes an important, if underexamined, dimension of the broader institutional reform agenda.

The first and most extensively documented barrier concerns evidentiary asymmetry between customary and state legal cultures. Indonesian courts, operating within a civil-law tradition that privileges documentary and cadastral evidence, frequently require indigenous claimants to produce written proof of territorial boundaries and communal membership—forms of evidence that customary systems, historically reliant on oral tradition, communal memory, and physical markers such as sacred sites and boundary trees, are poorly equipped to generate in the format demanded by formal adjudication.⁴⁰ Pradhani's analysis of Constitutional Court and Supreme Court jurisprudence concerning traditional indigenous rights demonstrates that even where courts have doctrinally affirmed the existence of ulayat rights, subsequent litigation before district, high, and supreme courts has repeatedly turned on narrow findings regarding formal legal certainty of documented land titles rather than the substantive, factual authorization claimed by communities through customary occupation and use, resulting in outcomes that frequently favor state agencies and commercial concessionaires over indigenous claimants notwithstanding the constitutional endorsement of customary rights.⁴¹

A second barrier concerns the criminalization of indigenous land defense. Forest conflicts arising from overlapping claims between indigenous communities and state-sanctioned forestry, plantation, and mining concessions have frequently resulted in the prosecution of indigenous community members for offenses such as unauthorized forest encroachment or

³⁹Yance Arizona and M. Wicaksono, "The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 487–506, <https://doi.org/10.1080/14442213.2019.1670241>.

⁴⁰Herman Hidayat et al., "Forests, Law and Customary Rights in Indonesia: Implications of a Decision of the Indonesian Constitutional Court in 2012," *Asia Pacific Viewpoint* 60, no. 2 (2018), <https://doi.org/10.1111/apv.12207>.

⁴¹Sartika 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>.

illegal logging, even where the underlying land is subject to a pending or unresolved customary rights claim.⁴² Van Der Muur's study of forest conflicts demonstrates that the informal, protracted, and politically contingent character of customary land rights realization leaves indigenous communities in a state of prolonged legal liminality, vulnerable to criminal sanction for exercising customary use rights over land that the state formally continues to classify as forest estate pending completion of recognition procedures that may never be concluded.⁴³ Similarly, research on the East Kalimantan context documents recurring instances in which state agencies have failed to adequately recognize and protect indigenous access to natural resources, describing this pattern as a form of "state failure" that leaves communities exposed to both economic displacement and legal jeopardy.⁴⁴

Before turning to the third barrier, it is worth noting that the barriers identified in this subchapter are mutually reinforcing rather than independent. Evidentiary asymmetry makes indigenous land claims more vulnerable to defeat in litigation; this vulnerability, in turn, increases the likelihood that communities will be prosecuted for exercising customary use rights over land whose status remains formally contested; the prospect of criminal liability discourages communities from pursuing formal recognition processes that require public assertion of territorial claims; and the resulting under-registration of customary territory leaves land more exposed to permitting decisions made under increasingly streamlined environmental review procedures. Understanding these barriers as an interlocking system, rather than as a checklist of discrete problems, is essential to designing reforms capable of producing durable improvement, since addressing any single barrier in isolation is unlikely to meaningfully improve indigenous communities' overall access to justice if the remaining barriers continue to operate unchecked. A third and increasingly salient barrier concerns the interaction between indigenous rights and the broader trajectory of Indonesia's economic and environmental legislation. The enactment of the omnibus Job Creation legislation and its subsequent statutory revisions—culminating in Law Number 6 of 2023—has streamlined environmental permitting and land-use procedures with the explicit policy objective of accelerating investment, but civil society submissions to international human rights bodies have raised concern that this streamlining has correspondingly narrowed the procedural windows within which affected indigenous communities can contest development decisions, including through simplified

⁴²Ahmad Dhiaulhaq and J. McCarthy, "Indigenous Rights and Agrarian Justice Framings in Forest Land Conflicts in Indonesia," *The Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 34–54, <https://doi.org/10.1080/14442213.2019.1670243>.

⁴³Willem Van Der Muur, "Forest Conflicts and the Informal Nature of Realizing Indigenous Land Rights in Indonesia," *Citizenship Studies* 22, no. 2 (2018): 160–174, <https://doi.org/10.1080/13621025.2018.1445495>.

⁴⁴M. Muhdar and Muhammad Tavip, "State Failure in Recognition and Protection of Indigenous Peoples over Natural Resource Access in East Kalimantan," *Asia Pacific Law Review* 27, no. 1 (2019): 127–143, <https://doi.org/10.1080/10192557.2019.1665921>.

environmental impact assessment requirements for projects designated as nationally strategic.⁴⁵ Climate and environmental justice scholarship published in 2025 similarly documents how green economy and energy transition policies, notwithstanding their stated sustainability objectives, risk reproducing familiar patterns of exclusion by locating renewable energy, carbon offset, and conservation projects on customary territories without adequate consultation or benefit-sharing arrangements, underscoring the need for legal frameworks that integrate indigenous consent and participation into environmental governance rather than treating indigenous territories merely as sites for extraction of ecological, as opposed to mineral, value.⁴⁶

A fourth barrier concerns access to affordable and competent legal representation. Indonesia's state-funded legal aid program, established under the 2011 Legal Aid Law, provides an essential mechanism through which indigent and marginalized groups, including many indigenous claimants, can access professional legal assistance without direct cost. Empirical evaluations of this program, however, reveal persistent quality and capacity constraints: a 2022 study measuring the quality of legal aid services found substantial variation in the competence and responsiveness of accredited legal aid organizations, while a 2024 assessment of legal aid standards within the criminal justice system similarly concluded that formal entitlement to legal assistance does not reliably translate into effective representation, particularly for claimants in geographically remote areas where accredited legal aid organizations maintain limited presence.⁴⁷ Complementary research proposing reforms to attorney-fee regulation argues that a more predictable and equitable fee structure, including expanded pro bono obligations and improved public funding mechanisms, is necessary to ensure that indigenous and other marginalized claimants can secure adequate legal representation in civil disputes concerning land and customary rights, which frequently require

⁴⁵ Elida Rahajeng Puspitasari and Mohammad Hazyar Arumbinang, "Climate Justice and Legal Frameworks in Indonesia: Ensuring Equity for Marginalized Communities in Green Policy Implementation," IOP Conference Series: Earth and Environmental Science 1566 (2025), <https://doi.org/10.1088/1755-1315/1566/1/012029>.

⁴⁶ Mohammad Hazyar Arumbinang and Elida Rahajeng Puspitasari, "Integrating Indigenous Legal Traditions into Indonesia's Environmental Governance: Advancing Pathways to Ecological Justice," IOP Conference Series: Earth and Environmental Science 1566 (2025), <https://doi.org/10.1088/1755-1315/1566/1/012015>.

⁴⁷ Oki Wahyu Budijanto and Tony Yuri Rahmanto, "Measuring the Quality of Legal Aid Services as the Embodiment of Access to Justice," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 3 (2022): 397–422, <https://doi.org/10.30641/kebijakan.2022.V16.397-422>. See also Nurani Ajeng Tri Utami et al., "The Effectiveness of Legal Aid Standards for Suspects in the Indonesian Criminal Justice System in Achieving Access to Justice," *Fiat Justisia: Jurnal Ilmu Hukum* 18, no. 2 (2024): 95–108, <https://doi.org/10.25041/fiatjustisia.v18no2.3249>.

specialized expertise in both adat law and formal agrarian and forestry regulation that few legal aid providers currently possess.⁴⁸

Despite these substantial barriers, several emerging pathways offer grounds for cautious optimism regarding the future trajectory of indigenous access to justice in Indonesia. The first is judicial digitalization. Following the accelerated adoption of electronic case management and e-court systems during and after the COVID-19 pandemic, courts have expanded online case filing, electronic summons, and remote hearing capabilities, developments that a 2022 study found had measurably improved procedural access to justice for litigants in geographically remote areas, including indigenous communities located far from provincial court centers, though the same study cautioned that persistent gaps in digital infrastructure and literacy risk generating a new form of digital exclusion that disproportionately affects the very communities such reforms are intended to benefit.⁴⁹ Ensuring that digitalization efforts are accompanied by targeted digital literacy and infrastructure investment in remote and indigenous-majority regions is therefore essential if these reforms are to translate into genuine, rather than merely nominal, improvements in access.

The interaction between digitalization and legal aid reform also merits attention as a distinct pathway in its own right. Where e-court systems and legal aid case-management platforms are designed with interoperability in mind, indigenous claimants supported by paralegals or legal aid organizations can, in principle, benefit twice over: once through reduced travel and procedural cost associated with electronic filing, and again through improved caseload visibility that allows legal aid organizations to track and prioritize cases involving remote or underserved communities more systematically than paper-based case management historically allowed.⁵⁰ Realizing this potential synergy, however, requires deliberate policy coordination between the judiciary, the National Legal Aid Agency, and regional legal aid organizations—coordination that, based on the available evidence, remains at an early and uneven stage of development across Indonesia's court system. A second pathway lies in strengthening and formalizing hybrid or restorative justice mechanisms that bridge customary and state legal orders. The Attorney General's Office Regulation Number 15 of 2020 on the Termination of Prosecution Based on Restorative Justice, together with subsequent Supreme Court and Police restorative justice guidelines, has expanded the formal legal space within which customary and community-based dispute resolution can be integrated into, rather than

⁴⁸Nurani Ajeng, Tri Utami, Tedi Sudrajat, and Setya Wahyudi, "Toward Equal Access to Justice: A Model for Fair Attorney Fee Regulation in Indonesia," *Pandecta: Research Law Journal* 19, no. 2 (2024): 139–172, <https://doi.org/10.15294/pandecta.v19i2.8316>.

⁴⁹G. N. Wala, "The Impact of Judicial Digitalization on Access to Justice and Human Rights in Indonesia Post-Pandemic," *Journal of Law, Politic and Humanities* 2, no. 4 (2022): 216–221, <https://doi.org/10.38035/jlph.v2i4.2387>.

⁵⁰G. N. Wala, "The Impact of Judicial Digitalization on Access to Justice and Human Rights in Indonesia Post-Pandemic," *Journal of Law, Politic and Humanities* 2, no. 4 (2022): 216–221, <https://doi.org/10.38035/jlph.v2i4.2387>.

displaced by, the formal criminal justice process, offering a potential model for reconciling indigenous customary practices with due-process guarantees.⁵¹ Gilbert's comparative analysis of strategies for indigenous legal empowerment suggests that such hybrid models are most effective when customary institutions are afforded genuine decision-making authority—rather than a merely advisory or diversionary role subordinate to prosecutorial discretion—and when procedural safeguards ensure that restorative processes do not become a mechanism for circumventing substantive rights, particularly in disputes involving unequal power relations between indigenous communities and corporate or state actors.⁵²

A further pathway, closely related to legal aid reform, concerns the expansion of paralegal and community-based legal empowerment programs that operate below the threshold of formal legal representation. Because professionally qualified lawyers—whether privately retained or provided through the state legal aid program—remain scarce relative to demand in many indigenous-majority regions, trained community paralegals, often drawn from within the indigenous communities themselves, can provide an intermediate layer of legal literacy, documentation assistance, and referral capacity that meaningfully narrows the gap between formal legal entitlement and practical legal capacity described by Brinks' concept of legal agency.⁵³ Comparative experience elsewhere in the region and beyond suggests that such paralegal programs are most sustainable when formally integrated into, and at least partially funded through, the national legal aid architecture, rather than remaining dependent on the intermittent project funding characteristic of many NGO-led initiatives, a lesson with direct relevance for Indonesian legal aid policy going forward. A third pathway concerns the sustained advocacy role of civil society and international human rights mechanisms in maintaining pressure for legislative reform. The continued, if protracted, deliberation of the draft Law on Indigenous Communities within the House of Representatives, alongside parallel legislative processes such as the 2024 amendment to the Conservation of Natural Resources and Ecosystems Law, reflects ongoing civil society engagement in shaping the legal framework governing indigenous rights, even where enactment timelines remain uncertain.⁵⁴ Litigating indigenous peoples' rights before the Constitutional Court, complemented by strategic engagement with United Nations treaty bodies and special procedures such as the Special Rapporteur on the Rights of Indigenous Peoples, has proven to be a comparatively effective

⁵¹Jeremie Gilbert, "Litigating Indigenous Peoples' Rights: Strategies for Legal Empowerment," *Journal of Human Rights Practice* 12, no. 2 (2020): 301–320, <https://doi.org/10.1093/jhuman/huaa028>.

⁵²Jeremie Gilbert, "Litigating Indigenous Peoples' Rights: Strategies for Legal Empowerment," *Journal of Human Rights Practice* 12, no. 2 (2020): 301–320, <https://doi.org/10.1093/jhuman/huaa028>.

⁵³Daniel Brinks, "Access to What? Legal Agency and Access to Justice for Indigenous Peoples in Latin America," *The Journal of Development Studies* 55, no. 3 (2019): 348–365, <https://doi.org/10.1080/00220388.2018.1451632>.

⁵⁴Wulan Krismawati and Ardeli Zena El Fareeha, "Legal Policy on the Recognition of Indigenous Peoples' Rights in the Draft Indigenous Peoples' Law," *Asian Journal of Law and Humanity* 5, no. 1 (2025): 17–32, <https://doi.org/10.28918/ajlh.v5i1.2>.

avenue for establishing normative precedent, even where subsequent implementation lags behind judicial pronouncement—a pattern consistent with Gilbert’s broader observation that indigenous rights litigation functions most powerfully as a catalyst for political and social mobilization rather than as a self-executing source of remedy.⁵⁵

Finally, comparative and international perspectives underscore that Indonesia’s challenges, while shaped by distinctive historical and institutional features, are not unique. Brinks’ comparative study of indigenous legal agency in Latin America identifies a similar pattern in which formal legal recognition of indigenous rights has outpaced the practical infrastructure necessary for communities to exercise those rights effectively, suggesting that durable improvements in access to justice depend less on the formal expansion of rights than on sustained investment in the intermediary institutions—legal aid organizations, paralegal networks, indigenous rights NGOs, and specialized judicial chambers—that translate formal entitlement into lived legal capacity.⁵⁶ Boag’s comparative analysis of Indonesian adat land law alongside Australian indigenous land rights frameworks similarly suggests that formal statutory recognition of native title or communal land rights, without corresponding reform of evidentiary standards and dedicated adjudicative mechanisms, tends to reproduce rather than resolve the underlying access barriers facing indigenous claimants.⁵⁷ These comparative insights reinforce the conclusion that Indonesia’s path toward strengthened indigenous access to justice must combine legislative reform with sustained institutional investment, rather than relying on judicial or statutory recognition alone. The persistence of forest conflicts examined earlier in this subchapter also underscores the importance of coordinated conflict-resolution mechanisms that operate prior to, and independently of, formal litigation. Van Der Muur’s analysis suggests that the informal and protracted character of Indonesia’s customary land recognition process itself generates conflict, insofar as the absence of a clear and time-bound resolution pathway leaves competing claimants—indigenous communities, concession holders, and government agencies—with strong incentives to assert *de facto* control over disputed land pending final resolution, frequently through escalating and sometimes violent means.⁵⁸ Establishing dedicated, time-bound administrative conflict-resolution mechanisms, potentially modeled on mediation-based land dispute panels already piloted in several provinces, could reduce reliance on criminal prosecution as a *de facto* mechanism for resolving

⁵⁵Jeremie Gilbert, "Litigating Indigenous Peoples' Rights: Strategies for Legal Empowerment," *Journal of Human Rights Practice* 12, no. 2 (2020): 301–320, <https://doi.org/10.1093/jhuman/huaa028>.

⁵⁶Daniel Brinks, "Access to What? Legal Agency and Access to Justice for Indigenous Peoples in Latin America," *The Journal of Development Studies* 55, no. 3 (2019): 348–365, <https://doi.org/10.1080/00220388.2018.1451632>.

⁵⁷Carly May Boag, "A Comparative Study of the Legal Frameworks Facilitating Indigenous Land Management in Postcolonial Societies: Indigenous Australia and Indonesian Adat Law," *Brawijaya Law Journal* 3, no. 2 (2016): 125–150, <https://doi.org/10.21776/ub.blj.2016.003.02.03>.

⁵⁸Willem Van Der Muur, "Forest Conflicts and the Informal Nature of Realizing Indigenous Land Rights in Indonesia," *Citizenship Studies* 22, no. 2 (2018): 160–174, <https://doi.org/10.1080/13621025.2018.1445495>.

what are, in substance, unresolved property disputes, thereby addressing one of the more troubling manifestations of the access-to-justice deficit documented in this article. The role of transitional and historical-accountability mechanisms deserves brief additional attention, given their relevance to indigenous communities affected by past state violence and displacement. McGregor and Setiawan's study of Indonesia's shift from internationalized to domestically managed measures for addressing past human rights violations demonstrates that domestic transitional justice mechanisms, including truth-seeking commissions and reconciliation processes established at the regional level, have achieved uneven and often limited results, constrained by weak institutional independence and the absence of binding follow-up mechanisms capable of translating findings into reparations or structural reform.⁵⁹ For indigenous communities whose historical dispossession from customary territory is frequently linked to state-sanctioned resource extraction and, in some regions, periods of armed conflict, the limitations of Indonesia's transitional justice architecture compound the contemporary access-to-justice barriers examined above, suggesting that a comprehensive reform agenda must address historical as well as ongoing sources of indigenous legal disadvantage. Finally, the growing engagement of Indonesian civil society with international human rights mechanisms—including periodic reporting to the Human Rights Council, submissions to the Committee on Economic, Social and Cultural Rights, and engagement with the Special Rapporteur on the Rights of Indigenous Peoples—provides an increasingly important, if still largely indirect, avenue for reinforcing domestic accountability. While these international mechanisms lack direct enforcement power within the Indonesian legal system, they generate normative and reputational pressure that has historically contributed to incremental domestic reform, and they provide indigenous communities and their civil society allies with an internationally recognized vocabulary—free, prior and informed consent, cultural rights, non-discrimination—that has proven useful in framing domestic legal and political advocacy, including strategic litigation before the Constitutional Court.⁶⁰

4. Conclusion

This article has examined the persistent gap between Indonesia's constitutional and statutory recognition of indigenous law communities and the substantive realization of their civil and human rights through accessible, effective, and timely legal remedies. The analysis demonstrates that while landmark developments—Constitutional Court Decision Number 35/PUU-X/2012, the accommodation of adat criminal law within the new Criminal Code, the expansion of restorative justice mechanisms, and the digitalization of court procedures—have

⁵⁹Katharine McGregor and Ken Setiawan, "Shifting from International to 'Indonesian' Justice Measures: Two Decades of Addressing Past Human Rights Violations," *Journal of Contemporary Asia* 49, no. 5 (2019): 837–861, <https://doi.org/10.1080/00472336.2019.1584636>.

⁶⁰Jeremie Gilbert, "Litigating Indigenous Peoples' Rights: Strategies for Legal Empowerment," *Journal of Human Rights Practice* 12, no. 2 (2020): 301–320, <https://doi.org/10.1093/jhuman/huaa028>.

collectively expanded the normative and institutional space available to indigenous communities, this expansion has not been matched by commensurate improvements in the practical capacity of communities to invoke and enforce their rights. Evidentiary asymmetries favoring documentary proof over customary knowledge, the continued criminalization of indigenous land defense amid unresolved territorial claims, the procedural contraction associated with investment-oriented legislative reform, and persistent quality and capacity constraints within the legal aid system together constitute the principal structural barriers identified in this study.

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