

## **Implementation Gap of Constitutional Court Decision on Customary Forest Recognition in Aceh**

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### **Abstract**

*This study aims to analyze the normative and empirical effectiveness of Constitutional Court Decision Number 35/PUU-X/2012 in protecting the constitutional rights of indigenous peoples regarding customary forest recognition in Aceh and to examine the factors contributing to its implementation gap. Although the decision constitutionally recognizes customary forests as the rights of indigenous peoples, formal recognition in Aceh remains substantially limited, creating a persistent disparity between constitutional guarantees and administrative realization that threatens legal certainty, indigenous rights protection, and sustainable forest governance. This issue demonstrates the urgency of evaluating whether constitutional adjudication has effectively produced substantive legal protection in practice. This study employs a socio-legal approach by integrating normative juridical analysis through statute, conceptual, and case approaches with empirical evaluation based on official data concerning customary forest recognition in Aceh up to 2024. The findings reveal that the implementation of the decision remains ineffective, as evidenced by the recognition of only 22,549 hectares out of more than 100,000 hectares of customary forests claimed by indigenous communities. The implementation gap is primarily caused by regulatory disharmonization, bureaucratic complexity, fragmented institutional authority, limited legal and technical assistance, and competing political-economic interests. The novelty of this research lies in integrating constitutional legal analysis with empirical measurement of implementation effectiveness while positioning Aceh's special autonomy and legal pluralism as a distinctive constitutional governance framework. The study concludes that constitutional recognition alone is insufficient to ensure substantive justice without comprehensive institutional, administrative, and regulatory reforms that strengthen the protection of indigenous peoples' constitutional rights.*

**Keywords:** *Constitutional Rights; Customary Forest; Indigenous Peoples; Legal Effectiveness*

## **1. INTRODUCTION**

Recognition and protection of indigenous peoples' rights are an integral element of constitutionalism, human rights and democratic governance in Indonesia. With the constitutional amendments to the 1945 Constitution, the Indonesian constitutional system has increasingly recognised the existence of customary law communities as legal subjects that have collective rights over their traditional territories and natural resources.<sup>1</sup> Article 18B paragraph (2) of the 1945 Constitution specifically states that the state recognises and respects indigenous peoples and their traditional rights as long as they are alive and in line with the development of society and the principles of the Unitary State of the Republic of Indonesia.

This article provides a constitutional basis for the preservation of indigenous peoples, including their rights over customary forests as a part of their ancestral regions. This constitutional mandate was further reinforced in the context of forestry governance by the Constitutional Court Decision Number 35/PUU-X/2012 (hereinafter MK Decision 35), which substantially

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<sup>1</sup> Raden Ajeng Diah Puspa Sari, "Perlindungan Dan Kesejahteraan Masyarakat Adat Dalam Memenuhi Hak-Haknya Berdasarkan Pasal 18B UUD 1945," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 11 (2023): 1006–16, <https://doi.org/10.58812/jhhws.v2i11.730>.

changed the legal status of customary forests by removing them from the category of state forests and reclassifying them as rights forests belonging to indigenous peoples.<sup>2</sup> This ruling was a constitutional redress of the centralised, state-centric forestry regime that historically marginalised indigenous tenure forms and placed control over forest lands within the state authority.

In the domain of constitutional jurisprudence, MK Decision 35 issued by the Constitutional Court is regarded by numerous scholars as one of the most avant-garde constitutional adjudications pertaining to indigenous rights and environmental stewardship within the Indonesian context.<sup>3</sup> The ruling not only affirmed the constitutional validity of the rights of indigenous populations but also contested the entrenched paradigm of governmental supremacy over forest resources. In theoretical terms, the decision exemplifies the emergence of constitutional environmentalism and legal pluralism within Indonesia's constitutional framework, wherein state law is incrementally acknowledging the coexistence of adat legal systems alongside formal legal institutions.<sup>4</sup> Furthermore, the ruling carries significant implications for constitutional governance, as it underscores the utilization of judicial review as a mechanism for addressing state actions that infringe upon constitutional rights. Nonetheless, despite its substantial normative legitimacy, the practical application of MK Decision 35 continues to encounter challenges, particularly in regions characterized by intricate socio-legal frameworks and overlapping governmental structures, such as Aceh.

Aceh is an example of how to review the effectiveness of MK Decision 35 through a specific constitutional and administrative pattern. Aceh, as a territory with particular autonomy, is distinguished by distinctive legal frameworks that derive from the interplay of state law, Islamic law, and customary law.<sup>5</sup> Institutions such as the mukim and the gampong continue to play important roles in local governance, social order, and management of natural resources. Customary forests are not only economic assets for the indigenous inhabitants of Aceh but also cultural identity, social cohesion, ecological sustainability, and spiritual values that have been inherited for generations. Thus, the protection of customary forests in Aceh is not just seen from the economic or administrative aspect but should be seen in the broader framework of constitutional, socio-cultural and environmental aspects.<sup>6</sup>

But the pragmatic reality is that constitutional recognition has not automatically translated into effective protection of indigenous peoples' rights. Constitutionally, MK Decision 35 ensures the recognition of customary forests but the realisation of these rights is still quite limited. Only 22,549 hectares of customary forests in Aceh had been formally recognised by the state until

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<sup>2</sup> Sri Wahyu Kridasakti et al., "The Legitimacy Crisis of Customary Villages Under Indonesia's Village Law," *Sriwijaya Law Review* 9, no. 2 (2025): 432–56, <https://doi.org/10.28946/slrev.v9i2.3998>.

<sup>3</sup> Shomona Khanna, "Forest Rights and the Forest Rights Act," in *The Oxford Handbook of Environmental and Natural Resources Law in India*, ed. Philippe Cullet, Lovleen Bhullar, and Sujith Koonan (Oxford University Press, 2024), 487–506, <https://doi.org/10.1093/oxfordhb/9780198884682.013.28>.

<sup>4</sup> Ayuda Ramadhan, "Konflik Agraria: Analisis Resolusi Konflik Agraria Sumber Daya Alam Di Aceh," *Jurnal Transformasi Administrasi* 13, no. 1 (2023): 1–17, <https://doi.org/10.56196/jta.v13i01.247>.

<sup>5</sup> Hairun Tri Wahyuni Sagala, "Kajian Teori Pluralisme Hukum Terhadap Sistem Hukum Di Aceh," *Interdisciplinary Journal on Law, Social Sciences and Humanities* 3, no. 2 (2022): 115, <https://doi.org/10.19184/idj.v3i2.35095>.

<sup>6</sup> Yulia Yulia, "The Concept of Forest Management Based on Customary Forest Law in North Aceh Regency," *Asian Research Journal of Arts & Social Sciences* 16, no. 1 (2022): 43–52, <https://doi.org/10.9734/arjass/2022/v16i130277>.

2024, according to data from the Ministry of Environment and Forestry (KLHK).<sup>7</sup> Meanwhile, indigenous people claimed more than 100,000 hectares of customary areas.<sup>8</sup> This large difference reveals a stark implementation gap between constitutional norms and administrative realisation.<sup>9</sup> This persistent disparity demonstrates that legal recognition alone is not sufficient to ensure substantive justice without institutional effectiveness, regulatory harmonisation and political commitment. This means that the indigenous tribes in Aceh continue to encounter structural impediments in obtaining formal acknowledgement of their customary areas.

The implementation gap in customary forest recognition has wider consequences for constitutional governance and legal efficacy. Legal confusion often arises for indigenous peoples from the overlapping claims of state forest areas, customary territory and corporate concessions for plantations, mining and forestry activities.<sup>10</sup> Many indigenous groups remain susceptible to land confiscation, criminalization and exclusion from forest governance, despite constitutional safeguards that recognise their right.<sup>11</sup> This condition indicates that constitutional adjudication does not necessarily result in transformative legal change when administrative systems and political-economic interests continue to reinforce centralised resource governance. Thus, the application of MK Decision 35 poses crucial considerations about the link between constitutional recognition and practical efficacy in pluralistic legal systems.<sup>12</sup>

Issues of indigenous people's rights, customary forest acknowledgement and forestry governance in Indonesia have been discussed in earlier research. However, the present literature suffers from serious conceptual and methodological limitations. For example, Qiftiah (2024) stresses the need for the reconstruction of legislation for the acknowledgement of indigenous land rights and points out contradictions between constitutional guarantees and sectoral legal frameworks. The study provides valuable normative insights for legal reform, but it is methodologically limited by its reliance on doctrinal legal analysis, without empirical assessment of the results of implementation. Thus, the study is not able to clearly clarify whether constitutional recognition methods have been successful in improving indigenous peoples' access to customary forest acknowledgement in practice.<sup>13</sup>

In a similar vein, Natsir (2024) explore the applicability of Islamic environmental principles and local wisdom for forest governance in Aceh. The study illustrates the significance of incorporating socio-cultural values into environmental management and offers useful insights

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<sup>7</sup> Daru Adianto and Muamar, "Peranan Budaya Hukum Kementerian Lingkungan Hidup Dan Kehutanan Dalam Penetapan Hutan Adat," *Jurnal Suara Hukum* 4, no. 2 (2022): 435–55, <https://doi.org/10.26740/jsh.v4n2.p435-455>.

<sup>8</sup> Rahmat Fajri, "KLHK Tetapkan 22.549 Hektare Wilayah Hutan Adat Di Aceh," *Antara News*, 2023, <https://www.antaraneews.com/berita/3738018/klhk-tetapkan-22549-hektare-wilayah-hutan-adat-di-aceh>.

<sup>9</sup> Yulia and Herinawati, "Customary Law of the Forest in North Aceh Regency," *Diponegoro Law Review* 7, no. 2 (October 27, 2022): 328–43, <https://doi.org/10.14710/dilrev.7.2.2022.328-343>.

<sup>10</sup> Rabiatul Qiftiah, "Rekonstruksi Regulasi Pengakuan Dan Perlindungan Hak Ulayat Atas Tanah Masyarakat Hukum Adat Yang Berbasis Nilai Keadilan," *Disertasi* (Universitas Islam Sultan Agung, 2024).

<sup>11</sup> Ikhsan Lubis, Duma Indah Sari Lubis, and Andi Hakim Lubis, "Integration Of Customary Legal Values And Modern Mediation In The Framework Of Land Dispute Resolution," *Jurnal Ilmu Hukum Prima* 8, no. 1 (2025): 62–80, <https://doi.org/10.34012/jihp.v8i1.5781>.

<sup>12</sup> Herlambang P. Wiratraman, "Cultural Expertise and the Social Justice Defense of Indigenous Peoples Rights in the Indonesian Constitutional Court," *Constitutional Review* 11, no. 2 (2025): 299–339, <https://doi.org/10.31078/consrev1122>.

<sup>13</sup> Qiftiah, "Rekonstruksi Regulasi Pengakuan Dan Perlindungan Hak Ulayat Atas Tanah Masyarakat Hukum Adat Yang Berbasis Nilai Keadilan."

about the link between Islamic principles and ecological sustainability. However, the research is mainly focused on the socio-cultural and normative dimensions without analysing the efficiency of the constitutional law procedures or examining the administrative hurdles to the recognition of customary forests. Thus, while the study contributes to the discourse on environmental governance, it does not adequately deal with the implementation effectiveness of MK Decision 35.<sup>14</sup>

According to research by Lubis (2025), there are structural tensions between state law and the land rights of indigenous peoples, and customary law norms are integrated into Indonesia's agricultural legal system. The research provides a more comprehensive examination of legal pluralism and the settlement of land disputes, but it does not provide a quantitative evaluation of the real difference between officially recognised regions and customary forest rights. Moreover, neither constitutional adjudication procedures nor forestry governance are expressly addressed in the paper. Because of this restriction, it is challenging to assess how constitutional rulings address structural injustices in forest governance systems.<sup>15</sup>

Sahide (2026), critically examine recent forestry policy reforms and argue that Indonesia's forestry governance remains dominated by state-centered approaches despite increasing recognition of indigenous rights. Their findings suggest that bureaucratic structures and political-economic interests continue to obstruct indigenous forest recognition. Although this study provides critical policy analysis and highlights institutional constraints, it does not specifically analyze Aceh as a special autonomy region characterized by legal pluralism and distinctive governance arrangements. Moreover, the study does not quantitatively evaluate the implementation gap between customary forest claims and formal recognition outcomes<sup>16</sup>. Other international research on indigenous forest administration also show variations in identifying the variables of implementation efficiency. Some studies identify regulatory disharmonization as the key barrier, while others refer to institutional fragmentation, a lack of political will or corporate capture in the control of natural resources. These divergent results illustrate the lack of an integrated analytical framework that would allow for a study of constitutional legislation, institutional governance, and empirical evaluation of efficacy in tandem. Moreover, many of the past studies are still descriptive and rely on restricted qualitative observations without quantifiable indications of the implementation results. Thus, there is still a gap in the research on the relationship between constitutional recognition and the administrative institutions and political-economic processes that shape indigenous peoples' access to customary forest rights.

The shortcomings of the prior studies reveal several key research challenges. First, most of the available research are still mostly normative or socio-cultural, without constitutional law analysis combined with empirical evaluation of efficacy. Second, quantitative assessment of

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<sup>14</sup> Muhammad Natsir et al., "The Relevance of Islamic Principles in Environmental Management in Aceh," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (2024): 31–43, <https://doi.org/10.22373/petita.v9i1.209>.

<sup>15</sup> Lubis, Lubis, and Lubis, "Integration Of Customary Legal Values And Modern Mediation In The Framework Of Land Dispute Resolution."

<sup>16</sup> Muhammad Alif K Sahide, Abdurrahman Abdullah, and Moira Moeliono, "Policy Forum: Indigenous Forest Rights at a Crossroads? A Critical Look at Indonesia's Planned Forestry Law Amendment," *Forest Policy and Economics* 185 (2026): 103730, <https://doi.org/10.1016/j.forpol.2026.103730>.

the gap between forest claims of indigenous peoples and legally recognised customary forests is typically absent in previous studies. Third, the position of Aceh's special autonomous area with legal plurality as a specific constitutional governance environment towards implementation effectiveness has not been effectively positioned. Fourth, the prior results are still unclear on what the major problem is, regulatory disharmonization, bureaucratic complexity, institutional fragmentation, or political-economic interests. Such contradictions suggest the need for a more thorough analytical approach to the interplay between constitutional rules, administrative structures and implementation realities.

From these constraints, this study finds a significant research vacuum in the absence of an integrated analysis that simultaneously explores the normative efficacy and empirical effectiveness of MK Decision 35 in the specific autonomy context of Aceh. The existing research have not adequately explored the interplay of constitutional recognition mechanisms with legal pluralism, institutional arrangements, and political-economic interests in causing implementation inadequacies. Moreover, no prior study has objectively quantified the implementation gap between indigenous customary forest claims and official state recognition in Aceh while concurrently analysing the structural mechanisms underpinning this difference. This research thus focuses especially on the evaluation of the implementation gap of MK Decision 35 using quantitative and structural analysis.

The novelty of this study lies in three principal aspects. First, this research integrates constitutional law analysis with empirical effectiveness measurement in evaluating the implementation of MK Decision 35. Unlike previous studies that primarily emphasize doctrinal interpretation or socio-cultural analysis, this study combines normative legal assessment with quantitative evaluation concerning the disparity between claimed and recognized customary forests. Second, this research specifically positions Aceh as a special autonomy region characterized by legal pluralism and strong customary institutions, thereby offering a distinctive constitutional governance perspective absent from previous studies.<sup>17</sup> Third, this study develops a structural analysis of implementation gaps by categorizing obstacles into normative barriers, administrative barriers, and political-economic barriers.

Normative barriers include regulatory disharmonization between national forestry regulations and regional qanun, legal pluralism without institutional integration, and unclear legal definitions concerning indigenous peoples. Administrative barriers encompass bureaucratic complexity, participatory mapping constraints, overlapping institutional authority, and limited access to legal assistance for indigenous communities. Political-economic barriers involve competing corporate interests, extractive industry expansion, and weak political commitment in prioritizing indigenous rights protection. These structural obstacles collectively contribute to legal uncertainty, indigenous marginalization, and environmental degradation within customary forest governance.

This study also contributes theoretically to the development of legal effectiveness theory and constitutional governance scholarship. From the perspective of legal effectiveness theory, the

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<sup>17</sup> Mahmuddin Mahmuddin and Eka Juniar, "Konstelasi Negara Dan Kelembagaan Adat Dalam Pengelolaan Hutan Adat Di Aceh" (Banda Aceh, 2020).

findings demonstrate that constitutional recognition alone cannot ensure substantive protection of indigenous rights without institutional capacity, administrative accessibility, and political support. Thus, the research expands socio-legal understandings regarding the relationship between constitutional norms and implementation realities. From the perspective of constitutional governance, this study illustrates the limitations of judicial constitutionalism in transforming state-centered natural resource governance within legally pluralistic regions. The findings therefore contribute to broader debates concerning the effectiveness of constitutional adjudication in addressing structural inequalities.

Practically, this research offers operational policy recommendations for strengthening customary forest recognition mechanisms in Aceh and Indonesia more broadly. These recommendations include simplification of administrative procedures for customary forest recognition, strengthening the role of regional governments and customary institutions, harmonization between national and regional legal frameworks, improvement of institutional coordination, enhancement of participatory mapping mechanisms, and expansion of legal assistance for indigenous communities. Such measures are necessary to ensure that constitutional recognition evolves beyond symbolic legitimacy toward substantive justice and sustainable forest governance.

Based on the foregoing explanation, this study aims: (1) to analyze the normative effectiveness and empirical effectiveness of Constitutional Court Decision Number 35/PUU-X/2012 in protecting indigenous peoples' constitutional rights regarding customary forest recognition in Aceh; and (2) to examine the normative, administrative, and political-economic barriers contributing to the implementation gap in customary forest recognition.

## 2. METHOD

This study uses a socio-legal research approach, which combines normative juridical analysis and empirical effectiveness evaluation to analyse the implementation gap of the Constitutional Court Decision Number 35/PUU-X/2012 on recognition of customary forests in Aceh.<sup>18</sup> This integrated method is applied in order to overcome the limits of simply normative legal research by integrating doctrinal legal analysis with empirical data on the practical application of the constitutional rights of indigenous peoples. Thus, the research analyses the normative efficacy and empirical effectiveness of the Constitutional Court ruling in the practice of forest governance in Aceh.

The normative analysis uses three legal methodologies, which are statute approach, conceptual approach, and case approach.<sup>19</sup> The statutory method studies constitutional provisions, forestry legislation, regional qanun and other rules concerning indigenous peoples and customary forests. The conceptual approach studies legal doctrines relating to constitutional rights, legal effectiveness, legal pluralism, and constitutional governance, while the case approach analyses the legal reasoning and constitutional implications of Constitutional Court Decision Number 35/PUU-X/2012 as the main object of analysis in this study.

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<sup>18</sup> Nur Solikin, *Pengantar Metodologi Penelitian Hukum*, ed. Tim Qiara Media, Cet. Pertama (Jawa Timur: Qiara Media, 2019).

<sup>19</sup> Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 2004).

The empirical analysis measures the success of the execution of the Constitutional Court ruling by analysing quantitative and qualitative data, on the recognition of customary forests in Aceh till 2024.<sup>20</sup> Empirical data were collected from official government reports, publications of the Ministry of Environment and Forestry (KLHK), papers of regional governments, participatory mapping records, and prior empirical research on indigenous forest governance. The research explicitly contrasts the customary forest areas claimed by indigenous people with those officially recognised by the state to reveal the implementation gap between constitutional and administrative recognition.

The data gathering is done via library research and document analysis by employing primary, secondary and tertiary legal documents. Qualitative normative interpretation and empirical descriptive analysis were used to analyse the data.<sup>21</sup> The normative analysis involved grammatical, systematic and constitutional interpretation to determine the coherence of legal norms, while the empirical analysis applied comparative and structural analysis to identify normative, administrative and political-economic obstacles to the recognition of customary forest. Triangulation is used by cross-checking the legal papers, official statistics data, government reports, and academic publications to guarantee the quality of data and reliability of analysis in this study.<sup>22</sup>

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

#### **3.1 Effectiveness of Constitutional Court Decision Number 35/PUU-X/2012 in Protecting the Constitutional Rights of Indigenous Peoples in Aceh**

##### **3.1.1 Legal Framework: Normative Effectiveness of Constitutional Court Decision Number 35/PUU-X/2012**

The Constitutional Court Decision Number 35/PUU-X/2012 (hereinafter referred to as MK Decision 35) signifies a profound constitutional evolution within Indonesia's forestry governance framework, particularly in relation to the acknowledgement of the rights of indigenous peoples over customary forests.<sup>23</sup> In this landmark ruling, the Constitutional Court asserted that customary forests are no longer to be classified as state forests, but rather as rights forests that belong to indigenous communities. This judicial pronouncement fundamentally transformed the preceding legal framework established by Law Number 41 of 1999 regarding forestry, which had previously subsumed customary forests under the overarching classification of state forests. By excising customary forests from the purview of direct state ownership, the Constitutional Court enhanced the constitutional safeguarding of indigenous peoples as collective legal entities endowed with intrinsic rights over their ancestral lands.<sup>24</sup>

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<sup>20</sup> Sandu Siyoto and M. Ali Sodik, *Dasar Metodologi Penelitian*, ed. Ayup Ayup (Yogyakarta: Literasi Media Publishing, 2015).

<sup>21</sup> Lauren Gatti and Paula McAvoy, "Theorizing to Cases: A Methodological Approach to Qualitative Normative Cases," *Educational Theory* 74, no. 3 (2024): 350–57, <https://doi.org/10.1111/edth.12611>.

<sup>22</sup> Samza Fatima, "Employability of a Research Method and Methodology in a Socio-Legal Study," *Global Social Sciences Review* VIII, no. I (2023): 341–51, [https://doi.org/10.31703/gssr.2023\(viii-i\).31](https://doi.org/10.31703/gssr.2023(viii-i).31).

<sup>23</sup> Citra Tiurmasari Retta Siagian, "The Political Arrangement of Customary Forest in Indonesia: A Discursive Institutional Analysis" (Master of Science in Forest and Nature Conservation, 2021), <https://edepot.wur.nl/561127>.

<sup>24</sup> Tim Inkuiri Nasional Komnas HAM, *Inkuiri Nasional Komisi Nasional Hak Asasi Manusia: Hak Masyarakat Hukum Adat Atas Wilayahnya Di Kawasan Hutan*, Cet. 1 (Jakarta: Komisi Nasional HAM RI, 2016).

Normatively, the resolution acquires substantial legitimacy from Article 18B, paragraph (2), of the 1945 Constitution, which mandates the state to acknowledge and uphold the rights and traditions of indigenous populations. The resolution also embodies more extensive constitutional principles relating to the protection of human rights, the pursuit of social equity, and the commitment to environmental sustainability.<sup>25</sup> From a doctrinal perspective, MK Decision 35 can be construed as a component of the constitutionalisation of indigenous rights within Indonesia's legal framework, wherein constitutional law progressively embraces legal pluralism and customary governance systems as valid elements of national governance.<sup>26</sup> As a result, the resolution encompasses not only legal ramifications but also a more profound constitutional relevance, as it reconfigures the dynamics between the state, Indigenous communities, and the governance of natural resources.

In the province of Aceh, the normative efficacy of the Constitutional Court's Decision 35 is conceptually bolstered by the provisions of special autonomy under Law Number 11 of 2006, which pertains to the governance of Aceh. Aceh exhibits a unique administrative framework that acknowledges customary institutions such as mukim and gampong as integral components of local governance mechanisms. Historically, these institutions have served as traditional authorities overseeing land tenure, forest stewardship, and social dynamics within indigenous populations.<sup>27</sup> Moreover, several regional qanun in Aceh formally recognise customary institutions and establish a legal foundation for governance of natural resources grounded in customary practices. This synergy of constitutional endorsement, regional autonomy, and the legitimacy of customary institutions theoretically cultivates a conducive legal milieu for the recognition of customary forests in Aceh.<sup>28</sup>

According to the theory of legal effectiveness, the normative essence of MK Decision 35 can be regarded as relatively robust. This decision distinctly acknowledges the constitutional recognition of the rights of indigenous populations, the legal elucidation of the status of customary forests, and the establishment of a constitutional obligation for the state to safeguard indigenous territories.<sup>29</sup> The position of the Constitutional Court, which asserts that customary forests are owned by indigenous peoples rather than the state, engenders minimal normative

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<sup>25</sup> Moh. Arif Hariyanto and Azis Budianto, "Protection of Indigenous Peoples Law Based on the 1945 Constitution," in *Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, ICLSSSEE* (Jakarta: EAI: Research Meets Innovation, 2021), <https://doi.org/10.4108/eai.6-3-2021.2306460>.

<sup>26</sup> Rudy, Ryzal Perdana, and Rudi Wijaya, "The Recognition of Customary Rights by Indonesian Constitutional Court," *Academic Journal of Interdisciplinary Studies* 10, no. 3 (2021): 308–18, <https://doi.org/10.36941/AJIS-2021-0086>.

<sup>27</sup> Yulia and Herinawati, "Sosialisasi Dan Penyuluhan Hukum Pengelolaan Hutan Berbasis Kearifan Lokal Di Kabupaten Aceh Utara," *Jurnal ABDINUS: Jurnal Pengabdian Nusantara* 6, no. 3 (2022): 716–24, <https://doi.org/10.29407/ja.v6i3.16122>.

<sup>28</sup> Silfi Iriyani et al., "Chapter 5 - Provincial Autonomy and Forest Management Unit Legislation in Aceh Province, Indonesia: A Review of Regulatory Asynchronies," in *Natural Resource Governance in Asia: From Collective Action to Resilience Thinking*, ed. Raza Ullah et al. (Elsevier, 2021), 55–66, <https://doi.org/https://doi.org/10.1016/B978-0-323-85729-1.00011-6>.

<sup>29</sup> Taufik Qul Basyar, Arfa'i, and Iswandi, "Analisis Pengelolaan Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012," *Limbago: Journal of Constitutional Law* 4, no. 1 (2024): 30–45, <https://doi.org/10.22437/limbago.v4i1.20000>.

ambiguity. Therefore, from the perspective of legal substance, the decision fulfils the requirement for normative clarity, thereby facilitating its effective legal implementation.<sup>30</sup>

However, even when a certain measure is normatively effective, it does not necessarily guarantee empirical effectiveness. The mere existence of constitutional legitimacy cannot facilitate the realisation of indigenous peoples' rights in the absence of adequate institutional capacity, administrative accessibility, and political will.<sup>31</sup> In practical terms, the execution of MK Decision 35 continues to depend on state administrative processes predominantly governed by central government entities. Consequently, despite the robust constitutional legitimacy, the genuine implementation of customary forest recognition encounters numerous challenges. The differentiation between normative and empirical effectiveness is pivotal for comprehending the implementation gap present in Aceh.

### 3.1.2 Implementation Reality: Empirical Effectiveness of Customary Forest Recognition in Aceh

Although MK Decision 35 has conferred robust constitutional acknowledgment of the rights of indigenous populations, empirical evidence indicates that the application of this decision within Aceh is significantly constrained. Official statistics from the Ministry of Environment and Forestry (KLHK), along with reports from regional governments and documentation of customary forest recognition, uncover a considerable discrepancy between the customary forest areas asserted by indigenous communities and those formally acknowledged by the state.

Table 1 below illustrates the comparison between customary forest claims and formal recognition in Aceh up to 2024:

Description	Area (Hectares)	Percentage
Customary forest areas claimed by indigenous communities	>100,000 Ha	100%
Customary forest areas formally recognized by the state	22,549 Ha	22.5%
Estimated unrecognized customary forest areas	±77,451 Ha	77.5%

Source: Processed data

Table 1 illustrates a considerable disparity between constitutional acknowledgment and administrative implementation. Of the more than 100,000 hectares of customary forests asserted by indigenous populations in Aceh, merely around 22,549 hectares have received formal state recognition. Consequently, approximately 77.5% of the asserted customary forest territories remain legally unrecognized, notwithstanding the presence of constitutional assurances as articulated in MK Decision 35. Quantitatively, this gap signifies the limited empirical efficacy of the Constitutional Court's ruling in actualizing constitutional rights into tangible legal safeguards.

<sup>30</sup> Paulus Pora Putra Fajar, Sukardan Aloysius, and Husni Kusuma Dinata, "Implikasi Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 Terhadap Pengaturan Hutan Adat Dan Dampaknya Terhadap Hak Masyarakat Adat," *Perkara: Jurnal Ilmu Hukum Dan Politik* 2, no. 2 (2024): 39–61, <https://doi.org/10.51903/perkara.v2i2.1844>.

<sup>31</sup> Fitri Arianti Saputri, "Indigenous Peoples and the Constitution: Implementation of Traditional Rights Recognition in Modern Legal Foundations," *Journal of Adat Recht* 1, no. 1 (2024): 37–47, <https://doi.org/10.62872/8bsvvnw62>.

The empirical evidence suggests that the enforcement of customary forest recognition in Aceh is characterised by a notably selective and administratively constrained approach. Although indigenous communities possess customary authority over extensive forest territories, the formal acknowledgement of such rights is contingent upon bureaucratic approval processes predominantly overseen by the Ministry of Environment and Forestry (KLHK). Indigenous populations are required to navigate protracted procedures involving identification, participatory territorial mapping, verification protocols, endorsement by regional administrations, and ultimately, ratification by the minister.<sup>32</sup> In practical terms, these procedures frequently necessitate substantial technical proficiency, financial assets, and comprehensive administrative documentation, which many indigenous communities lack.

The disparity illustrated in Table 1 further elucidates that mere constitutional acknowledgement is inadequate in isolation without the presence of institutional frameworks that can effectively enable execution. The recognition of only 22.5% of asserted customary forests signifies that the administrative apparatus responsible for executing functions often operates more as a constraining force rather than a supportive mechanism for the safeguarding of indigenous rights. This predicament epitomises what socio-legal scholars characterise as an implementation deficit, wherein progressive constitutional principles fail to yield tangible results due to the persistent dominance of centralised bureaucratic authority over implementation agencies.

The intricacies inherent in Aceh's legal pluralism framework significantly contribute to the restricted empirical efficacy. Traditional entities such as mukim and gampong continue to exert governance over forested areas in accordance with customary law; however, their jurisdiction remains unintegrated within the national forestry administrative systems.<sup>33</sup> Consequently, a multitude of customary territories that receive local recognition via customary governance frameworks do not attain acknowledgement within formal state administrative structures. This discordance between local and formal administrative recognition engenders overlapping legality, wherein customary forests may achieve social recognition by indigenous communities yet lack administrative acknowledgement by the state.

Inconsistencies between national forestry regulations and regional governance arrangements in Aceh also make the implementation process more difficult. While Aceh has special autonomy, the institutions of the central government have the primary authority over procedures for forest designation and recognition.<sup>34</sup> This results in institutional dualism with social legitimacy of regional customary institutions and centralised formal legal authority at the national level. Thus the process of recognition is based mainly on ministerial discretion, not on local customary legitimacy.

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<sup>32</sup> Asnawi Mubarak et al., "The Relationship Of State Law And Customary Law: Reinforcement And Protection Of Customary Law In Constitutional Court Judgment," *Jurnal Jurisprudence* 13, no. 2 (2023): 188–204, <https://doi.org/10.23917/jurisprudence.v13i2.2914>.

<sup>33</sup> Edra Satmaidi, "A Legal Framework for Social Forestry Management That Provides Access Rights to Communities in Forest Resource Utilization," *Negrei: Academic Journal of Law and Governance* 5, no. 1 (2025): 1–26, <https://doi.org/10.29240/negrei.v5i1.11994>.

<sup>34</sup> Chairul Fahmi and Muhammad Siddiq Armia, "Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms," *Journal of Southeast Asian Human Rights* 6, no. 1 (2022): 1–25, <https://doi.org/10.19184/jseahr.v6i1.30242>.

Another pivotal element for empirical efficacy is the intersection between traditional territories and economic concession zones. Numerous customary forest regions asserted by indigenous populations intersect with plantation concessions, mining licenses, logging zones, and various operations within the extractive industry. In such circumstances, priorities pertaining to economic advancement frequently receive greater political and administrative endorsement than the constitutional entitlements of indigenous communities. As a result, entities benefiting from the prevailing concession frameworks often exhibit resistance to the acknowledgement of customary forests. This indicates that the enforcement of MK Decision 35 is inextricably linked to the overarching political-economic frameworks that govern natural resource management in Indonesia.<sup>35</sup>

The empirical evidence further elucidates that variances in implementation are not solely attributable to technical or administrative challenges but rather signify profound structural inequities inherent within forest governance frameworks. Indigenous communities endowed with enhanced political engagement, institutional backing, or external advocacy support tend to attain recognition with greater efficacy compared to marginalised communities that lack technical and legal resources. Consequently, the empirical efficacy is significantly shaped by disparate access to legal aid, participatory mapping facilitation, and bureaucratic networks.

The inadequate recognition of customary forests engenders more extensive socio-environmental repercussions. From a legal standpoint, indigenous communities remain susceptible to criminalization and land conflicts as unrecognized customary territories persist in being classified as state-controlled forest domains. From a social perspective, the lack of recognition diminishes the authority of indigenous peoples over their ancestral territories and jeopardizes the sustainability of customary governance frameworks. Environmentally, the protracted delay in recognition hampers sustainable forest management practices that have historically been upheld by indigenous communities through customary ecological tenets<sup>36</sup>.

Thus, empirical enquiry reveals that the execution of MK Decision 35 in Aceh is markedly ineffective despite its robust constitutional underpinning. The enduring recognition gap illustrates that constitutional adjudication, in isolation, is insufficient to reform forest governance structures without concomitant transformations in administrative systems, institutional collaboration, and political resolve.

### **3.1.3 Gap Analysis: Disparity Between Constitutional Recognition and Administrative Realization**

The principal implementation disparity discerned in this research pertains to the divergence between constitutional acknowledgment and the actual execution thereof. This implementation disparity signifies that the normative efficacy of MK Decision 35 considerably surpasses its empirical efficacy. The adjudication aptly acknowledges indigenous populations as

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<sup>35</sup> Gde Made Swardhana and Suviwat Jenvitchuwong, "The Participation within Indigenous Land Management: Developments and Challenges of Indigenous Communities Protection," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 308–27, <https://doi.org/10.53955/jhcls.v3i1.72>.

<sup>36</sup> Silfi Iriyani et al., "Indigenous Custodianship and Timber Legality Assurance System: Challenges and Opportunities for Customary Forest Management in Indonesia," *Jurnal Sylva Lestari* 12, no. 3 (2023): 929–47, <https://doi.org/10.23960/jsl.v12i2.734>.

constitutional rights bearers concerning customary forests. In empirical terms, however, the administrative and institutional frameworks entrusted with execution have failed to fulfill constitutional assurances in the guise of substantive legal protection.<sup>37</sup>

The implementation gap delineated in Table 1 elucidates a structural dissonance between constitutional legitimacy and administrative actualisation. In quantitative terms, the notably low figure of 22.5% of customary forest areas that have attained formal recognition indicates that a majority of indigenous territories remain outside the ambit of legal protection frameworks. This inequity is not merely incidental but rather indicative of entrenched systemic obstacles within forest governance institutions.

The initial dimension of the implementation gap pertains to normative impediments. While MK Decision 35 constitutionally acknowledges the existence of customary forests, sectoral forestry regulations persist in maintaining a centralized oversight over forest management. Numerous implementing regulations continue to position the state as the preeminent authority adjudicating the legitimacy of indigenous claims. Consequently, constitutional recognition is relegated to bureaucratic validation processes governed by central institutions. This phenomenon engenders a normative dissonance between constitutional tenets acknowledging indigenous rights and administrative regulations prioritizing state dominion over forest areas.<sup>38</sup>

Normative impediments are further exacerbated by legal pluralism devoid of institutional integration. The governance framework in Aceh amalgamates constitutional law, regional autonomy, Islamic law, and customary law. Nevertheless, these legal frameworks frequently function in isolation, lacking effective harmonization. Customary entities such as mukim may socially and culturally acknowledge indigenous forest territories; however, such recognition frequently lacks administrative legitimacy within national forestry frameworks.<sup>39</sup> As a result, indigenous communities encounter a dual legal landscape: socially acknowledged by customary bodies yet formally unrecognized by state administrations.

The secondary dimension pertains to administrative obstacles. The process of recognition necessitates participatory mapping, territorial validation, documentary substantiation, and formalized legal recognition protocols. These stipulations require specialized technical knowledge and financial resources that are often inaccessible to indigenous people. The act of participatory mapping itself presents a significant hindrance, as numerous indigenous territories do not possess formally documented boundaries, despite a history of customary occupation. The stipulation for technical mapping standards disproportionately disadvantages communities that predominantly rely on oral traditions and customary systems of territory delineation.

Administrative fragmentation further exacerbates the gap in implementation. The procedures for recognition engage numerous entities, including local governments, provincial authorities,

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<sup>37</sup> Muhammad Natsir et al., “Unwise Criminal Environmental Law Policies In Protecting Aceh’s Customary Forests From Destruction,” *Journal of Law and Legal Reform* 7, no. 1 (2026): 1–22, <https://doi.org/10.15294/jllr.v7i1.22464>.

<sup>38</sup> Saputri, “Indigenous Peoples and the Constitution: Implementation of Traditional Rights Recognition in Modern Legal Foundations.”

<sup>39</sup> Iriyani et al., “Chapter 5 - Provincial Autonomy and Forest Management Unit Legislation in Aceh Province, Indonesia: A Review of Regulatory Asynchronies.”

customary institutions, and the Ministry of Environment and Forestry (KLHK). The lack of cohesive coordination often leads to overlapping jurisdictions, bureaucratic delays, and inconsistent policy execution. In practice, indigenous communities are compelled to navigate exceedingly intricate administrative frameworks with minimal institutional support.

The tertiary dimension pertains to political-economic impediments. The governance of forest resources in Indonesia is profoundly shaped by commercial and extractive interests. Numerous customary territories intersect with corporate concessions in the domains of plantation, mining, and logging industries. Consequently, the acknowledgment of customary forests frequently engenders conflicts with pre-existing economic interests that are bolstered by state development policies. Under such conditions, the constitutional rights of indigenous peoples are often relegated to the supremacy of investment priorities and revenue-generating endeavors.<sup>40</sup>

Insufficient political commitment also plays a crucial role in exacerbating the implementation gap. Despite the formal existence of constitutional recognition, numerous governmental entities exhibit reluctance to transfer forest authority to indigenous communities.<sup>41</sup> This hesitation is indicative of broader political apprehensions regarding state dominion over strategically significant natural resources. Consequently, the process of implementation tends to unfold at a sluggish and selective pace rather than comprehensively.

The implementation gap elucidated in this investigation bears significant ramifications for the theoretical framework of constitutional governance. It elucidates the constraints of constitutional adjudication as an agent of transformation when institutional frameworks exhibit resistance to modification. The judicial acknowledgment of Indigenous rights does not inherently dismantle the entrenched centralized governance systems that are profoundly integrated within administrative and political institutions.<sup>42</sup> Consequently, the efficacy of the constitution is contingent not solely upon normative legitimacy but also upon the institutional readiness and administrative capacity to actualize constitutional directives.

The findings corroborate, from the standpoint of legal effectiveness theory, that the efficacy of law necessitates the alignment of legal substance, legal structure, and legal culture. MK Decision 35 possesses substantial legal content; however, its institutional frameworks and implementation culture are deficient, thereby significantly diminishing its practical effectiveness. Hence, the safeguarding of constitutional rights cannot be solely predicated on judicial rulings but necessitates a more comprehensive institutional reform and administrative transformation.

The persistence of the implementation gap yields significant ramifications for the indigenous populations residing in Aceh. The legal status of indigenous peoples' rights to their ancestral

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<sup>40</sup> Aprisep Ferdhana Kusuma et al., "Emergent Institutional Issues from New Tenure Reforms and Social-Forestry Initiatives in Indonesia: Notes from The Field," *Forest and Society* 7, no. 2 (2023): 450–66, <https://doi.org/10.24259/fs.v7i2.28319>.

<sup>41</sup> Rikardo Simarmata, "The Current Updates of the Progresses and the Challenges of Recognition of Customary Forests in Indonesia," *Jurnal Ilmu Kehutanan* 18, no. 2 (2024): 142–52, <https://doi.org/10.22146/jik.v18i2.12660>.

<sup>42</sup> Muhammad Natsir et al., "Legal Forms Against Corporations as Perpetrators of Environmental Crime in Indonesia: Study Based on the Environmental Protection and Management Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 646–64, <https://doi.org/10.22373/sjhk.v8i2.22071>.

territories remains precariously unresolved. From a social perspective, inadequate acknowledgment perpetuates their marginalization and heightens their vulnerability to conflict and criminalization. Environmentally, the lack of formal recognition erodes indigenous-led conservation frameworks that have historically facilitated sustainable forest governance.

Consequently, the enhancement of the efficacy of MK Decision 35 necessitates a holistic array of institutional reforms that concurrently address normative, administrative, and political-economic obstacles. The realization of substantive justice can only be achieved through the alignment of regulatory structures at both national and regional levels, the simplification of recognition procedures, the fortification of regional customary institutions' authority, the expansion of legal assistance, and the reinforcement of political commitment to the safeguarding of indigenous rights. Absent such reforms, constitutional recognition is likely to remain a mere symbolic gesture rather than a substantive mechanism for the protection of the constitutional rights of indigenous peoples in Aceh.

### **3.2 Normative and Administrative Obstacles in the Implementation of MK Decision 35 and Their Impact on Indigenous Peoples' Rights**

The execution of the Constitutional Court Decision Number 35/PUU-X/2012 (MK Decision 35) within the jurisdiction of Aceh illustrates that mere constitutional acknowledgment is insufficient for the comprehensive safeguarding of the rights of indigenous populations over customary forests. While the decision establishes a robust constitutional foundation for the recognition of customary forests as the rights of indigenous peoples, its execution continues to encounter numerous structural impediments. These obstacles are interrelated and function at the normative, administrative, and political-economic strata, thus exacerbating the persistent discrepancy between constitutional acknowledgment and tangible realization. Consequently, the advancement of constitutional jurisprudence has not succeeded in providing adequate constitutional protection for the rights of indigenous peoples in Aceh.

One of the principal challenges in the execution of MK Decision 35 is the persistent regulatory dissonance among constitutional provisions, national forestry statutes, and regional legal frameworks in Aceh. Normatively, the Constitutional Court has unequivocally articulated that customary forests are no longer categorized as state forests. However, numerous sectoral forestry regulations continue to confer forest administration and designation authority upon the centralized state. In practical terms, the Ministry of Environment and Forestry (KLHK) maintains a predominating influence in adjudicating the legitimacy of customary forest acknowledgment.<sup>43</sup> Consequently, constitutional recognition remains predominantly contingent upon the approval processes of administrative authorities, which are subordinate to the control of central government entities. This scenario engenders normative discord between constitutional principles that recognize indigenous rights and administrative regulations that emphasize state dominion over forest territories.

The phenomenon of legal pluralism significantly contributes to the challenges encountered in the implementation processes in Aceh. Aceh operates under a distinctive governance

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<sup>43</sup> Adianto and Muamar, "Peranan Budaya Hukum Kementerian Lingkungan Hidup Dan Kehutanan Dalam Penetapan Hutan Adat."

framework. This governance framework is delineated by the coexistence of constitutional law, Islamic law, regional autonomy statutes, and customary law. Institutions such as mukim and gampong persist as customary entities overseeing land tenure and forest management within indigenous populations. Nevertheless, these customary legal frameworks have not been wholly assimilated into the national forestry governance structure.<sup>44</sup> Consequently, customary forest territories that are socially and culturally acknowledged by indigenous communities frequently lack formal recognition within state administrative frameworks. This lack of institutional harmonization regarding legal pluralism engenders overlapping jurisdictions and divergent legal interpretations concerning the status of customary forests.

Another significant normative impediment pertains to the ambiguous legal characterization of indigenous peoples as articulated within Indonesian jurisprudence. Varied statutes and regulations employ disparate criteria to ascertain the existence and legitimacy of indigenous communities, which encompass factors such as historical continuity, customary institutions, ties to territory, and traditional governance frameworks. The lack of a unified legal definition engenders ambiguity in the recognition process, compelling indigenous communities to incessantly validate their legal existence to gain acknowledgment of their ancestral forests. In Aceh, the interplay of customary identity, regional autonomy, and administrative stipulations enforced by national authorities further exacerbates the complexity of the matter.<sup>45</sup> Consequently, numerous indigenous communities find themselves at a disadvantage in satisfying formal legal prerequisites, notwithstanding their enduring customary occupancy and societal acknowledgment.

These normative limitations suggest that the constitutional acknowledgment established by MK Decision 35 has not been entirely reinforced by cohesive legal frameworks that would facilitate effective execution. Notwithstanding the robust constitutional validity of the ruling issued by the Constitutional Court, the actualization of the rights of indigenous peoples remains obstructed by disparate sectoral regulations, disjointed legal systems, and ambiguous definitions.

In addition to normative issues, the execution of MK Decision 35 also faces significant administrative impediments that substantially undermine its empirical efficacy. Among these administrative impediments, the bureaucratic intricacies associated with the customary forest recognition process are particularly salient.<sup>46</sup> For indigenous communities aspiring to achieve formal acknowledgment, a sequence of procedural actions is requisite, encompassing the identification of indigenous groups, participatory territorial mapping, validation of customary governance frameworks, endorsement by local governmental authorities, and ratification by the Ministry of Environment and Forestry (KLHK). These procedures are frequently

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<sup>44</sup> Muhammad Natsir, Fuadi Fuadi, and Zaki Ulya, "Perwujudan Sila Keadilan Sosial Dalam Pengelolaan Lingkungan Hidup Dikaitkan Upaya Penanggulangan Kemiskinan Di Aceh," *Bina Hukum Lingkungan* 7, no. 1 (2022): 80–93, <https://doi.org/10.24970/bhl.v7i1.281>.

<sup>45</sup> Teuku Muttaqin Mansur et al., "Challenges in Documenting and Formalizing Customary Court System in Aceh, Indonesia," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (2024): 98–113, <https://doi.org/10.22373/petita.v9i1.230>.

<sup>46</sup> Simarmata, "The Current Updates of the Progresses and the Challenges of Recognition of Customary Forests in Indonesia."

protracted, financially onerous, and administratively taxing, particularly for Indigenous communities that possess limited technical expertise and financial resources.<sup>47</sup>

The bureaucratic framework of acknowledgment illustrates that the state remains the principal arbiter in determining the access of indigenous populations to customary forest resources. Although customary forests are acknowledged under the Constitution as a legitimate right forest pursuant to MK Decision 35, indigenous communities are still required to obtain consent from the state apparatus to achieve formal legal recognition.<sup>48</sup> This stipulation indicates that constitutional acknowledgment is contingent upon the satisfaction of bureaucratic criteria rather than the intrinsic existence of Indigenous customary rights. Such a situation significantly constrains the practical accessibility of mechanisms for constitutional safeguarding.

Mapping constraints represent a significant administrative impediment in the enforcement of customary forest recognition. The process of participatory mapping is indispensable for delineating customary forest peripheries and mitigating conflicting territorial assertions.<sup>49</sup> Nevertheless, numerous indigenous populations in Aceh experience a deficiency in access to requisite technical proficiency, mapping technologies, and fiscal resources essential for executing formal mapping protocols. Furthermore, customary territorial frameworks are often grounded in oral traditions, customary pacts, and natural geographical indicators rather than in formal cartographic records. Consequently, the imposition of technical mapping criteria engenders structural disadvantages for indigenous communities endeavoring to attain acknowledgment of their customary domains.

Institutional fragmentation exacerbates the implementation difficulties linked to customary forest recognition. The recognition process entails the involvement of various governmental entities functioning at local, provincial, and national tiers, which encompass customary institutions, regional authorities, forestry departments, and the Ministry of Environment and Forestry (KLHK).<sup>50</sup> The lack of efficient coordination among these entities often culminates in overlapping jurisdictions, bureaucratic procrastination, inconsistent policy frameworks, and ambiguity concerning institutional accountability. In certain instances, customary forest propositions languish unresolved for extended periods due to clashing administrative protocols and a deficiency in institutional alignment.

Limited availability of legal assistance and technical support for Indigenous communities further exacerbates administrative obstacles. Numerous communities are insufficiently informed regarding recognition protocols and possess a constrained ability to navigate intricate bureaucratic frameworks. Consequently, indigenous populations frequently depend on external

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<sup>47</sup> Tagor Manahan P.L. Tobing, Sufiarina, and Erna Amalia, "The Implementation of the Acknowledgment of Rights through the Conversion of Customary Land Ownership," *International Journal of Research and Innovation in Social Science (IJRISS)* 8, no. 2 (2025): 1175–89, <https://doi.org/10.47772/ijriss.2024.802078>.

<sup>48</sup> Klemens Ola Gelu, Saryono Yohanes, and Ebu Kosmas, "Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 35/PUU- X/2012 Terhadap Eksistensi Masyarakat Hukum Adat," *Comserva : Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 2 (2023): 407–17, <https://doi.org/10.59141/comserva.v3i02.778>.

<sup>49</sup> Kwabena Asiama and Anthony Arko-Adjei, "An Experiment on the Role of Participatory GIS in the Adjudication Process of Customary Lands," *Survey Review* 55, no. 389 (March 4, 2023): 178–91, <https://doi.org/10.1080/00396265.2022.2040869>.

<sup>50</sup> Adianto and Muamar, "Peranan Budaya Hukum Kementerian Lingkungan Hidup Dan Kehutanan Dalam Penetapan Hutan Adat."

civil society organizations or advocacy entities for participatory cartography, legal documentation, and administrative negotiations. Communities devoid of such support face a considerable disadvantage in the recognition process, thereby engendering inequitable access to the safeguarding of constitutional rights.<sup>51</sup>

These observations indicate that administrative obstacles are pivotal to the disparity between constitutional acknowledgment and the tangible realization of customary forest rights in Aceh. The ongoing presence of bureaucratic intricacies, mapping challenges, and institutional disunity implies that the administrative framework surrounding forest recognition remains inadequately attuned to the realities and capabilities of indigenous communities.

Administrative obstacles are further exacerbated by the insufficient availability of legal aid and technical resources for Indigenous populations. Numerous communities exhibit a deficit in legal comprehension concerning recognition protocols and demonstrate a constrained ability to navigate intricate bureaucratic frameworks.<sup>52</sup> As a result, Indigenous peoples frequently rely on external civil society organizations or advocacy entities to assist with participatory mapping, legal documentation, and administrative negotiations. Communities devoid of such support are markedly disadvantaged within the recognition framework, thus engendering disparities in access to constitutional rights protection.

These observations elucidate that administrative impediments serve a pivotal function in perpetuating the disparity between constitutional acknowledgment and the tangible realization of customary forest rights in Aceh. The continued existence of bureaucratic intricacies, challenges in mapping, and institutional disjunction signifies that the administrative apparatus governing forest recognition is inadequately attuned to the realities and capabilities of Indigenous communities.

Beyond normative and administrative constraints, the execution of MK Decision 35 is profoundly shaped by political-economic impediments. One of the most notable political-economic challenges pertains to the existence of conflicting corporate interests within the realm of forest governance. Numerous customary forest territories asserted by indigenous communities coincide with plantation concessions, logging licenses, mining enterprises, and various other activities within the extractive sector. In such contexts, economic imperatives often attain greater political and administrative significance than the constitutional rights of indigenous populations.

Conflicts pertaining to land and forest governance frequently emerge at the convergence of ancestral territories and corporate concessions. Indigenous populations striving to attain acknowledgment of their traditional forests may face opposition from corporate entities that derive advantages from prevailing concession agreements.<sup>53</sup> In practical terms, governmental

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<sup>51</sup> Ari Ade Kamula, Rachmad Safa'at, and Imam Koeswahyono, "Restoration of Indigenous People's Rights in Natural Resources Management," *International Journal Of Humanities Education and Social Sciences (IJHESS)* 2, no. 6 (2023): 2010–21, <https://doi.org/10.55227/ijhess.v2i6.472>.

<sup>52</sup> Yayan Supiani, "Legal Recognition and Protection of Indigenous Land Rights: Analysis of the Legal Framework to Achieve Sustainable Development Goals," *KnE Social Sciences* 10, no. 27 (2025): 506–19, <https://doi.org/10.18502/kss.v10i27.20087>.

<sup>53</sup> Sahide, Abdullah, and Moeliono, "Policy Forum: Indigenous Forest Rights at a Crossroads? A Critical Look at Indonesia's Planned Forestry Law Amendment."

institutions generally place a higher priority on the stability of investment and objectives related to economic development than on safeguarding the rights of indigenous peoples. Consequently, the constitutional acknowledgment established under MK Decision 35 is challenging to implement effectively in regions that are already assimilated into frameworks of commercial exploitation.<sup>54</sup>

The insufficient political will significantly contributes to the inadequate implementation of customary forest recognition in Aceh. The constitutional directive is unequivocal as articulated in the ruling of the Constitutional Court; however, the actualization of this mandate is predominantly contingent upon the dedication of policymakers and government entities.<sup>55</sup> The apprehension regarding administrative intricacies, competing land claims, and potential confrontations with commercial interests has frequently constrained the political resolve of both local and national governments to expedite the acknowledgment of customary forests. Consequently, the implementation process is characterized by a gradual and selective approach rather than a comprehensive one.

Political-economic obstacles reveal that the chasm in implementation cannot solely be interpreted as a technical or legal challenge. Instead, the enduring inadequacy in recognizing customary forest rights indicates more extensive structural conflicts between the safeguarding of constitutional rights and state-centric economic development strategies. In practice, although the constitutional acknowledgment of indigenous peoples' rights is robust, it has been undermined by the persistent prevalence of extractive economic interests within the realm of forest governance.

The enduring presence of normative, administrative, and political-economic obstacles has exerted considerable effects on indigenous populations and forest governance within Aceh. A direct repercussion of this situation is the advent of legal ambiguity regarding the status of customary forests. Indigenous communities that are devoid of formal state acknowledgment for their customary lands persist in facing heightened susceptibility to conflicting claims, forced displacement, and criminalization, as their forests remain officially classified as state-controlled territories. This legal ambiguity serves to undermine the negotiating power of indigenous peoples in disputes with state entities or corporate stakeholders.

The existing implementation gap perpetuates the marginalization of indigenous populations within the frameworks of forest governance. Despite the formal recognition of Indigenous communities as rights holders within the constitutional framework, their capacity to exert effective control over customary territories is severely hampered by a lack of practical implementation measures. Consequently, indigenous peoples continue to be excluded from participatory decision-making processes in the management of natural resources, notwithstanding their historical customary authority and profound ecological insights regarding forest conservation. This marginalization further entrenches structural inequalities between indigenous communities and more dominant political-economic entities.

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<sup>54</sup> Natsir et al., "Legal Forms Against Corporations as Perpetrators of Environmental Crime in Indonesia: Study Based on the Environmental Protection and Management Law."

<sup>55</sup> Sutri Helfianti et al., "Land Governance and the Unfulfilled Promise of Aceh's Special Autonomy: Legal Schism and Political Stress," *Veredas Do Direito* 22, no. 3 (2025): e223628, <https://doi.org/10.18623/rvd.v22.n3.3628>.

In addition to the legal and social ramifications, the inadequate acknowledgment of customary forests also engenders risks of environmental degradation. Indigenous populations have historically governed forests according to customary ecological principles that prioritize sustainability, collective accountability, and the preservation of resources for future generations. Consequently, the exclusion of indigenous communities from forest governance undermines locally grounded conservation systems that have traditionally played a pivotal role in maintaining ecological equilibrium. In numerous instances, unrecognized customary forests become susceptible to the adverse effects of unsustainable commercial exploitation, deforestation, and the environmental devastation linked to extractive industries.

From the standpoint of constitutional governance, these consequences illustrate that the efficacy of constitutional adjudication cannot be evaluated solely on the basis of normative legitimacy. The actual implementation of constitutional rights is contingent upon the interplay between legal substance, institutional frameworks, and political will. In the context of MK Decision 35, robust constitutional recognition remains inadequate as administrative frameworks and political-economic conditions persist in limiting Indigenous peoples' access to substantive justice.

Therefore, to effectively bridge the implementation gap in Aceh, it is imperative that institutional reforms be both extensive and multifaceted, encompassing the harmonization of legal frameworks, the streamlining of administrative processes, the fortification of customary governance structures, enhanced intergovernmental cooperation, the broadening of legal support services, and a more robust political commitment to safeguarding the rights of indigenous populations. In the absence of such comprehensive reforms, the constitutional acknowledgment of these rights may ultimately serve as more of a symbolic gesture rather than a genuine catalyst for the realization of the constitutional entitlements of indigenous communities and the advancement of sustainable forest governance.

#### **4. CONCLUSION**

This study demonstrates that Constitutional Court Decision Number 35/PUU-X/2012 has established a strong constitutional foundation for recognizing customary forests as the rights of indigenous peoples; however, its implementation in Aceh remains substantively ineffective due to the persistent disparity between constitutional recognition and administrative realization, reflected in the limited formal recognition of customary forest areas compared to indigenous claims. The implementation gap is primarily driven by regulatory disharmonization, fragmented institutional authority, complex administrative procedures, limited legal and technical support, and competing political-economic interests, all of which continue to undermine the effective protection of indigenous peoples' constitutional rights. The novelty of this research lies in integrating constitutional legal analysis with empirical measurement of implementation effectiveness while positioning Aceh's special autonomy and legal pluralism as a distinctive constitutional governance framework, thereby providing a structural explanation of implementation barriers through normative, administrative, and political-economic dimensions. These findings confirm that constitutional adjudication alone is insufficient to achieve substantive justice without corresponding institutional and administrative reforms. Therefore, strengthening the implementation of MK Decision 35

requires harmonization of national and regional regulations, simplification of customary forest recognition procedures, reinforcement of coordination among relevant institutions, expansion of participatory mapping and legal assistance for indigenous communities, and stronger governmental commitment to ensuring effective constitutional protection and sustainable customary forest governance.

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