

Protection of Indigenous Peoples' Land Rights in Agrarian Reform Policy: A Normative and Implementational Legal Study

Salwa Aulia Novitasari¹, Arief Fahmi Lubis², Dila Padila Nurhasanah³

^{1,3}Universitas Nusa Putra

²Sekolah Tinggi Hukum Militer

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ABSTRACT

This study examines the protection of Indigenous Peoples' land rights within the framework of agrarian reform policy through a normative and implementational legal analysis. The research aims to analyze the extent to which existing legal frameworks recognize and protect Indigenous land rights, identify inconsistencies within regulatory structures, and evaluate the effectiveness of their implementation in practice. Employing a normative juridical approach, this study analyzes constitutional provisions, statutory regulations, and relevant legal doctrines, complemented by a qualitative assessment of implementation challenges. The findings reveal that although Indigenous land rights are formally recognized in the legal system, such recognition remains conditional and fragmented across sectoral regulations. Overlapping authorities between land, forestry, and other resource-related laws create legal uncertainty and hinder the effective protection of customary land. Furthermore, the implementation of agrarian reform policies often fails to accommodate the collective nature of Indigenous land tenure, resulting in the marginalization of Indigenous communities. Bureaucratic complexities, limited institutional coordination, and weak enforcement mechanisms further exacerbate these challenges, leading to persistent land conflicts and dispossession. This study highlights a significant gap between normative legal guarantees and practical realities. It emphasizes the need for a more integrative and responsive legal framework that harmonizes regulations, strengthens the recognition of customary land rights, and ensures meaningful participation of Indigenous Peoples in agrarian reform processes. By bridging normative analysis with implementation perspectives, this research contributes to the development of more equitable and inclusive land governance systems that uphold Indigenous rights and promote social justice.

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Corresponding Author:

Name: Arief Fahmi Lubis

Institution Address: Sekolah Tinggi Hukum Militer

e-mail: arieffahmilubis0@gmail.com

1. INTRODUCTION

Land constitutes a fundamental resource for human survival, economic

development, and social identity. For Indigenous Peoples, land is not merely an economic asset but also a source of cultural heritage, spiritual meaning, and collective

existence, deeply embedded in customary law, social structures, and traditional knowledge systems. Consequently, the protection of Indigenous land rights represents not only a legal obligation but also a moral imperative to preserve cultural diversity and social justice. In Indonesia, however, the recognition and protection of these rights remain complex and contested, despite constitutional provisions and sectoral laws that formally acknowledge them. Regulatory overlaps continue to hinder effective implementation [1], while landmark decisions such as Constitutional Court Decision No. 35/PUU-X/2012 affirming that customary forests are not state forests have yet to be fully realized due to bureaucratic constraints [2], [3]. As a result, many Indigenous communities, including groups such as the Orang Rimba, still face systemic marginalization and land tenure insecurity [4].

Agrarian reform has long been promoted as a strategic policy to address inequality in land distribution, enhance rural welfare, and promote sustainable development. In principle, it seeks to redistribute land to marginalized groups and ensure equitable access to land resources. However, in practice, agrarian reform often reveals tensions between state control, market-oriented development, and the recognition of customary land tenure systems, frequently sidelining Indigenous claims [4], [5]. This creates a paradox in which policies intended to promote equity may instead perpetuate marginalization. To address these challenges, strengthening multi-stakeholder collaboration and participatory mapping is essential to reinforce Indigenous land claims and legal recognition [2], [3]. Furthermore, reforming agrarian policies to embrace legal pluralism is crucial to achieving social justice and ensuring meaningful protection of Indigenous land rights [5].

From a legal perspective, Indonesia has made significant progress in recognizing Indigenous rights through constitutional provisions and statutory regulations. The 1945 Constitution, particularly Articles 18B, 28G, and 33, provides a normative foundation

for acknowledging Indigenous communities and their traditional rights, in line with international frameworks such as ICESCR and UNDRIP [6]. However, this recognition remains conditional, as reflected in the phrase “as long as it is alive,” which introduces ambiguity and limits effective enforcement [6]. In addition, various sectoral laws—such as those governing forestry, mining, and land—formally recognize customary rights but often overlap and conflict with one another, thereby undermining their implementation [1], [5]. The absence of clear mechanisms for the formal recognition of customary territories, particularly in regions such as coastal areas, further exacerbates legal uncertainty and weakens Indigenous land claims [7].

These challenges are compounded by institutional and structural barriers that hinder the practical realization of Indigenous rights. Weak institutional coordination, limited participation of Indigenous communities in policymaking, and the stagnation of the Indigenous Peoples Bill reflect a lack of strong commitment to reform [1], [5], [8]. Moreover, bureaucratic procedures for recognizing customary territories are often complex and time-consuming, failing to align with the lived realities of Indigenous communities. The dominance of state-centric land administration systems further diminishes the legitimacy of customary tenure, frequently resulting in land conflicts involving Indigenous Peoples, corporations, and government agencies, particularly in plantation, mining, and infrastructure sectors. Consequently, Indigenous communities continue to face risks of dispossession, displacement, and loss of livelihoods, highlighting a persistent gap between normative recognition and practical implementation.

Scholarly discussions on Indigenous land rights emphasize the importance of adopting a pluralistic legal approach that recognizes the coexistence of state law and customary law. Legal pluralism provides a conceptual framework for understanding how different normative systems interact in

governing land, where the recognition of Indigenous rights requires not only formal legal acknowledgment but also institutional arrangements that respect and integrate customary practices. In this context, principles of social justice and human rights demand that agrarian reform policies be designed and implemented in ways that ensure meaningful participation of Indigenous communities and safeguard their collective rights.

Given these complexities, this study aims to examine the protection of Indigenous Peoples' land rights within agrarian reform policy through a normative and implementational legal analysis. The study focuses on analyzing the existing legal framework, identifying inconsistencies and gaps in legal norms, and evaluating the extent of their practical implementation. By combining doctrinal legal analysis with an assessment of implementation challenges, this research seeks to provide a comprehensive understanding of the relationship between law and practice. The significance of this study lies in its contribution to the discourse on agrarian justice and Indigenous rights, particularly by highlighting discrepancies between normative frameworks and implementation realities, and offering directions for reform to achieve equitable land distribution and sustainable social and ecological systems.

2. LITERATURE REVIEW

2.1 *Concept of Indigenous Peoples and Land Rights*

Indigenous land rights in Indonesia, particularly the concept of *hak ulayat*, reflect a complex interplay between customary law and state legal frameworks, rooted in historical connections to ancestral lands yet facing persistent challenges in recognition and enforcement. Historically, the legacy of colonialism has contributed to the systematic deprivation of Indigenous land rights, with

state authority frequently overriding customary claims [9], while constitutional recognition of *hak ulayat* has not been matched by consistent implementation due to regulatory inconsistencies [5], [10]. The integration of customary law into national legislation remains constrained by overlapping regulations and weak institutional mechanisms [8], and the absence of clear technical regulations further exacerbates legal uncertainty and agrarian conflicts across regions [11]. Consequently, the state's tendency to prioritize individual property rights over collective tenure continues to marginalize Indigenous communities. To address these challenges, strengthening the protection of *hak ulayat* requires comprehensive agrarian policy reform grounded in social justice and legal pluralism [5], alongside the development of participatory dispute resolution mechanisms and transparent systems for registering Indigenous territories to enhance legal recognition and reduce conflict [8], [11].

2.2 *Agrarian Reform and Social Justice*

Agrarian reform encompasses a range of policies aimed at redistributing land and improving access to resources for marginalized groups, including Indigenous Peoples, grounded in both classical perspectives that seek to correct unequal land distribution and contemporary approaches that emphasize access to credit, technology, and markets [12], [13]. Despite its potential, agrarian reform is often criticized for its top-down

implementation, which tends to overlook local contexts and customary land systems, creating a duality of opportunities and challenges for Indigenous communities. On the one hand, agrarian reform can support the recognition of customary rights, as demonstrated in Bolivia's INRA Law, and enhance land tenure security, thereby fostering more dynamic rural land markets for small and medium farms [14]. On the other hand, the imposition of standardized land tenure systems frequently conflicts with Indigenous practices and risks eroding customary rights, while in Indonesia, persistent legal ambiguities and overlapping frameworks continue to marginalize Indigenous land claims and reinforce state dominance over communal tenure [2].

2.3 *Legal Pluralism and Recognition of Customary Law*

Legal pluralism in Indonesia highlights the coexistence of state law and customary law, particularly in the context of Indigenous land rights; although customary law is constitutionally recognized, its practical implementation remains inconsistent and often sidelined within state-centric legal frameworks [4]. This condition is evident in communities such as the Orang Rimba, who continue to face exclusion from formal legal processes despite strong customary claims [4]. The dominance of state law frequently generates legal uncertainty and social tensions, as illustrated in cases like Bidar Alam where defenders of

customary land are criminalized [15], further compounded by overlapping regulations and weak institutional mechanisms that hinder effective integration of customary law into national legislation [8]. Therefore, strengthening the protection of Indigenous land rights requires participatory dispute resolution mechanisms and improved institutional capacity to formally recognize and register customary territories [8], alongside a coordinated legal approach that respects local cultures and enhances social cohesion [16].

2.4 *Theoretical Framework and Research Gap*

Based on the existing literature, this study is grounded in three main theoretical perspectives: legal pluralism, social justice, and human rights. Legal pluralism provides a framework for understanding the interaction between state law and customary law, while social justice emphasizes the need for equitable distribution of resources and recognition of marginalized groups. Human rights principles further reinforce the importance of protecting Indigenous land rights as fundamental rights.

Despite extensive research on Indigenous land rights and agrarian reform, there remains a gap in integrating normative legal analysis with an assessment of implementation practices. Many studies focus either on legal frameworks or on empirical case studies, but few attempt to bridge these perspectives in a comprehensive manner. This study seeks to address this gap by combining doctrinal analysis with an evaluation of

implementation challenges, thereby offering a more holistic understanding of the protection of Indigenous land rights within agrarian reform policy.

3. METHODS

3.1 Research Approach

This study employs a normative legal research approach (doctrinal legal research) combined with an implementational perspective to examine the protection of Indigenous Peoples' land rights within agrarian reform policy. The normative approach focuses on analyzing legal norms, principles, and doctrines as contained in legislation, judicial decisions, and legal literature to assess the adequacy, coherence, and consistency of the legal framework. In addition, the study incorporates an implementational dimension by evaluating how these legal norms are applied in practice, thereby bridging the gap between *das sollen* (what the law ought to be) and *das sein* (what occurs in reality) to provide a more comprehensive understanding of legal protection.

3.2 Type and Nature of Research

This research is descriptive-analytical and qualitative in nature, aiming to describe existing legal norms related to Indigenous land rights and agrarian reform while critically analyzing their effectiveness and limitations in practice. Rather than merely presenting legal provisions, the study evaluates their implementation by identifying inconsistencies, overlaps, and gaps within the legal system. The qualitative approach relies on textual analysis of legal documents and literature, enabling an in-depth interpretation of legal concepts, principles, and institutional dynamics that influence the protection of Indigenous land rights.

3.3 Sources of Legal Materials

The study utilizes three main categories of legal materials to support its analysis, namely primary, secondary, and tertiary sources. Primary legal materials

consist of authoritative legal sources such as constitutional provisions recognizing Indigenous Peoples and their traditional rights, laws and regulations related to agrarian reform, land administration, forestry, and regional governance, as well as judicial decisions concerning Indigenous land rights and customary law recognition. Secondary legal materials include scholarly works that provide explanations, interpretations, and critiques of these primary sources, including academic books, journal articles on Indigenous rights, agrarian reform, and legal pluralism, research reports, policy analyses, and expert legal commentaries. Meanwhile, tertiary legal materials serve as supporting references to clarify legal concepts, including legal dictionaries, encyclopedias, and official government publications and guidelines.

3.4 Methods of Data Collection

Data collection in this study is conducted through library research, which involves systematically identifying, collecting, and reviewing relevant legal materials from academic databases, official government documents, and legal repositories, including laws and regulations related to Indigenous land rights and agrarian reform, scholarly literature for theoretical and conceptual frameworks, as well as judicial decisions and policy documents to capture implementation dynamics. The analysis of legal materials is carried out using several approaches, namely the statutory approach to examine the consistency and hierarchy of laws and regulations, the conceptual approach to analyze key legal concepts such as Indigenous rights, customary law, legal pluralism, and social justice, the case approach to understand how courts interpret and apply legal norms, and a limited comparative approach to identify inconsistencies and overlaps within the regulatory framework. Overall, the analysis employs qualitative legal reasoning through interpretation, systematization, and evaluation of legal norms, while also identifying gaps between normative provisions and their practical

implementation, particularly the challenges faced by Indigenous communities.

3.5 Data Analysis Technique

The data analysis technique used in this study is qualitative descriptive analysis, in which legal materials are systematically examined by classifying relevant legal norms and concepts, interpreting the meaning and scope of legal provisions, evaluating the effectiveness of legal protection mechanisms, and identifying inconsistencies as well as implementation barriers. This analysis emphasizes the relationship between legal norms and their practical application, enabling the study to assess whether existing regulations adequately protect Indigenous land rights within agrarian reform policies.

4. RESULTS AND DISCUSSION

4.1 Normative Recognition of Indigenous Land Rights in Agrarian Reform Policy

The analysis of the legal framework indicates that the recognition of Indigenous Peoples' land rights has been formally embedded within constitutional and statutory provisions, where Indigenous communities are acknowledged as legal subjects possessing traditional rights over land and natural resources. This recognition is further reinforced through sectoral regulations, including agrarian, forestry, and regional governance laws that provide a legal basis for acknowledging customary land (*hak ulayat*). However, such recognition remains largely conditional and declarative rather than fully operational, as Indigenous rights are only acknowledged if they are deemed to still exist and align with national interests, creating a precarious legal status [17]. This conditionality is also reflected in key regulations such as the Basic Agrarian Law (UUPA No. 5/1960), which often prioritizes state interests over Indigenous claims, thereby allowing the state to determine the validity of customary rights [18].

Furthermore, the legal framework governing Indigenous land rights is characterized by significant ambiguities and implementation challenges. Overlapping

regulations and inconsistencies across legal instruments create confusion in the recognition and registration of customary lands [19], while the absence of clear definitions of ownership and the tendency to transform communal land into individual property further weaken the protection of Indigenous rights [8]. Although the state bears responsibility for safeguarding Indigenous rights, the implementation of supportive policies and regulations remains inadequate [20]. As a result, effective recognition requires not only formal acknowledgment but also the harmonization of customary law with national legislation, ensuring that Indigenous communities are meaningfully involved in land and resource governance processes [8].

In the context of agrarian reform policy, the normative framework emphasizes equitable land distribution and social justice; however, Indigenous land rights are not always explicitly integrated into agrarian reform programs. Instead, these policies tend to prioritize redistributive mechanisms targeting landless farmers and rural populations without adequately considering the distinct legal status and collective rights of Indigenous Peoples. This gap highlights a misalignment between the objectives of agrarian reform and the protection of customary land rights, ultimately limiting the effectiveness of such policies in achieving inclusive and equitable land governance.

4.2 Inconsistencies and Overlapping Regulations

One of the most significant findings of this study is the existence of regulatory fragmentation and overlapping authorities in the governance of land and natural resources. Various laws related to agrarian affairs, forestry, and other sectors often operate independently, leading to inconsistencies in the recognition and administration of Indigenous land rights. A clear example is the dual classification of land, where areas recognized as customary territories under agrarian law may simultaneously be designated as state forest under forestry law, creating substantial legal uncertainty for

Indigenous communities. Although Constitutional Court Decision No. 35/PUU-X/2012 clarified that customary forests are not state forests, its implementation remains constrained by overlapping regulations and fragmented legal frameworks [2], [21]. Consequently, Indigenous communities continue to face difficulties in securing formal recognition of their land rights despite their acknowledgment in principle.

Furthermore, regulatory fragmentation is closely linked to institutional challenges that exacerbate the marginalization of Indigenous communities. The lack of coordination among government agencies results in bureaucratic inefficiencies, as Indigenous Peoples must navigate complex administrative processes involving multiple institutions with differing requirements and criteria [2], [8]. This situation increases transaction costs and discourages communities from pursuing formal recognition of their land rights [22]. In addition, limited participation of Indigenous communities in decision-making processes further weakens their position in land and forest governance, reinforcing patterns of exclusion and inequality [21], [23].

These conditions highlight the urgent need for comprehensive legal reform aimed at harmonizing customary law with national legal systems. The absence of a unified legal framework reflects the persistence of state-centric legal paradigms, where formal land tenure systems dominate over customary arrangements, despite constitutional recognition of legal pluralism. To address this, scholars emphasize the importance of developing integrated policies that enhance legal certainty and strengthen the protection of Indigenous rights [8], [23]. Proposed solutions include participatory mapping of customary territories and the establishment of specialized conflict resolution mechanisms to facilitate more effective recognition and management of Indigenous land [2], [23].

4.3 Implementation of Agrarian Reform and Its Impact on Indigenous Peoples

The implementation of agrarian reform policies reveals a significant gap between normative objectives and practical outcomes, particularly in relation to Indigenous Peoples. Although agrarian reform is intended to promote equitable land distribution, in practice it often fails to address the specific needs and rights of Indigenous communities. Standardized criteria used in land redistribution programs frequently conflict with the collective nature of Indigenous land tenure, as such programs typically require individual land titles that are incompatible with communal ownership systems [24]. In Indonesia, this challenge is compounded by gaps in the legal framework, where key regulations such as the Basic Agrarian Law do not adequately protect customary land rights, resulting in persistent legal uncertainty [25]. Consequently, Indigenous communities are often excluded from the benefits of agrarian reform or forced to adapt to legal structures that undermine their traditional practices, as seen in cases like Senama Nenek Village where land conflicts emerged due to unilateral state control [26], [27].

From a human rights perspective, agrarian reform is closely linked to international obligations that emphasize the protection of Indigenous land rights, such as those outlined in UNDRIP [27]. However, the implementation of these principles remains inconsistent, especially in countries where state-centric legal systems dominate. Comparative experiences, such as Bolivia's agrarian reforms, demonstrate that incorporating special tenure regimes for Indigenous Peoples can help address historical injustices and improve equitable access to land [14], [24]. In contrast, the absence of such adaptive frameworks in Indonesia highlights the limitations of current policies in accommodating legal pluralism and collective land rights.

Furthermore, the implementation process of agrarian reform is often characterized by top-down decision-making with limited participation from Indigenous communities, undermining the principle of free, prior, and informed consent (FPIC). This

lack of meaningful involvement restricts Indigenous Peoples from influencing decisions that directly affect their livelihoods, territories, and cultural heritage. In addition, agrarian reform programs frequently overlap with large-scale development projects such as plantations, mining, and infrastructure, where economic interests tend to take precedence over the protection of Indigenous land rights. This dynamic not only exacerbates existing inequalities but also increases the vulnerability of Indigenous communities, reinforcing patterns of marginalization within the broader development agenda.

4.4 Land Conflicts and Legal Uncertainty

The interaction between normative gaps and implementation challenges has contributed significantly to the persistence of land conflicts involving Indigenous communities, often arising from competing claims between Indigenous groups, government agencies, and private corporations. Although customary law is formally acknowledged within national legal frameworks, its implementation is frequently obstructed by overlapping regulations and weak institutional structures [8]. Furthermore, the Basic Agrarian Law recognizes customary rights only insofar as they align with national interests, creating inherent tension between local customary systems and formal legal requirements [28]. As a result, Indigenous communities are often placed in a disadvantaged position, particularly because conflict resolution tends to rely on formal legal documents, which they may lack due to the informal and communal nature of customary land tenure.

The absence of effective and integrated dispute resolution mechanisms further exacerbates these conflicts. While customary courts continue to play an important role in resolving disputes at the local level, their decisions are often undermined by formal judicial systems that fail to adequately recognize customary ownership [28], [29]. This dualism highlights the urgent need for harmonization between

customary norms and national legislation, as well as the development of participatory mechanisms that allow Indigenous communities to actively engage in conflict resolution processes [8]. Without such integration, legal processes remain biased toward formal land ownership systems, reinforcing the marginalization of Indigenous claims.

In addition, legal uncertainty surrounding the identification and registration of customary land further intensifies land conflicts. The absence of standardized procedures creates ambiguity regarding the legal status of Indigenous territories, which can be exploited by external actors to justify land acquisition and resource exploitation [30], [31]. Although recent regulations have sought to improve the registration of communal land rights, only a small proportion of customary land has been formally registered, indicating ongoing structural challenges [30]. Moreover, weak enforcement mechanisms mean that even when legal recognition is granted, violations often occur without accountability, underscoring the limitations of normative legal protection in the absence of strong institutional support.

4.5 The Role of Legal Pluralism in Strengthening Protection

The findings underscore the importance of adopting a legal pluralism approach in the governance of land and natural resources, as it recognizes the coexistence of state law and customary law and provides a framework for integrating Indigenous land rights into formal legal systems. However, effective implementation of legal pluralism requires more than formal recognition; it demands institutional arrangements that enable coordination between legal systems and ensure the equal standing of customary law. This includes establishing mechanisms for recognizing customary territories, resolving conflicts, and incorporating Indigenous perspectives into policy-making processes.

In addition, the study highlights the importance of participatory governance

within agrarian reform policies. Strengthening the role of Indigenous communities in decision-making processes can enhance both the legitimacy and effectiveness of such policies. Meaningful participation ensures that policies are aligned with local realities while also promoting accountability and transparency in implementation, ultimately contributing to more inclusive and sustainable land governance.

4.6 Towards an Integrative and Responsive Legal Framework

Based on the analysis, the protection of Indigenous land rights within agrarian reform policy requires a more integrative and responsive legal framework that harmonizes sectoral regulations to eliminate overlaps and inconsistencies, strengthens the recognition of customary land rights through clear and standardized procedures, enhances institutional coordination among government agencies, ensures meaningful participation of Indigenous communities in policy-making and implementation, and develops effective dispute resolution mechanisms that accommodate customary law. Such an integrative approach would align agrarian reform objectives with the protection of Indigenous rights, thereby promoting social justice and legal certainty while bridging the gap between normative frameworks and implementation practices to create a more inclusive and equitable system of land governance.

5. CONCLUSION

This study concludes that the protection of Indigenous Peoples' land rights

within agrarian reform policy remains limited despite the existence of a normative legal framework that formally recognizes such rights. Legal recognition is often conditional and fragmented, leading to inconsistencies across sectoral regulations and overlapping institutional authorities that create legal uncertainty and weaken enforceability. From an implementation perspective, agrarian reform policies have not adequately accommodated the collective and customary nature of Indigenous land tenure systems. The dominance of state-centric legal approaches, coupled with bureaucratic complexity and weak institutional coordination, has contributed to the marginalization of Indigenous communities in land redistribution processes, while the absence of effective dispute resolution and enforcement mechanisms has sustained ongoing land conflicts.

Therefore, strengthening the protection of Indigenous land rights requires a comprehensive and integrative approach that includes harmonizing legal regulations, establishing clear procedures for recognizing customary land, enhancing coordination among institutions, and ensuring meaningful participation of Indigenous communities in policy-making and implementation. Adopting a legal pluralism framework that recognizes the coexistence of state and customary law is essential to achieving equitable and sustainable land governance. Ultimately, aligning agrarian reform policies with the rights and lived realities of Indigenous Peoples is crucial for advancing social justice and reducing structural inequalities in land ownership.

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