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Legal status of former customary land ownership evidence after its validity period expires: Assessment of the legal certainty over Indigenous peoples' land rights

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Abstract

This study examined the legal protection afforded to holders of written evidence of former customary land ownership in Indonesia, particularly in the context of Article 96(2) of Government Regulation No. 18 of 2021 "On the Management Rights, Land Rights, and Land Registration", which renders such documents invalid after five years. The provision raises significant

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concerns regarding legal certainty and the constitutional rights of Indigenous communities. Employing a normative juridical method and a conceptual approach, the study analysed the tension between state-imposed administrative requirements and the historically rooted recognition of land ownership under customary law. The findings indicated that the sudden invalidation of traditional land documents without transitional mechanisms creates legal exclusion and deepens structural inequality, particularly among rural and Indigenous populations with limited access to legal resources. The analysis demonstrated that such a policy undermines the principles of procedural fairness, legitimate expectations, and the protection of property rights as guaranteed by the 1945 Constitution of Indonesia and international human rights instruments. The study argued for a rights-based and restorative framework to ensure transitional legal protection and the recognition of non-formal evidence rooted in Indigenous traditions. This approach is essential for aligning agrarian policy with justice, inclusivity, and constitutional obligations

Keywords: customary land rights; legal certainty; Indigenous communities; transitional justice; land registration; property rights; constitutional protection

Introduction

Customary land rights remain one of the most pressing issues in the legal framework of Indonesia, especially in 2024 when administrative reforms intersect with persistent demands for Indigenous recognition. The expiration of legal recognition for non-formal land documents risks marginalising communities that have long relied on these documents to secure tenure and identity. This issue is particularly urgent due to the ambitious land registration policies and modernisation efforts of Indonesia, which may inadvertently undermine historical claims. At the same time, the socio-economic vulnerability of Indigenous communities highlights the critical importance of ensuring legal protection for conventional land ownership. This creates a complex challenge of aligning formal legal mechanisms with lived realities in diverse local contexts.

Recent studies cover the complex challenges faced by Indigenous communities in asserting land and resource rights in contemporary governance frameworks. A. Abdullah *et al.* (2024) explored the political ecology of Indigenous forest recognition in Indonesia, highlighting that while

formal policies promise community empowerment, they often generate new forms of exclusion and marginalisation. A.A. Kamula (2025) analysed the non-involvement of the Cek Bocek Salesek Reen Sury Indigenous community in mining approvals in Sumbawa Regency, demonstrating how such exclusion violates principles of participation, transparency, and sustainable development, ultimately leading to prolonged social conflicts. R. Aprido and F. Fatimah (2023) reflected on the broader challenges regarding the tension between formal legal systems and Indigenous land tenure, emphasising that the elimination of customary evidentiary value without inclusive transitional mechanisms risks marginalising Indigenous communities and perpetuating legal exclusion. A. Artaji *et al.* (2024) examined restorative justice approaches in resolving agrarian conflicts on plantation lands in Indonesia, concluding that participatory conflict resolution mechanisms can bridge the divergent perspectives of communities, the state, and private stakeholders. A.L. Vásquez (2024) critiqued dominant narratives of Indigenous environmental

stewardship, arguing that capitalist land grabs threaten the sustainability of communal land systems and Indigenous ways of life. S. Teitelbaum *et al.* (2023) analysed governance in boreal forests, demonstrating that inclusive and hybrid governance models involving Indigenous and local communities enhance adaptive land management and promote sustainable development. P. Bose (2023) conducted a study of Indigenous resistance to mining-induced deforestation in India, finding that community-led initiatives and social movements challenge exclusionary policies, calling for decentralised, equitable governance. L. Notess *et al.* (2021) traced the historical erasure of Indigenous land rights through the implementation of Torrens-style registration systems in settler and post-colonial contexts, showing how formalised registration frameworks have undermined communal land tenure and perpetuated structural exclusion. Collectively, these studies reveal the persistent tension between formal legal structures and Indigenous governance systems, emphasising the need for integrative legal frameworks that accommodate Indigenous land tenure practices and protect communal rights.

The purpose of this study was to analyse the legal status of written evidence of former customary land after the enactment of Article 96(2) of Government Regulation of the Republic of Indonesia No. 18 (2021), and its implications for the protection of Indigenous land rights in Indonesia. This study intended to identify the normative gaps in the current regulatory framework and assess the extent to which these gaps may undermine the constitutional guarantees of legal certainty, procedural fairness, and property rights. The study also proposed specific legal and administrative reform strategies that could integrate transitional protection mechanisms for indigenous communities while strengthening the recognition of communal land rights in Indonesia's agrarian system.

Materials and Methods

This study adopted a normative juridical approach that focuses on analysing the law as a written norm prevailing in society. This approach emphasised the interpretation of positive legal systems, including statutory regulations, legal doctrines, general legal principles, and constitutional norms, to examine the legal status of written evidence of former customary land ownership following the enactment of Government Regulation of the Republic of Indonesia No. 18 "On the Management Rights, Land Rights, and Land Registration" (2021). The principal aim of this method was to assess the consistency of Article 96(2) with fundamental principles such as legal certainty, justice, and the protection of property rights within the framework of a constitutional state. This approach is particularly relevant in modern legal systems that require systematic and coherent legal interpretation, one that is not solely textual but also contextual.

The study applied a statute approach to examine the juridical construction of the norms contained in Government Regulation of the Republic of Indonesia No. 18 (2021), their relationship with agrarian provisions in the Basic Regulations on Agrarian Principles of Indonesia (1960), and their normative alignment with the Constitution of the Republic of Indonesia (1945). A conceptual approach was also employed to examine key ideas such as customary rights, communal ownership, and legal certainty from the perspective of procedural justice. This conceptual framework was essential, given that agrarian law encompasses not only formal-legal dimensions, but also philosophical and historical aspects related to the collective right to land. These aspects included international legal instruments such as the Indigenous and Tribal Peoples Convention (1989) and the United Nations Declaration on the Rights of Indigenous Peoples (2007). This methodological approach was intended to evaluate the normative

coherence of existing regulations with universal standards of justice and the obligation of the state to protect conventional rights. Consequently, the study was not only descriptive-analytical in its legal interpretation but also evaluative in assessing the extent of legal protection afforded to Indigenous communities within the context of national agrarian practices.

Results and Discussion

The constitutional relevance of Indigenous rights recognition: An analytical discussion.

The constitutional recognition of Indigenous communities in Indonesia, as articulated in Article 18B(2) and Article 28I(3) of the Constitution of the Republic of Indonesia (1945), positioned the rights of Indigenous law communities within the framework of fundamental rights that cannot be subordinated to administrative regulations. However, the implementation of Article 96(2) of Government Regulation of the Republic of Indonesia No. 18 (2021), which imposes a five-year expiration period on written evidence of customary land, creates a profound tension between constitutional guarantees and administrative enforcement. International legal frameworks, such as the United Nations Declaration on the Rights of Indigenous Peoples (2007) and the Indigenous and Tribal Peoples Convention (1989), emphasise the protection of Indigenous rights to lands and resources conventionally owned or occupied, highlighting the incompatibility of extinguishing these rights without participatory mechanisms or adequate transitional frameworks.

Comparative experiences from countries such as Canada and New Zealand provide concrete examples of how exclusionary legal frameworks have marginalised Indigenous communities. In Canada, for example, the *Tsilhqot'in Nation v. British Columbia* (2014) decision of the Supreme Court of Canada reinforced the recognition of Indigenous land rights that were not formally

documented, emphasising the role of oral histories and social legitimacy (Stauffer, 2020). In New Zealand, the Waitangi Tribunal demonstrated the failures of the Crown to honour conventional Maori land claims, showing how reliance on formal title systems has erased communal land ownership structures (O'Sullivan *et al.*, 2021). These examples parallel the challenges of Indonesia in balancing formal legal frameworks with Indigenous norms.

Indonesian land law, particularly the Basic Regulations on Agrarian Principles of Indonesia (1960), acknowledges the continued relevance of customary rights through concepts such as *ulayat* (communal) land. However, modern regulatory instruments, including the Law of the Republic of Indonesia No. 24 "On Land Registration" (1997), increasingly prioritise formal documentation, thereby marginalising oral or conventional evidence recognised by Indigenous communities. The study of J.F. McCarthy *et al.* (2022) demonstrates that this legalistic bias perpetuates systemic exclusion and reinforces structural inequalities. The imposition of an expiration period for conventional land evidence directly conflicts with Indigenous oral legal systems, which rely on collective memory, intergenerational transmission of land rights, and socially validated claims rather than written documentation. Research shows that communities such as the Kajang in South Sulawesi and the Baduy in Banten maintain complex customary systems where legitimacy derives from consensus and ritual acknowledgement, not formal legal records (Abdullah *et al.*, 2024). Nullifying the legal weight of such evidence undermines these communities' cultural integrity and violates the principle of legal pluralism, which recognises multiple coexisting legal orders (Teitelbaum *et al.*, 2023).

A further analysis of transitional justice mechanisms in land reform underscores the necessity of integrating Indigenous perspectives

into state law. For example, restorative justice models in agrarian conflicts have demonstrated that participatory dispute resolution frameworks can bridge the gap between formal law and community norms, ensuring equitable outcomes. In this context, the current legal approach of Indonesia lacks the requisite inclusivity and adaptability, creating a risk of legal exclusion for Indigenous communities that are unable to comply with rigid formal procedures. This discussion demonstrates that the constitutional obligation of the state and international law is not merely symbolic but requires substantive legal protections that respect Indigenous cultural systems. Legal empowerment strategies, including the formal recognition of non-formal evidence and the provision of community-based legal services, are essential to uphold the principle of substantive equality and ensure fair access to justice. Failure to implement such measures risks transforming state law into a mechanism of exclusion rather than a facilitator of inclusion and protection.

Access to land registration: Sociological realities and legal marginalisation. One of the critical challenges in the land registration system of Indonesia is the fundamental disconnect between legal formalism and the lived realities of Indigenous law communities. Article 96(2) of the Law of the Republic of Indonesia No. 18 (2021) stipulates that written evidence of customary land ownership (such as *girik*, *petuk*, or *pipil*) must be registered within five years of the regulation's enactment. Failure to comply renders these documents legally invalid. However, this formal requirement disregards the socio-cultural contexts in which these communities operate, particularly in Papua, West Kalimantan, and parts of Sulawesi, where access to administrative infrastructure is limited, and conventional land tenure is deeply rooted in oral histories and social legitimacy (Sani, 2020). In these regions, land ownership is affirmed

through intergenerational transmission, communal rituals, and genealogical ties – practices that have historically secured land rights without the need for formal documentation.

This disconnect reflects a broader tension between state-centric positivist legal norms and customary law that operates as a “living law” in Indigenous societies. Article 5 of the Basic Regulations on Agrarian Principles of Indonesia (1960) explicitly recognises the validity of customary law in agrarian matters, provided it aligns with national interests. However, the implementation of Article 96(2) of Government Regulation of the Republic of Indonesia No. 18 (2021) contradicts this recognition by effectively invalidating oral and non-formal evidence that has long served as legitimate proof of land ownership. Such legal rigidity disproportionately affects communities with low levels of legal literacy and limited access to registration services, reinforcing structural inequalities and marginalising Indigenous peoples from their ancestral lands (Nehaluddin, 2020).

The situation in Indonesia can be contrasted with legal frameworks in countries such as Canada, Australia, and New Zealand, where the legal system has progressively integrated Indigenous oral evidence and community-based land claims into formal legal structures (Dudgeon & Bray, 2019). For instance, Section 35 of the Constitutional Act of Canada (1982) affirms Indigenous land rights, and landmark rulings such as *Delgamuukw v. British Columbia* (1997) accept oral histories as valid evidence in land disputes. Similarly, the Native Title Act of Australia (1993) provides for the recognition of communal land claims supported by conventional knowledge and practices. These frameworks demonstrate the feasibility of integrating plural legal traditions to ensure both state legal certainty and the protection of Indigenous rights. Table 1 illustrates a comparison of evidentiary requirements in Indonesia and selected jurisdictions.

Table 1. Comparative legal frameworks for Indigenous land rights recognition in Indonesia, Canada, Australia, and New Zealand

Jurisdiction	Legal Framework	Accepted Evidence Types	Integration of Oral Traditions
Indonesia	Basic Regulations on Agrarian Principles (1960), Government Regulation of the Republic of Indonesia No. 18 (2021)	Formal documents (girik – informal land ownership letter, petuk – historical land document, land certificate)	Limited, oral traditions not formally recognised
Canada	Constitutional Act of Canada (1982), Delgamuukw v. British Columbia (1997)	Oral histories, community testimonies	Explicitly recognised and validated
Australia	Native Title Act of Australia (1993)	Anthropological reports, oral evidence	Recognised within claims procedures
New Zealand	Treaty of Waitangi (1840)	Cultural and historical evidence, oral traditions	Forms a core part of recognition

Source: developed by the authors

The contrast demonstrates that while the legal system of Indonesia emphasises formal written evidence, other jurisdictions adopted more inclusive and culturally responsive frameworks, accommodating the diversity of Indigenous land tenure systems. Bridging this gap requires revision of Article 96(2) of the Government Regulation of the Republic of Indonesia No. 18 (2021) to incorporate provisions for community-based verification systems, recognise oral traditions as valid forms of evidence, and establish participatory land registration programmes that respect Indigenous legal systems (Wijaya *et al.*, 2024). Without such reforms, the state risks perpetuating legal disenfranchisement, undermining constitutional guarantees under Article 18B(2) and 28I(3) of the Constitution of Indonesia (1945), and escalating agrarian conflicts driven by systemic exclusion.

Comparative legal analysis indicates that countries such as Canada and Australia implemented mechanisms to integrate Indigenous oral evidence into formal land rights recognition. Section 35 of the Constitutional Act of Canada (1982) recognises the rights of Indigenous peoples, and landmark cases such as Delgamuukw v. British Columbia (1997) affirm that oral histories constitute valid evidence in land disputes. The Native Title Act of Australia (1993)

permits recognition of communal land claims based on cultural practices and long-standing occupation, with evidence requirements adjusted to reflect Indigenous oral traditions (Marshall, 2019). These international approaches provide a benchmark for Indonesia to consider legislative amendments that incorporate community-based legal verification, ensuring that Indigenous communities are not unfairly excluded from formal systems of land ownership.

The current Indonesian framework lacks sufficient provisions for transitional legal protection. Unlike New Zealand's Treaty of Waitangi (1840), which provides a legal foundation for acknowledging Maori land claims through historical and cultural ties (Marshall, 2019), Government Regulation of the Republic of Indonesia No. 18 (2021) offers no alternative recognition for customary land claims that cannot meet formal documentation standards. This not only violates Indigenous communities' legitimate expectations but also risks infringing Article 28I(3) of the Constitution of Indonesia (1945), which mandates respect for cultural identities and traditional community rights. The absence of affirmative measures such as grace periods, facilitated registration services, or legal aid tailored to Indigenous needs reflects a broader structural exclusion perpetuated by Indonesia's legal system.

From a socio-legal perspective, the failure of the state to accommodate these realities constitutes a form of legal disenfranchisement, where the law inadvertently becomes a tool of exclusion rather than inclusion (Tamanaha, 2021). Empirical studies in Indonesia, including cases in Dayak customary territories and in the Mentawai Islands, show how the rigidity of formal registration processes has led to protracted disputes and dispossession of Indigenous lands (Rahmat *et al.*, 2023). The application of a one-size-fits-all legal approach disregards the nuanced socio-cultural fabric of these communities, reinforcing structural barriers to justice and exacerbating existing inequalities. This legal bias risks not only the erosion of customary law but also the escalation of social tensions and potential conflicts over land.

Legislative reforms in Indonesia are essential to redress these issues. A revision of Government Regulation of the Republic of Indonesia No. 18 (2021), particularly Article 96(2), should introduce transitional mechanisms such as extending the validity period of traditional evidence and recognising community-based verification processes. A Presidential Regulation (Perpres) could be issued to operationalise these transitional protections, modelled on the Specific Claims Tribunal Act (2008), which provides avenues for Indigenous communities to present claims based on historical and cultural evidence. The Ministry of Agrarian Affairs and Spatial Planning should implement community-based legal services, drawing on the approach in Mexico's Agrarian Reform Law (Decree of the President of Mexico, 1992), which incorporates participatory mapping and legal counselling to bridge the gap between state formalities and Indigenous practices. In practice, Indonesia can also draw on successful initiatives such as the Recognition and Protection of Customary Law Communities programme in Bali and South Sulawesi, where local regulations and village ordinances provide

frameworks for recognising and protecting communal land rights. These localised approaches, combined with national legal reforms, would ensure a more inclusive and just land registration system. Incorporating oral traditions, community narratives, and participatory mechanisms into formal legal processes would enable Indonesia to align its agrarian policies with constitutional guarantees of justice and legal pluralism.

The idea of introducing transitional mechanisms, such as extending the validity of traditional evidence and strengthening the role of communities in verifying land rights, aligns with the framework of legal pluralism, which recognises the coexistence of multiple legal systems – state, customary, and religious law – within a single national space. In the context of Indonesia, this concept has deep historical roots. As R. Lukito (2013) notes, Indonesian law was formed through the interaction of state law, Islam, and adat rules, resulting in a complex multi-level legal structure. His approach to “bridging the unbridgeable” demonstrates the need not for unification, but for coordination and mutual recognition of different sources of law. N.A. Hamida (2022) shows that in practice, the Indonesian state resorts to positivising adat law through local regulations, which often leads to bureaucratisation and a loss of flexibility in customary practices. An alternative approach is participatory integration: mechanisms that allow communities to independently document, represent, and confirm their land rights, as demonstrated in the Recognition and Protection of Customary Law Communities programme in Bali and South Sulawesi.

In this context, it is appropriate to apply the categories of intercultural constitutionalism, which, in Latin American legal theory (e.g. in Bolivia or Ecuador), is understood as the mutual recognition and institutionalisation of legal diversity. The Indonesian model, which combines local ordinances, adat law, and centralised regulation,

effectively reflects this approach, provided that the procedures are properly configured. As S. Isra and H. Tegnán (2021) emphasise, it is not formal harmonisation but legal syncretism and flexible mutual recognition procedures that can reduce tensions between adat norms and state legislation. The implementation of mechanisms such as the continuation of conventional evidence, the recognition of collective memory, and the introduction of presidential regulations supporting the legal inclusion of communities aligns with two theoretical frameworks: legal pluralism (Lukito, 2013; Hamida, 2022) and intercultural constitutionalism (Isra & Tegnán, 2021). These frameworks enable the creation of a flexible and fair legal regime capable of ensuring the rights of communities without undermining their autonomy.

In Indonesia, the concept of adat already has constitutional recognition (Articles 18B and 28I of the Constitution), but the absence of effective legal mechanisms to implement this recognition, including provisions for prolonged transition periods, support for undocumented claims, and community participation, renders it largely declarative. From the perspective of intercultural constitutionalism, the situation requires hybrid mechanisms such as presidential regulations adapted to the adat context and community participation in the formalisation of rights. This analysis underscores that genuine legal certainty and justice in land rights recognition cannot be achieved through formalistic standards alone. Achieving these objectives requires a contextual understanding of social realities, inclusive legal mechanisms, and a commitment to equitable reform. Bridging the gap between state law and customary practices is essential for ensuring that the legal system of Indonesia serves as an instrument of social integration rather than exclusion.

Transitional justice and customary land tenure: Bridging the legal gap. The transition to a post-conflict or reform era in Indonesia opens

strategic opportunities for applying transitional justice to customary land disputes. Efforts to respect customary rights through comparative law approaches from other countries, such as those of Europe and Asia, can serve as models for regulation based on human rights principles and local knowledge (Zamrud & Salam, 2022). Such an approach highlights that the recognition of customary tenure is not limited to the restoration of land rights but extends to achieving historical justice and social reconciliation.

From an international academic perspective, transitional justice addresses not only property restitution but also structural improvements to the land law system. L.A. Wily (2009) emphasised the importance of customary tenure reform during peaceful transitions to prevent the erosion of customary rights and provide space for the adaptation of formal law based on local contexts. In Indonesia, this goal should be pursued through harmonisation between formal regulations, such as Government Regulation of the Republic of Indonesia No. 18 (2021), and the recognition of Indigenous peoples, thereby preventing a legal vacuum and strengthening the legitimacy of the state (Simarmata, 2019). First, the Law should be amended by adding a separate section on transitional mechanisms for recognising adat territories. This section should establish an extended grace period during which adat communities could apply for land registration without the requirement of formal documents. The Law should also incorporate provisions requiring the state to conduct information and awareness campaigns on adat rights as a form of historical and legal rehabilitation. This position aligns with the study of A. Ward *et al.* (2012), which highlights that restoring property rights without acknowledging their historical value is an insufficient element of transitional justice.

Practically, the recognition of customary tenure through transitional justice can facilitate

the design of an equitable and accessible customary land registration mechanism. The Profor study (2024) notes that around 70% of the state forest area in Indonesia is still controlled by the state, although only 11% has been legally verified, creating a gap that fosters conflict and marginalisation of indigenous peoples (Profor, 2024). Therefore, legal reform recommendations should include procedures for demarcating customary territories, simplifying the verification process, and empowering communities through customary registries, so that transitional justice policies in the land sector deliver substantive and inclusive justice.

Strengthening the position of Indigenous peoples in the national legal system requires concrete and inclusive legal recognition at both the legislative and implementation levels. Although the Constitution of the Republic of Indonesia (1945) (Article 18B, paragraph 2) recognises customary law communities, practical enforcement remains limited, with overlapping regulations and insufficient inter-agency coordination persisting (Sihotang *et al.*, 2025). Legal reform recommendations should, therefore, involve drafting clear customary laws with defined standards for verifying customary boundaries and enhancing inter-agency coordination. Participatory approaches, such as Free, Prior, and Informed Consent, are crucial to ensure the genuine involvement of Indigenous peoples in all stages of land management and development projects. In the context of Indonesia, this could be operationalised through regulations requiring the active participation of Indigenous peoples in customary registration processes, alongside systematic evaluations of environmental impacts for development projects (Aznannya, 2024).

Practical recommendations also encompass institutional strengthening and increased funding for Indigenous villages. The successful social forestry model in Bantaeng (2019-2021) demonstrates that, with access to forest management

and financial support, local communities can maintain both their welfare and environmental sustainability (Veriasa *et al.*, 2020). Indonesia should encourage the establishment of customary village units with full authority over customary land and provide minimum allocations from the State and Regional Revenue and Expenditure Budgets to support customary registration, demarcation, and litigation activities.

Thus, the application of transitional justice mechanisms to issues of customary land tenure in Indonesia extends beyond restitution and demands a comprehensive rethinking of the legal landscape. It concerns more than the formal recognition of rights, representing an effort to integrate historical justice, local knowledge, and cultural practices into the foundations of modern legislation. This approach enables the principles of legal pluralism to be aligned with the concept of human rights, creating a model in which adat territories are regarded not as exceptions but as integral components of the broader legal system. Moreover, the considerable gap between constitutional guarantees and administrative practice highlights the need for institutional reconfiguration and budget reallocation. International studies demonstrate that sustainable legitimisation of adat land tenure can be achieved only through the creation of separate procedures, including extended grace periods, flexible verification mechanisms, and authentic community participation. In this sense, transitional justice operates not as a reactive measure but as a transformative tool, enabling reform of the legal system towards inclusiveness, flexibility, and fairness.

Conclusions

This study examined the legal status of expired customary land ownership evidence in Indonesia, focusing on the implications of Article 96(2) of Government Regulation of the Republic of Indonesia No. 18 for Indigenous communities. The

research sought to determine whether the elimination of legal validity for conventional documents without transitional safeguards undermines constitutional guarantees, and whether reforms are necessary to align national land law with the principles of justice, equality, and cultural recognition. The objective of the study was achieved through a systematic analysis of relevant statutory provisions, comparative international experience, and conceptual frameworks such as legal pluralism and transitional justice.

The study established that Article 96(2) lacks adequate transitional mechanisms, thereby legally disenfranchising many Indigenous communities. The analysis demonstrated that the invalidation of conventional land evidence, such as *girik* and *petuk*, disregards the socio-legal context in which such documents operate and fails to acknowledge oral traditions as valid forms of land tenure. It was discovered that this legal framework contradicts both the constitutional provisions of Indonesia – specifically Articles 18B(2) and 28I(3) – and international human rights standards. Comparative analysis with jurisdictions such as Canada and Australia further highlighted that oral and community-based evidence is increasingly recognised as a legitimate basis for land rights. The study also demonstrated that the Indonesian regulatory system reinforces structural inequality by privileging formal legal instruments while overlooking communal systems of legitimacy.

These findings indicated that the issue is not merely administrative but fundamentally

constitutional and sociological. The lack of inclusive procedures and institutional flexibility reflects a deeper conflict between formal state law and Indigenous legal traditions. Conceptually, the study confirmed that bridging this divide requires integrating transitional justice principles and recognising legal pluralism within agrarian law. It also reinforced the argument that legal certainty must not be interpreted narrowly as formal registration, but more broadly as accessibility, recognition, and protection for all social groups.

Overall, this study contributed to the growing body of literature on Indigenous land rights in Indonesia by demonstrating how administrative rigidity can result in legal exclusion and injustice. It highlighted the need for more culturally sensitive and participatory legal reforms. Future research should focus on evaluating the implementation of community-based verification programmes, monitoring judicial responses to land disputes involving Indigenous evidence, and assessing how decentralised legal reforms can support more equitable outcomes for customary law communities across different provinces of Indonesia.

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Conflict of Interest

None.

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Правовий статус колишніх доказів традиційного володіння землею після закінчення терміну їх дії: оцінка правової визначеності щодо прав корінних народів на землю

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Анотація

У статті розглянуто правовий захист, що надається власникам письмових доказів колишнього звичаєвого права власності на землю в Індонезії, зокрема у зв'язку з положенням статті 96(2) Постанови Уряду № 18 від 2021 року «Про права управління, права на землю та реєстрацію землі», яка визнає такі документи недійсними через п'ять років. Це положення викликало серйозну стурбованість щодо правової визначеності та конституційних прав корінних громад. Використовуючи нормативний юридичний метод та концептуальний підхід, у цьому дослідженні проаналізовано напругу між адміністративними вимогами, встановленими державою, та історично вкоріненим визнанням права власності на землю на основі звичаєвого права. Дослідження показало, що раптове визнання недійсними традиційних документів на землю без перехідних механізмів створює правову ізоляцію та посилює структурну нерівність, особливо серед сільського населення та корінних народів, які мають обмежений доступ до правових ресурсів. Аналіз показав, що така політика підриває принципи процедурної справедливості, законних очікувань та захисту прав власності, гарантованих Конституцією Індонезії 1945 року та міжнародними документами з прав людини. У статті обґрунтовано необхідність створення правової та відновлювальної системи для забезпечення перехідного правового захисту та визнання неформальних доказів, що ґрунтуються в традиціях корінних народів. Такий підхід є необхідним для приведення аграрної політики у відповідність із принципами справедливості, інклюзивності та конституційними зобов'язаннями

Ключові слова: звичаєві права на землю; правова визначеність; корінні громади; перехідне правосуддя; реєстрація землі; права власності; конституційний захист