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Indigenous Perspectives at the Core: Addressing Legal Barriers to Sustainable Growth in Indonesia

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This study aims to analyze the recognition and protection of Indigenous peoples' rights in Indonesia within the context of sustainable development.

The method used in this study is a rigorous normative legal research method using a qualitative approach, focusing on the systematic interpretation of the 1945 Constitution of the Republic of Indonesia and key sectoral laws: Law No. 5/1960 on Basic Agrarian Law, Law No. 41/1999 on Forestry, Law No. 18/2004 on Plantation, and Law No. 6/2014 on Villages.

The novelty of this study stems from its integrative approach, which merges normative legal analysis with socio-economic perspectives to explore the multifaceted relationship between Indigenous rights and sustainable development.

The results indicate that while formal recognition exists, its implementation is fundamentally impaired by a normative vulnerability in the national legal system.

The conclusions of this study state that recognizing and protecting Indigenous rights is crucial for achieving sustainable development goals and recommends the need for accelerated legal recognition, enhancement of the One Map Policy, and better legal protections (including legal aid and mediation platforms) for Indigenous communities.

Keywords: Indigenous Rights; Sustainable Development; Legal Decentralization Paradox; Normative Vulnerability; Legal Reform.

Abstrak

Tujuan penelitian ini adalah untuk menganalisis pengakuan dan perlindungan hak-hak masyarakat adat di Indonesia dalam konteks pembangunan berkelanjutan.

Metode penelitian yang digunakan dalam studi ini adalah metode penelitian hukum normatif yang ketat dengan pendekatan kualitatif, berfokus pada interpretasi sistematis UUD 1945 dan undang-undang sektoral utama: UU No. 5/1960 tentang Pokok Agraria, UU No. 41/1999 tentang Kehutanan, UU No. 18/2004 tentang Perkebunan, dan UU No. 6/2014 tentang Desa.

Kebaruan penelitian ini berasal dari pendekatan integratifnya, yang menggabungkan analisis hukum normatif dengan perspektif sosial-ekonomi untuk mengeksplorasi hubungan multidimensi antara hak-hak adat dan pembangunan berkelanjutan.

Hasil penelitian menunjukkan bahwa meskipun pengakuan formal ada, pelaksanaannya secara fundamental terganggu oleh kerentanan normatif dalam sistem hukum nasional.

Kesimpulan dari studi ini menyatakan bahwa mengakui dan melindungi hak adat sangat penting untuk mencapai tujuan pembangunan berkelanjutan dan merekomendasikan perlunya percepatan pengakuan hukum, peningkatan Kebijakan Satu Peta (*One Map Policy*), serta perlindungan hukum yang lebih baik (termasuk bantuan hukum dan platform mediasi) bagi masyarakat adat.

Kata Kunci: Hak Masyarakat Adat; Hukum Agraria; Pembangunan Berkelanjutan; Reformasi Hukum.

1. INTRODUCTION

The protection and recognition of Traditional rights within the concept of sustainable development in Indonesia represent a critical legal issue that requires thorough examination. Indigenous peoples are often treated as subjects of development rather than active contributors, which is evident in their limited participation in development projects and initiatives. They typically receive only social responsibility funds from investors, which do little to improve their quality of life.¹ As development projects increasingly encroach upon their traditional lands, recognizing their rights becomes essential not only for social justice but also for achieving sustainable development goals.

Recent literature highlights that Indigenous communities are among the most affected by climate change, facing significant risks due to the rapid loss of forests in tropical countries. This environmental degradation threatens not only ecosystems but also the survival of these communities, who have inhabited these regions for many generations.² To effectively address these challenges, it is essential to acknowledge the rights of Indigenous communities before launching initiatives like REDD+, ensuring that they are protected and not negatively impacted.³ By acknowledging these rights, countries can promote inclusive development and uphold the principle of leaving no one behind.

In Indonesia, legal protections for indigenous peoples exist, with their customary and communal rights recognized in the constitution, specifically in Article 18B Paragraph (2) and Article 28I Paragraph (3) of the 1945 Constitution, as well as in various national and regional regulations.⁴ However, the government claims that the international idea of indigenous peoples does not apply in Indonesia because all Indonesians are seen as indigenous.⁵ This perspective is also common in many countries across Asia and Africa.⁶ Consequently, several

¹ Nur Putri Hidayah et al., "The Strengthening Legal Protection of Indigenous People in Facing Investment Climate in Era of ASEAN Economic Community In," 175, no. 1 (2018), 3.

² D. A.A. Sari et al., "Indigenous People's Forest Management to Support REDD Program and Indonesia One Map Policy," 200, no. 1 (2018), 4.

³ Sari et al., "Indigenous People's Forest Management to Support REDD Program and Indonesia One Map Policy", 9.

⁴ Hidayah et al., "The Strengthening Legal Protection of Indigenous People in Facing Investment Climate in Era of ASEAN Economic Community In", 2.

⁵ Chairul Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights," *Journal of Indonesian Legal Studies* 8, no. 2 (2023), 1043.

⁶ Adriaan Bedner and Stijn Van Huis, "The Return of the Native in Indonesian Law Indigenous Communities in Indonesian Legislation," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 164, no. 2/3 (2008), 166.

studies indicate that the policies designed to protect people's rights often remain unimplemented and exist only on paper.⁷ Therefore, it is crucial for indigenous peoples to be involved not only in policy creation but also in implementation and monitoring. Their participation in managing natural resources is vital, as certain practices and beliefs dictate that only local indigenous people should handle these resources.⁸ This approach not only safeguards their rights but also promotes unity in the sustainable development of society and the country.

Several studies have addressed similar topics. For instance, Kristiansen and Sulistiawati which examined customs, land ownership, and the development of local well-being in Eastern Indonesia⁹ and Hidayah, Wiryani, and Madyasti which focused on the strengthening of legal protections for Indigenous communities within the framework of the ASEAN economic community¹⁰.

Kristiansen and Sulistiawati investigated the impacts of customary land allocation systems on families, clans, and the government.¹¹ Meanwhile, Hidayah, Wiryani, and Madyasti (2018) concentrated on legal protection and the impact of inconsistent regulations across different sectors.

Kristiansen and Sulistiawati revealed that when actual land ownership is not legally acknowledged, outsiders can more readily "interfere, impose, and manipulate," leading to potential conflict. They concluded that communities must first recognize the weak legal standing of their actual land ownership, even though they firmly believe in the security of their rights rooted in adat and traditional practices¹². Similarly, Hidayah, Wiryani, and Madyasti highlighted the weaknesses in current protections for Indigenous peoples' communal rights, particularly regarding customary land, noting that significant portions of communal land cannot be claimed due to their location within protected forest areas. For instance, the transfer of 1,000,000 m² of communal land and customary land rights to the Ministry of Forestry cannot be claimed, since it is situated within designated forest conservation areas¹³.

To achieve a comprehensive analysis of the gap between legal frameworks and ground realities, this study is guided by two foundational research questions. The first question focuses on the structural issues: What are the primary legal and implementation barriers in Indonesia

⁷ R. Ramli and Wahyudin, "Achieving Sustainable Development Goals (SDGs) through Indigenous Group Protection in Indonesia," 921, no. 1 (2021), 2.

⁸ Ahmad Yani and Tria Noviantika, "The Antinomy of Green Economy Implementation towards Indigenous People in Natural Resources Management," 1270, no. 1 (2023), 7.

⁹ Stein Kristiansen and Linda Sulistiawati, "Traditions, Land Rights, and Local Welfare Creation: Studies from Eastern Indonesia," *Bulletin of Indonesian Economic Studies* 52, no. 2 (2016), 209.

¹⁰ Hidayah et al., "The Strengthening Legal Protection of Indigenous People in Facing Investment Climate in Era of ASEAN Economic Community In", 1.

¹¹ Kristiansen And Sulistiawati, "Traditions, Land Rights, And Local Welfare Creation: Studies From Eastern Indonesia", 209.

¹² Kristiansen and Sulistiawati, "Traditions, Land Rights, and Local Welfare Creation: Studies from Eastern Indonesia", 216.

¹³ Hidayah, Wiryani, And Madyasti, "The Strengthening Legal Protection Of Indigenous People In Facing Investment Climate In Era Of ASEAN Economic Community In", 3.

that prevent the effective recognition and protection of Indigenous peoples' traditional land rights within the framework of sustainable development? This inquiry tackles the specific failures within the legal system and policy execution. The second question explores the resulting consequences: How do the limitations on the recognition of these rights impact the socio-economic conditions of Indigenous communities and their capacity to contribute to Indonesia's sustainable development goals? Together, these questions guide the research toward proposing solutions that integrate Indigenous voices and rights, thereby promoting truly inclusive and sustainable growth.

The primary purpose of this research is to provide a rigorous understanding of the intersection between Indigenous rights and sustainable development, focusing on the unique challenges faced by Indigenous communities in asserting their land rights. The urgency of this inquiry stems from the pressing need to address the legal and social barriers that hinder the recognition of these rights, particularly considering ongoing environmental degradation and climate change. Consequently, the scope of this research centers on the limitations surrounding the recognition and protection of Indigenous rights in Indonesia. This includes examining legal frameworks, the lack of implementation of existing protections, and the socio-economic challenges faced by Indigenous peoples. By identifying these limitations, the study aims to provide a clearer understanding of the obstacles that must be addressed to formulate effective recommendations.

The novelty of this study stems from its integrative approach, which merges normative legal analysis with socio-economic perspectives to explore the multifaceted relationship between Indigenous rights and sustainable development. Unlike previous studies that may have analyzed legal frameworks or socio-economic impacts in isolation, this research aims to bridge these areas by examining how legal recognition directly correlates with economic resilience and environmental sustainability. Furthermore, the study distinguishes itself by incorporating Indigenous voices and perspectives, ensuring that their experiences and knowledge are central to the analysis. This participatory approach not only enriches the academic discourse but also validates the critical role of Indigenous communities as substantive partners in achieving national sustainable development goals.

2. METHOD

This research uses a normative legal research method (doctrinal research) coupled with a qualitative approach, focusing on the recognition and protection of Indigenous rights in Indonesia, particularly in relation to sustainable development. This method allows for a thorough understanding of the complexities surrounding Indigenous rights by emphasizing descriptive analysis of the legal and social challenges faced by Indigenous peoples.

The legal material analysed primarily consists of primary sources, specifically the foundational Indonesian laws: the 1945 Constitution of the Republic of Indonesia, Law No. 5 of 1960 on Basic Agrarian Law, Law No. 41 of 1999 on Forestry, Law No. 18 of 2004 on Plantation, and Law No. 6 of 2014 on Villages.

Data collection for secondary materials involves a systematic literature review to gather

academic articles and policy reports. This systematic approach justifies the exclusive use of high-quality, peer-reviewed international databases, specifically ProQuest and Taylor & Francis Online, to ensure the academic reliability and global relevance of the contextual analysis. The inclusion criteria for selecting secondary literature prioritize publications from the last ten years that explicitly address the legal and implementation dualism of Indigenous customary rights in Indonesia. This targeted approach ensures that the study engages with the most current scholarly debate concerning the gap between constitutional recognition and on-the-ground socio-legal challenges.

The analysis is conducted through a descriptive qualitative analysis, which means synthesizing the collected legal materials to identify patterns, gaps, and implications for Indigenous rights. The study uses both conceptual and analytical methods to critically assess how effective existing legal frameworks are and how they impact Indigenous communities. By using this comprehensive normative legal research method, the study aims to provide valuable insights into the recognition and protection of Indigenous rights in Indonesia, ultimately contributing to discussions on sustainable development and social justice.

3. DISCUSSION

3.1. Recognition of Indigenous Rights in Indonesia

The legal recognition of Indigenous peoples in Indonesia involves a complex interplay between constitutional guarantees and statutory regulations regarding their traditional and communal rights. At the foundational level, the 1945 Constitution explicitly acknowledges the existence of Indigenous communities (*Masyarakat Hukum Adat*) and their traditional rights. Specifically, Article 18B Paragraph (2) grants protection to these communities as long as they exist and remain aligned with societal development and the principles of the Republic of Indonesia.¹⁴ This recognition is reinforced by Article 28I Paragraph (3) regarding cultural identity, and Article 28H Section 4, which emphasizes that Indigenous property rights are fundamental entitlements that cannot be arbitrarily seized without due legal process.¹⁵

Despite these constitutional safeguards, the operational framework for these rights creates significant vulnerability. Law No. 5/1960 on Basic Agrarian Law is significant because it was the first law in Indonesia to recognize Indigenous property rights, although it only addresses these rights briefly in Article 3. This article states that Indigenous property rights must align with national interests and should not conflict with higher laws. However, the law does not provide clear criteria for determining the existence of these rights. As a result, the practical recognition of these rights often depends on how well a customary law community can advocate for their rights against the government and other powerful interests.¹⁶ Juridically, this provision creates a normative vulnerability. The ambiguous phrase "national interests" establishes a conditionality that allows subsequent sectoral laws, particularly those related to forestry and mining, to easily supersede and effectively deny *hak ulayat* (customary communal

¹⁴ D. Haryono et al., "Legal Policy on the Protection of Ulayat Rights of Indigenous Peoples in Kampar Regency," 1181, no. 1 (2023), 2.

¹⁵ Kurnia Toha, *The Struggle over Land Rights - A Study of Indigenous Property Rights in Indonesia*, 2007, 93 & 124.

¹⁶ Toha, *The Struggle over Land Rights - A Study of Indigenous Property Rights in Indonesia*, 85.

land rights) in practice.

The conflict over Indigenous rights is most evident in the forestry sector, where statutory frameworks have historically enabled state dispossession. Under Law No. 41/1999 on Forestry, forests were historically bifurcated into State Forests (land without established rights) and Rights Forests (land with recognized rights). Crucially, this law classified customary forests as a subset of State Forest areas, requiring government approval for their management. This classification directly contradicted the constitutional recognition of inherent Indigenous rights, leading to persistent land conflicts and the marginalization of communities arguing for the return of their ancestral lands.¹⁷

The legal landscape reached a critical juncture with Constitutional Court Decision No. 35/PUU-X/2012. This landmark ruling addressed the disharmony between the Forestry Law and the Constitution by explicitly declaring that customary forests are not State Forests, but rather belong to the customary law communities. While this decision established a vital precedent for recognizing collective Indigenous rights, its full implementation remains hindered by a significant administrative barrier: the requirement that the existence of these communities must first be validated through local regulations (*Perda*) before their forest rights can be legally recognized.¹⁸

In contrast to the hostility of the forestry regime, Law No. 18/2004 on Plantation offers a framework that appears more protective of Indigenous rights. Article 9 Section 2 mandates that if land required for plantations is subject to Indigenous property rights, the applicant must negotiate with the customary law communities to reach a mutual agreement on compensation and land release before a permit is granted.¹⁹ However, this negotiation framework often fails in practice. The unresolved legal status of Indigenous property rights, despite the Constitutional Court ruling, leaves communities with weak bargaining power. Consequently, the burden of proof falls on the communities to demonstrate their rights, while corporations frequently utilize the state-owned land narrative to bypass these negotiations.²⁰

Beyond domestic law, the protection of Indigenous rights is supported by the international legal framework. Indigenous rights are safeguarded by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007), which is regarded as a milestone for establishing pathways for self-determination. Furthermore, ILO Convention No. 169 and the International Covenant on Civil and Political Rights (ICCPR) (specifically Article 27) play a vital role in protecting civil and cultural rights. These conventions underscore the ongoing efforts of Indigenous communities to pursue justice through international law.²¹ Despite these global standards, domestic acceptance is mixed. The Indonesian government recognizes

¹⁷ Sari Et Al., "Indigenous People's Forest Management To Support Redd Program And Indonesia One Map Policy", 3.

¹⁸ Sari et al., "Indigenous People's Forest Management to Support REDD Program and Indonesia One Map Policy", 3.

¹⁹ Toha, *The Struggle over Land Rights - A Study of Indigenous Property Rights in Indonesia*, 104.

²⁰ Toha, *The Struggle over Land Rights - A Study of Indigenous Property Rights in Indonesia*, 105.

²¹ Hans Kristian Hernes et al., "Indigenous Rights and Governance Theory: An Introduction," in *Indigenous Peoples, Natural Resources and Governance: Agencies and Interactions* (Taylor and Francis, 2021), 4.

UNDRIP but does not fully accept the concept of "Indigenous peoples" as defined internationally. The state argues that because the demographic composition of the nation is distinct, the international definition cannot be permanently established or is not entirely applicable to the Indonesian context.²²

3.2. Connection Between Indigenous Rights and Sustainable Development

The nexus between Indigenous rights and sustainable development is defined by the interdependence of economic inclusion, cultural identity, and environmental stewardship. The most significant connection lies in the capacity for Indigenous peoples to participate in development not merely as beneficiaries, but as active partners whose livelihoods and social inclusion are intricately linked to their rights over land, forests, and natural resources.²³ As sustainability becomes a primary catalyst for national policy within academia and governance, this partnership is particularly evident in the tourism industry, where sustainable development increasingly dictates social and political strategies worldwide.²⁴

In the Indonesian context, this global trend offers a strategic avenue for Indigenous communities to capitalize on the recognition of their traditional legal frameworks. By asserting rights over contested territories, such as "political forests" and ancestral domains, communities can build independent, sustainable economic initiatives.²⁵ A notable example of this synergy is found at Pandawa Beach in Badung Regency, Bali. Here, the Kutuh Traditional Village Institution demonstrates how local governance contributes to environmental sustainability and economic resilience. The institution has established a waste management system where a significant portion of waste is recycled, engaging all levels of local society, while the employment structure prioritizes Indigenous individuals across various sectors.²⁶ This model illustrates that while sustainable tourism offers community development, it requires strong Indigenous control to prevent economic leakage and ensure equitable wealth distribution.²⁷

Beyond economics, Indigenous peoples play a crucial role in ecological stewardship, using traditional knowledge to maintain biodiversity and combat challenges like deforestation.²⁸ Despite comprising only 5% of the world's population, Indigenous groups protect approximately 80% of global biodiversity, with research indicating that forests managed by these groups are more effective at carbon absorption than many commercial

²² Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights", 1043.

²³ Yani And Noviantika, "The Antinomy Of Green Economy Implementation Towards Indigenous People In Natural Resources Management", 4.

²⁴ Michelle Whitford and Lisa Ruhanen, "Indigenous Tourism Research, Past and Present: Where to from Here?," *Journal of Sustainable Tourism* 24, nos. 8–9 (2016), 1089.

²⁵ Rebakah Daro Minarchek, *Land, Trees, and Gold: The Politics of Resource Claims by Indigenous Peoples in Indonesia*, 2019, 149.

²⁶ A. Arifianto et al., "Involvement of Indigenous and Non-Indigenous Societies through the Development of Community Based Ecotourism Concept in Coastal Areas: Case Studies from Indonesia," 1250, no. 1 (2023), 10.

²⁷ Dewa Gede Sudika Mangku et al., "The Position of Indegenous People in the Culture and Tourism Developments: Comparing Indonesia and East Timor Tourism Laws and Policies," *Journal of Indonesian Legal Studies* 7, no. 1 (2022), 68.

²⁸ D. Daniel et al., "To What Extent Does Indigenous Local Knowledge Support the Social–Ecological System? A Case Study of the Ammatoa Community, Indonesia," *Resources* 11, no. 12 (2022), 12.

"protected areas".²⁹ This stewardship is rooted in knowledge systems that complement modern science. For instance, the Indigenous people of Patapahan Kampar in Riau Province utilize the Tapung River for *manubo* (fishing activities). The community uses a natural toxin derived from tree sap, proven to be environmentally safe, and prohibits the use of nets, relying instead on spears to ensure sustainable fish populations.³⁰

For centuries, Indigenous peoples have relied on their traditional knowledge, which is rooted in the teachings of their ancestors, with examples of this practice found worldwide.³¹ Indigenous knowledge systems has its own context and applications which is practical and accessible, evolving within communities.³² However, green economy strategies often overlook the effectiveness of Indigenous knowledge in conserving natural resources.³³

The sophistication of Indigenous resource management is further exemplified by the Balinese concept of *Tri Hita Karana* in Pakraman Village. This philosophy divides management into three components: *Parahyangan* (sacred sites), *Pawongan* (community relationships), and *Palemahan* (village environment). This strategy has resulted in the regulation known as *Druwe Desa*, which classifies land into residential, agricultural, temple, and communal categories, enforcing a concept of collective ownership that prevents individual monopolization of resources.³⁴ However, the operational legal status of these local wisdom systems remains highly vulnerable. While Indonesian environmental laws, specifically Law No. 32/2009 on Environmental Protection and Management, acknowledge the role of local wisdom, they rarely provide explicit legal mechanisms for customary sanctions to override conflicting corporate permits or sectoral policies. This structural gap renders the state's formal recognition of local wisdom rhetorical rather than functionally operational.

For Indigenous societies, land possesses magical-religious significance; it is not merely an asset but a sacred space for ancestors and the source of identity.³⁵ This connection is operationalized in Maluku through the practice of *Sasi*, a temporal prohibition system that restricts the extraction of specific marine or terrestrial resources to ensure regeneration. Initiated by the *Tutup Sasi* ceremony and concluded with *Buka Sasi*, this practice is a potent form of conservation.³⁶ Juridically, the effectiveness of the *Sasi* system highlights a key

²⁹ Ramli And Wahyudin, "Achieving Sustainable Development Goals (Sdgs) Through Indigenous Group Protection In Indonesia", 3.

³⁰ Ramli and Wahyudin, "Achieving Sustainable Development Goals (SDGs) through Indigenous Group Protection in Indonesia", 3.

³¹ Ramli and Wahyudin, "Achieving Sustainable Development Goals (SDGs) through Indigenous Group Protection in Indonesia", 3.

³² Daniel Et Al., "To What Extent Does Indigenous Local Knowledge Support The Social–Ecological System? A Case Study Of The Ammatoa Community, Indonesia, 10.

³³ Yani And Noviantika, "The Antinomy Of Green Economy Implementation Towards Indigenous People In Natural Resources Management", 5.

³⁴ Yani and Noviantika, "The Antinomy of Green Economy Implementation towards Indigenous People in Natural Resources Management", 5.

³⁵ Maria, "Local Wisdom of Indigenous Society in Managing Their Customary Land: A Comparative Study on Tribes in Indonesia," 52 (August 2018), 3.

³⁶ Maria, "Local Wisdom of Indigenous Society in Managing Their Customary Land: A Comparative Study on Tribes in Indonesia", 3.

contradiction: customary law provides an immediate, enforceable environmental safeguard, yet the state's positive law often fails to grant this self-enforcement mechanism the legal power to stand against concession licenses issued by the central government.

Collectively, the evidence from these diverse case studies, ranging from sustainable tourism in Bali and eco-friendly fishing in Riau to the conservation models of *Sasi* and *Druwe Desa*, demonstrates a crucial conclusion: Indigenous peoples are not merely beneficiaries of sustainable development, but its substantive prerequisites. The continued failure of the Indonesian legal system to move beyond rhetorical acknowledgement and grant operational legal status to customary rights represents a direct functional impediment to achieving environmental and economic sustainability. This necessitates a shift in the legal paradigm, where Indigenous governance is treated as an active, integrated partner in national resource management.

3.3. Challenges for Indigenous Communities in Claiming Land Rights

Indigenous communities face multifaceted challenges in claiming their land rights³⁷, primarily driven by the overlap of state-licensed concession areas with customary territories. This structural conflict is compounded by a complex legal bureaucracy, inconsistent political will at the local level, and internal erosion of solidarity due to land-selling practices by clan elites.

While Indonesia officially acknowledges the traditional land rights of Indigenous peoples (*Hak Ulayat*) through various policies³⁸, the gap between potential territory and recognized territory remains vast. According to August 2024 data from the Ministry of Environment and Forestry (KLHK), the Customary Territory Registration Agency (BRWA) has registered over 30 million hectares of claimed Indigenous territory. However, the Ministry has officially designated only 265,250 hectares as Customary Forest (*Hutan Adat*). This figure represents less than 1.2% of the estimated 23 million hectares of potential customary forests, highlighting a severe implementation deficit.³⁹

A primary driver of this deficit is the lack of a unified spatial database. Jurisdictional maps, including village maps, national forest maps, and concession boundaries, often reflect differing interpretations among stakeholders.⁴⁰ To address this, the government introduced the One Map Policy (OMP) to harmonize conflicting data, which aims to reduce land conflicts and promote social justice. However, despite participatory mapping exercises producing detailed maps of customary land, local governments often hesitate to integrate them due to differing

³⁷ Timo Duile, "Indigenous Peoples, the State, and the Economy in Indonesia: National Debates and Local Processes of Recognition," *Austrian Journal of South-East Asian Studies* 13, no. 1 (2020), 156.

³⁸ Habib Adjie, "Indonesian Land Rights for Individual Limited Companies," *International Journal of Cyber Criminology* 17, no. 2 (2023), 25.

³⁹ Raden Ariyo Wicaksono, "Pengakuan Wilayah Adat: Jauh Lebih Besar Potensi Dari Realisasi," News Website, Betahita, August 21, 2024, <https://papua.betahita.id/news/detail/10544/pengakuan-wilayah-adat-jauh-lebih-besar-potensi-dari-realisasi.html>.

⁴⁰ Micah Radandima Fisher, *Beyond Recognition: Indigenous Land Rights and Changing Landscapes in Indonesia*, 2019, 161.

mapping standards and resistance from sectoral agencies.⁴¹ Consequently, while over 30 million hectares are registered by civil society, only 4.85 million hectares have received recognition via local decrees (*Perda* or *SK Kepala Daerah*), proving that technical mapping solutions are insufficient without political commitment.

This structural conflict is best illustrated by the failure to implement Constitutional Court Decision No. 35/PUU-X/2012. Despite this constitutional victory, the operational mechanism for recognition remains cumbersome. The legal existence of a Customary Law Community (*Masyarakat Hukum Adat*) is contingent upon recognition through local regulations (*Perda* or *SK*).⁴² This requirement creates a "legal decentralization paradox." It subjects the inherent constitutional rights of Indigenous peoples to the fluctuating political will of regional legislative councils. The result is significant disparity: regions with pro-Indigenous leadership actively promote recognition, while those beholden to extractive industries often deliberately stall it. This lack of standardization undermines national consistency, leaving vast areas of customary land legally vulnerable.

In the absence of formal recognition, agrarian conflicts frequently arise between Indigenous communities and large-scale plantations. These conflicts generally stem from two factors. First, the central government often issues concession permits on customary land without the Free, Prior, and Informed Consent (FPIC) of the local population. Second, when disputes occur, the lack of government neutrality during negotiations creates an asymmetric power dynamic, consistently placing Indigenous communities at a disadvantage against well-resourced corporate entities.⁴³

Beyond external threats, Indigenous territories face internal erosion through "elite capture." In regions like Dharmasraya, West Sumatra, *ulayat* forests are communally owned and legally non-transferable. However, clan elites increasingly sell portions of this land to external actors for prices ranging from USD 300 to USD 1,300, driven by the lucrative prospects of oil palm or rubber cultivation.⁴⁴ This practice is facilitated by a "land clearing" strategy, where forests are burned to assert de facto individual ownership before sale. This reveals a critical ethico-legal deficit. The current legal framework lacks mechanisms to hold customary elites accountable for selling communal land. This accountability void allows elites to bypass legitimate communal consent, eroding the social solidarity necessary to resist corporate encroachment.⁴⁵

The inadequate protection of Indigenous peoples may stem from three key factors: the complexity of the mechanisms in place, the lack of information on the number of Indigenous

⁴¹ Laely Nuhidayah et al., "Resolving Land-Use Conflicts over Indonesia's Customary Forests: One Map, Power Contestations and Social Justice," *Contemporary Southeast Asia* 42, no. 3 (2020), 388.

⁴² Nuhidayah et al., "Resolving Land-Use Conflicts over Indonesia's Customary Forests: One Map, Power Contestations and Social Justice", 389.

⁴³ Hidayah, Wiryani, And Madyasti, "The Strengthening Legal Protection Of Indigenous People In Facing Investment Climate In Era Of ASEAN Economic Community In", 3.

⁴⁴ A. Mutolib et al., "Abnormality in Optimal Forest Management by Indigenous People in Deforestation," *Global Journal of Environmental Science and Management* 10, no. 1 (2024), 409.

⁴⁵ Mutolib et al., "Abnormality in Optimal Forest Management by Indigenous People in Deforestation", 410.

groups, along with insufficient institutional support and assistance.⁴⁶ Although the Constitution states that Indigenous communities should be recognized through local government regulations, many groups across the nation have not achieved this recognition. Furthermore, out of 2,302 Indigenous entities in Indonesia, only 11 have been recognized by local regulations, and just one has progressed to obtain a determination from the National Land Agency (Badan Pertanahan Nasional) for a single communal right.⁴⁷ This lack of recognition further exacerbates the vulnerability of Indigenous communities and their lands, making them more susceptible to exploitation and loss. This severe institutional deficit reflects a foundational tension between two systems, the national legal system, which prioritizes individual, registered, and transactional property rights, and the Adat system, which is based on communal, spiritual, and non-transmissible rights. The difficulty in obtaining BPN's communal rights determination highlights the state's continued bias towards individual titling and its systemic struggle to integrate the non-transactional nature of *hak ulayat* into the modern agrarian law framework.

In summation, despite the pivotal Constitutional Court Decision No. 35/PUU-X/2012 which legally separated customary forests from state control, the overall marginalization of Indigenous communities persists. This enduring challenge is a result of cumulative deficiencies: the political dependence on inconsistent local regulations, the weak implementation of the One Map Policy, and the internal erosion of communal solidarity due to unauthorized land sales. Therefore, while formal recognition exists in principle, the operational and political environment continues to impede genuine protection, creating a fundamental barrier to the effective participation of Indigenous peoples in sustainable development.

3.4. Impact of Sidelining Indigenous Voices in Sustainable Economic Growth

These structural barriers described above do more than just violate legal rights; they actively dismantle the foundations of sustainability. The systematic exclusion of Indigenous voices from sustainable economic growth strategies precipitates two profound crises: widespread social inequality and marginalization, and the irreversible loss of traditional knowledge. These are not merely side effects, but structural failures that undermine the very definition of sustainability.

To effectively address social inequality, development frameworks must recognize that Indigenous peoples are not passive recipients of aid, but active contributors to local environmental solutions.⁴⁸ However, The idea of a green economy often highlights the involvement of the private or formal sector in managing natural resources, while Indigenous peoples are frequently excluded from decision-making on projects that affect their own lands. This exclusion creates a mechanism of dispossession: it undermines effective resource

⁴⁶ Ramli And Wahyudin, "Achieving Sustainable Development Goals (Sdgs) Through Indigenous Group Protection In Indonesia", 5.

⁴⁷ Hidayah, Wiryani, And Madyasti, "The Strengthening Legal Protection Of Indigenous People In Facing Investment Climate In Era Of ASEAN Economic Community In", 2.

⁴⁸ Yani And Noviantika, "The Antinomy Of Green Economy Implementation Towards Indigenous People In Natural Resources Management", 4.

management and perpetuates the very inequalities the green economy purports to solve.⁴⁹ Consequently, Indigenous groups across the archipelago remain trapped in vulnerable conditions, victims of development efforts that decouple "growth" from "justice".⁵⁰ This demonstrates that sustainable development without Indigenous participation is inherently exclusive, failing the fundamental test of distributive justice.

The second critical impact is the erosion of Traditional Ecological Knowledge (TEK). For centuries, Indigenous peoples have relied on knowledge systems rooted in ancestral teachings, a practice observed globally. Unlike modern technocratic approaches, Indigenous life is characterized by a symbiotic reliance on nature. This knowledge is not archaic; it is a vital asset for achieving Sustainable Development Goals (SDGs), particularly those related to climate resilience.⁵¹

Throughout history, this knowledge has evolved in tandem with civilization, adapting traditional values to new land-use realities.⁵² However, by disregarding these perspectives, society risks losing a knowledge base that is uniquely suited to local environmental management.

This exclusion stems from a critical flaw in national legislation: the law fails to internalize Indigenous epistemologies. For instance, the Law on Environmental Protection and Management (UU PPLH) acknowledges local wisdom in rhetoric but offers few operational legal pathways (such as simplified procedures for *desa adat*) to integrate this wisdom into formal resource management decisions. Without legal mechanisms to validate and operationalize it, this sophisticated knowledge system is rendered invisible in the face of formal state planning.

In conclusion, the marginalization of Indigenous voices is not merely a social injustice; it is a profound structural barrier to sustainable development. The exclusion from decision-making not only perpetuates economic inequality but also accelerates the decline of unique, place-based traditional knowledge systems that are vital for climate resilience and biodiversity conservation. Addressing these impacts requires systemic reform that treats Indigenous participation and knowledge as essential co-producers of sustainability, rather than as external variables to be managed.

3.5. Solutions to Ensure Participation of Indigenous in Development

To ensure the effective participation of Indigenous communities and guarantee their voices are heard in sustainable development, three strategic solutions must be implemented: expediting the state's formal recognition of Indigenous rights, enhancing the One Map Policy through Indigenous inclusion, and strengthening domestic legal protections to align with

⁴⁹ Yani and Noviantika, "The Antinomy of Green Economy Implementation towards Indigenous People in Natural Resources Management", 5.

⁵⁰ Ramli And Wahyudin, "Achieving Sustainable Development Goals (Sdgs) Through Indigenous Group Protection In Indonesia", 2.

⁵¹ Ramli and Wahyudin, "Achieving Sustainable Development Goals (SDGs) through Indigenous Group Protection in Indonesia", 3.

⁵² Maria, "Local Wisdom Of Indigenous Society In Managing Their Customary Land: A Comparative Study On Tribes In Indonesia", 1.

international standards.

The first solution is to streamline the bureaucratic hurdle. Encouraging local governments to proactively issue these regulations is essential to provide the foundational legal personality necessary for Indigenous communities to assert their collective rights in broader economic contexts. This step is critical because, although the recognition of Indigenous peoples in Indonesia is constitutionally grounded, it remains conditional rather than absolute: under the law, communities are recognized only "as long as they are still alive" and provided that their existence is "in accordance with societal development",⁵³ a conditionality that necessitates validation through local regulations (*Perda*).⁵⁴ However, achieving this is currently a significant bottleneck, as local governments often hesitate to issue these regulations due to political concerns over conflicting land concessions, such as logging and palm oil estates, that overlap with customary rights.⁵⁵

The second solution involves enhancing the quality of the One Map Policy by incorporating Indigenous perspectives. This process involves encouraging the government to identify and map customary lands, ensuring these maps are approved by local laws and officially recorded with the National Land Agency. The government also has a duty to educate Indigenous peoples about how to register their communal land rights with the National Land Agency.⁵⁶ The One Map Policy aims not only to reduce land tenure conflicts but also to promote social justice by recognizing the claims of Indigenous communities to their customary forests. However, as previously mentioned, various challenges have impeded the implementation of the One Map Policy, leaving social justice for Indigenous communities unfulfilled.⁵⁷ But fostering positive relationships between customary communities and regional authorities can improve the chances of formal recognition of land rights.⁵⁸ The concept of "informal relationships" here refers to local, non-codified negotiations that often succeed where formal bureaucratic procedures fail, exemplified by the successful land-use agreements established by certain *Masyarakat Hukum Adat* in Sulawesi and Kalimantan. This underscores that while formal law is necessary, extra-legal and political support is often decisive in determining the effectiveness of efforts to protect Indigenous community rights. Although Indigenous status is defined as a right for communities that satisfy certain formal criteria, gaining real recognition involves more than just meeting these official requirements.⁵⁹

⁵³ Ramli And Wahyudin, "Achieving Sustainable Development Goals (Sdgs) Through Indigenous Group Protection In Indonesia", 4.

⁵⁴ Nuhidayah, Davies, And Alam, "Resolving Land-Use Conflicts Over Indonesia's Customary Forests: One Map, Power Contestations And Social Justice", 389.

⁵⁵ Nuhidayah et al., "Resolving Land-Use Conflicts over Indonesia's Customary Forests: One Map, Power Contestations and Social Justice", 391.

⁵⁶ Hidayah, Wiryani, And Madyasti, "The Strengthening Legal Protection Of Indigenous People In Facing Investment Climate In Era Of ASEAN Economic Community In", 4.

⁵⁷ Nuhidayah, Davies, And Alam, "Resolving Land-Use Conflicts Over Indonesia's Customary Forests: One Map, Power Contestations And Social Justice", 388.

⁵⁸ Willem van der Muur et al., "Changing Indigeneity Politics in Indonesia: From Revival to Projects," *Asia Pacific Journal of Anthropology* 20, no. 5 (2019), 389.

⁵⁹ Willem van der Muur, "Forest Conflicts and the Informal Nature of Realizing Indigenous Land Rights in Indonesia,"

A third critical solution involves the effective implementation of Law No. 6/2014 on Villages to secure legal protection for Indigenous communities. By authorizing the creation of *Desa Adat* (customary villages), the Law provides a pathway to integrate traditional institutions into the local governance framework.⁶⁰ This structure enables communities to not only oversee traditional resources and reinforce collective ownership but also to create economic bodies known as "Village-owned enterprises." Consequently, the capacity to independently manage customary wealth allows Indigenous peoples to shift from passive beneficiaries to active agents of development.⁶¹

A critical analysis of the Village Law reveals a significant tension: the state often seeks to accommodate Indigenous institutions symbolically while simultaneously controlling their substantive autonomy through bureaucratic requirements. This is most evident in the designation process, where gaining recognition as a customary village poses challenges because it must be approved through local regulations issued by the local government. Therefore, it is crucial for local authorities to assist and encourage Indigenous peoples in establishing these villages, rather than obstructing them, to promote the welfare of these communities.⁶²

Despite these hurdles, ensuring that traditional institutions, especially those connected to communal land ownership, receive official recognition is essential. These institutions play a crucial role in alleviating poverty and fostering peaceful, sustainable development. As a positive step, the Village Law advances the recognition of communal land ownership and grants *Desa Adat* new authority to manage local matters within specific areas. If fully supported by the government, this legal shift is expected to significantly improve future land management practices.⁶³

There is also increasing pressure on the Indonesian government to formally recognize customary communities in line with international law standards, particularly ILO 169. The failure to ratify this convention serves as a critical normative reflection on Indonesia's commitment to collective human rights, highlighting a distinct tension between the state's rigid positivist legal structure and the principles of self-determination enshrined in international law. Recognition aligned with these standards is essential for safeguarding the rights of these communities and ensuring their participation in decisions affecting their lands. This shift is further driven by external forces; key funding organizations, such as the World Bank and the Asian Development Bank, are actively working on policies that implement the standards set by ILO 169, while demand within Indonesia for adherence to these principles

Citizenship Studies 22, no. 2 (2018): 171.

⁶⁰ Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *Asia Pacific Journal of Anthropology* 20, no. 5 (2019), 423.

⁶¹ Hidayah et al., "The Strengthening Legal Protection of Indigenous People in Facing Investment Climate in Era of ASEAN Economic Community In", 4.

⁶² Hidayah et al., "The Strengthening Legal Protection of Indigenous People in Facing Investment Climate in Era of ASEAN Economic Community In", 3.

⁶³ Kristiansen and Sulistiawati, "Traditions, Land Rights, and Local Welfare Creation: Studies from Eastern Indonesia", 224.

continues to grow.⁶⁴

Furthermore, the government must translate these normative commitments into concrete support during economic engagements. The absence of government representation in negotiations between Indigenous peoples and investors has historically resulted in unequal bargaining situations that severely disadvantage Indigenous communities. To rectify this, the government must act as an active facilitator to enhance trust and reduce conflict.⁶⁵ This facilitation must be concretized through specific mechanisms, including providing mandatory legal aid (pro-bono counsel) for Indigenous communities during negotiations and establishing participatory mediation platforms to resolve resource conflicts transparently. Together, These actions can help build a fairer and more supportive setting for Indigenous communities in Indonesia.

4. CONCLUSION

This concludes that the continued marginalization of Indigenous rights in Indonesia is not a mere side-effect of poor enforcement, but a fundamental structural impediment to achieving sustainable growth. The core finding exposes a normative vulnerability in the national legal system: while the 1945 Constitution offers recognition, this constitutional right is effectively nullified by a legal decentralization paradox, subjecting inherent collective rights to inconsistent political discretion at the regional level. To rectify this, the legal paradigm must shift from rigid positivism toward a system of responsive law that treats Indigenous governance as a substantive co-producer of stability. Policy-wise, this requires three decisive actions: implementing Mandatory State Intervention through pro-bono legal aid to balance agrarian negotiations; transitioning *Desa Adat* recognition under the Village Law from symbolic accommodation to genuine substantive autonomy; and ratifying ILO Convention No. 169 to align domestic law with international self-determination standards.

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⁶⁴ Bedner And Van Huis, "The Return Of The Native In Indonesian Law Indigenous Communities In Indonesian Legislation", 169.

⁶⁵ Hidayah, Wiryani, And Madyasti, "The Strengthening Legal Protection Of Indigenous People In Facing Investment Climate In Era Of ASEAN Economic Community In", 3.

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