

The Legal Politics of Indigenous Peoples' Rights Recognition Following Constitutional Court Decision Number 35/PUU-X/2012 from a Human Rights Perspective

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Article Info

Article history:

Received Jun 1st, 2026

Revised Jun 5th, 2026

Accepted Jun 10th, 2026

Keyword:

Legal Politics; Indigenous Peoples; Constitutional Court Decision Number 35/PUU-X/2012; Human Rights; Constitutional Recognition.

ABSTRACT

The recognition of indigenous peoples' rights remains a crucial legal issue in Indonesia despite constitutional guarantees and Constitutional Court Decision Number 35/PUU-X/2012. This study aims to analyze the legal politics of indigenous peoples' rights recognition following the decision from a human rights perspective. The research employed normative legal research using statutory, conceptual, and case approaches. Legal materials were collected through library research and analyzed qualitatively through legal interpretation and legal reasoning. The findings reveal that Constitutional Court Decision Number 35/PUU-X/2012 strengthened the constitutional position of indigenous peoples by affirming that customary forests are no longer part of state forests. However, the implementation of indigenous rights recognition continues to face challenges, including administrative barriers, regulatory fragmentation, and the absence of comprehensive legislation. From a human rights perspective, these challenges indicate a gap between constitutional recognition and substantive rights protection. Therefore, legal harmonization and institutional reforms are necessary to ensure the effective realization of indigenous peoples' constitutional and human rights in Indonesia.



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INTRODUCTION

The recognition of indigenous peoples has become one of the most enduring legal and political issues in Indonesia's constitutional development. Indigenous communities have historically existed as social entities possessing their own customary institutions, territorial boundaries, and normative systems long before the establishment of the Indonesian state. The constitutional position of indigenous peoples is explicitly recognized in Article 18B paragraph (2) of the 1945 Constitution, which mandates state recognition and respect for indigenous communities and their traditional rights. In addition, Article 28I paragraph (3) of the Constitution affirms that cultural identities and the rights of traditional communities shall be respected in accordance with the development of civilization. These constitutional provisions demonstrate that the recognition of indigenous peoples is not merely a matter of administrative policy but constitutes a constitutional obligation closely linked to the protection of human rights.

Despite these constitutional guarantees, the legal recognition of indigenous peoples has remained problematic in practice. For decades, state policies concerning land tenure, forestry governance, and natural resource management were predominantly shaped by a centralized paradigm that prioritized state control over customary ownership. Such an approach frequently resulted in the marginalization of indigenous communities and weakened their access to ancestral territories that had long served as the foundation of their social, economic, and cultural life. Consequently, many indigenous communities experienced legal uncertainty regarding their customary lands and natural resources despite their historical attachment to those territories (Husni et al., 2022).

A fundamental shift in Indonesia's legal politics concerning indigenous peoples occurred following Constitutional Court Decision Number 35/PUU-X/2012. Through this landmark ruling, the Constitutional Court declared that customary forests should no longer be categorized as state forests but rather as forests belonging to indigenous peoples. This decision significantly altered the legal relationship between the state and indigenous communities by recognizing indigenous peoples as rights holders over customary forests located within their traditional territories. The Court's interpretation represented an important constitutional correction to previous regulatory frameworks that had subordinated indigenous rights under the doctrine of state control over forest resources (Tobroni, 2016).

The significance of Constitutional Court Decision Number 35/PUU-X/2012 extends beyond forestry governance. The decision reflects a broader transformation in Indonesia's legal politics regarding the recognition of indigenous peoples as constitutional subjects entitled to collective rights. By affirming the existence of customary forests as part of indigenous rights, the Court reinforced the constitutional mandate to protect indigenous communities and promoted a more inclusive understanding of justice in natural resource management. The decision therefore constitutes one of the most important judicial interventions in advancing indigenous rights within Indonesia's legal system (Kepel, 2020).

Nevertheless, the implementation of Constitutional Court Decision Number 35/PUU-X/2012 has revealed a substantial gap between constitutional recognition and practical realization. More than a decade after the ruling, many indigenous communities continue to encounter difficulties in obtaining formal recognition from the state. The recognition process often depends on administrative requirements imposed by regional governments, including verification procedures, territorial mapping, and the issuance of local regulations. These requirements have frequently become obstacles rather than facilitators of indigenous rights recognition, particularly for communities lacking adequate political representation or institutional support (Wibisana et al., 2024).

The persistence of these challenges indicates that the recognition of indigenous peoples remains heavily influenced by political and bureaucratic considerations. Although the Constitutional Court has affirmed indigenous rights at the constitutional level, the realization of those rights continues to depend on governmental discretion and regulatory mechanisms. This condition demonstrates that legal recognition is not solely a juridical issue but also a manifestation of legal politics, namely the manner in which state institutions formulate, interpret, and implement legal norms in accordance with broader political objectives. As a result, the effectiveness of indigenous rights protection cannot be assessed merely through constitutional provisions but must also be examined through the practical operation of laws and public policies.

From a human rights perspective, the recognition of indigenous peoples constitutes an essential component of the state's obligation to respect, protect, and fulfill fundamental rights. Indigenous rights encompass not only ownership and control over customary lands but also the preservation of cultural identity, traditional institutions, collective participation, and self-determination. Law Number 39 of 1999 concerning Human Rights recognizes the cultural identity and customary rights of indigenous communities as rights that deserve legal protection. Accordingly, any limitation on the recognition of indigenous peoples may potentially affect the fulfillment of broader human rights guarantees protected under national and international legal frameworks (Kepel, 2020).

Several previous studies have examined Constitutional Court Decision Number 35/PUU-X/2012 from different perspectives. Tobroni analyzed the strengthening of indigenous rights over customary forests following the Constitutional Court's ruling (Tobroni, 2016). Sukirno focused on the legal consequences and policy responses related to customary forest recognition after the decision (Sukirno, 2016). Gusliana and Hanifah examined the patterns of customary forest protection implemented after the Constitutional Court ruling (Gusliana & Hanifah, 2018). Husni and colleagues explored indigenous rights within the broader framework of agrarian legal politics in Indonesia (Husni et al., 2022). Wibisana and colleagues investigated legal recognition mechanisms affecting indigenous communities in the context of contemporary governance (Wibisana et al., 2024). Dhyta and Prasna highlighted regulatory inconsistencies concerning the criteria used to determine indigenous community status under Indonesian legislation (Dhyta & Prasna, 2025). Nababan and Anggusti further emphasized the continuing urgency of strengthening legal recognition mechanisms and accelerating the enactment of comprehensive legislation concerning indigenous peoples (Nababan & Anggusti, 2025).

Although previous studies have contributed significantly to understanding the legal implications of Constitutional Court Decision Number 35/PUU-X/2012, most of them focus on customary forests, agrarian law, or regulatory arrangements. Limited scholarly attention has been directed toward examining how the legal politics of indigenous rights recognition after the Constitutional Court decision affects the fulfillment of human rights guarantees. Consequently, an important gap remains regarding the relationship between constitutional recognition, legal implementation, and human rights protection in the post-decision period.

This study argues that the primary challenge following Constitutional Court Decision Number 35/PUU-X/2012 is no longer the absence of constitutional recognition but rather the persistence of legal and political barriers that impede the effective realization of indigenous peoples' rights. While constitutional and statutory instruments have formally acknowledged indigenous communities, the recognition process continues to be constrained by administrative requirements, sectoral regulatory conflicts, and political considerations that limit access to substantive rights. Such conditions reveal a discrepancy between normative recognition and actual human rights protection.

Based on this gap, the novelty of this study lies in its attempt to analyze indigenous rights recognition after Constitutional Court Decision Number 35/PUU-X/2012 through the combined perspectives of legal politics and human rights. Unlike previous studies that primarily focus on forestry governance or administrative recognition mechanisms, this article examines how post-decision legal policies reflect the state's commitment to protecting indigenous peoples as constitutional and human rights holders. Through this approach, the study seeks to provide a more comprehensive understanding of the relationship between constitutional recognition, legal implementation, and human rights fulfillment in contemporary Indonesia.

Therefore, this study aims to analyze the legal politics of indigenous peoples' rights recognition following Constitutional Court Decision Number 35/PUU-X/2012 from a human rights perspective. The study also seeks to identify the legal and political factors that continue to hinder the realization of indigenous rights despite constitutional recognition. The findings are expected to contribute to the development of legal scholarship concerning indigenous peoples, legal politics, and human rights while providing recommendations for strengthening the legal framework governing indigenous rights recognition in Indonesia.

RESEARCH METHODS

This study employed normative legal research to examine the legal politics of indigenous peoples' rights recognition following Constitutional Court Decision Number 35/PUU-X/2012 from a human rights perspective. The research applied a statute approach, a conceptual approach, and a case approach. The statute approach was used to analyze relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 5 of 1960 concerning Basic Agrarian Principles, Minister of Home Affairs Regulation Number 52 of 2014, and other regulations related to indigenous peoples. The conceptual approach was utilized to examine theories of legal politics, indigenous peoples' rights, and human rights protection, while the case approach focused on Constitutional Court Decision Number 35/PUU-X/2012 as the primary object of analysis.

The legal materials used in this study consisted of primary, secondary, and tertiary legal materials collected through library research. Primary legal materials included statutory regulations and Constitutional Court decisions, while secondary legal materials comprised scientific journal articles, books, and academic publications relevant to the research topic. The collected legal materials were analyzed qualitatively through legal interpretation and legal reasoning to assess the consistency between constitutional recognition, legal implementation, and human rights protection in the recognition of indigenous peoples' rights in Indonesia.

RESULTS AND DISCUSSION

1. The Legal Politics of Indigenous Peoples' Rights Recognition Before and After Constitutional Court Decision Number 35/PUU-X/2012

Legal politics reflects the direction and objectives pursued by the state through the formulation and implementation of legal norms. In the context of indigenous peoples, legal politics determines the extent to which the state recognizes, protects, and fulfills the rights of indigenous communities within

the national legal system. Since independence, the Indonesian legal framework has formally acknowledged the existence of indigenous peoples through various constitutional and statutory provisions. Nevertheless, such recognition has often been accompanied by conditions that place indigenous peoples under the authority of state institutions. As a result, indigenous rights have frequently been treated as derivative rights that depend on state recognition rather than inherent rights originating from the historical existence of indigenous communities themselves (Reumi, 2023).

Prior to Constitutional Court Decision Number 35/PUU-X/2012, the legal politics governing indigenous peoples was strongly influenced by the doctrine of state control over natural resources. Article 33 paragraph (3) of the 1945 Constitution provides that land, water, and natural resources shall be controlled by the state and utilized for the greatest prosperity of the people. In practice, this constitutional provision was often interpreted through a centralized approach that expanded state authority over forests, land, and natural resources. Such interpretation was institutionalized through Law Number 41 of 1999 concerning Forestry, which classified customary forests as part of state forests. Consequently, indigenous peoples were not recognized as holders of ownership rights over customary forests but merely as communities permitted to utilize forest resources under specific conditions (Arizona, 2011).

The classification of customary forests as state forests generated various legal and social consequences. Indigenous communities frequently encountered difficulties in defending their customary territories against state-led development projects, concession holders, and extractive industries operating under government permits. The legal position of indigenous peoples became increasingly vulnerable because customary rights could be limited or even disregarded whenever they were perceived as conflicting with state interests. This condition reflected a legal political orientation that prioritized state authority over the protection of indigenous peoples' collective rights (Siscawati, 2014).

The issuance of Constitutional Court Decision Number 35/PUU-X/2012 marked an important turning point in Indonesia's legal politics concerning indigenous peoples. The Constitutional Court declared that customary forests are not state forests but forests located within indigenous territories. Through this interpretation, the Court reaffirmed that indigenous peoples possess constitutional rights that cannot be subordinated entirely to state control. The decision therefore altered the legal construction that had previously positioned indigenous communities as passive beneficiaries of state policies and instead recognized them as constitutional rights holders with legitimate claims over customary forests (Tobroni, 2016).

From a legal politics perspective, Constitutional Court Decision Number 35/PUU-X/2012 demonstrates a shift from a state-centered approach toward a recognition-based approach. The decision reflects an effort to harmonize natural resource governance with constitutional guarantees concerning indigenous peoples. This transformation is also consistent with broader developments in democratic governance and human rights protection, which increasingly emphasize participation, recognition, and legal equality for marginalized groups (Husni et al., 2022).

However, the transformation of legal politics after Constitutional Court Decision Number 35/PUU-X/2012 remains incomplete. Although the decision significantly strengthened the constitutional position of indigenous peoples, formal recognition continues to depend on administrative mechanisms established by government institutions. Indigenous communities are generally required to undergo verification procedures and obtain recognition through regional regulations or regional head decrees before their rights can be fully acknowledged by the state. Consequently, constitutional recognition has not always translated into effective legal protection. This situation indicates that the post-MK 35 legal framework still contains elements of state control that limit the realization of indigenous peoples' rights, thereby creating a gap between normative recognition and practical implementation.

2. Constitutional Implications of Constitutional Court Decision Number 35/PUU-X/2012 for Indigenous Peoples' Rights Recognition

Constitutional Court Decision Number 35/PUU-X/2012 constitutes one of the most significant constitutional developments concerning the protection of indigenous peoples in Indonesia. The decision emerged from a judicial review of Law Number 41 of 1999 concerning Forestry, particularly provisions that categorized customary forests as part of state forests. In its legal reasoning, the Constitutional Court

emphasized that the constitutional recognition of indigenous peoples under Article 18B paragraph (2) of the 1945 Constitution must be interpreted as a guarantee of substantive rights rather than merely symbolic recognition. Accordingly, the Court held that customary forests cannot be classified as state forests because such classification contradicts the constitutional position of indigenous peoples as collective rights holders over their traditional territories (Constitutional Court of the Republic of Indonesia, 2013).

The constitutional significance of the decision lies in its reinterpretation of the state's authority over natural resources. Prior to the decision, state control was frequently understood as granting extensive power to determine the status, allocation, and utilization of forests without adequately recognizing indigenous peoples' customary rights. Through Constitutional Court Decision Number 35/PUU-X/2012, the Court clarified that the state's right to control natural resources must be exercised within constitutional limits and cannot negate the existence of rights held by indigenous peoples. Consequently, the doctrine of state control must be balanced with constitutional obligations to recognize and protect indigenous communities and their traditional territories (Arizona, 2011).

Furthermore, the decision strengthened the legal standing of indigenous peoples as constitutional subjects. Indigenous communities are no longer positioned merely as beneficiaries of government policies but are recognized as legal entities possessing constitutionally protected rights. This recognition is important because it establishes a stronger legal basis for indigenous peoples to claim protection over customary territories, natural resources, and cultural identities. The decision therefore reinforces the principle that indigenous rights are inherent rights derived from historical existence and constitutional recognition rather than rights granted solely through administrative discretion (Reumi, 2023).

Despite its progressive constitutional character, the implementation of Constitutional Court Decision Number 35/PUU-X/2012 has encountered significant challenges. Various sectoral regulations continue to require formal administrative recognition before indigenous communities can fully exercise their rights over customary forests and territories. In practice, this requirement has created disparities between communities that have obtained official recognition and those that have not. Consequently, the realization of constitutional rights often depends upon political and administrative processes at the local level rather than the direct application of constitutional guarantees (Nababan & Anggusti, 2025).

The persistence of these challenges demonstrates that constitutional recognition alone is insufficient to ensure effective protection of indigenous peoples' rights. While Constitutional Court Decision Number 35/PUU-X/2012 successfully transformed the constitutional framework governing customary forests, the effectiveness of that transformation remains dependent upon the harmonization of legislation, administrative policies, and institutional practices. Therefore, the decision should be understood not as the final stage of indigenous rights recognition but as an important constitutional foundation for broader legal reforms aimed at ensuring substantive protection of indigenous peoples in Indonesia.

3. Human Rights Analysis of Indigenous Peoples' Rights Recognition in Post-MK 35 Indonesia

The recognition of indigenous peoples is fundamentally a human rights issue because it concerns the protection of collective identity, cultural existence, traditional institutions, and customary territories that have been preserved across generations. In the Indonesian constitutional framework, the protection of indigenous peoples is closely linked to the broader human rights regime. Article 28I paragraph (3) of the 1945 Constitution explicitly recognizes cultural identities and the rights of traditional communities as rights that must be respected by the state. Similarly, Law Number 39 of 1999 concerning Human Rights affirms that the cultural identity and customary land rights of indigenous peoples are protected in accordance with legal developments and societal progress. These provisions indicate that indigenous peoples' rights are not merely administrative privileges but constitutionally protected human rights that impose obligations upon the state to ensure their realization.

From a human rights perspective, Constitutional Court Decision Number 35/PUU-X/2012 represents a significant advancement in strengthening the protection of indigenous peoples. By removing customary forests from the category of state forests, the Constitutional Court acknowledged that indigenous communities possess legitimate rights over their traditional territories and natural resources. This judicial interpretation contributes to the fulfillment of the principles of equality, justice, and non-discrimination by recognizing indigenous peoples as legal subjects entitled to constitutional

protection. The decision also reflects an effort to correct historical policies that frequently marginalized indigenous communities in the governance of natural resources (Tobroni, 2016).

However, the recognition framework established after Constitutional Court Decision Number 35/PUU-X/2012 continues to reveal significant human rights concerns. Although indigenous peoples are constitutionally recognized, the exercise of their rights remains largely dependent upon formal recognition by government institutions. In many cases, indigenous communities are required to satisfy complex administrative requirements before obtaining legal recognition of their customary territories. This condition creates unequal access to rights because communities that have not yet received official recognition often remain excluded from legal protection despite maintaining their customary institutions and territorial relationships. Such circumstances demonstrate that constitutional recognition has not always resulted in substantive human rights protection (Wibisana et al., 2024).

The dependence on administrative recognition also raises concerns regarding the principle of legal certainty and equal treatment before the law. Human rights protection requires that rights be recognized based on the existence of indigenous communities themselves rather than solely upon government approval. When recognition is conditioned upon lengthy bureaucratic procedures, indigenous peoples may experience delays in accessing rights that are constitutionally guaranteed. Consequently, the recognition process may inadvertently transform constitutional rights into privileges contingent upon administrative discretion rather than inherent rights attached to indigenous existence (Dhyta & Prasna, 2025).

Another important human rights issue concerns the absence of a comprehensive national legal framework specifically regulating indigenous peoples. Despite repeated discussions regarding the Indigenous Peoples Bill, Indonesia has yet to enact legislation that comprehensively governs the recognition, protection, and fulfillment of indigenous peoples' rights. This legislative gap contributes to regulatory fragmentation and inconsistent implementation across different regions. As a result, indigenous communities often face varying standards of recognition and protection depending on local political conditions and administrative capacities (Nababan & Anggusti, 2025).

From the perspective of state obligations, the protection of indigenous peoples requires more than formal acknowledgment of their existence. Human rights principles impose three interconnected obligations upon the state, namely the obligation to respect, the obligation to protect, and the obligation to fulfill rights. In the context of indigenous peoples, these obligations require the state not only to refrain from violating customary rights but also to prevent third-party interference and actively establish legal mechanisms that facilitate effective recognition and protection. Therefore, the effectiveness of post-MK 35 legal policies should be assessed based on their ability to guarantee substantive rights rather than merely providing symbolic constitutional recognition.

Accordingly, this study argues that Constitutional Court Decision Number 35/PUU-X/2012 has successfully strengthened the normative foundation for indigenous peoples' rights protection in Indonesia. Nevertheless, significant gaps remain between constitutional guarantees and practical implementation. The persistence of administrative barriers, regulatory fragmentation, and the absence of comprehensive legislation demonstrates that the realization of indigenous peoples' human rights remains an ongoing challenge. Consequently, strengthening indigenous rights protection requires not only constitutional recognition but also legal and institutional reforms capable of transforming normative guarantees into substantive human rights protection.

4. Challenges and Future Directions for Indigenous Peoples' Rights Protection in Indonesia

Despite the progressive constitutional developments brought about by Constitutional Court Decision Number 35/PUU-X/2012, the protection of indigenous peoples' rights in Indonesia continues to face substantial legal and institutional challenges. One of the most significant challenges is the persistence of regulatory fragmentation. Various laws and regulations governing forestry, agrarian affairs, environmental protection, regional governance, and natural resource management often adopt different criteria and procedures for recognizing indigenous peoples. This regulatory inconsistency has generated legal uncertainty and complicated the process through which indigenous communities seek formal recognition of their rights. Consequently, the implementation of indigenous rights protection remains uneven across different regions of Indonesia (Dhyta & Prasna, 2025).

Another challenge concerns the continuing dependence of indigenous rights recognition on administrative approval by state institutions. Although indigenous peoples are constitutionally

recognized, the realization of their rights frequently requires verification processes conducted by regional governments. This situation places indigenous communities in a vulnerable position because recognition may be influenced by political considerations, bureaucratic capacity, and local government priorities. As a result, communities possessing similar historical and cultural characteristics may experience different legal outcomes depending on the political context in which recognition is sought (Nababan & Anggusti, 2025).

The absence of comprehensive legislation specifically regulating indigenous peoples further contributes to the limited effectiveness of legal protection. While various sectoral regulations acknowledge the existence of indigenous communities, Indonesia still lacks a unified legal framework capable of integrating recognition procedures, territorial protection, dispute resolution mechanisms, and guarantees for the fulfillment of indigenous peoples' rights. This legislative gap has resulted in fragmented governance and inconsistent implementation among governmental institutions. Consequently, constitutional recognition has not yet been fully translated into an effective system of legal protection capable of addressing the diverse challenges faced by indigenous communities (Reumi, 2023).

From a legal politics perspective, these challenges indicate that Indonesia's approach toward indigenous peoples remains positioned between recognition and state control. On the one hand, constitutional provisions and Constitutional Court decisions demonstrate a commitment to recognizing indigenous peoples as rights holders. On the other hand, legal and administrative mechanisms continue to place substantial authority in the hands of state institutions to determine the validity, scope, and implementation of indigenous rights. This condition reflects an incomplete transformation of legal politics in which recognition has expanded normatively but remains constrained institutionally.

Therefore, future legal reforms should prioritize the establishment of a comprehensive and integrated framework for indigenous peoples' rights protection. Such reforms should include the enactment of legislation specifically governing indigenous peoples, the harmonization of sectoral regulations, the simplification of recognition procedures, and the strengthening of legal safeguards against violations of customary rights. In addition, greater participation of indigenous communities in policymaking processes is essential to ensure that legal reforms genuinely reflect their interests and aspirations. Through these measures, the recognition of indigenous peoples can evolve from a formal constitutional commitment into a substantive system of human rights protection.

Accordingly, the future direction of Indonesia's legal politics should not merely focus on recognizing the existence of indigenous peoples but also on guaranteeing the effective enjoyment of their constitutional and human rights. The success of Constitutional Court Decision Number 35/PUU-X/2012 should therefore be measured not only by its normative impact but also by its ability to produce tangible improvements in the protection of indigenous peoples and their customary territories. Only through such an approach can constitutional recognition be transformed into meaningful legal justice for indigenous communities throughout Indonesia.

CONCLUSION

This study demonstrates that Constitutional Court Decision Number 35/PUU-X/2012 has significantly transformed Indonesia's legal politics regarding the recognition of indigenous peoples by affirming that customary forests are no longer classified as state forests and by strengthening the constitutional position of indigenous peoples as rights holders. However, the implementation of this constitutional recognition remains constrained by administrative barriers, regulatory fragmentation, and the absence of comprehensive legislation specifically governing indigenous peoples. From a human rights perspective, these challenges indicate that the protection of indigenous peoples' rights has not yet fully progressed from normative recognition to substantive fulfillment. Therefore, strengthening indigenous peoples' rights protection requires the harmonization of legal regulations, the simplification of recognition mechanisms, and the establishment of a comprehensive legal framework capable of ensuring the effective realization of indigenous peoples' constitutional and human rights in Indonesia.

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