

Kepastian Hukum Pengakuan Hutan Adat melalui Koordinasi Kewenangan Daerah dan Kehutanan

Legal Certainty in Customary Forest Recognition through Coordination of Regional and Forestry Authorities

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Abstrak

Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 mengeluarkan hutan adat dari kategori hutan negara, tetapi pelaksanaannya tetap memerlukan pengakuan masyarakat hukum adat dan penetapan status hutannya. Artikel ini menganalisis hubungan kedua proses dan merumuskan koordinasi administratif yang mendukung kepastian hukum. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, kasus, dan konseptual terhadap bahan hukum hingga 31 Desember 2024. Analisis berpusat pada Undang-Undang Kehutanan, putusan Mahkamah Konstitusi, Permendagri Nomor 52 Tahun 2014, dan Permen LHK Nomor 9 Tahun 2021. Hasil penelitian menunjukkan bahwa pengakuan komunitas dan penetapan status hutan mempunyai objek serta persyaratan berbeda. Bentuk pengakuan perlu diperiksa menurut posisi kawasan; keputusan kepala daerah tidak mencukupi untuk seluruh keadaan. Namun, ketidaklengkapan dokumen pengakuan tidak selalu menutup verifikasi lapangan dan penetapan wilayah indikatif apabila persyaratan khususnya terpenuhi. Artikel mengusulkan pemeriksaan awal jalur hukum, penggunaan berkas bersama, verifikasi batas dengan partisipasi komunitas, dan alasan tertulis atas permintaan perbaikan. Koordinasi perlu menjaga kewenangan setiap lembaga, hak pihak lain, dan fungsi hutan, sekaligus membantu komunitas memahami tahapan permohonannya. Model ini merupakan rekomendasi normatif; dampaknya terhadap waktu penyelesaian, konflik, dan penghidupan memerlukan penelitian empiris.

Kata kunci: hutan adat; masyarakat hukum adat; pengakuan; kepastian hukum; kewenangan daerah.

Abstract

Constitutional Court Decision No. 35/PUU-X/2012 removed customary forests from the category of state forests, but implementation still requires recognition of customary law communities and determination of forest status. This article examines the relationship between these processes and develops an administrative coordination model to support legal certainty. It uses doctrinal legal research, combining statutory, case, and conceptual approaches to materials within an analytical cut-off of 31 December 2024. The analysis centres on the Forestry Law, the Constitutional Court decision, Ministry of Home Affairs Regulation No. 52 of 2014, and Ministry of Environment and Forestry Regulation No. 9 of 2021. It finds that community recognition and forest status determination concern different objects and requirements. The appropriate recognition instrument depends on the relevant forest-area setting; a regional head's decision is not sufficient in every case. Nevertheless, incomplete recognition documents do not invariably prevent field verification and indicative designation where the prescribed conditions are met. The proposed model combines early identification of the applicable legal pathway, shared documentation, community participation in boundary verification, and written reasons for corrective requests. Coordination should preserve institutional competence, competing rights, and forest functions while making the procedure intelligible to communities. The model remains a normative proposal requiring empirical evaluation.

Keywords: customary forests; customary law communities; recognition; legal certainty; regional authority.

Introduction

Customary forest recognition connects a community's legal standing with the territory through which its rights are exercised. Legal certainty therefore requires more than a change in statutory terminology. A community also needs to understand which authority can decide its application, what legal instrument is required, and how an earlier decision will be treated by the next institution. This article argues that regional and forestry procedures should be

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coordinated around their distinct decision-making objects. Such coordination can make recognition more usable without obscuring the legal basis of either authority.

On 16 May 2013, the Constitutional Court delivered Decision No. 35/PUU-X/2012, removing the word “state” from the statutory definition of customary forest and excluding customary forests from the category of state forests. The decision changed the legal relationship between the state, customary law communities, and their forests. It did not, however, automatically determine the existence or territorial boundaries of every community. Recognition remained subject to the applicable legal conditions (Constitutional Court of the Republic of Indonesia [Constitutional Court], 2013). The distinction matters because the constitutional correction must be given practical effect through decisions that identify both the rights-bearing community and the relevant forest territory.

Tobroni (2013) examines the decision as a means of strengthening customary communities' rights over their forests. Building on that concern, this article focuses on the procedural relationship between Ministry of Home Affairs Regulation No. 52 of 2014 and Ministry of Environment and Forestry Regulation No. 9 of 2021. The central difficulty addressed here is the risk of treating a community recognition decision as sufficient for all subsequent forestry purposes. Conversely, insisting on a single, uninterrupted sequence may overlook a conditional route for field verification and indicative designation already provided by the forestry regulation.

The inquiry asks how community recognition should be distinguished from forest status determination, and how their documentary requirements can be coordinated. Its contribution is a proposal for early legal screening, shared records, participatory boundary verification, and reasoned communication with applicants. These measures matter for communities seeking to plan their livelihoods and engage with public institutions. This relationship is assessed normatively: the article does not assume that formal recognition necessarily raises household income or resolves every territorial dispute.

Method

This study employs doctrinal legal research with statutory, case, and conceptual approaches. The primary materials are Law No. 41 of 1999 on Forestry, Constitutional Court Decision No. 35/PUU-X/2012, Ministry of Home Affairs Regulation No. 52 of 2014, and Ministry of Environment and Forestry Regulation No. 9 of 2021. The Forestry Law is read in light of the Court's decision and relevant amendments within a cut-off of 31 December 2024, including the legislative framework established by Law No. 6 of 2023; its original text is not treated as a consolidated statement of the law (Republic of Indonesia, 1999, 2023). The institutional names used here follow the instruments within that period.

The analysis compares the object of each decision, the competent authority, the required legal instrument, and the stages of documentary and territorial verification. Systematic interpretation is used to assess whether regional recognition documents satisfy the relevant forestry requirements. Secondary scholarship supplies context on customary rights, land-dispute jurisdiction, resource governance, and corporate responsibility. References were checked against official legal records and publishers' records or article texts. The coordination model is a normative recommendation derived from that comparison. No interviews, field mapping, community-document review, or assessment of a particular dispute was undertaken; implementation outcomes cannot be inferred from this method.

Results and Discussion

Community recognition and the determination of forest status

Community recognition concerns the existence and legally relevant characteristics of a customary law community, or *masyarakat hukum adat*. Forest status determination concerns a forest within that community's territory under the forestry framework. These inquiries are

related because a territorial right needs an identifiable holder, yet they are not interchangeable. Evidence of customary institutions cannot by itself settle the boundary of every forest parcel. Equally, a technically detailed map does not establish all the elements required for recognition of the community that claims it.

The Constitutional Court's decision should be understood through this distinction. It corrected the classification of customary forests while retaining the condition that the community must continue to exist and be legally recognised. In paragraph [3.13.8], the Court also maintained the regional-regulation requirement associated with Article 67 of the Forestry Law (Constitutional Court, 2013). A regional head's decision and a regional regulation therefore cannot be assumed to have identical legal effects merely because both concern a customary community. The question is whether the relevant instrument meets the requirement applicable to the particular forestry pathway.

Recognition also needs to be distinguished from forest function. Removing customary forests from the state-forest category does not abolish the forestry framework governing conservation, protection, and production functions. Regulation No. 9 of 2021 expressly places customary forests within these functions and provides for their management by customary law communities (Ministry of Environment and Forestry of the Republic of Indonesia [MoEF], 2021, art. 62). The legal task is to give effect to community rights while identifying the responsibilities attached to the forest, rather than allowing functional regulation to reproduce the classification rejected by the Court.

Consider a hypothetical recognition decision that records a community's history, institutions, and general customary territory but lacks sufficiently detailed forest boundaries. Its contribution to the application should be acknowledged, while the missing territorial information is identified precisely. A deficiency in the presentation of a map should not be equated, without further inquiry, with the absence of a community or with a substantive conflict over title. This distinction does not dispense with verification; it allows the response to fit the problem.

A similar discipline is needed when disputes arise. Tj et al. (2022) discuss judicial competence in disputes involving land ownership certificates by examining the substance of the dispute and the basis of the claim. Their study concerns certificates, not customary forest determination, so its relevance here is analytical rather than a direct rule of jurisdiction. Referral should identify the contested decision, the rights asserted, and the remedy sought. Geographic overlap alone is insufficient to establish that different disputes belong before the same forum.

Regional recognition instruments and forestry requirements

Regulation No. 52 of 2014 provides for identification, verification and validation, and recognition of customary law communities. Identification covers community history, customary territory, customary law, property or customary objects, and customary institutions. A committee makes recommendations, after which the regent or mayor adopts a recognition decision. Where a community extends across two or more regencies or cities, the regulation provides for a joint decision by the relevant regional heads (Ministry of Home Affairs of the Republic of Indonesia [MoHA], 2014, arts. 3–6). This procedure establishes an administrative route for recognising the community; it does not itself replace the separate requirements for forest status determination.

Article 63 of Regulation No. 9 of 2021 differentiates recognition instruments according to the community's location. For a community within a state forest area, Article 63(1)(a) requires a regional regulation. Outside a state forest area, Article 63(1)(b) permits a regional regulation or a governor's and/or regent's or mayor's decision within the relevant competence. The regional regulation may recognise a specific community or establish a recognition procedure. In the latter case, Article 63(3) envisages identification and mapping

by a committee, followed by a regent's or mayor's recognition decision (MoEF, 2021, art. 63). The analysis must therefore consider both the form and the content of the regional instrument.

The two ministerial regulations should not be read as if one simply invalidated the other. A recognition decision under the Home Affairs procedure may establish relevant community information, while the forestry procedure requires a particular legal basis for determining forest status. Administrative coordination cannot convert a decision into a regional regulation or dispense with the statutory framework. It can, however, identify what additional legal step is required and explain why. This avoids asking communities to repeat an entire recognition inquiry when the actual deficiency concerns the legal instrument supporting the next stage.

Nor does incomplete recognition documentation necessarily bring all forestry processing to a halt. Article 67(3)(b) permits field verification where the prescribed recognition instrument is incomplete but the customary territory has already been determined by the regent or mayor. Following qualifying verification, Article 71 provides for designation of an indicative customary forest territory as approval in principle. Final customary forest status remains contingent on completion of the recognition instrument required under Article 66(2)(c) (MoEF, 2021, arts. 67, 71). Indicative designation is thus a conditional intermediate step, not a substitute for final recognition or an exception available to every incomplete application.

An early screening process should identify the forest-area setting, the available recognition instrument, and the applicable route. Its output should explain whether the application can proceed towards final determination, qualifies for the indicative route, or requires further preparation. Where boundaries or area classification remain contested, the uncertainty should be recorded rather than concealed by an apparently definitive checklist. Screening should help applicants direct their effort to the unresolved requirement; it must not create additional conditions that the law does not prescribe.

This allocation of responsibilities also needs to remain visible in shared records. Rambe et al. (2024b) describe a tendency towards centralisation in natural resource management following the Job Creation reforms. That account supplies institutional context, but does not establish that all regional authority has disappeared. In customary forest recognition, regional recognition and forestry determination still need to be traced to their respective legal bases. A shared file should therefore identify who produced each document, what it establishes, and which authority remains responsible for the next decision.

Boundary verification and meaningful community participation

Territorial evidence carries legal significance, but it also reflects how people understand and use a place. A boundary may relate to inherited practices, agreements with neighbouring communities, or competing accounts of occupation. Regulation No. 52 of 2014 requires community involvement in identification, while Regulation No. 9 of 2021 provides for field verification through meetings, map comparison, and examination of boundaries on the ground (MoHA, 2014, art. 5; MoEF, 2021, arts. 68–69). These provisions support a procedure in which community knowledge can inform technical assessment.

Participation should be assessed through the opportunity to contribute, not inferred solely from a representative's signature. As a proposed safeguard, verification should record whose knowledge was sought, how different uses of the territory were considered, and whether an objection was answered. Women, younger members, or households using particular forest areas may have information that a formal representation structure does not fully convey. This is a recommendation for inclusive implementation, not a claim that every community has the same internal arrangements or that the regulations prescribe these exact categories of participation.

The Constitutional Court's discussion in paragraph [3.13.8] stresses that customary forest boundaries cannot be determined unilaterally without regard to affected interests (Constitutional Court, 2013). For example, a hypothetical map may show a boundary accepted by the applicant community but disputed by a neighbour. The verification record should distinguish agreed segments from contested ones, identify the competing explanations, and make the basis of any subsequent assessment available to those concerned. Technical mapping should make the dispute more intelligible, rather than turn an unresolved claim into an apparently settled fact.

Tobroni's (2013) emphasis on strengthening customary rights gives this procedural concern its substantive direction. Verification should allow the people whose territory is under examination to explain the evidence on which they rely. Their involvement does not make every claim correct, but helps prevent decisions based on records detached from local knowledge. Authorities should distinguish a correctable documentary deficiency from a disagreement over the existence, extent, or holder of a right, and use the appropriate process for each.

Coordinated records and reasons that applicants can use

The proposed model begins with a shared administrative record, supported by a clear division of responsibility. An initial review identifies the applicable legal route and outstanding requirements. Verified material on community history and institutions can then be reused where it remains relevant, while the forestry authority undertakes the territorial and status inquiries assigned to it. Reuse is not automatic acceptance: the receiving authority may seek an update or additional evidence, but should explain the requirement and the reason the existing record does not answer it.

Returned applications require particular care. Regulation No. 9 of 2021 provides for returning applications with incomplete or incorrect requirements within three working days and gives applicants up to 180 days to complete them, with rejection if the requirements remain unmet (MoEF, 2021, art. 67(4)–(6)). In implementing this provision, a corrective notice should identify the missing document, the relevant legal provision, and the action needed. It should also explain whether the conditional field-verification route applies. A generic statement that a file is “non-compliant” gives a community little basis for deciding what to do next.

Technical assistance should help applicants meet the requirements without prejudging the outcome. Article 73 permits the Minister to facilitate identification and mapping where the necessary customary territory map is unavailable (MoEF, 2021). This provides a legal basis for assistance within the conditions of the regulation; it does not guarantee acceptance of the substantive claim. A coordinated process should make available support intelligible to applicants and avoid treating the purchase of private technical services as an unstated prerequisite.

Communication should show the current stage, the institution responsible, and the next action. Digital access may be useful, but the proposed model should also accommodate direct explanations and simple written notices. Information sharing between agencies should be limited to what each decision requires, particularly where records contain personal information or sensitive community knowledge. The shared file is an instrument for accountable administration, not a reason to make every item of community evidence publicly accessible.

Objections must also remain traceable. Regulation No. 52 of 2014 provides for objections to verification and validation and for challenges to regional recognition decisions before the State Administrative Court in accordance with the applicable rules (MoHA, 2014, arts. 7–8). This should not be presented as a universal forum for every private-right or forestry dispute.

A useful notice should identify the decision at issue and the relevant avenue for review, while avoiding assurances about jurisdiction that the nature of the dispute does not support.

Where corporate activities intersect with the claimed territory, administrative convenience should not determine the outcome. Rambe et al. (2024a) examine state-owned enterprises and resource governance in relation to economic interests, welfare, and environmental sustainability. That discussion provides context for identifying interests affected by customary forest recognition; it does not establish the merits of any community's claim. The proposed process should record relevant interests and explain how they were assessed, so that coordination remains accountable to communities as well as other affected parties.

Tenure certainty and responsibilities after determination

The practical value of recognition depends partly on whether the decision can be understood and used in subsequent dealings with public institutions. After determination, communities should receive a clear account of the recognised territory, applicable forest function, responsible authorities, and available management support. This recommendation follows from the relationship between status and management in Article 62 of Regulation No. 9 of 2021. It does not treat recognition as unrestricted permission to undertake any activity within the forest.

Corporate identity, territorial rights, and responsibility for wrongdoing likewise require separate analysis. Rambe et al. (2022) examine the legal position of subsidiaries within a mining-sector state-owned holding structure. Their work is relevant to identifying the legal entity involved when a business operates near or within a claimed customary territory; a relationship with a holding company should not replace examination of the actual entity and its authority. This is a contextual application of the study, rather than a rule that resolves customary forest claims.

Ismaidar et al. (2024) address corporate criminal sanctions for forest burning and environmental damage. Their subject illustrates why recognition and criminal responsibility should not be conflated. A customary forest determination does not, by itself, prove a corporation's criminal guilt. Conversely, a criminal proceeding cannot be assumed to resolve the legal recognition or boundaries of a customary territory. Coordination should preserve the distinct elements and procedures of each inquiry while ensuring that an unresolved recognition process is not treated as permission to disregard forest obligations.

The model's performance remains an empirical question. Future research could examine repeated documentary requests, the clarity of corrective notices, participation in boundary verification, and whether earlier decisions are usable at later stages. It should also assess whether faster processing restricts the opportunity of affected parties to be heard. The aim is a procedure whose requirements and reasons can be followed, rather than speed alone. Claims that the model improves livelihoods, reduces costs, or ends conflict would require evidence beyond the doctrinal materials analysed here.

Conclusion

Community recognition and customary forest status determination concern different legal objects and documentary requirements. The regional instrument must be assessed against the applicable forestry pathway, including the distinction between a specific recognition regulation and a procedural regulation implemented through a regional head's decision. A recognition decision under the Home Affairs procedure cannot be treated as sufficient in every forest-area setting. At the same time, the forestry regulation permits conditional field verification and indicative designation before the full recognition instrument is completed. That route must be distinguished from final customary forest determination.

Legal certainty can be supported through early identification of the applicable pathway, shared and attributable records, participatory boundary verification, and written reasons that

explain corrective steps. Coordination should preserve each authority's competence, the opportunity of affected parties to be heard, and the forest functions attached to the territory. For communities, the immediate value of the proposal lies in a more intelligible process and decisions they can use. Its effects on processing time, territorial conflict, and livelihoods remain to be tested empirically.

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