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Resolution of Land Rights in Forest Areas Reviewed from Agrarian Law

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Abstract

Indonesia, as a state governed by the rule of law, mandates that all legal issues be regulated through statutory provisions to ensure clarity and compliance by its citizens. The registration of land within Forest Areas presents distinct legal and administrative complexities compared to general land registration processes. A recurrent conflict arises from the fact that communities residing in Forest Areas often lack formal land certificates, which serve as the highest legal proof of land ownership.

This research aims to identify viable legal solutions enabling communities residing within Forest Areas to obtain land certificates in accordance with prevailing statutory provisions. Employing a normative juridical method, this study integrates statutory and conceptual approaches, supported by an analysis of relevant legislation, scholarly literature, and scientific journals.

The findings reveal that communities within Forest Areas may secure land certificates through a collective application submitted via the mayor or regent, following the procedural requirements stipulated in Presidential Regulation No. 88 of 2017 concerning the Settlement of Land Tenure in Forest Areas. Upon issuance of a ministerial decree by the Minister of Environment and Forestry adjusting the boundaries of the Forest Area in compliance with applicable laws, the National Land Agency is authorized to issue the corresponding land certificates. This study offers a legal framework that bridges statutory requirements and practical implementation, potentially contributing to the resolution of long-standing land tenure disputes in Forest Areas.

1. Introduction

The country of Indonesia consists of thousands of islands so that the land area in Indonesia is very large and land is one of the natural resources that is very important for the people and government of Indonesia. Land is the topmost layer of the Earth which is managed by the community to be used as a place to live and a livelihood. So that land problems are a shared responsibility to realize the prosperity and welfare of the people.[1] Indonesia, as an archipelagic state consisting of thousands of islands, possesses an extensive land area that serves as a fundamental natural resource for both the population and the government. Land constitutes the uppermost layer of the earth, utilized by communities as a place of residence and a source of livelihood. Consequently, land-related issues are of collective concern, forming an essential element in realizing national prosperity and public welfare[2]. The country's socio-cultural diversity, encapsulated in the national motto *Bhinneka Tunggal Ika*, is reflected in varying terminologies and customary practices relating to land across different regions. For

[1] Perangin, E. "Indonesian Agrarian Law", Jakarta Rajawali Press (1986)
[2] Ahmad Maulana Anha et al., "Implementasi Perlindungan Hukum Hak Atas Tanah Terhadap Penetapan Kawasan Hutan," *Journal of Lex Philosophy (JLP)* 4, no. 2 (December 25, 2023): 221–40, http://www.pasca-umi.ac.id/index.php/jlp/article/view/1556.

example, unregistered land is referred to as *Petok D* in Java, *berentekan* in Gorontalo, and *tutup* in Banjarmasin, among other terms. This diversity underscores the complexity of harmonizing customary land practices with the formal legal framework.

The existence of indigenous peoples in the amended 1945 Constitution is recognized and respected, as stated in Article 18B paragraph 2. This article provides a constitutional position for indigenous peoples in relation to the state regarding how communities are treated. The presence of indigenous peoples is a historical reality that cannot be avoided or denied by the government.[3] Customary rights are a collection of authorities and obligations of customary law communities. These rights are related to the land in their territory and as a central support for the lives of the community living in the area forever. Customary rights are included in public law which are rights related to joint rights of ownership of land, in this right also includes the duties and authorities to manage, regulate and lead the allocation and assignment and maintenance.[4]

Population growth has significantly increased the demand for land, intensifying its economic and social value while highlighting its scarcity. In some cases, land recorded in regional government asset inventories is, in reality, physically occupied and controlled by communities. Such discrepancies often result in disputes over land rights, particularly in relation to state-owned land. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia recognizes and respects the existence of indigenous peoples and their traditional rights, providing them with constitutional status vis-à-vis the state. Customary rights (*hak ulayat*) represent a collective authority to manage, regulate, and allocate land within a customary territory and have been regarded as integral to the survival of indigenous communities for generations.

Scholars such as Van Vollenhoven have characterized customary law as a comprehensive system of unwritten legal norms that govern community life, enforceable through social sanctions, and occasionally codified through instruments such as charters or *awig-awig*. Budi Pramono defines legal norms as complex provisions governing human interaction, embodied in laws, regulations, and other state-sanctioned provisions. Customary law, therefore, operates as an unwritten legal order guiding the daily lives of most Indonesians, coexisting alongside formal statutory law.

Forests, water, minerals, and wildlife are subject to state protection under statutory provisions. The Regulation of the Minister of Environment and Forestry No. 9 of 2021 addresses customary forests but remains limited in scope, focusing primarily on data collection through Indicative Maps of Social Forestry Areas (*Peta Indikatif Areal Perhutanan Sosial* – PIAPS)[5]. Consequently, legal protection for customary forests and traditional rights

[3] Roki Suriadi Pasaribu and Janpatar Simamora, "Recognition and Legal Protection of the Existence of the Batak Toba Customary Law Community" Journal of the Master of Law Postgraduate Program, HKBP Nommensen University 3 number 1 (2022)

[4] Stivani Marantika Poro, Ali Imron, Wika Yudha Shanty, "Legal Protection of Traditional Rights of Customary Law Communities Against Individualization of Customary Land for Commercial Purposes" Bhirawa Law Journal 2 Issue 1 (2021)

[5] Dian Indrawati, Dian Kagungan, and Simon Sumanjoyo Hutagalung, "Analisis Penyelesaian Sengketa Kepemilikan Lahan Antara Masyarakat Lokal Pekon Sukapura Dengan Kementerian Lingkungan Hidup & Kehutanan (Studi Kasus: Kelurahan Sukapura, Kecamatan Sumberjaya, Kabupaten Lampung

remains insufficient. This is particularly evident in Forest Areas (*Kawasan Hutan*), where longstanding community occupation and land use often lack formal legal recognition, creating fertile ground for disputes.

The Basic Agrarian Law (*UUPA*) was intended to create a national land law rooted in customary law while ensuring legal certainty, as mandated by Article 33(3) of the 1945 Constitution: "The earth and water and the natural resources therein shall be controlled by the state and used for the greatest prosperity of the people." However, overlapping norms between agrarian law and forestry law have generated legal uncertainty, particularly in the determination and regulation of Forest Area boundaries.

Presidential Regulation No. 88 of 2017 concerning the Settlement of Land Tenure in Forest Areas was enacted to provide a legal pathway for communities to obtain land rights within Forest Areas, primarily through collective applications submitted via mayors or regents, and subject to ministerial decrees adjusting Forest Area boundaries. Nevertheless, the implementation of this regulation has faced bureaucratic, procedural, and resource-related challenges. Studies by Ridwan Labatjo, Sucipto, and Henri Manik highlight three key determinants in the policy's effectiveness: (1) communication among stakeholders, (2) the bureaucratic structure governing implementation, and (3) synergy between communication, resources, and organizational capacity to ensure policy success.

The opinion of customary law and legal norms from legal experts, namely Van Vollenhoven, is dubbed as a legal expert who discovered customary law or customary norms. According to him, customary law is a whole set of rules of behavior that on one side have sanctions so that they are called laws and on the other side are in a codified state.[6] Meanwhile, legal norms according to Budi Pramono are complex provisions regarding human life in everyday interactions. These norms are generally in the form of laws, regulations, or provisions that are determined and implemented in a country.[7]

Customary law is an unwritten original law that provides guidance to the majority of Indonesians in their daily lives, in their relationships with each other both in the village and in the city. "In addition to the unwritten parts, there are also written parts, namely: Charters, King's Commands, Guidelines on Palm Leaves, Awig-Awig (from Bali) and so on.[8] Forests, mining, water and wildlife are protected by the state through laws and regulations from irresponsible individuals for the welfare of the people. In terms of legal protection for the protection of customary forests and customary rights regulated by the Regulation of the Minister of Environment and Forestry Number 9 of 2021, it is only limited to the substance of customary forests and the understanding of customary rights and its data collection only

Barat)," *Jurnal Administrativa* 4, no. 1 (April 4, 2022): 81–90, https://doi.org/10.23960/ADMINISTRATIVA.V4I1.117.

[6] Budi Purnomo, "Sociology of Law" Scopindo Media Legal Library, (2020)

[7] Budi Purnomo, "Sociology of Law" Scopindo Media Legal Library, (2020)

[8] Mikrot Siregar, Muhammad Yamin, Syaruddin Kalo, Zaidar, "Legal Protection of Ownership of Forest Area Land Register 40 in Simangambat District, North Padang Lawas Regency" Locus Journal of Academic Literature Review 1 Issue 4 (2022)

records regarding PIAPS so that legal protection for the preservation of customary forests and the rights of traditional communities is very lacking.[9]

The role of land in human life, land becomes an object that is prone to disputes or disputes between humans, this happens because human needs for land are increasing, land can cause disturbances and involve many people, so it is required to be handled appropriately. The presence of UUPA as a legal institution that regulates the land sector and wants to create a national land law system, by making customary law as its basis, although UUPA uses the term agrarian, the substance of its regulations is more related to land law as the main legal field of agrarian law. [10]

Philosophical aspects based on the state's objectives that the National Agrarian Law Political Basis was chosen and laid down by the State of Indonesia, namely "protecting the entire nation to realize a just and prosperous state, and realizing general welfare" as stipulated in the Preamble to the 1945 Constitution (hereinafter referred to as the 1945 NRI Constitution). And in Article 33 paragraph (3) of the 1945 NRI Constitution which reads "The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The principle of social justice is an implementation of the 5th principle of Pancasila. Justice in sociological phenomena is a reflection of social justice. This matter is structural and not individual. This means that in creating just social structures, the implementation of justice is needed, if the social structure is not fair then there is no social justice. This is different from the concept of justice in a capitalist state, justice in a capitalist state is an understanding of individual justice or in its micro sense, namely the implementation of justice lies in personal will.

With the many conflicts in Indonesia related to the need for land, accompanied by the rapid increase in population, so that land in the Forest Area has begun to be eyed by some people as a place to live and a livelihood. Land control in the Forest Area for years is expected to get legal certainty and legal protection so that conflicts related to land, especially land in the Forest Area, can be resolved. According to Ridwan Labatjo and Dr. Sucipto, the mechanism for releasing and controlling land in the Forest Area is guided by Presidential Regulation No. 88 of 2017, namely that in essence the position of the forest in the Forest Area can be transferred through the release of the Forest Area with a settlement pattern by removing land plots from within the Forest Area through changes to the Forest Area Boundary through procedures for resolving land control in the Forest Area.[11] In this case, the community who have lived in the Forest Area for years should be given rights to the land they control as stated in Law No. 5 of 1960 concerning land rights, that a valid certificate is issued by the National Land Agency and is authentic evidence. This matter states

they have proof of rights to the land, the people living in the Forest Area already have the rights to the land and their rights should be protected by the State.

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[9] Obed Edotalino, Slamet Suhartono, "Legal Protection of Customary Forest Areas and Customary Rights", Journal of Law, Politics and Humanities 1 number 3 (2024)
[10] Adonia Ivone Laturette, "Resolution of Customary Rights Disputes in Forest Areas", SASI Journal 27 number 1 (2021)
[11] Ridwan Labatjo and Dr. Sucipto "Land Ownership Rights Obtained Through Release of Forest Areas Reviewed from the Perspective of Implementation and Problems", Jurnal Yustisiabel 4 number 1 (2020)

According to Henri Manik there are several factors that influence the effectiveness of the implementation of settlement policies in controlling land in the Forest Area, namely:

1. Communication Factor, this factor has a significant effect on the effectiveness of implementation of land control settlement in Forest Areas
2. Bureaucratic Structure Factor on the effectiveness of implementation, this factor has a significant effect on the implementation of land control settlement policies in Forest Areas
3. Effectiveness of Implementation of Presidential Regulation No. 88 of 2017, this factor cannot stand alone to achieve success in resolving land control in Forest Areas. This factor must be supported by communication factors, resources, disposition and organizational structure so that it can achieve success in implementing land control settlement in Forest Areas.[12]

Legal regulation of land ownership in Forest Areas, namely the determination of Forest Areas by the Minister based on the Minutes of Forest Area Boundary Arrangement and Forest Area Boundary Map and Forms of legal protection for land ownership of Coastal Communities in Forest Areas, namely legal protection in a juridical manner is the formal legality of land granted by the state. Land ownership in Forest Areas by Communities occurs hereditarily even before the area is designated as a Forest Area by the government/regional government.[13]

The Forest Area confirmation procedure has been regulated since the enactment of Law Number 5 of 1967 concerning Basic Provisions on Forestry and in Law Number 41 of 1999 concerning Forestry and Law Number 11 of 2020 concerning the Job Creation Law related to the Forestry cluster and Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as a Law. The status of Forest Areas in Indonesia does not all have legal certainty according to forestry law norms themselves and has the potential to cause legal disputes with land rights resulting from the regulation of forestry law norms with agrarian law norms.[14]

The reality in Indonesia, especially in areas where many people around forest areas can live, manage and earn a living from the land in an area without having rights protected by the state for years, and the phenomenon of how difficult it is to obtain a certificate or legal certainty for the land can result in the welfare of the Indonesian people being difficult to realize because of the unclear boundaries of the Forest Area. Indonesia's ideals contained in Article 33 paragraph 1 of the 1945 Constitution will not be achieved either. The determination of protected forests is carried out by the Government or groups to protect so that ecological functions, especially water management and soil fertility, are maintained, but everyone needs

[12] Henri Manik "Factors Influencing the Effectiveness of Implementing Land Acquisition Settlement Policy in Forest Areas", Journal 3 Number 4 (2022)
[13] Abdul Majid, H. Arba, Widodo Dwi Putra, "Legal Study of Land Control in Coastal Community Forest Areas in Teluk Santong Village, Plampang District, Sumbawa Regency" Justitia Journal 9 number 7 (2022)
[14] Sadino and Bambang Wiyono, "Legal Study of Forest Area Confirmation Towards Legal Certainty of Forest Areas in Indonesia" (2025) https://eprints.uai.ac.id/2546/

protection and legal certainty of land rights that they own with the aim of obtaining protection and guarantee of legal certainty of land rights that have occupied forest areas for many years.[15]

National land law contains the principles and provisions of the main provisions that are arranged in the form of a Law, and are the basis for compiling other regulations. Therefore, the Basic Agrarian Law has the following main objectives:

1. Laying the foundations for compiling National Agrarian Law, which will be a tool to bring prosperity, happiness and justice to the state and the people, especially farmers in the framework of a just and prosperous society;
2. Laying the foundations for establishing unity and simplicity in land law;
3. Laying the foundations for providing legal certainty regarding land rights for all people.[16]

Land control issues in forest areas occur due to claims by the state on forest areas. Such forest control patterns can be traced back to colonial forest management which tended to be centralistic, oriented towards production and extraction of natural resources (SDA), but ignored the rights of local communities. Efforts to resolve land control in forest areas are not easy to do because they are hampered by policies and regulations in the forestry sector, both directly and indirectly. Among the latest efforts to resolve land control in forest areas is when in 2017 Presidential Regulation Number 88 of 2017 was issued concerning the Settlement of Land Control in Forest Areas (Presidential Regulation No. 88 of 2017), as a replacement for the joint ministerial regulation that regulates the same problem. Presidential Regulation No. 88 of 2017 regulates a number of resolution options, but in its implementation there are several obstacles, both in terms of technical implementation and concerning the substance of the regulation itself.[17]

Factors that are obstacles in land rights certification are the lack of knowledge about the use of land rights certificates, and the way to overcome this is by providing legal counseling in the land sector. And the way to obtain a land rights certificate is by submitting an application to the Head of the Land Office accompanied by documents regarding the land.[18] The concept of land ownership rights and their regulations, land registration system, the function and role of land registration in providing legal certainty, legal protection for holders of land certificates with the result that the granting of land ownership rights is intended to guarantee the rights of the community legally. As an implementation of the UUPA, the government registers land ownership in Indonesia as stated in article 19 of the UUPA.[19]

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[15] Sri Mulyani, Joko Sriwidodo, Basuki, Yuhelson, "Legal Protection of Certified Land Rights Management Related to Changes in Designation to Forestry Conservation", Community Service Journal 3 (2023)

[16] Marulak Togatorop, Moh. Hardiansyah, Dawam Muzak, "Legal Certainty of Land Rights of Customary Law Communities Included in Forest Areas", ADIL Journal of Law 12 number 12 (2021)

[17] Muhammad Chanif Chamdani, "Resolution of Land Ownership in Forest Areas Post-Provision of the Job Creation Law" Journal of Environmental Law 7 number 2 (2021)

[18] Fadhilla Aditia Putri, Ngadino, and Irma Cahyaningtyas "Legal status of land title certificates issued above Forest Areas (Study of Decision 50/G/2014/Ptun.Smg)" Notarius Journal 4 number 2 (2021)

[19] Reni Fatmala Sari, Sapto Hermawan, and Andina Elok Puri Maharani, "Legal Certainty of Land Rights of the Indigenous People of the Anak Dalam Tribe in Forest Areas", National Conference on Applied Business, Education, & Technology (NCABET) (2022)

The requirements needed in regulating land registration with a positive publication system so that legal certainty for land rights holders is the fulfillment of 4 (four) prerequisites/pre-requisite conditions, namely the availability of 80% of Land Base Map Coverage, 80% of certified land area coverage, the fulfillment of forest and non-forest area boundaries reaching 50% and the fulfillment of customary/ulayat land mapping. No less important is the adequacy of quality BPN human resources and a balanced quantity to support public service policies and activities and the availability of a legal umbrella in the positive legal system for changes to the positive publication system in land registration.[20]

Community certificates can be owned because there are generations who have lived in a protected forest area for generations but they do not know that the land is a protected forest area so they think that they have the right to own land with an acknowledgement such as obtaining a land rights certificate. The process of obtaining community certificate ownership rights in a protected forest area, namely the community receiving a land rights certificate usually originates from the opening of a forest which is the customary land of a customary law community. These methods will then be regulated so that things that are detrimental to the public interest do not occur, because irregular forest opening will certainly in turn cause very detrimental consequences.[21]

Certificates have a legal standing as a strong means of proof as the nature of the certificate as proof of ownership rights has been explained in the UUPA, namely "a certificate as a strong means of proof, namely the physical data and legal data contained in the certificate are considered correct as long as it is not proven otherwise by other means of proof" based on the provisions of Article 32 paragraph (1) of Government Regulation Number 24 of 1997, the land registration publication system contained is a negative publication system, namely the certificate is a letter of proof of rights which is absolute.[22]

In order to resolve land conflicts in forest area claims against community land that are rampant, therefore the government has the responsibility in this case to resolve land ownership in forest areas in the National Strategy for the Implementation of Agrarian Reform 2015-2019 which was established in the Jokowi-JK Government era, including: strengthening the regulatory framework and resolving agrarian conflicts; structuring control and ownership of land objects of Agrarian Reform (TORA); legal certainty and legalization of rights to TORA; and empowering communities to utilize TORA. As a manifestation of the government's commitment that has been promised through Nawacita since 2014, Presidential Regulation No. 88 of 2017 concerning the Settlement of Land Ownership in Forest Areas and Presidential Regulation No. 86 of 2018 concerning Agrarian Reform were formed.[23]

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[20] Nur Susilowati, Ida Nurlinda, Mulyani Djakaria, "Analysis of the Prospects for the Implementation of the Positive Publication Land Registration System and the Aspect of Legal Certainty for Land Rights Holders" Journal of Notary Law, Faculty of Law, Unpad 4, number 1 (2020)

[21] Faizatul Khairani Isman, Kurnia Warman dan Hengki Andora, "Perlindungan Hukum Terhadap Pemegang Hak Milik Dalam Kawasan Hutan Lindung Di Kabupaten Agam" UNES Journal of Swara Justisia (2023)

[22] Nur Atika and Abraham Ferry Rosando, "The Position of Land Ownership Certificates in Control of Forest Areas", Journal of Evidence of Law 2 number 2 (2023)

[23] Ahmad Maulana Anha and Hardianto Djanggih, "Implementation of Legal Protection of Land Rights Regarding the Determination of Forest Areas" Journal of Philosophy 4 number 2 (2023)

Land disputes such as the conflict between indigenous peoples and TNTN are still numerous and many have not been resolved, making it difficult for indigenous peoples to freely cultivate their land. In many cases, the conflict that occurred was won by the indigenous legal community, because the judge saw evidence of events that occurred at the location of the customary land. "The judge must obtain certainty about the dispute or concrete events that have occurred[24]. The concrete events or cases found from the answers are complex events or incidents that must be analyzed, must be selected, the main events and those that are relevant to the law are separated from those that are not relevant, to then be arranged systematically and chronologically so that the judge can obtain a clear overview of the concrete events, about the facts of the case and finally proven and confirmed or declared to have actually occurred."[25]

2. Methods

This research is qualitative in nature using this type of normative juridical research, namely by using secondary research data. Secondary research data is obtained from court decisions, law journals and others. By collecting all legal sources to be studied, then all the data is combined into one to summarize the information that has been obtained by selecting only the main points that are the important focus of the research.The level of solving problems should be guided by existing laws and regulations and in accordance with the problems to be resolved. Customary norms that still apply in Indonesia should still be used but must not conflict with or be above existing laws and regulations.

This research will use 2 data sources, namely primary data sources and secondary data sources, primary legal materials and secondary legal materials Secondary data is a source of data in conducting research, namely books from legal experts related to the control of land rights in Forest Areas, laws and regulations, legal journals and expert opinions related to this research. From the formulation of the problem of land in Forest Areas can be used as Property Rights, researchers use the Theory of the Legal State, Theory of Authority, Theory of Legal Certainty and Theory of Legal Protection. This theory is used to find out the laws and regulations used by researchers and to find out who has the right to make decisions and act in the control of land rights in Forest Areas to obtain legal certainty and legal protection. Researchers use the method of legislative approach and case approach. From the case approach, researchers use the theory of authority in analyzing to make decisions.

3. Results and Discussion

3.1. Legal Ambiguities and Institutional Challenges in Forest Area Land Certification

The issuance of Presidential Regulation No. 88 of 2017 concerning the Settlement of Land Tenure in Forest Areas (PPTKH) reflects the government's attempt to reconcile agrarian

[24] Atas Tanah Yang Diterbitkan Di Atas Kawasan Hutan, Fadhilla Aditia Putri, and Irma Cahyaningtyas Program Studi Magister Kenotariatan, "Status Hukum Sertipikat Hak Atas Tanah Yang Diterbitkan Di Atas Kawasan Hutan (Studi Putusan 50/G/2014/Ptun.Smg)," *Notarius* 14, no. 2 (December 30, 2021): 804–17, https://doi.org/10.14710/NTS.V14I2.43751.

[25] Sareh Sulistiyo, and Kasmanto Rinaldi, "Peace Efforts Bound by Disputes over Conversion of Customary Land in the Tesso Nilo Protected Forest between the Community and the Riau BKSDA (Case Study in Air Hitam Village, UKUI District, Pelalawan Regency), SEIKAT Journal of Social, Political and Legal Sciences 2 number 2 (2023)

reform with forestry governance. Normatively, this regulation is expected to provide a legal pathway for communities living within forest zones to obtain land certificates through collective applications submitted via regents or mayors. It establishes a procedural link between the Ministry of Environment and Forestry (MoEF), which holds authority over forest boundaries, and the National Land Agency (BPN), which issues land certificates after boundary adjustments are made.

However, the central challenge lies in the legal ambiguity and institutional dualism surrounding land rights in forest areas. This stems from the historical dominance of forestry law, particularly Law No. 41 of 1999 on Forestry, which effectively subordinates agrarian rights to state claims over forest zones. As Soedomo (2024) notes, "two-thirds of Indonesia's land area does not operate under the Agrarian Law of 1960," highlighting the persistence of a parallel forestry regime. This overlap generates legal uncertainty and conflicts of authority between MoEF and BPN, ultimately undermining the principle of legal certainty as articulated in the Theory of the Legal State (Rechtsstaat)[26].

The implementation of Presidential Regulation No. 88/2017 further reveals a gap between normative provisions and practical realities. While the regulation creates formal procedures for boundary adjustment and certification, in practice, communities face obstacles such as unclear boundary demarcations, bureaucratic delays, and limited institutional coordination. Empirical studies have shown that unilateral forest designations remain common, often excluding local participation. For instance, Safitri (2021) found that forest zoning in Kalimantan and Papua was conducted without meaningful consultation with indigenous peoples, leading to overlapping claims and protracted disputes. Similarly, AMAN (2022) reported that MoEF frequently delays issuing boundary adjustment decrees, invoking environmental protection rationales, which prevents BPN from proceeding with certification. This administrative deadlock illustrates the tension between environmental governance and tenure recognition.

Beyond administrative inefficiencies, conflicts between indigenous communities and state authorities highlight deeper issues of legal pluralism. Customary land rights (hak ulayat) recognized under the Constitution often remain unacknowledged in forestry classifications, leaving indigenous groups vulnerable to eviction and criminalization for encroachment. This condition contravenes the Theory of Legal Protection (Hadjon, 1987), which mandates that legal frameworks must prioritize the protection of vulnerable groups. The lack of effective protection is exacerbated by limited legal literacy among rural populations; a World Bank (2020) survey showed that fewer than 30% of forest-dependent communities understand the certification process under Regulation No. 88/2017[27].

Comparative perspectives reveal alternative models that may address Indonesia's institutional challenges. In the Philippines, the Indigenous Peoples' Rights Act of 1997 directly

[26] Nurmiati Nurmiati, Sufirman Rahman, and Ahyuni Yunus, "Efektivitas Proses Pendaftaran Tanah Hak Milik," *Kalabbirang Law Journal* 2, no. 2 (July 1, 2020): 101–12, https://doi.org/10.35877/454RI.KALABBIRANG123.

[27] Jauhara Berliana Aziza Putri, Rahayu Subekti, and Purwono Sungkowo Raharjo, "Analisis Penyelesaian Sengketa Tentang Batas Tanah Pada Sertifikat Tanah Di Kantor Pertanahan Kabupaten Sukoharjo," *Eksekusi : Jurnal Ilmu Hukum Dan Administrasi Negara* 1, no. 3 (July 20, 2023): 181–96, https://doi.org/10.55606/EKSEKUSI.V1I3.474.

grants Certificates of Ancestral Domain Titles (CADT) without requiring prior boundary approval from forestry authorities, thereby reducing institutional bottlenecks. Similarly, Brazil's Terra Legal Program allows regularization of land within forest areas through simplified procedures and participatory mapping (de Souza, 2018). Compared to these approaches, Indonesia's highly centralized, multi-layered framework appears overly bureaucratic, prolonging legal uncertainty for communities. In summary, while Presidential Regulation No. 88/2017 represents a normative advance in integrating agrarian reform with forestry governance, its effectiveness is constrained by persistent legal ambiguities, institutional dualism, and weak enforcement. The analysis suggests that without greater inter-agency coordination, participatory boundary demarcation, and decentralization of authority, the regulation risks entrenching rather than resolving tenure insecurity. Thus, the legal framework must evolve not only normatively but also practically, balancing state control with community rights in line with both the Theory of Authority and he principle of Rechtsstaat.

The process of obtaining land certificates in Forest Areas that have been controlled by residents for an extended period of time cannot be separated from the procedural requirements mandated by the prevailing legal framework in Indonesia. The law requires that applications be submitted collectively through the regent or mayor, which reflects the principle of legal certainty (rechtszekerheid) as emphasized by Lon L. Fuller (1969), who argued that the legitimacy of law depends on the clarity, predictability, and enforceability of legal rules. Without strict adherence to such procedures, the issuance of land certificates would risk undermining the coherence of Indonesia's land administration system and potentially trigger new legal disputes[28].At the same time, this issue reveals a deeper socio-legal problem, namely the lack of legal literacy among the majority of citizens residing in or controlling land within Forest Areas. Many of these residents, who often have low levels of formal education, remain unaware of the legal mechanisms available to secure their rights. This condition demonstrates what Mauro Cappelletti and Bryant Garth (1978) have identified as the "access to justice" problem, where marginalized groups are systematically disadvantaged in navigating legal systems that are ostensibly designed to guarantee equality before the law. The absence of effective legal empowerment creates a gap between normative regulations and their implementation in practice[29].

Therefore, the role of village officials becomes pivotal in bridging this gap. Village authorities, as the closest state apparatus to the people, must actively disseminate updated information on land laws and forestry regulations. Their proactive engagement would not only fulfill the constitutional mandate of providing legal protection and certainty for all citizens (Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia) but

[28] Baiq Rika Septina Wardani, Rodliyah Rodliyah, and Aris Munandar, "Akibat Hukum Atas Terbitnya Sertifikat Tumpang Tindih (Overlapping) Dalam Program Pendaftaran Tanah Sistematis Lengkap (Studi Kasus Kantor Pertanahan Kabupaten Lombok Barat)," *Jurnal Risalah Kenotariatan* 4, no. 1 (March 20, 2023), https://doi.org/10.29303/RISALAHKENOTARIATAN.V4I1.90.

[29] Stivani Marantika Poro, Ali Imron, and Wika Yudha Shanty, "Perlindungan Hukum Hak Tradisional Masyarakat Hukum Adat Terhadap Tindakan Individualisasi Tanah Ulayat Untuk Tujuan Komersial," *Bhirawa Law Journal* 2, no. 1 (May 31, 2021): 73–78, https://doi.org/10.26905/BLJ.V2I1.5857.

also align with John Rawls' (1971) principle of fairness, which requires that social institutions ensure equal opportunities for all, particularly the most disadvantaged groups[30].

Moreover, strengthening the capacity of village officials to interpret and communicate laws effectively is consistent with the legal empowerment framework promoted by the United Nations Development Programme (UNDP), which views access to information and legal remedies as essential to the realization of sustainable development and community welfare. In this sense, legal literacy functions as a tool of empowerment that enables citizens not only to claim their land rights but also to participate meaningfully in decision-making processes affecting their livelihoods[31].

Ultimately, ensuring that land certificates in Forest Areas are accessible to long-term occupants requires not only procedural compliance but also the integration of legal theory with practical governance[32]. The rule of law in this context must be understood not merely as the supremacy of formal legal rules but as a living instrument that guarantees fairness, equity, and social justice. By fostering a culture of legal awareness at the grassroots level, Indonesia can transform its legal system into a more inclusive framework that addresses both the formal validity of regulations and the substantive rights of its citizens.

3.2. Procedural Pathways, Legal Theories, and Normative Solutions to Tenure Disputes

The procedural pathways for resolving tenure disputes in Forest Areas reflect a broader tension between administrative law, environmental law, and agrarian law in Indonesia. The multi-tiered process mandated by Presidential Regulation No. 88/2017 underscores the state's effort to institutionalize legal certainty by translating abstract constitutional guarantees into actionable rights. In this sense, the regulation operationalizes Gustav Radbruch's triadic legal values: justice, utility, and certainty, with procedural mechanisms acting as the vehicle for balancing these values in contexts where ecological sustainability and social justice often collide[33].

From the standpoint of Legal Protection Theory, as advanced by Fitzgerald and later adopted into Indonesian jurisprudence, procedures serve as instruments to shield communities from arbitrary state actions while simultaneously mediating competing interests

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[30] Kawasan Hutan, Nur Atika, and Abraham Ferry Rosando, "KEDUDUKAN SERTIFIKA HAK MILIK DALAM PENGUASAAN KAWASAN HUTAN," *Journal Evidence Of Law* 2, no. 2 (May 29, 2023): 37–46, https://doi.org/10.59066/JEL.V2I2.273.

[31] Anita Kamilah et al., "Peran Badan Pertanahan Nasional Dalam Penyelesaian Sengketa Tanah Akibat Overlapping," *Jurnal ISO: Jurnal Ilmu Sosial, Politik Dan Humaniora* 5, no. 1 (May 15, 2025): 13, https://doi.org/10.53697/ISO.V5I1.2443).

[32] Nur Susilowati, Mulyani Djakaria, and Ida Nurlinda, "ANALISIS PROSPEK PEMBERLAKUKAN SISTEM PENDAFTARAN TANAH PUBLIKASI POSITIF DAN ASPEK KEPASTIAN HUKUM PEMEGANG HAK ATAS TANAH," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4, no. 1 (December 31, 2020): 52–67, https://doi.org/10.23920/ACTA.V4I1.257.

[33] Perlindungan Hukum Terhadap Kepemilikan Atas Tanah Kawasan Hutan Register et al., "Perlindungan Hukum Terhadap Kepemilikan Atas Tanah Kawasan Hutan Register 40 Di Kecamatan Simangambat Kabupaten Padang Lawas Utara," *Locus Journal of Academic Literature Review* 1 (August 3, 2022): 226–35, https://doi.org/10.56128/LJOALR.V1I4.71.

between environmental conservation and human settlement[34]. The boundary mapping and certificate issuance stages exemplify what Philipus M. Hadjon terms preventive and repressive legal protection: preventive in providing communities with procedural safeguards before dispossession occurs, and repressive in offering grievance mechanisms when disputes arise. This duality reflects not merely a technical administrative process, but also the realization of human rights to land and livelihood guaranteed under Article 28H of the 1945 Constitution[35].

When compared with prior initiatives, such as the Social Forestry program under Ministry Regulation No. 9/2021, the distinction becomes clearer. Social forestry provides communities with long-term use rights, yet the absence of full property rights perpetuates vulnerability, especially when political regimes shift or when conservation priorities intensify. In contrast, the procedural model under Presidential Regulation No. 88/2017 offers a pathway toward more durable recognition, albeit conditioned upon rigorous mapping, verification, and administrative oversight. This reveals an inherent legal paradox: while the state proclaims recognition, the procedural intensity often delays or deters effective realization.

The theoretical linkage to Authority Theory is also crucial. Hans Kelsen's Pure Theory of Law emphasizes that the validity of legal acts derives from hierarchical norms (*Stufenbau des Rechts*). In this case, the procedures outlined in the Regulation acquire legitimacy from higher-order constitutional and statutory mandates. However, the effective exercise of authority requires not only formal delegation but also administrative competence and transparency. The persistence of overlapping institutional mandates between the Ministry of Environment and Forestry (KLHK), the National Land Agency (BPN), and local governments illustrates what Max Weber described as the bureaucratic dilemma: authority fragmented across institutions undermines rational-legal legitimacy.

Participatory land administration pilots provide valuable empirical insights here. While the integration of mobile spatial data and community-led mapping aligns with Responsive Law Theory (as articulated by Philippe Nonet and Philip Selznick), their sustainability hinges on institutional trust[36]. Without a robust grievance mechanism and centralized data system, communities often revert to informal arrangements, weakening the legal force of certificates. A 2023 case study underscores the importance of institutional transparency and accountability, echoing Lon Fuller's notion of the "inner morality of law" that law must be general, clear, consistent, and congruent in application. Procedural opacity not only erodes trust but also contradicts the constitutional mandate for the state to guarantee access to justice[37]. Normatively, the integrated framework advanced in this study positions itself at the

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[34] Faizatul Khairani Isman et al., "PERLINDUNGAN HUKUM TERHADAP PEMEGANG HAK MILIK DALAM KAWASAN HUTAN LINDUNG DI KABUPATEN AGAM," *Unes Journal of Swara Justisia* 7, no. 2 (July 7, 2023): 648–58, https://doi.org/10.31933/UJSJ.V7I2.359.

[35] Risye Julianti, Soefyanto Soefyanto, and M Yasir, "Peran Kantor Badan Pertanahan Nasional Mengenai Hak Kepemilikan Atas Tanah Di Kota Jakarta Utara," *JOURNAL of LEGAL RESEARCH* 3, no. 3 (May 12, 2021), https://doi.org/10.15408/JLR.V3I3.20520.

[36] Setiyo Utomo, "Problematika Tumpang Tindih Status Kepemilikan Tanah," *Jurnal Hukum Bisnis Bonum Commune* 6, no. 2 (August 1, 2023): 53–61, https://doi.org/10.30996/JHBBC.V6I2.8356.

[37] Musmuliadi Musmuliadi, Djumardin Djumardin, and Aris Munandar, "Analisis Yuridis Penyelesaian Sengketa Tanah Akibat Sertifikat Ganda (Studi Di Kementrian ATR/BPN Kabupaten Lombok Tengah)," *Jurnal Risalah Kenotariatan* 4, no. 1 (June 7, 2023), https://doi.org/10.29303/RISALAHKENOTARIATAN.V4I1.108.

intersection of constitutionalism and environmental governance. By aligning procedural safeguards with constitutional guarantees, the model addresses the normative gap often observed in prior programs that prioritized socio-economic empowerment without securing legal ownership. Moreover, the emphasis on centralized land data and grievance mechanisms provides a systemic corrective to fragmented bureaucratic practices, offering a replicable blueprint for tenure resolution not only in contested Forest Areas but also in other sectors of agrarian conflict in Indonesia.

Ultimately, this procedural model resonates with the broader constitutional vision of Indonesia as a rechtsstaat, where state authority must always be exercised under the framework of law, with an orientation toward justice and human dignity. By embedding legal certainty, authority, and protection within an operational pathway, this approach ensures that tenure disputes are not merely resolved administratively but are elevated to the level of constitutional fidelity. This situates the regulation as more than a technical policy it becomes a manifestation of Indonesia's constitutional commitment to balancing development, environmental stewardship, and social justice.

3.3. Comparative Perspectives on Procedural and Normative Approaches to Tenure Disputes

A comparative perspective provides an essential lens to situate Indonesia's evolving framework for tenure recognition in forest areas within a broader global discourse. Several jurisdictions with similar challenges balancing environmental conservation with community tenure security offer instructive pathways and cautionary lessons that underscore the normative debates on property rights, sustainability, and legal authority[38]. In Brazil, for instance, the demarcation of Indigenous Territories under the 1988 Constitution is procedurally grounded in both participatory mapping and executive recognition, yet disputes remain rife due to political resistance and competing land use claims. The Brazilian model demonstrates the strength of constitutional guarantees but also exposes institutional fragility when political will shifts, showing how legal certainty is often contingent upon sustained administrative integrity[39]. Similarly, India's Forest Rights Act of 2006 institutionalizes community participation through the Gram Sabha (village assembly), creating a bottom-up pathway for tenure recognition. However, implementation has been uneven due to bureaucratic resistance, capacity constraints, and judicial contestations. This illustrates the tension between normative recognition of rights and procedural bottlenecks that delay their realization. The Indian case further highlights the importance of integrating judicial oversight with administrative execution to ensure that procedural guarantees translate into substantive justice[40]. In Tanzania, the recognition of Village Land through the 1999 Village Land Act represents a hybrid between state authority and community autonomy. While the law enables local-level land certificates, overlapping claims with protected areas have produced recurrent

[38] Faktor-Faktor Yang et al., "Faktor-Faktor Yang Memengaruhi Efektivitas Implementasi Kebijakan Penyelesaian Penguasaan Tanah Dalam Kawasan Hutan," *Jurnal Widyaiswara Indonesia* 3, no. 4 (December 18, 2022): 177–88, https://doi.org/10.56259/JWI.V3I4.137.
[39] Demarcação, "Fundação Nacional Dos Povos Indígenas," accessed August 17, 2025, https://www.gov.br/funai/pt-br/atuacao/terras-indigenas/demarcacao-de-terras-indigenas.
[40] "The Gazette of India- FRA Amendment On" (new delhi, 2012).

conflicts. The Tanzanian model signals the necessity of designing grievance mechanisms that can mediate between conservation imperatives and local livelihoods, aligning with theories of legal pluralism and negotiated authority[41].

When compared with Indonesia, these international experiences illuminate both convergences and divergences. Like Brazil and India, Indonesia embeds community participation in mapping and verification, yet its reliance on a presidential regulation (Perpres No. 88/2017) rather than a constitutional or statutory foundation may leave tenure security vulnerable to shifting policy orientations. The integration of grievance mechanisms and centralized data infrastructure, as suggested by Indonesian case studies, finds resonance with Tanzania's hybrid administrative structures, though Indonesia's constitutional framework potentially offers stronger guarantees if adequately reinforced by statutory amendments.

The comparative analysis thus advances the theoretical argument that procedural clarity must be buttressed by institutional durability. Theories of legal certainty, authority, and legal protection converge in demonstrating that rights recognition is not merely a matter of normative proclamation but of embedding procedural guarantees within resilient institutional architectures. Indonesia's current reforms, while promising, must therefore be situated within a longer trajectory of comparative struggles over forest tenure that reveal how procedural innovation, political commitment, and judicial accountability interact to produce (or undermine) substantive justice[42].

4. Conclusions

The resolution of land tenure issues in Forest Areas that have been occupied and utilised by communities for extended periods requires strict adherence to statutory procedures. In accordance with Presidential Regulation No. 88 of 2017, the process must commence with a collective registration submitted through the regent or mayor, followed by verification, boundary adjustment decrees issued by the Ministry of Environment and Forestry, and final registration by the National Land Agency. This structured legal pathway provides a normative basis for granting land certificates without infringing upon forestry regulations, thereby ensuring both legal certainty and legal protection.

Given that a significant proportion of residents occupying land within Forest Areas possess limited formal education, the role of village officials becomes critical. Village administrations must actively monitor, interpret, and disseminate updated statutory and regulatory developments to ensure that affected communities are aware of their rights and procedural avenues. The proactive involvement of local officials not only enhances the accessibility of legal remedies but also maximises the socio-economic benefits that arise from the lawful recognition of long-held land rights.

From a broader governance perspective, this research affirms that effective implementation of the existing legal framework requires institutional coordination,

[41] "Analysis of the Tanzania Village Land Act and General Land Act of 1999," accessed August 17, 2025, https://www.researchgate.net/publication/364658155_Analysis_of_the_Tanzania_Village_Land_Act_and_General_Land_Act_of_1999.

[42] Jauhara Berliana Aziza Putri, Rahayu Subekti, and Purwono Sungkowo Raharjo, "Analisis Penyelesaian Sengketa Tentang Batas Tanah Pada Sertifikat Tanah Di Kantor Pertanahan Kabupaten Sukoharjo."

participatory public engagement, and ongoing dissemination of legal information. Strengthening these elements will enable the law to function as an instrument for both environmental stewardship and the realisation of social justice, in line with the constitutional mandate of Indonesia as a *state of law*.

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