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Recognition and Protection of Indigenous Peoples in Public Policy: Analysis of the Implementation of National Regulations

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ABSTRACT

Indigenous peoples are social groups with a long history, distinctive culture, and deep ties to their ancestral territories. In Indonesia, the recognition and protection of indigenous peoples has been normatively guaranteed through various legal instruments, ranging from the 1945 Constitution of the Republic of Indonesia to a number of sectoral laws and regulations. However, the implementation of these regulations in public policy practice still faces various structural, institutional, and cultural challenges. This article aims to analyze in depth the extent to which national regulations have provided real protection for indigenous peoples and to identify the obstacles that cause gaps between legal norms and realities on the ground. This research uses a normative juridical method with a legislative and conceptual approach, supplemented by empirical studies in the form of literature studies of various court decisions, reports from national and international institutions, and previous research. The results show that although the formal legal framework is quite comprehensive, its implementation is still hampered by unmanaged legal pluralism, weak synchronization between state institutions, minimal participation of indigenous peoples in the legislative process, and the hegemony of economic growth-based development that often sacrifices indigenous rights. This article concludes the need for comprehensive policy reform, including the creation of specific laws for indigenous peoples, strengthening of mentoring institutions, and the active involvement of indigenous peoples in every stage of public policy.
Keywords: *Indigenous Peoples, Customary Rights, Public Policy, National Regulations, Legal Implementation, Legal Protection.*

INTRODUCTION

Indonesia is an archipelagic nation with a very high level of ethnic and cultural diversity. This diversity is reflected in the existence of more than 300 ethnic groups and approximately 1,340 tribes spread across various regions of the archipelago, from Sabang to Merauke. Amid this plurality, there are certain communities known as customary law communities or indigenous communities, namely groups of people who have lived traditionally with distinctive social systems, cultures, values, and legal institutions. The existence of indigenous communities not only demonstrates the richness of the Indonesian nation's cultural identity but also reflects the existence of a system of social regulation that existed long before the formation of the modern state.[1] In everyday life, indigenous communities have their own mechanisms for regulating social relations,

[1] Ramadan, Rizky. "HUKUM PIDANA ADAT DI TENGAH MODERNISASI: RELEVANSI, TANTANGAN, DAN INTEGRASI DALAM SISTEM NASIONAL." *Jurnal Multidisiplin Ilmu Akademik* 3.1 (2026): 832-841. https://doi.org/10.61722/jmia.v3i1.8228

resolving disputes, managing natural resources, and even procedures for passing on cultural values that are passed down from generation to generation.[2]

Indigenous communities are essentially legal subjects who have collective characteristics and strong ties to their customary territories and the natural resources around them.[3] This bond gives rise to communal rights known as customary rights, which serve as the basis for the continued social, economic, and cultural identity of indigenous communities. The customary legal system they practice also possesses sociological legitimacy because it stems from customs, moral values, and local wisdom shared by community members. From the perspective of legal pluralism, the existence of indigenous communities demonstrates that Indonesia's national legal system is not solely based on state law but also coexists with customary law that develops within the community.[4] Therefore, the existence of indigenous communities cannot be viewed solely as a cultural phenomenon, but also as a legal and social reality that has an important position in the state structure and national legal development.

The existence of indigenous communities in Indonesia is not only a sociological reality, but also a legal reality recognized by the constitution. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) explicitly states that "the state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law." Furthermore, Article 28I paragraph (3) of the UUD NRI 1945 emphasizes that "the cultural identity and rights of traditional communities are respected in accordance with the development of the times and civilization."2 However, this constitutional recognition has not been fully translated into effective and equitable public policies. Various reports from national and international institutions indicate that indigenous communities in Indonesia still face various forms of discrimination, marginalization, and deprivation of rights to land and natural resources. The National Commission on Human Rights (Komnas HAM) noted that agrarian conflicts involving indigenous communities continue to increase from year to year, with the root of the problem directly related to regulatory uncertainty and weak legal implementation.[5]

The issue of protecting indigenous peoples is not merely a domestic legal issue, but also an international human rights issue. The United Nations (UN) adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, which sets minimum standards for the protection of indigenous peoples' rights worldwide. Indonesia supports the declaration but has not yet fully ratified it as a binding national legal instrument.[6]

Along with the development of governance and the dynamics of national legal politics, a number of regulations have emerged that directly or indirectly regulate the rights of indigenous peoples. Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Law Number 41 of 1999 concerning Forestry, Law Number 32 of

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[2] Badan Pusat Statistik, Hasil Sensus Penduduk 2020: Profil Keberagaman Indonesia (Jakarta: BPS, 2021), hlm. 4.

[3] Soetijono, Irwan Kurniawan, Nur Amaliah Ranie, and Dominikus Rato. "Pengakuan Konstitusional Hak Masyarakat Adat Atas Sumber Daya Alam di Indonesia." *KUNKUN: Journal of Multidisciplinary Research* 2.1 (2025): 75-93. https://ejournal.mediakunkun.com/index.php/kunkun/article/view/259

[4] Hutajulu, Lukas Pattrick. "Strategi Integrasi Hukum Adat dalam Sistem Hukum Nasional." *HARISA: Jurnal Hukum, Syariah, dan Sosial* 2.1) (2025): 124-139. https://ejournal.eddhuhacenter.com/index.php/harisa/article/view/67

[5] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 18B ayat (2) dan Pasal 28I ayat (3).

[6] Komisi Nasional Hak Asasi Manusia, Laporan Tahunan Komnas HAM 2022: Situasi Hak Asasi Manusia di Indonesia (Jakarta: Komnas HAM, 2023), hlm. 55-61.

2009 concerning Environmental Protection and Management, and Law Number 6 of 2014 concerning Villages are several examples of regulations containing provisions concerning indigenous peoples. However, because they are spread across various sectors and are often inconsistent with each other, these regulations actually create overlapping authority and confusion in implementation.[7]

The debate over the definition of indigenous peoples in national law is also a source of implementation complications. Unlike the UNDRIP, which uses the concept of indigenous peoples, Indonesian law uses various terminologies, such as customary law communities, traditional communities, local communities, and isolated indigenous communities. This lack of uniformity in terminology leads to inconsistent recognition criteria and has serious implications for the rights that these communities can claim.[8] Based on these issues, this article seeks to answer two main questions: first, how does the national regulatory framework govern the recognition and protection of indigenous peoples in Indonesia?; and second, what structural and institutional barriers cause the gap between legal norms and policy implementation on the ground? By answering these two questions, this article is expected to provide both academic contributions and practical recommendations for legal reform and public policy that are more equitable for indigenous peoples.

METHODS

This research uses a normative legal research approach, namely legal research conducted by examining primary, secondary, and tertiary legal materials. This approach was chosen because the primary focus of the research is to examine the substance of legal norms and their consistency within the national legal system, as well as to evaluate their implementation in public policy.[9] This research uses three main, complementary approaches. First, the statute approach, which examines all laws and regulations relevant to the recognition and protection of indigenous peoples. Second, the conceptual approach, which examines legal concepts, doctrines, and theories related to indigenous peoples' rights. Third, the case approach, which analyzes court decisions related to indigenous peoples' rights disputes.[10]

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include: the 1945 Constitution of the Republic of Indonesia; related sectoral laws; relevant government regulations, presidential regulations, and regional regulations; and decisions of the Constitutional Court, the Supreme Court, and district courts relating to the rights of indigenous peoples. Secondary legal materials include academic literature in the form of textbooks, scientific journals, dissertations, theses, research reports, and reports from state institutions and international organizations. Data collection techniques are carried out through library research, namely collecting and reviewing various written sources relevant to the research topic.[11] The collected data was then analyzed qualitatively using legal

[7] United Nations, United Nations Declaration on the Rights of Indigenous Peoples (New York: United Nations, 2008), hlm. 1-2; Rhona K.M. Smith, dkk., Hukum Hak Asasi Manusia (Yogyakarta: PUSHAM UII, 2008), hlm. 102.

[8] Maria S.W. Sumardjono, Kebijakan Pertanahan: Antara Regulasi dan Implementasi (Jakarta: Kompas, 2005), hlm. 113-120.

[9] Yance Arizona, Konstitusionalisme Agraria (Yogyakarta: STPN Press, 2014), hlm. 78-85.

[10] Peter Mahmud Marzuki, Penelitian Hukum, Edisi Revisi (Jakarta: Kencana Prenada Media Group, 2014), hlm. 47.

[11] Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat (Jakarta: RajaGrafindo Persada, 2015), hlm. 12-14.

interpretation methods, encompassing grammatical, systematic, historical, and teleological interpretations. The analysis was also supplemented with legal construction to fill any gaps in the norms identified.[12]

RESULTS AND DISCUSSION

National Regulatory Framework for the Recognition and Protection of Indigenous Peoples

The protection of indigenous peoples' rights in the Indonesian legal system can be traced back to the colonial era, when the Dutch East Indies government enacted Het Adatrecht, which recognized customary law as a separate legal system. Snouck Hurgronje, van Vollenhoven, and Ter Haar were among the Dutch scholars who contributed significantly to the development of customary law, which later became the foundation for colonial policies relating to indigenous communities.[13] Post-independence, regulations regarding indigenous communities have experienced significant ups and downs. During the Old Order era, the 1960 UUPA attempted to integrate customary rights of indigenous communities into the national agrarian law system. Article 3 of the UUPA states that the implementation of customary rights and similar rights of indigenous communities, to the extent they actually exist, must be in accordance with national and state interests. This provision implicitly subordinates customary rights to state interests.

During the New Order era, the rights of indigenous peoples were increasingly marginalized due to development policies oriented toward economic growth. Various large-scale development projects, particularly in the plantation and forestry sectors, were implemented on customary lands without adequate consultation with local communities. Law No. 5 of 1967 concerning Basic Provisions on Forestry granted the state broad authority to control forest areas, which resulted in the displacement of indigenous peoples' communal rights to forests.[14] The Reformation era brought significant changes in the state's approach to the rights of indigenous peoples. The second amendment to the 1945 Constitution of the Republic of Indonesia in 2000 included explicit provisions on the recognition of indigenous peoples and their traditional rights in Article 18B paragraph (2). Furthermore, MPR Decree No. IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management also expressly mandated the restoration of the rights of indigenous peoples that had been seized. This marked a significant turning point in the history of legal protection for indigenous peoples in Indonesia.[15]

The next important milestone was Constitutional Court Decision No. 35/PUU-X/2012, which partially granted the petition for judicial review of the Forestry Law. In its ruling, the Constitutional Court emphasized that customary forests are forests located within the territories of indigenous legal communities, not state forests. This ruling paradigmatically shifted the position of indigenous communities from mere legal subjects regulated by the state to rights holders who must be recognized and respected by the

[12] Johnny Ibrahim, Teori dan Metodologi Penelitian Hukum Normatif (Malang: Bayumedia Publishing, 2006), hlm. 295-300.

[13] Bushar Muhammad, Pokok-Pokok Hukum Adat (Jakarta: Pradnya Paramita, 2006), hlm. 5-10.

[14] Gunawan Wiradi, Reforma Agraria: Perjalanan yang Belum Berakhir (Yogyakarta: INSIST Press, 2000), hlm. 35-40.

[15] Sandra Moniaga, "Hak-Hak Masyarakat Adat dan Masalah serta Kelestariannya" dalam Anton Lucas dan Carol Warren (eds.), Land for the People: The State and Agrarian Conflict in Indonesia (Athens: Ohio University Press, 2013), hlm. 120-125.

state.[16] Law Number 6 of 2014 concerning Villages also makes a significant contribution to the protection of indigenous communities through the regulation of customary villages. This law recognizes customary villages as separate legal entities with the authority to regulate and manage the interests of local communities based on community initiatives, ancestral rights, and/or traditional rights. This regulation provides the legal basis for customary-based governance at the community level.[17]

In 2016, the government issued Minister of Environment and Forestry Regulation No. P.32/Menlhk-Setjen/2015 concerning Forest Rights as a technical instrument for implementing Constitutional Court Decision 35/2012. This regulation governs the mechanism for submitting and designating customary forests by regional heads. However, its implementation has been very slow due to complex administrative procedures, limited local government capacity, and the lack of comprehensive mapping data on customary territories.[18] From an international legal perspective, Indonesia is also bound by a number of relevant instruments. ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent States, although not yet ratified by Indonesia, remains an important reference in international legal discourse. Furthermore, various international environmental treaties ratified by Indonesia, such as the Convention on Biological Diversity (CBD), contain provisions on respecting the knowledge and practices of local and indigenous communities.[19] Thus, overall, Indonesia's national regulatory framework has established a fairly comprehensive legal architecture for the recognition and protection of indigenous peoples. However, this framework remains sectoral and scattered, and has not yet been integrated into a single comprehensive law, as has been repeatedly proposed in the National Legislation Program. This lack of a specific law is one of the biggest obstacles to systematic and equitable protection efforts.[20]

In addition to the development of national regulations, theoretically, the recognition of indigenous communities is a logical consequence of the concept of a state based on law (rechtstaat), which upholds the principle of respect for human rights and socio-cultural diversity. From the perspective of the theory of legal pluralism, as proposed by John Griffiths, law is not only understood as a product of the state but also encompasses social norms that exist and are adhered to by society.[21] Therefore, customary law that exists in indigenous communities has sociological legitimacy that cannot be ignored by the state. Constitutional recognition of indigenous legal communities in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia shows that the Indonesian state basically recognizes the existence of legal

[16] Mahkamah Konstitusi Republik Indonesia, "Perkembangan Hak Masyarakat Adat dalam Hukum Indonesia", Jurnal Konstitusi, Vol. 10 No. 2 (2013), hlm. 215-220.

[17] Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 35/PUU-X/2012 tentang Pengujian Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan, hlm. 175-180.

[18] Undang-Undang Nomor 6 Tahun 2014 tentang Desa, Pasal 1 angka 4 dan Bab XIII Desa Adat, Pasal 96-111.

[19] Aliansi Masyarakat Adat Nusantara (AMAN), Laporan Status Hutan Adat Indonesia 2022 (Jakarta: AMAN, 2023), hlm. 8-15.

[20] Rhona K.M. Smith, dkk., op.cit., hlm. 115; Konvensi Keanekaragaman Hayati (Convention on Biological Diversity), Pasal 8(j).

[21] Roziqin, Roziqin, Muhammad Hakim, and Dimyati Dimyati. "Kepastian Hukum Pengaturan Hak Atas Tanah Dalam Pluralisme Hukum." *Journal de Facto* 11.1 (2024): 135-145. https://doi.org/10.36277/jurnaldefacto.v11i1.228

pluralism in the national legal system.[22] However, this recognition is still conditional, namely as long as the indigenous community is "still alive" and "in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." In practice, this conditional phrase often gives rise to multiple interpretations and opens up space for the state to unilaterally determine the existence and legality of indigenous communities.

On the other hand, the construction of state control over natural resources as regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia also often becomes the basis of legitimacy for the state to limit the rights of indigenous peoples. An overly dominant interpretation of the state's right to control often positions the state as the absolute owner of land, forests, and natural resources, while indigenous peoples are only positioned as parties that can be recognized as long as they do not conflict with the interests of national development. In fact, the Constitutional Court through various decisions has emphasized that the state's right to control is not identical to the state's right to own, but rather the state's obligation to regulate, protect, and guarantee the welfare of the people, including indigenous peoples.[23] In this context, ignoring the customary rights of indigenous peoples actually contradicts the principle of social justice as the main objective of the Indonesian state of law.[24] Development policies that disregard the rights of indigenous peoples also have the potential to give rise to structural agrarian conflicts that result in the loss of living space, cultural identity, and economic sustainability of indigenous communities.

The regulatory framework regarding indigenous peoples also demonstrates the unresolved issue of harmonizing laws and regulations. Regulations concerning indigenous peoples are scattered across various sectoral regulations, including those on agrarian affairs, forestry, the environment, villages, and mining, which often have differing paradigms and interests.[25] This situation has led to overlapping authority between state agencies and legal uncertainty in the process of recognizing the rights of indigenous peoples. From the perspective of legal certainty theory, this situation indicates that the national regulatory system is unable to guarantee consistent and integrated legal protection for indigenous peoples. Therefore, the establishment of a specific law on indigenous peoples is an urgent need to create regulatory synchronization, clarify the mechanism for recognizing indigenous peoples, and provide certainty regarding the protection of traditional rights of indigenous peoples within the framework of a democratic and socially just state based on the rule of law.

Barriers to Implementation of Regulations and Policy Gaps for the Protection of Indigenous Communities

[22] Kusumawarni, Baiq Amilia. "Pluralisme Hukum Dalam Praktik Penerapan Hukum Internasional Di Indonesia: Kajian Terhadap Hubungan Hukum Internasional Dan Hukum Nasional." *Unizar Recht Journal (URJ)* 1.4 (2022). https://urj.unizar.ac.id/urj/article/view/21

[23] Sugianto, Gianinda Audrine. "Implikasi Putusan Mahkamah Konstitusi Terhadap Penguatan Hak Masyarakat Adat Atas Tanah Dan Sumber Daya Alam." *Justicia Sains: Jurnal Ilmu Hukum* 10.1 (2025): 46-67. https://doi.org/10.24967/jcs.v10i1.3571

[24] Kirana, Ni Wayan Galuh Candra. "Pengakuan dan Perlindungan Hak Ulayat Masyarakat Hukum Adat dalam Peraturan Perundang-Undangan Indonesia." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4.2 (2026): 7916-7929. https://doi.org/10.61104/alz.v4i2.5858

[25] Salsabilla, Rizky Winda, Ananda Mulia Putri Maharani, and Haniy Alhafizah. "Melindungi Kehidupan Masyarakat Hukum Adat dalam Konteks Pengaturan Pertambangan Mineral dan Batubara: Perspektif FPIC Indonesia dan Filipina." *Jurnal Hukum Lingkungan Indonesia* 10.2 (2024): 245-288. https://doi.org/10.38011/jhli.v10i2.876

Various empirical studies have shown a wide gap between written legal norms and the realities faced by indigenous communities on the ground. This gap is not solely the result of technical administrative weaknesses, but rather reflects more fundamental structural issues within Indonesia's legal system and governance.[26] The first and most fundamental obstacle is poorly managed legal pluralism. Indonesia is a country with a rich tradition of legal pluralism, where national law, customary law, and religious law coexist within a single system. In the context of indigenous communities, customary law, which regulates communal rights to land and natural resources, often clashes with state law, which emphasizes individual ownership or state control. This conflict between these two normative systems creates legal uncertainty that is detrimental to indigenous communities.[27] The second obstacle is weak synchronization between institutions and regulations. Indigenous peoples' rights are regulated in various sectoral laws, which often conflict with each other. For example, provisions on customary land rights in the Basic Agrarian Law (BAL) have the potential to conflict with provisions on forest area control in the Forestry Law. Similarly, the recognition of customary villages in the Village Law is not fully aligned with its derivative regulations. This horizontal and vertical misalignment between laws and regulations creates serious implementation complications.[28]

The third obstacle relates to the capacity and commitment of local governments to implement policies protecting indigenous communities. Decentralization, implemented since 1999, has granted regional governments significant authority to recognize and protect indigenous communities through regional regulations. However, in practice, many local governments lack adequate technical capacity, comprehensive data on indigenous communities in their jurisdictions, or a strong political commitment to prioritize indigenous community protection over investment and development interests.[29] The fourth, no less serious obstacle is the lack of meaningful participation of indigenous communities in the process of formulating regulations and policies that affect their lives. The principle of free, prior, and informed consent (FPIC), which requires the free, prior, and informed consent of indigenous communities before decisions that impact them, has not been consistently implemented in Indonesian government practice. Various infrastructure development and natural resource extraction projects are still frequently implemented without adequate consultation and consent from affected indigenous communities.[30]

The fifth obstacle is the dominance of a development paradigm based on economic growth, which often conflicts with the interests of indigenous communities. Large-scale investment policies in the mining, palm oil plantation, and industrial forestry sectors require extensive land acquisition, often within customary territories inhabited and managed by local communities for generations. Strong economic and political pressure from business groups and multinational corporations often results in the neglect of

[26] Dewan Perwakilan Rakyat RI, Naskah Akademik Rancangan Undang-Undang tentang Masyarakat Hukum Adat (Jakarta: DPR RI, 2021), hlm. 22-30.

[27] Fitzpatrick, Daniel, "Land, Custom, and the State in Post-Suharto Indonesia: A Foreign Lawyer's Perspective" dalam Jamie S. Davidson dan David Henley (eds.), The Revival of Tradition in Indonesian Politics (London: Routledge, 2007), hlm. 228-248.

[28] Myrna A. Safitri dan Tristam Moeliono (eds.), Hukum Agraria dan Masyarakat di Indonesia: Studi tentang Tanah, Kekayaan Alam, dan Ruang di Masa Kolonial dan Desentralisasi (Jakarta: HuMa, van Vollenhoven Institute, dan KITLV-Jakarta, 2010), hlm. 45-50.

[29] Herlambang P. Wiratraman, "Hak-Hak Konstitusional Warga Negara: Perkembangan Pasca-Amandemen Konstitusi", Jurnal Hukum dan Pembangunan, Vol. 44 No. 3 (2014), hlm. 374.

[30] Riza Primahendra, dkk., Kebijakan Perlindungan Masyarakat Adat di Era Desentralisasi: Kajian 10 Kabupaten (Jakarta: Epistema Institute, 2014), hlm. 32-38.

indigenous peoples' interests in policy considerations.[31] The sixth obstacle is the technical issue of data collection and mapping of indigenous territories. One of the formal requirements for recognition of indigenous communities and their territories is the availability of written evidence of the existence and boundaries of indigenous territories. Yet, many indigenous communities lack written documentation because they traditionally rely on local knowledge and oral agreements to determine territorial boundaries. Participatory mapping programs developed by various NGOs and indigenous peoples' organizations have attempted to fill this gap, but their results have not been officially and consistently recognized by the government.[32]

Another equally concerning phenomenon is the stigmatization and criminalization of indigenous peoples' rights defenders. Numerous reports from human rights organizations document cases in which indigenous peoples defending their territories have faced legal action from state officials or companies. Articles in the Criminal Code (KUHP) on theft and destruction, as well as provisions in forestry and plantation laws, are often used to ensnare indigenous peoples who collect forest products or farm on their own customary lands.[33] These various obstacles demonstrate that the implementation of protection for indigenous communities is not merely technical and administrative, but also a matter of power and interest. The progressive legal theory developed by Satjipto Rahardjo is relevant here: the law should not function merely as a tool to legitimize power, but rather as an instrument for realizing substantive justice. In the context of indigenous communities, this means the law must actively protect vulnerable groups from the domination of economic interests and state power.[34]

To overcome these obstacles, academics and legal practitioners generally recommend the creation of a comprehensive, specific law on indigenous peoples. Such draft laws have been included in the National Legislation Program (Prolegnas) several times, but their deliberations have consistently stalled due to various political obstacles. The main challenges in developing such legislation are balancing the recognition and protection of indigenous peoples with the needs of national development, as well as overcoming resistance from groups who feel their interests are threatened by strengthening indigenous peoples' rights.[35] Furthermore, strengthening the institutional capacity of local governments to identify, recognize, and protect indigenous communities is also an urgent need. This includes establishing special units for indigenous peoples' affairs at the district/city level, providing adequate budgets for indigenous peoples' protection programs, and increasing human resource capacity through training and education. In several regions, such as Jayapura Regency in Papua and several regencies in Kalimantan, policy innovations responsive to the needs of indigenous communities have begun to be developed, and these experiences need to be documented and expanded to other regions.[36]

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[31] Chalid Muhammad, "Free, Prior and Informed Consent dalam Hukum Indonesia: Antara Norma dan Praktik", Jurnal Hukum Lingkungan Indonesia, Vol. 4 No. 1 (2017), hlm. 86-90.

[32] Noer Fauzi Rachman, Land Reform dari Masa ke Masa: Perjalanan Kebijakan Pertanahan Indonesia 1945-2009 (Yogyakarta: Tanah Air Beta, 2012), hlm. 89-95.

[33] Abdon Nababan, "Pemetaan Partisipatif: Hak Masyarakat Adat atas Wilayahnya", dalam Jurnal Wacana, Vol. 15 No. 2 (2013), hlm. 145-150.

[34] Wahyu Wagiman, dkk., Kriminalisasi Pejuang Hak Masyarakat Adat: Tren dan Pola (Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, 2019), hlm. 15-22.

[35] Satjipto Rahardjo, Ilmu Hukum (Bandung: Citra Aditya Bakti, 2012), hlm. 188-195.

[36] Dewan Perwakilan Rakyat RI, op.cit., hlm. 40-45.

In addition to the various obstacles already outlined, the implementation of protection for indigenous peoples also demonstrates the dominance of a legal-positivistic approach within the national legal system. This approach tends to position state law as the sole source of legal legitimacy, while customary law is positioned subordinately and is often considered to lack binding force unless it has received formal recognition from the state. In practice, this situation results in indigenous peoples relying on lengthy and bureaucratic administrative mechanisms to obtain legal recognition. Yet, sociologically, indigenous peoples have lived and practiced their legal systems long before the modern state was formed.[37] This perspective reveals an unequal relationship between the state and indigenous communities, with the state holding dominant authority to determine the existence of indigenous communities and their rights. Consequently, legal protection for indigenous communities is highly vulnerable to influence by political and economic interests and the policy direction of the ruling government.

From the perspective of social justice theory, these various implementation obstacles indicate that the state has not fully carried out its constitutional obligations to protect vulnerable and marginalized groups in society.[38] When conflicts between investment interests and indigenous peoples' rights arise, the state tends to prioritize economic stability and investment growth over protecting indigenous peoples' traditional rights. This is evident in the widespread granting of plantation, mining, and forestry concessions in indigenous areas without first resolving the status of local community rights. Such policies not only give rise to prolonged agrarian conflicts but also threaten the sustainability of indigenous peoples' cultural identities, social systems, and living spaces. In the context of a democratic state governed by the rule of law, economic development should not be pursued at the expense of citizens' constitutional rights, including indigenous peoples' rights to land, the environment, and their cultural identity.[39] Therefore, the national development paradigm needs to be directed towards a more inclusive, participatory approach, and one based on respect for human rights.

The problems in implementing protection for indigenous peoples also demonstrate the state's weak political will to undertake comprehensive legal reform. Although various Constitutional Court decisions have affirmed the recognition of indigenous peoples' rights, their implementation is often hampered by technical regulations, inter-agency sectoral egos, and resistance from certain political and economic interests. The absence of a specific law on indigenous peoples further exacerbates legal uncertainty, as mechanisms for recognizing, protecting, and restoring indigenous peoples' rights are scattered across various, unintegrated sectoral regulations.[40] From the perspective of legal certainty theory, this situation creates inconsistent norms and opens up room for abuse of authority by state officials and corporations. Therefore, regulatory reform through the creation of a comprehensive indigenous peoples law is an urgent step to strengthen the legal position of indigenous peoples, clarify the authority relationships

[37] Damayanti, Elvira, and Daffa Arjuna Arya Putra. "Perkawinan dalam Perspektif Hukum Adat Indonesia: Ragam Sistem, Tradisi, dan Tantangan Modern." *TarunaLaw: Journal of Law and Syariah* 3.02 (2025): 99-116. https://doi.org/10.54298/tarunalaw.v3i02.448

[38] Prasojo, Hermawan, and Syarafina Dyah Amalia. "Konstitusi Redistributif dan Upaya Reformasi Keadilan Sosial di Indonesia." *Rechtsnormen Jurnal Komunikasi dan Informasi Hukum* 4.1 (2025): 60-72. https://doi.org/10.56211/rechtsnormen.v4i1.1158

[39] Bustomi, Ahmad Royhan, Derrel Azhar Sugianto, and Fardan Zidane Juniawan. "Politik Hukum dalam Pengelolaan Sumber Daya Alam: Antara Kepentingan Negara dan Hak Masyarakat Adat." *Hutanasyah: Jurnal Hukum Tata Negara* 4.1 (2025): 89-100.

[40] Lubis, Ikhsan, et al. "Integrasi hukum adat dalam sistem hukum agraria nasional: Tantangan dan solusi dalam pengakuan hak ulayat." *Tunas Agraria* 8.2 (2025): 143-158. https://doi.org/10.31292/jta.v8i2.401

between state institutions, and ensure that protection for indigenous peoples does not stop at the normative level but is effectively implemented in public policy practice.

CONCLUSIONS

Based on the analysis outlined above, several key conclusions can be drawn. First, Indonesia has established a fairly comprehensive regulatory framework for the recognition and protection of indigenous communities, anchored in constitutional provisions in the 1945 Constitution of the Republic of Indonesia and disseminated across various sectoral laws. A significant milestone was marked by Constitutional Court Decision No. 35/PUU-X/2012, which affirmed the existence of customary forests as the rights of indigenous communities, not objects of state authority. The 2014 Village Law also provides an institutional foundation for autonomous customary village governance. Second, the implementation of this regulatory framework in public policy remains far from satisfactory. Several structural barriers have been identified: unmanaged legal pluralism, inconsistencies between sectoral regulations, weak capacity and commitment of local governments, minimal meaningful participation of indigenous communities in the policy process, the dominance of a growth-based development paradigm, technical issues in mapping and registering customary territories, and the criminalization of advocates for customary rights. These barriers are synergistic and mutually reinforcing.

Third, comprehensive policy reform is an urgent need. Immediate steps include: (a) enacting a comprehensive, specific law on indigenous peoples that integrates scattered provisions; (b) harmonizing sectoral regulations to eliminate overlaps and contradictions; (c) strengthening the institutional capacity of local governments in implementing policies to protect indigenous peoples; (d) institutionalizing the principle of Free, Prior, and Informed Consent in all decision-making processes concerning indigenous peoples; and (e) establishing effective redress mechanisms for indigenous peoples whose rights have been violated. Fourth, protecting indigenous peoples is not merely a legal obligation but also a moral and ecological imperative. Indigenous peoples are the guardians of irreplaceable biodiversity and ecosystems; their local wisdom in managing natural resources constitutes a priceless legacy of humanity. In the context of the increasingly alarming global climate crisis, recognizing and strengthening the rights of indigenous peoples to their territories and natural resources is not only a matter of social justice but also an effective strategy for climate change adaptation and mitigation.30

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