

Obstacles recognition and legal protection of indigenous people's land in legal policy national agrarian

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Abstract

Customary land remains a problematic issue in national agrarian law policy following the Constitutional Court's decision in 2012. Several factors have hindered the recognition and legal protection of indigenous land, resulting in much of it being rezoned as state land or controlled by individuals or businesses. This has led to the absence of legal recognition and protection for indigenous land. However, such control and ownership deviate from the constitution, necessitating inventory and certification as a form of legal protection within the framework of national agrarian law policy. This study is a field study in private law, specifically in the field of agrarian law, and contributes to providing information on the significant amount of indigenous land in several regions of Indonesia that has not received recognition and legal protection as intended by the Constitutional Court's decision. Some of the challenges faced include the lack of authentic data on the extent and boundaries of customary land, the distance between customary land and research officers from the legal community, funding for customary communities and the National Land Agency, the distance between customary land and the research committee of the customary legal community, the dominance of concessions by investors, and the synchronization of legal frameworks for national strategic development projects, as well as the lack of local government policies in the formulation of regional regulations on land. The theoretical basis for discussing the research problem is based on Soerjono Soekanto's opinion on the factors influencing law enforcement and Laurence Meir Friedman's legal system theory. Using a legal-empirical research method, primary and secondary data collection instruments through interview guides and previous research results with descriptive-qualitative analysis techniques.

Keywords

Obstacles, Legal protection, Customary land, Legal policy, National agrarian policy

Introduction

The recognition and protection of indigenous peoples' rights are still far from what is expected and indigenous peoples' lands are in uncertainty, even having difficulty finding the essence of their legal protection [1]. This phenomenon is marked by several facts,

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including, suddenly their customary territories are said to be included in concessions, there are customary lands that without the knowledge of indigenous peoples are marked in the name of state forests or included in infrastructure development projects and many more that give rise to agrarian conflicts in the community [2]. Data from the Indigenous Peoples' Alliance of the Archipelago (AMAN) states that, until the end of 2021 there were 13 cases of confiscation of customary territories with an area of 251,000 hectares because indigenous peoples are not considered legal subjects of their land [3]. In addition, national agrarian legal policy also still does not provide hope for indigenous peoples in Indonesia, even though in the decision of the Constitutional Court Number 35 of 2012 indigenous peoples have been recognized as legal subjects of association [4]. Of the 65 districts that have regional legal products related to indigenous communities, 30 districts have implemented them up to the determination of indigenous communities and their territories, five districts have only reached the stage of forming a research committee for indigenous communities and 30 districts have not yet followed up on the regional legal products that have been determined¹. From the data, it was recorded that 53% of regional governments have not yet carried out their obligations to organize indigenous peoples' land in the form of regional legal products and this is a long road that indigenous communities still have to take, and still causes conflict for agrarian communities [5]. The absence of legal products has caused problems both from a legal perspective and from an implementation perspective, so that it still creates legal uncertainty from national agrarian legal politics and tends to become state-owned land [6]. This description is still a national issue that is increasingly prominent because since the enactment of national agrarian law until the enactment of the constitutional court decision in 2012, it has still been a legal problem in national agrarian legal politics.

The main issue is what factors hinder the recognition and legal protection of indigenous peoples' lands in Indonesia. This issue is part of the follow-up to Constitutional Court Decision No. 35 of 2012, which repositioned the strengthening of indigenous lands and also responded to the dynamics of national agrarian legal policy. This decision marked the starting point for re-strengthening the legal status of indigenous peoples' lands while simultaneously establishing their legal protection (law enforcement).

Methods

This study uses a normative-empirical research method with primary and secondary data sources. The data collection instrument uses an interview guide to a number of respondents, especially leaders and members of indigenous communities who are the research sample and a limited observation guide. The analysis technique used is qualitative through legal reasoning and argumentation to answer legal issues related to the recognition and legal protection of indigenous peoples' lands through several

¹ Ibid

proportional sample areas. For data analysis, using qualitative data analysis sourced from the results of primary and secondary data processing as well as data sourced from previous research results. Some of the research data is presented in the form of a frequency table that is tabulated descriptively after grouping the data according to the research problem. Furthermore, all data is analyzed descriptively-qualitatively using the theory of factors influencing law enforcement by Soerdjono Soekanto and the legal system theory by Laurence Meir Friedman which explains the legal system to address issues related to the recognition and legal protection of indigenous peoples' lands in Indonesia.

Results and Discussion

The results of research related to the recognition and legal protection of indigenous peoples' land rights in this sub-chapter will describe several factors inhibiting the recognition and legal protection of indigenous peoples' lands as described in the following sub-chapters.

No authentic data available on indigenous peoples' land

The authentic data required for the recognition and legal protection of indigenous peoples' land is data on the area and boundaries of indigenous peoples' land. Authentic data related to land recognition includes land measurement data, the determination of land boundaries, and the issuance of a measurement letter. The legal basis for the need for authentic data is, first, Article 19 of the UUPA states that a certificate is a "document-evidence of rights" that shows formal proof of a land right. This requires that everything related to registration must be officially recorded. Second, the provisions of Article 12 of Government Regulation No. 10 of 1961 concerning Land Registration emphasize that after the boundaries of a land plot and its owner are determined, the land rights are recorded in a land book register. Third, the provisions of Article 13 of Government Regulation No. 10 of 1961 concerning Land Registration state that copies of the land book plus the measurement letter are combined into one unit (certificate) and submitted to the holder of this certificate as a proof of rights as referred to in Article 19 of the UUPA.

Based on this legal basis, in the arrangement of customary land use from the perspective of national agrarian law, all customary land that will be designated as rights holders must complete authentic data as the basis for creating a land book of customary land ownership and also as a basis for recognizing their land rights. Based on the results of the study, several customary lands in the research location have difficulty in obtaining authentic land data, such as the Rongkong indigenous community in North Luwu, the Dayak indigenous community in North Kalimantan and the Indigenous Community in Borneo in Balikpapan. All customary lands controlled by indigenous communities currently have difficulty in obtaining authentic data when processing to obtain recognition from the National Land Agency Office in each region. The provision of authentic customary land data is intended to reduce land conflicts and is part of the

protection of indigenous communities while responding positively to the demands of the current dynamic national agrarian legal politics related to agrarian reform and sustainable natural resource management.

The results of this study also revealed several obstacles related to authentic data on customary land, namely, first, the lack of comprehensive data on customary land, the lack of availability of structural data or a national standard mechanism to systematically determine and record customary land areas. Second, the inconsistency of regulations and their implementation. Although the Basic Agrarian Law (UUPA) has ensured the recognition of customary rights, in practice many sectoral regulations overlap. Many unsynchronized policies make it difficult for indigenous communities to defend their claims to customary land. Therefore, from the perspective of law enforcement, especially national agrarian legal policy, many interrelated factors are influenced, such as the legal factors themselves, law enforcement, facilities and infrastructure, society, and culture. According to Soerjono Soekanto, these five factors have an important role in ensuring the law is enforced effectively. Therefore, the lack of authentic data on the area and boundaries of indigenous peoples' land; The absence of authentic record keeping is a factor in the customs of indigenous communities (culture), which in this case determines the boundaries of customary land based on local knowledge in the form of certain trees or plants as boundaries. This knowledge, in the view of Laurence Meir Friedman's legal system theory, is the legal culture of local communities that is inherited from generation to generation. This factor exists in all indigenous communities that experience difficulties in authentically (certainly) reporting the area and territory of customary land they control to local customary law community (MHA) research officers. The authentic data will then be submitted to the local National Land Agency as the basis for creating land books and certificates in order to obtain legal recognition and protection from the State. The unavailability of authentic data by indigenous communities is a factor that hinders the government from providing legal certainty and hinders the dynamics of national agrarian legal politics.

Distance of customary land location to the customary law community research committee

One of the factors inhibiting the recognition and legal protection of indigenous peoples' land is the distance between the location of the customary land and the customary law community (MHA) research committee. The purpose of establishing this committee by each regional government (province/district/city) is a positive government response to act as a social safety valve to anticipate agrarian conflicts and follow up on the operationalization of national agrarian law policy. The research results show that this factor also dominates the lack of data on land controlled by indigenous communities. In the research area of certain communities, such as the Rongkong Indigenous Community in North Luwu Regency, the distance is approximately 80-90 km from the district center, the travel time is 3-4 hours by car or motorcycle because the road is in a mountainous area. The altitude is 700-1,200 above sea level (Rindingallo, Limbong, Malimbu). In

addition, the distance between the community and its land is partly far, making it difficult for the MHA Research Committee. Similarly, several Dayak indigenous communities in East Kalimantan are spread across several regencies and cities throughout East Kalimantan, especially the Dayak community in Samarinda, which is approximately 150 km from the capital city of Samarinda. Similarly, the Borneo Dayak community, the Osin Indigenous Community in Surabaya, and several other places generally have varying distances in each province, district, and city in the research location ². The average distance from the district government center to the core area of indigenous communities is often in the range of 30–70 km, with a travel time of 2–5 hours depending on infrastructure. In Papua and inland Kalimantan, the distance can be 100–200 km or even more, with access sometimes only possible by river or air. In areas, such as Bali or Minangkabau, the distance can be much closer (≤ 10 km), because customary land is integrated with the city center of the nagari/village (AMAN, BRWA, and BRIN study, 2021–2023). From the perspective of law enforcement and achieving legal objectives, in this case, the distance between indigenous peoples' lands and the arrangement of customary land within national agrarian legal policy is a factor inhibiting the achievement of agrarian reform for indigenous peoples' lands located far inland (in the mountains). Furthermore, this inhibiting factor hinders the government from realizing agrarian justice and equitable distribution of customary land ownership for all Indonesians.

Limited funds for indigenous land mapping

One of the obstacles to the recognition and legal protection of indigenous land is the limited funding for establishing land rights for indigenous communities. This factor, according to research, clearly illustrates the reality of rural communities experiencing limited budgets to obtain rights to the customary land they control. The legal basis for financing land certificate is regulated in agrarian laws and regulations, as shown in [Table 1](#) below.

Table 1. Sources of financing, legal basis and targets for making land certificates

Source of Financing / Relief	Legal basis	Main Goals / Provisions
Relief for UMK	PP No. 25/2014 (Article 32)	Micro and small business actors; exemption or reduction of fees
PTSL Program (cheap/free certificate)	Contained on the official website (Articles 14–15)	Costs borne by the government for priority communities and certain groups
Fee waiver (general/generic)	PP 1961 (Article 34 paragraph 2)	Applicants who cannot afford to pay can be exempted from the certificate issuance fee.

² Interview with the committee Research on Customary Law Communities by Drs. Sarifuddin in the Village Government Section in the Regency North Luwu , June 5 , 2025 at the Regent's Office Regency North Luwuk , Masamba.

Source of Financing / Relief	Legal basis	Main Goals / Provisions
Bank financing (as collateral)	Law No. 4/1996; Law No. 10/1998	Certificates as credit collateral, but the costs of making them are not financed by financial institutions.

(Source: IA meta data, 2025)

Based on [Table 1](#), it is known that in processing land certificates, including certification of customary lands, several stages or activity components are technically carried out along with details of the financing carried out through the local BPN as in [Table 2](#) below:

Table 2. Stages/Components and estimated financing for land certificates at the National Land Agency

Stages / Components	Estimated costs
Registration	Rp. 50,000
Measurement & Mapping	Rp. 180,000
Land Inspection	Rp. 417,000
Officer Transportation/Accommodation	Rp. 250,000
Subtotal (without tax)	Rp. 897,000
BPHTB (if applicable)	±Rp 7,000,000
PTSL options (max. for your area)	Rp. 350,000

(Source: Meta data IA, 2025)

Based on the details of land registration costs in [Table 2](#), a minimum of Rp. 897,000 is required for 500 m2 of land, excluding Rp. 7,000,000 in BPHTB (Land Clearance Fee). This total represents the amount that must be paid by each land rights applicant. For indigenous applicants, this amount of funds is insufficient and/or not necessarily available, so most indigenous people do not register the customary land they control. Research (interviews) indicate that almost all customary landowners are unable to provide funds for registration to obtain a land book and certificate. Although there are regulations that allow for payment discounts or free registration, there are potential obstacles in obtaining authentic data on the land area and boundaries of customary land ownership. Based on the research results, in general, there are limited funds, and in this condition, in terms of maintaining customary land, the customary community is dependent on the surrounding environment (rural). They are accustomed to or have become a legal culture to maintain their customary land without allocating specific funds from generation to generation. Currently, as required by law, all land is registered to receive state recognition, and customary land is constrained by budget constraints. If the lack of budget for all customary land becomes a limiting factor, the national agrarian reform program will be hampered. Yet, one of its goals, to provide legal protection for the rights of indigenous peoples, will not be achieved within the framework of national agrarian legal policy. This situation hinders the state from implementing national agrarian legal policy to achieve its goals, both in terms of customary land management, oversight, and ultimately, community welfare, as mandated by the state constitution.

Dominance of investor concession projects

One of the factors hindering the recognition and legal protection of indigenous peoples' lands is the dominance of development and investment projects, commonly referred to as Concession Rights, granted to investors by local governments. This factor occurs in several customary land areas in Indonesia, including in areas with potential investor input in land management. The granting of concessions has given rise to numerous land conflicts between investors holding concession rights and indigenous communities. Conflict data recorded by the National Commission on Human Rights, the Indigenous Peoples' Alliance of the Archipelago, and Sawit Watch reveal that there have been 500-800 cases of land conflicts between investors and indigenous communities. Furthermore, monitoring by the Indigenous Peoples' Alliance of the Archipelago (AMAN) indicates that throughout 2023, approximately 2.58 million hectares of indigenous land were seized by the state and corporations in the name of investment ³. For example, in the Aru Islands (Maluku), four cattle ranching concessions were issued to investor companies, taking a total of approximately 61,527 hectares of land from indigenous territories. Similarly, in Jimbaran (Bali), the indigenous community is demanding the return of 290 hectares of inherited land, which is now controlled by investors through Building Use Rights (HGB) status.

The conflict between concession rights owners and indigenous communities in various regions in Indonesia was welcomed by the Indonesian Constitutional Court in its decision Number 35/PUU-X/2012 which emphasized that the existence of customary forests is no longer included as part of state forests. This means that the Government must recognize the existence of customary land that is not state land. What is the government's policy in granting concession permits to investors who will manage natural resources and minerals on customary land while still respecting local customary law. Theoretically, as expressed by Lon L. Fuller, written laws that are not based on customary law and have undergone filtering will not have a strong social basis. In fact, they will become ineffective laws and will result in a decline in legal authority. However, this factor is still a problem in national agrarian law until this research was conducted. Therefore, observations in the research area (2025) and until now still leave agrarian conflicts in customary land areas in Indonesia [7].

³Quoted From IA Metadata, accessed on August 11, 2025 at 7:25 PM WITA. The Jimbaran community is part of in Unity The savior of the Traditional Land (Kepet Adat) came The Bali Regional People's Representative Council (DPRD) office requested land that has been inhabited in a way passed down by the community customs to be returned . The reason is , the land the moment This has Building Use Rights (HGB) status which is submitted by the investor. Read the article detikbali , "HGB Controlled by Investors, Jimbaran Indigenous Residents Demand Their Land Returned " in full <https://www.detik.com/bali/berita/d-7760593/hgb-dikuasai-investor-warga-adat-jimbaran-minta-tanahnya-dibalikkan> .

Legal synchronization in the development of national strategic projects

In the implementation of national strategic projects, one of the obstacles encountered is the land acquisition of affected communities, with compensation and the right to which the state has been entitled. To date, this has been a barrier to development implementation. This is because the land acquisition objectives for these national strategic projects overlap with agricultural land and community gardens, even with community land under customary law. Based on the 2021 ranking of the Agrarian Reform Association on the topic of national evictions, it was found that this National Strategic Project (NSP) "successfully" increased the area of agricultural land conflicts by 123% compared to 2020. According to KPA Secretary General Dewi Kartika, the ease in the land acquisition and procurement process, which led to increased agrarian conflicts, was triggered by the goal of accelerating the project, which is also protected by government regulations. In addition, there was also an eviction process carried out with violence by irresponsible parties carried out by the police, TNI and civil police units which violated the human rights of indigenous communities [8]. The results of this study show that the development of National Strategic Projects has so far been an obstacle to the recognition and legal protection of indigenous peoples' lands in Indonesia.

In the problematic rights of customary land, customary land plots, although not included in the various types of land rights as referred to in Article 16 paragraph (1) UUPA, include ownership rights, land use rights, building use rights, use rights, rental rights, land clearing rights, rights to collect forest products, other rights not included in the rights mentioned above which will be determined by law and temporary rights as mentioned in article 53. The customary rights to land referred to are customary rights to land as referred to in Article 3 UUPA that by considering the provisions in articles 1 and 2 the implementation of customary rights and similar rights from customary law communities, as long as in reality they still exist, must be such that they are in accordance with national and state interests, which are based on national unity and must not conflict with other higher laws and regulations. In the provisions of Article 1 number 1 of the Minister of Agrarian Affairs/Head of BPN Regulation No. 5 of 1999 concerning "Guidelines for Settling Customary Rights Issues of Customary Law Communities", which was issued with the consideration that in reality at this time in many areas there are still lands within the customary law community environment whose management, control and use are based on local customary law provisions and are recognized by the members of the customary law community concerned as their customary land. The customary rights of customary law communities strongly recognize communalistic values, according to Boedi Harsono, in the development of national land law, the functional relationship is manifested in the function of customary law as the main source, namely in the form of conceptions, principles and legal institutions which are then formulated using the customary law system and as a complementary source

when connected with positive law regarding land law 4. Based on this formulation, in terms of control of land areas, it still contains an element of togetherness, known as communal rights to land, namely joint ownership rights to the land of a customary law community, or joint ownership rights to land granted to communities in certain areas, control is based on the Regulation of the Minister of ATR/Head of BPN No. 10 of 2016 concerning "Procedures for Determining Communal Rights to Land of Customary Law Communities and Communities Residing in Certain Areas. From this discussion, it can be seen that there are still several regulations related to customary land that overlap in their application, including the conflict of norms in the relocation of the National Capital in East Kalimantan [9]. The absence of regulatory synchronization in the context of customary land use is hampered by the lack of common regulatory policies regarding customary land. In fact, one of the principles of national agrarian reform is to provide protection for customary land in the form of recognition of the land they control. In this regard, national agrarian legal policy should open space for customary communities to determine their territory based on the area of the area authentically so that it is easier for the government to provide recognition and legal protection to the customary land areas they control. In the context of law enforcement in a legal system, the absence of harmonious synchronization of land management regulations (legal substance) becomes an obstacle in the recognition and legal protection of customary land.

Regional Government Regulations Governing Indigenous Communities

Legal recognition and protection for indigenous communities is also determined by the extent to which local governments regulate them through regional regulations, both provincial and district and city regulations. The following research data shows several regional regulations that have regulated indigenous communities in their areas, as shown in Table 3 below:

Table 3. Regulations on the recognition of customary land rights based on Governor's regulations in each Province

Provincial area	Local regulation	Main settings
West Sumatra	West Sumatra Provincial Regulation No. 6 of 2008 concerning Customary Land and its Utilization	Regulates the types of customary land (<i>nagari</i> , <i>kaum</i> , <i>suku</i>), customary deliberation mechanisms for utilization, conditions for granting utilization permits to outside parties.
Papua	Papua Regional Regulation No. 23 of 2008 concerning the Customary Rights of Customary Law Communities and the Individual Rights of Customary Law Community Members to Land	Establish procedures for recognizing customary rights, granting utilization permits to indigenous communities, and compensation obligations.
Bali	Bali Governor Regulation No. 4 of 2019 concerning Implementing Regulations of	Regulate the authority of traditional villages in managing customary land (

⁴ Harsono, Agrarian Law, History of the Formation of Content and Implementation (Djambatan 2008).[205].

Provincial area	Local regulation	Main settings
	Regional Regulation No. 4 of 2019 concerning Traditional Villages in Bali	<i>pelaba pura land</i> , <i>village ayahan land</i>), utilization mechanisms, and protection of customary rights.
Maluku	Maluku Provincial Regulation No. 16 of 2005 concerning the Determination of Customary Rights	Establish procedures for inventory, determination and protection of customary land in the Maluku region.
Lebak Regency (Banten)	Lebak Regent Regulation No. 8 of 2015 concerning the Protection of the Rights of the Kasepuhan Indigenous Community	Regulates the recognition of Kasepuhan customary areas, rights to land and forests, and procedures for granting utilization permits.
Kampar Regency (Riau)	Kampar Regent Regulation No. 17 of 2016 concerning Recognition and Protection of Indigenous Legal Communities	Determining customary areas, types of customary land, and mechanisms for handing over or cooperating on land use.

(Source: Artificial Intelligence Meta Data, 2025)

Research data demonstrates the government and relevant ministries' attention to the recognition and control of indigenous peoples' lands. Although some regions have issued regional regulations in the form of Provincial Regulations, Regency/City Regulations, and Ministry of Forestry Regulations, these regulations have not yet served as a significant legal basis for indigenous peoples to obtain them accurately, as reports from the indigenous peoples' research team (MHA) regarding the existence of indigenous peoples and the extent of their controlled land are still needed. Consequently, several provinces/regencies/cities have not yet completed their research results due to constraints on resources to measure the extent of indigenous land sourced from the Joint Team (BPN and local government); and the unavailability of government and indigenous peoples' budgets to finance the measurement and certification of their indigenous lands. Consequently, law enforcement over indigenous lands has been neglected. The data also reveals that many factors contribute to the low level of recognition of indigenous peoples' lands by each region (province/regency/city), resulting in legal certainty for indigenous peoples' lands not being achieved. Currently, many indigenous peoples' lands have not received protection and recognition from the government and the Ministry of Forestry. The data shows that not all provinces/districts/cities have issued regional regulations specifically regulating indigenous peoples' lands. According to the data collected, only 6 provinces have issued regional regulations regulating indigenous peoples' land rights with various regulatory objectives. Data from the Community Alliance (AMAN) shows that approximately 25-28 provinces have not yet regulated it. Specifically for district/city regulations, there are still 420 that have not regulated it out of 416 districts and cities (BPS, 2024 and AMAN). Therefore, regional regulations regarding indigenous peoples are generally not regulated by either provinces or districts and cities in Indonesia. This fact is an obstacle in terms of recognition and protection of indigenous peoples' lands in their respective regions. The following description supports the lack of guarantees of recognition and

determination of customary lands by local governments sampled from several regions in Indonesia with the percentage of each region as in Figure 1 below:

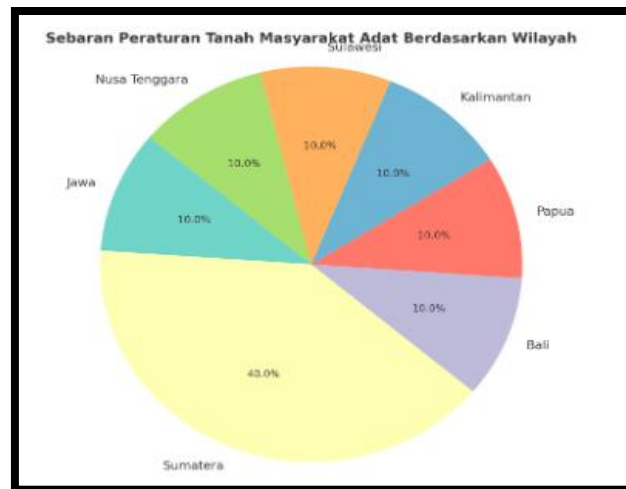


Figure 1. Comparison of the Percentage of Regional Regulations on Indigenous Lands by Government Based on Region in Indonesia (source: Artificial Intelligence Metadata, 2025)

The percentage description in Figure 1 regarding the regulation of indigenous peoples' lands in several regions in Indonesia shows very different percentage figures. The highest percentage is in Sumatera, reaching 42%, while other regions average only 10.0%. In this regard, there are still many regions that have not or are in the process of preparing draft regional regulations (assumptions) regarding the recognition and legal protection of indigenous lands in their territories. Therefore, it is certain that regions or areas that have not established regional regulations have not provided a guarantee of legal recognition and protection, so that national agrarian legal policy remains hampered in Indonesia. From the perspective of law enforcement theory (Soerjono Soekanto), there are five factors that influence each other. Similarly, in the theory of the legal system (Laurence Meir Friedman), the components of legal substance (legal substance), government apparatus (legal structure), and community legal culture (legal culture) are integrated to realize the recognition and legal protection of indigenous peoples' lands so that the goal of national agrarian law (goal) is achieved as mandated by the State constitution - welfare for all Indonesian people.

Conclusion

Based on the descriptions above, the following conclusions are proposed:

1. Recognition and legal protection of indigenous peoples' land is still hampered by several factors, namely the availability of authentic data on indigenous peoples' land, the distance between indigenous land and the indigenous peoples' research committee (MHA), the lack of funding sources for the issuance of certificates and mapping of indigenous land, the dominance of concession projects by investors and legal synchronization with national strategy projects.

2. The recognition and protection of indigenous peoples' lands is still full of problems in its implementation, giving rise to many agrarian conflicts and becoming a land law problem in national agrarian legal policy.

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