



## Towards Inclusive Policy: Formal Recognition of Customary Law in the Determination of Village Boundaries Under the National Legal Framework in Indonesia

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**Abstract.** *Inclusive policies are a must in governance, especially at the village level that deals directly with indigenous communities. Formal recognition of customary law in the determination of village boundaries under the national legal framework is crucial to create agrarian justice and legal certainty; Its relevance focuses on the importance of local wisdom accommodation and the structure of indigenous peoples as legal subjects entitled to their territories; The final goal of this study is to formulate a model of harmonization of positive law and customary law for the determination of participatory and equitable village boundaries; The main legal basis includes the 1945 Constitution Article 18B Paragraph (2) and Law (UU) Number 6 of 2014 concerning Villages; and Regulation of the Minister of Home Affairs Number 45 of 2016 concerning Guidelines for the Determination and Affirmation of Village Boundaries. This research uses a normative juridical method with a legislative and conceptual approach; The conflict resolution offered is through a consensus deliberation mechanism facilitated by the local government while still upholding the rights of indigenous peoples.*

**Keywords:** *Customary Law; Inclusive Policy; Local Wisdom; National Legal Framework; Village Boundaries.*

### 1. BACKGROUND

Indonesia is an archipelagic country rich in diversity of ethnicities, cultures, and traditions, which is reflected in the existence of Customary Law Societies (MHA). Customary Law Societies have a social order, value system, and customary law that have lived for generations, including in terms of land management and ownership. In the context of government administration, the smallest area in Indonesia is a village or other name that is adapted to the rights of origin and local customs. The determination of village boundaries is a very important issue because it is directly related to government authority, resource allocation, public services, and the most basic is the recognition of the communal rights of Customary Law Communities.

Historically, efforts to standardize village administration have often ignored or even eliminated the entities and territories of Indigenous Peoples that existed long before the modern state was formed. This has caused various agrarian problems and prolonged territorial boundary conflicts. Land conflicts between villages and villages, villages with customary law communities, or villages/customary law communities with corporations are often rooted in ambiguity or injustice in the boundary determination process that is only based on national positive laws without recognizing the existence of *customary* or customary territories.

The 1945 Constitution (Constitution) Article 18B Paragraph (2) expressly recognizes and respects the units of customary law communities and their traditional rights as long as they are

alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia (NKRI). In addition, Law Number 6 of 2014 concerning Villages and its technical instructions in the Regulation of the Minister of Home Affairs Number 45 of 2016 concerning the determination and affirmation of village boundaries, provide a space for the recognition of rights of origin, including the right to territory, which should be the basis for determining village boundaries. However, the implementation of this recognition is often hampered by unclear derivative regulations, rigid bureaucracy, and lack of understanding by state officials of the substance of customary law itself.

Therefore, there is an urgent need to formulate more inclusive policies that are able to bridge the discrepancy between national positive law and customary law. Inclusive policies must ensure that the process of determining village boundaries is not just a drawing of lines on the map, but also a dialogical and participatory process that accommodates local wisdom in managing space and natural resources. The formal recognition of customary law in determining village boundaries is not only a legalistic issue, but also a prerequisite for the achievement of social justice, environmental conservation, and indigenous peoples' independence. This research is here to highlight the urgency of such formal recognition and its relevance to create a policy framework that is truly inclusive, sustainable, and respectful of the nation's cultural diversity.

## **2. RESEARCH METHODS**

The research method used in this study is normative legal research, which is research that focuses on the assessment of positive legal norms and legal principles relevant to the issue of determining village boundaries and the recognition of customary law communities. This research utilizes two main approaches, namely the statute approach by examining various regulations ranging from the 1945 Constitution, the Village Law, the Regional Government Law, to the Regulation of the Minister of Home Affairs Number 45 of 2016 concerning the Determination and Affirmation of Village Boundaries, as well as rules regarding the recognition of customary law communities. In addition, a conceptual approach is also used to explore the concepts of customary law, customary rights, inclusive policies, and local wisdom through legal literature, scientific journals, and other academic works.

The data sources in this study are entirely derived from secondary data, which include primary legal materials in the form of relevant laws and regulations; secondary legal materials such as books, scientific journals, previous research results, and related conference papers; and tertiary legal materials such as legal dictionaries and encyclopedias. All data are collected using

literature study techniques, so that researchers can obtain a comprehensive theoretical and juridical basis in analyzing the issues being studied.

The data that has been collected is then analyzed qualitatively through descriptive-analytical methods. The analysis process is carried out by interpreting and associating positive legal norms with customary law concepts, so that points of harmonization and potential disharmony between norms can be identified. Through this evaluative process, this research aims to formulate policy recommendations that are more inclusive and fair, especially in the context of setting village boundaries and recognizing the existence and rights of customary law communities.

### **3. RESULTS AND DISCUSSION**

Inclusive policy are to strengthen the capacity of communities that are essential to their role in advocating for reform and support policy integration through comprehensive access to more inclusive, impactful information and policy frameworks (Yenny Febrianty, 2025). There is also a need for efforts to improve the way in which community engagement is traditionally managed from an authoritarian, top-down approach towards a more bottom-up and inclusive process involving the views of marginalized and vulnerable groups (Mosurska, 2023). The transition to an inclusive and participatory policy system requires radical changes in all components of the policy system: from planning, drafting, discussion, ratification and promulgation and including participatory governance (Ruerd Ruben, 2023). In a study conducted, it was found that socialization strategies, technology utilization, inclusive education policies, and collaboration with various sectors including industry have a significant impact on the positive image of policymakers (Umi Rusilowati, 2023).

In some countries, especially in Donggo customary law, it is based on traditional practices and local wisdom of their ancestors who are believed to have noble values and truth. Incorporating customary law into positive law is very important because customary law can increase the existence of national law. make positive law more sensitive to the diversity of existing societies without discrimination. The application of customary law and its enforcement in rural communities is important and central to restoring a social image as the norm that controls and limits all rule violations (Rosdalina Bukido, 2022). In addition to the approach of national and international law from the perspective of human rights, it is essential to synergize the customary law approach to fulfil children's rights. For this reason, the role of the family, social media, and traditional elder figures is urgently needed to enforce the law (Anak Agung, 2022).

In *Transmissionales in causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem* reveals throughout the history of urban petitions, actions, and lawsuits filed by villagers for the restoration of their long-standing old village boundaries and rights (Ela Cosma, 2023). Because the historic village boundaries from medieval times, which are preserved to this day in the form of the rest, have a historical character due to their antiquity and must be protected as part of the cultural heritage (Anna Oliskiewicz-Krzywicka, 2021). One of the components of the rural landscape is the village boundaries. Together with other elements, they form a complex system of relationships and spaces that create the uniqueness of each landscape and become one with the local community. There are two main methods for depicting village boundaries: macro and micro-level methods. The macro-level method uses remote sensing data as the basis for large-scale feature identification to depict village boundaries. For example, using remote sensing data to measure changes in rural settlement boundaries. This data can detect the loss, shrinkage, expansion, and incorporation of villages.

Adjusting the results of the delineation to the boundaries of village administration in the delineation of urban growth boundaries. The second is the method of depiction at the micro level. One of the methods is the depiction of village boundaries through field research measurements with the participation of local residents. For example, using interviews and group discussion methods with participatory resource mapping steps to describe land boundaries (Lixuan Liu and Zijian Liu, 2024). In the conservation and development of traditional villages, it is very important to delineate reasonable village boundaries. For example, Currently traditional Chinese village boundaries are mainly determined through village construction land boundaries in its land policy. This approach ignores the "natural" state of traditional village boundaries and does not really reflect the use of villages by their villagers. Using the constituent line segments of traditional village boundaries as a rule, we describe a series of traditional village boundaries and construct a scoring system for traditional village boundaries in terms of the comfort of the villagers' activities and their habit of using village spaces (Lixuan Liu and Zijian Liu, 2024). As a boundary mark often found demarcation on large communal lands and village boundaries in the early modern period were mostly tall trees that stood out visually, usually pines. Instead, smaller trees are planted to mark areas of forest and small-scale farmland.

Collaboration is carried out by incorporating into the national legal system with its traditions and that can affect its deeper structure, so that it can accommodate local knowledge. Challenges In national legal systems, these norms are often ignored or contradict positive law, which is based on broad legal concepts that may not allow for customary variation.

Therefore, the author can summarize in some of the Analysis below:

#### 1. The Urgency of Formal Recognition of Customary Law

Formal recognition of customary law in determining village boundaries is a constitutional and practical imperative. Constitutionally, this is guaranteed by the 1945 Constitution Article 18B Paragraph (2). Practically, this recognition is key to mitigating agrarian conflicts and ensuring that village boundaries reflect socio-cultural realities on the ground.

#### 2. Discrepancy between Positive Law and Customary Law

The national legal framework governing the determination of village boundaries, especially through technical regulations, is often dominated by cartographic and administrative approaches, referring to *ex-officio* local government data. Meanwhile, customary law sets boundaries based on natural *landmarks*, historical values, and inherited communal practices. This discrepancy creates conditions in which historically and sociologically valid customary territories are not *de jure recognized* in village boundary maps.

The relevance of local wisdom becomes very prominent here. Local wisdom, such as customary forest management systems (*sasi* in Maluku or *awig-awig* in Lombok), is often closely integrated with their territorial boundaries. Ignoring local wisdom is the same as ignoring a system of sustainable and time-tested resource governance.

#### 3. An Inclusive Formal Recognition Mechanism

To achieve inclusive policies, customary law recognition cannot only be declarative, but must be formal and operational. This requires three key steps:

- a) Regulation on the Recognition of Indigenous Peoples: Local governments must accelerate the establishment of Regional Regulations (Perda) on the Recognition and Protection of Indigenous Peoples. This Regional Regulation is a legal gateway to recognize the existence of Customary Law Communities as legal subjects, including their customary territories.
- b) Participatory *Mapping*: The process of determining village boundaries must be based on participatory mapping involving representatives of the Customary Law Community, neighboring villages, and local governments. This mapping should document and validate traditional boundaries, customary markers, and history of territorial tenure.
- c) Document Harmonization: The results of participatory mapping, which reflect customary boundaries (*ulayat*), should be harmonized and integrated into nationally recognized official Village Boundary Documents.

#### 4. Deliberation-Based Conflict Resolution Model

When boundary disputes occur, conflict resolution must prioritize the principle of consensus deliberation in accordance with the values upheld in customary law.

"Essential justice in the customary context is restorative justice that prioritizes the restoration of relationships and social balance, not just the determination of who is legally right or wrong."

An inclusive conflict resolution model should involve:

1. Customary Mediator: The involvement of traditional leaders or *traditional stakeholders* from the conflict area as the main mediator.
2. Government Facilitation: Local governments (Regencies/Cities) function as neutral facilitators and providers of supporting data, not as a single determinant.
3. Strengthening Customary Institutions: Re-strengthening the role of customary institutions in resolving internal and inter-village disputes, making them an integral part of the national legal dispute settlement system.

The formal integration of customary law ensures that the decision to determine the boundary is not only legitimate in state law but also *socially legitimate* in the eyes of the Customary Law Community, resulting in a truly inclusive and sustainable policy.

#### **4. CONCLUSIONS AND SUGGESTIONS**

The conclusion of this study emphasizes that inclusive policies in determining village boundaries can only be realized through formal and operational recognition of customary law within the framework of national law. Although the 1945 Constitution and the Village Law have provided a legal basis, their implementation still tends to focus on an administrative-cartographic approach that ignores the rights of origin and local wisdom of customary law communities. Formal recognition of customary law is very important to ensure legal certainty of customary territories, prevent agrarian conflicts, and maintain sustainable resource governance. Therefore, participatory mapping protected through the Regional Regulation on the Recognition and Protection of Indigenous Peoples is the key to harmonization in determining equitable village boundaries, while conflict resolution must be pursued through consensus deliberation facilitated by the government. In line with these findings, this study recommends that the central government immediately draft regulations that regulate the integration of customary territory mapping results into the process of affirming village boundaries; local governments accelerate the issuance of regional regulations on the recognition of indigenous peoples and provide a special budget for participatory mapping; and the legislature reviews potentially discriminatory regulations and ensures that all agrarian and spatial planning policies are inclusive and recognize the existence of indigenous peoples.

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