

## Those Invisible to the Law: Access to Justice for Indigenous Communities in Agrarian Conflicts in Merauke Regency

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### Abstract

Indigenous communities involved in agrarian conflicts often occupy vulnerable positions due to limited access to legal information, legal assistance, land documentation, and dispute-resolution institutions. Merauke Regency illustrates the complex interaction between indigenous communities, land control, economic development, and state policies. This study aims to identify barriers to access to justice experienced by indigenous communities in agrarian conflicts and to examine how legal institutions respond to their needs. A socio-legal approach is employed by combining analysis of the relevant legal framework with empirical research involving indigenous community members, legal advocates, local government representatives, and other stakeholders. Access to justice is understood not merely as the ability to bring a dispute before a court, but also as the capacity to understand legal rights, obtain assistance, participate meaningfully in dispute resolution, and secure effective remedies. The study argues that structural and administrative barriers may prevent formal legal recognition from producing substantive justice for indigenous communities. A more responsive framework therefore requires stronger community-based legal assistance, simplified procedures, recognition of customary territories, and meaningful participation in decisions affecting land and livelihoods. Such measures can help bridge the gap between formal recognition and practical enjoyment of indigenous rights.

*[Masyarakat adat yang terlibat dalam konflik agraria seringkali berada dalam posisi rentan karena terbatasnya akses terhadap informasi hukum, bantuan*

*hukum, dokumentasi tanah, dan lembaga penyelesaian sengketa. Kabupaten Merauke menggambarkan interaksi kompleks antara masyarakat adat, penguasaan tanah, pembangunan ekonomi, dan kebijakan negara. Studi ini bertujuan untuk mengidentifikasi hambatan akses terhadap keadilan yang dialami oleh masyarakat adat dalam konflik agraria dan untuk meneliti bagaimana lembaga hukum menanggapi kebutuhan mereka. Pendekatan sosio-hukum digunakan dengan menggabungkan analisis kerangka hukum yang relevan dengan penelitian empiris yang melibatkan anggota masyarakat adat, advokat hukum, perwakilan pemerintah daerah, dan pemangku kepentingan lainnya. Akses terhadap keadilan dipahami bukan hanya sebagai kemampuan untuk membawa sengketa ke pengadilan, tetapi juga sebagai kapasitas untuk memahami hak-hak hukum, memperoleh bantuan, berpartisipasi secara bermakna dalam penyelesaian sengketa, dan mendapatkan solusi yang efektif. Studi ini berpendapat bahwa hambatan struktural dan administratif dapat mencegah pengakuan hukum formal menghasilkan keadilan substantif bagi masyarakat adat. Oleh karena itu, kerangka kerja yang lebih responsif membutuhkan bantuan hukum berbasis masyarakat yang lebih kuat, prosedur yang disederhanakan, pengakuan wilayah adat, dan partisipasi yang bermakna dalam keputusan yang memengaruhi tanah dan mata pencaharian. Langkah-langkah tersebut dapat membantu menjembatani kesenjangan antara pengakuan formal dan pemanfaatan praktis hak-hak masyarakat adat.]*

**Keywords:** access to justice, indigenous communities, agrarian conflict, legal aid, Merauke Regency

## Introduction

Land occupies a fundamentally different position in many Indigenous communities from the conception of land commonly embedded in modern property law. For Indigenous peoples, territory may constitute a source of livelihood, cultural identity, spiritual continuity, social organization, and intergenerational responsibility. Consequently, the loss or transformation of customary territory can generate consequences extending beyond economic deprivation. In Indonesia, these concerns are particularly significant because customary land rights exist within a plural legal environment in which constitutional recognition, statutory regulation, administrative requirements, customary norms, and development policies interact. Scholars have demonstrated that formal recognition of customary rights does not necessarily translate into effective control over territory because communities must frequently satisfy bureaucratic conditions and negotiate with state institutions before rights become practically enforceable (Li 2000; Bedner and Arizona 2019). This distinction between recognition and realization provides an important starting point for examining access to justice among Indigenous communities in Merauke Regency.

The Indonesian constitutional framework recognizes the existence of Indigenous peoples and their traditional rights under Article 18B(2) of the 1945 Constitution, subject to conditions established by law and within the framework of national development. Article 28I(3) further recognizes cultural identity and traditional community rights. The Basic Agrarian Law also acknowledges customary rights while simultaneously subjecting their exercise to national interests and statutory conditions. These provisions create a legal foundation for protection but do not automatically resolve questions concerning the identification of Indigenous communities, boundaries of customary territories, evidentiary standards, institutional authority, and conflicts between customary claims and concessions. Pelupessy (2017) argues that Papua's special-autonomy framework provides substantial normative recognition of Indigenous land rights, yet implementation remains ambivalent. The result is a recurring gap between legal promises and the institutional capacity required to make those promises effective.

Merauke Regency provides a particularly important setting for investigating this gap because its territory has experienced substantial development pressures involving plantations, food-estate initiatives, infrastructure, conservation, and other land-based economic activities. Previous research specifically concerning Merauke has demonstrated that customary land release can generate uncertainty because customary boundaries and overlapping claims may remain inadequately clarified before investment activities proceed (Azis 2018). The problem is therefore not simply that Indigenous communities lack legal rights. Rather, their rights may become difficult to exercise when the administrative system requires forms of documentation, recognition, territorial mapping, and institutional representation that do not correspond neatly with customary systems of landholding. This creates what may be described as a condition of legal invisibility: communities formally acknowledged by law may nevertheless remain institutionally difficult to recognize when they attempt to defend concrete territorial claims.

The concept of access to justice provides a broader framework for understanding this problem. Access to justice traditionally concerns the ability of individuals to enter legal institutions and obtain effective remedies, but contemporary scholarship recognizes that justice requires more than formal access to courts (Cappelletti and Garth 1978; Rhode 2004). Individuals must possess sufficient information to understand their rights, practical capacity to participate in procedures, access to legal assistance, and realistic opportunities to secure remedies. These dimensions become particularly significant for Indigenous communities confronting corporations or government institutions because the parties may possess dramatically unequal resources. Galanter (1974) demonstrates that differences in legal experience, resources, and institutional familiarity can produce systematically unequal outcomes. Consequently, a formally neutral legal system may produce substantively unequal results when one party can mobilize lawyers, technical experts, documents, and political relationships while the other struggles to establish the legal identity of its community and territory.

Access to justice in Indigenous land conflicts must therefore be understood as both procedural and substantive. Procedural access concerns whether communities can enter complaint mechanisms, obtain representation, participate in hearings, and challenge administrative decisions. Substantive access concerns whether those processes can actually protect livelihoods, cultural identity, territorial integrity, and collective rights. Indigenous rights scholarship has repeatedly shown that legal recognition can become conditional upon state approval, resulting in a paradox in which communities must rely upon the same institutions that may be implicated in contested land governance (Ribot and Peluso 2003; Benda-Beckmann, Benda-Beckmann, and Wiber 2006). In Indonesia, this dynamic is especially visible in the recognition of *masyarakat hukum adat*, where formal recognition may require local political and administrative processes. The effectiveness of legal protection consequently depends on institutional relationships as much as statutory language.

The problem becomes more complex when customary law and state law operate simultaneously. Legal pluralism recognizes that multiple normative orders may regulate the same social space (Griffiths 1986; Merry 1988). Indigenous communities may understand territory through clan histories, customary boundaries, ancestral relationships, and collective responsibilities, while government agencies may assess the same territory through maps, permits, certificates, concessions, and administrative classifications. Neither system necessarily operates in complete isolation. Rather, actors strategically move between them, using customary narratives, statutory provisions, administrative procedures, political advocacy, and litigation depending upon the circumstances of a dispute. Research on Indonesian agrarian conflicts demonstrates that *adat* claims can provide important political and legal resources, but their effectiveness depends heavily on mobilization capacity and the political environment in which claims are advanced (Dhiaulhaq and McCarthy 2020).

Merauke also illustrates the broader relationship between customary land and investment. Research on customary land release in the regency has found that unclear territorial boundaries and overlapping claims can create uncertainty for both Indigenous communities and investors (Azis 2018). This is significant because legal uncertainty affects more than investment security. It can undermine community livelihoods when land is transferred or allocated without adequate recognition of the customary interests attached to it. Similar Indonesian cases demonstrate that unclear forest boundaries, overlapping administrative jurisdictions, and conflicting legal classifications can intensify tenure insecurity and prolong conflict (Riggs et al. 2016). Such disputes are rarely resolved simply by identifying a single statutory provision. They require coordination among government institutions, recognition of local knowledge, appropriate legal representation, and procedures capable of addressing both formal and customary dimensions of land rights.

International human-rights standards reinforce these concerns. The United Nations Declaration on the Rights of Indigenous Peoples recognizes Indigenous

peoples' rights to lands, territories, and resources traditionally owned, occupied, or otherwise used, as well as rights to participate in decisions affecting them (United Nations 2007). The principle of free, prior, and informed consent has consequently become an important reference point in evaluating development activities affecting Indigenous territories. Although the domestic implementation of such principles remains contested, they provide a normative framework for evaluating whether participation is genuinely meaningful. Participation should not be reduced to informing communities after decisions have effectively been made. Rather, affected communities should possess meaningful opportunities to influence decisions and seek remedies. This approach is particularly relevant in agrarian conflicts because decisions concerning land can permanently affect livelihoods and cultural continuity.

The present study examines access to justice for Indigenous communities involved in agrarian conflicts in Merauke Regency. It asks three principal questions. First, what structural, administrative, economic, and informational barriers restrict Indigenous communities' access to justice? Second, how do Indigenous communities navigate formal and customary legal institutions when defending territorial claims? Third, what institutional reforms are necessary to transform formal legal recognition into effective protection? The study argues that Indigenous communities become "invisible to the law" not because Indonesian law entirely ignores their existence, but because recognition frequently depends upon institutional procedures that communities may lack the resources, documentation, or political access to navigate. Effective justice therefore requires a shift from formal recognition toward substantive accessibility, legal empowerment, territorial recognition, meaningful participation, and effective remedies.

## **Theoretical Framework**

### **1. Access to Justice**

Access to justice is used in this study as a multidimensional concept encompassing legal knowledge, institutional accessibility, representation, participation, and effective remedies. Cappelletti and Garth (1978) describe access to justice as a central objective of legal systems because rights have limited meaning when individuals cannot effectively enforce them. Rhode (2004) similarly emphasizes that barriers to justice can be financial, institutional, geographical, informational, and social. These barriers often overlap. An Indigenous community may know that it possesses customary rights but lack the documentation required by administrative procedures. It may reach a government office but lack legal representation capable of translating customary claims into statutory arguments. It may also possess documentary evidence but lack the financial resources necessary to sustain litigation. Access to justice must therefore be evaluated across the entire pathway from recognition of a problem to the achievement of an effective remedy.

The distribution of legal resources is especially important in conflicts between communities and corporations or government institutions. Galanter's (1974)

distinction between repeat players and one-shotters remains useful because corporations and state institutions may possess greater familiarity with legal procedures than rural communities encountering formal litigation for the first time. Repeat players can accumulate expertise, establish institutional relationships, and develop strategies across multiple disputes. Indigenous communities may instead have to mobilize resources for each individual conflict. This imbalance does not necessarily mean that courts are inherently biased, but it demonstrates why formal equality of procedure may produce unequal practical opportunities. Legal aid, therefore, should be regarded not merely as assistance after a dispute reaches court but as an empowerment mechanism capable of helping communities understand documents, negotiate agreements, participate in administrative procedures, and formulate collective legal strategies.

## 2. Legal Pluralism and Indigenous Rights

Legal pluralism provides a conceptual basis for examining how state law interacts with customary law in agrarian conflicts. Griffiths (1986) challenges the assumption that law necessarily exists as a single coherent system monopolized by the state. Merry (1988) similarly explains that legal pluralism is particularly relevant where state law interacts with customary, religious, or community-based norms. In Indigenous territories, land may be regulated simultaneously by customary rules concerning clan authority, inheritance, boundaries, and resource use and by statutory rules concerning land registration, forestry, spatial planning, and investment. The resulting legal environment is not simply a conflict between “customary law” and “state law.” It is an arena in which actors interpret, combine, contest, and strategically deploy different normative systems.

The Indonesian experience demonstrates the practical importance of this perspective. Bedner and Arizona (2019) argue that *adat* has been repeatedly invoked as a means of resisting dispossession, yet its capacity to protect communities is constrained by the conditions through which the state recognizes customary rights. Dhiaulhaq and McCarthy (2020) likewise demonstrate that different legal and political framings can generate different opportunities for mobilization in agrarian conflicts. These studies indicate that legal recognition is not a neutral process. Recognition can provide communities with legal resources, but the institutional requirements attached to recognition may simultaneously exclude communities that lack political connections or administrative capacity.

## 3. Legal Empowerment

Legal empowerment shifts attention from the ability of professionals and institutions to apply law toward the ability of ordinary people to understand and use law. Golub (2003) argues that disadvantaged communities can strengthen their position by developing practical legal capabilities and engaging with institutions on their own terms. This perspective is especially relevant for Indigenous communities because legal disputes frequently require the translation of customary knowledge

into categories recognized by government agencies and courts. Legal empowerment does not require replacing customary institutions with lawyers or state officials. Instead, it can create bridges between customary institutions and formal legal structures. Community paralegals, legal-aid organizations, mapping initiatives, and rights education can help communities document claims, understand procedures, and participate more effectively in negotiations.

Legal empowerment is particularly important where formal recognition depends on administrative procedures. Afiff and Rachman (2019) demonstrate that Indigenous land claims in Indonesia often involve processes of documentation and political mobilization that extend beyond merely proving historical occupation. Communities must navigate relationships with local authorities and other actors who influence recognition. The consequence is that legal capacity becomes a form of political capacity. Communities with greater organizational resources may be better positioned to obtain recognition, while marginalized communities may remain excluded. Legal assistance should therefore begin before litigation and include institutional advocacy, documentation, negotiation, and monitoring.

#### **4. Legal and Institutional Framework**

The legal position of Indigenous communities in Indonesia begins with constitutional recognition. Article 18B(2) of the 1945 Constitution recognizes traditional community units and their traditional rights insofar as they remain alive, correspond with societal development, and comply with the principles of the Unitary State of the Republic of Indonesia. Article 28I(3) additionally recognizes cultural identity and traditional community rights. These provisions provide an important constitutional foundation but also contain qualifications that have generated debate concerning the scope of state recognition. The Basic Agrarian Law, Law Number 5 of 1960, recognizes customary rights while placing their exercise within the national agrarian framework. This combination creates a dual structure: customary rights are acknowledged, yet their practical validity is often mediated through state institutions and statutory requirements.

For Papua, the legal framework is supplemented by special-autonomy legislation. Law Number 21 of 2001 concerning Special Autonomy for Papua recognized the importance of Indigenous peoples and their customary rights within Papua's governance framework. Although the special-autonomy framework has undergone substantial amendment, the basic question remains whether constitutional and special-autonomy recognition can be translated into enforceable territorial rights. Pelupessy (2017) argues that Papua's legal framework contains substantial normative recognition but remains ambivalent in implementation. This observation is important because recognition without mechanisms for identifying communities, mapping territories, recording rights, and resolving overlapping claims may provide limited practical protection. In this sense, legal protection is not complete when a statute simply declares a right; it must also establish institutional pathways through which the right can be claimed and defended.

The Constitutional Court's decision concerning customary forests has also influenced the legal discourse surrounding Indigenous land. Constitutional Court Decision Number 35/PUU-X/2012 rejected the classification of customary forests as part of state forests and recognized the constitutional significance of customary communities' relationship with forests. The decision represented an important shift in Indonesian forest governance and opened greater legal space for Indigenous claims. Nevertheless, scholars have emphasized that recognition remains dependent on implementation at the local level (Arizona, Afiff, and Sihombing 2015; Bedner and Arizona 2019). The formal legal distinction between state and customary forests therefore does not automatically resolve territorial conflicts. Communities still need institutional recognition, spatial documentation, and administrative action. The gap between judicial recognition and administrative implementation remains one of the central challenges in transforming Indigenous rights from legal principles into effective protection.

Land administration also plays a critical role. Government Regulation Number 24 of 1997 concerning Land Registration establishes procedures for registering land rights and maintaining juridical and physical land data. Registration can strengthen legal certainty, but customary territorial rights do not always fit easily into individualized models of land administration. Indigenous territories may involve collective ownership, layered rights, seasonal resource use, and clan-based authority. The challenge is therefore to develop administrative approaches capable of recording collective rights without reducing them to inappropriate individual categories. Robinson (2019) demonstrates that formalization can offer opportunities for Indigenous communities but may also reproduce state control when recognition depends upon bureaucratic definitions and procedures.

The legal framework governing development and land acquisition further complicates Indigenous claims. Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest establishes procedures for acquiring land for specified public projects. Although the statute provides compensation and procedural safeguards, its application to customary territories raises questions concerning who possesses legitimate authority to consent to land acquisition and how collective customary rights should be valued. Mebri (2017) observes that land procurement for public purposes can generate conflicts when government interests intersect with the cultural and communal significance of Papuan Indigenous land. Effective access to justice therefore requires procedures that recognize Indigenous communities as collective rights holders rather than treating them solely as individual land users.

International law provides additional standards. The United Nations Declaration on the Rights of Indigenous Peoples recognizes Indigenous peoples' rights to traditional lands and resources and affirms their right to participate in decisions affecting them (United Nations 2007). International Labour Organization Convention No. 169 provides a more detailed framework for Indigenous participation, consultation, and land rights, although Indonesia has not ratified the

convention. The World Bank's Environmental and Social Standard 7 and IFC Performance Standard 7 likewise demonstrate the growing international expectation that projects affecting Indigenous peoples should address cultural, territorial, and participation concerns. These standards do not automatically become Indonesian domestic law, but they provide useful normative benchmarks for evaluating whether development processes respect Indigenous rights and meaningful participation.

## Methods

This study adopts a socio-legal research design combining normative legal analysis and qualitative empirical inquiry. The normative component examines constitutional provisions, legislation, administrative regulations, judicial decisions, and international instruments relevant to Indigenous land rights and access to justice. Particular attention is given to Article 18B(2) and Article 28I(3) of the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Regulations, Law Number 21 of 2001 concerning Special Autonomy for Papua and its amendments, Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Government Regulation Number 24 of 1997 concerning Land Registration, and Constitutional Court Decision Number 35/PUU-X/2012. The empirical component focuses on the experiences of Indigenous community members, legal advocates, local-government representatives, customary leaders, and other stakeholders involved in or familiar with agrarian disputes in Merauke Regency. The analytical objective is to identify how formal legal frameworks operate in everyday institutional settings.

Empirical materials are analyzed thematically through categories derived from the access-to-justice literature. These categories include legal awareness, access to legal assistance, documentary requirements, territorial recognition, institutional accessibility, participation, bargaining power, dispute resolution, administrative procedures, and effective remedies. Triangulation is applied by comparing information from different participant groups with relevant legal and documentary materials. The analysis distinguishes between formal recognition and practical enjoyment of rights so that a statute's existence is not automatically treated as evidence of effective protection. Because the information supplied for this manuscript does not specify the final number of interviewees, exact fieldwork dates, or the names of particular villages and customary groups included in the empirical research, those details should be inserted from the authors' verified field records before journal submission. This approach avoids presenting unverified fieldwork details as established empirical facts.

## Results and Discussion

### 1. Structural Barriers: When Recognition Does Not Become Accessibility

The first major finding concerns the difference between formal legal recognition and practical accessibility. Indigenous communities may possess

constitutional and statutory rights, yet exercising those rights can require navigating administrative structures that demand documentary evidence, formal identification of customary communities, territorial maps, and institutional recognition. These requirements can create barriers for communities whose customary systems historically relied upon oral transmission, collective authority, natural boundaries, and ancestral narratives rather than standardized documents. The problem is therefore not simply a lack of law but the institutional translation of customary rights into administrative categories. Bedner and Arizona (2019) describe this problem as a central limitation of *adat*-based land protection, while Butt (2014) emphasizes the importance of judicial developments in expanding recognition without eliminating the implementation gap. In practical terms, communities can become “invisible” when the state recognizes Indigenous rights abstractly but lacks accessible mechanisms for determining precisely who holds those rights and where the relevant territory is located.

Territorial ambiguity can intensify these problems. Customary territories may overlap with administrative boundaries, forest classifications, concessions, or development zones. Research from other Indonesian regions demonstrates that unclear forest boundaries and conflicting institutional classifications can create prolonged tenure insecurity (Riggs et al. 2016). In Merauke, the problem is particularly significant because customary land release has historically involved competing territorial claims and boundaries that may rely upon natural features rather than surveyed coordinates (Azis 2018). When state agencies rely on maps and formal documents while communities rely upon customary territorial knowledge, each side may possess internally coherent understandings of land without sharing the same legal vocabulary. Access to justice therefore requires institutional mechanisms capable of translating between these systems rather than requiring Indigenous communities to abandon customary knowledge before their claims can be heard.

Administrative complexity also has a distributive dimension. A community with financial resources, educated representatives, established relationships with officials, and access to legal professionals may navigate recognition procedures more effectively than a geographically isolated community. Benda-Beckmann, Benda-Beckmann, and Wiber (2006) explain that legal pluralism often operates through relationships between normative orders and institutional actors rather than through written law alone. In Indigenous land conflicts, this means that the capacity to build institutional relationships may influence whether a claim receives recognition. The consequence is an unequal geography of legal visibility. Communities that can mobilize lawyers, civil-society organizations, researchers, or sympathetic officials may become more visible within administrative processes, while communities lacking such connections remain marginalized. The principle of equal protection therefore requires more than identical procedures; it requires attention to unequal capacities to use those procedures.

## **2. Legal Aid and the Empowerment of Indigenous Communities**

The second major finding concerns the central role of legal assistance. In agrarian conflicts, legal representation is often necessary because disputes involve multiple areas of law simultaneously, including land law, administrative law, environmental regulation, investment law, forestry, and human rights. Indigenous communities may understand their customary claims deeply but face difficulties translating those claims into the formal language used by courts and administrative institutions. Legal advocates can perform a bridging function by helping communities document claims, interpret permits, examine agreements, challenge administrative decisions, and negotiate with corporations or government agencies. Golub (2003) conceptualizes this broader function as legal empowerment: law becomes a resource that communities can actively use rather than an external system imposed upon them. Legal aid should therefore be understood as a mechanism for strengthening community agency rather than simply representing individuals in court.

The importance of legal assistance becomes particularly apparent when communities negotiate with economically powerful actors. Agrarian conflicts can involve corporations with specialized legal departments, consultants, surveyors, and substantial financial resources. Indigenous communities may confront these institutions with limited funds and incomplete documentation. Galanter's (1974) analysis of unequal legal resources helps explain why nominally equal legal procedures may produce unequal outcomes. Dhiaulhaq and McCarthy (2020) similarly demonstrate that the capacity to mobilize broader political and legal support can affect the outcomes of Indigenous and agrarian claims in Indonesia. Community-based legal aid can reduce these asymmetries by providing continuous assistance before, during, and after formal proceedings. Its function should include legal education, evidence preservation, negotiation support, and monitoring of agreements rather than being limited to courtroom advocacy.

Community paralegals can be particularly valuable in geographically dispersed areas. A paralegal model allows members of Indigenous communities to develop practical knowledge concerning land documentation, administrative procedures, complaint mechanisms, and legal rights. Such actors can serve as intermediaries between communities and professional lawyers, ensuring that legal assistance is culturally and geographically accessible. Legal empowerment literature suggests that local participation is essential because external legal professionals may not fully understand community structures or customary authority (Golub 2003). In the Papuan context, this is particularly relevant because land claims may involve clan structures and customary institutions that cannot be reduced to individual claimants. Strengthening community-based legal capacity can therefore improve not only access to formal institutions but also the quality of communication between Indigenous communities and the state.

### 3. Customary Law, Legal Pluralism, and Meaningful Participation

The third major finding concerns the role of customary law. Indigenous communities frequently possess established mechanisms for regulating land, resolving disagreements, and determining legitimate authority. These mechanisms may involve customary leaders, clan elders, community deliberation, historical narratives, and forms of compensation or reconciliation. The existence of such institutions demonstrates that Indigenous communities are not legally passive populations waiting for the state to provide justice. Rather, they possess normative systems that continue to shape social relations. Legal pluralism provides an appropriate framework for recognizing this reality (Griffiths 1986; Merry 1988). However, customary law should not be romanticized. Customary institutions may themselves contain internal inequalities, and not every practice necessarily complies with contemporary human-rights standards. Recognition therefore requires dialogue between customary norms and constitutional principles.

The interaction between customary and state law is particularly important in territorial disputes. A community may establish a claim through ancestral occupation and customary authority, while the state evaluates the same claim through formal documentation and administrative recognition. Bedner and Arizona (2019) argue that the contemporary use of *adat* in land disputes can provide political and legal resources but may also become constrained by bureaucratic definitions. Robinson (2019) similarly shows that formalization may protect customary rights in some circumstances while simultaneously reinforcing state authority over determining which communities qualify for recognition. These observations suggest that the legal system should not simply ask whether a community is “recognized” as Indigenous. It should also ask whether recognition provides meaningful control over territory, participation in decisions, and access to remedies when rights are violated.

Meaningful participation is therefore an essential dimension of justice. Participation cannot be satisfied merely by inviting community representatives to meetings after fundamental decisions have already been made. It requires access to relevant information, adequate time to deliberate internally, representation consistent with customary structures, and genuine opportunities to influence outcomes. The United Nations Declaration on the Rights of Indigenous Peoples establishes important international standards concerning participation and consultation (United Nations 2007). Although international instruments must be situated within Indonesia's domestic legal framework, they reinforce the principle that development affecting Indigenous territories should not treat communities as passive recipients of government decisions. Meaningful participation can reduce conflict because it enables communities to identify concerns before decisions become irreversible.

#### 4. Effective Remedies and Institutional Reform

The fourth major finding concerns the availability and effectiveness of remedies. A right has limited practical value if violations cannot be challenged through accessible and effective mechanisms. Indigenous communities may encounter several possible institutions, including village government, customary institutions, local government, land offices, administrative courts, civil courts, human-rights institutions, and legal-aid organizations. However, institutional plurality can itself become a barrier when communities do not know which institution has authority over a particular issue. The problem is particularly serious when a dispute combines customary land claims with administrative permits or government development decisions. A community may therefore be required to pursue several procedures simultaneously. Effective access to justice requires clearer referral mechanisms, institutional coordination, and legal assistance capable of navigating multiple jurisdictions.

The experience of Indonesian agrarian conflicts demonstrates that negotiation without adequate institutional safeguards may produce incomplete settlements. Dhiaulhaq and McCarthy (2020) show that agreements reached in land conflicts can remain constrained by broader political and institutional structures. Lucas and Warren (2013) similarly demonstrate that legal recognition does not automatically eliminate the political and economic pressures underlying land conflicts. In Papua, Pelupessy (2017) identifies continuing tensions between normative recognition and actual implementation of Indigenous land rights. These findings suggest that effective remedies must address both the immediate dispute and the institutional conditions that produced it. Compensation alone, for example, may not resolve a conflict if the underlying question concerns territorial identity, collective authority, or continuing access to natural resources.

Institutional reform should consequently prioritize recognition, documentation, legal aid, participation, and remedy as interconnected components. Customary territories should be mapped through participatory processes involving Indigenous communities, customary authorities, technical agencies, and independent experts. Recognition procedures should be transparent and subject to review when communities believe their claims have been incorrectly rejected. Legal-aid services should be available before disputes escalate to litigation. Administrative decisions affecting customary territory should provide accessible complaint and appeal mechanisms. These reforms would address the central problem identified by Bedner and Arizona (2019): the limited practical consequences of formal recognition. They would also respond to the broader finding that Indigenous rights are frequently realized through complex interactions between communities and state actors rather than through statutes alone.

#### 5. Broader Discussion: From Legal Recognition to Legal Visibility

The concept of “legal invisibility” captures a central paradox in Indigenous land governance. Indigenous communities can be visible within constitutional

discourse yet invisible within specific administrative procedures. They may be recognized as culturally distinct populations while their territories remain insufficiently mapped or formally recorded. They may possess customary rights but lack the documentary evidence demanded by administrative institutions. They may be invited to participate in consultations but lack meaningful influence over final decisions. This distinction resembles the broader argument of Li (2000) that recognition of Indigenous identity can become conditional upon state-defined criteria. It also corresponds with the findings of Bedner and Arizona (2019), who argue that *adat* recognition has generated limited concrete protection when institutional implementation remains weak. The challenge is therefore to transform Indigenous peoples from objects of recognition into active rights holders capable of exercising, defending, and negotiating their rights.

The situation also demonstrates why access to justice should not be reduced to court access. A community that reaches court only after its territory has been allocated, cleared, or transformed may already have experienced irreversible harm. Preventive justice is therefore essential. Legal information, participatory mapping, consultation, documentation, and legal assistance can intervene before conflict escalates. This perspective is consistent with the broader access-to-justice literature, which emphasizes the importance of early intervention and alternative mechanisms alongside adjudication (Cappelletti and Garth 1978; Rhode 2004). For Indigenous communities, preventive justice also requires recognition of customary institutions as legitimate participants in land governance. Such recognition should not create parallel systems operating without accountability, but it can enable state institutions to engage with existing community structures more effectively.

The Merauke context further illustrates the relationship between development and justice. Large-scale development projects may be presented through national objectives such as food security, infrastructure, investment, or economic growth. Yet the distribution of development benefits and burdens may be unequal. If Indigenous communities lose access to land while receiving limited participation or compensation, development can intensify rather than reduce inequality. Research concerning Indonesia's forest and plantation conflicts demonstrates that legal and political structures can facilitate dispossession even where communities possess formally recognizable claims (Dhiaulhaq and McCarthy 2020; McCarthy and Robinson 2016). A rights-based development framework therefore requires an assessment of who bears the costs of land transformation, who receives benefits, and whether affected communities possess meaningful opportunities to influence decisions.

The principle of effective participation should also be connected to territorial self-determination within the limits of Indonesian constitutional law. Indigenous participation does not necessarily require complete separation from state institutions. Rather, it requires institutional arrangements through which communities can influence decisions concerning their customary territories. This may involve customary councils, village governments, district authorities, land

agencies, and independent legal organizations working through coordinated procedures. Pelupessy (2017) emphasizes the importance of strengthening recognition through appropriate regulatory and institutional mechanisms in Papua. Similarly, research on customary land institutionalization in West Papua suggests that collaboration between government and Indigenous communities is essential for translating customary rights into practical protection (Yunus and Ibrahim 2025).

### **Policy Implications**

Several policy implications emerge from this study. First, the recognition of Indigenous communities and customary territories should be made more accessible, transparent, and participatory. Procedures should not rely exclusively upon bureaucratic documentation that communities may be unable to produce. Oral histories, customary maps, community testimony, genealogical evidence, and other forms of locally meaningful evidence should be appropriately considered alongside administrative records. Second, participatory mapping should be strengthened because territorial uncertainty is a recurring source of conflict. Mapping should not merely be conducted by government agencies but should involve customary authorities and affected communities from the beginning. Third, legal-aid programs should prioritize Indigenous communities facing land-related development projects and should provide assistance before formal litigation begins. These reforms would reduce the gap between formal legal recognition and practical legal visibility.

Fourth, government institutions should establish clearer coordination mechanisms for agrarian conflicts involving customary territories. Land offices, forestry agencies, local governments, development authorities, and customary institutions may otherwise apply different classifications and procedures to the same territory. Fifth, complaint mechanisms should be geographically and financially accessible. Communities should be able to challenge administrative decisions, land allocations, or development processes without facing disproportionate costs. Sixth, participation requirements should be strengthened so that consultation occurs before major decisions are finalized. International standards concerning Indigenous participation provide useful benchmarks even when domestic law remains the principal source of legal obligation (United Nations 2007). Finally, legal protection should be evaluated through outcomes rather than regulations alone. The relevant question is not simply whether Indigenous rights appear in legislation but whether communities can actually exercise those rights and obtain effective remedies.

### **Limitations**

This study has several limitations. First, its socio-legal and qualitative orientation emphasizes institutional processes and community experiences rather than statistical generalization across all Indigenous communities in Papua or Indonesia. Merauke contains diverse Indigenous groups, customary institutions, territorial arrangements, and experiences with development, meaning that findings

from one locality cannot automatically represent the entire regency. Second, agrarian conflicts differ significantly depending upon whether they involve plantations, food estates, infrastructure, conservation, forestry, or individual land claims. Third, access to justice is influenced by political circumstances and institutional relationships that may change over time. Finally, the empirical information supplied for the manuscript does not specify the final number of informants, exact fieldwork locations, interview dates, or detailed case profiles. Those elements should therefore be completed from the authors' verified field notes before submission. Future research should conduct comparative studies among different customary territories in Merauke and examine how recognition, legal aid, participatory mapping, and administrative remedies affect long-term conflict outcomes.

## Conclusion

Indigenous communities involved in agrarian conflicts in Merauke face a multidimensional access-to-justice problem. Their vulnerability cannot be explained simply by the absence of legal recognition because Indonesian constitutional and statutory frameworks already provide important foundations for Indigenous rights. The deeper problem concerns the distance between recognition and realization. Communities may encounter administrative requirements, unclear territorial boundaries, limited documentation, insufficient legal assistance, unequal bargaining power, and fragmented institutional authority. These barriers can make communities legally invisible at precisely the moment when they need the law to protect their territory and livelihoods. Access to justice must therefore be understood as a continuum extending from legal awareness and community organization to representation, participation, dispute resolution, and effective remedies. Legal protection becomes meaningful only when Indigenous communities possess practical capacity to use the legal system.

A responsive framework should move from declaratory recognition toward substantive legal empowerment. This requires accessible legal aid, community-based paralegal programs, participatory territorial mapping, transparent recognition procedures, meaningful participation in development decisions, and coordinated institutional mechanisms for resolving agrarian conflicts. Customary law should be recognized as an important normative resource while remaining subject to constitutional principles and fundamental human rights. State institutions should not require Indigenous communities to abandon their customary identity before their claims can be heard. Instead, legal institutions should develop mechanisms capable of translating customary knowledge and territorial relationships into legally meaningful forms. In Merauke, strengthening access to justice therefore means making the law visible and usable from the perspective of the communities whose territories are at stake. Such an approach can transform Indigenous rights from formal promises into practical guarantees of dignity, participation, livelihood, and territorial security.

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