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Review Article

Legal and Political Policies Related to Customary Forests in Indonesia: From Normative Recognition to Implementation Contestation

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ABSTRACT

Forest management by indigenous peoples has been globally recognized as a method to reduce deforestation and slow the climate crisis. Deforestation rates in indigenous-managed forests are 20–50% lower than in other forests. In Indonesia, despite constitutional recognition (Article 18B, Paragraph (2), of the 1945 Constitution) of the rights of indigenous peoples, the reality is highly variable, and legal protection is undermined by an extractive forestry system that administers approximately 63% of the total land area as forest. This research employs a qualitative approach with an instrumental policy case study. There are three objectives: First, to document the historical political development of customary forest recognition in Indonesia from the colonial era to the post-Constitutional Court Decision 35/2012; Second, to address significant political and economic-bureaucratic obstacles; and Third, to examine the adaptive strategies of key actors in policy realization. This research relies on the systematic implementation of the PRISMA 2020 methodology and the analysis of 122 publications (1990–2026). The implementation arena is where policy is put into practice. The analysis results indicate that within the implementation arena, policy politics, local bureaucracy, and political economy collectively form systemic barriers. Recognition of customary forests is limited to administrative recognition because overlapping sectoral permits, including cultivation rights (HGU), mining permits (IUP), and industrial plantation forest permits (HTI), are not automatically revoked. This study concludes that land justice is only possible with a transformation of the development paradigm and a redistribution of political power, combined with institutional transformation, particularly the mandatory revocation of overlapping permits.

1. Introduction

Since the adoption of the Paris Agreement in 2015 and the solidification of the Glasgow Climate Agreement in 2021, international policy frameworks have increasingly emphasized indigenous land and forest rights as pillars of forest governance (Carmona et al. 2023). It has been widely documented that territories managed by indigenous peoples exhibit lower deforestation rates and higher carbon stocks than those managed by non-indigenous entities (Fa et al. 2020;

Walker et al. 2020). Strengthening indigenous land tenure rights is an implicit and explicit strategy within the SDGs framework and the Paris Agreement (Katila et al. 2020).

Indonesia is at the center of this discussion as the country with the third-largest area of tropical forests. In the Indonesian State's nationally determined contribution (NDC), the commitment rests on the ability to control customary forests (Syakila et al. 2023; Wongkar 2021). The national legal-political context shows a unique contradiction. The State is constitutionally relatively advanced regarding Article 18B Paragraph (2) of the 1945 Constitution. However, the legacy of the New Order's centralized forestry system designates about 63% of the State's territory as so-called "Forest Areas" under State control, thereby extinguishing indigenous rights (Hidayat et al. 2018; Simarmata 2024).

According to the Nusantara Indigenous Peoples Alliance (AMAN) (2026), around 80% of indigenous people in Indonesia live in or around state-claimed forest areas. This phenomenon is understood to generate chronic conflict for these communities. AMAN's estimates indicate that roughly 40 million ha of state-owned forest land in Indonesia should be returned to indigenous peoples. However, indigenous and local communities have *de facto* controlled these areas, and the recognition of their rights has been overlooked, resulting in insecurity of land tenure. This creates a conflict-prone situation of overlapping land tenure systems (Berenschot and Dhiaulhaq 2023; Dhiaulhaq and McCarthy 2020; Musrifah and Syarifah 2025; Salim et al. 2021).

The Constitutional Court of the Republic of Indonesia reached a significant historical landmark by determining in decision number 35/PUU-X/2012 that all customary forests are not classified as state forests and, as a corollary, are not included in the realm of state forests (Abrori et al. 2025; Arizona and Illiyina 2024). However, more than a decade later, the situation on the ground is far slower and more complicated than expected, highlighting the gap between legal recognition (*ex ante*) and the protection that should be afforded (*ex post*).

There is a growing, yet incomplete, body of literature on customary forests in Indonesia, which depicts a fragmentation of three overlapping traditions: legal anthropology and traditional ecological knowledge; policy and positive law (Maryudi and Sahide 2017; Sahide et al. 2020); and political ecology and agrarian conflict (Peluso and Vandergeest 2020; Scheidel et al. 2023). Each of these works fills a specific niche and has its own specific blind spots. While Peluso and Vandergeest (2020) capture the effects of bureaucratic, political, and economic barriers, as well as the political forests narrative, Dhiaulhaq and McCarthy (2020) analyze framing without systematically applying these concepts.

While Arizona and Illiyina (2024) and Sahide et al. (2020) have respectively addressed aspects of legal and policy analysis, an empirical gap remains in integrating legal analysis and policy implementation within the post-Constitutional Court Decision 35/2012 context. The concept of "political forests" by Peluso and Vandergeest (2020) can address macro-structural and dynamic aspects of forestry policy. However, this concept is limited in its ability to assess the interactions among bureaucratic and implementation barriers, local political and economic structures, and narrative conflicts during the day-to-day operationalization of implementation. On the other hand, the work by Dhiaulhaq and McCarthy (2020) on framing is not enriched by an analysis of strategies developed by local actors to overcome or circumvent barriers to policy implementation.

In other words, existing research still treats policy implementation as a black box. Although we understand that conflict and delays on the ground remain ongoing issues, we know that Constitutional Court Decision 35/2012 represents progress in normative development. However,

we still acknowledge a gap in our understanding of why and how implementation unfolds, and we are particularly concerned with what the existing response strategies of various players in this system actually mean.

This article offers three original contributions in filling this gap. First, it combines the legal, political, and implementation approaches and integrates the fragmented disciplines into an analytical framework. Second, it identifies, diachronically, the phases of the legal politics of customary forests, providing a historical overview from colonial times to post-Constitutional Court Decision 35/2012, a customary approach in implementation studies. Third, it focuses the analysis on the 'implementation arena' as the key political battlefield.

Why focus on the "implementation arena"? Three reasons justify it. First, policy implementation is a political arena, not a purely technical process. Here, the meaning of the law is tested, interpreted, and renegotiated among actors with differing interests (González-Martínez and Peeters 2024; Peeters and Campos 2022). Second, a change has occurred in the post-Constitutional Court Decision 35/2012 period that shifts the main battleground from the Constitutional Court to local and bureaucratic politics, the full extent of which has yet to be documented. Third, the dynamics of implementation reveal structural constraints that legal analysis ignores, including bureaucratic rituals, a rent-seeking political economy, and narrative contestation.

The objectives of this research are: (1) The legal-political analysis of the evolution of the recognition of customary forests in Indonesia from the colonial period to the post-35/2012 Constitutional Court period; (2) The identification of the political, economic, and bureaucratic obstacles that will be the greatest barriers to implementation; and (3) The description of the adaptive strategies of indigenous peoples, facilitated by non-governmental organizations (NGOs), and state actors in the implementation field. Operationally, these objectives are formulated into three research questions: (1) How has the legal-political evolution of customary forest recognition in Indonesia unfolded from the colonial era to the post-Constitutional Court Decision (MK) 35/2012? (2) What are the main factors hindering implementation? (3) What adaptation strategies are demonstrated by key actors in the implementation arena?

2. **Materials and Methods**

2.1. Study Design

This research employs a systematic literature review (SLR) approach within the PRISMA 2020 framework (Page et al. 2021). The SLR approach was chosen to integrate scattered bodies of evidence on legal, political, and implementation issues related to the recognition of customary forests in the broader Indonesian context. Beyond empirical research, this study integrates available evidence from indexed literature to identify patterns, gaps, and theoretical contributions. This approach is reinforced by an instrumental policy case study strategy (Yin 2018) to explore in depth the complex phenomenon that followed the Constitutional Court decision. The main unit of analysis is the policy process for recognizing and designating customary forests at the national level, with an in-depth examination grounded in the empirical context of various regional cases, as reflected in the secondary literature analyzed.

2.2. Search Strategy

The literature search was conducted through May 2026 across three databases: Scopus, Web of Science, and Google Scholar. The search string integrated terms related to customary forests, recognition, and implementation, utilizing Boolean operators. The search string was as follows: ("customary forest" OR "*hutan adat*" OR "indigenous forest" OR "*ulayat* forest" OR "*masyarakat hukum adat*") AND ("recognition" OR "*pengakuan*" OR "Constitutional Court" OR "MK 35/2012" OR "*putusan MK*") AND ("implementation" OR "policy implementation" OR "tenure" OR "agrarian conflict" OR "land dispute"). Backward citation tracking from key articles (Arizona and Illiyina 2024; Hidayat et al. 2018; Sahide et al. 2020) and forward citation tracking in Google Scholar were used to identify additional literature.

2.3. Inclusion and Exclusion Criteria

The following inclusion and exclusion criteria were established to filter and select publications for this systematic review. Types of publications include journal articles, non-governmental organization (NGO) reports, gray literature and books and book chapters. Regarding the publication timeframe, journal articles, NGO reports, and gray literature are restricted to 2017–2026, whereas books and book chapters are restricted to 1990–2025 to accommodate foundational works. Publications must focus on or be relevant to Indonesia, be written in either English or Indonesian, contain empirical data or substantive policy analysis, and address the recognition of indigenous peoples and customary forests in Indonesia. Excluded publications consist of opinion pieces, editorials, non-scientific commentary, conference abstracts without a full manuscript, and publications that focus solely on other countries without an explicit comparison to Indonesia.

From the 811 publications obtained during the initial search, 624 remained after 187 duplicates were eliminated. The first screening stage excluded 412 publications as irrelevant to the review's objectives or insufficiently policy-relevant. A total of 211 records were then screened comprehensively, and 89 were removed with the following breakdown: 37 because they contained minimal or no empirical data, 26 because they were unrelated to customary forests, 15 because of low research quality according to the Critical Appraisal Skills Program (CASP) assessment, and 11 because they were written in languages other than English or Indonesian. Consequently, 122 records were selected as the final focus of the review across the entire available literature.

2.4. Data Sources

This study draws upon four categories of documents, which are concisely presented in **Table 1**. Based on **Table 1**, among the 122 sources reviewed, journal articles dominate at 81.15%. These include internationally indexed and nationally accredited publications in law, political science, anthropology, and political ecology, published between 2017 and 2026. All such articles have undergone peer review and serve as the primary foundation for the theoretical and empirical analysis in this study. Meanwhile, legal and policy documents account for 9.02%, encompassing the 1945 Constitution, several forestry laws, Constitutional Court Decision No. 35/PUU-X/2012, and various implementing regulations from central to local governments concerning the recognition of customary law communities.

Table 1. Classification and distribution of data sources

Reference category	Count	Percentage (%)	Examples
Journal articles (international and national)	99	81.15	Forest Policy and Economics, Land Use Policy, *Jurnal Manajemen Hutan Tropika*, SASI
Legal and policy documents	11	9.02	1945 Constitution, Forestry Laws, Constitutional Court Decision No. 35/2012, MoEF Regulations
NGO reports and gray literature	9	7.38	Nusantara Indigenous Peoples Alliance (AMAN), Consortium for Agrarian Reform (KPA), Ancestral Domain Registration Agency (BRWA), Center for International Forestry Research (CIFOR), Ministry of Environment and Forestry (MoEF)
Books and book chapters	3	2.45	Yin (2018), Scharpf (1989), Peluso (1992)
Total	122	100	

The remaining source categories include NGO reports and gray literature (7.38%) published by AMAN, KPA, BRWA, CIFOR, and MoEF, as well as books and book chapters (2.45%) by foundational authors such as Yin, Scharpf, Peluso, and Li. These four categories of secondary data were subsequently critically analyzed to reconstruct the narrative and dynamics of the implementation of customary forest policy following Constitutional Court Decision No. 35/2012.

2.5. Analytical Framework and Procedure

Data analysis was conducted thematically with reference to the principles of critical discourse analysis. Data from documents were systematically reduced, categorized, and interpreted to identify patterns of power relations, dominant and counter-narratives, forms of indigenous resistance, and the socio-ecological consequences of forest area utilization practices (Nowel et al. 2017). Thematic analysis combined with critical discourse analysis has been validated as an appropriate and scientifically rigorous method for examining power dynamics, marginalization, and structural injustice in qualitative socio-ecological research (Green and Healy 2022; Slemon 2025).

The analysis was undertaken using the three-phase thematic analysis model of Braun and Clarke (2006), alongside the legal politics framework and the implementation arena (Cheng and Liu 2022; Scharpf 1989). Researching within this framework conceives of law as both the product and the battleground of politics. This approach interprets the dynamics of implementation as the interplay of individual, corporate, and governmental actors and their interests, preferences, and capacity within the framework of specific institutional rules. **Table 2** summarizes the operationalization of the analytical framework used.

As an implementation of the Braun and Clarke (2006) thematic analysis model, the analysis procedure in this study was carried out in three sequential stages: Stage 1–Open Coding, in which each of the 122 publications was analyzed and initially coded based on several inductive variables. These variables included the historical period of law, bureaucratic processes, recognition frameworks and mechanisms, actor strategies, spaces of conflict engagement, and the outcomes of these activities. Analysis was conducted in two interactive stages: First, identification of paradigm

and norm shifts through content analysis of legal documents; Second, thematic analysis following the approach of Ahmed et al. (2025). NVivo 14 software was used for manual coding to ensure systematic traceability.

Table 2. Operationalization of the analytical framework

Level of analysis	Key concept	Analytical question	Application in the study
Legal politics (Cheng and Liu 2022)	Law as a political product; normative paradigm shift	How does the law recognize, restrict, or negate indigenous rights?	Tracing evolution from *domeinverklaring* to Constitutional Court Decision 35/2012 (Section 3.1)
Implementation arena (Scharpf 1989)	Strategic interaction of actors within institutional rules	Who are the key actors, their interests/capabilities, and how do their interaction strategies unfold?	Dissecting three arenas: bureaucracy (3.3.1), local politics (3.3.2), narratives (3.3.3)
Structural gap (author's synthesis)	Gap between normative (*de jure*) recognition and substantive (*de facto*) protection	What factors prevent the realization of rights after administrative recognition?	Identifying overlapping permits, passive law enforcement, and post-recognition dependency

Next, Stage 2–Axial Coding, where initial codes were organized into analytical categories based on the theoretical framework. Four main categories emerged: (a) evolution of legal politics (colonial period, New Order, Reform, post-MK); (b) bureaucratic arena (verification procedures, participatory mapping, technical barriers); (c) local political arena (rent economy, patronage networks, elite fragmentation strategies); (d) narrative arena (state/corporate narratives vs. indigenous/NGO counter-narratives). Finally, Stage 3–Selective Coding, where categories were synthesized into three main themes forming the article's core argument: (1) Conditional recognition as the dominant pattern of legal politics; (2) The implementation arena as a multi-front battlefield; (3) The post-recognition structural gap between administrative designation and substantive protection.

2.6. Study Limitations

This study has several limitations. First, as a systematic literature review, it does not include primary fieldwork; therefore, the findings reflect the evidence base of existing publications, which may better represent documented conflicts but may underrepresent successful or ongoing recognition processes. Second, reliance on secondary data limits the ability to verify case study claims. Third, publication bias may emerge, as unsuccessful recognition processes and cases without advocacy support are likely to be unpublished. Fourth, due to a bias towards English-language publications, some Indonesian-language case studies may be underrepresented. Fifth, the limitation to 2017–2026 may overlook important older studies, but some major studies (Li 2000; Peluso 1992) were added through citation tracking. There is a need for further longitudinal ethnographic research and/or primary data studies of the identified customary forests to build on this.

3. Results and Discussion

An overview of the synthesizing results from the examined publications is a prerequisite to discussing the findings in detail. The literature outlines only three general patterns. The first is the legal politics of recognition of customary forests, which has evolved from total denial to conditional recognition. Each phase is accompanied by new, more sophisticated forms of resistance. The second is the implementation of post-Constitutional Court Decision 35/2012, which has become a fragmented battlefield characterized by a hostile bureaucracy, local politics, and narratives that impede the realization of the substantive rights of indigenous peoples. Third, there is a structural gap between forest recognition through administrative steps and adequate field protection, stemming from an unwillingness to revoke overlapping sectoral permits and from ineffective law enforcement. These three trends are elaborated further.

3.1. Evolution of Legal Politics: From Denial to Conditional Recognition

Indonesian customary forests reflect the impact of nation-state building and agrarian capitalism. During the colonial period, the *domeinverklaring* doctrine from the Agrarische Wet 1870 (Dutch East Indies 1870) delegitimized communal land tenure systems. Colonial law deliberately created a distinction between communal customary law and individualistic Western law by designating land without evidence of individual ownership as 'state domain land' (Fahmi 2020; Ikhsan and Saidin 2023). Legitimate customary land was considered 'empty' and therefore available for exploitation. The Deli tobacco plantations in Sumatra exemplify this context. This situation reflects the paradox of 'illegal legality'. Communities, legitimized by customary law, became illegal in the eyes of the state (Fahmi et al. 2024; Mustafa et al. 2025).

The paradox of 'illegal legality' was modernized during the New Order period. Under Law No. 5/1967 concerning basic forestry provisions, state control was reinforced by defining all forests not burdened by rights as 'state forests'. The focus of forests was shifted to 'timber stock'. Forests were leased through forest concession rights (HPH) for industrialization (Bedner and Arizona 2019). Indigenous Peoples were classified as 'nomadic farmers' requiring 'guidance'. Transmigration and nucleus estate (PIR) programs legitimized the dispossession of indigenous lands. Law No. 5/1979 concerning village government also eliminated the diversity of customary systems, replacing them with a standard village system (Bakker 2022; Bedner and Arizona 2019).

The early Reformasi period produced tactical ambiguity. The amendment to Article 18B(2) of the 1945 Constitution opened opportunities for indigenous peoples' constitutional struggle. However, Law No. 41/1999 concerning forestry translated this struggle through a highly politicized process. This ambiguity is reflected in Article 67 of the law. The phrase "as long as it still exists in reality" created uncertainty dependent on bureaucratic interpretation (Indriasari and Widyastuti 2024; Pradhani 2018). The phrase "recognized in accordance with Regional Regulations" shifted the burden of proof to the local level, where local elites often share interests with capital owners. The phrase "does not conflict with national interests" serves as a rubber article because 'national interests' are often synonymous with large-scale investments (Arisandi and Pareke 2024; Fuad et al. 2023).

In this stage, the state's legal politics shifted from absolute denial to controlled recognition. Though the state may not have the ability to deny indigenous people fully, it equally lacks the desire to withdraw from its control fully. The state maintains an intentionally vague legal position, allowing its bureaucracy to exercise discretion in determining who will or will not be granted

recognition. To visualize this paradigmatic shift, **Fig. 1** presents the periodization of legal politics that shape the relationship between the state and indigenous people in Indonesia.

The illustration goes beyond mere periodization by clarifying three hard-to-capture dimensions. First, duration asymmetry: colonial denial (≈ 82 years) plus New Order extraction (≈ 32 years) total over a century of systematic rights negation. The post-MK era (≈ 14 years) remains short by comparison. This suggests institutional inertia is structural, not merely political. Second, the timeline shows a gradual but incomplete shift from state-forest control toward conditional recognition of customary forests. This shows that legal reform has occurred faster than the transformation of administrative practices and governance arrangements. Third, the figure exposes a non-linear threshold. MK 35/2012 reclassifies customary forests as non-state forests, yet the flat post-2016 trajectory proves that legal victory cannot substitute for enforcement. Together, these patterns reinforce the article's core claim: implementation, not legislation, is the real political battlefield.



Fig. 1. Political periodization of customary forest law in Indonesia.

What **Fig. 1**'s periodization makes clear is that each political era generated its own characteristic mode of exclusion. Colonial rule operated through the *domeinverklaring*—a direct negation of customary rights. The New Order shifted toward centralized extraction and enforced administrative subordination. Reformasi brought legal ambiguity, a form of tactical vagueness. The post-MK period, in contrast, produces bureaucratic filtering as its dominant mechanism. With this macro-structural pattern now visualized, **Table 3** offers a more granular comparison. It lays out regulatory frameworks, governing paradigms, and their concrete implications for indigenous people across the very same historical periods.

3.2. Anatomy and Limitations of Constitutional Court Decision 35/2012

The Constitutional Court Decision Number 35/2012 illustrates complex legal reasoning regarding Indonesian forestry policy. The court rejected the artificial dualism in Indonesian forestry policy, concluding that customary forests are not state forests (Arizona and Illiyina 2024), and partially annulled the forestry law. Constructing the dualism was easy, given the existing legal

ambiguity. This decision is not merely a clearer legal interpretation; it is a thorough legal ontological restructuring (Arizona and Cohen 2024). By their decision, the justices placed customary forests completely outside of the state's legal control (Myers et al. 2017; Nirahua et al. 2025; Syofiarti 2023). In removing the Council's particular phrase "as long as it exists in reality," which was discriminatory and intentionally ambiguous. The court recognized, for the first time, that indigenous people are legal subjects, not legal objects of the state, and that the state would authorize them to issue permits; therefore, indigenous people are vested with rights (Syofiarti 2023).

Table 3. Evolution of legal politics regarding customary forest recognition in Indonesia

Period	Key regulation/policy	Main paradigm	Implication for indigenous people
Colonial	*Agrarische Wet* 1870	*Domeinverklaring*; negation of customary rights	Customary territories declared state land
New order	Law No. 5/1967; Law No. 5/1979	Centralized-extractive; construction of state forests	Subordination, land dispossession and violation of customary rights
Early reformation	Law No. 41/1999; Article 18B of the 1945 Constitution	Controlled recognition	Legal ambiguity; burden of proof on communities
Post-MK 35/2012	Constitutional Court Decision 35/2012; MoEF Reg 21/2020	Deconstruction of state forest; normative recognition	Strengthened legal position; persistent implementation barriers

Note: Synthesized from Bedner and Arizona (2019); Hidayat et al. (2018).

This decision, however, also marks the boundary of this legal pathway for change. The negative nature of the decision, which only annulled specific provisions, was not followed by an order to formulate progressive implementing regulations. This post-decision legal vacuum was effectively exploited by the MoEF (Arizona and Cohen 2024), which introduced specific administrative procedures through modified ministerial regulations (MoEF Reg. 32/2015, subsequently superseded by 21/2020). These procedures maintain state bureaucratic control over indigenous forests and shift the conflict from the legal to the administrative domain.

Another limitation concerns the legal and political compromises reflected in the decision. The constitutional court kept the provision that recognition is grounded in regional regulations (Karjoko et al. 2021; Mubarok et al. 2023). This positions local politics, specifically the Regional People's Representative Council (DPRD) and local government, as the main access points (Hosim et al. 2025). In areas where extractive interests predominate, the formulation of regional regulations under the Recognition and Protection of Indigenous Law Communities (PPMHA) is typically postponed or implemented under restrictive conditions. The decision offers significant normative legitimacy but, at the same time, intensifies local antagonism, effectively turning a court victory into the onset of an intensified enforcement struggle (Rochmawanto et al. 2022; Syam et al. 2024; Triwahyuningsih et al. 2026; Tuasikal and Homer 2024).

3.3. The Implementation Arena as a Political Battlefield

The scope of implementing customary forest recognition changed after Constitutional Court Decision No. 35/2012. A shift in political focus from the normative arena to the implementation arena is experienced here. The arena is understood as a complex, multi-level battlefield, where the processes of translation, distortion, and adaptation of progressive legal provisions are carried out by various competing interests. Implementation is seen not as the technical execution of a task, but as the extension of politics into law-making. This extension manifests in three dynamic, interrelated spheres: the bureaucracy, local politics, and narratives.

3.3.1. The bureaucratic arena: verification rituals and technical power

The customary forest designation procedure designed by the MoEF functions as what several researchers characterize as a bureaucratic ritual with several latent functions: (1) Testing the resilience of indigenous people and their supporters; (2) Providing legitimacy for the state that the process is participatory and scientific; (3) Filtering claims considered bureaucratically 'unworthy' through administrative mechanisms (Perbawati et al. 2023). The complicated nature of these processes often functions to disguise the maintenance of state control behind a facade of technical neutrality.

Operationalizing the 'bureaucratic ritual': Based on our synthesis, we have articulated three observable procedural mechanisms: (a) multi-layer verification requirements, which expand the documentation of cases beyond 24 months; (b) mandatory reconciliation with state spatial data (indicative map of customary forests/PIHA or forest management unit map/KPH), which systematically compresses customary territory boundaries; this concept empowers communities, but the resulting maps must go through a process of 'verification' and 'adjustment' with official state maps that often ignore customary boundaries (Arizona and Cohen 2024); and (c) multi-stakeholder verification teams that depend on consensus among participants with opposing interests. In practice, this gives pro-extractive institutions veto power. This is evidenced in several studies across Indonesia (Siscawati et al. 2017).

The participatory mapping paradox can also be analyzed for the Dayak Iban living in Kapuas Hulu. On the one hand, participatory mapping empowers the community to record the locations of their traditional lands. On the other hand, the community members' maps must be verified and adjusted to include government maps, which give little to no regard to customary borders. Of the 33.6 million ha of demonstrated customary lands, only 2,435,984 ha (around 7.25%) are acknowledged to be customary forests. This gap illustrates that these bureaucratic procedures create an effective filtering mechanism (BRWA 2025).

3.3.2. The local political arena: rent economy, patronage, and fragmentation

In the local political arena, customary forest recognition directly confronts established political-economic machinery. In many resource-rich districts, business permits for plantation, mining, or forestry serve as political currency, financing campaigns and building patronage networks among entrepreneurs, bureaucrats, and political elites (Hosim et al. 2025; Karso 2025; Utomo and Nadriana 2025). Consequently, designating a specific area as a customary forest, which restricts the issuance of new permits and prevents the revocation of existing ones, is viewed as a significant threat to the stability of local political patronage and rent flows. To bridge this

persistent gap, hybrid governance models that integrate customary institutions as equal partners are essential (Suwarno et al. 2026).

A national study found 1,411 overlapping areas between mining business permits (IUP) and cultivation rights (HGU) for palm oil plantations, covering approximately 448,632 ha, mainly in Sumatra and Kalimantan (Raharja et al. 2023). Another study found weaknesses in the recognition of customary territories and in the management of overlapping concessions (mining, forestry, plantations) that narrow the management space for indigenous people and damage forests and water bodies (Jamin et al. 2023; Salampessy et al. 2024).

A common strategy to neutralize the threat is 'legalizing the illegal'. A real case occurred in Sintang Regency, West Kalimantan. An oil palm plantation company operated in the territory of the Dayak Iban people without complete permits. When the community fought for the designation of the customary forest, the company immediately processed location permits from the local government. The company's previously 'illegal' position became administratively 'legal', and ironically, the indigenous community was accused of 'hindering legitimate investment' (Ali 2025; Sukarman 2025). Agrarian conflict data (KPA 2024) shows that 67% of documented plantation conflicts are caused by oil palm plantations—often following a pattern in which companies operate first before obtaining permits.

Internal community fragmentation is often manipulated. In several communities in Indonesia, customary elites, enticed with material rewards or positions, are persuaded to agree to the release of part of the customary territory through unrepresentative 'deliberations', thereby breaking consensus and weakening the community's bargaining position (Goma et al. 2026; Hamid et al. 2026). Froese et al. (2022), in a comparative study of land conflicts in the Amazon, identified that 'identity- and lifestyle-driven transformations' and 'state- and market-driven agendas' are the main drivers of conflict, where formal institutions fail to protect indigenous people due to weak law enforcement and corrupt practices of local elites. This 'divide and conquer' strategy has been documented in various agrarian conflict cases in Indonesia (Froese et al. 2022; KPA 2024).

3.3.3. The narrative arena: contestation over meaning and legitimacy

The conflict in the implementation arena is similar in terms of discourse and legitimacy. The state and corporations use particular wordings in the form of "development", "economic growth", "job creation", and "legal order" in the dominant narrative to justify the legitimacy of extractive projects. Subsequently, the indigenous people who oppose such projects are labeled as "anti-development", "backward", or "exploited by foreign NGOs" (Chen 2020; Nygren et al. 2022; Riofrancos 2017). The narrative's efficacy shapes public opinion in urban society and influences technocratic bureaucrats (Matuankotta and Holle 2022).

These examples are all very similar. The Malay residents of Rempang Island, who did not want to move to make way for the establishment of a special economic zone, were said to be blocking investment. The government carried out the eviction due to the absence of land certificates—despite their having lived on the land for many generations (Bhakti et al. 2023). The situation in Wawonii was similar: when residents opposed a nickel mine, they were accused of undermining stability; mining permits were issued for land belonging to their ancestors; and opposition was met with repressive measures. The Mining Advocacy Network (Jatam) documented 29 criminalized citizens (2018–2023) charged with obstructing mining and incitement

(Nasution et al. 2024; Wicaksono 2024). For Iriyani et al. (2024), these cases epitomize how 'limited administrative recognition' fails to resolve—and often deepens—tenure conflicts.

The response of indigenous people and their allied non-governmental organizations (NGOs) has undergone a dramatic shift, namely abandoning the use of "customary rights" and moving towards more globally and nationally relevant constructs, such as "climate guardians", "biodiversity saviors", "practitioners of *Pancasila*", and "food security" (Abdullah et al. 2024; Siagian 2021). The "climate guardian" narrative has generated broader international support for the Kasepuhan community in West Java, the Dayak Iban in the Utik River, and the Dayak Benawan in West Kalimantan, which were recently hailed as "climate heroes" (Lizarazo-Rodríguez et al. 2024; Niko et al. 2024). Framing local struggles within a global context, such as the SDGs and national climate obligations, provides a new source of legitimacy. The pattern of narrative contestation is presented in **Table 4.**

Table 4. Narrative contestation in the customary forest implementation arena

Actor	Main narrative	Framing strategy	Example case/impact
State and corporation	Development, investment, law and order	Technocratic; in the name of national interest	Accusations of "anti-development" against the rejection of oil palm permits in Jambi
Indigenous people and NGOs	Climate guardians, biodiversity, food security	Global; linking with SDGs and climate	"Save Our Forest" campaign in Kalimantan gains international support
Bureaucracy	Procedure, verification, legal certainty	Neutral-technical; using knowledge authority	Participatory maps that MoEF must verify

Note: Collated from Abdullah et al. (2024); Matuankotta and Holle (2022); Tamma and Duile (2020); Yahya and Syam (2018).

This discursive contestation highlights an interesting phenomenon we shall call the "symbolic commodification" of forests and indigenous people. Symbolic commodification refers to the selective recognition of forests located in less economically competitive yet ecologically relevant areas (e.g., protected forest areas) within the context of international climate diplomacy, while substantive issues in more economically constructive areas (e.g., oil palm concessions in Kalimantan or mining in Papua) tend to be ignored or resolved unfairly (Carton et al. 2020; Howson 2018; Miles 2021; Ungirwalu et al. 2021). The central government can prioritize designating customary forests in ecologically important yet economically less competitive areas to serve as showcases for international climate diplomacy (Devine and Baca 2020).

As of December 2022, only 153,322 ha of customary forests have been acknowledged out of a possible 13.7 million ha (Simarmata 2024). This is not a hypothetical situation but a fact that has been identified. With regard to the Kajang case, the first national model—the placement occurred precisely in a protected forest, where there are no tenure conflicts with concessions, —while the claims in the production areas overlapping with the plantations have been left unresolved (Abdullah et al. 2024). On the other hand, the Hutan Adat Hemag Beniung in West Kutai shows that regional laws can combine customary law with formal governance (Zulfiani et al. 2025). This suggests that the designation of customary forests is a symbolic 'trophy' or greenwashing rather than an actual intention to protect the rights of indigenous people.

3.4. The Acute Gap between Recognition and Protection

The declaration of customary forests through a Decree of the Minister of Environment and Forests often involves what is known as 'limited administrative recognition'. The state fails to recognize and protect indigenous people's access to natural resources (Darmadi 2025; Muhdar et al. 2019). The state and companies that receive permits from the state use the advantage of the law, while indigenous people do not possess the resources that allow them to comply with the permit requirements and, as a result, lose control of their lands. This reveals agrarian conflict in three major aspects related to sectoral permits (Muhdar et al. 2019). For corporations, the decree designating customary forests as such is an administrative obstacle rather than a revocation of rights, so they continue their business while appealing and waiting until the community is exhausted (Sukarman 2025).

3.4.1. Empirical evidence of overlapping sectoral permits

The conflict between HGU cultivation rights and indigenous rights (*ulayat*) is part of a structural phenomenon across regions in Indonesia. Deliberation procedures have increasingly been omitted in the issuance of HGU, contributing to legal uncertainties (Bahri et al. 2026). A similar situation in Riau shows that HGU and *ulayat* land clashes cannot be resolved through litigation and need participatory mediation (Deliana et al. 2023). In Sintang, West Kalimantan, corporate land grabbing is occurring through territorialization, employing state policy and village power relations to appropriate Dayak customary land (Kurniawan et al. 2024). A study of 150 national conflicts revealed three mechanisms: rights restrictions through regulations, exploitation of legal loopholes, and business-politics collusion. The conflict between HGU and customary rights is a product of systemic agrarian governance.

Second, conflicts frequently arise between IUP and customary forest areas. In Malinau, North Kalimantan, the Dayak and Punan communities face overlapping customary rights with those of mining, logging, and oil palm concessions (de Royer et al. 2016). In Pampang Village, Samarinda, 63 IUP concessions covering 50,742 ha overlap with the living territories of the Dayak Apokayan and Kenyah, resulting in environmental damage and crop failure, with rights inadequately resolved (Erwiningsih and Ali 2023). In Central Halmahera, PT Weda Bay Nickel seized land and damaged the environment of the Sawai community (Dewi 2025). Nationally, mining permits overlap with 5.2 million ha of forest areas and 448,632 ha of HGUs. Resolution relies on mediation or joint use (PP No. 43/2021), without revoking permits that conflict with indigenous rights (Raharja et al. 2023). Root problems include the control of *ulayat* land through IUPs and the antagonistic relationship between the state and the people. Protection for indigenous people remains declarative, and the removal of criminal sanctions for those defending their rights is necessary (Serfiyani et al. 2022).

Third, conflicts between industrial plantation forests (HTI) and customary forests. In North Sumatra, the Pandumaan-Sipituhuta community obtained customary forest recognition after a long struggle against PT Toba Pulp Lestari, which ignored FPIC (Tarigan et al. 2019). In Riau, the Petalangan community fought for village forest permits for seven years as a counter-territorialization strategy, yet this scheme actually reinforced state hegemony (Budiono et al. 2018). Tenurial conflict in the Sekadau HTI involves the Dayak Mentuka territory due to overlapping customary claims (Hardiansyah et al. 2025). In Gowa, South Sulawesi, the Matteko customary territory was taken for HPH/HTI.

3.4.2. Integrative analysis: three post-recognition structural problems

An integrative analysis of 122 studies reveals three structural problems arising from the recognition of customary forests, rendering the Decree of the Minister of Environment and Forestry a frequent trigger of new conflicts rather than a resolution. First, overlapping sectoral permits (HGU, mining permits: IUP, and HTI) within customary territories are not automatically revoked, as Government Regulation No. 43/2021 prioritizes mediation. There is no clear revocation mechanism (Efriani et al. 2024; Muharman 2025). The Nusantara Indigenous Peoples Alliance (2025) reported 135 cases of dispossession (3.8 million ha) throughout 2025, and the loss of 11.7 million ha of customary territories (2014–2024), yet state recognition remains below 1%. The Consortium for Agrarian Reform (KPA 2025) documented 295 agrarian conflicts, dozens of which involved indigenous people. Although the MoEF revoked 192 concession permits (3.1 million ha) in January 2022 (Decree No. SK.01/MENLHK/SETJEN/KUM.1/1/2022), this revocation was due to land neglect, not overlaps with customary territories. By the end of 2025, an estimated 330,000–360,000 ha of customary forests were recognized, far fewer than the tens of millions of hectares that have been mapped.

Second, passive law enforcement shifts the burden of proof to indigenous people involved in civil disputes. Passive law enforcement classifies these conflicts as civil matters, thereby imposing substantial evidentiary costs and prolonging the resolution process (Kristin et al. 2025; Lofi 2025). Customary legal claims lack formal standards of proof, whereas concession-holding companies have documentation. Litigation in courts is prolonged, whereas custom mechanisms provide a quick and inexpensive resolution. This is a challenge in developed countries. For instance, in Smallwood on behalf of the Bindal People #2 v State of Queensland [2025] Federal Court of Australia (FCA) 1668 (FCA 2025), the plaintiffs could not prove a continuous customary connection with the land in dispute.

Third, post-accompaniment issues for NGOs, particularly dependency, include disputes over the distribution of benefits and inadequate local institutional capacity. In many cases, the recognition of customary forests becomes a “national project” of NGO indigeneity, where communities are highly dependent on NGOs (Arizona et al. 2019; Toumbourou and Dressler 2023). Research in Kerinci, Jambi, shows that critical NGO support is decisive for the successful recognition of customary forests, and the withdrawal of that support carries significant risks (Harada et al. 2022). Simarmata (2024) states that the trade-off between recognition and protection remains the most important issue. This trade-off indicates a degree of policy failure; without significant reform, the recognition of customary forests is likely to be a ceremonial act. Without ongoing accompaniment after recognition, the establishment of customary forests remains uncertain.

4. Conclusions

This research concludes that the Constitutional Court’s Decision No. 35/2012 is a fundamental step toward recognizing customary forests. However, even if this decision has successfully broken down the state’s centralized, long-standing forest regime’s monopoly, it has also given rise to new local conflicts. This is because it is triggered by the establishment of customary forests, which are still limited to administrative recognition and lack formal law enforcement. Overlapping sector licenses have not been revoked, so enforcing indigenous people's

rights remains difficult. These protections are even entangled in a political struggle in which the bureaucracy acts as a gatekeeper through complicated procedures, while the narratives of "development" and "climate guardians" clash, widening the gap between de jure and *de facto* protection. Therefore, land tenure justice is only possible if overlapping permits are revoked and the development model is changed from an extractive to a sustainable paradigm. Power and resources are redistributed to indigenous people, and local institutions are strengthened sustainably without reliance on NGOs. The future agenda, long-term ethnographic studies, and cross-comparison of typical forest areas in Indonesia are indispensable to understanding the dynamics of the conflict and formulating more context-specific solutions.

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E.S.: Conceptualization, Methodology, Software, Validation, Formal Analysis, Investigation, Resources, Data Curation, Writing – Original Draft Preparation; E.R.: Writing – Review and Editing, Visualization, Supervision; G.G.: Writing – Review and Editing, Visualization, Supervision; I.G.F.: Writing – Review and Editing, Visualization, Supervision; J.M.: Writing – Review and Editing, Visualization, Supervision.

Conflict of Interest

The authors declare no conflict of interest.

Declaration of Generative AI And AI-Assisted Technologies in the Manuscript Preparation

During the preparation of this work, the authors used DeepSeek to improve the manuscript's clarity and language. After using this tool/service, the authors reviewed and edited the content as needed and take full responsibility for the publication's content.

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