

## **The Ambiguous Authority of Provincial Governors in Customary Law Recognition: Regulatory Fragmentation in Indonesia's Decentralization Era**

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### **ABSTRACT**

This study aims to analyze the structural, institutional, and regulatory challenges in recognizing Indigenous Law Communities (*Masyarakat Hukum Adat/MHA*) in Indonesia, with a particular focus on the strategic yet ambiguous role of provincial governments. Despite the legal mandate for decentralization, the dual function of governors as regional heads and central government representatives has not been supported by a clear legal framework to facilitate cross-district recognition of MHA. Using a qualitative approach, the study employs document analysis of legal texts, regional regulations, and case studies, supported by secondary data from institutional reports and scholarly publications. The findings reveal three major issues: first, the absence of a legal mandate for governors to coordinate inter-district recognition processes; second, regulatory conflicts between provincial and district-level authorities, especially when indigenous territories cross administrative boundaries; and third the lack of harmonization between regional customary regulations and national laws. These obstacles have resulted in legal uncertainty, fragmented policy implementation, and continued marginalization of indigenous communities. This research contributes to the discourse on multilevel governance by emphasizing the overlooked role of governors in indigenous rights recognition. It also identifies practical entry points for policy reform, such as enhancing judicial review mechanisms, formalizing adat institutions, and improving spatial data integration across ministries. The originality of this study lies in shifting the analytical lens from district-level actors to the provincial level, proposing a coordinated, vertically and horizontally integrated governance framework for sustainable recognition of indigenous communities in Indonesia.

**Keywords:** Decentralization; indigenous law communities; multilevel governance; provincial government; regulatory conflict.

### **ABSTRAK**

Penelitian ini bertujuan untuk menganalisis tantangan struktural, kelembagaan, dan regulatif dalam proses pengakuan Masyarakat Hukum Adat (MHA) di Indonesia, dengan fokus khusus pada peran strategis namun ambigu pemerintah provinsi. Meskipun terdapat mandat hukum tentang desentralisasi, fungsi ganda gubernur sebagai kepala daerah dan perwakilan pemerintah pusat belum didukung oleh kerangka hukum yang jelas untuk memfasilitasi pengakuan MHA lintas kabupaten. Dengan pendekatan kualitatif, penelitian ini menggunakan analisis dokumen terhadap teks hukum, peraturan daerah, dan studi kasus, serta didukung oleh data sekunder dari laporan institusi dan publikasi ilmiah. Temuan utama menunjukkan tiga persoalan pokok: pertama, ketiadaan mandat hukum bagi gubernur untuk mengoordinasikan pengakuan lintas kabupaten; kedua, konflik regulatif antara pemerintah provinsi dan kabupaten, terutama saat wilayah adat melintasi batas administratif; dan ketiga belum efektifnya harmonisasi antara Perda Adat dengan hukum nasional. Ketiga hal ini berujung pada ketidakpastian hukum, fragmentasi implementasi kebijakan, dan terus berlanjutnya marginalisasi terhadap komunitas adat. Penelitian ini memberikan kontribusi terhadap diskursus tata kelola multilevel dengan menyoroti peran gubernur yang selama ini kurang diperhatikan dalam proses pengakuan hak-hak masyarakat adat. Studi ini juga mengidentifikasi sejumlah rekomendasi praktis untuk reformasi kebijakan, seperti penguatan mekanisme *judicial review*, formalisasi kelembagaan adat, dan integrasi data spasial lintas kementerian. Keaslian penelitian ini terletak pada pergeseran fokus analisis dari aktor tingkat kabupaten ke tingkat provinsi, serta pada tawaran kerangka tata kelola yang

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terintegrasi secara vertikal dan horizontal untuk memastikan pengakuan yang berkelanjutan terhadap MHA di Indonesia.

**Kata kunci:** Desentralisasi; konflik regulasi; masyarakat hukum adat; pemerintah provinsi; tata kelola multilevel.

## INTRODUCTION

The recognition of *Masyarakat Hukum Adat* (MHA or Customary Law Communities) in Indonesia is constitutionally guaranteed under Article 18B(2) of the 1945 Constitution (Qodim, 2023). However, the phrase “as long as they are still alive and in accordance with the development of society” introduces legal ambiguity, as it remains undefined in any organic law (Budianto & Karo, 2021; Rudy et al., 2023). This ambiguity has resulted in the absence of uniform standards in local regulations and has frequently triggered regulatory conflicts at the regional level. Indonesia presents a significant case study due to its 1,499 recognized indigenous communities (Aliansi Masyarakat Adat Nusantara, 2024), but as of late 2024, only 330 of them had received formal legal recognition from local governments (Arifin et al., 2025).

Decentralization policies enacted through Law No. 22/1999 and Law No. 23/2014 have not fully strengthened MHA protections. Concurrent authority over recognition has created uncertainty about the governor's role as a representative of the central government, especially regarding inter-regional customary land disputes and licensing matters (Law No. 23/2014, Article 38). This ambiguity is further exacerbated by the limited capacity of local governments in budgeting, technical processes for recognition, and cross-sectoral coordination. The Badan Registrasi Wilayah Adat (BRWA or Customary Territory Registration Agency) (2024) reported that out of a total of 30.1 million hectares of registered customary territories, only 4.85 million hectares had been formally recognized as of August 2024.

This gap is also reflected in the slow recognition of *hutan adat* (customary forests) by the state, the increase in agrarian conflicts, and the weak harmonization between customary and national legal systems. Komnas HAM (National Commission on Human Rights) recorded that only around 265,250 hectares of customary forest had been recognized out of the 4.85 million hectare target, while agrarian conflicts exceeded 200 cases annually—many of which involved indigenous territories (Lahay, 2025). These legal and institutional conflicts underscore the urgent need for regulatory reform that integrates customary law, national law, and the province-level coordination role.

**Table 1. Summary of Key Data on Customary Territories and Agrarian Conflicts in Indonesia, 2024**

| Source                                   | Year | Indicator                        | Quantity/Description  | Notes   |
|--|------|----------------------------------|---|---|
| Badan Registrasi Wilayah Adat (BRWA)     | 2024 | Registered customary territories | 1,499 territories; 4.85 million ha recognized; 16.1% of 30.1 million ha total | Of all regional regulations, only 330 documents have been officially issued |
| Aliansi Masyarakat Adat Nusantara (AMAN) | 2024 | Threatened customary territories | 4.85 million ha; 247 victims; 1 death   | Land grabs often involve companies and the state                            |
| Komisi Nasional Hak Asasi                | 2024 | State-recognized                 | 265,250 ha of 4.85 million ha target  | MoEF recognition is slow compared to  |

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|  |      |                           |   |  |
|--|------|---------------------------|---|--|
| Manusia (Komnas HAM)                               |      | customary forest (MoEF)   |   | the potential customary areas  |
| Center for International Forestry Research (CIFOR) | 2024 | Annual agrarian conflicts | 212 conflicts; 20 in forestry sector; 21 in mining sector | Agrarian conflicts affect indigenous territories but are often recorded sectorally |

**Source:** Retrieved from Several Sources (2024)

Previous studies have addressed various aspects of decentralization, customary law, and the role of local governments in recognizing MHA in Indonesia. However, several critical gaps remain insufficiently explored. First, studies on decentralization and regulatory conflict indicate that while decentralization grants regions autonomy to draft their own regulations, implementation continues to face significant coordination hurdles. Research by Nasution (2024), Ramadhan et al. (2022), and Rijal et al. (2024) highlighted conflicts between local and central policies, particularly in managing natural resources and infrastructure projects. Overlapping legal frameworks and unclear authority divisions have resulted in fragmented and ineffective policy outcomes (Din & Wahyudhi, 2021; Fauzan et al., 2025).

Second, studies on customary law emphasize the significant potential of indigenous communities in resolving internal conflicts and managing communal resources. For instance, Syaikh et al. (2023) demonstrated how Dayak Ngaju inheritance practices still serve as conflict resolution mechanisms, while Akbar et al. (2023) noted the effectiveness of customary law in managing *tanah ulayat* (communal land). However, other scholars stress that the dominance of statutory law and the absence of integrative legal instruments continue to marginalize customary law (Jayantiari et al., 2025; Jayus, 2020; Syaifi & Zahra, 2021; Zainurohmah et al., 2024).

Third, studies on local government actors find that figures such as regents and mayors hold strategic roles in social development, cultural preservation, and conflict mediation (Burhanuddin et al., 2024; Diab et al., 2022; Venter, 2018). Nevertheless, many of these studies also report limitations, including low substantive accountability (Dewi et al., 2024), inadequate inter-district budgeting (Pardosi, 2017), and political conflict with regional legislatures (Mukhlis et al., 2025). Meanwhile, research on MHA recognition mostly focuses on central and municipal/regency authorities (Haridison, 2024; Redi, 2023; Widiatedja, 2021), with limited attention to the governor's dual role at the provincial level in bridging and coordinating national and local regulations. Yet, this role is crucial in the context of regional autonomy and the legal harmonization of customary law in Indonesia. This is the gap this study intends to address.

This study aims to fill the void in existing research by thoroughly analyzing the governor's dual role in the recognition of MHA in Indonesia—a topic that has received insufficient attention in decentralization and customary law literature. Specifically, the study explores how the governor's dual function—as both regional head and representative of the central government—affects legislative processes and the implementation of MHA recognition. It also maps authority conflicts among national, provincial, and municipal/regency governments concerning customary land and spatial regulations and proposes a regulatory harmonization model between local customary regulations (*Perda Adat*) and national law to establish legal coherence within a unitary state framework. This approach seeks to contribute both theoretically and practically to the development of multilevel governance that respects indigenous rights.

The study argues that institutional ambiguity surrounding the governor's dual role—as regional executive and central government representative—serves as a major factor contributing to regulatory

fragmentation and the weak recognition of MHA at the local level. Within Indonesia's multilevel governance system, decentralization has not been accompanied by clear institutional mandates or sufficient legal frameworks that enable governors to perform their coordination functions effectively (Rondinelli, 2017; Smith, 2023). As a result, governors are often caught between implementing national agendas and responding to the socio-legal realities of indigenous communities in their regions. The absence of standardized procedures and explicit legal mandates has weakened governors' positions as mediators between central and local interests. Therefore, this study tests the hypothesis that clarifying the governor's role and strengthening intergovernmental coordination can enhance the effectiveness of MHA recognition through an integrated regulatory harmonization scheme based on the principles of legal pluralism.

## RESEARCH METHOD

This study analyzes the legal and institutional structures that influence the recognition of *Masyarakat Hukum Adat* (MHA or Customary Law Communities) at the provincial level in Indonesia. It focuses on formal legal instruments and governance mechanisms that define the governor's role in either facilitating or obstructing the recognition process. In particular, the research examines how provincial policies and the governor's dual function affect intergovernmental coordination in the recognition of MHA.

The study adopts a qualitative approach by combining a normative juridical and socio-legal design (Ezirigwe & Glazewski, 2024; Mitchell, 2023). The normative juridical approach examines the formal legal framework governing MHA recognition, including the 1945 Constitution, Law No. 23 of 2014 on Regional Government, and Law No. 5 of 1960 on Basic Agrarian Principles. The socio-legal and legal ethnographic approaches help the study understand how these legal provisions are interpreted and implemented in practice—especially within institutional dynamics and the political roles of governors, regents, and regional legislatures (Janmyr, 2024; Kurczewski, 2023).

The study uses both primary and secondary data. Primary data include legal documents such as Article 18B(2) of the 1945 Constitution, Constitutional Court Decision No. 35/PUU-X/2012, provincial and regency-level regulations on MHA recognition, and gubernatorial decrees—particularly from West Kalimantan, Central Sulawesi, Bali, and West Papua. Secondary data come from scholarly articles, policy reports, and publications by civil society organizations such as the Aliansi Masyarakat Adat Nusantara (AMAN), the Badan Registrasi Wilayah Adat (BRWA), and HuMa, as well as media outlets such as Kompas and Antara.

Document analysis serves as the primary method of data collection. The study systematically collects and examines legal texts, official policy documents, and regulatory archives to trace normative developments and map patterns of authority distribution across government levels. It selects documents based on their relevance to the study's focus on provincial governance and customary law recognition. To enrich the context and validate interpretations, the study also reviews reports from local media and non-governmental organizations (NGOs).

The research employs thematic analysis to identify legal and institutional patterns related to the governor's role in customary law recognition. The analysis focuses on the interactions among national law, provincial authority, and implementation at the municipal/regency level. It applies the multilevel governance (MLG) framework (Şahin-Mencütek et al., 2021; Zhang et al., 2024) to assess both vertical (central–regional) and horizontal (interregional) dynamics. This framework helps evaluate how institutional ambiguity at the provincial level affects the harmonization between customary and national legal systems. The study focuses on three provinces with high regulatory involvement in MHA issues and does not aim to produce findings that are nationally generalizable. Limitations of the study include local implementation variability, restricted access to regional data, and the subjectivity of legal interpretation by local actors.

## RESULTS

### The Role of Governors in Customary Law Recognition

Governors in Indonesia serve a dual role: they act as both the heads of provincial governments and representatives of the central government within their respective regions. Law No. 23 of 2014 on Regional Governance—specifically Article 38(1)—defines this dual mandate by assigning governors the duties of guidance, supervision, and coordination of central government affairs in the regions, along with other supporting functions. However, this duality creates its own challenges, especially regarding the recognition and protection of MHA. In practice, governors often find themselves caught between the national government's interests—often tied to large-scale development agendas—and the indigenous communities' demands for recognition of their traditional rights. This ambiguity can result in ineffective policy implementation and spark conflicts between provincial governments, municipal/regency administrations, and indigenous communities.

Legislative trends in MHA recognition at the provincial level demonstrate a range of regulatory approaches, shaped by varying interpretations of national law. Article 18B(2) of the 1945 Constitution explicitly acknowledges the existence of customary law communities, but its implementation relies heavily on normative elaboration at the local level. A positive example comes from Bali Province, which passed Regional Regulation No. 4 of 2019 on *Desa Adat* (Customary Villages). This regulation explicitly recognizes customary villages as public legal entities and outlines their institutional structures, resources, and local authority. The regulation aligns with Article 103 of Law No. 6 of 2014 on Villages, which allows for the recognition of customary villages as legitimate local governance units based on ancestral origins.

In contrast, West Kalimantan Province has yet to establish a provincial-level regional regulation (*Perda*) that explicitly governs MHA recognition. Instead, it delegates recognition authority to regency-level governments, resulting in fragmented and inconsistent implementation. For example, Kapuas Hulu Regency issued Regent Decree No. 561 of 2019 on the identification and protection of the Dayak Iban Menua Sungai Utik Indigenous Community. However, this local initiative lacks the support of a comprehensive provincial framework, leading to fragmented authority, inconsistent verification standards, legal legitimacy issues, and poor inter-regency coordination—ultimately delaying and undermining the sustainability of the MHA recognition process.

Central Sulawesi Province has enacted Regional Regulation No. 10 of 2013 on the Recognition and Protection of Customary Law Communities. While this regulation demonstrates a formal commitment at the provincial level, its implementation faces several obstacles: unclear recognition criteria, insufficient technical guidelines, and weak interagency support. Furthermore, the lack of harmonization with regency-level initiatives results in inconsistent interpretations and delays in formal recognition processes. The regulation also fails to clearly delineate responsibilities between provincial and regency governments, leading to institutional overlap and inefficiency. As a result, despite the existence of legal instruments, operational effectiveness remains low, contributing to the slow pace of MHA recognition in the province.

West Papua, by contrast, has taken more progressive steps through Governor Regulation No. 25 of 2021 on Procedures for the Recognition of Customary Law Communities and Customary Territories. This regulation provides a structured framework for the identification, verification, and validation of MHA claims in coordination with regency governments. However, despite these advancements, implementation still faces challenges, such as inconsistencies among regencies and limited resources at the local level. Coordination mechanisms between provincial and regency governments remain underdeveloped, and in some cases, governors lack the authority to sanction local leaders who fail to implement recognition procedures.

Moreover, many identified customary territories remain unregistered in the national land administration system, indicating a disconnect between local policies and national legal integration.

Bureaucratic ambiguity in MHA recognition stands out as a major obstacle to implementing progressive policies. Recognition involves shared authority among central, provincial, and municipal/regency governments. Yet, field practices reveal a lack of clarity in role division and accountability. For example, Ministry of Home Affairs Regulation No. 52 of 2014 assigns MHA recognition to regents/mayors, but when customary territories span multiple regencies/municipalities, joint decisions between heads of those regions are required. Furthermore, recognition committees at the regency/municipal level often lack sufficient resources to carry out effective identification, verification, and validation. Consequently, the MHA recognition process in Indonesia remains slow and uneven.

One relatively successful practice occurred in West Papua Province. In 2021, the Governor issued Regulation No. 25/2021 on the Procedures for Determining Customary Law Communities and Customary Territories. This regulation provided a legal foundation for the formal recognition of indigenous communities and their territories. In implementation, Teluk Bintuni Regency, under provincial coordination, issued Regent Decree No. 188.4.5/065/2023 recognizing the *Marga Yec* of the *Moskona* Tribe in Moyeba Village, West Moskona District. The recognition covered 1,625 hectares of customary territory and resulted from a coordinated process of recognition, verification, and validation led by the regency's customary law community committee. This step demonstrates the local government's commitment to protecting indigenous communities through legal recognition mechanisms in Indonesia.

**Table 2. Provincial Comparison in MHA Recognition**

| Province         | Legal Instrument   | Recognition Authority                              | Weaknesses/Challenges  | Example of Implementation  |
|------------------|--|--|--|--|
| Bali             | Regional Regulation No. 4/2019 on <i>Desa Adat</i>               | Provincial Government                              | Not specified  | Not specified  |
| West Kalimantan  | No provincial regulation yet                                     | Regency Government (Kapuas Hulu)                   | Fragmented authority, lack of provincial verification standards            | Regent Decree No. 561/2019 (Dayak Iban, Sungai Utik)                           |
| Central Sulawesi | Regional Regulation No. 10/2013 on Customary Law Communities     | Provincial and Regency Governments                 | Vague criteria, minimal technical support, intergovernmental misalignment  | No specific example yet  |
| West Papua       | Governor Regulation No. 25/2021 on MHA and Territory Recognition | Provincial and Regency Governments (Teluk Bintuni) | Weak inter-regional coordination, lack of national land system integration | Regent Decree No. 188.4.5/065/2023 ( <i>Marga Yec, Moskona Tribe, Moyeba</i> ) |

**Source:** Retrieved from Several Sources (2024)

The data presented above indicate that Indonesian provinces adopt different approaches to MHA recognition. Bali and West Papua have shown legislative initiative at the provincial level, while West Kalimantan and Central Sulawesi face institutional, normative, and coordination-related obstacles. West Kalimantan lacks a provincial regulation and delegates recognition authority to regencies, whereas West Papua has established a collaborative model between the provincial and regency governments. The existing

regulation in Central Sulawesi remains largely non-operational due to unclear roles and a lack of technical instructions.

From these findings, four main patterns emerge regarding MHA recognition at the provincial level. First, there is significant variation in regulatory approaches across provinces. Only a few provinces, such as Bali and West Papua, possess clear and operational legal instruments to govern MHA recognition, while others still lack adequate legal frameworks. Second, vertical disconnection between government levels poses a serious issue. Many regency governments conduct MHA recognition independently, without structured coordination or support from the provincial level, resulting in fragmented authority and weak policy legitimacy.

Third, the absence of standardized procedural and technical guidelines hinders implementation. In several provinces, the lack of detailed recognition criteria leads to slow, inconsistent, and ambiguously interpreted processes. Finally, disparities in resources and institutional capacity further complicate the situation. In Central Sulawesi, the lack of technical support and implementation guidelines constitutes a major barrier. Meanwhile, in West Papua, limited local-level resources hinder effective coordination and recognition execution. These four patterns collectively demonstrate that successful MHA recognition requires not only regulations but also institutional synergy and sustained technical support.

### **Conflicts between Provincial and District Governments**

The recognition process of MHA in Indonesia frequently encounters structural obstacles, particularly due to fragmented authority and a lack of vertical and horizontal synchronization between provincial and district/city governments. Normatively, Minister of Home Affairs Regulation No. 52 of 2014 authorizes regents and mayors to issue decrees recognizing MHA. However, in practice, the process becomes complicated when customary territories span more than one district or municipality. In such cases, the regulation merely recommends deliberation between regional heads, without providing any binding legal mechanisms or standardized joint procedures.

One such case occurred in West Kalimantan Province, particularly involving the Dayak Iban Sungai Utik customary territory, which stretches across multiple districts. Although Kapuas Hulu District issued Regent Decree No. 561 of 2019, the decision stood alone without cross-district coordination or support from a provincial regulation. As a result, the recognition process at the national level reached a stalemate. A similar situation unfolded in Central Sulawesi, where overlapping claims between Poso and Sigi Districts concerning the Toraja and Kaili indigenous communities remained unresolved. This occurred despite the province already having Regional Regulation No. 10 of 2013 on the Recognition and Protection of Customary Law Communities. Unfortunately, the absence of cross-district validation procedures and the governor's limited authority reduced mediation efforts to informal actions without legally binding outcomes.

The problem grows more complex because provincial governments are often only involved informally to provide technical support, without possessing formal authority to unify or align the recognition process across districts. As a result, MHA recognition policies vary from region to region, leading to inconsistent procedures, legal uncertainty, and prolonged delays. This phenomenon reflects a weakness in Indonesia's decentralization framework, particularly its failure to establish a coordinated multilevel governance system for protecting indigenous rights.

In West Papua, despite the issuance of Governor Regulation No. 25 of 2021 on Procedures for Determining Customary Law Communities and Customary Territories, implementation has revealed interregional disparities. For example, Teluk Bintuni District proceeded with MHA recognition through Regent Decree No. 188.4.5/065/2023 for the *Marga Yec* community of the *Moskona* Tribe, covering a

customary area of 1,625 hectares. However, other districts within the same province remained largely passive. The absence of integration between gubernatorial policy and local land administration agencies has led to many recognized customary areas being left unregistered in the national land system (Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional ATR/BPN), thereby weakening their legal standing.

Jurisdictional conflict also arises in the context of land-use permits. In Ketapang District, West Kalimantan, the provincial government issued a concession permit to PT Mayawana Persada for oil palm plantation development on the customary land of the Dayak Simpang Dua community. However, the company failed to conduct deliberations with the indigenous community as required by Ketapang District Regulation No. 7 of 2015. In response, the community rejected the company's operations and imposed customary sanctions in the form of a fine. This case highlights the dissonance between provincial licensing and local customary protections.



**Figure 1. The Dayak community of Kualan, Simpang Dua, alongside civil society organizations and musicians, unfurled a banner at the PT Mayawana Persada concession, demanding the revocation of its permit.**

Source: A'an (2024)

Mass civil society mobilization has also taken place. In late 2024, hundreds of farmers from Jambi and Riau walked more than 1,300 kilometers to Jakarta to demand legal protection directly from President Prabowo Subianto. They claimed that major corporations such as PT Rimba Peranap Indah and PT Trimitra Lestari had taken over their customary agricultural land without formal recognition or certification, causing prolonged insecurity and economic vulnerability. This action illustrates the structural failure to protect indigenous land rights due to weak coordination across government levels.





**Figure 2. Farmers from Jambi and Riau protest to draw President Prabowo Subianto's attention, demanding legal protection for lands threatened by corporate concession permits.**

Source: Juliana (2024)

In North Sumatra, public pressure has continued to mount due to the absence of any regional regulation on MHA recognition. In October 2024, representatives of 31 indigenous communities held a peaceful demonstration at the North Sumatra Provincial Parliament (DPRD), urging the swift ratification of a Regional Regulation on MHA. They performed traditional rituals and carried banners with their demands. Unlike provinces such as Papua and West Kalimantan, North Sumatra lacks a solid legal foundation for recognizing MHA. This gap has caused a legitimacy crisis and hindered the protection of indigenous rights at the local level.



**Figure 3. Various civil society organizations in North Sumatra urge the ratification of the Indigenous Peoples Bill and the Indigenous Peoples Regional Regulation.**

Source: Pristiandaru (2024)

This intergovernmental misalignment is further exacerbated by conflicts between sectoral regulations. Law No. 41 of 1999 on Forestry states that forest areas are state-owned, which often overlaps with customary territories. Meanwhile, the Basic Agrarian Law (UUPA, Law No. 5 of 1960) formally acknowledges *hak ulayat* (communal land rights) of indigenous communities. However, its implementation is hindered by other sectoral regulations, including Law No. 32 of 2009 on Environmental Protection and Management, which emphasizes conservation—a principle that sometimes conflicts with indigenous resource management practices. According to the Consortium for Agrarian Reform (KPA), agrarian conflicts

rose to 295 cases in 2024 (a 21% increase from the previous year), affecting 1.1 million hectares of land and more than 67,000 families across 349 villages. The main drivers included oil palm expansion, National Strategic Projects (PSN), and infrastructure development. All of these indicate a systemic failure to harmonize sectoral policies with indigenous land rights protections (Konsorsium Pembaruan Agraria, 2025).

**Table 3. Surge in Agrarian Conflicts and Their Triggers in 2024**

| Aspect                       | Data   |
|------------------------------|--|
| Number of Agrarian Conflicts | 295 cases (up 21% from 2023)   |
| Affected Land Area           | 1.1 million hectares   |
| Number of Affected Families  | More than 67,000 families  |
| Number of Affected Villages  | 349 villages   |
| Main Conflict Triggers       | – Expansion of oil palm plantations<br>– National Strategic Projects (PSN)<br>– Infrastructure development |

**Source:** Konsorsium Pembaruan Agraria (KPA) (2025)

Beyond structural and regulatory constraints, the exclusion of customary institutions from formal legal processes poses a serious problem. Although Article 18B(2) of the 1945 Constitution recognizes the existence of MHA, decisions made by customary institutions rarely receive formal recognition within the state legal system. According to 2024 data from AMAN, out of the 30.1 million hectares of customary land registered through BRWA, only around 14% have received formal recognition from local governments. This significantly limits indigenous community participation in formal legal procedures (Agung, 2024).

Furthermore, Khosla and Tushnet (2022) found that decisions made by customary institutions do not carry binding legal force in state courts due to their lack of integration into the national legal system. Therefore, regulatory harmonization is crucial to strengthen the legal status of customary decisions, ensure legal certainty, and incorporate them into the national justice system. Achieving this is key to institutional synergy and equitable legal protection for indigenous peoples in Indonesia.

Overall, the data presented indicate that the recognition of MHA in Indonesia still faces various structural and institutional challenges at both the provincial and district/municipal levels. While some regulations—such as Ministry of Home Affairs Regulation No. 52 of 2014 and certain gubernatorial regulations—exist, field implementation remains uneven. When customary territories cross district or municipal boundaries, the recognition process often stalls due to the absence of binding joint validation mechanisms. Governors only hold informal and coordinative roles, while regents and mayors may lack the capacity—or political will—to carry forward the recognition process, particularly in the absence of technical and regulatory support from the provincial level. This lack of harmony is exacerbated by overlaps between business permits issued by the province and legal protections set by the district, as seen in the PT Mayawana Persada case in Ketapang and the agrarian conflicts in Jambi and Riau.

From these diverse findings, several core patterns can be identified. First, there is a fragmentation of authority across government levels that has not been clearly or operationally regulated. Governors lack legal mandates to unify or direct the MHA recognition process across multiple districts. Second, regulatory disharmony between sectors is highly pronounced—especially between forestry, agrarian, and environmental laws—which define and regulate territories differently, often in conflict with customary land recognition. Third, weak administrative integration between local recognition efforts and national land registration has left many recognized customary areas without full legal standing, as they remain unlisted in the national land system (ATR/BPN). Fourth, customary institutions have yet to be formally institutionalized

within the state legal system, meaning that their rulings carry no legal enforcement—even though the 1945 Constitution affirms their existence.

### Harmonization of Customary Regulations with National Law

The Inconsistencies between local and national regulations have become a major source of legal conflict in the recognition process of MHA in Indonesia. According to data from the Aliansi Masyarakat Adat Nusantara (2024), out of the total 30.1 million hectares of registered customary territories, only about 4.85 million hectares have received formal recognition, while another 6.6 million hectares remain under concession status and have triggered criminalization of indigenous communities. These conflicts typically arise from overlaps between *Perda Adat* (Customary Regional Regulations) that recognize indigenous rights and national regulations that grant natural resource exploitation permits to private companies without customary consultation mechanisms. A clear example occurred in Ketapang District, West Kalimantan, where PT Mayawana Persada obtained a permit from the provincial government without engaging in customary deliberation, as required by Ketapang District Regulation No. 7 of 2015. This case underscores the importance of harmonizing *Perda Adat* with national regulations.

The Ministry of Home Affairs evaluates the substance of *Perda Adat* based on Ministerial Regulation No. 1 of 2017, which mandates that all regional regulation drafts must undergo review to ensure alignment with national law. However, in practice, the process faces many challenges. One issue is the limited technical capacity at the local level, coupled with the lack of validated data and maps of customary territories. These constraints hinder verification and evaluation efforts, making the process slow and inefficient. As of 2024, many local governments had yet to establish operational *Perda Adat*, highlighting the urgent need to strengthen regional institutions and improve central-local synergy in MHA recognition (Aliansi Masyarakat Adat Nusantara, 2024).

On the judicial side, the judicial review (*uji materi*) pathway through the Supreme Court has not functioned effectively as a harmonization mechanism. Reports from the Center for Law and Policy Studies (PSHK) indicate that judicial review procedures are often obstructed by high costs, complex administrative steps, and minimal transparency. In 2015, of the 72 judicial review petitions submitted, only 7 were granted (Mahkamah Agung RI, 2016). The absence of public hearings, limited community participation in legal argumentation, and poor access to judicial information all pose serious barriers to legal recourse.

Nevertheless, some provinces have demonstrated promising practices in aligning customary law with national law. In Bali Province, Regional Regulation No. 4 of 2019 on *Desa Adat* formally recognizes *Desa Adat* (Customary Villages) as public legal entities with ancestral rights, traditions, and territorial management authority. This regulation repealed earlier regulations (No. 3/2001 and No. 3/2003 on *Desa Pakraman*) and established *Baga Utsaha Padruwen Desa Adat* (BUPDA), or customary village enterprises, to strengthen the economic independence of these communities. A concrete example can be found in Desa Adat Sembiran, Buleleng, where the community manages its territory and institutions based on this regulation (Rhismawati, 2019).



**Figure 4. Ceremonial signing of Bali Provincial Regulation No. 4/2019, which strengthens the legal recognition of *Desa Adat* in Bali.**

Source: Rhismawati (2019)

Similarly, West Sumatra Province passed Regional Regulation No. 7 of 2018 on *Tanah Ulayat* (communal land), which recognizes *Nagari* as customary law communities with autonomous management rights based on Minangkabau traditions. This regulation aligns with Law No. 6 of 2014 on Villages, which provides legal space for recognizing *desa adat* (customary villages) within the national legal framework. The Mentawai Islands District Government, for instance, has issued several regent decrees and supporting regulations to protect indigenous rights within its jurisdiction (Padang Media, 2023).



**Figure 5. Signing of Regional Regulation No. 7/2018 on *Tanah Ulayat* in West Sumatra, integrating Minangkabau customary law communities into the national legal system.**

Source: Padang Media (2023)

However, both provinces still face implementation challenges in harmonization. In Bali, several *desa adat* struggle to align their customary institutional structures—such as *awig-awig* (customary law codes)—with the national legal framework, especially regarding coordination between provincial and district/city governments (April et al., 2023). In West Sumatra, some local governments hesitate to implement Regional Regulation No. 7/2018 due to concerns over horizontal conflict and budgetary uncertainty (Hazra, 2024).

Additionally, the reduction of local cultural authority has weakened the internalization of customary values within formal government structures.

These findings show that the harmonization process between customary and national regulations still faces significant institutional, technical, and legal-political challenges. Reforms must target three key areas: first, strengthening the capacity of local legislators to draft *Perda*; second, providing accurate and accessible spatial data on customary territories; and third, reforming the judicial review procedures in the Supreme Court to ensure greater transparency and public participation. Without improvements in these three areas, legal recognition of MHA will remain a normative discourse without substantive protection in practice.

## Discussion

This study finds that the recognition of *Masyarakat Hukum Adat* (MHA or Customary Law Communities) in Indonesia continues to face structural, institutional, and regulatory barriers—especially within the provincial context. Three major findings emerge from this research. First, the governor's dual role as both regional head and representative of the central government lacks an explicit legal mandate to coordinate MHA recognition across districts, resulting in regulatory ambiguity and fragmentation. Second, authority conflicts between provincial and district/city governments often obstruct recognition efforts, especially when customary territories extend across administrative boundaries. Third, the harmonization of local customary regulations (*Perda Adat*) with national law remains ineffective due to technical limitations, judicial constraints, and weak institutions. These three issues highlight that decentralization, which was intended to grant autonomy and flexibility to local governments, has not been accompanied by legal clarity or adequate governance capacity in the context of indigenous rights recognition.

The ineffectiveness of MHA recognition at the provincial level stems not from a lack of legal frameworks but from overlapping and disconnected authority across levels of government. Governors, as central actors in multilevel governance, lack sufficient juridical power to intervene in or align district policies, despite their supposed coordinative function. As a result, each district operates independently with varying capacity, leading to procedural disparities, delayed recognition, and weakened legal legitimacy of verified customary territories. Conceptually, this demonstrates that decentralized governance without a clear vertical coordination mechanism can lead to administrative dysfunction and legal voids in policy implementation.

This fragmentation is further exacerbated by regulatory conflicts among the forestry, agrarian, and environmental sectors. The Forestry Law, which classifies forest areas as state-owned, often contradicts the Basic Agrarian Law (UUPA), which recognizes *hak ulayat* (communal land rights). Meanwhile, environmental regulations emphasizing conservation may not align with customary practices of natural resource management. When provincial governments issue exploitation permits to companies without proper customary consultation—as seen in the PT Mayawana Persada case in Ketapang—social conflict becomes inevitable. This reveals that the failure of harmonization is not merely technical; it reflects an epistemic crisis in legal governance—a clash between the state's legal-positivist values and the communal norms of customary law.

This study confirms prior findings on coordination challenges in Indonesia's decentralized system. Nasution (2024), Ramadhan et al. (2022), and Rijal et al. (2024) highlight recurring tensions between local and central policies due to poor synchronization in natural resource and infrastructure governance. Din and Wahyudhi (2021) and Fauzan et al. (2025) also emphasize how overlapping legal frameworks and unclear divisions of authority have led to policy fragmentation. However, the novelty of this study lies in its extension of focus to the provincial level, particularly in highlighting the strategic yet problematic position of governors—a topic often overlooked in previous research. The study demonstrates that amid regulatory

fragmentation across districts, the governor should serve as a vertical (center-local) and horizontal (inter-district) connector in MHA recognition, yet instead remains constrained by institutional limitations and ambiguous mandates.

In the discourse on customary law, this research reaffirms the findings of Syaikhul et al. (2023) and Akbar et al. (2023), who show that indigenous communities possess internal mechanisms to resolve conflict and manage local resources. However, while earlier studies often positioned customary law as a marginalized parallel system vis-à-vis statutory law (Jayantiari et al., 2025; Syaifi & Zahra, 2021), this study introduces a new analysis by showing how legally enacted *Perda Adat* in several regions still face implementation stagnation when not functionally integrated into the national legal system. Another contribution is the observation of judicial gaps—how the judicial review mechanism for *Perda* fails to provide a participatory space for asserting customary law within formal legal forums.

Furthermore, this study offers new theoretical contributions to the literature on local governance. Whereas most studies have focused on regents and mayors as development actors and cultural mediators (Burhanuddin et al., 2024; Venter, 2018), this research shifts the lens to governors as strategic nodes in multilevel governance. Very few studies explicitly discuss the governor's dual role in bridging national and local regulations within the context of MHA recognition. Thus, this study's primary novelty lies in its reformulation of the governor's function as a normative and coordinative actor capable of enhancing the sustainability of indigenous rights protection through a vertically and horizontally integrated provincial governance framework.

Socially, the findings reveal that disharmony among regulations and government actors has created legal uncertainty that directly impacts indigenous communities (Setiadi & Harefa, 2021; Widyastuti et al., 2022). The neglect of customary deliberation mechanisms, the weak formal recognition of customary institutions, and limited access to the national land system have left indigenous peoples socially, economically, and politically vulnerable. Conflicts manifest not only as administrative disputes but also as social marginalization and the criminalization of indigenous land defenders.

Historically, these findings reinforce the reality that indigenous peoples in Indonesia have never been fully integrated into the national legal system—from the colonial period to the post-reform era (Buana, 2020; Fahmi et al., 2024). Although the 1945 Constitution acknowledges their existence, implementation remains obstructed by colonial legal legacies and a centralized administrative system (De Royer et al., 2015). The slow and uneven recognition process reflects the failure of the modern legal structure to accommodate the legal pluralism that exists within society.

Ideologically, the absence of binding legal mechanisms for MHA recognition reveals the persistent dominance of the nation-state paradigm, which subordinates customary law under state law. Even though Article 18B(2) of the 1945 Constitution provides constitutional recognition of MHA, its implementation remains conditional and restricted (Bebbington et al., 2004; Matsui, 2005). Numerous studies have shown that customary law is often subordinated within administrative, regulatory, and judicial systems (Arifin et al., 2025; Jayantiari et al., 2025; Utama, 2021). Indonesia's dominant legal-positivist approach prioritizes written state law, leaving little room for deliberative mechanisms and local values inherent in customary law (Sihotang et al., 2025; Tjiptabudy, 2018). This is further compounded by the lack of an integrative legal framework that could substantively harmonize customary law within the national legal system (Utama, 2021). In effect, recognition of customary law remains selective—dependent on state interests or the dominance of specific sectoral laws (El Falahy, 2020; Suhariyanto et al., 2024). This condition produces not only legal disparity but also reproduces structural injustice for indigenous communities, who continue to face symbolic and practical marginalization by the state legal system.



Reflectively, this study reveals the dysfunction of MHA recognition governance. Decentralization, which was intended to strengthen local autonomy, has instead triggered horizontal and vertical conflict among government levels. Governors lack sufficient legal authority to coordinate inter-district efforts, while regents/mayors often lack the technical or political capacity to carry out recognition mandates. Moreover, the existing legal framework lacks clear dispute resolution mechanisms, causing indigenous-state or indigenous-corporate conflicts to frequently end in criminalization. In many cases, indigenous actions on ancestral lands are criminalized under state law, without any legal space to protect customary rights (Serfiyani et al., 2022; Tuslian, 2021; Van der Muur, 2018). The absence of effective mechanisms within the national legal system—including weak implementation of culturally-sensitive mediation and arbitration—denies indigenous communities equitable and fair pathways for resolution (Fitrianggraeni et al., 2024). This is aggravated by poor administrative integration between local recognition and national registration—such as with the ATR/BPN land system—leaving customary territories legally unrecognized and vulnerable to external claims (Jayus, 2020). The disconnect between state law and indigenous lifeways also means that state conflict resolution approaches often misalign with local community values (Sukriono et al., 2025; Zhomartkyzy, 2023).

This study offers five strategic policy recommendations. First, the government should strengthen the governor's role by revising relevant regulations—such as the Ministerial Regulation or sectoral laws—to grant governors a clear mandate for cross-district facilitation and mediation. Second, central and local governments must establish mandatory inter-district consultation mechanisms for shared customary territories, supported by joint ratification protocols. Third, the judicial review system at the Supreme Court must be made more transparent and participatory, allowing indigenous communities and scholars to engage in substantive legal challenges. Fourth, customary institutions must be granted formal space within the national legal system—such as through the integration of customary rulings into civil mediation and litigation procedures. Fifth, the government must develop an open, spatial, and cross-ministerial verified information system on customary territories as the basis for harmonizing spatial planning, customary law, and the national land system. Only through a coordinated, multilevel approach rooted in legal pluralism can Indonesia move from symbolic recognition of MHA toward substantive and sustainable protection.

## CONCLUSION

This study concludes that the recognition of *Masyarakat Hukum Adat* (MHA or Customary Law Communities) in Indonesia continues to face structural, institutional, and regulatory challenges—particularly concerning the role of the provincial government. The main findings indicate that the governor's position as a coordinative node in MHA governance lacks a clear legal mandate, resulting in role ambiguity and fragmentation across levels of government. Authority conflicts between provinces and districts/cities, coupled with the ineffective harmonization between *Perda Adat* (customary regional regulations) and national law, remain key obstacles to protecting indigenous rights. Decentralization, which was intended to provide greater autonomy, has instead become a site of administrative conflict in the absence of integrated institutional capacity and legal instruments.

The principal contribution of this study lies in reinforcing the multilevel governance perspective in MHA recognition research, by positioning the governor as an actor previously overlooked in the literature. This study proposes a new analytical framework that underscores the importance of a coordinative mandate at the provincial level to bridge national and local regulations, while also highlighting the need for legal design that substantively integrates customary law into the formal legal system. Additionally, the research reiterates

the urgency of harmonizing customary law through reforms in judicial review mechanisms, inter-regional consultation protocols, and the integration of spatial data on customary territories.

Nonetheless, this study has limitations in terms of geographic scope, as it focuses only on selected provinces with high regulatory engagement in MHA issues. Restricted access to internal government data and the limited documentation of formal deliberation processes also posed challenges to achieving a more comprehensive understanding of implementation practices. Future research should broaden the scope through comparative studies across regions and conduct direct field observations of MHA recognition practices, including participatory insights from indigenous communities themselves.

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