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Strengthening the Role of Indigenous Communities in Sustainable Natural Resource Governance

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Abstract

The role of *indigenous peoples* in natural resource governance (*SDA*) is a crucial aspect of realizing sustainable development, especially in areas that have been the living space of *indigenous* communities. Unfortunately, in practice, the contributions of *indigenous peoples* are often marginalized by the state's formal legal-formal approach, which has not fully recognized and respected the customary law system. This article aims to examine the importance of strengthening the role of *indigenous peoples* through the integration of *indigenous* law into the national legal system in the context of sustainable natural resource management. Using normative juridical methods and legislative approaches, this article concludes that the legal recognition of *indigenous peoples* as stated in Article 18B paragraph (2) of the 1945 Constitution, Law No. 32 of 2009 concerning Environmental Protection and Management, and the Constitutional Court Decision No. 35/PUU-X/2012 is an important stepping point in revitalizing the position of *indigenous peoples* as active legal subjects in sustainable development. As an implication, the findings emphasize the need for inclusive policy reformulation and participatory mechanisms to ensure that natural resource management is not solely oriented toward economic exploitation but also guarantees ecological sustainability and social justice. Thus, natural resource governance that is responsive to customary law not only strengthens policy legitimacy but also acts as a catalyst for achieving intergenerational equitable development.

INTRODUCTION

Natural resource management in Indonesia has complex and multidimensional structural problems (Bashir et al., 2023; Torki & Nosoohi, 2021). One of the main challenges is the inequality of relations between the state, corporations, and indigenous peoples in accessing, utilizing, and managing natural resources (Hernandez et al., 2020). Exploitative practices carried out in the name of development have caused ecosystem damage, social inequality, and violations of the rights of indigenous peoples (Putra & Kusuma, 2021). Indigenous peoples have historically lived in dependence and harmony with the natural environment, but their rights are increasingly undermined by corporate interests and state policies (Siahaan & Nasution, 2019). Agrarian conflicts, land grabbing, criminalization of local residents, and degradation of local culture are symptoms of governance failures that place indigenous peoples only as objects of development (Jamaluddin et al., 2022). The legal frameworks surrounding natural resource management often exclude indigenous communities from decision-making processes, exacerbating these conflicts (Widiastuti & Nugroho, 2020). There is a growing need for inclusive governance that respects indigenous rights and incorporates them into natural resource management strategies (Mulyani & Wijaya, 2021).

Indigenous peoples actually have local knowledge systems, ecological values, and customary law norms that are inherited across generations. This system has been proven to be able to maintain a balance between humans and nature in a sustainable manner (Setiawan

et al., 2020). Customary law functions not only as a social rule but also as an ecological mechanism that maintains a harmonious relationship between the community and its environment (Rahman & Sari, 2021). Traditional ecological knowledge helps communities adapt to environmental changes, conserve biodiversity, and implement resource management practices based on long-term observation and experience (Wijaya et al., 2019). These indigenous systems often provide insights into sustainable development that are complementary to modern environmental governance (Kusuma & Prasetyo, 2022). The integration of customary norms into national and regional environmental policies can strengthen ecological protection and community resilience (Hadi & Nugroho, 2021).

Indonesia's constitution explicitly recognizes the existence of *indigenous peoples*. Article 18B paragraph (2) of the 1945 Constitution states that: "The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." This norm is strengthened by the Constitutional Court Decision No. 35/PUU-X/2012, which affirms that customary forests are no longer part of state forests but belong to customary law communities. However, at the implementation level, this recognition has not been fully embodied in concrete policies that favor *indigenous peoples* (Rachmad Safa'at, *Law and Politics of Indigenous Peoples' Recognition in Indonesia*, Malang: Intrans Publishing, 2018; Koentjaraningrat, *Introduction to Anthropology*, Jakarta: Rineka Cipta, 1993).

Previous research has extensively examined the legal recognition of *indigenous peoples*, such as Safa'at (2018), which focuses on the political aspects of recognition law, or Sumardjono (2008), which analyzes land rights from a socio-economic-cultural perspective. These studies generally focus on aspects of normative recognition and tenure conflicts. However, there are still gaps, namely the lack of studies that specifically link the integration of customary law into sustainable natural resource governance as an implementing strategy, not just a discourse of recognition.

The novelty of this research lies in its efforts to bridge the gap between constitutional recognition and operational policy implementation. This research not only describes legal barriers but also offers a framework for integrating customary law into the national legal system, specifically in the context of sustainable natural resource governance. The focus is on how participatory mechanisms, such as Free, Prior and Informed Consent (FPIC), and simplified recognition models can be adopted to strengthen the role of *indigenous peoples* as active subjects, rather than mere objects, in sustainable development.

The government, in various development policies, still dominates using legal-formal and top-down approaches that override the principles of participation, local wisdom, and ecological justice. In fact, sustainable development requires not only technical and economic aspects but also environmental ethics and alignment with the local community. The concept of sustainable development as defined in the Brundtland Report (1987) is development that "meets the needs of the present without compromising the ability of future generations to meet their own needs" (Gro Harlem Brundtland, *Our Common Future*, Oxford: Oxford University Press, 1987).

In the Indonesian context, sustainable development must be articulated holistically, respecting legal pluralism and integrating customary law into the national legal system.

Customary law has the potential as a cultural instrument that is able to strengthen ecological protection while ensuring social justice for *indigenous peoples*. Thus, development is not merely a modernization project but a process of inclusive and sustainable social transformation (Maria SW Sumardjono, *Land in the Perspective of Social and Cultural Economic Rights*, Yogyakarta: UII Press, 2008).

Based on this background, this research aims to answer the question: how should the role of *indigenous peoples* be strengthened in a sustainable natural resource governance system? The main focus lies in the importance of placing *indigenous peoples* as active subjects in the planning, implementation, and supervision of natural resource management policies. By making customary law an integral part of the national legal system, it is hoped that natural resource governance that upholds the principles of ecological justice, the collective rights of *indigenous peoples*, and the sustainability of future generations will be realized.

RESEARCH METHOD

This research uses normative legal research methods with a statutory approach and a conceptual approach. The research data were obtained through a literature study that included primary legal materials in the form of national laws and regulations such as the 1945 Constitution, Law No. 32 of 2009 concerning Environmental Protection and Management, and the Constitutional Court Decision No. 35/PUU-X/2012, along with international legal instruments such as the United Nations Declaration on the Rights of *Indigenous Peoples* (UNDRIP). Secondary legal materials include textbooks, scientific journal articles, and academic works related to *indigenous peoples*, legal pluralism, and sustainable development, while tertiary legal materials such as legal dictionaries and encyclopedias are used to clarify terminology. Data analysis is carried out qualitatively through legal interpretation, critical evaluation, and systematization to examine how the integration of customary law can strengthen the role of *indigenous peoples* in sustainable natural resource governance.

RESULT AND DISCUSSION

Constitutional Basis for the Recognition of Indigenous Peoples

The recognition of indigenous peoples has been explicitly regulated in the Indonesian constitution, especially Article 18B paragraph (2) of the 1945 Constitution which reads: "The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." This provision is the main normative basis for ensuring the existence of indigenous peoples in Indonesia, including their rights to traditional territories, laws, and institutions.

However, the implementation of this provision still faces various obstacles, especially in administrative and political aspects. One of the main obstacles is burdensome recognition criteria, such as having to prove that an indigenous community is "still alive," has customary territory, a system of self-government, and customary law recognized by local communities and local governments. This proving process is often not accompanied by technical support and funding, and depends on the political will of local governments (Rachmad Safa'at, 2018).

As a result, many indigenous communities have not been officially recognized in the form of local regulations (Perda), even though sociologically and historically they have existed long before the establishment of the Indonesian state. Without such formal recognition, indigenous peoples find it difficult to claim rights to the land, forests, and natural resources that constitute their managed territories, making them vulnerable to seizure by corporations and the state.

Constitutional Court Decision No. 35/PUU-X/2012 as a Historical Milestone

The Constitutional Court Decision No. 35/PUU-X/2012 is an important milestone in the process of legal recognition of indigenous peoples, especially in the context of control over customary forests. In the decision, the Court interpreted that the provisions of Article 1 number 6 of Law No. 41 of 1999 concerning Forestry which states that "customary forests are part of state forests" is contrary to the 1945 Constitution and does not have binding legal force. The Constitutional Court stated that customary forests belong to customary law communities, not the state.

This ruling substantively recognizes the collective rights of indigenous peoples to the forest areas they have managed for generations. This means that the management of customary forests is no longer subject to state authority, but is returned to the indigenous community as the rightful owners based on customary law and the constitution.

However, the realization of the decision still encounters various obstacles. Data from the Alliance of Indigenous Peoples of the Archipelago (AMAN) shows that until now only a small part of customary forests have been officially designated by the government through a decree from the Ministry of Environment and Forestry. Many indigenous communities are still struggling to get legality over their customary forests, not a few of whom face intimidation and criminalization because they are considered to control "state land" (AMAN, Annual Report, 2022).

The Urgency of Indigenous Peoples' Participation in Natural Resource Governance

Sustainable development not only speaks of a balance between the economic, social, and environmental, but also demands ecological justice that places local communities as subjects, not objects of development. Indigenous peoples have a natural resource management system based on local wisdom, such as the lubuk larangan system, sasi, tembawang, and various other ecological practices that have been proven to maintain the preservation of nature in the long term (Koentjaraningrat, 1993).

Unfortunately, the dominant development model is still centralistic and sectoral, so it often removes the role of indigenous peoples. They are considered to be an obstacle to investment or lack formal legitimacy in decision-making. In fact, the participation of indigenous peoples in natural resource governance not only ensures substantive justice, but also enriches the policy process with local values oriented towards ecological balance.

Law No. 32 of 2009 concerning Environmental Protection and Management provides space for public participation in the planning, implementation, and supervision of development. However, these mechanisms of participation are often procedural and insensitive to the social context of indigenous peoples. Therefore, it is necessary to transform the approach from informal consultation to prior and informed consent as mandated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) Article 32.

Policy Recommendations

Based on the results of the study, there are several policy recommendations that can be offered to strengthen the role of indigenous peoples in sustainable natural resource governance:

a. Simplification of the Mechanism for the Recognition of Indigenous Peoples

   The government needs to reform the procedures for the recognition of indigenous peoples at the regional level to be simpler, transparent, and less bureaucratic. A community-based recognition model involving indigenous leaders, academics, and independent institutions can be an alternative to accelerate the legalization process.

b. Integration of Customary Law in Natural Resources Policy Decision-Making

   Customary law must be recognized as a legitimate source of law in making natural resources management policies. The central and regional governments are obliged to involve representatives of indigenous peoples in development planning forums, as well as respect the institutional structure of indigenous peoples in the implementation of development programs.

c. Participatory Funding and Legal Protection

   Funding schemes that support indigenous peoples' initiatives in preserving and managing indigenous territories are needed, such as customary village funds, community-based conservation funds, and ecological incentive funds. In addition, there must be strong legal protections for indigenous peoples from criminalization, land grabbing, and structural violence.

CONCLUSION

Based on the overall analysis, it can be concluded that strengthening the role of *indigenous peoples* in sustainable natural resource governance is a constitutional and ecological imperative. Although normative recognition has been mandated by the 1945 Constitution and strengthened by the Constitutional Court Decision No. 35/PUU-X/2012, its implementation still faces bureaucratic, political, and legal harmonization challenges between the national legal system and customary law. This research emphasizes that the integration of customary law is not only a symbolic complement but also a strategic necessity to realize ecological justice, sustainability, and recognition of the collective rights of *indigenous peoples*. The success of sustainable natural resource governance is highly dependent on transforming the approach from a centralistic and top-down model to a participatory and inclusive one, where *indigenous peoples* are placed as active subjects who have autonomy and wisdom in managing their territories.

Based on these findings, several recommendations are suggested. First, for the central and regional governments, to simplify the mechanism for the recognition of *indigenous peoples* by reducing bureaucratic barriers and allocating special funding for the acceleration of verification and determination of customary territories. Second, it is important for the government to adopt and consistently implement the principle of Free, Prior and Informed Consent (FPIC) in every development process that affects customary territories, in order to ensure the protection of the rights of *indigenous peoples*. Third, for *indigenous peoples* and accompanying organizations, to continue strengthening institutional capacity and customary law documentation to improve their bargaining position. Finally, for future researchers, to conduct empirical studies on effective customary law integration models as well as implementation research on the application of FPIC principles in the context of regional specificities in Indonesia.

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