

# Navigating Legal Pluralism in the Conflict Between Waqf and Customary Land in Indonesia

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## Abstract

**Introduction:** The dualism of land law in Indonesia (positive law, Islamic law, customary law) that causes conflicts, especially between waqf land and customary heritage land.

**Purposes of the Research:** Analyze the roots of conflicts, implications for legal certainty, and find integrative solutions.

**Methods of the Research:** The research uses a normative legal method with a descriptive-analytical approach through a literature study of laws and regulations, doctrines, and scientific literature related to agrarian law, waqf, and customary law community rights.

**Results of the Research:** The results of the study show that disputes generally originate from differences in the concept of land ownership, where waqf law places land as an individual right that can be waqf for religious and social purposes, while customary law views land as a communal asset that has historical, cultural, and spiritual value so that any change in status must obtain the approval of all parties who are entitled to it. This paradigm difference causes the administrative recognition of the state to not always be in line with the social legitimacy that lives in indigenous peoples, thus giving rise to legal uncertainty and prolonged conflicts. This research emphasizes the importance of harmonizing agrarian law, Islamic law, and customary law through strengthening land status verification, optimizing waqf administration, involving customary institutions in the decision-making process, and increasing coordination between agencies. This approach is expected to be able to realize legal certainty that is not only formal, but also reflects substantive justice and maintains social harmony in the settlement of land disputes in Indonesia.

**Keywords:** Dualism of land Ownership; Waqf and Customary Heritage; Agrarian Disputes Based on Traditional Values.

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## INTRODUCTION

Land plays an important role in the lives of Indonesian people, not only as an economic resource and refuge, but also as a cultural and spiritual identity. Land is an asset of the Indonesian nation and serves as the basic capital for development towards a just and prosperous society.<sup>1</sup> Therefore, its utilization must be based on principles that grow and develop in society. In pluralistic Indonesia, the land ownership system is not only subject to state law, but also influenced by a long-rooted customary law system. The existence of customary law as part of the national legal system is recognized by Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects the unity of customary law communities and their customary rights as long as they are alive and in

<sup>1</sup> A Harris, F. Y Sitepu, and S. L Andriati, "Juridical Analysis of the Dualism of Building Use Rights Ownership on Management Rights as Assets of the Medan City Government (Land Disputes in Medan Petisah District)," *De Lega Lata: Journal of Law* 6, no. 2 (2021): 339-51, <https://doi.org/https://doi.org/10.30596/dll.v6i2.5965>.

accordance with the development of society. However, in practice, this recognition often faces serious challenges, especially when faced with a national legal system that tends to be formalistic and centralistic.

One concrete form of this tension is the emergence of agrarian conflicts triggered by dualism of land ownership, namely conflicts between land that is claimed as private property under customary inheritance law, and land that has been donated for religious or social purposes under Islamic law. This conflict usually occurs due to differences in the interpretation of the status of land which is inherited property that can be distributed to heirs according to customary provisions, or has changed its status to waqf land that can no longer be inherited or transferred. The issue of waqf in Indonesia has been regulated in positive laws, namely Law Number 41 of 2004 concerning Waqf, Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, Government Regulation Number 28 of 1977 concerning Waqf of State Property, and Law Number 5 of 1960 concerning Basic Agrarian Provisions. The issue of state-owned waqf is closely related to social issues and normatively, the provisions for realizing waqf are manifested in the form of normative laws that apply in society without reducing the Islamic values contained in the waqf law itself.<sup>2</sup> The problem becomes more complex when there is no strong administrative evidence regarding the waqf deed, or when the waqf is given orally in accordance with local tradition, but is then opposed by the heirs who have inheritance documents or historical claims to the land. Waqf only continues, without any real intervention, either in terms of providing inspiration or managing it. The impact can be felt until now, namely the deviation of waqf management from its true purpose. In addition, due to the lack of registration, many waqf objects are overlooked due to unclear data, and waqf is included in the trading cycle.<sup>3</sup>

Legal disputes over land ownership like this not only create legal confusion but also have the potential to trigger social tensions in the community. In many cases, the settlement of such agrarian disputes requires a deep understanding of traditional values, customary norms, and waqf principles applicable in local communities. This suggests that legal resolutions cannot rely solely on formal-juridical approaches but also need to accommodate the sociological and anthropological aspects underlying people's differing views on land. In addition to being regulated by positive Indonesian law, the provisions regarding waqf are also explained in Islamic jurisprudence (*fiqh*). Scholars of Islamic thought, with the exception of the Maliki school, argue that waqf cannot be realized unless the donor intends to donate the property forever and continuously. Therefore, waqf is referred to as *jariyah alms* (*sustainable charity*). To ensure legal certainty and avoid future disputes, the registration of waqf assets is essential. This ensures a safer legal status of waqf and provides protection for all parties involved.<sup>4</sup>

This is where it is important to further examine agrarian disputes based on traditional values, particularly in the context of conflicts between waqf land and customary heritage. In some indigenous communities in Indonesia, land is often considered a sacred ancestral heritage that cannot be bought or sold. However, when a traditional leader or landowner

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<sup>2</sup> Z Fatahillah, "Perlindungan Hukum Tanah Wakaf Yang Tidak Memiliki Sertifikat (Studi Terhadap Putusan Wakaf Di Mahkamah Syar'iyah Aceh)," *Kalam: Jurnal Agama Dan Sosial Humaniora* 7, no. 1 (2019): 1-20.

<sup>3</sup> E Febriansyah, "Peranan Persyarikatan Muhammadiyah Sebagai Nazhir Dalam Pengelolaan Tanah Wakaf Di Yogyakarta Menurut Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf (The Role Of Muhammadiyah Corporation As The Nazhir (The Waqaf Organizer) In Managing Waqaf's Land In Yog," 2008.

<sup>4</sup> M. J Mughniyah, *Fiqh Lima Mazhab: Ja'fari, Hanafi, Maliki, Syafi'i, Hambali*. Jakarta: Lentera, 2002.

bequeaths land without involving all heirs or without clear written documentation, the legal issue arises as to whether the waqf is valid and legally binding, or can it be revoked for violating customary inheritance principles that guarantee the rights of all heirs? This situation illustrates the legal vacuum, or at least lack of synchronization, between customary law, Islamic law, and state law. All three operate in intersecting spaces, but not always harmoniously. As a result, dispute resolution practices are often case-specific and depend on the understanding and policies of law enforcement officers in the field.

The dualism of land law that brings together customary law, Islamic law, and national law ultimately not only raises the question of who has land rights, but also has a direct impact on legal certainty and social harmony in society. Differences in the legal basis used by each party often give rise to inconsistent decisions, prolong the dispute resolution process, and create uncertainty regarding the legal status of a piece of land.<sup>5</sup> On the other hand, prolonged disputes have the potential to damage family relationships, trigger horizontal conflicts, and even reduce public trust in law enforcement agencies. This condition shows that legal certainty is not enough to be realized through the formal application of laws and regulations, but must also consider the social, cultural, and religious values that live in the community as part of the living law.

On this basis, an approach is needed that is able to integrate the various legal systems that apply without eliminating their respective characteristics. Integrative solutions can be realized through harmonization between customary law, Islamic law, and national law by placing dialogue, deliberation, and recognition of the rights of indigenous peoples as part of the dispute resolution mechanism. Strengthening land administration, recording and certification of waqf land as a whole, as well as the involvement of traditional leaders, religious leaders, the Indonesian Waqf Agency, and the government in the dispute resolution process are also strategic steps to prevent conflicts in the future. Thus, dispute resolution not only produces normative legal certainty, but is also able to maintain substantive justice, protect traditional values that are still alive in society, and create sustainable social harmony.

## METHODS OF THE RESEARCH

This research uses a descriptive-analytical method, which is a method that aims to systematically describe various facts, concepts, and legal provisions related to land disputes, especially regarding customary land and waqf land, then analyze them in depth based on laws and regulations and applicable legal principles.<sup>6</sup> The implementation of the descriptive method is carried out by identifying various forms of legal problems that arise in land management and utilization practices, including factors that cause conflicts of authority and inconsistencies between positive legal norms and practices in the field. Furthermore, the analysis is carried out by examining the relationship between the legal facts and the applicable legal provisions so that an understanding of the form of legal protection, legal certainty, and resolution of the problem being studied can be obtained. The research approach used is normative legal research, which is research that focuses on the study of legal norms contained in laws and regulations, doctrines, and legal principles that are

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<sup>5</sup> Tpw Sirait, "Penerapan Model Mediasi Dalam Penyelesaian Sengketa Tanah Secara Non-Litigasi Di Pengadilan Negeri Sidoarjo," *Jurnal Media Akademik (Jma)* 4, no. 1 (2026): 2–22, <https://doi.org/https://doi.org/10.62281/bqd8rp84>.

<sup>6</sup> U Umar, T Hadi, and A Hanafi, "Analisis Yuridis Terhadap Sengketa Tanah Adat Dalam Perspektif Hukum Agraria Nasional," *Catatan Hukum* 1, no. 2 (2025): 53–58, <https://doi.org/https://doi.org/10.70716/legalnote.v1i2.107>.

relevant to the object of research. The implementation of the normative approach is carried out through a comprehensive review of various regulations that regulate land, customary land, waqf land, and the authority of customary village governments in managing customary lands. In addition, this study also compares the relationship between regulations to find the suitability and potential disharmony of norms that affect the management of customary lands.<sup>7</sup> Through this approach, the research is directed to identify the legal basis that is the basis for customary village governments to exercise their authority while evaluating the extent to which these arrangements are able to provide certainty, justice, and legal protection for interested parties. The legal materials used consist of primary legal materials and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, laws, government regulations, ministerial regulations, as well as regional regulations and customary village regulations related to the object of research. The secondary legal materials are in the form of scientific books, journal articles, results of previous research, expert opinions, and other relevant literature to strengthen the analysis. The collection of legal materials is carried out through literature studies by tracing various legal sources that have relevance to research problems. All legal materials that have been obtained are then analyzed qualitatively through the process of interpretation, classification, and legal reasoning to produce systematic arguments and obtain conclusions that are able to answer the formulation of research problems comprehensively.

## RESULTS AND DISCUSSION

### A. Dualism of Land Ownership between Waqf and Customary Heritage

Since the enactment of Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles, the regulation of land rights in Indonesia has been directed at the creation of legal certainty through the national agrarian legal system that continues to recognize the existence of customary rights of customary law communities as long as they are alive and in accordance with the development of society. On the other hand, the regulation regarding waqf continues to develop, starting from Government Regulation Number 28 of 1977 concerning Waqf of Owned Land to the birth of Law Number 41 of 2004 concerning Waqf which expands the scope of waqf objects and strengthens the institution of waqf management. One of the important updates in the law is the addition of the form of nazhir in the form of organizations other than individual nazhir and legal entities, as well as limiting the remuneration for nazhir to a maximum of 10% of the net proceeds of the management and development of waqf property.<sup>8</sup> This change in regulation shows that there are efforts by the state to improve the professionalism of waqf management while providing legal certainty for waqf assets so that they can be used optimally for the benefit of worship and community welfare.

However, the development of these regulations has not been able to fully overcome the problems that arise due to the meeting of two legal systems that coexist in Indonesia, namely state law and customary law. In practice, conflicts often arise when the object of waqf in the

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<sup>7</sup> KVG Putri and S Akhmaddhian, "Harmonization of National Regulations in Land Management and Utilization in the Perspective of Legal System Theory," *Logic: Journal of Research at the University of Kuningan* 16, no. 02 (2025): 197–206, <https://doi.org/https://doi.org/10.25134/logika.v16i02.3338>.

<sup>8</sup> E Febriansyah, "The Role of Muhammadiyah as a Nazhir in the Management of Waqf Land in Yogyakarta According to Law No. 41 of 2004 concerning Waqf (The Role of Muhammadiyah Company as a Nazhir (Waqaf Operator) in the Management of Waqf Land in Yogy," 2008, <https://eprints.undip.ac.id/17416>.

form of land is still related to the communal customary ownership system. Islamic law provides space for a person to waqf the property he owns as a form of worship, while in customary law, especially in communities that still uphold customary rights or communal rights, land is not always seen as the property of individuals who are free to transfer. Land is understood as the common property of a large family or indigenous people that is inherited from generation to generation, so any action that changes the status of land must obtain the consent of all parties who have a genealogical or social relationship to the land.

The problem becomes even more complex when one of the heirs considers himself as the sole owner of a piece of inherited land, then endows the land without the consent of the other heirs. From the perspective of waqf law, this action can be considered valid if the waqf is considered to have qualified ownership rights.<sup>9</sup> However, from the perspective of customary law, this action is seen as violating the principle of family deliberation and ignoring the collective rights of the heirs. As a result, there is a dualism of assessment of the legal status of the same land. The state can recognize the land as waqf land because it has met administrative procedures, while indigenous peoples still consider the land to be part of an inheritance that cannot be unilaterally transferred. This difference in perspective is one of the main sources of agrarian disputes which are still found in various regions.

The conflict is basically not only influenced by differences in legal norms, but also by the weak synchronization between the land administration mechanism and the social reality of the community.<sup>10</sup> In many cases, the status of land ownership is not fully clear because there has been no formal distribution of inheritance, it has not been registered in the name of a particular party, or it is still in the joint control of the extended family. This condition creates a different interpretation space regarding who is actually authorized to act as a wakif. When the waqf process is still carried out without first settling the ownership status, the dispute is no longer limited to administrative issues, but develops into a social conflict involving families, traditional leaders, village governments, and religious institutions.

The issue is also related to the provisions of Article 36 of Law Number 41 of 2004 concerning Waqf which stipulates that changes in the status or designation of waqf property can only be carried out in certain circumstances in accordance with the public interest and must obtain permits in accordance with the provisions of laws and regulations, and be re-registered with the Authorized Official for Waqf Pledge Deed. However, in practice, these provisions are often not implemented optimally. Not a few nazhir only report changes in the function of waqf land to Authorized Official for Waqf Pledge Deed without continuing the registration process to the National Land Agency or the Indonesian Waqf Agency. This is not solely due to the desire to save time or avoid administrative procedures, but it is also influenced by a variety of other factors. First, there is still uncertainty about the initial status of the land that is waqf, especially if the land comes from customary heritage that does not have certainty of ownership. Second, there are economic pressures and development needs that encourage rapid changes in land use without going through a complete legal mechanism. Third, there are still differences in interpretation of administrative obligations between nazhir, village officials, and the community so that the re-registration process is

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<sup>9</sup> I Fitri, R Alauddin, and N Rungkel, "Legal Transition of Waqf Land Transfer to Property Rights in the Perspective of Islamic Law," *Al-Mashlahah Journal of Islamic Law and Social Institutions* 10, no. 001 (2023): 416–430, <https://doi.org/https://doi.org/10.30868/am.v10i001.3869>.

<sup>10</sup> AR Fahri, MF Ramadhan, and MA Ilham, "When Legal Certainty Stumbles Bureaucracy: A Study of the Implementation of Land Registration at the Office of the National Land Agency," *Legal Dialogy* 1, no. 2 (2026): 1–17, <https://103.133.36.88/index.php/legal/article/view/2441>.

often considered only as a formality that does not affect the religious validity of waqf. In fact, the neglect of the provisions of Article 36 actually increases the potential for legal disputes because there is no certainty about the status and function of waqf land after it has undergone changes.

If changes in the function of waqf land are carried out for the public interest, such as the construction of roads, dams, educational facilities, or other infrastructure, Law Number 41 of 2004 has stipulated that such changes can only be made through the exchange mechanism (*ruislag*) with the approval of the Minister of Religion and ensuring that the value and benefits of the replacement land are at least the same as the original waqf land. This provision aims to maintain the sustainability of the social function of waqf while protecting the interests of the community. However, if the land that has been the object of the exchange since the beginning is still disputed as customary heritage land, then the administrative settlement does not necessarily eliminate the conflict. The dispute continues because the root of the problem lies not only in the change in the function of the land, but in the absence of an agreement on who is legally authorized to endow the land.

Such conditions are found in many indigenous peoples in the Timor, Papua, and several areas in East Nusa Tenggara Province who still maintain a communal land ownership system. In such societies, land is not seen as an object that can be controlled individually, but rather as part of the identity of a tribe, clan, or clan that has historical, religious, and cultural value. Land is an ancestral heritage whose existence is maintained to ensure the sustainability of the next generation. Therefore, every decision regarding the use, transfer, or change of land status must be made through deliberation with tribal chiefs, traditional elders, and all family members who have a genealogical relationship to the land. Collective consent is the main condition that cannot be ignored because it concerns the common interest, not the interests of the individual.

As an illustration, customary land disputes that occurred in several areas of South Central Timor Regency<sup>11</sup>, and Kupang Regency show that unilateral decisions on land that are still clan land often trigger rejection from extended family members and customary institutions.<sup>12</sup> Similarly, in some regions of Papua, especially in communities that still uphold customary rights, the release or transfer of land without the consent of the owner of customary rights is often considered to have no legitimacy according to customary law even though it has obtained administrative recognition from the state. In similar conditions, it can happen if someone endows land that according to indigenous peoples is still part of customary land or common inherited land. Although administratively the land can be registered as waqf land if it meets the formal requirements, indigenous peoples still view the act as a violation of communal rights because it eliminates the collective relationship between the community and its ancestral land.

Thus, the root of the problem of land ownership dualism between waqf and customary heritage is not solely caused by differences in legal arrangements, but also by differences in paradigms regarding the meaning of land ownership. Waqf law rests on the concept of individual ownership which gives the owner the authority to transfer his rights for the sake

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<sup>11</sup> Mary Grace Megumi Maran, "The Effect of Settlement of Inherited Land Disputes through Mediation on Land Tenure Rights in Nifikiu Village, East Amanuban District, South Central Timor Regency," *Lex Generalis 6 Law Journal*, no. 6 (2025): 1-13, <https://doi.org/https://doi.org/10.56370/jhlg.v6i6.1384>.

<sup>12</sup> R Saija et al., "The Status of Ownership of Rights to Clan Customary Land in the Agrarian Reform Asset Arrangement Policy in Southeast Maluku Regency," *Sasi* 26, no. 1 (2020): 99-110, <https://doi.org/https://doi.org/10.47268/sasi.v26i1.246>.

of worship and public welfare. In contrast, customary law views land as part of a communal identity whose existence must be maintained through mutual consent. As long as the two paradigms have not been harmonized through a mechanism for verifying land status, involving indigenous peoples in the waqf process, and better coordination between the National Land Agency, the Indonesian Waqf Agency, Authorized Official for Waqf Pledge Deed, and customary institutions, the potential for disputes between waqf land and customary heritage land will remain a recurring problem in the practice of agrarian law in Indonesia.

## **B. Agrarian disputes based on traditional values and their implications for legal certainty**

The conflict between customary land and waqf land is not only a legal issue, but also a reflection of the tension between the value system that exists in society. This type of agrarian dispute arises not only from ignorance of the law but also from the conflicting values between customary norms and formal state law. Disputes arising from the transfer of rights to waqf land usually give rise to double claims, with one party holding a legally valid waqf certificate, while the other party bases its claim on customary legitimacy and collective inheritance rights. The orderly implementation of waqf in Indonesia has indeed improved, as evidenced by the large number of certified waqf land. However, until now, there are still many cases of waqf land disputes. The practice of waqf has not been fully orderly and efficient, resulting in many cases where waqf assets are not properly maintained, neglected, or transferred to third parties illegally.<sup>13</sup> Several court rulings in Indonesia show that judges are beginning to accommodate sociological and anthropological approaches in deciding customary-based agrarian cases. However, there are no standard guidelines on how to integrate indigenous values into the judicial process. As a result, inconsistencies in decisions often occur between regions, even between judges in the same jurisdiction. This undermines legal certainty and prolongs social conflicts at the grassroots level. According to research,<sup>14</sup> It shows that 70% of indigenous peoples prefer to resolve disputes through customary mechanisms because they are more trusted and relevant to local culture, although it often carries the risk of not getting legal recognition. On the other hand, Chang Hoon emphasized that the lack of formal legal recognition of customary decisions exacerbates conflicts, ultimately leading to social instability and weakening of community cohesion.<sup>15</sup>

Customary law is often the primary alternative for communities, but there has been little discussion about how the difference of views between customary law and formal law affects the implementation of dispute resolution.<sup>16</sup> In highlighting the success of customary law, it does not provide a comparison with the results achieved through a formal approach.<sup>17</sup> This is in line with Aasoglenam's thinking, noting the importance of formal recognition of customary law, but does not discuss the impact of conflicts that occur due to

<sup>13</sup> A. G Abdullah, *Introduction to the Compilation of Islamic Law in the Indonesian Legal System*. Jakarta: Gema Insani Press, 1994.

<sup>14</sup> B Pratiwi, P. F Soeparan, and W Wibisono, "The Role of Customary Law in Agrarian Dispute Resolution in Indonesia: An Empirical Study with Comparative Methods," *Hakim: Journal of Legal and Social Sciences* 2, no. 4 (2024): 807-22, <https://doi.org/https://doi.org/10.51903/hakim.v2i4.2187>.

<sup>15</sup> J Oh, C.H., Shin and S.H. Ho, "Conflicts between Mining Companies and Communities: The Institutional Environment and Conflict Resolution Approaches," *Business Ethics, Environment & Responsibility* 32, no. 2 (2023): 638-56, <https://doi.org/https://doi.org/10.1111/beer.12522>.

<sup>16</sup> C Lingaas, "Norwegian Customary Law and Domestic Law: Marriage Scenes (Mutually Complementary or Mutually Exclusive)?," *Law* 11, no. 9 (2022): 19, <https://doi.org/https://doi.org/10.3390/laws11020019>.

<sup>17</sup> U Wardi et al., "Comparative Analysis of Islamic Family Law and Customary Law in the Settlement of Inheritance Disputes in Indonesia," *Hakamain: Journal of Sharia and Legal Studies* 3, no. 1 (2024): 13-25, <https://doi.org/https://doi.org/10.57255/hakamain.v3i1.330>.

incompatibilities between customary and formal law.<sup>18</sup> According to Kurniawan, customary law identifies obstacles, but does not explore solutions to improve coordination between the two legal systems.<sup>19</sup> On the other hand, these results also reinforce the view that the lack of formal recognition of customary law decisions can be a major obstacle to comprehensive conflict resolution.<sup>20</sup> Resolving such disputes requires an integrative approach. On the one hand, the state needs to ensure that waqf is not used as a tool to avoid other people's inheritance rights, especially in the context of customs. On the other hand, indigenous peoples also need to be given space to voice their values in the formal legal process. The paradigm difference between customary and formal law can exacerbate conflicts if not managed properly. These tensions are often caused by national policies that fail to consider local contexts, triggering resistance from indigenous peoples who feel their rights are being ignored.<sup>21</sup> In addition, the lack of mechanisms that integrate customary law with formal law further exacerbates the situation, creating legal uncertainty for the parties involved. Customary-based restorative justice can be one of the solutions, namely by mediating conflicts through a deliberative approach involving indigenous leaders, religious scholars, and law enforcement officials. There is also a need for a reconstruction of agrarian law that is more responsive to the local context. The revision of the Basic Agrarian Law or the creation of special derivative regulations that regulate the relationship between waqf land and customary heritage is very important. These regulations must be able to bridge legal dualism to prevent overlap between religious, customary, and state legal norms. For example, a social verification mechanism must be passed before land can be endowed, if the land is known to be derived from customary heritage.

Legal education for grassroots communities must also be strengthened. Many agrarian conflicts are caused by a lack of public understanding of the legal status of their land, as well as a neglect of administrative procedures. Therefore, the state must be present not only as a law enforcer, but also as a facilitator of education and strengthening the legal capacity of the community. Realizing the importance of land for humans, as well as its status as a non-renewable natural resource, the government through various policies seeks to regulate the use, allocation, and utilization of land for the benefit of humanity in Indonesia.<sup>22</sup> To ensure that the positive impact of customary land recognition is realized, regular evaluation and monitoring of the implementation of customary land recognition is needed. This evaluation can be carried out by independent institutions or with the participation of indigenous peoples. By conducting regular evaluations, local governments can identify existing obstacles and challenges and develop more effective strategies to address these issues. Overall, the recognition of customary lands has significant potential to improve the welfare of indigenous peoples and support more inclusive and equitable agrarian

<sup>18</sup> T. A. Aasoglenang, S. Z. Bonye, and G. Y. Yiridomoh, "Framework for Building Synergies of the Traditional and Formal Political Adjudicatory Institutions in Conflict Resolution in North-Western Ghana," *Cogent Social Sciences* 9, no. 2 (2023): 2268974, <https://doi.org/https://doi.org/10.1080/23311886.2023.2268974>.

<sup>19</sup> K. F. B. Kurniawan et al., "Territorialization of Plantation Concessions: Customary Land Acquisition Process, Agrarian Fragmentation and Social Resistance," *Cogent Social Sciences* 10, no. 1 (2024): 2367259, <https://doi.org/https://doi.org/10.1080/23311886.2024.2367259>.

<sup>20</sup> B. U. Haq et al., "Dareemat: A Mechanism of Arbitration and Dispute Resolution among Pashtuns in Zhob, Pakistan," *Legal Pluralism and Critical Social Analysis* 55, no. 1 (2023): 97–116, <https://doi.org/https://doi.org/10.1080/27706869.2023.2188016>.

<sup>21</sup> K. F. B. Kurniawan et al., "Territorialization of Plantation Concessions: Customary Land Acquisition Process, Agrarian Fragmentation and Social Resistance," *Cogent Social Sciences* 10, no. 1 (2024): 2367259, <https://doi.org/https://doi.org/10.1080/23311886.2024.2367259>.

<sup>22</sup> Z. Malaka, "Land Ownership in the Concept of Indonesian Positive Law, Customary Law and Islamic Law," *Al-Qanun: Journal of Islamic Law Thought and Reform* 21, no. 1 (2018): 101–24, <https://doi.org/https://doi.org/10.15642/alqanun.2018.21.1.101-124>.

governance.<sup>23</sup> The debate on the legitimacy of waqf (waqf) on customary land cannot be answered clearly and concisely. Formal legality is not always the same as social legitimacy. Therefore, going forward, a more carefully designed synergy between customary law, Islamic law, and positive law is needed to ensure substantive justice for all stakeholders without sacrificing the noble values inherent in indigenous peoples.

## CONCLUSION

Dispute between waqf land and customary heritage land is a consequence of the existence of three coexisting legal regimes in Indonesia, namely state law, Islamic law, and customary law, which have not been fully integrated into one harmonious settlement system. Although Law Number 41 of 2004 concerning Waqf and Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles have provided a normative basis regarding land management and legal certainty of land rights, their implementation still faces various obstacles when the object of waqf comes from land that has a communal character based on customary law. Differences in views on the concept of land ownership are the main factors that give rise to conflicts, where waqf law is oriented towards the individual right of the owner to transfer his property for the sake of worship and the public welfare, while customary law places land as a collective heritage that has historical, social, cultural, and spiritual value so that any change in status must be based on mutual agreement. This condition has an impact on the emergence of legal uncertainty because the administrative recognition of the state is not always in line with the social legitimacy recognized by indigenous peoples. As a result, waqf land certification and the fulfillment of formal procedures have not been able to eliminate potential disputes if the status of land ownership before waqf is still disputed. This problem is further exacerbated by weak inter-institutional coordination, lack of optimal verification of land origin, low public understanding of legal procedures, and lack of mechanisms that effectively accommodate indigenous peoples' participation in the waqf process. Therefore, conflict resolution cannot rely only on a legal-formal approach, but requires a more comprehensive approach through the harmonization of agrarian law, customary law, and Islamic law. Strengthening the social verification mechanism before the implementation of waqf, the involvement of customary institutions in the decision-making process, optimizing coordination between the National Land Agency, the Indonesian Waqf Agency, Waqf Deed Making Officials, and local governments, along with strengthening legal education to the community, are important steps to realize legal certainty while maintaining substantive justice. Thus, the management of waqf land derived from customary heritage not only gains juridical legitimacy, but is also socially accepted by the community, so as to minimize agrarian conflicts and support the realization of fairer, inclusive, and more sustainable land governance.

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