



Reconstructing the Legal Status of Indigenous Peoples as Rights-Holders in Indonesian Law

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Abstract: The legal recognition of Indigenous Peoples in Indonesia does not necessarily guarantee their effective position as holders of rights. Although the Indonesian Constitution recognizes Indigenous Peoples and their traditional rights, the exercise and protection of these rights remain affected by conditional recognition, administrative identification, and fragmented regulations. This article aims to reconstruct the legal status of Indigenous Peoples as rights-holders within the Indonesian legal system by examining the relationship between recognition, legal subjectivity, and rights-holding. This study employs normative legal research using statutory, conceptual, and case approaches. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, relevant legislation, and Constitutional Court decisions, supplemented by recent scholarly literature on Indigenous Peoples' rights and legal protection. The analysis finds that the existing recognition-oriented framework tends to make the effective exercise of Indigenous rights dependent upon formal recognition mechanisms. The study argues that recognition should not constitute the existence of Indigenous Peoples' rights but should function as a mechanism for establishing legal certainty and facilitating their protection. Reconstructing Indigenous Peoples as collective legal subjects and rights-holders strengthens the State's position as a duty-bearer and provides a basis for developing a more rights-based framework for Indigenous Peoples' protection in Indonesia.

1. Introduction

The legal status of Indigenous Peoples has become an increasingly important issue in the development of constitutionalism and human rights protection in Indonesia. The issue is not limited to whether Indigenous Peoples are formally acknowledged by the State, but also concerns how the legal system positions them in relation to the rights they possess and the obligations imposed upon public

authorities. This distinction is particularly significant because Indigenous Peoples' claims commonly concern collective rights over land and territory, natural resources, cultural identity, traditional institutions, and participation in decisions affecting their lives. Recent research demonstrates that formal recognition of customary rights in Indonesian law has not necessarily resulted in their effective realization. Hidayat et al. (2026), for instance, demonstrate that Indigenous communities continue to encounter legal fragmentation and complex recognition processes when seeking to secure customary land rights, producing substantially uneven recognition across local contexts.

At the international level, the development of Indigenous Peoples' rights has increasingly emphasized their position as holders of collective rights rather than merely beneficiaries of state protection. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognizes Indigenous Peoples' rights to self-determination, culture, lands, territories and resources, participation, and other fundamental rights. This rights-based orientation is relevant to the Indonesian context because the question of who holds a right is inseparable from the question of who bears the corresponding legal obligation. Treating Indigenous Peoples as rights-holders therefore requires the legal system to move beyond identifying Indigenous communities merely as objects of recognition and to establish corresponding duties for the State to respect, protect, and fulfil their rights. Fahmi et al. (2023) demonstrate that the Indonesian understanding of Indigenous Peoples is substantially compatible with international legal frameworks concerning Indigenous rights, particularly those reflected in ILO Convention No. 169 and UNDRIP.

Within the Indonesian constitutional order, the existence of Indigenous Peoples is expressly acknowledged. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia provides that the State recognizes and respects units of Indigenous Law Communities and their traditional rights insofar as they remain alive, are consistent with societal development and the principles of the Unitary State of the Republic of Indonesia, and are regulated by law. Article 28I paragraph (3) further provides that the cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilization. These provisions establish an important constitutional foundation for the existence and protection of Indigenous Peoples and their traditional rights. Nevertheless, the constitutional formulation simultaneously introduces conditions through which recognition is legally assessed. Adnyani et al. (2021), in examining Article 18B paragraph (2), identify four conditions for constitutional recognition concerning the continued existence of the community, its dynamic development, conformity with the principle of integration, and regulation by law.

The conditional character of constitutional recognition has significant implications for the legal position of Indigenous Peoples. Recognition may function not merely as a means of acknowledging an existing community but also as a mechanism through which the State determines whether the community qualifies for legal protection. This creates a tension between a declaratory understanding of Indigenous rights and a model in which the practical exercise of those rights depends

upon prior administrative or regulatory recognition. The problem becomes particularly visible when Indigenous Peoples seek to exercise rights over customary territories or resources. Hidayat et al. (2026) show that although national laws formally recognize customary land rights, Indigenous communities continue to face fragmented legal arrangements and local regulatory requirements that make recognition difficult to obtain. Their comparative study of Indigenous communities in Sulawesi further demonstrates that recognition outcomes are shaped by local political, institutional, and socio-economic conditions.

The problem of fragmented recognition is also identified in recent legal scholarship. Buana and Arsy (2024) argue that the recognition and protection of Indigenous Peoples in Indonesia remain uncertain because of the absence of a ratified law specifically addressing their rights. Although recognition exists across several legislative instruments, uncertainty persists concerning the regulatory basis and mechanisms through which recognition is implemented, particularly at the regional level. Similarly, Krismawati and El Fareeha (2025) identify the conditional nature of recognition under Article 18B paragraph (2) and examine the Draft Law on Indigenous Peoples as an effort to establish a more comprehensive legal framework for the recognition and protection of Indigenous rights. Their analysis indicates that political and regulatory obstacles continue to affect the development of a comprehensive recognition framework.

The relationship between recognition and substantive rights is particularly evident in the protection of Indigenous Peoples' land rights. Fahmi (2024) demonstrates that Indigenous communities' claims to ancestral land are frequently grounded in collective recognition and customary relationships with territory rather than in formal state-issued certification. By examining international cultural rights norms, the study highlights the continuing ambiguity surrounding the protection of Indigenous land rights within the Indonesian legal framework. This situation illustrates a broader legal problem: the existence of a right within Indigenous customary relations does not automatically guarantee that the right will be recognized, protected, or enforceable within the formal legal system. The gap between the existence of a right and its legal recognition therefore raises a fundamental question concerning the legal status of the community that claims that right.

The jurisprudence of the Indonesian Constitutional Court provides another important dimension to this issue. Constitutional Court Decision Number 35/PUU-X/2012 significantly altered the legal construction of customary forests by distinguishing Indigenous forests from State forests within the framework of Law Number 41 of 1999 on Forestry. The decision is important because it demonstrates that constitutional adjudication can transform the legal relationship between the State and Indigenous Peoples concerning customary territories and natural resources. Nevertheless, subsequent realization of customary rights has remained dependent upon complex institutional and regulatory arrangements. The persistence of legal fragmentation following constitutional recognition indicates that judicial

recognition alone does not necessarily resolve the underlying question of how Indigenous Peoples are positioned within the broader legal system.

Existing scholarship has made important contributions to understanding these problems. Recent studies have examined the constitutional requirements for recognition (Adnyani et al., 2021), the conceptual relationship between Indigenous Peoples in Indonesia and international Indigenous rights frameworks (Fahmi et al., 2023), regulatory ambiguity and fragmentation (Buana & Arsy, 2024), the protection of Indigenous land rights through international cultural rights (Fahmi, 2024), and the legal policy of recognition under the Draft Law on Indigenous Peoples (Krismawati & El Fareeha, 2025). More recent empirical research has further demonstrated that recognition of customary land rights remains uneven because of fragmented legal arrangements and local political and institutional conditions (Hidayat et al., 2026). Taken together, this literature establishes that recognition remains a significant legal and institutional problem in Indonesia.

Nevertheless, the existing discussion leaves room for a more integrated examination of the relationship between recognition and rights-holding. Much of the recent literature asks whether Indigenous Peoples have been adequately recognized, how their customary rights can be protected, or what regulatory mechanisms are necessary to provide legal certainty. These questions are essential, but they do not fully resolve the underlying conceptual issue of whether recognition should be understood as the source of Indigenous Peoples' rights or as a legal mechanism for acknowledging an existing rights-bearing subject. The distinction is particularly important because a rights-holder framework changes the normative relationship between Indigenous Peoples and the State. If Indigenous Peoples are understood as rights-holders, the State's role cannot be limited to determining whether they satisfy the requirements for recognition. Instead, recognition should operate as a mechanism for establishing legal certainty concerning an existing rights-bearing subject, while the State assumes corresponding duties to respect, protect, and fulfil those rights.

This article therefore seeks to reconstruct the legal status of Indigenous Peoples as rights-holders within Indonesian law. The central argument is that the existing recognition-oriented framework should be reconsidered so that recognition does not become a constitutive condition for the existence of Indigenous Peoples' rights. Rather, recognition should be understood as a legal mechanism through which the State acknowledges and secures the rights-bearing status of Indigenous Peoples. Such a reconstruction does not eliminate the need for legal identification or institutional procedures. Instead, it requires those procedures to function as instruments of legal protection rather than as mechanisms that determine whether Indigenous Peoples possess rights in the first place.

Based on this argument, the article addresses two questions. First, how is the legal status of Indigenous Peoples as rights-holders constructed within Indonesian law? Second, how should that legal status be reconstructed to strengthen the effective protection of Indigenous Peoples' rights? The objective of this article is therefore to examine the existing legal construction of Indigenous Peoples' status

and to formulate a rights-based reconstruction that positions Indigenous Peoples as legal subjects and rights-holders within the Indonesian legal system. The analysis is expected to contribute to the development of Indonesian Indigenous Peoples law by clarifying the conceptual distinction between recognition and rights-holding and by identifying the implications of that distinction for the State's legal obligations.

This article employs normative juridical research using statutory, conceptual, and case approaches. The primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, relevant legislation, and Constitutional Court decisions concerning Indigenous Peoples and their traditional rights. These materials are analyzed alongside recent scholarly literature published primarily between 2021 and 2026 concerning constitutional recognition, Indigenous rights, legal protection, regulatory fragmentation, and the relationship between Indonesian law and international Indigenous rights standards. The analysis is directed toward reconstructing the legal relationship between Indigenous Peoples as rights-holders and the State as the corresponding duty-bearer.

2. Method

This study employs normative legal research to examine the legal construction and reconstruction of Indigenous Peoples as rights-holders within the Indonesian legal system. Normative legal research is appropriate for this study because the research problem concerns the interpretation, coherence, and development of legal norms rather than the measurement of social behaviour or the collection of empirical data. In this approach, law is examined primarily as a normative system consisting of legal rules, principles, concepts, and judicial reasoning. The normative character of the research enables the analysis to move beyond identifying applicable provisions toward assessing their legal meaning and developing a normative argument concerning the appropriate legal position of Indigenous Peoples (Negara, 2023).

The research uses three complementary approaches: the statutory approach, conceptual approach, and case approach. The statutory approach is employed to examine the constitutional and legislative framework governing Indigenous Peoples in Indonesia. It is directed toward identifying, mapping, and interpreting relevant legal provisions in order to determine how Indonesian law constructs the recognition, status, and protection of Indigenous Peoples. The conceptual approach is used to examine the legal concepts underlying the research problem, particularly the concepts of legal subject, rights-holder, recognition, and the corresponding duties of the State. This approach is necessary because the principal issue of the study is not merely the existence of legal provisions but the conceptual relationship between recognition and the status of Indigenous Peoples as rights-bearing legal subjects. The case approach is employed to examine relevant judicial decisions and the legal reasoning developed by courts in resolving disputes concerning Indigenous Peoples and their traditional rights. The integration of these approaches allows statutory norms, legal concepts, and judicial reasoning to be examined as interconnected elements of the legal system (Wulandari, 2026).

The legal materials consist of primary and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, legislation concerning Indigenous Peoples and their traditional rights, and relevant judicial decisions, particularly Constitutional Court decisions concerning the constitutional position and rights of Indigenous Peoples. These materials constitute the principal basis for identifying the applicable legal norms and examining their interpretation and development. Secondary legal materials consist of peer-reviewed journal articles, scholarly writings, and other academic publications concerning normative legal research, Indigenous Peoples' rights, legal subjectivity, rights-holding, and constitutional protection. The selection of secondary materials emphasizes recent scholarly publications while retaining relevant theoretical works where necessary to establish the conceptual foundation of the analysis. The distinction between primary and secondary legal materials is consistent with the methodological structure of normative legal research, in which legal norms are examined through authoritative legal sources and interpreted with the support of legal scholarship (Negara, 2023).

The research process consists of four stages. First, relevant constitutional provisions, legislation, and judicial decisions are identified and classified according to their relationship with the legal recognition and protection of Indigenous Peoples. Second, the selected legal materials are examined through legal interpretation to identify the underlying construction of Indigenous Peoples' legal status. Third, the statutory findings are examined through conceptual analysis, particularly by distinguishing the concepts of recognition, legal subjectivity, and rights-holding. Fourth, the results of statutory, conceptual, and case analysis are synthesized to formulate a normative reconstruction of the legal status of Indigenous Peoples as rights-holders. This methodological integration is important because statutory analysis alone cannot fully resolve conceptual ambiguities concerning the relationship between recognition and rights-holding, while conceptual analysis without reference to positive law would not adequately address the Indonesian legal context.

The analysis is conducted qualitatively through legal interpretation and normative legal reasoning. The statutory materials are interpreted systematically by examining individual provisions in relation to the broader constitutional and legislative framework. Judicial decisions are analyzed by examining the legal issues, judicial reasoning, and principles relevant to the position of Indigenous Peoples. Meanwhile, the conceptual analysis is used to test whether the existing recognition-oriented framework is consistent with the understanding of Indigenous Peoples as rights-holders. The final stage of analysis is therefore prescriptive: rather than merely describing the existing legal framework, the study formulates a reconstruction of the legal relationship between Indigenous Peoples and the State. This orientation is consistent with the characteristic of normative legal research as a method directed toward the formulation of legal arguments and propositions concerning what the law ought to provide in response to an identified legal problem (Wulandari, 2026).

3. Result and Discussion

3.1. The Conditional Construction of Indigenous Peoples' Legal Status in Indonesian Law

The analysis demonstrates that Indonesian law recognizes Indigenous Peoples within the constitutional order, but constructs that recognition through a predominantly conditional framework. Article 18B paragraph (2) of the 1945 Constitution recognizes and respects customary law communities and their traditional rights subject to several conditions. The continued existence of the community, its conformity with societal development and the principles of the Unitary State of the Republic of Indonesia, and statutory regulation collectively determine the extent to which recognition can operate within the formal legal system. Consequently, the constitutional position of Indigenous Peoples is not constructed solely through the existence of their historical, social, and customary relationships with their territories, but also through a process of legal identification conducted within the state legal system.

This construction creates a particular form of legal status. Indigenous Peoples may possess rights within their customary systems, yet the exercise and protection of those rights within the national legal order may depend upon their recognition by state institutions. The distinction is important because recognition may operate as both an acknowledgment of an existing community and a gateway to access formal legal protection. In practice, the latter function can become dominant. Research concerning the legal standing of the Matteko Customary Law Community before the Constitutional Court illustrates this problem. Sawerigading and Maemanah (2021) found that the community encountered difficulties in establishing legal standing because it could not demonstrate state recognition through a regional regulation or regional head decision. The case demonstrates that the absence of formal recognition may affect not only access to substantive rights but also the ability of an Indigenous community to participate as a legal actor in constitutional litigation.

The significance of this problem extends beyond procedural standing. If recognition is required before an Indigenous community can effectively assert its rights within the formal legal system, recognition becomes closely connected to the community's capacity to function as a legal subject. The result is a potential distinction between social or customary existence and formal legal existence. A community may continue to organize its social relations according to customary norms and maintain collective relationships with its territory, while simultaneously experiencing difficulties in obtaining equivalent recognition within state law. The legal consequences of this distinction are substantial because access to judicial remedies, land protection, administrative recognition, and other forms of state protection may depend upon the formal status attributed to the community.

The problem is also visible in the development of customary land rights. Indonesian law recognizes customary rights in principle, but their practical protection remains strongly connected to formal recognition mechanisms. The Constitutional Court's jurisprudence, particularly Decision Number 35/PUU-X/2012, represents a significant shift in the legal treatment of customary forests. Nevertheless,

subsequent developments demonstrate that judicial recognition does not automatically produce effective legal protection. A 2024 study of the recognition of Dayak customary land rights in Central Kalimantan, for example, demonstrates that the legal recognition of customary rights remains closely related to the requirements imposed by the national agrarian framework and the implementation of Constitutional Court jurisprudence (Aulia et al., 2024).

The continuing dependence upon formal recognition therefore produces a paradox. On the one hand, constitutional law acknowledges Indigenous Peoples and their traditional rights. On the other hand, the legal effectiveness of those rights may remain dependent upon additional acts of recognition and administrative determination. This situation creates what may be described as a conditional legal status: Indigenous Peoples are recognized in constitutional terms, but their ability to exercise and defend particular rights within the state legal system can remain contingent upon the fulfillment of recognition requirements.

The problem is particularly relevant in regions where customary institutions remain an important part of local governance. Research on Maluku demonstrates that the recognition and protection of customary law communities continue to be influenced by local government policies and the legal status of customary villages. Umar et al. (2023) show that disputes concerning recognition and the institutional status of customary communities remain present despite the constitutional guarantee contained in Article 18B paragraph (2). This finding indicates that constitutional recognition alone does not eliminate the institutional processes through which Indigenous Peoples must negotiate their legal status at the regional level.

Accordingly, the first finding of this study is that Indonesian law has established a recognition-based construction of Indigenous Peoples' legal status, but that construction remains conditional and institutionally mediated. Recognition is not merely descriptive; it has substantive consequences for the ability of Indigenous Peoples to exercise rights within the formal legal system. The legal problem therefore lies not in the absence of recognition altogether, but in the possibility that recognition functions as a prerequisite for the effective enjoyment of rights.

3.2. Recognition, Legal Subjectivity, and the Problem of Rights-Holding

The second finding concerns the conceptual relationship between recognition and legal subjectivity. The analysis indicates that these concepts should not be treated as identical. Recognition concerns the legal acknowledgment of an Indigenous community, while legal subjectivity concerns the capacity of that community to occupy a position within legal relationships. Rights-holding goes one step further by identifying the community as the holder of legally protected interests that generate corresponding duties upon other legal actors.

This distinction becomes particularly important because the constitutional recognition of Indigenous Peoples does not automatically resolve the question of how their rights should be conceptualized. A recognition-centered approach tends

to place the State in the position of an institution that determines whether an Indigenous community satisfies the conditions necessary for legal recognition. A rights-holder approach, by contrast, begins with the existence of rights and asks what obligations follow from those rights. The difference is therefore not merely terminological. It determines the normative direction of the relationship between Indigenous Peoples and the State.

Recent scholarship concerning the protection of Indigenous constitutional rights demonstrates the continuing gap between constitutional recognition and effective legal protection. Akmal et al. (2025) argue that Indigenous Peoples' constitutional rights remain insufficiently protected in both normative and empirical dimensions, particularly where legislation and government policies fail to reflect Constitutional Court decisions. Their analysis suggests that the existence of constitutional rights does not by itself ensure their effective implementation. This finding reinforces the argument that the legal status of Indigenous Peoples must be examined not only through the existence of recognition provisions but also through the institutional consequences attached to their rights.

The problem can also be observed in the development of customary land rights. Sukirno and Malik (2025) demonstrate that the legal landscape surrounding customary land rights in Indonesia has undergone significant changes, but recognition remains affected by historical patterns of state control and regulatory policy. Their analysis argues for a more responsive legal policy that actively involves Indigenous communities in the development of legal frameworks governing customary rights. The significance of this argument lies in its implication that Indigenous Peoples should not merely be recipients of regulatory decisions. Their position as holders of rights requires their participation in determining the legal rules through which those rights are protected.

The distinction between recognition and rights-holding is therefore particularly important in relation to the role of the State. When recognition is treated as constitutive, the State effectively determines whether an Indigenous community enters the sphere of legally protected rights. This model risks positioning the State as the source of rights. A rights-holder framework requires a different understanding. The State does not create the underlying existence of Indigenous Peoples' collective rights; rather, the State is required to recognize, protect, and provide institutional mechanisms through which those rights can be exercised and defended.

This argument does not mean that formal recognition mechanisms are unnecessary. State identification remains important for legal certainty, administrative governance, conflict resolution, and the protection of third parties. The problem arises when recognition procedures are treated as determining the existence of rights rather than establishing the legal certainty necessary for their protection. The distinction can therefore be formulated as follows: recognition should establish legal certainty concerning the holder of rights, not constitute the existence of the rights themselves.

This proposition is supported by recent developments concerning the administration of customary rights. Purwanto and Widyawati (2025) examine ATR/BPN Regulation No. 14 of 2024 and emphasize that the recognition of customary law communities as legal subjects is an important element of substantive legal protection. Their analysis distinguishes administrative recognition from the broader question of whether customary communities can function as rights-bearing legal subjects. This distinction strengthens the conceptual basis of the present study: administrative mechanisms should facilitate the exercise and protection of rights rather than reduce the legal existence of Indigenous Peoples to the outcome of administrative procedures.

The second finding of this study is therefore that the principal conceptual weakness of the recognition-oriented framework lies in the tendency to conflate recognition, legal subjectivity, and rights-holding. These concepts perform different legal functions. Recognition provides formal acknowledgment and legal certainty; legal subjectivity establishes the capacity to participate in legal relationships; and rights-holding establishes the possession of legally protected interests accompanied by corresponding state duties. A coherent legal framework for Indigenous Peoples must therefore connect these three dimensions without making the existence of rights entirely dependent upon recognition.

3.3. Reconstructing Indigenous Peoples as Rights-Holders in Indonesian Law

The findings above provide the basis for reconstructing the legal status of Indigenous Peoples in Indonesian law. The reconstruction proposed by this study does not reject constitutional recognition or the need for administrative identification. Instead, it seeks to reposition recognition within a broader rights-based legal framework. The central proposition is that Indigenous Peoples should be understood as rights-holders whose rights are acknowledged and protected by the State, rather than as communities whose rights become legally relevant only after the State grants or confirms their recognition.

The first element of this reconstruction is the separation between the existence of rights and the formal recognition of their holders. Indigenous Peoples' collective rights arise from their status as Indigenous communities and from the legal protection afforded to their customary relationships, identity, culture, territory, and traditional institutions. Formal recognition should provide certainty regarding the identity and institutional representation of the rights-holder, but it should not be interpreted as the legal source that creates the underlying rights. This approach is particularly important in the context of customary land and territorial rights, where customary relationships with land may predate the establishment of contemporary state institutions.

The second element is the recognition of Indigenous Peoples as collective legal subjects. A rights-holder framework must recognize that some Indigenous rights cannot be reduced to individual rights. Rights concerning customary territory, collective cultural identity, traditional institutions, and communal natural resources

are exercised through collective entities. Consequently, the legal system must provide mechanisms through which Indigenous Peoples can act collectively, represent their interests, participate in legal proceedings, and defend their rights before state institutions.

The importance of collective legal status is also demonstrated by the experience of Indigenous communities before judicial institutions. Where an Indigenous community cannot demonstrate formal recognition, its ability to establish legal standing may be restricted, as demonstrated in the Matteko case (Sawerigading & Maemanah, 2021). The implication is that recognition procedures should be designed not merely to determine eligibility but also to ensure that Indigenous communities possess an effective institutional identity through which their collective rights can be exercised.

The third element is the transformation of the State's role from recognizer to duty-bearer. Once Indigenous Peoples are positioned as rights-holders, the State's obligations cannot be limited to issuing recognition instruments. The State must also respect Indigenous rights by refraining from unjustified interference, protect those rights against violations by public and private actors, and fulfil them through appropriate legal and institutional measures. This framework is consistent with the broader development of rights-based legal protection, in which the existence of a right necessarily implies a corresponding duty.

Such a transformation is particularly necessary because regulatory fragmentation remains a significant obstacle to effective protection. Recent scholarship demonstrates that overlapping regulations and inconsistent recognition mechanisms continue to generate uncertainty concerning customary territories and rights. Leliak (2026) identifies regulatory fragmentation, disharmonization of sectoral legislation, and inconsistent recognition mechanisms as structural obstacles to the effective protection of customary land rights in Indonesia. This finding indicates that reconstructing Indigenous Peoples as rights-holders cannot be achieved merely through a conceptual change. It must also be accompanied by institutional and regulatory reforms that make rights enforceable.

The fourth element is therefore the development of rights-based recognition procedures. Recognition should be accessible, transparent, participatory, and oriented toward legal protection. Procedures should not impose unnecessary burdens that effectively require Indigenous Peoples to prove their existence solely according to categories established by the State. Instead, state institutions should assess the existence of Indigenous communities through processes that take customary institutions, collective identity, historical relationships with territory, and community-generated evidence seriously. The purpose of such procedures should be to establish legal certainty and facilitate protection rather than to confer rights upon communities that are otherwise presumed to have none.

This reconstruction also has implications for judicial protection. Courts should interpret recognition requirements in a manner consistent with the constitutional protection of Indigenous Peoples and should avoid treating administrative

recognition as the only possible evidence of Indigenous existence. A rights-holder approach requires judicial institutions to examine the substantive relationship between the community and the claimed right, while considering formal recognition as one element of legal evidence rather than automatically treating it as the source of the right.

The fifth element concerns participation and agency. Indigenous Peoples as rights-holders should not merely be consulted after legal policies have been formulated. They should have meaningful opportunities to participate in the development of laws and policies affecting their rights. Sukirno and Malik (2025) emphasize the need for a responsive legal policy that involves Indigenous communities in the development of customary rights regulation. From a rights-holder perspective, participation is not simply an administrative preference. It follows from the fact that those affected by legal decisions possess rights that the State is required to respect and protect.

The reconstruction proposed in this study can therefore be represented through four interconnected legal relationships:

Table 1. Comparison of Recognition-Oriented and Rights-Holder Approaches to Indigenous Peoples

Legal Dimension	Recognition-Oriented Model	Rights-Holder Model
Legal status	Dependent on formal recognition	Indigenous Peoples recognized as rights-bearing legal subjects
Function of recognition	Potentially constitutive of legal protection	Declaratory and protective, providing legal certainty
Position of the State	Recognizer and regulator	Duty-bearer responsible for respecting, protecting, and fulfilling rights
Participation	Primarily procedural or consultative	Substantive participation based on rights and collective agency
Legal protection	Dependent on recognition and administrative mechanisms	Rights-based, with accessible mechanisms for enforcement

Source: Author's analysis based on statutory, conceptual, and case approaches.

The table demonstrates the principal contribution of this study. The proposed reconstruction does not eliminate the State's authority to regulate recognition. Instead, it changes the normative function of that authority. The State's role should be directed toward securing the conditions under which Indigenous Peoples can exercise their rights, rather than determining whether those rights exist solely through administrative recognition.

The reconstruction also provides a basis for understanding why formal constitutional recognition has not always produced effective rights protection. Recognition operates within a broader legal structure involving legislation, administrative institutions, courts, and local governments. Where those institutions treat recognition as a prerequisite for the existence of rights, constitutional guarantees may remain conditional in practice. Conversely, when recognition is understood as an instrument for establishing legal certainty concerning an existing rights-holder, the constitutional principle of recognition can be connected more consistently with substantive rights protection.

Accordingly, the principal result of this study is that the legal reconstruction of Indigenous Peoples in Indonesia should proceed from a recognition-centered paradigm toward a rights-holder paradigm. The shift does not mean abandoning recognition; it means changing its legal function. Indigenous Peoples should not be regarded merely as communities awaiting legal recognition from the State, but as collective legal subjects whose rights require state acknowledgment, protection, and enforcement. Recognition should therefore serve as an institutional mechanism for securing legal certainty and access to protection, while the underlying status of Indigenous Peoples as rights-holders should remain the normative foundation of the legal relationship.

This reconstruction contributes to existing scholarship by bringing together questions that have often been examined separately: constitutional recognition, legal subjectivity, customary rights, and state obligations. Existing studies have demonstrated the conditional nature of recognition, regulatory fragmentation, and the continuing difficulty of protecting customary rights. The present analysis builds upon those findings by arguing that the deeper problem lies in the legal consequences attached to recognition. Reconstructing Indigenous Peoples as rights-holders provides a conceptual basis for ensuring that recognition functions as a means of protecting rights rather than as a condition that determines whether rights exist at all.

4. Conclusion

This study concludes that the legal status of Indigenous Peoples within the Indonesian legal system remains substantially shaped by a recognition-oriented framework. Although the Constitution provides explicit recognition and protection of Indigenous Peoples and their traditional rights, the practical exercise and protection of those rights continue to be influenced by conditional recognition, administrative identification, and fragmented regulatory arrangements. The analysis demonstrates that recognition, legal subjectivity, and rights-holding should not be treated as interchangeable concepts. Recognition provides legal acknowledgment and certainty, legal subjectivity establishes the capacity of Indigenous Peoples to participate in legal relationships, while rights-holding establishes the possession of legally protected interests that generate corresponding obligations for the State.

The study further concludes that the principal legal problem does not lie in the absence of recognition but in the legal consequences attached to recognition. When recognition is treated as a constitutive condition for the existence or exercise of rights, Indigenous Peoples may be positioned as communities whose legal claims depend upon prior state determination. Such a construction risks weakening the substantive character of their rights and creating a gap between constitutional recognition and effective rights protection. The reconstruction proposed in this study therefore places Indigenous Peoples as collective legal subjects and rights-holders whose rights require state acknowledgment, protection, and enforcement.

The findings have several implications for the development of Indonesian law. First, recognition mechanisms should be understood primarily as instruments for establishing legal certainty concerning Indigenous Peoples and their collective rights, rather than as mechanisms that create those rights. Second, legislation and administrative procedures should provide Indigenous Peoples with effective institutional capacity to represent, exercise, and defend their collective rights. Third, judicial institutions should interpret recognition requirements consistently with constitutional guarantees and should not automatically equate the absence of a formal recognition instrument with the absence of Indigenous rights. Fourth, the State should assume its position as a duty-bearer by ensuring that recognition, regulatory, administrative, and judicial mechanisms function to respect, protect, and fulfil Indigenous Peoples' rights.

Accordingly, future legal reform should move toward a rights-based recognition framework that separates the existence of Indigenous rights from the administrative process of establishing legal certainty concerning their holders. The development of a comprehensive statutory framework on Indigenous Peoples should incorporate this distinction and ensure meaningful participation of Indigenous communities in decisions affecting their rights. Such an approach would allow Indonesian law to move beyond a model in which Indigenous Peoples are primarily treated as objects of recognition toward a legal framework in which they are consistently recognized and protected as rights-holders.

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