The Indonesian Journal of Critical Legal Studies
ISSN Online: 3164-3531
Vol. 1 Issue 1 (2026) 139-176
Online since: April 30, 2026

THE INDONESIAN JOURNAL of CRITICAL LEGAL STUDIES

POSTCOLONIAL CRITIQUE OF AGRARIAN LAW AND LAND INEQUALITY IN INDONESIA

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ABSTRACT

Land inequality remains a persistent sociolegal issue in Indonesia despite decades of agrarian reform initiatives and legal reforms aimed at promoting equitable access to land resources. This study offers a postcolonial critique of Indonesia's agrarian law by examining how historical legacies of colonial governance continue to influence contemporary land relations and patterns of inequality. Employing a Critical Legal Studies and postcolonial theoretical framework, the research analyzes the development of agrarian regulations, land administration systems, and property rights structures. The findings indicate that many contemporary legal arrangements retain institutional characteristics rooted in colonial land governance, including centralized authority, commodification of land, and unequal recognition of customary land rights. These legal structures contribute to the concentration of land ownership and the marginalization of rural and indigenous communities. The study further reveals that legal discourse often presents land regulation as neutral and objective while obscuring underlying power relations that shape access to resources. From a postcolonial perspective, agrarian law reflects broader historical processes of domination and exclusion that continue to affect social and economic development. The research argues that addressing land inequality requires reexamining the ideological assumptions embedded within existing legal frameworks and promoting more inclusive approaches to land governance. Greater recognition of customary tenure systems and participatory decision-making processes may contribute to more equitable outcomes. The study concludes that agrarian reform should involve not only legal redistribution measures but also critical reflection on the historical foundations of contemporary land law. These findings enrich critical legal scholarship concerning law, colonial legacies, and social justice in Indonesia.

KEYWORDS *Postcolonial Legal Studies, Agrarian Law, Land Inequality, Land Reform, Customary Land Rights*

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I. INTRODUCTION

Land inequality remains one of the most persistent sociolegal problems in Indonesia. Despite repeated efforts to reform the agrarian structure, access to land continues to be shaped by highly uneven relations of ownership, control, use, and recognition. The persistence of agrarian conflicts and the incomplete realization of land reform indicate that the problem cannot be reduced to the unequal distribution of an economic resource. Land is simultaneously a legal object, a political resource, a source of livelihood, and a basis of social and cultural identity. Consequently, the distribution of land is also a distribution of legal rights, institutional authority, and political power. The enduring gap between the normative promise of agrarian reform and the realities of land control therefore raises a fundamental question about the role of law itself: does agrarian law merely regulate pre-existing inequalities, or does it participate in producing and legitimizing them? Scholarship on Indonesian agrarian reform has long documented the gap between the redistributive aspirations of the Basic Agrarian Law of 1960 (Undang-Undang Pokok Agraria, hereafter UUPA) and the continuing inequalities and conflicts surrounding land access (Lucas and Warren 2013; Widodo 2017).

This question becomes particularly significant when Indonesia's agrarian legal order is examined from a postcolonial perspective. Indonesian land law did not emerge on an institutional blank slate following independence. Colonial governance had already established legal categories, administrative practices, property regimes, and forms of state authority through which land could be classified, controlled, and transferred. The colonial agrarian order was characterized by legal pluralism and differentiated regimes of land tenure, in which customary forms of tenure existed alongside statutory and Western-style property arrangements. The Agrarian Law of 1870, for example, facilitated the expansion of private enterprise and large-scale exploitation of land and natural resources under colonial rule. These historical arrangements were not simply abolished by political independence; rather, aspects of their institutional and conceptual legacy continued to shape the organization of land after decolonization (Fitzpatrick 1997; Daryono 2015).

The UUPA of 1960 represented an important attempt to break with this colonial inheritance. Its enactment was intended to establish a national agrarian law based on social justice, national unity, and the social function of land, while replacing the fragmented colonial legal order with a unified national framework. In this sense, the UUPA can be understood as a project of legal decolonization. Yet the achievement of formal legal unification did not necessarily eliminate the deeper tensions between state-centered legality and customary forms of land tenure. Fitzpatrick (1997) argues that the postcolonial transformation of Indonesian land law generated a new form of legal pluralism in which the formal objective of legal unity coexisted with continuing uncertainty and conflicts over customary tenure. Similarly, Daryono (2015) demonstrates that the attempt to replace pluralistic tenure arrangements with unified statutory rights did not necessarily produce greater tenure security. The persistence of these tensions suggests that the postcolonial transformation of land law should not be understood simply as a transition from colonial law to national law. It must also be examined in terms of which forms of knowledge, authority, and property relations were retained, transformed, or marginalized in the process of legal nation-building.

The problem is particularly visible in the treatment of customary land rights. Indonesian law formally recognizes the existence of customary law communities and their traditional rights, while the UUPA itself incorporates customary law into the national agrarian framework under specified conditions. At the constitutional level, recognition of customary communities and their traditional rights is also provided by Article 18B(2) of the 1945 Constitution. Nevertheless, recognition has often remained conditional upon state-defined criteria and administrative procedures. The Constitutional Court's landmark Decision No. 35/PUU-X/2012, which rejected the classification of customary forests as state forests, illustrates both the possibility of legal transformation and the continuing tension between customary authority and state-centered land governance. The decision affirmed that customary forests located within the territories of recognized customary law communities should not simply be treated as part of the state's forest domain. Yet the continuing need for administrative recognition demonstrates that the legal visibility of customary territories remains substantially mediated by state institutions.

This tension exposes an important limitation in conventional approaches to agrarian reform. Agrarian inequality is frequently treated as a problem of insufficient redistribution, weak implementation, inadequate land registration, or ineffective enforcement. These explanations are important, but they do not fully address the deeper question of how legal categories themselves structure unequal access to land. A postcolonial critique shifts the analytical focus from the question of whether existing law is properly implemented toward the question of how the legal order defines legitimate property, legitimate ownership, legitimate evidence, and legitimate authority over land. Such an approach makes it possible to examine how apparently neutral legal mechanisms—including land registration, property classification, administrative mapping, licensing, and recognition procedures—may privilege particular forms of landholding while rendering other forms legally uncertain or institutionally invisible.

This study therefore advances the argument that contemporary land inequality in Indonesia is not merely the result of economic concentration, political patronage, or incomplete implementation of agrarian reform. It is also shaped by legal and institutional arrangements that carry forward elements of colonial modes of ordering land, particularly centralized authority, administrative classification, individualized property concepts, and the selective recognition of customary tenure. The argument does not suggest that contemporary Indonesian agrarian law is simply a continuation of Dutch colonial law. Such an interpretation would overlook the significant normative and institutional transformations introduced after independence, particularly through the UUPA. Instead, the study adopts a more nuanced understanding of colonial legacy as a process of institutional and epistemic continuity within a formally transformed legal order. The central issue is therefore not whether colonial law survives unchanged, but how particular modes of governing land may persist after the formal end of colonial rule.

The study asks three related questions. First, how have colonial legal and institutional legacies shaped the development of contemporary Indonesian agrarian law? Second, how do contemporary agrarian legal arrangements reproduce or legitimize unequal access to land and customary land rights? Third, to what extent can a postcolonial approach contribute to a more inclusive conception of agrarian reform and land governance? These questions place law at the center of the analysis while treating land inequality as a sociolegal phenomenon rather than merely an economic outcome.

The study contributes to the literature in three respects. First, it brings postcolonial legal analysis into closer conversation with scholarship on Indonesian agrarian law and land inequality. Existing scholarship has extensively examined agrarian conflict, land reform, legal pluralism, and customary rights, but these bodies of literature are not always brought together through a systematic analysis of the continuing relationship between colonial legal legacies and contemporary distributions of land-related authority (Fitzpatrick 1997; Lucas and Warren 2013). Second, the study contributes to critical legal scholarship by examining property and land administration not simply as technical regulatory mechanisms but as institutional practices through which social relations and distributive outcomes are constructed. Third, it offers a normative contribution to agrarian reform debates by arguing that redistribution alone is insufficient if the institutional and epistemic structures that determine whose land claims become legally recognizable remain unchanged.

This study employs a qualitative sociolegal research design combining doctrinal legal analysis, historical legal analysis, and critical interpretation of legal discourse. The methodological approach is designed to examine not only the formal content of agrarian legislation but also the historical assumptions and institutional relations embedded within that legislation. Rather than attempting to measure land inequality statistically, the study investigates the legal mechanisms through which land rights, authority, and recognition are distributed.

The primary legal materials consist of Indonesian constitutional provisions, legislation, implementing regulations, and relevant judicial decisions concerning land tenure, agrarian reform, customary rights, forestry, land administration, and land acquisition. Particular attention is given to the UUPA and its relationship with the constitutional recognition of customary communities, as well as to Constitutional Court jurisprudence concerning customary land and forest rights. Historical legal materials concerning the colonial agrarian regime are examined to identify institutional and conceptual continuities between colonial and postcolonial land governance.

Secondary materials include peer-reviewed scholarship on Indonesian agrarian reform, land conflict, legal pluralism, customary tenure, property law, and postcolonial legal studies. The analysis also engages with critical legal scholarship concerning the relationship between law, property, and power. The selection of these materials follows a purposive strategy: sources are included where they illuminate the historical formation of agrarian institutions, the legal construction of property and tenure, or the distributional consequences of contemporary land governance.

The analytical procedure proceeds in three stages. First, the study reconstructs the historical genealogy of Indonesian agrarian law in order to identify major institutional and conceptual features inherited from or developed in response to colonial governance. Second, it examines contemporary legal arrangements governing land ownership, administration, customary rights, and state authority to identify mechanisms through which particular forms of landholding are recognized or marginalized. Third, these findings are interpreted through a postcolonial and critical legal lens to determine how legal neutrality, property categories, and state authority may conceal or reproduce unequal relations of power.

The study uses postcolonial legal theory and Critical Legal Studies as complementary analytical perspectives. The postcolonial perspective directs attention to colonial continuities, epistemic hierarchies, and the unequal recognition of indigenous and customary forms of knowledge and authority. Critical Legal Studies, meanwhile, provides the conceptual basis for questioning the neutrality of legal rules and examining how apparently universal legal categories may reflect and stabilize particular distributions of social and political power. Their combination enables the study to move beyond a binary distinction between "colonial law" and "national law" and instead investigate the continuing production of legal hierarchy within a formally postcolonial state.

The scope of the study is deliberately limited to the legal and institutional dimensions of land inequality. It does not claim to establish a statistical causal relationship between individual legal rules and national patterns of land concentration. Instead, it seeks to identify the legal mechanisms and historical rationalities through which unequal land relations become possible, legitimate, or difficult to challenge. This sociolegal focus is particularly appropriate because the Indonesian agrarian question involves overlapping systems of state law, customary norms, administrative institutions, and market relations. The persistence of legal pluralism itself demonstrates why land inequality cannot adequately be understood through formal statutory analysis alone (Fitzpatrick 1997; Daryono 2015).

On this basis, the article proceeds by integrating the literature on agrarian law, postcolonial legality, Critical Legal Studies, and legal pluralism into a single analytical framework. The subsequent analysis then traces the historical formation of Indonesia's agrarian legal order before examining how contemporary state-centered land governance, property regimes, and recognition mechanisms may reproduce unequal land relations. The final part considers what a genuinely postcolonial approach to agrarian reform would require beyond formal redistribution and statutory recognition.

II. AGRARIAN LAW, COLONIALITY, AND THE POLITICS OF LAND

Understanding land inequality in Indonesia requires moving beyond an approach that treats agrarian law as a technically neutral system for allocating and protecting property rights. Land law is embedded in historically specific relations of authority, knowledge, and political economy. The legal definition of land, the identification of legitimate landholders, the allocation of rights, and the procedures through which those rights become enforceable are institutional decisions with distributive consequences. Property rights are therefore not merely pre-existing entitlements that the state passively protects; they are constituted and structured through legal institutions. As Critical Legal Studies has demonstrated, apparently formal and neutral legal rules may embody choices concerning the distribution of power and resources (Kennedy 1976, 1685–88; Kennedy 1981, 3–20). Applied to agrarian law, this perspective requires attention not only to what legal rules formally provide but also to whose interests and conceptions of property those rules privilege.

This insight is particularly relevant to Indonesia, where land relations have historically developed through the interaction of state law, customary norms, administrative institutions, and market-based property relations. Indonesian agrarian law cannot therefore be understood adequately through a purely doctrinal examination of statutory provisions. The coexistence of different normative orders has long been a defining characteristic of Indonesian land governance. Fitzpatrick's influential analysis of Indonesian land law demonstrates that the postcolonial agrarian order continued to experience tensions arising from the interaction between statutory law and customary tenure, even after the enactment of the Basic Agrarian Law of 1960 (Fitzpatrick 1997, 171–76). These tensions are significant because the coexistence of legal orders does not necessarily imply equality between them. The state may recognize customary law while simultaneously retaining the institutional authority to determine the conditions under which customary claims acquire legal validity.

Legal pluralism provides an important conceptual starting point for understanding this relationship. Rather than assuming that the modern state possesses a single, internally coherent legal system, legal pluralist scholarship recognizes the simultaneous operation of multiple normative orders within the same social and territorial space. These may include state law, customary law, religious norms, community rules, and other forms of social ordering (Griffiths 1986, 2–8; Tamanaha 2021, 1–18). In the agrarian context, however, the critical issue is not simply whether multiple legal orders exist. It is also how they are hierarchically organized and how the state determines which forms of normativity are legally recognizable. The existence of customary law alongside state law may therefore produce a condition of asymmetrical legal pluralism, in which different normative systems coexist but possess unequal institutional authority.

This distinction is particularly important in Indonesia because customary land rights have historically been subject to processes of recognition, qualification, and incorporation by state institutions. The UUPA sought to establish a unified national agrarian law while simultaneously acknowledging the importance of customary law. Yet the relationship between national law and customary tenure remained legally conditional and institutionally contested. Fitzpatrick argues that the post-

1960 legal order did not simply eliminate legal pluralism; rather, it reorganized the relationship between state law and customary law in ways that continued to generate uncertainty concerning land rights (Fitzpatrick 1997, 176–82). Thus, the nationalization of agrarian law should not automatically be equated with the decolonization of land relations.

This observation provides an entry point for postcolonial legal analysis. Colonialism should not be understood solely as a historical period characterized by foreign political domination. It also involved the construction of legal and administrative categories through which populations, territories, resources, and forms of knowledge became governable. Colonial legal systems did not merely regulate existing social relations; they actively reorganized them by defining legitimate forms of ownership, authority, and evidence. Postcolonial legal scholarship therefore asks how such institutional and epistemic structures may persist, mutate, or be reproduced within formally independent states (Mawani 2015, 1–10).

For the purposes of this study, a distinction must be made between colonial law and coloniality. Colonial law refers to the formal legal rules and institutions established under colonial rule. Coloniality, by contrast, refers to the persistence of particular structures of hierarchy, knowledge, and authority after the formal end of colonial domination. The latter concept allows analysis to move beyond the question of whether colonial statutes remain formally valid. A legal system may abolish colonial legislation while retaining modes of classification and governance that continue to privilege centralized state authority, particular forms of property, and particular forms of legally recognized knowledge.

This distinction is especially useful for analyzing the Indonesian agrarian order. The enactment of the UUPA in 1960 represented a significant attempt to dismantle the fragmented colonial agrarian system and establish a national legal framework based on social justice and national sovereignty. The legislation explicitly rejected the colonial foundations of Indonesia's existing agrarian law and sought to establish a unified national system (Fitzpatrick 1997, 172–75). It would therefore be analytically inaccurate to describe contemporary Indonesian agrarian law simply as a continuation of Dutch colonial law. The more productive question is whether certain institutional rationalities associated with colonial land governance were transformed, displaced, or reproduced within the postcolonial legal order.

This question becomes particularly significant when examining the administration of land. Land registration, cadastral mapping, certification, and administrative classification are commonly presented as technical mechanisms designed to produce legal certainty. Yet these mechanisms also determine which claims become legally visible. A land administration system necessarily establishes criteria concerning who may be recognized as a rights holder, what constitutes adequate evidence of ownership or occupation, how boundaries are defined, and which institutions possess authority to resolve disputes. Land administration is therefore not merely a technical infrastructure of property law. It is also a mechanism for constructing legal subjects and determining the institutional visibility of competing claims.

The critical significance of legal visibility becomes apparent when state-based property systems encounter customary forms of tenure. Customary relationships with land may be collective, territorial, intergenerational, and embedded in social institutions that do not correspond neatly to individualized models of property ownership. The problem is not that one model is inherently superior to another. Rather, the problem arises when one model possesses greater institutional capacity to define the legal validity of the other. If customary land claims must be translated into categories established by state law before they can receive meaningful protection, the process of recognition may simultaneously protect and transform customary tenure.

Recognition, therefore, should not automatically be equated with substantive equality. A state may formally recognize customary communities while maintaining significant authority over the conditions under which their rights are acknowledged. Such recognition can produce a paradox: the state becomes the institution that determines whether a community is sufficiently "customary" to receive protection. The legal subject is consequently not recognized solely on the basis of its own normative order but through criteria established by the dominant legal system. This dynamic illustrates the hierarchical character of legal pluralism and provides a critical point of connection between postcolonial theory and Critical Legal Studies.

Critical Legal Studies further suggests that legal neutrality should be treated as an object of inquiry rather than an assumption. Kennedy's analysis of adjudication demonstrates how apparently formal legal reasoning may conceal substantive choices concerning social values and competing interests (Kennedy 1976, 1685–88). In the agrarian context, the same insight can be extended to statutory classifications, administrative procedures, and property institutions. A rule requiring documentary evidence of land rights may appear neutral because it applies formally to all claimants. Yet its practical consequences may differ considerably between actors with access to legal representation, financial resources, administrative institutions, and formal documentation and communities whose claims are embedded in collective or customary systems of tenure.

Land inequality should consequently be conceptualized as more than an unequal distribution of hectares. It is also an unequal distribution of the capacity to establish, exercise, defend, and transfer rights over land. This broader conception is consistent with sociolegal scholarship on Indonesian agrarian conflict, which demonstrates that disputes over land involve competing claims concerning state authority, community rights, economic development, and access to legal institutions (Lucas and Warren 2013, 1–39). Land inequality may therefore emerge through multiple legal mechanisms, including ownership rules, concessions, licensing, land registration, spatial planning, acquisition procedures, and the recognition or non-recognition of customary claims.

The issue of commodification further complicates this relationship. When land becomes increasingly organized as an economic asset, its value is assessed through legal and market mechanisms that facilitate transfer, investment, leasing, and large-scale development. This process does not mean that commodification is necessarily colonial or that private property is inherently illegitimate. The critical issue is how particular forms of property become legally privileged and how alternative relationships to land are treated within the same institutional framework. Warren and Lucas's analysis of Indonesia's land titling program, for example, illustrates the tension between formalization, market-oriented approaches to land, and the social realities of agrarian communities (Warren and Lucas 2013, 93–113). From a critical perspective, formalization can enhance tenure security for some actors while simultaneously exposing other forms of tenure to new pressures of commodification and transfer.

The combination of postcolonial theory, Critical Legal Studies, and legal pluralism therefore produces a multidimensional framework for analyzing Indonesian agrarian law. Postcolonial analysis directs attention to historical continuities, epistemic hierarchies, and the institutional residues of colonial governance. Critical Legal Studies directs attention to the distributive consequences of legal categories and to the relationship between law and power. Legal pluralism explains the coexistence of state and customary normative orders while drawing attention to the unequal authority assigned to them. Together, these perspectives make it possible to analyze land inequality as a legally mediated historical process rather than simply as an economic condition.

Four analytical propositions follow from this framework. First, land rights are legally constituted rather than merely discovered. Claims over land become enforceable through institutions that define ownership, possession, use, transfer, and recognition. Second, legal institutions are historically embedded. Contemporary agrarian arrangements may contain institutional rationalities that developed through earlier forms of territorial and administrative governance. Third, legal recognition is distributive. Decisions concerning which claims, persons, communities, and forms of evidence receive legal recognition affect the distribution of land and political authority. Fourth, legal pluralism is frequently hierarchical rather than symmetrical. The coexistence of customary and state law does not establish equality between normative orders when state institutions retain the authority to determine the legal validity of customary claims.

These propositions allow land inequality to be conceptualized as a sociolegal outcome produced through the interaction of history, legal institutions, political authority, and economic power. Such an approach also helps explain why formal legal reform does not necessarily generate substantive transformation. A new statute may change the formal content of property rights while leaving intact the institutional mechanisms through which rights are recognized and enforced. Similarly, recognition of customary tenure may remain limited if communities must satisfy state-defined conditions before their rights become legally visible.

The central theoretical proposition of this article is therefore that contemporary land inequality in Indonesia is partly produced and legitimized through legal and institutional arrangements that mediate access to land, recognition of rights, and authority over territory, while retaining elements of historical legal rationalities associated with colonial governance. This proposition does not reduce contemporary agrarian inequality to colonialism, nor does it assume that Indonesian law has remained unchanged since the colonial period. Instead, it identifies a more complex relationship between rupture and continuity. Postcolonial legal transformation may replace colonial statutes while leaving certain modes of classification, administration, and authority structurally influential.

This perspective also redefines what it means to decolonize agrarian law. Legal decolonization cannot be achieved solely by replacing colonial legislation with national legislation. It requires critical examination of the epistemic and institutional assumptions through which land is made legally intelligible. Questions of decolonization therefore include who has authority to define land rights, whose knowledge constitutes valid evidence, which forms of tenure receive legal protection, and who participates in decisions concerning territorial transformation. Agrarian reform, from this perspective, must address not only redistribution of land but also redistribution of legal authority and recognition.

III. COLONIAL LEGACIES AND THE FORMATION OF INDONESIA'S AGRARIAN LEGAL ORDER

The contemporary Indonesian agrarian legal order can only be understood through its historical formation. The legal regulation of land in Indonesia developed through a complex interaction between colonial state authority, European property concepts, customary tenure, and postcolonial efforts to construct a unified national legal system. This history is significant not merely because colonial regulations once governed land relations, but because colonialism transformed the institutional meaning of land itself. It introduced legal classifications and administrative techniques through which land could be rendered visible to the state, allocated to particular forms of ownership, and incorporated into an extractive political economy. The postcolonial state subsequently sought to dismantle this legal structure, yet the process of legal decolonization also involved the consolidation of new forms of centralized state authority.

A. Colonial Agrarian Governance and the Construction of State Domain

A central feature of Dutch colonial agrarian governance was the attempt to establish legal certainty over land in order to facilitate economic exploitation and private investment. The Agrarische Wet of 1870 represented a decisive moment in this transformation. Adopted as part of the liberalization of the colonial economy, the legislation sought to provide a legal framework within which European capital could obtain long-term access to land while maintaining extensive colonial control over agrarian resources (Fitzpatrick 1997, 171–74; Neilson 2020).

The significance of the 1870 regime extended beyond the authorization of European enterprise. Its deeper importance lay in the construction of a legal distinction between land that could be recognized as subject to particular rights and land that could be claimed by the colonial state. The associated *Domeinverklaring* doctrine operated on the premise that land over which legally recognizable rights could not be established could be treated as state domain. In practical terms, the doctrine enabled the colonial government to transform the absence of legally recognized private or customary rights into a basis for state control. Land that was not legible within the colonial legal framework could therefore become available for state allocation or commercial exploitation (Neilson 2020).

The legal consequences were profound. Customary communities did not necessarily conceptualize their relationship with land in terms of individualized ownership capable of being demonstrated through written title. Rights could be embedded in collective institutions, customary authority, historical occupation, and social relationships with territory. The colonial legal order nevertheless privileged particular forms of documentary and statutory recognition. Consequently, the question was not simply whether indigenous communities possessed relationships with land, but whether those relationships could be translated into categories that colonial law recognized as legally enforceable.

This distinction illustrates the epistemic dimension of colonial property law. Colonial governance did not merely take land; it established the criteria by which land could be known, classified, and claimed. The state domain doctrine therefore operated simultaneously as a property rule and an epistemic mechanism. It established a hierarchy between land claims that were legible within the colonial legal system and those that were not. The legal absence of a recognized title could thus be transformed into the juridical presence of state authority.

The relationship between colonial law and customary tenure was consequently characterized by asymmetry. Customary rights were not necessarily eliminated as social practices, but their legal effectiveness was increasingly conditioned by colonial definitions of recognition. This pattern is consistent with broader postcolonial scholarship showing that colonial legal systems frequently transformed indigenous social relations into administratively defined categories while retaining ultimate authority over their legal validity (Mawani 2015, 1–10). In the Indonesian context, the legal classification of land became part of a broader system of territorial governance through which the colonial state sought to reconcile local social institutions with the demands of an expanding colonial political economy.

The economic implications of this arrangement were substantial. The 1870 agrarian reforms facilitated the expansion of plantation agriculture and long-term land concessions, particularly in sectors oriented toward export production. The colonial legal order thereby linked land classification to capital accumulation. Land became increasingly capable of being conceptualized as an economic asset that could be leased, transferred, and incorporated into commercial production. The relationship between law and land was consequently transformed from one concerned primarily with social tenure and customary authority into one increasingly concerned with legally enforceable property and investment relations (Neilson 2020).

From a Critical Legal Studies perspective, this history demonstrates that property law cannot be separated from the political economy in which it operates. The legal construction of property did not merely provide security to pre-existing economic interests. It helped create the institutional conditions through which those interests could expand. Legal certainty was therefore distributive: certainty for one category of rights holder could simultaneously generate uncertainty for another. The establishment of legally secure plantation concessions, for example, could strengthen commercial claims while weakening the practical position of communities whose relationships to the same territories were not recognized in equivalent legal terms.

B. Legal Dualism and the Marginalization of Customary Tenure

Colonial agrarian governance also produced a distinctive form of legal pluralism. European statutory law existed alongside customary legal orders, but the coexistence of these systems did not imply institutional equality. The colonial state retained authority to classify populations and determine the scope within which different legal regimes operated. As Fitzpatrick observes, colonial land law was characterized by pluralism in which customary *adat* law existed alongside Western-style statutory law, producing persistent tensions concerning legal certainty and land rights (Fitzpatrick 1997, 170–76).

This historical form of legal pluralism is important because it complicates the conventional narrative that postcolonial agrarian reform simply replaced colonial law with national law. The problem confronting the Indonesian state after independence was not only that colonial rules were unjust. It was also that land relations had already been organized through multiple and unequal legal categories. Decolonization therefore required a choice concerning what kind of legal order should replace the colonial system.

The architects of post-independence agrarian reform explicitly understood the colonial system as incompatible with the objectives of the new republic. The preamble to the Basic Agrarian Law states that the agrarian law then in force was partly based on and influenced by the aims and principles of the colonial government and was therefore considered inconsistent with the interests of the Indonesian people and state (Indonesia 1960). The UUPA consequently sought to establish a national agrarian law capable of replacing the fragmented colonial structure and providing a foundation for social justice, national unity, and legal certainty.

The aspiration toward legal unity was therefore itself part of the decolonization project. The UUPA was enacted on September 24, 1960, as Law No. 5 of 1960 and remains the foundational statute of Indonesian agrarian law (Indonesia 1960). Its significance lies in its explicit rejection of the colonial agrarian regime and its attempt to construct a national system based on the constitutional principle that land and natural resources are controlled by the state for the greatest prosperity of the people.

Yet the attempt to create legal unity generated a paradox. In seeking to overcome colonial legal pluralism, the postcolonial state strengthened the role of national statutory law as the principal framework through which land rights were defined. Customary law was incorporated into the national legal order, but it was no longer positioned simply as an autonomous normative system existing independently of state authority. Instead, customary rights were recognized within a national legal framework whose ultimate institutional authority remained with the state.

This transformation can be interpreted in two ways. From one perspective, it represented genuine decolonization because the state rejected the colonial hierarchy between European and indigenous legal systems. From another perspective, it created a new form of legal centralization in which the postcolonial state assumed the authority previously exercised by the colonial state to define the legal status of land and the conditions under which customary rights would be recognized. The second perspective is particularly important for a postcolonial critique because it draws attention to the possibility that the institutional form of centralized land governance may survive even when its political objectives have fundamentally changed.

C. The Basic Agrarian Law and the Promise of Legal Decolonization

The UUPA represents one of the most important moments of legal transformation in Indonesia's agrarian history. It revoked or replaced major elements of the colonial agrarian regime and sought to establish a national framework grounded in the social function of land and the welfare of the people (Indonesia 1960; Fitzpatrick 1997, 172–78). Its enactment was therefore not merely a technical reform of property law. It was an attempt to reconstruct the relationship between the state, society, and land after colonial rule.

The normative orientation of the UUPA is significant. Land was not conceived solely as an object of private ownership or market exchange. The principle of the social function of land placed property within a broader social framework and rejected an unrestricted conception of private dominion. The UUPA also recognized customary law as an important foundation of national agrarian law, although this recognition was subject to conditions established within the statute (Indonesia 1960).

Nevertheless, the UUPA's project of legal decolonization contained an internal tension. On the one hand, it rejected the colonial *Domeinverklaring* and sought to eliminate the legal dualism that had privileged European property law. On the other hand, the national legal system retained a powerful conception of state authority over land. Article 2 of the UUPA established the state's *Hak Menguasai dari Negara*—the state's right of control—over land and natural resources. This doctrine was constitutionally connected to Article 33(3) of the 1945 Constitution, which provides that land, water, and natural resources are controlled by the state and utilized for the greatest prosperity of the people (Indonesia 1945; Indonesia 1960).

The conceptual distinction between state control and state ownership is important. The state's right of control does not formally mean that the state owns all land as a private proprietor. Rather, it establishes public-law powers concerning the allocation, regulation, designation, and use of land. The Constitutional Court has subsequently emphasized that “controlled by the state” should not automatically be equated with ownership and instead encompasses public authority exercised in the interest of the people (Constitutional Court of Indonesia 2013).

Yet from a critical perspective, the distinction between control and ownership does not eliminate the distributive significance of state authority. The institution that possesses the power to determine land allocation, land use, and legal recognition also possesses substantial capacity to influence the distribution of land-related resources. The question therefore becomes not simply whether the state owns land but who has the institutional authority to determine the legal conditions under which land may be owned, used, transferred, or claimed.

This is where the postcolonial critique becomes analytically significant. The UUPA's state-control doctrine was developed within a radically different political and normative project from the colonial *Domeinverklaring*. It cannot therefore be treated as equivalent to colonial state domain. Nevertheless, both systems raise a structurally similar question concerning the relationship between state authority and community claims: who has the power to define the legal status of land that is not incorporated into an individualized and formally documented property right?

The difference in normative purpose is crucial, but so is the institutional continuity. Colonial law used state domain to facilitate colonial extraction and private enterprise. Postcolonial law used state control as an instrument intended to promote national welfare and social justice. The same broad institutional capacity of the state to classify and allocate land can therefore operate within radically different political projects. A postcolonial critique should consequently examine not only the historical origins of legal institutions but also the ways in which those institutions are subsequently deployed.

D. 'Hak Menguasai Negara' and the Reconfiguration of State Authority

The doctrine of *Hak Menguasai Negara* is therefore central to understanding the postcolonial transformation of Indonesian agrarian law. It represents a fundamental departure from the colonial doctrine of *Domeinverklaring* because the state does not claim private ownership of all land. Instead, it exercises regulatory and public-law authority over land and natural resources in accordance with constitutional and statutory purposes (Indonesia 1945; Indonesia 1960).

Nevertheless, the doctrine creates a highly centralized institutional structure. The state possesses authority to regulate the designation, allocation, use, and relations concerning land. This centralization was partly justified by the need to overcome colonial fragmentation and prevent private domination of natural resources. Yet it also creates the possibility that local communities become dependent upon state institutions for the legal recognition and protection of rights that they may regard as pre-existing and inherent.

This tension is especially visible in customary land rights. Article 3 of the UUPA recognizes the exercise of customary rights insofar as such rights remain in existence and their implementation is consistent with national interests and statutory provisions. The provision therefore establishes recognition while simultaneously placing customary rights within a framework of state-defined conditions. The legal status of *hak ulayat* is consequently neither one of complete exclusion nor unconditional recognition. It is a form of conditional legal recognition.

The concept of conditional recognition is important for understanding contemporary land inequality. If the state determines whether a customary community and its territory satisfy the legal requirements for recognition, the state also determines when a customary claim becomes legally visible. This does not necessarily mean that state recognition is inherently oppressive. Formal recognition can provide substantial protection against external appropriation. The critical issue is the institutional asymmetry created when the state acts simultaneously as regulator, classifier, and ultimate arbiter of the validity of customary claims.

This asymmetry also demonstrates the difference between legal recognition and legal autonomy. A community may be recognized as possessing customary rights while lacking equal authority to determine the legal status of its territory. Recognition may therefore protect a community against certain forms of dispossession without fundamentally altering the hierarchy between state law and customary law. The result is a form of legal pluralism in which customary law exists within the national legal system but remains institutionally subordinate to state-defined criteria of validity.

E. The Postcolonial Paradox: From Colonial Domain to National Control

The historical development from *Domeinverklaring* to *Hak Menguasai Negara* should therefore be understood neither as simple continuity nor complete rupture. It represents a transformation in the normative justification of state authority combined with a significant continuity in the institutional importance of state control over land. The colonial regime constructed state domain in order to facilitate territorial administration and economic extraction. The postcolonial regime rejected that colonial objective and replaced it with a constitutional commitment to national welfare and social justice. Yet both legal orders relied on strong state capacity to classify land, define legally recognizable claims, and determine the permissible uses of territory. The critical question is consequently whether the postcolonial state has sufficiently redistributed the authority to define land relations or whether it has primarily nationalized that authority.

This distinction matters because decolonization can occur at two different levels. The first is formal decolonization, involving the repeal of colonial statutes and the establishment of national legislation. The second is substantive decolonization, involving the transformation of the institutional and epistemic relationships through which land rights are defined and enforced. Indonesia clearly achieved substantial formal decolonization through the UUPA. The more difficult question concerns the extent to which substantive decolonization has been achieved.

The continuing importance of this question is illustrated by Constitutional Court Decision No. 35/PUU-X/2012. In that decision, the Court held that the statutory definition of customary forest as part of state forest was unconstitutional and reformulated the legal meaning of customary forest as forest located within the territory of customary law communities (Constitutional Court of Indonesia 2013). The decision was significant because it challenged the assumption that customary territories should automatically be incorporated into the category of state forest. It also demonstrated that the postcolonial legal order remains capable of revising state-centered classifications in favor of stronger recognition of customary territorial rights.

At the same time, the litigation itself reveals the persistence of the underlying institutional problem. The legal status of customary territories remained dependent upon constitutional litigation and subsequent processes of legal and administrative recognition. The Court's intervention therefore illustrates both the possibility and the limitations of postcolonial legal transformation. It demonstrates that state law can become an instrument for correcting historical exclusion, but it also confirms that customary communities continue to encounter the state through institutions that determine the legal conditions of recognition.

The significance of this historical trajectory is not that Indonesia has failed to decolonize its agrarian law. Rather, it is that decolonization has been incomplete and internally contradictory. The postcolonial state rejected the colonial legal hierarchy between European and indigenous subjects, but it also consolidated a national legal order in which state institutions became the principal arbiters of land rights. The result is a legal structure in which the language of social justice and national welfare coexists with centralized authority over territory.

This historical paradox provides the foundation for understanding contemporary land inequality. If the state possesses extensive authority to classify, allocate, and recognize land rights, then unequal access to state institutions can translate into unequal access to land. Communities with limited administrative, financial, and legal capacity may encounter greater difficulty transforming customary or informal relationships with land into legally protected rights. Conversely, actors with greater economic and institutional resources may be better positioned to navigate the legal and administrative system. Land inequality is thus connected not only to the formal distribution of property but also to unequal capacities to operate within the legal institutions that produce and protect property.

The historical development of Indonesian agrarian law therefore supports the central proposition of this article: the relationship between colonialism and contemporary land inequality is mediated by legal institutions rather than by direct legal continuity alone. Colonialism established particular modes of territorial classification and state authority; independence transformed their normative foundations; and the postcolonial legal order subsequently reproduced, modified, and contested those institutional structures. The resulting agrarian order is neither purely colonial nor entirely detached from colonial history. It is a hybrid legal formation in which decolonizing aspirations coexist with enduring forms of centralized land governance.

IV. CENTRALIZED LAND GOVERNANCE AND THE REPRODUCTION OF INEQUALITY

The historical transformation of Indonesian agrarian law did not eliminate the central role of the state in defining and allocating land rights. Instead, the postcolonial legal order replaced the colonial structure with a national system in which state institutions remain central to the regulation, administration, and recognition of land. This institutional arrangement was justified by the constitutional commitment to ensure that land and natural resources are used for the greatest prosperity of the people. Yet the concentration of regulatory authority in state institutions also creates distributive consequences. The ability to obtain, protect, formalize, or contest land rights depends not only on the substantive content of legal rules but also on access to the institutions that administer those rules.

From a critical legal perspective, centralized land governance should therefore be examined as a structure of power rather than merely as an administrative arrangement. The state does not simply implement pre-existing land rights. Through legislation, licensing, spatial planning, registration, mapping, and administrative decisions, state institutions participate in defining the legal status and permissible use of land. The question of who controls land consequently intersects with the question of who possesses the institutional authority to define and enforce land rights. This distinction is particularly important in situations where state classifications encounter customary or locally embedded systems of tenure.

A. State-Centered Land Governance and Legal Authority

The principle of *Hak Menguasai Negara* provides the constitutional and statutory foundation for extensive state authority over land. As discussed above, this doctrine differs conceptually from private ownership. It grants the state public authority to regulate the allocation, use, designation, and legal relations concerning land in accordance with the objectives established by the Constitution and the UUPA (Indonesia 1945; Indonesia 1960). The Constitutional Court has repeatedly emphasized that state control should be understood as a form of public authority directed toward the realization of public welfare rather than as an assertion of unrestricted state ownership (Constitutional Court of Indonesia 2013).

The distinction is normatively important, but it does not eliminate the distributive implications of centralized authority. The institution that determines land use, allocates particular rights, authorizes development, or recognizes customary claims inevitably affects the distribution of opportunities associated with land. Consequently, the critical issue is not whether state control is legitimate in the abstract. It is whether the exercise of that authority produces equal opportunities for different categories of land users and rights holders.

This question becomes particularly significant where land is treated as a resource for economic development. State authority can facilitate infrastructure, investment, agricultural expansion, conservation, and other public objectives. At the same time, development-oriented land governance can create conflicts when projects overlap with existing community claims. The legal framework may recognize compensation or procedural safeguards, but the parties often enter these processes with significantly different institutional and economic capacities. A corporation or state institution may possess legal counsel, technical experts, cadastral information, and administrative access that are unavailable to rural communities. Formal equality before the law therefore does not necessarily translate into equality in the capacity to use law.

This problem illustrates the relevance of Critical Legal Studies to agrarian governance. Legal institutions can distribute power indirectly by determining the resources necessary to make legal rights effective. A right that exists formally but cannot be effectively asserted, documented, or defended may provide substantially weaker protection than a right supported by strong administrative and institutional capacity. The distributive effect of land law therefore depends not only on formal entitlement but also on the institutional conditions under which entitlement becomes enforceable.

B. Land Administration and the Production of Legal Visibility

Land administration provides a particularly important site for examining this process. Registration and certification are generally understood as mechanisms for increasing legal certainty, reducing disputes, and strengthening tenure security. These objectives are legitimate and important. Yet land registration also performs a classificatory function: it determines how land, rights holders, boundaries, and forms of evidence are represented within the official legal system.

The production of cadastral and registration data is therefore not simply a neutral technical process. It transforms complex social relationships with land into administratively legible categories. A certificate identifies a rights holder; a cadastral map identifies a boundary; a register identifies the legal status of a parcel. These representations are valuable because they enable rights to be documented and enforced. At the same time, relationships that do not fit easily within the categories of formal registration may become more difficult to defend within the state legal system.

This problem is particularly important for collective and customary tenure. Customary relationships with territory may involve multiple overlapping rights concerning residence, cultivation, access to forests, water, ritual sites, inheritance, and communal authority. Such relationships cannot always be reduced to a single individualized title without altering their institutional meaning. The challenge is therefore not merely that customary land is "unregistered." It is that the administrative system may be based on a conception of property that does not fully correspond to the social organization of customary tenure.

From a postcolonial perspective, the issue is one of legal visibility. A claim becomes legally visible when the dominant institutional system possesses categories and procedures capable of recognizing it. Claims that are difficult to translate into those categories may remain institutionally weak even when they are socially legitimate. This does not necessarily mean that the administrative system intentionally excludes customary communities. Rather, exclusion can occur structurally through the design of legal categories themselves.

The significance of this issue has become increasingly visible in contemporary debates about customary land recognition. Indonesian scholarship continues to identify procedural and institutional difficulties in integrating customary land rights into the national registration system (Sukirno and Malik 2025). The persistence of these difficulties suggests that the problem is not simply the absence of legal recognition. It also concerns the institutional mechanisms through which recognition is translated into administratively enforceable rights.

This distinction allows the concept of legal visibility to be connected to land inequality. Where formal documentation is necessary to secure land against competing claims, actors with greater access to administrative institutions may possess a structural advantage. Communities whose claims depend upon customary histories, collective institutions, or locally recognized boundaries may face greater burdens in translating those claims into state-recognized legal rights. The resulting inequality is therefore not necessarily created by a single discriminatory rule. It can emerge from the cumulative effect of institutional procedures that appear neutral when examined individually.

C. Formalization and the Unequal Capacity to Use Law

The relationship between formalization and inequality requires a similarly cautious analysis. Formal land rights can generate significant benefits. Registration can strengthen tenure security, facilitate transactions, improve access to credit, and reduce uncertainty concerning competing claims. It would therefore be misleading to treat formalization as inherently harmful to rural communities.

The critical question is instead under what conditions formalization produces protection and under what conditions it facilitates the transformation of socially embedded land relations into marketable property. The answer depends on the institutional environment in which formalization occurs. Where landholders possess secure tenure, effective access to legal institutions, and meaningful bargaining power, formalization may strengthen their position. Where communities face economic pressure or unequal bargaining relationships, formalization may also make land more easily transferable and therefore more vulnerable to concentration.

This tension reflects a broader debate within property scholarship concerning the relationship between formal property rights and economic development. Hernando de Soto famously argued that formal property rights can transform “dead capital” into productive economic resources by making assets legally recognizable and transferable (de Soto 2000, 35–50). Critical scholarship has challenged the assumption that formalization necessarily produces equitable outcomes, emphasizing that property formalization can also facilitate processes of enclosure and dispossession when rights are embedded within unequal political and economic structures (Sikor and Lund 2009, 1–8).

The Indonesian context illustrates why this debate cannot be resolved through a universal assumption that more formalization is always better. Land is simultaneously a productive asset, a source of livelihood, a territorial resource, and a component of collective identity. The conversion of these relationships into formal property rights may produce greater legal certainty for some actors while weakening collective forms of tenure for others. The distributive consequences therefore depend upon the legal form of recognition and the relative power of the actors involved. This point is particularly important for a postcolonial critique because colonial land governance itself demonstrated how legal formalization could facilitate economic transformation in ways that privileged particular actors. Contemporary formalization should not be equated with colonial land law. Nevertheless, the historical connection demonstrates why the legal transformation of land into administratively legible property deserves critical scrutiny. The question is not whether land should be documented, but whose interests are served by the particular form of documentation and property recognition adopted by the state.

D. Commodification and the Changing Meaning of Land

The commodification of land represents a second mechanism through which legal structures can influence inequality. Commodification occurs when land is increasingly organized as an economic asset that can be transferred, leased, licensed, mortgaged, or incorporated into investment projects. The process is not purely economic because it depends upon legal institutions that define which interests in land can be created and transferred.

The UUPA itself contains a tension between market-oriented property relations and the social function of land. On the one hand, it recognizes various forms of land rights that can support economic activity. On the other hand, it establishes the principle that land rights have a social function and cannot be exercised solely according to unrestricted private interests (Indonesia 1960). This tension reflects a broader characteristic of Indonesian agrarian law: land is simultaneously treated as a commodity, a social resource, and a public interest.

Recent scholarship has identified increasing tensions between the social-justice orientation of the UUPA and more market-oriented approaches to land governance, particularly in the context of investment and regulatory reform (Muntaqo et al. 2025). The significance of this development is not that market relations are inherently illegitimate. Rather, market-oriented land governance may produce unequal outcomes when economic actors possess substantially different bargaining power and when customary or communal tenure is insufficiently protected.

From a Critical Legal Studies perspective, commodification should therefore be understood as a legal process as much as an economic one. Law determines which forms of land interest can enter markets, which actors can participate, what procedures must be followed, and what happens when private economic projects conflict with existing social claims. Legal rules can consequently transform the relative power of different actors without explicitly declaring one group superior to another.

The postcolonial dimension emerges when this process is situated within Indonesia's historical political economy. Colonial agrarian law connected land administration to commercial extraction and plantation production. Contemporary Indonesian law operates under fundamentally different constitutional and political principles, but land continues to occupy a central position in strategies of economic development. The analytical task is therefore to identify where contemporary market-oriented governance reproduces structural patterns of unequal access, rather than assuming a direct identity between colonial and contemporary economic systems.

E. Development, Land Acquisition, and Unequal Bargaining Power

Large-scale development provides a concrete context in which these legal dynamics become visible. Infrastructure projects, plantations, industrial development, mining, conservation, and urban expansion frequently require the consolidation or transformation of land. Such processes are legally structured through land acquisition procedures, licensing systems, spatial planning, compensation mechanisms, and administrative decisions.

The formal existence of procedures for acquisition and compensation does not by itself establish substantive equality. The parties may have unequal access to information, legal representation, valuation expertise, and political institutions. Communities may also attach cultural, social, and intergenerational meanings to land that are difficult to capture through monetary valuation. Consequently, compensation may address the economic value of land while failing to address the loss of territorial relationships, communal institutions, or cultural sites.

The problem is particularly acute when land is conceptualized primarily through individualized economic value. A community may regard territory as a collective foundation of social reproduction, while a development institution may treat the same territory as a set of parcels with measurable monetary value. Both positions can be legally intelligible, but they do not necessarily possess equal institutional power. Where state law privileges one form of valuation, the resulting decision may appear neutral while producing highly unequal consequences.

This is where the concept of substantive legal inequality becomes important. Substantive inequality does not necessarily require an explicit discriminatory rule. It may arise when formally general rules operate within materially unequal social conditions. A procedure that treats all landholders identically may nevertheless produce unequal outcomes when some landholders possess significantly greater economic and institutional capacity to participate in the procedure.

The issue therefore returns to the central claim of this article: land inequality is partly a question of capacity to use law. Landholders do not enter the legal system with equal resources. The practical value of a property right depends on the ability to register it, defend it, negotiate its transfer, challenge administrative decisions, and obtain effective remedies. Consequently, the distribution of land-related power cannot be measured solely through the distribution of formal titles.

F. From Legal Recognition to Substantive Equality

The analysis thus far suggests that three mechanisms are particularly important in understanding the relationship between contemporary agrarian law and inequality: centralized authority, legal visibility, and commodification. Centralized authority determines who possesses the institutional power to regulate land. Legal visibility determines which claims can be effectively recognized and defended. Commodification determines how legally recognized interests can be incorporated into economic transactions. These mechanisms interact rather than operate independently.

Centralized authority can determine the criteria for legal visibility. Legal visibility can influence whose land rights become sufficiently secure to participate in formal markets. Commodification can then alter the economic value and transferability of those rights. The interaction may produce a cumulative advantage for actors with greater institutional and economic resources.

> The relationship can be represented analytically as follows:
> *Centralized authority → legal classification → unequal legal visibility → unequal capacity to secure rights → differential access to land markets and development opportunities → reproduction of land inequality.*

This sequence does not imply an inevitable causal chain. State regulation can also protect vulnerable communities, strengthen customary rights, and prevent arbitrary dispossession. The critical argument is instead that the same legal institutions capable of protecting rights can also generate unequal outcomes depending upon how recognition, administration, and enforcement are structured.

This ambivalence is important for avoiding an overly deterministic postcolonial argument. The contemporary Indonesian state should not be portrayed simply as reproducing colonial domination. Postcolonial legal institutions have also provided important mechanisms for challenging historical exclusion. Constitutional recognition, judicial review, agrarian reform policies, and legal recognition of customary rights demonstrate that state law can become a vehicle for redistribution and social justice. The problem lies in the institutional conditions under which these possibilities are realized.

A postcolonial critique therefore does not require rejecting state law. Instead, it requires examining how state law can become more responsive to multiple forms of land tenure and more accountable to communities affected by land governance. This approach shifts the discussion from the binary opposition between "state law" and "customary law" toward the question of how legal institutions can accommodate genuine plurality without reproducing hierarchical recognition. The central implication is that agrarian reform must address more than formal ownership. If inequality is partly produced through unequal legal visibility and unequal institutional capacity, redistribution must be accompanied by reforms that alter the processes through which rights are recognized, documented, and enforced. Otherwise, formal redistribution may coexist with continuing structural inequalities in the capacity to retain and defend land.

V. CUSTOMARY LAND RIGHTS: RECOGNITION, EXCLUSION, AND LEGAL PLURALISM

The question of customary land rights occupies a central position in the tension between Indonesia's commitment to agrarian justice and the continued dominance of state-centered land governance. Indonesian law does not simply ignore customary rights. On the contrary, customary law communities and their traditional rights receive constitutional and statutory recognition. Article 18B(2) of the 1945 Constitution recognizes the existence of customary law communities and their traditional rights insofar as they remain alive and are consistent with societal development and the principles of the unitary state. Article 3 of the Basic Agrarian Law similarly acknowledges the exercise of customary rights (*hak ulayat*) insofar as such rights remain in existence and their exercise is consistent with national interests and applicable legislation (Indonesia 1945; Indonesia 1960).

The existence of these provisions might suggest that Indonesian agrarian law has established a relatively strong foundation for legal pluralism. Yet formal recognition does not necessarily produce substantive equality between legal orders. The critical problem lies in the conditions attached to recognition and in the institutional authority responsible for determining whether those conditions have been satisfied. Customary rights are recognized, but their legal effectiveness remains substantially mediated by state law. This creates a distinctive form of legal pluralism in which customary law is neither completely excluded nor fully autonomous. It exists within a legal framework whose ultimate institutional authority remains concentrated in the state.

A. Recognition as a Conditional Legal Status

The conditional nature of recognition is visible in the structure of Article 3 of the UUPA. The provision does not provide an unconditional affirmation of customary territorial authority. Rather, customary rights are acknowledged to the extent that they remain in existence and their exercise is consistent with national interests and statutory provisions (Indonesia 1960). This formulation reflects the historical attempt of the UUPA to incorporate customary law into a unified national agrarian system. It also illustrates the limits of that incorporation.

The legal significance of this arrangement lies in the relationship between the existence of a right and the institutional recognition of that right. A customary community may regard its territorial relationship as historically established through customary law, collective memory, occupation, and community institutions. The state, however, may require additional evidence or administrative recognition before the same relationship becomes legally enforceable within the national system. The result is a distinction between social legitimacy and state legal validity.

This distinction should not be interpreted as meaning that customary rights are necessarily valid independently of state law in every circumstance. Customary systems themselves contain rules concerning membership, authority, boundaries, inheritance, and land use, and those rules may evolve over time. The critical point is instead that the national legal system possesses the institutional power to determine when customary normativity becomes legally effective. Recognition therefore operates as a gateway between customary social authority and formal state legality.

From a postcolonial perspective, this gateway function is significant. Colonial legal systems frequently transformed indigenous institutions into objects of administrative recognition and regulation. The postcolonial state may reject the discriminatory objectives of colonial governance while retaining a similar institutional relationship in which the state determines the legal visibility of customary communities. The historical difference is substantial, but the institutional question remains: who has the authority to decide whether a community's relationship with land counts as law?

This question shifts the analysis from recognition as a purely protective concept toward recognition as a form of power. Recognition can protect rights, but it can also establish the conditions under which those rights become visible to the state. A community that must satisfy externally defined criteria to obtain legal recognition is placed in a structurally different position from an actor whose property rights are presumed valid through formal registration or statutory title.

B. Constitutional Recognition and the Politics of Legal Visibility

The constitutional recognition of customary communities represents a significant departure from a purely state-centered conception of property. Article 18B(2) acknowledges that customary communities and their traditional rights constitute part of Indonesia's constitutional order, subject to specified conditions (Indonesia 1945). This provision is important because it recognizes that the legal order contains forms of social organization and territorial rights that predate or exist independently of modern statutory administration.

Nevertheless, the constitutional language also illustrates the complexity of recognition. The existence of a customary community is constitutionally recognized subject to conditions concerning continued existence, social development, compatibility with the principles of the Republic of Indonesia, and regulation through legislation. Consequently, recognition is both affirmative and conditional. It affirms customary communities while simultaneously placing their legal status within a framework defined by the state.

This structure produces what may be described as asymmetrical recognition. The state recognizes customary law, but customary communities do not possess an equivalent institutional capacity to determine the scope and conditions of state authority over their territories. In other words, the legal system recognizes plurality without necessarily distributing authority pluralistically.

This distinction is important because legal recognition is often treated as the final objective of indigenous rights advocacy. Yet from a postcolonial perspective, recognition may represent only the beginning of a deeper transformation. Recognition becomes substantively meaningful only when communities possess effective institutional capacity to exercise their rights, participate in decisions affecting their territories, and obtain remedies when those rights are violated.

The distinction between formal and substantive recognition is therefore central to this study. Formal recognition occurs when legislation or judicial decisions acknowledge the existence of customary rights. Substantive recognition requires that such rights become practically enforceable and capable of influencing decisions concerning land use and territorial governance. A legal system may achieve the first without achieving the second. This distinction helps explain why constitutional recognition has not eliminated agrarian conflicts involving customary communities. The persistence of conflict does not necessarily demonstrate the complete failure of legal recognition. Rather, it suggests that recognition operates within broader institutional structures involving land administration, spatial planning, forestry regulation, development policy, and licensing. Customary rights can therefore be constitutionally recognized while remaining vulnerable within administrative processes governed by other sectors of law.

C. The Constitutional Court and the Reconfiguration of Customary Forest Rights

Constitutional Court Decision No. 35/PUU-X/2012 provides a particularly important illustration of this tension. The case challenged provisions of Law No. 41 of 1999 concerning Forestry that treated customary forests as part of state forests. The petitioners included the Alliance of Indigenous Peoples of the Archipelago (AMAN), the Kenegerian Kuntu customary law community, and the Kasepuhan Cisitu customary law community. In its decision of May 16, 2013, the Constitutional Court partially granted the petition (Constitutional Court of Indonesia 2013).

The significance of the decision extends beyond the technical interpretation of forestry legislation. The Court challenged a legal classification that effectively placed customary forests within the state's forest category and distinguished customary forests from state forests. The decision consequently strengthened the constitutional position of customary communities by recognizing that forests located within customary territories could not automatically be treated as part of the state's forest domain (Constitutional Court of Indonesia 2013).

From the perspective of legal pluralism, the decision represents an important movement away from a hierarchical model in which state classification automatically overrides customary territorial claims. It recognizes that the legal relationship between communities and territory cannot be fully reduced to state ownership or administrative control. The decision therefore illustrates how constitutional adjudication can become an instrument for correcting the historical marginalization of customary legal orders.

Yet the decision also reveals the limits of judicial recognition. The Court did not establish a completely autonomous customary legal jurisdiction over land and forests. Instead, it reinterpreted the relationship between customary rights and state law within the constitutional framework. The legal recognition of customary forests therefore remained dependent upon broader questions concerning the existence and recognition of customary law communities and the institutional implementation of the Court's ruling.

This illustrates a broader paradox of postcolonial constitutionalism. Courts may provide an important mechanism for challenging state-centered classifications, but they remain institutions of the state. Their recognition of customary rights consequently operates through the conceptual and procedural language of constitutional law. Judicial recognition can alter the hierarchy between legal orders without eliminating the institutional role of the state in defining the framework within which that plurality operates. The importance of Decision No. 35/PUU-X/2012 therefore lies precisely in this tension. It demonstrates that state law can function both as an instrument of historical exclusion and as an instrument for correcting exclusion. The analytical task is not to characterize state law as inherently oppressive but to examine the institutional conditions under which it produces either domination or protection.

D. Legal Pluralism without Equal Legal Authority

The Indonesian experience suggests that the existence of multiple legal orders should not automatically be interpreted as a successful model of legal pluralism. The critical question is whether those legal orders possess meaningful institutional authority within the broader legal system. Griffiths's classic distinction between weak and strong forms of legal pluralism is useful here: legal pluralism becomes particularly significant when non-state normative orders possess social and institutional autonomy rather than merely being tolerated or incorporated by the state (Griffiths 1986, 5–8).

In Indonesia, customary law has significant social authority in many communities, but its formal legal authority remains constrained by the national legal system. The state determines many of the conditions under which customary communities can obtain formal recognition, establish territorial boundaries, and secure legal protection. This produces a form of state-managed pluralism in which plurality is recognized but ultimately administered through centralized institutions.

The distinction matters because state-managed pluralism can reproduce the very hierarchy that recognition is intended to overcome. When the state determines which communities qualify as customary communities, which territories qualify as customary territories, and which customary norms are compatible with national law, it retains substantial authority over the boundaries of legal plurality.

This is not necessarily problematic in every circumstance. All legal systems require mechanisms for resolving conflicts among competing claims and ensuring constitutional rights. The problem emerges when the institutional criteria for recognition are designed primarily from the perspective of state administration rather than through meaningful participation by the communities whose rights are being recognized. In such circumstances, recognition can become a process of legal translation in which customary institutions are required to conform to categories established by the dominant legal order.

The resulting tension can be understood as a conflict between recognition and autonomy. Recognition provides access to the protection of state law. Autonomy concerns the capacity of communities to participate meaningfully in defining the legal and institutional conditions governing their territories. A system that provides recognition without meaningful autonomy may protect communities against certain forms of dispossession while leaving the underlying hierarchy of legal authority largely intact.

E. Evidence, Mapping, and the Epistemic Politics of Customary Land

The politics of recognition also operates through evidence. State land administration generally relies upon documents, maps, surveys, registration records, and legally standardized categories. These instruments are essential for legal certainty, but they also establish a hierarchy of evidence. Forms of knowledge that are difficult to represent through standardized administrative categories may receive weaker legal status.

Customary land claims may be supported by oral histories, genealogies, customary decisions, sacred sites, historical occupation, community boundaries, and collective memory. Such evidence can be highly authoritative within customary institutions but may not possess equivalent evidentiary weight within formal administrative procedures. The problem is therefore not simply that customary communities lack evidence. Rather, the problem may lie in the unequal legal authority assigned to different forms of evidence. This is an epistemic dimension of land inequality. If legal institutions recognize only particular forms of knowledge as sufficiently objective or authoritative, communities whose land relationships are expressed through different epistemologies may face structural disadvantages. A cadastral map can make a territory visible to the state, but the absence of a cadastral map does not necessarily mean that a territory lacks social or customary boundaries.

Postcolonial legal analysis is particularly concerned with this form of epistemic hierarchy because colonial governance frequently depended upon the transformation of complex social realities into administratively legible categories. The persistence of administrative epistemologies after independence does not mean that contemporary officials reproduce colonial intentions. It means that institutional techniques can survive changes in political authority and acquire new purposes within the postcolonial state. This observation has important implications for customary land registration. A genuinely inclusive registration system should not simply require customary communities to abandon their own modes of territorial knowledge. Instead, it should create mechanisms through which customary knowledge can become authoritative evidence within state institutions without necessarily being transformed into individualized private property.

F. Recognition and the Risk of Incorporation

The problem of incorporation is therefore central to the postcolonial critique. Incorporation occurs when customary institutions are recognized only after being translated into the conceptual categories of state law. The process can produce legal protection, but it can also alter the nature of the rights being protected. For example, collective territorial rights may be translated into individualized parcels, customary authority may be translated into formal administrative institutions, and community membership may be defined through state-established criteria. Such processes can make customary claims more legible to the state while simultaneously changing their social and legal meaning.

Fitzpatrick's analysis of postcolonial Indonesian land law is particularly relevant in this respect. He argues that the UUPA's attempt to combine customary principles with a unified national land system generated new forms of legal pluralism and uncertainty, particularly because the formalization of land rights could conflict with customary tenure arrangements (Fitzpatrick 1997, 171–212). The problem was therefore not simply the exclusion of *adat* law but its incorporation into a legal system whose institutional structure could continue to privilege formalized state-recognized rights.

This insight challenges a simplistic opposition between recognition and exclusion. A legal system may exclude customary rights by denying them recognition, but it may also weaken them through forms of recognition that transform their underlying institutional structure. The postcolonial problem is therefore not only legal invisibility but also legal transformation. The distinction is crucial for agrarian reform. If reform policy focuses solely on increasing the number of customary territories formally recognized by the state, it may overlook whether communities retain meaningful authority over those territories after recognition. Recognition should therefore be evaluated not only by the number of legal instruments issued but also by the extent to which communities can exercise substantive control over land use, development decisions, resource management, and dispute resolution.

G. From Recognition to Participation

The analysis suggests that the protection of customary land rights requires a shift from recognition as an administrative endpoint toward recognition as an ongoing institutional relationship. Recognition should provide communities with effective participation in decisions concerning their territories rather than merely confirming their status within a state-defined registry. This approach is consistent with the broader principle that land governance should be participatory. Decisions concerning territorial development, infrastructure, natural resources, conservation, and investment can have consequences that extend far beyond the formal ownership of a parcel. A community's relationship with territory may include social, cultural, ecological, and intergenerational dimensions that cannot be adequately represented through individualized property titles.

Participation is therefore not simply a procedural supplement to recognition. It is part of substantive legal equality. A community that is formally recognized but excluded from meaningful decisions concerning its territory remains institutionally vulnerable. Conversely, participation without secure legal recognition may leave communities unable to enforce the outcomes of participatory processes. The two dimensions must therefore operate together: *Recognition → legal status → participation → institutional authority → substantive protection.* This framework also helps explain why legal pluralism should be understood as more than the coexistence of state and customary law. A more meaningful form of legal pluralism requires institutional mechanisms through which different normative orders can interact without one automatically possessing unilateral authority to define the validity of the other.

H. Customary Rights and the Limits of State-Centered Reform

The Indonesian experience ultimately reveals the limits of a reform strategy that relies exclusively on state recognition. The state remains indispensable to the protection of land rights, particularly because formal legal institutions can provide remedies against powerful private actors and public authorities. Yet state-centered recognition can also reproduce institutional dependency when communities must continuously seek validation from state agencies before their territorial rights become legally effective.

A postcolonial approach therefore requires a reorientation of the relationship between state law and customary law. The objective should not be to replace state law with customary law or to romanticize customary institutions as inherently egalitarian. Customary systems can themselves contain internal inequalities and disputes. The objective is instead to construct a legal framework in which customary institutions are treated as legitimate participants in the production and governance of land law rather than merely as objects of state recognition.

Such an approach would require at least three transformations. First, customary land rights should be recognized through procedures that accommodate collective and territorial forms of tenure rather than forcing them into individualized property categories. Second, customary knowledge and evidence should receive meaningful legal consideration in land administration and dispute resolution. Third, customary communities should possess effective participatory authority in decisions concerning the transformation or allocation of their territories.

These transformations would move agrarian law from conditional recognition toward substantive legal pluralism. The difference is significant. Conditional recognition asks whether a customary claim satisfies the conditions established by state law. Substantive legal pluralism asks how state and customary institutions can share authority while protecting constitutional rights and preventing domination. The distinction also strengthens the central postcolonial argument of this article. The persistence of coloniality in agrarian law should not be measured only by the survival of colonial statutes. It should also be examined through the institutional hierarchy that determines whose knowledge, authority, and property concepts receive legal priority. If customary communities remain dependent upon state-defined categories to establish the legal existence of their territorial rights, then the process of decolonization remains incomplete even where the formal legal framework recognizes customary rights.

The challenge for agrarian reform is consequently to move beyond a model in which the state simply grants recognition to marginalized communities. A more transformative model would redistribute not only land but also legal authority, epistemic recognition, and decision-making capacity. Such a transformation would not weaken the rule of law. On the contrary, it would deepen the rule of law by ensuring that legal equality is measured not merely by formal uniformity but by the capacity of differently situated communities to exercise and defend their rights.

The analysis of customary land rights therefore reinforces the broader argument developed in this article. Land inequality is produced not only through the unequal ownership of land but also through unequal access to the legal institutions that define, recognize, and protect land rights. The next section turns to the broader implications of this argument for agrarian reform. It examines the limits of legal neutrality, the relationship between redistribution and recognition, and the possibility of a postcolonial model of agrarian governance that treats decolonization as both a distributive and institutional project.

VI. AGRARIAN REFORM, LEGAL NEUTRALITY, AND A POSTCOLONIAL FRAMEWORK FOR AGRARIAN JUSTICE

The preceding analysis demonstrates that land inequality in Indonesia cannot be explained solely by the unequal distribution of land. It is also produced through legal and institutional processes that determine whose claims become legally visible, whose rights receive effective protection, and whose interests are prioritized in decisions concerning land use and territorial transformation. This observation raises a fundamental question for agrarian reform: if inequality is partly reproduced through legal institutions, can redistribution alone produce substantive agrarian justice? The argument advanced here is that redistribution remains indispensable but is insufficient on its own. Agrarian reform must address not only the allocation of land but also the institutional structures through which land rights are recognized, administered, transferred, and defended.

The principle of legal neutrality provides an important starting point for this argument. Modern legal systems generally seek to apply rules equally to similarly situated persons and to limit arbitrary distinctions among rights holders. In land governance, neutrality may appear through standardized registration procedures, uniform evidentiary requirements, formal property categories, and general rules governing land acquisition and dispute resolution. Yet Critical Legal Studies has demonstrated that formally neutral rules may operate within unequal social structures and may therefore produce materially unequal consequences (Kennedy 1976, 1685–88). The relevance of this insight to agrarian law is not that legal rules are meaningless or that their application is necessarily arbitrary. Rather, it is that formal equality does not eliminate the unequal economic, political, and institutional capacities with which different actors enter the legal system.

A land registration requirement, for example, may apply formally to all landholders. Its practical consequences, however, can differ according to access to documentation, administrative institutions, financial resources, legal assistance, cadastral information, and technical expertise. The rule does not need to discriminate explicitly in order to produce unequal outcomes. Inequality may emerge through the interaction between a formally general rule and materially unequal social conditions. This distinction between formal and substantive equality is particularly important in Indonesia because rural communities, customary communities, smallholders, corporations, and state institutions do not possess equivalent capacities to navigate land administration. Consequently, the critical question is not simply whether agrarian law is neutral but what social and institutional assumptions are embedded within its claims to neutrality.

This problem also demonstrates why land rights should be understood as institutional rather than merely doctrinal entitlements. A right becomes meaningful only when its holder can establish, exercise, defend, and, where necessary, challenge that right through effective legal institutions. The practical value of a property right therefore depends partly upon access to the administrative and judicial structures through which the right is enforced. Unequal legal capacity can consequently produce unequal substantive rights even where formal entitlements appear equivalent.

Agrarian reform must therefore be understood as involving more than the redistribution of physical land. The UUPA itself was oriented toward social justice and the restructuring of agrarian relations, including through the recognition of the social function of land (Indonesia 1960). Yet redistribution should be distinguished from broader institutional transformation. Redistribution changes the allocation of land or land rights; institutional transformation changes the conditions under which those rights are produced, recognized, exercised, and defended.

This distinction is important because redistributive programs may operate within legal and administrative structures that continue to reproduce unequal bargaining power. Individualized land titles, for example, can provide important tenure security and strengthen the legal position of landholders. At the same time, formalization can increase the transferability of land and facilitate its incorporation into markets. Where landholders face economic vulnerability, indebtedness, unequal access to information, or pressure from more powerful actors, formally secure property rights may subsequently become subject to concentration. The issue is therefore not whether formalization is inherently beneficial or harmful. Its consequences depend upon the institutional and economic conditions in which formalization occurs (de Soto 2000, 35–50; Sikor and Lund 2009, 1–8).

This tension is particularly relevant to the social-function principle contained in Article 6 of the UUPA. The principle rejects an understanding of land as an object of unrestricted private dominion and places land rights within a broader social framework (Indonesia 1960). Yet the existence of a social-function principle does not automatically prevent the commodification of land. Land markets themselves are legally constituted through property rights, contracts, registration systems, credit institutions, spatial planning, and state development policies. Consequently, the distributional consequences of land markets depend substantially on the legal institutions through which those markets operate.

The critical issue is therefore not whether land should participate in markets. Markets can provide important economic opportunities for farmers, landholders, and rural communities. The issue is whether market relations operate under conditions that protect vulnerable rights holders and prevent economic power from being translated into disproportionate control over land. In this respect, market neutrality is subject to the same critique as legal neutrality: apparently general rules can have unequal effects when actors possess substantially different resources and bargaining capacities.

A postcolonial analysis adds a further dimension to this problem by examining the historical assumptions embedded in land administration and property institutions. The argument is not that contemporary Indonesian agrarian law is simply colonial law under another name. Such a claim would ignore the substantial transformation represented by independence and the UUPA. The more precise proposition is that coloniality can persist through institutional rationalities even after colonial statutes have been abolished. Coloniality, in this sense, concerns the continuing significance of particular hierarchies concerning authority, knowledge, territorial classification, and legally recognized forms of property.

This distinction is essential because the postcolonial state has simultaneously transformed and reproduced aspects of earlier land governance. The UUPA explicitly rejected the colonial agrarian regime and sought to establish a national legal order grounded in social justice and national interests (Indonesia 1960; Fitzpatrick 1997, 171–78). At the same time, the postcolonial system retained a strong conception of state authority over land through the doctrine of *Hak Menguasai Negara*. The normative objectives were fundamentally different from those of colonial rule, but the institutional significance of centralized authority remained substantial.

The persistence of centralized authority is not, in itself, evidence of colonial continuity. A modern state requires institutions capable of coordinating land use, protecting public interests, resolving conflicts, and preventing arbitrary private domination. The critical question is instead whether centralized authority is balanced by meaningful participation, plural recognition, and institutional accountability. Where state institutions retain unilateral authority to determine the validity of competing land claims, centralized governance can reproduce unequal legal relationships even when its stated objective is social welfare.

This problem is particularly evident in the treatment of customary land rights. Indonesian law provides constitutional and statutory recognition of customary communities and their traditional rights (Indonesia 1945; Indonesia 1960). Yet recognition remains conditional upon criteria established within the national legal order. The result is a form of legal pluralism in which customary law is acknowledged but remains institutionally dependent upon state recognition. Fitzpatrick's analysis of Indonesian land law demonstrates that the attempt to integrate customary law into a unified national agrarian system generated new forms of legal pluralism and uncertainty rather than simply eliminating the tension between state and customary law (Fitzpatrick 1997, 171–212).

The distinction between formal recognition and substantive recognition is therefore central. Formal recognition occurs when legislation, administrative instruments, or judicial decisions acknowledge the existence of customary rights. Substantive recognition requires that those rights become practically enforceable and that customary communities possess meaningful institutional capacity to influence decisions concerning their territories. Recognition without effective participation can protect communities against some forms of dispossession while leaving the underlying hierarchy of legal authority largely unchanged.

Constitutional Court Decision No. 35/PUU-X/2012 provides an important example of both the possibilities and limitations of legal recognition. The Court rejected the legal treatment of customary forests as automatically belonging to the category of state forests and recognized a distinction between customary forests and state forests (Constitutional Court of Indonesia 2013). The decision represented an important corrective to a state-centered classification that had subordinated customary territorial claims. It also demonstrated that state law and constitutional adjudication can function as instruments for correcting historical exclusion.

Nevertheless, the decision did not eliminate the institutional role of the state in determining the conditions under which customary communities and their territories receive legal protection. Judicial recognition therefore illustrates a broader paradox of postcolonial constitutionalism: state institutions can challenge state-centered domination while remaining the institutions through which recognition is legally produced. The objective of reform should consequently not be to eliminate state law but to restructure the relationship between state authority and other legitimate forms of land governance.

This requires greater attention to what may be termed legal visibility. A claim becomes legally visible when the dominant institutional system possesses categories and procedures capable of recognizing and enforcing it. Customary land claims may be supported by oral histories, genealogies, customary decisions, historical occupation, collective memory, sacred sites, and community-defined territorial boundaries. These forms of evidence may be authoritative within customary institutions but may not possess equivalent weight within formal administrative processes. The resulting inequality is epistemic as well as legal.

The politics of evidence is therefore an important dimension of agrarian inequality. A cadastral map can make a territory visible to the state, but the absence of such a map does not necessarily mean that the territory lacks socially recognized boundaries. Similarly, the absence of an individualized title does not necessarily mean that a community lacks a historically established relationship with land. A genuinely inclusive land administration system should therefore recognize multiple forms of legally relevant knowledge rather than assuming that only standardized documentary evidence can establish legitimate land relations.

This does not require romanticizing customary law or assuming that customary communities are internally homogeneous or inherently egalitarian. Customary systems can contain their own conflicts, exclusions, and inequalities. The objective of legal pluralism should therefore not be to exempt customary institutions from legal scrutiny. Rather, it should be to ensure that customary institutions participate meaningfully in the production and governance of land law while remaining subject to constitutional principles concerning equality, justice, and fundamental rights.

The distinction between recognition and autonomy is consequently crucial. Recognition provides access to state protection, whereas autonomy concerns the capacity of communities to participate in determining the legal and institutional conditions governing their territories. A system that provides recognition without meaningful participation may produce formal inclusion with substantive exclusion. Conversely, participation without secure legal rights may leave communities vulnerable to decisions that they cannot effectively challenge.

Agrarian reform should therefore combine at least three dimensions: redistribution, recognition, and participation. Redistribution addresses unequal access to land. Recognition addresses the legal status of different forms of tenure, including customary and collective rights. Participation addresses the distribution of decision-making authority concerning land and territory. These dimensions are mutually dependent. Redistribution without recognition may undermine collective forms of tenure; recognition without redistribution may leave existing concentrations of land intact; and participation without secure rights may result in consultation without meaningful power.

This framework expands the conventional understanding of agrarian reform. Agrarian reform should not be limited to the question of who owns land. It should also ask who possesses the institutional capacity to define, use, defend, transfer, and govern land. In this sense, reform should include the redistribution of legal capacity. Legal capacity encompasses access to legal information, administrative procedures, cadastral data, legal assistance, dispute-resolution mechanisms, and meaningful participation in land-related decisions.

The concept of legal capacity is particularly important because unequal access to legal institutions can reproduce inequality after formal redistribution has taken place. A smallholder or customary community may possess a legally valid right but lack the resources required to defend it against a more powerful actor. Conversely, a corporation or state institution may possess extensive technical, financial, and legal resources that enable it to navigate complex regulatory procedures. The practical value of formal rights is therefore partly determined by the institutional resources available to their holders.

A postcolonial model of agrarian justice should consequently seek to reduce this asymmetry. This does not mean abolishing state land administration or property registration. Instead, it requires redesigning those institutions so that they can accommodate multiple forms of tenure and knowledge. Collective and customary territories should be capable of obtaining legally secure recognition without being automatically converted into individualized private property. Customary evidence should receive meaningful consideration in land administration and adjudication. Communities affected by major land-use decisions should have access to information, legal assistance, and effective participation before decisions become irreversible.

Participation should therefore be understood as a component of substantive equality rather than merely a procedural requirement. A community formally recognized as a rights holder but excluded from decisions concerning the transformation of its territory remains institutionally vulnerable. Meaningful participation requires that affected communities have sufficient information, adequate time for internal deliberation, access to independent assistance, and genuine opportunities to influence the outcome of decisions.

This approach also requires a reconsideration of the concept of legal certainty. Clear titles, defined boundaries, and standardized procedures can provide important protection against arbitrary dispossession. Yet certainty is never entirely neutral because it depends upon the categories through which certainty is constructed. A cadastral system may provide certainty concerning an individualized parcel while failing to adequately represent collective territorial relationships. A concession may provide legal certainty for an investor while creating uncertainty for communities whose customary claims are not reflected in the same administrative record.

The appropriate question is therefore not simply whether land governance produces certainty, but certainty for whom, concerning which rights, and through which legal categories. A postcolonial approach would redefine legal certainty as inclusive rather than merely formal. Inclusive legal certainty requires that different legitimate forms of tenure can be represented within the legal system and that formalization does not systematically transform one actor's legal certainty into another community's dispossession.

This approach also offers a more nuanced understanding of decolonization. Formal decolonization involves the repeal of colonial legislation and the establishment of national legal institutions. Substantive decolonization requires a deeper transformation of the distribution of authority, knowledge, and recognition within those institutions. Indonesia has clearly achieved substantial formal decolonization through the UUPA and subsequent constitutional developments. The continuing challenge concerns the extent to which legal authority over land has been redistributed beyond centralized state institutions.

The distinction between formal and substantive decolonization explains why coloniality can persist without the survival of colonial statutes. Institutional structures may continue to privilege centralized classification, administrative legibility, and particular conceptions of property even when their normative justification has changed. Contemporary state institutions are therefore neither inherently colonial nor inherently emancipatory. They are sites of contestation in which competing understandings of property, authority, development, and justice are negotiated.

The central contribution of a postcolonial critique is consequently to shift the focus of agrarian reform from the replacement of legal rules toward the transformation of legal relationships. The question is not merely whether Indonesia has replaced colonial agrarian law with national legislation. It is whether contemporary institutions have created a legal order in which different relationships with land can receive meaningful and substantively equal protection.

On this basis, a postcolonial framework for agrarian justice should rest on four interrelated principles. First, historical consciousness requires recognition that contemporary land institutions emerged through colonial and postcolonial transformations and that historical structures continue to influence present legal arrangements. Second, substantive equality requires evaluating legal rules according to their practical effects on differently situated rights holders rather than relying solely on formal uniformity. Third, plural recognition requires legal institutions to accommodate customary, collective, communal, and individualized forms of tenure without automatically subordinating one to another. Fourth, democratic participation requires communities affected by land governance to possess meaningful institutional opportunities to influence decisions concerning their territories.

These principles point toward an understanding of agrarian reform as an institutional project rather than merely a redistributive program. Redistribution remains essential for addressing excessive concentration and unequal access to land. Yet redistribution will be incomplete if beneficiaries remain vulnerable to subsequent dispossession because of unequal bargaining power, inadequate legal protection, or weak institutional capacity. Similarly, recognition will remain incomplete if customary communities receive formal status without meaningful authority over their territories.

The broader normative implication is that agrarian justice requires a redistribution of not only land but also legal recognition, institutional capacity, and political authority. Such redistribution would not require the abandonment of state law. Instead, it would require a reconfiguration of state authority so that the state acts not as the exclusive producer of legitimate land relations but as an institution that facilitates coexistence among different forms of tenure while protecting constitutional rights and the public interest.

The resulting model may be described as substantive legal pluralism. Unlike a model in which customary law is merely tolerated or conditionally recognized by the state, substantive legal pluralism seeks institutional arrangements in which multiple legitimate normative orders can participate in land governance without one automatically possessing unilateral authority to determine the validity of the others. This model does not imply absolute autonomy or immunity from constitutional norms. Rather, it seeks a more balanced distribution of legal authority.

Such a framework provides a more comprehensive response to land inequality than redistribution alone. It recognizes that land inequality is sustained not only through unequal ownership but also through unequal capacities to make claims legally visible, obtain administrative recognition, participate in decision-making, and defend rights against more powerful actors. Agrarian reform that fails to address these institutional dimensions may change the distribution of land without fundamentally changing the structures through which inequality is reproduced.

The postcolonial critique therefore leads to a broader conception of agrarian justice. Justice requires not only that land be distributed more equally but also that the legal system recognize different relationships with land, treat different forms of knowledge as legally meaningful, provide effective protection for customary and collective rights, and ensure meaningful participation in territorial decision-making. In this sense, decolonizing agrarian law is not simply a matter of removing colonial legal remnants. It is a continuing process of democratizing the production, recognition, and enforcement of land rights.

VII. CONCLUSION

This article has argued that persistent land inequality in Indonesia should be understood not only as a problem of unequal land ownership but also as a problem of legal structure and institutional power. A postcolonial critique reveals that the contemporary agrarian legal order emerged through a complex process of rupture and continuity: the UUPA of 1960 decisively rejected the colonial agrarian regime and established a national framework oriented toward social justice, yet centralized state authority remained a defining feature of land governance (Fitzpatrick 1997, 171–212; Indonesia 1960). Through state control, land administration, legal recognition, and property formalization, law determines which relationships with land become visible, enforceable, and transferable. Customary land rights illustrate this tension particularly clearly. Although constitutional and statutory law recognizes customary communities and their traditional rights, recognition remains conditioned by state-defined legal and administrative frameworks (Indonesia 1945;

Indonesia 1960). Constitutional Court Decision No. 35/PUU-X/2012 demonstrates that state law can correct historical exclusion, but it also confirms the continuing importance of state institutions in determining the legal status of customary territories (Constitutional Court of Indonesia 2013). Land inequality therefore cannot be adequately addressed through redistribution alone. Agrarian reform must also address unequal legal capacity, unequal access to institutions, and the unequal distribution of authority over land.

The article consequently proposes a postcolonial conception of agrarian justice based on the interaction of redistribution, recognition, participation, and substantive equality. Redistribution is necessary to address unequal access to land, but recognition must ensure that customary, collective, and other legitimate forms of tenure receive meaningful legal protection. Participation must give affected communities a substantive role in decisions concerning their territories, while substantive equality requires attention to the unequal institutional capacities with which different actors engage the legal system. From this perspective, decolonizing Indonesian agrarian law does not mean simply replacing colonial legislation or rejecting state law. It requires transforming the institutional structures through which land rights, knowledge, and authority are produced and recognized. The central challenge is therefore to move from formal decolonization toward substantive legal pluralism: a legal order in which the state protects the public interest while recognizing multiple legitimate relationships with land and preventing the concentration of legal authority from reproducing social and economic inequality. Such an approach broadens the meaning of agrarian reform from the redistribution of land toward the redistribution of legal recognition, institutional capacity, and political power, thereby providing a more comprehensive foundation for land justice in postcolonial Indonesia.

REFERENCES

Chakrabarty, Dipesh. 2000. *Provincializing Europe: Postcolonial Thought and Historical Difference*. Princeton, NJ: Princeton University Press.

Constitutional Court of the Republic of Indonesia. 2013. *Decision Number 35/PUU-X/2012*. Jakarta: Constitutional Court of the Republic of Indonesia.

de Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books.

Fitzpatrick, Daniel. 1997. "Disputes and Pluralism in Modern Indonesian Land Law." *Yale Journal of International Law* 22 (1): 171–212.

Griffiths, John. 1986. "What Is Legal Pluralism?" *The Journal of Legal Pluralism and Unofficial Law* 18 (24): 1–55. https://doi.org/10.1080/07329113.1986.10756387.

Indonesia. 1945. *The 1945 Constitution of the Republic of Indonesia*. Jakarta: Government of the Republic of Indonesia.

Indonesia. 1960. *Law No. 5 of 1960 Concerning Basic Agrarian Regulations (Basic Agrarian Law)*. State Gazette of the Republic of Indonesia No. 104 of 1960.

Kennedy, Duncan. 1976. "Form and Substance in Private Law Adjudication." *Harvard Law Review* 89 (8): 1685–1778.

Neilson, Jeff. 2016. "Agrarian Transformations and Land Reform in Indonesia." In *Land and Development in Indonesia: Searching for the People's*

Sovereignty, edited by John F. McCarthy and Kathryn Robinson, 245–264. Singapore: ISEAS–Yusof Ishak Institute.

Sikor, Thomas, and Christian Lund. 2009. "Access and Property: A Question of Power and Authority." *Development and Change* 40 (1): 1–22. https://doi.org/10.1111/j.1467-7660.2009.01503.x.

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Acknowledgment

The author would like to express gratitude to Universitas Brawijaya for providing the academic environment and institutional support that contributed to the preparation of this manuscript. The author also acknowledges the contributions of scholars and researchers whose works provided the theoretical and empirical foundations for this study. Any remaining errors, limitations, or shortcomings in the manuscript are the sole responsibility of the author.

Funding Information

None

Conflicting Interest Statement

The author declares that there are no conflicts of interest that could have influenced the research, analysis, interpretation, or presentation of the findings reported in this manuscript.

Publishing Ethical and Originality Statement

All authorsdeclared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

Generative AI Statement

During the preparation of this manuscript, the author used generative artificial intelligence (AI) tools to assist with language refinement, structural organization, and preliminary drafting. The use of AI was limited to supporting the writing and editing process. The author independently reviewed, verified, and revised all AI-assisted content and remain fully responsible for the accuracy, originality, interpretation, arguments, citations, and conclusions presented in this manuscript. No generative AI tool was used as a substitute for the authors' scholarly judgment or responsibility for the research.