
Legal Politics of the Recognition of Indigenous Customary Land Rights in West Papua After the Constitutional Court Ruling on Customary Forests

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ABSTRACT

The recognition of indigenous people's customary land rights in Indonesia remains a persistent legal and political issue, particularly in regions where customary law continues to function as a living normative order, such as West Papua. A major constitutional development occurred through Constitutional Court Decision No. 35/PUU-X/2012, which affirmed that customary forests are no longer part of state forests, thereby strengthening the legal position of indigenous peoples over their traditional territories. However, this juridical progress has not automatically resulted in effective recognition and protection at the administrative level. This study examined the legal politics underlying the recognition of customary land rights in West Papua in the aftermath of the Constitutional Court's decision. Using a socio-legal approach combined with doctrinal legal analysis, this paper explores the tension between normative recognition and empirical implementation in land administration practices. The study finds that the post-decision legal framework still reflects a state-centric orientation, in which recognition of indigenous rights remains dependent upon bureaucratic validation, fragmented regulation, and formal governmental determination of indigenous communities. In West Papua, these challenges are intensified by legal pluralism, overlapping regulatory regimes, and the absence of adaptive mechanisms for communal land registration. This paper argues that the existing legal politics has not yet fully moved from symbolic recognition toward substantive justice. Therefore, a reconstruction of legal policy is necessary, integrating legal pluralism, participatory mapping, and institutional recognition of customary authorities within the national land administration system.

INTRODUCTION

The recognition of indigenous peoples' rights over land and natural resources has become a central issue in contemporary legal scholarship, particularly in post-colonial legal systems where state law coexists with customary normative orders. In Indonesia, this issue is not merely juridical but fundamentally political, reflecting deeper tensions between state sovereignty, resource control, and the acknowledgment of plural legal systems (Harahap et al., 2025; Hariiri & Babussalam, 2024; Karso, 2025; Malik et al., 2024; Putri, 2026).

Although Article 18 B paragraph (2) of the 1945 Indonesian Constitution provides formal recognition of indigenous peoples and their traditional rights, such recognition is inherently conditional and administratively mediated. This conditionality reveals what may be described

as a “controlled recognition paradigm”, in which indigenous rights are acknowledged only insofar as they conform to state-defined criteria and bureaucratic procedures (Ali, 2025; Bauer, 2015; Ugarte Urzua, 2019; Weitzner, 2019; Xu, 2025).

The novelty of this research lies in several key contributions. First, this study provides a systematic analysis of "administrative conditionality" as a mechanism of legal control, demonstrating how recognition is made contingent upon compliance with layered bureaucratic requirements (formal identification, regional endorsement, technical verification, cross-sectoral approval). Second, the research integrates empirical conflict data from AMAN (687 conflicts, 11.07 million hectares, 925 criminalized) and West Papua-specific recognition data (only 16,299 hectares formally recognized) with doctrinal analysis of the Constitutional Court decision and implementing regulations. Third, the study develops a theoretical framework combining Griffiths' legal pluralism, Habermas' critique of legitimacy without communicative justice, and Rawls' principle of justice for the least advantaged to analyze the gap between symbolic recognition and substantive justice (Finlayson, 2016; Fleuß, 2021). Fourth, the research identifies specific structural conditions producing limited recognition in West Papua: the presumption that unrecognized customary territories remain available for state allocation, the weakness of subnational legal instruments, and the continued dominance of sectoral licensing over communal territorial claims (Kelly & Peluso, 2015; Lavoie, 2022; Sharma, 2024). Fifth, the study proposes a transformative reconstruction grounded in three principles: from state validation to inherent recognition, from legal centralism to pluralistic integration, and from procedural formalism to substantive justice.

A critical turning point occurred through Constitutional Court Decision No. 35/PUU-X/2012, which declared that customary forests are not part of state forests. This ruling is widely regarded as a progressive constitutional development that repositions indigenous peoples as legitimate legal subjects with territorial rights (Kingsbury, 2017; Lindqvist, 2019). However, the practical implementation of this decision reveals a persistent paradox: while recognition is strengthened at the normative level, it remains constrained at the administrative level (Lodge & Wegrich, 2016; Schädeli & Ritz, 2024).

This paradox is particularly evident in West Papua, where customary land systems are deeply embedded in social, cultural, and spiritual life. In this context, land is not merely a commodity but constitutes a communal and existential space. The inability of the formal legal system to accommodate this reality highlights a fundamental misalignment between state law and living law (Kagan, 2019; Kurniawan et al., 2025).

From a legal-political perspective, this misalignment reflects the persistence of a state-centric legal paradigm, in which the state retains ultimate authority over defining legality, legitimacy, and recognition. Consequently, indigenous peoples are positioned not as autonomous rights holders, but as subjects whose existence must be verified and validated through administrative mechanisms. This concern is particularly evident in West Papua, where the promise of decentralization and special autonomy has not automatically translated into the effective recognition of customary forests. Empirical studies indicate that, despite the post-reform legal framework, the formal recognition of customary forest rights remains limited due to weak regulatory support and competing policy priorities at the regional level.

This paper argues that the post-Constitutional Court framework does not represent a complete transformation of legal politics, but rather a reconfiguration of control mechanisms

under the guise of recognition. In this sense, recognition becomes procedural rather than substantive, and symbolic rather than transformative.

METHOD

This study employed a qualitative research design based on a socio-legal approach. The methodology integrates doctrinal legal analysis with empirical insights to provide a comprehensive understanding of the issue. First, doctrinal analysis is conducted to examine constitutional provisions, statutory regulations, and judicial decisions related to indigenous land rights. Particular attention is given to the Constitutional Court ruling on customary forests and its implications for land governance.

Second, a socio-legal approach is used to analyze how these legal norms are implemented in practice, particularly in West Papua. This includes examining administrative procedures, institutional interactions, and practical challenges faced by indigenous communities. Third, the study adopts a conceptual approach to identify gaps between normative frameworks and empirical realities. This approach enables the formulation of a legal reconstruction model that integrates legal pluralism and substantive justice.

RESULT AND DISCUSSION

Administrative Conditionality as a Form of Legal Control

The implementation of indigenous land recognition in Indonesia, particularly in West Papua, reveals a structural pattern that may be conceptualized as administrative conditionality, whereby recognition is not granted as an inherent right but is instead made contingent upon compliance with a series of bureaucratic requirements. These requirements include the formal identification of indigenous communities, endorsement by regional governments, technical verification and mapping of customary territories, and approval across multiple sectoral institutions such as land, forestry, and regional governance authorities.

At a doctrinal level, these procedures are often justified as necessary instruments to ensure legal certainty, administrative order, and the prevention of overlapping claims. However, empirical and analytical scrutiny suggests that such procedural requirements function beyond their stated purpose. Rather than facilitating recognition, they operate as gatekeeping mechanisms that regulate and, in many cases, delay or limit access to recognition itself.

The requirement for formal identification of indigenous communities, for example, places the burden of proof on the communities themselves to demonstrate their existence according to criteria defined by the state. This process often involves anthropological verification, historical documentation, and institutional validation, which may be difficult to fulfill given the oral and communal nature of indigenous knowledge systems. Consequently, recognition becomes dependent not on the factual existence of indigenous communities, but on their ability to conform to administrative standards.

Similarly, the necessity of regional government endorsement introduces a political dimension into the recognition process. In many cases, the issuance of local regulations (*Peraturan Daerah*) recognizing indigenous communities is influenced by local political dynamics, resource interests, and administrative priorities. This creates variability in recognition across regions and reinforces the discretionary nature of the process.

Technical verification and mapping further illustrate the complexities of administrative conditionality. While spatial mapping is essential for defining territorial boundaries, the lack of technical capacity and institutional support in many regions, including West Papua, often results in delays and inaccuracies. Moreover, participatory mapping conducted by indigenous communities is not always recognized within formal cadastral systems, leading to discrepancies between customary and official spatial data.

The requirement for cross-sectoral approval adds another layer of complexity. Indigenous territories frequently overlap with areas designated for forestry, mining, or plantation concessions. As a result, recognition of customary land rights requires coordination among multiple agencies, each with its own regulatory framework and institutional interests. This fragmented governance structure often leads to bureaucratic inertia and conflicting decisions. In practice, the requirement to translate customary law into state-recognized administrative categories results in the reduction of indigenous legal systems into formal objects of governance. This process reflects a broader pattern in which recognition operates through inclusion–exclusion mechanisms, reinforcing the dominance of state legal frameworks over customary normative orders.

From a legal-political perspective, these layered requirements transform recognition into a conditional and controlled process. Indigenous rights are not denied outright; rather, they are deferred through procedural complexity. This condition aligns with the argument that law, in this context, functions as an instrument of governance that maintains state authority over territorial legality.

From the standpoint of responsive law theory, as developed by Philippe Nonet and Philip Selznick, the persistence of administrative conditionality reflects a failure of the legal system to adapt to social realities. Instead of accommodating the lived experiences and normative systems of indigenous communities, the law imposes formalistic requirements that prioritize administrative order over substantive justice. In this sense, the legal system remains in a formalistic phase, where rules are applied rigidly without sufficient consideration of their social implications.

Thus, administrative conditionality must be understood not merely as a technical feature of governance, but as a manifestation of legal politics that conditions recognition upon compliance with state-defined procedures. This condition fundamentally limits the transformative potential of legal recognition and perpetuates structural inequality in access to land rights.

Legal Pluralism versus State Legal Centralism.

The coexistence of customary law and state law in West Papua exemplifies the dynamics of legal pluralism, where multiple normative systems operate simultaneously within a single social space. Indigenous communities in West Papua continue to regulate land ownership, inheritance, and dispute resolution through customary norms that are deeply embedded in social and cultural practices. These norms constitute what is often referred to as “living law,” reflecting the collective identity and historical continuity of indigenous societies.

However, as argued by John Griffiths, legal pluralism should not be understood merely as a descriptive condition, but as a site of power contestation between competing normative systems. In the Indonesian context, this contestation is resolved through a hierarchical legal

structure that prioritizes state law over customary law, thereby producing a form of legal centralism.

Under this structure, customary law is recognized only to the extent that it can be incorporated into state legal frameworks. This process of incorporation often requires the translation of customary norms into formal legal categories, such as administrative recognition, spatial mapping, and legal documentation. While this translation is intended to facilitate integration, it often results in the loss of contextual meaning and flexibility inherent in customary systems. Furthermore, the reliance on administrative categorization of indigenous identity and territory risks simplifying complex and historically layered forms of customary land relations. Studies have shown that state-driven recognition frameworks tend to impose rigid territorial boundaries that do not reflect the fluid and relational nature of indigenous land tenure systems.

In West Papua, this dynamic is particularly evident in land administration practices. Customary territories, which are defined through social relations and collective memory, must be converted into fixed boundaries and formal documentation to be recognized within the national land system. This conversion process imposes a static and individualistic framework onto a system that is inherently dynamic and communal.

The dominance of state legal centralism also manifests in the allocation of land for development purposes. State-issued permits for forestry, mining, and plantations often overlap with customary territories, reflecting the prioritization of economic and administrative considerations over indigenous rights. In such cases, customary law is effectively subordinated, and indigenous communities are required to negotiate their rights within a system that does not fully resize their normative authority.

This condition illustrates what Griffiths describes as weak legal pluralism, where non-state legal systems exist but are subordinated within a state-centric hierarchy. In contrast, strong legal pluralism would require the recognition of customary law as an autonomous and equal normative system. The persistence of legal centralism in Indonesia suggests that the recognition of indigenous rights remains constrained by the state's reluctance to relinquish control over land and natural resources. While legal pluralism is acknowledged in principle, its implementation is limited by structural and institutional factors that reinforce state dominance.

Symbolic Recognition and Substantive Injustice

The current legal framework governing indigenous land rights in Indonesia produces what may be termed symbolic recognition, in which rights are acknowledged at the normative level but not effectively realized in practice. This condition is evident in the gap between constitutional guarantees, judicial decisions, and the lived experiences of indigenous communities. From a theoretical perspective, this condition aligns with the critique advanced by Jürgen Habermas, who argues that legal systems may maintain legitimacy through formal recognition while failing to achieve communicative justice. In such systems, the law appears to recognize rights, but does not provide meaningful opportunities for affected groups to participate in decision-making processes or to influence outcomes. In the context of indigenous land rights, symbolic recognition manifests in the form of constitutional provisions and judicial decisions that affirm the existence of indigenous communities, while the administrative mechanisms required to operationalize such recognition remain inaccessible or ineffective.

As a result, indigenous communities are recognized in principle but excluded in practice. From a Rawlsian perspective, this condition represents a failure to uphold principles of justice, particularly the principles of fairness and equal access to opportunities. John Rawls emphasizes that social and legal institutions should be arranged in a manner that benefits the least advantaged members of society.

However, the persistence of administrative barriers and structural inequalities indicates that indigenous communities remain disadvantaged within the current legal framework. Moreover, symbolic recognition may serve to legitimize existing power structures by creating the appearance of reform without substantive change. In this sense, recognition becomes a form of legal legitimation, where the state maintains its authority while addressing demands for reform in a limited and controlled manner. The empirical evidence from West Papua supports this analysis.

Despite the recognition of customary forests at the constitutional level, the limited number of formally recognized customary territories and the persistence of agrarian conflict indicate that substantive justice has not been achieved. Indigenous communities continue to face barriers in accessing their rights, and conflicts over land remain unresolved. Thus, symbolic recognition must be understood as a transitional condition that reflects both progress and limitation. While it represents a step toward acknowledging indigenous rights, it is insufficient to address the structural inequalities that underlie land governance.

Toward Transformative Legal Reconstruction

To move beyond symbolic recognition and achieve substantive justice, this paper proposes a transformative reconstruction of legal policy grounded in three key principles.

1. From State Validation to Inherent Recognition

The first principle requires a shift from recognition based on state validation to recognition grounded in the inherent existence of indigenous communities. Indigenous rights should be understood as pre-existing and not contingent upon administrative approval. This requires a reorientation of legal frameworks to acknowledge indigenous communities as primary subjects of rights, rather than as objects of regulation.

2. From Legal Centralism to Pluralistic Integration.

The second principle calls for the integration of customary law into the formal legal system as an equal normative framework. This involves recognizing customary institutions, dispute resolution mechanisms, and territorial governance systems as legitimate components of the legal order. Such integration would move the system toward strong legal pluralism, where multiple legal systems coexist on an equal footing.

3. From Procedural Formalism to Substantive Justice

The third principle emphasizes the need to prioritize substantive outcomes over procedural compliance. Legal processes should be designed to ensure fairness, accessibility, and protection of indigenous rights, rather than merely fulfilling administrative requirements. This includes simplifying recognition procedures, enhancing institutional capacity, and incorporating participatory approaches in decision-making.

In conclusion, the transformation of indigenous land recognition in West Papua requires not only legal reform but also a fundamental shift in legal politics. Without such transformation, recognition will remain symbolic, and the structural conditions that produce conflict and exclusion will persist.

Agrarian Conflict and the Limited Recognition of Customary Territories in West Papua

The empirical urgency of this issue becomes clearer when the recognition problem is placed alongside available conflict data. At the national level, AMAN reported that over the last ten years there were 687 agrarian conflicts in indigenous territories covering 11.07 million hectares, resulting in more than 925 indigenous persons criminalized, 60 subjected to violence by state apparatus, and 1 death. In its 2025 year-end report, AMAN further recorded 135 cases of expropriation or seizure of indigenous territories affecting 109 indigenous communities, covering 3.8 million hectares, with 162 indigenous people becoming victims of violence and criminalization. These figures show that the problem of indigenous territorial recognition is not merely administrative; it is directly linked to coercion, exclusion, and recurring conflict.

Although AMAN's aggregate data are national in scope, the West Papua case demonstrates how this broader structural problem is reproduced in a region where indigenous territoriality remains central to social life. Publicly accessible conflict records show that in Teluk Wondama, Papua Barat, a land-and-forest conflict recorded in 2014 remained categorized as "*belum ditangani*" and involved an area of 133 hectares in the production forest sector. This indicates that even when conflicts are identified, institutional resolution may remain delayed or absent. The pattern is also visible in the wider customary territory of Tanah Papua. Conflict data bases record a 2024 case involving the rejection of oil palm permits by the Awyu and Moi peoples, who opposed plantation expansion in customary forest areas because it threatened their forest, livelihood base, and cultural survival. While this case spans Papua more broadly and not only West Papua Province in its current administrative sense, it remains analytically important because it reflects a recurring conflict pattern in Papuan indigenous regions: state-issued permits and sectoral licensing continue to enter spaces that indigenous communities regard as ancestral territory.

From the standpoint of state recognition, the contrast is striking. Official reporting and public documentation indicate that recognition of customary forest in West Papua remains extremely limited. Reporting in 2024 noted that in Papua Barat, formal recognition had only been granted to Marga Ogoney in Teluk Bintuni, covering approximately 16,299 hectares. Subsequent reporting in late 2025 also noted that customary forest potential exists in other regencies such as Manokwari, Manokwari Selatan, Pegunungan Arfak, Teluk Wondama, and Fakfak but these areas had not yet progressed because the required regional legal instruments had not been completed. In other words, the territorial potential of customary tenure is much broader than the territory formally recognized by the state.

This limited recognition must also be read against the national policy framework on customary forests. The audited 2024 ministry report reproduces an official table showing that the government had recognized 65 customary forest decrees covering 35,090 hectares in total, but the table itself is sourced from 2019, illustrating how official reporting has not always kept pace with the ongoing policy discourse. In doctrinal terms, this suggests that although customary forest has been constitutionally legitimized after the Constitutional Court ruling, bureaucratic consolidation remains weak and uneven.

The legal-political implication is significant. In West Papua, the scarcity of formally recognized customary forests compared with the depth of territorial attachment and the persistence of conflict indicates that the state has not yet transformed constitutional recognition into an effective architecture of protection. Recognition remains selective, slow, and regulation-dependent. This supports the argument developed in this paper that indigenous land recognition in West Papua is still trapped within a regime of administrative conditionality: rights are not denied in principle, but their realization is postponed through layered procedural requirements. The empirical result is a widening gap between recognized legality and lived territoriality.

In socio-legal terms, the West Papua experience shows that agrarian conflict is not simply caused by the absence of norms, but by the coexistence of three structural conditions: first, the presumption that unrecognized customary territories remain available for state allocation; second, the weakness of subnational legal instruments needed to formalize indigenous communities and territories; and third, the continued dominance of sectoral licensing over communal territorial claims. As long as these structural conditions persist, legal recognition will remain symbolic, while conflict will continue to function as the practical language through which indigenous communities defend their territories. This finding is consistent with empirical research in West Papua, which shows that the absence of clear regulatory frameworks and the limited prioritization of customary forest recognition by local governments have significantly constrained the formalization of indigenous territorial rights.

The Constitutional Court's decision has established a new legal norm derived from Article 18B paragraph (2) of the 1945 Constitution, particularly with respect to the legal construction of the relationship between the State's right of control (*hak menguasai negara*) over state forests and its right of control over customary forests. In relation to state forests, the State retains full authority to regulate and determine their inventory, allocation, utilization, administration, and the legal relations arising within state forest areas. In contrast, with respect to customary forests, the State's authority is not absolute, but is limited by the substance and scope of the rights inherent in customary forests themselves.

Customary forests fall within the ambit of *ulayat* rights, as they are inseparable from the territorial unity of indigenous peoples. Accordingly, the State's authority over customary forests must be understood as a limited authority, exercised within the framework of recognition and respect for the existence, continuity, and territorial rights of indigenous law communities. These findings suggest that the recognition of indigenous land rights in Indonesia is not merely a legal or administrative process, but a deeply political one, shaped by competing interests, institutional constraints, and power asymmetries. Consequently, the persistence of conflict and delayed recognition should be understood as structural outcomes of the current legal-political framework rather than isolated implementation failures.

CONCLUSION

The recognition of indigenous customary land rights in West Papua following Constitutional Court Decision No. 35/PUU-X/2012 reflects a significant normative shift, yet it remains only partially transformative in practice. While the decision repositions indigenous peoples as legal subjects and removes customary forests from state control, the implementation framework continues to be shaped by a state-centric legal politics. Recognition is not treated

as an inherent right but is mediated through layered administrative procedures, including verification, regional endorsement, and cross-sectoral approval. Empirical evidence drawing on data from Aliansi Masyarakat Adat Nusantara and Tanah Kita demonstrates that this condition contributes to delayed recognition, limited formalization of customary territories, and the persistence of agrarian conflict, indicating that recognition remains structurally constrained. From a theoretical perspective, this condition illustrates the persistence of hierarchical legal pluralism, in which customary law is acknowledged but subordinated within a centralized legal framework. As emphasized by John Griffiths, pluralism in such contexts reflects asymmetrical power relations rather than genuine normative coexistence. Consequently, the legal system produces what may be termed symbolic recognition, where rights are affirmed at the level of legal discourse but remain inaccessible in practice. This dynamic aligns with Jurgen Habermas' critique of legitimacy without communicative justice and John Rawls' concern regarding structural inequality, as indigenous communities continue to face barriers in accessing substantive rights despite formal acknowledgment. Therefore, this study concludes that meaningful recognition requires a fundamental transformation of legal-political structures, not merely incremental regulatory reform. Such transformation entails shifting from administrative validation to inherent recognition, from legal centralism to strong legal pluralism, and from procedural compliance to substantive justice. Without this reorientation, the legal system will continue to reproduce a pattern in which recognition operates symbolically while exclusion persists materially, thereby limiting the capacity of law to function as an instrument of justice for indigenous peoples.

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