Harmonization of Customary Law and Investment Policy in Indonesian Indigenous Natural Resource Governance

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Abstract

Agrarian conflicts in Indonesia show the limitations of formal legal approaches in accommodating the rights of indigenous peoples, especially in the context of land-based investment expansion. This article analyzes the interaction between customary norms and investment-based governance of natural wealth through a case study of Jelutih Village, Jambi Province. This study aims to identify the gap between normative recognition and implementive practice, as well as to formulate a more inclusive governance model. This study uses a qualitative approach, with normative juridical methods, strengthened by conceptual analysis and a literature review. The findings show that legal recognition of indigenous peoples remains partial and has not been integrated into resource management operational mechanisms, thereby triggering tenure conflicts and weakening the bargaining position of local communities in the face of investment actors. The novelty of this article lies in the development of an operational legal pluralism framework through three key dimensions, namely: first, the recognition of the collective rights of indigenous peoples; second, the application of the principle of Free, Prior and Informed Consent (FPIC) in the investment process; and third, fair and sustainable distribution of benefits. This framework shifts the position of indigenous peoples from policy objects to major actors in natural resource governance. This article contributes to strengthening the discourse of legal pluralism by offering an integrative model relevant to agrarian policy reform and resource governance at the local and national levels.

Keywords: *Customary Law; Indigenous Peoples; Natural Resource Governance.*

Introduction

The control and management of natural resources in Indonesia have always been a tug-of-war among the interests of the state, the market, and customary law

communities.[1] Data from the Agrarian Reform Consortium (KPA) shows that throughout 2021, there were 207 agrarian conflicts in Indonesia covering millions of hectares of land and involving hundreds of thousands of families, especially in the plantation, forestry, and mining sectors. The agrarian conflict data shows a recurring structural trend, with the plantation sector accounting for the largest portion of conflicts, followed by forestry and mining.[2] Empirical studies show that such conflicts are generally related to overlapping claims between concessions granted under state permits and local community-managed territories, particularly those of indigenous peoples who lack strong administrative recognition.[3] This confirms that agrarian conflicts are not just incidental phenomena, but a consequence of natural resource governance designs that tend to be exclusive and investment-oriented. This phenomenon reflects the still strong structural tension in natural resource governance, especially between investment-based development policies and the protection of indigenous peoples' rights.[4]

Article 33, paragraph (3) of the 1945 Constitution emphasizes that the earth, water, and natural resources are controlled by the state for the maximum prosperity of the people, which, in the doctrine of constitutional law, is interpreted as the public authority to regulate, manage, and supervise, not as private property of the state.[5] The implementation of this principle often emphasizes formal legality and investment-based licensing regimes, thus triggering tensions with customary rights

[1] Tri Indrahastuti et al., "The Hudoq Kita': A Contemporary Reinterpretation of Dayak Kenyah Cosmology in Light of Islamic Legal and Theological Perspectives," *MILRev: Metro Islamic Law Review* 5, no. 1 (April 15, 2025): 403–26, https://doi.org/10.32332/milrev.v5i1.10333.
[2] Basri Mulyani and M. Helmi, "Justice and Sustainability: Legal Perspectives on Mining and Tourism in Raja Ampat," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 3 (December 23, 2025): 638–55, https://doi.org/10.29303/ius.v13i3.1840.
[3] Alina Brad and Jonas Hein, "Towards Transnational Agrarian Conflicts? Global NGOs, Transnational Agrobusiness and Local Struggles for Land on Sumatra," *New Political Economy* 28, no. 3 (May 2023): 452–67, https://doi.org/10.1080/13563467.2022.2138300.
[4] Ahmet Faruk Aysan et al., "Natural Resources Governance and Conflicts: Retrospective Analysis," *Resources Policy* 85 (August 2023): 103942, https://doi.org/10.1016/j.resourpol.2023.103942.
[5] Umar Ma'ruf et al., "Deconstruction of the Right to Control the State: An Analysis of Article 33 Paragraph (3) of the 1945 Constitution and Its Implications for the Politics of Indonesian Agrarian Law," *Sultan Agung Notary Law Review*, March 2026, https://doi.org/10.30659/sanlar.v8i1.52036.

and customary legal systems that are communal and oriented towards ecological balance.[6]

In Jambi Province, such as the one in Jelutih Village, it is a social space where real interaction between customary law and modern regulations occurs within the framework of state control over natural resources. Administratively, Jelutih Village is located in Batanghari Regency, Jambi Province, which is part of a regional landscape dominated by plantation and forestry concessions. Based on local ecological and economic characteristics, the region includes secondary forest areas, people's rubber land, and rapidly expanding oil palm plantations. This condition places Jelutih Village in a spatial configuration that is vulnerable to overlapping claims between local communities and land-based investment interests.[7] In local practice, land tenure in Jelutih Village is not entirely based on individual ownership, but rather follows a collective pattern based on lineage and community agreement. This system regulates the distribution, utilization, and protection of territories through customary norms that include the prohibition of overexploitation, the regulation of utilization zones, and social sanction mechanisms. Thus, the character of "religious communal" in this context refers to a system of dominion that integrates spiritual values, genealogical relationships, and ecological responsibility for territory. Sociologically juridically, the people maintain customary institutions in the management of land, forests, and natural resources based on hereditary norms that are qualified as customary rights with a religious communalist pattern.[8] The institution not only serves as an instrument of internal regulation, but also as a

[6] Frans Reumi and Kadir Katjong, "The Legal Standing of Ulayat Rights and Communal Rights of a Land Based on Knowledge and Kindship of Community System of the Sentani Customary Law in Jayapura Regency, Papua," *International Journal of Multicultural and Multireligious Understanding* 8, no. 9 (September 2021): 244, https://doi.org/10.18415/ijmmu.v8i9.2982.
[7] Jennifer Merten et al., "Flooding and Land Use Change in Jambi Province, Sumatra: Integrating Local Knowledge and Scientific Inquiry," *Ecology and Society* 25, no. 3 (2020): art14, https://doi.org/10.5751/ES-11678-250314.
[8] Dita Perwitasari et al., "The Impact of Concession Rights Overlapping on Indigenous Peoples' Access to Natural Resources on Customary Lands," ed. N. Suprapto et al., *E3S Web of Conferences* 673 (December 2025): 02003, https://doi.org/10.1051/e3sconf/202567302003.

mechanism for ecological protection and the affirmation of collective identity, because customary law essentially contains the value of balance between humans and nature as a cosmic unit.[9]

On the other hand, at the macro policy level, the orientation of national natural resource management is normatively oriented towards the investment-based development paradigm and the optimization of measurable exploitation to support economic growth, as analyzed in various studies of legal reform and investment policies.[10] In the context of Jelutih Village, the crucial juridical issue is no longer the existence or absence of normative recognition of customary law communities, but rather the effectiveness of the protection of rights to natural resources that are managed from generation to generation.

Although Article 18B paragraph (2) of the 1945 Constitution and the Constitutional Court Decision Number 35/PUU-X/2012 have affirmed constitutional recognition of customary forests, there is still a gap between normative recognition and administrative implementation at the regional level. Declarative procedural legal recognition does not necessarily guarantee access, control, and equitable distribution of economic benefits for indigenous peoples, thus potentially leaving structural problems in natural resource governance.[11]

Within the framework of national natural resource governance, there is an urgent need to harmonize customary law in Jelutih Village with modern natural resource management policies, especially so that investment policies do not ignore the principles of social justice and environmental sustainability. The formal rules that encourage investment often operate in modern administrative regimes that are

[9] Tyas Ismi Trialfhianty, Claire Helen Quinn, and Maria Beger, "Engaging Customary Law to Improve the Effectiveness of Marine Protected Areas in Indonesia," *Ocean & Coastal Management* 261 (February 2025): 107543, https://doi.org/10.1016/j.ocecoaman.2025.107543.
[10] Ilham Dwi Rafiqi, "Recognition of Indigenous Peoples Values in Indonesia for Policy Addressing Climate Change," *Journal of Law and Legal Reform* 6, no. 1 (March 2025): 1–40, https://doi.org/10.15294/jllr.v6i1.11746.
[11] Neil M. Dawson et al., "Is It Just Conservation? A Typology of Indigenous Peoples' and Local Communities' Roles in Conserving Biodiversity," *One Earth* 7, no. 6 (June 2024): 1007–21, https://doi.org/10.1016/j.oneear.2024.05.001.

less sensitive to the normative structure of customary law and local wisdom,[12] so that it can marginalize the right of indigenous peoples to participate in the decision-making process and the distribution of economic benefits from natural resources.

This is relevant to the findings presented by Ageng Triganda Sayuti, which examines how contracts and legal practices in the natural resources sector tend to prioritize investment certainty over the protection of local communities' rights, especially in the context of primary industries such as oil palm plantations, which have an impact on indigenous communities and the local environment.[13] From the perspective of social justice, the legal and public policy arrangements for natural resources must be able to ensure a fair distribution of benefits, recognition of access and control rights by indigenous peoples, and the protection of vulnerable groups from unilateral exploitation, in accordance with constitutional ideals and legal principles of equitable development.

Governance must ensure ecological sustainability that not only protects resources for current generations but also future generations, as reviewed in the progressive legal literature on the contribution of customary law in environmental conservation.[14] Therefore, the harmonization between customary law and modern policy is not only a normative ideal, but a strategic need to formulate an inclusive, just, and sustainable model of natural resource governance, capable of reconciling the formal legal mechanisms of the state and the practice of customary law that lives in the community.

Studies on the recognition and protection of customary law communities in natural resource management have been widely conducted by academics. Bedner and Arizona highlight that the existence of customary law in Indonesia's land law

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[12] Ridwan Arifin and Siti Hafsyah Idris, "In Dubio Pro Natura: In Doubt, Should the Environment Be a Priority? A Discourse of Environmental Justice in Indonesia," *Jambe Law Journal* 6, no. 2 (December 2023): 143–84, https://doi.org/10.22437/jlj.6.2.143-184.

[13] Ageng Triganda Sayuti et al., "Legal Realism and the Future of Palm Oil Management in Indonesia," *Jambe Law Journal* 8, no. 1 (July 2025): 375–98, https://doi.org/10.22437/home.v8i1.342.

[14] Dwi Suryahartati et al., "The Local Customary Law: The Contribution of Adat Law in Preserving the Lubuk Larangan in Jambi," *Jambe Law Journal* 4, no. 1 (November 2021): 43–68, https://doi.org/10.22437/jlj.4.1.43-68.

system faces a dilemma between the promise of normative recognition and the limitations of administrative implementation, so that recognition of indigenous peoples often depends on state policies and bureaucratic mechanisms.[15] Meanwhile, Berkes emphasized the contribution of traditional knowledge systems in maintaining ecological sustainability through community-based environmental management practices.[16] Another study also highlighted the importance of integrating the principle of Free, Prior, and Informed Consent (FPIC) as an instrument for the protection of indigenous peoples' rights in investment-based development policies.[17]

However, these studies generally focus on normative and conceptual aspects on a national and comparative scale, without examining in depth the dynamics of the interaction between customary norms and investment policies in specific local contexts. In addition, studies that specifically analyze the integration of legal pluralism into natural resource governance, grounded in social justice and sustainability, at the indigenous community level remain limited. Therefore, this study fills the gap by analyzing the effectiveness of recognizing and protecting the rights of the indigenous peoples of Jelutih Village and by formulating a framework for aligning customary norms with investment policies in natural resource governance, based on legal pluralism.

Thus, this study not only complements Bedner and Arizona's ideas regarding the recognition of customary law in Indonesian land law but also offers a new contribution in the form of a harmonization model based on legal pluralism that is

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[15] 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 (October 2019): 416–34, https://doi.org/10.1080/14442213.2019.1670246;CSUBTYPE:STRING:SPECIAL;PAGE:STRING:ARTICLE/CHAPTER.

[16] Corinna Casi, Hanna Ellen Guttorm, and Pirjo Kristiina Virtanen, "Traditional Ecological Knowledge," in *Situating Sustainability: A Handbook of Contexts and Concepts* (Helsinki University Press, 2021), 181–94, https://doi.org/10.33134/HUP-14-13.

[17] Retno Kusniati, "Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?," *Jambe Law Journal* 7, no. 1 (2024): 169–93, https://doi.org/10.22437/home.v7i1.350.

contextual, applicable, and oriented towards social justice and environmental sustainability. Although various studies have addressed indigenous peoples' recognition and legal pluralism, most still stop at normative or comparative analyses without concretely linking these to conflict dynamics and local governance. In addition, there are still a few studies that specifically examine how the interaction between customary norms and investment policies unfolds in particular empirical contexts and how harmonization models can be formulated operationally. This research focuses on emptiness, using Jelutih Village as a case study.

Based on this background, this article aims to analyze the effectiveness of the recognition and protection of the rights of the indigenous people of Jelutih Village to natural resources within the framework of national law, as well as to formulate a harmonization model between customary norms and investment policies based on legal pluralism, social justice, and environmental sustainability.

Methods

This research uses a normative legal research method that focuses on analyzing legal norms, principles, and doctrines related to the recognition and protection of customary law communities in natural resource management. The approaches used include a statute approach, a conceptual approach, and a case approach. The legislative approach examines regulations governing the ownership and management of natural resources and the recognition of indigenous peoples' rights, while the conceptual approach analyzes legal pluralism, social justice, and environmental sustainability. The case approach focuses on the natural resource management practices of indigenous peoples in Jelutih Village as the context for analysis.

To ensure the linkage between research methods and problem formulation, this research is specifically directed to answer two main questions, namely: (1) how effective is the recognition and protection of indigenous peoples' rights within the national legal framework; and (2) how to model the alignment between customary

norms and investment policies in natural resource management. Therefore, normative analysis is not only carried out descriptively, but also prescriptively by assessing the conformity between positive legal norms and practices that occur in society.

In addition, this research is also supported by a limited empirical approach, which is used to strengthen the analysis of cases in Jelutih Village. This approach is carried out through the search for secondary data sourced from research reports, scientific articles, and documents related to natural resource management practices by local communities. The use of this limited empirical approach is intended to provide a factual context for normative analysis, considering that the case of Jelutih Village is the main basis for explaining the dynamics of interaction between customary norms and state policies.

Thus, this research method integrates normative analysis and empirical support in a complementary manner to provide a more comprehensive understanding of the problems under study and to produce more contextual and applicable recommendations. This approach was chosen to bridge the gap between abstract legal norms and local-level empirical realities, so that the resulting analysis is not only normative but also contextual.

Discussion

The Effectiveness of Recognition and Protection of the Rights of Indigenous Peoples of Jelutih Village to Natural Resources within the National Legal Framework

In Indonesia's national legal system, the recognition of indigenous peoples' rights to natural resources has an explicit constitutional basis; the constitution provides indigenous peoples with legal status as legal subjects over the natural resources they own and manage for generations.[18] Despite constitutional

[18] Yuniar Rahmatiar, "Legal Protection and Rights of Indigenous Peoples: Legal Certainty in Managing Natural Resources," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 3 (September 2024), https://doi.org/10.31941/pj.v22i3.4999.

recognition, the reality of normative implementation still faces significant obstacles, as such recognition is often conditional and dependent on the administrative interpretation of local governments, so that the rights of indigenous peoples have not been fully recognized operationally in national legal practice.[19]

In the local context, these dynamics are reflected in changes in land use patterns influenced by the expansion of large-scale plantations around the Jelutih Village area. This condition has implications for the narrowing of traditional management spaces and increased potential for tenure conflicts, especially when customary boundaries do not have clear administrative recognition. This region is one of the areas with a high level of pressure on natural resources, especially due to the expansion of oil palm plantations and the forestry sector. Studies have shown that agrarian conflicts in Sumatra are largely triggered by overlapping claims between state forest areas, local community-managed areas, and corporate concessions, which has an impact on increasing tenure uncertainty for indigenous peoples.[20] In such situations, indigenous peoples are often in a vulnerable position because legal recognition of customary territories has not been fully integrated into the national land and forestry administration system. [21]As analyzed by Krismawati and El Fareeha in a study of the Customary Law Community's Draft Law, recognition so far is still procedural and does not guarantee substantive protection of customary rights to land and natural resources.[22] In a juridical study on the state's responsibility for indigenous peoples' rights to natural resources, Soelistyowati

[19] Mary Grace Megumi Maran, "The Role of the Lamaholot Tribal Customary Justice Institution in Settling Customary Violations during Murung Keneber (Planting Season)," *Mendapo: Journal of Administrative Law* 6, no. 1 (February 2025): 41–58, https://doi.org/10.22437/MENDAPO.V6I1.38556.

[20] Brad and Hein, "Towards Transnational Agrarian Conflicts? Global NGOs, Transnational Agrobusiness and Local Struggles for Land on Sumatra."

[21] A. Junaedi Karso, "Natural Resources Governance and the Vulnerability of Indigenous Communities in Indonesia," *Frontiers in Political Science* 7 (November 2025), https://doi.org/10.3389/fpos.2025.1601480.

[22] Wulan Krismawati and Ardeli Zena El Fareeha, "Legal Policy on the Recognition of Indigenous Peoples' Rights in the Draft Indigenous Peoples' Law," *Asian Journal of Law and Humanity* 5, no. 1 (March 2025): 17–32, https://doi.org/10.28918/ajlh.v5i1.2.

explained that since the post-1998 agrarian law political reform, there has been an intention of the government to recognize the rights of Indigenous Peoples, but its implementation is still limited by the ambiguity of norms and cross-sectoral regulatory conflicts that weaken legal certainty over customary territories and access to natural resources.[23]

The concept of customary rights as a form of collective rights of indigenous peoples is also strengthened in Indonesian agrarian literature, which is regulated in Article 3 of the Basic Agrarian Law Number 5 of 1960, which affirms that the implementation of customary rights and other rights of customary law communities is recognized as long as they exist according to reality, but this norm is often unable to guarantee legal protection because it conflicts with technical implementation at the local level.[24] The political discourse of agrarian law in Indonesia shows the tension between the orientation of national development and the protection of indigenous peoples' rights, where, in many cases, indigenous peoples' rights to natural resources are marginalized in favor of investment and economic growth, resulting in agrarian conflicts between indigenous peoples, governments, and private investors.[25]

There is a fundamental difference between the national regulatory framework and the practice of customary law norms in natural resource management.[26] Other academic studies confirm that the relationship between indigenous peoples and their natural resources has a strong historical and cultural dimension.[27] So that

[23] Soelistyowati, "Reassessing State Responsibility for Indigenous Rights to Natural Resources Based on Justice Principle," *Jambe Law Journal* 7, no. 1 (2024): 149–67, https://doi.org/10.22437/home.v7i1.347.
[24] Ni Ketut Suartining and Benny Djaja, "Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960," *Journal of Social Research* 2, no. 6 (May 2023): 1775–85, https://doi.org/10.55324/josr.v2i6.903.
[25] Sahlan, Nurul Miqat, and Susi Susilawati, "Realizing 'Deconstructional' Justice Through Agrarian Civil Law Reform: A Review Of Jacques Derrida's Theory," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 3 (December 2024): 588–606, https://doi.org/10.29303/ius.v12i3.1559.
[26] Brad and Hein, "Towards Transnational Agrarian Conflicts? Global NGOs, Transnational Agrobusiness and Local Struggles for Land on Sumatra."
[27] Andika Prawira Buana and Moch Andry Wikra Wardhana Mamonto, "The Role of Customary Law in Natural Resource Management: A Comparative Study between Indonesia and Australia," *Golden*

every legal protection effort must consider socio-cultural sustainability and maintain ecological balance, this linkage positions customary rights not only as agrarian rights but also as a form of collective rights inherent in the social structure of indigenous peoples themselves.

The recognition of the rights of indigenous peoples to natural resources in the Indonesian legal system has a solid constitutional basis.[28] This constitutional recognition is also strengthened through Article 28I paragraph (3) of the 1945 Constitution, which affirms the state's obligation to respect cultural identity and the rights of traditional communities. In the context of natural resource management, these regulations are closely correlated with the principle of state control over land, water, and natural resources, which in practice often raises dynamics and tensions between state authority and the collective rights of customary law communities over their customary territories.[29]

An important development in strengthening the legal position of indigenous peoples occurred through the Constitutional Court Decision Number 35/PUU-X/2012 which emphasized that customary forests are no longer part of state forests, but forests that are within the territory of customary law communities. This ruling corrects the legal construction in the Forestry Law that previously included customary forests as part of state forests, thus causing various conflicts of territorial control between indigenous peoples, the government, and forestry business license holders. With this ruling, the Constitutional Court affirmed that the existence of

Ratio of Mapping Idea and Literature Format 3, no. 2 (June 2023): 167–86, https://doi.org/10.52970/grmilf.v3i2.400.

[28] Deni Yusup Permana et al., "Integrating Indigenous Wisdom in Environmental Protection: Exploring Village Authority within the Framework of State Responsibility in Indonesia," *Jambura Law Review* 7, no. 2 (May 2025): 359–89, https://doi.org/10.33756/jlr.v7i2.29582.

[29] Luke MARSH, "The Strategic Use of Human Rights Treaties in Hong Kong's Cage-Home Crisis: No Way Out?," *Asian Journal of Law and Society* 3, no. 1 (May 2016): 159–88, https://doi.org/10.1017/als.2015.23.

customary forests is a consequence of the recognition of the customary rights of customary law communities in the national legal system.[30]

Through this ruling, the Constitutional Court conducted a constitutional reinterpretation of the provisions in Law Number 41 of 1999 concerning Forestry, especially related to the definition of customary forests. The court emphasized that customary forests are no longer qualified as part of state forests, but as forests that are within the territory of customary law communities. Therefore, customary forests are constructed as part of the rights of the customary rights of customary law communities, so that their existence can no longer be positioned solely as an object of state control.[31] Doctrinally, the ruling revises the normative construction previously adopted by the Forestry Law, which places customary forests as part of state forests whose management is under state authority.

Although the Constitutional Court Decision No. 35/PUU-X/2012 has normatively strengthened the legal position of indigenous peoples by removing customary forests from the category of state forests, its implementation at the regional level still faces various structural and administrative obstacles. In practice, the recognition of customary forests still requires a formal determination of the existence of customary law communities through regional law products, such as regional regulations or regional head decisions. This dependence on administrative mechanisms causes the implementation of the Constitutional Court's decisions not to run automatically, but remains dependent on the political will and institutional capacity of local governments.[32]

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[30] Anti Mayastuti, "Strengthening The Position Of Indigenous People In The Management Of The Forest By Subsquent Of The Constitutional Court Decision Of Republik Indonesia No.35/Puu-X/2012 To Support Of Redd+ Indonesia," *Yustisia Jurnal Hukum* 6, no. 2 (August 2017), https://doi.org/10.20961/yustisia.v6i2.12866.

[31] I Ketut Drawi, H. M. Arba, and Widodo Dwi Putro, "The Existence of Customary Law Communities Rights To Forests After the Establishment of North Lombok Regional Regulation About Recognition and Protection of Customary Law Communities," *Jurnal Ilmu Kenotariatan* 5, no. 2 (November 2024): 102, https://doi.org/10.19184/jik.v5i2.51532.

[32] Tandori Tandori and Caritas Woro Murdiati, "Legal Protection of Indigenous Peoples Within The Social Forestry Scheme A Study of Commercial Licensing in The Pubabu Customary Forest Area, East

In the context of Jambi Province, the implementation of the Constitutional Court Decision 35/2012 shows a similar dynamic. Until now, recognition of customary forests is still limited and has not fully covered all areas managed by indigenous peoples. Some indigenous peoples' recognition initiatives have indeed developed, but the process of determining customary territories and customary forests tends to be slow due to limited regional regulations, the complexity of administrative verification, and the overlapping of claims with state forest areas and company concessions. This condition indicates that, substantively, the Constitutional Court Decision 35/2012 has not been fully able to reduce tenure conflicts at the local level, including in areas such as Jelutih Village, which are in the landscape of natural resource management based on forest areas.

Furthermore, the limitations of implementation also reflect the gap between the legal-formal approach and the social reality at the local level. Declarative recognition does not automatically guarantee access, control, and distribution of natural resource benefits for indigenous peoples. In many cases, communities continue to face restrictions on access to forest areas they have historically managed, especially when the area has been classified as a state forest area or is under investment concessions. This shows that the effectiveness of the Constitutional Court Decision 35/2012 is highly determined by the integration of cross-sectoral policies and the existence of operational mechanisms that are able to translate normative recognition into substantive protection of the rights of indigenous peoples.[33]

The construction has been one of the sources of tenure conflicts between customary law communities, the government, and forestry business license holders because it negates the customary rights of indigenous peoples over forest areas that they have historically and sociologically managed for generations. By removing the

Nusa Tenggara," *International Journal of Social Science and Human Research* 08, no. 06 (June 2025), https://doi.org/10.47191/ijsshr/v8-i6-72.

[33] Soelistyowati, "Reassessing State Responsibility for Indigenous Rights to Natural Resources Based on Justice Principle."

phrase "state" from the definition of customary forests, the Constitutional Court implicitly affirmed that state control over forest resources is not absolute, but must be limited by the recognition of the collective rights of customary law communities guaranteed by the constitution.[34]

The decision has important implications for the repositioning of the relationship between the state and customary law communities in the management of forest areas. The Constitutional Court affirmed that the recognition of customary forests is a logical consequence of constitutional recognition of the existence of customary law communities and their traditional rights. The state no longer acts as the sole owner of customary forest areas, but as a party that is obliged to ensure the recognition, protection, and respect for the customary rights of customary law communities as long as they are still alive and recognized according to the law.[35]

Although the constitution and various court decisions have provided a basis for recognition of customary law communities, the implementation of such recognition in practice still faces various normative and administrative obstacles.[36] In Indonesia's positive legal regime, the determination of customary territories generally requires formal recognition from local governments, either through local regulations or regional head decisions, as a prerequisite before the territory can be recognized by the central government as customary forests. Consequently, the recognition mechanism is procedural and tiered, so that the existence of customary

[34] Mayastuti, "Strengthening The Position Of Indigenous People In The Management Of The Forest By Subsquent Of The Constitutional Court Decision Of Republik Indonesia No.35/Puu-X/2012 To Support Of Redd+ Indonesia."
[35] Herman Hidayat et al., "Forests, Law and Customary Rights in Indonesia: Implications of a Decision of the Indonesian Constitutional Court in 2012," *Asia Pacific Viewpoint* 59, no. 3 (December 2018): 293–308, https://doi.org/10.1111/apv.12207.
[36] I Gusti Agung Mas Rwa Jayantiari et al., "The Rights of Customary Law Communities to Resources: The Relationship of Coexistence of State Law and Customary Law," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (April 2025): 187–98, https://doi.org/10.29303/ius.v13i1.1329.

law communities and their customary territories does not necessarily automatically obtain legal protection.[37]

This legal construction shows that state recognition of indigenous peoples still emphasizes the aspect of administrative legalization rather than substantive protection of indigenous peoples' collective rights to their land and natural resources.[38] In many cases, the lengthy verification and determination process actually slows down the realization of indigenous peoples' rights, while opening up space for the intervention of political and economic interests in the recognition process. Bedner and Arizona assert that customary identity-based recognition strategies in Indonesian land law often yield limited achievement because state recognition remains dependent on bureaucratic mechanisms and changing government policies.[39]

This condition also reflects the fragmentation of regulations across sectors between agrarian law, forestry law, and economic development policy. The inconsistency between these legal regimes often leads to normative conflicts in natural resource management practices, especially when investment interests, natural resource exploitation, and development projects are placed as a priority for state policy.[40] As a result, the protection of customary law people's rights to their customary territories is often in a subordinate position compared to the economic and development interests encouraged by the state. The fragmentation of regulations in practice often manifests itself in the form of agrarian conflicts involving indigenous peoples, the government, and business actors. In areas such as

[37] Herlambang P. Wiratraman, "Cultural Expertise and the Social Justice Defense of Indigenous Peoples Rights in the Indonesian Constitutional Court," *Constitutional Review* 11, no. 2 (December 2025): 299–339, https://doi.org/10.31078/consrev1122.
[38] Rena Yulia et al., "Conflict Resolution Patterns in Indigenous Communities of Indonesia: A Comprehensive Study of the Customary Laws of Baduy, Kajang, and Anak Dalam in Jambi," *Indonesia Private Law Review* 6, no. 2 (January 9, 2026): 159–76, https://doi.org/10.25041/iplr.v6i2.4671.
[39] Bedner and Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?"
[40] Rashwet Shrinkhal, ""Indigenous Sovereignty" and Right to Self-Determination in International Law: A Critical Appraisal," *AlterNative: An International Journal of Indigenous Peoples* 17, no. 1 (March 2021): 71–82, https://doi.org/10.1177/1177180121994681.

Jambi, such conflicts are generally related to overlapping claims to forest areas and plantation land, which often leads to the marginalization of people's access to natural resources. Studies on the legal politics of natural resources show that this conflict is not only legal-formal, but also reflects the imbalance in power structures in natural resource management, where investment interests tend to be more dominant than the protection of indigenous peoples' rights.[41]

In addition to representing a land tenure system based on customary rights, the practice of natural resource management by indigenous peoples in Jelutih Village also reflects the existence of local wisdom in environmental management that is oriented towards the principles of ecological balance, sustainability of natural resources, and collective responsibility for the environment. Studies have shown that indigenous people-based natural resource management systems generally contain social mechanisms that are able to maintain ecosystem sustainability through customary rules, social sanctions, and management practices that are adaptive to local environmental conditions.[42]

The customary law system functions not only as a social norm that regulates relations between community members, but also as an institutional instrument that regulates the pattern of control, utilization, and protection of natural resources within the framework of ecological sustainability.[43] In this context, Jelutih Village not only reflects customary law practices, but also exists in a landscape of structural pressures of control of natural resources that are typical of Jambi, where the relationship between forest areas, state licensing, and investment interests often intersects with community-managed areas. This makes Jelutih relevant as a locus of

[41] Rahmatiar, "Legal Protection and Rights of Indigenous Peoples: Legal Certainty in Managing Natural Resources."
[42] Permana et al., "Integrating Indigenous Wisdom in Environmental Protection: Exploring Village Authority within the Framework of State Responsibility in Indonesia."
[43] Aprilia Stefany Leliak, "Strengthening Legal Protection of Indigenous Peoples' Customary Land Rights In Indonesia's Disruption Era," *LITIGASI* 26, no. 2 (May 2026): 443–72, https://doi.org/10.23969/litigasi.v26i2.20032.

study because it concretely shows the gap between formal legal recognition and substantive protection of indigenous peoples' rights.[44]

The existence of customary law in Jelutih Village can be understood as part of a community-based natural resource governance system rooted in the social structure of indigenous peoples. The system forms a collective regulatory mechanism that integrates legal, social, and ecological dimensions in the management of customary territories.[45] The integration of indigenous peoples' local wisdom with the national legal regulatory framework is an important factor in realizing effective legal protection of indigenous territories and ensuring the sustainability of natural resource management at the local level. Without such integration, the regulation of natural resources can lead to conflicts of authority and legal uncertainty between the state legal system and the customary law system within the community.

Harmonization of Customary Law and Investment Policy in Natural Resources Governance Based on Social Justice and Sustainability

The transformation of natural resource governance in the era of economic globalization puts the state in a strategic position as a regulator as well as an investment facilitator. The state is obliged to create a conducive investment climate to encourage economic growth and national development.[46] The state also has a constitutional responsibility to protect the rights of indigenous peoples who have historically had a collective relationship with the territories and natural resources on which their lives are based. The interaction between these two interests gives birth to the need for a legal construction that is able to harmonize the interests of economic development with the protection of the rights of indigenous peoples.

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[44] Karso, "Natural Resources Governance and the Vulnerability of Indigenous Communities in Indonesia."

[45] Tuoyuan Xu et al., "Decentralizing While Centralizing: An Explanation of China's Collective Forestry Reform since the 1980s," *Forest Policy and Economics* 119 (October 2020): 102268, https://doi.org/10.1016/j.forpol.2020.102268.

[46] Bayu Dwi Anggono et al., "Interrogating the Legal Foundations of Digital Transformation: Balancing Economic Growth and Social Welfare in the Era of Disruption," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (May 27, 2025): 191–211, https://doi.org/10.24090/volksgeist.v8i1.12211.

In the perspective of contemporary legal theory, the relationship between customary law and state law in natural resource management can be understood through the framework of legal pluralism. This concept recognizes that in a society there can be more than one legal system that has different social legitimacy and regulatory functions. In the context of developing countries with complex cultural diversity and social structures, legal pluralism is often reflected in the interaction between state law, customary law, and international norms related to the protection of indigenous peoples' rights and the environment. In practice, such legal pluralism does not always result in harmony, but it often creates normative tensions between different legal systems. This can be seen in various conflicts over the control of natural resources involving indigenous peoples, governments, and business actors.[47]

These tensions arise especially when investment-based natural resource management policies do not fully account for the existence of customary legal systems within communities. Policies oriented towards economic exploitation often place indigenous territories as an object of investment without involving indigenous peoples in the decision-making process. This condition shows an imbalance in the structure of legal power, with state law as the dominant system and customary law in a subordinate position. In such a context, legal harmonization is an urgent need to ensure that the management of natural resources is not only oriented towards economic growth but also respects the principles of social justice and environmental sustainability.[48]

Social justice is a fundamental principle of the modern legal system that demands the equitable distribution of development benefits and the protection of historically vulnerable groups. In the context of natural resource management, the

[47] Karso, "Natural Resources Governance and the Vulnerability of Indigenous Communities in Indonesia."
[48] Aditya Prastian Supriyadi, Mustafa Lutfi, and Kurniasih Bahagiati, "Strengthening Indonesia's Green Investment Law: Legal Reconceptualisation toward Net-Zero Emissions under Green Constitution and Maslahah," *Jurisdictie: Jurnal Hukum Dan Syariah* 16, no. 2 (December 24, 2025): 411–51, https://doi.org/10.18860/j.v16i2.35169.

concept of social justice is not only concerned with the sharing of economic benefits from investment activities, but also includes the recognition of indigenous peoples' collective rights to the territories and natural resources they manage for generations.

In the environmental and development law literature, social justice is often associated with environmental justice, which emphasizes protecting local communities from the adverse impacts of natural resource exploitation. This concept emphasizes that development policies must not sacrifice the rights of indigenous peoples for the sake of short-term economic interests. Instead, development must be designed to provide economic benefits while strengthening protections for indigenous peoples and the environment.

Research on natural resource governance shows that indigenous peoples are often the most vulnerable groups in investment-based development policies. This vulnerability is caused by various factors, including overlapping claims to natural resource areas,[49] the weakest legal recognition of customary territories, as well as the lack of participation of indigenous peoples in the decision-making process. This condition shows that the normative recognition of indigenous peoples' rights in various laws and regulations has not been fully followed by effective implementation mechanisms.

In the framework of social justice, harmonization between customary law and investment policy must be able to guarantee three main dimensions, namely recognition, participation, and distribution of benefits. Recognition is related to legal recognition of the existence of indigenous peoples and their customary territories. Participation is related to the involvement of indigenous peoples in the decision-making process related to the use of natural resources.[50] Benefit distribution is

[49] Permana et al., "Integrating Indigenous Wisdom in Environmental Protection: Exploring Village Authority within the Framework of State Responsibility in Indonesia."
[50] Thurka Sangaramoorthy, "Maryland Is Not for Shale: Scientific and Public Anxieties of Predicting Health Impacts of Fracking," *The Extractive Industries and Society* 6, no. 2 (April 2019): 463–70, https://doi.org/10.1016/j.exis.2018.11.003.

related to the equitable distribution of economic benefits from investment activities to indigenous peoples as owners of traditional territories.

One mechanism that has developed to harmonize customary law with investment-based natural resource management policies is the application of the Free, Prior, and Informed Consent (FPIC) principle. This principle affirms that indigenous peoples have the right to freely consent to any development activities that may affect their customary territories. Within the framework of international law, FPIC is recognized as a right of indigenous peoples in various international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This instrument affirms that states must consult and cooperate with indigenous peoples to obtain their consent before implementing development projects that impact indigenous territories.[51]

The implementation of FPIC in natural resource management policies has several important functions. First, FPIC provides space for indigenous peoples to voice their interests in the decision-making process. Second, FPIC serves as a safeguard against potential violations of indigenous peoples' rights arising from investment activities. Third, FPIC can increase the social legitimacy of investment projects because indigenous peoples are actively involved in the planning and implementation process of development activities.

The implementation of FPIC in national legal practice still faces various challenges. One of the main obstacles is the lack of comprehensive regulation on the FPIC implementation mechanism in the national legal system. As a result, indigenous peoples' consent is often treated as an administrative formality rather than as the result of substantive consultation. Research on Indonesia's mining legal framework shows that the absence of a clear FPIC mechanism can create a legitimacy gap between indigenous peoples and business actors.[52]

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[52] La Ode Dedihasriadi et al., "Strengthening Indigenous Peoples' Rights: Integrating The Fpic Principle Into Indonesia's Mining Legal Framework," *Cepalo* 10, no. 1 (January 2026): 1–12, https://doi.org/10.25041/cepalo.v10no1.4899.

In addition to social justice, the principle of sustainability is also an important foundation in the harmonization between customary law and investment policy. In the global environmental law discourse, sustainability is understood as an effort to ensure that the use of natural resources is done responsibly without sacrificing the ability of future generations to meet their needs.

Customary law makes an important contribution to realizing the principle of sustainability because many customary law systems regulate the use of natural resources in line with the values of ecological balance. In many indigenous communities, the exploitation of natural resources is limited by social norms aimed at preserving the environment. Customary-based management systems often include rules restricting resource use, prohibitions on overexploitation, and social sanctions for violations of these norms.

Research on community-based natural resource governance shows that integration between local knowledge and customary law systems can improve the effectiveness of environmental management. Management systems based on local community participation are often more responsive to local ecological conditions than management models that are entirely based on state regulations.[53] The integration of customary law in investment policy does not always go smoothly. In some cases, environmental conservation policies designed by the state have actually created new conflicts with indigenous peoples.

The phenomenon known as green grabbing refers to the practice of land acquisition or tenure in the name of environmental conservation, climate change mitigation, or biodiversity protection, which in practice has implications for the marginalization of local and indigenous communities.[54] This concept emphasizes that the environmental agenda is not always neutral, but can be used as an

[53] Dhita Puthi Jaenong, Liliana Nur Ahimi, and Zubaedillah Zubaedillah, "Customary Law and Natural Resource Governance: Strengthening Indigenous Rights in Environmental Management," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 3, no. 2 (May 2025): 1164–78, https://doi.org/10.51903/t8hwbv11.
[54] Maisa Maisa et al., "Legal Protection and Certainty of Land Ownership in Post-Disaster Recovery: Evidence from Indonesia, Spain, and Oman," *Journal of Law and Legal Reform* 7, no. 1 (January 26, 2026): 77–112, https://doi.org/10.15294/jllr.v7i1.19431.

instrument of legitimacy to transfer control over natural resources from local communities to the state or corporate actors. In many cases, areas historically managed by indigenous peoples are then classified as conservation areas or environment-based projects, so that community access to the area is restricted or even eliminated.[55] Efforts to harmonize customary law and investment-based natural resource management policies are not only an issue in the national legal system, but also a concern in various legal systems in the world. Some countries have developed relatively progressive mechanisms for integrating the rights of indigenous peoples in natural resource management policies.

In the Indonesian context, the practice of green grabbing can arise when conservation policies or environmental projects are not followed by recognition of the rights of indigenous peoples. Instead of strengthening sustainability, this approach has the potential to create new conflicts because it ignores the historical and cultural relationship of communities with their territories. Therefore, environmental policies need to be designed in a more inclusive manner by integrating the principles of social justice, recognition of indigenous peoples' rights, and the active participation of local communities in decision-making. Without such integration, the sustainability agenda risks becoming a new justification for social exclusion in natural resource governance.[56] In the Canadian legal system, recognition of Aboriginal title is one of the constitutional instruments that provides juridical legitimacy for indigenous peoples to defend and manage traditional territories that have historically been under their control. The concept is rooted in the constitutional recognition of the rights of indigenous peoples as set out in Section 35 of the Constitution Act 1982, which affirms the existence and applicability of indigenous rights in the Canadian legal system. This recognition is

[55] Maulana Hendra Mandala, Maria Ana Muryani, and M.Khoirur Rofiq, "The Threat of Green Grabbing to Indigenous Peoples' Rights in the Implementation of Law Number 32 of 2024," *JUSTISI* 11, no. 3 (September 2025): 874–88, https://doi.org/10.33506/js.v11i3.4601.
[56] Dawson et al., "Is It Just Conservation? A Typology of Indigenous Peoples' and Local Communities' Roles in Conserving Biodiversity."

not only declarative, but also provides normative consequences in the form of recognition of the historical, cultural, and economic relationship of indigenous peoples with their territories. Thus, Aboriginal title is seen as a sui generis right that has different characteristics from property rights in modern property law, as it is based on the collective relationship of indigenous peoples with land as well as the sustainability of their socio-cultural practices.[57]

In jurisprudence practice, the Supreme Court of Canada has developed a doctrine that places the state as a party with a legal duty to consult with indigenous peoples before making policies or granting permits that could potentially affect customary rights over traditional territories. This doctrine developed through a number of landmark decisions, including Haida Nation v. British Columbia (Minister of Forests) which affirmed that the state is obliged to consult in good faith when government actions have the potential to negatively impact the rights or claims of indigenous peoples' rights. This obligation is rooted in the principle of honour of the Crown, which requires the government to exercise public authority in an honest, transparent manner, and respect the rights of indigenous peoples in every decision-making process related to natural resource management.[58]

Such consultation obligations have far-reaching implications in the context of natural resource management, especially when governments grant exploitation permits for territories historically used by indigenous peoples. In various Canadian court rulings, it has been emphasized that the consultation process must be carried out in a substantive manner and not just an administrative formality. The consultation is intended to ensure that the views, interests, and concerns of indigenous peoples are adequately considered in the process of formulating policies and granting permits for the exploitation of natural resources. If such obligations

[57] Cherie Metcalf, "Indigenous Land Ownership and Title in Canada: Implications for a Northern Corridor," *The School of Public Policy Publications* 16, no. 1 (June 2023), https://doi.org/10.55016/ojs/sppp.v16i1.76089.
[58] Minh Do, "Throughput Legitimacy and the Duty to Consult: The Limits of the Law to Produce Quality Interactions in British Columbia's EA Process," *Canadian Journal of Political Science* 53, no. 3 (September 2020): 577–95, https://doi.org/10.1017/S000842392000027X.

are not adequately met, the government's actions may be considered a violation of the constitutional rights of indigenous peoples protected by Canadian law.[59]

Recent developments in jurisprudence have even shown that Canadian courts have further strengthened the legal position of indigenous peoples by recognizing that the rights inherent in Aboriginal title can have a stronger position than the property rights granted by the state in the modern property law system. Landmark decisions such as Tsilhqot'in Nation v. British Columbia have confirmed that once a territory has been recognized as land with Aboriginal title, the government cannot unilaterally grant permits for the exploitation of natural resources without meaningful consent or consultation with the customary rights holder. This shows a paradigm shift in Canadian law, where recognition of indigenous peoples' rights is no longer merely symbolic, but has tangible legal consequences in limiting the country's authority in the management of natural resources.[60]

In the Australian legal system, the recognition of indigenous peoples' rights to land and natural resources is formalized through the provisions in the Native Title Act 1993, which is a national legislation instrument that gives legal legitimacy to the existence of Aboriginal and Torres Strait Islander peoples' traditional rights to territories that are historically and culturally under their control. This law was born in response to the development of jurisprudence pioneered by the Mabo v Queensland decision, which abolished the doctrine of terra nullius and affirmed that the Australian legal system must recognise the existence of customary law systems that existed before colonisation.[61] In this framework, native title is understood as a right derived from the traditional relationship of indigenous peoples with their land

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[59] Christina Allard, "The Rationale for the Duty to Consult Indigenous Peoples: Comparative Reflections from Nordic and Canadian Legal Contexts," *Arctic Review on Law and Politics* 9 (February 2018): 25–43, https://doi.org/10.23865/arctic.v9.729.

[60] Gunawan Tjokro et al., "The Role of Interfaith Law and Policy in Managing Human Resources: Addressing Religious Diversity in the Workplace," *Contemporary Issues on Interfaith Law and Society* 4, no. 1 (June 27, 2025): 1–44, https://doi.org/10.15294/ciils.v4i1.22479.

[61] Leya Reid, "Native Title, Land Rights and Aboriginal Self-Determination," *NEW: Emerging Scholars in Australian Indigenous Studies* 4, no. 1 (March 2019): 8–13, https://doi.org/10.5130/nesais.v4i1.1537.

and territory, whose existence is recognized as long as it can be proven that the continuity of legal and cultural relations with the territory according to local customary law can be proven.

The mechanism set out in the Native Title Act 1993 provides space for indigenous peoples to defend and assert their rights through the process of native title claims processed by specialized judicial institutions, namely the Federal Court of Australia and the National Native Title Tribunal.[62]The recognition of native title not only serves as an endorsement of the historical rights of indigenous peoples, but also serves as a legal basis for their involvement in the decision-making process related to the use of natural resources in customary territories. Thus, the arrangement reflects institutional efforts to integrate customary law norms into the national legal framework in order to create more inclusive and equitable natural resource governance for indigenous peoples.

In practice, the native title system also regulates the mechanism of the right to negotiate, which is the obligation for parties who intend to carry out natural resource exploitation activities or investments in areas that are in the claim or recognition of native title to negotiate with indigenous peoples as rights holders.[63] Through this mechanism, companies and governments are required to consult and negotiate directly with indigenous communities to reach agreements on land use, protection of cultural values, and compensation or sharing of economic benefits arising from natural resource utilization activities. This mechanism is one of the important instruments in ensuring that economic development activities do not ignore the collective rights of indigenous peoples that have been recognized by law.

The implementation of the negotiation mechanism has encouraged the development of various forms of Indigenous Land Use Agreements (ILUA), which

[62] John E. Tilton et al., "Public Policy and Future Mineral Supplies," *Resources Policy* 57 (August 2018): 55–60, https://doi.org/10.1016/j.resourpol.2018.01.006.
[63] James J. Fogarty and Simon Sagerer, "Exploration Externalities and Government Subsidies: The Return to Government," *Resources Policy* 47 (March 2016): 78–86, https://doi.org/10.1016/j.resourpol.2016.01.002.

are agreements between indigenous peoples and the government or private parties regarding the use and management of indigenous territories. Such agreements often include arrangements for financial compensation, employment opportunities for indigenous peoples, protection of cultural sites, and social development programs for local communities. ILUA not only serves as a legal instrument to resolve potential conflicts of interest between economic investment and indigenous peoples' rights, but also as a means to encourage a fairer distribution of economic benefits in the management of natural resources in indigenous territories.In the Philippine legal system, the recognition of the rights of indigenous peoples has gained a strong normative foundation through the enactment of the Indigenous Peoples' Rights Act (IPRA) of 1997 or Republic Act No. 8371. This law is a legislative instrument that comprehensively recognizes the existence of Indigenous Cultural Communities (Indigenous Peoples) and their collective rights to customary territories, cultural identities, and traditional legal systems that have developed before the formation of the modern state.[64] Through IPRA, the Philippines emphasizes that ancestral domains are living spaces that have historical, social, economic, and spiritual dimensions for indigenous peoples, so that their recognition is not only related to aspects of land ownership, but also includes recognition of the natural resource management system based on customary norms and traditional practices of the community.

Institutionally, the implementation of IPRA is carried out through the National Commission on Indigenous Peoples (NCIP) which functions as a state institution responsible for administering the recognition and protection of the rights of indigenous peoples. One of the key mechanisms within this legal framework is the granting of a Certificate of Ancestral Domain Title (CADT) which formally recognizes

[64] William Holden, Kathleen Nadeau, and R. Daniel Jacobson, "Exemplifying Accumulation by Dispossession: Mining and Indigenous Peoples in the Philippines," *Geografiska Annaler: Series B, Human Geography* 93, no. 2 (June 2011): 141–61, https://doi.org/10.1111/j.1468-0467.2011.00366.x.

the collective ownership of indigenous peoples over their customary territories.[65] The recognition provides legal certainty for the historical relationship of indigenous peoples with the land and natural resources located therein, as well as placing indigenous peoples as legal subjects who have the right to determine the management and utilization of customary territories in accordance with applicable customary norms. Thus, the IPRA serves as a legal instrument that integrates customary law into the national legal system of the Philippines through a mechanism for administrative recognition and protection of the collective rights of indigenous peoples.

One of the fundamental principles regulated in IPRA is the application of the Free, Prior and Informed Consent (FPIC) mechanism in every development or investment activity that has the potential to affect customary territories.[66] This principle requires governments and the private sector to obtain the consent of indigenous peoples freely, preceded by the provision of adequate information, and done before the development project begins. The implementation of the FPIC aims to ensure that indigenous peoples have an equal opportunity to determine whether a development project can be implemented in their customary territories, while ensuring that such decisions are taken through a deliberative process that is in accordance with the social structure and decision-making mechanisms within the indigenous community.

FPIC is seen as an important instrument in protecting the rights of indigenous peoples as well as a mechanism for mitigating conflicts between the interests of economic development and the sustainability of indigenous peoples' lives. The legal regulatory model applied in the Philippines suggests that harmonization between customary law and investment policy can be achieved through a national legal

[65] Kyle Galindez, "Social Movements and Civil Governance in Hong Kong.," *Asian Journal of Law and Society* 6, no. 01 (May 2019): 216–18, https://doi.org/10.1017/als.2019.4.
[66] Alejandro de la Fuente, "Remittances and Vulnerability to Poverty in Rural Mexico," *World Development* 38, no. 6 (June 2010): 828–39, https://doi.org/10.1016/j.worlddev.2010.02.002.

framework that explicitly recognizes the existence as well as rights of indigenous peoples as an integral part of the country's legal system.

Customary territories, traditional legal systems, and indigenous peoples' consent mechanisms through FPIC, IPRA builds a legal pluralism approach that allows the existence of customary law co-existing with national law in the management of natural resources and the implementation of economic development.[67] This approach provides a normative foundation for the creation of more inclusive development governance, where investment interests can go hand in hand with the protection of the collective rights of indigenous peoples and the sustainability of the environment in customary territories.

Although the three models show progressive developments in the recognition and protection of indigenous peoples' rights, the level of relevance and possibility of their adoption in the Indonesian context varies. The Canadian model, particularly through the duty to consult doctrine, emphasizes the state's obligation to conduct substantive consultations before taking policies that impact indigenous peoples. However, this model is developing in a legal system that has provided strong constitutional recognition of customary rights, so its implementation is relatively more stable than in Indonesia, which still faces the problem of basic administrative recognition.[68]

Meanwhile, the Australian model through the Indigenous Land Use Agreements (ILUA) mechanism offers a negotiation-based approach between indigenous peoples and investors. This model has relevance to the Indonesian context, especially in the framework of economic partnerships and agreement-based conflict resolution. However, its effectiveness is highly dependent on the

[67] Peter Bille Larsen, "Contextualising Ratification and Implementation: A Critical Appraisal of ILO Convention 169 from a Social Justice Perspective," *The International Journal of Human Rights* 24, no. 2–3 (February 2020): 94–111, https://doi.org/10.1080/13642987.2019.1677613.
[68] Allard, "The Rationale for the Duty to Consult Indigenous Peoples: Comparative Reflections from Nordic and Canadian Legal Contexts."

bargaining position of indigenous peoples, which in the Indonesian context still tends to be weak due to limited formal legal recognition of customary territories.[69]

Among the three models, the Philippines' approach through the Indigenous Peoples' Rights Act (IPRA) and the Free, Prior and Informed Consent (FPIC) mechanism shows a higher level of conformity with Indonesia's needs. This is because IPRA not only provides normative recognition of customary territories through the Certificate of Ancestral Domain Title (CADT), but also integrates the consent mechanism of indigenous peoples as a prerequisite in investment activities. This model is more contextual for Indonesia, which is still in the transition stage from declarative recognition to substantive protection, so the integration of FPIC within national legal frameworks is one of the most potential approaches to bridge investment interests and the protection of indigenous peoples' rights.[70]

Based on the development of international legal practice and findings in various academic studies on natural resource governance, efforts to harmonize customary law and investment-based natural resource management policies can be realized through a number of normative and institutional approach models. This approach in principle aims to create a balance between the interests of economic development, the protection of indigenous peoples' rights, and environmental sustainability. The literature on natural resource law and environmental governance shows that the integration of customary norms into the country's legal framework is an important strategy to reduce agrarian conflicts, increase the legitimacy of investment policies, and strengthen the principles of social justice in natural resource management.[71]

The first approach is the normative recognition model, a mechanism for formally recognizing the existence of customary law and customary territories

[69] Reid, "Native Title, Land Rights and Aboriginal Self-Determination."
[70] Kusniati, "Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?"
[71] Baginda Khalid Hidayat Jati et al., "Legal Culture, Environmental Non-Compliance, and the Persistence of Illegal Mining in Paningkaban," *IJCLS (Indonesian Journal of Criminal Law Studies)* 10, no. 1 (May 31, 2025), https://doi.org/10.15294/ijcls.v10i1.24008.

through laws and regulations. From the perspective of constitutional law and agrarian law, the recognition provides a juridical basis for indigenous peoples to maintain collective rights to the land and natural resources they have managed for generations. Normative recognition also serves as a legal protection mechanism against potential violations of the rights of indigenous peoples due to the expansion of extractive investments such as mining, forestry, and large-scale plantations.[72]

Legal recognition of the rights of indigenous peoples can reduce land conflicts and increase legal certainty in natural resource investment. The second approach is the participatory governance model, which is an approach that places indigenous peoples as legal subjects as well as the main actors in the decision-making process related to the use of natural resources. In this model, the principle of participation is realized through various mechanisms such as public consultation, customary deliberation, and the application of the principle of Free, Prior and Informed Consent (FPIC) before an investment project is implemented in customary territory.[73]

Such participation not only serves as an instrument for democratizing natural resource management, but also as a means to ensure that decisions taken reflect the interests of local communities and take into account the cultural values inherent in indigenous territories. Participatory mechanisms can increase the legitimacy of environmental policies and reduce potential conflicts between indigenous peoples and investors. The third approach is the economic partnership model, which is a scheme that places indigenous peoples as strategic partners in natural resource-based investment activities.

Relationships between investors and indigenous peoples are not solely compensatory but develop into partnerships that provide sustainable economic

[72] Allen Blackman et al., "Titling Indigenous Communities Protects Forests in the Peruvian Amazon," *Proceedings of the National Academy of Sciences* 114, no. 16 (April 2017): 4123–28, https://doi.org/10.1073/pnas.1603290114.
[73] Jana Schindler et al., "Sustainability Impact Assessment to Improve Food Security of Smallholders in Tanzania," *Environmental Impact Assessment Review* 60 (September 2016): 52–63, https://doi.org/10.1016/j.eiar.2016.04.006.

benefits to local communities. Mechanisms that can be applied include benefit sharing, share ownership by indigenous communities, providing employment opportunities, and developing community-based businesses. The literature on natural resource investment governance shows that economic partnership schemes can improve the welfare of indigenous peoples while strengthening the social legitimacy of investment projects.[74]

The fourth approach is the institutional integration model, which is an approach that integrates indigenous institutions into the natural resource governance structure recognized by the state. Through this model, customary institutions are not only seen as socio-cultural entities, but also as institutions that have authority in supervising investment activities and in resolving disputes related to the use of natural resources. Such institutional integration allows for the creation of a pluralistic governance mechanism, where state legal norms and customary norms can interact constructively. A number of studies on legal pluralism have shown that recognition of indigenous institutions in local government systems can strengthen the effectiveness of natural resource management and increase the legitimacy of public policies at the community level.

The harmonization between customary law and investment-based natural resource management policies essentially has strategic implications in an effort to realize a sustainable development paradigm. The integration of customary law norms with the state regulatory framework in natural resource management allows for the formation of a more inclusive, equitable, and eco-sustainability-oriented governance system. From a development law perspective, harmonization is an important instrument to ensure that the use of natural resources is not solely oriented towards economic growth, but also pays attention to the protection of

[74] Muzzammil Hussain et al., "A Nexus of Natural Resource Rents, Institutional Quality, Human Capital, and Financial Development in Resource-Rich High-Income Economies," *Resources Policy* 74 (December 2021): 102259, https://doi.org/10.1016/j.resourpol.2021.102259.

indigenous peoples' rights and environmental sustainability as part of the interests of current and future generations.

The harmonization of the legal framework has the potential to reduce agrarian conflicts that have often arisen due to overlapping claims to natural resource areas between the state, business actors, and indigenous peoples.[75] The recognition and integration of customary law norms in natural resource management policies also serves to increase social legitimacy for the implementation of investment projects, because indigenous peoples are placed as legal subjects who have an active role in the decision-making process related to the use of customary territories.

In addition, recognition of indigenous peoples' local knowledge systems can significantly strengthen environmental conservation practices, sustainable natural resource management, and mitigation efforts against the impacts of climate change.[76] The harmonization between customary law and investment policies in natural resource management cannot be seen solely as a technical issue in the formation or adjustment of regulations. More than that, harmonization is part of the process of transforming the development paradigm, which places social justice, recognition of indigenous peoples' rights, and environmental sustainability as fundamental principles in the implementation of natural resource governance at the national and local levels.

Conclusion

This study concludes that the recognition and protection of indigenous peoples' rights over natural resources in Indonesia formally possess a strong constitutional basis, particularly through Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution, as well as the Constitutional Court Decision

[75] Achmad Muchsin et al., "Reconstructing the Environmental Licensing Law Based on Ecological Justice," *Administrative and Environmental Law Review* 6, no. 2 (October 27, 2025): 105–20, https://doi.org/10.25041/aelr.v6i2.4222.
[76] Halilul Khairi et al., "Traditional in Modern: The Existence of Village Governance Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 1 (June 30, 2024): 121–35, https://doi.org/10.30631/alrisalah.v25i1.1781.

No. 35/PUU-X/2012 which affirms that customary forests constitute part of indigenous peoples' rights rather than state forests. Nevertheless, the effectiveness of this recognition remains limited in practice because its implementation is largely procedural and dependent on administrative verification by regional governments. As a consequence, indigenous communities, including those in Desa Jelutih, still experience legal uncertainty regarding the recognition of customary territories and the control, access, and distribution of benefits derived from natural resources that have historically been managed through customary institutions.

The study also finds that tensions between customary law and investment-based natural resource governance arise from the dominance of state-centered regulatory frameworks that prioritize economic development and investment certainty. In this context, customary law is frequently positioned in a subordinate role, resulting in structural imbalances in natural resource governance and increasing the risk of agrarian conflicts between indigenous communities, government authorities, and private investors. Conversely, customary legal systems practiced by indigenous communities demonstrate governance mechanisms grounded in local wisdom, collective responsibility, and ecological balance, which contribute significantly to sustainable natural resource management.

The novelty of this research lies in the development of a conceptual framework for harmonizing customary law and investment policy through a legal pluralism approach that integrates three fundamental dimensions: recognition of indigenous rights, participatory decision-making mechanisms, and equitable distribution of economic benefits. Unlike previous studies that mainly focus on normative recognition of indigenous rights, this research emphasizes the need for institutional and governance integration between customary institutions and modern regulatory frameworks in natural resource management.

Therefore, harmonization between customary law and investment policy should be pursued through strengthening normative recognition of indigenous territories, institutionalizing mechanisms such as Free, Prior and Informed Consent

(FPIC), and integrating customary governance structures into formal natural resource management systems. Future research is recommended to explore empirical models of collaborative governance that involve indigenous institutions, government authorities, and private-sector actors to strengthen sustainable, inclusive, and socially just natural resource governance.

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None

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