

## Constitutional Recognition of Adat Law Communities to Create Legal Certainty

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### ARTICLE INFO

#### Article History

Received: October 7, 2025

Revised: February 15, 2025

Accepted: March 3, 2025

#### Keywords

Legal Politics;

Adat Law Communities;

Legal Certainty;

Constitutional Recognition;

Unitary State

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### ABSTRACT

This study aims to determine the state's legal politics on the conditional recognition of Adat Law Communities (ALCs) under the 1945 Constitution, which remains uncertain, leading to acts of violence and discrimination. This study contributes to providing stakeholders with an understanding that every state's legal politics must be based on the principle of a unitary state as stipulated in the 1945 Constitution, with implications for the recognition of ALCs. This study uses a doctrinal legal method with a statute and conceptual approach. The findings of this study are that, so far, the government considers conditional legal politics regarding state recognition of ALCs to be the right choice in a unitary state, namely, one without independent collective power. Furthermore, violations of the ALCs under Article 18B paragraph (2) of the 1945 Constitution, particularly those related to the principle of a unitary state, are unclear because the scope of a unitary state is not constitutionally regulated. However, if such violations are deemed breaches, the state has the authority to revoke the existence of these ALCs. The conclusion of this study is that the state's political law choices, as reflected in constitutional regulations, must be clearly defined to uphold the value of legal certainty. The formulation of legal norms in Article 18B paragraph (2) of the 1945 Constitution should not require the existence of ALCs, as the parameters of the unitary state are clearly regulated in the constitution.

## Introduction

Existing state legal politics on the protection and legal certainty of Adat Law Communities (ALCs) are not yet aligned with the two elements that should be present in every state's legal politics formulation:<sup>1</sup> the interests of the state; and the legal needs of the community.<sup>2</sup> These two elements are ideal criteria in achieving

<sup>1</sup> Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *The Asia Pacific Journal of Anthropology* 20, no. 5 (October 20, 2019): 416–34, <https://doi.org/10.1080/14442213.2019.1670246>.

<sup>2</sup> Nilna Aliyan Hamida, "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?," *Indonesian Journal of Law and Society* 3, no. 1 (March 19, 2022): 1, <https://doi.org/10.19184/ijls.v3i1.26752>.

the state's goal of equality.<sup>3</sup> This is because, fundamentally, a state's success in achieving its goals can be assessed by the legal politics it issues.<sup>4</sup>

Various laws and regulations related to the legal protection of ALCs have not improved protection for these communities; instead, they have created problems and overlapping regulations for ALCs, ranging from constitutional to sectoral, implementation, and regional regulations, which are feared to create legal uncertainty.<sup>5</sup> Indigenous peoples in Indonesia have been present since ancestral times and are territorial or genealogical communities with their own wealth. Members, who are distinct from other communities, can act, internally or externally, as a single independent legal entity (legal subject) capable of self-governance.<sup>6</sup> However, ALCs continue to experience state-sponsored violations and discrimination to this day. This is based on the 2024 Year-End Report of the Aliansi Masyarakat Adat Nusantara (AMAN), which reports that in the last 10 years, 925 members of ALCs have been criminalised, 687 agrarian conflicts have occurred in indigenous territories covering 11.07 million hectares, 60 of whom have been subjected to violence by state officials, and 1 death.<sup>7</sup>

In fact, ALCs have unique characteristics that, if properly preserved and managed, will become a distinctive feature of Indonesia abroad. Conversely, when the unique characteristics of ALCs are misused, the potential for small sovereign communities to emerge within a large country becomes apparent. Since independence, following the enactment of the 1945 Constitution as the state's basic law, the state's legal politics has shifted, with the 1945 Constitution now serving as its constitutional basis for governing the country. The 1945 Constitution provides that Indonesia is a unitary state in the form of a republic, as stated in Article 1 paragraph (1): "Indonesia is a unitary state in the form of a republic." In its explanation, it stipulates that the form of a unitary and republican state contains the fundamental idea of people's sovereignty. The People's Consultative Assembly is the highest state institution. This assembly is considered to be the embodiment of the people who hold state sovereignty.<sup>8</sup> Since then, the existence of ALCs has been subject to the 1945 Constitution, which means that the existence of ALCs must not

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<sup>3</sup> Karina Putri, Sartika Intaning Pradhani, and Hendry Julian Noor, "The Existence of ALCs in Public-Private Partnership," *Yustisia Jurnal Hukum* 9, no. 3 (December 31, 2020): 306, <https://doi.org/10.20961/yustisia.v9i3.25492>.

<sup>4</sup> David H. Rosenbloom, Robert S. Kravchuk, and Richard M. Clerkin, *Public Administration: Understanding Management, Politics, and Law in the Public Sector* (New York: Routledge, 2021), <https://doi.org/10.4324/9781003198116>.

<sup>5</sup> Jumarim, Ilyya Muhsin, and Muhammad Chairul Huda, "The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 19, no. 1 (June 15, 2024): 27–52, <https://doi.org/10.19105/al-lhkam.v19i1.10522>.

<sup>6</sup> Arief Fahmi Lubis, "Legal Pluralism and Social Identity: An Analysis of State and Religious Law Interaction in Local Dispute Resolution in Indonesia and Pakistan," *Lex Localis - Journal of Local Self-Government* 23, no. 11 (October 3, 2025): 1910–21, <https://doi.org/10.52152/bt4pv061>.

<sup>7</sup> AMAN, "Catatan Akhir Tahun 2024 Aliansi Masyarakat Adat Nusantara: Transisi Kekuasaan & Masa Depan Masyarakat Adat" (Jakarta, 2024), [https://aman.or.id/filemanager/files/CATAHU 2024 - final.pdf](https://aman.or.id/filemanager/files/CATAHU%2024-final.pdf).

<sup>8</sup> Explanation of the 1945 Constitution before amendments were made.

conflict with the 1945 Constitution. When comparing the 1945 Constitution before and after the amendment, the term ALCs appeared only in the post-amendment version, whereas the pre-amendment version mentioned only "original rights" in regions with special status.

Initially, the term ALCs was introduced by Van Vollenhoven to refer to indigenous (native) citizens of Indonesia. This was related to the Dutch Government's policy under Article 131 of the IS (*Indische Staatregeling*) 1939, which classified Indonesian citizens at the time as indigenous (*Indische*), European, or Foreign Eastern citizens.<sup>9</sup> Recognition of these differences in citizenship led to the emergence of a pluralistic legal system. Adat law is a legal system that does not originate from regulations issued by the Dutch East Indies Government or from other instruments of power established by the Dutch authorities. It is a legal system not based on regulations issued by the Dutch East Indies Government or on other instruments of power established by Dutch authorities.<sup>10</sup>

Constitutionally, the existence of ALCs is relevant to the rights to life and freedom of every citizen. The right to life and freedom to determine one's destiny are part of human rights. Based on the provisions of Article 28A of the 1945 Constitution, which states: every person has the right to life and the right to defend their life and livelihood. Furthermore, Article 28D paragraph (1) of the 1945 Constitution states: every person has the right to recognition, protection and certainty of fair law and equal treatment before the law and based on Article 28H paragraph (1) of the 1945 Constitution states: every person has the right to physical and spiritual prosperity, to a place to live and a good and healthy environment, and to health services. Based on these provisions, what the community most needs is protection and legal certainty. Legal protection and legal certainty form a single entity, the icon of a state based on the rule of law.<sup>11</sup>

On the other hand, constitutionally, the existence of ALCs and their traditional rights are regulated by the state in a manner the author considers conditional. As a result, the regulations relating to the existence of these ALCs do not yet meet the requirements for legal protection and certainty.<sup>12</sup> The provisions of Article 18B, paragraph (2), and the regulations under it do not yet reflect the value of legal certainty in the existence of ALCs. However, from a historical perspective, the emergence of modern law today was initiated by the existence of ALCs and their

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<sup>9</sup> Sartika Intaning Pradhani, "Adat Law-Making Process: What Is at Stake When the Community Domesticates State Law?," *International Journal on Minority and Group Rights* 31, no. 3 (August 31, 2023): 417–44, <https://doi.org/10.1163/15718115-bja10128>.

<sup>10</sup> Mursyid Djawas et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review* 10, no. 1 (May 1, 2024): 64, <https://doi.org/10.20956/halrev.v10i1.4824>.

<sup>11</sup> Yahya Ahmad Zein et al., "Indigenous, Diversity, and the Future of Human Rights in Regional Legal Systems," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (August 28, 2025): 581–607, <https://doi.org/10.53955/jhcls.v5i2.573>.

<sup>12</sup> Sulastriyono Sulastriyono, "Adat Law as an Alternative Option in Law Pluralism Perspective in Indonesia," *Journal of Indonesian Adat Law (JIAL)* 1, no. 1 (October 15, 2020): 34–62, <https://doi.org/10.46816/jial.v1i1.16>.

traditional rights. This means that the existence of ALCs and their traditional rights should not be forced to erode or even disappear. Let the existence of ALCs and their traditional rights continue, in line with the existence of communities that still live by them. However, the state has now begun to slowly impose its will, both directly and indirectly, through various laws and regulations under the pretext of legal protection and legal certainty. For example, Article 19 paragraph (1) of Law No. 5 of 1960 concerning Basic Agrarian Provisions/UUPA states: To guarantee legal certainty, the Government shall conduct land registration throughout the territory of the Republic of Indonesia in accordance with the provisions stipulated by Government Regulation.<sup>13</sup>

Currently, in the name of legal protection and legal certainty, almost all legal objects are codified through legislation. This is not wrong as long as it protects citizens' rights and meets society's needs and the state's interests. However, the state's legal politics framework must remain balanced, not the other way around. In the context of ALCs, as long as they do not conflict with the principles of the unitary state, there is no need for the state to interfere.<sup>14</sup> The state can only undertake functions that enhance the existence of the ALCs, so that it feels more secure and comfortable in carrying out its various activities. However, the state also has its own legal system, which is, *in fact*, written law enacted by the state itself.

This study aims to fill a gap in research that has not been addressed by other researchers, where most previous studies have discussed the recognition of legal traditions applicable to ALCs by state judicial institutions, as researched by Ryzal Perdana and Rudi Wijaya, who discussed the recognition of the rights of ALCs by the constitutional court, where their research recommended the need for specific legislation on ALCs.<sup>15</sup> Yance Arizona also researched the recognition of the rights of indigenous peoples, but he focused on the rights to customary land by the constitutional court, where recognition by the court had a positive impact on the development of legislation to recognise the rights of ALCs to their land.<sup>16</sup>

In addition, previous studies have also discussed the position of adat law in national law. As researched by Ikhda Fitria, who focused on the legal basis for the recognition of adat law in Indonesia. According to Fitri, although adat law is not

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<sup>13</sup> Iwan Permadi, Weny Almoravid Dungga, and Azhani Arshad, "Ensuring Indigenous People's Rights Protection Through Normative Law in Land Acquisition for Indonesia's New National Capital City, Nusantara," *Jambura Law Review* 7, no. 1 (December 23, 2024): 30–54, <https://doi.org/10.33756/jlr.v7i1.24930>.

<sup>14</sup> Try Widiyono and Md Zubair Kasem Khan, "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law," *Law Reform* 19, no. 1 (August 9, 2023): 128–47, <https://doi.org/10.14710/lr.v19i1.48393>.

<sup>15</sup> Rudy, Ryzal Perdana, and Rudi Wijaya, "The Recognition of Customary Rights by the Indonesian Constitutional Court," *Academic Journal of Interdisciplinary Studies* 10, no. 3 (10 May 2021): 308, <https://doi.org/10.36941/ajis-2021-0086>.

<sup>16</sup> 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* (Leiden, The Netherlands: Brill | Nijhoff, 2024), 173–94, [https://doi.org/10.1163/9789004691698\\_008](https://doi.org/10.1163/9789004691698_008).

written, it is still respected and implemented by the community because these rules originate from community traditions, and those who are part of the community recognise the need to maintain them. The position of adat law is strengthened by the state's legitimisation, which recognises these legal traditions as long as they are still practised by the community.<sup>17</sup> Lukman Hakim and colleagues also conducted research on the problem of regulating the recognition of adat law in national law. According to them, although the state has recognised adat law through its regulations, it is not implemented by local governments. This means that recognition is limited to state regulations and is not decentralised to local legal products.<sup>18</sup> Syahriza Alkohir Anggoro and Tunggul Anshari Setia Negara also discussed this recognition problem, arguing that although the recognition of adat law has developed significantly since the reform era, Indonesia's centralised legal system has not been able to fully recognise the existence of adat law because state law prioritises the application of positive law over adat law.<sup>19</sup>

Based on several previous studies described above, although all discuss ALCs, the perspectives employed differ. This difference in perspective can be drawn as a common thread in this study. The novelty of this study lies in its attempt to analyse the concept of legal certainty in the design of constitutional recognition for ALCs. There must be an affirmation regarding the formulation of state legal politics, as reflected in the legal norm of Article 18B, paragraph (2), of the 1945 Constitution, which affords legal certainty and leaves no room for differing interpretations. Legal certainty that prevents conflicting interpretations of ALC's position's will protect these communities from government policies that could lead to discriminatory actions. Based on the above description, the issues to be examined in this study are as follows: First, how should the principles of a unitary state colour the existence of ALCs under Article 18B paragraph (2) of the 1945 Constitution? Second, what are the legal consequences when the existence of ALCs violates the principles of a unitary state?

## Methods

This study utilises doctrinal legal research methods and literature studies.<sup>20</sup> The normative legal method is intended to explain various laws and regulations governing the recognition of ALCs. To explain the recognition of ALCs, a socio-

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<sup>17</sup> Ikhdia Fitria, "Recognising Adat Law: Problems and Challenges in the Modern Legal System in Indonesia," *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 503–16, <https://doi.org/10.15294/ijicle.v2i4.43154>.

<sup>18</sup> Lukman Hakim, Qatrunnada Hambaran Melati, and Purnawan Dwikora Negara, "Integrating Customary Law in Indonesia: Challenges and Opportunities in a Centralised Legal Framework," *Indonesian State Law Review* 8, no. 1 (2025): 58–82, <https://doi.org/https://doi.org/10.15294/isrev.v8i1.19628>.

<sup>19</sup> Syahriza Alkohir Anggoro and Tunggul Anshari Setia Negara, "The Struggle for Recognition: Adat Law Trajectories under Indonesian Politics of Legal Unification," *International Journal on Minority and Group Rights* 29, no. 1 (2 August 2021): 33–62, <https://doi.org/10.1163/15718115-bja10040>.

<sup>20</sup> Jens Frankenreiter and Michael A. Livermore, "Computational Methods in Legal Analysis," *Annual Review of Law and Social Science* 16, no. 1 (October 13, 2020): 39–57, <https://doi.org/10.1146/annurev-lawsocsci-052720-121843>.

legal approach to law is also used, aiming to move beyond a mere doctrinal approach and to provide a broader perspective by viewing law in relation to society's social, cultural, and economic systems.<sup>21</sup>

A literature review is an effort by a researcher to obtain information related to the topic or issue being studied. Literature reviews have many benefits, including identifying the scope of the issue, the appropriate perspective, the question's limitations, and study concepts closely related to the issue. A literature review also allows researchers to identify and evaluate potentially conflicting findings, select the appropriate approach to solving the problem, prevent unnecessary replication, and increase confidence in interpreting the findings.<sup>22</sup> The literature review has a specific purpose in this study: to determine whether adat law exists in the era of modernisation.

The primary data in this study were collected by examining several regulations on the existence of ALCs in Indonesian legislation, including interpretations that have been considered to vary and have given rise to various problems. The collected data were then analysed using a prescriptive analytical method, as the objective of the research was to develop a regulatory design that would serve as a reference for policymakers in formulating regulations to ensure the existence of ALCs.

## Discussion

### Unitary State and Violence against ALCs

Among the main criteria for a unitary state are the principles of state sovereignty and the state's structure. All processes and responsibilities of state administration lie with the central government. The Central Government has the authority to formulate various master regulations, which are then followed by all lower levels of government. The amended 1945 Constitution requires the delegation of government affairs from the Central Government to the Regional Governments in a unitary state. Therefore, a unitary state is a state with a decentralised system (a *unitary state by decentralisation*).<sup>23</sup> In the context of the Indonesian unitary state, accountability for the delegation of government affairs remains with the Central Government. Based on the provisions of Article 7, paragraph (2) of Law No. 23 of 2014 concerning Regional Government, it is stated that: The President holds ultimate responsibility for the implementation of Government Affairs carried out by the Central and Regional Governments.

The country's legal politics on the separation of powers will not be a problem as long as justice is evident. This aligns with one of the most fundamental objectives

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<sup>21</sup> Tonja Jacobi, "The Role of Theory in Empirical Legal Studies," *Comparative Constitutional Studies* 1, no. 2 (December 22, 2023): 222–43, <https://doi.org/10.4337/ccs.2023.0002>.

<sup>22</sup> Ralph I. Williams et al., "Re-Examining Systematic Literature Review in Management Research: Additional Benefits and Execution Protocols," *European Management Journal* 39, no. 4 (August 2021): 521–33, <https://doi.org/10.1016/j.emj.2020.09.007>.

<sup>23</sup> Mahmuzar, "Model Negara Kesatuan Republik Indonesia Di Era Reformasi," *Jurnal Hukum & Pembangunan* 50, no. 2 (September 28, 2020): 302, <https://doi.org/10.21143/jhp.vol50.no2.2590>.

of law: to create justice, legal certainty, and value. In addition, creating order is an important reason why laws must exist. In creating order amid the current conditions of modernisation, society's dynamics are very different from a few years ago. Society is undergoing many changes during modernisation, both in its structure and organisation, and in its institutions, and sometimes in its norms, values, views, and behaviour.<sup>24</sup>

Among these three legal objectives, a correlation emerges when they are linked to the recognition of ALCs. ALCs that grow and develop in a region are the result of the will of previous generations. Thus, customary communities are communities with their own rules that bind only that community. Therefore, their existence must be supported by a strong constitutional basis that demonstrates that ALCs are the true face of Indonesian society.

The 1945 Constitution, as the basic law governing the state's administration, regulates important matters within the state. Therefore, in formulating the norms of the 1945 Constitution, consideration must be given to the values that exist in society.<sup>25</sup> One form of value in society is related to the existence of adat law. Adat law exists and develops within the local community. In fact, the state, through the norms stipulated in the constitution, particularly Article 18B paragraph (2), affirms that the state merely recognises and respects the existence of adat law in all its variants, with the following conditions: (1) as long as it still exists; and (2) it does not conflict with the principles of a unitary state.<sup>26</sup>

The above provisions suggest that the drafters of the article did not understand that the existence of ALCs is the basis of the national legal system. However, the wording of Article 18B, paragraph (2), of the 1945 Constitution does not need to be questioned because it has become state policy under the 1945 Constitution.<sup>27</sup> It is unfortunate, however, that if the state truly wishes to preserve the existence of ALCs, the regulations should also address the needs of indigenous peoples for a clean and healthy environment and the right to participate in every state legal politics decision that is directly or indirectly related to the existence of ALCs. The regulation regarding the recognition of ALCs, although it appears to use only the terms "recognise" and "respect" their existence, may not be considered tendentious, even though, at the same time, adat law is Indonesia's original law.<sup>28</sup>

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<sup>24</sup> Nurus Zaman, "Membangun Politik Hukum Administrasi Pemerintahan Yang Bersumber Dari Nilai-Nilai Pancasila," *Rechtidee* 10, no. 2 (March 14, 2016), <https://doi.org/10.21107/ri.v10i2.1237>.

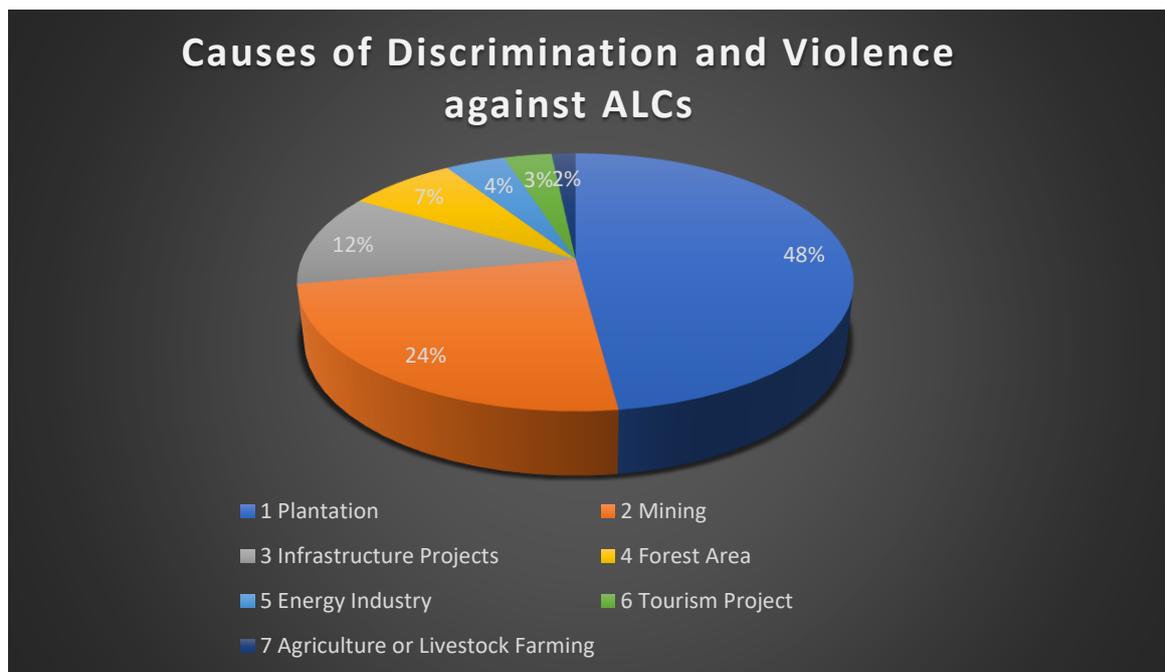
<sup>25</sup> Muhammad Jamaluddin, "The Role of the People in the Amendment of the 1945 Constitution Based on Democratic Constitution Making: Future Prospects," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 07, no. 01 (April 2020): 19–42, <https://doi.org/10.22304/pjih.v7n1.a2>.

<sup>26</sup> Fitria, "Recognizing Adat Law: Problems and Challenges in Modern Law System in Indonesia."

<sup>27</sup> RR Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints," *Abkam: Jurnal Ilmu Syariah* 23, no. 1 (June 16, 2023), <https://doi.org/10.15408/ajis.v23i1.32549>.

<sup>28</sup> Soelistyowati Soelistyowati, "Reassessing State Responsibility for Indigenous Rights to Natural Resources Based on Justice Principle," *Jambe Law Journal* 7, no. 1 (July 30, 2024): 149–67, <https://doi.org/10.22437/home.v7i1.347>.

The state must ensure legal certainty by ensuring that ALCs be immediately incorporated into state policy.<sup>29</sup> At the very least, the government's plan to ensure legal certainty regarding the existence of ALCs, by drafting legislation, must be initiated, discussed, and enacted immediately.<sup>30</sup> This step is a solution to the numerous acts of discrimination and violence against ALCs, which continue to this day and are perpetrated by the government. Data from AMAN shows that in 2024 alone, there were 121 cases of criminalisation and seizure of customary territories in 140 ALCs.<sup>31</sup> The targets and causes of this violence are shown in the image below:



**Figure 1:** Violence and Discrimination against ALCs

**Source:** Catatan Akhir Tahun 2024, <https://aman.or.id/index.php/publication-documentation/304>

Figure 1 above shows that the cause of ALCs facing various forms of discrimination and violence is due to their position in relation to natural resources, whether in agriculture, plantations, or mining.<sup>32</sup> The natural resource areas surrounding the locations inhabited by indigenous peoples are rich and attractive to exploitation by the state or corporations. This has led to the marginalisation of these

<sup>29</sup> Stefanus Sianturi and Asmarani Ramli, “The Application of the Principle of Prudence in the Issuance of Replacement Certificates: A Perspective on Adat and Positive Law,” *Trunojoyo Law Review* 7, no. 2 (August 30, 2025): 334–60, <https://doi.org/10.21107/tr.v7i2.29846>.

<sup>30</sup> Anne Gunadi, “The Embodiment of Adat Law as an Element of Legal Certainty in Administration of Adat Rights,” *Indonesia Law Review* 9, no. 3 (December 31, 2019), <https://doi.org/10.15742/ilrev.v9n3.585>.

<sup>31</sup> AMAN, “Catatan Akhir Tahun 2024 Aliansi Masyarakat Adat Nusantara: Transisi Kekuasaan & Masa Depan Masyarakat Adat.”

<sup>32</sup> Helmi Helmi et al., “Indigenous People in the Dynamics of Land Use Changes, Forest Fires, and Haze in Riau Province, Indonesia,” in *Natural Resource Governance in Asia* (Leiden, The Netherlands: Elsevier, 2021), 291–308, <https://doi.org/10.1016/B978-0-323-85729-1.00023-2>.

communities.<sup>33</sup> The resistance of indigenous peoples in fighting for their rights to natural resources is sometimes met with violence by law enforcement officials.

### **The Unitary State is the Basis for Recognising the Existence of ALCs**

Based on the provisions of Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that: The State of Indonesia is a Unitary State in the form of a Republic. The choice of a unitary state was a choice agreed upon by the founders of the nation, so that when dynamics arise in its development, they are borne jointly. The choice of a unitary state is a symbol that the Indonesian people's desire to be united and have an established kinship with one another, as inspired by Pancasila. A unitary state is one with a single government and sovereignty.<sup>34</sup> A unitary state is characterized by the fact that, once formed, all power and authority lie with the central government, which then delegates some of its authority to the regions.<sup>35</sup>

According to C.F. Strong, A unitary state is a form of state in which the highest legislative authority is concentrated in a single national/central legislative body. C.F. Strong further concludes that there are two absolute characteristics of a unitary state: *first*, the supremacy of the central representative council; *second*, the absence of other sovereign bodies.<sup>36</sup> Solly Lubis states that, in a unitary state, there is a principle that all state affairs cannot be divided between the central government and local governments in such a way that the state as a whole remains intact, and that the highest authority in the state is the central government.<sup>37</sup>

The principle of division of power and/or authority in a unitary state is as follows: *First*, power essentially belongs to the Central Government, while regions are given the right and obligation to manage and exercise some of the governmental authority delegated or transferred to them. Thus, there is a process of transferring or delegating authority. *Second*, the Central Government and Regional Governments still have a chain of command and hierarchical relationship. Local governments are subordinate to the Central Government, but the relationship is not intended to interfere with or dictate to local governments in various matters. *Third*, the authority transferred or delegated to the regions is subject to certain conditions; if the regions

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<sup>33</sup> Yanto Sufriadi, Laily Ratna, and Syarifudin Syarifudin, "The Violence in Conflict of Natural Resources Tenure Rights- Companies Vs Traditional Communities in Indonesia," *UUM Journal of Legal Studies* 15, no. 1 (January 31, 2024): 197–220, <https://doi.org/10.32890/uumjls2024.15.1.9>.

<sup>34</sup> Triwahyuningsih Triwahyuningsih, Islahuddin, and Deslaely Putranti, "Asymmetric Decentralization in a Unitary State: Lessons from Pattani, Thailand," *Journal of Human Rights, Culture and Legal System* 5, no. 3 (December 4, 2025): 897–921, <https://doi.org/10.53955/jhcls.v5i3.602>.

<sup>35</sup> Ngesti Prasetyo et al., "The Politics of Indonesias Decentralization Law Based on Regional Competency," *Brawijaya Law Journal* 8, no. 2 (October 31, 2021): 159–84, <https://doi.org/10.21776/ub.blj.2021.008.02.01>.

<sup>36</sup> Gerrit van der Waltdt, "Systems of Government: A Comparative Analysis of Selected African Countries," in *Handbook of Public Management in Africa* (Cheltenham: Edward Elgar Publishing, 2023), 48–60, <https://doi.org/10.4337/9781803929392.00015>.

<sup>37</sup> Suryajiyoso Suryajiyoso, "Power and Authority in the State Administration System: Comparing the Netherlands and Indonesia," *Journal of Law and Legal Reform* 2, no. 3 (July 31, 2021): 411–20, <https://doi.org/10.15294/jllr.v2i2.46615>.

are unable to perform their duties properly, the Central Government, as the owner of that authority, can revoke it. So, based on the concept of a unitary state, whatever method is used, whether *ultraveres* or *general competence*, the role of the Central Government is still needed to supervise and control the overall implementation of government.<sup>38</sup>

Based on the views above, when applied to Article 18B paragraph (2) of the 1945 Constitution, the state has chosen a middle ground between implementing the agreed-upon unitary state and maintaining the original Indonesian legal system, namely, adat law.<sup>39</sup> The wording of this article indicates that the state does not want the choice of a unitary state to be disrupted in the long term by avoidable factors. The existence of ALCs has created the potential for them to stand alone.<sup>40</sup> Thus, on the one hand, the state continues to maintain its original legal concept. Still, on the other hand, it must formulate the concepts of national unity and integrity as integral parts of the state.

This is where the importance of the separation of powers in government lies. The benefits of revealing and exposing the relationship between political developments and legislation concerning regional government in Indonesia include the following:<sup>41</sup> *Firstly*, it can be seen to what extent the central government, as the government of a unitary state, applies national political and legal politics in the territory of that unitary state in accordance with its position and responsibilities. *Second*, conversely, it can be seen to what extent the government and administration in the regions, in their subordinate position to the central government of the unitary state, have the authority and responsibility to implement national political and legal concepts regarding regional government in their regions, within the framework of the concepts of political unity, social and cultural unity, economic unity, and defence and security unity.

The consequence of a unitary state is that the relationship between the central government and regional governments is one of subordination, because regional governments have authority over the delegation or transfer of powers from the central government. In contrast to the relationship between the state and its citizens, according to Maria S.W. Sumardjono, this relationship is not one of subordination but of equality, because the state derives its authority to control from its position as

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<sup>38</sup> Aan Eko Widiarto et al., “The Authority Relationship of Central and Local Governments in Forming Laws and Regulations: Between Indonesia and Malaysia,” *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (February 16, 2025): 148–67, <https://doi.org/10.22219/ljih.v33i1.36629>.

<sup>39</sup> Yenny Febrianty, Joko Sriwidodo, and Priyaldi Priyaldi, “Establishing Regional Regulations for the Protection of Local Wisdom,” *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 3 (September 22, 2023): 193–220, <https://doi.org/10.25041/fiatjustisia.v17no3.2708>.

<sup>40</sup> I Ketut Ardhana and Ni Wayan Radita Novi Puspitasari, “Adat Law, Ethics, and Human Rights in Modern Indonesia,” *Religions* 14, no. 4 (March 24, 2023): 443, <https://doi.org/10.3390/rel14040443>.

<sup>41</sup> Arief Zainuddin et al., “Dispute Resolution Model for Village Head Election Results: Examining the Authority of Regents/Mayors from the Perspectives of the Principles of Justice and Independence,” *Indonesia Law Reform Journal* 5, no. 2 (September 4, 2025): 228–60, <https://doi.org/10.22219/ilrej.v5i2.41087>.

the representative of all citizens. In accordance with the principle of human rights, the rights of every person are the state's obligation, and its function as a fair arbiter must be guaranteed.<sup>42</sup>

### **The Constitutional Basis for the Existence of ALCs**

One of the unique features of the Republic of Indonesia is the presence of various social strata that live and thrive within society. This diversity requires the state to implement *equitable* policies to prevent inter-regional jealousy, thereby ensuring the country remains conducive despite its diversity. Laws are not only formulated in relation to the attitudes and actions of legal sources, whether as rulers or citizens, but also to create validity and freedom. In the context of a constitutional state, the legal basis is important in relation to whether or not it is permissible to carry out acts and/or actions, especially those carried out by the state. The legal basis is the basis for assessing the validity of acts and/or actions, as well as the validity of something.<sup>43</sup> Thus, by having a legal basis, acts and/or actions, as well as the power of existence of something, are protected by the state. Regarding the existence of ALCs, constitutionally, the existence of ALCs can be directly regulated in the 1945 Constitution, specifically in the provisions of Article 18B, which reads: 1) The State recognises and respects special or exceptional regional government units as regulated by law; 2) The State recognises and respects ALCs and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the unitary state of the Republic of Indonesia as regulated by law.<sup>44</sup>

The provisions of the above article, if understood in depth, indicate that the regulation ALCs in the 1945 Constitution is not *absolute*, but rather the state's recognition and respect for the existence of ALCs is conditional. This shows that their nature depends on certain conditions. However, conditions usually exist before something else exists. Therefore, the standardisation of ALCs recognition, as stated in the above article, is not entirely accurate. The drafters of Article 18B of the 1945 Constitution appear to have been cautious in regulating the existence of ALCs. This is especially true considering Indonesia's history, which undeniably shows that ALCs are the original communities in Indonesia. Before codified law existed, ALCs were the state's icons.<sup>45</sup>

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<sup>42</sup> Basuki Rahmat and Asep Nurjaman, "The Intersections of Politics, Law and Social Stratification in Indonesia," *International Journal of Humanities, Social Sciences and Education* 11, no. 10 (2024): 36–44, <https://doi.org/10.20431/2349-0381.1110004>.

<sup>43</sup> Jonathan Chen, "Representing Chinese Indonesians: Pribumi Discourse and Regional Elections in Post-Reform Indonesia," *Journal of Current Southeast Asian Affairs* 41, no. 1 (April 29, 2022): 59–87, <https://doi.org/10.1177/18681034211036716>.

<sup>44</sup> Jaja Ahmad Jayus, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum* 27, no. 1 (2020), <https://doi.org/10.18196/jmh.20200144>.

<sup>45</sup> Iwan Erar Joesoef, "The Idea of Customary Law Community Representation in the Regional Representative Council," *Unnes Law Journal* 6, no. 1 (April 30, 2020): 119–42, <https://doi.org/10.15294/ulj.v5i2.26984>.

As mentioned above, the standardisation of the provisions of Article 18B paragraph (2) is fundamentally inappropriate because it remains conditional. However, the country's legal politics choice is understandable and must be respected as the result of a mutual agreement. A historical review of adat law in Indonesia shows that it not only serves as a guideline for Indonesian society but also as the basis for the formation of national law. This is stated in MPRS Decree No. II/MPRS/1960, Appendix A, paragraph 402, which stipulates that adat law is the basis for the development of national law.<sup>46</sup> In the provisions of Law No. 5 of 1960 concerning the Basic Agrarian Law, or referred to as the UUPA, based on the provisions of Article 2 paragraph (4), it states: the state's right of control over its implementation can be delegated to Swantara regions and ALCs, as long as it is necessary and does not conflict with national interests according to the provisions of Government Regulations. Article 3 of the UUPA states:<sup>47</sup>

*“Bearing in mind the provisions of Articles 1 and 2 concerning the implementation of adat law and similar rights of ALCs, insofar as these still exist in reality, they must be such that they are in accordance with the national and state interests based on national unity must not conflict with higher laws and regulations.”*

Based on the above description, the drafters of Article 18B appear to be aware of and taking preventive measures to prevent undesirable events for the country in the long term. Whatever the state's legal politics may be, if it is properly formulated in accordance with existing rules, it should be supported and complied with by all actors. Potential errors can be brought before the competent court for review. Minister of Home Affairs Regulation No. 52 of 2014 on Guidelines for the Recognition and Protection of Indigenous Peoples explains that local governments are authorised to form Indigenous Peoples Committees in each region of Indonesia and that the Ministry of Home Affairs recognises and protects Indigenous Peoples in those regions.<sup>48</sup> This provision seems to imply that the government always recognises the existence of ALCs. However, if the provisions of the 1945 Constitution continue to be guided by higher regulations, the correct wording should still state that such recognition remains in effect as long as it exists and does not conflict with the principles of the unitary state. The principle in the formulation of Article 18B paragraph (2) of the 1945 Constitution, namely, as long as it still exists

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<sup>46</sup> Tody Sasmitha Jiwa Utama, “Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System,” *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (May 4, 2021): 269–89, <https://doi.org/10.1080/07329113.2021.1945222>.

<sup>47</sup> I Made Suwitra Suwitra et al., “The Existence of Customary Land and Its Utilization Pattern for Tourism Business,” *Randvick International of Social Science Journal* 4, no. 2 (April 30, 2023): 28–42, <https://doi.org/10.47175/rissj.v4i2.644>.

<sup>48</sup> Muhamad Muhdar, Muhammad Tavip, and Rahmawati Al Hidayah, “State Failure in Recognition and Protection of Indigenous Peoples Over Natural Resource Access in East Kalimantan,” *Asia Pacific Law Review* 27, no. 1 (January 2, 2019): 127–43, <https://doi.org/10.1080/10192557.2019.1665921>.

and does not conflict with the principles of the unitary state, is the basis for the formulation of regulations below it.<sup>49</sup>

The constitutional basis for the existence of ALCs is set out in Article 18B paragraph (2), and is further elaborated in subsequent articles on human rights.<sup>50</sup> In the author's opinion, even if there is a specific law regulating the existence of ALCs, as long as the formulation of the norm in Article 18B paragraph (2) remains unchanged, the legal certainty regarding the existence of ALCs remains intact. This is because it is impossible for a law that is derived from the 1945 Constitution to regulate something differently from what is regulated in the 1945 Constitution, unless the 1945 Constitution does not regulate it, as long as it does not conflict with and is not prohibited by higher regulations, it is not a problem.<sup>51</sup>

In addition to the 1945 Constitution, several sectoral regulations also guarantee the rights of ALCs, including:<sup>52</sup> (1). Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA); (2). Law No. 41 of 1999 concerning Forestry; (3). Law No. 26 of 2007 concerning Spatial Planning; (4). Law No. 32 of 2009 concerning Environmental Protection and Management; (5). Law No. 6 of 2014 concerning Villages; (6). Law No. 23 of 2014 concerning Regional Government; (7). Law No. 39 of 2014 concerning Plantations. Regulation of the Minister of Home Affairs No. 52 of 2014 concerning Guidelines for the Recognition and Protection of ALCs.

Within the judicial system, the existence of ALCs also receives attention, particularly regarding their legal protection. The protection of ALCs to defend their constitutional rights in the event of laws that infringe upon those rights, which are enshrined in Law No. 24 of 2003 on the Constitutional Court and Law No. 8 of 2011 on amendments to Law No. 24 of 2003. However, certain conditions must be satisfied for adat communities to have legal standing to file a petition for judicial review of a law with the Constitutional Court, as not all indigenous communities have such standing in judicial review proceedings.<sup>53</sup>

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<sup>49</sup> Linda Noviana Mita Devi, Maulana Abdi Hanifa, and Yuniar Prehatini, "Juridical Review of the Indigenous Peoples Bill and the Recognition of Indigenous Peoples," *Journal of Constitutional and Governance Studies* 1, no. 2 (April 10, 2025): 205–26, <https://doi.org/10.20885/JCGS.vol1.iss2.art5>.

<sup>50</sup> R Ramli and Wahyudin, "Achieving Sustainable Development Goals (SDGs) through Indigenous Group Protection in Indonesia," *IOP Conference Series: Earth and Environmental Science* 921, no. 1 (November 1, 2021): 012074, <https://doi.org/10.1088/1755-1315/921/1/012074>.

<sup>51</sup> Herlambang P. Wiratraman, "Cultural Expertise and the Social Justice Defense of Indigenous Peoples Rights in the Indonesian Constitutional Court," *Constitutional Review* 11, no. 2 (2025): 299–339, <https://doi.org/https://doi.org/10.31078/consrev1122>.

<sup>52</sup> Dodi Haryono, "Protection of Indigenous Peoples' Rights Through the Constitutional Review: The Efforts to Achieve Sustainable Development Goals in Indonesia," in *Proceedings of the Riau Annual Meeting on Law and Social Sciences (RAMLAS 2019)* (Paris, France: Atlantis Press, 2020), <https://doi.org/10.2991/assehr.k.200529.261>.

<sup>53</sup> Relexi Bayo, Andy Usmina Wijaya, and Fikri Hadi, "Pengakuan Masyarakat Adat Dalam Peraturan Perundang-Undangan Di Indonesia," *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 1 (April 12, 2023): 1–11, <https://doi.org/10.38156/jihwp.v1i1.87>.

The Constitutional Court (MK) ruling that has had the most significant impact on ALCs is the Decision on Customary Forest Rights (No. 35/PUU-X/2012), which holds that customary forests are not part of state forest rights.<sup>54</sup> This ruling affirms that ALCs are legal subjects and holders of rights over their customary territories, and that customary forests are their property within those territories.<sup>55</sup> The various legal bases for recognizing the existence of the ALCs above, which serve as the foundation and umbrella for all of them, are the 1945 Constitution.<sup>56</sup> As long as the formulation of the legal norm in the provisions of Article 18B paragraph (2) remains unchanged and no amendments are made to its wording, all derivative regulations cannot exceed the provisions of the 1945 Constitution, unless the provisions of Article 18B paragraph (2) of the 1945 Constitution are interpreted more broadly by the Constitutional Court.

### **Characteristics of State Recognition of ALCs**

Essentially, a state's assessment of the recognition of a legal community should be assessed by evaluating the nature of its relationship with its citizens. One form of relationship between the state and its citizens, according to George Jellinek, is positive status, meaning the state actively determines the prosperity and welfare of its people. Even in the study of statecraft, it is impossible for a state to exist without a society. This means that a society is an absolute requirement for a state. Moreover, the objectives of the state, as outlined in the preamble to the 1945 Constitution, paragraph IV, include ensuring the welfare of its people.<sup>57</sup> Therefore, the term "recognition" in Article 18B paragraph (2) by the state seems to be considered the most appropriate choice because it intersects with the form of a unitary state, or the term "recognition" is deliberately used so that various state legal politics reflect further arrangements.

ALCs are an integral part of Indonesian society and their presence cannot be denied from the past to the present. The Indonesian Constitution uses several terms to refer to ALCs, such as ALCs, indigenous communities, and traditional communities, allowing these terms to be used simultaneously or interchangeably.<sup>58</sup>

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<sup>54</sup> 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 (December 12, 2018): 293–308, <https://doi.org/10.1111/apv.12207>.

<sup>55</sup> William R.I. Sopaheluwakan et al., "Two-Decade Decentralization and Recognition of Customary Forest Rights: Cases from Special Autonomy Policy in West Papua, Indonesia," *Forest Policy and Economics* 151 (June 2023): 102951, <https://doi.org/10.1016/j.forpol.2023.102951>.

<sup>56</sup> Budi Bahreisy et al., "The Urgency of Protecting Customary Forests Based on The Principle of Local Wisdom in North Aceh," *Journal of Law and Sustainable Development* 11, no. 12 (December 7, 2023): e21118, <https://doi.org/10.55908/sdgs.v11i12.2118>.

<sup>57</sup> A Mayastuti and H Purwadi, "Customary Forest Designation Policy a Realization of Sustainable Development Goal Achievements in Indonesia (Study of Indigenous Peoples in Lebak Regency Banten)," *IOP Conference Series: Earth and Environmental Science* 1180, no. 1 (May 1, 2023): 012016, <https://doi.org/10.1088/1755-1315/1180/1/012016>.

<sup>58</sup> Gerlov van Engelenhoven, "From Indigenous Customary Law to Diasporic Cultural Heritage: Reappropriations of Adat Throughout the History of Moluccan Postcolonial Migration," *International Journal*

If the existing power is consistent with the idea that the presence of ALCs preceded the origin of codified law. Then the power is not only sufficient to recognise and respect the existence of these communities, but the state must immediately implement legal policies with a more definitive meaning so that the existence of ALCs will always be preserved. Let the existence of ALCs cease when the communities concerned no longer desire it. In this case. The state should adopt a passive stance as a sign of respect for Indonesia's original laws.<sup>59</sup>

The term "recognition" as defined in Article 18B paragraph (2) of the 1945 Constitution certainly has a different meaning from the term "recognition" as regulated in regulations under the 1945 Constitution. However, because this article recognises the existence of ALCs, which are fundamental to statehood, it is not sufficient to use the term "recognition" alone. Recognition must be accompanied by more concrete *normative legitimacy*.<sup>60</sup> In the literature on adat law developed during the Dutch East Indies era, ALCs, or *adat-rechtsgemeenschappen*, are synonymous with villages or *volksgemeenschappen* and are regulated by two ordinances on villages: one for Java and one for the islands outside Java. Both ordinances respected the traditional rights of ALCs, so that villages and ALCs were referred to as village republics (*dorps republiek*). ALCs are synonymous with communities that have traditional characteristics. Traditional characteristics mean that adat law is rooted in the will of revered ancestors. Therefore, some experts consider adat law an integral part of Indonesian culture.

Recognition and protection of the rights of ALCs are important, as traditional ALCs existed long before the Unitary State of the Republic of Indonesia was formed.<sup>61</sup> However, in their development, these traditional rights must be aligned with the principles and spirit of the Unitary State of the Republic of Indonesia, as set out in the legislation itself. The state's recognition of ALCs must be consistent with the achievement of state objectives. From a socio-economic perspective, the 1945 Constitution was drafted on the basis of *the welfare state (verzorgingstaat)* concept, as stipulated in Article 28H (right to a prosperous life), Article 31 (right to

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*for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 34, no. 3 (July 29, 2021): 695–721, <https://doi.org/10.1007/s11196-020-09781-y>.

<sup>59</sup> Donna Asteria et al., "Adat Law and Culture: The Local Authority Elements of Baduy Tribe on Environment Preservation," *IOP Conference Series: Earth and Environmental Science* 716, no. 1 (March 1, 2021): 012049, <https://doi.org/10.1088/1755-1315/716/1/012049>.

<sup>60</sup> Bono Budi Priambodo, "Positioning Adat Law in the Indonesia's Legal System: Historical Discourse and Current Development on Customary Law," *Udayana Journal of Law and Culture* 2, no. 2 (July 31, 2018): 140, <https://doi.org/10.24843/UJLC.2018.v02.i02.p02>.

<sup>61</sup> Yayan Sopyan et al., "Degradation of Customary Inheritance Law in the Sai Batin Lampung Tribe," *AL-ADALAH* 17, no. 2 (March 19, 2021): 295–314, <https://doi.org/10.24042/adalah.v17i2.7137>.

education),<sup>62</sup> Article 33 (economy), and Article 34 (care for the poor and neglected children, social security system, health services, etc.).<sup>63</sup>

Recognition originating from the state through legal regulations and recognition originating from society certainly have different legal powers. Indeed, when viewed from the perspective of sovereignty theory, both have an equal basis; it is simply a matter of which one will be chosen as the theoretical basis. However, when both are linked to executive power in a constitutional state, state recognition is dominant because it carries greater legitimacy. This is especially true in the context of the Indonesian constitutional state, where the legal norms used as the primary basis are state-produced.

The future existence of adat law will influence national legal development and international relations. This is due to the increasing demands of globalisation as it relates to justice. Even today, a country's legal sovereignty still seems more important than reducing economic relations. That certainly has a greater impact on public law. Therefore, the government must provide space for the growth and development of adat law when drafting national legislation. Under the 1989 Common Law Declaration, countries such as Indonesia can prevent overseas distribution, even though their domestic laws may not withstand strong international pressure.<sup>64</sup>

The state's recognition of ALCs means it has an unconditional obligation to maintain and preserve them. This is to assess the state's consistency and commitment to maintaining Indonesia's diversity and cultural wealth, especially since ALCs predate Indonesia's independence. The recognition and respect for ALCs, as stipulated in the 1945 Constitution, remain general and do not specify the form of recognition and respect the state shows for the unity of ALCs. The clearest and most apparent recognition of ALCs is found in other laws, such as the UUPA, which was enacted in 1948. However, recognition of ALCs' rights has not been consistently implemented.

In interpreting Article 18B paragraph (2) of the 1945 Constitution, Jimly Asshiddiqie states that it is necessary to note that this recognition is given by the state:<sup>65</sup> (i) to the existence of an ALCs and its traditional rights; (ii) The recognised existence is the existence of ALCs units; (iii) the ALCs is indeed alive (still alive); (iv) within a specific environment (*lebensraum*); (v) this recognition and respect is given

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<sup>62</sup> Marco Dani, "The Democratic and Social Constitutional State as the Paradigm of the Post-World War II European Constitutional Experience," in *The Legitimacy of European Constitutional Orders* (Cheltenham: Edward Elgar Publishing, 2023), 19–42, <https://doi.org/10.4337/9781803928890.00008>.

<sup>63</sup> Zamroni Abdussamad et al., "Constitutional Balance: Synchronizing Energy and Environmental Policies with Socio-Economic Mandates," ed. R. Febrina, Z. Harirah, and T. Puspita, *E3S Web of Conferences* 506 (March 25, 2024): 06006, <https://doi.org/10.1051/e3sconf/202450606006>.

<sup>64</sup> Surjanti Surjanti et al., "Customary Law In Indonesia: A Legacy for a Sustainable Future," *Journal Evidence of Law* 4, no. 1 (April 8, 2025): 310–15, <https://doi.org/10.59066/jel.v4i1.1173>.

<sup>65</sup> Jimly Asshiddiqie, "Building a Constitutional Aware Culture to Create a Democratic Law State," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 8, no. 1 (April 1, 2023): 1–11, <https://doi.org/10.22373/petita.v7i2.128>.

without neglecting the standards of humanity in accordance with the level of development of the nation; (vi) this recognition and respect must not diminish the meaning of Indonesia as a unitary state of the Republic of Indonesia.

On the other hand, governmental recognition of ALCs must be strictly regulated to avoid future problems for the unitary state. The state must provide regulations that consider the legal certainty of the regulation. This is because it is more appropriate for the respective local governments to regulate ALCs, with guidance and regulatory mechanisms still established by the central government.<sup>66</sup> There is concern that if regulations related to the recognition of ALCs are not *finalised*, meaning that they are not definitive, and further regulations are left to each local government, then these non-definitive regulations will be used as a political tool by the authorities in the region. Whether a matter is handled by the central or regional government is determined not by its nature but by its benefits.<sup>67</sup>

Recognition must be definitive so that legal certainty follows, because definitive recognition can optimise the objectives of the ALCs themselves. When recognition of ALCs is not definitive, it can hinder the achievement of the welfare of the ALCs themselves. The recognition of ALCs should be strengthened to respect and preserve Indonesia's indigenous legal system, without contradicting Indonesia's status as a unitary state. The view that the existence of ALCs and their traditional rights will conflict with national development is exaggerated. In fact, if Indonesia maintains ALCs and can classify each region by territory, it will become a model for modern societies. The state must be able to formulate its legal politics based on the country's historical journey, without rejecting the development of modern countries.<sup>68</sup>

In the opinion that, even though there is no law specifically regulating ALCs, the 1945 Constitution has provided guarantees for the recognition and respect of adat law, subject to the realities and ideals. The reality requirement is that the law remains alive and in line with societal development, while the idealistic requirement is that it aligns with the principles of the Unitary State of the Republic of Indonesia and that its application is regulated by law.<sup>69</sup> Thus, the state's recognition of ALCs and their adat laws is conditional and can be interpreted in different ways. Another argument is that these requirements are reasonable because the state has the right to control the laws applicable to it. under the rule of law.

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<sup>66</sup> Joesoef, "The Idea of Customary Law Community Representation in the Regional Representative Council."

<sup>67</sup> Tine Suartina, "Between Control and Empowerment: Local Government and Acknowledgement of Adat Villages in Indonesia," *Indonesia Law Review* 10, no. 3 (December 31, 2020), <https://doi.org/10.15742/ilrev.v10n3.679>.

<sup>68</sup> Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (December 25, 2021): 529, <https://doi.org/10.22373/sjhk.v5i2.11082>.

<sup>69</sup> Yogi Prasetyo, "Indonesian Integral Law Based on Pancasila," *Pancasila and Law Review* 3, no. 1 (June 29, 2022): 1–12, <https://doi.org/10.25041/plr.v3i1.2443>.

## The Idea of a Regulatory Model and Recognition of ALCs Based on Legal Certainty

Legal principles are part of spiritual life; in every legal principle, humans see an ideal that they wish to achieve. Isn't the goal of legal perfection in society an ideal? Conversely, legal rules are historical. It is in the relationship between legal principles and concrete legal rules that the nature of law lies. The nature of law determines whether a legal norm can be enforced or merely regulated, with the two properties having different sanctions. Legal certainty is one of the objectives of the validity of a legal norm. Legal certainty applies not only to authorities in their actions but also to citizens in theirs. Legal certainty is also necessary for all applicable legal norms.<sup>70</sup>

Certainty means provision, stipulation, whereas when the word certainty is combined with the word law, it becomes legal certainty. It means a country's legal system that is capable of guaranteeing the rights and obligations of every citizen. Legal certainty is not solely related to the state, because the essence of legal certainty is protection from arbitrary actions.<sup>71</sup> Arbitrary actions should not be assessed solely by existing powers; they should also be reflected in the formulation of existing legal norms. Similarly, the legal norms in the 1945 Constitution, as the basic law that regulates matters of fundamental and principled nature, must be clear and certain.<sup>72</sup> The use of legal language in each article must not be vague, giving rise to multiple interpretations, unless such a choice is a means of preserving the existence of the state. Legal certainty means that a regulated matter is subject to a finalised regulation. Legal certainty functions not only as a constitutional basis for the state to act or not to act, but also as a means of providing legal protection for legal subjects or the community. The recognition of the Sadat legal community is governed by Article 18B paragraph (2), of the 1945 Constitution, which is conditional and thus requires more specific regulations.<sup>73</sup>

As a unitary state, there can be no sovereignty other than that of the state. In this case, it appears that the state is taking early preventive action regarding the existence of ALCs. Violations by ALCs of the principles of a unitary state indicate that these communities have violated Pancasila's values.<sup>74</sup> As a consequence, the state must cease to exist under predetermined conditions. Even without regulations

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<sup>70</sup> Nurus Zaman, "Pembukaan Undang-Undang Dasar 1945 Dalam Perspektif Kepastian Hukum," *Jurnal Legislasi Indonesia* 20, no. 1 (March 31, 2023): 79–89, <https://doi.org/10.54629/jli.v20i1.1007>.

<sup>71</sup> Ni Luh Wayan Yasmiati and I Dewa Gede Herman Yudiawan, "Analysis of Human Rights Protection and Enforcement Based on Local Wisdom in Indonesia," *Indonesian Journal of Humanities and Social Sciences* 5, no. 4 (2024): 1665–75, <https://doi.org/https://doi.org/10.33367/ijhass.v5i4.6247>.

<sup>72</sup> Sapto Hermawan et al., "Constitutionality of Indigenous Law Communities in the Perspective of Sociological Jurisprudence Theory," *Jurnal Jurisprudence* 11, no. 2 (March 28, 2022): 282–96, <https://doi.org/10.23917/jurisprudence.v11i2.12998>.

<sup>73</sup> Budi Priambodo, "Positioning Adat Law in the Indonesia's Legal System: Historical Discourse and Current Development on Customary Law."

<sup>74</sup> Asmadi Lubis et al., "The Concept of Pancasila in Guaranteeing the Legal Protection of Indonesian Customary Law Communities," *KnE Social Sciences*, January 5, 2024, <https://doi.org/10.18502/kss.v8i21.14720>.

on the normative conditions for the abolition of adat law, it would not be a problem if the state unilaterally abolished ALCs, provided there were objective reasons. For example, if the communities of adat law were constantly in conflict with one another.

State recognition and respect are not limited to acknowledging the existence of ALCs; they also extend to traditional rights and customary land rights.<sup>75</sup> However, these rights have been repeatedly violated by both the government and non-governmental actors. These violations include violations of economic, social, and cultural rights, which lead to violations of civil and political rights.<sup>76</sup> These ongoing violations of rights are one of the factors contributing to horizontal and/or vertical conflicts, which often result in loss of life and property. These events occur because ALCs have not been *fully* recognised by the state. If their existence were legally certain, it is unlikely that violations against ALCs would occur, as the state would directly protect them.<sup>77</sup>

Therefore, the author maintains that the formulation of the norm in Article 18B, paragraph (2), of the 1945 Constitution does not yet provide actual legal certainty, as it remains conditional. The formulation of the legal norm in Article 18B paragraph (2) still has the potential to cause differing assessments and interpretations among the existing powers. On the other hand, as long as it does not conflict with the principle of a unitary state, whoever has the authority to determine these principles. If, constitutionally, there are no limits on the principles of a unitary state, then the benchmark is the opinion of experts, which will not be binding unless it has been normalised, or at least not in the form of a court decision. Furthermore, under the provisions on the existence of ALCs, Article 28I paragraph (3) of the 1945 Constitution states: "The government shall respect the cultural identity and rights of traditional communities in accordance with the development of the times and civilisation."

## Conclusion

Based on the explanations above, this study concludes that the formulation of state legal politics regarding the recognition of ALCs, as stipulated in Article 18B, paragraph (2), of the 1945 Constitution, cannot yet be categorised as recognition that has absolute legal certainty, as it remains conditional. Therefore, the provisions of Article 18B paragraph (2) of the 1945 Constitution need to be amended so as not to

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<sup>75</sup> Zefrizal Nurdin, "Legal Protection of Customary Rights Under Legal Pluralism And Its Impact on the Minangkabau Society: An Empirical Study in The District of Lima Puluh Kota, West Sumatra," *Cogent Social Sciences* 8, no. 1 (December 31, 2022), <https://doi.org/10.1080/23311886.2022.2045722>.

<sup>76</sup> Chairul Fahmi (Acehnese), "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," *AlterNative: An International Journal of Indigenous Peoples* 20, no. 1 (March 8, 2024): 157–66, <https://doi.org/10.1177/11771801241235261>.

<sup>77</sup> Sri Warjiyati et al., "The Legalization and Application of Osing Indigenous People's Customary Law Model in the Legal System," *Lex Localis - Journal of Local Self-Government* 21, no. 4 (November 1, 2023): 853–75, [https://doi.org/10.4335/21.4.853-875\(2023\)](https://doi.org/10.4335/21.4.853-875(2023)).

give rise to different interpretations and perceptions among the public, and so as to be in line with the objectives of the law, particularly the creation of legal certainty.

Differing interpretations of the constitutional recognition of ALCs have driven the changes that have occurred so far. These differences in interpretation and perception have created loopholes for the state and corporations to commit acts of violence and deprive indigenous peoples of their inherent rights. Therefore, the concept of unconditional recognition must be enshrined in national legislation to prevent and end all discrimination against indigenous peoples and to ensure that the existence of these communities is recognised within the context of a unitary state.

## Acknowledgement

None

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