

# Implementation of Natural Law and Positivism in the Recognition of Customary Law Communities in the Capital Region of the Indonesian Archipelago (IKN)

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**Abstract.** The implementation of customary law in Indonesia faces various challenges related to the recognition and protection of the rights of indigenous peoples, especially those related to customary and land rights. Although the 1945 Constitution and other regulations, such as the Forestry Law recognize the existence of indigenous peoples, the reality on the ground shows an imbalance between customary law norms and positive law, which often leads to conflict and neglect of indigenous peoples' rights. Development policies that are oriented towards economic interests frequently conflict with the traditional rights of indigenous peoples, causing injustice. This article discusses legal issues related to the implementation of customary law and provides solutions and recommendations to strengthen legal protection for indigenous people, through regulatory reform, constructive dialogue, and more inclusive development policies.

**Keywords:** customary law; indigenous peoples; natural law; positivism

## INTRODUCTION

The capital city of Indonesia was previously located in Jakarta, which has been the center of government, economy, and culture for decades. However, Jakarta faces major challenges, such as traffic jams, pollution, and land subsidence that threaten the city's sustainability. To overcome these problems, the Indonesian government decided to move the capital city to a more strategic and potentially developing area, namely East Kalimantan, which is now known as the Indonesian Capital (IKN). The relocation of the capital city aims to create a balance of development outside Java, reduce dependence on Jakarta, and have a positive impact on economic growth in eastern Indonesia (Arsil, 2022). The development of the IKN is also expected to be a symbol of Indonesia's progress and modernization, by paying attention to environmental sustainability and improving the quality of life. On the other hand, the relocation of the capital city raises various issues, especially related to the rights of indigenous peoples who have long inhabited the area. Indigenous peoples, who have lived in harmony with nature, must be recognized and their rights protected, including rights to the land and natural resources they manage.

The capital city is designed to be the center of the country's government, functioning as a gathering place for government leaders and an office center. The term "capital city" comes from the Latin "caput," meaning head, and is associated with the word "capitol," which refers to the location of the main government building. In general, the capital city also serves as the economic, cultural, and intellectual center of the country. In developing a capital city, three important factors influence it, namely the size and structure of the government, the country's economic conditions, and the timing of the formation of the capital city related to the formation of the country's politics and economic development. In 2019, the President of Indonesia, Joko Widodo, announced plans to move the nation's capital from

Jakarta to a new area in East Kalimantan. This decision was motivated by the heavy burden borne by Jakarta as the center of government, public services, and business center which will be increasingly difficult to bear in the future, considering the limitations of the city's infrastructure and capacity (Nugroho, 2022).

The selection of East Kalimantan as the new capital city is based on its strategic location in the center of Indonesia, as well as the area covering 256,142 hectares of land and 68,189 hectares of seawater. This region is also rich in natural resources such as forests, plantations, and mines, making it a potential area for the national capital development project. In addition, Kalimantan is also inhabited by indigenous peoples who have long inhabited the area. These indigenous peoples have land rights that have been passed down from generation to generation, although legal protection for their rights has not yet been fully realized. Recognition of indigenous peoples is stated in the 1945 Constitution and other regulations, such as the National Capital Law which regulates the protection of indigenous peoples' rights in the context of capital city development. With this recognition, it is hoped that the communal rights of indigenous peoples can be protected, and the development of the new capital city can take place without ignoring the cultural values and local wisdom that they have (Mauleny, 2022).

Indigenous peoples are legal subjects who have an important position as residents who have long settled in the East Kalimantan region, especially in the area that has now been designated as the new national capital. The land they inhabit is a hereditary heritage, which gives them the right to manage and utilize natural resources in the area. To move the nation's capital, the government must maintain transparency and involve indigenous peoples in every decision related to the development of the IKN (Herdiana, 2022). It is important to ensure that the interests of local communities are also taken into account, considering that they are the parties who will be directly affected by this major change. As the parties who will be the "hosts" in the area, indigenous peoples should be included in discussions on the development of the nation's capital, which is a major project that will shape the future of the region (Amila, 2023).

The process of moving the nation's capital will have an impact on land that has been managed by indigenous peoples. Land acquisition for public interest, as regulated by law, can force residents who depend on the land to move elsewhere. In this case, the provisions in Article 10 of Law Number 2 of 2012 regulate land acquisition for development, where special attention is paid to compensation given to entitled parties, including indigenous peoples who have rights to communal land (Mazda, 2022). However, in its implementation, this land acquisition process often causes problems, especially if the compensation given is inadequate or if the land acquisition is not carried out with the clear consent of the affected indigenous peoples (Firnaherera, 2022). One example that emerged was a complaint from the Balik Paser Tribe indigenous people who felt disappointed and surprised when their land, which was previously not included in the development plan, was suddenly marked with stakes for the IKN project. This shows a discrepancy between what is regulated in the legislation and the reality on the ground, which has the potential to cause tension between the government and indigenous peoples.

In this case, although there are regulations that normatively protect the rights of indigenous peoples, implementation on the ground shows that these norms are often not translated properly. It can be seen from the lack of adequate notification to Indigenous peoples about the status of their land, as well as the ambiguity regarding the compensation provided. This incident reflects that although the government is trying to accommodate development needs, inaccuracy in managing the relationship between the government and Indigenous communities can lead to conflict and dissatisfaction. Transparency, active participation of Indigenous communities in the decision-making process, and the provision of fair and appropriate compensation are essential to prevent greater tensions and ensure that the development of the nation's capital does not ignore the rights of Indigenous communities.

Legal recognition of indigenous communities in Indonesia has a strong basis in the country's constitution. Article 18B paragraph (2) of the 1945 Constitution states that the state recognizes and respects indigenous community units and their traditional rights, as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia. This provision provides a clear legal basis for the existence of Indigenous communities, but its implementation in practice often encounters obstacles. (Baihaki, 2018). In addition to the provisions in the 1945 Constitution, recognition of Indigenous communities is also stated in various other legal

products, such as Paser Regency Regional Regulation No. 4 of 2019 which regulates the recognition and protection of Indigenous communities. Although there is normative recognition, in reality, customary law communities are often marginalized in the development process and development planning that involves changes in the use of customary land.

The gap between *de jure* legal recognition and implementation in the field (*de facto*) is one of the main challenges in protecting the rights of customary law communities. Legally, customary law communities are recognized and have the right to the land and natural resources they manage, but in many cases, development policies or large projects involving land transfer or acquisition do not always accommodate their interests. Customary law communities are often forced to accept government decisions that seize their customary land without adequate compensation or consultation. It creates injustice that is contrary to the principle of recognition guaranteed by the Constitution. On the other hand, the government also faces challenges in aligning flexible and normative customary law with a more formal and rigid positive legal system, which often does not consider local values and the wisdom of Indigenous communities (Rizqiyah, 2023).

The realization of legal recognition and protection for customary law communities in the Indonesian positive legal system still needs much improvement. One of the main challenges is the lack of concrete regulations that can guarantee the rights of indigenous peoples outside of existing regulations. Although there are already several legal products that regulate the protection of Indigenous peoples, such as the Draft Law on Indigenous Peoples which is currently still under discussion, the implementation of this protection is often hampered by a lack of understanding and awareness among policy-makers and the unpreparedness of the legal system to accept and apply customary law more broadly. For example, although there are provisions regulating land rights, customary rights, and environmental protection regulated in various laws, conflicts often occur when development policies collide with these rights.

Legal issues related to the implementation of customary law also include obstacles faced in practice in the field. One of the main obstacles is the difference between customary legal norms in indigenous peoples and positive law implemented by the state Community law, which is local and based on local traditions and wisdom, often conflicts with more formal and universal positive law. It can cause difficulties in resolving disputes or claims over land and customary rights, which often clash with government policies in infrastructure development and other projects. In addition, land rights owned by indigenous people frequently become a source of conflict between the interests of indigenous peoples and development interests driven by the state or the private sector. This tension demands more intensive dialogue between the government, indigenous peoples, and related parties, to find fair solutions and respect the rights of indigenous peoples without ignoring the needs of national development.

## METHOD

The normative legal research method is used to analyze legal norms contained in laws and regulations, legal doctrines, and legal theories relevant to the issues studied. In this study, the legislative approach is applied to examine the laws and regulations governing the recognition and protection of indigenous legal communities in Indonesia, such as the 1945 Constitution, regional regulations, and related laws. Meanwhile, the conceptual approach is used to understand and analyze various legal concepts underlying customary law regulations, such as land rights, customary rights, and the relationship between customary law and positive law. The combination of these two approaches aims to provide a comprehensive picture of the legal recognition of indigenous legal communities in the Indonesian legal system and its implementation in the field.

## RESULT AND DISCUSSION

Customary law communities in Indonesia are groups that live based on their traditions and ancestors from generation to generation, with areas that have been inhabited for a long time and are regulated by customary laws that regulate social life, culture, and management of natural resources. This group has sovereignty over the land and natural resources in their area, with customary institutions that

play an important role in maintaining and managing their lives. The existence and rights of customary law communities are constitutionally recognized through Article 18B paragraph (2) of the 1945 Constitution, which stipulates that the state recognizes and respects the existence of customary law communities and their traditional rights, as long as they still exist and develop by the principles of the Unitary State of the Republic of Indonesia as regulated by law (Alting, 2010).

In the area planned for the development of the Indonesian Capital City (IKN), around 21 customary communities are inhabiting the area. Of this number, the majority are in Penajam Paser Utara Regency, while the rest are spread across Kutai Kartanegara. Several tribes in the region, such as the Paser Tribe, Kutai Tribe, and Punan Tribe, have more specific tribal divisions, such as the Paser Luangan Tribe, Paser Adang Tribe, Paser Bukit Bura Mato Tribe, and others. Each tribe has its own unique culture and traditions and how they manage the natural resources around them. The existence of these indigenous peoples shows the richness and diversity of Indonesian culture which is very valuable (Fristikawati, 2022).

The diversity of cultures and native government systems that have developed in the IKN region, such as in the Penajam Paser Utara and Kutai areas, have made an important contribution to social, political, economic, and legal developments in Indonesia. The concept of governance and management of natural resources that they apply, which is based on local wisdom, has been proven to maintain a balance between social needs and environmental preservation. Indirectly, these traditions have made a major contribution to the sustainability of Indonesia's development, by integrating local values in various aspects of life, from economics to law, which are still relevant today.

Recognition and protection of indigenous legal communities in Indonesia is strengthened in the constitution, especially in Article 18B paragraph (2) of the 1945 Constitution, which emphasizes that the state recognizes and respects indigenous legal communities and their traditional rights, as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia. However, in practice, regulations regarding the recognition and protection of indigenous legal communities have not been fully centralized. The state still relies on regional legal products to determine the status of indigenous communities, as an effort to delegate authority to regional governments, considering that there is no national law that specifically regulates indigenous legal communities. This causes regulations regarding the rights of indigenous communities to be spread across various sectoral laws, each with different criteria, which are not always coordinated in an integrated manner. Although there are regional regulations such as Paser Regency Regulation Number 4 of 2019 and West Kutai Regency Regulation Number 13 of 2017 which regulate the recognition and protection of customary law communities, the substance and process of their determination depend more on the regional government and regional people's representative council through the existing political process, without any obligation to seek approval from the customary law community itself (Dalil, 2021).

In recognizing customary law communities in the Capital City of the Archipelago (IKN), the state has a responsibility to provide legal recognition and protect customary communities to realize their welfare, security, and development through their human dignity and dignity. This recognition also aims to protect customary law communities from discrimination and to respect their traditional rights as basic capital in national development. This recognition is based on the constitutional spirit contained in Article 18B paragraph (2) of the 1945 Constitution, which emphasizes the regulation of customary law communities by the development of the times and civilization. This provision is then strengthened by Article 281 paragraph (3) which stipulates that cultural identity and traditional communities must be respected along with the development of the times. Thus, recognition of customary law communities becomes an integral part of the history and sustainability of the state, which is further regulated in laws and regulations, including those relating to the IKN region (Ulhaq, 2023).

Various laws and regulations in Indonesia have included elements of customary law communities in their legal structures, as part of the state's recognition of the existence and traditional rights held by customary communities. One of these is Law Number 41 of 1999 concerning Forestry, which regulates the management of customary forests. Article 5 paragraph (2) of this law recognizes customary forests as part of state forests, the management of which is handed over to customary law communities, as long as the community still exists and its existence is recognized. Customary forests, previously known by various names such as people's forests or clan forests, are considered part of the state's control rights

but still provide space for customary law communities to manage and utilize them according to their functions and traditions, such as farming to meet their living needs. This recognition shows that the state provides access to forest management to customary communities with the principle of recognizing their legitimate traditional rights. In addition, Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest also provides a form of recognition for customary law communities. Article 40 states that customary law communities have the right to receive compensation if their customary land is needed for the public interest. The compensation can be in the form of replacement land or resettlement, which is given through an agreement between the authorities and the customary law community. This shows that the state not only recognizes the existence of customary law communities but also provides protection for their rights related to the land that they have controlled for generations.

Recognition of customary law communities is also reflected in Government Regulation Number 19 of 2021 which is a derivative of Law Number 2 of 2012. This regulation further regulates the technical aspects related to land acquisition for public interest, by providing recognition to customary law communities as long as their existence is still recognized by statutory provisions. In addition, customary land owned by customary law communities is recognized as land controlled by the community unit and is not bound by land rights or other management rights. This regulation strengthens the legal status of customary law communities, ensuring that their rights to land continue to be respected in the context of national development.

Furthermore, in the plantation sector, Law Number 39 of 2014 concerning Plantations stipulates that in the case of land required for plantation businesses being customary land rights of customary law communities, plantation business actors must hold deliberations with the customary law community holding customary rights to obtain approval. Article 12 paragraphs (1) and (2) state that such deliberations must be conducted by applicable laws and regulations. This indicates that customary law communities are still given the right to participate in decision-making related to the use of their customary land, by prioritizing the principles of deliberation and mutual agreement. In village governance, Law Number 6 of 2014 concerning Villages also recognizes and provides space for customary law communities to be designated as Customary Villages. Articles 96 and 97 regulate the arrangement of customary law community units that still exist and have traditional rights to be designated as Customary Villages. This provision aims to ensure that the existence of customary law communities is maintained in the village government system, by paying attention to community development and the principles of the Unitary State of the Republic of Indonesia. Through this administrative arrangement, local governments can facilitate data collection and policy-making related to indigenous communities (Setyawan, 2019).

Finally, Regional Regulation Number 4 of 2019 concerning the Recognition and Protection of Indigenous Legal Communities in Paser Regency provides special rights to Indigenous legal communities, such as the right to development, the environment, education and health services, and population administration. Recognition and protection of indigenous legal communities is carried out through a determination by the Regent, which is stated in the Decree of the Regent of Paser Number 413.3 / KEP-924 / 2019. Thus, this regional regulation becomes a legal basis that recognizes the existence of indigenous legal communities and supports the fulfillment of their rights, while maintaining their survival and existence without intervention from external interests. The main objective of this regulation is to provide support to Indigenous communities in maintaining their existence so that they can continue to live and develop according to their traditions and values.

The protection of indigenous legal communities in the Capital City of the Archipelago (IKN) is an increasingly relevant issue along with the development of infrastructure development projects in the area. In this context, legal protection is interpreted as an effort to provide a sense of security and protect the community's rights, including Indigenous peoples, who are often the parties affected by large projects related to land acquisition for the public interest. One of the main challenges is resolving issues related to land acquisition involving customary rights of indigenous peoples, where land rights often overlap with state interests in development.

Efforts to protect the rights of indigenous peoples are regulated through various laws and regulations, such as Law Number 2 of 2012 concerning Land Acquisition for Development in the Public

Interest, which ensures that fair compensation is given to entitled parties, including indigenous peoples. This law recognizes that customary land owned by indigenous peoples must receive special attention and be regulated in a way that prioritizes agreements with the indigenous peoples themselves. In this case, the theory of natural law can be connected, where the law is considered part of basic human rights that cannot be challenged, such as rights to land and natural resources that have long been controlled by indigenous peoples.

Article 33 Paragraph (3) of the 1945 Constitution also strengthens the principle that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. However, in its implementation, this can give rise to potential conflicts between the interests of the state and the rights of indigenous peoples. In this case, the theory of legal positivism, which prioritizes regulations regulated by the state, emphasizes the importance of legal certainty and regulations that are applied consistently to address land control and customary rights issues. The state has the authority to manage land and natural resources, but the management must still prioritize the protection of indigenous peoples' rights, which are reflected in various regulations such as the Forestry Law and the Government Regulation on Land Acquisition. In addition, Indigenous peoples also receive protection through various legal instruments that recognize their rights, both in the form of recognition of Indigenous peoples' unity and in the form of policies that regulate the provision of fair compensation for those whose land is used for the public interest. Several regional regulations, such as the District Regulation, have also been implemented to recognize the existence and rights of indigenous peoples, as stated in Law Number 41 of 1999 concerning Forestry. This regulation reflects the principles of social justice and equality, which prioritize respect for the traditional rights of indigenous peoples.

However, although there are already several regulations that provide recognition and protection for indigenous peoples, the main challenge still lies in fair and transparent implementation. In this case, the theory of natural law emphasizes the importance of laws that flow from the basic values that exist in society, namely justice and equality. In contrast, the theory of legal positivism emphasizes the importance of clear and structured application of laws by the state. In practice, the state must act as a fair mediator, respect the rights of indigenous peoples, and ensure that development policies do not ignore their interests. It includes more detailed and procedural regulations in resolving land disputes and related rights, as reflected in policies regarding land acquisition and compensation by the rights of Indigenous people.

Recognition and protection of customary law communities in Indonesia is regulated in Article 18B of the 1945 Constitution, which states that the state recognizes and respects the unity of customary law communities and their traditional rights, as long as they are still relevant to the development of society and the principles of the Unitary State of the Republic of Indonesia. One of the legal products that supports this is the forestry law, which in Article 67 Paragraph (1) regulates the recognition of customary law communities if they meet certain criteria, such as the existence of associations, customary ruling institutions, clear customary law areas, and customary law institutions and instruments that are still adhered to. Article 5 of the Forestry Law also states that state forests can include customary forests and customary forests are recognized as long as the customary law community in question still exists and its existence is recognized. However, the phrase "as long as in reality the customary law community in question still exists and its existence is recognized" is controversial, because it is feared that it could potentially eliminate or transfer the land rights of customary law communities. The Indigenous Peoples Alliance of the Archipelago (AMAN) criticized this phrase because it could risk harming their rights, especially for those who do not have written proof of land ownership. Indigenous peoples, who depend on forests for their daily lives, are concerned about the potential transfer of forest management rights to the government.

The phenomenon has become increasingly prominent with cases that illustrate conflicts between indigenous peoples and government development projects. One example is the experience of Yati Dahlia, a member of the Balik Paser Tribe in East Kalimantan, whose land was suddenly marked for the Indonesian National Capital City (IKN) project, even though previously the land was not included in the IKN area according to government statements. Cases like this show legal uncertainty and the potential for indigenous peoples to be evicted from their territories. In response to this ambiguity, AMAN filed a judicial review of the Forestry Law, specifically related to the definition of customary

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forests in Article 1 number 6. In its decision, the Constitutional Court granted part of AMAN's request by stating that the word "state" in the article does not have binding legal force, and thus, customary forests are only considered as forests located in the territory of customary law communities. This decision provides hope for customary law communities to maintain their rights to the land and forests they have inhabited for generations while confirming that customary communities have the right to legal recognition and protection for the land and forests they manage.

Legal issues related to the implementation of customary law in Indonesia arise because of the tension between customary law norms and positive law applicable in the national legal system. Customary law, which is a product of the traditions and culture of a particular community, often clashes with more formal and standardized positive law. One of the main conflicts lies in the recognition of customary rights and land managed by customary law communities. In many cases, indigenous peoples have inherited rights to land and natural resources, but these rights are often not recorded or formally recognized in state law. For example, development policies that are oriented towards economic interests, such as infrastructure development or the use of natural resources, often ignore the existence of indigenous peoples and threaten their rights to land and customary territories. Positive law, which tends to be based on formal and administrative ownership, often does not provide space for the recognition of traditional rights held by Indigenous peoples, creating injustice and inequality in legal protection.

The main obstacle in implementing the protection of land rights and customary rights of indigenous peoples is the frequent conflict between these rights and development policies taken by the government. Large development projects, such as road construction, land clearing for mining, or industrial area development, often involve the takeover or change of land status that has been managed by indigenous peoples. Without clear recognition of customary rights, indigenous peoples are marginalized in the decision-making process and are often forced to give up their land without receiving adequate compensation or guarantees of protection. It is exacerbated by the lack of regulations that provide adequate protection for the rights of indigenous peoples, as well as the weak implementation of existing laws. In many cases, indigenous peoples also have difficulty proving their land ownership in writing, because their land management is more customary and not recorded in the state administrative system. As a result, development policies that are not sensitive to the existence of indigenous peoples often harm them, causing them to lose access to land and natural resources that are an important part of their lives.

To overcome these problems, several solutions and recommendations need to be implemented to strengthen legal protection for indigenous peoples. First, the essential in strengthening clearer and more comprehensive regulations related to the recognition of customary rights and land rights of indigenous peoples. The government needs to draft more inclusive laws that can accommodate the rights of indigenous peoples in the context of development. These regulations must provide guarantees for land rights managed by indigenous peoples, as well as clarify the mechanism for providing fair compensation for indigenous peoples affected by development projects. Second, there needs to be a more intensive dialogue between the government and Indigenous peoples to create a shared understanding of the importance of the sustainability of Indigenous peoples' rights in development. This dialogue must involve various stakeholders, including representatives of indigenous peoples, the government, and the private sector, to find mutually beneficial solutions. Third, development policies must be more inclusive by considering the social and cultural aspects of indigenous peoples. Updates in development policies that prioritize the principles of social justice and recognition of Indigenous peoples' rights will help create a balance between economic development and the protection of indigenous peoples. Thus, legal recognition and protection of indigenous peoples can be strengthened, and conflicts between customary law norms and positive law can be minimized.

Natural law theory argues that law originates from moral and ethical principles that are universal and naturally applicable throughout human society. In the context of indigenous legal communities in Indonesia, natural law theory can be seen as a basis for recognizing and protecting their traditional rights, which existed long before the positive legal system. Customary law, which is rooted in the values of indigenous peoples' lives, contains principles that are considered fair and by human nature and nature. Therefore, the application of natural law theory can provide a strong moral basis for the recognition of customary rights and land rights of indigenous peoples. Customary law is considered part of the legal

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system that is natural and inseparable from their lives, which have the right to manage and maintain their land and natural resources as part of their identity and existence.

However, the application of natural law theory faces major challenges in the context of a modern state that tends to prioritize positive law. Natural law is not always in line with the interests of the state or the national economy, which often ignores traditional rights in the interests of the development and management of natural resources. Nevertheless, the integration of natural law values into the Indonesian legal system can provide a fairer approach to treating indigenous peoples. In this case, the government and legal institutions need to respect and acknowledge that the rights of Indigenous peoples to their land and territories are not merely formal and legal in nature, but also involve moral and historical aspects that have been recognized in Indigenous communities since ancient times.

On the other hand, the theory of legal positivism emphasizes that law is a rule made by a legitimate authority and accepted by the state, without considering moral aspects or natural values. In this case, the law implemented by the state becomes the main reference in enforcing justice and regulating society, including customary law communities. The Forestry Law and various other regulations are examples of the application of the theory of positivism in regulating land and forest rights in Indonesia, which require recognition of indigenous communities as long as they comply with applicable regulations. This positive law focuses on order and legal certainty through clear and structured regulations, which allow the state to control and manage natural resources and land ownership rights.

However, although the theory of positivism provides a clear and applicable legal basis for regulating conflicts of interest, problems arise when positive law conflicts with customary law. As seen in many cases, indigenous communities are often marginalized or not recognized in the positive legal system, especially about the management of land and natural resources that they have controlled for generations. The theory of positivism can be seen as the main cause of the marginalization of customary rights, because state law often prioritizes development and economic interests over the protection of traditional rights. Therefore, the implementation of the theory of positivism in this case requires a balance between legal order and recognition of the historical rights and local wisdom of indigenous peoples, so as not to cause injustice and harm to them.

In dealing with customary law problems in Indonesia, the application of the theory of natural law and the theory of positivism cannot be seen as two opposing poles, but must be synergized to create a more just and inclusive legal system. The theory of natural law provides a moral and ethical basis for the recognition of customary rights that have existed for a long time, while the theory of positivism provides a legal framework that can be legally accepted by the state. Recognition of customary law communities must involve a meeting between the two, where state law must respect and protect the rights of indigenous peoples by the basic principles of customary law that have developed naturally, but still based on regulations set by the state to maintain legal certainty. The integration of these two theories will create a more just legal system, accommodate the diversity of society, and provide effective legal protection for indigenous legal communities.

## CONCLUSION

The implementation of customary law in Indonesia still faces various challenges and issues that affect the protection of the rights of indigenous peoples, especially in terms of recognition of customary and land rights. Conflicts between customary law norms and positive law often cause inequality in the recognition and protection of the rights of indigenous peoples. Although there are efforts to recognize the existence of indigenous peoples through regulations such as the Forestry Law and the 1945 Constitution, the reality on the ground shows that economic-oriented development policies often ignore or even seize the traditional rights of indigenous peoples, without providing adequate protection guarantees. Therefore, harmonization is needed between customary law and positive law that can guarantee justice and sustainability for Indigenous peoples in the context of national development. To overcome these problems, several steps need to be taken to strengthen the recognition and protection of indigenous peoples. First, there needs to be a more inclusive regulatory update, which not only recognizes the land rights of Indigenous peoples but also provides a protection mechanism in dealing with development projects that can harm them. Second, the importance of constructive dialogue



between the government, indigenous peoples, and other relevant parties, to ensure that development policies can be implemented by considering the social, cultural, and economic interests of indigenous peoples. In addition, development policies must be designed with the principle of social justice that prioritizes the rights of indigenous peoples as an integral part of sustainable development. Thus, efforts to strengthen legal protection for indigenous peoples will be more effective, and the potential for conflict between customary law and positive law can be minimized.

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