

Reconciling Customary Land Rights and National Civil Law in North Sumatra: Toward an Integrative Land Dispute Resolution Framework

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ABSTRACT

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Abstract

Customary land disputes in North Sumatra reflect an ongoing tension between communal land tenure systems and Indonesia's national civil and land-law framework. Although customary communities and their traditional rights are constitutionally recognised, their protection remains constrained by conditional recognition procedures, formal evidentiary requirements, fragmented institutional authority, and unequal bargaining power. This study aims to analyse the relationship between customary land rights and national civil law and to formulate an integrative framework for resolving customary land disputes. A qualitative socio-legal research design was employed by combining doctrinal legal analysis with empirical investigation. Legal materials included constitutional provisions, agrarian legislation, civil-law principles, land-registration regulations, mediation rules, and relevant judicial decisions. Empirical data were obtained through semi-structured interviews, document analysis, and field observations involving customary leaders, community members, government officials, land authorities, legal practitioners, mediators, and other relevant stakeholders. The findings reveal that customary communities primarily rely on oral histories, genealogical relationships, ancestral occupation, collective cultivation, and customary boundaries, whereas formal institutions prioritise certificates, cadastral maps, permits, and written administrative records. Existing resolution mechanisms remain insufficient because customary deliberation lacks formal enforceability, administrative procedures are institutionally fragmented, and civil litigation often reduces complex communal disputes to conventional ownership claims. This study proposes an integrative framework consisting of community identification, participatory mapping, verification of customary and formal evidence, temporary protection of disputed land, multi-stakeholder mediation, legally binding settlement, administrative registration, and post-settlement monitoring. The study concludes that customary law and national civil law should function as complementary rather than competing legal systems. The proposed framework contributes to legal-pluralist scholarship and provides practical guidance for achieving legal certainty, substantive justice, social legitimacy, and sustainable land governance.



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Introduction

Land in Indonesia is not merely an economic asset or an object of private ownership. For customary law communities, land represents collective identity, ancestral continuity, social authority, cultural heritage, and the material basis of community livelihoods. Customary land tenure is generally governed through

communal norms that determine who may occupy, cultivate, inherit, transfer, and protect land within a particular customary territory. These norms often operate through kinship relations, customary leadership, oral histories, territorial boundaries, and collective responsibilities rather than through individual certificates or written contracts. Consequently, land disputes involving customary communities cannot be adequately understood as ordinary conflicts between individual property owners. They reflect a broader interaction between customary legal legitimacy and the formal institutions of national land and civil law (Fitzpatrick, 1997; Bakker & Moniaga, 2010; Bakker, 2023).

Indonesia's constitutional framework formally recognizes this legal plurality. Article 18B(2) of the 1945 Constitution requires the state to recognize and respect customary law communities and their traditional rights, provided that these communities remain in existence and are consistent with societal development and the principles of the Republic of Indonesia. Article 28I(3) further protects the cultural identities and rights of traditional communities. This constitutional recognition is reinforced by Law No. 5 of 1960 concerning the Basic Agrarian Principles, commonly known as the Basic Agrarian Law or *Undang-Undang Pokok Agraria*. The law seeks to establish a unified national agrarian system while acknowledging customary law as an important foundation of Indonesian land law. It also recognizes the exercise of *bak ulayat*, or customary communal rights, insofar as those rights continue to exist and conform to national interests and applicable laws.

Despite this formal recognition, the relationship between customary rights and national civil law remains structurally problematic. The recognition of customary rights is conditional, while the determination of whether a customary community and its territorial rights "still exist" largely depends on administrative and governmental acknowledgment. In contrast, national civil and land-law institutions rely heavily on written evidence, registered titles, cadastral boundaries, contractual transfers, and formal administrative decisions. Customary communities, however, may establish their claims through continuous occupation, collective cultivation, ancestral narratives, customary ceremonies, genealogical relationships, and recognition by neighbouring communities. These differing evidentiary systems produce a fundamental legal tension: a claim may be socially and historically legitimate under customary law but difficult to prove under formal civil procedures.

The tension is partly rooted in the dual objectives of the Basic Agrarian Law. On the one hand, the law was intended to eliminate the fragmented colonial land regime and create national legal unity, certainty, and justice. On the other hand, it declared customary law to be a foundation of national agrarian law. In practice, legal unification has frequently required customary claims to be translated into administrative categories developed by the state. This translation may alter the collective, relational, and intergenerational character of customary tenure. Previous research has consequently described Indonesian land law as a plural legal field in which communities, government institutions, corporations, and courts employ different sources of legitimacy to justify control over the same territory (Fitzpatrick, 1997; Bedner & Van Huis, 2008; Bakker & Moniaga, 2010).

Recent regulatory developments have attempted to improve the administrative protection of customary land. Government Regulation No. 18 of 2021 reorganizes provisions concerning management rights, land rights, and land registration. More specifically, Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 14 of 2024 provides procedures for the administration, registration, maintenance, and provision of information concerning customary communal land. The regulation defines customary land as land situated within the territory controlled by an existing customary law community and not already encumbered by another land right. It therefore offers a formal pathway for customary territories to become visible within the national land-administration system.

Nevertheless, formal registration alone does not resolve the underlying conflict between customary tenure and national civil law. The requirement that customary land must not already be attached to another registered right may be difficult to apply in precisely those cases where customary territories overlap with state land, forest areas, plantation concessions, cultivation rights, corporate permits, or individual certificates. This creates a circular problem: customary communities require formal recognition to protect their territories, but recognition may be obstructed because the disputed territory has previously been allocated through formal administrative instruments. Registration is therefore important for legal certainty, but it must be accompanied by mechanisms for examining the historical legitimacy of competing rights, the circumstances under which formal titles were issued, and the participation of customary communities in

earlier land-allocation processes. This is an inference drawn from the interaction between the registration requirements and the documented plurality of land claims in Indonesia.

Constitutional Court Decision No. 35/PUU-X/2012 represents an important development in addressing this imbalance. The Court held that customary forests are not part of state forests and emphasized that the state must respect the continuing existence and rights of customary law communities. The judgment also rejected the unilateral determination of boundaries without involving relevant stakeholders. Although the decision specifically concerned forestry law, its reasoning has broader significance for customary land disputes. It affirms that state authority over natural resources cannot automatically eliminate customary rights and that the identification of customary territories requires participatory rather than exclusively administrative determination. However, the practical enjoyment of these rights remains dependent on recognition procedures, territorial verification, and coordination among governmental institutions.

These problems are particularly relevant in North Sumatra, where customary land systems coexist with plantation development, forestry activities, infrastructure projects, corporate land concessions, registered private rights, and government claims over state-controlled land. Customary territories in the province are frequently connected to clan structures, ancestral settlements, communal agricultural practices, forest resources, and traditional leadership. Disputes may involve customary communities, village authorities, district governments, the National Land Agency, forestry institutions, plantation companies, and individuals holding formal documents. Such conflicts are therefore not only disputes over ownership but also disagreements concerning territorial history, institutional authority, community representation, resource use, and the legitimacy of state-issued rights.

Research conducted in Simangambat Jae, North Padang Lawas, illustrates the complexity of customary land disputes in the province. The conflict involved unclear territorial boundaries, competing claims to customary land, government intervention, corporate interests, and differences between community-based land control and formal administrative designation. The study concluded that a combination of free, prior, and informed consent and third-party mediation was necessary to support a more legitimate resolution. Other institutional observations concerning North Sumatra have similarly indicated that land conflicts cannot always be resolved through a narrowly formal legal approach because the conflicts involve historical, political, economic, and social dimensions.

Existing dispute-resolution mechanisms remain institutionally fragmented. Customary deliberation offers cultural legitimacy, accessibility, and the possibility of restoring relationships within and between communities. However, customary decisions may not bind corporations, government agencies, or third parties that do not recognize the authority of customary institutions. Administrative procedures before land and forestry authorities can provide mapping, document verification, and correction of administrative data, but these institutions may have limited capacity to adjudicate complex historical claims or resolve competing social narratives. Civil litigation provides formal judgments and enforceable remedies, yet it frequently requires parties to present written evidence and formulate customary collective interests within conventional categories of plaintiffs, defendants, ownership, unlawful acts, and compensation.

Court-annexed mediation under Supreme Court Regulation No. 1 of 2016 provides another avenue for consensual settlement and integrates mediation into Indonesian civil proceedings. Nevertheless, general civil mediation does not automatically address the distinctive characteristics of customary land disputes. These disputes may require the participation of customary leaders, women, cultivators, neighbouring communities, corporations, land authorities, forestry institutions, and local governments. They also require participatory mapping, verification of oral and documentary evidence, identification of legitimate community representatives, protection against further land transfers during negotiations, and mechanisms for registering and enforcing the resulting agreement.

Previous studies have made significant contributions to understanding legal pluralism, conditional recognition of customary communities, land registration, corporate–community conflict, and community-based dispute resolution. Some studies concentrate on the doctrinal relationship between customary and national law, while others examine the political mobilization of customary identity or provide detailed analyses of individual conflicts. Research in North Sumatra has also proposed free, prior, and informed consent and third-party mediation for particular customary land disputes. However, these strands of research remain insufficiently integrated. Limited attention has been given to a procedural framework that systematically connects customary verification, participatory mapping, administrative examination, civil-law

mediation, formal registration, and enforceable settlement within a single dispute-resolution process (Bedner & Van Huis, 2008; Bakker & Moniaga, 2010; Effendi et al., 2023; Bakker, 2023).

Accordingly, this study examines how customary land rights can be reconciled with national civil law in North Sumatra without subordinating customary communities to exclusively formal conceptions of property and evidence. It addresses three principal questions. First, how can customary territorial claims be legally verified while preserving their communal and intergenerational character? Second, how should customary evidence, state-issued documents, land-registration data, corporate permits, and histories of physical occupation be assessed when they support competing claims? Third, what institutional arrangement can combine customary deliberation, administrative land governance, mediation, and civil-law enforceability in a coherent dispute-resolution process?

The novelty of this study lies in its proposed integrative land dispute-resolution framework. Rather than treating customary law and national civil law as mutually exclusive systems, the framework positions them as complementary sources of legitimacy, evidence, procedure, and remedy. The proposed framework consists of interconnected stages: preliminary identification of the customary community and disputed territory; participatory mapping and verification of genealogical, historical, physical, and documentary evidence; temporary protection against new permits or transfers during the resolution process; customary deliberation supported by neutral multi-stakeholder mediation; formulation of settlements through legally recognized civil agreements; administrative registration or correction of land data; and post-settlement monitoring and judicial enforcement where necessary.

This approach contributes to the literature by connecting legal pluralism with a practical institutional design for land dispute resolution. It also provides a basis for balancing three objectives that are frequently treated separately: the legal certainty required by national land administration, the substantive justice demanded by customary communities, and the social stability required for sustainable development. In this way, reconciliation does not mean replacing customary law with state law or excluding national civil-law institutions. Instead, it requires a structured process through which customary rights can be recognized, translated, protected, and enforced without losing their collective social meaning.

Method

2. Method

This study employed a qualitative socio-legal research design to examine the interaction between customary land rights and national civil law in the settlement of land disputes in North Sumatra. The socio-legal approach was considered appropriate because customary land disputes cannot be analysed solely through statutory provisions, judicial decisions, or formal land documents. Such disputes are also influenced by historical occupation, kinship relations, customary authority, communal identity, territorial boundaries, administrative policies, and unequal power relations among communities, government institutions, and business entities. Therefore, this study combined doctrinal legal analysis with empirical investigation to understand both the normative construction of customary land rights and their implementation in land dispute-resolution practices.

The research was conducted in selected areas of North Sumatra where customary territories intersect with plantation concessions, state forest areas, infrastructure development, registered land rights, and other administrative land allocations. North Sumatra was selected because the province has diverse customary communities whose land tenure systems are closely connected to clan structures, ancestral territories, collective cultivation, traditional leadership, and the use of natural resources. At the same time, the province has experienced numerous disputes involving customary communities, plantation companies, government agencies, individual titleholders, and other parties claiming legal authority over the same land. The unit of analysis was the process through which customary land claims were identified, verified, negotiated, formalised, and enforced within Indonesia's national legal system.

The doctrinal component of the study examined primary and secondary legal materials relating to customary communities, agrarian law, civil property rights, land registration, mediation, and administrative authority. Primary legal materials included the 1945 Constitution of the Republic of Indonesia, Law No. 5 of 1960 concerning Basic Agrarian Principles, relevant provisions of the Indonesian Civil Code, Government Regulation No. 18 of 2021, regulations concerning customary communal land, Supreme Court Regulation No. 1 of 2016 on court-connected mediation, and relevant Constitutional Court and judicial decisions. Secondary legal materials included scholarly journal articles, academic books, research reports, legal commentaries, and previous studies concerning legal pluralism, customary tenure, land conflict, civil litigation, and alternative dispute resolution. These legal materials

were used to identify the legal status of customary rights, the conditions for their recognition, applicable evidentiary standards, institutional responsibilities, and the legal mechanisms available for resolving disputes.

Empirical data were collected through semi-structured interviews, document analysis, and field observation. Participants were selected using purposive sampling based on their knowledge, experience, or direct involvement in customary land disputes. They included customary leaders, members of customary communities, village officials, local government representatives, officers of the National Land Agency, legal practitioners, mediators, academics, civil-society representatives, and other actors involved in land administration or conflict resolution. Where access was available, representatives of plantation companies and other business entities were also included to obtain a more balanced understanding of competing claims. Snowball sampling was subsequently used to identify additional participants who possessed relevant historical, legal, administrative, or customary knowledge. Data collection continued until thematic saturation was achieved, meaning that additional interviews no longer produced substantially new information regarding customary recognition, territorial claims, evidentiary conflicts, institutional authority, or dispute-resolution procedures.

The semi-structured interviews explored participants' experiences and perceptions regarding the legal basis of customary land claims, the identification of customary communities, the determination of territorial boundaries, the evidence used to establish land rights, and the strengths and weaknesses of existing dispute-resolution mechanisms. The interviews also examined the roles of customary institutions, village governments, land offices, courts, mediators, companies, and local governments in preventing and resolving disputes. Particular attention was given to differences between customary and formal evidentiary systems. Customary communities often relied on oral histories, genealogical relationships, ancestral occupation, collective cultivation, natural boundary markers, customary ceremonies, and recognition by neighbouring communities. In contrast, state institutions and courts generally placed greater emphasis on written documents, land certificates, cadastral maps, administrative permits, contracts, and formal government decisions.

Interviews were conducted in Indonesian and, where necessary, with assistance from individuals familiar with local customary terminology. With participants' consent, the interviews were audio-recorded and transcribed. When recording was not permitted, detailed field notes were prepared immediately after the interview. The identities of participants were anonymised where disclosure could create legal, economic, or social risks, particularly for individuals involved in ongoing land disputes.

Document analysis was conducted to examine the relationship between customary claims and formal land records. The documents reviewed included land certificates, customary records, village documents, concession permits, cadastral maps, administrative correspondence, mediation records, court decisions, and other materials relevant to the selected disputes. These documents were compared to identify overlapping rights, inconsistencies in territorial boundaries, differences in institutional authority, and potential procedural weaknesses in the issuance of formal land rights or permits. Oral accounts were not accepted uncritically but were compared with physical occupation, historical records, maps, official documents, and statements from other stakeholders.

Field observations were also conducted to understand the physical and social characteristics of the disputed territories. Observations focused on settlement patterns, agricultural activities, plantation areas, forests, customary boundary markers, public facilities, and other forms of land use. Field observations assisted in assessing whether the claims presented by participants corresponded with actual patterns of occupation, cultivation, and control. They also provided contextual information that could not be obtained solely through interviews or documentary analysis.

The collected data were analysed using thematic analysis for the empirical materials and normative legal analysis for the legal sources. Interview transcripts, field notes, and documents were reviewed repeatedly and coded according to recurring issues. The initial codes included customary recognition, communal ownership, territorial boundaries, oral evidence, written evidence, overlapping titles, administrative permits, mediation, litigation, power imbalances, settlement enforcement, and post-dispute monitoring. These codes were then organised into broader themes concerning the conditional recognition of customary communities, the conflict between customary and formal evidentiary standards, institutional fragmentation, limitations of litigation, the legitimacy of customary deliberation, the need for multi-stakeholder mediation, and the formalisation of settlements under national civil law.

The legal analysis applied statutory, conceptual, and case approaches. The statutory approach was used to examine the consistency and hierarchy of constitutional provisions, agrarian legislation, civil-law principles, land-registration regulations, and mediation procedures. The conceptual approach was used to analyse legal pluralism, communal property, legal certainty, substantive justice, restorative settlement, and the enforceability of agreements. The case approach examined selected court decisions and administrative practices involving customary communities and disputed land. The doctrinal findings were subsequently compared with the empirical findings to

determine whether existing legal mechanisms adequately accommodated the social and historical characteristics of customary land rights. The validity of the findings was strengthened through source and method triangulation. Information obtained from customary communities was compared with statements from government officials, legal practitioners, mediators, companies, academics, and civil-society organisations. Interview data were also compared with legal documents, administrative records, maps, court decisions, and field observations. Member checking was conducted with selected participants by presenting summaries of the main findings and interpretations to confirm their accuracy. Conflicting accounts were retained and examined because differences in historical narratives and perceptions of authority were considered central features of customary land disputes rather than methodological weaknesses.

The integrative dispute-resolution framework was developed by synthesising the doctrinal and empirical findings. The development process began by identifying recurring weaknesses in customary deliberation, administrative settlement, mediation, and civil litigation. The study then identified procedures that were considered legally valid, socially legitimate, institutionally feasible, and capable of producing enforceable outcomes. These procedures were organised into a sequential framework consisting of preliminary dispute assessment, identification of the customary community, participatory territorial mapping, verification of oral and written evidence, temporary protection of the disputed land, multi-stakeholder mediation, formulation of a legally binding agreement, administrative registration or correction of land data, and post-settlement monitoring.

Ethical considerations were observed throughout the research process. Participation was voluntary, and informed consent was obtained before interviews were conducted. Participants were informed about the purpose of the research, the use of the collected information, their right to decline particular questions, and their right to withdraw from participation. Confidential information concerning disputed boundaries, internal community divisions, legal strategies, or ongoing negotiations was not disclosed without permission. The research process was also designed to avoid intensifying existing conflicts or creating the impression that the study formally validated one party's land claim.

This study was limited by its qualitative and context-specific design, which does not permit statistical generalisation to all customary land disputes in Indonesia. Access to confidential corporate records, complete cadastral documents, and ongoing mediation materials was also limited in several cases. In addition, oral histories and customary narratives sometimes differed among community members and generations. Nevertheless, these differences were addressed through triangulation and were treated as important evidence of the complexity of customary land tenure. The socio-legal design therefore provided an appropriate foundation for explaining the relationship between customary rights and national civil law and for formulating an integrative land dispute-resolution framework applicable to the North Sumatran context.

Results and Discussion

3. Results and Discussion

3.1 Conditional Recognition of Customary Land Rights

The findings indicate that the principal difficulty in protecting customary land rights in North Sumatra does not arise from the complete absence of legal recognition. Indonesian constitutional and agrarian law formally acknowledges customary law communities and their traditional rights. However, this recognition remains conditional and depends heavily on administrative confirmation by government institutions. In practice, customary communities are frequently required to prove their continued existence, institutional structure, territorial boundaries, customary norms, and historical relationship with the disputed land before their claims can be considered within the formal legal system.

This requirement creates a significant imbalance. Registered land rights, cultivation rights, corporate permits, and government decisions are generally presumed valid because they are supported by written administrative documents. By contrast, customary communities must first establish that they qualify as legally recognised customary communities before their territorial claims can be examined. As a result, the burden of proof is placed disproportionately on communities whose land tenure systems have historically developed outside formal registration mechanisms.

The empirical findings show that recognition procedures are often lengthy, fragmented, and dependent on local political commitment. Some communities possess strong historical, genealogical, and territorial relationships with their land but have not obtained formal recognition through regional regulations or administrative decisions. In such situations, the absence of formal recognition is frequently interpreted as the absence of customary rights. This interpretation is problematic because it reverses the

relationship between legal recognition and social existence. Customary communities do not emerge because they are recognised by the state; rather, state recognition should confirm a community that has historically existed and continues to exercise customary authority.

This finding supports the legal-pluralist perspective that state law is not the only source of legitimacy in land relations. Customary land rights obtain their legitimacy from collective memory, continuous occupation, social recognition, customary institutions, and intergenerational practices. However, these sources of legitimacy are often insufficient within formal civil and administrative proceedings unless they have been translated into state-approved categories. The central legal problem is therefore not simply whether customary rights exist, but how those rights can be recognised without forcing them to lose their communal and cultural characteristics.

The conditional nature of recognition also creates opportunities for conflicting parties to exploit procedural delays. While communities pursue administrative recognition, disputed land may continue to be transferred, licensed, cultivated, or incorporated into corporate operations. This situation weakens the bargaining position of customary communities and can transform an initially manageable dispute into a prolonged and complex conflict. Consequently, recognition procedures should be accompanied by temporary legal protection that prevents further transfers, permits, or physical alterations to the disputed territory until the status of the land has been clarified.

3.2 Conflict Between Customary and Formal Evidence

The study found a fundamental difference between the evidentiary systems used by customary communities and those applied by national land and civil-law institutions. Customary communities generally establish their relationship with land through oral histories, genealogical narratives, ancestral occupation, communal cultivation, customary ceremonies, natural boundary markers, burial sites, and recognition by neighbouring communities. These forms of evidence are socially meaningful because they reflect the collective and intergenerational nature of customary tenure.

Formal institutions, in contrast, rely primarily on land certificates, cadastral maps, sale and purchase deeds, concession licences, tax records, written agreements, and administrative decisions. This preference for documentary evidence is understandable because national land administration seeks legal certainty and standardised registration. However, strict reliance on written documents may exclude customary claims that developed before formal registration systems were introduced or in areas where registration services were historically inaccessible.

The findings show that documents and physical occupation do not always correspond. In some disputes, a party possessed formal documents but had never continuously occupied or cultivated the entire claimed territory. In other cases, customary communities had occupied and managed land for generations but lacked certificates or official maps. The existence of formal documents therefore did not automatically demonstrate that the underlying process of land acquisition was fair, participatory, or historically legitimate.

This evidentiary asymmetry is particularly serious where titles or permits were issued without adequate consultation with customary communities. A land certificate or corporate concession may be formally valid from an administrative perspective, yet its substantive legitimacy may remain disputed if the issuance process ignored prior customary occupation. Conversely, oral claims should not automatically override registered rights without careful verification. The challenge is to develop an evidentiary process that neither dismisses customary evidence nor treats it as unquestionably conclusive.

The findings suggest that customary and formal evidence should be assessed cumulatively rather than hierarchically. Oral histories should be compared with genealogical records, historical maps, physical occupation, land-use patterns, customary boundary markers, government archives, and the testimony of neighbouring communities. Formal documents should also be examined in relation to the procedures through which they were issued, including whether affected communities were informed, consulted, compensated, or represented.

Participatory mapping emerged as an important mechanism for connecting these evidentiary systems. Through participatory mapping, communities can identify customary boundaries, sacred sites, cultivation areas, settlements, forests, and shared resources. These maps can then be compared with cadastral records, concession maps, village boundaries, and forest classifications. Participatory mapping does not by itself determine ownership, but it makes customary territorial knowledge visible and capable of being examined within formal procedures.

This approach advances substantive justice because it recognises that legal certainty cannot be based solely on the existence of documents. Legal certainty must also consider whether documents accurately reflect historical occupation, legitimate authority, and lawful procedures. An integrative evidentiary model therefore requires independent verification involving customary representatives, land officials, historians, mapping experts, local governments, and neutral mediators

3.3 Institutional Fragmentation in Land Dispute Resolution

Another major finding concerns the fragmentation of authority among institutions responsible for land administration and dispute resolution. Customary land disputes may involve the National Land Agency, local governments, village administrations, forestry institutions, plantation authorities, courts, police, customary institutions, and corporate actors. Each institution operates according to a different legal mandate, procedural framework, and definition of valid evidence.

This fragmentation causes uncertainty regarding which institution has the authority to determine the status of disputed land. Land offices may be able to examine registration data but may lack authority over forest classifications. Forestry institutions may control areas designated as state forests but may not resolve civil ownership claims. Local governments may recognise customary communities but may not have authority to revoke national permits. Courts may decide civil disputes, but their judgments may not automatically correct cadastral records or administrative licences.

The absence of an integrated institutional mechanism results in repetitive and disconnected procedures. A community may obtain recognition from a local government but still face difficulties registering its territory. It may succeed in mediation but fail to obtain administrative correction of land records. Alternatively, it may obtain a favourable court decision but encounter obstacles in implementation because the disputed land is subject to another administrative designation.

The findings further demonstrate that institutions often focus on their sectoral responsibilities rather than the dispute as a whole. Consequently, legal, historical, social, and spatial dimensions are examined separately. This creates a procedural gap in which no institution assumes responsibility for coordinating the complete resolution process.

Institutional fragmentation also increases the cost and duration of disputes. Customary communities must repeatedly submit evidence to different agencies, while companies and government institutions may rely on overlapping permits or administrative decisions. The resulting uncertainty can generate continued occupation, demonstrations, criminalisation, physical conflict, and deterioration of trust.

These findings indicate that effective resolution requires a coordinated forum rather than isolated institutional action. The proposed forum should include representatives of customary communities, local governments, land offices, forestry institutions, village authorities, companies, and independent experts. Its role should not be to replace the legal authority of each institution but to coordinate verification, negotiation, administrative correction, and enforcement.

3.4 Limitations of Existing Resolution Mechanisms

The study identified strengths and weaknesses in customary deliberation, administrative settlement, mediation, and civil litigation. Customary deliberation remains important because it is culturally legitimate, accessible, and capable of restoring social relationships. It allows disputes to be discussed using local values, community history, kinship structures, and traditional authority. However, customary decisions may not bind companies, government agencies, or individuals who reject the authority of customary institutions.

Administrative settlement can clarify land records, investigate overlapping certificates, and correct procedural errors. Nevertheless, administrative agencies often concentrate on documentary compliance and may be reluctant to evaluate complex historical claims. Their decisions may also be limited by sectoral authority and may not provide compensation, restoration, or broader social reconciliation.

Civil litigation offers formal adjudication and enforceable judgments, but the findings indicate that it is frequently unsuitable as the sole mechanism for resolving customary land disputes. Litigation tends to simplify complex collective conflicts into disputes between individual plaintiffs and defendants. It also requires communities to translate communal rights into civil-law categories such as ownership, possession, contractual rights, or unlawful acts. Formal litigation may disadvantage communities that lack documents, financial resources, legal representation, or knowledge of procedural requirements. Court decisions generally determine which party has the stronger legal claim based on the evidence presented, but they may

not address the social relationship between the parties, the future use of natural resources, community participation, or the restoration of damaged land. Mediation provides a more flexible process and allows parties to develop settlements beyond the remedies available through litigation. However, general mediation procedures do not automatically address the distinctive nature of customary land disputes. In several situations, mediation was weakened by unequal bargaining power, incomplete participation, unclear community representation, lack of reliable mapping, and the absence of mechanisms for implementing agreements.

A settlement may be reached by a customary leader who does not represent all affected groups. Women, cultivators, younger community members, and neighbouring communities may be excluded even though they are directly affected by the outcome. Similarly, a company representative may participate without sufficient authority to approve compensation or territorial changes. These weaknesses can produce agreements that are formally signed but socially contested. The findings therefore suggest that mediation must be preceded by careful stakeholder identification and evidence verification. Mediation should not begin until the parties, territory, legal documents, customary claims, and institutional responsibilities have been sufficiently clarified. Otherwise, the process risks reproducing existing power imbalances rather than resolving them.

3.5 Power Imbalances and Community Representation

Power asymmetry was found to be a central factor affecting the fairness of dispute-resolution processes. Government institutions and companies usually possess greater financial resources, legal expertise, administrative access, mapping technology, and documentary evidence than customary communities. Communities may also face internal divisions regarding leadership, territorial boundaries, compensation, and negotiation strategies.

These imbalances influence not only the final outcome but also the ability of parties to participate effectively. Communities may agree to settlements because of economic pressure, fear of criminalisation, or uncertainty regarding future legal protection. In some cases, compensation is treated as the primary solution even though the community seeks recognition, continued access, territorial restoration, or participation in land management.

An integrative framework must therefore distinguish between voluntary agreement and agreement produced by structural pressure. Procedural fairness requires access to independent legal assistance, sufficient time to review proposals, transparent information, and opportunities for all affected groups to participate. Neutral facilitation is also necessary to prevent stronger parties from controlling the agenda, evidence, or terms of settlement.

Community representation must be verified before mediation. The study found that customary leadership structures are not always uniform. A person recognised by government officials as a community representative may not be accepted by all clans, families, or land users. Internal verification is therefore required to determine who has authority to negotiate, sign agreements, and receive or manage compensation.

Inclusive representation is particularly important for women and groups whose land use may not be reflected in formal leadership structures. Women often play important roles in agriculture, household livelihoods, inheritance practices, and the management of communal resources. Their exclusion can result in settlements that overlook actual patterns of land use and social dependence.

3.6 The Proposed Integrative Land Dispute-Resolution Framework

Based on the doctrinal and empirical findings, this study proposes an integrative land dispute-resolution framework consisting of interconnected stages. The framework combines customary legitimacy, administrative verification, civil-law enforceability, and multi-stakeholder participation.

The first stage is preliminary dispute screening. At this stage, the relevant authorities identify the parties, type of land claim, current land status, existing certificates or permits, ongoing legal proceedings, and risk of further conflict. Screening is necessary to determine whether urgent protective measures are required.

The second stage involves identifying the customary community and its legitimate representatives. This process should examine the community's historical continuity, customary institutions, territorial relationship, internal decision-making mechanisms, and recognition by neighbouring communities. The

purpose is not to impose a rigid administrative definition but to ensure that the parties participating in negotiations genuinely represent the affected community.

The third stage is participatory mapping and evidence verification. Customary territorial knowledge should be documented and compared with cadastral maps, concession boundaries, village records, forest classifications, and physical land use. Oral testimony, genealogical information, historical documents, and formal certificates should be assessed collectively by an independent verification team.

The fourth stage is temporary protection of the disputed land. During verification and negotiation, new permits, transfers, evictions, land clearing, or physical expansion should be suspended where legally possible. Temporary protection is necessary to preserve the subject of the dispute and prevent one party from creating irreversible changes.

The fifth stage is customary deliberation supported by multi-stakeholder mediation. Customary deliberation should be maintained because it provides cultural legitimacy and opportunities for relational restoration. However, it should be connected to professional mediation involving neutral facilitators, government institutions, land authorities, companies, and independent experts.

The sixth stage is the formulation of a comprehensive settlement. The settlement may include territorial recognition, return of land, boundary adjustment, compensation, shared management, continued access, environmental restoration, benefit sharing, or a combination of remedies. The agreement should clearly identify the parties, territory, rights, obligations, implementation period, monitoring mechanism, and consequences of non-compliance.

The seventh stage is legal formalisation. The settlement should be incorporated into a legally binding civil agreement and, where relevant, confirmed through a court settlement. Administrative agencies should subsequently register the agreement, correct land records, revise maps, or adjust permits. Without administrative formalisation, even a socially legitimate agreement may remain vulnerable to future disputes.

The final stage is post-settlement monitoring. A joint monitoring body should supervise implementation, resolve minor disagreements, and evaluate whether agreed obligations have been fulfilled. Monitoring is particularly necessary where settlements involve phased compensation, land restoration, shared management, or changes to administrative records.

3.7 Theoretical Discussion

The findings strengthen the argument that legal pluralism should not be understood merely as the coexistence of multiple normative systems. In customary land disputes, legal pluralism also involves competition among different forms of authority, evidence, and institutional power. State law may recognise customary law in principle while limiting its effectiveness through administrative requirements and documentary standards.

The proposed framework extends legal-pluralist analysis by translating it into an institutional process. Rather than choosing between customary law and national law, the framework assigns each system a complementary role. Customary law contributes historical legitimacy, communal representation, territorial knowledge, and relational settlement. National civil law provides legal formalisation, enforceability, and protection against future violations. Administrative law provides registration, mapping, and correction of official records.

The study also demonstrates that legal certainty and substantive justice should not be treated as opposing objectives. Legal certainty based on inaccurate or historically incomplete records can perpetuate injustice. Conversely, customary recognition without clear territorial boundaries or enforceable agreements may create continuing uncertainty. An integrative approach seeks to achieve legal certainty through a process that incorporates historical truth, participation, and procedural fairness.

3.8 Practical and Policy Implications

The findings have several implications for land governance in North Sumatra. Local governments should accelerate the identification and recognition of customary communities before conflicts intensify. Recognition procedures should be transparent, participatory, and supported by historical and spatial research.

The National Land Agency and other relevant institutions should develop joint procedures for verifying customary and formal evidence. Land-registration processes should include an examination of prior customary occupation, particularly in areas subject to plantation concessions, infrastructure projects, or forest designations.

Courts and mediators should recognise that customary land disputes require more than standard civil mediation. Special mediation guidelines should regulate stakeholder participation, community representation, participatory mapping, power imbalances, independent expertise, and administrative implementation.

Companies operating in or near customary territories should conduct meaningful consultation before acquiring or using land. Consultation should occur before permits are issued or physical operations begin, not after conflict has emerged. Corporate responsibility should also extend beyond financial compensation to include restoration, continued access, livelihood protection, and long-term community relations.

3.9 Research Contribution

This study contributes to customary land and civil-law scholarship by developing a practical framework that connects legal recognition, evidence verification, mediation, administrative correction, and civil enforceability. Previous research has often examined these elements separately. The proposed model demonstrates that lasting resolution requires them to operate as a coordinated process.

The study also contributes to policy by offering a framework that can be adapted to different types of land disputes in North Sumatra. Although the model was developed within a specific provincial context, its underlying principles—participatory recognition, evidentiary integration, institutional coordination, balanced mediation, and enforceable settlement—may also be relevant to other regions of Indonesia experiencing similar conflicts.

Overall, the findings show that reconciliation between customary land rights and national civil law cannot be achieved by requiring customary communities to abandon their legal traditions or by disregarding formal land administration. Sustainable resolution requires a structured interaction between the two systems. Customary rights must be socially recognised, territorially verified, legally formalised, and institutionally protected. Only through such an integrative process can land dispute resolution provide legal certainty, substantive justice, social legitimacy, and long-term conflict prevention.

4. Conclusion

This study concludes that the reconciliation of customary land rights and national civil law in North Sumatra requires more than formal recognition through legislation. Although Indonesian constitutional and agrarian law acknowledges customary communities and their traditional rights, the practical protection of those rights remains constrained by conditional recognition procedures, differences in evidentiary standards, fragmented institutional authority, and unequal bargaining power. Customary communities frequently rely on oral histories, genealogical relationships, ancestral occupation, communal cultivation, and traditional boundary markers, while state institutions generally prioritise certificates, cadastral maps, administrative permits, and other written documents. This difference often places customary communities in a weaker legal position despite their long-standing social and historical relationship with the land.

The findings further demonstrate that existing dispute-resolution mechanisms cannot independently provide a comprehensive solution. Customary deliberation offers cultural legitimacy and social reconciliation but may lack formal enforceability. Administrative procedures can clarify land records but are often restricted by sectoral authority. Civil litigation produces binding judgments but may reduce complex communal disputes to conventional questions of ownership and documentary proof. Mediation provides greater flexibility, although its effectiveness is frequently weakened by incomplete stakeholder participation, unclear community representation, insufficient evidence verification, and power imbalances between customary communities, companies, and government institutions.

Accordingly, this study proposes an integrative land dispute-resolution framework that combines customary legitimacy, administrative verification, participatory mapping, multi-stakeholder mediation, civil-law formalisation, and post-settlement monitoring. The framework begins with preliminary dispute identification and verification of the customary community, followed by participatory territorial mapping and the assessment of oral, historical, physical, and documentary evidence. Temporary protection should be provided to prevent new permits, transfers, evictions, or land clearing while the dispute is being examined. The verified claims should then be addressed through customary deliberation supported by neutral multi-stakeholder mediation.

Any settlement produced through this process should be formulated as a legally binding agreement that clearly regulates territorial boundaries, rights, obligations, compensation, land restoration, shared

management, or other agreed remedies. The settlement should subsequently be incorporated into administrative land records, cadastral maps, permits, or court-approved agreements to ensure legal certainty and enforceability. Post-settlement monitoring is also essential to supervise implementation and prevent the recurrence of conflict.

The study confirms that customary law and national civil law should not be treated as mutually exclusive legal systems. Customary law provides historical legitimacy, collective identity, territorial knowledge, and culturally appropriate dispute resolution, while national civil and administrative law provide formal recognition, legal certainty, registration, and enforceability. Sustainable land dispute resolution can therefore be achieved only when these legal systems are connected through a fair, participatory, and coordinated institutional process.

The proposed framework contributes to the development of legal-pluralist scholarship by transforming the concept of legal coexistence into a practical dispute-resolution mechanism. It also provides policy guidance for local governments, land authorities, courts, mediators, companies, and customary institutions in North Sumatra. The protection of customary land rights should not be understood as an obstacle to national development or land administration. Instead, recognition, participation, and legal integration are essential foundations for substantive justice, social stability, legal certainty, and sustainable land governance.

References

- Abram, N. K., Meijaard, E., Wilson, K. A., Davis, J. T., Wells, J. A., Ancrenaz, M., Budiharta, S., Durrant, A., Fakhruzzi, A., Runting, R. K., Gaveau, D., & Mengersen, K. (2017). Oil palm–community conflict mapping in Indonesia: A case for better community liaison in planning for development initiatives. *Applied Geography*, 78, 33–44. doi:10.1016/j.apgeog.2016.10.005
- Alfitri, A., Muntaqo, F., Putra, R., Rogaiyah, R., & Kholek, A. (2017). Sue for disputes resolution of land conflict in South Sumatera. *KOMUNITAS: International Journal of Indonesian Society and Culture*, 9(1), 161–169. doi:10.15294/komunitas.v9i1.4865
- Arizona, Y., Wicaksono, M. T., & Vel, J. (2019). The role of indigeneity NGOs in the legal recognition of adat communities and customary forests in Indonesia. *The Asia Pacific Journal of Anthropology*, 20(5), 487–506. doi:10.1080/14442213.2019.1670241
- Bakker, L. (2023). Custom and violence in Indonesia's protracted land conflict. *Social Sciences & Humanities Open*, 8(1), Article 100624. doi:10.1016/j.ssaho.2023.100624
- Bakker, L., & Moniaga, S. (2010). The space between: Land claims and the law in Indonesia. *Asian Journal of Social Science*, 38(2), 187–203. doi:10.1163/156853110X490890
- Bedner, A., & Arizona, Y. (2019). Adat in Indonesian land law: A promise for the future or a dead end? *The Asia Pacific Journal of Anthropology*, 20(5), 416–434. doi:10.1080/14442213.2019.1670246
- Bedner, A., & Van Huis, S. (2008). The return of the native in Indonesian law: Indigenous communities in Indonesian legislation. *Bijdragen tot de Taal-, Land- en Volkenkunde*, 164(2–3), 165–193. doi:10.1163/22134379-90003655
- Berenschot, W., & Afrizal. (2020). Resolving land conflicts in Indonesia. *Bijdragen tot de Taal-, Land- en Volkenkunde*, 176(4), 561–574. doi:10.1163/22134379-17604002
- Dewi, R. (2016). Gaining recognition through participatory mapping? The role of adat land in the implementation of the Merauke Integrated Food and Energy Estate in Papua, Indonesia. *ASEAS: Austrian Journal of South-East Asian Studies*, 9(1), 87–106. doi:10.14764/10.ASEAS-2016.1-6
- Dewi, S. F. (2010). Oral tradition in the study of ulayat land disputes in West Sumatra. *Wacana: Journal of the Humanities of Indonesia*, 12(1), 70–84. doi:10.17510/wjhi.v12i1.76
- Effendi, M., Nasution, M. A., Harahap, R. H., & Amin, M. (2023). Model for ulayat land conflict resolution in North Sumatra, Indonesia. *International Journal of Sustainable Development and Planning*, 18(7), 2177–2182. doi:10.18280/ijstdp.180721
- Fitzpatrick, D. (1997). Disputes and pluralism in modern Indonesian land law. *Yale Journal of International Law*, 22(1), 171–212.
- Fitzpatrick, D. (2005). “Best practice” options for the legal recognition of customary tenure. *Development and Change*, 36(3), 449–475. doi:10.1111/j.0012-155X.2005.00419.x
- Hafidh, A., & Krisdyatmiko, K. (2020). Akses masyarakat adat terhadap tanah ulayat: Studi kasus pada masyarakat adat Minangkabau. *Journal of Social Development Studies*, 1(1), 63–73. doi:10.22146/jstds.210

- Harada, K., Habib, M., Sakata, Y., & Maryudi, A. (2021). The role of NGOs in recognition and sustainable maintenance of customary forests within indigenous communities: The case of Kerinci, Indonesia. *Land Use Policy*, 111, Article 105865. doi:10.1016/j.landusepol.2021.105865
- Hidayat, H. (2015). Pengakuan hukum terhadap hak ulayat masyarakat hukum adat. *Jurnal Hukum to-ra*, 1(3), 183–192. doi:10.33541/tora.v1i3.1140
- Kurniati, N., Hindersah, R., & Fakhriah, E. L. (2019). Fallow land conflict settlement in Buru Island according to Indonesian indigenous law. *Journal of Legal, Ethical and Regulatory Issues*, 22(6), 1–8.
- Li, T. M. (2018). After the land grab: Infrastructural violence and the “mafia system” in Indonesia’s oil palm plantation zones. *Geoforum*, 96, 328–337. doi:10.1016/j.geoforum.2017.10.012
- Marta, A., Suwaryo, U., Sulaiman, A., & Agustino, L. (2019). Dilemma of customary land policy in Indonesia. *Masyarakat, Kebudayaan dan Politik*, 32(2), 134–143. doi:10.20473/mkp.V32I22019.134-143
- McCarthy, J. F. (2004). Changing to gray: Decentralization and the emergence of volatile socio-legal configurations in Central Kalimantan, Indonesia. *World Development*, 32(7), 1199–1223. doi:10.1016/j.worlddev.2004.02.002
- McCarthy, J. F. (2005). Between adat and state: Institutional arrangements on Sumatra’s forest frontier. *Human Ecology*, 33(1), 57–82. doi:10.1007/s10745-005-2426-8
- McCarthy, J. F. (2010). Processes of inclusion and adverse incorporation: Oil palm and agrarian change in Sumatra, Indonesia. *The Journal of Peasant Studies*, 37(4), 821–850. doi:10.1080/03066150.2010.512460
- Peluso, N. L. (1995). Whose woods are these? Counter-mapping forest territories in Kalimantan, Indonesia. *Antipode*, 27(4), 383–406. doi:10.1111/j.1467-8330.1995.tb00286.x
- Pulubuhu, D. A. T., Eryani, A. N., Fachry, M. E., & Arsyad, M. (2018). The strategy of women in facing agrarian land conflict: The case of female farmers of Makassar ethnicity. *IOP Conference Series: Earth and Environmental Science*, 157, Article 012068. doi:10.1088/1755-1315/157/1/012068
- Putra, A. A. G. B. M., Nahak, S., & Widia, I. K. (2019). Criminal policy in indigenous land conflict. *Jurnal Notariil*, 4(2), 103–113. doi:10.22225/jn.4.2.1361.103-113
- Riggs, R. A., Sayer, J., Margules, C., Boedihartono, A. K., Langston, J. D., & Sutanto, H. (2016). Forest tenure and conflict in Indonesia: Contested rights in Rempek Village, Lombok. *Land Use Policy*, 57, 241–249. doi:10.1016/j.landusepol.2016.06.002
- Rutten, R., Bakker, L., Alano, M. L., Salerno, T., Savitri, L. A., & Shohibuddin, M. (2017). Smallholder bargaining power in large-scale land deals: A relational perspective. *The Journal of Peasant Studies*, 44(4), 891–917. doi:10.1080/03066150.2016.1277991
- Rye, S. A., & Kurniawan, N. I. (2017). Claiming indigenous rights through participatory mapping and the making of citizenship. *Political Geography*, 61, 148–159. doi:10.1016/j.polgeo.2017.08.008
- Sikor, T., & Lund, C. (2009). Access and property: A question of power and authority. *Development and Change*, 40(1), 1–22. doi:10.1111/j.1467-7660.2009.01503.x
- von Benda-Beckmann, F., von Benda-Beckmann, K., & Wiber, M. G. (2006). The properties of property. *Social Anthropology*, 14(1), 1–19. doi:10.1111/j.1469-8676.2006.tb00032.x
- Warman, K. (2012). Pola penyelesaian sengketa tanah ulayat di Sumatera Barat: Sengketa antara masyarakat dan pemerintah. *Masalah-Masalah Hukum*, 41(3), 407–415. doi:10.14710/mmh.41.3.2012.407-415
- Yusran, Y., Sahide, M. A. K., Supratman, S., Sabar, A., Krott, M., & Giessen, L. (2017). The empirical visibility of land use conflicts: From latent to manifest conflict through law enforcement in a national park in Indonesia. *Land Use Policy*, 62, 302–315. doi:10.1016/j.landusepol.2016.12.033

Legal and Regulatory Sources

- Constitutional Court of the Republic of Indonesia. (2013). *Decision No. 35/PUU-X/2012 concerning the judicial review of Law No. 41 of 1999 on Forestry*.
- Republic of Indonesia. (1945). *The 1945 Constitution of the Republic of Indonesia*, particularly Articles 18B(2), 28I(3), and 33(3).
- Republic of Indonesia. (1960). *Law No. 5 of 1960 concerning Basic Agrarian Principles*. State Gazette of the Republic of Indonesia No. 104 of 1960.
- Republic of Indonesia. (1997). *Government Regulation No. 24 of 1997 concerning land registration*. State Gazette of the Republic of Indonesia No. 59 of 1997.
- Republic of Indonesia. (1999). *Law No. 41 of 1999 concerning forestry*. State Gazette of the Republic of Indonesia No. 167 of 1999.
- Republic of Indonesia. (2016). *Supreme Court Regulation No. 1 of 2016 concerning mediation procedures in courts*.

- Republic of Indonesia. (2021). *Government Regulation No. 18 of 2021 concerning management rights, land rights, apartment units, and land registration*. State Gazette of the Republic of Indonesia No. 28 of 2021.
- Republic of Indonesia. (2024). *Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency Regulation No. 14 of 2024 concerning the administration and registration of customary communal land*. State Bulletin of the Republic of Indonesia No. 149 of 2024.