Legal Pluralism and the Crisis of Customary Land Tenure in Papua

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Abstract

Agrarian conflict in Papua reflects a persistent tension between the state-centered orientation of Indonesia's national land law and the communal land tenure system of Papuan indigenous communities. The expansion of investment activities, the implementation of national strategic projects, and the limited formal recognition of customary land rights have reinforced asymmetrical legal pluralism and intensified agrarian disputes. This study examines the structure of legal pluralism in Papuan agrarian conflicts, analyzes customary-based dispute resolution mechanisms, and formulates a reconstruction model for indigenous-based land governance. The study employs a normative-empirical socio-legal design combining statutory, conceptual, case, and comparative approaches. The study collected empirical data through semi-structured interviews with customary leaders, government officials, academics, and indigenous community members in Manokwari and Biak Numfor, supported by field observations and document analysis. Data were collected through a literature review, regulatory analysis, judicial decisions, and empirical studies concerning agrarian conflicts in Papua. The findings demonstrate that customary dispute resolution mechanisms possess strong social legitimacy but remain structurally marginalized within the formal state legal system. The study contributes to legal pluralism scholarship by developing the concept of coordinated legal pluralism, an operational governance model designed to integrate customary law and state law within Papua's agrarian governance framework. The study concludes that agrarian governance in Papua requires institutional integration between customary and state legal systems. It recommends formally recognizing customary mediation outcomes, reforming evidentiary rules, implementing FPIC requirements, and strengthening indigenous governance institutions to reduce agrarian conflicts and improve legal certainty.

Keywords: *Legal Pluralism, Customary Land Rights, Agrarian Conflict, Papua, Indigenous Communities.*

Introduction

Despite constitutional recognition of indigenous peoples and customary rights, agrarian conflicts in Papua continue to increase, indicating a structural failure

of existing agrarian governance. This persistence raises an unresolved theoretical question: why does legal recognition fail to produce substantive protection for indigenous land rights? Existing governance arrangements continue to reproduce legal inequality despite extensive regulatory reforms, suggesting limitations within the prevailing model of state-centered agrarian governance. These conflicts extend beyond disputes over access to and control of land, reflecting broader power relations among the state, corporations, and indigenous communities in determining the legitimacy of territorial authority and living space. In Papua, agrarian conflicts possess a more complex dimension due to their close connection with indigenous cultural identity, the historical legacy of colonialism, natural resource exploitation, and state-led development policies that frequently disregard the socio-cultural characteristics of indigenous communities. For indigenous Papuans, land is not merely an economic asset but an integral part of genealogical identity, spirituality, and communal survival.[1] Consequently, the loss of land is perceived as the loss of cultural space, social dignity, and ancestral ties transmitted across generations.

Agrarian reform has been one of Indonesia's most debated legal and public policy issues for decades.[2] In Indonesia, the empowerment of indigenous communities is being realized through state policies that ensure the sustainability of their culture and rights.[3] Agrarian conflicts in Papua fundamentally arise from the interaction between state law and customary law, both of which operate simultaneously yet unequally within the legal order. Through Law Number 5 of

[1] Muslim Lobubun, *Hukum Pengelolaan Sumber Daya Alam: Studi Terhadap Sumber Daya Alam Tambang Dan Hutan Papua*, ed. Fajlurrahman Jurdi (Litera, 2019).
[2] Muslim Lobubun, Iryana Anwar, and Ahmed Mohamed Barak, "Pancasila and Justice for Shared Land: Sustainable Communal Governance in Indonesia's Forest Areas," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 9, no. 1 (June 30, 2026): 227–48, https://doi.org/10.24090/Volksgeist.V9I1.16024.
[3] Bagio Kadaryanto et al., "Reconstruction of Indigenous Community Inclusion in Village Autonomy Policy: Towards a Substantive Autonomy Model in Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 1 (June 2025): 1–19, https://doi.org/10.30631/Alrisalah.V25I1.1845; Hariyanto et al., "Legal Ambiguities Surrounding the Role of Regional House of Representatives in Indonesia's Regional Autonomy Framework," *Legality: Jurnal Ilmiah Hukum* 33, no. 2 (2025): 334 – 360, https://doi.org/10.22219/ljih.v33i2.38409.

1960 concerning Basic Agrarian Principles (UUPA), the state exercises authority over land and natural resources under the doctrine of state control.[4] In contrast, indigenous Papuan communities maintain a communal land tenure system grounded in customary rights that are institutionalized through clans, tribes, and customary authorities. This customary system constitutes a form of living law that possesses strong social legitimacy within indigenous communities,[5] despite often lacking formal administrative recognition under the national legal framework.

The tension between these two legal systems has intensified alongside the acceleration of national strategic projects in Papua, including oil palm plantation expansion, mining operations, infrastructure development, and food estate programs.[6] Such projects require extensive land acquisition processes that frequently overlap with customary territories belonging to indigenous Papuan communities. The state generally relies on formal administrative mechanisms, including concession permits and spatial planning regulations, to determine the legality of land ownership and utilization. Indigenous communities, however, derive land legitimacy from collective genealogical and historical relationships inherited communally over generations. These competing paradigms have generated persistent agrarian disputes and demonstrate the national land administration system's inability to adequately accommodate the complex relationship between customary law and indigenous land tenure systems.

From the perspective of legal pluralism, this condition illustrates the coexistence of multiple legal systems within a single social arena.[7] In fact, courts in

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[4] Sunardi Purwanda et al., "The Fate of Indigenous Peoples' Rights Recognition After the Enactment of the National Criminal Code," *IJCLS (Indonesian Journal of Criminal Law Studies)* 9, no. 2 (November 2024): 357–88, https://doi.org/10.15294/IJCLS.V9I2.50321.

[5] Souad Ezzerouali, "Expanding the Authority of Muhtasib to Protect Consumers: A Comparison between Moroccan Law and Islamic Qanun of Aceh," *Trunojoyo Law Review* 7, no. 2 (March 15, 2025): 161–91, https://doi.org/10.21107/tlr.v7i2.29151.

[6] Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–34, https://doi.org/10.1080/14442213.2019.1670246.

[7] Andrew Ikhayere Imiefoh and Evis Garunja, "The Role of Cultural Education in Shaping Succession Laws in Nigeria: Bridging Tradition and Modernity," *Kampala International University Law Journal* 8, no. 1 (April 2, 2026): 162–79, https://doi.org/10.59568/KIULJ-2026-8-1-10.

Indonesia often make decisions based on applicable law as the basis for their decision making.[8] Nevertheless, the recognition of customary law communities under Article 18B paragraph (2) of the 1945 Constitution and Article 3 of the Basic Agrarian Law remains conditional and subordinate, as the state retains the dominant authority to determine the legal validity of indigenous communities and their customary rights. As a result, an "asymmetrical legal pluralism" emerges in which customary law is formally acknowledged yet remains structurally subordinated to state law.[9] This condition is further reinforced by sectoral regulations in forestry, mining, and investment that provide the state with extensive authority to issue concession permits without meaningful participation from indigenous communities. Data published by the Agrarian Reform Consortium in 2024 indicate that Papua and West Papua remain among the regions experiencing the highest levels of agrarian conflict in Indonesia. Rather than reflecting isolated implementation failures, these recurring conflicts suggest deeper institutional deficiencies in how state law, customary law, and investment governance interact. Consequently, agrarian conflicts should be understood as evidence of a governance crisis rather than merely a dispute over land ownership. This reality demonstrates that Indonesia's agrarian governance framework has yet to substantively realize agrarian justice for indigenous Papuan communities.

Scholarly discussions concerning agrarian conflicts and the recognition of indigenous customary rights in Indonesia have expanded significantly over the past two decades, particularly in response to the growing expansion of extractive industries and state-led development initiatives. In the Papuan context, agrarian disputes are not merely disputes over land ownership; they also reflect an epistemological contestation between centralized state law and the communally inherited customary legal system of indigenous Papuans. Accordingly, the legal

[8] Jamrud Qomaruz Zaman et al., "The Influence of Positivism and Empirism in The Enforcement of Islamic Inheritance Law in Indonesia," *Substantive Justice International Journal of Law* 7, no. 1 (April 2024): 48–69, https://doi.org/10.56087/SUBSTANTIVEJUSTICE.V7I1.267.

[9] Brian Z. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences*, 1st ed. (Oxford University PressNew York, 2021), https://doi.org/10.1093/oso/9780190861551.001.0001.

pluralism approach provides an essential analytical framework for understanding the dynamics and development of agrarian conflicts in Papua.

The concept of legal pluralism explains that multiple legal systems may coexist within a single social arena, including state law, customary law, and other forms of social norms.[10] In post-colonial societies, the existence of customary law should not be regarded as an anomaly but rather as a social reality requiring substantive legal recognition.[11] Within the Indonesian context, legal pluralism is particularly evident in the agrarian sector, where the 1960 Basic Agrarian Law (UUPA) normatively recognizes the customary rights of indigenous communities.[12] Nevertheless, such recognition remains largely declaratory in practice and continues to be subordinated to state interests.

Previous studies can be grouped into four major strands. First, studies examine the recognition of customary land rights and the dominance of state law.[13] Second, research focuses on customary dispute resolution mechanisms and their effectiveness.[14] Third, scholars investigate asymmetrical legal pluralism and indigenous marginalization.[15] Fourth, recent studies propose participatory

[10] John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55, https://doi.org/10.1080/07329113.1986.10756387.
[11] Tamanaha, *Legal Pluralism Explained*.
[12] Emelia Kontesa and Zico Junius Fernando, "Reclaiming Our Roots: Agrarian Law's Battle Against Land Grabbing," *Lex Scientia Law Review* 8, no. 2 (December 2024): 945–84, https://doi.org/10.15294/LSLR.V8I2.10681.
[13] Alpi Sahari, "The Rights of Controlling State in Indonesia Against Land Tenure of Customary Law Community," *Randwick International of Social Science Journal* 2, no. 2 (2021): 141–48, https://doi.org/10.47175/rissj.v2i2.224; Daniel Tanati, "Patterns of Resolution of Customary Rights Disputes for Traditional Law Communities in Waropen District Papua Province," *Russian Law Journa* 12, no. 1 (2024): 1487–93.
[14] Muhammad Inzaghi Wahyu Rahmadhan and Ryo Jauhari Saputra, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah Ulayat Di Kabupaten Nabire Papua," *Notary Law Journal* 3, no. 3 (2024): 179–91, https://doi.org/10.32801/nolaj.v3i3.79; Rajab Lestaluhu et al., "Rethinking Dispute Resolution: Moi Customary Law within Indonesia's Legal Pluralism," *Justisi* 12, no. 2 (2026): 386–99, https://doi.org/10.33506/js.v12i2.4872.
[15] Yuldiana Zesa Azis and Emiliana B. Rahail, "Kearifan Lokal Dalam Adaptasi Penyelesaian Sengketa Tanah Akibat Ekspansi Investasi: Studi Kasus Pada Masyarakat Adat Di Merauke," *Jurnal Restorative Justice* 9, no. 2 (2025): 137–54, https://doi.org/10.35724/jrj.v9i2.7321.

approaches to agrarian governance (Lira & Rahman, 2025).[16] However, no previous study has integrated (1) legal pluralism theory, (2) Papua's Special Autonomy regime, (3) Constitutional Court Decision No. 35/PUU-X/2012, and (4) institutional design for customary land governance into a single operational governance model. This gap provides the foundation for the present study.

Research conducted by Daniel Tanati and James Yoseph Palenewen demonstrates that the recognition of customary land rights under the Basic Agrarian Law remains contingent upon state recognition of the existence of indigenous communities. This finding confirms the dominant position of the state in determining the legal validity of customary law.[17] Similarly, research by Muhammad Inzaghi Wahyu Rahmadhan and Ryo Jauhari Saputra in Nabire found that indigenous communities tend to prefer customary deliberation mechanisms for dispute resolution because they are perceived as more equitable and capable of preserving social harmony. However, the outcomes of customary dispute resolution frequently lack formal legal legitimacy within the state legal system.[18]

Further research by Yuldiana Zesa Azis and Emiliana B. Rahail on the Malind indigenous community in Merauke introduces the concept of "asymmetrical pluralism," referring to a condition in which customary law is tolerated only insofar as it does not obstruct the national development agenda. While this study contributes significantly to the discourse on critical legal pluralism, it does not formulate an operational model of agrarian governance.[19] In addition, Lestaluhu et al. demonstrate that the effectiveness of customary dispute resolution mechanisms

[16] Muhammad Adnan Lira and Ali Rahman, "Customary Agrarian Conflicts: Cultivation Rights Regulations and Local Community Impacts," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 2 (2025), https://doi.org/10.22373/petita.v10i2.831.
[17] Daniel Tanati and James Yoseph Palenewen, *Penyelesaian Konflik Agraria Pada Masyarakat Adat Papua* (CV Widina Media Utama, 2024).
[18] Muhammad Inzaghi Wahyu Rahmadhan and Ryo Jauhari Saputra, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah Ulayat Di Kabupaten Nabire Papua."
[19] Yuldiana Zesa Azis and Emiliana B. Rahail, "Kearifan Lokal Dalam Adaptasi Penyelesaian Sengketa Tanah Akibat Ekspansi Investasi: Studi Kasus Pada Masyarakat Adat Di Merauke."

is strongly influenced by the degree of harmonization between customary law and formal state law.[20]

Other scholars, including Albert Agus Massua et al. and Hidayatullah A.K. Husein et al. emphasize the importance of integrating customary law with national law in order to achieve legal certainty and substantive justice.[21] Meanwhile, Lira and Rahman have begun developing a participatory model of agrarian governance based on indigenous communities, although their framework has not yet incorporated the special autonomy regime applicable in Papua.[22] In a broader perspective, Bakker argues that agrarian conflict fundamentally represents a struggle over the distribution of power among the state, corporations, and indigenous communities in the control and management of natural resources.[23]

Previous scholarship has largely been dominated by descriptive and case-study-oriented approaches that focus either on the effectiveness of customary dispute resolution mechanisms or on critiques of the dominance of state law in agrarian conflicts. However, these studies have not comprehensively integrated legal pluralism theory, the Papuan Special Autonomy framework, and the post-recognition development of jurisprudence concerning customary forests into a coherent and operational model of agrarian governance. The novelty of this study is both empirical and theoretical. Empirically, it examines agrarian conflicts in Manokwari and Biak Numfor within Papua's Special Autonomy context.

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[20] Rajab Lestaluhu et al., "Rethinking Dispute Resolution: Moi Customary Law within Indonesia's Legal Pluralism," *JUSTISI* 12, no. 2 (April 2026): 386–99, https://doi.org/10.33506/JS.V12I2.4872; Marolop Pandiangan, Harkristuti Harkrisnowo, and Febby Mutiara Nelson, "The Conflict between Mining Law and Anti-Corruption Law in Indonesia's Extractive Sector: A Study of Legal Justification and Judicial Reasoning," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 9, no. 1 (May 2026): 111–26, https://doi.org/10.24090/VOLKSGEIST.V9I1.14411.

[21] Albert Agus Massua et al., "The Effectiveness of Mechanisms and Procedures for Resolving Customary Land Disputes by Adat Judges in Tana Toraja," 1, no. 1 (2024): 72–80, https://ojs.ukipaulus.ac.id/index.php/icp/article/view/776; Mohamad Hidayatullah A.K. Husein et al., "Customary Land Pawn Disputes in Lebung Jangkar Village: An Islamic Law and Cultural Perspective," *Jurnal Penelitian* 22, no. 2 (2026): 193–203, https://doi.org/10.28918/jupe.v22i2.14054.

[22] Lira and Rahman, "Customary Agrarian Conflicts."

[23] Laurens Bakker, "Agrarian Justice and Indonesian Law," *SHS Web of Conferences* 54 (2018): 03020, https://doi.org/10.1051/shsconf/20185403020.

Theoretically, it develops the concept of coordinated legal pluralism, extending conventional legal pluralism theory by proposing an institutional mechanism through which customary law and state law may operate in a coordinated rather than hierarchical relationship. This model moves beyond descriptive explanations of legal coexistence toward a practical framework for governance integration.

This study focuses on Manokwari and Biak Numfor because both regions represent contrasting yet comparable manifestations of agrarian conflict involving strong customary land tenure systems, increasing investment pressures, and active customary institutions. These cases were selected purposively to examine how legal pluralism operates under different socio-political conditions within Papua.

Based on this background, the objectives of this study are as follows:

1) To examine the structure of legal pluralism in agrarian conflicts in Papua and to analyze the relationship between state law and customary law in the governance of indigenous customary land.
2) To analyze customary-based dispute resolution mechanisms as a primary forum for dispute settlement, including their social legitimacy, empirical effectiveness, and normative justification from the perspective of legal pluralism.
3) To formulate a reconstruction model of customary-based land governance capable of integrating customary mechanisms into the national legal system in order to achieve legal certainty and substantive justice.
4) To examine case studies of agrarian conflicts in Manokwari, Biak Numfor, and West Papua in order to identify patterns of conflict, structural barriers, and locally developed dispute resolution practices.
5) To analyze comparative perspectives on land governance and the recognition of customary law in Aceh and Bali as references for strengthening the integration of legal pluralism in the resolution of agrarian conflicts in Papua.

Methods

This study employs a normative-empirical legal research method combined with a socio-legal approach to analyze legal pluralism in agrarian conflicts in Papua and to formulate a model of indigenous-based land governance. The normative approach examines legal regulations concerning agrarian law, customary rights, indigenous peoples, and land dispute resolution, while the empirical approach examines social practices and the implementation of legal norms within indigenous Papuan communities. This methodological approach was selected because agrarian conflicts in Papua are not merely juridical in nature, but are also closely related to social, cultural, political, and historical dimensions.

The study adopts statutory, conceptual, case-based, and comparative approaches. The legal materials analyzed include the 1960 Basic Agrarian Law (UUPA), the Special Autonomy Law for Papua, the Human Rights Law, the Forestry Law, and various regulations concerning customary rights and spatial planning. Conceptually, this research draws on Brian Tamanaha's theory of legal pluralism, the concepts of agrarian justice and restorative justice, and critical agrarian studies perspectives to explain the power relations among the state, corporations, and indigenous communities.

The empirical case studies focus on agrarian conflicts in Manokwari and Biak Numfor, as both regions maintain strong customary land tenure systems yet face increasing pressures from development and investment activities. Fieldwork was conducted between January and June 2026. The research data consist of primary and secondary legal materials, as well as empirical data obtained through semi-structured interviews, field observations, and documentation studies. A total of 24 informants participated in this study, consisting of 8 customary leaders, 6 local government officials, 4 academics specializing in agrarian and customary law, and 6 indigenous community members directly involved in customary land disputes. Informants were selected through purposive sampling based on their direct involvement, institutional authority, or expertise in customary land governance and

agrarian conflict resolution. Comparative analysis between Papua, Aceh, and Bali employed three indicators: (1) institutional recognition of indigenous communities, (2) recognition of communal land rights, and (3) mechanisms for customary dispute resolution. Data analysis followed four stages: (1) transcription and organization of interview data; (2) open coding to identify recurring themes; (3) thematic categorization according to legal pluralism concepts; and (4) comparative interpretation across cases and regulatory frameworks. Findings were validated through source triangulation, methodological triangulation, and member checking with selected informants.

Discussion

The Structure of Legal Pluralism in Agrarian Conflicts in Papua

Papua, one of Indonesia's most resource-rich regions, continues to face a persistent paradox: abundant natural resources have not translated into equitable welfare for indigenous communities.[24] Agrarian conflicts in Papua cannot be understood merely as administrative disputes over land ownership, but rather as manifestations of competing legal systems operating simultaneously within an unequal power structure. Agrarian conflicts in Indonesia show the limitations of formal legal approaches in accommodating the rights of indigenous peoples.[25] Within Indonesia, customary law communities illustrate the enduring nature of legal pluralism.[26] The configuration of legal pluralism that has developed in Papua reflects a hierarchical relationship in which state law occupies a dominant position, while customary law receives only limited and subordinate recognition. Legal

[24] Muslim Lobubun et al., "Customary Rights, Legal Pluralism, and Natural Resource Governance in Papua," *Jambura Law Review* 1, no. 2 (July 2026): 390–406, https://doi.org/10.33756/JLR.V1I2.37256; H. Hariyanto et al., "Toward Welfare-Driven Regional Autonomy: Strengthening Public Services in Indonesia," *LITIGASI* 27, no. 1 (April 2026): 71–99, https://doi.org/10.23969/LITIGASI.V27I1.39515.

[25] Pahlefi et al., "Harmonization of Customary Law and Investment Policy in Indonesian Indigenous Natural Resource Governance," *Trunojoyo Law Review* 8, no. 2 (2026): 345–84, https://doi.org/https://doi.org/10.21107/tlr.v8i2.33687.

[26] Eko Arief Wibowo et al., "Decolonizing Indonesian Penal Law Through Indigenous Justice: Reconstructing the Future of Customary Criminal Law," *Indonesia Private Law Review* 7, no. 2 (August 2026): 131–50, https://doi.org/10.25041/IPLR.V7I2.5357.

certainty for indigenous communities also depends heavily on the alignment of land administration regulations with the recognition of collective rights.[27]

According to Ter Haar, law consists of decisions made by community leaders who possess the authority to resolve disputes and regulate social relations.[28] These decisions, whether concerning specific cases or recurring issues, reflect the legal norms that operate within society.[29] Customary law is generally unwritten law. Therefore, customary law is dynamic and needs to be continuously studied for various legal developments.[30] Within the social practices of indigenous Papuan communities, customary law continues to function as the primary normative basis for controlling and managing customary land. Land is perceived as ancestral heritage collectively owned by clans and tribes; consequently, the legitimacy of land tenure is determined less by state administrative documentation than by genealogical relationships, historical origin, and communal recognition within customary society. A customary leader in Biak explained: "Customary deliberation is always the first mechanism because land belongs to the clan and cannot be separated from ancestral identity." Similarly, a government official in Manokwari noted: "Many disputes have already been resolved through customary mediation, but these outcomes often face difficulties when formal registration is required."

These findings illustrate the gap between social legitimacy and formal legal recognition. Among indigenous communities in Manokwari and Biak Numfor, land

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[27] Yuherman et al., "Integration of Absolute Authority of District Courts and State Administrative Courts in Land Disputes through Koneksitas Courts," *Administrative and Environmental Law Review* 6, no. 1 (September 2025): 45–60, https://doi.org/10.25041/AELR.V6I1.4223; Zico Junius Fernando et al., "Environmental Genocide and the Urgency to Criminalize Ecocide in Modern Criminal Law Reform," *Administrative and Environmental Law Review* 7, no. 1 (May 2026): 71–92, https://doi.org/10.25041/AELR.V7I1.5010.

[28] Olalekan Moyosore Lalude et al., "Strengthening Environmental Justice through Anti-Corruption Governance in Africa: An Insight from Nigeria and Uganda," *Kampala International University Law Journal* 8, no. 1 (April 2, 2026): 113–30, https://doi.org/10.59568/KIULJ-2026-8-1-07.

[29] Zulfikar Jayakusuma et al., "Local Wisdom and Coastal Protection on Rupat Island: The Role of the Akit Indigenous Community," *Lampung Journal of International Law* 8, no. 1 (June 2026): 35–44, https://doi.org/10.25041/LAJIL.V8I1.3429.

[30] Aprilia Stefany Leliak, "Strengthening Legal Protection of Indigenous Peoples' Customary Land Rights In Indonesia's Disruption Era," *LITIGASI* 26, no. 2 (May 2026): 443–72, https://doi.org/10.23969/litigasi.v26i2.20032.

disputes are generally resolved initially through customary mechanisms such as clan deliberations, customary assemblies, and reconciliation rituals.

Table 1. Comparative Models of Land Dispute Resolution in Papua

Indicator	Manokwari	Biak Numfor
Main Conflict Driver	Investment Expansion	Boundary Disputes
Dominant Institution	Customary Council	Clan-Based Governance
Resolution Pattern	Mediation	Deliberation
Main Obstacle	Administrative Recognition	Mapping and Registration

***Source**: compiled by the author based on research findings*

These mechanisms are considered more effective at preserving social equilibrium and restoring communal relationships than formal state litigation processes, which are often adversarial. While Griffiths conceptualizes the coexistence of multiple legal orders and Tamanaha emphasizes legal interaction, the findings suggest that coexistence alone does not guarantee legal equality. Papua demonstrates a form of asymmetrical legal pluralism in which state law systematically structures the hierarchy of legal authority.[31] Drawing on critical legal pluralism and legal consciousness theory, this study argues that legal hierarchy is reproduced through institutional practices, evidentiary rules, and administrative recognition mechanisms. Accordingly, the concept of coordinated legal pluralism is proposed as a theoretical framework capable of transforming hierarchical legal relations into coordinated governance arrangements.[32] In the Papuan context, at least four normative orders interact simultaneously: clan- and tribe-based customary law, national agrarian law under the Basic Agrarian Law (UUPA), the Papuan Special Autonomy regime, and sectoral regulations governing forestry, plantations, and mining. However, the interaction among these legal systems is not

[31] Geoffrey Swenson, "Legal Pluralism in Theory and Practice," *International Studies Review* 20, no. 3 (2018): 438–62, https://doi.org/10.1093/isr/vix060; Wa Ode Zamrud and Antonio Gutiérrez Pozo, "Normative Tensions between International Law and Customary Legal Systems: Comparative Insights from Indonesia and Spain," *SASI* 32, no. 2 (2026): 227–42, https://doi.org/10.47268/sasi.v32i2.3696.
[32] Griffiths, "What Is Legal Pluralism?"; Tamanaha, *Legal Pluralism Explained*.

horizontal but hierarchical.[33] State law and sectoral regulations remain the dominant instruments in formal adjudication, whereas customary law primarily functions de facto within everyday land tenure practices.

This condition produces an asymmetrical pattern of legal pluralism. Articles 3 and 5 of the Basic Agrarian Law formally recognize customary rights and customary law as foundational elements of Indonesia's agrarian system. In addition, Article 43 of the Papua Special Autonomy Law provides a constitutional mandate for regional governments to recognize, respect, and protect the land rights of indigenous Papuans. Nevertheless, in practice, such recognition remains constrained by the dominance of sectoral legislation that grants the state broad authority to allocate land through plantation permits, mining concessions, and national strategic development projects.

Agrarian disputes in Indonesia are complex and reflect structur-al injustice that has persisted since the colonial era.[34] Despite various government efforts to address land issues, agrarian conflicts continue to occur across the country, indicating that the problem is not iso-lated but systemic, such as the ones happened in Papua.[35] Indigenous communities frequently encounter significant obstacles in proving customary land ownership within formal adjudication processes because the state's evidentiary system prioritizes land certificates and administrative documentation over oral histories, customary rituals, and hereditary patterns of

[33] Maskun Maskun et al., "The Dilemma of Administrative Sanctions in Legalizing Palm Oil Plantations in Indonesian Forest Areas," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (May 2025): 171–90, https://doi.org/10.24090/VOLKSGEIST.V8I1.13114.
[34] Rico J.R. Tambunan et al., "Justice, Land, and Sharia: Conceptualizing Agrarian Courts in the Settlement of Land Ownership Disputes," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 2 (2025): 530–52, https://doi.org/10.18860/j-fsh.v17i2.32486.
[35] M Zuhri Al et al., "Contested Land Rights and the Failure of Land Governance: Exploring Pathways to Resolution," *Jambe Law Journal* 9, no. 1 (July 2026): 475–504, https://doi.org/10.22437/CT9GX923.

land tenure.[3637] As a result, indigenous communities occupy a structurally weaker position than corporations or actors holding official state-issued permits. This condition demonstrates that the burden of proof in agrarian disputes continues to be heavily oriented toward administrative legality as defined by the state. These findings are consistent with previous studies, which argue that state law systematically privileges certificate holders over indigenous communities whose claims are grounded in social and historical legitimacy.[38]

Recognition of the existence of customary rights is legally justified, as both these rights and customary law communities have existed before the formation of the 1945 Constitution, which contains the concept of state control of rights.[39] Constitutional Court Decision No. 35/PUU-X/2012 also provides a significant constitutional foundation for strengthening the rights of indigenous communities. The decision affirmed that customary forests are no longer categorized as state forests but rather as forests belonging to customary law communities. Although primarily situated within the forestry context, the decision has broader implications for the recognition of customary territories and communal land rights among indigenous Papuan communities. More fundamentally, the ruling reflects a paradigmatic shift from administrative recognition toward substantive recognition of indigenous existence and rights.

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[36] Istislam Istislam et al., "Adaptive Environmental Governance Within A Legal Pluralism Framework: A Case Study of The Tengger Indigenous Community in Indonesia," *Jurisdictie: Jurnal Hukum Dan Syariah* 17, no. 1 (June 2026): 1–36, https://doi.org/10.18860/j.v17i1.41228; Zico Junius Fernando et al., "Transnational Environmental Crime in the Context of International Criminal Law and Victim-Centered Environmental Justice," *Lampung Journal of International Law* 7, no. 1 (October 2025): 15–30, https://doi.org/10.25041/lajil.v7i1.4338.

[37] Istislam et al., "Adaptive Environmental Governance Within A Legal Pluralism Framework: A Case Study of The Tengger Indigenous Community in Indonesia."

[38] Muhammad Arifin Tanjung, "Legal Pluralism and Indigenous Justice Systems: An Anthropological Analysis," *Jurnal Ar Ro'is Mandalika (Armada)* 3, no. 2 (2023): 84–91, https://doi.org/10.59613/armada.v3i2.2838; Uwais Umar et al., "Analisis Yuridis Terhadap Sengketa Tanah Adat Dalam Perspektif Hukum Agraria Nasional," *Legal Note* 1, no. 2 (2025): 53–58, https://doi.org/10.70716/legalnote.v1i2.107.

[39] Julianto Jover Jotam Kalalo et al., "Protecting Indigenous Rights in the Indonesia–Papua New Guinea Border Area," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 2 (July 2025): 309–25, https://doi.org/10.29303/IUS.V13I2.1536.

Despite its constitutional significance, the implementation of the decision has remained limited. In Papua, formal recognition of customary territories has progressed slowly due to administrative constraints, overlapping sectoral regulations, and weak institutional coordination among government agencies.[40] This condition demonstrates that constitutional recognition alone is insufficient to transform entrenched agrarian power structures in the absence of concrete institutional and procedural reforms. In this regard, Von Benda-Beckmann and Von Benda-Beckmann conceptualize legal pluralism as a dynamic process in which customary norms and state law continuously interact, influence, and contest one another.[41]

This study is consistent with the findings of Pratiwi et al., which indicate that customary dispute resolution mechanisms are most actively utilized during the initial stages of conflict but become increasingly marginalized within formal adjudication processes.[42] Similarly, research conducted by Daniel Tanati and Daniel Tanati and James Yoseph Palenewen in Waropen Regency demonstrates that customary deliberation mechanisms remain effective in resolving intra-communal disputes, yet tend to fail when disputes involve corporations or state institutions possessing stronger administrative legitimacy. [43]However, the present study advances this argument by demonstrating that such failure does not merely stem from the institutional weakness of customary law itself, but rather from the

[40] Abdul Chasib, "Resolution of The Long Conflict In Papua for Equitable National Development," *Jurnal Lemhannas RI* 12, no. 1 (2024): 92–100, https://doi.org/10.55960/jlri.v12i1.566; Frans Reumi et al., "The Function of The Kinship Legal System and Legal Certainty of Land Rights of Papuan Customary Communities in Jayapura City: From a Philosophical, Sociological, and Legal Perspective," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (2025): 6292–316, https://doi.org/10.31941/pj.v24i2.6769.

[41] Franz Von Benda-Beckmannn and Keebet Von Benda-Beckmannn, "The Dynamics of Change and Continuity in Plural Legal Orders," *The Journal of Legal Pluralism and Unofficial Law* 38, nos. 53–54 (2006): 1–44, https://doi.org/10.1080/07329113.2006.10756597.

[42] Berliant Pratiwi et al., "Peran Hukum Adat Dalam Penyelesaian Sengketa Agraria Di Indonesia: Kajian Empiris Dengan Metode Komparatif," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 2, no. 4 (2024): 807–22, https://doi.org/10.51903/hakim.v2i4.2187.

[43] Daniel Tanati and James Yoseph Palenewen, *Penyelesaian Konflik Agraria Pada Masyarakat Adat Papua*; Daniel Tanati, "Patterns of Resolution of Customary Rights Disputes for Traditional Law Communities in Waropen District Papua Province."

fundamentally unequal and centralized structure of legal pluralism operating in Papua, as illustrated in Table 2 below.

Table 2. Comparative Models of Land Dispute Resolution in Papua

No.	Governance Model	Mechanism	Legal Basis	Limitations
1	Centralized State-Based Model (National Land Agency/Courts)	Land registration, civil litigation, and administrative adjudication	Basic Agrarian Law 1960 (UUPA); Indonesian Civil Code; Government Regulation No. 24 of 1997	Fails to accommodate communal land ownership; procedures are time-consuming and costly
2	Pure Customary Law Model (Customary Courts)	Resolution through customary authorities, customary council deliberations, and ritual reconciliation mechanisms such as stone-burning ceremonies and *sasi*	Customary norms and practices; Papua Special Regional Regulation (Perdasus) No. 23 of 2008	Customary decisions lack formal enforceability against third parties
3	Integrated Hybrid Model	Customary-led mediation combined with state recognition and registration of communal land rights	Papua Special Autonomy Law; Constitutional Court Decision No. 35/PUU-X/2012; Perdasus No. 23 of 2008	Limited implementing regional regulations and weak institutional support
4	Asymmetrical Legal Pluralism Model (Status Quo)	Customary law is formally tolerated but remains subordinated to state law within formal adjudication processes	Sectoral regulations in forestry, mining, and plantation governance	Reproduces structural injustice against indigenous Papuan communities

***Source**: compiled by the author based on research findings*

The table reveals three principal consequences of asymmetrical legal pluralism in Papua. First, legal uncertainty emerges because both indigenous communities and investors lack clarity regarding which dispute resolution mechanism possesses definitive binding authority. Second, this condition encourages forum shopping, particularly among corporations that strategically prefer state courts due to their structural advantages within the formal evidentiary framework. Third, asymmetrical pluralism has generated a broader crisis of legal legitimacy, whereby indigenous communities perceive state law as an instrument facilitating land dispossession, while investment actors regard customary law as an impediment to legal certainty and investment stability.

The current configuration of legal pluralism in Papua's agrarian governance has therefore failed to realize substantive justice for indigenous Papuan communities. The merely declaratory recognition of customary law, without meaningful procedural integration into the national legal system, has resulted in little more than symbolic accommodation of customary rights. Accordingly, this study emphasizes the urgent need to transform the existing asymmetrical model of legal pluralism into an integrated model that positions customary and state legal mechanisms within a more balanced institutional relationship. Such a model must provide a clear procedural framework for customary institutions in the recognition of customary territories, the mediation of disputes, and the validation of customary decisions, while simultaneously ensuring that customary resolutions obtain formal legal force within the national legal system. In this regard, legal pluralism should no longer function as a source of structural conflict, but instead serve as the foundation for reconstructing a more just, participatory, and constitutionally grounded system of agrarian governance in Papua.

Customary-Based Dispute Resolution Mechanisms as a First-Stage Forum from a Legal Pluralism Perspective

Customary mechanisms continue to function as the primary and most trusted instruments for indigenous Papuan communities, particularly in the regions of

Manokwari and Biak Numfor, in resolving customary land disputes during the early stages of conflict. Within indigenous communities, customary forums are perceived not merely as legal mechanisms, but also as spaces for restoring social relationships, facilitating communal reconciliation, and maintaining the cosmological balance of customary society.

Customary-based dispute resolution generally involves clan deliberation, mediation by customary leaders or customary councils, ritual reconciliation, and the provision of symbolic restitution.[44] Among the Biak and Arfak indigenous communities in Manokwari, dispute resolution processes are not oriented toward determining winners and losers, but rather toward restoring social harmony among kinship groups. Consequently, the legitimacy of customary mechanisms derives not from coercive authority, as is characteristic of state law, but from the collective community belief in ancestral values, genealogical ties, and the authority of customary institutions.

These findings are consistent with the study by Reumi et al. (2025), which argues that customary law in Papua functions effectively as an alternative dispute resolution mechanism, particularly when the disputing parties originate from the same customary community or maintain close social relationships.[45] The present study further reinforces this perspective by demonstrating that compliance with customary decisions remains relatively high insofar as dispute resolution procedures conform to customary processes recognized as legitimate within the community. In several cases observed in Manokwari, disputing parties complied

[44] Yanuriansyah Ar Rasyid and Leni Sipra Helen Rahakbauw, "Revitalization of Biak Numfor Customary Dispute Resolution: Harmonization of the Criminal Justice System in Indonesia," *Jurnal Ilmu Hukum Kyadiren* 7, no. 2 (2026): 832–42, https://doi.org/10.46924/jihk.v7i2.335.; Muhammad Rudi Syahputra et al., "Formalization and Documentation: Transforming the Aceh Customary Legal System in Dispute Resolution Through Mediation," *SASI* 32, no. 2 (2026): 177–91, https://doi.org/10.47268/sasi.v32i2.3771; Sabela Gayo, "Customary Mediation Practices: Practical Experiences from Indonesia," *International Asia of Law and Money Laundering (IAML)* 3, no. 2 (2024): 107–12, https://doi.org/10.59712/iaml.v3i2.92.

[45] Reumi et al., "The Function of The Kinship Legal System and Legal Certainty of Land Rights of Papuan Customary Communities in Jayapura City: From a Philosophical, Sociological, and Legal Perspective."

with the outcomes of customary deliberations even in the absence of formal recognition within state legal documents. This finding indicates that the effectiveness of customary law is determined less by state coercion than by the social and moral legitimacy embedded within indigenous communities.

The effectiveness of customary mechanisms is also strongly influenced by the procedural stages through which disputes are resolved.[46] In practice, customary deliberation serves as the initial stage for hearing the claims of the parties, followed by ritual reconciliation aimed at restoring social relationships, and ultimately concluded through symbolic restitution in the form of customary payments, exchanges of customary objects, or collective rituals. These findings support the conclusions of Tondas et al., who argue that customary decisions possess a high degree of social binding force when customary procedures are fully implemented in accordance with the cultural structure of the local community.[47]

In Papua, customary mechanisms represent a form of living law that continues to endure despite the dominance of state law. This condition illustrates not only the coexistence of multiple legal systems, but also the manner in which communities selectively utilize dispute resolution forums perceived as the most legitimate and effective according to their social values.[48] Indigenous Papuan communities tend to prioritize customary mechanisms as first-stage forums because they are regarded as faster, less costly, more participatory, and more capable of preserving inter-clan

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[46] Nina Persak, "Procedural Justice Elements of Judicial Legitimacy and Their Contemporary Challenges," *Oñati Socio-Legal Series* 6, no. 3 (2016): 749–70.

[47] Alexander Edo Tondas et al., "Simbur Cahaya Customary Law in Sociological Jurisprudence Perspective," *Jurnal Bina Mulia Hukum* 9, no. 2 (2025): 266–76, https://doi.org/10.24198/jbmh.v9i2.1879.

[48] Arief Fahmi Lubis, "Legal Pluralism and Social Identity: An Analysis of State and Religious Law Interaction in Local Dispute Resolution in Indonesia and Pakistan," *Lex Localis: Journal of Local Self-Government* 23, no. 11 (2025): 1910–21, https://doi.org/10.52152/bt4pv061; Achmad Hariri and Basuki Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia," *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146–70, https://doi.org/10.21580/walrev.2024.6.2.25566; Maya Shaffina Putri, "Rule of Law and Legal Pluralism in Indonesia: Constitutional Transformation, Regulatory Governance, and Rights Protection in a Decentralized State," *Indonesian Journal of Law, Governance, and Regulation* 1, no. 1 (2026): 1–12, https://doi.org/10.55942/ijlgr.v1i1.1885.

social relations than formal state litigation, which is frequently perceived as distant, expensive, and adversarial.

The existence of customary mechanisms has, in fact, received formal recognition through Papua Special Regional Regulation No. 23 of 2008 concerning the Customary Rights of Indigenous Law Communities. This regulation grants customary institutions authority to administer customary rights and mediate disputes relating to customary land. Nevertheless, the present study finds that such normative recognition has not been accompanied by adequate procedural integration into the national legal system.[49] Customary decisions continue to be treated as informal mechanisms lacking enforceable legal authority when disputes are subsequently brought before state courts.

This condition creates a significant dilemma in the practice of agrarian dispute resolution in Papua. On the one hand, customary mechanisms possess strong social legitimacy and have proven effective in resolving intra-communal disputes. On the other hand, these mechanisms become structurally vulnerable when confronted with corporations or state institutions possessing stronger administrative legitimacy and greater access to formal legal instruments. This finding is consistent with the research of Daniel Tanati and James Yoseph Palenewen, which demonstrates that customary deliberation mechanisms are effective in resolving inter-clan disputes but frequently fail when disputes involve external actors supported by state-issued permits.[50]

The absence of formal recognition of customary territorial mapping constitutes a major obstacle to the effectiveness of customary-based dispute resolution mechanisms.[51] In many regions, the boundaries of customary land

[49] Hariyanto et al., "The Communal Democracy of Yogyakarta Special Region's Government on the Islamic Law Eclecticism Perspective," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (June 2023): 200–221, https://doi.org/10.19105/al-lhkam.v18i1.7403.
[50] Daniel Tanati and James Yoseph Palenewen, *Penyelesaian Konflik Agraria Pada Masyarakat Adat Papua*.
[51] Setiawati Setiawati, "Model for Empowering Traditional Leaders in Resolving Customary Conflicts Based on Local Wisdom in Indonesia," *Jurnal Pemberdayaan Masyarakat* 4, no. 2 (2025): 494–509, https://doi.org/10.46843/jpm.v4i2.477.

continue to be determined through oral histories, natural markers, and genealogical agreements, which are not consistently recognized within the state administrative system.[52] As a consequence, agrarian conflicts become increasingly complex when investment permits or development projects are issued over disputed customary territories. These findings support the study by Rahmadhan and Saputra, which argues that the absence of state-recognized customary mapping creates a legal vacuum that is subsequently filled by overlapping administrative claims.[53]

The state's failure to incorporate customary mechanisms as first-stage dispute resolution forums has also increased the potential criminalization of indigenous communities. In several cases, indigenous peoples defending their customary territories have been portrayed as obstacles to development or even as violators of the law when confronted with formally issued investment permits. These findings reinforce the argument advanced by Siti Romdonah and Ikomatussuniah Ikomatussuniah, who contend that law enforcement practices disregarding customary institutions tend to facilitate land dispossession and further marginalize indigenous Papuan communities.[54]

In practice, customary mechanisms perform a crucial function in supporting state land administration processes. Within the Complete Systematic Land Registration Program (Pendaftaran Tanah Sistematis Lengkap / PTSL), the resolution of communal territorial boundaries through customary deliberation constitutes a factual prerequisite prior to the commencement of formal land registration procedures. Customary processes therefore function not merely as alternative dispute resolution mechanisms, but also as essential procedural foundations for establishing legal certainty over land in Papua. These findings are consistent with the study by Vikkania Rahmi Andika Putri et al., which demonstrates

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[52] Muslim Lobubun, *Hukum Pengelolaan Sumber Daya Alam: Studi Terhadap Sumber Daya Alam Tambang Dan Hutan Papua*.
[53] Muhammad Inzaghi Wahyu Rahmadhan and Ryo Jauhari Saputra, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah Ulayat Di Kabupaten Nabire Papua."
[54] Siti Romdonah and Ikomatussuniah Ikomatussuniah, "Penegakan Hukum Terhadap Masyarakat Dalam Menghadapi Deforestasi Hutan Adat Papua," *Pikukuh: Jurnal Hukum Dan Kearifan Lokal* 2, no. 1 (2025): 56–69, https://doi.org/10.51825/pkh.v2i1.30768.

that the success of land registration programs in Papua is highly dependent upon customary legitimacy and communal agreement.[55]

Customary-based dispute resolution mechanisms thus possess strong social legitimacy, empirical effectiveness, and normative justification to function as first-stage forums for the resolution of agrarian conflicts in Papua. Nevertheless, such effectiveness can only be sustained if the state ceases to regard customary law as a subordinate and informal mechanism, and instead recognizes it as an integral component of the national legal system.[56] Accordingly, this study emphasizes the need for a more integrative model of legal pluralism through the strengthening of customary institutions, the formal recognition of customary decisions, participatory mapping of customary territories, and the establishment of hybrid mechanisms linking customary forums with the state land administration system. Through this approach, the resolution of agrarian conflicts in Papua would not only generate formal legal certainty, but also promote substantive justice and stronger protection of the rights of indigenous Papuan communities.

Reconstruction of Indigenous Community-Based Land Governance Through the Integration of Customary Law and National Law

The root causes of agrarian conflict in Papua do not solely derive from overlapping claims to land ownership, but rather from the unequal relationship between state law and customary law within the broader system of land governance. The current model of national agrarian law continues to position indigenous communities as administrative objects whose existence depends upon state recognition, rather than as legal subjects possessing full legal authority over their customary territories.

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[55] Vikkania Rahmi Andika Putri et al., "The Existence of Customary Land of the Kaum as Communal Property Rights Post-Certification in Lima Puluh Kota Regency," *Jurnal Cendekia Hukum* 9, no. 2 (2024): 197–209, https://doi.org/10.33760/jch.v9i2.971.

[56] Ade Adhari et al., "Customary Delict of Penglipuran Bali in the Perspective of the Principle of Legality: A Dilemma and Arrangements for the Future," *Journal of Indonesian Legal Studies* 6, no. 2 (2021): 411–36, https://doi.org/10.15294/jils.v6i2.50555.

The existing structure of legal pluralism tends to reproduce a pattern of asymmetrical pluralism in which customary law is symbolically recognized yet remains subordinated within formal adjudication processes and investment policies.[57] In various cases observed in Manokwari and Biak Numfor, customary mechanisms continue to function as the primary basis for determining the social legitimacy of land ownership. Nevertheless, the outcomes of customary processes frequently lack formal legal force when confronted with state-issued permits or land certificates granted by government land agencies. This condition demonstrates that the normative recognition of customary rights under Article 3 of the Basic Agrarian Law and Article 43 of the Papua Special Autonomy Law has not been accompanied by adequate institutional and procedural reconstruction.

This study therefore formulates a reconstruction model of indigenous community-based land governance grounded in five principal dimensions: the strengthening of communal rights as legal subjects, the integration of customary dispute resolution forums, reform of evidentiary law, the implementation of Free, Prior and Informed Consent (FPIC), and the institutional strengthening of customary authorities. The proposed model is informed by Roscoe Pound's conception of law as a tool of social engineering[58] and Lawrence M. Friedman's theory of the legal system[59], which emphasizes the interrelationship among legal substance, legal structure, and legal culture. Within the Papuan context, agrarian law reform cannot be achieved merely through amendments to substantive legal norms; rather, it also requires transformation of the institutional structures and legal culture that have historically marginalized indigenous communities, as illustrated in Figure 1.

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[57] Larissa Vetters et al., "Legal Pluralism and the Production of (Un)Certainty in Lived Migration Orders," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (2024): 557–82, https://doi.org/10.1080/27706869.2024.2366070.
[58] Roscoe Pound, *An Introduction to the Philosophy of Law* (Transaction Publishers, 1992).
[59] Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975).

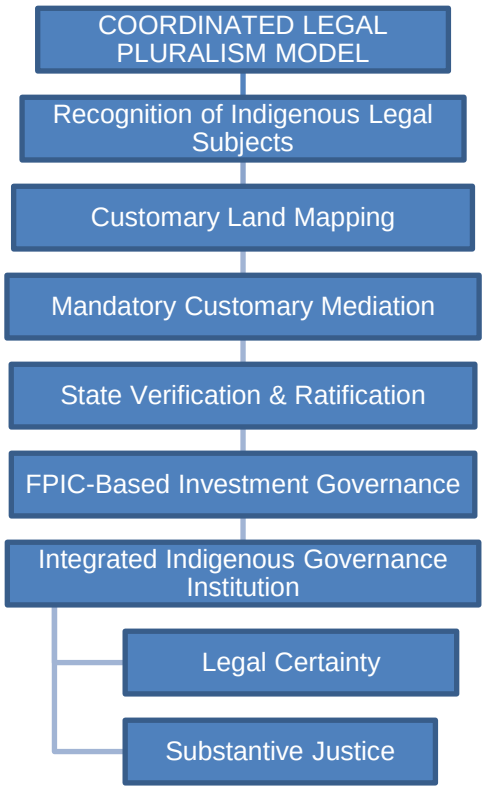


Figure 1. Reconstruction of Indigenous Community-Based Land Governance in Papua

The first dimension of this reconstruction concerns the recognition of indigenous communities, clans, and tribes as communal legal subjects possessing legal personality. One of the principal causes of agrarian conflict in Papua is the inability of the national legal system to accommodate collective ownership structures grounded in genealogical relationships. The state land administration system continues to prioritize individual ownership and formal land certification, whereas indigenous communities conceptualize land as communal heritage inseparable from their social and cultural identity. Accordingly, formal recognition of clans and tribes as legal subjects is necessary to enable indigenous communities to hold communal land rights, register customary territories, and participate in legal proceedings on behalf of the community.

The second dimension involves the integration of customary mechanisms as first-stage forums for the resolution of agrarian disputes. Customary mechanisms

possess significantly stronger social legitimacy than formal state litigation, particularly in disputes occurring within indigenous communities. However, the limited integration of customary processes into the national legal system often undermines the effectiveness of customary decisions when disputes are subsequently brought before state courts. Consequently, this study proposes a model of mandatory customary mediation prior to the initiation of formal litigation. Under this framework, the outcomes of customary deliberations may be formally ratified by the state following verification of procedural fairness and compliance with fundamental legal standards. This approach is consistent with the argument advanced by Pradhani, who emphasizes the importance of strengthening customary legal institutions in order to prevent them from being reduced to merely symbolic or folkloric entities amidst the expansion of corporate agribusiness.[60]

The third dimension concerns the reform of evidentiary law in agrarian disputes. Existing civil procedure and land administration laws continue to prioritize written certificates as the primary form of legal evidence, while oral testimony, customary maps, and genealogical evidence are frequently treated as secondary forms of proof. As a result, indigenous communities encounter substantial difficulties in establishing customary land claims despite possessing strong historical and social legitimacy. This study therefore argues for the formal recognition of customary forms of evidence through the adoption of technical regulations and specific evidentiary guidelines applicable to customary land disputes. Such proposals derive constitutional legitimacy from Constitutional Court Decision No. 35/PUU-X/2012, which affirmed that the existence of indigenous communities constitutes a factual condition that cannot depend solely upon state administrative recognition.

The fourth dimension concerns the mandatory implementation of Free, Prior and Informed Consent (FPIC) in all investment activities affecting indigenous

[60] Sartika Intaning Pradhani, "Pendekatan Pluralisme Hukum Dalam Studi Hukum Adat: Interaksi Hukum Adat Dengan Hukum Nasional Dan Internasional," *Undang: Jurnal Hukum* 4, no. 1 (2021): 81–124, https://doi.org/10.22437/ujh.4.1.81-124.

customary territories. A substantial number of agrarian conflicts in Papua emerge because investment licensing processes are conducted without obtaining effective consent from affected indigenous communities. In many instances, consultation procedures function merely as administrative formalities and fail to ensure meaningful participation by clans possessing customary rights.[61] Accordingly, FPIC should be established as a mandatory prerequisite for the issuance of investment permits as part of the harmonization of national law with the principles embodied in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Article 43 paragraph (4) of the Papua Special Autonomy Law.

The fifth dimension relates to the long-term strengthening of customary institutions through sustained state support. Many customary institutions in Papua continue to operate informally and experience limitations in funding, documentation, and administrative capacity. Consequently, the consistency and authority of customary decisions often depend heavily upon particular customary leaders.[62] This study therefore emphasizes the importance of establishing permanent Indigenous Peoples' Institutions supported through state funding, training programs in customary mediation and adjudication, and integration into the national legal aid system. These findings reinforce the research of Yulianus Pabassing, which demonstrates that even limited institutional support can significantly enhance the legitimacy and consistency of customary dispute resolution mechanisms.[63]

This study differs fundamentally from previous scholarship, which has generally focused either on descriptive analyses of agrarian conflict or on the partial

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[61] Daniel Tanati, "Patterns of Resolution of Customary Rights Disputes for Traditional Law Communities in Waropen District Papua Province"; Satria Unggul Wicaksana Prakasa et al., "Protecting the Land Tenure Rights of Papuan Indigenous Peoples After New Autonomy Region," *Indonesia Law Reform Journal* 3, no. 3 (2023): 287–303, https://doi.org/10.22219/ilrej.v3i3.31352.
[62] Muslim Lobubun, *Hukum Pengelolaan Sumber Daya Alam: Studi Terhadap Sumber Daya Alam Tambang Dan Hutan Papua*.
[63] Yulianus Pabassing, "Implementation of Land Registration in Providing Legal Security of Land Rights in Jayapura City," *Pena Justisia* 21, no. 2 (2022): 1–17, https://doi.org/10.31941/pj.v21i2.3702.

effectiveness of customary mechanisms.[64] Rather than merely explaining how legal pluralism operates in practice, the present study offers an operational framework for integrating customary law and state law through a coordinated pluralism model. This model does not seek to eliminate the role of the state in land governance, but instead aims to recalibrate the relationship between the state and indigenous communities in a more balanced, participatory, and constitutionally grounded manner.

Legal certainty and substantive justice should not be positioned as mutually contradictory objectives. To date, Indonesia's national agrarian legal system has largely pursued legal certainty through an administrative approach that frequently sacrifices the rights of indigenous communities. The reconstruction model proposed in this study demonstrates that legal certainty can instead be achieved through the clear recognition of customary procedures, the strengthening of communal legal status, and institutional integration between customary forums and state legal mechanisms. Under this framework, legal certainty is no longer produced through the subordination of indigenous peoples, but rather through the harmonization of state legality and indigenous social legitimacy.

The reconstruction of indigenous-based land governance therefore constitutes an urgent agenda within agrarian law reform in Papua. The coordinated pluralism model proposed in this study offers a potential balance between the demands of investment and the protection of indigenous peoples' rights by establishing legal relations that are more equitable, participatory, and constitutionally grounded. Through this approach, law no longer functions primarily as an instrument of state domination over indigenous communities, but rather as a mechanism of social

[64] Chasib, "Resolution of The Long Conflict In Papua for Equitable National Development"; Daniel Tanati, "Patterns of Resolution of Customary Rights Disputes for Traditional Law Communities in Waropen District Papua Province"; Muhammad Inzaghi Wahyu Rahmadhan and Ryo Jauhari Saputra, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah Ulayat Di Kabupaten Nabire Papua"; Reumi et al., "The Function of The Kinship Legal System and Legal Certainty of Land Rights of Papuan Customary Communities in Jayapura City: From a Philosophical, Sociological, and Legal Perspective."

engineering aimed at creating a more inclusive and constitutionally oriented system of agrarian governance in Papua.

Conclusion

This study examines the structure of legal pluralism in agrarian conflicts in Papua, analyzes the effectiveness of customary-based dispute resolution mechanisms, and proposes a reconstruction model for indigenous community-based land governance. Agrarian conflicts in Papua emerge from asymmetrical legal pluralism, in which customary law is formally recognized yet remains subordinated to state law and sectoral regulations in formal adjudication processes and investment policies. Although customary mechanisms possess strong social legitimacy and empirical effectiveness, particularly in intra-communal disputes, they remain structurally disadvantaged when confronted with state-issued land certificates or corporate interests.

In response to these conditions, the principal theoretical contribution of this study lies in the development of the concept of coordinated legal pluralism. Unlike conventional legal pluralism, which primarily explains the coexistence of legal orders, coordinated legal pluralism provides an institutional framework for integrating customary law and state law within agrarian governance.

Nevertheless, this study remains limited by its normative orientation and its reliance on selected case studies, and therefore does not comprehensively capture developments across all regions of Papua. Accordingly, Policymakers should establish legal mechanisms for recognizing customary mediation outcomes, institutionalize participatory mapping, and integrate FPIC into investment licensing procedures. Future studies should test the coordinated legal pluralism model through longitudinal and comparative research across different indigenous territories in Indonesia to evaluate its institutional feasibility and effectiveness.

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