

Reconstruction of the Legal Governance of Customary Tourism Villages: Addressing Institutional Fragmentation in Indigenous-Based Tourism Development

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Abstract.

This study examines the reconstruction of the legal governance of customary tourism villages in addressing institutional fragmentation within indigenous-based tourism development. The research is motivated by the persistent gap between normative legal frameworks and practical implementation, particularly due to regulatory fragmentation, weak recognition of indigenous rights, unequal power relations, and the absence of fair benefit-sharing mechanisms. Using a normative legal research method with statute and conceptual approaches, this study analyzes the disharmony among regulations related to village governance, tourism, and indigenous peoples, as well as relevant theoretical frameworks such as legal pluralism, legal recognition, and collaborative governance. The findings indicate that existing governance models remain sectoral, state-centric, and insufficiently integrative, resulting in legal uncertainty and limited participation of indigenous communities. As a solution, this study proposes a legal reconstruction based on the Quadruple Helix model, which integrates government, academia, the private sector, and indigenous civil society into a collaborative and participatory governance system. This model emphasizes co-design, co-governance, and rights-based approaches to ensure inclusivity, accountability, and equitable distribution of benefits. In conclusion, the reconstruction of legal governance requires strengthening legal substance, institutional design, and legal culture to create an integrated, sustainable, and socially just framework for customary tourism village development, with indigenous communities as the primary subjects.

Keywords: Customary Tourism Village; Legal Reconstruction and Collaborative Governance; Indigenous Peoples

1. INTRODUCTION

In recent years, tourism villages-particularly rural settlements characterized by traditional features or rich cultural heritage-have evolved into strategic arenas for promoting sustainable and inclusive development. This transformation positions customary tourism villages not merely as economic destinations, but also as socio-cultural spaces that represent the identity, values, and ways of life of indigenous communities. Therefore, the governance of customary tourism villages requires an approach that is not only administrative but also collaborative and context-sensitive, in order to maintain a balance between economic growth, cultural preservation, and social justice.

In this context, the Quadruple Helix framework has become increasingly relevant in addressing the complexity of community-based development governance. This model extends the Triple Helix by incorporating civil society as a key actor alongside government, academia, and industry. Through the interaction of these four actors, governance is directed toward the formulation of co-created policies and the collaborative management of destinations (*co-managed destinations*), with a strong orientation toward environmental sustainability and social inclusion.

Several studies indicate that the Quadruple Helix approach enhances governance effectiveness through knowledge exchange and cross-actor social learning[1]. In the context of tourism development, such collaboration has also been shown to foster resource mobilization and community-based innovation[2]. Moreover, other studies emphasize that the integration between local actors and formal institutions is crucial in linking cultural assets with tourism-driven economic development [3].

However, the literature also suggests that the success of collaborative models depends not only on stakeholder involvement but also on institutional design and adequate participation mechanisms. Several studies highlight the importance of destination management organizations and multi-stakeholder platforms in ensuring legitimacy and the sustainability of public participation[4,5]. In addition, public communication and the role of media are critical factors in sustaining policy innovation [6,7].

Despite the growing consensus on the importance of the Quadruple Helix approach, a number of studies reveal limitations in its implementation, particularly regarding the suboptimal integration of civil society and governance capacity at the local level[8]. This condition indicates that the Quadruple Helix model still faces challenges in achieving truly inclusive and sustainable governance.

In the Indonesian context, these challenges become more complex when applied to customary tourism villages, such as Kemiren Village. This village is widely recognized as a cultural center of the Osing community, characterized by rich traditions and well-preserved local values. The development of tourism in Kemiren demonstrates significant potential for integrating cultural preservation with economic growth. However, existing governance practices still encounter challenges, including regulatory overlaps, the dominance of external actors, and the limited involvement of indigenous communities in decision-making processes.

Normatively, the recognition of indigenous communities has been accommodated within various national legal instruments. However, implementation at the local level often fails to address the specific needs of indigenous communities. This situation reflects a gap between legal norms and social practices, thereby highlighting the need for a more contextual and adaptive reconstruction of the legal framework.

On the other hand, although the Quadruple Helix approach offers significant potential for fostering collaborative governance, its application in the context of customary tourism villages, including Kemiren Village, has not been supported by an operational and binding legal framework. As a result, this model tends to remain normative and has not yet been able to effectively regulate inter-actor relations in a manner that is fair, accountable, and sustainable.

Based on the foregoing, this study identifies a research gap in the absence of a systematic legal construction that integrates the Quadruple Helix approach into the governance of customary tourism villages within a local context. Accordingly, the research questions are: (1) what are the legal problems in the current governance of customary tourism villages? (2) how can a collaborative governance framework based on the Quadruple Helix be reconstructed? and (3) what are the implications of such reconstruction for sustainability and inclusiveness?

This study aims to examine and reconstruct the legal framework of customary tourism village governance based on the Quadruple Helix approach, with a case study of Kemiren Village. Theoretically, this research contributes to the development of legal studies on collaborative governance grounded in legal pluralism. Practically, it is expected to serve as a foundation for formulating policies on customary tourism villages that are sustainable, inclusive, and equitable.

II. METHODS

This study is a normative legal research employing a prescriptive-analytical approach aimed at reconstructing the legal governance of customary tourism villages to address institutional fragmentation[9]. The approaches used include the statute approach and the conceptual approach. The statute approach is applied to examine and identify regulatory disharmony and overlaps in the fields of village governance, tourism, and the recognition of indigenous communities. Meanwhile, the conceptual approach is used to analyze key concepts such as legal pluralism, legal recognition, and collaborative governance as the foundation for formulating an integrative governance model.

The legal materials consist of primary, secondary, and tertiary sources. Primary legal materials include relevant legislation and court decisions, while secondary legal materials comprise

scholarly literature and expert doctrines. Tertiary legal materials are used to clarify terms and concepts.

The collection of legal materials is conducted through library research and analyzed qualitatively using legal interpretation techniques, including grammatical, systematic, and teleological interpretation. In addition, legal argumentation techniques are employed to construct a coherent normative framework. Thus, this study not only analyzes the existing legal framework but also produces a reconstructed model of customary tourism village governance that is more integrative and based on collaborative principles.

III. RESULT AND DISCUSSION

1. Legal Problems in the Governance of Customary Tourism Villages

The development of customary tourism villages in Indonesia demonstrates high complexity in legal governance, particularly due to the interaction between state law and pluralistic customary law systems. Customary tourism villages are not merely positioned as instruments of local economic development, but also as living spaces for indigenous communities encompassing social, cultural, and ecological dimensions. In this context, legal governance cannot be understood solely in administrative terms; rather, it must accommodate legal pluralism while ensuring social justice in benefit distribution. However, both in the broader Indonesian context and in empirical cases such as Kemiren Village in Banyuwangi, the literature indicates a persistent gap between normative frameworks and practical implementation. This gap reflects structural rather than merely technical problems, thus requiring comprehensive and synthesis-based diagnostic analysis.

One of the main problems is regulatory fragmentation, which creates legal uncertainty in the governance of customary tourism villages. The lack of synchronization between state law-particularly in the fields of village governance and tourism-and customary law generates ambiguity in determining authority, especially regarding resource management and tourism control. Existing regulations tend to be sectoral and are not systematically integrated with living customary norms, resulting in a normative vacuum in practice [10,11]. In the context of Kemiren Village, this condition is reflected in the dualism between formal regional regulations and customary practices implemented through local institutions, which have not fully resolved fundamental issues such as land rights and resource management [12,13]. Critically, this indicates that the problem lies not only in regulatory limitations but also in the normative design of positive law, which remains state-centric and has not recognized customary law as an equal system in governance.

Another issue relates to the gap between normative recognition and substantive protection of indigenous peoples. Constitutionally, recognition of indigenous communities has been established; however, in tourism policy practice, such recognition remains largely symbolic and has not been operationalized into concrete rights. In Kemiren Village, for example, the cultural identity of the Osing community has been recognized and even utilized as a primary tourism attraction, yet recognition of land rights and control over resources remains weak[14.15]. This reflects a gap between formal recognition and substantive protection. Furthermore, weak protection of traditional knowledge and cultural expressions increases the risk of cultural commodification without community consent and without fair benefit-sharing mechanisms [16,17]. Analytically, this condition indicates that a rights-based approach has not been adequately integrated into the legal framework of tourism governance in Indonesia.

In addition, governance design that does not substantively reflect collaborative principles constitutes another source of problems. Although the concept of collaborative governance has been widely adopted in academic discourse, its implementation still shows the dominance of state and private actors in decision-making processes. Various studies, including stakeholder analyses, show that government often acts as the key player, while indigenous communities are positioned merely as supporting actors [18,19,20]. In Kemiren Village, this configuration is evident in the involvement of

local government, CSR programs, and private sector actors, potentially creating unequal power relations despite cultural preservation efforts [21,22]. This phenomenon is further reinforced by neo-exoticism, where local culture is commodified for market interests by emphasizing aesthetic aspects while neglecting community empowerment [23,24]. Thus, the failure of collaborative governance is not only due to lack of participation but also due to unequal power structures.

Such imbalance directly affects inequitable benefit-sharing. Several studies indicate that economic gains from tourism village development are disproportionately enjoyed by external actors, while indigenous communities receive limited benefits [25]. The absence of explicit legal mechanisms regulating benefit distribution weakens the bargaining position of indigenous communities and may lead to social conflict [19]. In Kemiren Village, although participatory mechanisms such as discussion forums and local institutions (e.g., LEMAO and Pokdarwis) exist, community involvement in strategic decision-making—particularly regarding land use and resource management—remains limited [26]. Analytically, this shows that benefit-sharing is a key indicator in assessing governance success and a prerequisite for sustainable community-based tourism.

Another issue is the weak integration of local values and customary wisdom into the formal legal framework. Studies emphasize that successful governance of customary tourism villages depends on the legal system's ability to accommodate such values (Astara & Wesna, 2023; Nugroho et al., 2024). In Kemiren Village, customary practices such as the *barong ider bumi* ritual and deliberative mechanisms continue to exist but are not fully integrated into formal policy design [27,28]. Moreover, the use of policy analysis instruments such as Regulatory Impact Analysis (RIA) remains limited, resulting in insufficient assessment of policy impacts on indigenous communities. This reflects a gap between formal law and social reality, where positive law has not been sufficiently adaptive to local contexts.

In synthesis, legal problems in the governance of customary tourism villages in Indonesia, including in Kemiren Village, are systemic and interrelated. Regulatory fragmentation, recognition gaps, unequal power relations, inequitable benefit distribution, and weak integration of local values indicate that the problem lies not only at the implementation level but also within normative and institutional design. The literature shows varying approaches to solutions—some emphasizing formal recognition, others advocating substantive governance reform [29]. However, there is consensus that without integrating legal recognition and operational collaborative governance design, achieving sustainability and inclusivity will remain difficult. Therefore, legal reconstruction is necessary not only to strengthen normative aspects but also to concretely regulate collaborative governance mechanisms, including indigenous participation, benefit-sharing, and protection of local cultural values and assets.

2. Critique of Conventional Governance Models

Conventional governance models in development sectors, including customary tourism villages, remain dominated by administrative approaches that are not fully grounded in strong legal principles. These approaches prioritize procedural compliance over substantive justice, participation, and accountability. Literature shows that formal legal reforms often fail to produce transformative change due to their reliance on legal-formalistic paradigms and neoliberal ideologies that maintain existing power structures [30,31].

Criticism of these models highlights their failure to integrate social justice and meaningful public participation. Although the Quadruple Helix concept offers an alternative by incorporating civil society alongside government, private sector, and academia, its implementation remains limited due to weak regulatory and institutional foundations.

A key critique is the dominance of administrative approaches without strengthening legal principles ensuring rights, accountability, and justice. Kamphuis (2020) notes that legal reforms often function merely as instruments of legitimacy rather than tools of social transformation [30]. Similarly, Parker (2012), through responsive regulation, argues that rigid rule-based approaches may produce injustice due to lack of adaptability [32]. Néron (2015) and Brown (2021) further emphasize that market-oriented frameworks often neglect structural justice [33,31].

Conventional governance is also criticized for failing to ensure meaningful participation. Participation is often procedural and does not empower vulnerable groups. Bognitz (2023) shows that dispute resolution mechanisms can expose power imbalances[34], while Partridge et al. (2018) highlight how urgency narratives in policymaking can suppress deliberative processes[35]. Reynolds & Cipler (2022) argue that market-based mechanisms alone cannot ensure justice without accountability[36].

Furthermore, modern governance must consider data politics and justice. Zeffiro (2021) stresses data justice[37], while Liboiron et al. (2023) identify tensions between procedural, distributive, and developmental justice models[38]. These findings show that governance requires not only regulation but also a normative framework balancing multiple dimensions of justice.

The Quadruple Helix model offers a collaborative alternative by emphasizing civil society participation. However, its success depends on institutional design, regulatory support, and effective coordination[39]. Without strong legal frameworks, civil society involvement risks becoming merely symbolic.

In conclusion, conventional governance models suffer from fundamental limitations in legitimacy, justice, and participation. While the Quadruple Helix offers potential improvements, its effectiveness depends on integrating collaborative approaches with strong legal frameworks, ensuring justice, participation, and accountability.

3. Legal Reconstruction Based on the Quadruple Helix

The Quadruple Helix (QH) approach, as a governance framework, integrates four main actors: government, academia, the private sector, and indigenous civil society. Literature on legal pluralism and local governance across various regions indicates that tourism development in the context of customary villages requires coordination between state law, customary law, and market actors to prevent conflict and ensure equitable benefit distribution[40].

Accordingly, the adoption of the Quadruple Helix model becomes relevant as it provides a collaborative framework that not only accommodates multi-stakeholder interests but also formalizes co-design and co-governance mechanisms in the management of customary tourism villages[41,42,43]. Within this perspective, governance is no longer sectoral and top-down but evolves into a collaborative system emphasizing interdependence among actors and a more balanced distribution of authority. This model also enables the integration of economic interests, cultural preservation, and environmental sustainability within a unified policy framework.

a. The Role of Government

The government plays a strategic role in establishing a legal framework that recognizes customary villages as legitimate governing entities in tourism management, while ensuring the protection of rights, environmental sustainability, and cultural preservation [43]. Such recognition must be operationalized through implementing regulations that provide legal certainty regarding the authority of customary villages, including the management of tourism assets and relations with external parties.

In addition, the government is responsible for designing benefit-sharing mechanisms, investment incentives, and public-private-community partnership schemes aligned with sustainable development principles[44]. In this context, the government acts not only as a regulator but also as a facilitator and enabler that bridges stakeholder interests and creates a conducive policy environment.

Furthermore, the government must harmonize cross-sectoral policies, particularly in village governance, tourism, environment, and culture, to avoid normative conflicts and overlapping authorities. This is essential to ensure integrated and non-fragmented governance.

b. The Role of Academia

Academics function as knowledge brokers and policy advisors by providing theoretical frameworks, empirical analysis, and governance models based on legal pluralism[45]. This role is

crucial in bridging the gap between formal legal norms and social practices within indigenous communities.

Academics also contribute by developing evaluation indicators, such as regulatory impact analysis, and supporting institutional capacity building, including the formulation of *awig-awig* and *pararem* [46]. This evaluation-based approach enables comprehensive assessment of policy effectiveness across economic, social, cultural, and ecological dimensions.

In practice, academics engage in community service activities such as training, mentoring, and capacity building for village officials and customary institutions, including financial governance, local-based product development, and digital tourism management.

c. The Role of the Private Sector

The private sector contributes through investment and the development of tourism assets, with obligations to ensure local employment, fair benefit-sharing, and protection of local values[47]. Investment should not be solely profit-oriented but must also consider social justice and environmental sustainability.

Additionally, the private sector promotes innovation in tourism products, risk management, and sustainable marketing that respects customary norms and ecological limits. This includes digitalization, ecotourism development, and creative economy integration based on local culture.

Moreover, the private sector helps expand market linkages for local products and services. However, such involvement must be regulated to prevent market dominance that could undermine indigenous authority.

d. The Role of Indigenous Civil Society

Indigenous communities play a central role in safeguarding traditional rights, local resources, and sacred sites, while ensuring accountability in tourism governance[48]. As holders of cultural authority, they are key actors in determining the direction and limits of development.

Through institutions such as *desa adat* and *banjar adat*, as well as legal instruments like *awig-awig* and *pararem*, indigenous communities actively participate in governance, including through customary sanctions and social control mechanisms[49]. These reflect forms of self-governance grounded in local values and traditional wisdom.

Furthermore, indigenous communities ensure social and cultural sustainability through the preservation of traditions, rituals, and local knowledge systems. In modern contexts, this role expands to include participation in the creative economy, homestay management, and community-based tourism promotion, while maintaining a balance between market adaptation and cultural preservation.

The institutional design of this model includes the establishment of multi-stakeholder forums involving government, academia, the private sector, and indigenous communities. These forums function as platforms for policy deliberation, regulation of tourism activities, and joint financial management[24].

Village-Owned Enterprises (*BUMDes*) serve as key instruments for managing tourism assets, revenue distribution, and job creation. Meanwhile, customary institutions through *awig-awig* and *pararem* function as normative foundations integrating local values into the formal legal system[10]. A participatory governance approach emphasizes rights-based consent and active community involvement in decision-making, which is essential to prevent marginalization and ensure equitable benefit distribution.

Additionally, co-design and co-management mechanisms enable the integration of academic knowledge with local practices, resulting in adaptive and socially just policies [45]. This model places constitutional recognition of indigenous communities as a fundamental basis, which must be operationalized through sectoral regulations and regional policies. In this regard, legal pluralism becomes essential in harmonizing state law and customary law[50]. Cross-sector coordination and regulatory impact analysis are also necessary to ensure policy consistency and effective implementation[51]. However, implementation faces several challenges, including conflicts between state law and customary authority, inequalities in benefit distribution, and risks of cultural

commercialization. Inclusivity issues-particularly regarding the participation of women and marginalized groups-must also be addressed

Therefore, implementation requires a gradual approach through pilot projects, regulatory strengthening, and the integration of rights-based policies for indigenous communities. Further research is also needed to evaluate socio-ecological impacts and the effectiveness of governance outcomes

IV. CONCLUSION

The reconstruction of the legal governance of customary tourism villages is an urgent necessity to address the various problems arising in current management practices. The Quadruple Helix-based approach provides a collaborative framework capable of integrating multiple actors into a participatory and accountable system.

Such reconstruction must be carried out through strengthening legal substance, establishing collaborative institutions, and transforming legal culture. In this way, the governance of customary tourism villages can achieve sustainability and inclusivity, while ensuring fair benefits for all stakeholders, particularly indigenous communities as the primary subjects.

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