

## **Recognition and Marginalization: The Paradox of Legal Politics in Indigenous Constitutional Rights in West Kalimantan**

**Karolin Margret Natasa**<sup>a</sup>  , **Abdul Mukti Ro'uf**<sup>b</sup> ,  
**Sopian Lubis**<sup>b</sup> , **Abu Bakar Munir**<sup>c</sup>

<sup>a</sup> The Regent of Landak and Indonesian Farmers Harmony Association,  
Landak, Indonesia

<sup>b</sup> Universitas Islam Negeri Syarif Hidayatullah Jakarta, Jakarta, Indonesia

<sup>c</sup> Faculty of Law, Universiti Malaya, Kuala Lumpur, Malaysia

 Corresponding email: [karolinkmn@gmail.com](mailto:karolinkmn@gmail.com)

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### **Abstract**

Despite the constitutional guarantees provided by the Indonesian State to recognize and respect the existence of indigenous communities, the implementation of these rights remains problematic. In West Kalimantan, a province rich in both cultural diversity and natural resources, a sharp contradiction exists: while legal frameworks for recognition are expanding, indigenous peoples continue to face systematic marginalization, particularly regarding land tenure and ancestral domain. This study aims to analyze the legal-political paradox in which formal state recognition often serves as a mechanism of exclusion rather than empowerment. It seeks to uncover the underlying factors that cause legal instruments to fail to protect indigenous constitutional rights, against the backdrop of large-scale extractive industries and bureaucratic hurdles. This research employs a qualitative socio-legal approach. Data were gathered through a combination of normative legal research—analyzing constitutional mandates, national laws, and local regulations (*Perda*)—and empirical observations of land disputes and administrative recognition processes in West Kalimantan. The findings reveal

that the “paradox of recognition” is driven by two primary factors: first, overly complex administrative requirements for legal status that transform a fundamental right into a “state-granted” privilege; and second, the dominance of developmentalist agendas that prioritize investment over indigenous sovereignty. Consequently, legal recognition in West Kalimantan often serves as a “formal mask” that stabilizes state authority while indigenous communities remain vulnerable to displacement and criminalization. The study concludes that true constitutional protection requires a paradigm shift from a state-centric recognition model to a rights-based approach that honors the self-identification of indigenous peoples.

### Keywords

*Indigenous Peoples, Legal Politics, Constitutional Paradox, Land Rights, West Kalimantan.*

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## Introduction

The recognition of indigenous peoples' rights has become a central issue in contemporary legal and political discourse, particularly in the Global South where natural resource governance intersects with questions of justice, identity, and sovereignty.<sup>1</sup> Across many jurisdictions, constitutional and legal frameworks formally acknowledge the existence and rights of indigenous communities.<sup>2</sup> However, a growing body of scholarship highlights a persistent gap between formal recognition and substantive protection, especially in regions characterized by intensive extractive activities. This tension raises fundamental questions about the role of law not merely as a normative instrument, but as a site of political contestation that may simultaneously enable and constrain indigenous rights.

In Indonesia, the constitutional recognition of indigenous peoples (*Masyarakat Hukum Adat*)<sup>3</sup> is firmly embedded within the legal system. Article 18B(2) of the 1945 Constitution affirms the state's recognition and respect for indigenous communities along with their traditional rights, as long as they remain in accordance with societal development and the principles of the unitary state.<sup>4</sup> This recognition is further reinforced through sectoral legislation, including the Undang-Undang Pokok Agraria (*UUPA*), which acknowledges customary land rights (*hak ulayat*), and through Indonesia's engagement with international norms

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<sup>1</sup> Haydn Washington et al., "Ecological and Social Justice Should Proceed Hand-in-Hand in Conservation," *Biological Conservation* 290 (2024): 110456, <https://doi.org/10.1016/j.biocon.2024.110456>.

<sup>2</sup> Eric Evans Osei Opoku and Alex O. Acheampong, "Energy Justice and Economic Growth: Does Democracy Matter?," *Journal of Policy Modeling*, 2023, <https://doi.org/10.1016/j.jpolmod.2023.01.005>.

<sup>3</sup> The term of *Masyarakat Hukum Adat* has various definitions, Hazairin and Surjono Wignjodipuro define these communities as self-governing, organized social entities that possess their own customary law systems and territorial boundaries, existing long before the modern Indonesian state was formed. See Zayanti Mandasari, "Politik Hukum Pengaturan Masyarakat Hukum Adat (Studi Putusan Mahkamah Konstitusi)," *Jurnal Hukum Ius Quia Iustum* 21, no. 2 (2014): 227–50, <https://doi.org/10.20885/iustum.vol21.iss2.art4>.

<sup>4</sup> Sukirno, "Politik Hukum Pengakuan Negara Terhadap Masyarakat Hukum Adat Dan Hak-Hak Tradisionalnya," *Masalah-Masalah Hukum* 40, no. 3 (2011): 375–83.

such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>5</sup> Collectively, these frameworks position Indonesia as a state that appears normatively committed to protecting and recognizing indigenous peoples.<sup>6</sup>

At the subnational level, this commitment is reflected in the proliferation of local regulations (*Peraturan Daerah*) that explicitly recognize and protect indigenous communities. In West Kalimantan, for instance, regional governments, including *Landak* regency, have enacted regulations aimed at formalizing the status and rights of indigenous peoples within their jurisdictions.<sup>7</sup> These regulatory developments suggest a strengthening of legal recognition at both national and local levels, thereby reinforcing the narrative that Indonesia has progressively institutionalized indigenous rights within its legal architecture.

However, despite this robust framework of recognition, empirical realities present a starkly different picture. In resource-rich regions such as West Kalimantan, indigenous communities frequently face exclusion from decision-making processes related to land use, extractive industries, and environmental governance.<sup>8</sup> The expansion of mining, plantation, and forestry activities often proceeds without meaningful consultation or consent from affected indigenous groups, resulting in widespread

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<sup>5</sup> With the enactment of the National Criminal Code set for 2026, this recognition may pave the way for indigenous peoples to become equal parties when engaging with the state in matters of customary criminal law, read on Sunardi Purwanda et al., “The Fate of Indigenous Peoples’ Rights Recognition After the Enactment of the National Criminal Code,” *Indonesian Journal of Criminal Law Studies* 9, no. 2 (2024): 357–88, <https://doi.org/10.15294/ijcls.v9i2.50321>.

<sup>6</sup> Iwan Permadi et al., “Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region,” *Journal of Law and Legal Reform* 5, no. 2 (2024): 705–48, <https://doi.org/10.15294/jllr.v5i2.731>.

<sup>7</sup> Pemerintah Kabupaten Landak, *Peraturan Daerah Kabupaten Landak Nomor 15 Tahun 2017 Tentang Pengakuan Dan Perlindungan Masyarakat Hukum Adat Kabupaten Landak* (Bagian Hukum dan HAM Setda Kabupaten Landak, 2017).

<sup>8</sup> Adam Kurniawan et al., “Environmental Outlook 2025: Melanjutkan Tersesat, Atau Kembali Ke Jalan Yang Benar Untuk Kedaulatan Bangsa Dan Lingkungan Hidup Yang Lebih Baik,” 2025, 1–77.

violations of customary land rights.<sup>9</sup> Furthermore, state-led initiatives such as the Forest Area Control Task Force (*Satgas PKH*) have, in certain instances, intensified tensions by reasserting state control over forest areas that overlap with indigenous territories.<sup>10</sup> These dynamics illustrate a troubling contradiction. In contrast, indigenous peoples are formally recognized within the legal system, but they remain structurally marginalized in practice.

Existing scholarship on indigenous rights in Indonesia has made important contributions in documenting legal frameworks and analyzing specific cases of land conflict.<sup>11</sup> Much of this literature, however, tends to adopt a predominantly normative or doctrinal approach, focusing on the adequacy of legal recognition rather than its implementation.<sup>12</sup> While some studies have begun to explore socio-legal dimensions, there remains a limited engagement with the political underpinnings of law, particularly how legal frameworks are shaped by competing interests, power relations, and economic imperatives.<sup>13</sup> Moreover, regional analyses often concentrate on broader national trends or other parts of Indonesia, leaving specific contexts such as West Kalimantan relatively underexplored in terms of their legal-political dynamics.

This article addresses these gaps by shifting the analytical focus from recognition as a legal status to recognition as a political process. It argues that the persistence of indigenous marginalization cannot be fully

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<sup>9</sup> Sopian Lubis, Muhyideen Ali, and Ali Ali, “Decolonizing Education and the Green Economy: Religious and Indigenous Resistance to Extraction in Indonesia,” *Journal of Religion* 1, no. 1 (2025): 16–30.

<sup>10</sup> Heru Guntoro, “Sengketa Lahan Desa Banying: Cornelis Kritik Keras Rencana Pemasangan Plang Satgas PKH,” *Gesuri*, March 2026.

<sup>11</sup> Yance Arizona, “Adat as Strategy for Legal Struggle and Legal Mobilization (Adat Sebagai Strategi Perjuangan Dan Mobilisasi Hukum),” *Indonesian Journal of Socio-Legal Studies* 2, no. 2 (2023), <https://doi.org/10.54828/ijls.2023v2n2.3>.

<sup>12</sup> Riswanda Ramadhan, Sahlan, and Suardi Mallawa, “Perlindungan Hak Masyarakat Hukum Adat Dalam Pemanfaatan Dan Pengelolaan Hutan Perspektif Hak Asasi Manusia Di Bidang Ekonomi Sosial Dan Budaya,” *Tadulako Master Law Journal* 8, no. 2 (2024).

<sup>13</sup> Sartika Intaning Pradhani, “Various Insights Highlighting the Significance of Empirical Studies in Customary Legal Research,” *Indonesian Journal of Socio-Legal Studies* 3, no. 1 (2023), <https://doi.org/10.54828/ijls.2023v3n1.2>.

understood without examining the role of legal politics in structuring the relationship between the state, indigenous communities, and economic actors. In this regard, the concept of legal politics is employed to highlight how law functions not only as a set of rules but also as an instrument through which power is exercised, negotiated, and institutionalized.

To deepen this analysis, the article draws on three interrelated theoretical perspectives. *First*, the framework of legal pluralism provides a lens for understanding the coexistence and often-conflict between state law and customary law.<sup>14</sup> While Indonesia formally recognizes plural legal orders, in practice, state law frequently dominates and subsumes indigenous normative systems. *Second*, the politics of recognition, as developed in critical social theory, underscores the distinction between symbolic acknowledgment and material redistribution.<sup>15</sup> Recognition that is not accompanied by meaningful participation and control over resources risks becoming merely rhetorical. *Third*, the concept of extractivism situates indigenous marginalization within broader political-economic structures, in which the state prioritizes resource exploitation and investment over protecting local communities.<sup>16</sup> Together, these frameworks enable a more comprehensive understanding of the structural conditions that produce and sustain indigenous exclusion.

Building on these perspectives, this article advances the concept of a “constitutional paradox”<sup>17</sup> to capture the contradiction between formal

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<sup>14</sup> John Griffiths, “Legal Pluralism,” in *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, 2015, <https://doi.org/10.1016/B978-0-08-097086-8.86073-0>.

<sup>15</sup> Keebet von Benda-Beckmann and Bertram Turner, “Legal Pluralism, Social Theory, and the State,” *Journal of Legal Pluralism and Unofficial Law*, 2018, <https://doi.org/10.1080/07329113.2018.1532674>.

<sup>16</sup> Aditya Prastian Supriyadi, “Reduction of Public Participation Rights in The Rules of Analysis of Environmental Impacts for Business Licensing in Indonesia: Green Constitution Perspective,” *Jurnal HAM*, 2023.

<sup>17</sup> The paradox of legal politics in this context refers to the dialectic between the sociological identity of indigenous communities in West Kalimantan and the legal identity conferred by the state. When the state maintains exclusive control over the definition of who qualifies as “indigenous,” recognition essentially functions as a form of veiled marginalization, as it subordinates the reality of “historical people” to the exigencies of the state’s formal legal structure. See reviewed Z. Oklopic, on

recognition and substantive marginalization. The paradox lies in the dual role of the state as both a guarantor of indigenous rights and an agent of their erosion. On the one hand, the state institutionalizes recognition through constitutional provisions and local regulations; on the other hand, it facilitates or permits practices that undermine those very rights. This paradox is particularly evident in regions like West Kalimantan, where legal recognition coexists with ongoing dispossession and exclusion.

Accordingly, this article aims to examine how the legal politics of indigenous rights operate in West Kalimantan, and how it produces a paradoxical condition in which recognition and marginalization are simultaneously sustained. It seeks to answer the following questions: How is indigenous recognition constructed within Indonesia's legal framework? Why does such recognition fail to translate into effective protection in practice? And how do political and economic interests shape the implementation of indigenous rights in extractive contexts?

To address these questions, this study employs a socio-legal approach that integrates normative legal analysis with empirical examination of policy practices and indigenous experiences in West Kalimantan. The research draws on legal documents, policy analysis, and secondary data on land conflicts and extractive governance, with a focus on understanding the gap between formal legal frameworks and their practical implications. By situating legal recognition within its broader political and economic context, this article contributes to ongoing debates on indigenous rights, legal pluralism, and the role of law in mediating power and inequality in the Global South.

## **A. Normative Recognition of Indigenous Peoples in Indonesia and West Kalimantan**

The normative recognition of indigenous peoples in Indonesia is rooted in a complex legal architecture that combines constitutional mandates, statutory regulations, and regional legal instruments. This

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“The Paradox of Constitutionalism: Constituent Power and Constitutional Form,” *International Journal of Constitutional Law* 6, no. 2 (2008): 358–70, <https://doi.org/10.1093/icon/mon006>.

framework reflects an evolving legal consciousness that seeks to reconcile the existence of indigenous communities with the modern nation-state.<sup>18</sup>

At the constitutional level, the recognition of indigenous peoples is explicitly articulated in Article 18B paragraph (2) of the 1945 Constitution, which affirms that the state recognizes and respects customary law communities along with their traditional rights, as long as they remain in existence and are consistent with societal development and the principles of the unitary state.<sup>19</sup> This provision establishes a foundational legal basis for the acknowledgment of indigenous communities within the Indonesian legal system. In addition, Article 28I, paragraph (3), reinforces this recognition by affirming that cultural identities and the rights of traditional communities must be respected as part of human rights protection.

These constitutional provisions demonstrate that the recognition of indigenous peoples is not merely a policy choice but a constitutional obligation. Scholars emphasize that the state bears a duty to ensure that indigenous rights are not only acknowledged but also protected through legislative and administrative measures. In this sense, constitutional recognition serves as a normative foundation that legitimizes indigenous communities as legal subjects within the Indonesian state.

However, the constitutional formulation itself introduces significant limitations. The recognition is conditional upon several criteria, including the continued existence of indigenous communities, their conformity with societal development, and their alignment with national interests.<sup>20</sup> These conditions create a form of conditional recognition, where indigenous rights are not inherently guaranteed but must be validated through state-defined parameters. As a result, the

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<sup>18</sup> Septhian Eka Adiyatma, Ana Silviana, and Dorcas Adesola Thanni, “Criminalizing the Guardians: Eco-Justice and Indigenous Struggles in Indonesia and Nigeria,” *Indonesian Journal of Criminal Law Studies* 10, no. 2 (November 2025): p.918, <https://doi.org/10.15294/ijcls.v10i2.33536>.

<sup>19</sup> Republic of Indonesia, “The 1945 Constitution of the Republic of Indonesia” 1, no. 1 (1945).

<sup>20</sup> Saswoyo Bagus Ade and Hadi Margo dan Pura, “Urgensi Pengundangan Rancangan Undang-Undang Masyarakat Hukum Adat Sebagai Bentuk Kesetaraan Warga Negara,” *Jurnal Suara Hukum* 5, no. 1 (2023): 19–43.

constitutional framework simultaneously affirms and restricts indigenous rights, reflecting an inherent tension within the legal system.

The normative framework is further elaborated through statutory regulations, particularly in agrarian and natural resource law. One of the most significant legal instruments in this regard is Law Number 5 of 1960 concerning Basic Agrarian Principles.<sup>21</sup> This law acknowledges the existence of customary land rights, commonly referred to as *hak ulayat*, as part of Indonesia's agrarian system. Article 3 of the law explicitly recognizes these rights, stating that their implementation must be in accordance with national and state interests and must not conflict with higher regulations.

This formulation illustrates a critical characteristic of Indonesia's legal approach to indigenous rights. While customary rights are formally recognized, their exercise is subordinated to broader state interests. The state retains ultimate control over land and natural resources, thereby limiting indigenous communities' autonomy in managing their territories. This principle is reinforced by the doctrine of state control over land, which places the state as the primary authority in determining land use and allocation.

Further statutory recognition can be found in various sectoral laws, including Law Number 39 of 1999 on Human Rights and Law Number 41 of 1999 on Forestry. These laws acknowledge the rights of indigenous peoples to manage and utilize natural resources within their customary territories.<sup>22</sup> However, similar to the agrarian law framework, these recognitions are accompanied by regulatory mechanisms that allow the state to intervene and redefine the scope of such rights.<sup>23</sup>

The forestry sector provides a particularly illustrative example of this dynamic. For many years, indigenous forests were legally classified as

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<sup>21</sup> Anang Husni, Opan Satria Mandala, and Muhammad Bimarasmana, "Hak-Hak Masyarakat Adat Dalam Politik Hukum Agraria Di Indonesia," *Jurnal Fundamental Justice*, no. September (2022): 91–112.

<sup>22</sup> Lidya Christina Wardhani, "Indonesian Agrarian Law: The Illusion of State Land Control and Overlapping Land Regulations," 2025, 540–47, [https://doi.org/10.2991/978-2-38476-519-5\\_43](https://doi.org/10.2991/978-2-38476-519-5_43).

<sup>23</sup> Ni Ketut Suartining and Benny Djaja, "Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960," *Journal of Social Research* 2, no. 6 (2023): 1775–85, <https://doi.org/10.55324/josr.v2i6.903>.

part of state forests, effectively placing them under state control.<sup>24</sup> This classification was challenged and eventually revised through Constitutional Court Decision No. 31/PUU-V/2007, No. 35/PUU-X/2012, No. 95/PUU-XII/2014, No. 10/PUU-XXVIII/2020, No. 35/PUU-XXI/2023, No. 132-PS/PUU-XXII/2024 and No. 147/PUU-XXII/2024, which affirmed that indigenous forests are not state forests but belong to indigenous communities.<sup>25</sup> This decision marked a significant development in the recognition of indigenous rights, as it redefined the legal status of customary forests and strengthened the position of indigenous communities within the legal system.

Despite this progress, the implementation of constitutional and statutory recognition remains fragmented and inconsistent. Recent studies highlight that a lack of integration and coherence characterizes the legal framework governing indigenous rights in Indonesia. Regional legal instruments often operate independently, resulting in an ad hoc approach to recognition and protection. This fragmentation weakens the effectiveness of normative recognition, as it creates gaps and overlaps in legal authority.

At the regional level, the recognition of indigenous peoples is operationalized through local regulations, which play a crucial role in translating constitutional mandates into practical mechanisms. In West Kalimantan, several regional governments have enacted regulations to recognize and protect indigenous communities. One notable example is the regional regulation in Landak Regency, which provides a legal framework for the identification, verification, and recognition of indigenous peoples with local regulation No. 15 of 2017 on Recognition and Protection of Customary Law Communities of *Landak* Regency.<sup>26</sup>

This regional regulation reflects an important step toward institutionalizing indigenous recognition at the local level. It

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<sup>24</sup> Slamet Widodo, "A Critical Review of Indonesia's Agrarian Reform Policy," *Journal of Regional and City Planning* 28, no. 3 (2017): 204–18, <https://doi.org/10.5614/jrcp.2017.28.3.4>.

<sup>25</sup> Rudi Wijaya Rudy, Ryzal Perdana, "The Recognition of Customary Rights by Indonesian Constitutional Court," *Academic Journal of Interdisciplinary Studies* 10, no. 3 (2021): 308–18.

<sup>26</sup> Landak, *Peraturan Daerah Kabupaten Landak Nomor 15 Tahun 2017 Tentang Pengakuan Dan Perlindungan Masyarakat Hukum Adat Kabupaten Landak*.

acknowledges indigenous communities as collective entities with distinct cultural, social, and territorial characteristics. Furthermore, it establishes procedural mechanisms for determining the existence of indigenous communities, including processes of administrative verification and formal recognition by local authorities.

However, indigenous communities face significant challenges, including the need to undergo a formal process of identification, verification and validation that often involves bureaucratic requirements and evidentiary standards that may not align with the lived realities of indigenous societies. As a result, recognition becomes a procedural achievement rather than an inherent acknowledgment of pre-existing rights.

This proceduralization of recognition has important implications for the legal status of indigenous peoples. It reinforces the position of the state as the ultimate arbiter of recognition, thereby limiting the autonomy of indigenous communities. Moreover, it creates barriers for communities that lack the resources or capacity to navigate complex administrative processes. In many cases, communities remain unrecognized not because they do not exist, but because they are unable to fulfill the formal requirements imposed by the state.<sup>27</sup>

The normative framework in West Kalimantan also reflects broader challenges related to the governance of natural resources. The region is rich in natural resources, making it a focal point for economic development and investment. It has led to increased competition over land and resources, often resulting in conflicts among indigenous communities, the state, and private actors. In this context, the effectiveness of normative recognition is tested by the realities of economic and political interests.

Scholarly analysis indicates that regional legal instruments often lack the authority to effectively protect indigenous rights when confronted with stronger economic and political forces. This limitation highlights a fundamental issue within the normative framework. While regional regulations provide a basis for recognition, they are often

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<sup>27</sup> Rendra Oxtora, "Cegah Konflik Lahan, Pemkab Landak Data Ulang Hutan Adat," *Antara News*, May 2025.

subordinate to national policies and economic agendas that prioritize resource exploitation.

This condition underscores the hierarchical legal structure in which different levels of regulation interact in complex ways. Constitutional provisions establish broad principles of recognition, statutory laws provide sectoral regulations, and regional laws operationalize these principles at the local level. However, the interaction between these levels is not always harmonious. Conflicts and inconsistencies across legal instruments can undermine recognition effectiveness and create uncertainty for indigenous communities.<sup>28</sup>

Another important aspect of the normative framework is the role of judicial interpretation in shaping the recognition of indigenous rights. The Constitutional Court has played a significant role in interpreting provisions of the Constitution related to indigenous peoples. Through its decisions, the Court has clarified the scope and meaning of indigenous rights, often expanding their recognition within the legal system. For example, the Court has emphasized that the state does not grant indigenous rights, but rather recognizes them as pre-existing rights that have been historically embedded in Indonesian society.<sup>29</sup>

This interpretation aligns with the principle of legal pluralism, which acknowledges the coexistence of multiple legal systems within a single state.<sup>30</sup> Indigenous law, or adat law, is recognized as a living law that continues to govern the social and cultural life of indigenous communities.<sup>31</sup> However, the integration of customary law into the formal legal system remains a complex and contested process.

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<sup>28</sup> Meg Parsons, Karen Fisher, and Roa Petra Crease, "Environmental Justice and Indigenous Environmental Justice.," *Decolonising Blue Spaces in the Anthropocene: Freshwater Management in Aotearoa New Zealand*, 2021, [https://doi.org/10.1007/978-3-030-61071-5\\_2](https://doi.org/10.1007/978-3-030-61071-5_2).

<sup>29</sup> Herlambang P. Wiratraman, "Cultural Expertise and the Social Justice Defense of Indigenous Peoples Rights in the Indonesian Constitutional Court," *Constitutional Review* 11, no. 2 (2025): 299–339, <https://doi.org/10.31078/consrev1122>.

<sup>30</sup> David Nelken, "Eugen Ehrlich, Living Law, and Plural Legalities," *Theoretical Inquiries in Law*, 2008, <https://doi.org/10.2202/1565-3404.1193>.

<sup>31</sup> Svitlana Karvatska, "Socio-Historical Factors of Law Perception in 'Living Law' Concept by Eugen Ehrlich," *Erlibiv'skij Žurnal*, 2017, <https://doi.org/10.31861/ehrichsjournal2017.01.042>.

In practice, the recognition of customary law is often mediated through state institutions, which may reinterpret or modify indigenous norms to fit within the framework of national law. This process can lead to the transformation or even erosion of indigenous legal systems, as they are adapted to conform to state-defined standards. Consequently, the normative recognition of indigenous law does not necessarily guarantee the preservation of its original substance.

Overall, the normative recognition of indigenous peoples in Indonesia and West Kalimantan reflects a dual character. On the one hand, it demonstrates a formal commitment to acknowledging and protecting indigenous rights through constitutional, statutory, and regional frameworks. On the other hand, it reveals a pattern of conditional recognition driven by a state-centric economic agenda, demonstrating that recognition does not automatically translate into the protection of indigenous communities.

This duality creates a structural tension within the legal system. Recognition is framed as a legal right, yet it is simultaneously subject to conditions, procedures, and limitations imposed by the state. As a result, the normative framework does not fully resolve the question of indigenous rights, but rather reproduces a system in which recognition and control coexist.

In West Kalimantan, this tension is particularly evident. Regional regulations provide mechanisms for recognition, but broader legal and political dynamics constrain their effectiveness. The dominance of state authority, the influence of economic interests, and the complexity of legal procedures all contribute to the challenges indigenous communities face in securing their rights.

Therefore, while the normative framework represents an important step toward recognizing indigenous peoples, it also highlights the limitations of formal legal recognition in addressing deeper issues of justice and autonomy. The existence of constitutional and legal provisions is not sufficient in itself. What is required is a transformation of legal politics that prioritizes substantive recognition and meaningful protection of indigenous rights.

## B. Empirical Reality of Marginalization

While the normative framework of indigenous recognition in Indonesia demonstrates a formal commitment to acknowledging indigenous rights, the empirical reality in West Kalimantan reveals a persistent pattern of marginalization.<sup>32</sup> This gap between recognition and implementation reflects the complex interaction between law, political economy, and institutional practices. In this context, indigenous communities continue to face structural disadvantages, particularly in land tenure, natural resource governance, and participation in decision-making processes.

West Kalimantan is a critical case for examining these dynamics, given its socio-legal diversity and abundant natural resources. The province is home to various indigenous groups, particularly Dayak communities, whose livelihoods are closely tied to customary land systems and forest ecosystems. However, these territories have increasingly become sites of economic expansion, especially in the plantation, mining, and forestry sectors.<sup>33</sup> This expansion has intensified competition over land. It has significantly altered the relationship between indigenous communities and their customary territories.

One of the most prominent empirical issues is land dispossession. Despite legal recognition of customary land rights, many indigenous communities in West Kalimantan have lost control over their ancestral lands. This dispossession often occurs through the allocation of large-scale concessions to private corporations, particularly in the palm oil industry.<sup>34</sup> The process of land allocation is typically facilitated by state institutions, which grant permits without adequately recognizing or verifying existing customary claims. As a result, indigenous territories are

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<sup>32</sup> Muhammad Reza Zaini, "Collective Indigenous Identity and Activism: A Case Study of the Indigenous Dayak People in West Kalimantan Province, Indonesia Introduction and Essay Overview," *Research Gate* 1998, no. 1987 (2017): 1–10.

<sup>33</sup> Laurens Bakker, "Custom and Violence in Indonesia's Protracted Land Conflict," *Social Sciences and Humanities Open* 8, no. 1 (2023): 100624, <https://doi.org/10.1016/j.ssaho.2023.100624>.

<sup>34</sup> M Sirait, "Indigenous Peoples and Oil Palm Plantation Expansion in West Kalimantan, Indonesia," *Universiteit van Amsterdam and Cordaid Memisa*, no. May (2009).

frequently reclassified as state land or concession areas, effectively excluding communities from their own land.

In addition to corporate-driven land conversion, recent developments have introduced new forms of state intervention, further complicating indigenous land relations. One notable example is the implementation of the Forest Area Control Task Force, commonly known as *Satgas PKH*.<sup>35</sup> This task force has been actively conducting enforcement operations in forest-designated areas, including in *Landak* Regency. In several instances, *Satgas PKH* has installed boundary markers or warning signs in areas overlapping with indigenous settlements and customary lands belonging to *Dayak* communities.

The installation of such markers has not only symbolized state claims over land but has also triggered new conflicts at the local level. For indigenous communities, these actions are perceived as a direct negation of their historical and customary rights over the land. The presence of official signage designating areas as state-controlled forest zones effectively delegitimizes indigenous territorial claims and creates uncertainty about land ownership and access. As a result, communities that have inhabited and managed these lands for generations are suddenly positioned as occupants of state-controlled territory.

This development illustrates a critical dimension of empirical marginalization. Even in the absence of corporate actors, state-led enforcement mechanisms can produce similar outcomes of exclusion and dispossession. The operations of *Satgas PKH* reflect a legalistic approach to forest governance that prioritizes formal classification of land over lived realities and customary tenure systems.<sup>36</sup> Consequently, indigenous communities are subjected to a form of administrative marginalization, where their existence is acknowledged in principle but denied in practice.

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<sup>35</sup> Hendri Marcelleno, "Tolak Program Kawasan Hutan, Warga Dusun Sumiak Cabut Plang Satgas PKH Di Tanah Adat," *Kalbar Oke*, March 31, 2026, <https://www.kalbaroke.com/warga-dusun-sumiak-tolak-program-kawasan-hutan-2026>

<sup>36</sup> Ya Wahyu, "Warga Dusun Sumiak Cabut Plang Satgas PKH Yang Dipasang Di Lahan Bersertifika," *Inside Pontianak*, March 2026.

Moreover, the actions of Satgas PKH reveal the persistence of a sectoral approach to land governance.<sup>37</sup> Forest areas are managed under a legal regime that often operates independently from frameworks recognizing indigenous rights. This institutional fragmentation results in overlapping authorities and conflicting legal claims. While regional regulations may recognize indigenous communities, sectoral enforcement bodies continue to apply national forest laws rigidly, without adequately integrating customary rights.

The consequences of this fragmentation are particularly evident in the emergence of new conflicts. The designation of indigenous territories as state-controlled forest areas has led to tensions between communities and enforcement authorities. In some cases, communities resist the installation of markers, leading to confrontations and heightened social conflict. These conflicts are not merely disputes over land boundaries but reflect deeper struggles over recognition, authority, and legitimacy.

Beyond land dispossession and state-enforced measures, environmental degradation is another significant dimension of marginalization. The conversion of forests into plantations and mining areas has led to deforestation, biodiversity loss, and disruption of ecological systems that sustain indigenous livelihoods. Rivers that serve as sources of water and food have been polluted, and changes in land use patterns have undermined traditional agricultural practices. These environmental impacts are not merely ecological issues but also social and cultural concerns, as they affect indigenous communities' ability to maintain their way of life.

Their limited participation in decision-making processes further exacerbates the marginalization of indigenous peoples. Although legal frameworks emphasize the importance of community involvement, in practice, indigenous voices are often excluded from key decisions on land use and resource management. Mechanisms such as public consultations and environmental impact assessments are often conducted procedurally, without ensuring meaningful participation. In many instances, information is not adequately communicated, and

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<sup>37</sup> Kiwi, "Masyarakat Adat Meranti Landak Tolak Pemasangan Patok Satgas PKH," *Suara Pemred Kalbar*, April 2026.

communities are not given sufficient opportunity to influence outcomes.

This exclusion reflects a broader issue of power imbalance between indigenous communities, the state, and corporate actors. Decision-making processes are often dominated by economic and political interests, which prioritize development objectives over the protection of indigenous rights. As a result, indigenous communities are positioned as passive recipients of policies rather than active participants in shaping them. This dynamic reinforces their marginalization and limits their ability to assert their rights effectively.<sup>38</sup>

Another empirical challenge lies in implementing regional regulations on indigenous recognition. While local governments in West Kalimantan have introduced legal instruments to recognize indigenous communities, their implementation remains inconsistent. The processes of identification, verification, and formal recognition are often slow, complex, and subject to administrative constraints. In some cases, recognition has not been fully realized, leaving communities in legal uncertainty.

This situation highlights the gap between legal provisions and institutional capacity. Local governments may lack the resources, expertise, or political will to implement recognition mechanisms effectively. Moreover, the absence of clear coordination between different levels of government further complicates the process. The intervention of bodies such as *Satgas PKH*, which operate under national mandates, often bypasses or overrides local recognition processes, thereby undermining regional efforts to protect indigenous rights.

The empirical reality in West Kalimantan also reveals the persistence of conflict as a central feature of indigenous marginalization. Land conflicts between indigenous communities and corporations are widespread and often prolonged. With the addition of state-enforcement actions, such as those conducted by *Satgas PKH*, the conflict landscape has become even more complex. Indigenous communities now face multiple fronts of contestation, involving both private and state actors.

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<sup>38</sup> Desi Rahmawati, "Alarm Bahaya! Penolakan Praperadilan Fendy, Lampu Hijau Untuk Membungkam Masyarakat Adat," *Kolase Indonesia*, April 2026.

In many instances, indigenous communities face significant challenges in accessing justice. Legal processes are often costly, time-consuming, and difficult to navigate. Furthermore, the formal legal system may not fully recognize or accommodate customary law, thereby limiting indigenous communities' ability to seek redress under their own legal traditions. This situation creates a barrier to justice and reinforces existing inequalities.<sup>39</sup>

From a socio-legal perspective, the involvement of *Satgas PKH* underscores the central argument of this study. Marginalization is not solely the result of weak legal recognition but is actively produced through the interaction of legal norms and enforcement practices. The state, through different institutional mechanisms, simultaneously recognizes and restricts indigenous rights. This duality creates a condition in which recognition becomes contingent and reversible, rather than secure and substantive.

In West Kalimantan, this dynamic produces a particularly acute form of marginalization. Indigenous communities are formally acknowledged within legal frameworks, yet they remain vulnerable to dispossession through both corporate expansion and state enforcement. The emergence of new conflicts following the intervention of *Satgas PKH* further illustrates how legal instruments intended to regulate land can, in turn, generate instability and contestation.

This empirical reality provides a crucial foundation for understanding the concept of a constitutional paradox. The coexistence of recognition and marginalization is not accidental but reflects the structural characteristics of Indonesia's legal and political system. The following section will explore this paradox in greater depth by examining the role of legal politics in shaping the relationship between recognition and power.

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<sup>39</sup> Louis Fletcher, "A Modern Theodicy: John Rawls and The Law of Peoples," *European Journal of Political Theory*, 2025, <https://doi.org/10.1177/14748851231201471>.

### C. Legal Politics and the Constitutional Paradox

The preceding analysis has demonstrated a fundamental disjunction between the normative recognition of indigenous peoples and their empirical marginalization in West Kalimantan. This section argues that such a disjunction is neither incidental nor merely a failure of implementation. Rather, it reflects a deeper structural condition embedded within Indonesia's legal and political system, which can be conceptualized as a constitutional paradox. This paradox arises from the coexistence of formal recognition and substantive exclusion, both produced and sustained through legal politics.

Legal politics, in this context, refers to the processes through which law is formulated, interpreted, and implemented in alignment with particular configurations of power and interests. It determines not only the content of legal norms but also their operational meaning in practice.<sup>40</sup> In the case of indigenous peoples in Indonesia, legal politics reveals a dual orientation. On the one hand, it affirms recognition through constitutional and statutory frameworks. On the other hand, it facilitates forms of control and exclusion through regulatory mechanisms and enforcement practices.

This duality is clearly reflected in the constitutional formulation itself. Article 18B paragraph (2) of the 1945 Constitution recognizes indigenous peoples and their traditional rights, yet subjects this recognition to conditions such as continued existence, conformity with societal development, and alignment with national interests.<sup>41</sup> These conditions are not merely technical qualifications but represent political filters that allow the state to determine the boundaries of recognition. As a result, recognition becomes contingent, selective, and ultimately subordinated to state authority.

From a legal theoretical perspective, this condition can be understood through the lens of legal pluralism.<sup>42</sup> Indonesia formally

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<sup>40</sup> Kevin Olson, "Paradoxes of Constitutional Democracy," *Habermas and Law*, 2020, 251–64, <https://doi.org/10.4324/9781003074977-15>.

<sup>41</sup> Republik Indonesia, "Constitution of the Republic of Indonesia 1945 (After the First, Second, Third, and Fourth Amendments)," 1945.

<sup>42</sup> Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable*, vol. 1 (London: Routledge, 2012), <https://doi.org/10.4324/9780203113134>.

acknowledges the coexistence of state law and customary law. Yet, the relationship between the two is hierarchical rather than equal. Customary law is recognized only to the extent it can be accommodated within the framework of state law. It creates a form of weak legal pluralism in which the state retains ultimate authority over the validation and application of indigenous norms. Consequently, indigenous legal systems are not fully autonomous but are instead incorporated into a state-centric legal order.<sup>43</sup>

The empirical findings from West Kalimantan reinforce this analysis. The existence of regional regulations recognizing indigenous communities demonstrates an attempt to operationalize constitutional mandates at the local level. However, these mechanisms are embedded within bureaucratic procedures that require state verification and formal approval. Recognition is therefore transformed into an administrative process, rather than an acknowledgment of inherent rights. This phenomenon can be described as procedural recognition, in which the legitimacy of indigenous existence depends on compliance with state-defined criteria.<sup>44</sup>

At the same time, enforcement practices, such as those carried out by *Satgas PKH*, illustrate how legal politics operates beyond formal recognition. The installation of boundary markers in indigenous territories in *Landak* Regency reflects the assertion of state control through sectoral legal regimes, particularly forestry law. These actions demonstrate that the state can simultaneously recognize indigenous communities in one legal framework while negating their territorial rights in another. This fragmentation is not accidental but is a product of competing legal and institutional logics within the state apparatus.

The coexistence of recognition and exclusion can be further analyzed using the proposed theoretical framework of justice. There are three dimensions of justice, namely redistribution, recognition, and

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<sup>43</sup> Zico Junius Fernando, "Legal Politics Formation of Legislation in The Indonesia National Legal System," *Jurnal Hukum Progresif* 10, no. 1 (2022): 22–36, <https://doi.org/10.14710/hp.7.2.182-191>.

<sup>44</sup> Ricca Anggraeni and Indah Mutiara Sari, "Legal Politic in Providing Infrastructure in Indonesia, Is Human Right Still Have Any Places?," *International Journal of Recent Technology and Engineering (IJRTE)* 8, no. 4 (2019): 317–22, <https://doi.org/10.35940/ijrte.d6828.118419>.

representation.<sup>45</sup> In the Indonesian context, the recognition of indigenous peoples is formally acknowledged. Yet it is not accompanied by equitable resource redistribution or meaningful political representation. As a result, recognition remains symbolic and does not translate into substantive justice.

From a redistributive perspective, indigenous communities in West Kalimantan continue to experience dispossession of land and resources, particularly in areas affected by plantation and extractive industries. The allocation of land to corporate actors reflects an unequal distribution of economic benefits, which disadvantages indigenous populations. From a representational perspective, indigenous communities are often excluded from decision-making processes, limiting their ability to influence policies that directly affect their lives. The absence of these two dimensions undermines the effectiveness of recognition as a tool for justice.

This analysis suggests that the problem lies not only in the absence of protection but in the structure of recognition itself. Recognition, when detached from redistribution and representation, can function as a mechanism of control rather than empowerment. It allows the state to claim legitimacy in acknowledging indigenous rights, while simultaneously maintaining authority over land and resources. In this sense, recognition becomes a form of governance that manages, rather than resolves, indigenous claims.

The concept of a constitutional paradox captures this condition. The Constitution, as the highest legal authority, provides a basis for recognizing indigenous rights. However, it also embeds limitations that enable their restriction. This dual function creates a paradox in which the same legal framework that affirms rights also facilitates their denial. The paradox is not a contradiction to be resolved, but a structural feature of the legal system that reflects competing priorities within the state.<sup>46</sup>

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<sup>45</sup> Nancy Fraser et al., "Recognition, Redistribution and Representation in Capitalist Global Society: An Interview with Nancy Fraser," *Acta Sociologica* 47, no. 4 (April 2004): 374–82.

<sup>46</sup> Pria Sembada, Lego Karjoko, and Ayub Torry Satriyo Kusomo, "Implementation of Law and Justice in Indonesia: Between Formalistic Paradigm and Substantive Justice," 2025, 340–44, [https://doi.org/10.2991/978-2-38476-519-5\\_27](https://doi.org/10.2991/978-2-38476-519-5_27).

The role of political economy is crucial in understanding this paradox. Indonesia's development model, which relies heavily on natural resource extraction, creates strong incentives for the state to prioritize economic growth over protecting indigenous rights. Legal frameworks are thus shaped by the need to balance these competing objectives. In practice, this balance often tilts in favor of economic interests, particularly when supported by powerful corporate actors.<sup>47</sup>

The intervention of *Satgas PKH* in West Kalimantan provides a clear illustration of this dynamic. While framed as an effort to enforce forest governance, its operations have led to the reassertion of state control over lands claimed by indigenous communities. It reflects a broader pattern in which legal instruments are used to consolidate authority over natural resources, often at the expense of customary rights. The resulting conflicts highlight the limitations of a legal system that prioritizes formal land classification over social and historical realities.

Moreover, the fragmentation of legal regimes contributes to the persistence of the paradox. Different sectors, such as agrarian law, forestry law, and regional governance, operate under distinct legal frameworks with varying priorities.<sup>48</sup> This creates inconsistencies in how indigenous rights are recognized and enforced. While one framework may acknowledge customary rights, another may override them through sectoral regulations. The lack of integration between these frameworks reinforces the vulnerability of indigenous communities.

From a socio-legal perspective, the constitutional paradox is sustained by the interaction between normative structures and institutional practices. Legal norms provide a basis for recognition, but political interests, administrative procedures, and enforcement mechanisms mediate their implementation. This interaction produces outcomes that diverge from the normative ideals of justice and equality.

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<sup>47</sup> Arianto A Patunru, "The Political Economy of Environmental Policy in Indonesia," in *The Environments of the Poor in Southeast Asia, East Asia and the Pacific*, ed. Aris Ananta, Armin Bauer, and Myo Thant (Singapore: ISEAS Publishing, 2013), 203–20, <https://doi.org/10.1355/9789814519007-015>.

<sup>48</sup> Annisa D Amalia, Nurul Isnaeni, and Ardian Alhadath, "Revisiting the Path towards Environmental Justice in Indonesia: Devils in the Details?," *IR-UI Commentaries*, no. 5 (2020): 1–5.

Importantly, the paradox also reflects a deeper epistemological issue. The state's legal system is grounded in formal, codified norms, while indigenous systems are based on lived practices, oral traditions, and collective memory. The requirement for formal recognition imposes a particular mode of validation that may not align with indigenous ways of knowing and organizing. As a result, indigenous existence must be translated into state-recognized categories, which can distort or diminish its original meaning.

Despite these challenges, the persistence of indigenous resistance indicates that the constitutional paradox remains contested. Indigenous communities, along with civil society actors, continue to challenge exclusionary practices and advocate for more substantive forms of recognition. These efforts highlight the potential for transforming legal politics toward a more inclusive and equitable framework.

In conclusion, the relationship between legal politics and indigenous rights in Indonesia is characterized by a constitutional paradox in which recognition and marginalization coexist. This paradox is produced by a state-centric model of recognition, a fragmented legal framework, and a political economy that prioritizes resource exploitation. Addressing this condition requires more than formal legal reforms. It demands a reorientation of legal politics toward substantive justice, where recognition is integrated with redistribution and representation, and where indigenous communities are recognized not as objects of regulation, but as subjects of rights.

#### **D. Rethinking Legal Pluralism of Indigenous Rights**

The preceding discussion has demonstrated that the recognition of indigenous peoples in Indonesia operates within a paradoxical legal framework, where formal acknowledgment coexists with persistent marginalization. This condition calls for a critical rethinking of legal pluralism, not merely as a descriptive concept of multiple coexisting legal systems, but as a normative and transformative framework capable of addressing structural inequalities. In the context of indigenous rights, legal pluralism must move beyond symbolic recognition and toward substantive justice.

Conventionally, legal pluralism in Indonesia has been understood as the coexistence of state law and customary law within a single legal order. This recognition is reflected in constitutional provisions, statutory regulations, and judicial interpretations that acknowledge the existence of indigenous legal systems.<sup>49</sup> However, as demonstrated in the previous sections, this coexistence is not characterized by equality. Instead, it is structured within a hierarchical relationship in which state law retains ultimate authority over the validation, interpretation, and enforcement of customary law.<sup>50</sup>

This condition reflects what scholars describe as weak legal pluralism, where non-state legal systems are recognized but remain subordinate to the state. Within this framework, customary law is treated as a derivative or supplementary system, rather than as an autonomous source of authority. As a result, indigenous legal systems are incorporated into the state legal order in ways that often transform, limit, or even undermine their original character.<sup>51</sup>

The empirical realities in West Kalimantan illustrate the limitations of this model. The requirement for formal recognition through administrative procedures, the intervention of sectoral enforcement bodies such as Satgas PKH, and the dominance of economic interests in land governance all point to the persistence of state-centric control. Legal pluralism, in this sense, functions more as a mechanism of accommodation than as a framework for genuine coexistence. It allows the state to acknowledge diversity while maintaining its dominance over legal and political processes.

In light of these limitations, it is necessary to rethink legal pluralism as a framework that not only recognizes diversity but also addresses

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<sup>49</sup> Brian Z. Tamanaha, *A General Jurisprudence of Law and Society, A General Jurisprudence of Law and Society*, 2010, <https://doi.org/10.1093/acprof:oso/9780199244676.001.0001>.

<sup>50</sup> Talita Syamantha, Dedi Hermawan Syahputra, and . Zulfikar, "The Subject of Customary Law and the Relevance of Customary Law in the Indonesian Legal System," *International Journal of Research and Review* 12, no. 4 (2025): 298–301, <https://doi.org/10.52403/ijrr.20250436>.

<sup>51</sup> Yuki Muhammad Fidaus, "Preserving Customary Law in the Era of Globalization within Indonesian Society and Legal System," *Law and Justice* 9, no. 1 (2024): 163–71, <https://doi.org/10.23917/laj.v9i1.597>.

power relations. It requires a shift from weak legal pluralism to what can be conceptualized as strong or critical legal pluralism. Unlike its conventional counterpart, critical legal pluralism emphasizes the autonomy of non-state legal systems and challenges the hierarchical structures that privilege state law. It recognizes that legal systems are embedded in social, cultural, and political contexts, and that their legitimacy cannot be determined solely by state recognition.

A critical approach to legal pluralism also requires integrating the three dimensions of justice, namely recognition, redistribution, and representation. Recognition alone is insufficient if it is not accompanied by equitable access to resources and meaningful participation in decision-making processes. For indigenous peoples, this means that legal frameworks must not only acknowledge customary rights but also ensure that communities have control over their territories and a voice in governance.<sup>52</sup>

From this perspective, rethinking legal pluralism involves redefining the role of the state.<sup>53</sup> Rather than acting as the sole arbiter of legal validity, the state must adopt a facilitative role that supports the coexistence of multiple legal systems on more equal terms. It includes recognizing indigenous legal institutions as legitimate authorities in their own right, and creating mechanisms for resolving conflicts that respect both state and customary norms.<sup>54</sup>

In practical terms, this transformation requires several key changes. *First*, the process of recognizing indigenous communities must be simplified and reoriented toward acknowledgment rather than

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<sup>52</sup> Legal recognition of indigenous peoples must be accompanied by guarantees of territorial control and participation, which are closely related to the role of customary courts in ensuring access to justice and the protection of rights, read on Anti Mayastuti, Luthfiyah Trini H, and Diana Lukitasari, "Institutionalizing Customary Court in Indonesian Justice System as an Effort to Realize Access to Justice Right for Indigenous People," *Indonesian Journal of Criminal Law Studies* 7, no. 2 (2022), <https://doi.org/10.15294/ijcls.v7i2.35087>.

<sup>53</sup> Achmad Hariri and Basuki Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia," *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146–70, <https://doi.org/10.21580/walrev.2024.6.2.25566>.

<sup>54</sup> Anggi Purnama Harahap et al., "Legal Pluralism and Customary Justice in Indonesia: Reconstructing Adat Law under State Legal Dominance," *Littera Legis: Journal of Law, Society, and Justice* 1, no. 1 (2025): 1–16.

validation. The existence of indigenous peoples should not depend on bureaucratic procedures, but should be presumed based on historical and sociological evidence. Administrative processes should serve to document and support indigenous rights, rather than to restrict them.

*Second*, there is a need to harmonize the various legal regimes that affect indigenous rights, particularly in agrarian, forestry, and environmental law. The current fragmentation of legal frameworks creates inconsistencies and conflicts that undermine the effectiveness of recognition. A more integrated approach is required to ensure that indigenous rights are consistently protected across different sectors.

*Third*, mechanisms for participation must be strengthened to ensure that indigenous communities are actively involved in decision-making processes. This includes not only formal consultations but also the recognition of indigenous governance systems as part of the decision-making structure. Participation must be meaningful, allowing communities to influence outcomes rather than merely providing input.

*Fourth*, the principle of free, prior, and informed consent must be fully implemented as a standard for all activities affecting indigenous territories. This principle provides a basis for ensuring that indigenous communities have control over decisions that impact their land and resources. Its effective implementation requires clear guidelines, institutional commitment, and mechanisms for accountability.

*Fifth*, the role of enforcement institutions must be critically reassessed. As demonstrated by the actions of *Satgas PKH* in West Kalimantan, enforcement practices can undermine indigenous rights when they are applied without regard for customary systems. A reoriented approach to enforcement should incorporate safeguards to ensure that indigenous rights are respected and that conflicts are resolved through dialogue rather than coercion.

Beyond institutional reforms, rethinking legal pluralism also involves a broader shift in legal consciousness. It requires recognizing that law is not merely a set of formal rules but a reflection of social values and power relations. Indigenous legal systems embody alternative ways of understanding land, community, and governance, which can contribute

to more sustainable and equitable forms of development.<sup>55</sup> Integrating these perspectives into the broader legal framework can enhance the legitimacy and effectiveness of law.

In West Kalimantan, such a transformation has particular significance. The region's rich cultural diversity and ecological importance make it an ideal setting for developing more inclusive models of legal pluralism.<sup>56</sup> By strengthening the role of indigenous communities in managing their territories, it is possible to address both social justice and environmental sustainability. This approach aligns with broader global trends that recognize the importance of indigenous knowledge and governance in addressing environmental challenges.

Ultimately, rethinking legal pluralism is not merely a technical exercise but a normative project that seeks to redefine the relationship among law, the state, and society. It challenges the assumption that the state is the sole source of legal authority, opening space for more diverse and inclusive forms of governance. In doing so, it provides a pathway for resolving the constitutional paradox identified in this study.

By moving toward a more critical and justice-oriented model of legal pluralism, it becomes possible to transform recognition from a symbolic gesture into a substantive reality. It requires a commitment to addressing structural inequalities, rebalancing power relations, and ensuring that indigenous peoples are recognized and empowered as full subjects of law. Only through such a transformation can the promise of constitutional recognition be realized in practice.

## Conclusion

This article examines the disjunction between normative recognition and empirical marginalization of indigenous peoples in Indonesia, with a particular focus on West Kalimantan. By integrating

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<sup>55</sup> Nilna Aliyan Hamida, "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?," *Indonesian Journal of Law and Society* 3, no. 1 (2022): 1, <https://doi.org/10.19184/ijls.v3i1.26752>.

<sup>56</sup> Lukman Hakim, Qatrunnada Hamparan Melati, and Purnawan Dwikora Negara, "Integrating Adat Law in Indonesia: Challenges and Opportunities in a Centralized Legal Framework," *Indonesian State Law Review* 8, no. 1 (2025): 58–82, <https://doi.org/10.15294/islrev.v8i1.19628>.

constitutional analysis, regional legal frameworks, and empirical realities on the ground, this study demonstrates that the persistence of indigenous marginalization cannot be explained merely as a failure of implementation. Rather, it is rooted in the structure of legal politics itself, which simultaneously produces recognition and exclusion. This duality gives rise to what this article conceptualizes as a constitutional paradox: the legal system affirms indigenous rights while enabling their restriction.

At the normative level, Indonesia has established a relatively robust framework for recognizing indigenous peoples through constitutional provisions, statutory regulations, and regional legal instruments. These frameworks formally acknowledge indigenous communities as legal subjects and affirm their traditional rights, particularly regarding land and natural resources. However, this recognition is inherently conditional, subject to criteria defined and controlled by the state. As a result, recognition is not an inherent acknowledgment of pre-existing rights, but a mediated and contingent status that depends on state validation.

At the empirical level, the case of West Kalimantan reveals that such conditional recognition is insufficient to prevent marginalization. Indigenous communities, particularly Dayak groups, continue to face land dispossession, environmental degradation, and exclusion from decision-making processes. The expansion of extractive industries and the allocation of land concessions illustrate how economic interests are prioritized over indigenous rights. At the same time, state interventions, including enforcement actions by institutions such as the Forest Area Control Task Force, demonstrate that marginalization is not only driven by corporate actors but also actively produced through state practices. These dynamics generate new forms of conflict and deepen the vulnerability of indigenous communities.

The interaction between these normative and empirical dimensions reveals that the core issue lies in the way recognition is constructed and operationalized. Recognition functions within a state-centric legal order that prioritizes control, classification, and administrative validation. It transforms recognition into a procedural mechanism rather than a substantive guarantee of rights. Consequently,

legal recognition does not necessarily translate into justice; it may instead legitimize ongoing processes of exclusion.

To explain this condition, this article advances the concept of a constitutional paradox, which captures the coexistence of recognition and marginalization within the same legal framework. This paradox is not an anomaly but a structural feature of Indonesia's legal system, shaped by the interaction among legal norms, institutional practices, and political-economic interests. The state's dual role as both guarantor of rights and facilitator of economic development creates inherent tensions that are reflected in the governance of indigenous territories.

Building on this analysis, the article argues that resolving this paradox requires a fundamental rethinking of legal pluralism. The current model of legal pluralism in Indonesia reflects a weak form in which customary law is recognized but subordinated to state authority. This hierarchical structure limits the autonomy of indigenous legal systems and constrains their capacity to function as independent sources of normativity. As a result, legal pluralism operates more as a strategy of accommodation than as a framework for genuine coexistence.

A shift toward a more critical and justice-oriented model of legal pluralism is therefore necessary. Such a model must move beyond symbolic recognition and address the structural dimensions of inequality by integrating recognition with redistribution and representation. It requires reconfiguring the state's role from a central authority that validates indigenous existence to a facilitator that ensures equitable relations between legal systems. This transformation also demands greater coherence across legal regimes, stronger safeguards for indigenous participation, and a commitment to aligning legal frameworks with the lived realities of indigenous communities.

The findings of this study contribute to broader debates on indigenous rights, legal pluralism, and resource governance by highlighting the limitations of formal legal recognition in contexts shaped by strong political and economic interests. It underscores that recognition, in the absence of structural transformation, can become a tool of governance that manages rather than resolves claim to justice. By introducing the concept of a constitutional paradox, this article provides a new analytical lens for understanding the persistent gap between law and reality in the protection of indigenous rights.

Ultimately, the future of indigenous rights in Indonesia depends on moving beyond formalism toward substantive justice. It requires not only legal reform but also a reorientation of legal politics that prioritizes equity, inclusivity, and respect for indigenous autonomy. Without such transformation, the promise of constitutional recognition will remain unfulfilled, and the paradox between recognition and marginalization will continue to define the lived experiences of indigenous peoples.

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All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.