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National Law and Minangkabau Customary Law Disparity in Ulayat Land Disputes in the Bidar Alam Area, West Sumatra

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Abstract: This study critically examines the structural conflict between Indonesia's positivist legal framework and indigenous ulayat land tenure, using the Bidar Alam case as a focal point. The criminalization of customary land defenders and the continued exploitation of ancestral land by corporations expose the state's failure to operationalize Article 18B(2) of the 1945 Constitution. Despite formal recognition, customary law remains subordinated through weak legal pluralism, bureaucratic inertia, and epistemological misrecognition. Utilizing a normative juridical method and a conceptual framework rooted in Van Vollenhoven's adatrecht, John Griffiths's legal pluralism, and Romli Atmasasmita's Integrative Legal Theory, this study interrogates the systemic marginalization of masyarakat adat. It advocates for a radical restructuring of Indonesia's legal architecture beyond symbolic recognition toward substantive justice through dialogical legality. The goal is to harmonize state and customary law by institutionalizing adat practices, strengthening local governance, and embedding indigenous sovereignty within legal mechanisms. This integrative approach is essential for achieving plural, inclusive, and post-colonial agrarian justice.

Keywords: legal disparity, ulayat land, Minangkabau customary law, UUPA, agrarian conflict

Abstrak: Studi ini secara kritis mengkaji konflik struktural antara kerangka hukum positivis Indonesia dan sistem kepemilikan tanah adat ulayat, dengan menggunakan kasus Bidar Alam sebagai titik fokus. Kriminalisasi para pembela tanah adat dan eksploitasi terus-menerus atas tanah leluhur oleh korporasi mengungkap kegagalan negara dalam mengimplementasikan Pasal 18B(2) Undang-Undang Dasar 1945. Meskipun diakui secara formal, hukum adat tetap berada di bawah kendali melalui pluralisme hukum yang lemah, inersia birokrasi, dan pengakuan epistemologis yang keliru. Dengan menggunakan metode yuridis normatif dan kerangka konseptual yang berakar pada adatrecht Van Vollenhoven, pluralisme hukum John Griffiths, dan Teori Hukum Integratif Romli Atmasasmita, studi ini mengkritisi marginalisasi sistemik masyarakat adat. Penelitian ini mengadvokasi restrukturisasi radikal arsitektur hukum Indonesia melampaui pengakuan simbolis menuju keadilan substansial melalui legalitas dialogis. Tujuannya adalah mengharmonisasikan hukum negara dan hukum adat dengan menginstitusionalisasikan praktik adat, memperkuat tata kelola lokal, dan mengintegrasikan

kedaulatan asli ke dalam mekanisme hukum. Pendekatan integratif ini esensial untuk mencapai keadilan agraria yang plural, inklusif, dan pasca-kolonial.

Kata Kunci: ketidaksetaraan hukum, tanah ulayat, hukum adat Minangkabau, UUPA, konflik agraria.

INTRODUCTION

In Indonesia, the regulation of land tenure is shaped by a complex legal dualism between state law and customary legal systems (*adat*) (Setyowati, 2023). This legal dualism becomes particularly contentious in regions with strong indigenous traditions, such as West Sumatra, where the Minangkabau community practices a matrilineal system that views *ulayat* land as sacred, communal, and inalienable (Citrawan, 2020). Unlike the individualistic and certificate-based regime enshrined in the Basic Agrarian Law (UUPA) No. 5 of 1960, Minangkabau customary law does not recognize individual ownership of *ulayat* land (Arif, 2022). Instead, it is collectively inherited through maternal lineage and preserved for the welfare of future generations (Shebubakar, 2023).

This paradigm divergence is not merely theoretical but also it has profound legal, administrative, and socio-political consequences. Under national law, *ulayat* lands often go unregistered due to their oral, collective governance, and thus are misclassified as "vacant" or "abandoned" (Pulungan, 2023). Such misrecognition marginalizes indigenous communities and strips them of legal bargaining power (Putri, 2021). Moreover, in some cases, indigenous people are criminalized when asserting their customary rights (Wiguna, 2021).

In Bidar Alam, Solok Selatan Regency, the dispute over *ulayat* land vividly demonstrates these tensions. In 2005, the local community entered into a palm oil cooperation agreement with PT Ranah Andalas Plantation (RAP) on a 60:40 profit-sharing basis favoring the company (Mongabay Indonesia, 2024). Despite formalizing this partnership, the community never received their share of the profits. On July 2008 the Regent of Solok Selatan revoked RAP's location permit, thereby nullifying the company's legal foundation (Walhi Sumbar & LBH Padang, 2023). Nonetheless, RAP continued to operate on approximately 14,600 hectares of *ulayat* land without a valid cultivation right (HGU).

The peak of the tension emerged when community members attempted to harvest palm fruit from their own ancestor's land. Six individuals, including customary leader Zulkarnaini were prosecuted and sentenced to five months in prison under theft allegations (Walhi Sumbar & LBH Padang, 2023). These charges were brought despite the absence of valid corporate permits and the ongoing violation of community land rights. This legal contradiction reveals a structural failure within Indonesia's formal legal system, which criminalizes indigenous land defenders while allowing corporate encroachment to persist.

The case of Bidar Alam is not isolated. Across Indonesia, recognition of *ulayat* land remains contingent upon state administrative criteria (Wangi, 2023). Although Article 3 of the UUPA nominally acknowledges *ulayat* rights when they do not conflict with national interests, the clause is vague and subject to variable governmental interpretation, rendering it ineffective as legal protection. In addition, the Constitutional Court's Decision No. 35/PUU-X/2012 affirmed that customary forests are not part of state forest areas and belong to customary law communities (Fajar, 2024). However, implementation remains weak because technical regulations are inconsistent and regional enabling laws are largely absent.

To address this legal vacuum, the Ministry of Agrarian Affairs issued Regulation No. 14 of 2024, which sets a framework for recognizing and formally registering *ulayat* land. However, its effectiveness depends on political will, administrative capacity, and integration of customary records with national land databases (Krismantoro, 2022). Most customary

communities lack formal documentation since their systems are rooted in oral tradition valid in *adat* but often inadmissible under formal law (Tama, 2024). The lack of governmental support, coupled with bureaucratic inertia and rising land values, has exacerbated internal communal tensions. Without robust oversight or civil society interventions, internal conflicts can be exploited by external actors, further weakening communal protections upheld by institutions like Kerapatan Adat Nagari (KAN) (Bukhari, 2021).

Ultimately, the divide between national and customary law reflects more than normative difference, it also embodies profound epistemological and historical dissonance. National law emerges from a modern bureaucratic state logic emphasizing regulation and commodification, while customary law is grounded in spirituality, social cohesion, and ecological stewardship (Ikhsan, 2021). When these systems intersect without institutional bridging, indigenous communities face structural injustice and legal alienation. Therefore, this issue is consistent with Romli Atmasasmita's *Integrative Legal Theory* as discussed in this study. This paper advocates for an integrative legal approach, which synthesizes positivist norms, moral values, and social realities. This approach aligns with substantive justice principles and seeks equal legal recognition not through subordination, but mutual reinforcement. Such harmonization must extend beyond recognition to include institutional reform, restorative justice mechanisms, and empowerment of indigenous legal institutions. Only then can Indonesia realize an inclusive and sustainable agrarian legal order.

Literature Review

A number of recent studies have explored the interaction between *adat* law and the formal justice system in Indonesia, particularly within the Minangkabau context. Adamsyah et al. (2024) documented how restorative justice has been implemented by Polres Pariaman in minor criminal cases by involving the Kerapatan Adat Nagari (KAN), signaling procedural integration between state law and customary institutions. Similarly, Asmui et al. (2022) emphasized that Minangkabau customary justice has long embodied restorative values, and that community compliance with *adat* rulings reflects strong social legitimacy. In another comparative study, Irawan et al. (2021) highlighted the divergent sanctioning models between Minangkabau and Batak customary systems in adultery cases, shaped by their distinct normative traditions. Meanwhile, Arsyad et al. (2023) pointed to the lack of consistent national regulation on restorative justice, arguing that its application across law enforcement remains fragmented and institutionally weak.

While these studies confirm the normative strength and cultural legitimacy of *adat* mechanisms, they primarily focus on restorative justice in criminal or interpersonal disputes, and seldom address land governance or structural conflicts with the state legal system. None of the works critically interrogate the epistemological or constitutional gap between national agrarian law and customary tenure systems, nor do they confront the criminalization of *adat*-based land defense as a legal paradox. This study departs from the prior literature by applying a theoretical synthesis, by drawing on Van Vollenhoven's *adatrecht*, Griffiths's legal pluralism, and Romli Atmasasmita's Integrative Legal Theory and use the theories to examine the Bidar Alam *ulayat* land conflict. It moves beyond procedural integration to propose a structural and normative reconfiguration of Indonesia's legal architecture to support inclusive and post-colonial agrarian justice. This theoretical grounding and focus on legal pluralism in *ulayat* land disputes represent the core novelty of this research.

Conceptual Framework

1. John Griffiths's Legal Pluralism

   John Griffiths, in his influential 1986 article *"What is Legal Pluralism?"*, introduced a groundbreaking theory that challenges the traditional Western notion of

law as a singular, centralized system emanating solely from the state. He argues that in reality law exists in multiple forms, state law, religious law, customary norms, and informal community rules, and even coexisting within society and guiding behavior independently from the state authority. Griffiths distinguishes between strong (empirical) legal pluralism, where various legal systems operate regardless of state endorsement, and weak (state-sanctioned) pluralism, where the state formally incorporates non-state laws. He advocates that legal centralism (the belief in the state's exclusive authority over law) is an ideological myth detached from the lived experiences of most societies. Viewing law as a sociological phenomenon, Griffiths emphasizes that legal norms emerge from social practices rather than formal enactment. His theory has profound implications, particularly in post-colonial, multi-ethnic, and indigenous contexts, as it validates the legitimacy of non-state legal systems, informs critical debates on human rights and customary law, and undermines the assumption that the state holds a monopoly over legal authority and justice.

2. Vollenhoven's *Adatrecht* (customary law) concept

Cornelis van Vollenhoven's a pioneering Dutch legal scholar, is renowned for his comprehensive theory of *adatrecht* (customary law), which he developed in his multi-volume work *Het Adatrecht van Nederlandsch-Indië* (1901–1932). Contrary to the colonial view that indigenous law was primitive, informal, or destined to be replaced by Western legal systems, Van Vollenhoven argued that *adatrecht* was a legitimate, living legal system deeply embedded in the social fabric and moral values of indigenous communities across the Dutch East Indies. He emphasized that customary law was not static but dynamic, evolving in response to societal needs and cultural practices. His research identified nineteen distinct *adat law regions*, including the Minangkabau, whose matrilineal customs and communal land ownership reflected a highly organized legal order. For Van Vollenhoven, *adatrecht* was not only normative and enforceable within communities but also deserved recognition and protection under colonial governance. His work laid the intellectual foundation for legal pluralism in Indonesia, advocating that state law should coexist with, rather than dominate, the intricate legal traditions of indigenous peoples.

3. Romli Atmasasmita's Integrative Legal Theory

Prof. Dr. Romli Atmasasmita's *Teori Hukum Integratif* (Integrative Legal Theory), as articulated in his 2012 book *Teori Hukum Integratif: Rekonstruksi Terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif*, offers a comprehensive framework for reconciling Indonesia's plural legal systems by integrating three core dimensions of law: the normative (positive law and legal formalism), the philosophical (moral values and ideals of justice), and the sociological (social realities, local culture, and community practices). This theory responds to the limitations of legal positivism, which tends to overlook the cultural legitimacy and justice values embedded in society, particularly in post-colonial states like Indonesia. Romli argues that the effectiveness and acceptance of legal norms depend not only on their formal validity but also on their resonance with the community's sense of justice and cultural identity. By proposing an integrative approach, he provides a theoretical foundation for harmonizing state law with customary and religious norms. His idea is crucial especially in contexts where *hukum adat* (customary law) retains deep normative authority. His theory thus supports a pluralistic, culturally grounded legal system that enhances both legitimacy and justice.

METHOD

This study uses a normative juridical method, which emphasizes the analysis of written legal norms as the primary source for addressing the issues raised. Central to this approach is the examination of legal instruments that regulate the recognition of *masyarakat adat* (customary communities), including Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which explicitly states that "The state recognizes and respects units of customary law communities along with their traditional rights as long as they remain in existence and are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." This constitutional provision provides a strong normative basis for the legal acknowledgment of *ulayat* rights within the Indonesian legal framework.

In addition to the constitutional foundation, the analysis also focuses on the Basic Agrarian Law No. 5 of 1960, Constitutional Court Decision No. 35/PUU-X/2012, and the Regulation of the Minister of Agrarian Affairs/Head of BPN No. 14 of 2024, which further elaborate the regulatory context for the existence and implementation of Minangkabau customary law, particularly regarding *ulayat* land. The study also considers legal doctrines, principles, and theories in agrarian and customary law to better understand the legal positioning and treatment of *ulayat* land within Indonesia's pluralistic legal system.

Complementing the normative approach, a conceptual approach is applied to explore the philosophical, cultural, and social meanings of *ulayat* land from the perspective of the Minangkabau community, especially in the context of dispute resolution in the Bidar Alam region. Secondary data used include statutory regulations, constitutional texts, court decisions, legal journals, textbooks, and previous research. The data analysis is carried out qualitatively, employing legal interpretation, normative logic, and critical argumentation to assess the validity, limitations, and implementation of national legal provisions in responding to the reality of legal pluralism in indigenous communities. This combined approach is deemed the most appropriate to illuminate the normative conflicts between two coexisting legal systems that differ in orientation, structure, and foundational values.

RESULT AND DISCUSSION

Legal Pluralism, Adat Justice, and Structural Conflict: A Theoretical Analysis of Ulayat Land Disputes

The conflict between national legal authority and indigenous land tenure in Indonesia, as demonstrated in the *ulayat* land dispute in Bidar Alam, represents more than a jurisdictional disagreement. It reflects a deeper structural incongruence between the state's centralized legal system and the lived legal order of indigenous communities.

Contrasting dispute resolution mechanisms between adat customary law and state authority, Van Vollenhoven's *adatrecht* theory asserts that customary law is not primitive but is an independent, dynamic legal system that governs indigenous life with its own internal coherence and legitimacy (Vollenhoven, 1901–1932). In Minangkabau society, *ulayat* land disputes are resolved through communal deliberation (*musyawarah*) and consensus (*mufakat*), mediated by local institutions such as the Kerapatan Adat Nagari (KAN) (Bukhari, 2021). This restorative model prioritizes the reparation of social relationships over coercive punishment. In contrast, Griffiths (1986) identifies the modern state's legal centralism as an ideological fiction that presumes the state as the sole source of valid law. In the Indonesian context, state law enforces codified procedures that rely on adversarial trials, documentary evidence, and abstract legal norms (Pulungan, 2023). The resulting procedural formalism marginalizes communities like Bidar Alam, whose oral legal traditions and collective values are deemed inadmissible. The inability of state courts to accommodate *adatrecht* mechanisms renders customary actors structurally disadvantaged within formal litigation.

The issuance of a Hak Guna Usaha (HGU) to PT Ranah Andalas Plantation (RAP) on *ulayat* land epitomizes what Griffiths terms "weak legal pluralism": a situation in which the state formally acknowledges non-state law while simultaneously enforcing its own supremacy (Griffiths, 1986). Although the Minangkabau community of Bidar Alam had practiced collective ownership for generations, the absence of formal registration rendered their rights invisible in the eyes of the state (Walhi Sumbar & LBH Padang, 2023). This reflects a phenomenon of legal misrecognition, where social legitimacy is denied legal effect due to its nonconformity with positivist criteria. For Van Vollenhoven, such neglect was historically rooted in the colonial failure to recognize the autonomous normative order of indigenous communities. He contended that *adatrecht* deserved state recognition not as folklore, but as a legitimate and enforceable legal system within its own right (Vollenhoven, 1928). The Bidar Alam case underscores the continued coloniality embedded in Indonesia's modern land regime, wherein the state's recognition of *ulayat* rights remains conditional, fragmented, and discretionary.

On the other hand, Griffiths's framework emphasizes that legal pluralism is embedded in social hierarchies of power. The coexistence of multiple legal orders does not imply equality; rather, state law often asserts dominance through institutional apparatuses that indigenous communities cannot access or contest effectively. In the Bidar Alam case, PT RAP was able to navigate the regulatory bureaucracy, secure legal documents, and maintain operations despite permit revocation in 2008 (Mongabay Indonesia, 2024). Meanwhile, the local community lacked legal counsel, political leverage, and institutional access. Van Vollenhoven's work also identified power disparities between state-backed institutions and customary communities. He warned that the erosion of *adatrecht* would disproportionately benefit colonial elites and later, by analogy, corporate actors. In the modern Indonesian context, this structural asymmetry persists, with land administration bodies and investors wielding legal tools inaccessible to those governed by *adat*. The state's failure to level this playing field not only undermines constitutional commitments under Article 18B(2) of the 1945 Constitution, but also entrenches injustice under the guise of legality.

The problem not only came from legal misrecognitioin by state. Regulatory challenges also hinder Indonesian government to address the recognition of customary land rights. This challenges emerged through various instruments, notably Ministerial Regulation No. 14 of 2024. However, both Van Vollenhoven and Griffiths would caution against the bureaucratization of recognition. Van Vollenhoven argued that state-administered codification risks distorting the fluid, context-specific nature of *adatrecht*. Likewise, Griffiths noted that state appropriation of non-state legal systems often leads to their disempowerment, rendering recognition symbolic rather than substantive. In practice, the regulation's implementation in regions like Bidar Alam has been hampered by lack of political will, weak technical capacity, and bureaucratic complexity (Tama, 2024; Krismantoro, 2022). This reinforces a selective pluralism, where *ulayat* rights are acknowledged in law but denied in practice. The failure to operationalize recognition frameworks demonstrates the limitations of a top-down, state-controlled model of legal integration.

One of the most pressing structural failures in Indonesia's land governance is the absence of interim protections for communities whose *ulayat* rights are in the process of recognition. This legal vacuum enables land grabbing, corporate encroachment, and dispossession. In Bidar Alam, PT RAP continued to operate across 14,600 hectares of disputed land while recognition remained pending, exploiting the lack of moratorium or suspension mechanisms (Walhi Sumbar & LBH Padang, 2023). From a Griffithsian perspective, this represents the monopolization of legal timing, where the state controls the tempo and sequencing of recognition while indigenous communities bear the cost of legal delay. For Van Vollenhoven, this absence of protective temporality would constitute a failure to uphold legal

certainty in indigenous societies. His concept of *adatrecht* demands not only eventual recognition, but continuous protection, including during periods of transition and ambiguity.

The last and the most troubling manifestation of this systemic disparity is the criminalization of customary rights-holders. In 2023, six members of the Bidar Alam community, including *penghulu adat* Zulkarnaini were sentenced under Article 107(d) of the Plantation Law and Article 55 of the Indonesian Penal Code for harvesting fruit on their own ancestral land (Walhi Sumbar & LBH Padang, 2023). Despite Article 18B(2) of the 1945 Constitution, which mandates recognition and respect for customary law communities, these actors were treated not as rights-holders, but as trespassers. Griffiths would interpret this as a legal colonization of normative space, where state law not only displaces customary law but reclassifies its adherents as criminals. Van Vollenhoven, similarly, would see such criminalization as a violation of the moral and legal coherence of *adatrecht*, which treats land not as a commodity, but as a sacred trust passed through generations. The paradox is clear: while constitutional and statutory texts recognize indigenous rights, institutional practices criminalize their expression.

In light of these six dimensions, the Bidar Alam case exemplifies a profound crisis of legal pluralism without integration. As both Van Vollenhoven and Griffiths affirm, justice in plural societies requires not the subordination of customary systems to state law, but the coexistence of multiple legal orders on equal normative footing. This study therefore supports the adoption of Romli Atmasasmita's Integrative Legal Theory, which synthesizes positive legal norms, moral values, and socio-legal realities into a unified legal framework (Atmasasmita, 2012). Only by moving beyond symbolic recognition to structural reform through transitional protections, decentralized recognition mechanisms, and decriminalization of indigenous practices. This strutural reform hopefully can fulfill its constitutional mandate and achieve agrarian justice that is inclusive, culturally grounded, and substantively fair.

Conceptual Framework: Harmonizing Law through Romli Atmasasmita's Integrative Legal Theory

Romli Atmasasmita's Integrative Legal Theory provides a powerful framework for reconciling Indonesia's fragmented legal landscape. According to Atmasasmita (2012), law should be conceptualized not merely as a system of codified norms, but as a synthesis of three interrelated dimensions: positive legal norms (formal law), moral-philosophical values (justice), and sociological realities (community practices and lived experience). In the context of agrarian conflicts involving *ulayat* land, this framework offers five critical strategies for legal harmonization:

1. Equal Recognition of Customary Law The integrative model insists that *adat* law must be treated as a coequal normative system, not merely as a tolerated cultural exception. It must be integrated substantively into the legal hierarchy through formal statutes and institutional mechanisms. Particularly in land tenure, this means embedding customary recognition directly into registration, dispute resolution, and administrative procedures to eliminate systemic bias that favors codified law over living traditions.
2. Adopting Restorative Justice Mechanisms Consistent with Atmasasmita's emphasis on justice values. The restorative ethos of Minangkabau *adat* which emphasizes reconciliation, communal deliberation, and consensus should be institutionalized as valid legal procedures. This moves beyond tokenistic recognition toward procedural parity, where *musyawarah* and *mufakat* are afforded the same juridical legitimacy as courtroom litigation.
3. Strengthening Local Implementation Capacities Sociological reality, the third pillar of Atmasasmita's theory, demands attention to institutional feasibility. Harmonization must empower local governments and customary councils with the resources, authority, and legal instruments to act effectively. This includes funding for mapping *ulayat* land, capacity-

building for customary legal officers, and legal aid for communities navigating plural legal systems.

4. Transforming State Indigenous Relations through Empowerment. Atmasasmita rejects authoritarian legalism in favor of dialogical legality. The state must transition from a regulatory to a facilitative role recognizing indigenous peoples not as passive beneficiaries but as active legal actors. This shift requires restructuring national policies to support indigenous governance systems, including formalizing the role of *penghulu adat* and integrating local deliberative bodies into broader legal procedures.
5. Using Local Regulations (Perda) as Normative Bridges Finally, the integrative theory supports the use of *Peraturan Daerah* (Perda) as legal conduits that connect national law with customary values. However, to reflect genuine integrative legality, these local instruments must be co-produced with indigenous authorities and community representatives. This ensures they embody substantive justice and not merely bureaucratic formality.

By operationalizing these five strategies, Romli Atmasasmita's Integrative Legal Theory transcends theoretical abstraction. It offers a comprehensive and actionable model for reconfiguring Indonesia's legal architecture in a way that affirms both legal certainty and cultural legitimacy, especially in the fraught domain of agrarian justice.

CONCLUSION

The persistence of legal conflict over *ulayat* land in Indonesia, epitomized by the case of Bidar Alam reveals the structural failures of the state's legal centralism in accommodating legal pluralism. Despite constitutional guarantees and jurisprudential recognition, indigenous communities continue to face legal misrecognition, dispossession, and criminalization. The normative gap between the positivist, state-centric model of law and the lived, communal legality of *adat* traditions, particularly within matrilineal Minangkabau society, produces a pattern of systemic injustice. These injustices are not isolated, but symptomatic of an epistemological disconnect between the bureaucratic logic of national law and the sociocultural foundations of indigenous land tenure. As the analysis grounded in Van Vollenhoven's *adatrecht* and Griffiths's legal pluralism illustrates, formal institutions have failed not only to recognize, but also to structurally integrate the legitimate claims of customary communities into the national legal fabric.

To resolve this disjuncture, this study advocates the adoption of Romli Atmasasmita's Integrative Legal Theory as a normative and practical framework for harmonizing Indonesia's plural legal systems. Atmasasmita's model, by unifying positive law, justice values, and sociological realities provides a coherent strategy to move beyond tokenistic recognition and towards substantive legal pluralism. It calls for the equal status of *adat* law, the formal incorporation of restorative justice mechanisms, the empowerment of local institutions, and the development of *Perda* as normative bridges. Only through such integrative and dialogical reform can Indonesia transition from a paradigm of legal dominance to one of legal coexistence. This transition is essential not only for upholding constitutional mandates under Article 18B(2) of the 1945 Constitution but also for realizing a just, inclusive, and culturally resonant agrarian legal order that affirms indigenous dignity and sovereignty in practice not just in principle.

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