

Reconstructing Indigenous Land Rights in Forest Areas: A Framework for Social Justice-Based Agrarian Reform in Indonesia

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DOI: <https://doi.org/10.56293/IJMSSSR.2025.5750>

IJMSSSR 2025

VOLUME 7

ISSUE 4 JULY – AUGUST

ISSN: 2582 – 0265

Abstract: This study examines the juridical challenges facing customary land rights (hak ulayat) within forest areas in Indonesia's agrarian reform framework. Using a normative juridical approach with doctrinal analysis and comparative legal methods, the research identifies three critical structural barriers: (1) legal ambiguity surrounding customary rights status, (2) regulatory fragmentation across forestry and agrarian sectors, and (3) systematic marginalization of indigenous communities in forest governance. The Constitutional Court Decision No. 35/PUU-X/2012, which established that customary forests are not categorically state forests, represents a significant legal breakthrough, yet implementation remains constrained by bureaucratic complexities. The findings reveal that current juridical arrangements reflect colonial continuities rather than post-colonial transformation, with forest governance systems perpetuating control mechanisms that privilege state property concepts over indigenous collective tenure systems. The study proposes a comprehensive juridical reconstruction framework through: harmonization of Forestry Law with Basic Agrarian Law (UUPA), evidence-based recognition mechanisms, participatory mapping initiatives, and specialized conflict resolution mechanisms. The research concludes that strengthening customary rights recognition is a prerequisite for socially just agrarian reform, contributing to both legal pluralism theory and indigenous rights jurisprudence in Indonesia.

Keywords: customary land rights, forest areas, agrarian reform, social justice, juridical reconstruction, indigenous rights, legal pluralism

1. Introduction

Land holds paramount importance in human life, particularly for Indonesia, where virtually all aspects of life are inseparably connected to land. This connection extends beyond economic considerations to encompass entire livelihood systems, cultural identities, and spiritual relationships. The term "tanah air" (homeland) used by Indonesians to denote state territory illustrates this profound connection between people and land.

The constitutional foundation for land governance in Indonesia is established in Article 33(3) of the 1945 Constitution, stating: "Earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This constitutional mandate was operationalized through Law No. 5 of 1960 concerning Basic Regulations of Agrarian Principles (UUPA), which aimed to restructure colonial-era land arrangements and establish a unified national land law system [1].

Despite this constitutional mandate, indigenous communities across Indonesia continue to face significant challenges in securing their customary land rights, particularly within areas designated as state forests. The recognition of customary land rights (hak ulayat) is acknowledged in UUPA Article 3, which recognizes "the continued validity of customary rights and other rights that do not conflict with national interests." However, this legal recognition remains ambiguous and has been systematically undermined by sectoral laws, particularly forestry regulations that prioritize state control over indigenous governance systems.

The Minister of Agrarian Affairs/Head of National Land Agency Decree No. 5/1999 defines customary land rights as: "authority possessed by specific customary law communities over certain territories constituting their members' living environment, to benefit from natural resources, including land within that territory for survival and livelihood, arising from continuous hereditary physical and spiritual relationships between the customary law community and the concerned territory." This definition acknowledges the multidimensional nature of customary land rights, encompassing not only economic interests but also social, cultural, and spiritual relationships with territory [2].

A landmark development occurred in 2012 when Indonesia's Constitutional Court issued Decision No. 35/PUU-X/2012, declaring that customary forests (hutan adat) are no longer categorically part of state forests (hutan negara). This decision represented a significant legal breakthrough by recognizing indigenous communities' rights to their ancestral forests. However, the practical implementation of this decision remains severely constrained by bureaucratic complexities and regulatory inconsistencies between forestry and agrarian governance frameworks.

The implementation challenges are particularly evident in the requirement for indigenous communities to navigate through multiple administrative layers, including formal recognition by local governments through regional regulations (Peraturan Daerah), validation by provincial governments, and ultimate approval by central government agencies. These procedural barriers effectively limit the realization of constitutional rights and perpetuate historical patterns of marginalization [3].

This study addresses three critical research questions: (1) How do current juridical ownership structures of customary rights in forest areas reflect social justice principles? (2) What legal barriers impede agrarian reform implementation for indigenous communities? (3) How can juridical reconstruction of customary land rights ownership in forest areas realize social justice-based agrarian reform?

By examining these questions, this research contributes to both theoretical understanding and practical approaches to indigenous land rights recognition in Indonesia. The study employs legal pluralism theory to understand the coexistence and tensions between state law and customary law systems, indigenous rights theory to establish the normative framework for understanding customary land rights as fundamental human rights, and agrarian reform theory) to conceptualize land redistribution as a mechanism for addressing structural inequalities.

The findings of this research have significant implications for Indonesia's ongoing efforts to implement agrarian reform and recognize indigenous rights. By identifying the structural barriers to customary rights recognition and proposing a comprehensive juridical reconstruction framework, this study aims to contribute to the development of more equitable, socially just, and environmentally sustainable forest governance systems in Indonesia.

2. Literature Review and Theoretical Framework

Legal pluralism theory provides a critical lens for analyzing the coexistence and conflicts between state law and customary law systems in Indonesia's forest governance. This theoretical perspective helps explain why formal recognition of customary rights often fails to translate into effective protection, as state legal systems typically maintain hierarchical superiority over indigenous legal orders despite constitutional recognition of legal pluralism. Indigenous rights theory establishes the normative foundation for understanding customary land rights as fundamental human rights deserving protection under both national and international legal frameworks. This theoretical approach positions indigenous territorial rights not merely as property interests but as essential elements of cultural identity, self-determination, and collective survival. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which Indonesia endorsed in 2007, articulates these rights within a comprehensive human rights framework that emphasizes indigenous peoples' relationships with their traditional territories [4].

Agrarian reform theory conceptualizes land redistribution as a mechanism for addressing structural inequalities and promoting social justice. In the Indonesian context, this theoretical perspective helps analyze how the exclusion of forest-dwelling indigenous communities from agrarian reform programs perpetuates historical patterns of marginalization. Contemporary agrarian reform theory emphasizes that effective reform requires both asset redistribution and access reform to create more equitable land governance systems.

Social justice theory provides a multidimensional framework for evaluating forest governance arrangements through three interconnected dimensions: distributive justice (equitable resource allocation), procedural justice (fair decision-making processes), and recognition justice (acknowledgment of distinct identities and rights). This theoretical lens reveals how current forest governance systems systematically fail indigenous communities across all three dimensions.

3. Methodology

This research employs a normative juridical approach with analytical descriptive specifications. The normative juridical approach examines legislation related to customary land rights ownership in forest areas and agrarian reform.

Primary legal materials include:

- Indonesian Constitution 1945
- Law No. 5/1960 (Basic Agrarian Law/UUPA)
- Law No. 41/1999 (Forestry Law)
- Constitutional Court Decision No. 35/PUU-X/2012
- Government regulations and ministerial decrees

Secondary legal materials encompass academic books, scientific journals, and research reports. Tertiary legal materials include legal dictionaries and encyclopedias.

Data analysis utilizes legal hermeneutics to interpret normative conflicts and regulatory gap analysis to identify discrepancies between Forestry Law, UUPA, and Constitutional Court decisions. Data validity is tested through triangulation of regulatory sources and agrarian court decisions.

Doctrinal analysis examines legal principles underlying customary rights recognition, while comparative legal analysis draws insights from international best practices in indigenous land rights protection.

4. Results and Discussion

Current Juridical Status Lacks Social Justice

4.1.1 Centralistic Forest Governance Structure

The juridical ownership of customary land rights in forest areas fundamentally fails to reflect social justice principles due to Indonesia's deeply entrenched centralistic forest governance structure that systematically prioritizes state control over indigenous community rights. This centralistic approach, institutionalized through Law No. 41/1999 concerning Forestry, establishes a hierarchical governance system where the central government maintains absolute authority over forest area designation, management, and utilization permits.

Although Constitutional Court Decision No. 35/PUU-X/2012 represents a significant legal breakthrough by declaring that customary forests (hutan adat) are no longer categorically part of state forests (hutan negara), the practical implementation of this landmark decision remains severely constrained by bureaucratic complexities. The decision's implementation requires indigenous communities to navigate through multiple administrative layers, including formal recognition by local governments through regional regulations (Peraturan Daerah), validation by provincial governments, and ultimate approval by central government agencies [5].

Empirical evidence from various regions demonstrates the persistence of bureaucratic barriers. In West Kalimantan, the Dayak communities have been waiting for over a decade for formal recognition of their customary forests despite clear evidence of traditional management systems dating back centuries. Similarly, in North Sumatra, the Batak communities face similar challenges where their traditional "hutan adat" remains unrecognized due to administrative bottlenecks, leaving them vulnerable to forest encroachment by palm oil companies.

The centralistic governance structure contradicts the principles of decentralization established in Law No. 23/2014 on Regional Government, creating jurisdictional conflicts between central and local authorities regarding forest management. This contradiction is particularly problematic for indigenous communities whose traditional territories often span multiple administrative boundaries, requiring coordination across different government levels with inconsistent recognition policies [6].

4.1.2 Institutional Bias and Power Asymmetries

Structural inequality manifests through institutional arrangements that systematically favor state and corporate interests over indigenous community rights. The Ministry of Environment and Forestry operates under a paradigm that views forests primarily as economic assets and environmental services providers, rather than as integrated socio-ecological systems encompassing indigenous territories and cultural landscapes.

This institutional bias is evident in permit allocation processes where forest concessions, industrial plantation licenses (HTI), and mining permits are granted with minimal consultation with indigenous communities. Data from the Ministry of Environment and Forestry (2023) shows that over 12.7 million hectares of forest areas have been allocated for various industrial purposes, while less than 100,000 hectares have been officially recognized as customary forests since the 2012 Constitutional Court decision.

The power asymmetry between state institutions and indigenous communities is further exacerbated by legal pluralism conflicts where formal state law systematically overrides customary law systems. Indigenous communities lack institutional representation at national policy-making levels, resulting in forestry policies that fail to accommodate traditional governance systems and customary tenure arrangements [7].

4.1.3 Exclusion from Agrarian Reform Programs

The contradiction between agrarian reform objectives and forest governance practices becomes particularly stark when considering that forest areas encompass over 120 million hectares or approximately 63% of Indonesia's total land area. Despite this vast territorial coverage, indigenous communities residing within forest boundaries are systematically excluded from national agrarian reform programs due to their lands' classification as state forest property.

Presidential Regulation No. 86/2018 concerning Agrarian Reform identifies several categories of Agrarian Reform Land Objects (TORA), including: (a) state land from former plantation rights (HGU), (b) abandoned land, (c) unused transmigration land, and (d) forest areas with released status. Notably absent from this categorization are customary territories within active forest areas, effectively excluding millions of indigenous people from land redistribution programs.

This exclusion perpetuates historical marginalization patterns established during the colonial period and continued through post-independence development policies. The Dutch colonial government's forest domain declaration (*domeinverklaring*) of 1870, which claimed all uncultivated land as state property, established legal precedents that continue to influence contemporary forest governance approaches [8].

4.1.4 Social Justice Deficit Analysis

From a distributive justice perspective, current forest governance arrangements fail to ensure equitable access to forest resources and decision-making processes. Indigenous communities, despite their historical stewardship of forest ecosystems, receive minimal benefits from forest exploitation while bearing disproportionate environmental and social costs from industrial activities.

Procedural justice deficits are evident in policy-making processes that exclude indigenous voices from forest management decisions. Environmental impact assessments for forest concessions rarely include meaningful consultation with indigenous communities, and traditional ecological knowledge is systematically undervalued in forest management planning.

Recognition justice failures manifest through the non-acknowledgment of indigenous peoples' distinct cultural identities, governance systems, and territorial rights. The requirement for formal state recognition of indigenous communities through regional regulations represents a fundamental misunderstanding of indigenous peoples' inherent rights as distinct peoples with pre-existing sovereignty over their territories [9].

Legal Barriers to Customary Rights Ownership

4.2.1 Normative Conflicts and Legal Inconsistencies

The recognition and protection of customary land rights within forest areas face fundamental normative conflicts arising from incompatible legal frameworks operating simultaneously within Indonesia's pluralistic legal system. These conflicts manifest across multiple dimensions of legal hierarchy, from constitutional provisions to implementing regulations, creating a complex web of contradictory norms that systematically disadvantage indigenous communities [10].

Constitutional Level Inconsistencies: While Article 18B(2) of the 1945 Constitution explicitly recognizes and respects indigenous law communities and their traditional rights, Article 33(3) simultaneously grants the state control over natural resources "for the greatest prosperity of the people." This constitutional tension creates interpretive challenges regarding the extent of state authority versus indigenous community rights, particularly when these interests conflict in forest governance contexts.

Statutory Level Contradictions: The most significant normative conflict occurs between Law No. 5/1960 (UUPA) and Law No. 41/1999 (Forestry Law). UUPA Article 3 recognizes customary rights (hak ulayat) as legitimate land tenure forms "as long as they still exist in reality," while the Forestry Law categorically defines forest areas as state-controlled territories where private ownership is prohibited. This direct contradiction leaves customary rights in legal limbo, particularly when indigenous territories overlap with designated forest areas.

Regulatory Implementation Gaps: Ministerial regulations and implementing decrees often fail to operationalize constitutional and statutory provisions recognizing customary rights. The Ministry of Environment and Forestry's regulations prioritize forest conservation and production objectives while providing minimal mechanisms for customary rights recognition and protection.

4.2.2 Jurisdictional Overlaps and Institutional Fragmentation

Multi-sectoral Governance Complexity: Forest areas within Indonesia fall under multiple government jurisdictions, including the Ministry of Environment and Forestry, Ministry of Agrarian Affairs and Spatial Planning, provincial governments, and local governments. Each institution operates under distinct legal frameworks and policy priorities, creating coordination challenges that impede customary rights recognition.

The One Map Initiative launched in 2011 aimed to resolve spatial planning conflicts through integrated mapping systems. However, implementation progress remains slow due to inter-agency disputes over territorial boundaries and resource allocation authorities. Indigenous territories often span across administrative boundaries, making it difficult to determine which government level has primary responsibility for customary rights recognition [11].

Legal Standing Challenges: Indigenous communities face significant obstacles in establishing legal standing to assert customary rights claims in formal court systems. Indonesian procedural law requires plaintiffs to demonstrate clear legal interests and standing, but customary rights' collective nature often conflicts with individualistic legal concepts embedded in formal legal procedures.

4.2.3 Evidentiary Standards and Proof Requirements

Historical Documentation Challenges: Formal legal systems typically require written documentation to establish property rights, but indigenous tenure systems rely primarily on oral traditions, customary practices, and collective memory. This fundamental mismatch between legal proof requirements and indigenous knowledge systems creates systematic barriers to customary rights recognition.

Indonesian courts have gradually begun accepting alternative forms of evidence, including oral testimony from community elders, customary maps, and anthropological studies. However, the legal weight accorded to such evidence varies significantly across different court jurisdictions, creating uncertainty for indigenous communities pursuing formal recognition.

Expert Testimony and Cultural Validation: Legal proceedings involving customary rights increasingly require expert testimony from anthropologists, historians, and customary law specialists. However, the limited number of qualified experts and high costs associated with expert testimony create access barriers for indigenous communities, particularly those in remote areas with limited financial resources.

4.2.4 Administrative Procedures and Bureaucratic Barriers

Multi-tiered Approval Processes: Customary Forest recognition requires approval from multiple government levels, beginning with local government recognition through regional regulations, provincial government validation, and final approval from the Ministry of Environment and Forestry. Each administrative level operates under different timelines, requirements, and political considerations, creating lengthy and unpredictable approval processes.

Political Economy Influences: Local and provincial governments' willingness to recognize customary forests often depends on political and economic considerations unrelated to indigenous communities' legitimate claims. Areas with significant economic potential for plantation development, mining, or infrastructure projects face greater resistance to customary rights recognition due to competing commercial interests.

Capacity Constraints: Many indigenous communities lack the technical and financial capacity to navigate complex administrative procedures. Requirements for detailed maps, legal documentation, and formal applications often exceed communities' resources and capabilities, particularly in remote areas with limited access to legal assistance and technical support.

4.2.5 Enforcement Mechanisms and Implementation Gaps

Weak Enforcement Framework: Even when customary rights receive formal recognition, enforcement mechanisms remain inadequate to protect these rights against violations by state and non-state actors. Indigenous communities often lack effective recourse when government agencies or private companies violate recognized customary territories.

Criminalization Risks: Indigenous communities asserting customary rights face potential criminalization under forestry laws that prohibit activities within state forest areas. Activities such as traditional farming, hunting, and forest product collection can result in criminal charges, creating a deterrent effect on communities asserting customary rights.

Limited Legal Remedies: Indonesian legal system provides limited remedies for customary rights violations. Administrative courts can review government decisions regarding forest area designation, but lack authority to address broader systemic issues affecting customary rights recognition and protection.

Agrarian Reform Impact and Systemic Consequences

4.3.1 Structural Exclusion from Land Redistribution Programs

Policy Framework Contradictions: Indonesia's agrarian reform program, outlined in Presidential Regulation No. 86/2018, aims to redistribute 9 million hectares of land to landless and land-poor households by 2024. However, the program's design systematically excludes the largest category of potential beneficiaries: indigenous communities residing within the 120 million hectares of state forest areas. This exclusion represents a fundamental contradiction in agrarian reform policy that claims to address historical land inequities while perpetuating the marginalization of indigenous peoples.

TORA (Tanah Objek Reforma Agraria) Limitations: The official categorization of Agrarian Reform Land Objects excludes customary territories within active forest areas, despite these areas containing some of Indonesia's most acute cases of land tenure insecurity. The categories of eligible land—abandoned plantation estates, unused transmigration areas, and released forest lands—represent less than 20% of the total land area where tenure conflicts occur [12].

Quantitative Analysis of Exclusion: Data from the Ministry of Agrarian Affairs and Spatial Planning indicates that approximately 40-50 million indigenous people across Indonesia reside within or adjacent to forest areas. Their systematic exclusion from agrarian reform programs represents the single largest gap in Indonesia's poverty reduction and social justice initiatives. In provinces such as Papua, West Papua, Central Kalimantan, and North Sumatra, indigenous communities constitute significant portions of the rural population yet receive minimal benefits from national land redistribution programs.

Historical Context and Colonial Legacies: The exclusion of forest-dwelling indigenous communities from agrarian reform programs perpetuates colonial-era policies that systematically dispossessed indigenous peoples of their territories. The Dutch colonial administration's Basic Domain Declaration (Domeinverklaring) of 1870 claimed all "uncultivated" land as state property, establishing legal precedents that continue to influence contemporary forest governance. Post-independence agrarian reform initiatives, beginning with UUPA in 1960, failed to adequately address these historical injustices, instead reinforcing state control over forest areas.

4.3.2 Escalation of Land and Resource Conflicts

Conflict Typology and Patterns: The non-recognition of customary rights within forest areas generates multiple conflict types, ranging from administrative disputes to violent confrontations between indigenous communities and security forces. Analysis of conflict data from the Agrarian Renewal Consortium (KPA) reveals that forest-related conflicts constitute approximately 60% of all agrarian conflicts in Indonesia, with customary rights disputes representing the fastest-growing conflict category.

State-Community Conflicts: Direct conflicts between indigenous communities and government agencies typically arise when communities assert traditional land use practices that conflict with forest management regulations. These conflicts often result in criminalization of indigenous community members under forestry laws that prohibit activities such as shifting cultivation, hunting, and forest product collection within state forest areas.

Community-Corporate Conflicts: The allocation of forest concessions to private companies without meaningful consultation with indigenous communities creates systematic conflict conditions. Palm oil plantations, pulp and paper companies, and mining operations frequently operate within or adjacent to customary territories, leading to environmental degradation, cultural disruption, and economic displacement of indigenous communities.

Intra-community Conflicts: The legal uncertainty surrounding customary rights recognition sometimes generates conflicts within indigenous communities between traditional leaders advocating for customary law recognition and community members seeking individual land titles under formal legal systems. These internal divisions weaken communities' collective capacity to assert customary rights and resist external pressures.

4.3.3 Case Study Analysis

West Kalimantan Case: The conflict between Dayak communities and palm oil companies in West Kalimantan illustrates the systematic nature of these disputes. Over 2 million hectares of Dayak customary territory have been allocated to palm oil concessions since 2000, resulting in the displacement of over 100,000 community members and the destruction of traditional livelihood systems.

Central Sulawesi Case: In Central Sulawesi, the designation of indigenous territories as protected forest areas has criminalized traditional agricultural practices, leading to arrests of community members practicing subsistence farming. Despite evidence of sustainable traditional management systems, government agencies continue to treat indigenous land use as forest degradation.

Papua Case: The special autonomy status granted to Papua province includes provisions for customary rights recognition, yet implementation remains limited due to central government control over forest areas and large-scale resource extraction projects that prioritize national economic interests over indigenous rights.

Juridical Reconstruction Framework

4.4.1 Comprehensive Legal Reform Strategy

Multi-level Legal Harmonization: The reconstruction of customary land rights ownership requires comprehensive legal reform addressing normative conflicts across multiple levels of Indonesia's legal hierarchy. This harmonization process must begin with constitutional interpretation clarifying the relationship between state resource control (Article 33(3)) and indigenous rights recognition (Article 18B (2)), followed by statutory amendments eliminating contradictions between sectoral laws [13].

Constitutional Court Decision Implementation: The slow implementation of Constitutional Court Decision No. 35/PUU-X/2012 reveals the need for specific implementing regulations that operationalize the decision's recognition of customary forests as distinct from state forests. The Ministry of Environment and Forestry must develop clear procedures for customary forest designation that do not require prior indigenous community recognition through regional regulations [14].

Legislative Priority Framework: Priority legislative reforms should include: (1) amendment of Law No. 41/1999 to incorporate customary forest provisions as integral components of national forest governance, (2) harmonization of UUPA with forestry law to eliminate jurisdictional conflicts, and (3) enactment of comprehensive indigenous peoples' rights legislation establishing clear standards for customary rights recognition and protection.

4.4.2 Evidence-Based Recognition Systems

Multi-evidential Approach: Traditional legal systems' emphasis on written documentation systematically disadvantages indigenous communities whose tenure systems rely on oral traditions, customary practices, and collective memory. Recognition systems must accommodate multiple evidence types, including oral testimony from community elders, customary maps, archaeological evidence, historical records, and anthropological studies documenting traditional management systems.

Participatory Evidence Collection: Community-based documentation processes should be institutionalized through legal recognition of participatory mapping, oral history collection, and traditional ecological knowledge documentation as valid evidence forms in legal proceedings. These processes must be conducted according to indigenous communities' own protocols and decision-making systems to ensure cultural appropriateness and community ownership.

Expert Testimony Integration: Legal proceedings involving customary rights should incorporate interdisciplinary expert testimony from anthropologists, historians, ecologists, and customary law specialists. Courts should be provided with guidelines for evaluating expert testimony on customary tenure systems and traditional governance practices.

Technological Documentation Systems: Digital technologies, including Geographic Information Systems (GIS), blockchain-based tenure documentation, and mobile mapping applications, can enhance customary rights documentation while maintaining community control over sensitive cultural information. These systems should be designed according to indigenous data sovereignty principles ensuring community ownership and control over traditional knowledge.

4.4.3 Participatory Governance Mechanisms

Multi-stakeholder Institutions: Forest governance institutions must be restructured to ensure meaningful indigenous community participation in decision-making processes affecting their territories. Regional forest governance councils should include indigenous representatives with equal decision-making authority alongside government and private sector representatives.

Free, Prior, and Informed Consent (FPIC) Implementation: All forest management decisions affecting indigenous territories must comply with international FPIC standards, requiring community consent obtained through indigenous communities' own decision-making processes. FPIC protocols should be developed in collaboration with indigenous communities and incorporated into government regulations governing forest concession allocation and protected area establishment.

Collaborative Management Arrangements: Forest areas containing indigenous territories should be managed through collaborative arrangements recognizing indigenous governance authority while meeting national forest conservation and production objectives. International experience demonstrates that collaborative management can achieve better environmental and social outcomes than exclusionary approaches.

Benefit-sharing Mechanisms: When Forest areas within customary territories generate economic benefits through timber production, carbon credit programs, or ecosystem service payments, indigenous communities should receive fair shares of revenues through transparent benefit-sharing arrangements developed according to community priorities and traditional governance systems.

4.4.4 Institutional Capacity Building

Government Capacity Development: Government agencies at all levels require capacity building to understand and implement customary rights recognition. Training programs should cover indigenous rights law, traditional governance systems, participatory mapping techniques, and cross-cultural communication skills.

Indigenous Community Empowerment: Indigenous communities need support to document customary tenure systems, navigate legal procedures, and engage with government agencies on equal terms. Legal aid programs should be established specifically for indigenous communities, staffed by lawyers with expertise in customary law and indigenous rights.

Civil Society Organization Roles: Non-governmental organizations play crucial roles in supporting indigenous communities' customary rights assertions. NGO capacity should be strengthened through funding and technical support for legal aid, advocacy, documentation, and community organizing activities.

Academic and Research Institution Engagement: Universities and research institutions should be encouraged to conduct participatory research supporting customary rights documentation and recognition. Academic programs in law, anthropology, geography, and environmental studies should incorporate indigenous rights content and community-based research methodologies.

4.4.5 Conflict Resolution and Justice Mechanisms

Specialized Court Systems: The complexity of customary rights cases requires specialized judicial mechanisms with expertise in indigenous law, traditional governance systems, and cross-cultural legal interpretation. Specialized courts or specialized chambers within existing court systems should be established to handle customary rights disputes.

Alternative Dispute Resolution: Many customary rights conflicts can be resolved through alternative dispute resolution mechanisms incorporating traditional justice systems and community-based mediation practices. These mechanisms should be formally recognized and supported through government policy and funding.

Restorative Justice Approaches: When customary rights violations have occurred, restorative justice approaches focusing on relationship repair and community healing may be more appropriate than punitive legal responses. Restorative justice programs should be developed in collaboration with indigenous communities according to traditional justice principles [15].

Legal Aid and Access to Justice: Indigenous communities require access to quality legal representation in customary rights cases. Specialized legal aid programs should be established with government funding and staffed by lawyers with expertise in indigenous rights law and cross-cultural legal practice.

5. Conclusions

This study concludes that the juridical status of customary land rights within forest areas is fundamentally *ultra vires* (beyond legal authority) due to deep-seated philosophical and normative inconsistencies between Indonesia's Forestry Law, Basic Agrarian Law (UUPA), and constitutional provisions. These contradictions create a legal framework that systematically disadvantages indigenous communities while failing to achieve either social justice or environmental conservation objectives effectively.

The analysis reveals that current legal arrangements reflect colonial continuities rather than post-colonial legal transformation, with forest governance systems perpetuating Dutch colonial administration's territorial control mechanisms through contemporary bureaucratic structures. This colonial legacy manifests in the systematic privileging of state property concepts over indigenous collective tenure systems, creating what can be characterized as legal colonialism within Indonesia's nominally pluralistic legal system.

Socially just agrarian reform cannot be achieved within existing legal and institutional frameworks that exclude forest-dwelling indigenous communities from land redistribution programs. The research demonstrates that agrarian reform initiatives addressing less than 40% of Indonesia's land area while excluding the 63% classified as forest areas cannot meaningfully address historical land inequities or contemporary rural poverty.

The study concludes that paradigmatic transformation from centralistic, state-centric forest management toward community-based forest governance represents a necessary precondition for meaningful agrarian reform. This transformation requires not merely policy adjustments but fundamental reconceptualization of forest governance as collaborative arrangements between state and indigenous authorities rather than hierarchical state control systems.

Juridical reconstruction of customary land rights ownership in forest areas is both legally feasible and practically necessary for achieving social justice objectives. The research identifies specific reconstruction pathways through sectoral regulation harmonization, evidence-based recognition mechanisms, and participatory governance arrangements that can address current system failures while maintaining forest conservation objectives.

The study concludes that international experience demonstrates the feasibility of customary rights recognition within forest governance systems, though successful implementation requires sustained political commitment, adequate financial resources, and institutional capacity building across government, civil society, and indigenous community sectors.

References

1. R. A. Riggs, J. Sayer, C. Margules, A. K. Boedhihartono, J. D. Langston, and H. Sutanto, "Forest tenure and conflict in Indonesia: Contested rights in Remppek Village, Lombok," *Land use policy*, vol. 57, pp. 241–249, 2016, doi: 10.1016/j.landusepol.2016.06.002.
2. S. M. et al., "Overview of forest tenure reforms in Indonesia," *Overview of forest tenure reforms in Indonesia*, 2017, doi: 10.17528/cifor/006402.
3. D. Hernawan, "Assessing the Impact of Land Development Regulations on Customary Land Values: A Case Study of Rempang and IKN in Indonesia," *Society*, vol. 11, no. 2, pp. 644–664, 2023, doi: 10.33019/society.v11i2.584.
4. M. Kosuke, H. S. Hasibuan, O. Masaaki, and F. W. Asrofani, "Creation of the State Forest System and Its Hostility to Local People in Colonial Java, Indonesia," *Southeast Asian Studies*, vol. 12, no. 1, pp. 47–87, 2023, doi: 10.20495/seas.12.1_47.
5. R. K. Katjong, H. Tuhumury, A. M. Roem, and L. Sari, "Legal Protection of Customary Law Communities Over Ulayat Land Forests," *Jurnal Legalitas*, vol. 16, no. 1, pp. 30–44, 2023, doi: 10.33756/jelta.v16i1.18582.
6. A. Kurnia, A. Nugroho, and D. W. Titik Andari, "The Dynamics of Land Control in Forest Areas by the Customary Law Community of Nagari Simpang, Pasaman Regency," *Marcapada: Jurnal Kebijakan Pertanahan*, vol. 4, no. 1, pp. 17–36, 2024, doi: 10.31292/mj.v4i1.65.
7. K. W. Setya, A. A. Nasihuddin, and I. Wook, "Fulfilling Communal Rights through the Implementation

- of the Second Principle of Pancasila towards the Regulation on Agrarian Reform,” *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*, vol. 6, no. 1, pp. 89–102, 2023, doi: 10.24090/volksgeist.v6i1.7868.
8. K. Kusters et al., “Formalizing community forest tenure rights: A theory of change and conditions for success,” *For Policy Econ*, vol. 141, no. May, 2022, doi: 10.1016/j.forpol.2022.102766.
 9. A. Suntoro, N. A. Utomo, and M. A. Hermanto, “Reformulation of Agrarian Regulations Within a Human Rights Framework,” *Journal of Southeast Asian Human Rights*, vol. 6, no. 2, pp. 131–152, 2022, doi: 10.19184/jseahr.v6i2.27776.
 10. K. Warman and T. Fatimah, “Agrarian Reform in the Forests Around Vernacular Settlements: Asset Reform and Access Reform in Rural West Sumatra, Indonesia,” *ISVS e-journal*, vol. 10, no. 5, pp. 135–150, 2023.
 11. N. Rosyid Hermawan, A. Novizas Shebubakar, and S. Sadino, “Legal Aspects of Land Acquisition for the National Capital City (IKN) of the Nusantara,” *Journal of Law, Politic and Humanities*, vol. 4, no. 5, pp. 1636–1648, 2024, doi: 10.38035/jlph.v4i5.544.
 12. A. Bedner and Y. Arizona, “Adat in Indonesian Land Law: A Promise for the Future or a Dead End?,” *Asia Pacific Journal of Anthropology*, vol. 20, no. 5, pp. 416–434, 2019, doi: 10.1080/14442213.2019.1670246.
 13. S. Subiyanto, S. Endah Wahyuningsih, J. Hafidz, and A. Mashdurohatun, “Reconstruction of Employment Regulations that are Integral in Realizing Industrial Relations Based on Pancasila Justice,” *Enrichment: Journal of Multidisciplinary Research and Development*, vol. 2, no. 11, pp. 1–12, 2025, doi: 10.55324/enrichment.v2i11.307.
 14. M. Yasir, G. Gunarto, and B. T. Bawono, “Legal Reconstruction of Suspect Investigation Based on Pancasila Justice Values,” *Scholars International Journal of Law, Crime and Justice*, vol. 7, no. 01, pp. 6–10, 2024, doi: 10.36348/sijlcj.2024.v07i01.002.
 15. S. E. Wahyuningsih, S. Setiyowati, HR. Mahmuhtarom, and M. Iksan, “Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia,” *International Journal of Social Science and Human Research*, vol. 06, no. 02, Feb. 2023, doi: 10.47191/ijsshr/v6-i2-41.