

Regulation of the Utilization of Customary Land through HPL as an Instrument for Strengthening the Position of Indigenous Communities

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Abstract. *The Right of Management (Hak Manajemen/HPL) constitutes a strategic issue within the Indonesian agrarian legal system, as it directly relates to the recognition and protection of indigenous peoples' rights. Regulatory developments reveal persistent tension between state authority and the collective rights of indigenous communities in controlling and using customary land. This study aims to analyze the normative construction of HPL over customary land and to formulate a reconstructed regulatory model positioning HPL as an instrument to strengthen the legal standing of indigenous peoples. The research employs normative legal methodology, using statutory, conceptual, and analytical approaches, supported by primary and secondary legal materials and examined through prescriptive legal analysis. The findings demonstrate that the current construction of HPL still places the state in a dominant position and has not fully affirmed indigenous communities as legal subjects with full legal capacity. Normative ambiguities remain regarding the limits of authority, mechanisms for recognizing customary institutions, and the equitable distribution of economic benefits. Regulatory reconstruction is therefore required through the integration of distributive justice principles, legal pluralism, mandatory indigenous consent, and an equal, transparent tripartite partnership model. HPL must function as a substantive empowerment instrument accompanied by sustainable social and ecological safeguards within a welfare state framework.*

Keywords: *Customary Land; Distributive Justice; Indigenous People; Right of Management.*

1. INTRODUCTION

Land in the Indonesian legal system cannot be reduced merely to a material object; rather, it constitutes a constitutional foundation that binds the social, economic, political, and spiritual dimensions of the nation. The provisions of Article 33 paragraph (3) of the Constitution of the Republic of Indonesia of 1945 affirm that land, water, and the natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people. Consequently, the state's right of control (Hak Menguasai Negara/HMN) must be understood as a public function rather than as a form of private state ownership. The doctrine of national agrarian law positions the state as

a regulator, an arranger of allocation, and a guarantor of equitable distribution, in line with the principles of social justice and utility. (Anugrahyu, 2025) This concept is further reinforced by the theory of the welfare state, which requires state intervention to achieve a balance of interests between development and the protection of people's rights. Within the context of indigenous communities, land is not merely a production asset but a living space (Lebensraum) integrated with communal identity, kinship systems, and intergenerational continuity, thereby possessing socio-spiritual values inseparable from its collective existence. (Grobmann, 2024)

The existence of customary land as a communal right reflects the recognition of legal pluralism within the national agrarian system. Eugen Ehrlich's theory of living law emphasizes that the law existing within a community possesses social legitimacy that cannot be ignored by state law. Customary land represents a concrete manifestation of living customary law that has been practiced for generations, and therefore its existence must be interpreted within the framework of the principles of recognition and respect for the diversity of legal systems. (Mamonto, 2023) Ignoring the socio-spiritual dimensions of customary land risks reducing the rights of indigenous communities to merely administrative instruments. Therefore, the constitutional foundation of land requires harmonization between state law and customary law within the framework of substantive justice.

Recognition of indigenous peoples and their customary rights is affirmed in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which mandates the state to recognize and respect them as long as they remain alive and in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia. This norm is constitutional in nature and binds all legislative regulators. Further provisions are stipulated in Article 3 of the Basic Agrarian Law (UUPA), which acknowledges the implementation of customary rights as long as they still exist and do not conflict with national interests and higher legislative regulations. However, the construction of this norm contains administrative conditions that open space for dominant state interpretation. This principle of conditional recognition demonstrates the implicit subordination of customary rights to national interests, which are often interpreted in a centralistic manner.

From the perspective of legal protection theory, normative recognition must be accompanied by implementation mechanisms that guarantee certainty and effective protection. Satjipto Rahardjo emphasized that legislation should not stop at the level of text but must function as a means of liberation and protection for vulnerable groups. In reality, the recognition of customary rights often remains at a declarative level without being accompanied by instruments to strengthen the capacity of customary institutions. When confronted with large-scale investment interests, indigenous communities tend to have weak bargaining positions due to unclear procedures and minimal state support. This situation indicates that the transformation from normative recognition to substantive protection has not been fully realized.

The development of agrarian policy has undergone significant changes following the enactment of Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 18 of 2021. Government Regulation 18/2021, for the first time, opens the possibility of Land Management Rights (Hak Pengelolaan Tanah/HPL) originating from customary land and granting them to indigenous communities. This policy was later strengthened through the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 14 of 2024, which regulates the procedures for its determination and utilization. Normatively, this regulation may be interpreted as an effort to strengthen the legal position of indigenous communities as legal subjects holding HPL. From the perspective of recognition theory, the granting of HPL to indigenous communities has the potential to become a form of institutional recognition that enhances their legal capacity in relations with the state and investors. (Husna, 2025) However, the conceptual construction of HPL remains rooted in the state's right of control, thereby maintaining the relationship between the state and indigenous communities within a delegative framework. The principle of legal certainty requires clear boundaries of authority between HPL holders and the state authority as the grantor of such rights. Without clear formulation, HPL risks becoming merely a formal instrument that expands state control over customary land. Therefore, the dynamics of this policy must be critically analyzed to prevent it from merely shifting the form of control without altering the substance of power relations.

The empirical implementation of Land Management Rights (Hak Pengelolaan Tanah/HPL) on customary land has been carried out in several regions, including West Sumatra through an HPL certification scheme for villages. This fact demonstrates a concrete step by the state in providing administrative legal certainty for customary land. The certification of HPL theoretically provides formal legitimacy and broader access to land-use cooperation schemes. From the perspective of legality, this measure reflects the state's effort to regulate the legal relationship between customary land and the national land administration system. Such administrative legal certainty is essential to prevent overlapping claims and horizontal conflicts.

However, the reality in practice indicates the potential for a shift in control from indigenous communities to bureaucratic structures or investment partners. John Rawls's theory of distributive justice requires that every public policy provide the greatest benefit to the least advantaged. (Gilalo, 2025) If HPL benefits investors more than indigenous communities as communal owners, the constitutional objective of public prosperity becomes distorted. The lack of meaningful participation and the absence of participatory oversight mechanisms may potentially create new and more formal forms of marginalization. Therefore, administrative recognition through HPL is not necessarily identical with the substantive strengthening of the position of indigenous communities. The regulation of HPL for customary land under Government Regulation No. 18 of 2021 and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 14 of 2024 still leaves significant ambiguity within the normative framework.

The first ambiguity lies in the unclear boundaries of authority between the state and indigenous communities in determining land allocation and land-use cooperation. The second ambiguity relates to the absence of partnership mechanisms based on the principle of Free, Prior, and Informed Consent (FPIC), an international standard for protecting the rights of indigenous peoples. The third ambiguity is reflected in the absence of a clear model for the distribution of economic benefits and the duration of fair cooperation agreements. The fourth ambiguity concerns the absence of participatory oversight mechanisms that ensure ecological and social sustainability.

From the perspective of legal theory, unclear norms open space for multiple interpretations, which may potentially generate legal conflicts. (Malik, 2024) The principle of *lex certa* requires that legal norms be formulated clearly and unambiguously in order to provide legal certainty. (Sodikin, 2025) This ambiguity also has the potential to create friction between state law and customary law within the framework of legal pluralism. Without normative clarification, HPL (Land Use Permit) over customary land may become an arena of competing interests that disadvantages indigenous communities. Therefore, regulatory reform must be directed toward clarifying the boundaries of authority, partnership mechanisms, and fair distribution of benefits.

The urgent need at present is to formulate a model for regulating the use of customary land through HPL (Hooded Land Permit) that is oriented toward justice and sustainability. Indigenous institutional models must be positioned as the primary subjects holding and managing HPL, rather than merely administrative symbols. A tripartite partnership model between indigenous communities, the state, and investors must be designed based on the principles of stakeholder balance and good faith. A participatory oversight model must also be institutionalized to ensure socio-ecological protection and to prevent excessive exploitation. The philosophy of sustainable development, which stresses striking a balance between social, economic, and environmental concerns, is in line with this strategy.

Clear and consistent regulation based on the principles of distributive justice will transform HPL into an instrument of empowerment rather than merely a legalization of ownership. The principles of utility and intergenerational sustainability must underpin every agreement concerning the use of customary land. (Satriawan, 2025) The state has an obligation to ensure that every agrarian policy does not reduce the collective rights of indigenous communities into mere investment interests. In this way, HPL can function as an instrument to strengthen the position of indigenous communities within the national legal system.

Based on these normative developments and empirical dynamics, the regulation of customary land use through HPL stands at a transitional point between administrative recognition and substantive protection. Formal recognition through HPL certification has indeed been granted; however, the lack of clarity in technical and institutional regulations potentially weakens the position of indigenous communities in their power

relations with the state and investors. The fundamental question lies in whether HPL is truly designed as a means of empowering indigenous communities as mandated by the Constitution, or whether it has become merely a formal mechanism for the transfer of control within the framework of national development. A critical analysis of the normative construction, legal principles, and implementation practices therefore becomes both an academic and practical urgency. Ultimately, this research aims to assess the extent to which HPL over customary land can function as an instrument to strengthen the position of indigenous communities within a pluralistic and equitable national agrarian system.

2. RESEARCH METHOD

This research constitutes a normative juridical study oriented toward the examination of legal rules and positive legal norms concerning the regulation of land use and management within the Indonesian legal system. Normative legal research, as explained by Bahder Johan Nasution, places law as a normative system studied through three layers of legal scholarship, namely legal dogmatics, legal theory, and legal philosophy, so that the analysis does not stop at the textual level but moves toward conceptual and reflective dimensions. (Nasution, 2017)

At the level of legal dogmatics, this study explains and systematizes statutory provisions related to land management, particularly those concerning land management rights and customary land, in order to identify consistency, gaps, or ambiguities within the norms. At the level of legal theory, the analysis is conducted analytically and interdisciplinarily to explain the structure of the legal system, the principles of agrarian law, and the construction of the juridical arguments underlying them, in line with the view of G.W. Paton that jurisprudence constitutes a method for understanding the nature of law in general. (Syawaludin and Arif Wibowo, 2023)

At the level of legal philosophy, this research reflects upon the values of justice, utility, and legal certainty as evaluative foundations for assessing existing regulations, thereby producing normative prescriptions regarding the ideal direction of legal development. The statutory approach, conceptual approach, legal policy approach, and case approach are among the methods used in this investigation. The statutory approach is conducted by systematically examining various relevant regulations in order to identify their ratio legis and philosophical foundations, as emphasized by Philipus M. Hadjon, who argues that normative analysis must trace the ontological and teleological bases of a legal norm. (Iskandar, 2025)

The conceptual approach is used to examine doctrines, theories, and legal principles developed in the literature in order to construct a coherent argumentative framework, since, according to legal theory, legal scholars discuss law through reflective concepts and meta-language. The legal policy approach is utilized to examine the direction of state policy in the formulation of regulations concerning land management, while

comparative and case approaches are applied to test the application of norms in practice and to identify best practices across various jurisdictions.

The analysis of legal materials is carried out through the stages of description, systematization, and explanation using an open-system analytical pattern. The study then draws argumentative conclusions through systematic interpretation and hermeneutic methods in order to produce prescriptive formulations based on the principles of justice.

3. RESULT AND DISCUSSION

3.1. The Normative Construction of Land Management Rights over Customary Land within the National Agrarian Legal System: A Dogmatic Analysis of the Basic Agrarian Law and Its Implementing Regulations

The elaboration of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia places the state's right of control as a construction of delegated public authority rather than a form of private ownership by the state. The phrase "controlled by the state" must be interpreted from the perspective of regulatory, administrative, managerial, and supervisory functions aimed at achieving the greatest prosperity for the people. An interpretation that places the state as an absolute owner contradicts the principles of a democratic constitutional state because it has the potential to eliminate the social dimension of land rights. The state's right of control constitutes a constitutional instrument to ensure that the allocation and utilization of agrarian resources are carried out in a fair, proportional, and non-discriminatory manner. The state stands as a public trustee holding the mandate of the people; therefore, every agrarian policy must be morally and legally accountable. If this authority transforms into administrative domination that marginalizes collective subjects such as indigenous peoples, a conceptual deviation from the constitutional design occurs.

The elaboration of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia also places the state's right of control as a construction of delegated public authority rather than as a form of private ownership by the state. The phrase "controlled by the state" must be interpreted from the perspective of regulatory, administrative, managerial, and supervisory functions aimed at achieving the greatest prosperity for the people. An interpretation that positions the state as an absolute owner contradicts the principles of a democratic constitutional state because it risks eliminating the social dimension of land rights. The state's right of control constitutes a constitutional instrument to ensure that the allocation and utilization of agrarian resources are carried out in a fair, proportional, and non-discriminatory manner. In this context, the state acts as a public trustee holding the mandate of the people, so that every agrarian policy must be morally and legally accountable. If this authority evolves into administrative domination that marginalizes collective subjects such as indigenous peoples, then a conceptual deviation from the constitutional design occurs.

The relationship between the state's right of control and the recognition of indigenous peoples in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia demonstrates a dialectic between state authority and the existence of communal rights within society. As long as they continue to exist and in line with societal advancement and the values of the Unitary State of the Republic of Indonesia, indigenous communities and their customary rights are expressly acknowledged and respected by the Constitution. This formulation reflects a model of conditional recognition that opens space for interpretation and potential limitations. On the one hand, the state has an obligation to provide protection for customary rights as part of collective identity and the constitutional rights of citizens. On the other hand, the condition "as long as they still exist" is often used as a legitimizing instrument to limit recognition administratively. This tension requires a legal construction capable of balancing the state's control function while respecting the communal autonomy of indigenous communities.

The principles of social justice, utility, and legal certainty function as evaluative parameters to assess whether the development of Land Management Rights (Hak Pengelolaan Tanah/HPL) is consistent with the constitutional mandate. Social justice requires that HPL regulations not merely create formal legality but also ensure the proportional distribution of benefits for indigenous communities as holders of customary land rights. The principle of utility requires that the granting of HPL over customary land improve collective welfare without diminishing communal identity. Meanwhile, legal certainty requires clear norms that are not open to multiple interpretations and that provide protection against potential covert expropriation of rights. When HPL is positioned merely as an instrument of land administration without strengthening the bargaining position of indigenous communities, these three principles are not fully realized. Therefore, a normative evaluation of HPL must be conducted integratively, with these three principles serving as the primary benchmarks.

Placing customary land within the framework of legal pluralism and the theory of living law emphasizes that national agrarian law does not exist in a vacuum but interacts with living customary legal systems practiced within society. Customary land is not merely an economic object but also possesses spiritual, social, and genealogical dimensions embedded within the structure of indigenous communities. The legal pluralism approach recognizes the existence of customary norms as an equally legitimate source within social practice. The theory of living law emphasizes that effective law is the law that lives within the collective consciousness of society, not merely the law written in statutory regulations. If HPL is implemented without considering the communal characteristics and customary values, customary land will be reduced to a mere administrative commodity. Consequently, formal regulations may potentially clash with social norms that have long governed land management within indigenous communities.

A review of Articles 2 and 3 of the Basic Agrarian Law (Undang-Undang Pokok

Agraria/UUPA) indicates that the state's right of control and the recognition of customary rights are placed within a single normative framework that is interrelated but not fully operational. Article 2 affirms the authority of the state to regulate the allocation, use, and provision of land, while Article 3 recognizes the implementation of customary rights insofar as they exist in reality and do not conflict with national interests. This formulation is subordinative in nature because customary rights are placed within the boundaries of national interests determined by the state. Such declarative recognition does not automatically provide technical instruments for their protection and utilization. The absence of detailed operational mechanisms leaves broad interpretative space for administrative officials. This situation opens the possibility of a gap between norms of recognition and their implementation in practice. The delegative nature of HPL within the structure of land rights indicates that it is not a land right in the classical sense but rather a derivative of the state's right of control granted to certain subjects to manage land. HPL grants authority to plan land allocation, utilize land, and grant derivative rights to third parties. In the context of state land, this construction is relatively clear because the source of authority originates from the state's right of control. However, when HPL is applied to customary land, a conceptual issue arises concerning the source of legitimacy of this authority. Historically, customary land is not state land but rather communal land that is recognized. Granting HPL over customary land without an appropriate construction may potentially transform communal rights into mere objects of administrative delegation.

The absence of explicit provisions regarding HPL over customary land in the original structure of the Basic Agrarian Law indicates the existence of a significant normative gap. The Basic Agrarian Law primarily regulates the relationship between the state and individuals or legal entities within the framework of land rights, such as ownership rights, cultivation rights, and building rights. Although customary land is recognized, it does not possess a comprehensive technical framework for its integration into the national land administration system. This gap was later addressed through derivative regulations attempting to expand the scope of HPL, including to incorporate indigenous communities. However, this expansion does not immediately resolve the conceptual issue concerning the status of customary land. Without a strong theoretical foundation, HPL has the potential to become an instrument of formalization that obscures the communal character of customary land.

The normative gap between the recognition of customary land rights and their operational mechanisms is reflected in the practice of agrarian conflicts involving indigenous communities and development projects. Constitutional and legal recognition is not always accompanied by the strengthening of the institutional capacity of indigenous communities to manage their land. In many cases, indigenous communities find themselves in a weak bargaining position when confronted with investment interests or development policies. Land Management Rights (Hak Pengelolaan Tanah/HPL), which are intended as an instrument of empowerment, may instead transform into a mechanism of control if they are not designed based on participatory

and transparent principles. This gap indicates that the primary problem lies not only in normative recognition but also in the effectiveness of protection in practice. Therefore, a reconstruction is required that can bridge the gap between declarative norms and substantive implementation.

An analysis of the expansion of HPL subjects in recent regulations demonstrates an effort to integrate indigenous communities into the national land system through a more formal administrative scheme. The legislative rationale for this regulation relates to the need for harmonization of agrarian regulations and investment certainty. HPL is positioned as a bridge between communal land and the modern administrative system that requires registration and certainty of territorial boundaries. However, this expansion also raises questions regarding the limits of authority between the state and indigenous communities in the management and granting of derivative rights. If strategic authority remains in the hands of the state, HPL will merely become a symbol of recognition without substantive autonomy. The normative challenge lies in how to formulate HPL as an instrument of empowerment that strengthens the position of indigenous communities rather than as a means of integration that diminishes communal sovereignty over customary land.

The regulation of Land Management Rights over customary land presents serious issues of unclear norms at the operational level, particularly regarding the scope of authority of indigenous communities as holders of HPL. Existing norms do not clearly distinguish between administrative authority, civil authority, and internal communal regulatory authority, thereby potentially reducing the meaning of communal control to merely an administrative function. This lack of clarity creates ambiguity as to whether indigenous communities possess the authority to determine all policies related to land utilization, including the granting of derivative rights, or whether such authority remains under state control through administrative approval mechanisms. This situation indicates that the norms that are unclear (vague norms) which result in legal uncertainty, because the construction of HPL as a derivative of the state's right of control has the potential to position indigenous communities merely as extensions of the state. If not formulated with clear limitations, HPL over customary land may transform into an instrument of state control over communal land rather than a mechanism for strengthening the position of indigenous communities. From the perspective of legal dogmatics, such lack of clarity contradicts the principle of legal certainty and the principle of protection of traditional rights that are constitutionally recognized.

Normative ambiguity is also evident in the absence of standard operating procedures governing partnership mechanisms between indigenous communities as holders of HPL (Land Use Permit) and third parties, particularly concerning the principle of free, prior, and informed consent. Although this principle has developed within international legal practice and has become a parameter for the protection of indigenous peoples' rights, its provisions within the HPL regime have not been explicitly and operationally internalized. The absence of procedural standards creates an unequal negotiation space

in which the bargaining power of indigenous communities may be undermined by the strength of capital and the administrative support of the state for investors. Under such conditions, the consent of indigenous communities risks becoming formalistic rather than substantive, as it may not be based on complete information and a comprehensive understanding of long-term consequences. The lack of technical regulation concerning collective participation, internal deliberation mechanisms, and documentation of consent increases the risk of administrative manipulation. Normatively, this situation undermines the principle of social justice because the distribution of power in the legal relationship is unequal from the outset.

Uncertainty regarding the distribution of economic benefits and the duration of cooperation agreements represents another manifestation of vague norms regulating HPL (Land Use Permit) over customary land. The existing norms do not provide clear parameters for profit-sharing, periodic evaluation mechanisms, or the rights of indigenous communities to terminate agreements in cases of violation. Consequently, the legal relationships formed tend to follow the logic of general contractual arrangements without considering the communal character of customary land, which contains social, spiritual, and cultural dimensions. Without proportional time limits and fair renegotiation mechanisms, cooperation in the use of customary land may evolve into long-term control that de facto eliminates the authority of indigenous communities. From the perspective of distributive justice theory, such ambiguity may create structural inequality because economic benefits tend to accumulate primarily among external parties. Norms that fail to provide clear guidance regarding the redistribution of benefits instead open opportunities for hidden economic marginalization.

The potential for interpretative conflict between customary law and land administrative law further emphasizes the complexity of these normative issues. Customary land, within the framework of customary law, is not merely understood as an economic object but as a collective living space regulated by internal social norms. Meanwhile, land administration law perceives land as an object of formal regulation that requires registration, certification, and limitation of authority through administrative documentation. When HPL is positioned as a bridge between these two systems, there is a risk of subordinating customary law to state law because legal standards are determined administratively. Such interpretative conflict may trigger disputes of authority, particularly when community decisions are inconsistent with national land policies. Within the context of legal pluralism, the dominance of one legal system over another will erode the social legitimacy of norms that operate within society.

From the perspective of agrarian legal policy, the regulation of HPL (Land Use Permit) over customary land cannot be separated from the orientation of state policy that juxtaposes investment interests, national development, and the protection of communal rights. The state faces a dilemma between promoting economic growth through optimal land use and maintaining the sustainability of indigenous peoples' rights. In practice, agrarian policies are often more responsive to investment needs because they are

perceived as drivers of development. The development of HPL, which opens opportunities for cooperation with third parties, reflects this tendency, particularly when administrative procedures are accelerated to ensure investment certainty. This situation raises normative questions regarding whether strengthening the position of indigenous communities truly constitutes the primary objective, or whether it merely serves as an instrument of social legitimacy for development projects. Critical evaluation is therefore required to ensure that agrarian legal policy does not deviate from the mandate of social justice.

The shift in paradigm from declarative recognition to administrative formalization has also become a significant phenomenon in agrarian legal politics. Initially, the recognition of customary land was declarative in nature, acknowledging the existence of communal rights as long as they remained alive and consistent with societal development. However, regulatory developments have demonstrated a tendency to require identification, determination, and administrative registration as prerequisites for effective recognition. Although such formalization provides legal certainty within the land administration system, it also has the potential to narrow the meaning of recognition if formal procedures become obstacles. Indigenous communities that are unable to fulfill administrative requirements risk losing access to legal protection mechanisms. Normatively, this shift must be critically examined in order to prevent it from transforming ancestral rights into rights that are entirely dependent upon the administrative legitimacy of the state.

An evaluation of the construction of HPL reveals an ambivalence between empowerment and the subordination of customary land within the logic of development. On the one hand, HPL may be viewed as a legal instrument that grants indigenous communities a formal position within the national land system. On the other hand, because HPL originates from state authority, there remains a risk that substantive control continues to reside within bureaucratic structures. If the mechanisms for granting derivative rights and supervision remain dominated by the state, indigenous communities will obtain only symbolic legitimacy. Such a construction has the potential to shift customary land from the sphere of communal sovereignty into an object of development administration. From a critical perspective, the success of HPL as an instrument of empowerment must be measured by the level of real autonomy granted to indigenous communities.

The practice of granting HPL to indigenous communities in several regions demonstrates significant variation between normative provisions and practical realities. In some regions, HPL functions as a legal basis for establishing relatively participatory economic partnerships that provide collective benefits. However, there are also practices indicating that administrative processes are more dominant than efforts to strengthen the internal capacity of indigenous communities. Inequality in information and access to legal assistance prevents indigenous communities from fully understanding the legal implications of the HPL they receive. This situation creates a

normative precedent that the success of HPL depends largely on the design of its implementation rather than merely on the formulation of the norm itself. This gap in practice indicates that the existing norms are not sufficiently prescriptive to ensure uniform protection.

The alignment between written norms and implementation in practice constitutes an important indicator in assessing the effectiveness of HPL regulation over customary land. In several cases, the normative objective of strengthening the position of indigenous communities is undermined by pragmatic development interests. Administrative formalization sometimes facilitates the entry of economic actors with strong legal legitimacy, while the capacity of indigenous communities to manage and supervise cooperation remains limited. The potential for hidden marginalization emerges when indigenous communities formally hold HPL but substantively lose control over the direction of land use. This situation emphasizes that without clear participatory norms oriented toward distributive justice, HPL may become an instrument of administrative integration that undermines communal autonomy. Therefore, normative reform and the strengthening of implementation mechanisms constitute essential prerequisites for ensuring that HPL truly functions as an instrument for strengthening the position of indigenous communities, rather than as a means of legitimizing their subordination within the framework of national development.

3.2. Reconstruction of the Model for the Utilization of Customary Land through Land Management Rights Based on Distributive Justice and Legal Pluralism as an Instrument for Strengthening the Position of Indigenous Communities

The theoretical framework of distributive justice in the context of customary land utilization positions the distribution of economic benefits not merely as a consequence of market mechanisms but as a constitutional mandate inherent in the state's control over land. Customary land cannot be reduced to an economic commodity subject to the logic of capital accumulation, because it embodies the identity, spirituality, and social continuity of indigenous communities. (Muntaqo, 2025) The application of distributive justice theory requires that any utilization scheme through Land Management Rights ensure that the economic benefits generated are not concentrated in the hands of the state or investors but are proportionally distributed to the communities holding the original rights. Such distribution must take into account the historical and ecological contributions of indigenous communities in preserving the sustainability of their territories. This concept aligns with the welfare state doctrine, which requires state intervention to ensure substantive justice rather than merely formal certainty. In this regard, the state is obligated to design normative instruments capable of correcting structural inequalities in the relationships governing the utilization of customary land. Affirming the state's function as a facilitator of justice carries the normative implication that the state must not act as a dominant actor that seizes full control over customary land through administrative constructions. The state must limit itself to regulatory,

mediating, and protective functions so that the primary role remains with indigenous communities as holders of communal rights. In practice, state dominance often results in the subordination of customary rights within bureaucratic and hierarchical licensing frameworks. A facilitative model requires the state to provide a transparent legal framework, fair dispute resolution mechanisms, and impartial oversight. Such functions strengthen the principle of checks and balances in the management of agrarian resources. Thus, the welfare state should not be interpreted as a centralized state but as a state that ensures distributive justice through the recognition and empowerment of communal legal subjects.

The integration of the principles of balance, proportionality, and intergenerational sustainability serves as a normative foundation for designing a model of customary land utilization based on Land Management Rights. The principle of balance requires an equal relationship among indigenous communities, the state, and investors in determining the direction of land utilization. (Nugroho, 2022) The principle of proportionality ensures that restrictions on communal rights may only be applied to the extent necessary for legitimate interests and must not exceed reasonable limits. The principle of intergenerational sustainability stipulates that economic exploitation must not sacrifice the rights of future generations to their living space and natural resources. These three principles form an ethical and legal framework that prevents the penetration of short-term interests. Without the integration of these principles, Land Management Rights risk becoming instruments that legitimize the structural exploitation of customary land.

Strengthening customary institutions as subjects of Land Management Rights constitutes a fundamental prerequisite for indigenous communities to become not merely objects of policy but legal actors with full capacity. Customary institutions must be recognized as possessing legal capacity to enter into agreements, manage administrative matters, and assume responsibility for transparent resource management. Such strengthening requires formal recognition of customary leadership structures and mechanisms of community representation. Administrative capacity, including documentation, record-keeping, archiving, and reporting, is essential for customary institutions to interact on equal terms with the national land administration system. Without strengthening such capacities, the normative recognition of customary rights will remain largely symbolic. Therefore, the development of adaptive and professional customary institutional models constitutes a normative strategy to ensure the effectiveness of Land Management Rights.

The regulation of internal customary governance forms the basis for legitimizing every decision regarding the use of customary land. Decisions taken without inclusive deliberative mechanisms have the potential to generate internal conflicts and social delegitimization. Internal norms must regulate procedures for community consent, mechanisms for benefit-sharing, and accountability systems for customary leaders. Good governance reflects the principles of transparency and participation as

prerequisites for distributive justice. Harmonization between customary governance and the national land administration system is necessary without eliminating the distinctive characteristics of customary law. (Salle, 2024) Such harmonization should not be understood as a process of subordination but rather as a normative dialogue that positions customary law as a living and relevant source of law.

A tripartite partnership model based on equality among indigenous communities, the state, and investors represents a relational design capable of reducing power imbalances in the practice of customary land management. This partnership must be built upon the principles of good faith, transparency, and recognition of ancestral rights. The state acts as the guarantor of legal certainty and mediator, while investors are obliged to respect customary norms and sustainability standards. (Hutahayan, 2024) Indigenous communities are no longer positioned merely as recipients of compensation but as strategic partners entitled to determine the direction of land utilization. (Mokodompit, 2023) Equality within such partnerships must be reflected in contractual clauses that are not biased toward capital interests. This structure encourages a transformation of relationships from hierarchical subordination to collaborative engagement.

Transparent and accountable benefit-sharing arrangements are essential for implementing distributive justice within tripartite partnerships. The benefit-sharing formula must be clearly defined, including percentages, payment mechanisms, and the management of community funds. Transparency prevents information asymmetry that is often exploited to reduce the economic rights of indigenous communities. Accountability may be strengthened through participatory audits and joint monitoring mechanisms. Clear norms regarding benefit distribution will minimize potential conflicts and suspicions among the parties. Without detailed regulations, Land Management Rights may become merely formal instruments that conceal structural economic inequality.

Strengthening the bargaining position of indigenous communities in contractual negotiations constitutes a strategic step toward ensuring substantive equality. Bargaining power is determined not only by legal recognition but also by access to information, legal assistance, and negotiation capacity. The state has an obligation to provide technical support so that indigenous communities can understand the legal and economic implications of every agreement. Contractual balance can only be achieved when there is no hidden coercion or economic pressure forcing communities to accept disadvantageous terms. Within this framework, Land Management Rights must be designed as instruments of empowerment rather than mechanisms that integrate customary land into an exploitative development logic. A just model will position indigenous communities as primary subjects who determine the future of their living spaces with dignity and sustainability.

The integration of the principle of legal pluralism in the management of customary land

rights requires not merely symbolic recognition but the operational recognition of customary law as a living and binding source of law. Such recognition must be interpreted as recognition of the value system, authority structures, and decision-making mechanisms that have long functioned within indigenous communities, rather than merely a declarative acknowledgment of their existence. Within this framework, customary law must not be reduced to an administrative ornament whose validity depends entirely upon state verification, because such an approach would position indigenous communities as objects of regulation rather than subjects of law. Substantive legal pluralism demands an equal relationship between state law and customary law so that the management of Land Management Rights does not eliminate the communal character of customary land. When customary law is positioned as a legitimate source of law in the management of HPL, strategic decisions regarding land use must be subject to authentic customary deliberation mechanisms. Consequently, any administrative policy that ignores customary legal structures is, in fact, inconsistent with the constitutional principle of recognition of indigenous peoples.

The synchronization of customary norms with positive law through recognition mechanisms is essential to avoid normative dualism that may lead to conflicts of authority. Recognition must not stop at the stage of administrative determination but must be manifested in the formulation of norms that explicitly adopt customary principles into technical land regulations. The absence of a clear synchronization mechanism often results in unilateral interpretations by administrative officials who prioritize formal certainty over substantive justice. In such circumstances, positive law tends to dominate and gradually erode customary autonomy through bureaucratic procedures. Therefore, a normative design is required to ensure that every issuance of Land Management Rights (HPL) over customary land requires verification of compliance with existing customary norms. This mechanism must be participatory and actively involve customary institutions so that recognition does not degenerate into disguised subordination. In this way, normative harmonization becomes a dialogical process rather than a process of standardization.

Preventing normative conflict also requires the formulation of adaptive clauses in every cooperation agreement involving customary land. Such adaptive clauses must accommodate social dynamics and evolving needs of indigenous communities without eliminating their fundamental land rights. Rigid contracts based entirely on formal civil law risk disregarding the values of collectivity and sustainability embedded in customary law. (Islam, 2024) Therefore, every partnership agreement must explicitly recognize customary-based dispute resolution mechanisms as the primary option before resorting to state litigation. Such arrangements not only prevent conflicts of interpretation but also strengthen the social legitimacy of agreements. Without adaptive clauses, economic cooperation on customary land risks becoming an instrument for the penetration of market law, shifting from communal orientation toward purely commercial objectives. It is in this context that legal pluralism is truly tested within contractual practice.

A community-based participatory monitoring model is a logical consequence of recognizing indigenous communities as subjects of Land Management Rights (HPL). Oversight cannot be monopolized by administrative officials, as top-down approaches often fail to detect violations that directly affect the lives of local communities. The involvement of indigenous communities in monitoring creates a more effective social control mechanism that is responsive to potential deviations. Within the normative framework, such participation must be institutionalized through mandatory periodic reporting and joint evaluation forums involving HPL holders, the state, and indigenous communities. Participatory monitoring also functions as an accountability instrument to prevent excessive exploitation of customary land. Without such mechanisms, HPL risks becoming merely a legal instrument for legitimizing control that deviates from the principles of social justice.

The integration of sustainable development principles into the utilization of customary land must not be understood merely as ecological rhetoric but as a binding legal obligation. Customary land possesses spiritual, social, and ecological dimensions that cannot be reduced to economic commodities. (Abdurrahim, 2023) Therefore, any utilization through HPL must consider environmental carrying capacity and the sustainability of the social functions of land for future generations. The principle of sustainability requires strict limitations on exploitation and mechanisms for restoration in cases of ecological damage. The state is obligated to ensure that permits and cooperation agreements do not exceed the ecological capacity of customary territories. Failure to integrate this principle would place indigenous communities at the mercy of the externalities of development.

Guarantees of social and ecological protection must be formulated as normative obligations of HPL holders rather than merely moral commitments. Social protection includes ensuring indigenous communities' access to living space, livelihoods, and cultural identity. Ecological protection includes obligations to preserve forests, water sources, and ecosystems that form an integral part of customary land. These provisions must be accompanied by strict sanctions for violations in order to prevent impunity for negligent HPL holders. Weak regulatory frameworks in the protection dimension may open opportunities for hidden marginalization through environmental degradation and the shrinking of living spaces. Therefore, social and ecological protection constitutes a key indicator of whether HPL truly functions as an instrument of empowerment or otherwise.

Normative reconstruction requires a clear and proportional redefinition of the boundaries of authority between the state and indigenous communities. The state must not position itself as the substantive owner of customary land through administrative HPL mechanisms. (Hutabarat, 2025) State authority must be limited to regulatory, facilitative, and supervisory functions, while substantive authority over strategic land use remains in the hands of indigenous communities. Defining such boundaries is crucial to prevent the expansion of administrative authority that gradually erodes

communal rights. Clear norms also provide legal certainty for investors without sacrificing the rights of indigenous communities. In this context, the balance of authority constitutes a prerequisite for establishing equitable governance.

Codifying the principle of indigenous consent within technical regulations represents a prescriptive step that can no longer be postponed. The principle of Free, Prior, and Informed Consent (FPIC) must be regulated in detail regarding procedures, standards of information, and legal consequences in cases of violation. Without clear codification, this principle risks being reduced to a mere administrative formality, such as obtaining signatures without adequate understanding. Guarantees for fair and sustainable benefit distribution must also be formulated in measurable norms, including profit-sharing mechanisms, transparent financial reporting, and periodic evaluation. Such regulatory formulations will transform HPL from a mere administrative legitimacy into an instrument of substantive empowerment. Ultimately, the success of normative reconstruction is measured by the extent to which customary land remains the foundation of the economic sovereignty and collective identity of indigenous communities rather than merely an object within the logic of centralized development. The reconstruction of the model for utilizing customary land through Land Management Rights cannot stop at conceptual formulations concerning tripartite partnerships, distributive justice, and legal pluralism, but must be translated into operational normative formulations with clear legal consequences. The principle of Free, Prior, and Informed Consent (FPIC) must be explicitly codified as a valid prerequisite for the granting of Land Management Rights over customary land. (Nasywa Kayla, 2025) The granting of HPL may only be carried out after indigenous communities provide consent through customary deliberation mechanisms formally documented in official minutes signed by legitimate customary institutional structures. In the absence of such consent, the decision to grant HPL must be declared null and void as a form of protection for communal rights guaranteed by the Constitution. In this way, FPIC is no longer positioned merely as an ethical standard or implicit principle but as a binding administrative norm whose validity can be tested juridically.

The regulation concerning the FPIC obligation does not require amendments to the Constitution of the Republic of Indonesia of 1945 nor to the Basic Agrarian Law, but can be implemented through the refinement of derivative norms within the framework of Government Regulations or regulations issued by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. Systematically, such strengthening may be incorporated as an administrative clause in the implementation of Government Regulation Number 18 of 2021 or through revisions of technical regulations governing the procedures for the determination and utilization of HPL. From the perspective of the principle of *lex superior derogat legi inferiori*, such regulation does not contradict higher norms because it constitutes a technical elaboration of the constitutional mandates contained in Article 18B paragraph (2) and Article 33 paragraph (3) of the 1945 Constitution. The principle of *lex specialis derogat legi generali* also allows for specific regulation of HPL over customary land as a distinct regime different from HPL

over ordinary state land, thereby preventing normative conflict within the hierarchy of legislation. This synchronization ensures that the proposed reconstruction remains harmonious, systemic, and consistent with the framework of the rule of law.

The concretization of the tripartite partnership model must also be formulated through a clear and measurable division of authority among indigenous communities, the state, and investors. Indigenous peoples as holders of communal rights must possess primary authority in determining the direction of land utilization, granting or refusing consent for cooperation agreements, and collectively managing and enjoying economic benefits. (Tandori, 2025) The state should be limited to administrative supervision, registration, facilitation of dispute resolution, and the guarantee of legal certainty, without exercising substantive intervention in the internal decisions of indigenous communities regarding the use of their land. Investors, on the other hand, only possess operational authority in accordance with the agreements concluded and are obliged to comply with customary norms, environmental standards, and transparent and proportional benefit-sharing schemes. Such limitations of authority prevent the domination of either the state or capital while simultaneously affirming the position of indigenous communities as the primary legal subjects in the relationship governing the utilization of customary land.

In addition, the participatory monitoring model must be operationally institutionalized through norms that regulate mandatory annual audits of partnership implementation, biannual evaluation forums involving indigenous communities and local governments, and the obligation to provide open financial reports regarding profit distribution and socio-ecological impacts. Indigenous communities must also be granted the right to unilaterally terminate cooperation in cases of serious violations of the principles of consent, benefit-sharing, or environmental protection. This mechanism establishes effective social control and transforms oversight from a top-down model into a collaborative and accountable one. With clear evaluative parameters and firm legal consequences, participatory monitoring is no longer merely a normative slogan but becomes a substantive instrument for protecting communal sovereignty over customary land.

Ultimately, this prescriptive formulation shifts the paradigm of Land Management Rights (HPL) over customary land from a formal administrative instrument into an instrument of empowerment with clearly defined structures of authority, limitations, and accountability mechanisms. The clarity of norms regarding FPIC, the division of roles within the tripartite framework, and participatory monitoring addresses the problem of normative ambiguity that has long created space for interpretations detrimental to indigenous communities. This reconstruction provides legal certainty while simultaneously ensuring measurable distributive justice, thereby enabling HPL to genuinely function as an instrument for strengthening the position of indigenous communities within the national agrarian system.

4. CONCLUSION

The regulation of customary land utilization through Land Management Rights (HPL) does not fully reflect the principles of substantive recognition and protection of the rights of indigenous communities, as the prevailing normative construction still places the state in a dominant position while positioning indigenous communities in a derivative role. The main problem lies in the unclear boundaries of authority between the state and indigenous communities, the lack of a clear recognition mechanism for customary institutions as legal subjects of HPL, and the absence of guarantees for fair and sustainable distribution of economic benefits. Normative analysis indicates that without reconstruction based on distributive justice and legal pluralism, HPL risks becoming merely an administrative instrument that legitimizes land utilization by third parties without strengthening the bargaining position of indigenous communities. Therefore, a reformulation of norms is required, emphasizing the role of the state as a facilitator of justice, integrating indigenous consent as an absolute prerequisite, and establishing an equal and accountable tripartite partnership model. The integration of participatory monitoring and ecological protection principles is also necessary to ensure that the utilization of customary land does not compromise social and environmental sustainability. Accordingly, HPL can function as an instrument for strengthening the position of indigenous communities only if it is systematically reconstructed within the framework of a welfare state that upholds substantive justice and respect for legal pluralism.

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