

# Integrating Customary Law and National Agrarian Law in Indonesia: Legal Pluralism in the Case of *Si'ulu-Si'ila* in South Nias

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**Abstract.** The role of Si'ulu-Si'ila, is a traditional authority system in South Nias, Indonesia, as a living embodiment of *Volkgeist* in the governance of customary land and the resolution of indigenous land disputes. The study addresses the problem of legal dualism between state law and customary law that often marginalizes indigenous justice practices. Employing a non-doctrinal, socio-legal approach, the research integrates normative and empirical analysis. Field data were collected through in-depth interviews with customary leaders, participant observation in Orahua deliberations, and documentation of fondrakö decisions. The findings reveal that Si'ulu-Si'ila functions not merely as an adjudicative institution but as a moral and social regulator, where decisions are collectively legitimized and enforced through both material and moral sanctions. This indigenous model reflects restorative and participatory justice, ensuring social harmony and long-term sustainability. However, the absence of formal legal recognition limits its broader enforceability within Indonesia's agrarian framework. Drawing from comparative insights of the Māori Land Court (New Zealand) and Aboriginal Title (Canada), the paper concludes that integrating Si'ulu-Si'ila within formal legal structures can strengthen legal pluralism, protection of communal land rights, and culturally grounded justice.

## 1. INTRODUCTION

Agrarian conflicts and land disputes remain pervasive in Indonesia, particularly within indigenous customary law communities. In 2023 alone, 241 cases of agrarian conflict were recorded across the country, affecting an estimated 638 thousand hectares of land and involving hundreds of thousands of people (Ahdiat, 2024). These numbers do not include daily land disputes such as inheritance claims or conflicts between companies, but rather represent structural conflicts that threaten the constitutional rights of citizens over land and natural resources. Such disputes often involve indigenous communities who seek to defend their communal land, known as *tanah ulayat*, from claims made by the government or private corporations. This situation reflects the continuing tension between state law and the living law of indigenous communities in Indonesia.

On one hand, customary law plays an important role in the mechanism of land dispute resolution within indigenous communities, as it provides settlement processes that emphasize local values and collective agreement rooted in social consensus (Haning, 2025). For example, in Bali there is a growing phenomenon of the individualization of customary land, administrative weaknesses in customary institutions, and the need for legal pluralism and participatory land registration systems. Through his research, Sukirno proposes that the ideal construction of customary land governance in Bali should involve a political and legal transformation toward strong legal pluralism. This includes revising the conversion provisions of the Basic Agrarian Law that turned customary land into individual ownership, promoting participatory land administration, ensuring community-based control over land, and developing detailed land management that records land history, mutation, boundaries, and use (Sukirno et al., 2025).

On the other hand, these customary mechanisms often receive little attention from the government within the framework of Indonesia's national law (Haning, 2025). As a result, there is legal uncertainty and overlapping authority between customary communities and government officials, often drawing corporations into complex land disputes. (Haning, 2025) Normatively, the 1945 Constitution and several sectoral land-related laws recognize the existence of customary law and communal land rights (Maswatu et al., 2025). Article 3 of the Basic Agrarian Law of 1960, for instance, acknowledges communal rights as long as they still exist in practice and do not contradict national interests. Furthermore, Law No. 5 of 1960 mandates respect for customary rights, and recent decisions of the Constitutional Court have reaffirmed the importance of recognizing indigenous legal communities. However, the implementation of such recognition is often constrained by overlapping regulations, weak institutional mechanisms, and the dominance of state-centered agrarian policies (Maswatu et al., 2025). In other words, the existence of legal pluralism, such as the coexistence of several legal systems (state and customary) that exist side by side, has not been managed properly, thus potentially causing conflicts in the settlement of customary land disputes (Dachi, 2016). These disputes remain unresolved due to unclear land ownership status and differing perceptions of compensation. This condition indicates that without an integrated legal framework, communal land rights remain vulnerable to marginalization and conflicts are likely to persist without resolution.

Building upon this background, this study focuses on the mechanism of resolving communal land disputes in South Nias by combining perspectives from Indonesia's national agrarian law and the customary law of the Nias community. The approach of legal pluralism is used to understand how these two legal systems, namely state law and customary law, can be integrated without diminishing the unique characteristics of each in order to achieve justice and legal certainty (Maswatu et al., 2025). This research is also supported by empirical field data concerning dispute resolution practices conducted by traditional leaders of Nias, particularly the *Si'ulu-Si'ila* institution, as well as comparative insights from other countries such as New Zealand and Canada. These two countries are selected as comparative cases because they have more advanced models in recognizing indigenous

land rights and in implementing dispute resolution mechanisms that incorporate customary law within their national legal frameworks. The comparative analysis is expected to provide an alternative perspective on how the integration of customary institutions into the national legal system can reduce land conflicts. Ultimately, this study aims to formulate an effective and just model of land dispute resolution in South Nias that harmonizes with the national legal framework while empowering the local wisdom of the indigenous community.

## 2. RESEARCH METHOD

This research adopts a non-doctrinal socio-legal approach, which views law as a social institution inherently embedded within the socio-cultural context of society (Creutzfeldt, 2019). In this sense, law is not understood merely as a collection of normative rules but as a living system that reflects the interaction between state regulations and local customary values. The study specifically examines the legal culture and customary mechanisms of the Nias indigenous community, particularly the role of the *Si'ulu–Si'ila* institution as the decision-making authority in resolving land disputes among indigenous people in South Nias, Indonesia. This prescriptive and analytical study applies critical assessment to explore the intersection between customary law and national agrarian law, focusing on how plural legal systems operate in practice and influence land dispute resolution. To achieve these objectives, the study integrates both normative (doctrinal) and empirical (field) elements. The normative dimension involves the examination of relevant legal instruments, including Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Ministerial Regulation of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 21 of 2020 on the Handling and Settlement of Land Cases, Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Court, Ministerial Regulation of Agrarian Affairs No. 14 of 2024 on the Administration of Customary Land Rights, as well as court decisions and policy documents. Empirical data were collected through in-depth interviews with customary leaders (*Si'ulu* and *Si'ila*) to gain a comprehensive understanding of the deliberation process (*orahua*) and its social meaning within the community. The collected data were analyzed using a qualitative thematic method, consisting of several stages: data collection, coding, thematic categorization, comparative interpretation, and synthesis of findings. The analysis combined inductive reasoning derived from empirical findings and normative-conceptual interpretation drawn from legal theories, particularly those concerning legal pluralism, authority, and dispute resolution. This methodological design aims to produce contextually grounded insights that contribute to the development of a hybrid legal model integrating the *Si'ulu–Si'ila* customary mechanism into Indonesia's formal agrarian dispute resolution framework, thereby promoting legal protection, certainty, and justice for indigenous land communities.

## 3. RESULTS AND DISCUSSION

### 3.1. Customary Mechanisms for Land Dispute Resolution in South Nias

Field research findings reveal that the indigenous community of South Nias has a strong traditional mechanism for resolving land disputes, which is deeply rooted in the culture of deliberation known as *Orahua* in the Nias language. *Orahua* is a customary assembly attended by community leaders and members to reach a consensus on a particular issue (Bu'ulolo, 2020). It serves as a forum for discussion, negotiation, and collective decision-making aimed at finding agreement, resolving problems, and determining responses to social or legal matters within the community (A. et al., 2024). The tradition of deliberation has long been the primary method of collective decision-making in Nias, even before the introduction of national legal systems. In the daily life of the South Nias community, *Orahua* functions as the main institution for discussing and deciding various communal issues, including land conflicts, customary violations, and village development affairs (Maswatu et al., 2025). It is convened during important communal occasions such as village meetings, funeral ceremonies, marriages, *fa'ulu* (social status elevation rituals), and *mambu ana'a* (customary celebration ceremonies). In this open forum, all matters concerning the village are discussed and resolved collectively. Traditionally, *Orahua* also functions as a customary court where decisions are made and sanctions are imposed on those who violate customary rules (Syahrul et al., 2024).

At the household or clan level, small customary deliberations are commonly held to address minor disputes. However, for more complex conflicts or those involving the interests of the entire village (*banua*), a grand assembly known as *Orahua Mbanua* is convened. *Orahua Mbanua* is usually held in the *ewali orahua*, a large open courtyard located in front of the residence of the highest-ranking noble of the village, known as the *Balö Si'ulu*. It is within this customary institution that all community leaders and villagers are invited to deliberate and resolve disputes collectively. The participants of the *Orahua* assembly reflect the hierarchical social structure of Nias society, consisting of *Si'ulu* (the noble class or supreme customary chiefs), *Si'ila* (prominent customary figures who serve as elders or advisors), and *Ono Mbanua* (all villagers as members of the deliberative assembly). The presence of these three components—customary leaders, elders, and community members—ensures that every decision made in the assembly carries full customary authority and is collectively supported by all layers of the indigenous society.

The process of resolving land disputes through *Orahua* begins with the summoning of the disputing parties by the customary leaders. The *Balö Si'ulu* or *Balö Si'ila* (the chairperson of the deliberation, depending on the customary hierarchy) opens the meeting by presenting the main issues of the dispute to be discussed. For instance, in a boundary conflict between two families, the *Si'ulu* will invite both parties, together with their relatives and any available witnesses, to attend the deliberation hall (*balai desa*). After the case is presented, each party is given the opportunity to express their views, followed by respected elders known as *sorahu*, who are valued for their wisdom and experience in customary matters. The discussion proceeds in the spirit of collective consensus, where various arguments, customary facts (such as land history, inheritance lineage, and recognized boundary markers), and moral advice are presented openly. Interestingly, during the *Orahua* process, speakers often employ figurative expressions, proverbs, and traditional metaphors, accompanied by distinctive intonation and rhetorical rhythm. The ability to use this figurative language is regarded as a form of verbal artistry that enhances the persuasiveness and moral strength of one's argument within the deliberation.

In understanding the challenges of the agrarian paradigm, there is a growing need to promote ideas of justice and legal certainty in land management (Setiabudhi et al., 2023). Therefore, the customary law approach, such as that embodied in the *Si'ulu–Si'ila* institution, should be positioned within a paradigm of equitable land governance. A *Si'ulu* serves a central role similar to that of a customary judge within this traditional institution. He does not act with absolute authority but rather leads the deliberation with wisdom until a final consensus-based decision is reached. The *Si'ulu* listens to all opinions, mediates disputes, and ultimately formulates a decision grounded in customary law and the living sense of justice within the community. In a typical

land dispute between two families, the *Si'ulu* acts as the customary adjudicator who presides over the deliberation and delivers the final decision based on customary norms. The decision may determine the legitimate boundary of the land, specify which party holds rightful ownership, or define the appropriate form of compensation if required. Customary solutions often embody a balanced or win-win approach, such as dividing the land equally, or if the land is granted to one party, the other may receive compensation in the form of alternative land or traditional assets such as livestock or gold, according to collective agreement. In the indigenous legal community, the principle of shared interest forms the philosophical foundation of social life and underpins every decision made through customary consensus. Once a decision has been sanctified before customary leaders and affirmed through ritual, it must be executed without delay. Any party who refuses to comply or dishonors the outcome will be subject to customary sanctions, which may include both moral condemnation and material penalties imposed by the community (Resmini & Sakban, 2019).

The function of the *Si'ila* in customary deliberations is primarily that of an advisor or companion to the *Si'ulu*. The *Si'ila* assists in clarifying matters that may have been overlooked, recalling past precedents, and ensuring that every decision remains within the boundaries of customary norms. Within the Nias customary structure, the *Si'ila* can be understood as an elder who serves as the "second figure" after the *Si'ulu*. In some areas, they are also known as *sanoro li*, meaning messenger or communicator. The involvement of the *Si'ila* ensures that the perspectives of the elder generation and the ancestral values passed down through tradition remain alive and embedded within the decisions of the customary assembly.

From the recorded minutes of customary assemblies (*fondrakö*), it is evident that the principle of consensus is highly emphasized. In Nias customary law, *fondrakö* represents the formal affirmation of a customary decision collectively agreed upon through a prior *Orahua* deliberation. It is regarded as sacred and binding upon all members of the customary community, preserved either orally or in written form when recorded. The process of forming a *fondrakö* reflects the adaptability of Nias customary law to changing social circumstances, as long as such adjustments are collectively agreed upon by the community (Zebua, 2024). The decisions embodied in *fondrakö* not only bind the disputing parties but also serve as moral and social norms respected by the entire community. Any violation of these decisions is subject to firm customary sanctions, which may take the form of material penalties or social and moral punishment, such as public shaming or exclusion, in accordance with the deliberative consensus. This aligns with the view of Zaluchu (2025), who observes that the cultural strength of Nias is binding across generations as a legacy of values that sustain social cohesion and communal obedience (Zaluchu, 2025). Consequently, the level of compliance with customary decisions is very high, supported by strong social control and the community's belief in the legitimacy and authority of customary sanctions.

As an illustration, one case of communal land dispute in South Nias that was resolved through customary mechanisms involved a boundary conflict between two clans in a village. Based on interviews with the *Si'ulu* and *Si'ila*, the dispute initially created tension and nearly escalated into violence. However, through the initiative of the local *Si'ulu*, an *Orahua* deliberation was convened to ease the tension. During the assembly, several elderly witnesses were invited who recalled the historical boundary based on an agreement made by the ancestors. It was also found that a small river, which had long served as a natural boundary recognized by both parties, had shifted its course due to changes in water flow. Eventually, consensus was reached to restore the boundary according to the original river course, and both parties accepted the decision. The ruling was then formalized in a *fondrakö* with an accompanying customary oath and the *fangowalu* ritual, a communal meal symbolizing reconciliation and peace. The case was never brought before the state court, as all parties felt satisfied that justice had been achieved according to the customary law and traditions they uphold.

It can be concluded that the customary mechanism of South Nias in resolving land disputes emphasizes consensus-based deliberation, community participation, and moral leadership by traditional authorities. Values such as solidarity, honesty, respect for ancestors, and social harmony are upheld throughout the entire decision-making process. This approach aligns with the fundamental principles of alternative dispute resolution that prioritize peaceful settlement and the preservation of social relationships. The strength of this customary model lies in its ability to de-escalate conflicts swiftly before they expand, owing to the deep social and cultural bonds among the parties involved. Communities also tend to accept customary decisions as fair and legitimate compared to court rulings that are often perceived as distant or less equitable. Nevertheless, challenges arise when customary decisions interact with the national legal system, particularly regarding formal recognition of customary agreements or when external actors such as investors or government authorities are involved in the dispute. This intersection highlights the core issue of legal pluralism, which will be examined in the subsequent discussion.

### 3.2. Formation of the *Si'ulu–Si'ila* Traditional Leadership Institution

The *Si'ulu–Si'ila* institution represents a traditional leadership structure within the indigenous community of South Nias that has evolved from its local social and cultural system. Historically, the Nias people, known as *ononiha*, adhere to a patrilineal kinship system and maintain a clearly defined social hierarchy. The Nias ethnic group (*Ono Niha*) is a community deeply rooted in a megalithic culture, which is closely associated with the veneration of ancestors (Hia & Zega, 2021): In southern Nias, the traditional social structure is divided into three main strata: the noble class (*Si'ulu*), the intellectual or advisory class (*Si'ila*), and the commoners (*sato* or *ono mbanua*). The *Si'ulu* are the hereditary nobles who claim direct descent from the ancestral founders of the village and occupy the highest position in the customary hierarchy (Hocking, 2015):



Figure 1. The Leadership Setting of *Si'ulu-Si'ila* within the Indigenous Community

In addition to the *Si'ulu*, there exists the *Si'ila* group, who serve as the learned advisors, counselors, and communicators on behalf of the *Si'ulu*. In other words, the *Si'ila* represent the intellectual stratum of customary society, often described as the younger elders who bridge the communication between the senior nobles (*Si'ulu*) and the broader community. The role of *Si'ila* is usually undertaken by younger customary figures who have undergone initiation rituals, such as *owasa*, which symbolize a change in social status and mark the beginning of their service as junior customary elders. The coexistence of these two groups of leaders—the *Si'ulu* as the supreme customary authorities and the *Si'ila* as their advisors and companions—has long been a distinctive feature of Nias's social organization and continues to be highly respected in South Nias today.

The figure above illustrates the *Si'ulu* in a communal setting among the people of South Nias. The *Si'ulu*, seated in a central position wearing traditional ceremonial attire and regalia, is surrounded by members of the community. This position is not merely symbolic of leadership but also affirms the *Si'ulu's* social and spiritual legitimacy as the highest authority within the customary order. The upper stratum of society is composed of the *Si'ulu*, who alone possess the right and ability to recite the long genealogical lineage that serves as the principal source of their legitimacy (Marschall, 2002). The presence of the community encircling the leader reflects that the relationship between customary leaders and the people is collective and participatory, grounded in mutual respect for traditional social hierarchy and customary values that maintain harmony within the community.

The tripartite structure of *Si'ulu-Si'ila-Sato* reflects a balanced system of governance where authority, wisdom, and participation coexist within a unified customary framework. While *Si'ulu* embodies hereditary sovereignty and ritual legitimacy, *Si'ila* ensures intellectual and moral mediation, and *Sato* maintains communal solidarity and social continuity. This triadic hierarchy sustains the moral order of Nias society and reinforces the collective adherence to *fondrakö* as the ultimate expression of customary justice.

The formation of customary leadership in South Nias is largely determined by one's ability to organize traditional feasts and to demonstrate generosity and authority through such ceremonies. Although the title of *Si'ulu* is obtained by birth as an ascribed status, it still requires confirmation through a series of elaborate and costly customary rituals. A nobleman who wishes to be fully recognized as the head of the customary institution must hold *owasa* feasts in accordance with tradition. The person who organizes the largest and most magnificent feast, often marked by the highest number of sacrificial pigs, is appointed as the *Balö Si'ulu* or chief of the village. In theory, each generation may witness competition among the *Si'ulu* for the position of customary leader. In practice, however, the leadership title is usually inherited within the same lineage, commonly passed to the eldest son of the incumbent, provided that he has fulfilled the customary requirement of hosting the prescribed feasts. This tradition explains why the *Si'ulu-Si'ila* institution is deeply rooted in the ceremonial culture of feasting and the sanctity of sacrificial offerings, which together strengthen the social and spiritual legitimacy of leadership in the eyes of the community.

Table 1. Structure of Traditional Leadership in the *Si'ulu-Si'ila* Institution of South-Nias

Social Strata	Status and Origin	Main Functions and Roles	Symbols of Legitimacy and Social Authority	Position in Customary Law
<i>Si'ulu</i> (Nobility/ Leader/ King)	The noble group claiming to be direct descendants of the village's founding ancestors displays generosity and wealth.	The highest traditional leader ( <i>balö Si'ulu</i> ); the highest authority in customary law, land distribution, and conflict resolution. Leads the <i>fondrakö</i> (customary court).	Leads the <i>Owasa</i> , wears royal jewelry, is able to recite the genealogy of ancestors, and owns heirloom artifacts.	At the top of the hierarchy as the highest decision maker and guardian of ancestral law.
<i>Si'ila</i> (Class of Scholars)	A status obtained through achievement and wisdom, often acquired by young nobles or educated individuals trained under the guidance of <i>Si'ulu</i> elders. This status is elevated after participating in initiation parties or rituals.	Acts as an advisor, communicator between <i>Si'ulu</i> and indigenous communities. Provides interpretation of customary law and moral guidance during disputes.	Recognition in <i>owasa</i> ceremonies, respected oratory skills, and community support as intellectuals.	The middle class that functions as a "bridge" between the <i>Si'ulu</i> and the <i>ono mbanua</i> .
<i>Sato/ Ono Mbanua</i> (Common People/ Local community)	Members of the common community who make up the majority of the population. They can rise in rank through service, bravery, or grand celebrations.	Supporters and participants in traditional ceremonies. Uphold communal duties, enforce decisions, and provide social legitimacy for the leadership of <i>Si'ulu - Si'ila</i> .	Participation in the implementation of rituals, collective work ( <i>fangowalu</i> ), and contributions to celebrations.	Followers and providers of moral and material support for traditional government.

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### 3.3. Strengthening and Affirmation of the *Si-Ulu-Si-Ila* Customary Institution

The existence and role of customary institutions such as *Si'ulu-Si'ila* receive normative recognition under Indonesian constitutional law. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that the state recognizes and respects the unity of indigenous communities and their traditional rights, as long as these remain alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. The indigenous legal community, as a social unit bound to its ancestral land, maintains a deeply spiritual and sacred relationship with it—one that reflects a religious and mystical worldview (Dewi et al., 2020). This recognition is not merely declarative but also entails an obligation for the state to protect the rights of indigenous peoples, including their communal land rights (*tanah ulayat*), local wisdom, and customary social and legal systems (Hidayat, 2013).

In South Nias Regency, the *Si'ulu-Si'ila* institution represents a traditional leadership structure that is not only socially respected but also plays a crucial role in enforcing customary norms and maintaining social order. The *Si'ulu-Si'ila* institution has demonstrated remarkable endurance and continues to exist robustly within society, even in the modern era. Several key factors explain the resilience and strengthening of this customary institution, including:

1. The *Si'ulu-Si'ila* institution continues to possess a high degree of social and cultural legitimacy within the community.
2. The *Si'ulu-Si'ila* maintains a structured and functional institutional framework, which enables it to perform its roles effectively in leadership, mediation, and customary governance.
3. Its close connection with the community and its emphasis on restorative justice principles ensure that the customary institution remains relevant and essential in maintaining harmony and resolving disputes.
4. From a policy perspective, there have been formal efforts by the government, particularly in the post-reform era, to strengthen customary institutions as part of broader initiatives for local empowerment and recognition of indigenous governance systems.

At present, the *Si'ulu-Si'ila* customary institution has experienced strengthening from both within the community and through the national policy framework. Internally, the customary values they uphold—such as deliberation (*musyawarah*), consensus (*fondrakö*), and collective decision-making—continue to be revitalized as the foundation for effective dispute resolution at the local level. Externally, various legal instruments have provided institutional space for their continued existence and participation. These include constitutional recognition, Law No. 3 of 2024 concerning the Second Amendment to Law No. 6 of 2014 on Villages, Minister of Home Affairs Regulation No. 18 of 2018 on Village Community Institutions and Customary Institutions, as well as Nias Regency Regulation No. 25 of 2019 on Village Community Institutions and Customary Institutions, and West Nias Regency Regulation No. 2 of 2022 on Village Community Institutions and Customary Institutions. Together, these legal frameworks affirm the role of *Si'ulu-Si'ila* as an integral part of indigenous governance and as a partner in sustaining social harmony within the modern village administration system.

In South Nias, one of the most deeply rooted customary cycles is the resolution of all disputes through customary institutions, culminating in a final decision known as *fondrakö*. The *fondrakö* serves as the foundation for guiding social life, managing conflicts, and making decisions on communal matters. The pronouncement of a *fondrakö* is usually conducted in significant locations such as the royal house or the traditional deliberation hall known as *Arö Gosali* (Telaumbanua et al., 2023). The affirmation of *fondrakö* in South Nias society is carried out through a customary deliberation forum called *Orahua*. This assembly is typically held in a special place such as the *omo hada* (the large traditional house) or the *Arö Gosali* (the customary council hall) owned by the *Si'ulu*. The royal family or *Si'ulu* resides in the largest house, called *omo sebua* (Atmanti & Uekita, 2024). During the *fondrakö*

ceremony, the *Si'ulu* presides as the leader of the ritual, assisted by the *Si'ila* and other customary elders. All members of the village, from adults to children, gather in the courtyard of the traditional house to witness and participate in the enactment of customary law (Zaluchu, 2023).

The figure below depicts the implementation of a *Fondrakö* ceremony on Nias Island. It shows a large traditional building that functions as the *Arö Gosali*, or customary deliberation hall, where traditional leaders, nobles, and community members gather. The wide staircase leading to the traditional house is filled with people, symbolizing that the *Fondrakö* is not merely the affair of the customary elite but also involves the collective participation of the entire community. The presence of many participants reflects the sacred nature of the *Fondrakö* as the highest source of customary law and the foundation for resolving communal matters. The *Fondrakö*, affirmed by the *Si'ulu–Si'ila* leadership, is not only a cultural legacy but also a practical instrument for dispute resolution within the South Nias community. In the absence of formal judicial institutions in earlier times, the customary deliberation forum based on the *Fondrakö* served as the primary means for adjudicating various cases, ranging from interpersonal disagreements and moral violations to broader communal conflicts such as land disputes.



Figure 1. The Setting of a *Fondrakö* Ceremony

Ultimately, the affirmation of the *fondrakö* by the *Si'ulu–Si'ila* represents the living and enduring supremacy of Nias customary law. The *Si'ulu–Si'ila* enforce the *fondrakö* not through bureaucratic apparatus, but through the authority of tradition, sacred oaths, and the collective support of the community (Sunarti et al., 2024). This unique combination allows the *fondrakö* to endure through changing times while remaining flexible enough to adapt to new contexts without losing its essence of justice. As noted by scholars, the continued existence of *Orahua* and *fondrakö* in South Nias is sustained by the persistence of a stratified social structure (*Si'ulu–Si'ila*) and the preservation of customary facilities such as the *batu ewali* (the stone courtyard used for deliberation), which enable these traditions to be continually practiced. As long as the custodians of custom, the *Si'ulu–Si'ila*, continue to transmit their inherited knowledge and responsibilities to future generations, the *fondrakö* will remain a steadfast local institution guiding social conduct and resolving disputes with wisdom. Moreover, the presence of the *fondrakö* illustrates that a genuine form of deliberative democracy has long existed within Nias culture—one that prioritizes dialogue, consensus, and communal interests, underpinned by the moral legitimacy of the customary elders. Through the affirmation of the *Si'ulu–Si'ila*, the *fondrakö* continues to stand as a principal pillar ensuring justice, order, and social harmony for the people of South Nias across generations.

### 3.4. Challenges in Integrating Customary Law and National Law

Although customary mechanisms in South Nias are internally effective, externally there remains a gap between customary rulings and their recognition under state law. The national legal framework has yet to provide an optimal space for decisions made by customary institutions to be recognized as equivalent to those issued by formal courts. In fact, the recognition of *hak ulayat*—the communal land rights of indigenous communities—within the national agrarian legal system is an urgent necessity, directly related to social justice, environmental sustainability, and legal certainty. *Hak ulayat* reflects the deep and spiritual relationship between indigenous communities and the land they have managed for generations, serving as the foundation of their identity, economy, and culture (Lubis et al., 2025). In many cases of customary land disputes, including those in Nias, indigenous communities face a dilemma: whether to rely solely on customary decisions that are socially binding but lack formal legal recognition, or to bring the case to the state court in pursuit of legally binding certainty, which may come at the expense of local values and customary harmony.

The agrarian legal framework in Indonesia formally recognizes *hak ulayat* (communal land rights). However, the Indonesian government has not yet been able to fully realize this recognition in practice, even though the acknowledgment of *hak ulayat* is essential for the fulfillment of indigenous peoples' fundamental rights (Sukirno & Mahfud, 2022). One of the key issues lies in the weak legal recognition of indigenous communities (*masyarakat hukum adat*) as legal subjects possessing specific and distinct rights. Consequently, violations of indigenous rights, particularly *hak ulayat*, have become widespread and are often perpetuated by state authorities (Ardiansyah & Izzatusholekha, 2024). Although the Basic Agrarian Law of 1960 (*Undang-Undang Pokok Agraria*, or UUPA) recognizes the existence of *hak ulayat*—stating that such rights apply “as long as they still exist in reality” and do not contradict national interests—the law does not provide clear criteria for identifying what constitutes “still exists in reality” or the mechanisms for resolving disputes related to *ulayat* land. Only recently has the government begun to regulate these matters more explicitly through Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 14 of 2024 on the Administration of Customary Land Rights and Communal Land Registration, and Regulation No. 21 of 2020 on the Handling and Settlement of Land Disputes. These new frameworks represent incremental progress toward formal recognition of communal land governance and customary dispute resolution within Indonesia's agrarian system.

For instance, Ministerial Regulation No. 21 of 2020 defines “land cases” to include disputes, conflicts, and land-related matters, and introduces a mediation stage at the land office (through *Gelar Perkara* and task forces) prior to court proceedings. However, the implementation of this regulation in practice still requires time and broader institutional space. In South Nias, for example, public dissemination regarding the registration of *ulayat* land under the most recent regulation—Ministerial Regulation of Agrarian Affairs and Spatial Planning No. 14 of 2024—remains very limited. Several indigenous communities do not yet have a clearly defined legal status as *Masyarakat Hukum Adat* (customary law communities) formally recognized through regional regulations (*Perda*), which makes it difficult for them to access the available legal channels. In reality, indigenous legal communities play a crucial role in environmental management and sustainable development, as they possess traditional knowledge and long-standing ecological practices. Therefore, the state must recognize and fully support their existence, culture, and interests, while ensuring opportunities for active participation in achieving sustainable development goals (Matuankotta, 2019).

On the other hand, when *ulayat* land disputes are brought before the court, the outcomes are often unsatisfactory for indigenous communities. Peterson et al., in their study on land conflict litigation in Indonesia, found that the judiciary tends to adopt a highly formalistic approach when adjudicating agrarian disputes, particularly those involving *masyarakat hukum adat* (indigenous legal communities) (Peterson et al., 2025). In fact, the elucidation of Article 40 of Law No. 2 of 2012 on Land Procurement for Public Interest explicitly states that indigenous legal communities are among those entitled to compensation (Ramadhani, 2019). Nevertheless, judges rarely address the substantive aspects of the disputes—such as the historical basis of *hak ulayat* or the sense of justice prevailing within indigenous communities—and instead focus on procedural issues like legal standing, ownership certificates, and filing deadlines. Due to this rigid procedural approach, many claims filed by indigenous groups are dismissed on formal grounds without ever receiving a decision that examines the substance of their customary rights. In other words, the court system often fails to deliver substantive justice for indigenous communities in land disputes. This is not merely a consequence of inconsistencies within agrarian law but stems from the epistemic gap between the logic of customary law and the logic of state law. Judges are bound by written statutes that may not yet regulate the detailed recognition of *hak ulayat*, while indigenous communities argue from a moral and historical perspective that is not always documented in written form. Scholars have described this condition as a form of “adjudication without substantive jurisprudence,” in which court decisions remain procedural and fail to contribute to the development of *hak ulayat* jurisprudence within Indonesia's judicial system (Peterson et al., 2025).

A concrete example can be seen in the Silambo Airport dispute (as discussed in the introduction). When part of the community decided to bring a lawsuit against the government, the district court dismissed the claim on administrative grounds, citing unclear identification of the plaintiff and the expiration of the filing period. Although, under customary law, the community believed that their rights were legitimate, they failed to prove ownership under positive law because they lacked land certificates and were instead deemed to have occupied state land. This case illustrates the jurisdictional gap where a customary ruling recognizes the land as *tanah ulayat* (communal land), while the state decision categorizes it as state-owned land.

Several key issues have been identified concerning the integration of these two legal systems:

1. Lack of formal linkage between customary institutions and the state judicial system.

Decisions reached through customary deliberations (*fondrakö*) have no formal mechanism for registration or state recognition. Unlike the Religious Courts that are institutionally recognized to adjudicate Islamic inheritance cases, the Nias customary forum lacks equivalent legal status. Consequently, customary decisions stand independently. If both parties accept the outcome, the matter is socially resolved but remains unrecorded within the national legal framework (for instance, it does not alter land titles at the National Land Agency). However, if one party challenges the result in court, the customary institution is often deemed non-existent in the eyes of judges, perceived merely as an informal mediation process.

2. Evidentiary and documentation challenges.

In district courts, evidentiary procedures prioritize written documentation such as certificates or notarial deeds. However, *hak ulayat* is rarely recorded in written form. Customary proofs of land ownership include genealogies, oral histories of inheritance, continuous land use, or testimonies from village elders. Such evidence carries limited legal weight, often being considered *testimonium de auditu* (hearsay) unless presented as expert or witness statements. This evidentiary imbalance explains why indigenous communities frequently lose agrarian disputes due to the heavy burden of proof.

3. Limited implementation of culturally sensitive alternative dispute resolution (ADR).

Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution allows mediation or arbitration for civil cases, including land disputes. Supreme Court Regulation (PERMA) No. 1 of 2016 even mandates mediation at the beginning of civil litigation. However, this mediation process is typically led by certified mediators—often lawyers or trained professionals—whose methods are formal and seldom involve customary leaders. In *ulayat* land disputes, ideally the mediator should involve *Si'ulu* or *Si'ila*, who hold legitimacy within the community and can bridge communication through local wisdom. The rigid mediation timeframe, where failure to reach agreement within 30 days renders mediation unsuccessful, disregards the fact that customary mediation often requires longer engagement to build trust and consensus. The absence of culturally grounded mediation results in the loss of opportunities to settle disputes outside the court through indigenous approaches.

4. Overlapping authority.

According to the theory of jurisdiction, authority over a specific legal domain should be clearly defined. In *ulayat* land disputes, dual authority exists: the community recognizes the *Si'ulu* as the legitimate adjudicator, while the state recognizes only the formal

judiciary as competent to issue binding decisions. This duality creates a situation of parallel dispute resolution pathways, where a losing party in customary proceedings may turn to state courts, and vice versa. Such overlapping authority undermines finality, potentially reigniting conflicts and leading to prolonged disputes.

Given the aforementioned challenges, efforts to integrate and harmonize customary mechanisms with national law are essential. The objective is to ensure that *ulayat* land disputes can be fully resolved with recognition from both sides—customary decisions being socially accepted and simultaneously acknowledged by the state.

Based on the research findings and expert insights, several policy recommendations can be considered: First, Legal recognition of customary decisions through regional or special regulations. Local governments in regions with strong customary communities, such as Nias, should issue regional regulations (*Perda*) that recognize indigenous legal communities and formalize customary mechanisms. For instance, certain customary deliberation outcomes could be recorded as *acts of reconciliation* (*akta perdamaian*) registered with the district court or the land office. This would grant customary decisions formal legal status without diminishing their substance. Such an approach aligns with expert recommendations emphasizing the need to integrate customary institutions into binding legal frameworks (Haning, 2025). Samuel Haning's study highlights the urgency of policy reform focusing on the legal recognition of *hak ulayat*, institutional integration of customary systems within the existing framework, and the development of advanced dispute resolution mechanisms to bridge the current disparities in legal pluralism. Second, Enhancing the role of customary mediators in alternative dispute resolution. Mediators play a neutral, independent, and professional role in helping disputing parties reach voluntary and non-binding agreements (Budiana et al., 2025). In land disputes involving indigenous communities, local customary leaders should be included as mediators. A hybrid model combining certified mediators with customary leaders is worth exploring and implementing. Such collaboration ensures that mediation complies with Supreme Court Regulation (*PERMA*) No. 1 of 2016 while also accommodating cultural approaches. Customary mediators can articulate local concepts and traditions that may be unfamiliar to state officials, enabling more creative and mutually acceptable solutions.

Third, Strengthening documentation and registration of *ulayat* land. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 14 of 2024 concerning the Implementation of Land Administration and Registration of Customary Land Rights of Indigenous Peoples actually regulates the registration of customary land through the issuance of certificates. The dissemination and implementation of this regulation should be accelerated in South Nias. If core *ulayat* lands can be registered in the name of indigenous communities (through legally recognized customary villages or institutions), potential disputes with external parties can be reduced. Indigenous communities would also gain stronger legal evidence to prevent unilateral claims by investors or the government. The absence of clear registration has long made *ulayat* lands vulnerable to takeover, weakening the position of indigenous peoples (Haning, 2025). Registration would at least provide state-recognized documentary proof of ownership. Fourth, Legal education and awareness for both sides. Law enforcement officers need greater understanding of the values and evidentiary systems that operate within customary law, while indigenous communities must be informed about formal legal procedures to avoid procedural pitfalls in litigation. This mutual understanding could include appointing experts in legal anthropology or customary law as expert witnesses in land dispute cases to provide judges with the necessary cultural and contextual interpretation.

The foregoing discussion implies that integration does not mean eliminating customary law, but rather harmonizing the coexistence of both systems. As highlighted in the study by Ismail Maswatu et al., effective integration requires the harmonization of customary norms with legislative processes, active participation of indigenous communities in dispute resolution mechanisms, and the strengthening of institutional capacities to recognize and register customary territories (Maswatu et al., 2025). A legal framework that accommodates pluralism will promote social justice while ensuring the sustainable management of land based on indigenous traditions.

### 3.5. Lessons from New Zealand and Canada

To gain a broader perspective, this study draws comparative insights from approaches to indigenous land dispute resolution in New Zealand and Canada. Both countries have indigenous populations that continue to preserve their customary traditions—namely the Māori in New Zealand and the various First Nations, Inuit, and Métis in Canada—and have developed their own legal mechanisms for addressing indigenous land rights. Although their historical and constitutional contexts differ from that of Indonesia, valuable lessons can be derived within the framework of legal pluralism.

New Zealand. New Zealand has long recognized a dual legal system concerning land, particularly following the signing of the *Treaty of Waitangi* in 1840 between the British Crown and Māori chiefs. The Treaty of Waitangi, concluded on 6 February 1840 at Waitangi in what is now the North Island of New Zealand, marked the formal assertion of British sovereignty over the territory (Wallace, 2025). To address historical grievances and violations of the treaty, the *Waitangi Tribunal* was established in 1975 as a permanent commission of inquiry to investigate complaints brought by Māori communities regarding breaches of the treaty's principles by the government (Waitangi Tribunal, 2019). The Tribunal may recommend remedies including land restitution or compensation to affected *iwi* (Māori tribes). Studies indicate that Māori individuals who maintain clear genealogical affiliation with their *iwi* tend to experience better economic outcomes, higher levels of education, and lower levels of discrimination (Greaves et al., 2023). Although the Tribunal's recommendations are not always legally binding, its existence provides an important institutional platform for indigenous voices and serves as a restorative avenue for addressing historical injustices in land matters.

In addressing Māori land disputes in everyday contexts—such as inheritance, sale, or the management of communal Māori land—New Zealand has established a specialized court known as *Te Kooti Whenua Māori* or the Māori Land Court. This institution, which originated in the late nineteenth century and operates under the most recent *Te Ture Whenua Māori Act 1993*, adjudicates all matters related to Māori freehold land, namely customary land held collectively by Māori families. The Māori Land Court building itself has become a symbolic site reflecting the contested meanings of cultural heritage and ownership (Schmidt, 2018). Interestingly, through its legal reforms, the Māori Land Court has evolved beyond its adjudicative function to also facilitate mediation processes grounded in *tikanga* (Māori customary values and practices). The 2016 amendment to the *Te Ture Whenua Māori Act* formally incorporated free mediation services focused on resolving disputes in ways consistent with Māori principles of community harmony and restorative justice.

In practice, before a Māori land dispute proceeds to trial, the judge may offer the parties a voluntary and confidential mediation process facilitated by an independent mediator. Together with the mediator, the parties agree on the *tikanga*—the customary Māori protocols—that will guide the mediation, such as opening with a *karakia* (prayer) or sitting in a traditional circular formation. This ensures that the dispute resolution process aligns with local wisdom, creating an atmosphere in which the parties feel comfortable expressing their concerns. If the mediation reaches an agreement, the outcome can be ratified by the Māori Land

Court as a court order, thereby granting it binding legal force. If mediation fails, the case proceeds to trial, and the judge delivers a final decision. Nonetheless, the attempt at peaceful resolution through a culturally grounded process is always undertaken first (Community Law, 2025).

The key lesson from New Zealand is that the country has successfully established a parallel judicial structure that respects customary law in land-related disputes. Through the Māori Land Court, indigenous peoples are provided with a legal avenue that both understands their traditions and operates with formal judicial authority. Dispute resolution has thus become more inclusive, as both *tikanga*-based mediation and judicial decisions typically take into account *whakapapa* (genealogy, which helps shape institutional ethics and address broader challenges) and the Māori spiritual connection to land. For Indonesia, this model offers valuable inspiration for developing a form of customary land adjudication or, at the very least, legally recognized forums for customary mediation. One can imagine, for example, the establishment of *Customary Land Courts* at the district or municipal level, composed of professional judges alongside local customary leaders. Such an institution could handle disputes like those in Nias more effectively and in a manner trusted by all parties involved.

Canada. Canada adopts a distinct framework in which the rights of Indigenous peoples are constitutionally recognized and further developed through jurisprudence. Indigenous land rights in Canada are protected primarily through two mechanisms: customary rights and treaty rights (Cheng & Ma, 2016). Section 35 of the *Constitution Act 1982* recognizes and affirms the existing Aboriginal and treaty rights of Indigenous peoples (BC Treaty Commission, 2023). This means that traditional land rights of Indigenous nations are not extinguished by the imposition of colonial law unless such rights have been explicitly surrendered through treaties. A central concept within this framework is *Aboriginal Title*, which refers to the collective ownership rights of Indigenous communities over their traditional territories. The Supreme Court of Canada has defined the scope and nature of *Aboriginal Title* through a series of landmark cases. For example, in *Delgamuukw v. British Columbia* (1997), the Court held that *Aboriginal Title* constitutes ownership of the land itself—rather than a mere right of use or occupation—and that it is *sui generis*, meaning unique and distinct from ordinary property rights (BC Treaty Commission, 2023). The decision also imposed an obligation on the government to engage in meaningful consultation with First Nations holding *Aboriginal Title*, and to provide fair compensation if the land is used for public purposes. In her analysis, Christina Turner criticizes the Canadian Supreme Court for recognizing customary law through a colonial legal lens, whereby Indigenous law is acknowledged only insofar as it is framed within the parameters of the common law (Turner, 2020). Later, in *Tsilhqot'in Nation v. British Columbia* (2014), the Court made a historic ruling by directly granting *Aboriginal Title* to the Tsilhqot'in Nation (MacLaren et al., 2011): affirming that the title provides full authority for Indigenous communities to determine land use and manage their territories (Gunn & O'Neil, 2021). Thus, the position of Indigenous customary law in Canada is comparatively strong, as it enjoys constitutional recognition and operates alongside the national legal system. This parallel acknowledgment of Indigenous and state law demonstrates a mature form of legal pluralism, where Indigenous land governance functions not merely as cultural heritage but as a legitimate and enforceable part of Canada's constitutional order.

In terms of dispute resolution, Canada primarily employs negotiation and treaty-making between the government and Indigenous communities. Since the 1970s, the federal government has pursued a landmark policy shift following the *Calder v. British Columbia (Attorney General)* (1973) case, in which the Supreme Court's decision convinced the federal government of the need to negotiate modern treaties with Indigenous peoples (Rodon, 2018). Through these negotiations, numerous Indigenous communities have entered into agreements that define land distribution, compensation, and self-governance arrangements. In addition, Canada established specialized tribunals to adjudicate Indigenous claims related to treaty violations or land mismanagement by the government. These tribunals function in a manner similar to arbitration, with binding authority to issue compensation awards, often in monetary form. This system underscores Canada's commitment to resolving Indigenous land disputes through dialogue and negotiated settlement rather than purely adversarial litigation, while maintaining the constitutional protection of *Aboriginal* and treaty rights.

The key lesson from Canada is that the country recognizes legal pluralism by respecting the existence of pre-colonial Indigenous laws as an integral part of the national legal system. *Aboriginal Title* is acknowledged as a unique collective right derived from Indigenous occupation and customary legal systems themselves, rather than a grant from the state (Hanson, 2009). This concept is analogous to *hak ulayat* in Indonesia, but in Canada it has been firmly affirmed by the Supreme Court, thereby establishing binding jurisprudence. With this strong recognition, dispute resolution becomes more open and balanced through equal dialogue between the government and Indigenous communities. Instead of Indigenous peoples constantly resorting to litigation, many land-related issues are resolved politically through negotiated treaties, as their bargaining position is constitutionally protected. For Indonesia, the Canadian model underscores the importance of explicit constitutional or statutory recognition of Indigenous rights. Although Article 18B paragraph (2) of the 1945 Constitution already acknowledges the existence of Indigenous communities, it does not specifically regulate *hak ulayat*. Therefore, a stronger legal foundation—perhaps through a dedicated law or a revision of the Basic Agrarian Law (*UUPA*)—is needed to affirm *hak ulayat* as a legally protected right. Such recognition would ensure that the resolution of disputes over Indigenous lands is not merely a matter of government policy, but a constitutional and legal obligation.

Furthermore, Canada demonstrates the critical role of judicial engagement in establishing the principles of legal pluralism. Through a series of landmark cases—such as *Calder*, *Delgamuukw*, and *Tsilhqot'in*—Canadian courts have developed clear legal standards. For instance, the recognition of *Aboriginal Title* requires proof of exclusive historical occupation over the claimed territory. Such judicial guidance provides clarity in dispute resolution by narrowing the scope of legal interpretation. In Indonesia, if the Supreme Court (*Mahkamah Agung*) or the Constitutional Court (*Mahkamah Konstitusi*) were to issue a landmark ruling elaborating the definition and criteria of *hak ulayat*—for example, the qualifications of indigenous communities, the boundaries of communal lands, and the scope of rights—it would greatly assist in harmonizing legal practice. Some Constitutional Court rulings, such as Decision No. 35/PUU-X/2012 on customary forests, have already moved in this direction by affirming that “customary forests are not state forests.” This principle closely parallels Canada's recognition that “Indigenous lands are not state lands.” Moving forward, this principle should be extended to encompass non-forest *ulayat* lands as well.

In summary, both New Zealand and Canada offer valuable models for integrating customary law within modern legal systems. New Zealand emphasizes specialized adjudicative bodies and *tikanga*-based mediation, while Canada advances constitutional recognition and formal negotiation mechanisms. Both approaches affirm that empowering customary law in land dispute resolution is not a step backward but a progressive pathway toward inclusive justice. Customary law can coexist harmoniously with national law, provided it is afforded proper institutional space and legal legitimacy.

## 4. CONCLUSIONS

This study demonstrates that the *Si'ulu–Si'ila* customary institution in South Nias represents a living legal system that integrates authority, morality, and collective participation in land dispute resolution. The *Orahua* deliberation process and the decision-making ritual known as *fondrakö* embody the essence of *Volksggeist*—the moral consciousness and social order of the community—where every decision is legitimized through collective consensus and mutual respect. The enforcement of such decisions through both material and moral sanctions ensures compliance, stability, and enduring social harmony. Empirically, the *Si'ulu–Si'ila* mechanism provides an effective model of restorative and participatory justice at the local level, preventing prolonged conflicts and strengthening social cohesion. However, despite its strong internal legitimacy, the absence of formal recognition within Indonesia's agrarian legal framework limits the enforceability of customary rulings in the national legal system. The gap between customary and state law—particularly in areas of registration, evidence, and jurisdiction—poses challenges to achieving legal certainty and protecting communal land rights. The comparative analysis of New Zealand's Māori Land Court and Canada's Aboriginal Title jurisprudence reveals that institutional recognition of customary legal mechanisms can enhance justice and community engagement without undermining state sovereignty. Therefore, integrating *Si'ulu–Si'ila* into Indonesia's broader land dispute resolution system—through regional regulations, hybrid mediation forums, or localized customary courts—could strengthen legal pluralism and foster coexistence between national law and customary values. Ultimately, this study affirms that empowering customary institutions such as *Si'ulu–Si'ila* is not a regression to the past, but rather a path toward a culturally rooted, just, and sustainable legal order for the governance of indigenous lands in Indonesia.

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