

WENZAO URSULINE UNIVERSITY OF LANGUAGES  
DEPARTMENT OF INTERNATIONAL AFFAIRS

This senior paper was presented

By

Lourdes Valeriani Christoffelini

It was defended on

November 16, 2024

And approved by

Reviewer 1: Daniel Lin, Associate Professor, Department of International Affairs

Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Reviewer 2: Mark Lai, Assistant Professor, Department of International Affairs

Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Adviser: Philipp Fluri, Associate Professor, Department of International Affairs

Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Copyright © by Lourdes Valeriani Christoffelini  
2025

# **Customary Land Tenure and State Law in Indonesia: A Qualitative Analysis of Power Dynamics and Legal Pluralism**

Lourdes Valeriani Christoffelini

Wenzao Ursuline University of Languages, 2025

## **Abstract**

The existence of Adat communities or the indigenous people and their customary land rights through various laws and regulations are recognized by the Indonesian government. However, there is a complex interaction between the Adat rights over their customary land and Indonesia's state laws, with varying legal recognitions of customary land rights across regions. Unfortunately, most governmental projects related to industrial development often cause losses to indigenous communities who live in or around the development site. Indonesia recognizes the existence of indigenous communities and their customary land rights through various laws and regulations. Adat Law, a system of norms, customs, and traditional laws specific to different indigenous communities, plays a central role in governing land use, managing natural resources, and land tenure. Indigenous people often held a deep connection spiritually and culturally to their ancestral lands. These lands are not only seen as a source of living but as an integral part of their heritage and their identity. This research delves into the perspectives of indigenous communities, government officials, and NGOs on this issue. It examines existing legal and policy solutions aimed at strengthening customary land rights and promoting sustainable development that respects indigenous communities and their connection to the land. The research explores the historical and contemporary challenges faced by indigenous communities, including displacement, loss of livelihood, and erosion of cultural heritage. It investigates the reason behind the ongoing conflict between state and Adat law, analyzing the factors that contribute to the dominance of state law over customary rights. By understanding these dynamics, the research aims to propose potential solutions for integrating customary land rights into development planning. The goal is to create policy frameworks that promote the protection of indigenous communities' land rights while allowing for responsible economic development.

Keywords: Adat communities, Adat Law, Customary land, State law, land tenure

## 摘要

印度尼西亞政府透過各種法律法規承認了阿達特社區（原住民）的存在及其對傳統土地的習慣權利。然而，阿達特權利與印度尼西亞國家法律之間存在複雜的互動關係，各區域對傳統土地權利的法律承認程度不一。不幸的是，大多數與產業發展相關的政府專案往往會造成居住在開發地或其周邊的原住民社區損失。印度尼西亞承認原住民的存在及其對傳統土地的習慣權利，並透過各種法律法規加以規範。阿達特法是一種特定於不同原住民社區的規範、習俗和傳統法律體系，在土地使用、自然資源管理和土地保有權方面發揮核心作用。原住民通常與其祖傳土地存在著深厚的精神和文化聯繫。這些土地不僅被視為生活來源，更是其遺產和身份認同不可或缺的一部分。本研究深入探討了原住民社區、政府官員和非政府組織對此議題的觀點。研究檢視了旨在強化傳統土地權利並促進尊重原住民及其與土地聯繫的可持續發展的現有法律和政策解決方案。研究探討了原住民面臨的歷史和當代挑戰，包括流離失所、生計喪失和文化遺產侵蝕。研究調查了國家法律與阿達特法之間持續衝突的原因，分析了導致國家法律凌駕於習慣權利之上的因素。透過了解這些動態，本研究旨在為將傳統土地權利納入發展規劃提出潛在解決方案。目標是建立促進保護原住民土地權利並允許負責任經濟發展的政策框架。

關鍵字：阿達特社區、阿達特法、傳統土地、國家法律、土地保有權

## Table of Contents

INTRODUCTION .....	1
Research Motivation .....	2
Research Purpose .....	2
Research Questions .....	3
Limitations .....	3
Delimitations .....	4
Contributions .....	4
LITERATURE REVIEW .....	6
The Evolving Legal Landscape of Indigenous Land Rights in Indonesia .....	6
The Impact of MoEFL’s Internal Legal Culture on Customary Forest Recognition .....	8
Protecting Indigenous Rights and Promoting Sustainable Use of Genetic Resources .....	9
The Role of Customary Law into Biodiversity Conservation .....	10
The Baduy and Forest Conservation .....	11
Strengthening Legal Protection for Customary Land in Central Kalimantan .....	15
A Rights-Based Approach to Recognizing Indigenous Peoples’ Rights .....	16
METHODOLOGY .....	19
Introduction .....	19
Research Design .....	19
Instrumentation and Data Collection .....	20
DATA ANALYSIS .....	22
Purpose of Study .....	22
Challenges and Opportunities in Protecting Customary Land Rights in Indonesia .....	23
Balancing Development and Indigenous Rights .....	24
Balancing Development and Indigenous Rights in Indonesia’s Provinces .....	26
The Government’s Role in Protecting Customary Land Rights in West Kalimantan .....	27
CONCLUSION .....	29
Discussion of Key Findings .....	29
Addressing the Research Questions .....	30
APPENDIX .....	33
INTERVIEW WITH BADUY TRIBE SECOND LEADER .....	33
INTERVIEW WITH BPN HEAD DEPARTMENT .....	37

INTERVIEW WITH MS. MAYA LAWYER FROM KALIMANTAN .....	41
BIBLIOGRAPHY .....	44

## LIST OF FIGURES

Figure 1. Indonesian Tribe .....	6
Figure 2. Baduy tribe river .....	13
Figure 3. Baduy Tribe small market .....	13
Figure 4. Baduy Tribe gate to the village .....	14
Figure 5. Baduy Tribe villagers .....	14
Figure 6. Me and a Baduy kid.....	15
Figure 7. Hiking into the tribe.....	15

## INTRODUCTION

Environmental law is a global issue that needs addressing. Environmental law is crucial as it calls an array of challenges such as customary land protection, protection of human health and safety, promotion of sustainable practices and healthy ecosystem into perspective. It further recognizes the interconnectedness of environmental issues and the global nature of many environmental problems, making it an essential tool for safeguarding our planet and its resources.

The environment is something that is part of us as a living-creatures, but unfortunately, most governmental projects related to industrial development often cause losses to indigenous communities who live in or around the development site. Indonesia recognizes the existence of indigenous communities and their customary land rights through various laws and regulations. Adat Law, a system of norms, customs, and traditional laws specific to different indigenous communities, plays a central role in governing land use, managing natural resources, and land tenure.

The existence of Adat communities or the indigenous people and their customary land rights through various laws and regulations are recognized by the Indonesian government. However, there is a complex interaction between the Adat rights over their customary land and Indonesia's state laws, with varying legal recognitions of customary land rights across regions. Cases like encroaching lands or exploiting customary land's resources without consent happened a lot of times. State law often adopts a Western legal concept of land ownership, while Adat Law emphasizes a more communal and spiritual connection to the land. This discrepancy in legal frameworks creates uncertainty and can lead to a big conflict between the government and the



indigenous people when industrial development projects encroach upon customary lands. Not only that, they will also fight over compensation the indigenous get and the environmental resources.

### **Research Motivation**

This research delves into the intricate web of challenges faced by indigenous communities in Indonesia. Its primary objective is to shed light on the significant impact of industrial development projects on their customary land rights. By examining this critical issue through a multifaceted lens. The research contribute to a broader public understanding of the complex relationship between industrial development and customary land rights in Indonesia. This involves highlighting the historical and cultural significance of land for indigenous communities. By analyzing the impact of industrial development projects on customary lands, this research identify the specific challenges faced by these communities. This could include land dispossession, environmental degradation, and disruptions to traditional ways of life.

### **Research Purpose**

The research explore potential solutions for strengthening and upholding customary land rights into development planning, the research can contribute to promoting sustainable development models that are respectful of indigenous communities and their connection to the land. The research findings can be used to inform and influence policy changes at local, regional, and national levels. The goal is to create policy frameworks that promote the protection of indigenous communities' land rights while allowing for responsible economic development.

## **Research Questions**

Indigenous people often held a deep connection spiritually and culturally to their ancestral lands. These lands are not only seen as a source of living but as an integral part of their heritage and their identity. Therefore, how do indigenous communities, government officials, and NGOs perspectives on this issue? What legal and policy solutions exist to strengthen customary land rights and promote sustainable development that respects indigenous communities and their connection to the land? Did they move to some other place? How do they cope with this and survive? What do they hope the future of Indonesia's customary land rights will become? What is the conflicting nature between state and Adat law? Why are there still problems regarding this when Indonesia has Adat law? What makes state law 'stronger'? How and what reactions and opinions from indigenous people about this.

## **Limitations**

By achieving these ambitious goals, the research has the potential to make a significant contribution to the ongoing discussions surrounding indigenous rights, environmental protection, and sustainable development in Indonesia. The ultimate aim is to create a future where indigenous communities and their ancestral lands are safeguarded, allowing them to thrive and maintain their cultural heritage alongside responsible economic progress. It may be challenging for me to get to the Baduy tribe in Banten. Going back to Indonesia will be part of the journey. Not only that, the way to get to Baduy tribe is also far and can be challenging. From my house to the forest takes around 4-5 hours. Not only that, after hours of driving, hiking the small mountain for around 6-7 hours. To get there, stay over for a night would be needed. Then I get to interview the leader of the tribe. From the state and lawmakers perspective, there will be an interview from the Director General of MoEFL, some Indonesian lawyers and professors from University of

Indonesia but it can be so difficult to set a schedule with these people since they are very important people and often busy.

### **Delimitations**

One of the most significant strengths of my research lies in the unique access I have to key individuals. Many researchers face challenges in securing interviews with high-profile individuals. However, my ability to interview the Baduy tribe leader, the Director General of the Ministry of Environmental Law and Forestry, a lawyer specializing in this area, and professors from the University of Indonesia with relevant experience presents a truly unique opportunity. These individuals represent diverse perspectives from within the complex web of customary land rights, environmental law, and indigenous communities in Indonesia.

The Baduy tribe, known for their adherence to traditional ways of life, offers a valuable case study. Interviewing their leader will provide first hand insights into the cultural significance of land and the impact of development projects on their community. This perspective is often missing from academic discourse and can shed light on the social and spiritual dimensions of the conflict. The Director General of the Ministry of Environmental Law and Forestry represents the state's perspective on land management and environmental regulations. Their insights will be crucial in understanding the legal framework surrounding customary land rights and the challenges of reconciling them with state law. The lawyer specializing in this area will add further depth by providing legal analysis of the current situation and potential solutions.

### **Contributions**

Professors from the University of Indonesia with experience in this area will offer a wealth of academic knowledge. They can provide historical context, theoretical frameworks, and

comparative analysis with other countries facing similar challenges. By combining these diverse perspectives, you can create a rich and nuanced understanding of the issue. To maximize the potential of these interviews, it's essential to develop a well-structured interview protocol with targeted questions for each individual. Delving into specific cases, legal interpretations, and potential solutions will yield the most valuable data. By leveraging this unique access, this research has the potential to make a significant contribution to the ongoing discussions surrounding customary land rights and sustainable development in Indonesia.

## LITERATURE REVIEW

### **The Evolving Legal Landscape of Indigenous Land Rights in Indonesia**

Indonesia, a vast archipelago nation, is home to a rich tapestry of indigenous communities who have stewarded their ancestral lands for generations. These communities possess customary land rights, governed by a system of norms and traditions known as Adat Law. However, the legal landscape in Indonesia becomes complex when these customary rights collide with the framework of state law. The 2012 Constitutional Court Decision (Number 35/PUU-X/2012) established a legal framework for customary forests, distinct from state forests. This decision aimed to provide greater certainty and safeguard the human rights of indigenous people in managing their ancestral lands<sup>1</sup>. While traditional problems like legal standing and management area boundaries persist. The MoEFL evolving internal legal procedures are playing a positive role in recognizing customary land rights. This is reflected in the growing number of recognized customary forests (currently at 80 units).



Figure 1 Indonesian Tribe

---

<sup>1</sup> Heydir, Laurel. “Customary Forest and Conservation / Hutan Adat Dan Konservasi.” (Winrock International / USAID ~ White Paper 3), 2017, 73–90 / 91–109.

As for the procedures for the recognition and protection of the legal community customary is regulated in the regulation of the Minister of Internal Affairs Number 52 of 2014 concerning guideline recognition and protection of indigenous people. As for the stages of recognition and MHA protection is carried out through stages:

- Community identification customary law: Local governments identify customary law communities by forming committees at the district or city level. The identification process considers factors such as the community's history, traditional territory, customary laws, property and traditional objects, and institutional or traditional governance systems.
- Verification and validation of Indigenous Law Communities: Following identification, the claimed customary law community undergoes verification and validation procedures.
- Determination indigenous law society: The community is officially recognized as a customary law society.

The implementation of identification is carried out by the local government by forming a district/city indigenous law community committee with observing the history of the indigenous law society, the customary territory, customary law, property wealth and/ or customary objects, and institutional/ traditional government system. Laurel Heydir highlights the importance of a cross-sectoral approach for managing customary forests. This approach recognizes three key aspects:

- Social Aspects: The customary community itself
- Regional Aspect: The customary territory or land area
- Legal Aspect: The customary laws governing the community and its land.

Heydir further emphasized that biodiversity and ecosystem conservation efforts within customary forests also require cross-sectoral collaboration. This extends beyond the MoEFL, involving related government institutions and stakeholders in the management of biological resources. Therefore, it must be ensured to include indigenous peoples in conservation management and ensure the involvement of these indigenous people in order to support conservation functions.

### **The Impact of MoEFL’s Internal Legal Culture on Customary Forest Recognition**

<sup>2</sup>The process of recognizing customary forests in Indonesia often faces hurdles due to incomplete applications. Common issues include a lack of proper documentation for customary land boundaries and maps that don't adhere to established cartographic standards. This delves into a critical aspect of the challenge which is the response of the MoEFL to such incomplete applications submitted by indigenous communities. This leads to the questions of how the MoEFL handles these requests? Does the Ministry simply reject them, or does it offer guidance and support to help communities improve their applications? Understanding the MoEFL’s approach is crucial because it reflects the Ministry’s internal legal culture, the prevailing beliefs, attitudes, and practices concerning customary land rights within the institution.

It is important to focus on how the MoEFL’s internal legal culture influences the determination of customary forests. It will examine how the Ministry’s practices align with the landmark Constitutional Court Decision Number 35/PUU-X/2012, which recognized the distinct

---

<sup>2</sup> Heydir, Laurel. “Customary Forest and Conservation / Hutan Adat Dan Konservasi.” Conservation and Indigenous People / Konservasi dan Masyarakat Hukum Adat (Winrock International / USAID ~ White Paper 3), 2017, 73–90 / 91–109.

legal status of customary forests separate from state forests. By analyzing the MoEFL's response to incomplete applications, the research aims to shed light on the extent to which the Ministry upholds the court's decision and facilitates the recognition of customary land rights.<sup>3</sup>

This deeper investigation can reveal potential areas of improvement within MoEFL's application process. If the Ministry prioritizes rejection over offering support to indigenous communities, it may be hindering full implementation of the Constitutional Court decision.

### **Protecting Indigenous Rights and Promoting Sustainable Use of Genetic Resources**

<sup>4</sup>A presentation by Agus Sardjono titled "Access and Protection of Indigenous People Against Genetic Resources in Their Regions" sheds light on the crucial role indigenous communities play in environmental conservation. The presentation emphasizes that indigenous peoples hold not only rights but also responsibilities regarding:

- Conservation efforts: Protecting the delicate balance of ecosystems within their traditional territories.
- Sustainable Use of Natural Resources: Utilizing natural resources responsibly and ensuring their long-term viability for future generations.
- Fair Distribution of Benefits: Sharing the benefits derived from the use of genetic resources found in their territories in a just and equitable manner.

---

<sup>3</sup> Liswandi, I. (2018). Peranan Budaya Hukum Kementerian Lingkungan Hidup dan Kehutanan Dalam Penetapan Hutan Adat [The Role of Legal Culture of the Ministry of Environment and Forestry in the Determination of Customary Forests]. Academia.edu.

<sup>4</sup> Anggraini, Irma. "Akulturasi Hukum Adat Baduy Dengan Hukum Positif Indonesia." Rechtsregel : Jurnal Ilmu Hukum, 2020.



The presentation underscores the importance of a robust database for genetic resources. This database would serve as a critical tool for research, development, and ensuring the fair distribution of benefits associated with these resources. To achieve this goal, Sardjono emphasizes the need for a multi-stakeholder approach. This includes collaboration between:

- **Indigenous Communities:** Their knowledge and traditional practices are invaluable for identifying and managing genetic resources.
- **Local Governments:** They can provide support and infrastructure to facilitate data collection and management within indigenous territories.
- **Clearing Bodies:** These institutions play a crucial role in ensuring compliance with access and benefit-sharing regulations related to genetic resources.

### **The Role of Customary Law into Biodiversity Conservation**

By fostering collaboration between these stakeholders, a more comprehensive and accurate genetic resource database can be established. This ultimately contribute to the protection of indigenous rights, promote sustainable practices, and ensure fair distribution of benefits arising from the use of these valuable resources.

In a recent paper titled “Continuity and Transformation of Customary Law in The Middle of the Legal Needs of Biodiversity Conservation Law in Indonesia”, authors Luluk Uliyah, Muki T. Wicaksono and Myrna Safitri argue for the importance of recognizing customary law within the framework of biodiversity conservation in Indonesia. Their perspective, grounded in legal pluralism, emphasizes that customary law is a living and evolving body of knowledge that indigenous people use to manage their environments.

The authors highlight two key areas for revising Indonesia's Law No. 5/1990. Firstly, they advocate for incorporating customary law into the legal framework for managing conservation areas.<sup>5</sup> This would provide legal certainty for indigenous communities and their customary law in Indonesia policies. They argue that a legal pluralism approach should be embraced not only in forestry but also in coastal zone management and biodiversity conservation efforts across the country. This revised approach would recognize the valuable knowledge and practices of indigenous communities in managing their environments. It would also promote greater equity and justice for these communities by ensuring their legal rights are respected within conservation initiatives.

### **The Baduy and Forest Conservation**

Indonesia boasts a rich tapestry of indigenous cultures, and the Baduy tribe stands out as a unique example of a society deeply connected to its natural environment. Located in Lebak Regency, Banten, West Java, the Baduy people have garnered recognition for their tradition of living in relative seclusion from the outside world. But this isolation serves a greater purpose: preserving their ancestral traditions and fostering a harmonious relationship with nature. The Baduy community itself is divided into two groups: the Baduy Luar (Outer Baduy) and the Baduy Dalam (Inner Baduy). The Outer Baduy are more open to interaction with outsiders, while the Inner Baduy strictly maintain their isolation. However, both groups share a profound respect and commitment to protecting the surrounding forests. The forest is not merely a backdrop for the Baduy way of life; it is the lifeblood of their community. They understand that the health and

---

<sup>5</sup> sati, destara. "Politik Hukum Di Kawasan Hutan Dan Lahan Bagi Masyarakat Hukum Adat." *Jurnal Hukum Lingkungan Indonesia*, 2019.

well-being of the forest are inextricably linked to their own survival and the future of their descendants. Local environmental conditions within their territory are distinct from the surrounding areas, and the Baduy have adapted their customs to ensure the sustainability of this unique ecosystem.

Legally, Indonesian forests are classified as either state forests or forests with recognized rights (ownership, business rights, use rights, or customary rights) under Law No. 41 of 1999 concerning Forestry. For the Baduy tribe, the forest plays a multifaceted role. It serves not only as a source of spiritual and cultural sustenance, but also as the foundation of their livelihood.<sup>6</sup> The swidden fields carved from the forest provide for their basic needs and have become a cornerstone of their way of life. The Baduy tribe's dedication to forest conservation offers valuable lessons for contemporary society. Their commitment to preserving their heritage and living in harmony with nature serves as an inspiration, reminding us of the crucial role indigenous communities play in safeguarding the environment. The Baduy people, a traditional tribe residing in Indonesia, stand as a powerful example of unwavering commitment to forest and nature conservation. Their dedication to environmental protection is particularly noteworthy in a time when Indonesian forests, considered the "lungs of the world," face increasing threats and degradation. Guided by their ancestral wisdom, the Baduy have cultivated a deep respect for their surroundings. Their way of life revolves around maintaining a delicate balance with nature, ensuring the continued health of the forests that sustain them. However, their efforts are not without challenges.

---

<sup>6</sup> Wahyuningsih, Virliana. "Peran Masyarakat Adat Baduy Dalam Melestarikan Keberlangsungan Hutan Dan Alam." Virliana Wahyuningsih, 2022.



Figure 3 Baduy Tribe small market



Figure 2 Baduy tribe river

One such challenge is the presence of companies encroaching on their customary forest areas. In the case of Leuweung Titipan in Banten, the critical condition of the forest is further exacerbated by its inclusion within the Gunung Madur Plantation managed by Perhutani Perum and the territory of PT Cemindo Gemilang. This overlap makes it difficult for the Kasepuhan Bayah, the Baduy customary authority, to effectively manage their ancestral lands. Despite these obstacles, the Baduy remain resolute in their environmental stewardship. Their commitment stems from the fundamental understanding that environmental destruction directly threatens their way of life. They recognize that any disruption to the natural balance will negatively impact their ability to meet their basic needs, leading to food scarcity and economic hardship. Fortunately, there are legal instruments that can support the Baduy's fight. Permendagri No. 52 of 2014, concerning Guidelines for the Recognition and Protection of Indigenous Peoples, provides a framework for regional governments to acknowledge and protect the rights of customary law

communities.<sup>7</sup> This regulation, alongside other existing national legal protections, can empower local authorities to implement policies that safeguard the Baduy and their vital role as environmental guardians.



Figure 5 Baduy Tribe villagers



Figure 4 Baduy Tribe gate to the village

However, a purely legalistic approach may not be sufficient. The Socio Legal approach, which emphasizes the social context of legal issues, offers a valuable perspective. By examining the complexities of the situation beyond just legal norms, a more nuanced understanding of the challenges faced by the Baduy can be achieved.<sup>8</sup> This, in turn, can inform the development of

---

<sup>7</sup> Wahyuningsih, Virliana. "Peran Masyarakat Adat Baduy Dalam Melestarikan Keberlangsungan Hutan Dan Alam." Virliana Wahyuningsih, 2022.

<sup>8</sup> Zakaria, R. Yando. (2023). Pengaturan Pengakuan Tanah Masyarakat Adat: Meluruskan Logika Hukum yang Keliru [Regulation on the Recognition of Indigenous Land: Straightening Out the Flawed Legal Logic].



more effective solutions that address not only the legal aspects but also the social and cultural dimensions of the conflict. The Baduy tribe's unwavering commitment to environmental sustainability serves as an inspiration. Their struggle highlights the urgent need for stronger legal frameworks, coupled with a deeper understanding of the social dynamics at play, to protect both indigenous communities and the vital ecosystems they rely on.



Figure 7 me and a Baduy kid

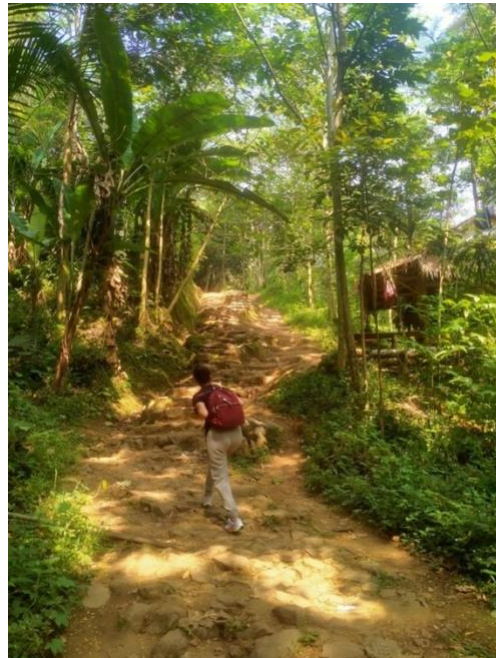


Figure 6 Hiking into the tribe

### **Strengthening Legal Protection for Customary Land in Central Kalimantan**

Meanwhile in Kalimantan, the existing regulations, Regional Regulation No. 16 of 2008 on Customary Institutions and Governor's Regulation No. 13 of 2009 on Customary Land and Customary Rights on Land in Central Kalimantan Province, are insufficient in guaranteeing legal certainty for the protection of customary land rights. In reality, conflicts between the Dayak

indigenous community and investors continue to occur in the region. To achieve legal protection for customary land, all stakeholders should have a common understanding and perspective on protecting existing customary land rights in the area.

The research, using a qualitative approach with a juridical empirical study, shows that there is no clear and comprehensive regulation at the national or specific Central Kalimantan level governing the protection of customary land rights. Moving forward, there is a need for state recognition and strengthening in the form of specific legislation, integrating both legal systems, so that customary land rights have certainty, justice, and benefits for the unity of existing customary legal communities.

It is recommended that the Central Kalimantan Province Government expand the scope of regulations in Governor's Regulation No. 13 of 2009 on Customary Land and Customary Rights on Land and Governor's Regulation No.4 of 2012 concerning Amendments to Governor's Regulation No.13 of 2009 on Customary Land and Customary Rights on Land into a Regional Regulation.<sup>9</sup>

### **A Rights-Based Approach to Recognizing Indigenous Peoples' Rights**

Current legal frameworks for recognizing the rights of indigenous peoples primarily focus on identifying and establishing the subject (i.e., the indigenous community); this process often involves political processes within regional parliaments. However, this approach of prioritizing the subject over the object and type of right is often misaligned with the socio-anthropological

---

<sup>9</sup> Yuhana, (2020). Makalah Perlindungan Hutan Atau Tanah Adat Di Kalimantan Tengah

realities of the relationship between the subject, object, and the type of right, especially considering the capacity of indigenous communities to participate in regional parliamentary processes. This approach, rather than recognizing and protecting the actual rights of indigenous people, can be seen as a form of ‘killing’ indigenous communities. Therefore, there is a need to rectify this legal approach by enacting a law that prioritizes the recognition of the object of the right, with a more flexible mechanism for regulating the subject that would be determined by the specific rights being recognized. The characteristic of the subject, object, and type of indigenous rights are highly diverse. This sociological reality necessitates a diverse range of recognition instruments. While this approach carries significant risks, particularly in ensuring that different policies do not contradict each other, it is technically more feasible and aligns more closely with socio-anthropological realities on the ground.

For instance, recognizing customary land rights might require a specific organic law, possibly as part of a national land law. In this context, Law Number 6 of 2014 on Villages can also be positioned as a legal instrument for recognizing the rights of indigenous people in the political, legal, governmental, and development spheres at the community level.

However, to ensure that sectoral regulations do not deviate significantly, there is a need for a comprehensive law that serve as an overarching framework for the recognition, respect and protection of indigenous people’s rights. This law, which could be called the Law on the



Recognition and Protection of Indigenous People's Rights would provide a more operational legal framework. <sup>10</sup>

Globally, issues surrounding customary land often arise due to two primary problems. First, the lack of formal legal recognition and policy frameworks for customary land leads to frequent disputes and claims. Second, the involvement of the private sector in acquiring customary land can exacerbate these conflicts. Indonesia, with its diverse ethnic and cultural landscape, has various customary land arrangements that align with local traditions and laws. However, as a unitary state, Indonesia also has a national constitution and laws that govern can use. The 1945 Constitution recognizes and respects indigenous and tribal peoples' customary rights, as long as they are compatible with national development and unity. Simultaneously, the constitution also emphasizes the state's control over land and natural resources for the benefit of the people.

The 1960 Basic Agrarian Law further recognizes customary rights, but it stipulates that these rights must be aligned with national interest and not conflict with higher laws. The law acknowledges the importance of customary law, but it also asserts the state's authority over land use and natural resources. <sup>11</sup>

---

<sup>10</sup> Firda Nisa, Syahfitri (2018). *Kedudukan Hukum Administrasi Negara Dengan Hukum Tata Negara*

<sup>11</sup> Agustino, Leo, and Aura Marta. "Dilemma of Customary Land Policy in Indonesia." *Masyarakat, Kebudayaan Dan Politik*, 2019.

## **METHODOLOGY**

### **Introduction**

This section outlines the methodological approach employed to examine the complexities surrounding customary land law and its interaction with state law in Indonesia. The research utilizes a multi-pronged approach, combining qualitative data collection techniques to gain a comprehensive understanding of the issue. Customary land law is deeply rooted in traditions and cultural practices. Interviews and focus groups can help me understand how people experience and navigate the complexities of customary land law in their daily lives. I can gain insights into their perceptions, challenges, and potential solutions. Interviews and focus groups can generate rich data in the form of narratives, stories, and personal experiences.

### **Research Design**

Focus groups can reveal how communities discuss, negotiate, and reach consensus on land-related issues. This can provide insights into the informal mechanisms for resolving disputes within the customary system. By analyzing legal documents and rulings, I can gain a deeper understanding of the formal framework of both customary and state land laws. This helps me compare and contrast the legal principles and identify potential areas of conflict. Analyzing historical documents or media coverage of land disputes can provide valuable insights into the evolution of customary and state laws over time. This historical context can help me understand the current situation. Combining data from interviews, focus groups, and content analysis allows you to triangulate my findings and ensure the validity of my research conclusions.

Content analysis of relevant documents like legal rulings, community records, or media reports can provide additional context and perspectives. Interviews and focus groups can reveal

underlying beliefs, values, and cultural norms that shape how people view land ownership and rights. By using content analysis for my research paper it can be crucial in understanding customary law, which is often deeply embedded in cultural traditions.

### **Instrumentation and Data Collection**

Since this paper is mostly interview based, by giving more detail on how to conduct the interview. Crafting an interview guide with open-ended questions tailored to the research questions is the first thing to do. Next step is identify and recruit participants who can offer relevant insights and experiences based on your research focus. Consider factors like demographics, background, and their potential role in my topic. Practicing my interviewing skills to ensure clarity, comfortable interaction, and active listening. This builds rapport and encourages open responses. Start by introducing myself, the research topic, and the purpose of the interview. Obtain informed consent, explaining how the data be used and ensuring anonymity or confidentiality if applicable. Use open-ended questions that begin with "how," "why," "can you elaborate on," or "tell me more about."

This avoids yes/no responses and allows for detailed narratives. Follow up on interesting points raised by the participant with probing questions that delve deeper into their experiences and perspectives. Maintain a professional and respectful demeanor throughout the interview. Avoid interrupting or leading the conversation, and adhere to ethical guidelines for research conduct.

By obtain informed consent, consider audio recording the interview for accurate data capture. However, ensure the participant feels comfortable with it. If not recording, take detailed

notes during the interview. Capture key points, participant quotes, and nonverbal cues (e.g., hesitation, excitement).

Not only from an interview but also by document analysis, identify documents relevant to your research question, such as personal letters, diaries, historical records, or media articles. Ensure the documents are authentic and credible sources of information. Carefully read and interpret the documents, considering the context and author's perspective. Identify key themes, recurring ideas, and historical or cultural significance. Analyze the data to understand the meanings and perspectives conveyed in the documents.

## **DATA ANALYSIS**

### **Purpose of Study**

The purpose of this study is to delve into the complex interplay between customary land tenure and state law in Indonesia. By employing a qualitative analysis, the research aims to uncover the underlying power dynamics and the manifestation of legal pluralism in shaping land governance practices.

Specifically, the study seeks to explore how customary land rights, rooted in indigenous traditions and practices, interact with the formal legal system. It examines the extent to which state law recognizes, respects, and protects customary land rights, and the implications of these interactions for indigenous communities. The research also investigates the factors that influence the power dynamics between state and customary legal systems, including historical, political, economic, and social contexts.

By understanding these dynamics, the study aims to contribute to a more nuanced understanding of land governance in Indonesia. It sheds light on the challenges faced by indigenous communities in securing their land rights and the strategies they employ to navigate the complex legal landscape. Furthermore, the research identifies potential policy recommendations to strengthen the protection of customary land rights and promote sustainable development that is equitable and inclusive. Ultimately, the study seeks to empower indigenous communities by providing them with a deeper understanding of their rights and the tools to advocate for their interests.

## **Challenges and Opportunities in Protecting Customary Land Rights in Indonesia**

While Indonesia has made significant strides in recognizing and protecting customary land rights, particularly through the 2012 Constitutional Court Decision and subsequent regulations, challenges persist. The identification and verification processes, though crucial, can be time-consuming and bureaucratic. Moreover, ensuring the long-term protection of these rights requires ongoing monitoring and enforcement. However, the growing recognition of customary forests and the increasing involvement of indigenous communities in decision-making processes represent positive developments. The cross-sectoral approach advocated by Heydir is essential for effective management, balancing ecological conservation with the socio-economic needs of indigenous communities. To further strengthen the protection of customary land rights, Indonesia should continue to refine its legal framework, streamline administrative procedures, and invest in capacity-building for both government officials and indigenous communities. By addressing these challenges and capitalizing on emerging opportunities, Indonesia can ensure a more equitable and sustainable future for its indigenous peoples and their ancestral lands.

The analysis of the MoEFL's response to incomplete applications for customary forest recognition is crucial for understanding the implementation of the 2012 Constitutional Court Decision. While the decision aimed to strengthen the rights of indigenous communities, the Ministry's practices may either facilitate or hinder this process. By examining the Ministry's internal legal culture and its alignment with the court's decision, we can assess the extent to which the rights of indigenous communities are being upheld. Additionally, the integration of indigenous knowledge and practices into biodiversity conservation efforts is highlighted. This requires a collaborative approach involving indigenous communities, local governments, and clearing bodies to establish a comprehensive genetic resource database. By recognizing and

respecting customary law, Indonesia can achieve a more sustainable and equitable approach to biodiversity conservation.

### **Balancing Development and Indigenous Rights**

The Baduy tribe offers a compelling case study of how indigenous communities can serve as effective stewards of the environment. Their deep-rooted connection to their ancestral lands and their traditional practices have allowed them to sustainably manage their forests for generations. However, their efforts are increasingly threatened by external pressures, such as encroaching plantations and mining activities. Despite these challenges, The Baduy tribe continues to advocate for their customary lands. The 2012 Constitutional Court Decision provides a legal basis for recognizing and protecting customary forests, but its implementation remains a complex process. To ensure the long-term sustainability of indigenous communities and their environments, a comprehensive approach is needed. This approach should combine legal reforms, policy implementation, and community empowerment. By recognizing the value of indigenous knowledge and practices, and by providing adequate legal protection, Indonesia can safeguard its rich cultural and ecological heritage.

The existing legal framework for protecting customary land rights in Central Kalimantan is inadequate, leading to ongoing conflicts between indigenous Dayak communities and external investors. The lack of clear and comprehensive regulations at both the national and regional levels has created a legal vacuum, hindering the recognition and protection of these rights. To address the issue, it is imperative to strengthen legal frameworks and enhance the recognition of customary land rights. A more robust legal system that integrates both customary and state laws is necessary to ensure then rights and interests of indigenous communities. This would involve

developing specific legislation that clearly defines customary land rights, establishes mechanisms for their recognition and protection, and provides for effective dispute resolution

Additionally, it is crucial to empower indigenous communities by providing them with the necessary knowledge and tools to assert their rights. This includes capacity-building initiatives, legal aid, and support in navigating complex legal processes. By empowering indigenous communities, they can actively participate in decision-making processes and advocate for their interests. Moreover, the government should foster collaboration between different stakeholders, including indigenous communities, government agencies, and private sector actors, to promote dialogue and find common ground. This collaborative approach can help to address land conflicts, ensure sustainable resource management, and promote equitable development. By implementing these recommendations, Indonesia can take significant steps towards protecting the rights of indigenous communities and ensuring the sustainable management of their land and resources.

The interview with the Baduy Dalam individual highlights the unique cultural practices and challenges faced by indigenous communities in Indonesia. The Baduy people have successfully preserved their traditions and customs through a combination of factors, including strong communal bonds, strict adherence to customary laws, and a deep spiritual connection to their land. The Baduy's ability to maintain their cultural integrity, even in close proximity to urban areas, contrasts sharply with the experiences of indigenous communities in other parts of Indonesia, such as Kalimantan and Papua. These communities often face challenges related to land rights, resource exploitation, and cultural erosion. One key factor contributing to the Baduy's resilience is their strong sense of community and their adherence to traditional customs. Regular communal meetings and rituals help to reinforce social cohesion and ensure that cultural



traditions are passed down from generation to generation. Additionally, the Baduy's spiritual connection to the land fosters a deep respect for nature and commitment to sustainable practices. While the Baduy have successfully preserved their way of life, they are not immune to external pressures. The increasing influence of globalization and modernization poses a threat to their cultural integrity. However, by understanding the factors that have contributed to the Baduy's resilience, other indigenous communities can learn valuable lessons about how to protect their cultural heritage and natural resources.

### **Balancing Development and Indigenous Rights in Indonesia's Provinces**

The interview with Rizki Anzar Maulid Dama, Head of the Section for Rights Determination and Registration at the Land Office of East Kotawaringin Regency, Central Kalimantan Province, provide valuable insights into the complex issue of customary land rights in Indonesia. The interview highlights the challenges faced by indigenous communities in asserting their land rights, particularly in regions like Kalimantan and Papua.

One of the key challenges is the lack of clear and comprehensive legal frameworks for recognizing and protecting customary land rights. While the government has made efforts to accommodate customary rights, the implementation of these laws can be inconsistent and subject to interpretation. Additionally, the lack of accurate land records and mapping, especially in remote areas, can hinder the identification and demarcation of customary land. Another significant challenge is the conflict between indigenous communities and external interests, such as mining and plantation companies. These conflicts often arise due to competing claims over land, leading to disputes and social tensions. The government's role in mediating these conflicts and ensuring the rights of indigenous communities is crucial.

To address these challenges, it is essential to strengthen legal frameworks, improve land administration systems, and promote dialogue and collaboration between indigenous communities, government agencies, and private sector actors. By recognizing and respecting the rights of indigenous peoples, Indonesia can foster sustainable development and social justice.

### **The Government's Role in Protecting Customary Land Rights in West Kalimantan**

The interview with Ms. Maya, a notary from Kuburaya, West Kalimantan, provides valuable insights into the complexities of land rights and indigenous communities in Indonesia. The discussion highlights the challenges faced by indigenous communities in asserting their land rights, particularly in regions like Kalimantan and Papua, where historical land records and formal property rights are often lacking.

One of the key issues is the conflict between customary land rights and state-issued land titles. While customary land rights are often based on long standing traditions and practices, they may not be formally recognized by the state. This can lead to disputes and land grabs, as external-actors, such as corporations and corporations and government agencies, seek to exploit these lands for economic development. To address these challenges, it is crucial to strengthen legal frameworks that recognize and protect customary land rights. This includes implementing clear and transparent procedures for land certification, ensuring that indigenous communities are involved in decision-making processes, and providing adequate compensation for land acquisition. Additionally, it is essential to promote dialogue and collaboration between indigenous communities, government official, and private sector actors to find mutually beneficial solution.

However, the effectiveness of these measures depends on the government's commitment to upholding the rights indigenous communities and implementing fair and equitable policies. It is also important to raise awareness about indigenous rights and promote respect for diverse cultures and traditions. By addressing these issues, Indonesia can foster a more just and sustainable future for its indigenous peoples.

## **CONCLUSION**

Indonesia, a nation of diverse cultures and landscapes, presents a complex picture when it comes to the recognition and protection of indigenous land rights. While the legal framework has evolved over time, with significant strides made in recent years, challenges persist in ensuring the equitable treatment of indigenous communities. One of the primary challenges is often-conflicting nature of customary law and state law. Indigenous communities have long relied on customary laws to govern land use and resource management. However, these customary rights can be undermined by state-led development projects, which may prioritize economic growth over environmental and social considerations. The lack of clear and comprehensive legal frameworks, particularly at the regional level, further exacerbates these challenges.

### **Discussion of Key Findings**

To address these issues, a multi-faceted approach is necessary. Firstly, it is crucial to strengthen legal frameworks that recognize and protect customary land rights. This includes developing specific legislation that clearly defines these rights, establishes mechanisms for their recognition and protection, and provides for effective dispute resolution. Secondly, empowering indigenous communities through capacity-building and legal aid is essential to enable them to assert their rights and participate meaningfully in decision-making processes.

Moreover, fostering collaboration between indigenous communities, government agencies, and private sector actors is crucial. This collaborative approach can help to identify and address the specific needs and concerns of indigenous communities, promote sustainable development, and minimize social and environmental impacts.

While significant challenges remain, there is hope for a more equitable and sustainable future for Indonesia's indigenous communities. By recognizing and respecting customary land rights, the government can contribute to the preservation of cultural heritage, environmental conservation, and social justice.

### **Addressing the Research Questions**

The interviews with the Baduy Dalam tribe second leader and the legal professionals from Kalimantan provide valuable insights into the complex and multifaceted issues surrounding indigenous land rights in Indonesia. While the Baduy community has successfully preserved their cultural heritage and land rights through strong communal bonds and spiritual connection to the land, indigenous communities in other regions, such as Kalimantan and Papua, face significant challenges in asserting their rights.

One of the primary challenges is the lack of clear and comprehensive legal frameworks that adequately recognize and protect customary land rights. This, coupled with the often-conflicting interest of state development and private sector exploitation, has led to land dispossession, environmental degradation, and social unrest. To address these challenges, it is imperative to strengthen legal frameworks, improve land administration systems, and empower indigenous communities.

Specific recommendations include:

1. Strengthening legal frameworks :

Develop and implement clear and comprehensive legislation that explicitly recognizes and protects customary land rights. This legislation should be aligned

with international human rights standards and indigenous peoples' rights conventions.

2. Empowering indigenous and collaboration:

Support indigenous communities in asserting their rights through capacity-building, legal aid, and community-based resource management initiatives. This will empower them to participate meaningfully in decision-making processes and advocate for their interests.

3. Promoting dialogue and collaboration:

Foster dialogue and collaboration between indigenous communities, government agencies, and private sector actors to find common ground and develop sustainable solutions. This can be achieved through participatory processes, such as free, prior, and informed consent (FPIC)

4. Strengthening land tenure security:

Implement effective land tenure systems that recognize and protect customary land rights. This includes improving land registration processes, resolving land disputes, and preventing land grabbing.

5. Promoting sustainable development:

Integrate indigenous knowledge and practices into development planning and implementation. This can help to ensure that development projects are environmentally sustainable and socially just.

Additionally, it is crucial to raise awareness about indigenous rights and promote respect for diverse cultures and traditions. By addressing these challenges and implementing these recommendations, Indonesia can create a more equitable and sustainable future for its indigenous communities.

However, it is important to acknowledge that the challenges faced by indigenous communities are complex and multifaceted. A one-size-fits-all approach may not be effective. Therefore, it is essential to tailor solutions to the specific needs and contexts of different communities. Furthermore, ongoing monitoring and evaluation are necessary to assess the effectiveness of these measures and to make adjustments as needed.

## APPENDIX

### INTERVIEW WITH BADUY TRIBE SECOND LEADER

	Conversation
Interviewer	Okay, let's start. What is your name, sir?
Interviewee	I go by Salati.
Interviewer	Okay, you are from the Baduy Dalam, right?
Interviewee	Yes.
Interviewer	I want to know a bit about the difference between the Baduy Dalam and the Baduy Luar.
Interviewee	The difference between Baduy Dalam and Baduy Luar is mainly in religion and clothing. Baduy Dalam wears plain black and white clothes with a plain white headband, while Baduy Luar wears blue batik headbands and can use vehicles. Baduy Dalam must walk wherever they go.
Interviewer	Baduy isn't far from the city, so how do Baduy people maintain their traditions and culture amidst the influence of outsiders, especially with so many visitors?
Interviewee	We have a customary meeting every three months.
Interviewer	What is that like, sir?
Interviewee	It instructs the residents on what is allowed and what is not, and everyone must respect the customs.
Interviewer	So, it's mandatory to follow?
Interviewee	Yes.
Interviewer	Can you share what are some of the strict rules that must not be violated?
Interviewee	The rules are determined by customs. The customs dictate what is allowed and what is not.
Interviewer	I read a journal about some Baduy land being taken by PT Cemindo Cemirlang for industrial development.
Interviewee	Where is that, approximately?
Interviewer	I forget. It wasn't detailed in the journal, but it mentioned that some land belonging to the Baduy was taken by the government for agriculture or industry, for resource extraction.
Interviewee	Oh, that might be outside our area, like in the Baya region, near Mount Mador. That place is spiritually entrusted to us, but physically, it's not maintained by the Baduy. Many mountains in Java are spiritually entrusted to the Baduy. So, the Baduy have a spiritual responsibility to care for it.
Interviewer	But there's no official certificate saying, "This belongs to us," right?
Interviewee	Correct.
Interviewer	How do the Baduy maintain a claim over their land when traditional land certificates aren't as strong as state-issued certificates? How do you ensure that the land remains yours and isn't taken by the government?
Interviewee	Since 2002, we've established an environmental document, which functions like a communal right over the area around Baduy. Before that, many people wanted to take the land, but now it has more weight.



Interviewer	So, technically, it shouldn't be taken because of that?
Interviewee	Yes.
Interviewer	What is your perspective on the government taking some Baduy land for development? Would the Baduy people agree to it if they were offered compensation?
Interviewee	Thankfully, so far, there hasn't been such an issue. The government respects our customs.
Interviewer	So, it hasn't reached that point yet?
Interviewee	Correct.
Interviewer	This gives me new insights. In many parts of Indonesia, like Kalimantan, where the capital city is being built, and Papua, there are conflicts between indigenous people and the government. The government says it's for industrial development, but the indigenous people are being displaced. What is your view, as a Baduy person, on these situations affecting other tribes?
Interviewee	It requires unity among the leaders. Without unity, it could lead to conflict, especially with modern technology and advanced countries today. Unity and awareness are crucial.
Interviewer	Would the Baduy community accept it if some of their land was taken for development in exchange for improvements or compensation?
Interviewee	Within the vicinity of Baduy, it wouldn't be accepted; it would conflict with our customs. But outside the Baduy area, it might be possible.
Interviewer	So, the area around Mount Mador is...
Interviewee	It's outside.
Interviewer	But spiritually, the Baduy have a responsibility to care for that land?
Interviewee	Yes, there are many places like Mount Karang, Mount Wage, Mount Kembang, even the Lapindo mudflow area that are spiritually under Baduy care.
Interviewer	That's far away.
Interviewee	That's why these entrusted mountains must be cared for and preserved to prevent natural disasters or severe diseases.
Interviewer	How do you take care of them?
Interviewee	If it becomes too damaged, the Baduy Dalam will send Baduy Luar representatives or customary leaders to the location to perform rituals and blessings for restoration. It's a lot of work for our community, but we must respect these responsibilities.
Interviewer	It's tough in modern times. Yes, progress is inevitable, but the government can't just bulldoze everything for development. How do the Baduy people manage their economy, for example, money?
Interviewee	Our livelihood is mostly farming; our main crop is rice. Besides rice, we grow ginger, bananas, durian, petai, and pepper, which we sell. Rice, however, is not for sale; it's reserved for personal consumption, traditional events, and ceremonies. For daily meals, we sometimes have to buy food since our own produce doesn't cover our needs throughout the year.
Interviewer	I've heard that honey is a major source of income for the Baduy.
Interviewee	Yes.

Interviewer	Baduy honey is well-known. What do the Baduy people usually do with the profits from selling honey? Do they use it for building homes or other things?
Interviewee	Yes, it can be used for building homes, storing food, daily expenses, buying clothes, and for traditional ceremonies, which require significant costs.
Interviewer	Is Baduy land considered sacred?
Interviewee	What do you mean by sacred?
Interviewer	For example, if a company wants to take over the honey business under their name, would that be allowed?
Interviewee	That has never happened.
Interviewer	So far, Baduy land is still safe and hasn't faced the severe situations like in Kalimantan with evictions?
Interviewee	Thank God, not yet.
Interviewer	Why is it that Baduy, despite being so close to urban areas, remains well-preserved, while Kalimantan, far from Jakarta, faces so many issues?
Interviewee	We have unity here. Unity with the customary leaders and among the community. If there's resistance, we are ready to face the local government. And we maintain relations through the Seba Baduy ritual, where every year, we visit the local regents and governors to present our harvest. It helps maintain relations with the government.
Interviewer	Maybe that's the issue in Kalimantan and Papua; their distance makes it hard for them to communicate with the government and traditional leaders. It's about accessibility.
Interviewee	It's about unity. It's harder to maintain connections over long distances. In the Baduy Dalam, people have the choice of whether or not to have an ID card.
Interviewer	But they are part of Indonesia?
Interviewee	Yes, they are, even without ID cards or practicing the officially recognized religions. They've been here before the country was established.
Interviewer	That's why in Kalimantan, where people have ID cards, they are still displaced, while the Baduy, even without ID cards, remain undisturbed.
Interviewee	It's about unity.
Interviewer	That's the key—lack of unity. Here, without unity, it could happen like that too. Why is there a lack of unity there? Maybe because of distance and communication difficulties with the government.
Interviewee	In Kalimantan, tribes can travel quickly by car. In Papua too, while in Baduy, even though it's close in distance, it takes longer because we walk. A journey can take 2-3 days. But we hold on to the spirit passed down by our ancestors: "Respect nature and whoever is in power." It's a lesson from our ancestors.
Interviewer	But why is there unity in Baduy, while in Kalimantan, despite easy access, there is conflict?
Interviewee	Another unique aspect is the Kawalu ritual, where for three consecutive months—February, March, and April—Baduy Dalam cannot go out, and outsiders cannot enter. It's a time of cleansing. In Hinduism, it's two days, for Muslims, it's one month, but for us, it's three months.
Interviewer	It's like a detox.

Interviewee	Yes, exactly. During that time, damaged plants regrow, guided by traditional leaders. It's a purification process for the heart. We try to cleanse any negative influences from tourism and visitors.
Interviewer	But now phones are becoming more common, and the younger generation is changing.
Interviewee	Our next generation will be different, but we will continue to respect traditions.
Interviewer	So you're still confident?
Interviewee	Yes.
Interviewer	For example, I asked Sarti if she wanted to leave to become a model, and she said no because once you leave, you can't come back. She wants to stay here.
Interviewee	Yes.

## INTERVIEW WITH BPN HEAD DEPARTMENT

Conversation	
Interviewer	Okay, first, could you tell us who you are, your position at BPN, and which regional BPN office you're with?
Interviewee	Alright, ma'am. Let me introduce myself. My name is Rizki Anzar Maulid Dama, commonly known as Dama. I work at the Land Office of East Kotawaringin Regency, Central Kalimantan Province. My position there is Head of the Section for Rights Determination and Registration. To answer your earlier question about customary rights: Customary rights have actually been accommodated by the Indonesian government and are granted management rights. However, there must first be a determination by the governor or regent that the area is designated as a customary land area. Once it's determined, customary land can be granted management rights. Under Indonesian law, the types of rights recognized include ownership rights, business use rights, use rights, management rights, and the right to collect forest products. The right to collect forest products is regulated by the Ministry of Environment and Forestry. Perhaps you are more familiar with ownership rights.
Interviewer	Yes, that's correct.
Interviewee	Ownership rights are the highest type of right that the government can grant. For plantations, the right is called business use rights, and for buildings, it's called building use rights. Customary land rights are actually given a special place in our system, regulated under a ministerial regulation—I can share the exact number later, but it's from 2024. We are very concerned about these customary rights. For example, in Padang, there is customary Nagari land, which is communal, so it's not given individual ownership but rather management rights in the name of the Nagari indigenous community. As for Kalimantan, I am focused on Central Kalimantan.
Interviewer	Yes, please go ahead.
Interviewee	In Central Kalimantan, particularly in East Kotawaringin Regency, according to research by Andalas University students, no customary land was found. There are also no indigenous communities, so sometimes the issues raised, for instance with the food estate in Palangkaraya City and Kapuas Regency, have been verified. The land was studied before the food estate was established to determine if there were any indigenous communities. After extensive research, it was found that there were no indigenous people on the land, which is why it was designated as a food estate. In my area of East Kotawaringin, I haven't personally handled the certification of customary land. Most of the time, when there are disputes involving large companies, the indigenous communities tend to lose in civil court, and the land is ruled to belong to the company. They often use claims of indigenous rights or customary land, but in Central Kalimantan, indigenous people practice shifting agriculture, so they don't settle in one place.

Interviewer	Okay. I once interviewed a notary who mentioned that the government would issue certificates based on what the local government had already issued, like SKT (Land Ownership Certificates). Is it true that whoever holds the SKT first gets ownership of the land?
Interviewee	That's an interesting question. SKT, or land ownership certificates, no longer exist. They have been replaced by a declaration of land ownership.
Interviewer	Oh, okay.
Interviewee	This declaration is made by the landholder, verified by the village head, sub-district head, or mayor.
Interviewer	So the notary said that in disputes between SKT holders and certificate holders, it's about who obtained the SKT first. Has this changed?
Interviewee	Yes, and perhaps the courts will decide who has the right to the land, as it's a civil case. For example, if I hold an SKT and let the land sit idle, but you, Ms. Valen, start cultivating it and making use of it, and if the neighbors know that the land belongs to you, then it can be certified in your name. The process here is called granting rights, which is different from Java. In Java, it's more about conversion and recognition, which takes longer because it involves historical claims. In Central Kalimantan, we focus on granting rights. If someone with good intent applies for certification, and their claim is supported by neighboring parties, the land is certified in their name, even if someone else holds an older SKT but hasn't been using the land. The courts would ultimately decide such disputes.
Interviewer	Oh, that's interesting. It seems every region, like Kalimantan and Java, has different issues. For example, in Java, indigenous communities may have better access to the government due to geographic proximity, unlike in Papua or Kalimantan, where it's more difficult. Would you agree with that?
Interviewee	Yes, history plays a role. In Java, there has been a long-standing system for land management, dating back to the Majapahit era and continuing through to the latest kingdoms. Land ownership records, like Leter C, have been maintained since colonial times and remain available. Meanwhile, in places like Central Kalimantan and Papua, no such historical records or mapping exist. The indigenous people there often live along riverbanks and practice shifting agriculture, making it difficult to map their lands. Moreover, local governments in these regions were only formed after independence, unlike in Java where the system has been in place for centuries.
Interviewer	So the issues in Kalimantan and Papua are more complex due to the lack of historical mapping compared to Java, where the system has been in place for much longer.
Interviewee	He'em.
Interviewer	Oh, it turns out this is complicated. Okay, I've found a new point. So, in a previous interview with the Baduy community assistant, not the head, they mentioned that for indigenous people, land ownership isn't just about certificates but also about spiritual ownership. As you mentioned, it's passed down from their ancestors, and they feel the land, like a mountain, is spiritually owned by the Baduy people. What happens when indigenous people feel they own the land but have no legal certificate, and if a company

	or the government wants to develop the land, but the indigenous community doesn't want to let go of it due to their spiritual connection? How is a case like that handled?
Interviewee	That's similar to cases in Central Kalimantan. In the case of the Baduy, it's clear that the indigenous people have lived there for a long time, and the area is well-known, making it easy for the Ministry of ATR/BPN, which manages land in Indonesia, to identify and grant management rights to the Baduy people. Everyone knows that the Baduy community exists, and they've been there for generations. However, in Central Kalimantan, the first thing we need to establish is the area's location. Then we check for sacred sites, like temples or houses like Rumah Betang, which are traditional houses occupied by several families. This kind of cultural evidence shows that an indigenous community exists in an area. But when a claim is made, and surveys are conducted by the relevant agencies, often no signs of indigenous presence are found. The land is sometimes just bushes or forests with no signs of indigenous farming or settlement. Therefore, if the survey finds no indigenous community, we do not classify it as customary land. The key is to identify the indigenous community and their territory, and once that's confirmed, the governor or regent can designate the land as customary land, such as for the Dayak tribe. Based on this, we can grant management rights (HPL) for the area, and the indigenous leaders handle land distribution within that territory.
Interviewer	So, it seems the indigenous leaders must agree to give permission, and the government can't just take over the land, right?
Interviewee	Yes, proper identification is done first.
Interviewer	What about cases in Papua, where people have become very upset?
Interviewee	I'm not entirely sure about Papua, but based on stories from friends, it seems the indigenous communities there have been established for a long time, and they divide their land based on types of plants and areas, but there is no clear mapping. The local government only maps villages and districts, not indigenous territories.
Interviewer	From your perspective as someone at BPN, why do issues like those in Papua persist? Is it a miscommunication, or are promises not kept?
Interviewee	It seems to be a mindset issue. Before the government or private companies invest in land, they usually conduct surveys to determine which areas are customary land. Compensation is provided for any land taken, but in some cases, after receiving compensation, the money is spent irresponsibly, leading to more claims.
Interviewer	So compensation is given?
Interviewee	Yes, that's what I've heard from colleagues in Papua. Compensation is provided, but due to their lifestyle, some people spend the money on non-productive activities like drinking or buying motorcycles. Once the money runs out, they claim it's customary land again, even though compensation was already given.
Interviewer	So they're using customary land as a shield?
Interviewee	Exactly. Even though the company or government has already obtained the necessary permits.

Interviewer	This is new information for me. I can see both sides now: the indigenous perspective and the government's perspective. I want my research to be unbiased, presenting both sides without favoring either one. Unfortunately, I couldn't interview indigenous people in Kalimantan due to the high travel costs, but in my interviews with the Baduy, they didn't face issues as severe as those in Papua or Kalimantan.
Interviewee	Yes, because in Java, everything is mapped, unlike in Kalimantan or Papua, where mapping is still an issue. This answers part of your comparative study on why there's a difference.
Interviewer	If these problems persist, especially in Papua, what do you think the government could do to create a win-win solution?
Interviewee	The government has provided many facilities for indigenous people to claim their rights. Regulations, policies, and local government decisions have all been made to support them. Compensation is offered, and if the indigenous community doesn't want the land, they're given an alternative area. However, the focus seems to be on material compensation rather than spiritual or cultural significance, unlike in Java.
Interviewer	So it's complicated, and there's no one-size-fits-all solution.
Interviewee	Exactly.
Interviewer	It seems that in some cases, indigenous claims are used as a way to make money.
Interviewee	Yes, it's become a way of making a living.
Interviewer	There's no structured legal solution because each case is different.
Interviewee	Correct. Civil law in Indonesia already defines ownership, but when people lose in court, they use customary law as a fallback, which doesn't always align with government law.
Interviewer	Some say customary land certificates are not as strong as government-issued certificates. Is that true?
Interviewee	Customary land certificates grant management rights but cannot be sold or used as collateral like ownership rights. They can be leased, though.
Interviewer	Leased?
Interviewee	Yes, for example, to plantation companies.
Interviewer	Is there ever a situation where indigenous people are relocated?
Interviewee	In Central Kalimantan, this hasn't happened yet because indigenous presence cannot be proven. In places like Baduy, though, relocation is negotiated with the community.
Interviewer	But relocation would still require agreement from both sides?
Interviewee	Yes, because of human rights laws.
Interviewer	What's your final hope for resolving these land issues in Indonesia?
Interviewee	I hope indigenous people can prove their existence and claim their land rights through legal channels, so we can properly identify and grant management rights. I also hope that customary land is not used as a means for personal gain. Their existence needs to be clear, either through media or other means.
Interviewer	Thank you so much.
Interviewee	You're welcome.
Interviewer	I'll share this in my presentation.

## INTERVIEW WITH MS. MAYA LAWYER FROM KALIMANTAN

Interviewer	Okay. Good afternoon, Ms. Mae. I'm Valin. I want to discuss the topic of customary land law versus state law, which is about traditional land law versus state law. Initially, I wanted to discuss this across Indonesia, but my professor said the scope was too broad, so I want to focus on Java first. My case study is comparative, comparing cases in Kalimantan, Papua, and why the land issues in Java, like those of the Baduy, are better managed. We know that in Papua, there are many conflicts with the military because their land is taken for industry, and in Kalimantan, there's the food estate project by Mr. Prabowo. Since you are from Pontianak in West Kalimantan, I'd like to get your opinion. My first question is, as a notary, do you handle land issues for all of Pontianak, or how does it work?
Interviewee	A notary should be distinguished from a PPAT (Land Deed Official). A notary deals with agreements and the creation of legal entities, while a PPAT handles land matters. So, you need to know the scope of a PPAT versus a notary. As you mentioned, comparing customary land and state-controlled land falls under the PPAT's domain. A notary's work is province-wide, but a PPAT's scope is limited to a district or city. I happen to work in Kuburaya, so my scope is only within the Kuburaya district.
Interviewer	I see. That's new to me. But maybe you can help with my questions. This isn't too in-depth, but at least I can get a sense of Kalimantan since I don't know anyone else there. So, I only know you, Ms. Mae.
Interviewee	Come to Pontianak with Uncle Deni.
Interviewer	Oh, that's far. So, I want to ask, Kalimantan is known as a province with a large number of tribes. Why are land certificates issued by the government considered stronger than those held by the indigenous communities? Why do traditional lands, even though they are verbally recognized and legally written as theirs, often lose out to the state's claims?
Interviewee	That's a misunderstanding. The state issues certificates based on documents provided by local governments, like those from village heads. SKT (Land Certificate) is a product of the village head but not yet registered with the state. When there is a dispute between an SKT holder and a certificate holder, we need to see who owned the SKT first. If a conflict arises, the earlier SKT holder will prevail, even if they don't have a certificate.
Interviewer	This is new information for me. I interviewed a lawyer about land issues, and they didn't explain it as detailed as you did, so I asked that question. Now I understand the gap. This will be a new note for my thesis. I want to ask, in cases like Kalimantan, where the land has been taken, does the government provide compensation or allocate something to the indigenous people?
Interviewee	It depends on who took the land.
Interviewer	For example, with the food estate, the land is used for agriculture. Are the indigenous people relocated or compensated by the government?
Interviewee	If the state takes over land for public purposes, people cannot refuse. However, they have the right to ask for compensation, or "compensation



	benefit” rather than “compensation loss.” If the owner refuses, the government cannot force them. If they resist and the government insists, they can take legal action through the administrative court.
Interviewer	Administrative court.
Interviewee	Yes.
Interviewer	Why do conflicts like those in Papua, where people protest the takeover of their land, still happen, in your opinion?
Interviewee	Conflicts often arise from a lack of agreement between the parties. If there is no mutual understanding, how can there be unity? It depends on the government’s approach. If they are heavy-handed, it causes chaos. But if the people understand the government’s intentions, especially if it’s for public welfare, they wouldn’t oppose it as long as they aren’t disadvantaged.
Interviewer	That’s the key point: as long as people aren’t disadvantaged.
Interviewee	Yes, conflicts can arise for three reasons: lack of agreement, forced takeover, and harm to the community. These are the main triggers of conflicts.
Interviewer	I once went to Baduy, and I asked my trip guide why things are peaceful there while Kalimantan still faces many conflicts. The reasons were similar to what you said, lack of agreement and collaboration. Baduy’s proximity to Jakarta makes it easier for them to communicate with the government than people in Kalimantan or Papua. What can indigenous people in Kalimantan do if they face conflicts like this? How can they bring their grievances to the government?
Interviewee	The legal resolution between the community and the government has different paths. The first is through deliberation and consensus, and the second is through legal means. If deliberation fails, it goes to court. In administrative law, if the community conflicts with the government, the route is through the administrative court. But before that, indigenous leaders can mediate to see if it conflicts with customary or state laws. If unresolved, the last resort is the administrative court. Usually, if people can understand the reasons, they can accept the situation without needing legal proceedings.
Interviewer	Okay. I’m curious, when you say it depends on who registers the SKT first, if the community loses the claim but still resists, what can be done?
Interviewee	Land ownership by the community isn’t just written; there’s also a concept called “hak ulayat” (communal rights). These are community rights passed down through generations. People understand which land belongs to whom without needing written proof. When legally conscious, they map and register their land. If outsiders enter this communal land, the rightful owner can assert their claim with witnesses.
Interviewer	So, it’s more of a spiritual or ancestral ownership?
Interviewee	Exactly.
Interviewer	It’s similar to the Baduy, where their lands are used by a company for industry but remain recognized as Baduy land without SKT.
Interviewee	That’s right.
Interviewer	Now, for the conclusion, what solutions or hopes do you have for resolving these conflicts in Indonesia?

Interviewee	The solution is simple: there needs to be mutual understanding and trust between the community and the government. Without understanding or trust, nothing can be resolved. Trust is crucial because people need to believe in the government's ability to resolve issues. Without it, conflicts will persist. So, the key points are mutual understanding and trust.
Interviewer	Okay.

## BIBLIOGRAPHY

- Agustino, Leo, and Aura Marta. "Dilemma of Customary Land Policy in Indonesia." *Masyarakat, Kebudayaan Dan Politik* 2019.
- Anggraini, Irma. "Akulturasi Hukum Adat Baduy Dengan Hukum Positif Indonesia." *Rechtsregel: Jurnal Ilmu Hukum* 2020.
- Firda Nisa, Syahfitri. "Kedudukan Hukum Administrasi Negara Dengan Hukum Tata Negara." 2018.
- Heydir, Laurel. "Customary Forest and Conservation / Hutan Adat Dan Konservasi." *Winrock International / USAID ~ White Paper 3*. 2017.
- Liswandi, I. "Peranan Budaya Hukum Kementerian Lingkungan Hidup dan Kehutanan Dalam Penetapan Hutan Adat [The Role of Legal Culture of the Ministry of Environment and Forestry in the Determination of Customary Forests]." *Academia.edu*. 2018.
- Sati, destara. "Politik Hukum Di Kawasan Hutan Dan Lahan Bagi Masyarakat Hukum Adat." *Jurnal Hukum Lingkungan Indonesia* 2019.
- Wahyuningsih, Virliana. "Peran Masyarakat Adat Baduy Dalam Melestarikan Keberlangsungan Hutan Dan Alam." 2022.
- Yuhana. "Makalah Perlindungan Hutan Atau Tanah Adat Di Kalimantan Tengah." 2020.
- Zakaria, R. Yando. "Pengaturan Pengakuan Tanah Masyarakat Adat: Meluruskan Logika Hukum yang Keliru Regulation on the Recognition of Indigenous Land: Straightening Out the Flawed Legal Logic." 2023.