



Legal Recognition of Indigenous Peoples in the Era of Social Transformation: A Constitutional and Customary Law Perspective

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Abstract: The existence of indigenous peoples within the Indonesian legal system has obtained strong constitutional recognition, as reflected in the 1945 Constitution, particularly Article 18B(2) and Article 28I(3), as well as statutory regulations such as Law No. 5 of 1960 on Basic Agrarian Principles and Constitutional Court Decision No. 35/PUU-X/2012. However, in the era of social transformation, legal recognition of indigenous peoples is not merely a normative issue but also a strategic concern in achieving social justice and sustainable legal development. This study employs a normative legal research approach, utilizing statutory, conceptual, and historical approaches, with data derived from library-based research. The findings reveal that the distinction between *de jure* and *de facto* recognition reflects a significant gap between state legal norms and the social realities experienced by indigenous communities. The study further identifies that the challenges of legal recognition are complex and multidimensional, encompassing normative, structural, social, and political dimensions. Therefore, harmonizing formal and factual recognition is essential to ensure substantive justice and legal certainty. Additionally, a comprehensive approach involving policy harmonization, institutional strengthening, and increased participation of indigenous peoples in regulatory processes is necessary to enhance the effectiveness of legal recognition in the context of ongoing social transformation.

Keywords: Legal Recognition; Indigenous Peoples; Customary Law; Constitutional Law; Social Transformation

1. Introduction

Globalization and digitalization have significantly transformed the social structure of Indonesian society, creating a data-driven environment characterized by efficiency and technological connectivity. These transformations require the legal system to continuously adapt, both normatively and practically, in order to respond to emerging social dynamics. In this context, law is not merely reflective but also transformative, functioning as a strategic instrument to guide social change toward order, justice, and responsiveness (Hafid, 2025; Karso, 2025; Widjajanto dkk., 2025).

Within this evolving socio-legal landscape, Indonesia's indigenous peoples now have significant constitutional legitimacy. Article 18B paragraph (2) and Article 28I paragraph (3) of the Republic of Indonesia's 1945 Constitution specifically acknowledge and protect indigenous communities and their traditional rights. These provisions position indigenous peoples not only as subjects formally acknowledged by law but also as integral components of the national legal system (Dahlan, 2019; Maladi, 2012; Ramadhan, 2024; Wiratraman, 2025).

In practice, customary law (*adat law*) continues to play a crucial role as a living law, functioning as a source of values and norms that regulate social relations within indigenous communities. Its influence is evident in various national legal frameworks, including agrarian and environmental laws, which incorporate customary principles in governing land rights and natural resource management. This demonstrates that customary law remains an essential foundation in shaping Indonesia's pluralistic legal system (Bogićević, 2025; Savitri, 2014; Sumaya, 2025).

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However, despite its constitutional recognition, the legal acknowledgment of indigenous peoples still faces significant challenges. The implementation of such recognition is often hindered by fragmented regulations, overlapping institutional authorities, and shifting political interests. As a result, recognition tends to remain administrative and procedural, without ensuring effective protection of indigenous rights in practice (Pradhani, 2021).

Despite these legal provisions, a significant gap persists between constitutional recognition and the actual protection of indigenous peoples. In practice, recognition often remains declarative rather than operative, as indigenous communities continue to face legal uncertainty, limited access to justice, and marginalization in natural resource governance. This gap is further exacerbated by inconsistent regulatory frameworks, weak institutional coordination, and the dominance of state-centered legal approaches that inadequately accommodate customary legal systems. Consequently, constitutional guarantees have not been fully translated into effective legal protection at the practical level.

From a normative perspective, legal recognition should not be limited to formal compliance with constitutional provisions but must also reflect substantive justice. This includes the protection of collective rights, cultural identity, and control over natural resources. The progressive development of indigenous rights recognition is reflected in the Constitutional Court Decision No. 35/PUU-X/2012, which affirmed that customary forests are no longer part of state forests but belong to indigenous peoples. This decision represents a significant step toward strengthening indigenous rights within Indonesia's constitutional framework (Dahlan, 2019; Jayuska dkk., 2025; Supiani, 2025).

Nevertheless, a fundamental problem persists in the form of a gap between state legal norms and customary legal practices. Conflicts frequently arise, particularly in natural resource governance, where state law tends to prioritize economic development and investment, while customary law emphasizes ecological balance and cultural sustainability. This disparity often leads to structural injustice and weakens the bargaining position of indigenous communities (Herlambang P. Wiratraman, 2025; Linda Noviana Mita Devi dkk., 2025; Maharani & Arrizal, 2025).

Therefore, the integration of customary law and state law becomes essential in addressing these challenges. Such integration should not aim to subordinate customary law within the formal legal system, but rather to create a complementary relationship that respects the autonomy and characteristics of each legal system. A comprehensive and participatory approach in legal policymaking is necessary to ensure that the legal system becomes more responsive and inclusive (Armansyah dkk., 2025; Febrianty dkk., 2025).

This study offers a novel contribution by integrating constitutional law and customary law perspectives within a unified analytical framework to examine indigenous legal recognition in Indonesia. Unlike previous studies that tend to analyze these domains separately, this research emphasizes the interdependence between formal legal structures and living law practices. By combining normative legal analysis with a pluralistic legal perspective, this study provides a more comprehensive understanding of how legal recognition can be operationalized to bridge the gap between legal norms and social realities.

Based on these considerations, this study aims to analyze the forms of legal recognition of indigenous peoples within the Indonesian legal system and to examine the challenges faced in the era of social transformation. By adopting both customary law and constitutional law perspectives, this research seeks to provide a comprehensive understanding of how legal recognition can be harmonized to achieve legal certainty and substantive justice within Indonesia's pluralistic legal framework.

2. Materials and Methods

This study employs a normative legal research approach, which conceptualizes law as a system of norms governing human behavior. Normative legal research focuses on the analysis of written legal rules, particularly statutory regulations, legal principles, and

doctrines, as the primary object of study (Masnun dkk., 2025; Philona & Awaludin Awaludin, 2025). In this context, law is treated as an autonomous system whose validity and operation are determined within the legal framework itself rather than by external social factors.

This research is primarily library-based (doctrinal research), relying on secondary data derived from legal documents and scholarly literature. Doctrinal legal research is widely used to examine legal norms and interpret regulatory frameworks within a structured legal system (Widjajanto dkk., 2025). The study employs several analytical approaches, including the statutory approach, the conceptual approach, and the historical approach.

The statutory approach is used to analyze relevant laws governing the recognition of indigenous peoples within the Indonesian legal system (Ardiansyah, 2024; Yahya, 2025). The conceptual approach is applied to examine legal doctrines, principles, and scholarly perspectives related to indigenous legal recognition. Meanwhile, the historical approach is employed to explore the development and interaction between customary law and state law in Indonesia over time, particularly in understanding the evolution of indigenous legal recognition (Rambe, 2025).

Although the issue of indigenous peoples involves strong empirical and social dimensions, the use of a normative legal approach is justified as this study primarily aims to examine the consistency, coherence, and adequacy of existing legal norms in regulating indigenous rights. Rather than analyzing social behavior directly, this research focuses on evaluating how legal frameworks recognize and protect indigenous communities, and whether such recognition aligns with constitutional mandates and principles of justice. Therefore, the normative approach is considered appropriate to assess the gap between legal norms and their intended function within the legal system.

The data used in this study consist of primary legal materials, including constitutional provisions and statutory regulations, as well as secondary legal materials, such as books, academic journal articles, and other relevant literature. These materials are analyzed using a qualitative legal analysis method to identify legal principles, interpret normative frameworks, and evaluate the coherence between customary law and constitutional law in the recognition of indigenous peoples (Wiraguna, 2024).

3. Results and Discussion

3.1 *Legal Recognition of Indigenous Peoples in the Indonesian Legal System*

The legal recognition of indigenous peoples within the Indonesian legal system reflects the evolving relationship between the state and socio-legal structures that embody traditional norms, values, and institutions developed over generations. In a rule of law framework, such recognition is not merely a form of formal legalization, but also represents an acknowledgment of legal pluralism as a fundamental characteristic of Indonesia's legal system (Maladi, 2012; Savitri, 2014).

In this context, legal pluralism plays a crucial role in explaining the dynamics of legal recognition in Indonesia. The coexistence of state law and customary law creates a complex legal landscape in which multiple normative systems interact, overlap, and sometimes conflict. Legal pluralism highlights that indigenous legal systems are not subordinate to state law, but rather operate as parallel systems that influence social order and governance. Therefore, understanding legal recognition requires acknowledging how these plural legal systems negotiate authority, legitimacy, and implementation in practice.

Constitutionally, involving normative, structural, social, and political dimensions. Although indigenous the recognition of indigenous peoples is explicitly enshrined in the 1945 Constitution of the Republic of Indonesia, particularly under Article 18B paragraph (2) and Article 28I paragraph (3), which affirm the state's obligation to recognize and respect indigenous communities and their traditional rights. These provisions demon-

strate that customary law is not positioned outside the national legal system, but rather integrated within it, subject to certain constitutional conditions.

At the statutory level, recognition is further operationalized through various legislative frameworks. For instance, Law No. 5 of 1960 on Basic Agrarian Principles (UUPA) acknowledges the existence of customary land rights (*hak ulayat*), as long as they don't interfere with national interests and continue to be relevant. Similarly, Law No. 41 of 1999 on Forestry and Law No. 32 of 2009 on Environmental Protection and Management recognize the role of indigenous peoples in natural resource governance and environmental preservation. These regulatory frameworks illustrate the state's attempt to incorporate customary legal norms into the formal legal system, particularly in the context of sustainable resource management (Dahlan, 2019).

However, such recognition remains conditional and partial. The frequent use of phrases such as "as long as they still exist" and "in accordance with national interests" indicates that recognition is not absolute, but contingent upon state interpretation. This conditionality often leads to legal uncertainty and opens the possibility of subjective determinations regarding the existence and rights of indigenous communities (Pradhani, 2021).

The use of conditional phrases such as "as long as they still exist" and "in accordance with national interests" has significant implications for legal certainty. Such formulations create ambiguity in determining the legal status of indigenous communities, as recognition becomes dependent on subjective state interpretation. As a result, indigenous peoples often face uncertainty regarding the protection of their rights, particularly in land tenure and natural resource management. This conditionality not only weakens the enforceability of legal recognition but also increases the risk of arbitrary exclusion and inconsistent application across different regions.

Furthermore, inconsistencies across sectoral regulations contribute to normative conflicts and overlapping authorities. In practice, constitutional recognition often remains symbolic and has not been fully implemented, leaving indigenous peoples in a vulnerable position, particularly in relation to natural resource exploitation (Dahlan, 2019).

From a doctrinal perspective, legal recognition can be classified into two main forms: *de jure* recognition and *de facto* recognition. *De jure* recognition refers to formal acknowledgment through legal instruments such as constitutions, statutes, and regional regulations. A significant example is the Constitutional Court Decision No. 35/PUU-X/2012, which affirmed that customary forests are not part of state forests but belong to indigenous peoples. This decision represents a progressive shift in recognizing indigenous rights within the constitutional framework.

On the other hand, *de facto* recognition arises from social realities, where indigenous communities continue to practice customary law regardless of formal legal acknowledgment. This form of recognition highlights the existence of customary law as a living law, which plays a crucial role in dispute resolution, environmental management, and community governance (Siregar, 2025; Sumaya, 2025).

The disparity between *de jure* and *de facto* recognition reflects a fundamental gap between state legal norms and social realities. Without harmonization, formal recognition risks becoming merely symbolic, while factual recognition without legal legitimacy exposes indigenous communities to marginalization. Therefore, integrating both forms of recognition is essential to achieve legal certainty and substantive justice within Indonesia's pluralistic legal system.

State institutions play a decisive role in either strengthening or weakening the recognition of customary law. On the one hand, institutions such as the Constitutional Court have contributed positively by affirming indigenous rights, as reflected in Decision No. 35/PUU-X/2012. On the other hand, administrative bodies and sectoral agencies often produce fragmented and inconsistent policies that undermine effective recognition. The lack of coordination among these institutions further exacerbates legal uncertainty and weakens the implementation of indigenous rights protection. Therefore, the effectiveness

of legal recognition largely depends on the institutional capacity and political will of the state in integrating customary law within the national legal framework.

3.2 Challenges in the Legal Recognition of Indigenous Peoples in the Era of Social Transformation

The challenges of legal recognition of indigenous peoples in the era of social transformation are complex and multidimensional, communities have been formally recognized within various legal instruments, the implementation of such recognition remains limited and often ineffective (Dahlan, 2019).

One of the primary challenges lies in the lack of regulatory harmonization and weak law enforcement. Legal provisions concerning indigenous peoples are dispersed across various sectoral regulations, each adopting different approaches, resulting in overlapping authorities and legal uncertainty. This condition undermines the effective recognition of indigenous rights, particularly regarding land and natural resource claims (Pradhani, 2021).

Another significant challenge relates to conflicts in natural resource governance. Despite the existence of regulatory frameworks such as agrarian and environmental laws, their implementation often fails to accommodate the actual needs and rights of indigenous communities. This has led to numerous conflicts arising from resource exploitation, which frequently marginalize indigenous peoples and weaken their bargaining position (Maharani & Arrizal, 2025).

Furthermore, Additional challenges arise from the inconsistency between state law and customary law. Differences in legal principles and procedures often create difficulties in recognizing and enforcing decisions made by customary institutions. For instance, customary land claims may not be recognized within the formal legal system, leading to legal disputes and social tensions (Thontowi, 2023).

Social transformation driven by globalization, modernization, and economic development also poses challenges to the sustainability of customary law. Changes in social values and community structures affect the continuity of indigenous legal practices, raising concerns about the preservation of customary law as a living legal system (Hafid, 2025).

In addition, institutional limitations and political factors further complicate the recognition process. Weak coordination among government institutions, lack of integrated policies, and insufficient political commitment hinder efforts to strengthen indigenous rights protection. The absence of a dedicated institutional framework for indigenous peoples reflects the need for more comprehensive and inclusive governance mechanisms.

Therefore, addressing these challenges requires a holistic approach that includes policy harmonization, institutional strengthening, and increased participation of indigenous communities in decision-making processes. Such measures are essential to ensure that legal recognition is not merely formal but also capable of delivering substantive justice in the context of ongoing social transformation.

4. Conclusions

The legal recognition of indigenous peoples within Indonesian legislation has been formally established; however, it remains limited, partial, and conditional in its implementation. The distinction between *de jure* and *de facto* recognition highlights a significant gap between formal legal norms and the lived realities of customary law within indigenous communities. This study demonstrates that a normative legal approach underscores the urgent need to integrate these two forms of recognition. Such integration is essential to ensure that legal recognition extends beyond formal acknowledgment and encompasses substantive dimensions, thereby promoting both legal certainty and social justice.

From a theoretical perspective, this research contributes to the development of legal pluralism theory in Indonesia by emphasizing the need to move beyond a hierarchical view of law toward a more integrative framework that recognizes the coexistence and

interaction between state law and customary law. By bridging constitutional law and living law perspectives, this study provides a more comprehensive understanding of how plural legal systems can function synergistically within a unified national legal order.

In terms of practical implications, the findings suggest that policymakers should prioritize regulatory harmonization, strengthen institutional coordination, and ensure the active participation of indigenous communities in the law-making process. In addition, clearer and more objective criteria for the recognition of indigenous peoples are necessary to reduce legal ambiguity and prevent arbitrary interpretations that may weaken the protection of indigenous rights.

Finally, future research is needed to empirically examine how the integration of *de jure* and *de facto* recognition operates in practice. Socio-legal and empirical studies focusing on case-based analysis, field research, and community-level implementation would provide deeper insights into the effectiveness of legal frameworks in protecting indigenous rights and contribute to the development of more responsive and evidence-based legal policies.

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