

Legal Protection of Indigenous Communities Affected by National Strategic Projects

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Abstract

The development of National Strategic Projects (PSN) in Indonesia often leads to conflicts between development interests and the protection of indigenous peoples' rights. This research aims to assess the weaknesses of the regulations and seek directions for policy reform on the protection of indigenous peoples in the context of PSN. Using a normative juridical approach with qualitative analysis, data is obtained through document studies of national regulations and international instruments, as well as case studies of PSN projects that have a direct impact on indigenous communities. The results showed a legal vacuum related to the recognition and protection of indigenous peoples' rights, weak involvement of indigenous peoples in the decision-making process, and the absence of explicit legal obligations on the application of the principle of Free, Prior and Informed Consent (FPIC). This research concludes that policy reforms are needed in the form of strengthening specific regulations, implementing FPIC thoroughly in every stage of the project, and strengthening indigenous peoples' access to legal justice as an integral part of the legitimacy and sustainability of national development.

Keywords: National Strategic Project; indigenous peoples; FPIC; legal protection, sustainable development

Introduction

The Government of Indonesia consistently encourages the acceleration of national development through the implementation of National Strategic Projects (PSN) which have been stipulated in various laws and regulations¹. PSN is designed to accelerate economic growth, reduce regional disparities, and strengthen national competitiveness through large-scale infrastructure development², such as toll roads, dams, industrial estates, ports, airports, as well as monumental projects such as the relocation and construction of the new National Capital City (IKN). The top-down approach in the implementation of PSN is often characterized by policies to accelerate land acquisition, simplify licensing, and various incentives for investors³. Although at a macro level PSN is seen as a driving force for national development, its implementation often raises legal, social, and environmental issues, especially for indigenous communities in project-affected areas. In this context, there is an urgent need to further examine aspects of legal protection of the rights of indigenous peoples so that development carried out by the state remains within the constitutional corridors and principles of social justice.

Problems arising from the implementation of National Strategic Projects (PSN) become increasingly complex when these projects intersect directly with customary land or customary

¹ Tessa Talitha, "Megaprojects as a 'Space of Exception': Unraveling Institutional and Policy Dynamics in Indonesia's National Strategic Projects Agenda," *Environment and Planning C: Politics and Space*, June 25, 2025, 23996544251353061, <https://doi.org/10.1177/23996544251353061>.

² Yahya Ahmad Zein and Arif Rohman, "The Urgency of Border Area Development Towards Special Economic Zones: Legal Guarantees for Social Welfare in Indonesia," *Pancasila and Law Review* 5, no. 2 (May 2025): 109–22, <https://doi.org/10.25041/plr.v5i2.4067>.

³ Kaiwen Zhang and Rong Tan, "Land Policy Making in a Complex System: The Innovation and Diffusion Logic of China's Retained Land Policy Reform," *Land Use Policy* 144 (September 2024): 107263, <https://doi.org/10.1016/j.landusepol.2024.107263>.

territories that have been traditionally controlled and utilized by indigenous peoples⁴. In many cases, customary land lacks formal certification in Indonesia's positive legal system, making it vulnerable to neglect in land acquisition processes⁵. As a result, indigenous communities often experience forced evictions, lose access to the natural resources that sustain their lives, and are cut off from living spaces that have deep cultural and spiritual values⁶. This loss is not only physical, but also involves structural impoverishment and erosion of cultural identity. These conditions raise crucial questions about how the state guarantees the protection of the constitutional rights of indigenous peoples within the framework of national development, as well as the extent to which positive law is able to accommodate and protect the existence of indigenous peoples in the face of development pressures.

The urgency of legal protection for indigenous communities in the context of the implementation of National Strategic Projects is particularly pressing given their weak legal position before formal state law. Although indigenous communities have controlled and utilized customary territories for generations, the absence of proof of ownership in the form of formal certificates means that their claims are often not recognized in the land acquisition process. The mismatch between formal law, which tends to be positivistic and administrative, and customary law, which is communal and based on social legitimacy, creates a serious legal protection gap. In fact, normatively, various legal instruments including the constitution, laws, and decisions of the Constitutional Court have recognized and guaranteed the rights of indigenous peoples, including over their customary territories. However, in practice, the implementation of these protections is weak and often ignored in the development process. This imbalance emphasizes the need for policy rearrangement and strengthening of legal mechanisms that can bridge between the interests of national development and respect for the rights of indigenous peoples as part of the principle of social justice.

Kerangka yuridis yang relevan dalam memberikan perlindungan terhadap komunitas adat telah diatur dalam berbagai instrumen hukum nasional. Article 18B paragraph (2) of the 1945 Constitution affirms that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia⁷. This recognition is strengthened through the Basic Agrarian Law (Law No. 5 of 1960) which recognizes customary rights as long as in reality they still exist⁸. Furthermore, the Constitutional Court Decision No. 35/PUU-X/2012 became an important milestone by emphasizing that customary forests are no longer part of state forests, but rather belong to the

⁴ Yofiendi Indah Indainanto, Faiz Albar Nasution, and Muhammad Imanuddin Kandias Saraan, "Observing Indonesia's Agrarian Conflict During The Covid-19 Pandemic," *Journal of Peasants' Rights* 1, no. 2 (September 2022): 10–20, <https://doi.org/10.32734/jpr.v1i2.9463>.

⁵ Laura Notess et al., "Community Land Formalization and Company Land Acquisition Procedures: A Review of 33 Procedures in 15 Countries," *Land Use Policy* 110 (November 2021): 104461, <https://doi.org/10.1016/j.landusepol.2020.104461>.

⁶ Sylvia Kokunda et al., "Batwa Indigenous Peoples Forced Eviction for 'Conservation': A Qualitative Examination on Community Impacts," *PLOS Global Public Health* 3, no. 8 (August 2023): e0002129, <https://doi.org/10.1371/journal.pgph.0002129>.

⁷ Rizki Aprido and Fatimah Fatimah, "The Resolution of Customary Community Land Rights Issues Based on Government Regulation No. 18 of 2021 and Its Relevance to the Constitution in Indonesia," *Jurnal EDUCATIO: Jurnal Pendidikan Indonesia* 9, no. 2 (October 2023): 893, <https://doi.org/10.29210/1202323279>.

⁸ Wilson Fernando, "PERLINDUNGAN HUKUM BAGI MASYRAKAT ADAT IKN, DENGAN TINJAUAN TERHADAP UNDANG – UNDANG NOMOR 5 TAHUN 1960 DAN SISTEM PUBLIKASI PENDAFTARAN TANAH ULAYAT," *Mandalika Law Journal* 1, no. 1 (May 2023): 26–39, <https://doi.org/10.59613/mlj.v1i1.1545>.

customary law communities concerned⁹. However, despite normative recognition, recent regulations such as the Job Creation Law and implementing regulations related to National Strategic Projects (PSN) have not substantially accommodated the existence and interests of indigenous peoples. These legal instruments tend to emphasize efficiency and accelerated development, potentially overriding the communal rights of indigenous peoples, especially in land acquisition and public consultation processes. Therefore, it is important to review the alignment between national development regulations and the principles of protection of indigenous peoples within the framework of social justice and human rights.

One of the main challenges faced by indigenous communities in the context of National Strategic Projects (PSN) is unequal access to justice, both procedurally and substantively¹⁰. While regulations require public consultation in any development process that significantly impacts communities, this is often not done in a meaningful way. Indigenous communities are often poorly informed, not given adequate time to consider project impacts, and not actively involved in decision-making processes. In addition, there are serious inequalities in access to legal aid and representation in courts or land acquisition negotiation forums. Many indigenous communities do not have sufficient legal knowledge or resources to formally defend their rights¹¹. When conflicts occur, their position is often weak compared to the government or corporations, which are supported by legal instruments and much greater resources. This creates structural inequalities that hinder the fulfillment of substantive justice principles, especially for vulnerable groups such as indigenous peoples whose rights are constitutionally guaranteed but difficult to realize in practice.

This paper aims to examine in depth the ideal forms of legal protection that should be provided to indigenous communities, particularly in the context of the implementation of National Strategic Projects (PSN) that have the potential to impact on their customary territories and traditional rights. With reference to the national legal framework and human rights principles, this paper seeks to identify normative and implementative gaps that still hinder the effective protection of indigenous peoples. It is also intended to provide constructive policy proposals to balance the interests of national development and respect for the rights of indigenous peoples. Through an inclusive and equitable approach, it is hoped that development can be implemented without compromising the existence, dignity and constitutional rights of indigenous communities in Indonesia.

Method

This research uses the normative juridical method, which is an approach that examines the law as written norms (law in books) with a focal point on the systematic study of relevant laws, legal principles and doctrines. This approach was chosen because the main object of study in the form of legal protection for indigenous communities affected by the National Strategic Project (PSN) is more appropriately analyzed through the study of legal documents and

⁹ Paulus Pora Putra Fajar, Sukardan Aloysius, and Husni Kusuma Dinata, "Implikasi Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 Terhadap Pengaturan Hutan Adat Dan Dampaknya Terhadap Hak Masyarakat Adat," *Perkara : Jurnal Ilmu Hukum Dan Politik* 2, no. 2 (April 2024): 39–61, <https://doi.org/10.51903/perkara.v2i2.1844>.

¹⁰ Prisca Listiningrum et al., "The Space Between Us: Questioning Multi-Spatial Justice in the Upcoming Indonesia's Capital," *Journal of Human Rights, Culture and Legal System* 3, no. 3 (November 2023): 706–30, <https://doi.org/10.53955/jhcls.v3i3.169>.

¹¹ Frenky L. Allorerung, Imran Ismail, and Uddin B. Sore, "Evaluasi Peraturan Daerah (Perda) Nomor 1 Tahun 2019: Studi Kasus: Pengakuan Dan Perlindungan Hak Masyarakat Hukum Adat Di Lapangan Gembira Kabupaten Toraja Utara," *Paradigma Journal of Administration* 2, no. 2 (December 2024): 130–37, <https://doi.org/10.35965/pja.v2i2.5155>.

literature. The sources of legal materials consist of three types: primary legal materials, namely laws and regulations such as the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), the Job Creation Law and its derivative regulations, as well as the Constitutional Court Decision Number 35/PUU-X/2012 which confirms the recognition of the rights of indigenous peoples to customary forests; secondary legal materials such as books, scientific journals, research results, and opinions of legal experts; and tertiary legal materials in the form of legal dictionaries and legal encyclopedias.

This research also adopts a conceptual approach to explore the basic principles of indigenous peoples' rights, social justice, and the state's obligation to ensure the protection of vulnerable groups in the context of national development. In addition, a historical approach is used to trace the dynamics of the recognition of indigenous peoples' rights in the development of Indonesian law, as well as a limited comparative approach to review how other countries regulate the legal protection of indigenous peoples in major development projects. Data analysis was conducted in a qualitative-descriptive manner, by describing legal regulations and their implementation practices, evaluating their relevance to the protection of indigenous communities, and identifying legal loopholes or gaps in applicable policies. The results of this analysis are used as the basis for formulating a *ius constituendum*, which is a proposal for legal improvement or reform in order to realize national development that is inclusive, equitable, and respects the existence of indigenous peoples as an integral part of the Indonesian nation.

Results and Discussion

1. Identification of Legal Issues

The results show that there is a fundamental discrepancy between legal norms that recognize and guarantee the rights of indigenous peoples and practices in the field, especially in the implementation of National Strategic Projects (PSN). Normatively, various legal instruments in Indonesia have recognized the existence of customary law communities and their rights to their customary territories, as stipulated in Article 18B paragraph (2) of the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), and strengthened through Constitutional Court Decision No. 35/PUU-X/2012 which states that customary forests are not part of state forests. However, this legal recognition has not been fully implemented concretely in development processes, especially those involving land acquisition within the PSN framework.

Conflicts arise when large-scale development needs, such as the construction of highway infrastructure, dams, or industrial estates, intersect directly with indigenous territories that do not yet have administrative recognition in the form of certificates or official territory maps. In many cases, affected indigenous communities are not meaningfully involved in consultation or decision-making processes, leading to resistance and even conflict escalation. The absence of clear and operational legal protection mechanisms for uncertified customary lands has made indigenous peoples vulnerable to eviction, marginalization, and loss of access to the natural resources that have been the basis of their lives.

In addition, regulations on land acquisition for public interest as stipulated in Law No. 2/2012 have not specifically accommodated the protection needs of indigenous communities. This is exacerbated by the weak verification of the existence and legitimacy of indigenous communities by local governments, so that community claims are often considered invalid. Thus, it can be concluded that there is a legal vacuum and policy mismatch in bridging national development goals with the principle of respect for the rights of indigenous communities. This

imbalance shows the need to reformulate a more inclusive, contextual and restorative justice-based legal approach in the implementation of PSN in indigenous territories.

2. Review of Legislation

The Indonesian Constitution explicitly recognizes the existence and rights of customary law communities. This is reflected in Article 18B paragraph (2) of the 1945 Constitution which states that the state recognizes and respects the unity of customary law communities along with their traditional rights, as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. This recognition is emphasized in the Basic Agrarian Law (UUPA) of 1960 which recognizes customary land as part of the property rights of indigenous peoples. In addition, the Constitutional Court Decision No. 35/PUU-X/2012 progressively affirmed that customary forests are no longer part of state forests, but are under the control of customary law communities.

However, in practice, implementing regulations relating to National Strategic Projects (PSN), such as Law No. 11 of 2020 on Job Creation and various government regulations governing the acceleration of infrastructure development, have not fully accommodated the principle of protection of indigenous peoples. Inconsistencies can be seen between normative-progressive constitutional norms and technocratic sectoral norms that tend to prioritize development efficiency. In the context of PSN implementation, there is often a disregard for procedures to identify the existence of indigenous peoples and their customary territories. These sectoral regulations also often do not provide meaningful participation space for indigenous peoples in decision-making processes related to land acquisition. This shows a serious gap between the ideal national legal system and the reality of implementation on the ground, and indicates the need to reformulate sectoral regulations to align with the constitutional framework and principles of social justice.

3. Empirical Case Study (based on secondary data)

Various national strategic projects in Indonesia have shown significant impacts on indigenous communities, particularly in terms of the eviction of customary territories without meaningful consultation. One concrete example is the case of infrastructure development that impacted the Suku Anak Dalam community in Jambi, who had to move from their ancestral territories due to the opening of roads and construction of state facilities. Similarly, the Awyu Tribe community in Papua faces the threat of losing their customary lands due to the expansion of palm oil company concessions and PSN projects without their active involvement in the planning and decision-making processes.

These findings indicate the weak implementation of the principle of Free, Prior and Informed Consent (FPIC) as guaranteed in various international human rights instruments and should also be accommodated in national law. The state's response tends to be formalistic, where public consultation is conducted only as an administrative fulfillment, not as a participatory process that respects the voices of affected communities. Land acquisition mechanisms are often insensitive to the legal status of uncertified customary territories, so that customary land is treated as "state land" that is freely allocated for development purposes.

Criticisms of land acquisition policies in the context of PSN point to the lack of space for indigenous communities to object effectively. In addition, there are no legal instruments that operationally guarantee the recognition of customary territories that do not yet have certificates or official designations from the state. This puts indigenous communities in a very vulnerable position legally, socially and economically.

4. Inequality in Access to Justice

The findings show that indigenous communities often face various structural and cultural barriers in fighting for their rights, especially when they intersect with national strategic projects. These barriers include limited legal representation, the high cost of accessing the judicial process, and low legal literacy within indigenous communities. This condition causes indigenous peoples' bargaining position in land disputes or rights violations to be very weak, especially in the face of the state and corporations that have large legal and financial resources.

This discussion underscores the importance of strengthening indigenous communities' access to justice, both through strengthening formal justice institutions and alternative dispute resolution (ADR). The development of ADR based on local wisdom and customary law can be a bridge to justice that is more responsive to community needs. In addition, legal advocacy and empowerment of indigenous peoples needs to be enhanced, involving civil society organizations, universities and legal aid institutions, to expand communities' understanding of their rights and ability to claim them. The emphasis on restorative justice and meaningful participation is an important step in realizing equal access to justice for all citizens, including indigenous communities who have been marginalized in the national development process.

5. Policy Recommendations and Reforms

The findings of this research indicate an urgent need to formulate policies that explicitly require the protection of indigenous peoples in the context of the implementation of National Strategic Projects (PSN). Currently, many policies are general in nature and do not explicitly regulate the mechanisms for protecting the rights of indigenous communities, thus creating legal loopholes that can be utilized by state and private actors in reducing these rights. In response to this, an integrative policy is needed, which is able to harmonize the national development agenda with respect for indigenous rights that have been guaranteed constitutionally and in various international legal instruments. One of the strategic steps proposed is to strengthen the application of the principle of Free, Prior and Informed Consent (FPIC) in every stage of PSN from planning, consultation, implementation, to evaluation. FPIC should be a mandatory and legally binding mechanism, not just an administrative formality. In addition, institutional reforms are needed that support the existence of a task force or independent monitoring mechanism for the implementation of PSN in indigenous territories, so that the development process takes place in a participatory, fair and sustainable manner.

Conclusion

This research shows that National Strategic Projects (PSN), although driven by national development goals, often have negative impacts on indigenous peoples due to weak legal protection of their rights. The lack of legal recognition of indigenous territories, weak consultation and participation mechanisms, and the dominance of exploitative development approaches cause indigenous communities to experience structural injustice in the PSN planning and implementation process. In addition, unequal access to legal justice is a fundamental problem, given that limited legal representation, low legal literacy, and high costs of dispute resolution limit the ability of indigenous peoples to fight for their rights. Available dispute resolution mechanisms are also not fully responsive to the socio-cultural characteristics of indigenous peoples. In terms of policy, there is no legal framework that explicitly requires the protection of indigenous peoples in the PSN. Therefore, policy reforms are needed that emphasize the importance of respecting indigenous rights through strengthening the principle of Free, Prior and Informed Consent (FPIC), integrating development policies with respect for the rights of indigenous communities, and establishing independent oversight institutions. Overall, this research emphasizes that the protection of indigenous peoples in the context of

PSN must be positioned as an integral part of social justice and sustainable development, not as an obstacle to development. The fulfillment of indigenous peoples' rights is not only a constitutional obligation, but also a key indicator of the legitimacy and sustainability of national development itself.

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