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ANDALAS BORNEO JUSTICE

Original Article

When Customary Court Decisions Meet State Certificates: Ulayat Land Tenure in East Kalimantan

Aris Irawan[1]*Adi Freddy Bawaeda[2] Rahmahwati Silvia Riani[3]

[1,2,3] Departement of Criminal Law, Faculty of Law, Borneo Tarakan University, Tarakan, Indonesia.

*Corresponding author: arisirawan@borneo.ac.id

Abstract

The coexistence of customary (adat) dispute resolution and state land registration in Indonesia produces recurring tension whenever a decision of a customary institution over land collides with a state-issued land certificate. This tension is especially acute in East Kalimantan, where Dayak, Paser and Balik communities hold land under customary tenure while plantation, mining and the Nusantara Capital City (IKN) projects are expanding over the same territory. This article examines the legal force of customary court decisions in land tenure disputes and their position when confronted with state certificates. It employs normative juridical research combined with a socio-legal perspective, using statutory, conceptual and case approaches to constitutional provisions, agrarian legislation, regional regulations, court decisions and recent empirical studies from Kalimantan. The findings show that customary court decisions possess strong social and cultural binding force and are constitutionally recognised, yet the unification of the judiciary has deprived them of executorial force. In civil land disputes they function, at most, as documentary evidence or as material for judicial consideration, while certificates enjoy a statutory presumption of validity that hardens after five years. Customary land documents have been progressively downgraded to mere indications for registration. The article concludes that harmonisation requires recognising customary communities through regional law, admitting customary decisions as juridical data in land registration, linking them to court-confirmed settlement deeds, and guaranteeing fair compensation for ulayat land within national strategic projects.

Keywords: Customary Court; Ulayat Land; Land Certificate; Legal Pluralism; East Kalimantan

Introduction

Land in Kalimantan has never been an empty space awaiting the arrival of the state. Long before the Basic Agrarian Law of 1960 was enacted, Dayak, Paser, Kutai and Balik communities governed access to land, forest and rivers through customary norms, inherited boundaries and institutions that settle disputes among their members. These institutions continue to operate today: the Lembaga Adat Besar in West Kutai, the customary councils of Paser, and the *Kedamangan* of Central Kalimantan still hear disputes, impose customary sanctions, and issue written decisions that communities regard as binding.[1] At the same time, the Indonesian state has built a national land administration whose central instrument is the land certificate (*sertipikat*), which the Basic Agrarian Law and Government

[1] Lukman Efendi, Bambang Panji Gunawan, and Agung Supangkat, 'Pengakuan Putusan Peradilan Adat Kutai Barat dalam Sistem Peradilan di Indonesia', *Jurnal Reformasi Hukum: Cogito Ergo Sum*, 3.1 (2020), 51–60 (pp. 52–53) https://e-journal.umaha.ac.id/index.php/reformasi/article/view/1507; Yuni, Erna Susanti, and Aryo Subroto, 'Kekuatan Hukum Putusan Lembaga Adat dalam Perkara Perceraian menurut Mekanisme Hukum Adat Dayak Benuaq', *Jurnal Ilmiah Advokasi*, 14.1 (2026), 39–57 https://doi.org/10.36987/jiad.v14i1.7111; Citranu, 'Pengaturan dan Akibat Hukum Tidak Dilaksanakanya Putusan Peradilan Adat Dayak', *Widya Kerta: Jurnal Hukum Agama Hindu*, 4.1 (2021), 1–22 (pp. 2–4) https://e-journal.iahn-gdepudja.ac.id/index.php/WK/article/view/284.

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Regulation No. 24 of 1997 designate as strong evidence of rights.[2] The question that this article addresses arises precisely where these two systems meet: what is the legal force of a customary court decision over land when it confronts a certificate issued by the state?

The question is neither theoretical nor marginal. In East Kalimantan, agrarian conflicts are dominated by the plantation sector, followed by forestry and mining, and many of these conflicts concern land claimed by customary communities.[3] The decision to relocate the national capital to Penajam Paser Utara and Kutai Kartanegara has sharpened these conflicts. Simarmata demonstrates that the government justified the choice of location by claiming that most of the area was state land, a claim based on a formalistic bureaucratic interpretation of 'state land' that is insensitive to the empirical reality of land control on the ground.[4] Studies of the IKN area report that most indigenous landholders possess only a *surat segel* or a statement of physical control rather than a certificate, so that unregistered land is readily treated as state land.[5] Within this setting, the decisions of customary institutions over who owns or controls a parcel are exposed to being disregarded by land offices, companies and the state itself.

The broader political context explains why these questions have become pressing. The fall of the New Order produced a revival of adat in Indonesian politics that few observers had predicted, in which the language of custom became associated with activism, protest and claims to land and resources.[6] Decentralisation allowed district governments to respond to such claims, with uneven results, while the Constitutional Court's 2012 decision on customary forests encouraged communities to seek formal recognition of their territories.[7] East Kalimantan has followed this trajectory. The province enacted a guideline on the recognition and protection of customary law communities in 2015, Paser Regency adopted its own regulation in 2019, and the selection of the province as the site of the new capital has drawn national attention to the position of Balik and Paser communities whose land lies within or near the capital region.[8]

Indonesian constitutional law does not ignore customary communities. Article 18B(2) of the 1945 Constitution provides that the state recognises and respects customary law communities and their traditional rights as long as they remain in existence and are in accordance with societal development and the principle of the unitary state, while Article 28I(3) protects cultural identity and the rights of

[2] Law No. 5 of 1960 on Basic Regulations on Agrarian Principles, art. 19(2)(c); Government Regulation No. 24 of 1997 on Land Registration, art. 32.

[3] Acep Supriadi Wahyu and Mariatul Kiptiah, 'Identifikasi Konflik Perebutan Tanah Adat di Daerah Lahan Basah Kabupaten Banjar', *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, 1.1 (2016), 1–6 (p. 2) https://journal.um.ac.id/index.php/jppk/article/view/5931.

[4] Rikardo Simarmata, 'Tumpang Tindih Penguasaan Tanah di Wilayah Ibu Kota Negara "Nusantara"', *Veritas et Justitia*, 9.1 (2023), 1–33 https://doi.org/10.25123/vej.v9i1.6504.

[5] Valencia Prayogo, Olivia Cherie Comeito, and Nayra Hanun, 'Kepastian Hukum atas Overlapping Penguasaan Tanah di Ibu Kota Nusantara (IKN)', *Notaire*, 8.2 (2025), 299–322 (pp. 300–01) https://doi.org/10.20473/ntr.v8i2.68102.

[6] David Henley and Jamie S. Davidson, 'In the Name of Adat: Regional Perspectives on Reform, Tradition, and Democracy in Indonesia', *Modern Asian Studies*, 42.4 (2008), 815–52 https://doi.org/10.1017/S0026749X07003083; Jamie S. Davidson and David Henley, eds, *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism* (London: Routledge, 2007).

[7] Laurens Bakker and Sandra Moniaga, 'The Space Between: Land Claims and the Law in Indonesia', *Asian Journal of Social Science*, 38.2 (2010), 187–203 https://doi.org/10.1163/156853110X490890; Herman Hidayat and others, 'Forests, Law and Customary Rights in Indonesia: Implications of a Decision of the Indonesian Constitutional Court in 2012', *Asia Pacific Viewpoint*, 59.3 (2018) https://doi.org/10.1111/apv.12207.

[8] Sindy Ar'tri Oktaviany, Fikri Hadi, and Farina Gandryani, 'Perlindungan Hak Tanah Adat Suku Paser dalam Wilayah Ibu Kota Negara Baru di Kalimantan Timur berdasarkan Peraturan Daerah No 4 Tahun 2019', *Jurnal Ilmu Hukum Wijaya Putra*, 17.4 (2021), 160–72 http://jurnal.uwp.ac.id/fh/index.php/jurnalilmuhukum/article/view/136; Bakhti Eko Nugroho, 'Perlindungan Hak Masyarakat Adat dalam Pemindahan Ibukota Negara', *JISIP UNJA (Jurnal Ilmu Sosial Ilmu Politik Universitas Jambi)*, 6.1 (2022), 83–97 https://doi.org/10.22437/jisipunja.v6i1.17417; Baren Sipayung, Siti Kotijah, and La Syarifuddin, 'Aspek Hukum tentang Pengabaian atas Pengakuan dan Perlindungan Masyarakat Hukum Adat di Wilayah Kalimantan Timur Berpotensi Sengketa Hukum', *Jurnal Begawan Hukum*, 2.1 (2024), 23–43 https://journal.unisan.ac.id/index.php/JBH/article/view/76.

traditional communities.[9] Article 3 of the Basic Agrarian Law recognises *hak ulayat* on the same conditional basis, and Article 5 declares that national agrarian law is based on adat law.[10] Yet the same legal order adopted a policy of judicial unification after independence, which, as Simarmata explains, did not prohibit customary leaders from resolving cases but removed the legally binding character of customary court decisions.[11] The resulting position is ambivalent: customary law is constitutionally acknowledged, but its adjudicatory institutions lack a clear place in the hierarchy of legal authority.

A growing body of literature has examined parts of this problem. Studies of the Lembaga Adat Besar of West Kutai argue that its decisions on customary offences attain final force and bar re-prosecution under the *ne bis in idem* principle, relying on Supreme Court jurisprudence.[12] Research on Dayak Benuaq divorce decisions concludes that customary decisions bind socially and culturally but face formal limitations in national law.[13] In Central Kalimantan, scholars disagree on whether the customary land certificate issued by a *Damang* (SKT-A) may serve as evidence for land registration: Setiawan answers in the negative, while Kadir and Kayun affirm its validity.[14] Citranu shows that decisions of the *Kedamangan* lack executorial force because no procedural law governs their enforcement.[15] A separate stream of research on the IKN area documents overlapping tenure, inadequate compensation and the weak participation of the Balik and Paser communities.[16]

International scholarship on Indonesian land law offers a broader frame. Fitzpatrick described the Basic Agrarian Law as a syncretic instrument that establishes registrable, alienable statutory rights while simultaneously declaring that national land law is based on adat principles, and he documented the disassociation of adat practice from state law together with the erosion of traditional adat authority.[17] Bedner and Arizona assess whether the place of adat in national land law is a promise for the future or a dead end,[18] while Lund shows that possession may be nine-tenths of the law but that recognition, often in the form of improvised legalisation, still matters a great deal.[19] Bakker's work

[9] Constitution of the Republic of Indonesia of 1945, arts 18B(2) and 28I(3).

[10] Basic Agrarian Law, arts 3 and 5; Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Jilid 1: Hukum Tanah Nasional* 12th edn (Jakarta: Djambatan, 2008).

[11] Rikardo Simarmata, 'Kedudukan dan Peran Peradilan Adat Pasca-Unifikasi Sistem Peradilan Formal', *Undang: Jurnal Hukum*, 4.2 (2021) (p. 283); Nanda Firdaus Puji Istiqomah, 'Legitimasi Putusan Lembaga Adat dalam Sistem Hukum Nasional: Studi terhadap Peraturan Perundang-Undangan di Indonesia', *Rewang Rencang: Jurnal Hukum Lex Generalis*, 6.3 (2025), 1–13 (p. 7) https://jhlg.rewangrencang.com/.

[12] Efendi, Gunawan, and Supangkat, 'Pengakuan Putusan Peradilan Adat Kutai Barat', pp. 57–59.

[13] Yuni, Susanti, and Subroto, 'Kekuatan Hukum Putusan Lembaga Adat'.

[14] Ferry Setiawan, 'Surat Keterangan Tanah Adat (SKT-A) oleh Damang Kepala Adat terkait Pembuatan Sertipikat Tanah di Provinsi Kalimantan Tengah: Pendekatan Konsep Al-'Adah al-Muhakkamah', *Jurisdictie: Jurnal Hukum dan Syariah*, 8.1 (2017), 71–90 https://doi.org/10.18860/j.v7i3.4331; Abdul Kadir, 'Kedudukan dan Pengakuan Hukum Surat Keterangan Tanah Adat (SKT-A) Damang Kepala Adat Dayak di Kabupaten Kotawaringin Timur Provinsi Kalimantan Tengah', *Dinamika Hukum*, 14.2 (2023) https://ejurnal.unisri.ac.id/index.php/Dinamika_Hukum/article/view/9312; Sri Kayun, 'Kekuatan Hukum Surat Keterangan Tanah Adat (SKTA) yang Dikeluarkan oleh Damang', *Belom Bahadat: Jurnal Hukum Agama Hindu*, n.d. https://ejournal.iahntp.ac.id/index.php/belom-bahadat/article/view/240.

[15] Citranu, 'Pengaturan dan Akibat Hukum', p. 12.

[16] Fikri Naufal Uyun, Bambang Daru Nugroho, and Sari Wahjuni, 'Legal Protection for the Customary Law Communities of East Kalimantan Related to Land Control for the National Capital', *The Kalimantan Social Studies Journal*, 6.2 (2025), 132–49 https://doi.org/10.20527/kss.v6i2.14322; Hanna Putri Avrillia Tinambunan and H. Hasni, 'Kajian Yuridis atas Pengadaan Tanah Ibu Kota Nusantara terkait Objek Tanah Ulayat Masyarakat Adat di Penajam Paser Utara', *Jurnal Reformasi Hukum Trisakti*, 6.3 (2024), 984–96 https://doi.org/10.25105/refor.v6i3.21125; Ninda Putri Noor Fajrini and Richard C. Adam, 'Perlindungan Hukum bagi Masyarakat Adat atas Tanah Ulayat yang Dijadikan Proyek Strategis Nasional oleh Pemerintah di Kalimantan', *SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum*, 5.3 (2026), 65–74 https://doi.org/10.55681/seikat.v5i3.2143; Sipayung, Kotijah, and Syarifuddin, 'Aspek Hukum tentang Pengabaian'.

[17] Daniel Fitzpatrick, 'Disputes and Pluralism in Modern Indonesian Land Law', *Yale Journal of International Law*, 22 (1997), 171 https://openyls.law.yale.edu/entities/publication/ccdf0f20-56e8-473c-a917-b1e5cffc8886.

[18] Adriaan Bedner and Yance Arizona, 'Adat in Indonesian Land Law: A Promise for the Future or a Dead End?', *The Asia Pacific Journal of Anthropology*, 20.5 (2019), 416–34 (p. 416) https://hdl.handle.net/1887/82902.

[19] Christian Lund, *Nine-Tenths of the Law: Enduring Dispossession in Indonesia* (New Haven: Yale University Press, 2020) https://doi.org/10.12987/9780300255560.

on Pasir and Nunukan demonstrates that *hak ulayat* claims in East Kalimantan cannot be understood through a strictly legal approach because the law is caught between aspirations to nationwide applicability and the demands of local diversity.[20]

Three conceptual tools frame the analysis. The first is the notion of *hak ulayat* itself. In the adat law literature, the term translates the *beschikkingsrecht* of van Vollenhoven and Ter Haar, while Soepomo preferred the term *hak pertuanan*.[21] Van Vollenhoven identified its characteristic features: the community's freedom to use uncultivated land within its territory, the requirement that outsiders obtain permission and pay recognition before using that land, the community's residual authority over land already cultivated by members, its collective responsibility for events within its territory, and the inalienability of the community's rights.[22] Ter Haar added that *hak ulayat* operates both inwardly, by allowing members to take benefits from the land, and outwardly, by excluding outsiders who have not obtained permission.[23] For the purposes of this article, the significance of these features is that the authority to allocate land and to settle disputes over it is an integral component of the right, not an external addition to it. A decision by a customary institution on who holds a parcel is therefore an exercise of the very right that the Constitution and the Basic Agrarian Law claim to recognise.

The second conceptual tool is legal pluralism. John Griffiths defined legal pluralism as the presence of more than one legal order in a social field, and his 'new legal pluralism' refuses to treat state law and customary law as a simple dichotomy.[24] Eugen Ehrlich's notion of living law, frequently invoked in studies of Dayak customary institutions, holds that law is found not only in rules made by the state but also in norms that are actually followed in social life; Malinowski's functionalism adds that customary sanctions serve to restore the social balance disturbed by a violation.[25] In the language of these theories, a customary land decision is law in the sociological sense, even where the state does not treat it as law in the formal sense. The analytical task is therefore to identify the points at which the formal and the living order intersect and the conditions under which one order recognises the products of the other.

The third conceptual tool is the distinction between recognition and grant. Andiko, as discussed by Sukirno, distinguishes recognition, by which the state merely declares and confirms a situation that already exists, from grant, by which the state creates new rights.[26] If customary authority over land is recognised rather than granted, the state's role is declaratory, and the burden should lie on the state to explain why it does not give effect to a customary decision, rather than on the community to prove that its decision deserves effect. Indonesian practice, as the following sections show, has tended to operate in the opposite direction. Nurjaya's observation that the New Order narrowed the concept of the state to the government, and so subordinated the people to official control over natural resources, helps to explain this inversion; his call for a principle of free, prior and informed consent in decisions affecting communities is equally relevant to land disputes.[27]

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[20] Laurens Bakker, '"Can We Get Hak Ulayat?": Land and Community in Pasir and Nunukan, East Kalimantan', Center for Southeast Asia Studies Working Paper (Berkeley: University of California, 2008) https://escholarship.org/uc/item/5pj3z2jr; Bakker and Moniaga, 'The Space Between'.

[21] R. Soepomo, *Bab-Bab tentang Hukum Adat* 16th edn (Jakarta: Pradnya Paramita, 2007); Fajrini and Adam, 'Perlindungan Hukum bagi Masyarakat Adat', p. 67.

[22] Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat setelah Putusan Mahkamah Konstitusi No.35/PUU-X/2012', *Masalah-Masalah Hukum*, 45.4 (2016), 259–67 (p. 262) https://ejournal.undip.ac.id/index.php/mmh/article/view/13734.

[23] Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat', p. 262.

[24] Istiqomah, 'Legitimasi Putusan Lembaga Adat', p. 3.

[25] Muhamad Sahdan Siregar, Surya Sukti, and Reza Noor Ihsan, 'Peran Lembaga Adat Dayak dalam Penyelesaian Tindak Asusila Perspektif Hukum Nasional', *Jurnal USM Law Review*, 9.2 (2026), 751–70 (pp. 756–57) https://doi.org/10.26623/julr.v9i1.13989.

[26] Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat', p. 261.

[27] Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat', p. 261; Maria S. W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya* (Jakarta: Kompas, 2008) (p. 73).

Despite this scholarship, three gaps remain. First, existing studies tend to treat the legal force of customary decisions and the evidentiary status of land documents as separate questions, although in land disputes they are inseparable. Second, much of the doctrinal work on customary courts derives from Central Kalimantan, Aceh or Bali, while East Kalimantan, where the pressure of national projects is now greatest, receives less attention. Third, few studies propose an operational design for linking customary decisions to the land registration system and to the courts. This article seeks to fill these gaps. Its urgency lies in the fact that, without a clear legal pathway, customary communities in East Kalimantan will continue to lose land disputes not because their claims are unfounded but because their evidence is not recognised.

Accordingly, this article addresses three research problems. First, what is the legal force of customary court decisions over land within Indonesia's national legal system? Second, how is that force tested when a customary decision or customary land document meets a state certificate in the tenure conflicts of East Kalimantan? Third, how can the evidentiary and executorial status of customary decisions be reconstructed so as to achieve legal certainty and justice for customary communities? The discussion is organised around these three questions.

Method

This article is based on normative juridical (doctrinal) research enriched by a socio-legal perspective. It uses a statutory approach to examine the 1945 Constitution, the Basic Agrarian Law, the Judicial Power Law, the State Capital Law, the regulations on land registration and land procurement, and the regional regulations of East and Central Kalimantan on customary communities and institutions. A conceptual approach is used to analyse the notions of legal force, executorial force, evidentiary value, legal pluralism and recognition. A case approach is applied to Constitutional Court Decision No. 35/PUU-X/2012, Supreme Court Decision No. 1644 K/Pid/1988, and documented decisions of customary institutions in West Kutai and Central Kalimantan.

Primary legal materials consist of legislation and judicial decisions. Secondary legal materials consist of peer-reviewed journal articles, monographs and doctoral research, including recent empirical studies conducted in Kalimantan, which provide the factual basis for the socio-legal analysis. No fieldwork was conducted by the author for this article; empirical observations are drawn from published studies and are attributed accordingly. Central Kalimantan is used as a comparative reference because its regional regulation on Dayak customary institutions is the most developed in the region. The materials were analysed qualitatively through legal interpretation (grammatical, systematic and teleological), systematisation and evaluation, and the conclusions are drawn deductively and prescriptively.

The analysis proceeded in three steps corresponding to the three research problems. The first step identified the legal force of customary decisions by systematically interpreting constitutional, statutory and regional provisions together with judicial decisions, distinguishing social, preclusive, evidentiary and executorial dimensions of legal force. The second step mapped the evidentiary hierarchy between customary instruments and state certificates and tested it against documented tenure conflicts in East Kalimantan, in particular in the capital region, West Kutai and Paser. The third step evaluated existing legal instruments to determine whether they can serve as procedural bridges between customary decisions and the state system, and formulated prescriptive recommendations on that basis. Throughout, empirical statements are confined to those reported in the cited sources, and the limitations of a literature-based approach are acknowledged in the conclusion.

Results and Discussions

The Legal Force of Customary Court Decisions within Indonesia's National Legal System

The legal force of a customary court decision must first be located in the constitutional architecture. Article 18B(2) of the 1945 Constitution recognises customary law communities and their

traditional rights, and the capacity to resolve disputes according to their own norms is among the most important of those rights. The conditional formula of recognition, however, has been criticised for making the existence of customary communities dependent on proof required by the state. Maladi notes that adat law is at once traditional, capable of change and able to adapt,[28] whereas the conditions in Article 18B(2) tend to freeze it into a form that must be verified. Thontowi observes that regional governments often decline to take active steps to confirm customary communities and ulayat land, partly for budgetary reasons and partly because recognition is associated with separatist aspirations.[29] Sulaiman, Adli and Mansur characterise the overall regulatory landscape as one of legal disorder in the recognition and protection of customary communities.[30]

The second layer is the organisation of judicial power. Law No. 1/Drt/1951 abolished customary and *swapraja* courts as part of the unification of the civil courts, while retaining, in Article 5(3)(b), a bridge through which acts that are offences under the living law may still be tried by the state courts.[31] Under Law No. 48 of 2009, judicial power is exercised by the Supreme Court and the courts under it and by the Constitutional Court, and judges are obliged to explore, follow and understand the legal values and sense of justice living in society; judgments must state the provisions of legislation or the unwritten sources of law on which they rest.[32] These provisions open a door for adat to enter the state courts as a source of law, but they do not confer on customary institutions the status of courts within the judicial system. As Simarmata explains, the unification policy did not forbid customary leaders from settling cases and sanctioning offenders; what it did was to declare that their decisions are no longer legally binding in the sense of state law.[33]

Within this framework, Supreme Court jurisprudence has given customary decisions a significant, though limited, recognition in the criminal domain. In Decision No. 1644 K/Pid/1988, the Supreme Court held that a person who had been sanctioned by a customary head for an act constituting a customary offence, and who had carried out that sanction, could not be prosecuted again before the district court for the same act; the prosecutor's indictment had to be declared inadmissible.[34] Relying on this jurisprudence, Efendi, Gunawan and Supangkat argue that the decision of the West Kutai customary court of 4 February 2021, which imposed a customary fine expressed in jars (*antang*) for a homicide, had acquired permanent legal force, so that once the fine was paid within the six-month period the district court could no longer try the offender.[35] Whatever one thinks of the extension of this reasoning to a homicide, it shows that the courts have treated customary decisions as having a preclusive effect in certain criminal matters.

The West Kutai case also reveals the degree to which state actors participate in customary proceedings. The customary hearing of 4 February 2021, presided over by a customary judge assisted by six other customary judges, was attended by the district military commander, the head of police intelligence, representatives of the prosecutor's office and of the regional government, the victim's family and representatives of ethnic organisations.[36] The case had been referred to the customary institution in order to defuse ethnic tension, yet the police nonetheless transferred the case file to the prosecutor a few days later to obtain legal certainty.[37] The coexistence of customary and state

[28] Yanis Maladi, 'Eksistensi Hukum Adat dalam Konstitusi Negara Pasca Amandemen', *Mimbar Hukum*, 22.3 (2010), 450–64.

[29] Jawahir Thontowi, 'Perlindungan dan Pengakuan Masyarakat Adat dan Tantangannya dalam Hukum Indonesia', *Jurnal Hukum Ius Quia Iustum*, 20.1 (2013), 21–36.

[30] Sulaiman Sulaiman, Muhammad Adli, and Teuku Muttaqin Mansur, 'Ketidakteraturan Hukum Pengakuan dan Perlindungan Masyarakat Hukum Adat di Indonesia', *Law Reform*, 15.1 (2019) https://doi.org/10.14710/lr.v15i1.23352.

[31] Law No. 1/Drt/1951 on Interim Measures for the Unification of the Structure, Powers and Procedure of Civil Courts, arts 1 and 5(3)(b).

[32] Law No. 48 of 2009 on Judicial Power, arts 5(1), 10(1) and 50(1).

[33] Simarmata, 'Kedudukan dan Peran Peradilan Adat', p. 283.

[34] Supreme Court Decision No. 1644 K/Pid/1988 of 15 May 1991; Efendi, Gunawan, and Supangkat, 'Pengakuan Putusan Peradilan Adat Kutai Barat', p. 58.

[35] Efendi, Gunawan, and Supangkat, 'Pengakuan Putusan Peradilan Adat Kutai Barat', pp. 58–59.

[36] Efendi, Gunawan, and Supangkat, 'Pengakuan Putusan Peradilan Adat Kutai Barat', p. 52.

[37] Efendi, Gunawan, and Supangkat, 'Pengakuan Putusan Peradilan Adat Kutai Barat', pp. 52–53.

proceedings in the same case shows that state officials treat customary adjudication as a legitimate instrument of social peace while reserving the final word to the state. In land disputes, a similar pattern can be expected: land offices and local governments may welcome customary settlement as a means of preventing conflict, while continuing to treat the certificate as the decisive legal fact.

The position is different in the civil domain, which is where land disputes belong. Here the decisive question is not preclusion but enforcement. Citranu's analysis of the *Kedamangan* in Central Kalimantan shows that the Tumbang Anoi agreement of 1894, the principal written source of Dayak customary law, regulates substantive offences and sanctions but contains no procedural rules on the execution of decisions; execution has therefore always depended on the voluntary compliance of the sanctioned party.[38] Unlike the decisions of state courts, which are executed by the clerk and bailiff under the chairman of the district court or by the prosecutor, customary decisions have no executorial apparatus.[39] Even the Dayak customary defence unit (*Batamad*), which the regional regulation tasks with ensuring compliance with customary sanctions, may not use coercion, because customary enforcement may not contravene national law.[40]

Central Kalimantan is the province that has gone furthest in regulating the force of customary decisions. Regional Regulation No. 16 of 2008 provides that disputes and violations of customary law that have been reconciled and sanctioned by the customary peace council at sub-district level are final and binding on the parties, and that a party who ignores such a decision is subject to a heavier customary sanction.[41] The same regulation authorises the *Damang* to issue customary land certificates and customary statements.[42] The phrase 'final and binding', however, operates within the customary order. A regional regulation cannot create a new judicial body or confer executorial force that only statute can grant. Consequently, when a party refuses to comply, the available remedies lie outside the customary order: further customary sanctions, social exclusion, a criminal report to the police or a civil claim in the district court using the customary decision as evidence.[43] Historically, the meetings of *Damang* in Kuala Kapuas in 1928 and 1953 had already accepted that a party dissatisfied with a customary decision could bring the matter, with a statement from the *Damang*, to the general courts.[44]

East Kalimantan has no comparable provincial regulation on customary courts. Regional Regulation No. 1 of 2015 sets out guidelines for the recognition and protection of customary law communities and acknowledges their rights to ulayat land, customary territory and natural resources occupied for generations, as well as the right to implement customary law and customary justice, but it does not regulate the legal force of customary decisions.[45] At regency level, Paser Regency Regulation No. 4 of 2019 lists the right to implement customary law and customary justice among the rights originating from the origins of customary communities.[46] The practice of customary adjudication in East Kalimantan therefore rests primarily on social legitimacy. Yuni, Susanti and Subroto show that in the Dayak Benuaq community the customary institution holds hearings and issues a customary divorce certificate which the community treats as conclusive, yet which faces formal limitations in the national legal system.[47]

The Central Kalimantan regulation also shows how much of the customary process can be codified without altering its legal force. Under Regional Regulation No. 16 of 2008, the *Damang* is

38 Citranu, 'Pengaturan dan Akibat Hukum', pp. 9–12.
39 Law No. 48 of 2009, art. 54; Citranu, 'Pengaturan dan Akibat Hukum', p. 12.
40 Citranu, 'Pengaturan dan Akibat Hukum', p. 14.
41 Central Kalimantan Provincial Regulation No. 16 of 2008 on Dayak Customary Institutions in Central Kalimantan, art. 28(1)–(2); Citranu, 'Pengaturan dan Akibat Hukum', p. 17.
42 Central Kalimantan Provincial Regulation No. 16 of 2008, art. 10(1)(d).
43 Citranu, 'Pengaturan dan Akibat Hukum', pp. 14–16.
44 Citranu, 'Pengaturan dan Akibat Hukum', p. 11.
45 East Kalimantan Provincial Regulation No. 1 of 2015, arts 5(1) and 6(g); Fajrini and Adam, 'Perlindungan Hukum bagi Masyarakat Adat', p. 69.
46 Paser Regency Regulation No. 4 of 2019, art. 5; Asnawi Mubarok, 'Satu Dekade Pembangunan Masyarakat Adat Dayak Paser Menghadapi Operasionalisasi Ibu Kota Nusantara', *Jurnal Pro Natura*, 2.2 (2025), 156–68 (pp. 163–64) https://journal.ugm.ac.id/v3/Pro-Natura/article/view/13510.
47 Yuni, Susanti, and Subroto, 'Kekuatan Hukum Putusan Lembaga Adat'.

the customary leader and chair of the customary peace council at sub-district level, authorised to uphold Dayak customary law within a customary territory, assisted by the *Mantir* or *Let* councils at sub-district and village level, which function as customary courts.[48] The *Damang* settles disputes and violations of customary law, including matters that may also be criminal, both at first examination and at final settlement, and acts as mediator and reconciler.[49] The regulation lists the sanctions that customary councils may impose, ranging from oral or written reprimand, apology and a customary fine (*singer*) to temporary exclusion from customary activities, expulsion from the village community and revocation of customary titles.[50] It also leaves procedure and the imposition of sanctions to the customary law of each *Kedamangan*, so that the content of customary justice varies from one territory to another.[51] Where a case cannot be proven because the alleged violator denies the act, the council may resort to a customary oath as a final step.[52]

A recent decision of the *Kedamangan* of Parenggean in East Kotawaringin illustrates how these provisions are applied and how customary institutions themselves acknowledge the limits of their authority. In Decision Reg. No. 019/PA/DKA-PRG/X/2025, concerning an indecency case, the customary institution expelled the respondent from the customary community of the sub-district and, at the same time, declared that if the customary decision were followed by acts violating positive law, the matter would be handed over to the Indonesian National Police.[53] The procedure begins with a written complaint supported by at least two pieces of evidence recognised by customary law, followed by internal deliberation, summons to the parties, the hearing of witnesses, mediation by the *Damang* and a final decision based on the rules of the Tumbang Anoi agreement.[54] The decision thus combines a customary sanction with an express referral to state law enforcement, which Siregar, Sukti and Ihsan read as a form of synergy between customary and positive law.[55]

In criminal matters, the debate has been revived by the new Criminal Code. Law No. 1 of 2023 recognises the law that lives in society as a basis for determining that a person may be punished for an act not regulated in the Code, within the limits set by the Code itself.[56] Siregar, Sukti and Ihsan note that offences such as adultery, which customary institutions in Central Kalimantan routinely handle, are also regulated in the new Code as complaint-based offences, so that state prosecution depends on a complaint while customary institutions may act immediately.[57] Efendi, Gunawan and Supangkat had earlier relied on Article 76 of the old Code, which embodies *ne bis in idem*, together with Supreme Court Decision No. 984 K/Pid/1996, in which a prosecution for adultery was rejected because the offender had already been sanctioned by the customary authorities of his village.[58] These developments strengthen the criminal-law dimension of customary decisions, but they do not touch the civil and agrarian dimension in which land disputes are decided. Utama's warning that incorporation may prove illusory applies with particular force here, because the inclusion of living law within state law tends to subject it to the state's own criteria of validity.[59]

The literature converges on the conclusion that the legal force of customary decisions is layered. At the first layer, they bind socially, culturally and religiously within the community; non-compliance is believed to disturb the cosmic balance and attracts social sanctions.[60] At the second layer, they

48 Citranu, 'Pengaturan dan Akibat Hukum', p. 12; Siregar, Sukti, and Ihsan, 'Peran Lembaga Adat Dayak', p. 758.
49 Citranu, 'Pengaturan dan Akibat Hukum', pp. 12–13.
50 Citranu, 'Pengaturan dan Akibat Hukum', pp. 18–19.
51 Citranu, 'Pengaturan dan Akibat Hukum', p. 17.
52 Citranu, 'Pengaturan dan Akibat Hukum', p. 17.
53 Siregar, Sukti, and Ihsan, 'Peran Lembaga Adat Dayak', p. 767.
54 Siregar, Sukti, and Ihsan, 'Peran Lembaga Adat Dayak', pp. 764–67.
55 Siregar, Sukti, and Ihsan, 'Peran Lembaga Adat Dayak', p. 767.
56 Law No. 1 of 2023 on the Criminal Code, art. 2.
57 Siregar, Sukti, and Ihsan, 'Peran Lembaga Adat Dayak', p. 759.
58 Efendi, Gunawan, and Supangkat, 'Pengakuan Putusan Peradilan Adat Kutai Barat', pp. 55–58.
59 T. S. J. Utama, 'Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System', *The Journal of Legal Pluralism and Unofficial Law*, 53.2 (2021), 269–89.
60 Citranu, 'Pengaturan dan Akibat Hukum', pp. 15–16; Yuni, Susanti, and Subroto, 'Kekuatan Hukum Putusan Lembaga Adat'.

have a preclusive effect in certain criminal matters by virtue of Supreme Court jurisprudence.[61] At the third layer, in civil matters including land, they lack executorial force and enter the state system only as evidence or as material for judicial consideration.[62] Istiqomah identifies the absence of formal recognition and the limits of execution within state courts as the main obstacles to their legitimacy.[63] Wiratraman goes further, arguing that the post-Suharto political space for customary justice has interacted with economic and political power in ways that have weakened customary courts and produced a symbolisation of power rather than genuine empowerment.[64] Utama describes the incorporation of living law into the penal system as illusory,[65] and Siregar, Sukti and Ihsan stress that the authority of customary institutions is not absolute and requires clear limits to avoid disharmony with state justice.[66]

Two observations follow for land disputes. The first is that the weakness of customary decisions is not a weakness of their substance but of their procedural link to the state. A customary decision may embody careful fact-finding, the hearing of witnesses and the consensus of the community, as the documented procedure of the *Kedamangan* of Parenggean illustrates, where a complaint requires at least two pieces of evidence before the customary hearing proceeds.[67] The second is that the gap between social legitimacy and legal force is precisely what allows a certificate holder, often a company or a buyer from outside the community, to disregard a customary decision. This gap becomes visible when customary decisions meet state certificates, which is the subject of the next section.

This layered structure also reflects the wider politics of adat revival. Davidson and Henley's collection asks whether the revival of adat is a constructive contribution to Indonesia's new political pluralism or a divisive and reactionary force, and examines its implications for democracy, human rights and political stability.[68] The ambivalence of the state towards customary adjudication can be read in the same light: recognising customary decisions as fully binding would empower communities against dispossession, but it would also empower customary elites whose authority is not subject to the guarantees that state courts must observe. The layered position described above is, in effect, a compromise between these concerns, one that leaves customary decisions socially strong and legally weak. For customary communities in East Kalimantan, the practical consequence of this compromise is felt most acutely in land disputes, where the stakes are economic, the opponents are often powerful and the state's own instruments of title are at issue.

The Dayak Benuaq divorce study further illustrates how a customary decision can perform an evidentiary function even without executorial force. The customary institution that hears the case issues a customary divorce certificate, which then serves as proof that the couple has been validly divorced according to customary law, and the authors argue that this legal force binds both parties and protects their respective rights and obligations.[69] The analogy with land is direct. A written customary decision on the boundaries or ownership of a parcel, issued by a recognised institution after a hearing, functions within the community as proof of the rights it declares. The question is whether that proof can travel beyond the community, to the land office and the district court. The following section shows that, in East Kalimantan, it travels only with great difficulty.

When Customary Decisions Meet State Certificates: Evidentiary Hierarchy and Tenure Conflicts in East Kalimantan

The Indonesian land registration system rests on a negative publication system with positive tendencies. Under Article 32(1) of Government Regulation No. 24 of 1997, a certificate is strong

[61] Efendi, Gunawan, and Supangkat, 'Pengakuan Putusan Peradilan Adat Kutai Barat', p. 58.
[62] Istiqomah, 'Legitimasi Putusan Lembaga Adat', p. 7; Siregar, Sukti, and Ihsan, 'Peran Lembaga Adat Dayak', p. 753.
[63] Istiqomah, 'Legitimasi Putusan Lembaga Adat', p. 1.
[64] Herlambang Perdana Wiratraman, 'Perkembangan Politik Hukum Peradilan Adat', *Mimbar Hukum*, 30.3 (2018), 490–505 (p. 490) https://journal.ugm.ac.id/jmh/article/view/38241.
[65] Utama, 'Between Adat Law and Living Law'.
[66] Siregar, Sukti, and Ihsan, 'Peran Lembaga Adat Dayak', p. 751.
[67] Siregar, Sukti, and Ihsan, 'Peran Lembaga Adat Dayak', pp. 764–67.
[68] Davidson and Henley, *The Revival of Tradition*.
[69] Yuni, Susanti, and Subroto, 'Kekuatan Hukum Putusan Lembaga Adat'.

evidence of the physical and juridical data it contains, as long as those data conform to the survey document and land book; under Article 32(2), where a certificate has been lawfully issued to a person who acquired the land in good faith and physically controls it, other parties claiming rights can no longer demand its cancellation if they have not objected in writing or filed a lawsuit within five years of its issuance.[70] In practical terms, the five-year rule converts the certificate from a rebuttable presumption into a near-conclusive title. A customary community that learns of a certificate late, or that relies on its customary institution instead of filing an objection with the land office or a lawsuit in court, may find that its customary decision arrives after the statutory window has closed.

Customary land documents, by contrast, have been steadily downgraded. Article 24(1) of Government Regulation No. 24 of 1997 allows written evidence of former customary rights to serve as the basis for first registration through the conversion of old rights. Government Regulation No. 18 of 2021, however, requires written evidence of former customary land owned by individuals to be registered within five years of its entry into force, after which such evidence is declared no longer valid as proof of rights and serves only as an indication (*petunjuk*) for land registration.[71] The same trend appears in administrative practice. Since Circular Letter No. 1756/15.1/IV/2016 on guidelines for community land registration, the village head's Land Statement Letter (SKT) has been replaced by a written statement of physical control, with the result that the SKT no longer has legal force as evidence in land registration.[72] Fatmawati and her co-authors found that ignorance of this change, combined with repeated sales of the same plot, has produced overlapping ownership among Dayak landholders in Balikpapan, and that the community avoids litigation in favour of mediation by the *Kedamangan*.[73]

The Central Kalimantan experiment with the SKT-A shows both the promise and the limits of regional innovation. Governor Regulation No. 13 of 2009 provides that the customary land certificate may be used as a main requirement for certification in accordance with applicable rules and as a requirement for partnership agreements with other parties.[74] Kayun and Kadir accordingly maintain that the SKT-A is valid and usable, with Kadir noting that the regional regulation itself envisages the SKT-A as evidence of control that can be registered under the Basic Agrarian Law.[75] Setiawan, analysing the same instrument against Article 24(1) of Government Regulation No. 24 of 1997, concludes that it cannot be recognised as evidence in land registration and therefore cannot guarantee legal certainty for holders of customary land.[76] Gorby and others, writing on the implementation of the same customary land policy, illustrate how the instrument has been carried into administrative practice.[77] The disagreement is instructive: a document issued by a customary authority under a regional regulation enjoys legitimacy within the province, yet its evidentiary value is decided by national registration law, which recognises it only as one of several possible indications.

The recognition of *hak ulayat* in land administration has followed an unstable regulatory path. Ministerial Regulation of the Agrarian Minister/Head of the National Land Agency No. 5 of 1999 provided the first technical definition of *hak ulayat* as the authority, under customary law, of a customary community over a certain territory constituting the living environment of its members, arising from a continuous physical and spiritual relationship between the community and that

[70] Government Regulation No. 24 of 1997, art. 32(1)–(2); Harsono, *Hukum Agraria Indonesia*.

[71] Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units and Land Registration, art. 96.

[72] Ana Fatmawati and others, 'Penyelesaian Sengketa Jual Beli Tanah Berstatus Surat Keterangan Tanah Masyarakat Adat Dayak', *Lex Suprema: Jurnal Ilmu Hukum*, 7.1 (2025) https://doi.org/10.36277/lexsuprema.v7i1.1011.

[73] Fatmawati and others, 'Penyelesaian Sengketa Jual Beli Tanah'.

[74] Central Kalimantan Governor Regulation No. 13 of 2009 on Customary Land and Customary Rights over Land, art. 8(2)–(3); Kayun, 'Kekuatan Hukum Surat Keterangan Tanah Adat'.

[75] Kayun, 'Kekuatan Hukum Surat Keterangan Tanah Adat'; Kadir, 'Kedudukan dan Pengakuan Hukum Surat Keterangan Tanah Adat'.

[76] Setiawan, 'Surat Keterangan Tanah Adat (SKT-A) oleh Damang Kepala Adat', pp. 71–90.

[77] Alosios Gorby and others, 'Implementasi Kebijakan Tanah Adat dan Hak-Hak Adat di Atas Tanah di Provinsi Kalimantan Tengah', *Perspektif*, 12.4 (2023), 1344–60 https://doi.org/10.31289/perspektif.v12i4.10324.

territory.[78] That regulation was revoked by Regulation No. 9 of 2015, which was in turn replaced by Regulation No. 10 of 2016 on communal rights; according to Sukirno, the substance of the 2016 regulation largely repeats that of its predecessor, although it adds experts, community representatives and NGOs to the inventory team (IP4T).[79] Each change has altered the criteria and procedures by which a community can establish that its ulayat right still exists, and therefore the conditions under which a customary decision about land within that territory can be attributed to a recognised authority. Harsono's treatment of adat law within national land law remains the standard doctrinal account of how these customary rights were meant to be converted and absorbed into the statutory system.[80]

The comparative literature on Indonesian land law explains why this instability matters. Fitzpatrick observed that only a small fraction of land parcels had been registered under the Basic Agrarian Law decades after its enactment and that the number and severity of land disputes reflected the failure to achieve the unified land law the statute promised.[81] In his later work, he analysed the post-Suharto revival of custom in land claims from a comparative legal perspective and questioned whether formal recognition can deliver tenure security when state institutions retain ultimate control over land allocation.[82] Bedner and Arizona likewise show that the prominent role of adat in Indonesian land law dates back to colonial debates, when van Vollenhoven used the concept to attack the colonial government's dispossessory land policy, and that the strategy of relying on the concept of an 'adat law community' has become entrenched in contemporary advocacy.[83]

Table 1 summarises the resulting evidentiary hierarchy as it applies to land disputes involving customary communities.

Table 1. Evidentiary Position of Customary and State Land Instruments

No.	Instrument	Legal Basis and Evidentiary Position
1	State land certificate (sertipikat)	Basic Agrarian Law, art. 19(2)(c); Government Regulation No. 24 of 1997, art. 32. Strong evidence of physical and juridical data; after five years of good-faith possession without written objection or lawsuit, third-party claims are barred.
2	Written evidence of former customary land (girik, segel, SKT)	Government Regulation No. 24 of 1997, art. 24(1); Government Regulation No. 18 of 2021, art. 96. Basis for conversion if registered within five years; thereafter only an indication (petunjuk) for registration. The village SKT has been replaced by a statement of physical control since 2016.
3	Customary land certificate (SKT-A) issued by a Damang	Central Kalimantan Provincial Regulation No. 16 of 2008, art. 10(1)(d); Governor Regulation No. 13 of 2009, art. 8(2). Requirement for certification at provincial level; its value as evidence under national registration law is contested.
4	Customary court decision on a land dispute	Constitution, art. 18B(2); Law No. 48 of 2009, arts 5(1) and 50(1); Central Kalimantan Provincial Regulation No. 16 of 2008, art. 28. Final and binding within the customary order; no executorial force; admissible as documentary evidence or material for judicial consideration.
5	Recognition of a customary community and its ulayat rights	East Kalimantan Provincial Regulation No. 1 of 2015; Ministry of Home Affairs Regulation No. 52 of 2014; Ministry of Agrarian Affairs Regulation No. 10 of 2016. A condition precedent for asserting communal rights; few communities in East Kalimantan have obtained it.

78 Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat', p. 263.
79 Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat', pp. 263–65; Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 10 of 2016.
80 Harsono, *Hukum Agraria Indonesia*.
81 Fitzpatrick, 'Disputes and Pluralism'.
82 Daniel Fitzpatrick, 'Land, Custom and the State in Post-Suharto Indonesia: A Comparative Legal Perspective', in *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, ed. by Jamie S. Davidson and David Henley (London: Routledge, 2007), pp. 116–35.
83 Bedner and Arizona, 'Adat in Indonesian Land Law', pp. 416–20.

Table 1 shows that the customary instruments on which communities rely occupy the lower tiers of the evidentiary hierarchy, while the certificate occupies the top. A customary court decision on a land dispute is not itself a title; at best it is evidence that a court may weigh against a certificate. Because the certificate carries a statutory presumption and, after five years, a near-conclusive status, the customary decision can prevail only if it is brought into the state system in time and in a form that the land office or the court can accept. The hierarchy also reveals that the recognition of the customary community itself (row 5) is the gateway to every other form of protection.

The conflicts in the IKN area illustrate how this hierarchy operates. Simarmata shows that the claim that most of the capital area was state land overlooked overlapping layers of control, including adat claims, claims based on the former sultanate and informal occupancy, and that Paser communities assert rights grounded in the history of the sultanate.[84] Prayogo, Comeito and Hanun report that only a minority of community land in the IKN area is certified, that many plots overlap with the Right to Cultivate (HGU) of a company, and that compensation offered to displaced residents was far below the market value that the project itself had created.[85] They add that, although Article 21(1) of Presidential Regulation No. 65 of 2022 allows unregistered land in the IKN to be registered, land registration services were suspended in several areas.[86] Documents such as the *surat segel* and statements of control over state land issued by village or sub-district heads were treated as permits to cultivate state land rather than as evidence of ownership.[87]

The demographic and spatial scale of the problem in the capital area is considerable. Prayogo, Comeito and Hanun report, on the basis of data compiled by the Indigenous Peoples' Alliance of the Archipelago, that approximately 20,000 people belonging to 19 customary communities in Penajam Paser Utara and 2 in Kutai Kartanegara live within the IKN region, and that Penajam Paser Utara had not enacted a regional regulation on the recognition of customary communities.[88] Mubarok refers to 21 customary communities in and around the capital area.[89] Fajrini and Adam note that land identified as customary territory in East Kalimantan covers a significant share of the province, and that members of the Balik community reported being offered neither land-for-land nor land-for-money options, so that many were forced to move far from their families.[90] Paser communities, for their part, have fenced plots and asserted that their ownership rests on land of the former sultanate, which they regard as customary land that cannot be disputed, while not realising that fencing alone does not constitute proof of ownership in the eyes of the land administration.[91]

Land procurement for the capital has followed the procedure of Law No. 2 of 2012, which names customary law communities among the parties entitled to compensation.[92] Tinambunan and Hasni, drawing on interviews with land office staff and a member of the Balik community, conclude that the procedure formally complied with the law but that there is no clear mechanism for compensating communal ulayat rights; in practice compensation took the form of money, replacement land or other individual forms.[93] Uyun, Nugroho and Wahjuni find that the participation of the Balik Paser community was ineffective and that post-dispute compensation was often delayed and insufficient, a situation worsened by the legal vacuum on compensation for customary land.[94] Fajrini and Adam

[84] Simarmata, 'Tumpang Tindih Penguasaan Tanah', p. 5.
[85] Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', pp. 300–01.
[86] Presidential Regulation No. 65 of 2022, art. 21(1); Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', p. 302.
[87] Simarmata, 'Tumpang Tindih Penguasaan Tanah', p. 28; Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', p. 310.
[88] Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', pp. 307–08.
[89] Mubarok, 'Satu Dekade Pembangunan Masyarakat Adat Dayak Paser', p. 157.
[90] Fajrini and Adam, 'Perlindungan Hukum bagi Masyarakat Adat', p. 66.
[91] Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', p. 305.
[92] Law No. 2 of 2012 on Land Procurement for Development in the Public Interest, art. 40; Tinambunan and Hasni, 'Kajian Yuridis atas Pengadaan Tanah Ibu Kota Nusantara', p. 993.
[93] Tinambunan and Hasni, 'Kajian Yuridis atas Pengadaan Tanah Ibu Kota Nusantara', pp. 990, 994–95.
[94] Uyun, Nugroho, and Wahjuni, 'Legal Protection for the Customary Law Communities'.

report seizure of customary land, loss of housing, ecosystem damage and food insecurity among the Balik, and they emphasise that Government Regulation No. 19 of 2021 obliges the government to provide fair and adequate compensation to customary communities.[95] Nugroho had already warned of these risks at the outset of the relocation policy.[96]

These findings matter for the question of customary decisions because they show that, in the IKN context, the customary community is not confronting a private certificate holder in a symmetrical civil dispute. It is confronting the state as acquirer of land, acting under a statute that subordinates the exercise of ulayat rights to the national interest. Sipayung, Kotijah and Syarifuddin argue that Article 21 of the State Capital Law, which refers to the protection of individual and communal rights of customary communities, has not been effective, whereas Article 42 has served to legitimise the taking of customary territory, rendering Regional Regulation No. 1 of 2015 inapplicable in the capital area.[97] They also note that the Constitutional Court declined to hear a formal review of the State Capital Law on procedural grounds of time limits.[98] In such a setting, even a well-reasoned customary decision declaring that a parcel belongs to a Balik lineage has little leverage unless the community has first been recognised and the decision can be translated into the categories of the procurement process.

Recognition, however, remains scarce. According to Sipayung, Kotijah and Syarifuddin, only three communities belonging to the Indigenous Peoples' Alliance of the Archipelago (AMAN) in East Kalimantan had obtained official recognition, namely Hemaq Beniung in West Kutai and Mului and Paring Sumpit in Paser, and only five customary communities had been recognised under Regional Regulation No. 1 of 2015.[99] Even recognition does not ensure welfare: Mubarok's empirical study of the Mului community, recognised in 2018 together with its customary forest, finds that the community remains isolated and in a weak position across economic, legal and social dimensions, which he attributes to weak political will.[100] Oktaviany, Hadi and Gandryani identify Paser Regency Regulation No. 4 of 2019 as the principal instrument for protecting Paser customary land in the new capital region, an instrument that later commentators consider in need of revision because its vagueness creates legal uncertainty.[101]

The reach of these conflicts extends beyond the capital. Wahyu and Kiptiah report that the Ministry of Forestry had approved 700 hectares of customary forest out of 11,667 hectares claimed by the Modang community in East Kalimantan, yet that customary forest was taken over by an industrial timber plantation company; in South Kalimantan, a mining company seized land of the Dayak Deyah in Tabalong on which at least six ancestral graves were located.[102] Mubarok, relying on research on customary forests, notes that if the current procedures were simulated, determining customary forest for all 2,332 customary communities in Indonesia would take 196 years, and that some 98 per cent of customary forests had not been recognised through regional regulations.[103] Hidayat and others similarly analyse the implications of the 2012 Constitutional Court decision for forests, law and customary rights, showing that the decision opened rather than completed the process of recognition.[104] In such a landscape, customary decisions on land operate in a field where the state has not yet decided whether the territory concerned is customary at all.

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95 Fajrini and Adam, 'Perlindungan Hukum bagi Masyarakat Adat', pp. 65–66, 72.
96 Nugroho, 'Perlindungan Hak Masyarakat Adat dalam Pemindahan Ibukota Negara'.
97 Sipayung, Kotijah, and Syarifuddin, 'Aspek Hukum tentang Pengabaian', p. 38; Law No. 3 of 2022 on the State Capital, as amended by Law No. 21 of 2023, arts 21 and 42.
98 Constitutional Court Decision No. 54/PUU-XX/2022; Sipayung, Kotijah, and Syarifuddin, 'Aspek Hukum tentang Pengabaian', pp. 37–38.
99 Sipayung, Kotijah, and Syarifuddin, 'Aspek Hukum tentang Pengabaian', pp. 24–25.
100 Mubarok, 'Satu Dekade Pembangunan Masyarakat Adat Dayak Paser', pp. 156, 161–63.
101 Oktaviany, Hadi, and Gandryani, 'Perlindungan Hak Tanah Adat Suku Paser'; Sipayung, Kotijah, and Syarifuddin, 'Aspek Hukum tentang Pengabaian', p. 39.
102 Wahyu and Kiptiah, 'Identifikasi Konflik Perebutan Tanah Adat', p. 2.
103 Mubarok, 'Satu Dekade Pembangunan Masyarakat Adat Dayak Paser', p. 165.
104 Hidayat and others, 'Forests, Law and Customary Rights in Indonesia'.

Outside the capital area, the same pattern appears in conflicts with extractive industries. Haug compares two Dayak struggles in East Kalimantan: a rather forlorn land dispute with a coal mining company and a more promising attempt to secure customary rights to a forested mountain area.[105] The difference lies less in the strength of customary claims than in the ability of the community to connect its claim to a legally recognised form of tenure. Sukirno notes that the customary forest of Setulang in Malinau plays an important role for local people but that, without legality, it is vulnerable to competing claims by Dayak groups and by investors holding government permits.[106] In South Kalimantan, Wahyu and Kiptiah similarly document conflicts between overlapping certificates and between the *segel* and certificates, many of which end in litigation.[107]

Socio-legal scholarship helps to explain why customary decisions so often lose in these encounters. Bakker and Moniaga, comparing nine settings after decentralisation, found that the lowest levels of government offer the best chance of success for land claims but that security increases with higher levels of ratification, and that broad alliances that include government bodies are essential.[108] A customary decision is a powerful instrument at the lowest level, within the community, but it lacks ratification at the levels where certificates are issued and enforced. Lund's concept of legalisation captures the same dynamic: people and agencies refer to the law as if it were fixed while in fact constructing it fragment by fragment, and the plausibility of legality can itself have the effect of law.[109] A certificate is a highly plausible fragment of legality; a customary decision is plausible within the community but much less so before a land office or a district court.

Bakker's case study of Pasir and Nunukan offers an instructive East Kalimantan precedent. After the fall of the New Order, both district governments chose to act upon the 1999 ministerial regulation on ulayat rights: Nunukan recognised *hak ulayat*, while Pasir intended to do so but abandoned the plan after popular protest.[110] Bakker argues that district decisions on ulayat claims can only be understood by including social, political and power relations, because the law is not the only authority regulating *hak ulayat* and is caught between nationwide applicability and local diversity.[111] The Pasir experience is particularly relevant because Paser communities now sit at the edge of the capital region. It shows that recognition of ulayat rights is not simply a legal act but a political settlement among competing local constituencies, including migrants, customary elites and claimants invoking the former sultanate. Customary decisions on land in such a setting may be contested not only by companies and the state but also by other local groups who reject the authority of the customary institution.

Lund's comparative fieldwork in West Java, North Sumatra and Aceh, though not in Kalimantan, sheds light on the same mechanism. He identifies forms of rightlessness that arise because land rights favour government over citizens, because legal complexity and social inequality make legal knowledge inaccessible to smallholders, and because the presumption of legality enables government institutions to acquire and control land even where juridical settlements have been made against them.[112] The East Kalimantan material discussed above displays each of these features: the designation of unregistered land as state land, the limited knowledge of customary landholders about changes in the evidentiary value of the SKT, and the capacity of the state to proceed with procurement while disputes over compensation remain unresolved.[113] Customary decisions are vulnerable in this environment because they are produced within the community but must be enforced against actors who enjoy the presumption of legality.

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105 Michaela Haug, 'Claiming Rights to the Forest in East Kalimantan: Challenging Power and Presenting Culture', *SOJOURN: Journal of Social Issues in Southeast Asia*, 33.2 (2018), 341–62 (p. 341) https://doi.org/10.1355/sj33-2e.

106 Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat', p. 260.

107 Wahyu and Kiptiah, 'Identifikasi Konflik Perebutan Tanah Adat', pp. 2–4.

108 Bakker and Moniaga, 'The Space Between', p. 187.

109 Lund, *Nine-Tenths of the Law*.

110 Bakker, 'Can We Get Hak Ulayat?'.

111 Bakker, 'Can We Get Hak Ulayat?'.

112 Lund, *Nine-Tenths of the Law*.

113 Simarmata, 'Tumpang Tindih Penguasaan Tanah'; Fatmawati and others, 'Penyelesaian Sengketa Jual Beli Tanah'; Uyun, Nugroho, and Wahjuni, 'Legal Protection for the Customary Law Communities'.

The courts nevertheless retain room to give weight to customary decisions. Because judges are obliged to explore the living law and may rest their judgments on unwritten sources, a customary decision on land tenure can serve as documentary evidence, as evidence of the customary norm applicable to the case, and as evidence of physical control and the history of the parcel.[114] Laturette's work on the settlement of customary land disputes, cited in the IKN literature, underlines that the authority to regulate the use and transfer of land within ulayat territory belongs to the customary authority acting as executor of the community's rights.[115] Where a certificate was issued over land that customary institutions had previously allocated to a lineage, the customary decision becomes evidence that the juridical data underlying the certificate were defective. The difficulty is that this argument must be made within the five-year window or must overcome the presumption of good faith, which places a heavy burden on communities with limited access to legal assistance.

The responsibility of the National Land Agency for overlapping certificates provides a further point of contact. Prayogo, Comeito and Hanun identify administrative error, unregistered boundary changes, changes in legal status and the splitting of regions as causes of overlapping titles in the IKN area, and they set out the dispute-resolution path through mediation under Ministerial Regulation No. 21 of 2020 on the handling and settlement of land cases, followed if necessary by litigation before the administrative court.[116] They also argue that the agency may bear civil liability under Article 1365 of the Civil Code for negligent issuance, criminal liability where maladministration is deliberate, and administrative responsibility to revoke a certificate wrongly issued.[117] A customary decision establishing prior customary control over a parcel is precisely the kind of evidence that can support a request to the agency to investigate and, where warranted, to revoke an overlapping certificate. Using this avenue requires that the decision be documented and submitted, and that communities have access to legal assistance able to translate customary findings into administrative claims.

Taken together, the East Kalimantan material reveals a consistent pattern. Customary decisions and customary land documents are produced within communities that regard them as authoritative, yet they lose effect at three points: when land is classified as state land because it is unregistered, when evidence of customary control is downgraded to a mere indication for registration, and when procurement procedures recognise individual holders but not communal rights or the institutions that allocate them. Simarmata's finding that the government regarded a very large proportion of the capital area as under state control, including unregistered land, captures the first point.[118] The changes in the evidentiary status of the SKT and of written evidence of former customary land capture the second.[119] The absence of a clear compensation mechanism for communal ulayat rights captures the third.[120] At each point, the problem is not that a customary decision is substantively wrong but that the legal system offers no procedure through which it can be heard. This finding shapes the reconstruction proposed in the next section.

Toward Harmonisation: Reconstructing the Evidentiary and Executorial Status of Customary Decisions

The preceding analysis suggests that the problem cannot be solved by declaring customary decisions equal to judgments of state courts. Such a step would require statutory change to the structure of judicial power and would raise concerns about due process, accountability and the protection of non-members, concerns that the literature on adat revival has rightly emphasised.[121] Fitzpatrick, notably, rejected a formal incorporation of adat law into statutory law and proposed instead the development of new institutions, including land courts.[122] The more realistic path is to

[114] Law No. 48 of 2009, arts 5(1) and 50(1); Istiqomah, 'Legitimasi Putusan Lembaga Adat', p. 7.
[115] Adonia Ivonne Laturette, 'Penyelesaian Sengketa Hak atas Tanah Masyarakat Hukum Adat', *SASI*, 22.2 (2016); Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', pp. 312–13.
[116] Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', pp. 315–17.
[117] Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', pp. 317–18.
[118] Simarmata, 'Tumpang Tindih Penguasaan Tanah'.
[119] Fatmawati and others, 'Penyelesaian Sengketa Jual Beli Tanah'; Government Regulation No. 18 of 2021, art. 96.
[120] Tinambunan and Hasni, 'Kajian Yuridis atas Pengadaan Tanah Ibu Kota Nusantara', p. 995.
[121] Henley and Davidson, 'In the Name of Adat'; Davidson and Henley, *The Revival of Tradition*.
[122] Fitzpatrick, 'Disputes and Pluralism'; Fitzpatrick, 'Land, Custom and the State'.

build procedural bridges that allow customary decisions to enter the state system at the points where land rights are recognised, registered and enforced. Five such bridges can be identified.

Comparison with other regions underlines that the choice is ultimately political. Regions with special autonomy, such as Aceh and Papua, have obtained statutory frameworks that give customary justice a larger space, whereas in other regions the role of customary institutions is frequently marginalised by the dominance of the formal judicial system.[123] Wiratraman traces how the political law of customary justice has developed since decentralisation and warns that formal recognition has not automatically empowered customary courts.[124] East Kalimantan does not enjoy special autonomy, and the State Capital Law establishes a special regional government whose priorities are dominated by national development. The bridges proposed below are therefore designed to operate within the existing statutory framework, using instruments that regional governments, land offices and courts already possess, rather than depending on a new national statute on customary communities whose enactment remains uncertain.

The first bridge is the recognition of customary communities themselves. Because recognition is the gateway to every other form of protection, regional governments in East Kalimantan should complete the recognition process under Regional Regulation No. 1 of 2015 and Ministry of Home Affairs Regulation No. 52 of 2014. Sukirno criticises the latter for entrusting identification, verification and validation entirely to a government committee without experts, NGOs or community representatives, which jeopardises the objectivity of its findings.[125] Sipayung, Kotijah and Syarifuddin recommend adequate budgets, trained committees in every regency, better access to spatial and socio-cultural data and the completion of village boundary maps.[126] Recognition instruments should expressly identify the customary institution competent to adjudicate land disputes within the community, so that its decisions can later be attributed to a recognised authority.

The second bridge is the admission of customary decisions as juridical data in land registration. Under Government Regulation No. 24 of 1997, physical and juridical data resulting from adjudication are announced so that interested parties may raise objections before the rights are recorded.[127] Land offices in East Kalimantan could be directed, by ministerial instruction or regional cooperation agreements, to treat a written decision of a recognised customary institution on the ownership or boundaries of a parcel as juridical data to be taken into account in this process, and to treat its existence as an objection that suspends registration until resolved. This would give practical meaning to Simarmata's critique that the state's orientation in registering customary land has subordinated the goal of respecting diversity to the goal of legal unification, with consequences for the communal nature of ulayat land and the authority of customary institutions over it.[128] It would also respond to the Central Kalimantan debate over the SKT-A by treating customary documents not as titles but as evidence that the land office must weigh.[129]

The third bridge is the transformation of customary settlements into court-confirmed settlement deeds. Supreme Court Regulation No. 1 of 2016 on mediation allows parties who have reached a peace agreement outside the court, with the assistance of a certified mediator, to submit it to the competent court by way of a lawsuit so that it may be confirmed as a settlement deed (*akta perdamaian*).[130] Many customary land decisions are in substance negotiated settlements reached

[123] Istiqomah, 'Legitimasi Putusan Lembaga Adat', pp. 7–8.
[124] Wiratraman, 'Perkembangan Politik Hukum Peradilan Adat', pp. 490–91.
[125] Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat', pp. 264–65; Regulation of the Minister of Home Affairs No. 52 of 2014.
[126] Sipayung, Kotijah, and Syarifuddin, 'Aspek Hukum tentang Pengabaian', pp. 36–37.
[127] Government Regulation No. 24 of 1997, art. 26.
[128] Rikardo Simarmata, 'Orientasi Negara dalam Pendaftaran Tanah Adat di Indonesia', *Indonesian Journal of Socio-Legal Studies*, 1.1 (2021) https://scholarhub.ui.ac.id/ijsls/vol1/iss1.
[129] Setiawan, 'Surat Keterangan Tanah Adat (SKT-A) oleh Damang Kepala Adat'; Kadir, 'Kedudukan dan Pengakuan Hukum Surat Keterangan Tanah Adat'.
[130] Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court, art. 36.

through deliberation, as the practice of the *Kedamangan* and the Benuaq institutions shows.[131] If customary functionaries were trained and certified as mediators, or if certified mediators participated in customary hearings, the resulting agreements could be confirmed by the district court and acquire executorial force. This bridge addresses directly the absence of executorial force that Citranu identifies as the main weakness of customary decisions.[132] It does not apply to contentious decisions imposed on an unwilling party, but it covers a large proportion of land disputes within communities.

The fourth bridge concerns communal tenure. The Ministry of Agrarian Affairs has introduced procedures for determining communal rights over the land of customary communities, but Sipayung, Kotijah and Syarifuddin argue that Regulation No. 10 of 2016 is inconsistent with the Basic Agrarian Law because it establishes a new land right by ministerial regulation rather than by statute, and that it conflates customary communities with communities in certain areas who have controlled land for a given period.[133] Bedner and Arizona caution that strategies relying on the concept of a customary law community have both enabled and constrained claims, and Arizona's doctoral research traces the origins of the conditional recognition of customary communities and customary land rights in the drafting of the Basic Agrarian Law.[134] Sumardjono's proposal to reposition land rights, ulayat rights and management rights within national land law provides a conceptual basis for a statutory solution.[135] Until such a statute is enacted, the registration of ulayat land as an administrative record, with the customary institution identified as the authority that allocates land within it, would at least make customary decisions on allocation visible to the land office and to third parties.

A complementary reform concerns the internal procedural law of customary institutions. Citranu proposes that the rules on the execution of customary decisions be written down, specifying who is authorised to carry out execution, how fines are to be collected and what consequences follow from non-compliance, so that execution does not depend solely on voluntary compliance and the religious sanctions associated with violations of *belom bahadat*.[136] He also argues that the *Damang* should be able to interpret the principles of customary law to fill gaps, in a manner analogous to judicial law-finding.[137] Written procedural rules of this kind would serve two purposes in land disputes. They would improve the quality and transparency of customary decisions, and they would make it easier for land offices and courts to assess whether a given decision was reached through a fair process, which is a precondition for giving it evidentiary weight. In East Kalimantan, where no provincial regulation on customary institutions comparable to that of Central Kalimantan exists, such rules could be adopted at regency level as part of the recognition instruments.

Financing and institutional capacity must accompany these legal reforms. Sipayung, Kotijah and Syarifuddin note that the provincial government has sought to use compensation from emission-reduction programmes to support the preparation of documents for the recognition of customary communities, and that only a few regencies had adopted regulations under the provincial guideline.[138] Mubarok's study of Mului shows that recognition without investment in roads, health services and livelihoods leaves recognised communities isolated and vulnerable, and he concludes that weak political will has prevented the benefits of recognition from materialising.[139] Thontowi's observation that local governments sometimes avoid recognition because they lack dedicated budgets or fear criticism is consistent with these findings.[140] Any attempt to give customary decisions a role in land

131 Fatmawati and others, 'Penyelesaian Sengketa Jual Beli Tanah'; Siregar, Sukti, and Ihsan, 'Peran Lembaga Adat Dayak', pp. 764–65.
132 Citranu, 'Pengaturan dan Akibat Hukum', pp. 12, 20.
133 Sipayung, Kotijah, and Syarifuddin, 'Aspek Hukum tentang Pengabaian', pp. 31–33; Basic Agrarian Law, art. 16(1)(h).
134 Bedner and Arizona, 'Adat in Indonesian Land Law'; Yance Arizona, 'Rethinking Adat Strategies: The Politics of State Recognition of Customary Land Rights in Indonesia' (unpublished doctoral thesis, Leiden University, 2022) https://hdl.handle.net/1887/3309795.
135 Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya*.
136 Citranu, 'Pengaturan dan Akibat Hukum', pp. 14, 20.
137 Citranu, 'Pengaturan dan Akibat Hukum', p. 18.
138 Sipayung, Kotijah, and Syarifuddin, 'Aspek Hukum tentang Pengabaian', pp. 35–36.
139 Mubarok, 'Satu Dekade Pembangunan Masyarakat Adat Dayak Paser', pp. 162–63.
140 Thontowi, 'Perlindungan dan Pengakuan Masyarakat Adat'.

administration will therefore succeed only if customary institutions are resourced to document their decisions and land offices are resourced to receive them.

Finally, the role of the courts deserves emphasis. District courts are not passive recipients of customary decisions; they are obliged to explore the living law and may base their judgments on unwritten sources. In land disputes involving customary communities, judges can use customary decisions to establish the customary norm governing allocation, the history of control over the parcel and the identity of the persons entitled under customary law. They can also assess whether a certificate holder acted in good faith when acquiring land that a customary institution had already allocated to others, which bears directly on the protection afforded by Article 32(2) of Government Regulation No. 24 of 1997. Maladi's analysis of the existence of adat law in the amended Constitution supports such a reading, as it treats customary law as part of the constitutional order rather than as an exception to it.[141] Laturette's study of the settlement of customary land disputes points in the same direction: the courts can give customary decisions practical weight even before the legislature acts.[142]

The fifth bridge concerns national strategic projects, above all the capital. The decision of the Constitutional Court in Case No. 35/PUU-X/2012, which removed customary forest from the category of state forest, shows that constitutional adjudication can change the legal status of customary territory.[143] Tobroni contrasts the repressive spirit of the earlier forestry provisions, which subordinated ulayat forest to state forest, with the progressive spirit of the decision, which liberates it.[144] Yet Sukirno shows that the follow-up by ministries has been fragmented, with differing perceptions among ministries and an excessively long bureaucratic chain for determining customary forest.[145] For the capital, the lesson is that compensation and resettlement procedures must recognise communal ulayat rights as such, must be negotiated with customary institutions rather than only with individual right holders, and must treat customary decisions on the composition of lineages and the boundaries of their land as authoritative inputs to the inventory of entitled parties.[146]

In the capital region, these bridges can be connected to an instrument that already exists. Article 21(1) of Presidential Regulation No. 65 of 2022 provides that land in the capital region that has not been registered may still be registered in accordance with the applicable rules.[147] The provision offers customary landholders a route to formalise their control, but its value depends on whether land offices accept customary evidence of control and on whether registration services actually operate; Prayogo, Comeito and Hanun report that services were suspended in parts of Penajam Paser Utara and Kutai Kartanegara because of uncertainty among officials about the boundaries of the capital region.[148] A targeted programme of registration in the capital region, in which customary decisions on the allocation of land to lineages and individuals are received as juridical data and in which communal land is recorded as such, would give concrete effect to Article 21 of the State Capital Law. It would also reduce the risk, documented in the literature, that land is classified as state land simply because its holders cannot produce a certificate.[149]

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141 Maladi, 'Eksistensi Hukum Adat dalam Konstitusi'; Law No. 48 of 2009, arts 5(1) and 50(1).

142 Laturette, 'Penyelesaian Sengketa Hak atas Tanah'.

143 Constitutional Court Decision No. 35/PUU-X/2012; Hidayat and others, 'Forests, Law and Customary Rights in Indonesia'.

144 Faiq Tobroni, 'Menguatkan Hak Masyarakat Adat atas Hutan Adat (Studi Putusan MK Nomor 35/PUU-X/2012)', *Jurnal Konstitusi*, 10.3 (2013) https://doi.org/10.31078/jk1035.

145 Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat', p. 266.

146 Tinambunan and Hasni, 'Kajian Yuridis atas Pengadaan Tanah Ibu Kota Nusantara', p. 995; Fajrini and Adam, 'Perlindungan Hukum bagi Masyarakat Adat', p. 73; Uyun, Nugroho, and Wahjuni, 'Legal Protection for the Customary Law Communities'.

147 Presidential Regulation No. 65 of 2022, art. 21(1); Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', p. 302.

148 Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', p. 302.

149 Simarmata, 'Tumpang Tindih Penguasaan Tanah'; Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', pp. 300–01.

Table 2. Procedural Bridges for Integrating Customary Land Decisions into the State System

No.	Bridge	Existing Legal Instrument and Expected Effect
1	Recognition of the customary community and its competent institution	East Kalimantan Provincial Regulation No. 1 of 2015; Ministry of Home Affairs Regulation No. 52 of 2014. Attributes customary decisions to a recognised authority.
2	Customary decisions as juridical data in land registration	Government Regulation No. 24 of 1997, art. 26 (announcement and objection). A recorded decision triggers verification or suspends registration until resolved.
3	Court confirmation of customary settlements	Supreme Court Regulation No. 1 of 2016, art. 36. A negotiated customary settlement becomes a settlement deed with executorial force.
4	Administrative record of ulayat land and communal tenure	Basic Agrarian Law, arts 3 and 16(1)(h); Ministry of Agrarian Affairs Regulation No. 10 of 2016 (pending a statutory basis). Makes customary allocation visible to third parties.
5	Customary decisions in land procurement for national projects	Law No. 2 of 2012, art. 40; Government Regulation No. 19 of 2021. Customary decisions on lineages and boundaries feed the inventory of entitled parties and communal compensation.

Table 2 shows that each bridge can be built with instruments that already exist in Indonesian law. None of them requires customary institutions to become state courts, and none deprives certificate holders of the protection that the land registration system affords to those who acquire land in good faith. What they change is the information on which land offices and courts act and the moment at which customary decisions enter the state system. The earlier a customary decision is recorded and attributed to a recognised institution, the less likely it is that a certificate will harden into a near-conclusive title over land that the community has already allocated.

These bridges share a common logic. They do not ask the state to surrender its monopoly over the execution of judgments, nor do they romanticise customary institutions, whose authority has itself been eroded and whose decisions may be contested within the community.[150] Instead, they seek to align the points at which the state recognises land rights with the points at which communities already decide them. Soepomo's classic exposition of adat law reminds us that adat land relations are embedded in the community's authority over its territory rather than in a register of individual titles.[151] Henley and Davidson ask whether the revival of adat is a constructive contribution to Indonesia's political pluralism or a divisive force;[152] in the domain of land, the answer depends largely on whether the state provides channels through which customary decisions can be checked, confirmed and enforced.

It should be acknowledged that these proposals have limits. Customary institutions are not homogeneous, and their authority may be contested by members of the community, by migrants who have acquired land through sale or by groups invoking other historical claims, such as those based on the former sultanate in Paser.[153] Customary decisions may also reflect internal hierarchies of gender, age or lineage that state law is bound to scrutinise. Fitzpatrick's early proposal for specialised land courts, rather than the formal incorporation of adat law into statute, was motivated by such concerns: a specialised forum could weigh customary evidence while observing the procedural guarantees of state adjudication.[154] The bridges proposed here are consistent with that approach. They do not ask courts or land offices to defer automatically to customary decisions; they ask them to receive, record and weigh those decisions, and to give them effect where they meet the

[150] Fitzpatrick, 'Disputes and Pluralism'; Wiratraman, 'Perkembangan Politik Hukum Peradilan Adat', p. 490.
[151] Soepomo, *Bab-Bab tentang Hukum Adat*.
[152] Henley and Davidson, 'In the Name of Adat'; Davidson and Henley, *The Revival of Tradition*.
[153] Prayogo, Comeito, and Hanun, 'Kepastian Hukum atas Overlapping', p. 305; Bakker, 'Can We Get Hak Ulayat?'.
[154] Fitzpatrick, 'Disputes and Pluralism'.

standards of a fair process. Tobroni's distinction between a repressive and a progressive spirit of derogable protection is apt: the aim is to move from a regime that subordinates customary authority to one that liberates and empowers it, without abandoning the limits that protect the rights of others.[155]

In the specific context of East Kalimantan, the urgency of these reforms is heightened by the pace of land transactions around the capital and the expansion of plantations and mines. The empirical literature shows that customary communities are already losing land not because their claims lack substance, but because their claims are articulated in forms that the land administration does not read. A customary decision that is recorded, attributed to a recognised institution, admitted as juridical data and, where possible, confirmed by a court as a settlement deed would no longer be a voice outside the state's hearing range. It would become part of the evidentiary record against which certificates are issued and tested, which is the minimum that the constitutional promise of Article 18B(2) requires.

Conclusion

This study has shown that the legal force of customary court decisions over land in Indonesia is layered. Such decisions are constitutionally anchored and possess strong social, cultural and religious binding force within customary communities, and Supreme Court jurisprudence gives them a preclusive effect in certain criminal matters. In civil land disputes, however, the unification of the judiciary has deprived them of executorial force, and they enter the state system only as documentary evidence or as material for judicial consideration. Regional regulations that describe customary decisions as final and binding operate within the customary order and cannot by themselves confer the force that only statute can grant.

When customary decisions meet state certificates, the evidentiary hierarchy favours the certificate, which carries a statutory presumption of validity that becomes nearly conclusive after five years of good-faith possession. Customary land documents have been progressively downgraded to mere indications for registration. In East Kalimantan, this hierarchy is reinforced by the scarcity of recognised customary communities and by land procurement for the Nusantara Capital City, in which communal ulayat rights lack a clear compensation mechanism. As a result, communities lose disputes not because their claims lack substance but because their evidence is not recognised.

Harmonisation therefore requires procedural bridges rather than a formal equation of customary decisions with state judgments: accelerated recognition of customary communities that identifies their competent institutions, the admission of customary decisions as juridical data in land registration, the confirmation of customary settlements as court-sanctioned settlement deeds, a statutory basis for communal tenure, and procurement procedures that treat ulayat rights and customary decisions as authoritative inputs. Future research should test these proposals empirically through fieldwork in customary institutions and land offices in East Kalimantan.

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[155] Tobroni, 'Menguatkan Hak Masyarakat Adat atas Hutan Adat'.

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1. **Manuscript writing support**: AI-based language models, such as Claude (Anthropic), were employed to:
    a. Language refinement (improving grammar, sentence structure, and readability of the manuscript).
    b. Content summarization (assisting in summarizing findings and conclusions in a concise manner).
    c. Technical writing assistance (providing suggestions for structuring complex technical descriptions more effectively).
    d. Generate scientific content, interpret data, and draw conclusions.

PLUS

"We confirm that all AI-assisted processes were critically reviewed by the authors to ensure the integrity and reliability of the results. The final decisions and interpretations presented in this article were solely made by the authors."

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