

Legal Pluralism in the Era of Deregulation: Reconstructing the Regulatory Framework of Customary Forest Recognition

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Abstrak

Penelitian ini menganalisis ketegangan antara pluralisme hukum dan agenda deregulasi dalam kerangka pengakuan hutan adat di Indonesia, dengan berfokus pada persoalan bahwa hak konstitusional masyarakat hukum adat masih bergantung pada prosedur administratif yang berlapis. Penelitian ini menggunakan pendekatan yuridis melalui pendekatan perundang-undangan, konseptual, dan kasus, dengan mengkaji Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan, regulasi pasca-Cipta Kerja, serta Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012. Hasil penelitian menunjukkan adanya ketidakseimbangan regulasi: rezim deregulasi mempercepat dan menyederhanakan akses berusaha, sementara pengakuan hutan adat masih dibebani berbagai prasyarat pengakuan masyarakat hukum adat, termasuk kebutuhan akan instrumen hukum daerah dalam konfigurasi tertentu. Ketergantungan tersebut mengubah pengakuan yang seharusnya bersifat deklaratif menjadi suatu proses yang menyerupai pemberian hak secara konstitutif oleh negara. Artikel ini menawarkan rekonstruksi melalui model pengakuan deklaratif berbasis registrasi-verifikasi, keputusan administratif yang terikat batas waktu, perlindungan sementara terhadap wilayah yang sedang dalam proses verifikasi, pemetaan partisipatif yang terintegrasi, serta mekanisme keberatan bagi pihak ketiga. Model tersebut menempatkan negara sebagai pihak yang mengonfirmasi hak-hak yang telah ada sebelumnya, bukan sebagai pencipta hak, sehingga kepastian hukum, pluralisme hukum, dan efisiensi administrasi dapat berjalan secara konsisten.

Kata Kunci: deklaratif; deregulasi; hutan adat; kepastian hukum; pluralisme hukum.

Abstract

This article examines the tension between legal pluralism and deregulation in Indonesia's customary forest recognition framework, focusing on the persistence of layered administrative requirements for rights that are constitutionally acknowledged. The study employs a juridical approach combining statutory, conceptual, and case analyses. It examines the 1945 Constitution of the Republic of Indonesia, Law Number 41 of 1999 on Forestry, the post-Job Creation regulatory framework, and Constitutional Court Decision Number 35/PUU-X/2012. The analysis finds a regulatory asymmetry: deregulation has simplified and accelerated business access to forest-related resources, while customary forest recognition remains dependent on prior recognition of indigenous legal communities and, in particular

regulatory configurations, regional legal instruments. This dependency transforms recognition that should be declaratory into a procedure resembling constitutive state authorization. The article proposes a declaratory recognition model based on registration and legal verification, time-bound administrative decisions, interim protection for claimed territories under review, integrated participatory mapping, and an objection mechanism for third parties. Under this model, the state confirms a pre-existing legal status rather than creating the underlying customary right. Such reconstruction would align legal certainty with constitutional recognition, reduce procedural inequality, preserve safeguards against overlapping claims, and make deregulation compatible with legal pluralism and ecological justice.

Keywords: customary forest; declaratory recognition; deregulation; legal certainty; legal pluralism.

INTRODUCTION

Indonesia's forest governance reveals an increasingly pronounced legal paradox when the regulatory simplification agenda is placed alongside the constitutional obligation to recognize and respect indigenous legal communities. On the one hand, the state has developed an administrative regime oriented toward prompt decision-making, investment certainty, service standardization, and the reduction of licensing barriers. On the other hand, communities claiming customary forests must still pass through a chain of proof concerning the indigenous legal community as a legal subject, territory, institutions, living norms, and the collective relationship with the forest before the state issues a determination. The issue is not that verification is entirely unnecessary. Verification is indeed important to prevent fictitious claims and conflicts of rights. The juridical issue lies in the nature and burden of the procedure: whether the administration merely confirms a pre-existing legal status, or is instead positioned as though it creates a right that previously never existed. This conceptual distinction determines whether customary forest recognition is consistent with legal pluralism or remains situated within the singular logic of state law. Literature on tenure reform shows that formalization can produce certainty, but at the same time can generate exclusionary effects when state categories and procedures become the sole gateway for rights arising from other legal orders.¹

The Constitution provides a starting point different from the logic of rights being granted by the state. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia recognizes and respects indigenous legal communities and their traditional rights insofar as they remain in existence, are consistent with societal development, and accord with the principles of the Unitary State of the Republic of Indonesia; Article 28I paragraph (3) also places cultural identity and the rights of traditional communities within a framework of constitutional respect. Therefore, the statement that customary rights 'predate' administrative action does

¹ John F. McCarthy, Ahmad Dhiaulhaq, Suraya Afiff, and Kathryn Robinson, "Land Reform Rationalities and Their Governance Effects in Indonesia: Provoking Land Politics or Addressing Adverse Formalisation?," *Geoforum* 132 (2022): 92–102, <https://doi.org/10.1016/j.geoforum.2022.04.008>.

not mean that every claim automatically acquires legal status without examination. The social-normative existence of a community and its customary relationship with a territory are sources of claims that are not created by an administrative decision, while the state remains authorized to verify whether constitutional and sectoral criteria are actually met, who the subject is, where the boundaries lie, and how those rights interact with third-party rights and area functions. The declaratory model proposed in this article retains the verification function but rejects the construction that a state decision is the original source of the right.²

Constitutional Court Decision Number 35/PUU-X/2012 reinforces this shift in the forestry sector. The Court changed the construction of Article 1 point 6 of Law Number 41 of 1999 on Forestry so that customary forest is no longer understood as state forest, but as forest located within the territory of an indigenous legal community. The juridical consequences are fundamental. First, indigenous legal communities are positioned as legal subjects holding rights, not merely as groups receiving policy benefits. Second, the relationship between the state and customary forests is not a relationship between an owner and a permit recipient, but a relationship of regulation and protection over pre-existing communal rights. Third, the legality of government action over areas claimed as customary forests must be read together with the constitutional obligation not to eliminate those rights merely because state administration has not yet been completed. Post-decision studies show that the change in the normative status of customary forests does not automatically resolve implementation problems because sectoral governance still requires the determination of subjects and territories through complex administrative instruments.³ Therefore, the main problem after Constitutional Court Decision Number 35/PUU-X/2012 is no longer merely the doctrinal recognition of the customary forest category, but the legal design that transforms constitutional recognition into administrative certainty that can be used effectively.

The tension becomes more relevant under the post-Job Creation deregulation regime. Law Number 11 of 2020 on Job Creation marked the starting point for major changes to various sectoral regulations, after which its constitutional dynamics continued through Constitutional Court Decision Number 91/PUU-XVIII/2020 and the issuance of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation, which was subsequently enacted as Law Number 6 of 2023. In the forestry sector, these changes were followed by Government Regulation Number 23 of 2021 on Forestry Administration and various implementing regulations. The broad direction is the simplification of procedures, consolidation of authority, and integration of business licensing mechanisms. This article does not question deregulation as an abstract concept. Administrative efficiency can be a legitimate objective. The criticism is directed at the asymmetry: if the state is able to design rapid, measurable, and standardized decisions for economic activities, the same

² Diya Ul Akmal, Mas Iman Kusnandar, and Fatkhul Muin, "Protecting Indigenous Peoples' Constitutional Rights Through Legal Formation: Perlindungan Hak Konstitusional Masyarakat Hukum Adat Melalui Pembentukan Hukum," *Jurnal Konstitusi* 22, no. 1 (2025): 66–87, <https://doi.org/10.31078/jk2214>.

³ Taufik Qul Basyar, Arfa'i, and Iswandi, "Analisis Pengelolaan Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012," *Limbago: Journal of Constitutional Law* 4, no. 1 (2024): 30–45, <https://doi.org/10.22437/limbago.v4i1.20000>.

principle should also apply to the recognition of the constitutional rights of indigenous legal communities. When the formalization of communal rights is far more burdensome than the facilitation of economic access, deregulation produces procedural inequality. Studies on the visualization of plantation legality and mapping in Central Kalimantan show that administrative techniques and spatial classifications are not neutral; they can determine who appears legal and who remains outside official legal categories.⁴

One source of this inequality lies in Article 67 paragraph (2) of Law Number 41 of 1999 on Forestry, which places a Regional Regulation as the instrument for confirming the existence and cessation of indigenous legal communities in the context of the rights regulated by that article. At the level of general administration, Minister of Home Affairs Regulation Number 52 of 2014 on Guidelines for the Recognition and Protection of Indigenous Legal Communities instead establishes a mechanism of identification, verification, validation, and determination through a regional head decision. In the forestry sector, Minister of Environment and Forestry Regulation Number 9 of 2021 on Social Forestry Management regulates the procedure for determining customary forests and links it to evidence of recognition of indigenous legal communities and the status of the area being applied for. This cross-regulatory construction shows that a single legal subject may face different formal gateways depending on the sector and spatial status. Studies concerning customary forest recognition in the regions show that the existence of regional instruments remains a crucial point in the process toward customary forest determination.⁵ This condition is not merely a technical administrative issue; it concerns the conformity between the hierarchy of norms, the form of governmental action, and the nature of the rights to be recognized.

Table 1. Analysis Issue

Instrument	Main function in the analysis	Issue / harmonization need
1945 Constitution of the Republic of Indonesia Articles 18B(2) and 28I(3)	Basis for the constitutional recognition of indigenous legal communities and traditional rights	Conditional recognition requires verification without turning the state into the creator of rights
Law Number 41 of 1999 Article 67(2)	Framework for confirming indigenous legal communities within the forestry regime	Dependence on regional legal instruments can give recognition a functionally constitutive character
Minister of Home Affairs Regulation Number 52 of 2014	Identification, verification, validation, and determination of indigenous legal communities by the regional head	Outputs must be interoperable with the forestry regime and must not repeat proof from the beginning

⁴ Rini Astuti, Michelle Ann Miller, Andrew McGregor, M. D. P. Sukmara, W. Saputra, Sulistyanto, and D. Taylor, "Making Illegality Visible: The Governance Dilemmas Created by Visualising Illegal Palm Oil Plantations in Central Kalimantan, Indonesia," *Land Use Policy* 114 (2022): 105942, <https://doi.org/10.1016/j.landusepol.2021.105942>.

⁵ Thea Farina, Satriya Nugraha, Agus Mulyawan, and Andika Wijaya, "Pengakuan dan Perlindungan Hutan Adat dalam Mewujudkan Hak Masyarakat Hukum Adat di Provinsi Kalimantan Tengah," *UNES Law Review* 6, no. 3 (2024): 9377–9389, <https://doi.org/10.31933/unesrev.v6i3.1852>.

Government Number 23 of 2021 and Minister of Environment and Forestry Regulation Number 9 of 2021	Regulation	Framework for forestry administration and customary forests	Synchronization is needed for subjects, territories, maps, legal consequences, and relations with licensing/spatial planning
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To clarify the claim of disharmony, the relationship among instruments needs to be read as a functional matrix. Article 67 paragraph (2) of the Forestry Law places the confirmation of the existence and cessation of indigenous legal communities within the configuration of regional legal instruments; Minister of Home Affairs Regulation Number 52 of 2014 provides stages of identification, verification, validation, and determination by the regional head; while the forestry regime requires the determination of customary forests based on subjects and territories that have been recognized. Tension arises when the outputs of regional processes are not treated uniformly by sectoral regimes or when an individualized Regional Regulation becomes a prerequisite that in practice adds a political layer to administrative verification.

Previous studies generally proceed in three directions. First, research on agrarian reform and social forestry views the restoration of access to forests as part of correcting inequality in control.⁶ Second, land-governance literature emphasizes fragmentation of authority, the formation of spatial categories, mapping, and inter-institutional relations as sources of uncertainty.⁷ Third, studies of indigenous peoples' rights highlight the gap between recognition at the policy level and the realization of rights in conservation or development practice.⁸ The contribution of this article differs because it centers its analysis on the legal nature of acts of recognition. This article argues that as long as a Regional Regulation or other regional political product is treated as a constitutive requirement for the existence of a subject whose rights have already been constitutionally recognized, the design maintains the subordination of living law under state law. The novelty offered is a firm separation between two functions: the verification function to establish the facts and boundaries of rights, and the declaratory recognition function to state the legal consequences of verified facts. With this separation, administrative caution need not be paid for by delaying the legal existence of indigenous communities.

The terms procedural inversion, equality before administration, race of legality, and deregulation for rights in this article are analytical labels developed by the authors to summarize patterns found from reading the norms. Procedural

⁶ Mhd Zakiul Fikri, "Restoring Customary Forest Rights through Agrarian Reform: Case Study of the Kampar Community, Indonesia," *Diponegoro Law Review* 9, no. 2 (2024): 277–296, <https://doi.org/10.14710/dilrev.9.2.2024.277-296>.

⁷ Muhammad Haidar Daulay, Fitria Dewi Susanti, Dwi Laraswati, Erliza C. Arthalina, and Ahmad Maryudi, "New Land Governance Models and Management Scenarios: Fitting Forest Management Units (FMUs) for Forested Landscapes outside Forest Zones in Indonesia," *Forest and Society* 7, no. 1 (2023): 43–60, <https://doi.org/10.24259/fs.v7i1.23962>.

⁸ Paul A. Barnes, Sabhrina Gita Aninta, Tomi Ariyanto, Mukhlis Jamal Musa Holle, M. Khairul Ikhwani, and Herdhanu Jayanto, "The Gap between Policy and Practice for Human Rights in Conservation: A Case Study in Papua Province, Indonesia," *Oryx* 57, no. 3 (2023): 360–369, <https://doi.org/10.1017/S0030605323000066>.

inversion refers to a shift in the function of recognition from confirmation of rights to a process resembling an application for rights; equality before administration requires comparable procedural burdens for rights holders and applicants for administrative access; race of legality describes the risk that administrative decisions in favor of other parties are issued earlier because customary claims are not yet visible in the system; while deregulation for rights refers to the use of procedural simplification principles to accelerate the realization of rights without reducing substantive verification. The four concepts are interrelated but are not positioned as established doctrines of positive law.

Based on this construction, this article poses the following questions: how should legal pluralism be situated within the deregulation regime of forest control; where does the regulatory disharmony lie that causes customary forest recognition to become protracted; and how can the recognition framework be reconstructed to ensure certainty without eliminating verification mechanisms. The main argument of this article is that customary forest recognition must shift from a functionally constitutive model toward a declaratory model based on registration-verification. This model does not mean that the state automatically accepts every claim. The state continues to examine the subject, territory, customary norms, historical relationship, potential overlaps, and third-party rights. However, the legal consequence of that examination is not the 'granting' of a customary forest, but an administrative statement that a community and territory meet the legal criteria so that their rights may be protected and recorded. Accordingly, deregulation becomes not only an instrument for facilitating business, but also a governance principle that proportionately reduces procedural burdens on constitutional rights.

RESEARCH METHOD

This study employs a juridical approach with a doctrinal-prescriptive character. Primary legal materials were selected because they directly determine the recognition of indigenous legal communities, the status of customary forests, administrative authority, business licensing, or the spatial consequences of such recognition. The corpus includes the 1945 Constitution of the Republic of Indonesia, Law Number 41 of 1999 on Forestry together with its relevant amendments, post-Job Creation regulations referred to in the discussion including Government Regulation Number 5 of 2021 and Government Regulation Number 23 of 2021, Minister of Home Affairs Regulation Number 52 of 2014, Minister of Environment and Forestry Regulation Number 9 of 2021, and Constitutional Court decisions that form the basis of the argument. The temporal limit of the legal materials is the regulations in force and available up to completion of the manuscript revision in August 2026. Secondary materials are used to test doctrinal consequences, not to replace the analysis of norms.

The case approach centers on Constitutional Court Decision Number 35/PUU-X/2012 and, to a limited extent, Constitutional Court Decision Number 91/PUU-XVIII/2020 for the context of changes to the Job Creation regime. Decision Number 35/PUU-X/2012 is used insofar as its ratio affirms the separation of customary forest from state forest and the position of indigenous legal communities as subjects whose rights must be read within the framework of constitutional recognition. The binding effect of that decision forms the basis for assessing the consistency of sectoral norms after the decision. The article does not infer that the Court has

determined a single form of administrative recognition instrument; the declaratory decision design is the authors' prescriptive reconstruction and must obtain a legal basis for authority through regulatory amendment or harmonization.⁹

The analysis was conducted in four stages. First, identification of norms determining the subject, object, recognition instrument, and legal consequences of customary forests. Second, vertical-horizontal synchronization to examine coherence among the Constitution, sectoral statutes, implementing regulations, and regional instruments. Third, reconstruction testing using *lex superior*, legal certainty, proportionality of administrative burdens, due process, protection of third-party rights, and consistency of governmental action. Fourth, formulation of a prescriptive model and testing of each pillar against the authority of norm-making institutions, overlap risks, and safeguard requirements. The relationship between the analytical stages and outputs is as follows: norm identification produces a conflict map; synchronization produces a diagnosis of procedural inversion; principle-based testing determines the design limits; and the prescriptive stage produces a registration-verification model and a division of changes at the statutory, government-regulation, and technical-regulation levels. The study does not use surveys, interviews, or measurements of actual service time.

RESULTS AND DISCUSSION

Dynamics of Legal Pluralism in the Deregulation Regime of Forest Control

Legal pluralism in the forestry sector cannot be understood merely as state tolerance of custom. In a more fundamental sense, legal pluralism recognizes the existence of more than one normative order that effectively regulates relationships among people, territories, and resources. Indigenous legal communities have rules concerning territorial boundaries, access, prohibitions, benefit sharing, inheritance, and dispute resolution that do not originate from state legislation. When the Constitution recognizes indigenous legal communities and their traditional rights, the state is not creating that order, but giving public-law consequences to an existence that has already developed. Constitutional recognition should therefore be read as a mandate to build points of convergence between systems, not as a mechanism of absorption that forces living law to lose validity unless it has first been translated entirely into the format of state bureaucracy. Studies of land mapping in Central Kalimantan show that the relationship between the state and local claims is relational: maps, institutions, and administrative categories can open space for recognition while also altering the bargaining positions of the parties involved.¹⁰ From a legal perspective, the implication is clear: recognition procedures are not neutral instruments, but part of the structure through which power over space is distributed.

⁹ Jean-Christophe Diepart, Natalia Scurrah, Alice Beban, Christophe Gironde, and Natalie Y. Campbell, "The Recognition and Formalization of Customary Tenure in the Forest Landscapes of the Mekong Region: A Polanyian Perspective," *Journal of Land Use Science* 18, no. 1 (2023): 211–226, <https://doi.org/10.1080/1747423X.2023.2206814>.

¹⁰ Nanang Indra Kurniawan and Ståle Angen Rye, "The Relational State and Local Struggles in the Mapping of Land in Central Kalimantan, Indonesia," *The Journal of Peasant Studies* 52, no. 2 (2025): 343–365, <https://doi.org/10.1080/03066150.2024.2366329>.

Before Constitutional Court Decision Number 35/PUU-X/2012, the definition of customary forest in Law Number 41 of 1999 on Forestry placed it as part of state forest. This model created a vertical relationship: the state was first deemed to control the area, and indigenous communities then obtained management space dependent on state recognition. Constitutional Court Decision Number 35/PUU-X/2012 corrected that premise. Customary forests were placed within the category of forests subject to rights, while indigenous legal communities were recognized as legal subjects. This change should have been followed by a change in administrative logic. If rights arise from the existence of the community and its customary relationship with the territory, then government decisions should be declaratory of a pre-existing status. However, substantive change at the constitutional level does not automatically alter administrative habits. Sectoral regulations still tend to begin the process by asking whether the state has recognized the community, rather than whether the community meets the constitutional and factual criteria for recognition. The difference in formulation determines the burden of proof: the former grants broad political discretion, whereas the latter places officials under a legal duty to decide on the basis of measurable criteria.

The era of deregulation widens this contrast. Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law maintains the orientation toward simplifying business procedures and restructuring sectoral authority. Government Regulation Number 5 of 2021 on Risk-Based Business Licensing introduces differentiated requirements based on the risk level of business activities, while Government Regulation Number 23 of 2021 on Forestry Administration organizes various instruments for forest management and utilization within the post-Job Creation architecture. Conceptually, the risk-based approach contains an important idea: administrative burdens should be proportionate to the risks being controlled. If this principle is applied consistently, customary forest recognition should likewise use proportionate procedural burdens. Risks of duplicate claims, boundary manipulation, or internal conflict should be addressed through verification, mapping, and objection mechanisms; not by making the existence of rights dependent on a community's success in obtaining political support for the enactment of a Regional Regulation. This asymmetry shows that deregulation has so far operated more strongly in facilitating economic access than in restoring and affirming communal rights.

The analogy with risk-based business licensing is limited to the principle of proportionality of administrative burdens, not to equating the legal objects. Business licensing regulates access derived from state authority, whereas the recognition of indigenous legal communities concerns verification of a status and rights relationship claimed to have pre-existed. Because their rationales differ, the only transferable element is the requirement that procedures be measurable, time-bound, and proportionate to the risk of erroneous recognition; the source of the rights and their legal consequences remain distinct.

The concept of the state's right of control under Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia likewise cannot be used to justify subordinating customary forests into objects granted by the state. The state's right of control is the basis of public authority to regulate, administer, manage, and

supervise the use of resources for the greatest prosperity of the people; it is not identical to a private ownership right of the state over every inch of land and forest. After Constitutional Court Decision Number 35/PUU-X/2012, the exercise of public authority over customary forests must instead take into account the status of the subjects and the rights of indigenous legal communities. Legal pluralism here does not eliminate the role of the state, but changes the quality of that role. The state continues to establish protection or conservation functions, ecological standards, and generally applicable limits on use.¹¹ However, such regulation must be distinguished from determining who holds the rights. By separating the resource-regulation function from the rights-recognition function, conceptual conflict can be reduced. Landscape-governance literature emphasizes that forestry problems often arise from institutional fragmentation and misaligned policy objectives, not merely from a lack of rules.¹²

Deregulation also needs to be read from the perspective of equality before administration. Legal certainty is insufficient if it is available only to applicants with organizational capacity, political access, and resources to navigate the bureaucracy. A procedure that is formally open to all communities can still produce inequality when transaction costs are very high or success depends on the political choices of regional representative institutions. In the context of customary forest recognition, a Regional Regulation is not merely an administrative document. Its formation follows a legislative agenda, deliberations between the Regional House of Representatives and the regional head, harmonization, and budgetary and political priorities that cannot be fully controlled by the applicant community. When the status of rights depends on that process, the timing of recognition becomes uncertain. Rights that substantively already exist may remain for years in the space between 'constitutionally recognized' and 'not yet administratively recognized.' Literature on the gap between policy and practice in protecting the rights of local communities shows that recognition at the level of principle can lose effectiveness when implementing institutions do not provide mechanisms that are operational and accessible.¹³

This condition gives rise to what this article calls procedural inversion. The concept is identified through five normative indicators: dependence of status on political instruments that are not bound by individualized deadlines; repeated proof of the subject or territory in more than one regime; the absence of preliminary legal effects when a claim is registered; the community's position functionally resembling that of a concession applicant; and administrative latitude to delay a response

¹¹ Chandra, Febrian. "Indigenous Community-Based Forestry Management in the Framework of the Green Constitution in Indonesia". 2025. *Adagium: Jurnal Ilmiah Hukum* 3 (1): 104-19. <https://doi.org/10.70308/adagium.v3i1.67>.

¹² Jeffrey Sayer, Agni Klintuni Boedhihartono, James Douglas Langston, Chris Margules, Rebecca Anne Riggs, and Dwi Amalia Sari, "Governance Challenges to Landscape Restoration in Indonesia," *Land Use Policy* 104 (2021): 104857, <https://doi.org/10.1016/j.landusepol.2020.104857>.

¹³ Paul A. Barnes, Sabhrina Gita Aninta, Tomi Ariyanto, Mukhlis Jamal Musa Holle, M. Khairul Ikhwani, and Herdhanu Jayanto, "The Gap between Policy and Practice for Human Rights in Conservation: A Case Study in Papua Province, Indonesia," *Oryx* 57, no. 3 (2023): 360-369, <https://doi.org/10.1017/S0030605323000066>.

without an equivalent corrective channel. These indicators do not prove the empirical frequency of each obstacle, but demonstrate structural risks that may arise from the design of the norms. State action remains necessary to make a status recordable, reviewable, mappable, and capable of being considered in other decisions; what is rejected is equating that action with the creation of the source of rights.

Legal pluralism compatible with deregulation is not pluralism without standards. National minimum criteria are required for consistency, but those criteria must remain open to variations in forms of evidence and customary organization. Non-written evidence may be assessed through documented testimony, institutional practices, histories of control, participatory maps, and evidence of socio-ecological relationships with the territory. Epistemic authority must not be monopolized by a single institution: the verification team needs to combine administrative competence, community knowledge, independent expertise where necessary, and opportunities for third parties to test claims. National standards function to establish the questions and thresholds for verification, not to standardize the form of indigenous legal communities.¹⁴

Regulatory Disharmony and Administrative Problems in Customary Forest Recognition

The first disharmony lies at the level of the concept of recognition. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia uses the language of recognition and respect for indigenous legal communities that remain in existence. Constitutional Court Decision Number 35/PUU-X/2012 then affirms indigenous legal communities as rights holders and separates customary forests from state forests. However, Article 67 paragraph (2) of Law Number 41 of 1999 on Forestry still places a Regional Regulation as the instrument for confirming the existence and cessation of indigenous legal communities for the exercise of the rights regulated by Article 67. Textually, this provision can be read as an administrative instrument of confirmation. The problem arises when, in implementation, it functions as a requirement that creates status: before a Regional Regulation exists, the community is considered not to have sufficient standing to proceed toward customary forest determination. Such an interpretation is inconsistent with the premise of Constitutional Court Decision Number 35/PUU-X/2012 that indigenous legal subjects possess rights because their existence meets constitutional criteria, not because those rights are created by regional legislators. Recent legal studies also emphasize the need for effective lawmaking so that the constitutional recognition of indigenous communities does not stop at the level of abstract norms.¹⁵

¹⁴ Rini Astuti, Michelle Ann Miller, Andrew McGregor, M. D. P. Sukmara, W. Saputra, Sulistyanto, and D. Taylor, "Making Illegality Visible: The Governance Dilemmas Created by Visualising Illegal Palm Oil Plantations in Central Kalimantan, Indonesia," *Land Use Policy* 114 (2022): 105942, <https://doi.org/10.1016/j.landusepol.2021.105942>.

¹⁵ Diya Ul Akmal, Mas Iman Kusnandar, and Fatkhul Muin, "Protecting Indigenous Peoples' Constitutional Rights Through Legal Formation: Perlindungan Hak Konstitusional Masyarakat Hukum Adat Melalui Pembentukan Hukum," *Jurnal Konstitusi* 22, no. 1 (2025): 66–87, <https://doi.org/10.31078/jk2214>.

The second disharmony lies in the form of instruments at the governmental level. Minister of Home Affairs Regulation Number 52 of 2014 on Guidelines for the Recognition and Protection of Indigenous Legal Communities regulates the identification, verification, validation, and determination of indigenous legal communities through a regent/mayor decision. This mechanism treats recognition as an individual and concrete administrative decision concerning a particular community. By contrast, Article 67 paragraph (2) of Law Number 41 of 1999 on Forestry refers to a Regional Regulation, a legal instrument with a regulatory character that is formed through a regional legislative process. When two different instruments are used to recognize the same subject, a question of legal sufficiency arises: whether a regional head decision is sufficient for the forestry process or must still be elevated into a Regional Regulation. This ambiguity can produce duplication. A community may already have undergone administrative verification and obtained a recognition decision, yet still face a request for another legal instrument when applying for customary forest recognition. From the perspective of the principles of efficiency and legal certainty, repeating verification without any difference in the object of examination constitutes a disproportionate burden.

The third disharmony stems from the relationship between recognition of the subject and determination of the object. Minister of Environment and Forestry Regulation Number 9 of 2021 on Social Forestry Management regulates customary forests within a single administrative framework together with other social forestry schemes, even though their legal nature differs. Village forests, community forests, community plantation forests, or forestry partnerships are essentially related to management access granted through particular administrative mechanisms. Customary forest, after Constitutional Court Decision Number 35/PUU-X/2012, is a forest subject to rights located within the territory of an indigenous legal community. Therefore, customary forest should not be understood merely as one variant of 'legal access' whose source is identical to state approval. Post-decision literature shows that this conceptual distinction remains a source of debate in the management of customary forests.¹⁶ If administrative instruments do not distinguish between granting access and recognizing rights, regulatory language risks reviving the relationship that was corrected by the Constitutional Court.

The requirement of a Regional Regulation creates a particular problem because the regional legislative process is deliberative and political, whereas determination of an individual and concrete status requires parameters, deadlines, reasons for decisions, and legal remedies. This article uses the term legal deadlock to describe the structural risk that arises when a community already possesses verification materials but does not obtain a recognition instrument because the political process does not move forward. The term is not intended as a claim that this condition occurs with a particular frequency across all regions. If examples of implementation are drawn from previous studies, their function is to illustrate how

¹⁶ Taufik Qul Basyar, Arfa'i, and Iswandi, "Analisis Pengelolaan Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012," *Limbago: Journal of Constitutional Law* 4, no. 1 (2024): 30–45, <https://doi.org/10.22437/limbago.v4i1.20000>.

normative design can produce delay or uncertainty, not to replace the empirical data of this study.¹⁷

From the perspective of the principle of legal certainty, such a deadlock has two dimensions. The first dimension is uncertainty of status. As long as no determination has been issued, a territory socially and historically claimed as customary forest may continue to appear in state databases as part of another category. The second dimension is uncertainty of priority. When a customary claim does not yet have an administrative status that can be read by the licensing system, decisions concerning the use of space or overlapping permits may continue to be processed on the basis of the available data. At that point, the community is placed in a defensive position: it must prove its claim only after another decision has been issued. Literature on conflicts in palm-oil governance shows how legal/illegal categorization and misalignment among actors can produce mutually exclusionary claims.¹⁸ An effective recognition system should operate before the conflict escalates, by giving preliminary legal effects to the registration of credible claims so that other officials are aware of customary interests that have not yet completed verification.

The next problem is the lack of uniformity in the objects and quality of evidence. An indigenous legal community is not an entity that can be proven by a single document alone. Genealogical or territorial elements, institutions, customary norms that remain observed, customary assets or objects, and a special relationship with the territory need to be examined contextually. However, flexibility in evidence must not become unlimited discretion. The administration requires a transparent evidence matrix: types of primary evidence, supporting evidence, methods for addressing the absence of written archives, methods for validating maps, and procedures for assessing objections. Without such a matrix, communities with orderly documentation will be more easily recognized than communities with strong legal practices but limited archives. Comparative studies on the formalization of customary tenure show that formalization can provide protection, but it can also alter rights structures when its design depends too heavily on state categories.¹⁹ Legal reconstruction must avoid both extremes: automatic recognition without verification and rigid formalization that accepts only evidence produced by the bureaucracy.

Comparative literature on the formalization of customary tenure is used at the level of principle: formalization can increase certainty but can also exclude communities if state evidence and categories are too rigid. The article does not

¹⁷ Thea Farina, Satriya Nugraha, Agus Mulyawan, and Andika Wijaya, "Pengakuan dan Perlindungan Hutan Adat dalam Mewujudkan Hak Masyarakat Hukum Adat di Provinsi Kalimantan Tengah," *UNES Law Review* 6, no. 3 (2024): 9377–9389, <https://doi.org/10.31933/unesrev.v6i3.1852>.

¹⁸ Tessa D. Toumbourou and Wolfram H. Dressler, "The Politics of Misalignment: NGO Livelihood Interventions and Exclusionary Land Claims in an Indonesian Oil Palm Enclave," *Critical Asian Studies* 56, no. 1 (2024): 89–114, <https://doi.org/10.1080/14672715.2023.2272736>.

¹⁹ Jean-Christophe Diepart, Natalia Scurrah, Alice Beban, Christophe Gironde, and Natalie Y. Campbell, "The Recognition and Formalization of Customary Tenure in the Forest Landscapes of the Mekong Region: A Polanyian Perspective," *Journal of Land Use Science* 18, no. 1 (2023): 211–226, <https://doi.org/10.1080/1747423X.2023.2206814>.

transplant institutions from other jurisdictions. The limits of comparability lie in differences in constitutions, governmental structures, tenure histories, and forms of customary law; therefore, the literature serves only as a test of design risks, not as a model to be applied directly in Indonesia.

Another administrative problem is institutional segmentation. Recognition of indigenous legal communities involves regional governments; determination of customary forests involves the ministry responsible for forestry; land information and ulayat rights overlap with land administration; and village boundaries, spatial planning, and forest areas each have their own databases. This fragmentation creates the risk that one community must repeatedly explain the same facts to multiple institutions. Literature on land-governance models in Indonesia identifies fragmentation of regulatory frameworks and institutions as a fundamental challenge, including in forested areas outside forest zones.²⁰ From the perspective of administrative law, this condition can be corrected through the once-only principle: data that have been verified by one authority should not be requested again without a substantive reason. Decisions recognizing the subject, verified maps, and validation results must be officially exchangeable among institutions. Integration does not mean centralizing all decisions at the national level, but ensuring the interoperability of legal effects.

Deregulation increases the urgency of such synchronization because the speed of economic decisions can heighten the risk of a race of legality. Parties that obtain formal approval more quickly acquire a stronger position in administrative databases, even when customary claims historically predate them. The Job Creation regime does not in itself eliminate the rights of indigenous communities, and Law Number 6 of 2023 must still be applied in accordance with the 1945 Constitution of the Republic of Indonesia and Constitutional Court decisions. However, if the path for recognition of rights moves more slowly than the path for business approvals, conflict may arise not because substantive norms permit indigenous communities to be disregarded, but because information systems and procedural sequences make customary rights visible too late. Studies on tenure reform and social forestry show that policy changes can create new institutional problems when rights, authority, and administrative practices are not aligned.²¹ Therefore, legal certainty requires rules on procedural priority, not only substantive norms of recognition.

From the perspective of legal hierarchy, the solution cannot be achieved merely through circular letters or technical policies. As long as Article 67 paragraph (2) of Law Number 41 of 1999 on Forestry is read as imposing a constitutive Regional Regulation requirement, a ministerial regulation cannot eliminate it. The ideal reconstruction requires amendment at the statutory level or legislative restructuring that affirms that a Regional Regulation functions as a general

²⁰ Muhammad Haidar Daulay, Fitria Dewi Susanti, Dwi Laraswati, Erliza C. Arthalina, and Ahmad Maryudi, "New Land Governance Models and Management Scenarios: Fitting Forest Management Units (FMUs) for Forested Landscapes outside Forest Zones in Indonesia," *Forest and Society* 7, no. 1 (2023): 43–60, <https://doi.org/10.24259/fs.v7i1.23962>.

²¹ Aprisep Ferdhana Kusuma, Muhammad Alif K. Sahide, Ris Hadi Purwanto, Ema Ismariana, Widodo Budi Santoso, Eka Wulandari, and Ahmad Maryudi, "Emergent Institutional Issues from New Tenure Reforms and Social-Forestry Initiatives in Indonesia: Notes from the Field," *Forest and Society* 7, no. 2 (2023): 450–466, <https://doi.org/10.24259/fs.v7i2.28319>.

regulatory framework and/or a regional protection instrument, rather than as a prerequisite for creating the existence of indigenous legal communities. During the transition, harmonization may be carried out through systematic interpretation: a regional head decision resulting from identification-verification-validation under Minister of Home Affairs Regulation Number 52 of 2014 may be treated as sufficient evidence of administrative recognition to initiate and complete the customary forest determination process, insofar as it does not conflict with statutory norms. However, to eliminate doubt completely, legislative amendment remains necessary. Legal certainty arises precisely when the form of action aligns with the nature of its object: general norms are regulated through regulations; the status of specific subjects and territories is determined through decisions.

This analysis shows that the problem of Regional Regulations cannot be reduced merely to 'lengthy bureaucracy.' The issue is more fundamental: a mismatch between the type of legal instrument and the nature of the rights being recognized. Regional Regulations are appropriate for establishing regional policies, general procedures, institutions, financing, or protection across communities. However, when a Regional Regulation is used as a decision on the existence of a single community, legislative and adjudicative-administrative functions become mixed. This mixture increases uncertainty because political processes do not have the same evidentiary standards and deadlines as administrative decisions. At the same time, eliminating Regional Regulations without replacing the verification mechanism would create new problems. Reconstruction must therefore begin with functional differentiation: legislators establish criteria and guarantees; administrative officials verify facts and issue declarations; courts review disputes; and the registration system makes status publicly knowable. This structure is more consistent with the rule of law than a model that places the entire burden on a single regional legal instrument.

Reconstructing the Legal Framework for Customary Forest Recognition to Ensure Certainty

The reconstruction proposed in this article is called a declaratory model based on registration-verification. The term declaratory emphasizes that a government decision does not create customary rights from nothing, but officially states that, based on the facts and legal criteria, an indigenous legal community and its forest territory meet the requirements to be recognized and protected. This model differs from automatic recognition. Administrative action remains necessary because the state must determine boundaries that can be asserted against third parties, avoid overlaps, and incorporate the status into licensing and spatial-planning systems. The difference lies in the point of origin of the rights and the consequences of proof. In a constitutive model, the absence of a decision is treated as the absence of rights. In a declaratory model, the absence of a decision means that the administrative status has not yet been resolved, but a registered claim must be treated as a legal interest that must be considered. This framework is more consistent with Constitutional Court Decision Number 35/PUU-X/2012 because the state confirms the rights of indigenous legal communities rather than returning something previously presumed to belong to the state.

The ten pillars of reconstruction are grouped into three layers so that the sequence of implementation is clear. The first layer is legislative change that alters

the nature of recognition and the basis of authority. The second layer is administrative procedures and safeguards, including registration, verification, time-bound decisions, interim protection, objections, and third-party protection. The third layer is data infrastructure and cross-sector integration, including map interoperability, once-only verification, and links with licensing and spatial planning. Legislative change is a prerequisite when the new design alters authority or legal consequences that, under the current framework, cannot be created solely through technical regulations.

The first pillar of the model is one-stop registration. Communities may register claims for recognition of indigenous legal communities and customary forests through a single channel at the regency/city government, provincial government, or an interconnected national system. Registration contains the identity of the community, a description of its institutions, relevant customary norms, the history of its relationship with the territory, an initial map, and a list of evidence. The system must accept variations in evidence, including documents, testimony recorded in official minutes, participatory maps, historical archives, and evidence of institutional practices. Once the registration is declared administratively complete, the claim receives a registration number and appears in a dedicated layer of the government's geospatial system. This status is not yet equivalent to customary forest determination, but it produces interim legal effects: agencies processing permits or status changes for overlapping areas must conduct a conflict check and notify the verification team. In this way, registration interrupts the race of legality because customary claims become visible before the final decision. Findings on the role of mapping in shaping state-local relations support the importance of a system that does not merely map after recognition, but uses mapping as part of the recognition procedure itself.²²

The second pillar is verification based on measurable but contextual national criteria. The minimum criteria must accept written and non-written evidence and give communities the right to correct maps and respond to objections. Partial recognition of undisputed portions of a territory may be undertaken only if the community agrees to the separation, the recognized portion can be managed without damaging the socio-ecological integrity of the overall claim, and disputes over other portions do not determine the identity or authority of the community as a whole. If separation would fragment the unity of the customary territory, ecological functions, or authority structure, the decision must await resolution of the claim as a whole. This safeguard prevents procedural efficiency from altering the substance of the rights.

The third pillar is a time-bound declaratory decision. The division of authority between the regional head for recognition of the subject and the minister/delegated official for determination of the customary forest can be applied only if the basis of competence is clearly stated in a statute or an implementing regulation that receives adequate delegation. If current norms do not yet grant such authority or still require a different form of confirmation, the change cannot be established through

²² Nanang Indra Kurniawan and Ståle Angen Rye, "The Relational State and Local Struggles in the Mapping of Land in Central Kalimantan, Indonesia," *The Journal of Peasant Studies* 52, no. 2 (2025): 343–365, <https://doi.org/10.1080/03066150.2024.2366329>.

administrative policy alone. The new design must also use a single shared verification dossier so that transfers of authority do not result in repeated examination; the forestry agency need only assess sectoral elements that have not yet been examined, while the status of the subject and the verified map are reused.²³

The fourth pillar is the repositioning of Regional Regulations. Reform of Article 67 paragraph (2) of the Forestry Law needs to separate the function of general norms from individual determinations. Regional Regulations may continue to regulate regional protection frameworks, verification institutions, financing, conflict governance, protection of traditional knowledge, and integration of customary territories into planning, but the existence of a particular community need not wait for a Regional Regulation that names it individually if national criteria have been met. A declaratory administrative decision becomes the instrument for determining status, while a Regional Regulation retains its general regulatory function within the framework of regional autonomy. This model requires amendment at the statutory level if the current wording still makes a Regional Regulation a condition for individual confirmation.

The fifth pillar is interim legal protection. Interim protection is granted only after registration passes an initial examination of the community's identity, its prima facie relationship with the territory, and a claim map sufficient to identify potential overlaps. The consequence is not the cancellation of third-party rights, but a duty of due diligence and, in areas that genuinely overlap, the suspension of new decisions that could render the recognition process ineffective. The suspension must have a time limit, periodic evaluation, written reasons, an objection mechanism for third parties, and a proportionality test against the risk of loss to both parties. The status may be revoked if the applicant is uncooperative or the preliminary examination proves unfounded. With this design, interim protection does not become an uncontrolled moratorium.²⁴

The sixth pillar is an objection mechanism and protection of third parties. The declaratory model must not be associated with disregarding the rights of other communities, land-right holders, neighboring villages, or valid permits. After the initial map is announced, interested parties are given time to submit objections together with evidence. The verification team then facilitates clarification and, where necessary, identifies disputed areas to be temporarily excluded from the decision. Objections must be specific to the subject or boundaries, rather than merely general rejection. Every final decision must be reviewable through administrative and judicial mechanisms. With this structure, the declaratory model actually increases certainty for third parties because the status of claims appears earlier and the procedure for resolving them is clear. Formalization of customary tenure in various jurisdictions shows that certainty does not arise from registration

²³ Diya Ul Akmal, Mas Iman Kusnandar, and Fatkhul Muin, "Protecting Indigenous Peoples' Constitutional Rights Through Legal Formation: Perlindungan Hak Konstitusional Masyarakat Hukum Adat Melalui Pembentukan Hukum," *Jurnal Konstitusi* 22, no. 1 (2025): 66–87, <https://doi.org/10.31078/jk2214>.

²⁴ Chandra, Febrian, Hartati Hartati, Helmi Helmi, and Muhammad Reza Halomoan. "Reconstructing Industrial Forest Spatial Planning Policy for Ecological Mitigation and Global Environmental Justice." *Journal of Law and Legal Reform* 7, no 2 (2026): 799-832. <https://doi.org/10.15294/jllr.v7i2.40843>.

alone, but from a design that takes account of social relations and the effects of changes in rights categories.²⁵ Therefore, map transparency and the objection process are constitutive elements of administrative quality, even though they are not themselves the source of customary rights.

The seventh pillar is data interoperability and the once-only verification principle. Reuse of verification results must be accompanied by data governance that positions the community as the data subject, not merely as a source of information. The system requires meaningful consent for the use of sensitive data, rights of access and correction, purpose limitation, audit trails, technical safeguards, and categories of data that must not be made public, such as sacred locations or sensitive traditional knowledge. Participatory maps required for administrative purposes do not automatically become open data. Interoperability must reduce repeated proof without transferring control over community knowledge to the bureaucracy.²⁶

The eighth pillar is clear legal consequences for other decisions. Once a customary forest has been determined, its map and status must automatically become mandatory data in the assessment of licensing, spatial planning, forest-area land-use administration, and environmental decisions. There should be no situation in which one government unit has recognized a customary forest while another continues to process the area as though it has no rights holder. If an earlier permit has already been issued, the resolution must be differentiated according to the permit's validity, scope, and timing; customary forest recognition cannot mechanically eliminate every third-party right, but the government must provide mechanisms for adjustment, mediation, compensation where relevant, or judicial resolution. Literature on the misalignment of claims in palm-oil landscapes shows that programs or interventions that fail to read local claim structures can reinforce exclusion.²⁷ Therefore, reconstructing customary forest recognition must at the same time reconstruct the cross-sector effects of that determination.

The ninth pillar is adjustment to the social forestry regime. Minister of Environment and Forestry Regulation Number 9 of 2021 on Social Forestry Management can remain an important instrument for community access to forests, but its terminology and mechanisms must clearly distinguish between management approvals on state forests and the determination of customary forests as forests subject to rights. Customary forests may remain under the broader umbrella of social forestry policy for purposes of facilitation, assistance, or economic programs, but the source of their management authority must not be equated with schemes

²⁵ Jean-Christophe Diepart, Natalia Scurrah, Alice Beban, Christophe Gironde, and Natalie Y. Campbell, "The Recognition and Formalization of Customary Tenure in the Forest Landscapes of the Mekong Region: A Polanyian Perspective," *Journal of Land Use Science* 18, no. 1 (2023): 211–226, <https://doi.org/10.1080/1747423X.2023.2206814>.

²⁶ Muhammad Haidar Daulay, Fitria Dewi Susanti, Dwi Laraswati, Erliza C. Arthalina, and Ahmad Maryudi, "New Land Governance Models and Management Scenarios: Fitting Forest Management Units (FMUs) for Forested Landscapes outside Forest Zones in Indonesia," *Forest and Society* 7, no. 1 (2023): 43–60, <https://doi.org/10.24259/fs.v7i1.23962>.

²⁷ Tessa D. Toumbourou and Wolfram H. Dressler, "The Politics of Misalignment: NGO Livelihood Interventions and Exclusionary Land Claims in an Indonesian Oil Palm Enclave," *Critical Asian Studies* 56, no. 1 (2024): 89–114, <https://doi.org/10.1080/14672715.2023.2272736>.

arising from state-granted access. Studies of institutional issues in tenure reform and social forestry in Indonesia show that policy changes create opportunities while also generating new institutional ambiguities.²⁸ With this differentiation, the state can provide technical assistance without reducing the status of indigenous legal communities to mere recipients of management permits.

The tenth pillar is strengthening accountability through service indicators. Deregulation regimes commonly use measures of service time, process simplification, and data integration. The same principle needs to be applied to customary forest recognition. Regulations should establish deadlines for completeness checks, field verification, map publication, resolution of objections, and issuance of decisions. Failure to meet a deadline must have consequences, such as an obligation to provide reasons, escalation to a superior official, or access to administrative remedies. The concept of a positive fictitious decision may be considered in a limited manner only for certain administrative acts that do not directly establish substantive rights - for example, acceptance of the completeness of a dossier - because automatic application to territorial determination could harm third parties. The principle is that acceleration must be designed without eliminating substantive examination. This is a form of deregulation for rights: procedural simplification is directed toward reducing irrelevant barriers, not reducing standards of protection.

Within a broader framework, the declaratory model also strengthens ecological certainty by separating two legal questions: who is the rights holder and how the area may be used. Recognition of indigenous legal communities and customary forests does not eliminate protection functions, conservation, carrying capacity, or lawful ecological restrictions. The state may continue to establish standards for use, restoration, and supervision as long as the restrictions have a legal basis, are applied proportionately, and do not transform rights into concessions that can be withdrawn at any time. Conversely, conservation functions must not be used to deny the identity of a rights-holding subject when the recognition criteria have been met. This separation strengthens ecological justice because ecosystem protection and tenure certainty are treated as two obligations that must operate together.²⁹

Doctrinally, this reconstruction can be formulated through three levels of change. The first level is legislation: amendment of Law Number 41 of 1999 on Forestry, especially the formulation of Article 67 paragraph (2), so that confirmation of indigenous legal communities does not have to depend on an individual and concrete Regional Regulation. The second level is government regulation: Government Regulation Number 23 of 2021 on Forestry Administration needs to provide procedures for registration, verification, interim protection, and map

²⁸ Aprisep Ferdhana Kusuma, Muhammad Alif K. Sahide, Ris Hadi Purwanto, Ema Ismariana, Widodo Budi Santoso, Eka Wulandari, and Ahmad Maryudi, "Emergent Institutional Issues from New Tenure Reforms and Social-Forestry Initiatives in Indonesia: Notes from the Field," *Forest and Society* 7, no. 2 (2023): 450–466, <https://doi.org/10.24259/fs.v7i2.28319>.

²⁹ Jeffrey Sayer, Agni Klintuni Boedhihartono, James Douglas Langston, Chris Margules, Rebecca Anne Riggs, and Dwi Amalia Sari, "Governance Challenges to Landscape Restoration in Indonesia," *Land Use Policy* 104 (2021): 104857, <https://doi.org/10.1016/j.landusepol.2020.104857>.

integration. The third level is technical regulation: Minister of Environment and Forestry Regulation Number 9 of 2021 needs to clarify the difference in character between customary forests and management-access schemes and to accept decisions recognizing indigenous legal communities issued through the declaratory model. Harmonization with Minister of Home Affairs Regulation Number 52 of 2014 is required so that the results of identification-verification-validation do not end as sectoral documents that apply only within a single regime. This multi-level change is safer than attempting to resolve the conflict solely through administrative policy without a statutory basis.

The model also requires the principle of non-regression of recognition as a prescriptive principle, not as a positive norm assumed to stand independently. Its basis lies in the need for legal certainty after status has been confirmed and in the constitutional condition that indigenous legal communities must continue to satisfy the criteria for continuity. Recognition is therefore not periodically reviewed like a permit, but may be evaluated when there is evidence of material change: the community no longer meets the constitutional criteria, boundaries change by agreement, relevant facts change, or a court decision is issued. Any change to or termination of status must proceed through notification, proof, community participation, written reasons, and access to legal remedies. This principle preserves certainty without freezing social reality forever.

The advantage of the declaratory model is its ability to reconcile three demands that have so far been separated. First, the demand of legal pluralism is met because the state recognizes a source of rights that does not originate from a state decision. Second, administrative legal certainty is fulfilled because the subject, object, boundaries, and legal consequences remain recorded through formal decisions that can be reviewed. Third, the objective of deregulation is met because disproportionate procedures - especially dependence on the Regional Regulation legislative process for individual status - are replaced by an administrative process with criteria and deadlines. In other words, this reconstruction is not deregulation that reduces protection, but a redesign of regulation. Efficiency is achieved by eliminating duplication and uncertainty, while safeguards are strengthened through verification, transparency, objections, and judicial review. This argument also distinguishes the article from approaches that merely demand faster enactment of Regional Regulations: accelerating an instrument that is poorly designed does not resolve the problem of its legal nature.

Ultimately, legal certainty for customary forests must be understood as a combination of certainty of recognition, certainty of procedure, and certainty against competing administrative acts. Certainty of recognition means that the law states that indigenous rights are not created by a permit. Certainty of procedure means that there are clear pathways, evidence requirements, deadlines, and legal remedies. Certainty against competing administrative acts means that the status of claims and final decisions are connected to licensing and spatial-planning systems so that they are not disregarded by other institutions. Without these three dimensions, recognition may remain symbolic. Conversely, if all three are fulfilled, legal pluralism is no longer positioned as an exception to state law, but as part of a rule-of-law architecture capable of managing diverse sources of rights in a measurable manner. This reform should be the meaning of deregulation in a state

based on the rule of law: not merely accelerating access to resources, but eliminating procedures that place holders of constitutional rights in a weaker position than applicants for administrative access.

CONCLUSION

The dynamics of deregulation in forest control show that the problem of customary forest recognition is not a lack of recognition norms, but a lack of synchronization among constitutional norms, the construction of sectoral statutes, and forms of administrative action. Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, together with Constitutional Court Decision Number 35/PUU-X/2012, establish the premise that indigenous legal communities are legal subjects and customary forests are not state forests. However, Article 67 paragraph (2) of Law Number 41 of 1999 on Forestry and the configuration of implementing regulations still allow recognition to depend on regional instruments whose processes are lengthy and political. This dependency produces procedural inversion: rights that should be confirmed are treated as resembling permits that must be obtained from the state.

The reconstruction can be summarized in three layers of reform. First, a change in the nature of recognition: rights are not created by a decision, but the status of the subject, object, boundaries, and legal consequences is confirmed through a declaratory decision based on verification. Second, procedural design and safeguards: one-stop registration, a contextual evidence matrix, decision deadlines, proportionate interim protection, third-party objections, due process, and limited criteria for partial recognition. Third, cross-sector and data integration: once-only verification, interoperable maps with community control over sensitive data, and legal effects that are visible in licensing, spatial planning, land administration, and management of forest functions. Changes in authority or forms of confirmation that conflict with statutory norms must be resolved through legislative amendment, not merely through technical policy.

The declaratory model offers a meeting point among legal pluralism, administrative certainty, third-party protection, and ecological functions, but this article has limitations. The study is doctrinal and does not measure actual service time, regional-government capacity, verification costs, mapping conflicts, community responses to registration, or the effectiveness of interim protection. Terms such as procedural inversion and race of legality are also analytical devices that still need to be tested empirically. Future research should therefore test the model across different types of communities, area statuses, and dispute configurations. At the doctrinal level, the contribution of this article is limited to a legal design that shifts recognition from a functionally constitutive logic toward confirmation of rights that remains verified, measurable, and reviewable.

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