

CUSTOMARY AGRARIAN CONFLICTS: CULTIVATION RIGHTS REGULATIONS AND LOCAL COMMUNITY IMPACTS

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Abstract: This article examines plantation land rights disputes in Indonesia by treating the recent Rempang Eco City conflict as a doctrinal stress test for the cultivation rights (HGU) regime. It shows that existing scholarship has extensively documented agrarian conflicts and legal pluralism but has not systematically unpacked the tensions between HGU, Government Regulation Number 18 of 2021 on land rights, and the constitutional recognition of customary land when concessions are granted or expire. Using a normative-legal method combined with qualitative synthesis of empirical case studies, the article analyzes how overlapping regulations, spatial planning policies, and weak land administration produce structural uncertainty for indigenous communities. Building on this analysis, the article develops an integrative Customary-State Agrarian Governance Model that links doctrinal reform of HGU rules with participatory mechanisms of customary dispute resolution, including deliberation, mediation, and co-management arrangements. The findings demonstrate that recognizing customary law only at the declaratory level is insufficient; effective protection of indigenous communities requires re-reading reversion rules for expired HGU, embedding free, prior, and informed consent in concession renewal, and institutionalizing participatory land governance at the regional level. The proposed model offers a normative and practical framework for designing plantation land dispute resolution that is more consistent with social justice and environmental sustainability.

Keywords: Land Use, Cultivation Rights (HGU), Customary Law, Agrarian Conflicts

Introduction

This research focuses on the complexity of resolving disputes over plantation land rights, which involves the interaction among indigenous peoples' rights, state policies, and corporate interests in the context of agribusiness expansion. Specifically, this study explores how this conflict dynamics occur and the efforts to negotiate solutions that accommodate customary rights while considering the economic and political interests of the state.

Resolving disputes over plantation land rights involves a complex interaction among community rights, state policy, and corporate interests, especially in areas where agribusiness expansion conflicts with customary land claims. The experience of communities such as the Kairak-speaking Baining in Papua New Guinea illustrates how local groups are resolving these disputes by leasing their customary lands for plantation development, viewing this not only as a solution

to displacement but also as a potential avenue for reclaiming and securing their land rights from encroaching settlers.¹ This form of land use reflects broader Melanesian cultural ideas, transforming agrarian space into a place of identity and self-determination while challenging traditional narratives of land ownership.²

In addition, an analysis of the Koto Gasib community in Siak Regency shows that disputes often arise from overlapping rights between indigenous communities and plantation companies. Here, the government's issuance of business-use rights has exacerbated tensions, as these rights often violate customary land held by the community. The findings show that local customary law plays a key role in resolving these conflicts; however, customary law is often undermined by unequal power dynamics that favor corporate interests. This situation highlights how agribusiness practices facilitated by state policies can lead to deep inequality, making it challenging to restore customary land rights.³

In the same context, as in Laos, the neo-liberalization of land, driven by state incentives for economic development, has encouraged small farmers to strategize their land tenure. Laotian government policies have resulted in coercive practices that challenge customary land use patterns, reinforcing the dynamics of colonial-era power under the guise of modern agricultural expansion.⁴ The deep entanglements between state and corporate interests often leave marginalized communities vulnerable, forcing them to adjust their land-use strategies in ways that render their customary rights invisible or replaceable.⁵

Moreover, resistance to such agribusiness practices is evident in various regions, where local communities are involved in activism against corporate violations of their land rights. For example, the ongoing struggle in Laos against Chinese rubber concessions underscores local grievances about environmental degradation and social injustice resulting from corporate land acquisitions.⁶ Such resistance movements are often intertwined with broader narratives of ecological preservation and cultural identity as they seek to reclaim land and protect traditional ways of life threatened by large-scale agricultural initiatives.⁷

Therefore, resolving disputes over plantation land rights requires a diverse approach, integrating customary legal frameworks with state policies while navigating the pressures of agribusiness expansion. Involving communities directly and recognizing their customary rights is important in promoting equitable solutions that address restorative justice for past injustices

- 1 Inna Yaneva-Toraman, 'Covering the Land with Oil Palm: Revelation, Value, and Landownership among the Kairak-speaking Baining of Papua New Guinea' [2024] *Journal of the Royal Anthropological Institute*. See also, Colm Fox, 'Indonesia: Twenty Years of Democracy By Jamie S. Davidson Cambridge: Cambridge University Press, 2018. Pp. 76. Bibliography, Footnotes.' (2020) 51 *Journal of Southeast Asian Studies* 495 <<https://www.cambridge.org/core/article/indonesia-indonesia-twenty-years-of-democracy-by-jamie-s-davidson-cambridge-cambridge-university-press-2018-pp-76-bibliography-footnotes/BF785A84D01ADF2638A35CD37E9F287D>>; David Bouchier, *Legal Pluralism in Indonesia: From Colonial to Contemporary* (Cambridge University Press 2021).
- 2 Yaneva-Toraman (n 1).
- 3 E Deliana, MA Rauf and Z Akmal, 'How Indigenous Peoples Resolve Ulayat Land Disputes (Study in Koto Gasib, Siak Regency)', *IOP Conference Series: Earth and Environmental Science* (IOP Publishing 2023). See also, Ignatius Yordan Nugraha, 'Abusive Unconstitutional Constitutional Amendments: Indonesia, the Pancasila and the Spectre of Authoritarianism' (2023) 43 *Oxford Journal of Legal Studies* 379 <<https://academic.oup.com/ojls/article/43/2/379/7032258>>.
- 4 Jonas Kramp, Diana Suhardiman and Oulavanh Keovilignavong, '(Un) Making the Upland: Resettlement, Rubber and Land Use Planning in Namai Village, Laos' (2022) 49 *The Journal of Peasant Studies* 78.
- 5 *ibid.*
- 6 Karen E McAllister, 'Rubber, Rights and Resistance: The Evolution of Local Struggles against a Chinese Rubber Concession in Northern Laos', *Global Land Grabbing and Political Reactions' from Below* (Routledge 2017).
- 7 *ibid.*

and sustainable land resource management.⁸ Despite this rich body of work, most studies still treat plantation land conflicts either as socio-political struggles or as implementation failures of agrarian reform without systematically unpacking the doctrinal tensions within Indonesia's plantation law regime. In particular, the interaction between cultivation rights (HGU), Government Regulation Number 18 of 2021 on management and land rights, and the constitutional and statutory recognition of customary land has not been analyzed as a coherent legal problem, nor translated into an operational governance model for dispute resolution. This article addresses that gap in three ways. First, it uses the Rempang Eco City conflict as a doctrinal stress test to examine how overlapping concessions and special economic zone policies interact with long-standing customary tenure. Second, it synthesizes evidence from Indonesia and comparative contexts to show how customary dispute-resolution practices can rebalance power asymmetries between corporations, the state, and indigenous communities. Third, it proposes an integrative Customary-State Agrarian Governance Model that links doctrinal reform of the HGU framework with participatory, customary-based mechanisms of land governance in plantation areas.

This study makes an academic contribution by providing a more in-depth analysis of how an integrative approach between customary law and state policy can address power imbalances in agrarian dispute resolution. This research used normative legal research with a qualitative analysis method. It involved an in-depth literature study of various sources, including academic journals, research reports, and relevant legal studies. The data were obtained from an analysis of previously published cases considered representative of the dynamics of agrarian conflicts and their resolution. Thus, this introduction establishes the main framework of the research, including the focus and identification of issues, an overview of the literature, the academic contribution to be achieved, and the methodological approach. Through this research, a fair and sustainable integrative solution can be found to overcome the increasingly complex disputes over plantation land rights.

Methods

This study employed normative-juridical research method with a descriptive qualitative approach. This method was chosen to explore various relevant regulations and policies in depth and literature studies regarding disputes over plantation land rights. The data collection technique was done through a literature study of primary and secondary legal sources, including laws, government regulations, academic journals, and relevant previous research results. The collected data was analyzed qualitatively to identify common patterns in agrarian conflicts and assess the effectiveness of customary and national legal approaches to resolving these disputes. The use of this method aims to obtain a comprehensive understanding of legal interactions in

8 Herdis Herdiansyah, 'Dissection of Social Interaction and Community Engagement of Smallholder Oil Palm in Reducing Conflict Using Soft System Methodology' (2022) 7 *Open Agriculture* 267; Chelsey R Smith, "'What Is for Me Is Not for My Master': Provision Grounds, Customary Rights, and Gradual Emancipation during Jamaican Apprenticeship, 1834–1838' (2024) 1 *New West Indian Guide/Nieuwe West-Indische Gids* 1; Ward Berenschot and others, 'Anti-Corporate Activism and Collusion: The Contentious Politics of Palm Oil Expansion in Indonesia' (2022) 131 *Geoforum* 39. See also, Niels Petersen and Konstantin Chatziathanasiou, 'Balancing Competences? Proportionality as an Instrument to Regulate the Exercise of Competences after the PSPP Judgment of the Bundesverfassungsgericht' (2021) 17 *European Constitutional Law Review* 314 <https://www.cambridge.org/core/product/identifier/S1574019621000201/type/journal_article>; Daniel Tischer and Tomaso Ferrando, 'Shaping the Climate Transition: Multistakeholder Networks, Elites, and Sustainable Finance Policy in Europe' (2024) 10 *Finance and Society* 113 <<https://www.cambridge.org/core/product/E1C9A42A6B79E20DA3AF4773DF5E3757>>; Katja Creutz, *State Responsibility in the International Legal Order* (Cambridge University Press 2020).

the context of plantation land disputes to produce integrative and fair solution recommendations.⁹

Results And Discussions

General Description of Plantation Land Rights Disputes

Disputes over plantation land rights in Indonesia are a complex and ongoing problem. The characteristics of the conflict show dynamics that vary with social, economic, and government policy changes. Agrarian conflicts not only involve legal and administrative aspects but also touch on social and cultural issues that affect the interaction between communities and agrarian companies.

Agrarian conflicts often stem from unequal land tenure, especially in the context of plantations dominated by the interests of large companies. Based on research conducted by Zakie,¹⁰ although many new regulations have been implemented to regulate agrarian issues, these often raise new problems, including uncertainty over land rights among the community. Similarly, Firdaus argued that agrarian conflict resolution requires an inclusive approach in which all parties, including local communities, are essential to achieve a sustainable solution.¹¹

Furthermore, according to research by Adiansyah agrarian conflicts are often the result of complicated relationships between individuals, communities, and business entities.¹² The leading causes of these conflicts can vary widely, such as overlapping government policies, changes in land use, and community dissatisfaction with the utilization of existing resources. This study also emphasizes the importance of strengthening the role of the community in decision-making regarding land use, which is often ignored in government policies.

The construction of the Rempang Eco City industrial estate on Rempang Island, Batam, by PT. Makmur Elok Graha (PT. MEG) triggered a land dispute between indigenous communities, the government, and the company. The conflict is rooted in competing legal claims: the Indigenous community (the Malay and Sea tribes, among others) considers the land to be an ancestral land they have inhabited for 200 years, while the government refers to the Cultivation Rights (HGU) granted to PT. MEG since 2004. This project, which aims to increase Indonesia's economic competitiveness against Singapore, is seen as ignoring the rights of indigenous peoples and triggering legal uncertainty. In Rempang, the unclear authority boundaries between BP Batam, as the Special Economic Zones (SEZ) authority, and customary land, as well as inconsistencies in the implementation of HGU by PT. MEG reflects this problem. Presidential Decree No. 41/1973 and Ministerial Regulation 2023 on the Eco-City project exacerbate overlapping claims because they do not recognize the status of customary land that Indigenous communities have occupied for two centuries. This reinforces the argument of Adiansyah¹³ that overlapping policies create room for ownership conflicts (Satria.ardhi.n, 2023). This article treats the Rempang dispute not merely as an illustrative case but as a doctrinal stress test for Indonesia's plantation land regime.

9 See also, Maurice Sunkin and Lee Marsons, 'Directions for Future Research on Administrative Justice', *The Oxford Handbook of Administrative Justice* (Oxford University Press 2021) <<https://academic.oup.com/edited-volume/38690/chapter/336008586>>.

10 Mukmin Zakie, 'Konflik Agraria Yang Tak Pernah Reda' (2016) 24 *Legality: Jurnal Ilmiah Hukum* 40.

11 Muhammad Aryan Firdaus, 'Dampak Sosial Konflik Agraria'. See also, Neil R Sircar, 'Global Health Law & Policy: Ensuring Justice for a Healthier World. Edited by Lawrence Gostin and Benjamin Mason-Meier. [Oxford University Press, 2023. Xxiv + 570 Pp. Hardback £91.00. ISBN 978-0-19768-771-0.]' (2025) 84 *The Cambridge Law Journal* 224 <<https://www.cambridge.org/core/product/8DF933A241D028174A200DB6948274BA>>; Kelly Chong Yan Chan and Edward Lui, 'Citizenship, Charges And Common Law Constitutional Rights' (2022) 81 *The Cambridge Law Journal* 225 <<https://www.cambridge.org/core/product/6A959F14C59A5F380ECB95AAC5C7B832>>.

12 Wandu Adiansah, Soni Akhmad Nulhaqim and Gigin Ginanjar Kamil Basyar, 'Resolusi Konflik Berbasis Komunitas Melalui Pengembangan Masyarakat Sebagai Upaya Alternatif Resolusi Konflik Agraria' (2020) 10 *Share: Social Work Journal* 163.

13 *ibid.*

By juxtaposing the overlapping mandates of Presidential Decree Number 41 of 1973, the special economic zone framework, and the HGU granted to PT. MEG with the constitutional and statutory recognition of customary communities, the Rempang conflict exposes a structural blind spot: when state land and cultivation rights are layered on top of long-standing customary tenure, existing norms do not clearly specify how ancestral rights must be reconsidered when concessions are granted, extended, or terminated. This blind spot explains why authorities are able to frame the land as “state land” available for large-scale investment, even though Indigenous communities can demonstrate centuries-long occupation and social attachment. The subsequent sections use this doctrinal tension as a starting point for developing an integrative governance model that can prevent similar conflicts in other plantation frontiers.

In Indonesia's framework of positive law, the settlement of agrarian disputes arising from the control of plantation land should focus on the *lex specialist* principle as regulated in more specific laws and regulations, such as Law Number 39 of 2014 concerning Plantations. This regulation contains provisions regarding the protection of the rights of local communities and the obligation of plantation business actors to hold deliberations when the plantation land is on customary indigenous peoples' customary rights. Thus, any land policy that prioritizes land use for companies should not ignore the principle of mutual consent and efforts to balance economic interests and socio-cultural aspects. If this principle is not respected, the risk of increased structural conflict will be greater, as local communities feel left out of the process of managing resources they have historically controlled.¹⁴

The settlement of plantation disputes should prioritize peaceful measures that create space for restoring relations between the parties. This approach views agrarian issues as purely legal matters and emphasizes restoring social balance. In this context, mediation and traditional consultation mechanisms can be used as the primary means of bridging the interests of Indigenous peoples and companies. Based on the principle of togetherness, the parties can formulate an agreement that respects the local community's rights, environmental sustainability, and rational economic interests.¹⁵

Implementing customary law approaches and participatory mediation face various obstacles, especially regarding the overlapping regulations between state and customary law. On the one hand, state law demands formal certainty and universal validity, while customary law tends to be more flexible, based on local wisdom and community legitimacy. Therefore, synergy among government agencies, traditional leaders, and other stakeholders is important in creating an institutional framework that enables collaboration among these legal systems. This is where the role of the National Land Agency (BPN) and local governments is tested, providing access to information and transparent, fair procedures for indigenous peoples.

- 14 Muhammad Siddiq Armia and others, 'Introduction: Legal Transformations in Governance, Security and Technology' (2025) 10 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* i <<https://petita.ar-raniry.ac.id/index.php/petita/article/view/821>>; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Maintaining the Constitutional Rights to Create a Better Society' (2023) 8 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 69; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Form Over Substance, Achieving Objectives While Preserving Values' (2023) 8 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* i.
- 15 Muhammad Siddiq Armia and others, 'Introduction: Measuring Environmental Impacts And Judiciary Environments' (2024) 9 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* i <<https://petita.ar-raniry.ac.id/index.php/petita/article/view/309>>; Muhammad Siddiq Armia and others, 'Introduction: Bridging Tradition And Modernity: Legal Innovations For Justice, Equity And Sustainability In Contemporary Society' (2024) 9 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* <<https://petita.ar-raniry.ac.id/index.php/petita/article/view/688>>; Marduat Mukhtar Hasan Basri M. Nur, Muhammad Siddiq Armia Munawiah Abdullah, Husaini Husda, 'Preserving Cultural Heritage In Aceh Legal Frameworks And Community Initiatives In Gampong Pande' (2025) 12 *Lentera Hukum*.

From an agrarian law perspective, collaboration between the government, companies, and local communities needs to be strengthened with a firm legal basis. The obligation of plantation businesses to conduct public consultations can be expanded by establishing official forums, that involved citizens, non-governmental organizations, and other stakeholders from the planning stage onward. Such a forum is not just a formality but a forum for dialogue to capture the community's aspirations. This is also in accordance with the principle of good governance, which emphasizes transparency and accountability to minimize the potential for corruption in granting HGU permits.

Efforts to resolve agrarian conflicts must ultimately integrate the principles of social justice and environmental sustainability. This integration can be realized through policy revisions that emphasize recognition of traditional rights and the implementation of sanction mechanisms for violations in the plantation sector. For example, supporting policies such as the Regional Spatial Plan (RTRW) need to be aligned with the potential and characteristics of customary territories to avoid conflict between government plans and the interests of local communities. Thus, good spatial planning will minimize the potential for land overlap in the future while preserving the environment, which is the community's main livelihood source.

Overall, the characteristics of this plantation land rights dispute conflict show that an efficient solution does not rely solely on a legal approach but also requires a comprehensive social understanding and strengthened cooperation among the government, companies, and the community. With a more inclusive and participatory approach, agrarian conflicts in Indonesia can be managed better and more sustainably.

Analysis of National Regulations related to Land Disputes

An evaluation of Indonesia's HGU Policy shows diverse impacts on society and the environment. HGU is an instrument that allows individuals or business entities to utilize state land for specific purposes within a certain period. However, its implementation often creates conflicts and challenges in land management. First, the existence of HGU can increase agricultural or plantation productivity, but at the same time, it can cause conflict with local communities when their land rights are not recognized. Anggriawan¹⁶ argued that land conflicts often arise when the control and use of HGU are not by the agrarian needs of the surrounding community. Sometimes, communities feel they have lost access to the land they have managed for years, leading to dissatisfaction and potential violence.¹⁷

An evaluation of the social impact of HGU also illustrates that this policy can exacerbate social inequality.¹⁸ noted that HGU policies often favor large companies over small communities due to

- 16 Rianedo Anggriawan and others, 'Upaya Pemerintah Dalam Penataan Hukum Terhadap Sengketa Kepemilikan Tanah Di Indonesia' (2024) 2 Future Academia: The Journal of Multidisciplinary Research on Scientific and Advanced 838. See also, Kirsten Martin, 'Platforms, Privacy, And The Honeypot Problem' (2023) 37 Harvard Journal of Law & Technology 1087; Stacy-Ann Elvy, 'Commercial Law As A Source Of Privacy And Cybersecurity Protection' (2023) 37 Harvard Journal of Law & Technology 1178. See also, Arti K. Rai, Rachel E Sachs and W Nicholson Price II, 'Cryptic Patent Reform Through The Inflation Reduction Act' (2023) 37 Harvard Journal of Law & Technology 58; David Choffnes and others, 'A Scientific Approach To Tech Accountability' (2023) 37 Harvard Journal of Law & Technology 1201; Bradley Rebeiro, 'History, Tradition, And Natural Rights' (2024) 47 Harvard Journal Of Law & Public Policy 713.
- 17 Fayola Fayola, B Erlina and Melisa Safitri, 'Analisis Putusan Hakim Terhadap Gugatan Perbuatan Melawan Hukum Pembatalan Hak Guna Usaha (HGU)' (2023) 6 Jurnal Justitia Jurnal Ilmu Hukum dan Humaniora 45. See also, Muhammad Siddiq Armia, 'Ultra Petita and The Threat to Constitutional Justice: The Indonesian Experience' (2018) 26 Intellectual Discourse 1; Muhammad Siddiq et al Armia, 'Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?' (2022) 7 JILS 525.
- 18 Udiana Wahyu Deviantari and Djurdjani Djurdjani, 'Literature Review: Pengaruh Administrasi Pertanahan Dalam Penilaian Tanah' (2023) 18 Geoid 265.

the non-transparent HGU issuance process and the tendency to ignore community voices. It is exacerbated by weak policies on land dispute resolution, which often corner communities¹⁹

Furthermore, research by Zakiyah²⁰ showed that legal uncertainty regarding HGU impacts unsustainable land use changes, including the environment. Land development for plantations provides economic benefits, but disregard for sustainability principles leads to ecosystem damage and loss of biodiversity.

The government has attempted to improve the situation by implementing inclusive policies and increasing transparency in the HGU licensing mechanism. According to Deviantri & Djurdjani,²¹ the government involves the community in the decision-making process concerning the utilization of natural resources to reduce potential conflicts. However, even though the initiative has been implemented, recent reports show that the policy implementation is often not in line with the expected principles of inclusivity and transparency.²² Furthermore, improving land administration capacity and strengthening regulations are urgent matters that cannot be ignored. Research by Idawijayanti and Pramono²³ proposed that the government should strengthen regulations regarding HGU and ensure that local policymakers have a comprehensive understanding of community rights to prevent abuses in the licensing process.

By the provisions of Law of the Republic of Indonesia Number 39 of 2014 concerning Plantations Article 12 paragraph (1), if the land needed for plantation business is customary land of customary law communities, plantation business actors are obliged to hold deliberations with customary law communities who hold customary rights to obtain approval regarding the transfer of land and its rewards. Furthermore, regarding Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, the right to cultivate customary land that has expired or been revoked by law will be returned to the state or revert to state land. Thus, the regulation emphasizes the importance of protecting the rights of customary law communities and controlling the use of plantation land to achieve a balance between economic interests and the maintenance of socio-cultural sustainability. Read together, however, these provisions generate a doctrinal tension in situations where cultivation rights are superimposed on customary land. Article 12 of the Plantation Law requires deliberation and agreement with customary communities when plantation activities affect their land, yet Government Regulation Number 18 of 2021 frames expired or revoked cultivation rights as simply reverting to state land without explicitly addressing cases in which the underlying land is ancestral territory that has never been formally extinguished. In disputes such as Rempang, this tension enables authorities to treat land as administratively “empty” state land, even where communities can demonstrate long-term occupation and deep socio-cultural attachment. The result is a form of legal erasure of customary tenure that is not openly acknowledged in statutory language but produced through the interaction of these norms in practice.²⁴

19 Reza Nur Amrin, ‘Pelaksanaan Program Pendaftaran Tanah Sistematis Lengkap (PTSL) Di Kabupaten Hulu Sungai Tengah Dalam Mendukung Kebijakan Satu Peta’, *Seminar Nasional Geomatika* (2021).

20 Ninik Zakiyah, ‘Reposisi Hak Cipta Sebagai Objek Jaminan Fidusia’ (2021) 12 *Jurnal Surya Kencana* Satu: *Dinamika Masalah Hukum Dan Keadilan* 77.

21 Deviantari and Djurdjani (n 25).

22 Muhammad Rizaldi, Dian Aries Mujiburohman and Dwi Wulan Pujiriyani, ‘Mediasi Sebagai Alternatif Penyelesaian Sengketa Tumpang Tindih Tanah Antara Hak Guna Usaha Dan Hak Milik’ (2023) 3 *Widya Bhumi* 137.

23 Tri Idawijayanti and Retno Widodo Dwi Pramono, ‘Pengadaan Tanah Jalur Kereta Api Bandara Adi Soemarmo-Solo Balapan: Kebijakan Konservasi Vs Pembangunan Infrastruktur’ (2021) 7 *BHUMI: Jurnal Agraria dan Pertanahan* 163.

24 Phil Anderson and others, ‘Legal Capacity, Developmental Capacity, and Impaired Mental Capacity in Children under 16: Neurodevelopment and the Law in Northern Ireland’ (2023) 87 *International Journal of Law and Psychiatry* 101872; Alex Ruck Keene and Chiara Cordone, ‘Distributed Rights

Building on this insight, the article proposes a reconstructive reading of the reversion clause in Government Regulation Number 18 of 2021 when cultivation rights have been granted over customary land. Before expired HGU over such territories can be reallocated, the state should be required to: (i) conduct participatory mapping and verification of customary tenure; (ii) prioritize restitution, recognition of communal rights, or co-management arrangements with affected communities; and (iii) subject any renewed concession to free, prior, and informed consent procedures and long-term benefit-sharing agreements. This doctrinal proposal differs from existing analyses that focus mainly on administrative weaknesses; it directly reformulates the legal conditions under which HGU can be granted, extended, or redistributed in areas where customary land has historically existed.

Overall, the evaluation and impact of the HGU policy show that although there is potential to improve welfare through efficient land utilization. This implementation does not seriously consider the rights of local communities and environmental sustainability can lead to more conflict and dissatisfaction. Therefore, a comprehensive reform of the HGU policy is essential to achieve social justice and sustainability in the land sector.

The Role of Customary Law in Dispute Resolution

Resolving HGU disputes in Indonesia often intersects with customary law, which is important in regulating and resolving various land conflicts. Customary law, especially in communities with strong traditional customs, is often the first option before taking formal legal action. This creates an intersection between formal legal and customary law-based dispute resolution, allowing the two systems to complement and reinforce one another. First, customary law provides a basis for communities to manage and resolve land conflicts often arising from Cultivation Rights. Research by Suryanto²⁵ showed that the Dayak Ngaju community in Central Kalimantan applies

Protection: The 2000 Hague Convention on the International Protection of Adults and the Challenge of Securing Fundamental Rights across Borders' (2023) 91 International Journal of Law and Psychiatry 101936 <<https://www.sciencedirect.com/science/article/pii/S0160252723000791>>; Ian Freckleton QC, 'COVID-19: Fear, Quackery, False Representations and the Law' (2020) 72 International Journal of Law and Psychiatry 101611 <<https://www.sciencedirect.com/science/article/pii/S0160252720300704>>; Babaev Isa, 'Integrating System Analysis, Information Management, and Decision-Making: Legal Perspectives and Challenges' (2023) 1 International Journal of Law and Policy <<https://irshadjournals.com/index.php/ijlp/article/view/85>>; Sadikov Ruslan, 'Challenges and Opportunities for Legal Practice and the Legal Profession in the Cyber Age' (2023) 1 International Journal of Law and Policy <<https://irshadjournals.com/index.php/ijlp/article/view/59>>; Mingming Hai, 'Effects of Psychological Torture and Cybertorture with Emerging Digital Technologies under Anti-Torture Legal Obligations in China: A Mixed Methods Research in Risks and Remedies' (2025) 101 International Journal of Law and Psychiatry 102081 <<https://www.sciencedirect.com/science/article/pii/S0160252725000147>>; Patrice Marie Miller and others, 'Differences and Similarities in Cross-Cultural Perceptions of Boundaries: A Comparison of Results from Two Studies' (2012) 35 International Journal of Law and Psychiatry 398 <<https://www.sciencedirect.com/science/article/pii/S0160252712000672>>.

- 25 Dede Suryanto Dede Suryanto, 'Dinamika Pelaksanaan Hukum Adat Dayak Ngaju Dalam Penyelesaian Sengketa Tanah Di Kalimantan Tengah' (2024) 19 Vyavahara Duta 68. See also, Muhammad Syauqi Bin-Armia, 'From Constitutional-Court To Court Of Cartel: A Comparative Study Of Indonesia And Other Countries' (2024) 9 PETITA: Jurnal Kajian Ilmu Hukum dan Syari'ah. See also, Beibei Zhang and Wenzhang Zhou, 'An Empirical Study of "Public Security Centralism" in Modern China and Its Legal and Political Ramifications' (2024) 76 International Journal of Law, Crime and Justice 100648 <<https://www.sciencedirect.com/science/article/pii/S1756061623000745>>; Anushka Singh, 'Sanction for Prosecution in "Offences Against the State" in India: The Prerogative of the Political and the Withdrawal of the Judicial' (2022) 69 International Journal of Law, Crime and Justice 100531 <<https://www.sciencedirect.com/science/article/pii/S175606162200009X>>; Sihan Yang and Hideki Koizumi, 'Space, Devices, Activities: A Crime Prevention Through Environmental Design (CPTED) Assessment in Kakogawa, Japan' (2025) 82 International Journal of Law, Crime and Justice 100765 <<https://www.sciencedirect.com/science/article/pii/S1756061625000412>>.

customary law in resolving land disputes. This traditional law maintains social harmony and avoids tensions that sometimes arise in the context of HGU managed by large companies. In this context, mediation through traditional leaders or court institutions is commonly used to reach an agreement between the disputing parties.

Furthermore, Nurbaiti explained the importance of mediation as an alternative dispute resolution.²⁶ Mediation conducted through a customary law approach allows the parties to negotiate in a more intimate and less tense atmosphere than the formal litigation process. However, this reference talks about mediation in the insurance context, so it is not entirely relevant to the context of HGU.

This dispute-resolution practice is not always smooth. Research conducted by Rizaldi²⁷ revealed a gap between customary law and national law, making dispute resolution more complicated. The uncertainty of recognizing customary law within the national legal framework is often a complicating factor in resolving HGU disputes. However, appropriate mediation process can effectively reduce tensions and improve relations between the parties involved.

In addition, Claudia added that the existence of customary law in dispute resolution can encourage communities to actively participate in the land dispute resolution process, which is part of their collective right to the resources they manage.²⁸ Although this reference does not directly address land disputes, the principle of community participation may be relevant in the context of HGU. Recognition of customary law is important in maintaining social balance in multicultural and diverse societies. Efforts to protect communities from detrimental land tenure must consider existing customary laws, given that the incompatibility between the state legal system and local practices is often a source of conflict.²⁹ The involvement of indigenous peoples in decision-making regarding their land rights can prevent the emergence of more significant disputes and provide a greater sense of justice within the community.

Furthermore, legal pluralism, or the existence of various legal systems within an area, is often a middle ground for resolving land disputes.³⁰ In the context of small and formal mining, the enforcement of land rights is inseparable from an understanding of customary law as

- 26 Siti Nurbaiti, 'Mediasi: Salah Satu Alternatif Penyelesaian Sengketa Asuransi Di Indonesia' (2008) 2 Jurnal Hukum PRIORIS 28. See also, 'Contract Law ? Forced Arbitration ? Third Circuit Rules That Tribal Payday Lenders Cannot Compel Arbitration. ? Williams v. Medley Opportunity Fund II, LP, 965 F.3d 229 (3d Cir. 2020)' (2021) 134 Harvard Law Review 2582 <<https://www.jstor.org/stable/27028836>>; Bowman Heiden and Justus Baron, 'The Economic Impact Of Patent Holdout' (2024) 38 Harvard Journal of Law & Technology 638.
- 27 Rizaldi, Mujiburohman and Pujiriyani (n 29). See also, Jacqueline Sebire, Gareth Stubbs and Mohamed Al Hanaee, 'Safety and Security in Abu Dhabi: The Impact of Policing on Public Perceptions' (2025) 80 International Journal of Law, Crime and Justice 100728 <<https://www.sciencedirect.com/science/article/pii/S1756061625000047>>; Saldi Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia' [2017] International Journal of Law, Crime and Justice.
- 28 Margaretha Yeremia Claudia and others, 'Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah' (2024) 3 Locus Journal of Academic Literature Review 127.
- 29 Adriaan Bedner and Yance Arizona, 'Adat in Indonesian Land Law: A Promise for the Future or a Dead End?' (2019) 20 The Asia Pacific Journal of Anthropology 416 <<https://www.tandfonline.com/doi/full/10.1080/14442213.2019.1670246>>.
- 30 Linda Mensah, 'Legal Pluralism in Practice: Critical Reflections on the Formalisation of Artisanal and Small-Scale Mining (ASM) and Customary Land Tenure in Ghana' (2021) 8 The Extractive Industries and Society 100973. See also, PS Berman, *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press 2020); J Bertrand, 'Indonesia: "Special Autonomy" for Aceh and Papua' in G Choudhry, S., & Anderson (ed), *Territory and Power in Constitutional Transitions* (Oxford University Press 2019); A Traianou, *The Centrality of Ethics in Qualitative Practice. The Oxford Handbook of Qualitative Research* (2020); Dwight Newman, 'Indigenous Rights and Decolonized Legal Positivism', *From Morality to Law and Back Again* (Oxford University Press Oxford 2023).

communities often have distinct traditional ways of managing and utilizing resources that differ from the formal legal system.

In addition, the utilization of customary law can also contribute to sustainable agreements regarding natural resource management. Formal law may not fully cover the community's needs. Customary law provides a better framework for problem-solving based on local wisdom and sustainable practices.³¹ Thus, recognizing and applying customary law in the formal legal context can strengthen the rights of local communities and reduce the potential for conflict that often arises from the unjust control of resources.

Furthermore, incorporating the principle of legal pluralism into the national legal system requires policy adjustments that recognize, respect, and accommodate local values. Implementing this approach is not enough at the normative level. It also requires the renewal of administrative and institutional procedures so that customary law gains legitimacy equal to formal law. This step can minimize overlapping jurisdictions that often occur due to diverse legal systems. Thus, land rights enforcement procedures become more transparent and effective.

Furthermore, strengthening the capacity of law enforcement officials is a determining factor in ensuring smooth coordination between customary law and positive law. State apparatus must comprehensively understand customary norms still in use and recognized in certain regions, including culturally accepted dispute-resolution mechanisms. If this synergy is formed, the application of customary law is no longer considered an 'alternative' alone. However, it can be an integral part of the mechanism for resolving land conflicts, especially in areas with strong traditions, such as small-scale local mining.

From a resource economics perspective, legal pluralism allows communities to maintain sustainable environmental management practices. This is in line with the idea of Hargreaves and Logie, as cited by Fisher that customary law often has a higher ability to adapt to local conditions to reduce the potential for ecological damage.³² Thus, arrangements that integrate customary law and formal law protect land rights and guarantee environmental sustainability and social welfare for local communities.

On the other hand, legal pluralism does not mean weakening the authority of national law. On the contrary, synergistic collaboration between customary law and state law can increase the legitimacy of legal decisions by making conflict-resolution process more inclusive. The

31 Micah R Fisher and others, 'Assessing the New Social Forestry Project in Indonesia: Recognition, Livelihood and Conservation?' (2018) 20 *International Forestry Review* 346.

32 Fisher and others (n 40). Haris Maiza Putra and others, 'Reconstruction of the Practice of *Siyasa Syar'iyah* During the Islamic Empire's Relevance to the Practice of Sharia Financing CWLS Retail in Indonesia' [2023] *Al-Istinbath: Jurnal Hukum Islam*; Vol 8, No 2 November (2023) DO - 10.29240/jhi.v8i2.8057 <<http://journal.iaincurup.ac.id/index.php/alistinbath/article/view/8057>>; Awalurramadhana Awalurramadhana, 'Climate Governance in the Financial Industries: Strategies for Sustainable Growth' (2025) 4 *SUKUK: International Journal Of Banking, Finance, Management And Business*; Teuku Rafli Azida Putra, 'The Shift to an Interest-Free Economy: Pakistan's Journey Toward a Fully Islamic Banking System' (2025) 4 *SUKUK: International Journal Of Banking, Finance, Management And Business*; Jihad Nafidzulhaq, 'Digital Shariah Compliance Supervision on Stock Market: An Innovative Approach on Islamic Capital Market' (2024) 3 *SUKUK: International Journal Of Banking, Finance, Management And Business*; Ardelia Vidya Riana, 'Unveiling the Economic Potential of Islamic Finance in the Philippines: Opportunities and Regulatory Challenges' (2025) 4 *SUKUK: International Journal Of Banking, Finance, Management And Business*; Samhudi Ramli Ahmad, 'Regulating Morality and Markets: A Critical Study of Fatwa Issuance Mechanisms in Islamic Economic Practice' (2025) 4 *SUKUK: International Journal Of Banking, Finance, Management And Business*; Ardelia Vidya Riana, 'The Impact of Green Banking Initiatives: Assessing Environmentally Friendly Banking on Islamic Banks in Indonesia' (2024) 3 *SUKUK: International Journal Of Banking, Finance, Management And Business*.

participation of the local community from the formulation stage through land policy implementation encourages the creation of more democratic decisions, reduces the potential for future disputes, and strengthens a sense of justice within the community. Thus, the merging of the two legal systems offers harmony among the state's interests, economic interests, and the rights of indigenous peoples.³³

Finally, official recognition of customary law must be combined with adequate protection mechanisms. The government and stakeholders need to formulate clear protocols regarding decision-making procedures and the implementation of sanctions. With detailed rules and dispute resolution mechanisms open to all stakeholders, the implementation of legal pluralism can provide stability, protect the rights of local communities, and achieve sustainable development which requires a balance among social, environmental, and economic aspect.

Finally, it is important to understand that integrating customary law into the dispute-resolution framework benefits affected communities and increases trust among the parties involved, facilitating a more constructive dialogue among communities, governments, and other stakeholders. Therefore, the settlement of land rights disputes must consider the interests and norms of customary law to achieve more comprehensive and sustainable form of justice.

An Integrative Customary-State Agrarian Governance Model

The preceding analysis suggests that neither formal law nor customary law alone can resolve plantation land disputes in a way that addresses structural power imbalances and long-term sustainability. Building on this insight, the article proposes an integrative Customary-State Agrarian Governance Model that links doctrinal reform of the cultivation rights regime with operational mechanisms of legal pluralism in agrarian governance. The model does not replace existing statutory or customary rules; rather, it provides a framework for sequencing and coordinating them in plantation conflict settings.³⁴

The model comprises three interrelated dimensions. First, the diagnostic dimension focuses on identifying the layered nature of land claims in plantation areas, including the historical depth of customary tenure, the legal basis of HGU and other concessions, and the distribution of bargaining power among communities, corporations, and state agencies. This diagnostic step is essential for determining whether a dispute concerns overlapping concessions, uncompensated dispossession, or failures of consultation and participation. Second, the procedural dimension sets out a stepwise pathway for dispute resolution. It begins with mandatory disclosure of

33 Kevin Kwok-yin Cheng and Zachary Bok-hin Chan, 'Leniency for Otherwise Law-Abiding Citizens? Testing the Lapse Theory and Sentencing in England and Wales' (2025) 80 *International Journal of Law, Crime and Justice* 100715 <<https://www.sciencedirect.com/science/article/pii/S1756061624000673>>; Rebecca Reeve and others, 'Community-Led Diversion of Indigenous Young People from the Justice System: The Role of Government Administrative Data' (2024) 76 *International Journal of Law, Crime and Justice* 100650 <<https://www.sciencedirect.com/science/article/pii/S1756061624000028>>.

34 Cristóbal Caviedes, 'Is Majority Rule Justified in Constitutional Adjudication?' (2021) 41 *Oxford Journal of Legal Studies* 376 <<https://academic.oup.com/ojls/article/41/2/376/6031984>>. See also, Muhammad Siddiq Armia and others, 'Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice' (2022) 17 *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 113 <<http://ejournal.iainmadura.ac.id/index.php/alihkam/article/view/4987>>; Muhammad Siddiq Armia, 'Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)' [2019] *Qudus International Journal of Islamic Studies*; Muhammad Syauqi Bin-Armia, Muhammad Siddiq Armia and Muhammad Fazlurrahman Syarif, 'Economical Rights versus God's Rights: Criticising of the Implementation Shariah Economic in Indonesia' (2024) ahead-of-p *International Journal of Islamic and Middle Eastern Finance and Management* <<https://doi.org/10.1108/IMEFM-01-2024-0054>>; Robert Home and Muhammad Siddiq Armia, 'Decolonising Israel/Palestine: An Approach To The Legal History Of The Middle East' (2025) 10 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* <<https://petita.ar-raniry.ac.id/index.php/petita/article/view/805>>.

concession histories and spatial data, followed by facilitated dialogue and mediation that explicitly recognizes customary authorities and community representatives as equal parties. Where agreement is reached, outcomes should be formalized through legally binding instruments—such as co-management agreements, communal title recognition, or revised concession contracts—that reflect both customary norms and statutory requirements. Where agreement cannot be reached, the model envisages adjudication that is informed by evidence of customary law and community practice, rather than relying solely on formal land certificates. Third, the institutional dimension emphasizes the need to redesign the roles of key actors—national land agencies, local governments, customary councils, and courts—so that legal pluralism becomes an organizing principle rather than an exception. This includes building the capacity of state officials to understand and apply customary norms, creating multi-stakeholder forums for plantation planning and monitoring, and establishing safeguards to prevent capture of customary institutions by corporate or political interests. By tying these institutional reforms to the doctrinal proposals on HGU reversion and concession renewal, the model offers a coherent pathway for transforming plantation land governance from a source of chronic conflict into a platform for negotiated, sustainable development.

Conclusion

This article has shown that plantation land disputes in Indonesia are sustained by more than administrative weaknesses or ad hoc policy failures. They are rooted in structural tensions within the cultivation rights regime, particularly where HGU and special economic zone policies are layered on top of long-standing customary tenure without clear rules on how ancestral rights must be reconsidered when concessions are granted, extended, or terminated. The Rempang Eco City conflict demonstrates how this blind spot allows state actors to frame inhabited customary territories as “state land” available for investment, despite constitutional and statutory commitments to recognize customary communities.

By reading Law Number 39 of 2014 on Plantations together with Government Regulation Number 18 of 2021, the article identifies a doctrinal gap: the reversion of expired or revoked HGU to state land is not conditioned by prior identification and recognition of customary rights. To address this, the article proposes a reconstructive interpretation that requires participatory mapping, restitution or co-management arrangements, and free, prior, and informed consent in any renewal or reallocation of HGU over customary land. These doctrinal proposals are then embedded in a broader Customary–State Agrarian Governance Model, which combines diagnostic, procedural, and institutional dimensions to operationalize legal pluralism in plantation governance. The main contribution of the article therefore lies not only in describing plantation land conflicts or advocating recognition of customary law, but in offering a concrete framework for reconfiguring the relationship between statutory and customary norms in the plantation sector. For policymakers, the model provides a roadmap for aligning concession practices, spatial planning, and dispute-resolution mechanisms with constitutional commitments to social justice and environmental sustainability. For future research, it opens an agenda for empirically testing how participatory land governance at regional and local levels can enhance the effectiveness and legitimacy of agrarian conflict resolution in different plantation frontiers.

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