

Navigating Legal Pluralism: Lessons from the Normative Recognition and Substantive Protection of Ende Customary Law Communities

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Abstract

Indonesia's constitutional framework formally recognizes customary law communities and their traditional rights. However, a significant gap persists between normative recognition and substantive protection at the local level, as emphasized in legal pluralism scholarship. This study examines the situation in Ende Regency, East Nusa Tenggara Province, where 184 customary law communities from the Ende, Lio, and Nage ethnolinguistic groups maintain communal land tenure systems and governance structures led by Mosalaki authorities. These communities face regulatory fragmentation, territorial disputes, and encroachment by mining concessions on customary territories. This research analyzes the interaction between state law and customary law and its impact on the legal recognition of customary law communities in Ende Regency, as reflected in current regulations and court decisions. It also evaluates the effectiveness of Ende Regency Regulation No. 2 of 2017 and critically examines the extent to which its implementing regulation, Ende Regent Regulation No. 7 of 2025, provides substantive legal protection for the rights and cultural identity of these communities. The analysis is conducted from a legal pluralism perspective. This study employs an empirical socio-legal methodology that integrates normative legal analysis with fieldwork conducted in March 2025. The findings indicate that the current regulatory framework, while progressively expanding normative recognition through regional regulations and court decisions, has produced a structural condition of pluralism without harmonization. In this context, formal recognition coexists with the absence of institutional mechanisms for genuinely accommodating customary law. The study recommends the formal institutionalization of tripartite governance, the revision of the verification committee's composition to include customary community representatives, and regulatory harmonization across governance levels.

1. INTRODUCTION

Ende Regency, East Nusa Tenggara Province, Indonesia, is home to at least 184 registered customary law communities across three ethnolinguistic groups: Ende, Lio, and Nage. A distinctive feature of these communities is the persistence of communal land tenure systems governed by customary law and the continued authority of traditional leadership structures despite decades of administrative modernization and decentralization. Their communal life, land tenure systems, and spiritual governance remain organized under the authority of *Mosalaki* customary leaders.¹

Regional governments have formally recognized customary law communities. In 2017, the Regency Government of Ende enacted a regional regulation acknowledging these communities as legal subjects.² Eight years later, in 2025, the Regent of Ende issued a regulation establishing procedures for the identification, verification, validation, guidance, and supervision of the recognition and protection of customary law communities.³ At the provincial level, the Governor of East Nusa Tenggara issued a circular letter in 2026 to accelerate recognition and protection efforts in support of social forestry management activities, including customary forests.⁴

However, persistent challenges remain. These include disputes over territorial boundaries, the issuance of nineteen mining concession permits within customary territories,⁵ and administrative fragmentation resulting from regional expansion.⁶ These issues demonstrate that normative recognition does not automatically guarantee substantive protection.⁷

The legal context in Ende is shaped by Indonesia's national legal framework governing customary law communities. The 1945 Constitution of the Republic of Indonesia (the 1945 Constitution) recognizes the rights of customary law communities and their traditional rights as a core element of

¹ Philipus Kami, "Cultural Identity and the Existence of Customary Law Among the People of Ende Regency," Interview by Stefanus Don Rade, Ende, March 20, 2025.

² Candra Perbawati and Evendia Malicia, "Legal Protection of Ulayat Rights: Contextualization and Policies," in *Proceedings of the 2nd International Conference on Fundamental Rights, I-COFFEES 2019* (Bandar Lampung, Lampung, Indonesia, 2021): 1.

³ Regent Regulation of Ende No. 7 of 2025 Concerning Procedures for Identification, Verification, Validation, Guidance and Supervision of the Implementation of Recognition and Protection of Customary Legal Communities, promulgated May 2025 (Ende Regent Regulation No. 7 of 2025).

⁴ Circular Letter of Governor of East Nusa Tenggara Province No. BU.600.4.1/04/DLHK/2026 Concerning the Acceleration of Recognition and Protection of Customary Law Communities in East Nusa Tenggara Province (Circular Letter of the Governor of NTT 2026), para. 1. This Circular Letter was issued in 2026, after the completion of field research for this study. It is included in this analysis as a post-research normative development contextualizing the provincial policy environment within which Ende Regent Regulation No. 7 of 2025 operates.

⁵ Hermanus Minggu, "Challenges Regarding the Recognition and Protection of Customary Law Communities in Ende Regency," Interview by Stefanus Don Rade, Ende, March 10, 2025.

⁶ Ari Purwadi, "Challenges in Recognizing Indigenous Peoples' Rights in Mining Licensing in Indigenous Areas," *Journal of Adat Recht* 2, no. 2 (2025): 25.

⁷ Perbawati and Malicia, *op.cit.* 10.

governance.⁸ This constitutional foundation underpins the protection of communal rights to land, territory, culture, and natural resources. These rights are not only legal entitlements but also expressions of the cultural identity and way of life of these communities.⁹

The regulatory framework for recognizing customary law communities is comprehensive but remains fragmented across sectors and levels of governance. At the national level, legal instruments regulating land,¹⁰ forestry,¹¹ villages,¹² and regional government¹³ require regional governments to enact regulations formalizing the status of customary law communities. A significant jurisprudential milestone was established by a Constitutional Court decision affirming that customary forests are owned by customary law communities rather than by the state. This development broadened the legal foundation for recognition and imposed new obligations on regional governments.¹⁴

Despite constitutional guarantees, derivative legislation, and relevant court decisions, customary law communities in Indonesia continue to face structural vulnerabilities, including marginalization, agrarian conflicts, regulatory overlap, and the subordination of customary norms to state law.¹⁵ These challenges underscore a fundamental tension between the formal structure of state law and the living customary law that traditionally guides the daily lives, social relations, and cultural practices of millions of Indonesians.¹⁶ Strengthening legal protection is therefore essential to preserving Indonesia's legal and cultural plurality.

From the perspective of legal pluralism, this complex regulatory structure demonstrates the coexistence of multiple legal systems: state, customary, and religious law. Achieving substantive justice requires harmonizing these systems rather than imposing hierarchical subordination.¹⁷ The extent to which a state legal system accommodates

⁸ The 1945 Constitution, Art. 18(2).

⁹ Andika Buana and Muhammad Arsy, "Ambivalence in The Regulation of Indigenous Peoples' Rights in Indonesia's Legal Hierarchy," *Alauddin Law Development Journal* 6, no. 1 (2024): 118–119.

¹⁰ Law No. 5 of 1960 Concerning Basic Regulations on Agrarian Principles (BAL), Art. 3.

¹¹ Law No. 41 of 1999 Concerning Forestry, Art. 1 No. (6) and Art. 67.

¹² Law No. 6 of 2014 Concerning Villages, Art. 103 and Art. 104.

¹³ Law No. 23 of 2014 Concerning Regional Government, Art. 236 and Regulation of the Minister of Home Affairs No. 52 of 2014 Concerning Guidelines for the Recognition and Protection of Customary Law Communities, Art. 2 and Art. 6 (2).

¹⁴ Constitutional Court of The Republic of Indonesia, Decision No. 35/PUU-X/2012, 185–186.

¹⁵ See Asmadi Lubis et al., "The Development of Recognition and Protection of the Customary Rights of Indigenous Peoples in Indonesia," *KnE Social Sciences*, no. 4th International Conference on Law Reform (4th INCLAR) (2024): 209; and Asnat Juljana Luturmas, Lita Tyesta Addy Listya Wardhani, and Sukirno, "Strengthening Indigenous Governance Structures Based on Local Wisdom in Protecting the Territorial Rights of Indigenous Peoples," *Journal of World Science* 3, no. 7 (2024): 311.

¹⁶ Fradhana Putra Disantara, "Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum," *Al-Adalah: Jurnal Hukum dan Politik Islam* 6, no. 1 (2021): 4, 9.

¹⁷ Laura Grenfell, "Legal Pluralism and the Rule of Law in Timor Leste," *Leiden Journal of International Law* 19 (2006): 306.

living customary traditions determines whether recognition remains merely formal or becomes substantive, a central concern in legal pluralism scholarship.¹⁸

Existing scholarship on legal pluralism and the protection of customary law communities in Indonesia identifies three interconnected challenges that frame the present study. The first is the persistent gap between normative frameworks and implementation. Salam (2023) highlights significant inconsistencies between regulations governing customary institutions and those governing customary law communities, resulting in legal ambiguity and limiting protection to administrative measures rather than substantive rights.¹⁹ This implementation gap is structurally related to the nature of constitutional recognition. Mubarok et al. (2023) and Buana and Arsy (2023) contend that recognition under the 1945 Constitution is facultative rather than imperative and thus does not operate as a self-executing right; instead, it depends on discretionary regional action through specific regulations. However, neither study addresses how such regulations operate within the distinct social and cultural contexts of particular localities.²⁰ Pradhani (2019) finds that courts continue to prioritize formal documentary evidence over historical forms of communal tenure,²¹ while Mayastuti et al. (2017) show that the paradigmatic shift introduced by the Constitutional Court's decision relies entirely on local governments establishing concrete legal instruments, a capacity many regional governments lack.²² Karjoko et al. (2021) further confirm this structural deficit, noting that the Constitutional Court's recognition of customary forests has not been followed by adequate regional regulations in several provinces.²³

The second challenge concerns the paradoxical effects of legal formalization on customary communities. Mujiburohman et al. (2024) found that the formal legalization of customary land in Manggarai-Flores converted communally held land into individually registered parcels, thereby eroding

¹⁸ See Jaja Ahmad Jayus, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum* 27, no. 1 (2020): 80; and Marhaeni Ria Siombo and Henny Wiludjeng, *Hukum Adat dalam Perkembangannya*. (Jakarta: Universitas Katolik Indonesia Atma Jaya, 2020), 13.

¹⁹ Safrin Salam, "Legal Protection of Indigenous Institutions in the Frame of the Rule of Law (Perspective of Legal Protection Theory)," *Cepalo* 7, no. 1 (2023): 61.

²⁰ See Asnawi Mubarok et al., "The Relationship of State Law and Customary Law: Reinforcement and Protection of Customary Law In Constitutional Court Judgment," *Jurnal Jurisprudence* 13, no. 2 (2023): 188; and Buana and Arsy, *op.cit.*, 118.

²¹ Sartika Intaning Pradhani, "Traditional Rights of Indigenous People in Indonesia: Legal Recognition and Court Interpretation," *Jambe Law Journal* 1, no. 2 (2019): 177.

²² Anti Mayastuti, Agus Rianto, and Diah Apriani Atika Sari, "Strengthening the Position of Indigenous People in the Management of the Forest by Subsequent of the Constitutional Court Decision of Republik Indonesia No.35/PUU-X/2012 to Support of RedTd+ Indonesia," *Yustisia* 6, no. 2 (2017): 400.

²³ Lego Karjoko et al., "The Consequence of the Decision of the Constitutional Court in Forestry on the Recognition of Traditional Forests in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 5 (2021): 1, 3.

the customary bonds that had governed land relations for generations.²⁴ Waworuntu, Alkatiri, and de Archellie (2023) observed that decentralization in Ende Lio created new political opportunities for formal local leaders, often at the expense of *Mosalaki* authority. This demonstrates that state law instruments intended to empower local communities can, in practice, marginalize customary institutions.²⁵

The third challenge, which is most directly relevant to this study, concerns the regulatory dimensions of customary law in Ende Regency. Murni, Pande, and Kelen (2023) analyzed the impact of Kelimutu National Park zoning on customary land access and found that state-imposed conservation boundaries superseded customary territorial boundaries recognized by local *Mosalaki*.²⁶

Existing studies have not examined Ende Regency's own regulatory instruments, specifically Ende Regency Regulation No. 2 of 2017 concerning the Implementation of the Recognition and Protection of Customary Law Communities (Ende Regency Regulation No. 2 of 2017) and the recently enacted Ende Regent Regulation No. 7 of 2025, as mechanisms of legal pluralism that bridge national mandates and local customary realities. While some studies have examined the legalization of customary law communities at the regency level in other regions of Indonesia,²⁷ there is a lack of analysis regarding how the relationship between a regional regulation and its implementing regulation operates as a mechanism of legal pluralism in Ende. Additionally, research that integrates empirical field data from the Ende, Lio, and Nage customary communities with normative analysis of these specific instruments remains limited. The issue of how regional governments can effectively bridge recognition and protection—rather than allowing recognition to replace protection—has not been sufficiently explored, particularly within the context of Flores Island and East Nusa Tenggara Province.²⁸

This research addresses two principal questions. The first examines how the interaction between state law and customary law affects the legal recognition of customary law communities in Ende Regency, considering existing laws, regulations, and relevant court decisions. The second evaluates the effectiveness of Ende Regency Regulation No. 2 of 2017 and

²⁴ Dian Aries Mujiburohman et al., "The Patterns of Ownership and the Registration of Customary Land in Manggarai Regency, Indonesia," *Jurnal Ilmiah Peuradeun* 12, no. 1 (2024): 300-301.

²⁵ Adrianus L.G. Waworuntu, Zeffry Alkatiri, and Reynaldo de Archellie, "Challenging the Promise of Decentralization: The Case of Marginalization of *Mosalaki* Role in Nggela Village in Ende Lio, Flores," *Cogent Arts & Humanities* 10, no. 1 (2023): 11.

²⁶ Christiana Sri Murni, Yohanes Pande, and Bernadus B. Kelen, "Perlindungan Hukum Terhadap Hak Pengelolaan dan Pemanfaatan Atas Tanah oleh Masyarakat Hukum Adat Yang Berada dalam Kawasan Taman Nasional Kelimutu," *RechtIdee* 18, no. 1 (2023): 128.

²⁷ Wihelmus Jemarut et al., "Analysis of the Implementation of the Legalization of Customary Law Communities (MHA) in North Lombok Regency," *Justisi* 11, no. 1 (2025): 222-226.

²⁸ Putera Astomo, Faradillah Rizal Putri, and Utit Sungkharat, "Regional Legal Politic Problems Concerning the Rights of Customary Law Communities in Majene Regency, West Sulawesi Province," *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 9, no. 1 (2024): 8-10.

critically assesses the normative content of its implementing regulation, Ende Regent Regulation No. 7 of 2025, in providing substantive legal protection for the rights and cultural identity of customary law communities in Ende Regency.

This study employed an empirical socio-legal research method,²⁹ combining normative legal analysis with direct field research conducted in Ende Regency in March 2025 to examine the implementation of Ende Regency Regulation No. 2 of 2017, Ende Regent Regulation No. 7 of 2025, issued in May 2025, and Circular Letter of the Governor of East Nusa Tenggara Province No. BU.600.4.1/04/DLHK/2026, issued in March 2026 (Circular Letter of the Governor of NTT 2026), were subsequently incorporated into the post-study analysis after the completion of field research. Primary data were obtained through direct observation within customary communities; in-depth interviews with *Mosalaki* and other customary leaders, local government officials, members of the *Aliansi Masyarakat Adat Nusantara-Nusa Bunga* (hereinafter, “AMAN”), and other relevant stakeholders; and two focus group discussions (FGDs). The first FGD was conducted on March 8, 2025, with customary law communities from the Ende and Nage ethnolinguistic groups, while the second was conducted on March 20, 2025, with communities from the Lio ethnolinguistic group. In total, twenty members of customary law communities participated in in-depth interviews and FGDs to examine community perceptions, experiences, and challenges related to the recognition and protection of customary rights. Secondary data sources comprised statutory regulations at the national, provincial, and regency levels, court decisions, and relevant scientific literature. Data analysis followed a qualitative descriptive-analytical approach, using triangulation across interviews, observations, and document analysis to enhance validity and reliability.³⁰

2. RESULTS AND DISCUSSION

2.1. Interaction between State Law and Customary Law and Its Impact on the Legal Recognition of Customary Law Communities in Ende Regency

2.1.1. Socio-Cultural Profile and Continued Existence of Customary Law Communities in Ende Regency

Customary law communities constitute collective legal entities formed through ancestral lineage and bound to particular inherited

²⁹ See Herbert M. Kritzer, *Advanced Introduction to Empirical Legal Research* (Cheltenham: Edward Elgar Publishing, 2021), 2–5; and Lisa Webley, “The Why and How To of Conducting a Socio-Legal Empirical Research Project,” in *Routledge Handbook of Socio-Legal Theory and Methods*, ed. Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie (Abingdon: Routledge, 2020), 2.

³⁰ Laura Lau Lemon and Jameson Hayes, “Enhancing Trustworthiness of Qualitative Findings: Using Leximancer for Qualitative Data Analysis Triangulation,” *The Qualitative Report* 25, no. 3 (2020): 605.

territories.³¹ Their sovereignty over land, natural resources, and socio-cultural systems is maintained through customary institutions and customary law that regulate communal life.³² Sociologically and anthropologically, the existence of customary law communities in Ende Regency reflects Indonesia's broader pluralistic reality while also possessing distinctive characteristics rooted in the cultural traditions of Flores Island.³³

Ende Regency is home to approximately 184 registered customary law communities,³⁴ divided among three ethnolinguistic groups: Ende, Lio, and Nage. Geographically, the Ende occupy the western-central part of the regency, including Ende District and its surroundings. The Lio, the oldest and largest community, dominate the southern and eastern areas of the regency, spanning several sub-districts, including Kelimutu, Wolojita, Lio Timur, Maukaro, Welamosa, Maurole, and Detusoko.³⁵ Nage constitute a subgroup primarily concentrated in the Nangapanda area and northern parts of the regency.

The organizational structure of these customary law communities is arranged hierarchically under the leadership of *Mosalaki* customary leaders, who hold both spiritual and social authority.³⁶ The *Mosalaki* is not merely a ceremonial figure but also an adjudicator of customary law and a guardian of social harmony. This multidimensional role encompasses spiritual custodianship, legal authority, social governance, and ecological stewardship over ancestral territories.³⁷

The leadership structure consists of *Mosalaki Pu'u* as the supreme leader, followed by *Mosalaki Ria Bewa* and other customary office holders responsible for ritual implementation, natural resource management, and the maintenance of customary order.³⁸ *Mosalaki* have historically served as the paramount authority in all aspects of communal life, from land allocation to conflict resolution, although this authority has increasingly been challenged by formal political structures introduced through decentralization.³⁹

³¹ Yance Arizona and Miriam Cohen, "The Recognition of Customary Land Rights at the Constitutional Court of Indonesia: A Critical Assessment of the Jurisprudence," in *Courts and Diversity: Twenty Years of the Constitutional Court of Indonesia*, ed. Bertus de Villiers, Saldi Isra, and Pan Mohamad Faiz (Leiden/Boston: Brill/Nijhoff, 2024), 175–176.

³² Salam, *op.cit.*, 62; Fahmi Arisandi and J.T. Pareke, "Recognition And Protection of Indigenous Peoples in Seluma Regency," *Journal Scientia Iustitiae* 2, no. 2 (2025): 56–57.

³³ See Signe Howell, *Ata Lio, Institutions, Values and Practice of The Northern Lio People, Flores, Indonesia* (Oslo: University of Oslo Press, 2000), 26–28; and J. Emmed M. Prioharyono, "Kekuasaan Politik dan Adat para Mosalaki di Desa Nggela dan Tenda, Kabupaten Ende, Flores," *Antropologi Indonesia* 33, no. 3 (2012): 181, 189.

³⁴ Philipus Kami, *loc.cit.*

³⁵ Customary Law Community in Ndetundora Village, "Customary Law Community in Ende," Interview by Stefanus Don Rade, Ende, March 7, 2025.

³⁶ Philipus Kami, *loc.cit.*

³⁷ Customary Law Community in Ndetundora Village, *loc.cit.*

³⁸ Adrianus Renga, "Ritual Obligations of Customary Stakeholders," Interview by Stefanus Don Rade, Ende, March 9, 2025.

³⁹ Waworuntu, Alkatiri, and Archellie, *op.cit.* 6–8.

Central to the worldview of these communities is the concept of *tana watu*, the spiritual bond between people, land, and ancestors, which positions land not as a commodity but as a living entity entrusted to the community by ancestral spirits.⁴⁰ Land is regarded as communal property held collectively under customary law, while farmers and community members (*ana kalo fai walu*) possess only cultivation rights within defined limits.⁴¹ This communal tenure system, documented through the *Fai Walu Ana Halo* classification in Ende Lio, remains a living social reality, a form of living law that continues to govern land relations despite modernization pressures.⁴² Customary authority is further manifested through ritual obligations, including annual contributions (*moke bori are pati*) for traditional ceremonies and prescribed rituals preceding construction activities.⁴³ Each community maintains traditional houses (*Sa'o Keda, Sa'o Baku, Kebo Ria*) that serve as centers of deliberation and symbols of communal identity,⁴⁴ alongside numerous cultural sites and forms of intangible heritage.⁴⁵

Within Ende Regency, there are thirty-three administrative villages, of which only four retain the structure of customary villages: Tinabani, Tomberabu II, Jamukeasa, and Ndetundora.⁴⁶ Each operates under distinct customary alliance structures led by *Mosalaki*, reflecting the localized and heterogeneous character of customary governance across the regency.⁴⁷

AMAN⁴⁸ plays an important institutional role in consolidating the aspirations of customary communities and advocating strengthened recognition and protection at various governance levels.⁴⁹ Table 1 presents data on registered customary law communities in Ende Regency, distributed among the three ethnolinguistic groups.

⁴⁰ Paulus Rhera, "Cultural Sites Found in Customary Law Communities in Ende Regency" Interview by Stefanus Don Rade, Ende, March 8, 2025.

⁴¹ Adrianus Renga, *loc.cit.*

⁴² Yosef Dentis, "Social Economic Life 'Fai Walu Ana Halo' in the Community of Ende Lio Flores," *Jurnal Ekonomi* 11, no. 1 (2022): 480-481.

⁴³ Adrianus Renga, *loc.cit.*

⁴⁴ Paulus Rhera, *loc.cit.*

⁴⁵ Hermanus Minggu, *loc.cit.*

⁴⁶ Customary Law Community in Ndetundora Village, *loc.cit.*

⁴⁷ *Ibid.*

⁴⁸ AMAN (*Aliansi Masyarakat Adat Nusantara*, the Indigenous Peoples Alliance of the Archipelago) is the largest national organization advocating for the rights of customary law communities (*masyarakat hukum adat*) in Indonesia. Established in 1999, AMAN serves as a network for indigenous communities across the archipelago, consolidating their aspirations and advocating for legal recognition, territorial protection, and the strengthening of customary governance. See AMAN, "Profile Aliansi Masyarakat Adat Nusantara," <https://aman.or.id/profile>.

⁴⁹ AMAN, "Aliansi Masyarakat Adat Nusantara," <https://www.aman.or.id/>.

Table 1.
Registered Customary Law Communities in Ende Regency as of 2025⁵⁰

Name of Customary Law Communities	Sub-district Area	Ethnic Group
Kekajodho, Nuabosi, Tomberabu, Tina Bani, Peno/Mbotutenda, Nua Ja, Nua Wologai, Boafeo, Wolotopo	Ende	Ende
Ondorea, Numba/Watuminte, Asa/Odja	Nangapanda	Nage
Mundinggasa	Maukaro	Lio
Suku Naya/Kamubheka, Saga, Bu'u Ngenda, Mukureku, Fata Atu Timur, Tiwu Bhesa, Wolomoni, Ndito, Ranga	Maukaro, Welamosa, Maurole, Detusoko	Lio
Nduaria, Tenda, Venda	Kelimutu, Wolojita, Lio Timur	Lio

Despite the resilience of these customary traditions, their continued existence remains structurally challenged by the intersection of state legal processes and customary governance, a tension with direct implications for legal protection. The following subsections examine the legal framework through which the state recognizes these communities and the specific implications of Constitutional Court Decision No. 35 for Ende Regency.

2.1.2. **Constitutional and Multi-Level Regulatory Framework for the Recognition of Customary Law Communities**

Customary law communities in Ende Regency are explicitly recognized within Indonesia's national legal framework. These communities satisfy the constitutional requirements outlined in Article 18B(2) of the 1945 Constitution. This constitutional mandate is implemented through a multilayered regulatory framework at the national, provincial, and regency levels.

At the national level, the BAL establishes the foundational recognition of customary rights, while the Forestry Law delineates the relationship between state forests and customary forests, a distinction that became the subject of Constitutional Court Decision No. 35.⁵¹ The Village Law and Regional Government Law delegate authority to local governments to formalize recognition through regional regulations,⁵² and Regulation of the Minister of Home Affairs No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities (MoHA Regulation No. 52 of 2014) provides standardized procedural guidelines for the identification, verification, and formal recognition of customary law

⁵⁰ Nusa Bunga Region of AMAN, compiled from field research, March 2025.

⁵¹ See BAL, Art. 3; and Forestry Law, Art. 1 No.(6) and Art. 67.

⁵² See Villages Law, Art. 103 and Art. 104; and Regional Government Law, Art. 236.

communities.⁵³ Critically, each instrument employs different criteria and mechanisms, creating a fragmented regulatory architecture in which the operationalization of recognition depends not on a unified national standard but on the varying capacities and political priorities of individual regional governments.

At the provincial level, Regional Regulation of East Nusa Tenggara Province No. 16 of 2018 concerning the Revocation of East Nusa Tenggara Provincial Regulation No. 8 of 1974 on the Implementation of the Affirmation of Land Rights (NTT Provincial Regulation No. 16 of 2018) replaced the contested earlier regulation on land rights.⁵⁴ Regional Regulation of East Nusa Tenggara Province No. 7 of 2021 concerning the Advancement of Culture in the Region (NTT Provincial Regulation No. 7 of 2021) establishes the preservation of customs and traditions as a provincial policy priority.⁵⁵

The Circular Letter of the Governor of NTT 2026 constitutes a significant measure to enhance provincial coordination by instructing all regents and mayors to promptly establish committees for the recognition and protection of customary law communities.⁵⁶ These committees, comprising regional government agencies, are responsible for identifying and inventorying communities located within and around forest areas as a prerequisite for formal recognition through a regional head decree.⁵⁷ The Circular Letter further delineates customary territory, customary law, customary forest, and social forestry as the normative framework guiding this recognition process.⁵⁸ Nevertheless, these provincial instruments primarily serve as policy directives rather than enforceable mandates. None establishes binding procedures or allocates specific resources for the recognition of customary law communities at the regency level, rendering implementation dependent on local initiative.

At the regency level, Ende Regency Regulation No. 2 of 2017 provides the principal legal framework, complemented by the recently enacted Ende Regent Regulation No. 7 of 2025. These instruments are examined in detail in Section 2.2.

This multi-level regulatory architecture is characterized by significant sectoral fragmentation that creates practical difficulties for customary law communities. Different regulations employ varying terminology, including customary law community in agrarian⁵⁹ and forestry legislation,⁶⁰ customary community in advocacy discourse, and other designations in spatial planning regulations. This variation creates ambiguity regarding the

⁵³ MoHA Regulation 52/2014, Art. 4.

⁵⁴ NTT Provincial Regulation No. 16 of 2018 as Amended by East Nusa Tenggara Provincial Regulation No. 17 of 1980 concerning the Amendment to Article 4 of East Nusa Tenggara Provincial Regulation No. 8 of 1974 concerning the Implementation of the Affirmation of Land Rights, Art. 1.

⁵⁵ NTT Provincial Regulation 7/2021, Art. 20(c).

⁵⁶ Circular Letter of the Governor of NTT 2026, point 1.

⁵⁷ *Ibid.*, point 1.

⁵⁸ *Ibid.*, points 2-7.

⁵⁹ BAL, Art. 3.

⁶⁰ Forestry Law, Art. 1 No. (6) and Art. 67.

legal subjects to be protected.⁶¹ Differing recognition criteria across sectors may result in situations where a customary law community recognized in one regulatory domain is not recognized in another, producing legal uncertainty and inconsistent levels of protection.⁶² Furthermore, the recognition process does not formally require the consent or direct participation of the customary law communities concerned, making it highly dependent on the political will and administrative dynamics of regional governments and regional legislative bodies.⁶³

This fragmentation is not merely a technical inconvenience; it reflects a deeper tension within Indonesia's pluralistic legal system, in which the formal architecture of state law coexists with living customary law without a unified framework for harmonization. As Grenfell observes, legal pluralism in practice often results in the subordination of non-state legal systems rather than their genuine accommodation.⁶⁴ The cumulative effect of this fragmentation is a condition of regulatory uncertainty in which a customary law community may simultaneously possess constitutional recognition, lack formal regional status, and face competing sectoral claims over its territory. This condition effectively inverts the protective purpose of the regulatory framework. The paradigmatic shift introduced by Constitutional Court Decision No. 35, examined in the following subsection, represents a significant attempt to recalibrate this relationship.

2.1.3. The Paradigmatic Shift: The Role of Court Decisions

Constitutional Court Decision No. 35 represents a pivotal development in the legal recognition of customary law communities in Indonesia. By declaring unconstitutional the inclusion of customary forests within the definition of "state forest" in Article 1 paragraph (6) of the Forestry Law, the Constitutional Court fundamentally redefined the relationship between the state and customary territories.⁶⁵ Before this decision, customary forests were classified as part of the state forest estate, which denied customary communities sovereign control over their ancestral forests⁶⁶ and required them to demonstrate exceptional circumstances to access their own lands. The decision reversed this presumption: customary forests are recognized as belonging to customary law communities, not to the state. This established a new legal paradigm in which the state's authority over forest resources is limited by the pre-existing rights of customary communities.⁶⁷ In Ende Regency, implementing this reversed presumption required formal regional recognition processes. However, these processes remained unattainable for

⁶¹ Chairul Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 1022.

⁶² Kenneth Adriel et al., "The Legal Politics of Regulating Indigenous Peoples," *Rechtsnormen Journal of Law* 1, no. 1 (2023): 11-12.

⁶³ Astomo, Putri, and Sungkharat, *op.cit.* 10-12.

⁶⁴ Grenfell, *op.cit.* 306-307, 322.

⁶⁵ Constitutional Court Decision No. 35, 185.

⁶⁶ Forestry Law, Art. 5 (2).

⁶⁷ Herman Hidayat et al., "Forests, Law and Customary Rights in Indonesia: Implications of a Decision of the Indonesian Constitutional Court in 2012," *Asia Pacific Viewpoint* 59, no. 3 (2018): 297.

eight years due to the absence of implementing regulations for Ende Regency Regulation No. 2 of 2017.

The *ratio decidendi* of Constitutional Court Decision No. 35 is grounded in a reinterpretation of the constitutional relationship between state authority and customary rights. The Court determined that Article 33(3) of the 1945 Constitution, which grants the state control over natural resources, does not abrogate pre-existing customary rights. Instead, it requires the state to exercise its authority in accordance with the recognition mandate of Article 18B(2).⁶⁸ The Court further clarified that the state's regulatory authority over forests is derivative and limited, whereas the rights of customary communities are original and constitutionally protected.⁶⁹ This doctrinal basis has direct implications for Ende Regency: the recognition procedures established by Ende Regent Regulation No. 7 of 2025 are not merely administrative formalities but constitutional obligations.

The implications for Ende Regency are tangible and observable. Forest governance policies have directly affected customary law communities within the Kelimutu National Park zone in Detusoko District, as state conservation boundaries have replaced customary territorial boundaries recognized by local *Mosalaki*, an issue that Constitutional Court Decision No. 35 specifically sought to address.⁷⁰ However, despite this paradigmatic shift, the Kelimutu case demonstrates that local-level implementation remains incomplete and requires affirmative regional action.

A Supreme Court Decision provides further clarification of the judicial approach to customary land rights through a dispute concerning *Tana Nggoro*, where external parties attempted to claim land under the sovereign authority of the *Mosalaki*, recognized as the highest guardian of ancestral territory.⁷¹ The Court's acknowledgment of the multidimensional nature of *Mosalaki* governance, including spiritual, legal, social, and ecological aspects, implicitly recognized customary law as a dynamic normative system rather than a historical artifact. This suggests a developing judicial readiness to assess customary claims according to their own principles.⁷²

The issuance of nineteen mining concession permits within the customary territories of Ende Regency demonstrates the incomplete implementation of the intended paradigmatic shift.⁷³ Interviews with customary leaders reveal that these concessions often disregard customary rights and cultural sites,⁷⁴ while mineral resource extraction persists under a distinct regulatory framework that remains unaffected by Constitutional Court Decision No. 35. The case of neighboring Manggarai Regency, where formal legalization converted communally held land into individually

⁶⁸ Constitutional Court Decision No. 35, 172.

⁶⁹ *Ibid.*

⁷⁰ Murni, Pande, and Kelen, *loc.cit.*

⁷¹ Supreme Court Decision No. 241 K/Pdt/2020, 3–5.

⁷² *Ibid.*, 7–8.

⁷³ Hermanus Minggu, “Tantangan Pengakuan dan Perlindungan Masyarakat Hukum Adat di Kabupaten Ende,” Interview by Stefanus Don Rade, Ende, March 10, 2025.

⁷⁴ *Ibid.*

registered parcels,⁷⁵ raises a critical question for Ende: whether Ende Regent Regulation No. 7 of 2025 will safeguard or instead erode the communal nature of customary tenure.⁷⁶

Territorial boundary conflicts present additional challenges to the implementation of Constitutional Court Decision No. 35. Administrative expansion frequently supersedes established customary boundaries, as demonstrated by the territorial dispute involving Saga Customary Village in Kelimutu District,⁷⁷ which threatens the conversion of communally held land into individualized rights.⁷⁸ The following section examines whether regional legal instruments in Ende Regency can effectively translate this broader normative recognition into substantive protection.

2.2. The Effectiveness of Ende Regency Regulation No. 2 of 2017 and the Substantive Legal Protection Provided by Ende Regent Regulation No. 7 of 2025

2.2.1. Normative Analysis and Critical Evaluation of Ende Regency Regulation No. 2 of 2017

The recognition and protection of customary law communities in Ende Regency are principally governed by Ende Regency Regulation No. 2 of 2017, enacted as a direct response to the constitutional mandate and the broader regulatory framework examined in Section 2.1.2. Substantively, the regulation establishes customary law communities as legal subjects with defined rights and obligations,⁷⁹ enumerates the types of customary rights to be protected, including rights over customary land, development, and the environment,⁸⁰ and establishes the obligations of customary law communities,⁸¹ the responsibilities of the regional government in facilitating recognition,⁸² procedures for formalization,⁸³ mechanisms for dispute resolution,⁸⁴ and systems of supervision and oversight.⁸⁵

A critical evaluation reveals three normative limitations. *First*, the regulation as originally enacted did not include detailed operational procedures for identification, verification, and validation, making it dependent on subsequent implementing regulations that took eight years to materialize, a delay that significantly undermined its effectiveness. *Second*, the regulation does not formally require the consent or direct participation of customary law communities in the recognition process, creating a risk that recognition becomes a top-down administrative exercise that subordinates community self-identification to state administrative logic.⁸⁶ *Third*, the

⁷⁵ Mujiburohman et al., *op.cit.* 304-306.

⁷⁶ Perbawati and Malicia, *op.cit.* 11.

⁷⁷ Hermanus Minggu, "Tantangan Pengakuan dan Perlindungan Masyarakat Hukum Adat di Kabupaten Ende" Interview by Stefanus Don Rade, Ende, March 10, 2025.

⁷⁸ Mujiburohman et al., *op.cit.* 309.

⁷⁹ Ende Regency Regulation No. 2 of 2017, Art. 5.

⁸⁰ *Ibid.*, Art. 6-12.

⁸¹ *Ibid.*, Art. 13.

⁸² *Ibid.*, Art. 14-15.

⁸³ *Ibid.*, Art. 16-18.

⁸⁴ *Ibid.*, Art. 19.

⁸⁵ *Ibid.*, Art. 20.

⁸⁶ Astomo, Putri, and Sungkharat, *op.cit.* 14-15.

dispute resolution framework does not clearly articulate the relationship between customary mechanisms administered by *Mosalaki* and the formal judicial system, a critical ambiguity in a legal pluralism context.⁸⁷

From a legal pluralism perspective, this third limitation exemplifies what Grenfell identifies as the structural subordination of non-state legal systems: by failing to define the interface between customary and formal adjudication, the regulation effectively privileges the state judicial pathway as the default mechanism for dispute resolution.⁸⁸ The practical consequence is adjudicated by Ende District Court in its decision in 2023, in which a customary land dispute escalated to formal adjudication and execution, resulting in the forced execution of a judgment over a customary house and approximately two hectares of customary land as recently as May 2025, despite the existence of both the regional regulation and traditional resolution mechanisms administered by *Mosalaki*.⁸⁹

Similarly, Supreme Court Decision No. 241 of 2020 demonstrates that disputes over customary land in Ende Lio remain sufficiently serious to reach the Supreme Court.⁹⁰ These cases collectively demonstrate that Ende Regency Regulation No. 2 of 2017, while normatively comprehensive, has been insufficient to provide substantive protection in the absence of effective implementing mechanisms, a deficiency that AMAN has consistently highlighted in its advocacy.⁹¹

2.2.2. Ende Regent Regulation No. 7 of 2025 and the Evolving Multi-Level Regulatory Framework: Proposing the *Tiga Batu Tungku* Model

Ende Regent Regulation No. 7 of 2025, promulgated on May 9, 2025, as an implementing regulation of Ende Regency Regulation No. 2 of 2017, establishes a three-stage procedural framework comprising identification, verification and validation, and guidance and supervision.⁹² The identification stage, conducted by the Regent through the Sub-district Head, requires data collection across five dimensions: community history, customary territory, applicable customary law, customary assets, and institutional governance structures.⁹³ These criteria are broadly consistent with the identification framework established by MoHA Regulation No. 52 of 2014.⁹⁴

⁸⁷ Nilna Aliyan Hamida, "Adat Law and Legal Pluralism in Indonesia: Toward a New Perspective?," *Indonesian Journal of Law and Society* 3, no. 1 (2022): 17-18.

⁸⁸ Grenfell, *op.cit.* 322.

⁸⁹ Ende District Court Decision No. 24/Pdt.G/2023/PN End, 45. The appellate court subsequently affirmed the district court's decision. See Decision of Kupang High Court No. 97/PDT/2024/PT KPG.

⁹⁰ Supreme Court Decision No. 241/2020, 1, 6.

⁹¹ Aliansi Masyarakat Hukum Adat (AMAN), "Measures Taken to Preserve the Existence of Customary Law Communities" Interview by Stefanus Don Rade, Ende, March 30, 2025.

⁹² Regent Regulation 7/2025, Art. 2

⁹³ *Ibid.*, Art 5.

⁹⁴ MoHA Regulation 52/2014, Art. 5 (2).

Notably, the regulation incorporates locally specific elements that reflect sensitivity to the living character of Ende's customary law. It requires documentation of territorial boundaries, including traditional markers (*ulu eko*), namely physical landmarks such as stone boundary pillars, specific trees, river confluences, or elevated ridgelines historically recognized by the community as territorial demarcations, often accompanied by oral histories documenting their placement by founding ancestors. It also requires documentation of the history of customary land acquisition, encompassing mechanisms such as ancestral land clearing (*pura poka*), exchange, and marriage-based transfers.⁹⁵ It further extends identification to customary sanctions, customary judicial institutions, and intangible heritage, including local ecological knowledge.⁹⁶

The regulation's approach to participation, however, warrants critical evaluation. Although the Identification Team includes customary leaders alongside government officials,⁹⁷ a significant participatory gap emerges at the verification and validation stage: the Customary Law Community Committee, which holds decision-making authority over whether a community qualifies for formal recognition, consists exclusively of government officials. No representative of the customary law community being assessed sits on this committee. The institutional design thus creates a two-tier participatory structure with an inherent power asymmetry. The Identification Team, which includes customary leaders, community figures, women representatives, and youth organizations, serves an advisory and information-gathering function at the initial stage, while the Customary Law Community Committee, composed exclusively of the Regional Secretary, heads of government agencies, and the Sub-district Head, exercises the actual determinative authority over recognition.⁹⁸ Community involvement is therefore concentrated at the data-collection stage but absent from the stage where the legal determination is made. This participatory deficit is particularly significant when assessed against the principle of Free, Prior, and Informed Consent (FPIC), which has gained normative authority in international indigenous rights discourse through the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁹⁹ Although FPIC is not formally binding in Indonesian domestic law, it represents an emerging standard that Indonesian courts and policymakers increasingly reference.¹⁰⁰ The exclusion of customary community representatives from the verification committee falls short of this standard because it denies communities meaningful decision-making authority over their own legal recognition, reducing consent to post hoc objection rather than prior participation.

⁹⁵ Ende Regent Regulation No. 7 of 2025, Art. 7

⁹⁶ *Ibid.*, Arts. 8 and 9.

⁹⁷ *Ibid.*, Art. 4 (2).

⁹⁸ *Ibid.*, Art. 12 (2).

⁹⁹ United Nations General Assembly, "United Nations Declaration on the Rights of Indigenous Peoples A/RES/61/295" (2007), Art. 19 and Art. 32(2).

¹⁰⁰ Simon Butt, Bisariyadi, and Fritz Siregar, "International Law in the Indonesian Constitutional Court: A Typology of Use," *Asian Journal of International Law* 16, no. 1 (2026): 112, 117.

The regulation provides a safeguard mechanism: communities that disagree with verification and validation results may file an objection with the committee, which may then conduct re-verification and re-validation following the same procedures.¹⁰¹ However, two limitations constrain this safeguard: reassessment may be conducted only once,¹⁰² and no independent review mechanism exists beyond this single opportunity for objection. On the institutional dimension, the regulation establishes a clear hierarchy of responsibility and, importantly, provides a legal basis for budgetary allocation through the Regional Revenue and Expenditure Budget (*Anggaran Pendapatan dan Belanja Daerah* or APBD) and other lawful sources,¹⁰³ addressing a constraint that AMAN had identified as a key obstacle to the implementation of Ende Regency Regulation No. 2 of 2017.¹⁰⁴ Whether these limitations can be addressed depends in part on the broader regulatory environment within which the regulation operates.

The broader regulatory environment within which Ende Regent Regulation No. 7 of 2025 operates, spanning provincial instruments, including NTT Provincial Regulation No. 16 of 2018, NTT Provincial Regulation No. 7 of 2021, the Circular Letter of the Governor of NTT 2026, and the regency's own medium-term development plan, particularly Regent Regulation of Ende No. 11 of 2024 concerning the Strategic Plan of the Community and Village Empowerment Service of Ende Regency for 2025-2026,¹⁰⁵ provides additional normative support. However, as analyzed in Section 2.1.2, this environment remains characterized by sectoral fragmentation and the absence of binding enforcement mechanisms at the provincial level.

The *Tiga Batu Tungku* ("Three Societal/Leadership Pillars") model is a locally developed collaborative governance arrangement rooted in the cultural symbolism of the traditional Flores cooking hearth, which requires three stones of equal standing to support a single vessel.¹⁰⁶ Applied to governance, the model institutionalizes tripartite coordination among three pillars of equal authority: government officials, customary leaders, and religious leaders in village and customary village development.

Each pillar contributes a distinct form of legitimacy: administrative authority, ancestral-customary authority, and moral-spiritual authority. The model's strength lies in its insistence that no single pillar can function without the others. In the context of Ende Regent Regulation No. 7 of 2025, the *Tiga Batu Tungku* model holds particular promise as a participatory framework for the identification, verification, and validation processes. Its

¹⁰¹ Ende Regent Regulation No. 7 of 2025, Art. 20.

¹⁰² *Ibid.*, Art. 20 (3).

¹⁰³ *Ibid.*, Art. 24.

¹⁰⁴ Aliansi Masyarakat Hukum Adat (AMAN), *loc.cit.*

¹⁰⁵ See NTT Provincial Regulation 16/2018; Circular Letter of the Governor of NTT 2026. This Circular Letter was issued in 2026, after the completion of field research for this study. It is included in this analysis as a post-research normative development contextualizing the provincial policy environment within which Regent Regulation 7/2025 operates; and Regent Regulation of Ende No. 11 of 2024 Concerning the Strategic Plan of the Community and Village Empowerment Service of Ende Regency for 2025–2026.

¹⁰⁶ Aliansi Masyarakat Hukum Adat (AMAN), *loc.cit.*

tripartite structure could address the participation gap in the Customary Law Community Committee's composition by ensuring that customary leaders hold coequal decision-making authority alongside government officials, rather than being confined to the advisory role currently assigned to the Identification Team.

Formal institutionalization of this model within the regulatory framework, rather than its retention as an informal cultural practice, would provide a concrete mechanism for operationalizing genuine legal pluralism in Ende's recognition process.

2.2.3. Obstacles and the Role of Legal Pluralism

Despite the progressive expansion of the normative framework through Constitutional Court Decision No. 35, Ende Regency Regulation No. 2 of 2017, and Ende Regent Regulation No. 7 of 2025, a significant gap persists between normative recognition and substantive protection. This subsection identifies the principal obstacles through the lens of legal pluralism.

The first and most consequential obstacle has been the delayed operationalization of the regulatory framework. Ende Regency Regulation No. 2 of 2017 remained without implementing regulations for eight years, from 2017 until the issuance of Ende Regent Regulation No. 7 of 2025 in May 2025. During this period, customary law communities lacked procedural mechanisms to formalize recognition, leaving their rights formally acknowledged but practically unenforceable. This delay reflects not merely administrative inefficiency but a structural pattern in which the delegation of recognition authority to local governments, without adequate fiscal resources, institutional capacity, or political incentives, results in prolonged periods of inaction.¹⁰⁷

The second obstacle involves the persistence of territorial boundary conflicts, which remain the most frequent source of disputes affecting customary law communities.¹⁰⁸ These conflicts arise between customary communities and state administrative units, between neighboring communities with overlapping territorial claims, and between customary land rights and mining or conservation concessions.¹⁰⁹ The issuance of nineteen mining concession permits within Ende Regency's customary territories exemplifies how state resource extraction policies continue to operate according to a regulatory logic that does not integrate customary territorial rights, a failure of regulatory harmonization that persists despite Constitutional Court Decision No. 35.¹¹⁰

The third obstacle is the marginalization of customary leadership structures within modern administrative governance. The Regional Government Law in Ende Lio created new political opportunities for formal local leaders, namely village heads elected through democratic processes,

¹⁰⁷ Asnat Juljana Luturmas, Lita Tyesta Addy Listya Wardhani, and Sukirno, "Strengthening Indigenous Governance Structures Based on Local Wisdom in Protecting the Territorial Rights of Indigenous Peoples," *Journal of World Science* 3, no. 7 (2024): 828, 831.

¹⁰⁸ Hermanus Minggu, *loc.cit.*

¹⁰⁹ *Ibid.*

¹¹⁰ Purwadi, *op.cit.* 23-24.

that directly competed with and diminished the authority of *Mosalaki*, whose legitimacy derives from ancestral lineage and customary law rather than electoral processes.¹¹¹ This dynamic illustrates a fundamental tension in legal pluralism: state law instruments designed to democratize and decentralize governance can inadvertently undermine the very customary institutions they purport to protect by introducing governance structures that operate according to fundamentally different principles of legitimacy and authority.

The fourth obstacle concerns the limited institutional and financial capacity of the regional government. Available evidence indicates that the drafting and implementation of implementing regulations have been constrained by budgetary limitations and the complexity of inter-agency coordination.¹¹² Implementing Ende Regency Regulation No. 2 of 2017 and Ende Regent Regulation No. 7 of 2025 require coordination across multiple government agencies, including those responsible for village governance, forestry, agrarian affairs, spatial planning, and cultural affairs, each operating under different sectoral mandates with potentially conflicting priorities.

Analyzed through the lens of legal pluralism, these obstacles reflect what this study characterizes as pluralism without harmonization, a structural condition defined by three interrelated features. The first is the formal recognition of multiple legal orders, namely state law, customary law, and religious law, within the same jurisdiction. The second is the absence of institutional mechanisms through which these legal orders can engage in mutual accommodation rather than hierarchical subordination. The third is the consequent tendency for state legal processes to restructure customary relations according to state legal categories, a phenomenon that may be termed formalization without accommodation.

In Ende Regency, this framework illuminates why normative recognition has not produced substantive protection: the regulatory instruments acknowledge customary law communities but do not establish mechanisms through which customary norms can operate with genuine authority alongside state norms. As Grenfell observes, legal pluralism in the absence of effective harmonization mechanisms tends to result in the *de facto* subordination of non-state legal systems, regardless of formal commitments to recognition.¹¹³

Each of the four obstacles identified above, namely delayed operationalization, territorial conflicts, leadership marginalization, and institutional limitations, represents a distinct manifestation of this structural condition. Collectively, they demonstrate that the challenge in Ende Regency is not the absence of recognition but the operationalization of recognition in a manner that genuinely accommodates Ende's living law without restructuring it according to incompatible state legal categories.

¹¹¹ Waworuntu, Alkatiri, and Archellie, *op.cit.* 7, 10-11.

¹¹² Aliansi Masyarakat Hukum Adat (AMAN), *loc.cit.*

¹¹³ Grenfell, *op.cit.* 307, 335.

2.2.4. Reflection

This study contributes to legal pluralism scholarship in three key ways. *First*, it presents an integrated empirical-normative analysis of the entire regulatory framework governing the recognition of customary law communities in Ende Regency. *Second*, it introduces the analytical concepts of pluralism without harmonization and formalization without accommodation to explain why recognition frameworks often fail to provide adequate protection. *Third*, it identifies a participation gap between the identification and verification stages of the 2025 regent regulation, highlighting it as a critical design flaw that diminishes communities' agency in the recognition process.

To address these findings, several measures are recommended. *First*, the composition of the verification committee should be amended to include at least two customary community representatives as full members with decision-making authority. *Second*, an independent review mechanism should be established for communities whose recognition claims are denied after reassessment. *Third*, the *Tiga Batu Tungku* governance model should be formally institutionalized as the tripartite framework for implementing identification, verification, and validation. *Fourth*, technical guidelines should be issued to operationalize the regulation's identification criteria, with specific reference to Ende's three distinct ethnolinguistic communities. *Fifth*, regulatory harmonization across governance levels and sectors is necessary to resolve the overlapping competencies that currently fragment the legal framework.

3. CONCLUSION

This research demonstrates that the evolving relationship between state law and customary law in Ende Regency has resulted in increased formal recognition of customary law communities, as reflected in statutory and judicial developments. Nevertheless, this recognition remains primarily procedural and does not yet adequately protect the substantive rights or cultural identity of these communities. Ende Regency Regulation No. 2 of 2017 provided a strong normative foundation, but its delayed implementation limited its effectiveness. Ende Regent Regulation No. 7 of 2025 represents significant progress by addressing local contexts and expanding protection to encompass cultural identity. However, the exclusion of customary community representatives from key decision-making processes weakens the participatory approach essential to authentic legal pluralism. Advancing beyond formal recognition requires inclusive governance and adaptive legal frameworks that integrate state and customary legal systems. Comparative analysis with other regions may offer valuable perspectives for enhancing substantive protection and fostering harmonious coexistence.

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