

**CUSTOMARY LAND OWNERSHIP, LEGAL PLURALISM, AND SUSTAINABLE  
LAND GOVERNANCE IN SOUTHEAST ASIA**

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**ABSTRACT;** *Ownership and management of customary lands in Southeast Asia, especially in Indonesia, still faces various legal, social, and economic problems due to the overlap between state law and customary law. This study aims to analyze the recognition of customary land rights and compare legal frameworks and implementation practices in several Southeast Asian countries to find an ideal model for equitable and sustainable customary land management. The research method used is normative legal research with a regulatory approach, a case approach, and a comparative approach. The source of legal material consists of primary, secondary, and tertiary legal materials that are analyzed qualitatively to produce prescriptive conclusions. The results of the study show that in Indonesia, although there has been legal recognition of customary land through the Constitutional Court Decision No. 35/PUU-X/2012, its implementation still faces administrative and political obstacles. Meanwhile, in other countries such as Malaysia and the Philippines, recognition of indigenous peoples' rights has been more institutionalized through affirmative policies and clearer juridical protections. These findings highlight the need for harmonization between customary and national laws as well as regional cooperation to strengthen the protection of indigenous peoples' rights to land*

**Keywords:** Customary Land; Customary Law Communities; Comparative Law; Southeast Asia; Legal Harmonization

## INTRODUCTION

Customary land ownership is a complex issue involving legal, economic, social, and environmental dimensions in various countries, including Indonesia and Thailand. In the legal context, the protection of customary land rights still faces serious challenges due to the legal dualism between the state legal system and customary law, as well as conflicts of interest between indigenous peoples and the government. (Swardhana & Jenvitchuwong, 2023) The unclear boundaries of customary territories also lead to legal uncertainty and inequality in access to natural resources. In Indonesia, although the government has made efforts to recognize customary lands through customary law people's land certification programs, implementation is still limited and often does not involve the active participation of indigenous peoples themselves. (News, 2024) In addition, the application of the customary land rights model such as the concept of *Squirting* in Bali shows that there is a close relationship between the control of customary land and the social structure of the community. (Suwitra, 2024)

From an economic perspective, customary lands have great potential in supporting sustainable development in rural areas through the development of the agricultural sector, community-based tourism, and sustainable natural resource management. However, research

shows that limited public consultation and lack of participation of local communities are often obstacles to the success of development projects on customary lands. (Celesistinus & Zakaria, 2023) For example, the development of community-based tourism on the indigenous lands of the Kamoro tribe in Papua offers economic opportunities as well as risks of cultural commercialization and inequality of benefits. (Anindhita dkk., 2024) In addition, land market pressures and foreign investment also threaten the sustainability of customary land ownership, as seen in the case of the expansion of business use rights and national development projects. (Opus, 2024)

Socially and culturally, customary land serves as a collective identity and symbol of ancestral heritage for customary law communities. The spiritual relationship between indigenous peoples and their land is reflected in the various social practices, rituals, and customary laws that govern the use and preservation of land. (Zaimah, 2015) The loss of customary land not only has an impact on the economic aspect, but also threatens the survival of social values, local wisdom, and the social stability of indigenous communities. (Laturette, 2023) In some cases, legal recognition of customary land, such as the determination of *Mukim Customary Forest* in Aceh, showing that collaboration between the state and indigenous peoples can strengthen natural resource governance and promote social justice. (Amusan, 2014) From an environmental perspective, the customary land ownership and management system plays an important role in maintaining ecosystem balance. Traditional practices such as mixed cropping systems and customary prohibitions on excessive deforestation have been proven to support biodiversity conservation and ecological resilience. (Prahesty, 2025) However, increasing economic pressures due to large-scale plantation expansion and infrastructure development often lead to environmentally damaging land conversions. (Munshifwa, 2020) Therefore, strengthening customary institutions, harmonizing regulations, and participation of indigenous peoples in decision-making are the main keys to realizing the management of customary lands that are just, sustainable, and in line with national development

## **Problem**

Based on the above discussion, there are two problem statements in this article:

1. How is the transformation of Socio-Legal Transformation and Adaptation of Indigenous Peoples in Land Management in Indonesia and Southeast Asia?
2. How is The Extent of Legal Frameworks, Inclusivity, and Justice Challenges in Customary Land Management in Southeast Asia

## **Research Methods**

This study uses a type of normative legal research that focuses on the analysis of legal norms that govern the recognition and protection of customary land rights in Indonesia and Southeast Asian countries. The approach used includes a legislative approach to examine various provisions of national and international law that govern indigenous peoples' rights to land, such as the Basic Agrarian Law and the Constitutional Court rulings in Indonesia, as well as similar legal regulations in Malaysia, the Philippines, and Thailand. The case approach is used to analyze law implementation practices in various court decisions and government policies related to customary land tenure conflicts. Meanwhile, a comparative approach is applied to examine the differences and similarities in the legal framework between countries in the Southeast Asian region, so that an ideal model for the management and protection of customary lands can be found. The source of legal material in this study consists of primary legal materials in the form of laws and regulations, court decisions, and official state

documents; secondary legal materials in the form of research results, books, and scientific journal articles; as well as tertiary legal materials such as legal dictionaries and encyclopedias to strengthen conceptual understanding. The analysis of legal materials is carried out qualitatively by interpreting relevant legal norms and principles, then drawing prescriptive conclusions. The results of this analysis resulted in normative recommendations on the harmonization of customary law with the national legal system and the formation of regional policies that ensure justice, sustainability, and protection of indigenous peoples' land rights in the Southeast Asian region

## **Discussion**

### **1. Socio-Legal Transformation and Adaptation of Indigenous Peoples in Land Management in Indonesia and Southeast Asia**

Social, economic, and political changes in the Southeast Asian region in recent decades have had a significant impact on customary land ownership and management patterns. In Indonesia, the customary rights system that has historically been rooted in the principle of communality is now under pressure due to the process of modernization, urbanization, and national development policies oriented towards the exploitation of natural resources. This process not only affects the structure of land ownership, but also challenges the existence of customary law that has been the basis for regulating indigenous peoples' land rights. (Bedner & Arizona, 2019) Similar transformations are also seen in other Southeast Asian countries such as Malaysia, the Philippines, and Thailand, where the legal dualism between customary systems and state laws creates complexity in the protection of indigenous peoples' rights. In Sabah, Malaysia, the failure of customary land development is largely due to overlapping regulations, lack of recognition of customary authorities, and weak coordination between local governments and indigenous peoples. (Marasinghe dkk., 2024) This shows that the issue of customary land is not only local, but also structural, where development policies are often insensitive to the socio-cultural aspects of the local community.

In Indonesia, the process of transforming customary land rights is also often associated with development projects such as plantations, mining, and infrastructure development. In this context, indigenous peoples often experience double pressures: on the one hand, they have to adapt to the more formal legal system of the state; On the other hand, they are required to maintain customary values that are the basis for the legitimacy of land tenure. (Lilleyman dkk., 2024) This tension results in a process of "legal pluralism in tension", in which customary law remains normatively recognized but often lacks implementing force on the ground. (Fitzpatrick, 2005)

In addition to legal factors, socio-economic aspects also play an important role in the adaptation process of indigenous peoples. For example, in the Philippines, the passage of the Indigenous Peoples' Rights Act (IPRA) in 1997 provided a strong legal basis for the recognition of indigenous land rights. However, its implementation still faces challenges in the form of weak institutional capacity and resistance from the private sector. (Ramos, 2020) In contrast, in Indonesia, the recognition of customary rights has only gained momentum after the Constitutional Court's decision No. 35/PUU-X/2012 which affirmed that customary forests are no longer part of state forests. This decision is an important milestone in strengthening the position of indigenous peoples in the national legal system. (Arizona & Cahyono, 2019)

The process of adaptation of indigenous peoples to legal and social changes is also seen in the form of institutional innovation. Some communities in Kalimantan and Sulawesi, for example, have developed a hybrid model between customary law and formal law by establishing community-based land management agencies recognized by local governments. This model is similar to the formation *Customary Land Secretariats* (CLS) in Ghana which serves as a bridge

between customary law and state law.(Kasanga & Kotey, 2001) Thus, a participatory and collaborative approach is key to ensuring the sustainability of customary land management systems amid changing social and economic dynamics. However, this transformation does not always go without conflict. Urbanization and industrialization around customary territories often put pressure on customary lands that have high economic value. In northern Thailand, for example, the process *Land Commodification* driving a shift from a system of communal ownership to individual ownership, resulting in social fragmentation among indigenous peoples.(Yasmi, 2017) In Indonesia, a similar phenomenon occurs in Dayak and Papuan customary areas, where customary land is used as an object of investment without adequate consultation with local communities.(Peluso, 2024)

## **2. Legal Framework, Inclusivity, and Justice Challenges in Customary Land Management in Southeast Asia**

The legal framework governing customary lands in Southeast Asia is essentially dualistic—combining the formal legal system of the state and the customary legal system that lives in the community. This dualism creates legal ambiguity that is often used by parties with economic or political interests. In Indonesia, although there is constitutional recognition of customary law communities as stated in Article 18B paragraph (2) of the 1945 Constitution, such recognition is often declarative and non-operational at the regional policy level.(Bedner & Van Huis, 2008) On the other hand, sectoral policies such as the Forestry Law and the Land Law still place the state as the holder of the highest authority over land and natural resources. This creates a gap between the law that is "on paper" and practice on the ground. In many parts of Indonesia, indigenous peoples continue to lose access to their land despite being legally recognized. The main cause is the weak implementation mechanism and overlapping regulations between the central and regional governments. Similar situations are found in Malaysia, particularly in Sabah and Sarawak, where the *Native Title* Theoretically grants rights to indigenous peoples, but in practice is limited by bureaucracy and the dominance of state governments.(Marasinghe, 2024)

On the other hand, some countries in the Southeast Asian region are starting to introduce a more inclusive legal approach. The Philippines is an important example with *Indigenous Peoples' Rights Act* (IPRA) which not only recognizes customary land rights, but also establishes *National Commission on Indigenous Peoples* (NCIP) as an independent implementing agency. Although there are still obstacles in implementation, the existence of this institution provides a formal mechanism for indigenous peoples to fight for their rights through legal channels.(Ramos, 2020) A similar approach has begun to be adopted in several regions of Indonesia through the establishment of regional regulations on the recognition and protection of customary law communities (Perda PPMHA).

The issue of inclusivity in customary land management also includes the gender dimension and the participation of vulnerable groups. In most Southeast Asian indigenous communities, women have an important role in the management of natural resources, but are rarely involved in formal decision-making.(Colchester, 2011) In Indonesia, research by Safitri (2018) shows that women's participation in customary institutions is still low due to cultural constraints and patriarchal structures.(Safitri, 2018) Therefore, gender-equitable customary land management policies need to be strengthened through education, training, and legal affirmation that recognize the role of women in communal land management

In addition to inclusivity, the aspect of ecological justice is an important dimension in the customary land debate. Indigenous peoples have a deep spiritual and ecological connection to the land, which is not only seen as an economic asset but also as part of a collective identity. In this context, a development approach that focuses only on economic value without taking

into account ecological and cultural value can create structural injustices. In Kalimantan, for example, the expansion of oil palm plantations has resulted in environmental degradation and the loss of indigenous peoples' access to productive land. (Colchester & Chao, 2013) This case reflects that justice in the management of customary lands is not only about distribution, but also the sustainability of the ecosystem.

In the context of regional comparison, Indonesia has unique challenges due to its ethnic diversity and its highly complex customary law system. While in countries such as Thailand and Vietnam, the legal system tends to be more centralized and homogeneous, Indonesia faces a situation of "legal pluralism at scale", where thousands of indigenous communities have different systems of land norms and governance. This condition demands a more adaptive and decentralized legal approach. Approach *Co-management* or that joint management between countries and indigenous peoples can be a compromise solution, as implemented in the model *Community-Based Forest Management* in the Philippines and *Social Forestry* in Indonesia. (Maryudi & Myers, 2018)

The biggest challenge in realizing justice for indigenous lands in Southeast Asia lies in policy consistency and political courage to place indigenous peoples as equal subjects of law. Without it, the rights of indigenous peoples will continue to be symbolic and ineffective in the face of global economic pressures. Therefore, synergy between customary law, national policies, and international instruments such as the *UN Declaration on the Rights of Indigenous Peoples (UNDRIP)* needs to be strengthened to ensure substantive protection of indigenous lands and the socio-ecological systems that underpin them

## Conclusion

The management of customary lands in Indonesia and Southeast Asia has the same philosophical values, namely land as a source of life and the collective identity of indigenous peoples. However, differences arise in its legal recognition and protection. In Indonesia, although it has been constitutionally regulated and through various regulations, implementation is still hampered by conflicts of interest between customary ownership and development policies. Meanwhile, in countries such as Malaysia, the Philippines, and Thailand, the main challenge lies in the integration of customary law with national legal systems that tend to be economically oriented. The suggestion that can be put forward is the need to strengthen a legal model that harmonizes customary law and national law consistently. The Government of Indonesia needs to strengthen participatory customary land registration mechanisms and encourage research collaboration between countries in Southeast Asia to formulate best practices in fair and sustainable customary land management.

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