

Customary Rights, Legal Pluralism, and Natural Resource Governance in Papua

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Abstract

Papua, one of Indonesia's most resource-rich regions, continues to face a persistent paradox in which abundant natural resources have not translated into equitable welfare for indigenous communities. This condition is rooted in fragmented and sectoral governance regimes in mining and forestry, overlapping licensing practices, and the marginalization of customary rights, which have contributed to recurring agrarian conflicts. This study aims to analyze the disharmony between central and regional authority, examine the role of customary rights as reinforced by Constitutional Court Decision No. 35/PUU-X/2012, and formulate a hybrid national-customary co-management model. The research employs a normative doctrinal method using statutory, conceptual, jurisprudential, and limited comparative approaches. The study reveals that governance conflicts in Papua stem from a fundamental tension between state legality and customary legitimacy, intensified by centralized control and the weak operationalization of Special Autonomy. Although constitutional recognition of indigenous rights exists, its implementation remains largely symbolic and inadequately integrated into licensing and governance practices. The novelty of this study lies in integrating mining law, forestry law, Special Autonomy, and customary rights into a hybrid co-management framework that functions as an operational governance model rather than merely a conceptual proposal. This model promotes more equitable, participatory, and context-sensitive natural resource governance in Papua.

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Introduction

Papua represents one of Indonesia's most resource-endowed regions, particularly in mineral extraction and tropical forestry. Its vast reserves of strategic minerals and extensive forest ecosystems have positioned the region at the center of national development policies oriented toward resource exploitation. Yet, this abundance reveals a persistent paradox: the wealth generated from natural resources has not translated into equitable welfare for local populations, especially indigenous communities. For these communities, customary territories and forests are not merely economic assets but constitute the material and symbolic foundation of livelihood systems, cultural identity, and intergenerational continuity. This disjuncture underscores the need to reconceptualize natural resource governance beyond technocratic licensing regimes and toward a more critical understanding of power, law, and institutional design.

Natural resource governance in Papua must therefore be understood as an arena of contestation involving the state, corporate actors, and indigenous peoples. Mining operations and forest concessions frequently overlap with customary territories, where indigenous communities maintain deep socio-cultural and spiritual attachments to land. When such territories are incorporated into extractive regimes without meaningful participation or consent, conflicts emerge not only over land tenure but also over environmental degradation, livelihood displacement, and the erosion of social cohesion.¹ These dynamics illustrate that governance failures are not merely administrative inefficiencies but reflect deeper structural imbalances in legal authority and recognition.²

These challenges are exacerbated by the fragmented and sectoral nature of Indonesia's regulatory framework governing mining and forestry. Each sector operates under distinct legal regimes, institutional mandates, and policy logics, often without effective coordination. As a result, overlapping licensing practices are common, particularly where mining permits are issued within designated forest areas or where state claims intersect with customary land tenure systems. This fragmentation generates legal uncertainty for all stakeholders—indigenous communities, local governments, and private actors—while simultaneously reinforcing asymmetries of power. Although Papua's Special Autonomy framework normatively emphasizes decentralization and the protection of indigenous rights, in practice, strategic decision-making in natural resource sectors remains highly centralized, thereby limiting the substantive role of local governments and customary institutions.

The expanding body of scholarship on natural resource governance in Papua and comparable resource-rich regions reflects growing concern over these issues. However, existing scholarship predominantly examines indigenous rights, mining governance,

¹ Carolin Dieterle, "When 'Best Practice' Means Formalising: Foreign Large-Scale Land Investments on Customary Tenure in Uganda and Sierra Leone," *Review of International Political Economy* 32, no. 3 (2025): 847–70; Hariyanto et al., "Eco-Governance Fiqh and Urban Waste Management: A Critical Study of Environmental Policy in Yogyakarta," *Journal of Islamic Law* 7, no. 1 (2026): 247–74, <https://doi.org/10.24260/JIL.V7I1.5167>.

² Hananta Aldhanny Wibisono et al., "E-Government and Artificial Intelligence in Electronic Administration: A Normative Legal Analysis of Modern Government Digitalization," *Journal of Law and Digital Civilization* 1, no. 1 (2026): 1–17, <https://doi.org/10.66277/jldc.v1i1.20>.

forestry regulation, and legal pluralism as separate analytical domains, thereby overlooking the need for an integrated legal–institutional governance model specifically designed for Papua. A first cluster of studies focuses on the regulatory and socio-environmental impacts of mining. These works consistently demonstrate that existing mining regimes inadequately protect indigenous rights, particularly in relation to licensing, reclamation, and post-extraction responsibilities. While analytically robust, such studies tend to isolate mining law from broader governance structures, thereby overlooking its interaction with forestry regulation and customary tenure systems.³

A second cluster emphasizes sustainability and post-extraction governance, highlighting the importance of institutional capacity, stakeholder participation, and social legitimacy. Although this perspective advances important insights into long-term development outcomes, it is largely confined to the post-mining phase and does not address the structural conflicts arising from overlapping legal authorities between mining and forestry sectors. Nor does it sufficiently incorporate customary rights as a foundational element of governance design.⁴

A third strand of scholarship, often grounded in comparative and international contexts, examines conflicts between extractive industries and forest governance in indigenous territories. These studies reveal that centralization of policy authority and weak implementation of participatory principles—such as Free, Prior, and Informed Consent (FPIC)—contribute significantly to the marginalization of indigenous communities. While conceptually relevant, this body of work remains predominantly empirical and sector-specific, offering limited guidance on how to achieve cross-sectoral legal harmonization.⁵

A fourth cluster engages with the recognition of customary rights and the role of legal pluralism. These studies critique the dominance of formalistic state law and argue for the legitimacy of customary legal systems in governing land and natural resources. Constitutional developments, particularly the recognition of customary forests as distinct from state forests, have further strengthened the normative basis for indigenous rights. However, the literature also demonstrates that such recognition remains largely symbolic, as it has not been systematically integrated into sectoral regulatory

³ Mohammad Jamin et al., “The Impact of Indonesia’s Mining Industry Regulation on the Protection of Indigenous Peoples,” *Hasanudin Law Review* 9, no. 1 (2023): 88–105; Justan Riduan Siahaan et al., “Reframing Sustainability in Post-Mining Landscapes: A Foundational Framework for Institutional and Behavioral Integration in Indonesia,” *Sustainability* 17, no. 12 (2025): 1–37; Purabi Bose, “Equitable Land-Use Policy? Indigenous Peoples’ Resistance to Mining-Induced Deforestation,” *Land Use Policy* 129 (June 2023): 106648, <https://doi.org/10.1016/j.landusepol.2023.106648>.

⁴ Damai Siallagan, “Hukum Adat as Embodied Law: Assessing the Legal Regimes Governing Indigenous Land Rights in Indonesia,” *Canadian Law Review Research* 3 (2024): 1–28; Jamin et al., “The Impact of Indonesia’s Mining Industry Regulation on the Protection of Indigenous Peoples”; Siahaan et al., “Reframing Sustainability in Post-Mining Landscapes: A Foundational Framework for Institutional and Behavioral Integration in Indonesia.”

⁵ Anugu Amarender Reddy et al., “Perspectives on Forest Governance among the Indigenous Communities of India’s Eastern Ghats,” *Forest Policy and Economics* 169 (2024): 1–14; L. Mei, “Logging and Indigenous Peoples’ Well-Being: An Overview of the Relevant International Human Rights Jurisprudence,” *International Forestry Review* 25, no. 1 (2023): 17–27; Bose, “Equitable Land-Use Policy? Indigenous Peoples’ Resistance to Mining-Induced Deforestation.”

frameworks. As a result, legal pluralism is often treated as a normative aspiration rather than an operational governance model.⁶

Finally, a number of normative legal analyses highlight the problem of regulatory disharmony and call for legal harmonization. While these contributions underscore the structural nature of governance fragmentation, they rarely advance concrete institutional models capable of bridging sectoral divides or operationalizing indigenous participation within formal governance systems.⁷

Taken together, the existing literature reveals a critical scholarly gap: previous studies have largely discussed indigenous rights, mining governance, forestry regulation, and legal pluralism separately, without developing an integrated institutional framework capable of operationalizing customary rights within Papua's complex natural resource governance system.

This article addresses these limitations by advancing a more integrated and comparative approach to natural resource governance. It argues that existing frameworks of collaborative governance, co-management, and legal pluralism—while conceptually valuable—remain insufficiently adapted to contexts characterized by strong sectoral fragmentation and asymmetrical legal authority, such as Papua. In contrast to prior studies that examine these issues separately, this research develops an integrated legal-institutional model through a hybrid national-customary co-management framework that explicitly connects mining law, forestry law, Special Autonomy, and customary land rights within a unified governance design. The proposed model moves beyond normative recognition by articulating operational mechanisms for shared authority, participatory decision-making, and conflict resolution grounded in customary institutions.

Accordingly, this study seeks to: (1) analyze the disharmony between central and regional authority in mining and forestry governance in Papua within the framework of Special Autonomy; (2) examine the role of customary rights, including their constitutional recognition, as a normative foundation for strengthening the legal position of indigenous peoples; and (3) formulate a hybrid national-customary co-management model as an institutional strategy for achieving more just, participatory, and sustainable natural resource governance. By integrating legal analysis with governance design, this

⁶ Yance Arizona and Miriam Cohen, "The Recognition of Customary Land Rights at the Constitutional Court of Indonesia: A Critical Assessment of the Jurisprudence," in *Courts and Diversity* (Brill-Nijhoff, 2024); Ismail Rumadan and Ummu Salamah, "Legal Status of Indigenous Land Rights in Indonesia's Mining Investment Policy," *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)*, 2023, 900–911, https://doi.org/10.2991/978-2-38476-180-7_94; Silfi Iriyani et al., "Indigenous Custodianship and Timber Legality Assurance System: Challenges and Opportunities for Customary Forest Management in Indonesia," *Jurnal Sylva Lestari* 12, no. 3 (2024): 929–47; Yahya Ahmad Zein et al., "Indigenous, Diversity, and the Future of Human Rights in Regional Legal Systems," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (2025): 581–607.

⁷ I. Gusti Agung Mas Rwa Jayantiari, "The Harmonization of Law in Regulating the Rights of Customary Community over Natural Resources in Indonesia," *Journal of Law, Policy and Globalization* 76 (2018): 11–17; Jamin et al., "The Impact of Indonesia's Mining Industry Regulation on the Protection of Indigenous Peoples"; Rumadan and Salamah, "Legal Status of Indigenous Land Rights in Indonesia's Mining Investment Policy"; Siallagan, "Hukum Adat as Embodied Law: Assessing the Legal Regimes Governing Indigenous Land Rights in Indonesia."

article contributes to the broader discourse on resource governance in plural legal systems and offers a context-sensitive framework for addressing agrarian conflicts in Papua. The novelty of this article lies in its formulation of a hybrid national–customary co-management model that operationalizes constitutional recognition of customary rights within mining and forestry governance under Papua’s Special Autonomy framework.

Problem Statement

The principal problem addressed in this study is the absence of an institutional mechanism capable of connecting state licensing systems with customary authority in Papua’s mining and forestry governance. As a result, indigenous communities remain insufficiently involved in decision-making processes concerning customary territories, contributing to recurring disputes over land use, legal legitimacy, and resource control. Existing governance approaches have yet to provide an operational framework that effectively integrates customary institutions into formal regulatory systems. Therefore, this study examines how a hybrid national–customary co-management model may serve as an institutional strategy for strengthening participation, legal certainty, and governance legitimacy in Papua.

Methods

This study adopts a doctrinal legal research design using statutory, conceptual, jurisprudential, and selective comparative references to analyze natural resource governance in Papua. It is normative in nature, emphasizing the interpretation and systematization of legal norms regulating mining, forestry, and indigenous rights within Indonesia’s legal framework. Primary legal materials include the 1945 Constitution, Law No. 3 of 2020 on Mineral and Coal Mining, Law No. 41 of 1999 on Forestry, and Law No. 21 of 2001 on Special Autonomy for Papua, along with relevant implementing regulations. Jurisprudential analysis focuses on Constitutional Court Decision No. 35/PUU-X/2012 and related rulings concerning indigenous rights. Secondary sources consist of scholarly articles, books, and policy reports, while tertiary materials support conceptual clarification.

The analysis proceeds in three stages. First, statutory interpretation identifies inconsistencies and overlaps between mining and forestry regimes, particularly regarding central–regional authority. Second, conceptual analysis evaluates frameworks such as legal pluralism, co-management, and collaborative governance in the Papuan context. Third, jurisprudential analysis assesses constitutional interpretations on indigenous rights and their integration into sectoral laws. A limited comparative approach draws insights from the Philippines and Canada because both jurisdictions provide relevant legal experiences in recognizing Indigenous participation, shared authority, and community-based governance over natural resources. The Philippines is selected due to its institutional recognition of Indigenous land rights through participatory mechanisms under the Indigenous Peoples’ Rights Act (IPRA), while Canada offers instructive practices concerning co-management arrangements and constitutional recognition of Indigenous governance in resource administration. These jurisdictions serve as comparative references for identifying institutional principles adaptable to

Papua's Special Autonomy framework. The study remains doctrinal, relying on documented literature rather than fieldwork. Finally, a normative synthesis formulates a hybrid co-management model that integrates state and customary systems, aiming to harmonize regulations, strengthen indigenous rights, and promote participatory, conflict-sensitive resource governance in Papua.

Central–Regional Authority and Governance Disharmony

The disharmony between central and regional authority in mining and forestry governance in Papua can be analytically understood as structural and systemic, rather than merely a technical issue of inter-agency coordination. From a normative legal perspective, the mining sector is positioned as a strategic domain under strong central government control, as reflected in Law No. 3 of 2020 on Mineral and Coal Mining. The consolidation of authority at the national level in determining mining areas and issuing permits has consequently limited the substantive regulatory and supervisory roles of regional governments, including those operating under Special Autonomy.

In parallel, the forestry sector, governed by Law No. 41 of 1999, affirms state control through administrative forest designation mechanisms. Although mining and forestry regimes are constructed upon distinct sectoral logics, both reflect a shared orientation toward centralized control. Within this framework, when mining activities intersect with forest areas, legal resolution tends to prioritize administrative compliance—such as forest release or utilization permits—rather than engaging substantively with the customary rights of indigenous communities.

This structural configuration is illustrated in large-scale mining operations in Papua, such as those conducted by PT Freeport Indonesia in Mimika Regency, where concessions overlap with forest areas and customary territories. The legal analysis indicates that policymaking authority in both sectors remains predominantly centralized, while regional governments retain limited influence despite bearing direct ecological and social consequences.⁸ This suggests that the conflict of authority extends beyond administrative coordination to encompass broader questions of spatial governance and resource control.

Furthermore, the imbalance between central and regional authority may be interpreted as undermining the normative objectives of Papua's Special Autonomy framework.⁹ Although Special Autonomy formally mandates the protection and recognition of indigenous rights, its regulatory design does not appear to redistribute strategic authority in the natural resources sector in a meaningful way. As a result, it functions more as a declarative framework than as an operative mechanism for restructuring governance relations.

⁸ James T. Erbaugh, "Responsibilization and Social Forestry in Indonesia," *Forest Policy and Economics* 109 (2019): 1–9.

⁹ Aura Dian Marta et al., "Dilemma of Customary Land Policy in Indonesia," *Masyarakat, Kebudayaan Dan Politik* 32, no. 2 (2019): 134–43.

The doctrinal analysis also indicates that this centralized structure contributes to limitations in agrarian conflict resolution. In disputes involving mining and forestry, indigenous communities are positioned against state-issued permits with strong formal legality, while regional governments lack sufficient authority to renegotiate nationally determined policies.¹⁰ This legal configuration helps explain the persistence and recurrence of such conflicts, as underlying structural issues remain unaddressed.

These analytical conclusions are consistent with existing scholarship highlighting the limited effectiveness of legal frameworks in protecting indigenous rights within resource governance.¹¹ However, this study advances the discussion by situating the problem not only in normative deficiencies but also in the misalignment of central–regional authority, particularly within the context of Special Autonomy.¹² In this sense, Papua illustrates how asymmetrical decentralization, without corresponding authority redistribution, may intensify governance complexity.

From a conceptual standpoint, the persistence of this disharmony reflects a spatial control paradigm in which the state remains the dominant actor, while indigenous communities are positioned as objects of regulation.¹³ Such a paradigm appears insufficiently responsive to Papua’s socio-legal context, where customary systems play a central role in land and resource governance.

The jurisprudential significance of Constitutional Court Decision No. 35/PUU-X/2012 can be interpreted as introducing a normative shift by excluding customary forests from the category of state forests. However, doctrinal examination suggests that this principle has not been fully integrated into sectoral governance, particularly in licensing practices and conflict resolution processes. Customary rights continue to function as supplementary considerations rather than as foundational legal principles.

This condition creates a structural dilemma for regional governments. On one hand, they carry political and social responsibilities to protect indigenous communities; on the other, their authority remains constrained within a centralized legal framework. This tension indicates that the limitations of Special Autonomy are embedded not only in its implementation but also in its regulatory design.

Accordingly, the analysis suggests that harmonization between mining and forestry law in Papua cannot be achieved solely through sectoral alignment. Instead, it requires a reconfiguration of central–regional authority relations within the Special Autonomy

¹⁰ Ben White et al., “Agrarian Movements and Rural Populism in Indonesia,” *Journal of Agrarian Change* 23, no. 1 (2022): 68–84.

¹¹ Jamin et al., “The Impact of Indonesia’s Mining Industry Regulation on the Protection of Indigenous Peoples”; Siallagan, “Hukum Adat as Embodied Law: Assessing the Legal Regimes Governing Indigenous Land Rights in Indonesia”; Jayantiari, “The Harmonization of Law in Regulating the Rights of Customary Community over Natural Resources in Indonesia.”

¹² Hariyanto et al., “The Communal Democracy of Yogyakarta Special Region’s Government on the Islamic Law Eclecticism Perspective,” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (2023): 200–221, <https://doi.org/10.19105/AL-LHKAM.V18I1.7403>.

¹³ Hunggul Yudono Setio Hadi Nugroho et al., “A Chronicle of Indonesia’s Forest Management: A Long Step towards Environmental Sustainability and Community Welfare,” *Land* 12, no. 6 (2023): 1–62.

framework. Without such restructuring, regulatory disharmony is likely to persist and continue reproducing conflict.

Finally, this study argues that the operationalization of a hybrid national–customary co-management model is legally feasible within Indonesia’s existing legal framework through a phased institutional approach that combines Special Regional Regulations (Perdasus), regional implementing regulations (Perdasi), ministerial coordination instruments, and, in the long term, statutory refinement. In practical terms, the model may initially be institutionalized through Perdasus under Papua’s Special Autonomy framework to establish legal recognition of customary co-management bodies, followed by Perdasi and ministerial regulations to regulate administrative coordination in licensing, conflict resolution, and participatory oversight. In the longer term, statutory amendments to mining and forestry legislation may be required to ensure stronger harmonization between national licensing systems and customary governance mechanisms. Accordingly, legal harmonization should be understood not merely as doctrinal consistency between sectoral regulations, but as the institutional integration of customary authority into formal governance mechanisms capable of shaping licensing decisions, conflict mediation, and resource oversight in Papua.

Constitutional Recognition of Customary Rights after Decision No. 35/PUU-X/2012

Customary rights occupy a central position within the social and legal structures of Papuan indigenous communities. These rights function not merely as collective claims over land and forest resources, but as a normative system governing human relationships with living space. Within customary practice, they define territorial boundaries, regulate access and resource use, and structure the distribution of collective benefits. In this sense, customary rights can be understood as an established and adaptive regime of natural resource governance that predates the formation of state-based legal systems.

From a doctrinal perspective, the relationship between customary rights and state law reflects a structural imbalance. Mining and forestry regulations consistently position the state as the primary authority over land, forests, and mineral resources through zoning and licensing mechanisms.¹⁴ In the forestry sector, the administrative designation of state forest areas is frequently undertaken without adequate recognition of existing customary territories, thereby incorporating indigenous-managed lands into the formal domain of the state.¹⁵ A similar pattern can be observed in the mining sector, where licenses are issued within indigenous living spaces without substantive accommodation of customary rights.

Constitutional Court Decision No. 35/PUU-X/2012 carries significant normative implications. The decision affirms that customary forests are not part of state forests, but fall within the territorial authority of indigenous communities. Doctrinally, this ruling

¹⁴ Novita Alfiani et al., “Economic and Legal Perspectives on Mining Permits in Protected Forest Areas for Realizing Ecological Justice,” *Proceedings of the International Conference on Law, Economic & Good Governance*, 2024, 39–44.

¹⁵ Suparto Suparto et al., “The Concept of State Control over Forests and Forest Areas in Indonesia,” *Journal of Law, Environmental and Justice* 3, no. 2 (2025): 201–28.

represents a shift away from the state-centric paradigm of forest control and introduces constitutional recognition of indigenous communities as legal subjects with ancestral rights. Its implications extend beyond forestry law and may be interpreted as providing a normative basis for harmonizing sectoral regulations, including those governing mining activities.

However, legal analysis suggests that this constitutional principle has not been fully internalized within governance practices. In licensing processes, administrative legality continues to dominate, while customary rights are treated as secondary considerations. This doctrinal gap between constitutional recognition and administrative implementation contributes to the persistence of agrarian and natural resource conflicts, particularly where concessions overlap with customary territories lacking formal recognition.

This interpretation aligns with existing scholarship indicating the limited operationalization of Constitutional Court Decision No. 35/2012 at the policy and bureaucratic levels. The literature generally points to the continued dominance of state control through spatial designation and licensing.¹⁶ Building on this, the present analysis suggests that the issue is not solely attributable to bureaucratic resistance, but also to the absence of an institutional design capable of reconciling formal state legality with customary legitimacy.

Accordingly, the strengthening of customary rights following the Constitutional Court's decision may be understood as implying a broader paradigm shift in natural resource governance. Recognition of customary forests should not be confined to formal reclassification; rather, it necessitates a reorientation of decision-making processes. Within this framework, forests and mining areas can no longer be treated as purely administrative spaces, but must be approached as socio-legal domains where customary claims constitute a primary normative reference.

Customary land rights, in this context, present a potential point of convergence between the forestry and mining sectors. Previous efforts at legal harmonization have tended to emphasize inter-sectoral coordination and regulatory alignment, often without addressing the underlying conflicts of legitimacy.¹⁷ By contrast, a customary rights-based approach situates these rights as the normative foundation for reconciling competing claims over land and resources within a unified governance structure.¹⁸

¹⁶ Ahmad Dirwan et al., "Indigenous Community Perspectives on Forest Area Protection Governance Policy," *Journal of Sustainable Development and Regulatory Issues* 1, no. 2 (2023): 122–32; Sheila Kusuma Wardani Amnesti et al., "Enhancing Sustainable Development Efficiency Through a Single Smart City Platform: A Cost-Benefit Policy Perspective from Indonesia," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, May 26, 2025, 151–69, <https://doi.org/10.24090/volkgeist.v8i1.12584>.

¹⁷ Sumartono Sumartono and Riswadi Riswadi, "Harmonization of Mining and Environmental Regulations as an Effort to Strengthen Legal Protection for Local Populations in Indonesia," *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik* 3, no. 3 (2025): 187–94; Syahlan Syahlan, "Effective and Efficient Synchronization in Harmonization of Regulations Indonesia," *Journal of Human Rights, Culture and Legal System* 1, no. 1 (2021): 54–71.

¹⁸ Muslim Lobubun, *Hukum Pengelolaan Sumber Daya Alam: Studi Terhadap Sumber Daya Alam Tambang Dan Hutan Papua*, ed. Fajlurrahman Jurdi (Litera, 2019).

On this basis, the analysis develops a co-management model grounded in customary land rights. Co-management is conceptualized not merely as consultative participation, but as shared governance in which customary institutions are formally integrated into decision-making processes. This includes involvement in spatial planning, licensing, monitoring, and conflict resolution. Such an approach reflects an effort to doctrinally integrate state law and customary law within a hybrid institutional framework.

Without the institutionalization of customary rights within licensing and regulatory procedures, constitutional recognition risks remaining declaratory in nature. Where permits are issued without reference to customary territorial mapping or without meaningful consent mechanisms, legal disharmony is likely to persist. This suggests that strengthening customary rights requires a shift from symbolic acknowledgment to operational incorporation within governance structures.

In this regard, Constitutional Court Decision No. 35/PUU-X/2012, when interpreted in conjunction with the broader recognition of customary rights, provides a normative foundation for rethinking natural resource governance in Papua. The recognition of indigenous communities as legal subjects offers a basis for developing a more coherent and equitable framework, consistent with the realities of legal pluralism. The proposed hybrid co-management model, therefore, represents a doctrinally grounded approach aimed at aligning legal certainty with substantive justice in the governance of natural resources.

Operationalizing the Hybrid National–Customary Co-Management Model

Agrarian conflicts in Papua can be analytically understood as arising from the interaction of two competing regimes of legitimacy. The state operates through an administrative legal framework that prioritizes formal validity—permits, zoning, and sectoral authority—while indigenous communities rely on customary rights as the normative basis for governing living space. Where mining and forestry permits are issued without substantive recognition of customary territories, disputes extend beyond legality into social, cultural, and political domains.

From a doctrinal standpoint, reliance on formal state mechanisms alone appears insufficient in resolving such conflicts. Judicial and administrative processes tend to emphasize procedural legality, often without addressing the restoration of social relations or the recognition of customary authority.¹⁹ This analytical observation suggests that conflict resolution frameworks in Papua require a model capable of integrating legal certainty with social legitimacy.

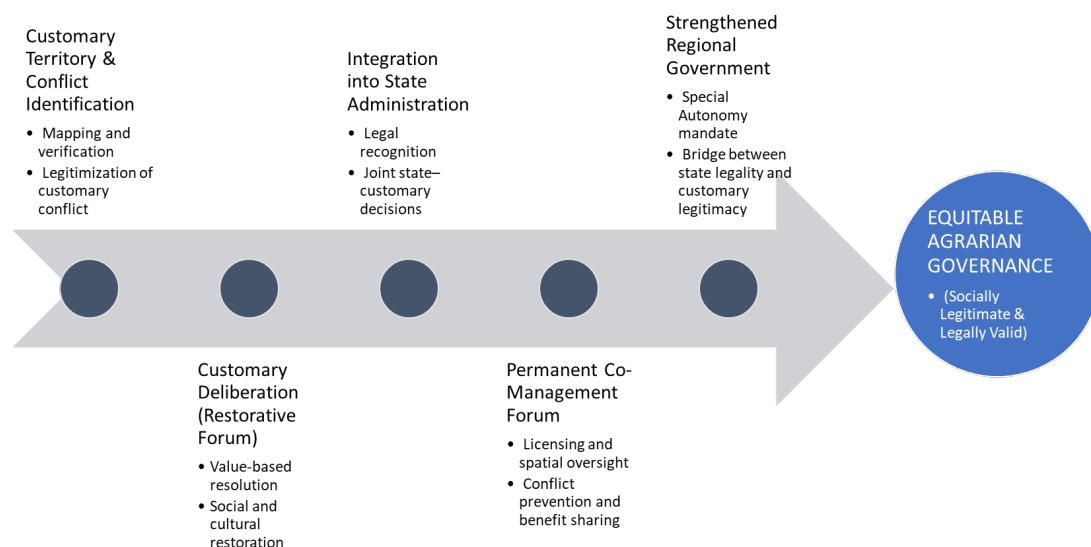
Against this background, a national–customary hybrid co-management model may be conceptualized as a governance framework that positions state institutions and customary authorities as co-equal actors in decision-making. Rather than symbolic participation, co-management here denotes shared authority, structured through formal

¹⁹ Muthoifin Muthoifin et al., “Toward Culturally Grounded Constitutional Justice: A Bibliometric Analysis of Ethical Principles, Javanese Customary Law, and Restorative Justice in Indonesia,” *Journal of Law and Digital Civilization* 1, no. 1 (2026): 71–95, <https://doi.org/10.66277/JLDC.V1I1.157>.

legal recognition and institutional design. The model integrates restorative customary mechanisms with binding state law, thereby aligning normative legitimacy with administrative enforceability.

To clarify its operational logic, Figure 1 illustrates the sequential stages of the model, showing how customary recognition, deliberative processes, and administrative integration interact within a unified governance framework. The figure should be read as a cyclical and iterative process rather than a strictly linear sequence.

Figure 1. *Stages of the Hybrid Co-Management Model for Resolving Agrarian Conflicts Based on Customary Territories in Papua*



Stage 1: Identification and Legal Recognition of Customary Territories

The model begins with participatory mapping and formal verification of customary territories. Doctrinal analysis suggests that many conflicts originate from the absence of prior recognition.²⁰ Accordingly, legal recognition—through regional regulations or administrative decrees—functions as a foundational step to establish equality between state and customary claims.

Stage 2: Institutionalization of Customary Deliberation (Musyawarah Adat)

Customary forums are positioned as primary venues for dispute resolution. Their role is

²⁰ Fierman Sjaifirial Agustus et al., “Strengthening the Papua Steering Committee Strategy: Reducing Instability for Accelerated Development in Papua, Indonesia,” *Social Sciences and Humanities Open* 11 (2025): 1–18; Herdis Herdiansyah, “Pengelolaan Konflik Sumber Daya Alam Terbaru Di Perbatasan Dalam Pendekatan Ekologi Politik,” *Jurnal Hubungan Internasional* 7, no. 2 (2019): 143–51; Hairan Hairan et al., “Sovereignty and Human Rights: Examining Sustainable Plantation Enterprises in Indonesia,” *Administrative and Environmental Law Review* 5, no. 1 (2024): 81–96.

not merely consultative but restorative, addressing relational and cultural dimensions of conflict. Within the model, these deliberations are granted formal standing through procedural recognition in regional legal instruments.²¹

Stage 3: Integration into the State Administrative System

Customary decisions are incorporated into the formal legal system through mechanisms such as registration, validation by regional authorities, or incorporation into licensing conditions. This stage ensures that customary outcomes acquire legal force and are not subordinated to administrative permits.

Stage 4: Resolution of Normative Conflicts Between Customary Decisions and State Permits

A critical institutional component—previously underdeveloped—is the establishment of a legal mechanism to resolve conflicts between customary rulings and existing permits. This may take the form of administrative review procedures requiring permit adjustment based on customary recognition; mandatory mediation facilitated by regional authorities; or judicial review pathways that recognize customary evidence and decisions as legally relevant. This stage ensures that co-management does not result in parallel systems, but in an integrated hierarchy of norms.

Stage 5: Strengthening the Role of Regional Government under Special Autonomy

Regional governments function as intermediaries between central authority and customary institutions. Within Papua's Special Autonomy framework, their authority can be expanded through Provincial Special Autonomy Regulations (Perdatus) to validate customary territories; formalize co-management procedures; and supervise integration between customary decisions and sectoral licensing. This repositioning transforms regional governments from administrative executors into active governance actors.

Stage 6: Establishment of a Permanent Co-Management Forum

The final stage involves creating a standing institutional forum at the provincial or regency level. This forum should include representatives from regional government, customary institutions, and relevant sectoral agencies. Its functions include conflict resolution, monitoring of permits, and preventive governance. Legally, such a body may be established through Perdatus, supported by delegated national regulations to ensure vertical harmonization.

1. Legal-Institutional Architecture of the Model

To ensure the model is operational rather than aspirational, its implementation requires a clearly defined legal framework:

²¹ Charles Roche et al., "Unseen Existences: Stories of Life from Venembeli, Papua New Guinea," *The Extractive Industries and Society* 8, no. 3 (2021): 1–14.

- a) **Source of Authority**
Customary institutions derive formal authority through constitutional recognition (Article 18B(2) of the 1945 Constitution) and its operationalization via regional regulations.
- b) **Legal Instruments**
Implementation of the model is most realistically initiated through Provincial Special Autonomy Regulations (Perdatus) as the principal legal instrument, given Papua's asymmetric decentralization framework. Perdatus may subsequently be supported by delegated ministerial regulations in the mining and forestry sectors to standardize customary verification within licensing procedures, while long-term institutionalization may require selective statutory amendments to harmonize sectoral laws with co-management principles.
- c) **Conflict Resolution Mechanism**
Conflicts between customary decisions and state permits are resolved through layered mechanisms: administrative review → mediated settlement → judicial oversight.
- d) **Institutional Host**
The permanent forum is housed at the provincial level, with regency-level branches to ensure proximity to local conflicts.
- e) **Requirement for Legal Reform**
While the model can begin through delegated and regional regulations, partial statutory refinement—particularly in mining and forestry laws—may be necessary to fully institutionalize co-management principles.

2. Regulatory Pathway for Implementation

The operationalization of this model can be staged through a multi-level regulatory approach:

Table 1. *Implementation Framework of the Hybrid Co-Management Model*

Stage of Implementation	Legal Instrument Needed	Responsible Institution	Expected Output
Short-Term (Regulatory Adaptation)	Ministerial Regulations; Regional Administrative Guidelines	Ministry of Energy and Mineral Resources, Ministry of Forestry, Papua Provincial Government	Integration of customary territorial verification into licensing procedures

Medium-Term (Institutionalization)	Provincial Special Autonomy Regulations (Perdatus)	Papua Provincial Government; Regional House of Representatives; Customary Institutions	Establishment of co- management forums and formal dispute resolution mechanisms
Long-Term (Statutory Harmonization)	Amendment/refinement of Mining and Forestry Laws	National Legislature (DPR RI); Central Government	Formal recognition of co- management principles and indigenous governance authority within sectoral law

Source: Data processed by the author

From a doctrinal perspective, agrarian conflicts in Papua cannot be adequately addressed through sectoral harmonization alone. They reflect deeper tensions between state legality and customary legitimacy.²² The hybrid co-management model provides a structured mechanism for reconciling these dimensions by embedding customary authority within the formal legal system. In this formulation, Constitutional Court Decision No. 35/PUU-X/2012 serves as a normative foundation, requiring the state to recognize customary territories prior to licensing. The proposed model translates this constitutional principle into an institutional framework capable of producing legally binding and socially legitimate outcomes. Accordingly, legal harmonization in Papua should be understood not merely as statutory alignment, but as a staged institutional restructuring process in which customary authority is progressively integrated into licensing, dispute resolution, and resource governance through legally enforceable mechanisms. Through this approach, natural resource governance in Papua may evolve toward a more participatory, equitable, and context-sensitive system that reflects the realities of legal pluralism.

Conclusion

This study demonstrates that agrarian conflicts in Papua are rooted not only in overlapping legal authority between mining and forestry governance, but also in an unresolved tension between state legality and customary legitimacy. Although Constitutional Court Decision No. 35/PUU-X/2012 strengthened the normative recognition of indigenous rights, its implementation remains insufficiently integrated into licensing systems and natural resource governance practices. In response, this study proposes a hybrid national–customary co-management model that institutionalizes shared authority, participatory decision-making, and the formal integration of customary

²² Achmad Cholidin et al., “Constitutional Court as Mediator: A Models and Solutions to Armed Conflict and The Rule of Law in Papua, Indonesia,” *Russian Law Journal* 11, no. 3 (2025): 1151–64.

institutions into governance processes under Papua's Special Autonomy framework.

Theoretically, the study contributes to legal pluralism scholarship by advancing a governance design that connects constitutional recognition with institutional implementation. Practically, it provides a policy-oriented framework for reducing agrarian conflict and improving governance legitimacy in Papua. However, because this research adopts a normative doctrinal approach, future studies should assess the feasibility of implementation through empirical socio-legal research and regional pilot projects.

Policy efforts should prioritize the formulation of Provincial Special Autonomy Regulations (Perdasus) concerning customary territory recognition, co-management procedures, and customary participation in licensing and dispute resolution mechanisms. Ultimately, this article's principal contribution lies in transforming legal pluralism from symbolic recognition into an institutionalized governance mechanism capable of strengthening participatory and legally coherent natural resource governance in Papua.

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