

The Ambivalence of the Supreme Court's Jurisprudence in Recognizing the Customary Rights of Indigenous Communities and Its Implications for the Transformation of the Concept of Communal Rights in National Land Law

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Abstract: *This study's objective is to examine the Supreme Court's reluctance in acknowledging indigenous peoples' customary rights and its consequences for the evolution of the notion of communal rights in Indonesian national land law. However, the Supreme Court's jurisprudence exhibits an ambivalent tendency in judicial practice, where a formal evidentiary strategy that prioritizes land title certificates as the primary evidence in land disputes frequently limits the acceptance of customary law. On the other hand, the development of legislative policies that introduce the concept of communal rights as a form of recognition of land ownership by indigenous communities aims to provide legal certainty, but has the potential to reduce the dimension of customary authority contained in the concept of customary rights. In order to achieve agrarian justice for Indonesia's indigenous communities, it is necessary to reconstruct the paradigm of more substantive customary law recognition within the national land law system. This circumstance demonstrates how the dualism between state law and customary law in the land sector persists in a new form.*

Keywords: *Customary Rights; Communal Rights; Customary Law Communities*

Introduction

State law and customary law combine to form the Indonesian legal system., and other social norms that exist in society, is inherently pluralistic. (Arman, 2023) This plurality is evident in the implementation of the national land law system while also acknowledging the existence of customary law. (Gautama, 2024) The Republic of Indonesia's 1945 Constitution specifically recognizes the existence of customary law communities and their traditional rights in Article 18B paragraph (2), which states that the state respects and acknowledges their unity and traditional rights as long as they continue to exist and in accordance with the principles of the Unitary State of the Republic of Indonesia and the advancement of society. (Burhanudin, 2021) Furthermore, the 1945 Constitution's Article 28I paragraph (3) highlights that traditional groups' rights and cultural identities are protected

in line with the advancement of civilization and the times. (Lubis, 2025) However, in practice, the relationship between customary law and state law in land regulation is often complex and not always harmonious, giving rise to normative tensions and conflicts in its implementation.

Customary rights are a key idea that reflects the collective relationship between indigenous populations and their regions within the context of customary law. In addition to representing land ownership, customary rights also include social, spiritual, and political aspects pertaining to indigenous people's power to control, administer, and make use of agricultural resources on their lands. (Wangi, 2023) The national legal system acknowledges customary rights in Article 3 of Law Number 5 of 1960. It states that, as long as they exist, indigenous groups' customary rights and comparable rights must be implemented in a way that serves national and state interests and does not contradict with higher laws and regulations. (Efrizon, 2025) Although the state normatively recognizes the existence of customary rights, this recognition is conditional and often dependent on an administrative verification process established by the state. This condition gives rise to various problems in the implementation of customary rights recognition, particularly when the existence of indigenous communities must be proven through formal mechanisms that do not always align with the character of customary law that is alive and developing socially within the community.

The judiciary plays a critical role in resolving land disputes by establishing the legitimacy and acceptance of indigenous people's traditional rights. As the highest court in the land, the Supreme Court strategically shapes jurisprudence that can affect how national agrarian law develops. (Pertwi, 2026) However, various court decisions indicate a tendency towards ambivalence in the judicial approach to customary rights. On the one hand, the courts recognize. (Apriani, 2022) However, when resolving property disputes, courts usually give official evidence in the form of state-issued land title certificates priority, as stated in Article 19 of Law Number 5 of 1960 about the implementation of land registration to guarantee legal certainty. (Muthallib, 2020) As a result, the historical claims of indigenous peoples based on hereditary control are often defeated by formal administrative evidence recognized by the state's legal system. Amidst these various issues, developments in land legislation demonstrate the state's efforts to accommodate indigenous communities through the introduction of the concept of communal rights. This concept emerged as a form of collective recognition of land ownership by certain communities within the national legal framework. In several sectoral regulations, including those on agrarian and forestry, communal rights are positioned as a legal instrument to provide legal certainty regarding land ownership by local communities. (Arfah, 2024) Conceptually, communal rights differ from customary rights under customary law. While customary rights reflect the collective authority of indigenous communities, encompassing aspects of territorial control, utilization regulations, and customary institutional authority, communal rights tend to be understood as a form of collective land rights recognized within the framework of the state land administration system. (Ramadhani, 2019) This conceptual shift has given rise to academic debate regarding the possible reduction of the complex meaning of customary rights to merely a narrower form of collective ownership.

The tension between substantive recognition of customary law and the formality of state law is increasingly evident in the practice of managing and resolving land disputes in Indonesia. Indigenous communities often base their claims on a history of hereditary territorial control recognized within customary social and institutional structures. However, the national land law system places greater emphasis on an administrative system based on the granting of certificates and land registration as solid proof of rights. (Julranda, 2022) The dominance of this certification system makes it difficult to legally recognize many indigenous peoples' claims that are not recorded in the state administration system. In addition to creating legal ambiguity, this circumstance may make it more difficult to defend the rights of indigenous peoples in the administration of agricultural resources.

This case highlights a discrepancy between normative norms that acknowledge the presence of indigenous peoples and the ways in which the land law system and judicial practice apply these regulations. Although the rights of indigenous peoples are recognized by a number of laws and constitutional provisions, the reality on the ground shows that this recognition is often not accompanied by effective protection mechanisms. The inconsistency of judicial approaches to customary rights and the shift in legislative policy toward the concept of communal rights demonstrate that the dualism endures in a new form between state law and customary law. Consequently, efforts must be made to rebuild the paradigm of customary law recognition inside the framework of national land law, placing customary law not just as a sign of normative recognition but also as a legal system with substantive legitimacy in the regulation and management of agrarian resources. This approach is crucial to fostering a more just and inclusive land law system capable of accommodating the diverse legal systems existing within Indonesian society.

Method

The legal standards contained in laws and regulations, court rulings, and legal doctrines that emerge in scholarly literature are all examined in this study using a normative juridical research technique. (Yanova, 2023) In order to comprehend the structure, coherence, and evolution of legal norms that govern a specific issue, normative juridical research examines. Both a conceptual and a statutory approach are employed in this study. In the meantime, legal concepts that have emerged in legal experts' theories and ideas about customary rights, communal rights, legal pluralism, and the connection between state law and customary law in the national land law system are examined using a conceptual method. By using these two methods, this study seeks to obtain a thorough grasp of the normative construction of indigenous communities' customary rights recognition and its consequences for the evolution of the notion of communal rights in Indonesian national land law.

Result and Discussion

Conceptualization of Customary Rights of Indigenous Peoples in the National Land Law System

Customary land rights are a fundamental concept in customary law, describing the collective relationship between customary communities and the territories they inhabit. From a customary law perspective, customary land rights are not merely understood as land ownership rights in the narrow sense, but rather as the collective authority of customary communities to control, regulate, and utilize specific territories and the natural resources within them. These rights are communal in nature because they are inherent to the community, not to the individual, and have social, spiritual, and political dimensions integrated within customary institutional structures. Land, in the context of customary land rights, is viewed as part of the collective identity and sustainability of customary communities, and its regulation falls under the authority of customary leaders or institutions that represent the community. Thus, customary land rights are not only related to land ownership but also reflect a territorial management system rooted in local values and traditions that live within the community. (Putra, 2024)

Additionally, the 1945 Constitution's Article 28I paragraph (3) declares that traditional groups' rights and cultural identities are respected in line with the advancement of civilization and time. This rule shows that the Indonesian constitutional state's acceptance of customary rights is not only administrative but also a component of safeguarding human rights and cultural diversity. (Simamora, 2023) The state retains the authority to determine the limits of the implementation of customary rights to ensure they do not conflict with national interests. Thus, customary rights are placed in a unique position: recognized as rights that exist within the community, yet simultaneously subject to the control of state law. (Noor, 2024)

The relationship between customary law and state law in the land sector is further demonstrated by Article 5 of Law Number 5 of 1960, which states that agrarian law applicable to land, water, and airspace is customary law as long as it is based on national unity, does not conflict with higher laws and regulations, and does not conflict with national and state interests. This sentence demonstrates how customary law is the source of national agricultural law, meaning that the Indonesian land law system is theoretically based on customary law principles. But in reality, the national land law system does not always apply customary law consistently. State-imposed restrictions may elevate state law above common law, particularly when development interests or natural resource management policies are prioritized in agrarian policy. (Rubi, 2024)

This framework gives the state the authority to regulate both the kinds of legally recognized land rights and the legal connection between people and land. Therefore, this idea of state authority must coexist peacefully with the existence of indigenous tribes' traditional rights. However, an overly broad interpretation of state authority has the potential to shift customary rights from being inherent rights to merely rights dependent on state administrative recognition. (Krismantoro, 2022)

The reality that the Indonesian legal system is not a single entity is reflected in the existence of customary rights from the standpoint of legal diversity, but rather comprises various legal systems that coexist within society. This legal pluralism demands an approach that accommodates the diversity of legal norms without neglecting the principle of legal

certainty within the national legal system. Theoretically, the recognition of customary rights can be understood as an effort to integrate customary law into the state legal framework without eliminating its characteristic as a living law within society. However, the main challenge in this integration process lies in how the state can provide substantive recognition to customary rights without diminishing their collective meaning and authority. Therefore, the conceptualization of customary rights within the national land law system must be placed within a framework that balances state interests, legal certainty, and the protection of indigenous peoples' rights as part of the social and cultural fabric of the Indonesian nation. (Zahra, 2024)

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According to this clause, customary law is one of the legal sources that can be taken into account when making decisions. However, normative acceptance of customary law and the application of formal evidentiary standards utilized in the judicial process frequently exhibit an inconsistent trend in court decisions regarding the resolution of property disputes including claims of customary rights.

The Supreme Court, as the highest judicial institution, plays a crucial role in shaping jurisprudence that can serve as a reference for lower courts. In the context of land disputes, Supreme Court jurisprudence serves not only as a means of resolving individual conflicts but also as an instrument for shaping legal interpretations of the customary rights of indigenous peoples within the national legal system. However, various court decisions demonstrate a pattern of ambivalence in the judicial approach. On the one hand, courts often recognize the existence of indigenous peoples as social entities with historical ties to specific territories. However, this recognition is often not accompanied by recognition of land ownership claims based on customary law. This situation indicates that although customary law is recognized as a source of law, its application in judicial practice is often limited by the evidentiary framework determined by the country's formal legal system.

One factor causing this tendency is the primacy of the land administration system, which employs land title certificates as the primary piece of evidence in land disputes, which states that a certificate is a valid proof of title and offers reliable evidence of the legal and physical information it includes. This clause is frequently used strictly in judicial practice, making the presence of a land title certificate the deciding factor in identifying the rightful owner. As a result, indigenous peoples' claims based on hereditary control of territory often struggle to meet the formal evidentiary standards established by the state's legal system.

This formalistic approach to proof often ignores the unwritten nature of customary law, which develops within the community's social practices. Customary rights under customary law are generally not documented in written administrative form, as in modern land registration systems. The existence of these rights is usually demonstrated through collective community recognition, the history of territorial control, and the existence of customary institutions that regulate land use within the community. However, this type of evidentiary mechanism is often not considered sufficiently robust in judicial processes that

emphasize written evidence, as stipulated in Article 1866 of the Civil Code, which places written evidence as one of the primary forms of evidence. Consequently, there is a gap between the evidentiary system recognized in state law and the land tenure practices prevailing among indigenous communities.

The way courts understand the connection between indigenous people's customary rights and the idea of governmental sovereignty over agricultural resources is another example of this jurisprudential ambivalence. In legal practice, this idea of state control is frequently invoked to support the state's issue of property rights, notwithstanding the fact that the region was once part of a specific community's customary territory. It creates a legal dilemma because, on the one hand, the state has the constitutional authority to regulate agrarian resources, but on the other, the constitution also recognizes the rights of indigenous communities.

This situation indicates that the Supreme Court's jurisprudence in customary rights disputes remains ambivalent between two different legal paradigms: the legal pluralism paradigm, which stresses legal certainty through the state's administrative structure, and the legal positivism paradigm, which acknowledges customary law. This ambivalence often results in the recognition of customary rights being declarative without being accompanied by effective legal protection in judicial practice. Therefore, a more substantive judicial approach is needed in assessing the existence of customary rights of indigenous peoples, by considering not only administrative evidence produced by the state legal system, but also social and historical facts of territorial control that exist within the community. This type of approach is consistent with Law Number 48 of 2009's Article 5 paragraph (1), which mandates that judges investigate community legal ideals as a foundation for achieving substantive justice in the legal system.

The Transformation of the Concept of Customary Rights into Communal Rights and Its Implications for the Recognition of Indigenous Peoples' Rights

The transformation of the concept of customary rights into communal rights in Indonesian land law policy is part of the state's efforts to integrate indigenous peoples into the modern legal administration system. In customary law, customary rights are understood as the collective authority of indigenous communities over a territory, encompassing the right to regulate, utilize, and control the use of land and the natural resources within it. These rights are not only economic in nature but also have social, cultural, and spiritual dimensions inherent in the life structures of indigenous communities. However, within the national legal framework, the state is attempting to formulate a form of recognition that can be formally administered through the concept of communal rights. This effort can be understood as a response to the need to create legal certainty in land tenure, particularly in the context of increasingly complex agrarian resource development and management. However, this conceptual shift raises questions about the extent to which the concept of communal rights adequately represents the characteristics of customary rights within the customary legal system.

The idea of community rights has been incorporated into land legislation as a legal tool to formally recognize local communities' or indigenous peoples' land ownership.

Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, which acknowledges the customary rights of indigenous people as long as they exist in fact and their application does not contradict with the national interest, is one often cited legal basis. Nonetheless, this acknowledgment is subsequently converted into collective rights that can be documented in the land administration system in contemporary agrarian policy practice. As stated in Article 19 of Law Number 5 of 1960 concerning the implementation of land registration, the state uses this mechanism to both incorporate these areas into the national land registration system and provide legal certainty regarding land ownership by specific communities.

However, conceptually, there are fundamental differences between customary rights under customary law and communal rights in modern land law policy. Customary rights encompass not only land ownership but also reflect the authority of indigenous communities to regulate the relationship between community members and their customary territories, including regulating the use of natural resources and resolving internal disputes. In contrast, communal rights within the state legal framework tend to be understood as a form of collective land rights recognized administratively by the state. Thus, the transformation from customary rights to communal rights has the potential to reduce the dimension of customary authority previously inherent in customary territory management systems. This reduction can occur when the authority to regulate customary territories, previously vested in customary institutions, is gradually replaced by administrative mechanisms controlled by the state.

The implications of this conceptual transformation can be seen in various concrete policies implemented by the government to recognize indigenous communities' territories. One concrete action is the program for identifying and establishing customary community territories by local governments through regional regulations or regional head decrees as a prerequisite for formal recognition by the state. In addition, the government, through land agencies, has mapped customary territories and recorded communal rights within the land administration system to provide legal certainty regarding land ownership by specific communities. Another action taken is the development of a community-based land registration policy aimed at integrating customary territories into the national land registration system. These measures are practically intended to prevent land conflicts and provide legal protection for indigenous communities in the face of development and investment expansion that exploits agrarian resources.

However, the effectiveness of this policy still faces various challenges, particularly in ensuring that recognition of indigenous rights is not merely administrative but also substantive. If the concept of communal rights is positioned solely as an administrative instrument without recognizing the authority of customary institutions to manage their territories, this transformation has the potential to narrow the scope for indigenous communities' autonomy in managing agrarian resources. Therefore, a more comprehensive policy approach is needed that focuses not only on granting legal status to communal lands but also on strengthening customary institutions, community decision-making mechanisms, and protecting customary territories from encroachment by third parties. This

kind of approach is important to ensure that the transformation of the concept of customary rights into communal rights truly contributes to efforts to realize agrarian justice and the protection of indigenous peoples' rights in the national land law system in Indonesia.

Conclusion

In actuality, however, an examination of the Supreme Court's jurisprudence demonstrates a lack of conviction regarding the acknowledgement of customary communities' rights. Courts acknowledge customary law as a living source of law in society, but they also prioritize formal proof through the state land administration system, especially land title certificates as required by Law Number 5 of 1960's Article 19 and Government Regulation Number 24 of 1997's Article 32 paragraph (1) concerning Land Registration. Furthermore, the development of legislative policies that encourage the transformation of the concept of customary rights into communal rights demonstrates the state's efforts to provide legal certainty regarding land ownership by indigenous communities, but at the same time, it has the potential to reduce the dimension of customary authority previously inherent in the concept of customary rights. Thus, both through judicial and legislative channels, the dualism between customary law and state law in the land sector continues in new forms that require conceptual and normative restructuring.

Strategic actions are required to improve the national land law system's acknowledgment and defense of indigenous peoples' rights in light of these findings. Normatively, legislators must create more thorough rules pertaining to the acknowledgment and defense of indigenous groups' customary rights that acknowledge the power of customary institutions in overseeing their lands in addition to administrative considerations. Additionally, the government must support specific policies that expedite the identification and determination of communities governed by customary law through transparent legal mechanisms, participatory mapping Regarding customary domains, as well as their incorporation into the land administration system without eliminating the community's customary law traits. However, in compliance with Law Number 48 of 2009 concerning Judicial Power's Article 5 paragraph (1), which mandates that judges look into the community's legal values, judicial institutions are expected to develop a more substantive judicial approach in evaluating the existence of customary rights by taking into account social and historical facts of control of customary territories. It is intended that by taking these actions, a land law system that is more equitable, inclusive, and capable of accommodating the legal plurality that is a key feature of Indonesian society will be established.

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