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Legal Vacuum in Indigenous Peoples' Legal Representation Regarding Communal Land Rights

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Abstract

The aim of this study is to critically examine the normative vacuum regarding the civil representation of indigenous peoples in Indonesia, with a particular focus on disputes over communal land rights

The method used is a normative legal approach by examining legislative instruments, jurisprudence, and analysis of selected cases, which aims to reveal systemic weaknesses in the legal recognition of indigenous peoples' representatives in the national legal structure.

The novelty lies in its direct involvement in unresolved issues regarding the legitimacy of indigenous community representation in formal judicial and administrative processes, a dimension that has often been overlooked in previous legal studies.

The results of the study propose a reform agenda that includes formal legal recognition of customary leadership structures, the establishment of regulatory norms based on the principle of Free, Prior, and Informed Consent (FPIC), and the adjustment of civil law principles to better reflect the customary-based collective governance systems that exist within indigenous communities and Informed Consent/FPIC, and the adjustment of civil law principles to better reflect the collective customary-based governance system that prevails within indigenous communities.

The conclusion of the research is that in order to respond to these challenges, this paper proposes a reform agenda that includes formal legal recognition of traditional leadership structures, the establishment of regulatory norms based on the principles of Free, Prior, Prior, and Informed Consent (FPIC) principles, and the adjustment of civil law principles to better reflect the collective and customary governance systems common among indigenous communities.

Keywords: Indigenous Peoples' Rights; Civil Representation; Legal Pluralism; Customary Law; Communal Land Governance

Abstrak

Tujuan Penelitian ini untuk mengkaji secara kritis kekosongan norma terkait representasi keperdataaan masyarakat adat di Indonesia, dengan fokus khusus pada sengketa hak atas tanah komunal

Metode Penelitian yang digunakan adalah pendekatan hukum normatif dengan menelaah instrumen peraturan perundang-undangan, yurisprudensi, dan analisis kasus-kasus terpilih, yang bertujuan untuk mengungkap kelemahan sistemik dalam pengakuan hukum terhadap perwakilan masyarakat adat dalam struktur hukum nasional.

Kebaruan ini terletak pada keterlibatannya secara langsung terhadap persoalan yang belum terselesaikan mengenai legitimasi perwakilan masyarakat adat dalam proses peradilan dan

*administrasi formal, suatu dimensi yang kerap diabaikan dalam kajian-kajian hukum sebelumnya.*¹

Hasil penelitian mengajukan agenda reformasi yang mencakup pengakuan hukum secara formal terhadap struktur kepemimpinan adat, pembentukan norma-norma regulatif yang berlandaskan pada prinsip Persetujuan Atas Dasar Informasi di awal tanpa paksaan (Free, Prior, and Informed Consent/FPIC), serta penyesuaian asas-asas hukum perdata agar lebih mencerminkan sistem pemerintahan kolektif berbasis adat yang berlaku di tengah komunitas masyarakat adat. siliasi antara hukum negara dan tradisi hukum adat.

Kesimpulan penelitian untuk menanggapi tantangan-tantangan ini, makalah ini mengusulkan agenda reformasi yang mencakup pengakuan hukum formal terhadap struktur kepemimpinan tradisional, penetapan norma-norma regulasi yang didasarkan pada prinsip Persetujuan Bebas, Sebelumnya, dan Berinformasi (FPIC), serta penyesuaian prinsip-prinsip hukum perdata untuk lebih mencerminkan sistem tata kelola kolektif dan adat yang umum di kalangan komunitas asli.

Kata Kunci: Hak Masyarakat Adat; Perwakilan Keperdataan; Pluralisme Hukum; Hukum Adat; Tata Kelola Tanah Komunal

1. INTRODUCTION

Customary communal land holds a fundamental role in preserving the cultural identity, social cohesion, and economic sustainability of Indigenous communities. In the Indonesian context, such land is not merely a material asset but constitutes an existential foundation passed down through generations. Nonetheless, within the framework of national law, communal land rights remain only partially recognized, often rendering these territories susceptible to agrarian disputes involving state actors or private enterprises.¹

In recent decades, tensions over customary land ownership have escalated. When Indigenous peoples confront development interests, they frequently find themselves at a disadvantage. A significant contributing factor to this inequity is the lack of formal legal recognition for traditional representatives authorized to act on behalf of the community in civil legal proceedings.² This disparity underscores a fundamental disconnect between state legal structures and the sociocultural institutions of Indigenous peoples.

Indigenous groups often lack adequate access to legal counsel, and their traditional representatives are not consistently acknowledged in formal adjudicative processes. This situation reflects the failure of the prevailing legal system to meaningfully incorporate collective legal practices rooted in customary norms. Consequently, Indigenous communities

¹ Sumarni Sumarni, Muhammad E Wijaya, and Astrid M Sugiana, "Safeguarding Indigenous Rights and Territories: Integrating Dayak Ngaju Wisdom in Peatland Ecosystem Management," *Udayana Journal of Law and Culture* 7, no. 2 (2023): 121, <https://doi.org/10.24843/ujlc.2023.v07.i02.p01>.

² Chairul Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights," *Journal of Indonesian Legal Studies* 8, no. 2 (2023), <https://doi.org/10.15294/jils.v8i2.68419>; Muhammad Akbar et al., "The Progressive Legal Perspective of Legal Justice in Customary Dispute Resolution Related to Natural Resources," *Jurnal Ius Kajian Hukum Dan Keadilan* 11, no. 2 (2023), <https://doi.org/10.29303/ius.v11i2.1252>.

are rendered vulnerable in judicial forums, particularly in matters involving disputes over ancestral lands.³

The legal ambiguity surrounding the authority of traditional representatives in civil land disputes poses a serious obstacle to the protection of Indigenous rights. In the absence of explicit legal provisions defining their legitimacy, customary representatives are left in a precarious position, susceptible to exclusion or delegitimization within formal legal mechanisms. This normative gap creates opportunities for more powerful actors to manipulate legal proceedings to the detriment of Indigenous stakeholders.⁴

Although various studies have examined the recognition of Indigenous land rights, these works have predominantly focused on sociological or economic dimensions. There remains a marked deficiency in legal scholarship that centers on the formal status of customary legal representation within the national legal framework.⁵ This research seeks to address that gap by focusing specifically on the legal recognition of traditional representatives in civil legal contexts.

The primary aim of this study is to investigate the legal vacuum regarding the recognition of customary legal representation in communal land disputes involving Indigenous communities. Additionally, the research aspires to propose legal reforms that would enable the Indonesian legal system to effectively accommodate the collective representation structures inherent in Indigenous societies.⁶

Unlike previous scholarship, which tends to generalize Indigenous land rights or concentrate on broader agrarian conflicts, this study narrows its focus to the question of legal standing and representation in formal judicial forums. In doing so, it offers a more pointed legal analysis of the systemic barriers faced by Indigenous communities when asserting their land rights within the prevailing civil law system.⁷

This inquiry is grounded in the theory of legal pluralism, which acknowledges the coexistence of multiple legal systems within a single national jurisdiction. Such a perspective is vital in understanding that customary law cannot be marginalized in a multicultural legal landscape. In addition, the principle of access to justice provides a normative foundation for

³ Iwan Permadi, Weny A Dungga, and Azhani Arshad, "Ensuring Indigenous People's Rights Protection Through Normative Law in Land Acquisition for Indonesia's New National Capital City, Nusantara," *Jambura Law Review* 7, no. 1 (2024): 30–54, <https://doi.org/10.33756/jlr.v7i1.24930>.

⁴ Yanto Sufriadi, Laily Ratna, and Syarifudin Syarifudin, "The Violence in Conflict of Natural Resources Tenure Rights-Companies vs Traditional Communities in Indonesia," *Uum Journal of Legal Studies* 15, no. 1 (2024): 197–220, <https://doi.org/10.32890/uumjls2024.15.1.9>; Sahlan, Nurul Miqat, and Susi Susilawati, "Realizing 'Deconstructional' Justice Through Agrarian Civil Law Reform: A Review of Jacques Derrida's Theory," *Jurnal Ius Kajian Hukum Dan Keadilan* 12, no. 3 (2024): 588–606, <https://doi.org/10.29303/ius.v12i3.1559>.

⁵ Rachael Asher, "Unresolved Injustice: An Examination of Indigenous Legal Issues in Australia," *Udayana Journal of Law and Culture* 4, no. 2 (2020): 146, <https://doi.org/10.24843/ujlc.2020.v04.i02.p02>; M H R Tampubolon, "Legal and Problematic Protection of Social Movements to the Tau Taa Wana Indigenous People," *Substantive Justice International Journal of Law* 3, no. 2 (2020): 147, <https://doi.org/10.33096/substantivejustice.v3i2.77>.

⁶ Mohammad Jamin et al., "Legal Protection of Indigenous Community in Protected Forest Areas Based Forest City," *Bestuur* 10, no. 2 (2022): 198, <https://doi.org/10.20961/bestuur.v10i2.66090>.

⁷ Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights."

advocating inclusive legal mechanisms that enable equal legal participation for all, including Indigenous populations.⁸

Recognizing the formal role of traditional representatives within the national legal structure offers a pathway toward redressing long-standing legal asymmetries. This recognition goes beyond procedural legitimacy and speaks to the substantive justice owed to Indigenous communities whose legal systems operate according to their own socio-legal norms. Strengthening the legal status of these representatives is therefore essential for ensuring equitable access to legal remedies and negotiations.

A significant body of work has explored the rights of Indigenous peoples, particularly in relation to communal land ownership in Indonesia. However, a critical gap remains in addressing the legal representation of Indigenous peoples in formal judicial proceedings, specifically in land disputes involving communal territories. The following studies are pertinent to the topic:

The study by Sumarni, Sumarni, Muhammad E Wijaya, and Astrid M Sugiana (2023), titled "*Safeguarding Indigenous Rights and Territories: Integrating Dayak Ngaju Wisdom in Peatland Ecosystem Management*", focuses on the integration of Indigenous knowledge in the management of peatland ecosystems. While their work is pivotal in highlighting the environmental significance of Indigenous practices, it does not address the issue of legal representation for Indigenous peoples in disputes concerning communal land in formal judicial settings.⁹ This research, therefore, diverges by emphasizing the recognition of Indigenous leaders as legitimate representatives in civil court cases.

In Chairul Fahmi et al.'s (2023) article "*Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights*", the authors delve into the legal recognition of Indigenous peoples under both national and international law. Despite its relevance to the acknowledgment of Indigenous rights, this study does not address the question of legal representation in formal civil disputes, especially in cases involving communal land.¹⁰ Our research fills this gap by discussing the legal void regarding who is legally authorized to represent Indigenous communities in formal legal proceedings and proposes the use of legal pluralism as a solution.

Similarly, Muhammad Akbar et al. (2023), in their article "*The Progressive Legal Perspective of Legal Justice in Customary Dispute Resolution Related to Natural Resources*",

⁸ Donna O Setiabudhi et al., "The Role of Land Management Paradigm Towards Certainty and Justice," *Bestuur* 11, no. 1 (August) (2023): 43, <https://doi.org/10.20961/bestuur.v11i1.71710>; Cita Y Serfiyani, Ari Purwadi, and Ardhiwinda Kusumaputra, "Declarative System in Preventing the Criminalisation of Indigenous People for Adat Rights Conflicts in Indonesia," *Sriwijaya Law Review*, 2022, 254–67, <https://doi.org/10.28946/slrev.vol6.iss2.1359>.pp254-267.

⁹ Muhammad E Wijaya Sumarni Sumarni Astrid M Sugiana, "Safeguarding Indigenous Rights and Territories: Integrating Dayak Ngaju Wisdom in Peatland Ecosystem Management," *Udayana Journal of Law and Culture* 7, no. 2 (2023), <https://doi.org/10.24843/ujlc.2023.v07.i02.p01>.

¹⁰ Chairul Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights," *Journal of Indonesian Legal Studies* 8, no. 2 (2023), <https://doi.org/10.15294/jils.v8i2.68419>.

examine justice in the resolution of disputes involving Indigenous communities through customary legal systems. Although their research contributes to understanding justice in Indigenous dispute resolution, it does not address the role of legal representation in formal legal systems.¹¹ This research introduces a new approach by integrating customary law with state law, focusing on how Indigenous communities can be represented effectively in civil land disputes.

Farida Patittinggi (2020), in her article *"New Paradigm in Natural Resources Management: Securing Indigenous Peoples' Rights"*, proposes a new framework for managing natural resources to protect Indigenous rights. However, her research does not explore the issue of who can represent Indigenous peoples in formal legal disputes.¹² Our research complements her work by focusing on the lack of regulatory clarity regarding legal representation in civil disputes, particularly in the context of land rights, and advocates for the recognition of Indigenous leaders as legitimate representatives in legal proceedings.

Finally, Saher R A Ketaren and M R Y Prawira (2024) in their study *"Unheard Voices: Analyzing Non-Compliance With the FPIC Principle in Protecting Indigenous Peoples' Rights in Indonesia"* analyze the non-compliance with the Free, Prior, and Informed Consent (FPIC) principle.¹³ While their research is crucial for understanding how the rights of Indigenous peoples are safeguarded, it does not address the issue of legal representation in civil court. This article proposes legal reforms to recognize Indigenous leadership structures as legitimate representatives in communal land disputes.

This research contributes to the existing literature by focusing on the legal representation of Indigenous peoples in civil judicial proceedings concerning communal land disputes. While much of the existing research has concentrated on land rights and natural resource management, this work specifically addresses the issue of who can legally represent Indigenous communities in formal legal disputes. The novelty of this study lies in its application of legal pluralism, proposing reform within Indonesia's legal system to allow for the formal recognition of Indigenous leaders as legitimate legal representatives in civil litigation related to communal land.

Our research fills a critical void by emphasizing the need for legal acknowledgment of Indigenous leadership structures in legal proceedings, especially in land disputes involving the state or corporations. The study also introduces a pluralistic legal approach, advocating for the integration of both state law and customary law, enabling a more inclusive legal framework for Indigenous communities in Indonesia.

¹¹ Muhammad Akbar et al., "The Progressive Legal Perspective of Legal Justice in Customary Dispute Resolution Related to Natural Resources," *Jurnal Ius Kajian Hukum Dan Keadilan* 11, no. 2 (2023), <https://doi.org/10.29303/ius.v11i2.1252>.

¹² Farida Patittinggi, "New Paradigm in Natural Resources Management: Securing Indigenous Peoples Rights," *Hasanuddin Law Review* 6, no. 1 (2020): 56, <https://doi.org/10.20956/halrev.v6i1.2267>.

¹³ Saher R A Ketaren and M R Y Prawira, "Unheard Voices: Analyzing Non-Compliance With the FPIC Principle in Protecting Indigenous Peoples' Rights in Indonesia," *Law Development Journal* 6, no. 4 (2024): 478, <https://doi.org/10.30659/lcj.6.4.478-502>.

This article argues that the legal representation of Indigenous peoples in communal land disputes in Indonesia is insufficiently recognized under the national legal system, necessitating reform to formally acknowledge Indigenous leadership structures as legitimate representatives in civil legal proceedings. By leveraging the concept of legal pluralism, this article advocates for systemic changes within the Indonesian legal framework, proposing the recognition and accommodation of Indigenous representatives in the legal process to ensure that their rights and interests in land disputes are adequately protected.

2. METHOD

This research adopts a normative legal approach (doctrinal legal research) to examine the regulatory frameworks governing the legal representation of Indigenous communities in the context of communal land rights. The research centers on the evaluation of Article 7 of Law 12/2011 mandates the recognition of Indigenous legal communities and their customary land rights, requiring both national and regional regulations to protect these rights. It also acknowledges the role of customary law in managing land and resolving disputes within Indigenous communities. Additionally, Article 18B(2) of the 1945 Constitution affirms that Indigenous peoples are integral to Indonesia's identity. The Constitutional Court Decision No. 35/2012 further protects Indigenous land rights by ruling that customary land cannot be classified as state owned forests, legal norms, statutes, and jurisprudence to determine the extent to which existing legal provisions effectively safeguard the rights of Indigenous peoples. The legal analysis incorporates three primary methods: the statutory approach, which examines key legislation such as the 1945 Constitution, the Basic Agrarian Law, and relevant local regulations to identify normative gaps impeding formal recognition of customary land the conceptual approach, applied to explore the integration of core legal notions such as customary law, land rights, and collective representation within the national legal system and their implications for Indigenous legal standing and the case-based approach, which involves the analysis of selected land disputes involving Indigenous communities to assess how legal norms are applied in practice and the challenges faced in litigation processes to support this doctrinal inquiry, the research draws upon primary legal materials, including the Basic Agrarian Law, Constitutional Court decisions, and regional regulations addressing Indigenous and communal land rights,secondary sources, such as scholarly literature, journal articles, and prior legal studies that elaborate on customary law and agrarian justice and tertiary references, including legal dictionaries, encyclopedias, and interpretative texts that aid in clarifying legal terminology and conceptual understanding. This combination of sources provides a comprehensive foundation for legal interpretation and ensures analytical rigor in addressing the challenges surrounding Indigenous legal representation in Indonesia.

3. DISCUSSION

3.1 The Legal Construction of Communal Rights and the Legal Standing of Customary Law Subjects in the Indonesian Legal System

Indigenous communal land in Indonesia plays a pivotal role in preserving the cultural integrity, livelihood, and social cohesion of traditional communities. These lands are not merely

economic resources but are imbued with deep cultural and spiritual significance. Communal land is often governed collectively under customary norms and legal traditions recognized within the community itself.¹⁴ However, within Indonesia's positive legal framework, regulations concerning communal land rights remain inadequate and lack enforceable clarity. The absence of strong legal recognition has created a significant degree of legal uncertainty, often to the detriment of Indigenous groups whose existence is intrinsically tied to the land they occupy.

The legal status of Indigenous peoples in Indonesia is complex and, in many cases, ambiguous. While traditional communities are generally acknowledged as collective legal subjects, they are not recognized as legal entities in the formal sense under national law.¹⁵ This has led to structural difficulties, especially when communities engage in land disputes with state actors or private entities. Frequently, their land claims are disregarded or declared invalid due to the absence of formal legal standing, resulting in systemic rights violations and exploitation.¹⁶ The imbalance between Indigenous communities and legally recognized institutions has consequently deepened.

A significant exacerbating factor is the persistent legal vacuum surrounding the protection of Indigenous rights. Although Article 18B of the 1945 Constitution guarantees recognition of Indigenous customary rights, in practice, these constitutional principles are not adequately reflected in statutory or judicial enforcement.¹⁷ The gap between constitutional ideals and on-the-ground realities highlights the disjuncture Indigenous communities face when seeking formal recognition of their communal land in legal forums.

One critical obstacle to effective legal representation is the lack of access to legal information and judicial processes. Many members of Indigenous communities are unfamiliar with formal legal procedures, limiting their capacity to assert their rights through litigation or negotiation.¹⁸ This lack of legal literacy marginalizes their role in decision-making processes concerning land governance, further silencing their voices in policy discourse.

The problem is compounded by weak law enforcement mechanisms, which fail to prevent unlawful appropriation of Indigenous land. In numerous documented instances, communal lands have been transferred to third parties without free, prior, and informed consent from the rightful community.¹⁹ Such circumstances give rise to prolonged disputes between Indigenous peoples and entities—public or private—that assert competing claims over the same territory.

¹⁴ Sufriadi, Ratna, and Syarifudin, "The Violence in Conflict of Natural Resources Tenure Rights- Companies vs Traditional Communities in Indonesia."

¹⁵ Sumarni, Wijaya, and Sugiana, "Safeguarding Indigenous Rights and Territories: Integrating Dayak Ngaju Wisdom in Peatland Ecosystem Management."

¹⁶ Setiabudhi et al., "The Role of Land Management Paradigm Towards Certainty and Justice."

¹⁷ Harry Purwanto, "Safeguarding the National Airspace of Indonesia Under the Framework of International Air Law," *Jurnal Hukum Novelty* 12, no. 2 (2021): 191, <https://doi.org/10.26555/novelty.v12i2.a18528>.

¹⁸ Asher, "Unresolved Injustice: An Examination of Indigenous Legal Issues in Australia."

¹⁹ Nashriana Nashriana et al., "Enhancing Restorative Justice in Indonesia: Exploring Diversion Implementation for Effective Juvenile Delinquency Settlement," *Sriwijaya Law Review*, 2023, 318–34, <https://doi.org/10.28946/slrev.vol7.iss2.2427.pp318-334>.

The marginalization of Indigenous communities is further reinforced by the failure of national legal institutions to appreciate and incorporate traditional knowledge systems related to sustainable land management. Instead, the legal system predominantly adopts a formalistic and positivist approach, disregarding customary practices that emphasize ecological stewardship and communal responsibility.²⁰ This results in both legal and ecological injustices, where traditional practices are neither recognized nor rewarded.

Despite several legislative and policy efforts to strengthen Indigenous rights, the implementation of such reforms has been inconsistent and insufficient.²¹ Many Indigenous communities continue to feel that their land rights are inadequately protected by national law, and that their participation in relevant legal or administrative processes is minimal. These experiences underscore the urgent need for reform to establish legal mechanisms that reflect the social realities of Indigenous governance.

On the international level, several legal instruments such as ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)—affirm the rights of Indigenous peoples to land and self-determination.²² However, a central challenge in Indonesia remains the effective incorporation of these international standards into the domestic legal system. Enhanced implementation of these norms is essential to reinforce national legal protections and ensure compliance with global human rights commitments.

Addressing the current legal vacuum requires a multidimensional approach that incorporates both positive law and customary legal traditions.²³ Legal reform must be accompanied by an inclusive policy framework that values the unique identity and practices of Indigenous communities. Through such recognition, Indigenous peoples may obtain stronger legal standing and be shielded from further marginalization.

The recognition and protection of communal land rights for Indigenous peoples are contingent upon the development of inclusive and coherent legal frameworks. The lack of clear statutory provisions regarding their status and rights has resulted in both legal failures and broader social injustice. Therefore, it is imperative to build a transparent and equitable legal system that not only protects Indigenous rights but also facilitates their meaningful participation in decision-making processes affecting their land and cultural survival.

The legal framework surrounding customary rights and the status of customary law subjects in Indonesia is crucial for understanding the legal vacuum affecting the civil

²⁰ Dhaniar E Budiastanti et al., "Compensation for Land Rights Holders According to the Land Acquisition Law," *Jurnal Cakrawala Hukum* 13, no. 2 (2022): 135–44, <https://doi.org/10.26905/ijch.v13i2.7970>.

²¹ Utji S W Wuryandari, Anggi D Chairani, and Myrna A Safitri, "Weak Investment Law Enforcement in Land and Forest Fire Cases in Indonesia," *Substantive Justice International Journal of Law* 5, no. 2 (2022): 205, <https://doi.org/10.56087/substantivejustice.v5i2.204>.

²² Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights."

²³ Ricco S Yubaidi, Mazliza Mohamad, and Saidatul N A Aziz, "Land Registration Acceleration in Indonesia: A Lesson-Learned Guideline From Land Registration Issues in Malaysia," *Uum Journal of Legal Studies* 13, no. No.1 (2022): 155–74, <https://doi.org/10.32890/uumjls2022.13.1.7>.

representation of Indigenous peoples in communal land disputes. Customary rights, rooted in the traditions and norms of Indigenous communities, are often acknowledged within Indigenous governance structures but remain insufficiently recognized within the formal, state-sanctioned legal system. For Indigenous peoples to receive valid legal representation in civil matters, positive law, including statutory law, regulations, and jurisprudence, must explicitly integrate customary law. In Indonesia, Article 18B(2) of the 1945 Constitution acknowledges Indigenous communities; however, while this constitutional recognition exists, it frequently fails to ensure that Indigenous leaders are formally authorized to represent their communities in civil land disputes. Additionally, Article 7 of Law 12/2011 mandates the formal recognition of Indigenous communities and their rights, yet a significant gap persists in empowering Indigenous leaders to act as legitimate legal representatives in official legal proceedings. This gap is compounded by the Basic Agrarian Law (UUPA), which often conflicts with customary law, and regional regulations (Perda), which may inadequately protect customary land rights. While the Constitutional Court Decision No. 35/2012 reinforces Indigenous land rights by ruling that customary lands cannot be classified as state-owned forests, it does not sufficiently address the issue of customary law subjects having formal legal representation in court proceedings. This legal void highlights the urgent need for reform, especially to ensure Indigenous leaders are formally recognized as legitimate legal representatives in land-related legal disputes. Such reform requires the integration of customary law into positive law, allowing customary law subjects to be legally represented in judicial processes and enabling Indigenous communities to safeguard their land rights and traditional governance systems more effectively.

3.2 The Legal Vacuum in Civil Representation

Indonesia faces a pressing legal gap regarding Indigenous legal representation in civil matters especially in relation to who holds legitimate authority to act for customary communities in transactions and disputes. While constitutional recognition of Indigenous communities exists under Article 18B of the 1945 Constitution, statutory frameworks remain ambiguous. No clear legal provision defines which individuals or entities may lawfully represent Indigenous groups in legal proceedings, creating ambiguity when these communities confront land or resource conflicts that demand formal representation.²⁴

This regulatory void is especially evident in conflicts involving state agencies or private corporations. Indigenous communities often lack access to legally recognized advocates capable of defending their interests. Legal rules and procedures tend to favor corporate or governmental actors, compounding Indigenous marginalization by sidelining their customary norms in formal adjudication.²⁵

²⁴ Sufriadi, Ratna, and Syarifudin, "The Violence in Conflict of Natural Resources Tenure Rights- Companies vs Traditional Communities in Indonesia."

²⁵ Hengki Firmando et al., "Land as the Soul of the Nation: Implications of the Transition of Land Status in the Talang Mamak Customary Law Community," *Malaysian Journal of Syariah and Law* 12, no. 1 (2024): 148–56, <https://doi.org/10.33102/mjsl.vol12no1.484>.

The disconnect between formal notions of representation under national law and customary practices deepens the problem. Indigenous communities traditionally delegate authority to elders or customary leaders (*ninik mamaik*) based on consensus rather than formal legal credentials. Such norms frequently go unrecognized in court, exposing Indigenous litigants to systemic disadvantage.²⁶

Several landmark judgments illustrate this representational ambiguity. Constitutional Court *Decision No. 35/PUU-X/2012* affirmed the existence of customary forest rights but neglected to specify who is authorized to represent communities in asserting those rights.²⁷ The ruling symbolically advanced Indigenous rights but lacked procedural clarity—essentially leaving communities without recognized legal voice.

Similarly, Supreme Court *Decision No. 65/PDT.G/2017* addressed a land dispute involving Indigenous claimants yet ignored their customary leadership structures. The court's failure to engage with traditional authorities rendered the outcome misaligned with Indigenous legal frameworks, ultimately undermining fair representation.²⁸

This representational vacuum leaves Indigenous communities vulnerable. without legally defined representatives recognized under formal law, their claims are easily dismissed or bypassed. Those with greater economic and legal power exploit ambiguities to displace communities from ancestral lands.

Therefore, urgent legal reform is needed to codify who may represent Indigenous communities in civil proceedings. Legislation must define the qualifications and recognition of Indigenous representatives grounded in customary norms, ensuring that representatives uphold community legitimacy and cultural integrity.²⁹

Such reform requires inclusive stakeholder engagement government institutions, Indigenous organisations like AMAN, NGOs, and academic experts to craft legislation that harmonizes customary governance systems with national legal norms.³⁰ This approach would enhance procedural fairness while respecting Indigenous legal pluralism.

Indonesia's current legal framework fails to bridge the gap between constitutional recognition of Indigenous rights and practical, enforceable mechanisms for representation. Without explicit legal recognition of customary representatives, Indigenous communities remain institutionally marginalized. To remedy this, Indonesia must reform its legal and procedural systems ensuring formal recognition of Indigenous representation and integrating customary legal principles into its civil justice system, advancing both legal certainty and substantive justice.

²⁶ Patittinggi, "New Paradigm in Natural Resources Management: Securing Indigenous Peoples Rights."

²⁷ Patittinggi.

²⁸ Sufriadi, Ratna, and Syarifudin, "The Violence in Conflict of Natural Resources Tenure Rights- Companies vs Traditional Communities in Indonesia."

²⁹ Sahlan, Miqat, and Susilawati, "Realizing 'Deconstructional' Justice Through Agrarian Civil Law Reform: A Review of Jacques Derrida's Theory."

³⁰ Mohammad Jamin et al., "The Impact of Indonesia's Mining Industry Regulation on the Protection of Indigenous Peoples," *Hasanuddin Law Review* 9, no. 1 (2023): 88, <https://doi.org/10.20956/halrev.v9i1.4033>.

The legal vacuum regarding the legal representation of Indigenous communities in communal land disputes arises from the insufficient formal recognition of customary law and the legal status of customary law subjects within Indonesia's positive legal system. This vacuum affects the ability of customary leaders and their legal representatives to act on behalf of their communities in formal legal processes, particularly in civil land disputes. Although constitutional and statutory recognition exists for Indigenous communities and their rights, the existing legal norms fail to provide a clear and enforceable pathway for the legitimate representation of these communities in land disputes.

Article 18B(2) of the 1945 Constitution acknowledges the existence of Indigenous communities and their customary rights, but it does not grant formal authorization to customary leaders as legal representatives in civil matters, especially those involving land ownership or dispute resolution. This normative gap is not explicitly addressed within the current legal framework. The Basic Agrarian Law (UUPA), which governs land ownership in Indonesia, does not recognize the role of customary law in land ownership, creating a legal conflict between state land law and customary land rights. Moreover, while Article 7 of Law No. 12/2011 mandates the recognition of Indigenous communities, it does not clearly outline the role of customary leaders as legal representatives in formal legal disputes. Consequently, this legal vacuum prevents Indigenous communities from accessing formal justice in land disputes.

The Constitutional Court's Decision No. 35/2012 strengthened the protection of Indigenous land rights by declaring that customary land cannot be classified as state forest land; however, this decision does not sufficiently address the formal recognition or endorsement of customary leaders in representing their communities in legal matters. This absence of recognition further exacerbates the legal vacuum, as customary leaders continue to face challenges in advocating for their communities' rights in civil courts.

Thus, the factual-normative issue lies in the inadequate legal framework that fails to regulate the formal recognition of customary legal representatives in civil litigation processes. Customary leaders remain unrecognized within the civil justice system, and this absence creates barriers for Indigenous communities to effectively assert their land rights in court. The existing legal vacuum underscores the need for normative reform to acknowledge the role of customary law and customary law subjects within Indonesia's formal legal system.

3.3 The Impact of Legal Vacuums on the Protection of Indigenous Peoples' Rights

The absence of a clear legal framework regarding civil representation for Indigenous peoples in Indonesia has resulted in profound implications for the protection of their rights, particularly concerning communal land ownership. This legal void manifests in three interconnected areas of concern: the risk of misrepresentation, the weakened bargaining position of Indigenous communities in land-related transactions and disputes, and systemic barriers to accessing formal legal mechanisms. These issues reflect not only technical legal deficiencies but also a broader failure to recognize and accommodate the unique sociocultural and legal systems of Indigenous communities.

One of the most immediate consequences of this legal vacuum is the prevalence of fraudulent claims to Indigenous legal representation. In the absence of explicit statutory criteria defining who may legitimately act on behalf of Indigenous groups, the space is left open for external actors to exploit this ambiguity. In numerous cases, individuals or third parties have falsely assumed the role of legal representatives, engaging in unauthorized transactions involving communal land for personal or corporate gain. Such fraudulent representation has led to the dispossession of Indigenous communities and significantly eroded trust in the legal system.³¹ A notable instance occurred in the Talang Mamak community of central Sumatra, where an unauthorized actor sold agricultural land to a private company without the community's consent or legitimate mandate. This case underscores the urgent need for legal clarity to prevent such exploitation.³²

Closely tied to this issue is the disadvantaged negotiating position of Indigenous peoples in agrarian disputes and land transactions. Without formal legal recognition of their rights and representative structures, Indigenous communities are often at a stark disadvantage when engaging with state or corporate actors. Their lack of officially recognized documentation renders them vulnerable to coercive agreements and unfair land transfers. In contrast, their counterparts—armed with institutional support and legal expertise are better positioned to assert and protect their interests.³³ For example, in a 2024 dispute in Central Kalimantan, an Indigenous community lost control over its ancestral lands following a land acquisition process by a palm oil corporation. Despite their longstanding stewardship over the land, the absence of formal legal recognition made it nearly impossible for them to assert a valid claim.³⁴

Furthermore, the legal disenfranchisement of Indigenous communities is exacerbated by their limited access to formal legal systems. Complex procedural requirements, linguistic and cultural differences, and a lack of legal literacy often prevent these communities from effectively participating in judicial processes. Many are unaware of the mechanisms available to defend their rights and lack legal representation that understands their customary context.³⁵ This structural exclusion is vividly illustrated in a case from West Nusa Tenggara, where an Indigenous group repeatedly failed to assert their land rights due to their legal counsel's inability to engage with Indigenous legal values and procedures. As a result, the legal process became both protracted and ineffective.³⁶

³¹ Firmanda et al., "Land as the Soul of the Nation: Implications of the Transition of Land Status in the Talang Mamak Customary Law Community."

³² Patittinggi, "New Paradigm in Natural Resources Management: Securing Indigenous Peoples Rights."

³³ Soelistyowati Soelistyowati, "Reassessing State Responsibility for Indigenous Rights to Natural Resources Based on Justice Principle," *Jambe Law Journal* 7, no. 1 (2024): 149–67, <https://doi.org/10.22437/home.v7i1.347>.

³⁴ Permadi, Dungga, and Arshad, "Ensuring Indigenous People's Rights Protection Through Normative Law in Land Acquisition for Indonesia's New National Capital City, Nusantara."

³⁵ Tampubolon, "Legal and Problematic Protection of Social Movements to the Tau Taa Wana Indigenous People."

³⁶ Sumarni, Wijaya, and Sugiana, "Safeguarding Indigenous Rights and Territories: Integrating Dayak Ngaju Wisdom in Peatland Ecosystem Management."

Collectively, these factors paint a troubling picture of structural inequity, where legal ambiguity facilitates the dispossession of Indigenous communities while denying them meaningful participation in legal decision-making. The legal system, as it currently stands, often overlooks the communal and customary basis of Indigenous legal authority and instead favors formalistic, individualistic approaches that are ill-suited to Indigenous governance models.

In response, it is essential that legal reforms be introduced to close this normative gap and secure effective civil representation for Indigenous communities. Such reforms should entail the codification of criteria for legitimate representation, grounded in both statutory recognition and the internal governance practices of Indigenous societies. This would ensure that those acting on behalf of Indigenous communities possess both legal and cultural legitimacy, thereby preventing further fraudulent activity and bolstering the community's confidence in formal legal institutions.³⁷

Moreover, these reforms must be participatory, inclusive of Indigenous voices, and attentive to the practical barriers that have historically excluded them from legal discourse. Collaborative policymaking integrating governmental authorities, civil society, legal scholars, and Indigenous leaders is indispensable to formulating laws that not only recognize Indigenous rights but also operationalize them in ways that are accessible, enforceable, and respectful of Indigenous legal traditions.³⁸

Ultimately, the issue of legal voids in civil representation for Indigenous peoples is not merely an administrative deficiency, it is a matter of justice and human rights. It exposes a critical disjuncture between constitutional recognition and legal practice, where rights acknowledged on paper are denied in practice. Addressing this gap is vital not only to protect the interests of Indigenous peoples but also to demonstrate Indonesia's commitment to upholding the rule of law and social equity.

As part of this commitment, greater attention must also be paid to the affordability and transparency of legal processes. Legal costs remain a major deterrent for Indigenous groups, as do opaque judicial procedures that alienate non-expert participants. Without concrete efforts to reduce these barriers, formal legal protections will remain illusory for those who most need them.

Hence, any meaningful effort to safeguard Indigenous rights must go beyond declaratory legislation. It must entail systemic reform aimed at strengthening legal institutions, educating legal practitioners on Indigenous legal systems, and establishing accessible avenues through which Indigenous communities can claim their rights.

Equally important is the need to recognize Indigenous law not merely as a cultural artifact but as a living legal system with equal status. Harmonizing customary and national legal norms can foster legal pluralism and ensure that state law reflects the diversity of its

³⁷ Salsabila R Aisy et al., "Customary Criminal Law in the Eastern of Indonesia: The Special Autonomy Province of Papua," *Borobudur Law Review* 3, no. 2 (2021): 148–60, <https://doi.org/10.31603/burrev.5553>.

³⁸ Cekli S Pratiwi, "Bridging the Gap Between Cultural Relativism and Universality of Human Rights: Indonesia Attitudes," *Journal of Indonesian Legal Studies* 5, no. 2 (2020): 449–78, <https://doi.org/10.15294/jils.v5i2.39271>.

constituents. Only by doing so can Indonesia build a legal order that is inclusive, equitable, and truly reflective of its multicultural identity.

Bridging the gap created by the absence of clear civil representation laws for Indigenous communities demands urgent and sustained action. Legal reform, inclusive policymaking, and institutional innovation are essential to ensuring that Indigenous peoples are not only recognized but also empowered within the legal system. Through such measures, the state can fulfill its constitutional and moral obligation to protect the collective rights of Indigenous peoples and restore justice where it has long been denied.

3.4 Formulation of Legal Proposals to Fill the Legal Vacuum

The absence of a clear legal framework regarding the civil representation of indigenous communities in Indonesia particularly with respect to their communal land rights—reveals a pressing need for comprehensive legal reform. While constitutional recognition of indigenous peoples exists, its practical enforcement remains weak, often leaving indigenous communities without adequate legal mechanisms to defend their collective interests. In response to this normative gap, several strategic approaches are necessary to ensure the protection and legal empowerment of indigenous peoples. These approaches include the formal recognition of traditional representative structures, the establishment of new normative regulations, the adaptation of civil law doctrines to accommodate communal legal traditions, and the integration of participatory, educational, and collaborative practices both domestically and internationally.

A key starting point in this reform agenda is strengthening legal recognition for indigenous representative institutions. Traditional leadership systems within indigenous communities often based on ancestral lineage, consensus, or customary authority—must be formally acknowledged through national and local legal instruments. This includes determining, through clear regulatory provisions, who is entitled to represent indigenous groups in legal transactions and disputes. By ensuring legal clarity in representation, the risk of fraudulent claims and unauthorized representation can be substantially reduced. The protection of collective land rights under frameworks such as the ILO Convention No. 169 reinforces the importance of recognizing indigenous governance structures as legitimate actors in resource management and legal advocacy.³⁹ Nevertheless, many indigenous groups in Indonesia still lack formal legal recognition, necessitating not only symbolic acknowledgements but practical, enforceable legislation that is operational at the local level.⁴⁰

To complement this recognition, the formulation of new legal norms is essential. These could take the form of national regulations or regional bylaws aimed at addressing the unique legal status and rights of indigenous communities. A key element in this process should be the incorporation of the principle of Free, Prior, and Informed Consent (FPIC), which ensures

³⁹ Retno Kusniati, "Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?," *Jambe Law Journal* 7, no. 1 (2024): 169–93, <https://doi.org/10.22437/home.v7i1.350>.

⁴⁰ Firdaus Arifin et al., "Recognition of Customary Norms Within the Framework of Indonesian Legal Positivism," *Khazanah Hukum* 7, no. 1 (2025): 92–104, <https://doi.org/10.15575/kh.v7i1.39409>.

that indigenous peoples are not merely informed but are active decision-makers in matters affecting their land and resources.⁴¹ The drafting of such norms must be inclusive and grounded in dialogue between governmental actors, community representatives, and civil society organizations. Without such consensus-building, new legal norms risk being ineffective or facing resistance from the very communities they intend to protect.⁴²

Another crucial reform area lies in reinterpreting civil law principles to align with indigenous communal systems. Indonesia's civil law system is heavily influenced by individualistic property concepts, which often conflict with indigenous models of collective ownership and stewardship. To address this incompatibility, legal reforms should incorporate clauses that recognize communal tenure arrangements and adapt procedural requirements to reflect indigenous governance models. For example, studies in Kalimantan have demonstrated that integrating local customary practices with formal legal procedures has yielded fairer outcomes in disputes over land tenure.⁴³ Such hybrid approaches allow indigenous values and historical relationships with land to be preserved while also ensuring legal security within the national legal system.⁴⁴

Equally important is the implementation of participatory methods in the formulation and application of new legal standards. Indigenous communities must not only be consulted but actively involved in the legislative process concerning land governance and representation. This participatory approach fosters a sense of ownership over the resulting legal norms and enhances compliance and legitimacy.⁴⁵ Dialogues among governments, indigenous leaders, and legal experts can bridge gaps in understanding and produce more contextually sensitive regulations that reflect indigenous values and priorities.

Building legal awareness at the grassroots level is another vital component of meaningful reform. Many indigenous communities face barriers to accessing legal information and resources, which undermines their ability to assert their rights. Culturally sensitive legal education initiatives tailored to indigenous languages and customs can empower communities to navigate the legal system effectively.⁴⁶ These programs not only enhance legal literacy but also reduce dependency on external actors, fostering self-advocacy and resilience in the face of legal challenges.

Institutional collaboration is equally critical. Ensuring the protection of indigenous rights requires coordinated action across government agencies, non-governmental organizations,

⁴¹ Ketaren and Prawira, "Unheard Voices: Analyzing Non-Compliance With the FPIC Principle in Protecting Indigenous Peoples' Rights in Indonesia."

⁴² Patittinggi, "New Paradigm in Natural Resources Management: Securing Indigenous Peoples Rights."

⁴³ Kendry Tan and Hari S Disemadi, "Urgency of Electronic Wallet Regulation in Indonesia," *Nagari Law Review* 5, no. 1 (2021): 1, <https://doi.org/10.25077/nalrev.v.5.i.1.p.1-14.2021>.

⁴⁴ Permadji, Dungga, and Arshad, "Ensuring Indigenous People's Rights Protection Through Normative Law in Land Acquisition for Indonesia's New National Capital City, Nusantara."

⁴⁵ Nadzriah Ahmad et al., "The Fundamental Rights of Children Deprived of Liberty Indetention Centres Inmalaysia During the Covid-19 Pandemic: A Qualitative Study," *Uum Journal of Legal Studies* 14 (2023), <https://doi.org/10.32890/uumjls2023.14.1.10>.

⁴⁶ Itok D Kurniawan et al., "Socio-Legal Challenges of Indigenous Land in West Kalimantan: Customary Practices and National Law," *Jurnal Pembaharuan Hukum* 11, no. 3 (2024): 473, <https://doi.org/10.26532/jph.v11i3.33860>.

academic institutions, and civil society actors. Such collaboration is necessary to develop policies that are not only legally sound but also practically implementable and responsive to indigenous realities. Synergistic partnerships can provide legal aid, policy recommendations, and capacity-building initiatives that strengthen indigenous representation and mitigate land conflicts.⁴⁷

Beyond national efforts, engagement with the international community offers additional avenues for reform. Indonesia can draw upon international human rights instruments and comparative best practices to enhance its domestic legal frameworks. Countries that have adopted inclusive legal mechanisms for indigenous peoples, such as constitutional courts that recognize customary law, offer valuable models. The integration of international norms such as those articulated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) can elevate the standards of protection available to Indonesia's indigenous population.⁴⁸

The legal vacuum in indigenous representation requires a multi-pronged strategy rooted in cultural recognition, legal reform, and inclusive governance. Strengthening recognition of traditional leadership, developing new regulatory norms, reforming civil law doctrines, and promoting participatory legal processes are all essential to ensure the meaningful inclusion of indigenous communities within Indonesia's legal order. Through sustained collaboration across institutions and with international partners, these efforts can build a legal system that respects the cultural integrity, historical identity, and collective rights of indigenous peoples fostering justice, sustainability, and legal certainty for generations to come.

To address the legal vacuum regarding the legal representation of Indigenous communities in communal land disputes, this study proposes amendments to several norms and regulations. First, Article 7 of Law No. 12/2011 should be amended to formally recognize customary leaders as legitimate legal representatives in customary land disputes. Second, the Basic Agrarian Law (UUPA) must be revised to acknowledge Indigenous land rights and integrate customary law into the land management system. Additionally, dispute resolution mechanisms based on customary law should be recognized within the national legal framework, providing Indigenous communities with an opportunity to resolve land disputes in accordance with their traditions before resorting to formal courts. Furthermore, regional regulations (Perda) should be amended to ensure the recognition of customary law at the local level. These reforms are essential to address the legal vacuum and provide legitimate legal representation for Indigenous communities in land disputes, while safeguarding their rights more effectively.

4. CONCLUSION

The legal vacuum concerning the civil representation of Indigenous peoples in Indonesia particularly in relation to communal land rights remains a major obstacle to justice and

⁴⁷ Sufriadi, Ratna, and Syarifudin, "The Violence in Conflict of Natural Resources Tenure Rights- Companies vs Traditional Communities in Indonesia."

⁴⁸ Jamin et al., "The Impact of Indonesia's Mining Industry Regulation on the Protection of Indigenous Peoples."

equality. Despite constitutional recognition, the absence of clear statutory guidelines on who may lawfully represent Indigenous communities has resulted in legal ambiguity, diminished bargaining power, and limited access to remedies. Existing civil law, rooted in individual ownership concepts, inadequately reflects Indigenous collective legal traditions. Addressing this gap requires legal reforms based on the principles of legal pluralism and access to justice. Key measures include formal recognition of traditional representative structures, the adoption of regulations incorporating Free, Prior, and Informed Consent (FPIC), and adjustment of civil law to recognize communal ownership. Successful implementation depends on inclusive participation, strengthened legal literacy, institutional cooperation, and alignment with international legal norms ensuring stronger protection for Indigenous peoples and their land rights.

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