

The Implications of the Constitutional Court's Ruling on the Protection of Indigenous Peoples' Land in the National Agrarian System

Maisa, Syamsul Haling, Moh. Nafri, Ida Lestiawati, Irmawaty

Universitas Muhammadiyah Palu, Indonesia
Email: maisa.unismuh1@gmail.com

Abstract

This research examines the legal recognition of customary land in Indonesia, reflecting the complexity of the relationship between indigenous communities and the state in managing natural resources within the framework of agrarian legal politics. Legal uncertainty and weak implementation mechanisms affect the recognition of customary land, despite the Constitutional Court Decision No. 35 of 2012 providing a strong legal foundation. Using a qualitative approach, this study analyzes primary and secondary data and conducts in-depth interviews with indigenous communities and legal experts. The findings reveal that despite legal recognition, its implementation on the ground still faces challenges, such as the confiscation of customary land without fair compensation and limited access of indigenous communities to natural resources. Moreover, the involvement of indigenous communities in participatory mapping has proven effective in strengthening customary land claims. This research implies the need to strengthen legal protection mechanisms and increase the involvement of indigenous communities in the recognition and decision-making processes concerning customary land within the broader context of agrarian legal politics in Indonesia.

Keywords: agrarian legal politic; Constitutional Court; customary land; indigenous communities; social justice.

The current situation regarding indigenous land in Indonesia shows significant legal uncertainty (Bedner & Arizona, 2019). This uncertainty arises from the absence of clear and consistent regulations concerning the recognition and protection of indigenous land rights. As a result, indigenous communities face difficulties in defending their ownership rights, particularly when their lands conflict with the interests of the government or corporations (Muntaqo & Pratama, 2024). This situation is

further exacerbated by the discrepancy between customary laws and national laws, which often disadvantages indigenous peoples.

One of the major problems faced by indigenous communities is land grabbing cases involving the government or corporations (Budiman et al., 2020). In many instances, the government or large companies claim indigenous lands for infrastructure development, mining, or large-scale plantations without considering the rights of indigenous peoples who

have lived there for centuries. This land acquisition process is often carried out without adequate compensation, and indigenous communities are not given the choice or opportunity to defend their rights through fair legal channels (Laturette, 2023). This injustice worsens the social and economic conditions of indigenous communities.

Data from the Indigenous Peoples Alliance of the Archipelago (AMAN) reveals that agrarian conflicts involving indigenous lands remain high in Indonesia (Ismia et al., 2019). According to AMAN's data, there are at least 13 cases of land grabbing of indigenous territories, covering approximately 251,000 hectares. These cases occur in various regions of Indonesia and involve conflicts between indigenous communities and stakeholders, including the government and private companies (Nindyatmoko et al., 2022). These conflicts often lead to violence, forced evictions, and the loss of livelihoods for indigenous communities who rely on the land.

The situation of indigenous lands in Indonesia is currently alarming. The lack of adequate legal protection, combined with land grabbing practices by politically and economically powerful entities, places indigenous communities in a very vulnerable position (Jarias, 2020). Efforts to advocate for indigenous land rights require stronger support from various parties, including through legal advocacy and policy reforms related to indigenous land.

The Constitutional Court Decision Number 35 of 2012 had a significant impact on the recognition of indigenous land rights in Indonesia (Notess et al., 2021). This ruling provided constitutional recognition of the rights of indigenous communities over their ancestral lands. It affirmed that customary lands, or *tanah ulayat*, are legally acknowledged as belonging to indigenous peoples, not the state (Zaim et al., 2020). This decision was a monumental step towards ensuring that indigenous land rights are protected under Indonesian law, thereby

strengthening the legal standing of indigenous communities in defending their territories from external claims.

One of the key consequences of the decision was the annulment of regulations that previously classified indigenous land as state land or privately owned (Erwin & Dimiyati, 2019). Prior to the ruling, many indigenous territories were considered state-owned or were sold to private parties without the consent of indigenous communities. The ruling effectively invalidated such claims and provided a legal framework that returned land rights to indigenous communities (Hangabei & Dimiyati, 2021). This has helped prevent further land grabs and recognized indigenous peoples' historical and cultural ties to their land.

However, the implementation of this decision has been slow and inconsistent across various regions. In some areas, local governments have been reluctant or unable to enforce the ruling, leading to continued disputes over land rights (Nasir & Saptomo, 2022). Bureaucratic hurdles, political interests, and a lack of clear guidelines for local authorities have contributed to the uneven application of the Constitutional Court's decision. As a result, while the legal foundation for indigenous land rights has been strengthened, many communities still face challenges in obtaining formal recognition of their lands and securing protection against encroachment by corporations or the government.

This slow implementation underscores the need for stronger commitment from both national and regional governments to ensure that the rights guaranteed by the decision are fully realized in practice (Usop & Roychansyah, 2022). Without consistent enforcement, the legal victories achieved through this decision may not be sufficient to protect indigenous lands from future threats.

The condition of indigenous land ownership in Rongkong, South Sulawesi, after the Constitutional Court's Decision No. 35 of 2012, reflects significant challenges in its

implementation. Although indigenous land is constitutionally recognized, this recognition has not fully materialized on the ground. Rongkong faces bureaucratic obstacles and economic pressures that complicate the process of land acknowledgment. Conflicts often arise between indigenous communities and the government or corporations claiming customary land for development or concessions.

In Ngata Toro, Central Sulawesi, the recognition of indigenous land has been more progressive compared to other regions. Based on the decisions of the Regent of Sigi and the Minister of Environment and Forestry, the Ngata Toro indigenous community has obtained rights to over 23,860 hectares of land. However, challenges remain in ensuring that these rights are protected from exploitation and land conversion for economic purposes by external parties.

In Osin, Madura Island, and the Dayak communities in Kalimantan, indigenous land continues to face numerous issues. Although legally recognized, indigenous land ownership is often disrupted by exploitation and land grabs by politically and economically stronger parties. Formal recognition does not always translate into effective protection on the ground, leaving indigenous communities frequently losing access and control over their ancestral land.

The legal and social challenges in defending indigenous land rights in these areas are closely linked to weak policy implementation, lack of law enforcement, and economic pressures driving resource exploitation. Effective protection requires stronger government commitment and consistent legal reforms.

Previous research relevant to the article's title includes several studies on agrarian law and indigenous land in Indonesia. Muntaqo et al. (2024) examined the evolution of Indonesian agrarian law and how it affects public welfare. The study found that national agrarian law development does not fully align with the mandate of the 1960 Agrarian Law to promote societal well-being. This research emphasizes

the importance of legal frameworks to resolve land conflicts, particularly concerning Ulayat land for development purposes.

Next, Haridison (2024) explored the failure of customary land certification programs in the Dayak community, Kalimantan. The study revealed that conflicts between indigenous and local leadership interests led to a bias in collaborative governance. It highlights the existence of conflicting regional regulations with central government policies, leading to legal uncertainty in recognizing indigenous communities.

In addition, Firmanda et al. (2024) studied the implications of changing the land status of the Talang Mamak indigenous community from customary forest to a national park. Using a sociological law approach, the study found that changes in land status created gaps in land management and limited the indigenous people's rights to their land.

As for Rahmah et al. (2024) examined the legal dilemmas faced by Land Deed Officials (PPAT) under Indonesia's agrarian reform policies. The study found that PPAT officials face significant legal risks when transferring land titles due to procedural discrepancies and a lack of legal protection, emphasizing the need for a stronger indigenous land database at the village level.

While Mujiburohman et al. (2024) analyzed land ownership patterns and legalization in Manggarai Regency. The research concluded that land legalization altered communal land ownership into individual ownership, resulting in the erosion of Ulayat land and weakening traditional values. Overall, these studies reinforce the notion that changes in agrarian law and indigenous land policies in Indonesia significantly affect the welfare of indigenous communities. However, challenges in implementation and legal uncertainties remain key barriers.

Despite the constitutional recognition of indigenous land rights, Indonesia's agrarian law has not provided sufficient legal clarity regarding

the status and protection of ulayat lands. This legal ambiguity creates uncertainty in the protection and management of indigenous lands. The implementation of indigenous land protection policies remains weak, with inconsistent application across regions, leaving many lands unrecognized. Furthermore, local governments have failed to uniformly enforce regional regulations, resulting in unprotected indigenous territories.

Indigenous communities' participation in decision-making processes is still limited, leading to policies that do not fully reflect their interests. Moreover, unresolved land conflicts between indigenous peoples and external parties, such as the government and corporations, persist. Previous studies have not fully addressed these disputes, leaving gaps in legal protection and conflict resolution.

This research is urgent and significant due to the persistent challenges in the recognition and protection of indigenous land rights. The legal uncertainty and weak implementation of agrarian policies create instability that directly impacts the welfare of indigenous communities. In many cases, unresolved land conflicts and ineffective regional regulations hinder the proper acknowledgment of these rights. These findings are crucial as they offer solutions by addressing the root causes of these issues, focusing on establishing clearer legal frameworks and stronger policy enforcement.

Therefore, this study aims to explore the dynamics of indigenous land recognition and protection within Indonesia's agrarian legal framework and to identify the challenges in implementing these policies. It also seeks to provide legal and policy recommendations that can effectively safeguard indigenous land rights in a fair and sustainable manner.

METHODOLOGY

Research Approach

The study employs a qualitative approach aimed at gaining in-depth insights into the

phenomenon of indigenous land protection in Indonesia, particularly after the Constitutional Court's Decision No. 35 of 2012. A qualitative approach is suitable for exploring the perspectives of various actors involved, such as indigenous communities, local governments, corporations, and non-governmental organizations (NGOs), in the process of land recognition and protection (Berg, 2001). Additionally, this approach allows the researcher to map out the issues and potential solutions in resolving agrarian conflicts involving indigenous lands.

Data Sources

The data used in this research consists of two types: primary and secondary data. Primary data is obtained through in-depth interviews with indigenous communities in several areas experiencing agrarian conflicts, such as Rongkong (South Sulawesi), Ngata Toro (Central Sulawesi), Osin (Madura Island), and Dayak communities (Kalimantan). Interviews are also conducted with local government representatives and NGO activists focusing on indigenous land rights advocacy. Secondary data includes relevant legal documents, such as Constitutional Court rulings, national and regional regulations, as well as reports from organizations such as the Indigenous Peoples Alliance of the Archipelago (Leavy, 2014).

Data Collection Techniques

Data collection in this study utilizes semi-structured interviews and document review. Interviews are conducted both in person and online, depending on field conditions. The interview questions focus on the experiences of indigenous communities in defending their land rights and the challenges faced during the legal recognition process. Additionally, this study employs participatory observation, where the researcher interacts directly with indigenous communities in the research locations to understand the social and cultural context surrounding indigenous land issues (Johnson, 2014).

Data Analysis Techniques

The collected data is analyzed using content and thematic analysis techniques. Content analysis is employed to identify key themes emerging from interviews and legal documents. The researcher categorizes the data to uncover patterns and trends related to land recognition and protection in the various research areas. Moreover, data triangulation is conducted by comparing interview findings with legal documents and previous literature to ensure the validity of the findings (Iosifides, 2016).

Validity and Reliability

To ensure the validity and reliability of the data, this study applies source triangulation, where data from various sources (interviews, legal documents, and observations) are compared and verified. Additionally, the researcher performs member-checking by confirming the interview results with the informants to ensure the accuracy of the interpretation.

RESULTS

The research findings reveal significant disparities in the implementation of indigenous land protection policies across various regions in Indonesia, particularly in Rongkong (South Sulawesi), Ngata Toro (Central Sulawesi), Osin (Madura Island), and the Dayak communities in Kalimantan. Although the Constitutional Court Decision No. 35 of 2012 provided a crucial legal foundation for the recognition of indigenous land rights, its application on the ground remains inconsistent, leading to ongoing conflicts between indigenous communities, the government, and corporations.

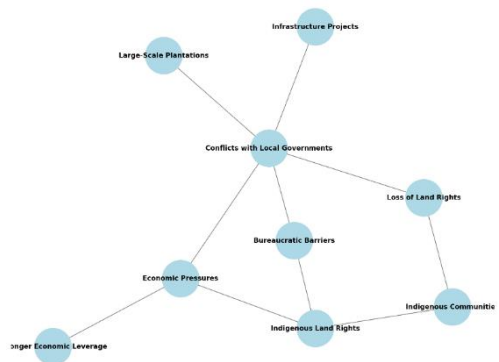


Figure 1 Land Rights Struggles in Rongkong, South Sulawesi

The concept map visualizes the complex interplay between indigenous land rights, bureaucratic barriers, and economic pressures in Rongkong, South Sulawesi. At the core is the issue of indigenous land rights, which are constitutionally recognized but face challenges in formal acknowledgment due to bureaucratic barriers and economic pressures.

These pressures, particularly from local governments and corporate interests, lead to conflicts over land use, especially when infrastructure projects or large-scale plantations are involved. Indigenous communities often struggle in these conflicts, mainly because of the stronger economic leverage held by corporations or government entities. This results in a significant loss of land rights for the indigenous people, affecting their ability to protect their territories and livelihoods. The map highlights the interconnectedness of these factors, illustrating how each element contributes to the ongoing struggles of the indigenous communities in Rongkong.

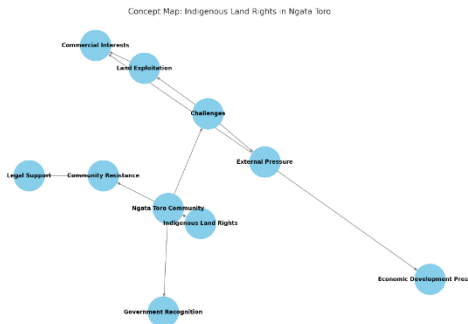


Figure 2 Indigenous Land Rights in Ngata Toro

The concept map highlights the intricate dynamics involved in managing indigenous land rights in Ngata Toro, Central Sulawesi. At the heart of this issue are the Indigenous Land Rights, which are directly tied to the Ngata Toro Community the key stakeholder in the region. The Government Recognition of these land rights is a major milestone for the community, as their ownership of 23,860 hectares of land has been legally recognized by both local authorities and the Ministry of Environment and Forestry. This recognition serves as a legal foundation for their claim over the land.

However, despite this achievement, the community continues to face significant Challenges. The most pressing issue is the persistent threat of Land Exploitation. This exploitation is driven by External Parties, primarily commercial interests like plantation and mining companies, aiming to convert the land for economic development. Such interests are often aligned with national Economic Development Pressure which complicates the efforts to protect indigenous land rights.

In response, the Ngata Toro community is forced to engage in Community Resistance, a constant battle to defend their land from external forces. This resistance is bolstered by Legal Support from NGOs and legal experts, but remains an ongoing challenge, as new threats to the land frequently emerge. The overarching problem is External Pressure which stems from both the commercial interests' profit-driven goals

and the government's focus on economic growth. These combined forces undermine the enforcement of indigenous land rights, placing the community at a continuous disadvantage in protecting their territory.

In summary, the struggle of the Ngata Toro indigenous community illustrates the ongoing tension between legally recognized indigenous rights and the external pressures exerted by commercial interests. This situation underscores the need for stronger legal enforcement and continuous advocacy to preserve and protect the community's land from exploitation.

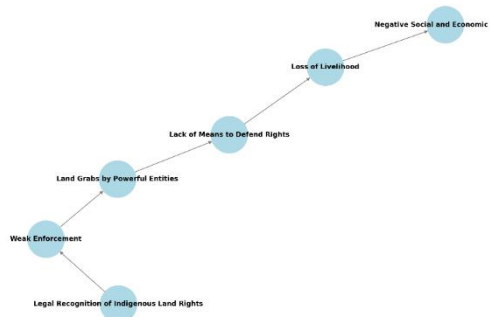


Figure 3 Indigenous Land Rights in Osin, Madura Island

The concept map illustrates the interconnections between key issues related to indigenous land rights in Osin, Madura Island. Firstly, Legal Recognition of Indigenous Land Rights exists, but this formal recognition does not inherently guarantee protection for the indigenous communities. Despite the presence of legal frameworks, Weak Enforcement is evident, meaning that these rights are not effectively upheld by authorities. This lack of enforcement allows Politically and Economically Powerful Entities to exploit the situation, engaging in land grabs and undermining the rights of indigenous communities.

Furthermore, the indigenous communities face a Lack of Means to Defend Their Rights as they often do not possess the financial resources, legal representation, or political influence

necessary to protect their land. This leaves them unable to challenge these powerful entities and results in significant Loss of Livelihood, since the land is the primary source of sustenance, income, and cultural heritage for these communities.

Ultimately, this cascade of issues leads to Negative Social and Economic Impacts such as poverty, displacement, and the erosion of cultural identity. The narrative emphasizes that while legal recognition is a crucial first step, it must be backed by robust enforcement and adequate support to ensure that the rights of indigenous communities are genuinely safeguarded.

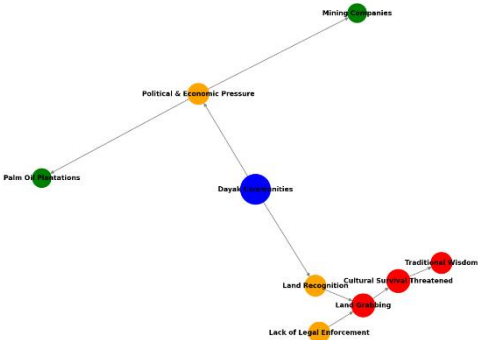


Figure 4 Dayak Community Land Rights Issues

The concept map illustrates the complex and interconnected challenges that the Dayak communities in Kalimantan face regarding their land rights. At the core of these challenges, the Dayak communities are grappling with issues related to land ownership, despite the fact that their ancestral lands are legally recognized. However, this recognition alone does not provide adequate protection, as enforcement on the ground remains weak and ineffective.

External pressures, primarily from powerful political and economic actors such as palm oil plantations and mining companies, further complicate the situation. These actors take advantage of existing legal loopholes, leading to

widespread land grabbing, where indigenous lands are seized without proper consultation or compensation.

The act of land grabbing directly threatens the cultural survival of the Dayak people. As they lose control over their ancestral lands, their traditional wisdom, practices, and cultural identity are at risk of being eroded. This is not just a matter of physical displacement but an existential threat to the community's way of life.

A significant factor contributing to this ongoing problem is the lack of legal enforcement. Even though laws exist to recognize indigenous land rights, the absence of concrete actions to uphold these laws leaves the Dayak people vulnerable to exploitation. As long as legal frameworks remain weak and unenforced, land grabbing will continue, further endangering the Dayak's land and culture.

To address this issue, there is an urgent need for stronger legal protections and enforcement mechanisms. Only by implementing more robust legal frameworks can the Dayak community hope to safeguard their land, preserve their culture, and continue their way of life.

Legal and Bureaucratic Challenges

The research further identifies legal and bureaucratic obstacles as major impediments to the effective implementation of indigenous land protection policies. In many regions, local governments have been slow to act on the Constitutional Court's decision due to unclear guidelines and conflicting political interests. Additionally, the absence of a comprehensive and accessible indigenous land registry exacerbates the situation, making it difficult for indigenous communities to secure formal recognition of their land rights.

Socio-Economic Impact

The socio-economic impact of weak land rights protection is evident in all research areas. Indigenous communities that have lost access to their ancestral lands face economic marginalization and are often pushed into poverty. In many cases, these communities are not adequately compensated for the loss of their

land, and their ability to maintain traditional livelihoods, such as farming and forest management, is severely curtailed. Unresolved land conflicts also exacerbate social tensions within indigenous communities, leading to divisions between those seeking legal redress and those feeling powerless to challenge external claims.

DISCUSSION

The discussion section of a journal article should address the research findings and demonstrate how the results can address the existing gaps, as well as expand or challenge current understanding. In this study, several key gaps were identified in the recognition and protection of indigenous land rights in Indonesia, despite Constitutional Court Decision No. 35 of 2012, which provided a strong legal foundation for these rights, especially in the context of political agrarian law.

First, the research findings reveal disparities in the implementation of indigenous land rights across various regions in Indonesia. While some areas, such as Ngata Toro, have achieved significant progress with the recognition of 23,860 hectares of indigenous land, other regions, such as Rongkong in South Sulawesi and the Dayak communities in Kalimantan, continue to face considerable challenges in securing proper recognition. These findings indicate that, despite a strong legal foundation, its implementation remains far from optimal. This reinforces the notion that there is a gap between the ideal agrarian policies and their practical application on the ground within the framework of political agrarian law.

Second, the gap related to weak law enforcement also emerges as a key issue in this research. Indigenous land rights are often formally recognized, but there is insufficient enforcement, leaving indigenous communities vulnerable to land grabs by corporations and the government. In this context, John Rawls' (1971) theory of social justice is highly relevant, as it

emphasizes that the formal recognition of individual or group rights must be accompanied by fair mechanisms of implementation to achieve true social justice. This research expands the understanding that legal recognition alone is insufficient without strong enforcement and the active participation of indigenous communities, underlining the need for stronger measures within political agrarian law.

Third, this research highlights the importance of indigenous community participation in the process of participatory mapping as an effective strategy to address the gaps in the recognition of indigenous land rights. In the case of Ngata Toro, the active involvement of the community in the mapping process has strengthened their bargaining position in defending land rights and reduced the potential for conflicts. This supports Fahmi's (2024) argument that community involvement in legal processes can strengthen land claims and mitigate the uncertainty surrounding land status, which is a critical issue in the broader discourse of political agrarian law.

The discussion also demonstrates how these findings challenge previous understandings of the effectiveness of agrarian policies in Indonesia. Prior research has largely focused on the formal aspects of legal recognition, but this study shows that without the active participation of indigenous communities and adequate law enforcement, such recognition has little practical impact. Thus, this discussion emphasizes the need for a more holistic approach, involving both community participation and stronger legal enforcement, within the sphere of political agrarian law to address the challenges at hand.

Based on these findings, the research recommends further efforts to strengthen legal frameworks and enhance mechanisms for indigenous land protection more consistently. Local governments need to adopt clearer and more transparent processes for indigenous land recognition and establish mechanisms that facilitate indigenous participation in decision-making. Additionally, the creation of a comprehensive national indigenous land

database is proposed as a solution to improve the recognition and protection of these lands, preventing future conflicts and ensuring that indigenous rights are safeguarded both legally and practically, all within the framework of political agrarian law.

Stronger enforcement mechanisms are also required to ensure that government and corporate actors are held accountable for land-grabbing practices and violations of indigenous rights. Without these reforms, indigenous communities will remain vulnerable to losing their ancestral lands, and the socio-economic consequences of these losses will continue to deepen their suffering. This study makes a significant contribution to expanding the understanding of indigenous land rights protection in Indonesia, while also challenging existing political agrarian law policies and practices by offering more inclusive and just solutions.

CONCLUSION

The conclusion of this research affirms that, despite the strong legal foundation provided by Constitutional Court Decision No. 35 of 2012, significant challenges remain in the implementation of indigenous land rights recognition in Indonesia. These challenges are deeply rooted in the political framework of agrarian law, which shapes the policies governing land rights. The stark differences in the application of land rights recognition across various regions demonstrate that formal legal recognition alone is insufficient to protect the rights of indigenous communities. Weak law enforcement, a lack of indigenous community participation, and external economic pressures are the main obstacles to safeguarding indigenous land. Therefore, this research underscores the importance of a more holistic approach within the agrarian legal politics, which not only involves formal recognition but also more effective enforcement mechanisms and active participation from indigenous communities.

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