

# Land Registration Dualism in Indonesia: Normative Legal Analysis and Policy Framework

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Received: 2026, 01, 09 Accepted: 2026, 05, 21

Available online: 2026, 06, 15

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KEYWORDS	ABSTRACT
<p><b>Keywords:</b> Land Registration Dualism; Indigenous Land Rights; Policy Framework; Customary Law; Agrarian Reform.</p> <p><b>Conflict of Interest Statement:</b> .</p> <p>Copyright © 2026 Vifada Assumption Journal of Law. All rights reserved.</p>	<p><b>Purpose:</b> Indonesia's land registration system continues to experience structural dualism arising from the coexistence of customary law and national statutory law, resulting in legal uncertainty and recurring land conflicts involving indigenous communities. This study aims to systematically analyse the legal implications of land registration dualism and to formulate a normative legal framework for the recognition of indigenous land rights.</p> <p><b>Research Design and Methodology:</b> The research employs a normative legal method using statute, case, and historical approaches, within a Critical Legal Studies framework to examine structural legal inequality. The analysis is framed within the Critical Legal Studies perspective, which views law as a product of power relations that may marginalise customary legal systems.</p> <p><b>Findings and Discussion:</b> The findings indicate that dualism persists due to the absence of clear procedural and institutional mechanisms for recognising and registering customary land within the national system. In response, this study proposes six policy strategies, including formal recognition of indigenous land rights, development of communal certification mechanisms, adoption of legal pluralism, simplification of registration procedures, establishment of a dedicated institution, and integration of customary land data into the national system.</p> <p><b>Implications:</b> This study offers a normative and structured legal reform model that positions legal pluralism as an operational framework, while also providing practical direction for agrarian law reform through the formal recognition of indigenous land rights, the institutional accommodation of customary land registration, and the strengthening of legal certainty within the national land administration system.</p>

## Introduction

Land constitutes a strategic asset for both community livelihoods and national economic development. As a nation characterised by extraordinary cultural diversity, Indonesia also possesses a plurality of legal systems, within which customary (adat) law occupies a central position, particularly in the governance of land rights.<sup>1</sup> On one hand, land in Indonesia carries immense historical, cultural, and economic value; on the other, it frequently serves as the locus of ownership conflicts. Scholars have long observed that the formalisation of property rights in developing countries does not automatically resolve tenure disputes but may instead generate new forms of contestation.<sup>2</sup> Land registration plays a critical role in providing legal certainty to landholders, reducing disputes, enhancing the economic utility of land, and supporting sustainable development.<sup>3</sup>

<sup>1</sup> Dhita Puthi Jaenong, Liliana Nur Ahimi, and Zubaedillah Zubaedillah, "Customary Law and Natural Resource Governance: Strengthening Indigenous Rights in Environmental Management," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 3, no. 2 (May 30, 2025): 1164-78, <https://doi.org/10.51903/t8hwbv11>.

<sup>2</sup> C. Lucian and K.T. Semindu, "Land Formalization and Its Efficacy: Experience from Dar Es Salaam, Tanzania," *Social Sciences & Humanities Open* 12 (2025): 101868, <https://doi.org/10.1016/j.ssaho.2025.101868>.

<sup>3</sup> Kevin Veronica Halim and Ariawan Gunadi, "Transformation of Land Registration Through Electronic Certificates to Overcome Overlapping Certificates in Indonesia," *Journal of Law, Politic and Humanities* 5, no. 1 (November 20, 2024): 354-60, <https://doi.org/10.38035/jlph.v5i1.884>.

However, in practice, Indonesia's land registration system is confronted with a persistent dualism originating from the coexistence of customary and national (formal) legal frameworks.<sup>4</sup>

This dualistic structure generates confusion and legal uncertainty for land rights holders. The Basic Agrarian Law (UUPA), which was intended to unify Indonesia's land law system, has proven unable to resolve the problem of agrarian legal pluralism in its entirety. The historical background of land governance in Indonesia reveals a complex legal architecture shaped by both customary law traditions and the enduring influence of colonial legacy.<sup>5</sup> Following independence, Indonesia commenced the integration of these two systems through the UUPA of 1960, which aimed to abolish land law dualism and formally recognise customary land tenure. Nevertheless, this dualism persists because customary law and national law maintain fundamentally divergent perspectives on the recognition, management, and registration of land rights, thereby creating uncertainty and conflict for all stakeholders.<sup>6</sup>

The National Land Agency (BPN), as the institution responsible for land administration, recognises only land that has been formally registered and certificated. Consequently, substantial areas of customary land lack clear legal status in the eyes of the state, rendering them vulnerable to overlapping claims and ownership disputes.<sup>7</sup> Legal uncertainty generated by this dual system produces conflicts that are inherently difficult to resolve, given the incompatible perspectives of customary and national law.<sup>8</sup> Several representative disputes further illustrate how the dualism between customary land claims and the national registration system continues to produce legal uncertainty, ownership conflicts, and uneven protection of indigenous land rights:

**Table 1.**  
**Representative Cases of Customary Land Disputes and Legal Dualism in Indonesia.**

No.	Case	Background	Dualism Issue	Court Decision
1	Dayak Indigenous People vs. PT Suryamas Cipta Perkasa (Central Kalimantan)	This dispute, which emerged in the early 2000s, involved the Dayak community's claim to customary communal land (tanah ulayat) that had been converted into oil palm plantations by PT Suryamas Cipta Perkasa. The contested land was not registered in the national system administered by the National Land Agency (BPN), which enabled the company to obtain government permits for commercial use.	The court confronted an irreconcilable tension between customary land rights traditionally upheld by the Dayak people and national land certificates held by the company. Recognition of customary rights lacked equivalent legal force compared to formally registered certificates.	The court ultimately favoured the company's nationally certified title. Nevertheless, the case catalysed broader public discourse on the necessity of strengthening formal recognition of customary lands within the national legal system.
2	Kajang Indigenous	The protracted conflict between the Kajang	PT Lonsum held legally certified land	Although the courts ultimately ruled in the

<sup>4</sup> Pandapotan Damanik, "Dualism of Land Rights Recognition in National and Customary Legal Systems in the Perspective of Dignified Justice," *Academia Open* 10, no. 1 (June 30, 2025), <https://doi.org/10.21070/acopen.10.2025.11363>.

<sup>5</sup> Basri, "Land Rights and Legislation: Uncovering the Veil of Property Law in Indonesia," *Ilomata International Journal of Social Science* 5, no. 1 (January 25, 2024): 105-23, <https://doi.org/10.52728/ijss.v5i1.1060>.

<sup>6</sup> Ismail Maswatu et al., "Legal Protection of Indigenous Land Rights: A Study of Customary Law Integration in National Legal," *RIGGS: Journal of Artificial Intelligence and Digital Business* 4, no. 3 (August 12, 2025): 1789-94, <https://doi.org/10.31004/riggs.v4i3.2223>.

<sup>7</sup> Fhlorida Agustina Simanjuntak, "Pendaftaran Tanah Di Atas Tanah Ulayat: Dilema Antara Hukum Negara Dan Hukum Adat," *AL-DALIL: Jurnal Ilmu Sosial, Politik, Dan Hukum* 3, no. 2 (July 30, 2025): 1-10, <https://doi.org/10.58707/aldalil.v3i2.1329>.

<sup>8</sup> Kamaruddin Kamaruddin et al., "Justice, Mediation, and Kalosara Custom of the Tolaki Community in Southeast Sulawesi from the Perspective of Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (June 10, 2023): 1077, <https://doi.org/10.22373/sjhh.v7i2.13183>.

People vs. PT Lonsum (South Sulawesi)	community and PT London Sumatra Indonesia (Lonsum) intensified from the late 1990s through the 2000s, as plantation expansion encroached upon areas the Kajang people considered ancestral customary territory. The dispute received heightened attention in 2014 when the Kajang community demanded formal government recognition of their customary domain.	titles issued by BPN, whereas the indigenous community asserted that the contested territory constituted inalienable customary land that could not be transferred without communal consent. This fundamental incompatibility produced sustained conflict.	company's favour, the decision provoked significant societal reaction from civil society organisations, underscoring the critical importance of integrating customary land recognition into the national registration framework.
3 Minangkabau Customary Land vs. Padang City Government (West Sumatra)	Recurring land disputes in West Sumatra gained particular prominence around 2012-2013 when the Padang City Government sought to utilise land claimed as tanah ulayat by the Minangkabau community for public infrastructure development. The indigenous community rejected this appropriation, arguing that the hereditary customary land could not be unilaterally transferred.	Under Minangkabau customary law, communal land is inalienable and cannot be sold or transferred without collective consent. However, under the national system, such unregistered land is classified as state land, generating direct conflict between local government authority and indigenous communal rights.	The court required the local government to consider indigenous rights, though it ultimately authorised the government's use of the land subject to compensation. The case highlighted the systemic imbalance between the national registration system and the recognition of customary tenure.
4 Balinese Customary Land vs. Hotel Construction in Ubud (Bali)	Customary land disputes in Bali's Ubud area, which carries high tourism value, emerged in the 2010s when investors with government-issued permits sought to develop land that the local community recognised as communal village property (tanah desa adat). Although the community lacked formal BPN certificates, the land was customarily acknowledged as collective property.	Customary lands in Bali frequently lack formal BPN registration yet maintain robust social recognition within local communities. This divergence between formal and customary systems fuelled conflict between commercial investors and indigenous communities seeking to preserve their ancestral territories.	The court recognised indigenous rights, and the dispute was resolved through mediation requiring the investor to provide fair compensation. This case demonstrated the imperative of formal recognition for customary lands to prevent conflicts with government-approved investment projects.

Source: Results of the author's literature review in 2026.

These cases confirm that the dualism between unregistered customary tenure and formally registered land rights continues to generate persistent agrarian conflicts and legal uncertainty.<sup>9</sup> In practice, indigenous communities remain structurally vulnerable because their customary claims

<sup>9</sup> Elfira Zahwa Octavia, Mohammad Hamidi Masykur, and Moh Fadil, "Legal Status of Former Customary Land Ownership Evidence after Its Validity Period Expires: Assessment of the Legal Certainty over Indigenous Peoples' Land Rights," *Law. Human. Environment* 16, no. 3 (September 23, 2025): 160-72, <https://doi.org/10.31548/law/3.2025.160>.

often carry weaker evidentiary value than state-recognised certificates. Although some dispute resolution processes have shown greater sensitivity to indigenous interests, the dominant legal framework still tends to privilege formal registration over communal customary legitimacy.<sup>10</sup>

Furthermore, the land registration dualism carries significant implications for the broader economy. First, it adversely affects Indonesia's investment climate, particularly in the property and plantation sectors that depend upon certainty of land ownership. Investors are deterred from committing capital to land without clear legal status, given the risks of overlapping claims and protracted litigation.<sup>11</sup> Second, the government faces considerable challenges in reforming and integrating the land registration system. Although digitisation initiatives and electronic land mapping have been undertaken under BPN's authority, these efforts remain insufficient to overcome the dualism, because the root cause lies in the regulatory overlap between customary and formal land rights regimes.<sup>12</sup>

For these reasons, it is necessary to reconstruct the concept of unification within the Basic Agrarian Law to ensure legal certainty and recognition of indigenous peoples' rights to land. The protracted and costly land registration process, compounded by the suboptimal implementation of Government Regulation No. 24 of 1997 concerning Land Registration, constitutes a further obstacle to improving the quality of land administration in Indonesia.<sup>13</sup>

This study is grounded in the central legal problem concerning the persistence of dualism in Indonesia's land registration system, particularly the structural gap between the formal recognition of land rights under national law and the substantive recognition of customary land rights within indigenous communities. Despite various regulatory efforts, this dualism continues to generate legal uncertainty and unequal protection of land rights.

This study is therefore directed at the unresolved gap between the normative recognition of indigenous land rights and the absence of an operational registration framework capable of accommodating customary tenure within the national land administration system. In response to this gap, the article offers a normative and policy-oriented contribution by integrating legal pluralism and Critical Legal Studies to formulate a structured harmonisation model for agrarian law reform and the strengthening of indigenous land rights recognition.

## Literature Review

### Legal Pluralism and Agrarian Legal Dualism

Legal pluralism refers to the coexistence of multiple legal systems within a single socio-political space, particularly between state law and non-state normative orders such as customary law. In the Indonesian context, legal pluralism manifests prominently in the field of land law, where customary and statutory systems operate simultaneously.<sup>14</sup> This coexistence creates a structural condition in which different norms regulate the same object with varying degrees of recognition and authority.

Scholars have argued that agrarian legal dualism is not merely a technical legal issue but reflects deeper socio-political tensions between state control and community-based land governance. The formal land registration system prioritises written documentation and individual ownership, thereby

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<sup>10</sup> Evgeny Guglyuyaty, "Indigenous Engagement Challenges and Carbon Mitigation Activities in Malaysian Forest Policy," *Frontiers in Forests and Global Change* 7 (March 19, 2024), <https://doi.org/10.3389/ffgc.2024.1362330>.

<sup>11</sup> Ben White and Anirban Dasgupta, "Agrofuels Capitalism: A View from Political Economy," in *The Politics of Biofuels, Land and Agrarian Change* (Routledge, 2013), 19-33.

<sup>12</sup> Rohyani Rigen Is Sumilat, "Implementation of the Regulation of the Minister of ATR/BPN No. 14 of 2024 in the Registration of Customary Land Rights of Customary Law Communities," *Santhet (Jurnal Sejarah Pendidikan Dan Humaniora)* 8, no. 2 (October 12, 2024): 1832-41, <https://doi.org/10.36526/santhet.v8i2.4485>.

<sup>13</sup> Damianus Krismantoro, "The Implementation of Land Registration to Provide Legal Certainty in Indonesia," *Journal of Lifestyle and SDGs Review* 4, no. 4 (December 31, 2024): e04291, <https://doi.org/10.47172/2965-730X.SDGsReview.v4.n04.pe04291>.

<sup>14</sup> Theresia N.A Narwadan, "The Existence of Customary Law as a Living Law within Indonesia's Legal System: A Legal Pluralism Analysis," *Journal of Adat Recht* 2, no. 4 (November 30, 2025): 28-38, <https://doi.org/10.62872/2rw71057>.

marginalising customary tenure systems based on communal recognition and unwritten norms,<sup>15</sup> which in turn reinforces institutional conflict.

In Indonesia, the Basic Agrarian Law (UUPA) was designed to unify land law by integrating customary principles into the national system. However, the implementation of this unification has been partial, as the formal registration system continues to prioritise individual ownership and written evidence. This has produced a persistent dualism that affects the legal status of customary land.<sup>16</sup>

Previous studies have primarily examined legal pluralism as a theoretical framework to explain the coexistence of legal systems, but they often stop at descriptive analysis. This study positions legal pluralism as an operational framework for legal harmonisation to address structural inequality in land registration. This structural dualism does not only explain the coexistence of multiple land regimes, but also raises a further legal question regarding how customary land rights are formally recognised within Indonesian positive law.

### Recognition of Customary Land Rights in Indonesian Positive Law

Against the background of legal pluralism, the issue then moves from the coexistence of legal systems to the extent to which customary land rights are normatively recognised and administratively accommodated within the national legal framework. The recognition of customary land rights within Indonesian positive law is formally acknowledged through various legal instruments, including the UUPA and Constitutional Court decisions. These instruments establish that customary law communities and their land rights exist and deserve protection, provided certain conditions are met.<sup>17</sup> However, such recognition is often conditional and lacks clear procedural mechanisms for implementation.

In practice, the absence of administrative clarity has resulted in limited formal recognition of customary lands within the national registration system. Customary lands frequently remain unregistered due to the requirement of formal documentation that does not correspond to traditional systems of proof.<sup>18</sup> This gap creates a disparity between normative recognition and empirical reality.

Legal developments such as Constitutional Court Decision No. 35/PUU-X/2012 have strengthened the legal position of customary forests by removing them from the category of state forests. Nevertheless, the implementation of this decision remains inconsistent due to regulatory fragmentation and institutional limitations.<sup>19</sup> As a result, indigenous communities continue to face challenges in securing formal recognition of their land rights.

Existing literature tends to focus on the normative recognition of customary rights without sufficiently addressing the procedural and institutional barriers to their implementation. This study contributes by analysing the disconnection between legal recognition and administrative practice, and by proposing a framework that integrates both dimensions. This gap between formal recognition and administrative implementation further indicates that the problem of customary land rights is not merely doctrinal, but also reflects deeper legal and institutional inequality.

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<sup>15</sup> Mathijs van Leeuwen et al., “Localized Land Tenure Registration in Burundi and Eastern DR Congo: Contributing to Sustainable Peace?,” *Global Environmental Change* 83 (December 2023): 102763, <https://doi.org/10.1016/j.gloenvcha.2023.102763>.

<sup>16</sup> Finna Maessy Pangestika and Mella Ismelina Farma Rahayu, “Unregistered Customary Land Ownership: Implications and Challenges in Practice,” *The Indonesian Journal of International Clinical Legal Education* 6, no. 4 (October 31, 2025): 531-50, <https://doi.org/10.15294/iccle.v6i4.15511>.

<sup>17</sup> Maisa et al., “The Implications of the Constitutional Court’s Ruling on the Protection of Indigenous Peoples’ Land in the National Agrarian System,” *EVOLUTIONARY STUDIES IN IMAGINATIVE CULTURE*, September 25, 2024, 1228-37, <https://doi.org/10.70082/esiculture.vi.1372>.

<sup>18</sup> Finna Maessy Pangestika and Mella Ismelina Farma Rahayu, “Unregistered Customary Land Ownership: Implications and Challenges in Practice.”

<sup>19</sup> Candra Perbawati et al., “Progressive Law and Legal Discourse on the Determination of Customary Forests,” *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 1 (March 28, 2023): 17-30, <https://doi.org/10.25041/fiatjustisia.v17no1.2815>.

## Critical Legal Studies and the Analysis of Legal Inequality

For that reason, Critical Legal Studies becomes relevant as an analytical lens to explain why the formal legal system continues to privilege registered land rights while marginalising customary tenure claims. Critical Legal Studies (CLS) challenges the assumption that law operates as a neutral and objective system. Instead, it views law as a product of social, political, and economic power relations that may reinforce existing inequalities.<sup>20</sup> This perspective is particularly relevant in analysing land law, where legal structures often privilege formal property regimes over customary systems.

Roberto Mangabeira Unger's framework emphasises that dominant legal systems tend to marginalise alternative normative orders, including indigenous legal systems. In the context of land registration, this manifests in the prioritisation of formally registered rights over customary claims, regardless of their historical legitimacy.<sup>21</sup> Consequently, law becomes an instrument that reproduces structural inequality.

The application of CLS in agrarian studies allows for a deeper understanding of how legal dualism is sustained by institutional arrangements and regulatory design.<sup>22</sup> It shifts the focus from formal legal provisions to the underlying power dynamics that shape their implementation. This approach also opens space for transformative legal reform.

Previous research has applied CLS primarily as a critical lens to expose inequality without offering concrete normative solutions. Accordingly, the combination of legal pluralism, normative recognition of customary rights, and Critical Legal Studies provides the conceptual basis for positioning this study and clarifying its specific contribution to the discourse on land registration reform in Indonesia.

## Positioning of the Study and Research Contribution

Building upon the preceding discussion, this study positions itself at the intersection of three interconnected issues, namely the persistence of legal pluralism in agrarian governance, the limited operational recognition of customary land rights in positive law, and the structural inequality reproduced through the formal land registration system. On that basis, this research seeks to move beyond descriptive explanation by formulating a structured normative framework for harmonising customary and national land law. While these studies provide important insights into the nature of legal pluralism, they often lack a structured framework for resolving the dualism.<sup>23</sup>

Moreover, previous research tends to treat legal pluralism and customary rights recognition as separate issues rather than interconnected components of a broader legal system. This fragmentation limits the development of comprehensive solutions that address both normative and institutional dimensions.<sup>24</sup>

This study positions itself by integrating three key analytical frameworks: legal pluralism, recognition of customary rights in positive law, and Critical Legal Studies.<sup>25</sup> Through this integration, the study seeks to bridge the gap between theoretical analysis and policy-oriented legal reform.

The novelty of this research lies in formulating a structured normative model for harmonising land registration systems, which not only identifies the sources of dualism but also proposes concrete legal and institutional strategies to ensure equitable recognition of indigenous land rights within the national framework.

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<sup>20</sup> William Fay, "Neoliberalism and Radical Rights: On the Work and Theory of Law and Organising," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 36, no. 2 (April 5, 2023): 407-39, <https://doi.org/10.1007/s11196-022-09931-4>.

<sup>21</sup> Maswatu et al., "Legal Protection of Indigenous Land Rights: A Study of Customary Law Integration in National Legal."

<sup>22</sup> Perbawati et al., "Progressive Law and Legal Discourse on the Determination of Customary Forests."

<sup>23</sup> Narwadan, "The Existence of Customary Law as a Living Law within Indonesia's Legal System: A Legal Pluralism Analysis."

<sup>24</sup> Rikardo Simarmata, "The Current Updates of the Progresses and the Challenges of Recognition of Customary Forests in Indonesia," *Jurnal Ilmu Kehutanan* 18, no. 2 (October 17, 2024): 142-52, <https://doi.org/10.22146/jik.v18i2.12660>.

<sup>25</sup> Eliza Meiyani and Fadhil Hayan Mochammad, "Negotiating Customary Values: A Legal Anthropological Study of Social Conflict Resolution in Local Communities Amid Modernization," *Golden Ratio of Mapping Idea and Literature Format* 6, no. 2 (February 1, 2026): 1426-34, <https://doi.org/10.52970/grmilf.v6i2.1764>.

## Research Design and Methodology

This study employs a normative legal methodology focusing on statutes, court decisions, and legal theories relevant to land registration dualism. The research adopts three complementary analytical approaches: First, the Statute Approach (*pendekatan perundang-undangan*) is utilised to analyse laws and regulations governing land registration and customary land recognition, including the UUPA of 1960, ministerial regulations pertaining to land registration, and other provisions relating to customary land rights; Second, the Case Approach is used to examine selected Indonesian court decisions involving conflicts between customary land claims and formally registered land rights. The cases are purposively selected to identify patterns of judicial reasoning, particularly regarding the legal status of customary land, the evidentiary weight of customary claims, and the extent to which statutory law prevails over customary norms. Through this approach, the study captures how judicial interpretation contributes to the persistence of land registration dualism. Third, the Historical Approach traces the historical background of legal dualism in Indonesia, particularly regarding the interplay between customary law and national law in land registration. Understanding the evolution of land law enables identification of the structural roots of contemporary legal dualism.

This normative study relies on secondary data, comprising: (1) primary legal materials, including statutes, regulations, and court decisions pertaining to land registration and customary land rights; and (2) secondary legal materials, encompassing legal treatises, scholarly journals, research articles, and other literature addressing legal dualism, land registration, and customary rights recognition. Data collection is conducted through library research and case study analysis. The data is analysed qualitatively to examine the relationship between statutory provisions, judicial decisions, and legal principle. Conclusions are drawn through deductive reasoning, applying pre-existing legal principles and rules to specific instances involving registration dualism, with the objective of providing general guidance for addressing this dualism within the national legal system. The three approaches are integrated to ensure consistency between methodology and findings. The statute approach identifies regulatory gaps, the case approach reveals patterns of judicial interpretation, and the historical approach explains the structural roots of dualism. Together, these approaches support the formulation of a normative model for legal harmonization and agrarian reform.

## Findings and Discussion

### The Problem of Dualism in Land Registration in Indonesia

Dualism in Indonesia's land registration system originates from the interaction between colonial land law, customary law, and the incomplete post-independence effort to unify both within the national legal framework.<sup>26</sup> This interaction has produced enduring normative inconsistencies in the recognition, proof, and registration of land rights, which continue to undermine legal certainty in Indonesian land administration.<sup>27</sup>

#### a) The Influence of Dutch Colonial Law

The Agrarische Wet 1870 introduced a formal land regime prioritising colonial economic interests, while subordinating indigenous tenure within a dualistic legal structure. Customary law was recognised in a limited manner and positioned as inferior to formal law, resulting in unequal legal protection for indigenous land rights.<sup>28</sup> Ostensibly designed to protect indigenous landholdings from direct European control while simultaneously facilitating investor access through leasing arrangements, the law in practice subordinated indigenous tenure to colonial economic imperatives. As Harsono has observed, the primary objective of

<sup>26</sup> David Angreas, "Colonial Legal System and Legal Dualism in Indonesia," *Jurnal Multidisiplin Madani* 5, no. 10 (November 3, 2025): 1148-51, <https://doi.org/10.55927/mudima.v5i10.658>.

<sup>27</sup> Von Benda-Beckmann, F., & Von Benda-Beckmann, K. (2011). Myths And Stereotypes About Adat Law: A Reassessment of Van Vollenhoven. *Bijdragen*, 167(2-3), 167-195.

<sup>28</sup> Rapti Siriwardane-de Zoysa et al., "Afterlives of Reclamation: Coastal Privatization, Distanced Dispossession, and More-than-Human Calcifications in Jakarta Bay," *Maritime Studies* 24, no. 3 (September 20, 2025): 56, <https://doi.org/10.1007/s40152-025-00443-y>.

the Agrarische Wet was not the protection of indigenous land rights but rather the provision of a legal foundation for the expansion of large-scale private plantation enterprises requiring extensive tracts of land.<sup>29</sup>

While the colonial administration recognised the existence of customary law, it did so within strict limitations. Customary law was regarded as inferior to European law, and its application was calibrated to serve colonial economic interests, including the exploitation of natural resources and agricultural commodities.<sup>30</sup> This arrangement introduced a fundamentally dualistic land system: Western (European) land rights were formally recognised and registered, whereas indigenous (customary) land rights, though acknowledged, were excluded from the formal administrative system. The consequence was a systemic inequality whereby indigenous communities lacked equivalent legal force to defend their land rights when confronted by non-indigenous parties.<sup>31</sup> This colonial legacy established the initial structural separation between formally recognised land rights and socially legitimate customary tenure, a division that continued to shape post-independence land governance.

#### **b) The Persistence and Significance of Customary Law**

Indonesian indigenous communities have relied upon customary land tenure systems for generations to regulate the use and management of ancestral lands and natural resources.<sup>32</sup> However, the recognition and protection of these rights have constituted a persistent challenge, frequently colliding with national land policies.<sup>33</sup> Scholarship on property rights emphasises that the interaction between statutory and customary systems in developing countries produces complex dynamics that cannot be resolved through simple formalisation.<sup>34</sup> Customary land is characterised by communal ownership, intergenerational transfer, and recognition based on social legitimacy rather than formal registration. This informal system remains legally unrecognised within the national framework, creating structural incompatibility with formal registration requirements.<sup>35</sup> This communal conception carries not merely economic but also profound spiritual and social significance, standing in sharp contrast to the individualist conception of property in Western legal traditions. The 1960 UUPA recognises customary land rights for indigenous communities under certain conditions, requiring demonstration of their existence as a “legal society” with governance structures and a tangible relationship to the claimed land. However, the UUPA fails to establish clear procedures for registering customary lands, resulting in inconsistent interpretations among government agencies.<sup>36</sup>

Tradition-based ownership: Customary lands are traditionally recognised and inherited intergenerationally without formal registration. Land ownership is determined through oral traditions, historical usage, and communal agreements.<sup>37</sup> Customary rights or communal land rights are deeply respected within adat law and frequently cannot be individually transferred

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<sup>29</sup> Devi Itawan, “Colonialism and Climate Crisis: The Root of Environmental Changes and the Rise of Environmental Awareness in Indonesia,” *Indonesian Historical Studies* 6, no. 2 (January 20, 2023): 192-205, <https://doi.org/10.14710/ihis.v6i2.16037>.

<sup>30</sup> David Brian Dennison, “The Resonance of Colonial Era Customary Codes in Contemporary Uganda,” *Potchefstroom Electronic Law Journal* 22 (December 12, 2019): 1-25, <https://doi.org/10.17159/1727-3781/2019/v22i0a7587>.

<sup>31</sup> Masatoshi Sasaoka, “Indigenous Resource Management Practices and the Local Social-Cultural Context: An Insight towards Self-Directed Resource Management by People Who ‘Coexist’ with Supernatural Agents,” in *Indigenous People* (InTech, 2017), <https://doi.org/10.5772/intechopen.70104>.

<sup>32</sup> Sasaoka.

<sup>33</sup> Afifatul A’la et al., “The Belief System Serves as a Disaster Mitigation Mechanism to Preserve the Local Wisdom of the Baduy Tribe,” *INFERENSI: Jurnal Penelitian Sosial Keagamaan* 17, no. 1 (August 14, 2023): 45-58, <https://doi.org/10.18326/infsl3.v17i1.45-58>.

<sup>34</sup> Omejua Sunday, “The Role of State Laws and Social Rules in Resolving Land Matters,” *International Journal of Law, Justice and Jurisprudence* 6, no. 3 (March 1, 2026): 01-06, <https://doi.org/10.22271/2790-0673.2026.v6.i3a.290>.

<sup>35</sup> Chairul Fahmi and Muhammad Siddiq Armia, “Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms,” *Journal of Southeast Asian Human Rights* 6, no. 1 (June 30, 2022): 1, <https://doi.org/10.19184/jseahr.v6i1.30242>.

<sup>36</sup> Ana Silviana and Ariza Fuadi, “Legal Policy on the Use of Heir Certificates (SKAW) for Registration of Land Rights Transfers in Indonesia,” *LAW REFORM* 19, no. 2 (December 29, 2023): 294-320, <https://doi.org/10.14710/lr.v19i2.52626>.

<sup>37</sup> Marco Fabbri and Giuseppe Dari-Mattiacci, “The Virtuous Cycle of Property,” *The Review of Economics and Statistics* 103, no. 3 (July 12, 2021): 413-27, [https://doi.org/10.1162/rest\\_a\\_00905](https://doi.org/10.1162/rest_a_00905).

or sold. This creates an informal registration system that is socially recognised but absent from the formal legal record, rendering customary land invisible to national land databases.<sup>38</sup> Systemic incompatibility: The communal and unregistered nature of customary land ownership renders it fundamentally incompatible with the formal registration system.<sup>39</sup> When indigenous communities confront formal registration requirements, they frequently lack the documentary proof of ownership demanded by administrative provisions, creating barriers to legal recognition.<sup>40</sup> Accordingly, the persistence of customary tenure demonstrates that the problem of dualism is not merely cultural or administrative, but fundamentally concerns the incompatibility between communal legitimacy and formal legal registration.

### c) The Post-Independence Period and the UUPA

Following independence, the Indonesian government attempted to overcome colonial-customary dualism through the UUPA, but the unification project remained incomplete at the level of registration and administrative recognition. This initiative was realised through the UUPA of 1960, which abolished the colonial land ownership system and recognised customary rights conditional upon their compatibility with national interests.<sup>41</sup> The UUPA sought to integrate customary law into the national system, yet failed to establish clear registration mechanisms for customary land. Despite this recognition, implementation has been impeded by the persistent failure to register vast areas of customary land within the national administrative system managed by BPN. As a result, vast areas of customary land remain unregistered and vulnerable to competing claims.<sup>42</sup>

The persistence of dualism is further reinforced by regulatory inconsistencies between provisions that normatively recognise customary rights and those that administratively privilege formal registration. The following regulations illustrate how this inconsistency operates within the national legal system.

### a) The Basic Agrarian Law (UUPA)

While recognising customary rights, the UUPA does not provide clear procedural mechanisms for their registration, reinforcing legal uncertainty. While the UUPA recognises indigenous land rights (*hak ulayat*), it fails to prescribe clear procedures for registering customary lands in the national system.<sup>43</sup> Customary land remains recognised only through oral tradition without formal certification from BPN, leaving indigenous communities structurally disadvantaged when confronting parties holding formal certificates.<sup>44</sup>

### b) Government Regulation No. 24 of 1997

The regulation prioritises individual land registration and excludes communal customary ownership, creating systemic incompatibility. However, it focuses predominantly on individually registered land and affords no special consideration to communal customary holdings.<sup>45</sup> Customary land cannot be registered under this system unless converted to individual ownership a requirement that contradicts the fundamental principle of communal ownership in customary law and effectively precludes formal recognition of collective tenure.

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<sup>38</sup> Nova Yarsina et al., "Ulayat Land Registration in Providing Legal Certainty through Certification Based on the Principle of Justice," *Nusantara: Journal of Law Studies* 5, no. 1 (March 13, 2026): 187-204, <https://doi.org/10.66325/nusantaralaw.v5i1.121>.

<sup>39</sup> Finna Maessy Pangestika and Mella Ismelina Farma Rahayu, "Unregistered Customary Land Ownership: Implications and Challenges in Practice."

<sup>40</sup> Mardia Ibrahim, Yahya Yunus, and Arief Budiono, "Registering Ternate City People's Traditional Knowledge as Property Rights," *JURNAL USM LAW REVIEW* 7, no. 1 (April 27, 2024): 443-61, <https://doi.org/10.26623/julr.v7i1.8500>.

<sup>41</sup> Noer Fauzi Rachman and Mia Siscawati, "Forestry Law, Masyarakat Adat and Struggles for Inclusive Citizenship in Indonesia," in *Routledge Handbook of Asian Law* (Routledge, 2016), 238-63.

<sup>42</sup> Rohyani Rigen Is Sumilat, "Implementation of the Regulation of the Minister of ATR/BPN No. 14 of 2024 in the Registration of Customary Land Rights of Customary Law Communities."

<sup>43</sup> Ulfia Hasanah, Nia Kurniati, and Maret Priyanta, "Legal Harmonization Between The Omnibus Law and Basic Agrarian Law (UUPA) In Protecting Indigenous Rights," *Cepalo* 9, no. 2 (June 2, 2025): 95-106, <https://doi.org/10.25041/cepalo.v9no2.3930>.

<sup>44</sup> Zahwa Octavia, Hamidi Masykur, and Fadil, "Legal Status of Former Customary Land Ownership Evidence after Its Validity Period Expires: Assessment of the Legal Certainty over Indigenous Peoples' Land Rights."

<sup>45</sup> Nova Yarsina et al., "Ulayat Land Registration in Providing Legal Certainty through Certification Based on the Principle of Justice."

**c) Law No. 41 of 1999 on Forestry**

The Forestry Law classifies all forest areas as state-owned unless formal proof of alternative ownership exists.<sup>46</sup> This provision has resulted in extensive areas of customary land particularly in rural and forested regions being designated as state forest. Indigenous communities thereby lose access to ancestral lands reclassified as state property, generating conflicts between communities asserting customary rights and governmental authority.<sup>47</sup>

**d) Constitutional Court Decision No. 35/PUU-X/2012**

This landmark decision separates customary forests (hutan adat) from state forests, recognising that customary forests constitute part of indigenous territory rather than state property. While jurisprudentially significant, the practical implementation of this decision remains limited due to the absence of clear governmental guidelines. Consequently, indigenous communities frequently lack formal certificates acknowledging their ownership, notwithstanding the legal recognition conferred by the Constitutional Court.<sup>48</sup>

**e) Ministerial Regulation No. 10 of 2019**

This regulation establishes procedures for determining communal rights for customary law communities. It represents a positive development in providing formal recognition of communal land tenure, requiring administrative verification of the existence of customary communities and their historical relationship to claimed lands. However, several implementation challenges persist, including complex administrative requirements that are burdensome for remote indigenous communities, limited scope of recognition for areas not formally acknowledged by the government, insufficient inter-agency coordination, potential conflicts with pre-existing concessions and permits, inadequate socialisation among indigenous communities, and diverse interpretations of the legal definition of “customary law community”.<sup>49</sup>

The absence of adequate state protection for the rights of indigenous communities, as mandated by the 2006 ICARRD Final Declaration, has exacerbated the vulnerability of these populations.<sup>50</sup> To address these pressing challenges, comprehensive reform of the customary land rights registration system is imperative. Such reforms should prioritise transparent, participatory processes that respect indigenous practices and community livelihoods.<sup>51</sup> Taken together, these inconsistencies confirm that the problem of land registration dualism lies not in the absence of legal recognition in principle, but in the absence of a coherent mechanism for integrating customary tenure into the national registration system. As a result, indigenous communities remain vulnerable to exclusion, while the national land system continues to reproduce legal uncertainty through unequal standards of recognition and proof.

### **Model of Harmonization and Legal Reform Based on Recognition of Indigenous Peoples' Rights**

Customary law occupies a historically rooted position within the Indonesian legal system, reflecting the pluralistic legal structure shaped since the colonial period.<sup>52</sup> Post-independence, Indonesia has confronted persistent challenges in harmonising this legal tradition with modern

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<sup>46</sup> Orhan ERCAN and Kemalettin TOKER, “Assessment of the Completion of the Forest Cadastre Considering the Legal Grounds, Collaboration, and the Use of Technology: The Case of Turkey,” *International Journal of Engineering and Geosciences* 7, no. 1 (February 15, 2022): 49-58, <https://doi.org/10.26833/ijeg.927502>.

<sup>47</sup> Rachman and Siscawati, “Forestry Law, Masyarakat Adat and Struggles for Inclusive Citizenship in Indonesia.”

<sup>48</sup> Maisa et al., “The Implications of the Constitutional Court’s Ruling on the Protection of Indigenous Peoples’ Land in the National Agrarian System.”

<sup>49</sup> Farida Patittingi, “New Paradigm in Natural Resources Management: Securing Indigenous Peoples Rights,” *Hasanuddin Law Review* 6, no. 1 (April 12, 2020): 56, <https://doi.org/10.20956/halrev.v6i1.2267>.

<sup>50</sup> Tracey Osborne et al., “Climate Justice, Forests, and Indigenous Peoples: Toward an Alternative to REDD + for the Amazon,” *Climatic Change* 177, no. 8 (August 25, 2024): 128, <https://doi.org/10.1007/s10584-024-03774-7>.

<sup>51</sup> Maswatu et al., “Legal Protection of Indigenous Land Rights: A Study of Customary Law Integration in National Legal.”

<sup>52</sup> Rudy, Ryzal Perdana, and Rudi Wijaya, “The Recognition of Customary Rights by Indonesian Constitutional Court,” *Academic Journal of Interdisciplinary Studies* 10, no. 3 (May 10, 2021): 308, <https://doi.org/10.36941/ajis-2021-0086>.

statutory frameworks.<sup>53</sup> The role of customary law remains a subject of ongoing negotiation, particularly in contexts such as land rights, with scholars and policymakers debating the extent to which customary law should influence national legislation and its conformity with international legal standards.<sup>54</sup>

This study employs Roberto Mangabeira Unger's Critical Legal Studies framework to analyse the harmonisation of customary and national land law.<sup>55</sup> Law is understood as a product of power relations that may reproduce inequality, thereby requiring a more inclusive and responsive legal framework. This perspective provides the basis for formulating inclusive and implementable legal harmonisation strategies.<sup>56</sup>

Unger argues that dominant legal systems, often rooted in Western liberal thought, tend to marginalise or disregard local and customary legal systems, particularly those belonging to indigenous or non-dominant groups.<sup>57</sup> This marginalisation occurs because dominant systems assume universality and objectivity, thereby failing to recognise the validity of alternative legal frameworks. Unger advocates a more inclusive and contextual jurisprudence that acknowledges the diversity of legal norms an approach consonant with the literature on legal pluralism.<sup>58</sup> In the context of land registration, this critical perspective underscores the importance of recognising and integrating customary tenure systems alongside formal state-based registration.<sup>59</sup> The following subsections elaborate specific harmonisation strategies informed by Unger's theoretical framework. Based on this framework, the following strategies are proposed not merely as separate recommendations, but as interrelated mechanisms for harmonising customary and national land law within a more inclusive and operational reform design.

#### a) Strategy 1: Legal Recognition and Harmonisation

Harmonisation requires formal legal recognition of customary land rights within the national system to ensure equitable legal certainty. In Unger's critical analysis, the dominant legal system frequently overrides local legal systems deemed irrelevant.<sup>60</sup> Alignment of these systems requires recognising the existence and distinctiveness of indigenous legal orders while facilitating their integration on equal and mutually beneficial terms. Formal recognition of customary lands in national legislation for example, through specific provisions in the UUPA or related regulations explicitly acknowledging indigenous land rights would enable customary lands to be incorporated into the national registration system without requiring protracted formal procedures.<sup>61</sup>

#### b) Strategy 2: Special Certification Mechanisms

Unger argues that law must be flexible and responsive to community social and economic conditions. Special certification mechanisms are required to accommodate the communal nature of customary land without conversion to individual ownership. Rigid systems tend to discriminate against indigenous rights; special certifications allow national law to adapt to

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<sup>53</sup> Firdaus Arifin et al., "Recognition of Customary Norms Within the Framework of Indonesian Legal Positivism," *Khazanah Hukum* 7, no. 1 (April 7, 2025): 92-104, <https://doi.org/10.15575/kh.v7i1.39409>.

<sup>54</sup> Maswatu et al., "Legal Protection of Indigenous Land Rights: A Study of Customary Law Integration in National Legal."

<sup>55</sup> Randy Vallentino Neonbeni et al., "Interpreting Customary Justice in the Resolution of Digital Land Disputes in Postcolonial Societies," *Formosa Journal of Science and Technology* 4, no. 8 (August 25, 2025): 2319-32, <https://doi.org/10.55927/fjst.v4i8.198>.

<sup>56</sup> Arip Rahman Sudrajat and Remy Nakula Urbaningrum, "Legal Reform and Social Equity in Contemporary Society," *Journal of Law and Social Politics* 3, no. 2 SE-Articles (March 14, 2025): 139-46, <https://doi.org/10.59261/jlsp.v3i2.63>.

<sup>57</sup> Sudrajat and Urbaningrum.

<sup>58</sup> Tunggul Anshari, "Forming Legislation: Pluralism Between Adat Law and State Law," in *Proceedings of the 2018 International Conference on Energy and Mining Law (ICEML 2018)* (Paris, France: Atlantis Press, 2018), <https://doi.org/10.2991/iceml-18.2018.75>.

<sup>59</sup> Anthea Amadi-Echendu, "Protecting Investors from the Repercussions of Unregistered Indigenous Property," *Politeia* 41, no. 1 & 2 (2022): 13-pages.

<sup>60</sup> Unger, R.M., op. cit.

<sup>61</sup> 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.

the distinctive needs of indigenous communities.<sup>62</sup> The issuance of certificates of customary property rights or communal rights can provide legal certainty without requiring conversion to individual property status, thereby preserving the socio-cultural significance of communal tenure.<sup>63</sup>

**c) Strategy 3: Legal Pluralism Approach**

A legal pluralism framework recognises that multiple legal systems can legitimately coexist within a single polity.<sup>64</sup> In this model, the government acknowledges the operative force of customary law alongside national law, particularly in the governance of customary land ownership and management. This integration permits indigenous communities to manage their lands according to customary law while receiving state recognition, obviating the need to transform or subordinate customary rights to conform to national legal norms.<sup>65</sup>

**d) Strategy 4: Simplification of Registration Processes**

In critical legal theory, complex legal procedures frequently constitute barriers for marginalised groups seeking to access their rights. Unger contends that law should serve communities and not function as an exclusive instrument accessible only to privileged groups.<sup>66</sup> Simplifying registration procedures reduces administrative barriers and improves access for indigenous communities.<sup>67</sup>

**e) Strategy 5: Establishment of a Dedicated Institution**

Unger's framework holds that law must be oriented toward societal needs and facilitate social transformation.<sup>68</sup> The establishment of a specialised institution or commission for customary lands represents a concrete embodiment of this principle. Such an institution would serve as a bridge harmonising customary and national law while functioning as a mechanism for conflict resolution. It could act as mediator in customary land disputes and provide technical assistance to indigenous communities navigating the registration process.<sup>69</sup>

**f) Strategy 6: Digital Integration of Customary Land Data**

Based on the imperative that law must be adaptive to social realities, integrating customary land data into the National Land Information System (SIPN) or equivalent digital infrastructure ensures that the law serves the interests of all communities, including indigenous groups whose tenure is frequently undocumented.<sup>70</sup> Digital integration of customary land data strengthens the inclusion of customary systems within the national legal framework.<sup>71</sup>

Taken together, these six strategies should not be understood as isolated legal measures, but as an integrated reform design for restructuring the relationship between customary tenure and the

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<sup>62</sup> Arina Adila and Sallie Alexandra, "Implementation of Customary Law in Land Dispute Resolution in Indigenous Law Communities," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 3, no. 1 (February 19, 2025): 993-1012, <https://doi.org/10.51903/hakim.v3i1.2296>.

<sup>63</sup> Christiana Sri Murni, Bernadus Basa Kelen, and Sumirahayu Sulaiman, "The Legal Certainty of Land Ownership Right in Registration's Context," *International Journal of Law Reconstruction* 6, no. 1 (April 7, 2022): 13, <https://doi.org/10.26532/ijlr.v6i1.16422>.

<sup>64</sup> Geoffrey Swenson, "Corrigendum to 'Legal Pluralism in Theory and Practice,'" *International Studies Review* 20, no. 2 (June 1, 2018): 342-342, <https://doi.org/10.1093/isr/viy019>.

<sup>65</sup> Basyarudin, Burhanuddin, and Oyo Sunaryo Mukhlas, "Reconstruction of the Legal Relationship between Local Governments and Indigenous Communities in the Management of Customary Land," *Indonesian Journal of Contemporary Multidisciplinary Research* 5, no. 1 (January 14, 2026): 259-70, <https://doi.org/10.55927/modern.v5i1.23>.

<sup>66</sup> Catherine L. Crooke, "Frustration and Fidelity: How Public Interest Lawyers Navigate Procedure in the Direct Representation of Asylum Seekers," *Law & Society Review* 58, no. 2 (June 16, 2024): 270-93, <https://doi.org/10.1017/lsr.2024.20>.

<sup>67</sup> Arditya Wicaksono et al., "Empowering Communities: Knowledge Transfer and Participatory Approaches to Revitalization Land Registration in Indonesia," *International Journal of Sustainable Development and Planning* 20, no. 4 (April 30, 2025): 1499-1513, <https://doi.org/10.18280/ijstdp.200413>.

<sup>68</sup> Amy J. Cohen and Bronwen Morgan, "Prefigurative Legality," *Law & Social Inquiry* 48, no. 3 (August 28, 2023): 1053-82, <https://doi.org/10.1017/lsi.2023.4>.

<sup>69</sup> Bruri Marwano Wutwensa et al., "A Hybrid Model for Resolving Customary Land Disputes in Papua's Indigenous Communities," *JiHK* 6, no. 2 (December 10, 2024): 1-12, <https://doi.org/10.46924/jihk.v6i2.231>.

<sup>70</sup> Priscilla Badaweh Coffie et al., "Building an Efficient Land Information System in Ghana: Insights from Land Governance," *Journal of Energy Engineering and Thermodynamics*, no. 43 (May 14, 2024): 37-50, <https://doi.org/10.55529/jeet.43.37.50>.

<sup>71</sup> Loso Judijanto, "Customary Law as a Pillar of Identity and Sustainability: A Review of Its Dynamics, Challenges, and Relevance in the Era of Modernization," *International Journal of Global Sustainable Research* 3, no. 11 (November 30, 2025): 787-804, <https://doi.org/10.59890/ijgsr.v3i11.96>.

national land registration system. Formal legal recognition provides the normative foundation, communal certification and legal pluralism translate that recognition into an operational framework, simplification of procedures and the establishment of a dedicated institution function as implementation instruments, and digital integration of customary land data strengthens administrative coordination and legal certainty. Through this integrated design, the harmonisation model moves beyond abstract recognition and offers a clearer direction for the practical incorporation of indigenous land rights into Indonesia's national land governance system.

## Conclusion

Land registration dualism in Indonesia is rooted in the incompatibility between communal customary tenure and the national registration system, which continues to generate legal uncertainty and unequal protection of indigenous land rights. This study shows that overcoming such dualism requires legal harmonisation that is supported by institutional reform, procedural accommodation, and formal recognition of customary land within the national land administration framework.

This study contributes by integrating legal pluralism and Critical Legal Studies into a normative harmonisation model for agrarian reform. Practically, the model offers an operational direction through six interconnected measures, namely legal recognition, communal certification, legal pluralism, procedural simplification, dedicated institutional support, and digital integration of customary land data, in order to strengthen legal certainty and provide fairer protection for indigenous communities.

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