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Legal Protection for Indigenous Peoples over Forest Areas amid Investment Utilization Conflicts

Mukhlis[1]
[1] Faculty of Law, Universitas Dharma Indonesia

Correspondence: Mukhlisss2378@gmail.com

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ABSTRACT (10 PT)
Forests, as areas of life and sources of livelihood for indigenous peoples in Indonesia, often clash with policies granting utilization permits for forestry and plantation investments. Although constitutionally the rights of indigenous peoples have been guaranteed under Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and reinforced by Constitutional Court Decision Number 35/PUU-X/2012, the implementation of legal protection still faces various obstacles. This research aims to analyze the legal protection arrangements for indigenous peoples over forest areas, identify obstacles in their application when conflicts arise with investment permits, and formulate appropriate improvements to legal regulations. The type of research employed is normative legal research using statutory, conceptual, and comparative legal approaches. The findings reveal that the recognition of indigenous peoples remains partial and conditional, there is overlapping authority in forest management, weaknesses exist in the evidentiary system for proving customary rights, and access to dispute resolution for indigenous peoples remains limited. This research concludes that effective legal protection requires full recognition of customary rights, harmonization of all sectoral regulations, and acknowledgment of local wisdom-based evidence in judicial processes.

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INTRODUCTION (Capital, bold, Times new romance 11 pt)

Indonesia is a country endowed with abundant tropical forest resources. Forests not only function as vital environmental ecosystems for the sustainability of global life but also serve as living spaces, sources of livelihood, and cultural identities for thousands of indigenous communities scattered across various corners of the archipelago. Indigenous peoples have long coexisted with forests, managing them based on local wisdom and customary law passed down through generations. This harmonious relationship between indigenous peoples and forests has persisted for centuries, creating sustainable and environmentally friendly natural resource management systems. However, reality demonstrates that recognition of indigenous peoples' rights over their territories remains a critical issue, as it frequently confronts economic development policies that prioritize forest utilization for large-scale investments.

According to data from the Indigenous Peoples Alliance of the Archipelago (AMAN), throughout 2025 there were at least 135 cases of indigenous territory dispossession covering 3.8 million hectares affecting 109 indigenous communities, with 162 individuals becoming victims of criminalization and violence (Aliansi Masyarakat Adat Nusantara, 2025). Ironically, of the 33.6 million hectares of indigenous territories mapped participatorily by indigenous peoples, 26.2 million hectares fall within forest areas and 7.3 million hectares overlap with concessions (Aliansi Masyarakat Adat Nusantara, 2025). State recognition remains extremely limited, with only 6.37 million hectares of indigenous territories recognized through regional legal products and merely 345,000 hectares designated as customary forests (Kementerian Lingkungan Hidup dan Kehutanan, 2025). These data reveal a

significant gap between the extent of indigenous territories claimed by indigenous peoples and those recognized by the state, which constitutes the root cause of various agrarian conflicts in Indonesia.

Sumardjono (2018) asserts that natural resource management in Indonesia has tended to prioritize the interests of the state and large capital, resulting in the frequent neglect of indigenous peoples' rights, which are considered to lack legal force. This view is reinforced by the findings of the National Commission on Human Rights (Komnas HAM), which states that various forms of human rights violations have occurred against indigenous peoples within and around forest areas due to the absence of legal recognition and sectoral regulatory fragmentation (Komnas HAM, 2024). This situation triggers numerous territorial conflicts, criminalization of indigenous rights defenders, and the loss of indigenous peoples' access to their primary sources of livelihood. Indigenous peoples who have for years preserved forest sustainability are instead marginalized and lose access to resources that form the backbone of their existence.

Constitutionally, recognition of indigenous peoples is guaranteed under Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which affirms that the state recognizes and respects traditional customary law communities and their traditional rights as long as they remain alive and in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia. This provision is reinforced by Article 28I paragraph (3) of the 1945 Constitution, which states that cultural identity and the rights of traditional communities are respected in line with the development of times and civilization. However, Zainab (2022) criticizes that constitutional recognition remains conditional, as it requires indigenous communities to exist "as long as they remain alive and in accordance with societal development." This conditionality creates a loophole for the state to narrowly interpret the existence of indigenous peoples, resulting in many indigenous communities not being recognized because they are considered no longer to meet certain criteria. In fact, the original spirit of the 1945 Constitution, as stated in the Elucidation of Article 18, recognized the customary rights of indigenous peoples without any conditions whatsoever.

A significant breakthrough in the protection of indigenous peoples' rights over forests occurred through Constitutional Court Decision Number 35/PUU-X/2012, delivered on May 16, 2013. This decision partially granted the judicial review petition against Law Number 41 of 1999 concerning Forestry, filed by the Indigenous Peoples Alliance of the Archipelago (AMAN) together with two indigenous communities from Kenegerian Kuntu, Riau and Kasepuhan Cisitu, Banten. The essence of this decision states that customary forests are no longer part of state forests but rather constitute rights-based forests controlled by customary law communities. The Constitutional Court held that classifying customary forests as state forests, as regulated under Article 5 paragraph (1) of Law No. 41/1999, constituted an unconstitutional act contradicting the 1945 Constitution (Mahkamah Konstitusi, 2013). This decision effectively corrects the *domein verklaring* doctrine (state dominion principle), a colonial legacy that had served as the basis for state control over all lands whose individual ownership could not be proven by the people. Through this decision, the Constitutional Court affirmed that indigenous peoples are rights-holders and legal subjects over their customary territories.

Recent developments in the legal protection of indigenous peoples are evident in Constitutional Court Decision Number 181/PUU-XXII/2024, delivered on October 16, 2025. In this decision, the Constitutional Court partially granted the judicial review petition against Law Number 6 of 2023 concerning Job Creation, which amended Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction. The Constitutional Court ruled that the prohibition on conducting plantation activities within forest areas without a permit from the central government does not apply to communities that have lived hereditarily within forests and whose activities are not intended for commercial purposes (Mahkamah Konstitusi, 2025). In its considerations, the Court affirmed that administrative sanctions, including temporary suspension of business activities, administrative fines, and/or government coercion, also cannot be applied to such communities. This decision constitutes an important recognition that indigenous peoples who have long inhabited forests and depend on them for their livelihoods cannot be equated with commercial business actors operating without permits.

At the international level, Indonesia has ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries through Law Number 19 of 2012. This convention

regulates the rights of indigenous peoples over land, territory, and natural resources, and obligates states to consult with indigenous peoples before adopting policies affecting them. Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007, which Indonesia also supports, affirms the rights of indigenous peoples to self-determination, land, territory, culture, identity, language, and participation in decisions affecting their lives (United Nations, 2007). Globally, indigenous peoples are recognized as guardians and protectors of forests, playing an important role in biodiversity conservation and climate change mitigation. Nevertheless, Erwin (2025) identifies that 12 rights of indigenous peoples are scattered across various regulations, and their implementation remains sectoral, thus failing to provide comprehensive protection.

Despite the existence of various regulations at the constitutional level, Constitutional Court decisions, and international law, the implementation of legal protection for indigenous peoples over forest areas continues to face significant obstacles. One major obstacle is the overlapping authority between central and regional governments, as well as among various sectors such as forestry, plantations, mining, and spatial planning. Forest utilization permits are frequently issued by the central or regional governments without first verifying whether the area concerned is under the control of indigenous peoples. A member of the Indonesian House of Representatives' Legislation Body, La Tinro La Tunrung (2026), acknowledges that problems frequently arise concerning indigenous lands because data on areas requiring protection remain unclear. Consequently, indigenous lands are often granted to entrepreneurs for their business activities, triggering land conflicts in various regions.

Another obstacle is the requirement for proving customary rights, which mandates official written evidence. This requirement is exceedingly difficult for indigenous peoples to fulfill, as they have traditionally relied on customary evidence systems and witness statements in managing their territories. As stated by the Regent of Landak, the documentation of customary forests cannot be conducted haphazardly, as it must be based on historical evidence, witness statements, and comprehensive recognition by the indigenous community. Customary forests cannot simply emerge; there must be history and testimony from the surrounding community. In judicial practice, local wisdom-based evidence is frequently not recognized as valid evidence because it does not meet the formal requirements of the Civil Procedure Law. In the dispute case concerning the Sukamaju Customary Forest area, the Tangerang District Court's 2023 decision declared the concession permit administratively valid, despite the indigenous community having controlled the area for centuries. This demonstrates that customary rights are still considered secondary compared to rights arising from state administrative permits.

Furthermore, the Job Creation Law, which prioritizes business facilitation, sometimes eliminates the obligation for in-depth socio-cultural impact assessments before permits are issued. The mechanism of Free, Prior, and Informed Consent (FPIC) has not been explicitly accommodated within the national legal system, despite receiving recognition in international legal instruments. Research on FPIC implementation in Indonesia reveals that legal vacuums, inconsistencies among regulations, weak legal recognition, and power imbalances between indigenous communities and the state or corporations constitute the main obstacles to FPIC implementation (Suryani & Wahyuni, 2023). Without a binding obligation to obtain consent from indigenous peoples before investment permits are issued, the right of indigenous peoples to self-determination over their territories continues to be neglected.

The most significant structural obstacle is the absence of a specific law on indigenous peoples, as mandated by Article 18B paragraph (2) of the 1945 Constitution. The Draft Law on Indigenous Peoples has been included in the National Legislative Program for 16 years and was re-included in 2026, yet it has still not been enacted. The presence of this legal umbrella is considered a key instrument to end structural discrimination, ensure recognition of customary rights, and prevent the ongoing dispossession of indigenous territories. Without a specific law comprehensively regulating the rights of indigenous peoples, the recognition of indigenous peoples remains sectoral and partial. This creates legal uncertainty detrimental to indigenous peoples, as each sector has its own standards and procedures for recognition.

Based on the foregoing description, this research raises three main research questions: first, how is the legal protection of indigenous peoples over forest areas regulated in Indonesian legislation;

second, what obstacles are encountered in the implementation of such legal protection when conflicts arise with investment permits; and third, what form of legal regulatory improvement is appropriate to resolve such conflicts. This research aims to identify and analyze the legal basis for the protection of indigenous peoples' forest territories, reveal normative and structural obstacles in the implementation of legal protection, and formulate recommendations for improving relevant legal regulations and policies. Theoretically, this research is expected to contribute to the development of legal science, particularly in environmental law and customary law. Practically, this research is expected to provide input for policymakers, law enforcement officials, and relevant stakeholders in efforts to realize more effective legal protection for indigenous peoples over their forest territories.

RESEARCH METHODS

This research falls within the category of normative legal research (*normative legal research*), which focuses on the study of written legal rules and legal principles to address the issues under investigation. Normative legal research is conducted by examining library materials or secondary data relevant to the problems raised. Marzuki (2017) explains that normative legal research is the process of discovering legal rules, legal principles, and legal doctrines to answer the legal issues at hand. This research also enriches the analysis with references to actual conditions occurring in the field as a comparator to enhance the legal analysis conducted. Soekanto (2014) adds that normative legal research encompasses research on legal principles, legal systematics, legal synchronization, and comparative law aimed at producing prescriptions about what should be done based on applicable legal norms.

The approaches employed in this research comprise three main approaches. The statutory approach (*statute approach*) is used to analyze applicable legal rules concerning indigenous peoples, forestry, and investment. This approach is undertaken by examining consistency and harmonization among legal regulations, ranging from the 1945 Constitution, laws, to implementing regulations at the ministerial and regional levels. The conceptual approach (*conceptual approach*) is employed by referring to theories of legal protection, human rights, indigenous sovereignty, and the principle of Free, Prior, and Informed Consent (FPIC) as analytical frameworks (Rahardjo, 2018; Hadjon, 1987). This approach is important for understanding the foundational concepts underlying the regulatory protection of indigenous peoples. The case approach (*case approach*) is used to examine court decisions and Constitutional Court rulings related to customary forest area disputes, including Constitutional Court Decision No. 35/PUU-X/2012 and Constitutional Court Decision No. 181/PUU-XXII/2024, as well as other relevant court decisions.

The sources of legal materials utilized in this research consist of primary legal materials and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 41 of 1999 concerning Forestry, Law Number 11 of 2020 concerning Job Creation, Law Number 32 of 2009 concerning Environmental Protection and Management, Constitutional Court Decision Number 35/PUU-X/2012, Constitutional Court Decision Number 181/PUU-XXII/2024, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007. Secondary legal materials include law books, reputable scientific journal articles, research findings, official reports from state institutions, and expert legal opinions. These materials were collected through searches of official legislative documents, libraries, and trusted legal databases such as Google Scholar, JSTOR, and the official portals of the Constitutional Court and the Ministry of Environment and Forestry.

Data analysis was conducted using qualitative descriptive methods, namely organizing, describing, and evaluating the compatibility among legal rules and the gaps that occur. Conclusions were drawn deductively, from general premises (legal norms) to specific conclusions (application to concrete cases), while still considering the social context and empirical realities in the field. Citations in this research employ the APA (*American Psychological Association*) format, citing the author's name and year of publication either at the beginning or end of the quoted sentence. Data validity was obtained through source triangulation techniques, comparing data from various different legal sources to ensure consistency and accuracy of information. A comparative approach was also used to compare regulations in Indonesia with international legal instruments and practices in other countries that share similar characteristics in forest management and indigenous peoples' protection.

RESULTS AND DISCUSSION

A. Legal Protection Arrangements for Indigenous Peoples' Forest Areas in Indonesian Legislation

The legal protection arrangements for indigenous peoples over forest areas within the Indonesian legal system can be examined at various levels, ranging from the constitution, Constitutional Court decisions, sectoral laws, to international legal instruments that have been ratified. At the constitutional level, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia provides a strong foundation by stating that the state recognizes and respects customary law communities and their traditional rights. However, this recognition contains the condition "as long as they remain alive and in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia." Zainab (2022) criticizes that this condition renders the recognition of indigenous peoples conditional and opens opportunities for the state to narrowly interpret the existence of indigenous peoples. This results in many indigenous communities that are actually still existing and practicing their traditions not being recognized by the state because they are considered not to meet one of the specified requirements. According to Safitri (2017), indigenous peoples should be recognized based on sociological and historical facts, not based on administrative decisions fraught with political interests.

Constitutional Court Decision Number 35/PUU-X/2012 serves as a historic milestone in the protection of indigenous peoples' rights over forests in Indonesia. In this decision, the Constitutional Court firmly stated that customary forests are no longer part of state forests but rather become rights-based forests controlled by customary law communities (Mahkamah Konstitusi, 2013). The Court held that classifying customary forests as part of state forests as regulated in Article 5 paragraph (1) of Law No. 41/1999 was unconstitutional, contradicting Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution. This decision essentially corrects the *domein verklaring* doctrine, a colonial legacy that had served as the basis for state control over all lands whose individual ownership could not be proven. Sukmawati (2019) affirms that this decision restores the rights of indigenous peoples that had been lost for centuries due to unjust state policies and serves as a foundation for the future recognition of indigenous peoples' rights. However, Fauzi (2020) cautions that this decision has not fully resolved the issue, as it still acknowledges the authority of regional regulations to establish the existence of indigenous peoples.

Recent developments through Constitutional Court Decision Number 181/PUU-XXII/2024 further strengthen the position of indigenous peoples. In this decision, the Court ruled that the prohibition on conducting plantation activities within forest areas without a permit does not apply to communities that have lived hereditarily within forests and whose activities are not intended for commercial purposes (Mahkamah Konstitusi, 2025). The Court's consideration is important because it clearly distinguishes between indigenous peoples who traditionally depend on forests for their livelihoods and commercial business actors operating on a large scale. The Court also stated that administrative sanctions cannot be applied to indigenous communities, meaning that indigenous peoples cannot be subjected to administrative fines or government coercion merely for conducting activities in forests. This aligns with the spirit of human rights protection and recognition of the traditional way of life of indigenous peoples.

At the legislative level, regulations concerning indigenous peoples are scattered across various sectors. Law Number 41 of 1999 concerning Forestry, as amended several times, recognizes the rights of customary law communities to collect forest products for daily needs, conduct forest management activities based on customary law, and receive empowerment (Article 67 paragraph 1). However, Article 67 paragraph (2) stipulates that the affirmation of the existence and extinction of customary law communities is established by Regional Regulations. This means that indigenous peoples must go through the political legislative path at the regional level to obtain recognition, which requires time, cost, and lengthy bureaucratic processes. The Elucidation of Article 67 paragraph (1) also requires five very technical elements of the existence of indigenous peoples: the community still exists in the form of an association, there is institutionalization in the form of customary leadership apparatus, there is a clear customary legal territory, there are customs and legal instruments still being adhered to, and they still collect forest products in the surrounding forest areas.

Law Number 32 of 2009 concerning Environmental Protection and Management also provides space for recognition of indigenous peoples' rights, particularly in the context of preserving environmental functions. Article 12 paragraph (1) states that communities have the same right to a good and healthy environment, while Article 70 regulates community participation in environmental protection and management. However, the implementation of these provisions remains hampered by weak recognition of customary institutions and the customary legal systems practiced by indigenous peoples. Kusumastuti (2021) notes that although various legal instruments recognize the rights of indigenous peoples, in practice such recognition remains formalistic and has not been followed by substantive protection of indigenous peoples' rights.

At the international level, Indonesia has ratified ILO Convention No. 169 through Law Number 19 of 2012. This convention obligates participating states to recognize the rights of indigenous peoples over lands and territories they traditionally occupy, as well as to protect their rights in decision-making that affects their lives. However, this ratification has not been followed by comprehensive harmonization of national law, so this convention often remains a declaration without meaningful implementation at the national level (Suryani & Wahyuni, 2023). Winata (2020) adds that the inconsistency between national law and international instruments creates legal uncertainty that further disadvantages indigenous peoples, because on one hand the state is bound by international commitments, yet on the other hand national policies often disregard indigenous peoples' rights.

B. Obstacles to the Implementation of Legal Protection amid Investment Conflicts

The implementation of legal protection for indigenous peoples over forest areas amid investment conflicts faces various normative, structural, and practical obstacles. The first and most fundamental obstacle is the overlapping authority between central and regional governments, as well as among various natural resource management sectors. Forest utilization permits are frequently issued by the central government through the Ministry of Environment and Forestry or regional governments through the local Forestry and Plantation Offices, without first verifying whether the area in question is under the control of indigenous peoples. The Ministry of Environment and Forestry (2025) acknowledges that spatial planning across five sectors (forestry, plantations, mining, energy, and infrastructure) has not been well connected, as evidenced by the existence of mining permits in protected forest areas or even conservation areas. The lack of synchronized data among institutions constitutes the foundational problem causing overlapping land control, which subsequently leads to conflicts between indigenous peoples and permit holders.

This problem is exacerbated by weak integrated information and spatial data systems. A member of the Indonesian House of Representatives' Legislation Body, La Tinro La Tunrung (2026), acknowledges that problems frequently arise concerning indigenous lands because data on areas requiring protection remains unclear. Consequently, indigenous lands are often granted to entrepreneurs for their business activities, triggering land conflicts in various regions. The Customary Territory Registration Agency (2025) records that of the 33.6 million hectares of indigenous territories mapped participatorily by indigenous peoples, 26.2 million hectares fall within forest areas and 7.3 million hectares overlap with concessions. These data indicate that overlapping land control constitutes a systemic problem requiring spatial reorganization and a more integrated licensing system.

The second obstacle is the evidentiary requirement for proving customary rights, which is incompatible with the customary legal system and local wisdom. Administrative requirements demanding official written evidence to prove existence and territorial rights are exceedingly difficult for indigenous peoples to fulfill, as they have traditionally relied on customary evidence systems and witness statements in managing their territories. Indigenous peoples transmit knowledge and claims over their territories through oral traditions, genealogies, and cultural symbols that are not always formally documented. The Regent of Landak (2025) states that the documentation of customary forests cannot be conducted haphazardly, as it must be based on historical evidence, witness statements, and comprehensive recognition by the indigenous community. Customary forests cannot simply emerge; there must be history and testimony from the surrounding community. However, in judicial practice, local wisdom-based evidence is frequently not recognized as valid evidence because it does not meet the formal requirements of the Civil Procedure Law.

The dispute case concerning the Sukamaju Customary Forest area exemplifies this obstacle. The Tangerang District Court Decision Number 43/Pdt.G/2022/PN.Tng dated March 17, 2023, declared the concession permit administratively valid, despite the indigenous community having controlled the area for centuries (Pengadilan Negeri Tangerang, 2023). This decision demonstrates that customary rights are still considered secondary compared to rights arising from state administrative permits. The judge in this decision prioritized the formal legality of the permit letter over historical and sociological evidence submitted by the indigenous community. This reflects the weak understanding of law enforcement officials regarding indigenous peoples' rights and the lack of recognition of the customary legal system as a legitimate source of rights. Kusumawati (2022) criticizes this rigid positivist approach, emphasizing that judges should use a substantive justice approach that considers the social reality of indigenous peoples, not merely formal legality.

The third obstacle relates to the orientation of investment policies that prioritize economic growth at the expense of indigenous peoples' rights. Law Number 11 of 2020 concerning Job Creation, subsequently amended by Law Number 6 of 2023, prioritizes business facilitation and licensing simplification. However, this convenience often eliminates the obligation for in-depth socio-cultural impact assessments before investment permits are issued. The mechanism of Free, Prior, and Informed Consent (FPIC) has not been explicitly accommodated within the national legal system, despite receiving recognition in international legal instruments. Suryani and Wahyuni (2023) in their research found that legal vacuums, inconsistencies among regulations, weak legal recognition, and power imbalances between indigenous communities and the state or corporations constitute the main obstacles to FPIC implementation in Indonesia. Without a binding obligation to obtain consent from indigenous peoples before investment permits are issued, the right of indigenous peoples to self-determination over their territories continues to be neglected.

The fourth and equally important obstacle is the criminalization and violence against indigenous peoples defending their territories. According to records from the Indigenous Peoples Alliance of the Archipelago (2025), throughout 2025 there were 162 individuals within indigenous communities who became victims of criminalization and violence. These conflicts intersect with forestry, mining, energy, monoculture plantation, infrastructure projects, and the designation of conservation areas and national parks. Rukka Sombolinggi (2025), Secretary-General of AMAN, criticizes Presidential Regulation Number 5 of 2025 concerning Forest Area Control, which involves security forces. This policy is considered rife with tendencies toward militarization in indigenous territories and reflects a biased perspective that positions indigenous peoples as objects of control rather than as legal subjects entitled to their territories. This approach risks opening space for repression in the name of order and development, ultimately worsening the position of indigenous peoples in conflicts with investment. Komnas HAM (2024) also documents various forms of human rights violations experienced by indigenous peoples, including forced eviction, criminalization, and loss of livelihoods due to conflicts with investment.

The most significant structural obstacle is the absence of a specific law on indigenous peoples, as mandated by Article 18B paragraph (2) of the 1945 Constitution. The Draft Law on Indigenous Peoples has been included in the National Legislative Program for 16 years and was re-included in 2026, yet it has still not been enacted. The presence of this legal umbrella is considered a key instrument to end structural discrimination, ensure recognition of customary rights, and prevent the ongoing dispossession of indigenous territories. Without a specific law comprehensively regulating the rights of indigenous peoples, the recognition of indigenous peoples remains sectoral and partial. This creates legal uncertainty detrimental to indigenous peoples, as each sector has its own standards and procedures for recognition. Erwin (2025) identifies 12 rights of indigenous peoples scattered across various regulations, whose implementation remains sectoral, thus failing to provide comprehensive protection. The stagnation of the Draft Law on Indigenous Peoples demonstrates the weak political commitment to provide adequate legal protection for indigenous peoples. According to Zainab (2022), a law on indigenous peoples is an urgent necessity to provide legal certainty and end the various forms of discrimination experienced by indigenous peoples to date.

C. Improvement of Legal Regulations and Relevant Policies

Based on the identification of the obstacles above, various improvements to legal regulations and policies are required to resolve conflicts between indigenous peoples and investment in forest areas. The first and most urgent step is the harmonization of all sectoral regulations to align with Constitutional Court Decision No. 35/2012. Currently, many regulations at the ministerial, governor, and regent/mayor levels have not been adjusted to this decision. Cross-ministerial and institutional policy harmonization is essential so that recognition of customary forests is not hampered by sectoral ego. The Minister of Forestry, Raja Juli Antoni (2025), acknowledges the need for cross-ministerial spatial evaluation, as spatial planning across five sectors has not been well connected. This evaluation must involve all stakeholders, including representatives of indigenous peoples, to ensure that indigenous territories no longer fall victim to overlapping policies. This harmonization must also include revision of various implementing regulations that still employ the old paradigm positioning customary forests as part of state forests.

The next step is the enactment of the Draft Law on Indigenous Peoples, which has long been stalled in the House of Representatives. This law must comprehensively guarantee the 12 customary rights of indigenous peoples, including rights over land, territory, and natural resources, ulayat rights, rights to cultural identity, rights to self-determination, and rights to participation in decision-making affecting them. The enactment of the Draft Law on Indigenous Peoples will demonstrate that the government complies with the constitution while simultaneously responding to accusations of continued neglect of indigenous peoples and their traditional rights. This law will also provide a strong legal basis for removing various administrative obstacles in the process of recognizing indigenous peoples, as well as providing legal certainty for indigenous peoples in defending their rights. Zainab (2022) emphasizes that without a specific law, recognition of indigenous peoples will remain symbolic and will not provide substantive protection. This law must also regulate effective dispute resolution mechanisms and recognize the authority of customary institutions in resolving internal and external conflicts involving indigenous peoples.

The mechanism for verifying indigenous territories also needs to be conducted participatorily, involving representatives of indigenous peoples. The currently convoluted and protracted process must be simplified, as complex procedures often give rise to conflicts detrimental to indigenous peoples. Documentation and verification of customary forest claims must be based on historical evidence, witness statements, and comprehensive recognition by the indigenous community. Customary evidence must be recognized as valid evidence in judicial processes, given that written evidentiary systems are often incompatible with the social reality of indigenous peoples, who rely on oral traditions and local wisdom. Sukmawati (2019) recommends the establishment of an independent special institution to conduct verification and recognition of indigenous territories, with balanced representation from government, indigenous peoples, and academics. The participatory mapping of indigenous territories already conducted by indigenous peoples together with the Customary Territory Registration Agency (BRWA) must serve as the basis for state recognition. Recognition of the results of participatory mapping will accelerate the process of designating customary forests and reduce the potential for conflicts with investment.

The obligation to implement Free, Prior, and Informed Consent (FPIC) must also be explicitly regulated before any investment permit is issued in areas with the potential to become indigenous forest territories. The FPIC principle is an important mechanism in protecting indigenous peoples' rights over land and natural resources. Full integration of the FPIC principle into national legislation and strengthening the capacity of indigenous peoples are necessary so that they can exercise their consent rights substantively, not merely symbolically. Suryani and Wahyuni (2023) emphasize that the consultation process with indigenous peoples must be conducted from the early stages of investment planning, not after permits are issued. This will prevent conflicts from arising later and provide legal certainty for both parties. The FPIC process must include honest and transparent provision of information about investment plans, sufficient time for indigenous peoples to discuss and consider such information, and the right to give consent or refusal freely without pressure from any party.

On the law enforcement side, law enforcement officials need to employ a justice-based approach and recognize local wisdom-based evidence in resolving territorial disputes. Courts should not rely solely on the formal legality of administrative permits without considering the customary rights of indigenous peoples that existed long before the state was established. Constitutional Court Decision No. 35/2012 has affirmed that customary forests are not part of state forests, so the rights of indigenous peoples over customary forests cannot be contested by permits issued subsequently. Law enforcement officials must remain consistent with this decision and make it the primary reference in resolving customary forest area disputes. Winata (2020) recommends training and capacity building for judges, prosecutors, and police regarding indigenous peoples' rights and customary legal systems so that they can make fairer decisions favoring indigenous peoples. Customary courts or customary-based dispute resolution institutions also need to be recognized and strengthened as alternative dispute resolution mechanisms more effective and consistent with local wisdom values.

The active involvement of indigenous peoples in development planning and investment licensing processes in indigenous territories must become a legal obligation, not merely an option. Indigenous peoples are legal subjects entitled to self-determination, including the right to reject investments that threaten their survival and culture. The role of indigenous peoples as forest guardians and bastions of biodiversity must be recognized and supported. Good conservation practices conducted by indigenous peoples need to be acknowledged, including through more flexible recognition schemes without converting them into formal conservation areas that often alienate indigenous peoples. Fauzi (2020) emphasizes that recognition of customary-based forest management systems is important not only for the protection of indigenous peoples' rights but also for the overall sustainability of forest ecosystems, as indigenous peoples have been proven capable of maintaining forests better than management models oriented toward short-term economic profit.

Furthermore, the government needs to complete the national mapping of customary forest areas with clear and measurable targets. The Ministry of Environment and Forestry (2025) has set a target of recognizing 1.4 million hectares of customary forests as a commitment to accelerating the designation of indigenous territories. However, this target remains far below the extent of indigenous territories mapped by indigenous peoples themselves, indicating a significant gap between normative recognition and field implementation. There needs to be acceleration and an increase in the target for customary forest recognition to align with the actual extent of indigenous territories. This process must be conducted with direct involvement of indigenous peoples, not merely through convoluted government bureaucracy. Adequate funds and resources also need to be allocated to support the mapping and recognition process of indigenous territories, including legal assistance for indigenous peoples in fighting for their rights.

Finally, there needs to be regular monitoring and evaluation of the implementation of indigenous peoples' protection policies. The government, the House of Representatives, and independent institutions such as Komnas HAM and the Ombudsman must actively monitor the implementation of legal protection for indigenous peoples and impose strict sanctions against violations that occur. Transparency in the licensing process and recognition of indigenous territories must also be enhanced to prevent corruption and collusion practices that frequently occur in natural resource management. The involvement of civil society and non-governmental organizations in oversight is also important to ensure that policies adopted genuinely favor indigenous peoples and do not merely constitute political rhetoric. With effective oversight, it is hoped that legal protection for indigenous peoples will not remain merely a promise on paper but will truly materialize in the daily lives of indigenous peoples throughout Indonesia.

CONCLUSION

Based on the research findings and discussion, the following conclusions can be drawn:

First, the regulatory framework for the legal protection of indigenous peoples over forest areas in Indonesia already possesses a strong constitutional foundation in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, reinforced by Constitutional Court Decision Number 35/PUU-X/2012, which declared that customary forests are not

part of state forests, and Constitutional Court Decision Number 181/PUU-XXII/2024, which provides protection for indigenous peoples in conducting activities in forests. However, this recognition has not been followed by comprehensive harmonization of sectoral regulations and remains conditional, as it requires recognition through Regional Regulations as stipulated in Article 67 of Law No. 41/1999. The prolonged stagnation of the Draft Law on Indigenous Peoples for 16 years symbolizes the protracted legal uncertainty for indigenous peoples. Although Indonesia has ratified ILO Convention No. 169, the implementation of this international legal instrument within the national legal system remains very limited.

Second, the main obstacles to the implementation of legal protection for indigenous peoples amid investment conflicts encompass five aspects. First, overlapping authority and unclear data on indigenous territories cause conflicts with investment permits, exacerbated by weak integrated information and spatial data systems across sectors. Second, evidentiary requirements incompatible with local wisdom mandate written evidence, while indigenous peoples rely on customary evidence systems and witness statements, resulting in customary rights being considered secondary to state administrative permits. Third, investment regulations prioritize business facilitation through the Job Creation Law, including the absence of explicit FPIC obligations in the national legal system. Fourth, criminalization and violence against indigenous peoples defending their territories occur, with various fatalities and human rights violations recorded annually. Fifth, the absence of a specific law on indigenous peoples creates legal uncertainty and renders the recognition of indigenous peoples sectoral and partial.

Third, improvements to legal regulations must be conducted comprehensively through six strategic steps. First, placing recognition of customary rights as the primary foundation in all forest management policies and harmonizing all sectoral regulations to align with Constitutional Court Decision No. 35/2012. Second, simplifying the process of designating customary forest areas and recognizing participatory mapping results as the basis for recognition. Third, recognizing local wisdom-based evidence as valid evidence in judicial processes. Fourth, mandating the involvement of indigenous peoples in all territorial utilization planning through the FPIC principle explicitly regulated in legislation. Fifth, enacting the Draft Law on Indigenous Peoples as a comprehensive legal umbrella. Sixth, enhancing the capacity of law enforcement officials in understanding and recognizing the rights of indigenous peoples and customary legal systems. Through these steps, it is expected that legal protection for indigenous peoples over forest areas amid investment conflicts can be realized effectively and justly.

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