

Strengthening Legal Protection of Indigenous Peoples' Customary Land Rights In Indonesia's Disruption Era

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ABSTRACT

Constitutional recognition of customary law communities and their customary rights in the Indonesian legal system affirms the existence of customary law as part of national law. However, in an era of disruption marked by globalization, economic expansion, and regulatory complexity, the protection of customary territories faces significant structural and normative challenges. Regulatory fragmentation and disharmonization of sectoral legislation have weakened the effectiveness of the recognition and protection of customary rights, thereby creating legal uncertainty and increasing the vulnerability of indigenous peoples. Based on this background, this study formulates the following problem: How can customary law and national law be harmonized in responding to the challenges of globalization? How can regulatory fragmentation and structural barriers affect the protection of customary land rights in the era of disruption? This study aims to examine the adequacy and coherence of legal norms governing customary rights and to formulate normative recommendations to strengthen the protection of customary territories within the national legal framework. This study uses a normative juridical method with a regulatory, conceptual, and analytical approach to constitutional provisions, sectoral regulations, and relevant legal doctrines. The results of the study show that the main obstacles to the protection of customary rights lie in overlapping regulations, inconsistent recognition mechanisms, and the lack of a comprehensive legal framework. Therefore, strengthening the protection of customary rights requires regulatory harmonization, clarity of recognition procedures, and adaptive legal governance by integrating customary law principles into the national legal system.

Keywords: Legal Protection; Indigenous Peoples; Disruption Era.

I. INTRODUCTION

The applicable law in Indonesia is classified into three types, namely Western Law, Religious Law, and Customary Law. The implementation of the law is based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This is because Indonesia has adopted a diverse legal system in terms of legal aspects. Customary law is a form of law that is widely used in Indonesia. Indonesia is a country that has many tribes, customs, races and

cultures that have many different types of customary law. Customary law in Indonesia is a set of rules, values and norms that apply to an area or environment. Customary law is generally in the form of unwritten law. The level of obedience and compliance with customary law is still very high in certain communities, even in some indigenous groups, customary law is part of religious law. Customary law is often used as an alternative to solving various social problems (Sukriono et al., 2025).

As is known, customary law is generally unwritten law. Therefore, customary law is dynamic and needs to be continuously studied for various legal developments. The application of customary law is very relative, because it depends on the society to which it is applied. In the Era of disruption, the world began to develop, and today's society lives an integrated life. Globalization affects the way society lives, including lifestyles and ways of thinking.

Indigenous peoples in the book of B. Ter Haar Baz, which is translated as "*Rechtsgemeenschappen*". The term customary law society is often used in legal development. According to Van Vollenhoven, customary law is all positive behavior which on the one hand has sanctions (law) and on the other hand is not codified. Positive behavior has the meaning of law ("Hukum adat Indonesia," 2025). The term indigenous peoples are often used in the development of legal studies that explore natural resources. In natural resource law courses, there are several debates between the interests and laws of indigenous peoples and the state (Soelistyowati, 2024).

The 1945 Constitution of the Republic of Indonesia is the constitutional basis for various policy implementations in Indonesia so as not to conflict. Article 18B paragraph 2 formulates that "The State recognizes and respects the unity of Customary Law Communities along with their traditional rights as

long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law."

Before the term customary law was added to the constitution, there were several laws and regulations that contained various restrictions on indigenous peoples, such as Article 2 paragraph (4) of Law Number 5 of 1960 formulating "The right to control the state can be delegated to autonomous regions and customary law communities as needed and not contrary to the national interest.

Most societies believe that Indigenous Peoples are *rechtssubjects*, or legal subjects, who have the right to be involved in the overall legal discussion. Ter Haar claims that societies are associations with the following constraints; regular groups that proceed with power and their own wealth in the form of tangible and intangible assets. (Mieke Yustia Ayu Ratna Sari, 2019)

From the above statement, the difference between customary law communities and society in general is about assets, namely tangible and intangible "treasures". The current civilization is a modern civilization that has a high level of rationality in terms of social interaction guided by practical and utilitarian pattern goals rather than primitive, traditional and ceremonial ones.

Discussing the law if only focuses on the procedural understanding of the law, the material meaning in this case the substantive law that fulfills the sense of justice is reduced to procedural law because it is not fulfilled. Moreover, modern globalization is characterized by the problems and challenges of today, entering the era of human life.

Globalization is understood as a process in social life on advances in information and communication technology. With the rapid advancement of information and communication technology, globalization has become important for social life and society, and a global society will eventually be

realized. Advances in information technology have made everything easier to do. The next step towards globalization is marked by the faster rise of capitalism (Nath, 2025).

In particular, the role of investment, production processes and markets of multinational corporations is becoming increasingly open and global, further supported by the philosophy created by several associations of free trade organizations in all parts of the world towards a new world trade order. The combination of globalization and capitalism knowledge identifies the two most important "theories" fundamental to capitalist development: "modernization" and "development". The basic idea of modernization and development theory is that social change is a revolutionary social movement (rapid change from tradition to modernization).

Modernization is gradual through a continuous, complex process of homogenization (convergence) in many areas and fields of science, and ultimately in many areas and fields of science that will affect all of humanity. Politics, economics, theology, education, legal systems and other fields are filled with homogeneity, in other words modernization is about living a better life and modern science is essential for that purpose. Rather than just an economic phenomenon, globalization is a phenomenon influenced by the interaction of political, social, cultural and economic factors (the role of large multinational corporations) (Bonaraja Purba et al., 2023).

Nowadays, the modern era is also known as the Era of Disruption, which means technological advancement. Today, indigenous associations face many challenges and major changes. The process of Globalization, urbanization and modernization to disruption has had a huge impact. One of the biggest challenges faced is the loss of indigenous lands. Industrial expansion, agriculture, and infrastructure projects often threaten indigenous territories. As

a result, indigenous peoples lose access to natural resources that are essential to their survival and culture. In addition, social and cultural changes caused by modernization also impact indigenous peoples. Their traditional values and social systems can be influenced by modern lifestyles, technology and foreign cultures. This can lead to internal conflicts and the challenge of maintaining cultural identity and traditions. The era of disruption, however, also has efforts to respect and protect the unity and rights of indigenous peoples.

Recognition of indigenous peoples' land rights and participation in decision-making are important issues at the national and international levels. Human rights organizations and international organizations play a role in fighting for justice for indigenous peoples. In addition, indigenous peoples are increasingly recognizing the importance of preserving and promoting their culture and traditions. They seek to preserve languages, traditional knowledge and cultural practices, revitalize traditional rituals and traditional knowledge through social education. In other words, modernization in indigenous societies is about striving towards a better life, and modern science plays an important role. In such situations, rationalism and empiricism become the approach in addressing and solving problems.

Empirically, conditions on the ground show a different dynamic. Agrarian conflicts involving customary territories still occur frequently, especially in relation to the granting of permits for plantations, mining, forestry, and infrastructure projects. The expansion of investment policies and the simplification of licensing within the framework of national economic development in this era of disruption have also increased pressure on the customary territories of indigenous peoples. In addition, overlapping sectoral regulations and complex administrative mechanisms in the process of

recognizing indigenous peoples often pose obstacles to the effective protection of customary rights.

These conditions indicate a gap between normative recognition and empirical implementation. On the one hand, the constitution and legislation recognize the existence of customary law communities and their rights to customary territories. On the other hand, in practice, customary law communities still face legal uncertainty and vulnerability in defending their customary territories, especially in the context of an era of disruption characterized by globalization, digital transformation, and the acceleration of investment-based development.

Previous discussions often focus either on the existence of customary law in modern society or on broader indigenous peoples' rights without clearly examining the specific issue of legal protection of customary land rights in contemporary regulatory dynamics. Consequently, there is a need to critically examine how Indonesia's legal system responds to the challenges posed by the era of disruption in protecting indigenous peoples' customary land rights.

Based on the above considerations, this study is directed at examining the following research question; How can customary law and national law be harmonized in responding to the challenges of globalization? How can regulatory fragmentation and structural barriers affect the protection of customary land rights in the era of disruption? This article aims to analyze the adequacy of existing legal norms and to formulate legal recommendations for reinforcing the protection of indigenous customary territories.

II. RESEARCH METHODS

This study employs a socio-legal approach, integrating normative legal analysis with empirical examination of the implementation of indigenous peoples' customary land (ulayat) rights in Indonesia. This approach is considered more appropriate than a purely doctrinal method, as the research problem concerns not only the existence of legal norms but also their effectiveness and application in the era of disruption.

The research was conducted in several stages. First, a normative analysis was undertaken by examining constitutional provisions, statutory regulations, and relevant court decisions concerning indigenous peoples and customary land rights. This stage aimed to identify the scope and structure of legal recognition and protection within Indonesia's regulatory framework.

Second, empirical data were collected through document analysis of policy instruments, reports on land conflicts, and relevant governmental and institutional publications. Where applicable, qualitative information was obtained from secondary empirical sources to understand how customary land rights are implemented and contested in practice.

Third, the study analyzed the gap between normative guarantees and empirical realities. The analysis focused on identifying regulatory inconsistencies, administrative barriers, and development policies that potentially weaken the protection of customary land rights.

Finally, based on the socio-legal analysis, the research formulates recommendations for strengthening legal protection through regulatory harmonization, clearer recognition mechanisms, and a rights-based approach to indigenous territorial governance.

III. RESEARCH RESULTS AND ANALYSIS

A. Harmonization and Strengthening of Customary Law as a Source of National Law in the Era of Disruption

Customary law is a set of values that live and develop in a society. Although customary law is not written, it has a strong binding force in society. It has its own sanctions for violations of customary law rules. In that community, the customary law that applies has a strong cultural uniqueness. Even if the judge, handling a case, cannot find it in written law but must find unwritten law that lives and develops in the unity of the customary law community.

Van Vollenhoven explained that customary law is a whole of positive rules of behavior which on the one hand has sanctions, therefore it is called law and on the other hand is not codified, therefore it is called adat (Erfan et al., 2024). Customary law in the provisions of the results of the seminar on Customary Law in Yogyakarta in 1975 is an original Indonesian law that is not written in legislation and contains religious elements and customary law has a position as one of the sources for obtaining material for the development of national law leading to legal unification (legal equality) (Syamsudin, 1998).

Law is a system that has rules in the form of legal rules based on agreement. The Indonesian way of thinking is different from the way of thinking in the western legal system (Civil Law System or Common Law System) (Engrina Fauzi, 2025). The existence of customary law is as one part of positive law that is constitutionally recognized by the state so that customary law is in the national legal system.

The term recognized has a different meaning from the term determined. The validity of customary law in Indonesia is not determined or stipulated by the state. Article 18B paragraph (2) of the 1945 Constitution of the Republic of

Indonesia formulates "The State Recognizes and Respects Community Unities According to Customary Law and Traditional Rights as Long as They Are Still Alive, and in Accordance with the Development of Society and the Principles of the Unitary State." The formulation of the article contains elements; The state recognizes and respects customary law, this requires the state not only to recognize the existence of customary law (Arifin et al., 2025), but to play an active role in the process of developing customary law, for example by strengthening the customary law system through legislation and state administration. The state recognizes the existence of indigenous peoples' units and their traditional rights, meaning that the state promotes indigenous peoples' units as an important part of the state order, plays an active role when needed, is obliged and respects and maintains indigenous peoples' units.

As a result of Globalization, legal reform in all areas of life is very important for the implementation of Indonesia's national reform agenda, in various aspects of social life, legislation at the national and regional levels needs to be updated. The legal reform agenda in relation to globalization includes legislative changes, institutional reform and cultural transformation.

The use of law as an instrument of social control (by the ruler) as a tool to change society and as a political weapon developed for political purposes is one example of its function (Al Alawi, 2024). Based on the principle of concordance, the legal system applied in Indonesia is like the legal system in the Netherlands. However, this is different from the circumstances and desires of the people who prioritize recognition and respect for the law. individual rights (not the same as sectoral ego) and think more rationally in the implementation of existing law enforcement.

According to Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the state recognizes and respects customary law, Article

28 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, cultural identity and rights of traditional groups are respected in accordance with the times and civilization. Article 6 of Law Number 39 of 1999 concerning Human Rights formulates

1. To protect human rights, the unique needs and differences of indigenous peoples must be recognized and protected by law, society and government.
2. Customary land rights and protected land, as well as the cultural identity of indigenous peoples are modern.

In the material content of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia in the phrase "as long as it is alive", mandates that the Indonesian state has a pluralist constitution. This means that the constitution considers customary law included in the law that needs to be used as a source of guidance for social life in the modern era.

Law is flexible and dynamic, but customary law can be used as a source of drafting national legislative material (Setiawan et al., 2024). Customary law has its own style compared to other legal systems. Three characteristics of customary law are that it is traditional, subject to change, and capable of adjusting itself. This characteristic shows that although customary law maintains its local wisdom value, at the same time it can accept changes that affect it. This is where the flexibility of customary law lies.

The Constitution, an organic law that guarantees the certainty of customary law and its legal community with the recognition and respect for the enactment of laws that apply in the community. The guarantee in legal certainty by the constitution is also realized from judges as creators and givers of justice in the community to explore, and understand the value of law and justice that lives in the community.

The court's partiality towards customary law will be seen when the court judges' decisions have shown everything that exists in the life of the community, which has gained form as law (Syam et al., 2023). In the sense that every court decision reflects certainty that has legal consequences (*rechtsgevolgen*) in the form of *dwang* (coercion) or certainty in other forms. According to Anthony Allot regarding the basic postulates of law, the characteristics of judicial decisions are "enforced judicial decisions" (Allot, 1967).

Upholding human rights in society emphasizes the limits of good legislation, so that customary rights that still apply in customary law communities must be recognized and protected. In this case too, Nader and Todd identify ways of resolving disputes that exist in society, and outline that one of the ways of resolving disputes is by taking coercion through the courts (adjudication) (Nader & Todd, 1978).

Customary law is recognized for its existence and is still upheld by the Indonesian constitution, but that does not mean that customary law has no limitations. Limitations can arise with customary law if it contradicts the principles of the Unitary State of the Republic of Indonesia. For example, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia formulates "The land and water and the natural resources contained therein shall be under the control of the state and shall be used for the greatest prosperity of the people".

The definition of "people" in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia must be understood without the exception of indigenous peoples (Arvita Hastarini, 2024). However, in the existence of customary law communities, these boundaries cause controversy or are contested, because they are complementary, and some even emphasize the

existence of customary law communities as Indonesian people guaranteed by the constitution.

This constitutional obligation is an effort to uphold the principle of kinship as a unitary state of Indonesia, upholding the principle of Unity in Diversity. Indonesia is a country based on Pancasila and the concept of Unity in Diversity. Pluralism in unity in accordance with the concept of the constitution in the development of modernization seeks balance and harmony between people's understanding of the diverse realities of a pluralistic society.

Indigenous peoples are among those disadvantaged by development policies. Although indigenous peoples are the most important element in the structure of the Indonesian nation-state, their presence is not considered in national policies or systematically excluded from the state's political agenda. Unfair treatment can be seen in the unilateral categorization and definition of indigenous peoples as "vulnerable peoples", "alienated peoples", "shifting cultivators", "communities", "indigenous peoples", and "indigenous peoples". primitive", "forest encroachers", these categorizations have implications for accelerating the destruction of systems and even patterns of indigenous peoples. According to ILO Convention No.69 of 1986, "Nations, tribes and indigenous peoples are groups of people who trace their ancestry back to pre-invasion and colonial societies, who developed in their areas, consider themselves different from other communities that are now in their areas or are not part of these communities(Haryono, 1994). They are not part of the community and are determined to preserve, develop and pass on their ancestral territory and ethnic identity to the next generation. This is the foundation of their survival as a tribe, in accordance with their cultural patterns, social institutions and legal systems. Indonesian development planners and implementers have long viewed traditional cultural values as backward. Based

on this assumption, it has developed a deeper understanding of the importance of achieving socio-cultural change. Change means removing traditional values and replacing them with other values, in this case "modern values", so that development can achieve its ultimate goal of community welfare. The elimination and even revocation of traditional values occurs through various laws and regulations and other policies. For example, Law No. 5/1979 changed the jurisdictional system into a village form of government, which was the beginning of the dysfunction of adat government (Kadaryanto et al., 2025). The village head became the sole ruler who considered the interests of the government above him-acts based on legal authority (Rahmawati et al., 2023).

Jimly Ashiddiqie stated that it should be noted that this recognition is given by the state (Andriyadi, 2025);

1. to the existence of a customary law community and its traditional rights.
2. The existence that is recognized is the existence of the units of customary law communities. This means that recognition is given to each of these entities and therefore the customary law community must be specific;
3. the customary law community is alive (still alive);
4. in its particular environment (lebensraum);
5. Recognition and respect are given without ignoring the measures of humanity in accordance with the level of development of the nation's existence. For example, certain traditions that are no longer worth maintaining should not be left out of the progress of civilization just for sentimental reasons.
6. Recognition and respect must not diminish the meaning of Indonesia as a country in the form of the Unitary State of the Republic of Indonesia At the beginning of Indonesian independence, customary law was not explicitly stated.

In the body of the 1945 Constitution. Even in this case, there is not a single article that contains the basis for the enactment of customary law, except for the provisions of the Transitional Rules in Article II which formulates "All existing state bodies and regulations are still directly applicable as long as no new ones have been made in this basic law". However, in the General Elucidation of the 1945 Constitution, "The basic law is the written basic law, while in addition to the basic law, the basic law does not apply. written." According to Soepomo, the term unwritten law is a synonym for customary law. (Sudiyat, 1978)

Since 1998, the spirit of reform on the position of indigenous peoples has had a positive impact. Therefore, the Congress of the Indigenous Peoples Association of the Archipelago disagrees with the equation of indigenous peoples as alienated peoples. The congress explained that indigenous peoples are groups of people who have ancestral origins (from generation to generation) in a certain geographical area, and have their own value system, ideology, economy, politics, culture, social, and territory (AMAN 1999) (Acciaioli, 2001).

Social Change, Technology and Globalization can have a significant impact on the existence of indigenous peoples. Here are some of the impacts that may occur:

1. Social Change.

Social changes such as urbanization, migration and changing cultural values can affect the lifestyles and interactions of indigenous peoples. Pressure to conform to modern norms can alter or diminish previously held customs. This can threaten the sustainability and survival of indigenous peoples.

2. Technology
Technological advances can have both positive and negative impacts on indigenous peoples. On the one hand, technology enables greater access to information, allowing indigenous peoples to promote their

cultural heritage. However, technology can also bring about changes in lifestyle patterns, economics, and values, disrupting traditional customs.

3. Globalization

Globalization has led to increased flows of information, communication and trade between countries and cultures. This can have an impact on the existence of indigenous peoples. Rapid cultural exchange and the dominance of global cultural values can lead to a decline in the importance and recognition of customary law. Globalization can also create conflicts of interest between indigenous peoples and broader economic or political interests.

The emergence of globalization in the Disruption era has made clear the importance of a good development paradigm that considers the rights of indigenous peoples. Protecting their existence, strengthening their participation in policy-making, and encouraging the preservation of culture and the natural environment are important steps in maintaining the existence of indigenous peoples in the current Disruption Era.

B. Regulatory Fragmentation and Structural Challenges in Protecting Customary Land Rights in the Era of Disruption

Customary law as an original Indonesian law is a law that should follow the spirit of the Indonesian nation and society because customary law grows and lives from the culture of the community/society where customary law is enforced. This is related to the opinion of Von Savigny who explained that the content of the law is determined by the development of customs and the content of the law is determined by the history of society in this case the law applies (Laia et al., 2024).

As the Law of the people, customary law is continuously in a state of growth and development like the life of the people themselves (Saswoyo & Pura, 2023). In Indonesia, customary law adapts to the life of the Indonesian people throughout the course of its history (Ali Syarif, 2024). Thus, customary law has always undergone changes but changes have not been able to revoke its existence.

In this era of disruption, indigenous communities face several complex challenges in maintaining their existence. The impact of rapid social change, technological advances, and globalization has changed traditional cultures and values around the world. Indigenous peoples who have lived based on principles and orders for generations must now face threats to the existence and preservation of indigenous peoples.

According to Social change is any modification in the organization of a society that concerns social institutions or patterns of social roles. This change concerns a broad social system not just small group change (Arrizal Diwa Muzzaki et al., 2023).

One of the biggest challenges to indigenous peoples is the impact of modernization and urbanization. Rapid social change has penetrated indigenous communities, altering patterns of life, values and social relations. Traditional values are often ignored or replaced with modern norms. Broader cultural assimilation can result in local wisdom, which can have an impact on the decline of the existence of indigenous peoples. In addition, the impact of globalization also poses serious challenges to indigenous peoples. The global culture driven by the flow of information and communication technology has a direct impact on indigenous peoples. Traditional values and customs may be undermined by the introduction of world culture. Understanding and respect for local wisdom may be threatened by the dominance of a wider culture, which

often considers customary law to be outdated or irrelevant. Equally important is the conflict between customary law and formal laws enforced by the state. Formal legal systems often do not recognize or respect customary law, and customary law communities face challenges in protecting their rights. Discrimination, injustice and inequality can hinder the sustainability of customary law and threaten it.

Indigenous communities in Indonesia face loss of habitat or living space due to globalization. Globalization often threatens and shrinks the territories inhabited by indigenous peoples, thus making indigenous communities lose access to natural resources that are important for their survival. In this situation, issues related to the sustainability of customary law in Indonesia are increasing. However, it is important to understand how important customary law is in protecting the cultural diversity, identity and livelihoods of indigenous peoples. Given the impact of globalization, efforts are needed to strengthen recognition of customary law, respect customary rights, and involve indigenous peoples in the implementation of state development that impacts their lives. Therefore, it is very important to know the impact of globalization on customary law in Indonesia. The rich cultural heritage that is important for Indonesia's diversity must be preserved by continuing to fight for the recognition, protection and preservation of indigenous peoples.

In the face of these challenges, it is important to take appropriate steps to strengthen and protect the existence of indigenous peoples. Recognition of the existence of indigenous peoples needs to be improved. Legal protection, participation of indigenous peoples in decision-making can be an important foundation for maintaining customary law in the current era of modernization.

Jeremy Bentham explained that the certainty generated by the law (*zekerheid door het recht*) for society is the main purpose of legal protection or

the law itself. Furthermore, Bentham formulated the main purpose of law is to ensure the existence of as much happiness as possible to many people (Bentham, 2012). The task of law is to ensure certainty, especially in dealing with globalization in the era of disruption during society, especially customary law communities.

Globalization results in legal changes in all areas of life. Based on this, the agenda for legal change in relation to globalization includes legislative change, institutional reform, and cultural transformation (Lazarus, 2024). Globalization and national justice approaches to law have two aspects: the way law is applied from one country to another. The use of law as an instrument of social control (by the ruler), as a tool to change society and as a political weapon in its development for a political purpose.

In relation to modernization between customary law, which is classical-modern in nature and entrenched in the psyche of the Indonesian people, should be the main basic capital for the formation and development of national law (Harniwati, 2024). Customary law, which is considered underdeveloped, is in many respects more advanced than Western law, in this case English law and Dutch law, for example:

1. The concrete/empirical nature of customary law means that it is more plastic, having the possibility to respond more quickly to the challenges of nature and the times.
2. There is no distinction between public law and private law, freeing it from obstacles to its movement.
3. Social functions make people or communities to live more proportionally and humanely.
4. Pragmatism and religious functionalism result in cultured and civilized humans to live effectively.

5. Ownership of land encourages people to try to preserve and increase productivity for the sake of collective survival
6. The principle of separation for current and future levels of development, able to adapt to complex technological developments
7. Tolerance between communities, fostering a sense of solidarity to live more harmoniously
8. Common interests are prioritized to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Preparing to address the needs of Indigenous peoples in responding to contemporary challenges involves complex issues that can no longer be addressed solely through traditional political knowledge. This is due to the transition into the digital era, which presents conditions fundamentally different from those of earlier centuries. In addition, the rapid flow of information requires individuals to critically assess the credibility of information before engaging in civic participation, making citizen literacy an essential requirement.

The reference in seeing modern law formed will be seen and observed in the social history of European society. The law used in Indonesia is characterized by modern law. When the law characterizes modern, a "Legal Order" emerges along with the emergence of the bourgeoisie, rationalizing modern law as something that is general and has autonomy vis-à-vis other institutions in society. In more detail Trubek characterizes modern law as follows (Trubek, 1972):

1. made intentionally
2. to achieve a specific goal
3. Part of the state, but at the same time also has autonomy vis-à-vis the state.

In preparing for the needs of indigenous peoples to answer the challenges mentioned; first, significant and complex challenges that require more than the traditional knowledge of citizens in politics because the challenges are different from before the 2nd century in that the world has not entered the digital era. other challenges are the flow of information that is so the fast flow of information means that people must determine which information they can trust and base their involvement on, so citizen literacy is needed. (Dominici, 2023)

Second, the interdependent international world rewards people who understand global competencies, such as the ability to relate from local to global. Globalization, with technological advancement as its tool, is changing the basis of society, economy and social life. Society and the work environment are increasingly diverse in terms of language, culture and so on. Globalization demands a global-minded society. Therefore, education is needed to be able to interact with the environment from outside themselves as Oxfam sees a global citizen as someone who is "aware of the wider world and has a sense of their own role as a world citizen; respects and values diversity; willing to act to make the world a more equitable and sustainable place; take responsibility for their actions" (Kamalin et al., 2024).

The impact of globalization has caused conflict in communities that uphold traditional norms. Cultural changes in traditional societies, namely changes from a closed society to a more open society, from homogeneous values to pluralism. International technology and information have eliminated the cultural boundaries of every nation (Mumu et al., 2023). The worst impact is the loss of the existence of indigenous culture because it is carried away by globalization. Indigenous peoples in Indonesia are among the marginalized (vulnerable). The intended vulnerability is the inability of indigenous peoples

to maintain sovereignty, autonomy and identity. This vulnerability is caused by external pressures and internal weaknesses (Lubis et al., 2025).

One of the government's duties is to recognize and respect customary law as a legal system that is legitimate and equal to formal law. Through supportive laws and policies, the government can provide a strong legal basis for indigenous peoples to live their lives without fear of discrimination.

The existence of indigenous peoples is a historical fact that cannot be avoided or denied by the government. Formally, the recognition of indigenous peoples in the constitutional structure is mandated and regulated in the Constitution of the Republic of Indonesia.

As explained earlier, the state has a constitutional obligation to recognize and respect the existence of indigenous peoples and their traditional rights. This obligation is technically carried out by the government as the state organizer given by the constitutional mandate. In the context of state administration, the central government divides/delegates its power to local governments as the implementation of decentralization in government affairs which is summarized in the concept of regional autonomy. In various literatures, the forms of delegation of authority are attribution, delegation and mandate (Hikmatul Hasana & Firman Octaviana Sulistiyono, 2026).

Kennedy and Cohen argue that transformation has brought us globalization, a new awareness and understanding that the world is one. Giddens asserts that most of us are aware that we are actually participating in a world that must change uncontrollably characterized by tastes and interests in the same thing, change and uncertainty, and possible realities. Along the same lines, Peter Drucker calls globalization the age of social transformation. (Hasibuan & Aslami, 2022)

The role of law in globalization, for example in economic globalization, is in regulating human activities in meeting needs through trade in goods and services, being the right revealer of new forces that require the formation of community welfare. In addition, the law is here to protect, regulate and plan economic life so that the dynamics of economic activity can be directed towards progress and prosperity for the entire community, economic globalization cannot be avoided by any country. (S. Nita Amalia et al., 2025)

At the normative level, in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, Indonesia is a state of law, not a state based on power. So, the 1945 Constitution wants the Indonesian state to be a state of law by guaranteeing the rule of law, the principle of equality which implies the principle of freedom, the principle of democracy, and the principle of government functions to serve the people. Based on the above description, it can be said that what the Indonesian state wants to strive for is a state based on law, in which all uses of power must always be based on law, and within the framework of the limits set by law a fortiori for the use of public power. So, the desired government is a government based on law. (Qamar & Rezah, 2023)

In this context, legal harmonization is an absolute solution, it is intended as a vehicle to create a set of rules whose basic principles come from the national laws of each country. Thus, each country will not feel that it has lost control of its national laws. activities of its citizens. This harmonization model will not ignore the existence of each national law but will absorb the basic principles whose existence is then maintained through consensus and the principle of mutual benefit.

Legal protection of the rights to customary territories of indigenous peoples in this era of disruption faces structural challenges stemming from regulatory fragmentation, institutional barriers, and development policies

focused on economic growth. The main problem lies not in normative recognition, but in weak implementation designs and the lack of harmonization between regulations governing agrarian resources and customary territories.

Normatively, recognition of customary rights has been affirmed in the national agrarian law framework, which states that these rights are recognized as long as they still exist in reality (Pradhani, 2019). However, regulations in other sectors such as forestry, mining, and investment have developed under separate legal regimes that are often not integrated with the agrarian regime (Fathoni, 2022). This situation has led to a situation where areas that are sociologically customary territories can be administratively designated as state forest areas or concession areas. This fragmentation of regulations has created overlapping claims between customary law communities and business license holders, where in practice the sectoral regime tends to be more dominant because it is supported by strong administrative instruments and state authority. As a result, the protection of customary rights remains subordinate to sectoral policy interests.

On the other hand, institutional and procedural barriers also weaken the effectiveness of the protection of rights to customary territories. The mechanism for recognizing customary law communities generally requires formal designation through local regulations or regional head decisions. This process is not only lengthy and bureaucratic, but also highly dependent on the political will of the local government. In practice, many customary law communities still exist sociologically and have customary territories, but have not yet received formal recognition from the state. Without such administrative recognition, rights to customary territories are vulnerable to licensing interventions and development projects, making the protection of customary rights conditional and dependent on the administrative legitimacy of the state.

Development policy pressures in this era of disruption further exacerbate the complexity of this issue. Accelerating investment, digitizing the licensing system, and simplifying regulations to support economic growth are indeed aimed at increasing efficiency and competitiveness. However, in practice, these policies often reduce the space for customary law communities to participate in decision-making processes related to their territories. The integration of electronic-based licensing has the potential to accelerate the issuance of permits without substantive verification of the status of customary territories, thereby increasing the risk to the tenure security of customary law communities if protection mechanisms do not develop in a balanced manner.

The findings of this study indicate a structural gap between normative recognition and effective protection. Although the constitution and various laws and regulations have recognized customary rights, institutional design and regulatory configuration do not yet fully guarantee comprehensive and sustainable protection. From a legal pluralism perspective, this condition reflects the dominance of state law over customary law in agrarian resource governance. Customary law is recognized declaratively, but its implementation remains within the framework of state administrative control. Therefore, the main challenge in this era of disruption is not the existence of customary law, but rather the need to reconstruct legal protection mechanisms that are more integrated, harmonious, and rights-based.

IV. CONCLUSIONS

This study aims to analyze how strengthening legal protection of indigenous peoples' rights to customary territories can be realized within the Indonesian legal framework in this era of disruption. The results of the study show that the main problem does not lie in the absence of normative

recognition, because the constitution and various laws and regulations have recognized the existence of indigenous peoples and their rights to customary territories. However, there is a gap between normative recognition and effective protection in practice. Sectoral regulatory fragmentation, complex administrative recognition mechanisms, and development policies oriented towards accelerating investment have weakened the tenure security of customary law communities. In the context of the era of disruption, the acceleration of licensing and digital system integration has actually increased the risk of overlapping claims over customary territories. Therefore, strengthening legal protection of customary rights requires cross-sectoral regulatory harmonization, simplification of the recognition mechanism for customary law communities, and the application of a rights-based approach that prioritizes the security of customary territories in national development policies. Without such structural reforms, constitutional recognition of customary rights has the potential to remain declarative and not yet provide full effective protection.

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