



## **Legal Assessment of the Expiration of Evidence of Customary Land Ownership**

### **Penilaian Hukum atas Kedaluwarsa Bukti Kepemilikan Tanah Adat**

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**Abstract:** This article examines the legal uncertainty faced by holders of written evidence of former customary land ownership in Indonesia following Article 96(2) of Government Regulation No. 18 of 2021, which invalidates such documents five years after the regulation's enactment. Framed within a normative juridical method and conceptual approach, this study analyzes constitutional principles, statutory law, and selected international instruments to assess the impact of the regulation on Indigenous peoples' rights. The lack of transitional mechanisms, such as extended validity periods or community-based evidentiary alternatives, creates legal exclusion and deepens structural inequality—particularly in rural areas where state-recognized documentation is rarely accessible. While the regulation aims to standardize land certification, it risks violating procedural fairness, legitimate expectations, and the protection of property rights as guaranteed by Articles 18B(2) and 28G(1) of the 1945 Constitution. The article argues that agrarian policy reform must adopt a rights-based and restorative framework, capable of accommodating non-formal, community-rooted proofs of ownership to uphold justice and inclusivity within Indonesia's plural legal system.

**Keywords:** Constitutional Protection; Customary Land Rights; Indigenous Communities; Land Registration; Legal Certainty; Property Rights; Transitional Justice.

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## **INTRODUCTION**

The Constitution of the Republic of Indonesia explicitly acknowledges the existence of Indigenous law communities and their traditional rights, as stipulated in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution. Philosophically, this recognition reflects the principle of substantive justice within a democratic state governed by the rule of law, whereby legal norms must not merely reflect the will of the majority but also serve to protect minority groups and local values passed down through generations (Rawls, 2001). From a juridical perspective, Indigenous peoples' rights to their customary land are categorized as

collective economic human rights, placing a positive obligation on the state to safeguard and respect these rights within the national land law system (Anaya, 2004). Sociologically, however, the implementation of these constitutional principles continues to face structural inequalities, particularly in terms of access to land administration services and the formal recognition of traditional land documents such as *girik*, *petuk*, or hereditary land certificates. The core problem lies in the gap between state law, which emphasizes formal legality, and customary law, which is grounded in social legitimacy and collective recognition. When the state imposes an expiration period on customary land documents without an inclusive transitional mechanism, it effectively neglects the historical and socio-cultural dimensions of Indigenous land ownership that are maintained through non-formal means. In contrast, various modern legal systems have adopted more accommodative approaches to Indigenous land rights, including the acceptance of unwritten or community-based evidence within land governance frameworks. This condition underscores the need to reconstruct the relationship between the state and Indigenous law communities, particularly in a manner that ensures legal certainty without sacrificing communal justice.

Numerous legal discourses have addressed the vulnerability of Indigenous communities in accessing the national land administration system, particularly when confronted with rigid administrative requirements such as formal certification and legal documentation. The prevailing reliance on formal written evidence often marginalizes forms of land ownership rooted in communal legitimacy, which have been socially recognized for generations. In this context, documents such as *girik*, *petuk*, or traditional land certificates are frequently deemed to lack sufficient legal standing. Nonetheless, existing legal debates tend to focus on administrative challenges, while neglecting the substantive legal implications that arise when such customary documents are explicitly rendered invalid by state regulation. This creates a normative vacuum that directly impacts the legal status of Indigenous land. Within the framework of legal theory that upholds the principle of legal certainty, the elimination of evidentiary value from longstanding land documents without providing equivalent legal protection mechanisms risks producing systemic legal uncertainty (Bingham, 2007). This research contributes to filling that gap by offering a normative analysis of Article 96(2) of Government Regulation No. 18 of 2021 and assessing its consequences on the recognition of Indigenous land rights within Indonesia's agrarian legal system.

The imposition of a five-year deadline for holders of written evidence of former customary land to register their land, as stipulated in Article 96(2) of Government Regulation No. 18 of 2021, poses a significant risk of reinforcing structural inequalities in access to land rights. Many Indigenous communities face serious challenges in understanding formal legal procedures, lack access to legal assistance, and are further constrained by geographic and administrative barriers

to reaching land registration offices. Within the framework of a state governed by the rule of law, administrative actions by the state must not negate substantive rights of its citizens—especially those rights protected under the Constitution (Cassese, 2004). When the state fails to accommodate the structural limitations faced by Indigenous communities, the risk of legal marginalization increases.

Moreover, policies that disregard prevailing social realities tend to exacerbate agrarian conflicts, particularly in areas where customary land ownership is dense and contested. The disjunction between normative law and social fact in this context reflects a failure of the state to fulfill the distributive function of law in an equitable manner (Unger Mangabeira, 1976). Legal systems that overlook socio-cultural constraints in favor of rigid formalism risk legitimizing exclusion and perpetuating systemic injustice under the guise of procedural neutrality.

The legal issue arising from the implementation of Article 96(2) of Government Regulation No. 18 of 2021 directly engages with the core principles of legal certainty and the constitutional protection of property rights. When written evidence of former customary land ownership is declared invalid after a specific deadline, a fundamental question emerges as to whether the state has provided fair and proportional legal alternatives for Indigenous communities. Legal instruments governing proof of land ownership should not rely solely on a formalist-positivist approach but must also account for principles of substantive justice embedded in the lived experiences of communities (Suwito et al., 2023). The exclusion of evidentiary forms that fall outside the administrative norms of the state, yet are recognized by customary communities, can amount to a violation of property rights protected under international legal standards (Penner & Smith, 2013). In this context, the essential inquiry becomes how far the state may legitimately revoke traditional evidentiary instruments that have been historically and culturally recognized, and what form of legal protection should be enacted to prevent the unilateral extinguishment of Indigenous land rights. This issue calls for a critical re-evaluation of the relationship between state law, customary law, and universal legal principles concerning the right to property and land ownership.

This research is directed toward examining the legal status of written evidence of former customary land ownership that has lost its evidentiary value following the enactment of Article 96(2) of Government Regulation No. 18 of 2021. The primary focus lies in analyzing how this provision affects the protection of land rights held by Indigenous law communities within the framework of Indonesia's agrarian legal system. In the context of a state governed by the rule of law—one that upholds the principles of non-retroactivity and legal certainty any regulatory changes should be accompanied by transitional mechanisms to ensure the uninterrupted protection of civil rights, including the right to property (Tuominen, 2025). This study further

assesses the extent to which the regulation aligns with principles of social justice and the recognition of collective rights as enshrined in international instruments such as the ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (Dervin et al., 2025). Additionally, the research explores the potential for reformulating land law policy to become more responsive to the realities faced by Indigenous communities, particularly those with limited access to formal legal systems. Central to this analysis is the construction of a legal protection model based on the principles of proportionality, procedural fairness, and sensitivity to legal pluralism that acknowledges the coexistence of state law and living customary legal systems within a diverse society.

## RESULT AND DISCUSSION

### The Constitutional Relevance of Indigenous Rights Recognition

The recognition of Indigenous law communities within the Indonesian legal system is firmly grounded in the 1945 Constitution of the Republic of Indonesia. Article 18B(2) affirms that the state acknowledges and respects the existence of traditional communities and their customary rights, insofar as they are still alive and consistent with the development of society and the principles of the Unitary State of the Republic of Indonesia. Furthermore, Article 28I(3) strengthens this by asserting that cultural identity and the rights of traditional communities must be respected in accordance with the advancement of civilization. Normatively, these provisions place the rights of Indigenous peoples within the domain of constitutional rights that cannot be overridden by administrative policies or technical regulations. In modern constitutional doctrine, such recognition is part of the principle of *constitutional pluralism*, which affirms the coexistence of non-state legal norms, as long as they do not contravene the fundamental principles of the state (Tushnet, 2018).

From a human rights perspective, Indigenous communities possess the right to collective identity and to the natural resources they have traditionally controlled. The state bears a positive obligation to respect and protect these rights through substantive legal policies, not merely procedural mechanisms. These constitutional provisions serve as a *constitutional guarantee* for the continued existence and protection of traditional rights, which are not always accommodated by modern legal systems that tend to rely on formal administrative mechanisms. This legal philosophy is also echoed in international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which affirms that Indigenous peoples have rights to lands, territories, and resources they have traditionally owned, occupied, or otherwise used (Gargett, 2013)

In the Indonesian context, the recognition of Indigenous communities is not merely cultural or symbolic, but carries binding constitutional implications. The state is required to develop a

legal framework capable of bridging Indigenous values with the demands of national legal certainty. When tensions arise between formal evidentiary systems and long-standing traditional rights, the interpretation of Articles 18B and 28I of the Constitution must aim to safeguard the continuity of Indigenous rights as constitutional entitlements that cannot be subordinated to temporary administrative procedures.

The constitutional recognition of Indigenous law communities entails an active obligation on the part of the state to guarantee, respect, and fulfill their rights in concrete terms. Within the framework of a modern rule-of-law state, recognition without corresponding implementation amounts to a denial of *constitutional accountability* and risks reducing such recognition to a mere symbolic gesture. The rights of Indigenous peoples to land that has been collectively inherited across generations cannot be confined to constitutional rhetoric; they must be safeguarded through affirmative state action that ensures the effective realization of these rights within the positive legal system. From a human rights perspective, the state bears *positive obligations* toward vulnerable groups, including Indigenous communities, and such obligations must be fulfilled through equitable regulation and fair access to legal mechanisms (Tiedemann, 2023)

In international practice, such obligations include the legal recognition of Indigenous forms of land ownership, the formulation of policy frameworks that protect *ulayat* (communal) land, and the adaptation of national legal instruments to ensure that non-formal ownership evidence recognized under customary law is not subjected to discriminatory treatment. When a state enacts regulations such as Article 96(2) of Government Regulation No. 18 of 2021 which imposes an expiration period on customary land documents such measures must be interpreted through the lens of constitutional rights protection rather than mere administrative efficiency. The state's obligation in this context involves the establishment of transitional mechanisms, community-based legal services, and the acknowledgment of legal pluralism that characterizes Indonesian society (Charters & Stavenhagen, 2009)

The state is also required to uphold the principle of *substantive equality*, which entails treating Indigenous communities not through uniform formal standards, but through differentiated approaches that take into account their structural vulnerabilities and cultural barriers (Enno Sellya Agustina, 2025). This aligns with the principle of *contextual justice* in modern constitutional law, which rejects the assumption that formal equality constitutes justice, and instead promotes inclusive and participatory approaches in the formulation and implementation of public policy (Khaitan, 2015). Failure to meet this obligation risks reinforcing legal exclusion of Indigenous peoples and undermining the legitimacy of the state as a guarantor of equal protection for all citizens without discrimination.

Constitutional recognition of Indigenous rights cannot be separated from the necessity of granting legal legitimacy to land ownership evidence grounded in customary systems. Documents such as *girik*, *petuk*, *pipil*, and other forms of non-certificate-based proof, although not classified as formal evidence under positive law, have long held legitimate status within Indigenous communities as concrete representations of land ownership. Disregarding the existence of such documents effectively means dismissing the recognition of *living law* the normative systems that organically operate within customary societies. Within the framework of a pluralistic agrarian legal system, evidentiary instruments that are socially validated must be accorded legal protection as part of the constitutional guarantee of property rights (Gilbert, 2018).

The protection of customary land documents is also an integral component of the principle of *legal empowerment*, which emphasizes strengthening the legal standing of marginalized groups by recognizing their local legal systems (Banakar, 2015). When the state exclusively acknowledges formal evidence in the form of land certificates without accommodating traditional documentation that predates the introduction of formal land registration systems—it risks perpetuating inequality in access to justice. This condition is further exacerbated by the implementation of Article 96(2) of Government Regulation No. 18 of 2021, which limits the validity of written evidence of customary land ownership to only five years from the date the regulation took effect. Such a restriction may be interpreted as the legal erasure of ownership claims that remain socially and communally recognized within Indigenous law communities.

In the context of land rights, evidentiary documents serve not merely as administrative records, but also as anchors of collective memory and existential foundations for Indigenous communities in relation to their ancestral territories. Nullifying the legal value of such evidence effectively severs the historical and cultural ties that have been preserved across generations. A legal approach grounded in contextual justice must recognize that customary land ownership documents possess legitimate legal value within a constitutional framework that upholds legal pluralism and acknowledges diverse systems of proof (Beetham, 2017). To disregard such evidence is to transform state law into a tool of exclusion rather than a mechanism of inclusion for the protection of traditional rights.

### **Access to Land Registration: Sociological Realities and the Risk of Marginalization**

One of the primary obstacles faced by Indigenous law communities in the land registration process is limited access to the national land administration system, which is heavily reliant on technical procedures and legal formalities. Most Indigenous communities reside in remote areas with minimal infrastructure, making physical access to land offices or legal service institutions a

significant barrier. In addition, low levels of legal literacy mean that many community members are unaware of the importance of legalizing land ownership within the state system. This lack of awareness is not merely a consequence of limited formal education, but also reflects a deep epistemological divide between state legal sys (Graham, 2010). In many cases, Indigenous communities lack the administrative capacity to prepare the required documentation, such as inheritance certificates or technically compliant land maps.

These limitations are further exacerbated by the absence of state support through community-based legal services or participatory outreach programs. The state-administered land registration system tends to be top-down and insufficiently inclusive of social and cultural diversity, often leaving Indigenous communities feeling alienated from legal processes that should, in principle, serve to protect them. From an *access to justice* perspective, these challenges place Indigenous peoples in a structurally subordinate position, in which the opportunity to gain formal recognition of land rights is significantly diminished compared to groups with greater access to resources (Chen, 2013). Moreover, the application of a one-size-fits-all approach in agrarian policy has led to a failure to accommodate the specific needs of Indigenous groups, who are geographically and structurally disadvantaged. This contributes to the entrenchment of legal exclusion and deepens longstanding disparities between state law and Indigenous legal systems.

One of the most fundamental dilemmas in Indonesia's national land governance practice lies in the disconnect between formalist-positivist legal norms and the social realities of Indigenous communities who operate within non-codified legal systems. When the state imposes regulations that require land registration through formal documents such as land certificates or officially sanctioned cadastral maps, it effectively establishes a standard of legality that often fails to align with the traditional forms of legitimacy that have been practiced and upheld for generations. This condition illustrates what has been referred to as a *socio-legal mismatch* a tension between codified state law and *living law*, the normative systems that continue to thrive within local communities (Cotterrell, 2017). In many Indigenous communities, land ownership is based not on formal documentation, but on collective recognition, genealogical relations, and social agreements that are not recorded administratively, yet carry authoritative legitimacy within the community's social structure. The imposition of administrative formalism in such contexts not only ignores the lived legal consciousness of Indigenous societies but risks invalidating long-standing customary arrangements that have historically regulated land tenure.

When state law fails to comprehend the social logic underlying Indigenous practices of land ownership and inheritance, the result is the emergence of widespread structural injustice. Requiring Indigenous peoples to prove land ownership through documentation they have never historically used constitutes a form of *legal disenfranchisement*—the marginalization of

communities from the legal system due to evidentiary standards that are inherently exclusionary (Tamanaha, 2021) A legal system that is unaccommodating of social complexity risks gradually eroding the existence of customary law, as state regulations compel communities to conform to a legal order they neither understand nor can easily access.

In such circumstances, state law ceases to function as a means of social integration and instead operates as a mechanism of exclusion, privileging administrative compliance over substantive justice. This imbalance reveals that the effectiveness of law cannot be measured solely by its formal validity, but also by its ability to respond to social realities and maintain social legitimacy within a pluralistic society. When the law is unable to bridge the diversity of recognition and evidentiary systems regarding land rights, it risks failing in its role as a *social regulator*, and instead contributes to deepening social inequality and escalating agrarian conflict.

When the state imposes a formal legal framework on communities lacking the structural capacity to comply with it, a process of systemic legal marginalization occurs. The imposition of a time limit on the validity of customary land documents, as stipulated in Article 96(2) of Government Regulation No. 18 of 2021, without providing proportionate affirmative mechanisms, poses a serious threat of dispossession for Indigenous communities. In the long term, this situation generates a domino effect: the loss of collective rights over natural resources, the intensification of agrarian conflicts due to overlapping claims, and the erosion of Indigenous communities' bargaining power in legal and economic processes. This phenomenon constitutes what is referred to as *legal exclusion*—a condition in which the legal framework no longer serves a protective function but instead becomes a mechanism of neglect toward vulnerable groups (Artiles et al., 2021)

This risk is exacerbated when the state fails to adopt a contextual justice approach that takes into account historical, social, and cultural differences in legal design. Justice cannot be achieved through uniform formal standards when the objective realities of different societal groups vary significantly. From the perspective of socio-legal theory, entrenched inequality in access to and recognition of land rights cannot be remedied merely by providing identical legal treatment. What is required is the application of the principle of *substantive equality*, which emphasizes recognition of contextual differences and the specific needs of minority groups. Without such an approach, the law risks reproducing exclusion under the guise of formal legitimacy.

Moreover, the disregard for the unique characteristics of customary land ownership systems exacerbates land distribution inequality and reinforces the dominance of groups more integrated into the state legal framework. This condition leads to *structural invisibility*, wherein Indigenous communities are systematically rendered invisible in the formulation of policy and the compilation of administrative land data (Levi & Durham, 2015). In such situations, substantive



justice remains unfulfilled because those most in need of protection are often the ones most adversely affected by state policy. As a result, there is an urgent need to restructure the agrarian legal paradigm to become more responsive to the diversity of social systems, and to prevent the law from functioning as a tool of exclusion against those without access to formal legal recognition.

When a state regulation explicitly sets an expiration date for written evidence of former customary land ownership, it creates an urgent need for the establishment of transitional legal protection mechanisms. The sudden loss of evidentiary value concerning land rights is not merely an administrative issue, but a fundamental deprivation of property rights that have been passed down through generations within Indigenous communities. In a legal system that upholds principles of justice and non-discrimination, the state is not permitted to extinguish pre-existing rights without providing a legal bridge toward integration into the new system. The concept of *transitional legal protection* is particularly relevant in cases where state law displaces deeply rooted local legal systems, especially when affected communities lack the structural capacity to adapt immediately (De Schutter, 2019). In such contexts, the state is obliged to implement normative grace periods and provide legal facilitation to avoid the abrupt exclusion of vulnerable groups from rights protection frameworks.

The principle of *legitimate expectations* in constitutional law asserts that individuals or groups are entitled to rely on the continued legal protection of conditions that have long been recognized, both legally and socially (Endicott, 2021). Accordingly, provisions such as Article 96(2) of Government Regulation No. 18 of 2021 must be interpreted with caution, as they risk violating the legitimate legal expectations of Indigenous communities who have relied on traditional forms of evidence as the basis for land tenure. When the state imposes a time limit without accounting for the objective realities of affected communities, such a policy may be regarded as a form of *regulatory negligence*—a failure to design legal measures that are procedurally fair. Transitional protection is not optional but a normative obligation to ensure that law does not become an instrument of arbitrary deprivation. In the realm of human rights, the state bears the responsibility of ensuring that legal reforms do not impose disproportionate harm on vulnerable groups, including Indigenous law communities (Jones, 2018). Transitional legal safeguards are thus essential to preserving the continuity of justice and reinforcing the legitimacy of the state in the eyes of those whose legal frameworks are being replaced.

The implementation of land policies that invalidate customary land ownership documents without providing corrective mechanisms reflects a tendency toward administrative legalism that disregards procedural justice and proportionality. In such circumstances, an approach that exclusively demands compliance with formal legal norms—without acknowledging the socio-

cultural background and structural disadvantages faced by Indigenous communities—serves only to intensify legal exclusion and undermine the principle of rights protection. A more humane and equitable alternative can be developed through administrative reform grounded in procedural justice, which not only ensures access to land registration systems but also guarantees that such procedures are navigable by the most vulnerable groups (Roy, 2024). The principle of *procedural fairness* requires that all citizens, including Indigenous communities, be treated equally in legal processes and afforded sufficient opportunity to adjust to new regulations through consultation, information dissemination, and adequate legal assistance.

Contemporary thinking on social justice and remediation increasingly emphasizes the relevance of *restorative justice* in public policy, including in matters of land distribution and rights recognition. In the land context, restorative justice is not merely about resolving legal violations, but also about restoring rights that have been compromised through unilateral changes in the legal system (Braithwaite, 2021). Within this framework, the state functions not only as a regulator but also as a facilitator of recovery for groups who have suffered disproportionate loss of rights. This may involve affirmative policies such as extending the validity period of customary land documents, implementing community-based legalization processes, or even establishing customary verification mechanisms that are formally recognized within the state legal system. Such an approach reflects a shift from a *compliance-centered regime* to *rights-based governance*, where the law serves not only to regulate, but also to protect and restore.

This concept of restorative justice is further supported by international legal instruments that promote respect for local legal systems in the context of land and natural resource rights. Within the frameworks of sustainable development and human rights, participatory approaches that provide Indigenous communities with the space to define the legal status of their land have been shown to produce more equitable and sustainable outcomes (Gupta & Vegelin, 2016). Rather than contradicting national law, such approaches enhance the legitimacy of the state through the implementation of responsive and inclusive legal frameworks.

The experiences of countries with significant Indigenous populations provide valuable perspectives for Indonesia in designing legal protections for customary land ownership evidence. Canada, Australia, and New Zealand have developed legal approaches that are comparatively more accommodating of Indigenous law by formally recognizing forms of communal land tenure without dismantling traditional systems of evidentiary claims. In Canada, the recognition of Indigenous land rights has been reinforced through Supreme Court rulings such as *Tsilhqot'in Nation v. British Columbia*, which held that Indigenous land rights do not require formal written documentation as long as historical and cultural occupation can be demonstrated (Walters, 2017). This approach reflects an understanding that legal legitimacy does not solely derive from state-issued documents, but also from social legitimacy and the continuity of land possession.

In Australia, the *Native Title* system provides a legal framework that allows Indigenous peoples to assert rights over ancestral lands based on traditional occupation and the continuity of cultural practices. The evidentiary mechanism in this system allows for the use of collective narratives, anthropological data, and community testimony as valid alternatives to formal documentation (Manzo, 2019). A similar principle is upheld in New Zealand through the *Treaty of Waitangi*, which despite its challenges in implementation remains a cornerstone for affirming the land and resource rights of the Māori people (Boast, 2012). These three jurisdictions demonstrate that the legal recognition of traditional, non-formal evidence is not only possible but also instrumental in enhancing state legitimacy and fostering a more just relationship between governments and Indigenous communities.

This comparative analysis becomes particularly relevant given that Indonesia's customary legal systems possess a rich historical foundation and exert significant influence on patterns of land tenure at the local level. When the state enacts policies that disqualify non-formal evidence without providing space for community-based verification, it forfeits the opportunity to build an agrarian legal framework that is both inclusive and context-sensitive. Legal practices from other jurisdictions demonstrate that procedural flexibility and recognition of the uniqueness of local legal traditions can actually enhance the efficacy of law in plural societies. The principle of *legal pluralism* embodied in such approaches may serve as an appropriate model for Indonesia to balance state legal interests with the protection of traditional rights of Indigenous communities.

One of the core principles of the rule of law is the guarantee of *legal certainty*, which requires that legal rules be not only clearly written but also predictable and equitably applied to all citizens. Within the context of Indonesia's national agrarian policy, Article 96(2) of Government Regulation No. 18 of 2021 raises significant concerns regarding this principle. By stipulating that written evidence of former customary land ownership loses its legal validity five years after the regulation's enactment—without providing adequate alternative mechanisms the provision does not enhance legal certainty but instead creates *legal ambiguity*. This condition increases uncertainty over the legal status of land that has long been socially recognized but lacks formal administrative documentation. Genuine legal certainty is derived not only from the clarity of formal legal texts, but also from the law's ability to deliver stability and fairness to those bound by it.

When Indigenous communities lose trust in the legal system due to the invalidation of traditional evidence that has been historically recognized, the legitimacy of state law is inevitably called into question. Legal provisions that are abrupt or applied retroactively without transitional safeguards tend to generate a sense of injustice, thereby weakening public confidence in state institutions. Within a broader normative framework, *legal certainty* demands not only clarity and

consistency, but also an element of *fairness* that ensures legal rules do not impose disproportionate burdens on specific social groups. When the state designs agrarian systems that can only be accessed by those with legal literacy and substantial resources, the result is the reinforcement of legal inequalities that systematically exclude Indigenous law communities.

As a legal instrument intended to ensure administrative order in land affairs, Article 96(2) of Government Regulation No. 18 of 2021 instead reflects characteristics of a policy that fails to fulfill the integrative function of law. When legal regulations are formulated without adequate assessment of social impact, they are likely to produce uncertainty and widen the gap between state law and community-based legal systems. In a pluralistic society, the law must function as a bridge not a wall between national legal norms and the historically and socially valid values of local communities.

## CONCLUSION

The enactment of Article 96(2) of Government Regulation No. 18 of 2021, which nullifies the validity of written evidence of former customary land ownership after five years, reveals a deep normative tension between administrative land reform and the constitutional mandate to protect Indigenous rights. This study finds that such a provision, when implemented without transitional safeguards such as extended validity periods or mechanisms recognizing community-based forms of proof risks producing structural injustice and legal exclusion, particularly for rural Indigenous communities who historically lack access to formal legal instruments. Referencing Articles 28G(1) and 18B(2) of the 1945 Constitution, the analysis highlights the state's affirmative obligation not only to acknowledge Indigenous existence but also to sustain the legitimacy of their rights within the legal system. As a response, the article proposes a proportional and restorative legal approach that integrates administrative rationality with the socio-legal reality of adat communities. Such integration is essential to ensuring that agrarian regulation functions not as a tool of exclusion, but as a constitutional bridge between state law and living customary law, thereby advancing a more just and inclusive national land governance framework.

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