

Legal Protection of Customary Forests of the Awyu Tribe in South Papua From a National and International Law Perspective

Nonce Kristin Gaman, Dwi Pratiwi Markus, Hadi Tuasikal

Program Studi Hukum, Pascasarjana, Universitas Muhammadiyah Sorong, Papua, Indonesia
kristinnnonce@gmail.com

Abstract

Amid the expansion of extractive industries that threaten ecosystems and marginalize indigenous communities, the Awyu Tribe in South Papua faces increasing pressure over the ownership and protection of their customary forests. This study aims to explore the ownership conflict of Awyu customary forests, assess the effectiveness of national and international legal frameworks, and evaluate the implementation of state policies in securing indigenous rights and ecological justice. The urgency of this issue lies in the persistent neglect of the Awyu people's legal standing, where regulations often fail to reflect their lived realities and cultural values. Using a normative legal method, the research applies statutory, conceptual, comparative, and case-based approaches, relying on secondary data sourced from literature and analyzed through qualitative-descriptive techniques. Findings indicate that although both national and international law recognize indigenous rights, implementation on the ground is obstructed by bureaucratic inefficiencies and competing economic interests. The principle of Free, Prior, and Informed Consent (FPIC) is frequently disregarded, resulting in systemic land dispossession and environmental degradation. This research offers a novel perspective by integrating fragmented legal mechanisms into a cohesive approach to indigenous forest protection. As a normative recommendation, the study calls for stronger enforcement of FPIC, institutional reform to reduce regulatory bias, and the meaningful inclusion of indigenous voices in policy formulation and implementation.

Keywords: Awyu Tribe; Customary Forest Conflict; Indigenous Peoples' Rights; South Papua

1. INTRODUCTION

Conflicts over the control of customary forests by indigenous communities in Indonesia remain a pressing legal and environmental issue, particularly in resource-rich regions such as South Papua. Despite constitutional guarantees and landmark rulings like Constitutional Court Decision No. 35/2012, the implementation of indigenous forest rights protection continues to face systemic obstacles rooted in bureaucratic, political, and economic factors. National data and legal developments show that such conflicts are not isolated but represent a broader structural problem in natural resource governance. Customary law consists of norms and regulations that evolve within a specific community and are transmitted through generations. Hazairin argues that communities governed by customary law share a unified system of law, authority, and environmental management, grounded in collective rights to land and water. This legal system addresses not only interpersonal relationships but also governs the management of natural resources, property rights, and the resolution of conflicts. While typically oral, customary law

adapts to the changing social and cultural contexts of the community, embodying a dynamic legal framework.¹

In Indonesia, the rights of indigenous peoples are recognized in Article 18B Paragraph (2) of the 1945 Constitution, which includes recognition of customary land and forest rights. The legal basis for this recognition is provided by Law Number 5 of 1960 concerning Agrarian Principles and Law Number 41 of 1999 concerning Forestry, which affirms the rights of indigenous peoples to their forests.² Under international law, the rights of indigenous peoples are upheld through various instruments, including the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention No. 169, and the principle of Free, Prior, and Informed Consent (FPIC). These frameworks grant indigenous peoples the authority to either approve or reject projects that affect their lands.³ However, the lack of harmonization between national legal protections and these international standards, especially FPIC, remains a critical and often overlooked gap in practice.

Forest management based on customary law often involves prohibitions on activities that can damage the ecosystem, such as land clearing or excessive logging. Some customary communities implement rules that prohibit the logging of certain trees that are considered to have high ecological or cultural value. In addition, they use local wisdom, such as land rotation systems and natural reforestation, which have proven effective in maintaining the balance of nature.⁴

A concrete example of this structural conflict is the case of the Awyu Tribe in South Papua, whose customary forests are under serious threat from the expansion of palm oil and extractive industries. For the Awyu Tribe in South Papua, customary forests play a very vital role, not only as a natural resource but also as part of their social, cultural, and spiritual identity. For centuries, they have managed and protected the forests based on customary law, which focuses on the sustainability of the ecosystem and daily needs. For the Awyu Tribe, customary forests are not only a place to earn a living, but also a space that maintains noble values and inherited local knowledge.

However, in recent years, the existence of customary forests in South Papua, especially those belonging to the Awyu Tribe, has faced serious threats due to the expansion of the extractive industry. The entry of large companies with land concession permits for oil palm plantations and other natural resource exploitation has changed the ecological landscape and damaged the

¹ Septa Hanung Surya Dewi, I Gusti Ayu Ketut Rachmi Handayani, and Fatma Ulfatun Najicha, "Kedudukan Dan Perlindungan Masyarakat Adat Dalam Mendiami Hutan Adat," *Legislatif* 4, no. 1 (2020): 79–92. <https://doi.org/10.20956/jl.v4i1.12322>

² Jabalnur et al., "Perjanjian Di Bawah Tangan Ditinjau Dari Asas Pacta Sunt Servanda," *Halu Oleo Legal Research* 6, no. 2 (2024): 247–57.

³ S. Megawati and M. A. Mahdiannur, "Implementation of Forest Conservation Policies Based on Local Wisdom of the Ammatoa Kajang Indigenous Community," *IOP Conference Series: Earth and Environmental Science* 940, no. 1 (2021): 1–6, <https://doi.org/10.1088/1755-1315/940/1/012082>.

⁴ Sandy Leo et al., "Indigenous Dayak Iban Customary Perspective on Sustainable Forest Management, West Kalimantan, Indonesia," *Biodiversitas* 23, no. 1 (2022): 424–35, <https://doi.org/10.13057/biodiv/d230144>.

sovereignty of indigenous peoples. The granting of these permits is often done without adequate consultation with indigenous peoples, and in many cases, customary land is seized unilaterally. As a result, the Awyu Tribe has lost access to the land, forests, and natural resources that are the mainstay of their lives. According to data published by Kompas Media, PT Indo Asiana Lestari (IAL) has seized more than 36,000 hectares of customary forests for oil palm plantations. The impacts of granting these permits include not only the loss of living space but also environmental damage such as deforestation, land degradation, and loss of biodiversity.⁵ These changes add major challenges to the sustainability of indigenous peoples' lives and violate their rights to land and natural resources.

Although Indonesia has regulations that recognize indigenous peoples' rights to land and forests, their implementation on the ground still faces many obstacles. The complex and lengthy process of legalizing customary forests, as well as the low legal protections for indigenous peoples in the face of corporate claims, often puts indigenous peoples in a particularly vulnerable position. Cases such as those faced by the Awyu Tribe demonstrate an imbalance between economic interests and the protection of indigenous peoples' rights. This situation reflects a structural dilemma in natural resource governance in Indonesia. Conflicts arising from corporate claims to customary lands are not only local issues, but also reflect global challenges in protecting the rights of indigenous peoples.

As explained in a similar study on the legal protection of customary forests by Katjong, which discusses the legal protection of customary law communities over ulayat land forests, which states that customary forests are part of customary land managed by customary law communities and protected by national and international regulations.⁶ In addition, Ridwan also wrote something similar in his research which discussed the legal protection of the rights of the Matteko indigenous community to customary forests in Gowa Regency, by highlighting the obstacles faced by indigenous communities in obtaining recognition of rights to customary forests due to the absence of regional regulations (PERDA) that recognize their existence. The author highlights the importance of formal recognition through local policies to strengthen legal protection of the rights of indigenous communities.⁷ Not only that, Rodhiah also discusses the change in function of Papua's customary forests into oil palm plantations and its impact on the rights of indigenous communities, by highlighting that forest conversion carried out without the

⁵ Mispanasyah Mispanasyah and Nurunnisa Nurunnisa, "Penyalahgunaan Perizinan Perkebunan Sawit Dalam Perspektif Tindak Pidana Korupsi," *Jurnal Ius Constituendum* 6, no. 2 (2021): 348, <https://doi.org/10.26623/jic.v6i2.2700>.

⁶ Putri Balqis Ar Rodhiah et al., "Perlindungan Hukum Hutan Adat Papua Terhadap Ahli Fungsi Hutan Menjadi Perkembangan Kelapa Sawit Ditinjau Dari Aliran Sociological Jurisprudence," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 2, no. 11 (2024): 767–75.

⁷ Muhammad Ridwan, Baso Madihong, and Zulkifli Makkawaru, "Perlindungan Hukum Hak Masyarakat Adat Matteko Terhadap Hutan Adat Di Kecamatan Tombolo Pao Kabupaten Gowa," *Indonesian Journal of Legality of Law* 5, no. 2 (2023): 239–44, <https://doi.org/10.35965/ijlf.v5i2.2602>.

participation of indigenous communities is contrary to the principles of living law and has the potential to damage the ecosystem and cultural identity of indigenous communities.⁸

While Katjong's research effectively outlines the normative recognition of customary forests in national and international law, it does not delve into the implementation challenges at the ground level. Ridwan's work highlights the importance of local policy (PERDA) in securing indigenous rights, but lacks a national legal framework analysis. Rodhiah's research examines the impacts of forest function conversion, but does not provide a comprehensive resolution mechanism. This research integrates all three perspectives, normative recognition, local legal challenges, and environmental consequences into a unified analysis that emphasizes the dual approach of national and international legal protections. It aims to address the gap left by these prior studies by providing a structured, normative framework that can be implemented to protect the customary forest rights of the Awyu Tribe amid industrial pressures.

This research seeks to explore the dynamics of the conflict surrounding the Awyu Tribe's control over customary forests in South Papua, focusing on the recognition and safeguarding of indigenous rights to these forests from both national and international legal viewpoints. The study will analyze how current national legal frameworks, such as the Agrarian and Forestry Laws, alongside international legal instruments, can effectively protect indigenous rights. Additionally, it will assess the extent to which the implementation of these legal policies can promote justice and sustainability for the Awyu Tribe in preserving their customary forest rights amid the growing threat of extractive industries.

2. METHOD

This study adopts a normative legal approach, focusing on the analysis of written legal norms and principles relevant to resolving conflicts over customary rights to control forests. The study adopts a variety of methods, including a legislative approach to examine statutory regulations at the national level related to indigenous peoples and forest management; a case approach to analyze relevant judicial decisions, including Constitutional Court rulings such as MK No. 35/2012 that impact the legal status of customary forests; a conceptual approach to clarify the legal principles underpinning indigenous rights and forest governance; and a comparative approach to evaluate the alignment and divergence between national laws and international legal instruments, particularly those upholding the FPIC principle. It is based on secondary data sources consisting of primary, secondary, and tertiary legal materials. Primary legal materials include national laws and regulations protecting the rights of indigenous peoples as well as international legal instruments. Secondary legal materials come from books, journals, articles, and research reports on conflicts with indigenous peoples and environmental law. Tertiary legal materials include legal dictionaries, encyclopedias, and other reference materials to support the analysis. Data collection was conducted through documentary research and analysis of various

⁸ Rodhiah et al., "Perlindungan Hukum Hutan Adat Papua Terhadap Ahli Fungsi Hutan Menjadi Perkembunan Kelapa Sawit Ditinjau Dari Aliran Sociological Jurisprudence."

legal documents and scientific texts, including reports of civil society organizations that deal with indigenous peoples' rights. After data collection, it was analyzed descriptively and qualitatively to investigate the relationship between national and international legal norms and the resolution of conflicts over traditional forest management in the Awyu tribe.

3. RESULTS AND DISCUSSION

3.1 Dynamics of the Conflict Over Control of the Awyu Tribe's Customary Forests in South Papua

The Awyu Tribe is one of the indigenous communities inhabiting the South Papua region, especially in Boven Digoel Regency.⁹ Since ancient times, they have had a close and harmonious relationship with the surrounding forest. For the Awyu Tribe, the forest is not just a physical environment, but also an integral part of their social, cultural, and economic life. Forest ownership by the Awyu Tribe is based on a customary system that has been passed down from generation to generation, where land and forests are considered the common property of the community, with management regulated through customary norms. Each member of the community has certain rights and obligations in utilizing natural resources in the forest. This ownership structure ensures that the forest remains sustainable and can meet the needs of future generations.

Before the conflict with external parties occurred, the Awyu Tribe had developed various sustainable forest management practices. They utilize natural resources traditionally by hunting, gathering, and farming without damaging the forest ecosystem. Animals such as cassowaries, wild boars, and deer are sources of protein, while rivers around the forest provide fish as part of daily consumption.¹⁰ In addition, forest management is regulated through customary laws that divide areas based on their function, such as special areas for hunting, gardening, or those considered sacred and should not be disturbed.¹¹ These customary norms are strictly maintained by traditional elders and respected by all members of the community.

The spiritual beliefs of the Awyu people also influence the way they protect the forest. They believe that the forest is inhabited by ancestral spirits and other supernatural beings, so before using natural resources, they perform various rituals as a form of respect and asking for permission.¹² These rituals also serve as a reminder of the importance of maintaining the balance of the ecosystem. In addition, knowledge about the forest and how to manage it is passed down orally from generation to generation. Children are taught from an early age about the types of

⁹ Revo Linggar Vandito and Artanti Paramesti, "Partisipasi Politik Masyarakat Adat Dalam Konflik Agraria Di Papua : Studi Kasus Partisipasi Suku Awyu Melawan Pt Megakarya Jaya Raya Dan Pt Kartika Cipta Pratama," *Publiciana* 17, no. 02 (2024): 91–106.

¹⁰ Petrus Tekege and Roy Marthen Rahanra, "Papua People and Its Culture," *Lakhomi Journal Scientific Journal of Culture* 3, no. 3 (2022): 89–99, <https://doi.org/10.33258/lakhomi.v3i3.742>.

¹¹ Septya Hanung Surya Dewi, I Gusti Ayu Ketut Rachmi Handayani, and Fatma Ulfatun Najicha, "Kedudukan Dan Perlindungan Masyarakat Adat Dalam Mendiami Hutan Adat," *Jurnal Legislatif* 4, no. 1 (2020): 79–92, <https://doi.org/10.15900/j.cnki.zylf1995.2018.02.001>.

¹² Petrus Tekege and Roy Marthen Rahanra, "Papua People and Its Culture."

plants and animals, the correct way to hunt, and the importance of maintaining the forest so that it remains sustainable. The passing on of this knowledge ensures that sustainable forest management practices continue.

However, over time, the Awyu customary territory has faced various pressures from outside parties, especially due to the expansion of oil palm plantations and other industries. This pressure intensified as the government issued concession permits to companies without obtaining Free, Prior, and Informed Consent (FPIC) from the Awyu Tribe, violating principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which, although non-binding, is considered part of international soft law. Furthermore, such practices contradict Law No. 32 of 2009 on Environmental Protection and Management and Law No. 41 of 1999 on Forestry, which emphasize sustainable development and community participation. The government has issued various permits to companies to clear land in areas claimed as the Awyu customary forests, triggering agrarian conflicts that threaten the sustainability of the forests and the culture of the community. Nevertheless, the Awyu community continues to fight to maintain their land and forest rights through various efforts, including legal action and advocacy. This reflects not only a socio-environmental conflict but also a legal conflict involving the violation of recognized indigenous and environmental rights.

The customary forest conflict in South Papua began when the government began issuing concession permits to plantation companies to clear land in South Papua, including in areas claimed as customary forests by the Awyu Tribe. These permits were issued without adequate consultation with the indigenous people, so many of them did not know that their ancestral lands had been given to another party until the company began operating. One real-life example of this case is the entry of PT Indo Asiana Lestari (PT IAL), which was granted a permit to manage thousands of hectares of land claimed by the Awyu Tribe as part of their customary land. This action represents a failure to implement FPIC and indicates a breach of administrative law, particularly in the issuance of land-use permits that fail to accommodate indigenous claims under the Indonesian legal system. When the community began to realize that their land was being taken over, they tried to protest and resist, both through demonstrations and legal channels, despite facing many challenges in the process.

One of the main factors causing this conflict to escalate is the increasingly aggressive expansion of the palm oil industry in South Papua.¹³ Palm oil companies see this region as a potential area that is still vast and has looser regulations than other areas in Indonesia. As a result, many companies are competing to apply for permits to open plantations, often at the expense of the rights of indigenous people who have long lived in the area. In addition to the palm oil industry, other sectors such as mining and logging have also contributed to this conflict. Timber

¹³ Nixon Nicolaous Nila et al., "Normative Approach in Forestry Law Enforcement in Papua Province: Challenges and Opportunities for Indigenous Peoples' Participatio," *Pakistan Journal of Criminology* 16, no. 04 (2024): 943–54.

companies are cutting down forests on a large scale, often without considering the impact on the lives of indigenous people who depend on forest products for their survival.

In addition to industrial expansion, legal factors are also a major cause of this conflict. One of the biggest problems faced by the Awyu Tribe is the lack of legal recognition of their rights to customary land.¹⁴ Although the Indonesian constitution recognizes the existence of customary law communities, implementation in the field often does not go well. Customary land that has been managed for generations by the community is often considered state land by the government, so it is easily given to large companies.¹⁵ This makes indigenous people lose their legal rights to defend their land, and they are increasingly vulnerable to land grabbing. The government's economic motives are also a factor that exacerbates this conflict. Local and central governments see investment from large companies as an opportunity to increase regional income and open up employment opportunities for local communities.¹⁶ However, this approach often does not consider the negative impacts on indigenous people. Instead of providing welfare for local communities, the entry of large companies actually makes them lose access to natural resources that have been part of their lives. The loss of customary forests means the loss of food sources, clean water, natural medicines, and the loss of space for cultural and spiritual practices that have been carried out for centuries.

The lack of participation of indigenous communities in decision-making is also a major cause of this conflict. Although there are regulations that require companies and governments to consult with indigenous communities before development projects are carried out, in practice, this process is often just a formality. The ineffective implementation of FPIC reflects a broader failure of regulatory enforcement and highlights the gap between procedural requirements and substantive compliance. Many indigenous communities do not receive sufficient information about the impacts of these projects, so they do not have the opportunity to voice their objections before their land is taken over. In some cases, communities only find out that their land has been granted to companies after land-clearing activities have begun.

The impact of the takeover of the Awyu Tribe's customary forest area has had a significant impact on the law, environment, and the Awyu tribe's indigenous people. Deforestation resulting from the conversion of customary forests into industrial land has caused loss of biodiversity, ecosystem degradation, and changes in the ecological function of the forest. In addition, damage to the water ecosystem is one of the main problems, where river pollution due to industrial activities threatens the availability of clean water for indigenous people who are highly dependent on this natural resource. Local climate change is also an unavoidable impact because

¹⁴ Yuldiana Zesa Azis, Emiliana B. Rahail, and Marlyn Jane Alputila, "Bingkai Hukum Negara Indonesia Dalam Perlindungan Hak Ulayat Dan Kesejahteraan Masyarakat Adat Di Daerah Perbatasan," *Jurnal Restorative Justice* 8, no. 2 (2024): 136–49.

¹⁵ Hugo Warami, "Social Codification Of Papuan Culture Context On The Sdgs : An Antropolinguistic Study," *Journal of Lifestyle & SDG's Review* 5, no. 1 (2025): 1–21.

¹⁶ Sepus M. Fatem et al., "Conservation Policy, Indigeneity, and Changing Traditional Hunting Practices in West Papua," *Forest and Society* 7, no. 2 (2023): 359–79, <https://doi.org/10.24259/fs.v7i2.27420>.

the loss of forest cover disrupts the hydrological cycle, increases environmental temperatures, and affects the lives of local flora and fauna. Not only that, other environmental impacts include the increased risk of natural disasters such as landslides and floods due to the loss of forests as natural buffers that should protect the surrounding area from soil erosion and excessive water flow.

In addition to causing serious ecological impacts, conflicts over customary forests have caused various social problems that have an impact on the lives of the Awyu indigenous people. One of the most obvious impacts is the division of communities due to disputes between indigenous peoples and companies or external parties who have interests in the exploitation of natural resources.¹⁷

It is not uncommon for internal conflicts to also arise among members of indigenous communities, especially when there are differences of opinion regarding land management. The loss of customary forests threatens the cultural identity of the Awyu people, because forests have deep spiritual and cultural meaning for them. Customary rituals, religious practices, and traditions passed down from generation to generation are highly dependent on the existence of forests, which are now increasingly threatened. Another social change that has emerged as a result of this conflict is the increasing number of indigenous people migrating to other areas, which has caused a shift in their lifestyle from being forest-based to being more dependent on the urban economy.¹⁸ As a result, social inequality has occurred, where indigenous people who previously had control over their own natural resources are now increasingly marginalized and losing their land rights. The presence of industry in customary areas often benefits external parties more than local communities, who end up becoming mere spectators in the massive exploitation that occurs on their own land.

In terms of the economy, the conflict over customary forests has had a very detrimental impact on the Awyu indigenous community. One of the most noticeable impacts is the loss of their traditional sources of livelihood. With increasingly massive forest encroachment, communities have lost access to non-timber forest products, hunting, and traditional agriculture, which have been their main sources of income. Dependence on external parties has increased, especially when industrial companies have started offering jobs to indigenous communities who have lost their land.¹⁹ Unfortunately, the jobs offered are often unfair and benefit the companies more than the indigenous communities themselves. In addition, injustice in the distribution of profits from the exploitation of natural resources is a problem that often arises, where indigenous

¹⁷ Mohamad Ulil Amri, Teguh Yuwono, and Laila Kholid Alfirdaus, "Gerakan Perlawanan Masyarakat Urutsewu Kebumen Terhadap Penyerobotan Lahan Oleh Tni," *Journal of Politic and Government Studies* 11, no. 2 (2022): 1–25.

¹⁸ syamsu A Kamaruddin, "Dampak Pembangunan Industri Di Pedesaan," *Aksiologi : Jurnal Pendidikan Dan Ilmu Sosial* 5, no. 2 (2024): 362–75.

¹⁹ Putri Maulida, Muryani Muryani, and Andhita Risko Faristiana, "Dampak Perkembangan Teknologi Pertanian Terhadap Perubahan Sosial Masyarakat Di Kabupaten Madiun," *Student Scientific Creativity Journal* 1, no. 4 (2023): 349–65, <https://doi.org/10.55606/sscj-amik.v1i4.1650>.

communities do not receive proper compensation for the exploitation carried out in their areas.²⁰ This further exacerbates the existing economic gap. On the other hand, the presence of large companies often causes inflation and increases in the cost of living in indigenous areas, which ultimately worsens the economic conditions of local communities.

To deal with this conflict, the Awyu people have made various efforts to resist, both through protests and legal channels. They have sued the permits granted to companies through the State Administrative Court (PTUN) in the hope of getting justice. However, this legal effort faces concrete obstacles such as high litigation costs, lack of access to legal counsel, and prolonged case processing times, challenges that reflect the broader ineffectiveness of national legal remedies in providing protection for indigenous communities. Nevertheless, indigenous peoples continue to try to defend their rights in various ways, including collaborating with civil society organizations, environmental activists, and the media to voice the problems they face.

However, this legal effort faces concrete obstacles such as high litigation costs, lack of access to legal counsel, and prolonged case processing times, challenges that reflect the broader ineffectiveness of national legal remedies in providing protection for indigenous communities

3.2 Recognition and Protection of Indigenous Peoples' Rights to Customary Forests in National Law and International Law

Indonesia is a law-based country, as outlined in Article 1, paragraph (3) of the 1945 Constitution. As such, all government policies and state governance must be grounded in law, rather than solely on the authority of the ruler. Indonesia's legal framework is also founded on Pancasila, which serves as the ideological foundation for the nation's and state's life.²¹

The rule of law is a core principle in governance, asserting that all aspects of state affairs must be governed by law. In a system based on the rule of law, governmental power is constrained by legal norms designed to ensure justice, legal certainty, and the protection of human rights. The idea of the rule of law has evolved since Ancient Greece, with philosophers like Plato and Aristotle stressing the significance of the rule of law in societal life.²²

In the modern context, the rule of law is often associated with the principles of democracy and the protection of civil rights.²³ This concept can be categorized into two main forms, namely the rule of law in the formal sense and the rule of law in the material sense. The formal rule of law emphasizes the legality aspect, where all government actions must be based on applicable law.

²⁰ Elisa Hendrik Kurube et al., "The Role of Local Government in Improving the Economy and Welfare of the Wamesa Great Tribes Society in West Papua, Through A Sustainable Forest Development Program: In the Perspective of Collaborative Governance in Public Service," *International Journal of Membrane Science and Technology* 10, no. 5 (2023): 285–98, <https://doi.org/10.15379/ijmst.v10i5.2470>.

²¹ M. Tasbir Rais, "Negara Hukum Indonesia: Gagasan Dan Penerapannya," *Jurnal Hukum Unsulbar* 15, no. 2 (2022): 1–20, <https://ojs.unsulbar.ac.id/index.php/j-law/article/view/1854>.

²² Zulfahmi Nur, "Rekonstruksi Negara Hukum Dalam Paradigma Hukum Islam Dan Ketatanegaraan Di Indonesia," *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 4, no. 1 (2023): 119–43, <https://doi.org/10.24853/ma.6.1.119-142>.

²³ Ias Muhlashin, "Negara Hukum, Demokrasi Dan Penegakan Hukum Di Indonesia," *Al Qadau* 8 (2021): 6, <https://doi.org/https://doi.org/10.24252/al-qadau.v8i1.18114>.

Meanwhile, the material rule of law not only focuses on the legality aspect, but also ensures that the applicable law reflects the values of justice and social welfare.

The core principles of the rule of law encompass several key elements, including the supremacy of law, equality before the law, safeguarding human rights, and the separation of powers.²⁴ The supremacy of law dictates that no person or entity, including the government, is exempt from the law. The principle of equality before the law guarantees that all citizens are treated equally, free from discrimination. The protection of human rights is a crucial component of the rule of law, ensuring that the law upholds individual freedoms and fundamental rights.

The Constitution of the Republic of Indonesia strongly recognizes the rights of indigenous peoples, especially in the management of existing natural resources and forests. Article 18B paragraph (2) of the 1945 Constitution clearly affirms that the state recognizes and respects customary law communities and their customary rights.²⁵ However, such constitutional recognition is not automatically operationalized without the issuance of regional regulations (Perda) or administrative acknowledgment from local governments. This gap results in the non-enforceability of constitutional guarantees in the absence of derivative regulations or formal recognition.

Furthermore, Article 28I, paragraph (3) highlights that the cultural identity and rights of traditional communities must be upheld and safeguarded in accordance with the progression of time and civilization.²⁶ Protection of the rights of indigenous peoples in this context is not only related to physical aspects such as land and forests, but also includes cultural values, customs, and local knowledge systems that are passed down from generation to generation. The state has a responsibility to ensure that modernization and development do not erode the identity of indigenous peoples, but instead empower them in the national legal and policy system. Article 33, paragraph (3) of the 1945 Constitution declares that the state controls the earth, water, and the natural resources within it, and these are to be utilized for the greatest benefit of the people.²⁷ In the context of indigenous peoples, this provision mandates the state to manage natural resources while still paying attention to and respecting the rights of indigenous peoples who have long protected and preserved their customary forests. This principle is important because indigenous peoples often have more sustainable environmental management systems than the practices of resource exploitation by external parties. Therefore, the state must ensure that economic development and natural resource exploitation policies do not sacrifice the rights of indigenous peoples, but instead, provide space for them to continue to play a role in the

²⁴ Nabih Amer, "Analysis Dissemination of Community Organizations In The Perspective Legal Countries," *Jurnal Legalitas Fakultas Hukum Universitas Gorontalo* 15, no. 1 (2020): 1–15.

²⁵ Veren Sempo, Deizen Rompas, and Carlo Gerungan, "Hak Masyarakat Hukum Adat Di Tengah Modernisasi Di Tinjau Dari Pasal 18B Ayat (2) Undang Undang Dasar 1945," *Lex Privatum* 13, no. 5 (2024): 1–12.

²⁶ Maryo Sengkandai, Decky J. Paseki, and Christine S. Tooy, "Tinjauan Hukum Internasional Dan Nasional Atas Hak-Hak Masyarakat Adat Di Indonesia 1," *Lex Privatum* 13, no. 2 (2014).

²⁷ Rahmat Ramadhani, "Peran Politik Terhadap Pembangunan Hukum Agraria Nasional," *Sosok: Jurnal Sosial Dan Ekonomi* 1, no. 1 (2020): 1–6.

management and utilization of these resources.

Meanwhile, recognition of customary forests is also regulated in Law Number 41 of 1999 concerning Forestry.²⁸ Article 1, paragraph (6) states that customary forests are state forests located in the territory of customary law communities.²⁹ This definition initially caused problems in recognizing the rights of customary communities because it indicated that customary forests were still under state control. Consequently, customary communities do not have full control over the management of the forests that they have guarded for generations. The status of customary forests as part of state forests means that customary communities must obtain permission from the government to manage or utilize their own forest resources.

Article 4, paragraph (3) emphasizes that forest control by the state still takes into account the rights of indigenous legal communities as long as they still exist and their existence is recognized.³⁰ However, in practice, this recognition is often administrative in nature and requires verification and formal recognition from the regional government. This process is hampered by bureaucratic complexity and slow local government responses, including the delayed issuance of Perda and the lack of institutional readiness to verify customary law communities. These institutional challenges hinder the realization of substantive indigenous rights despite their formal recognition.

Article 67 paragraph (1) of the Forestry Law states that customary law communities have the right to collect forest products for the daily needs of the indigenous community concerned, to manage forests based on applicable customary law as long as it does not conflict with the law, and to receive empowerment in order to improve welfare.³¹ This provision basically provides protection for the traditional practices of indigenous communities in managing forests, but remains limited by state regulations. In practice, this provision cannot always be implemented optimally due to other interests, such as investment in the forestry, plantation, and mining sectors, which often conflict with the rights of indigenous communities.

Prior to the Constitutional Court Decision Number 35/PUU-X/2012, the Forestry Law still considered customary forests as part of state forests. The consequence of this regulation is that indigenous peoples have limitations in managing and owning their customary forests. Many cases have occurred where indigenous peoples have lost access to their own forests due to land conversion given to private companies by the government. In addition, the status of customary forests as part of state forests also causes an imbalance in the distribution of natural resource management rights between indigenous peoples and other parties who have obtained permits

²⁸ Nila et al., "Normative Approach in Forestry Law Enforcement in Papua Province: Challenges and Opportunities for Indigenous Peoples' Participatio."

²⁹ Antoni Ungirwalu et al., "Customary Forests in West Papua: Contestation of Desires or Needs?," *Forest and Society* 5, no. 2 (2021): 365–75, <https://doi.org/10.24259/FS.V5I2.13350>.

³⁰ Wihelmus Jemarut and Kornelia Webliana B, "Analysis of Customary Forest Legal Arrangements Post Constitutional Court," *Legal Brief* 13, no. 6 (2025): 1558–66.

³¹ Dewi, Handayani, and Najicha, "Kedudukan Dan Perlindungan Masyarakat Adat Dalam Mendiarni Hutan Adat."

from the government.

With the Constitutional Court Decision No. 35/PUU-X/2012, the classification of customary forests shifted from being categorized as state forests to being acknowledged as belonging to indigenous communities. This ruling offers a more solid legal foundation for indigenous peoples to assert their rights over the ownership and stewardship of their customary forests. Nonetheless, practical application on the ground continues to encounter multiple obstacles, particularly in the efforts to acknowledge and formalize customary territories, which necessitates proactive participation from local authorities and relevant organizations.

The Constitutional Court (MK) Decision Number 35/PUU-X/2012 is an important milestone in the legal protection of customary forests for indigenous communities, including the Awyu Tribe in South Papua. In this decision, the Constitutional Court emphasized that customary forests are no longer part of state forests. Previously, customary forests were categorized as state forests, which caused indigenous communities to lose their ownership and management rights over their forests. Through this decision, Article 1, number 6 of the Forestry Law was amended so that customary forests are recognized as part of the collective rights of indigenous communities.³² This decision provides a legal basis for indigenous communities to obtain recognition of their customary forest rights, with the note that their existence must be recognized by the local government.

The implementation of national law in providing protection for the rights of indigenous peoples in South Papua, including the rights to customary forests of the Awyu Tribe, still faces various challenges despite the existence of a legal framework that recognizes their rights. One of the main obstacles to the implementation of national law is the process of formal recognition of the existence of indigenous peoples and their customary territories. Law Number 23 of 2014 concerning Regional Government complicates this process by delegating the authority to recognize indigenous peoples to provincial governments, which often face administrative, political, and economic obstacles.³³ Without formal recognition from the government, indigenous peoples find it difficult to obtain legal rights to their territories, including customary forests that they have managed for generations. In addition, conflicts of interest with various sectors, such as the plantation, mining, and forestry industries, further weaken the position of indigenous peoples in defending their rights.³⁴ In many cases, concession permits issued by the government to companies often conflict with the existence of indigenous peoples who have long managed the area.

Although there are legal mechanisms to resolve indigenous peoples' rights disputes, such as through lawsuits or mediation with the government, their effectiveness is still questionable. A

³² Jemarut and B, "Analysis of Customary Forest Legal Arrangements Post Constitutional Court."

³³ Dewi, Handayani, and Najicha, "Kedudukan Dan Perlindungan Masyarakat Adat Dalam Mendiarni Hutan Adat."

³⁴ Amri Panahatan Sihotang, Zaenal Arifin, and Mac Thi Hoai Thuong, "The Philosophy and Essence of Customary Law in Southeast Asia: Comparative Law Between," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (2025): 55–74, <https://doi.org/https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/1647>.

legal system that tends to favor investment interests and a convoluted bureaucracy often makes it difficult for indigenous peoples to claim their rights. In addition, access to adequate legal aid is still limited, considering that many indigenous peoples are in remote areas with limited legal and economic resources. In some cases, indigenous peoples' efforts to defend their rights to customary forests have actually resulted in criminalization, where they are considered encroachers or illegal actors in areas that they have traditionally managed.

In addition to these structural constraints, the implementation of the Social Forestry Program also faces institutional obstacles, including slow bureaucratic processing, inadequate inter-ministerial coordination, and limited capacity at the regional level to facilitate the identification and verification of customary communities. These challenges hinder the effectiveness of recognition and protection measures designed to secure indigenous forest rights.

The effectiveness of national regulations in protecting the customary forests of the Awyu Tribe in South Papua is still being debated because, even though there are various regulations that recognize the rights of indigenous peoples to their forests, their implementation still faces structural and practical obstacles. The main problem is the process of legal recognition of customary forests, which is still very bureaucratic. Law Number 23 of 2014 concerning Regional Government transfers the authority to recognize indigenous peoples from district/city governments to provincial governments.³⁵ This actually prolongs the administrative process, considering that local governments are often slow in issuing regional regulations (Perda) that officially recognize the existence of indigenous peoples and their rights to land and customary forests. Without this official recognition, indigenous peoples such as the Awyu Tribe do not have sufficient legal power to defend their customary territories from the expansion of the palm oil, mining, and forestry industries that have obtained permits from the government.

In addition, existing regulations often overlap and favor investment interests over the protection of indigenous communities. For example, although Law Number 32 of 2009 concerning Environmental Protection and Management provides protection for the environment, including customary forests, the implementation of this rule is often ignored when dealing with large-scale investment projects.³⁶ There are many cases where the customary forests of the Awyu Tribe have been given as concessions to companies without adequate consultation with indigenous communities, even though Law Number 39 of 2014 concerning Plantations and Regulation of the Minister of Environment and Forestry Number P.32/MENLHK/SETJEN/KUM.1/5/2015 regulates community consent before natural resource management is carried out.

³⁵ Amirrudin Umasangaji, Ahmad Mufti, and Sri Indriyani Umra, "Desentralisasi Asimetris Kewenangan Provinsi Kepulauan Dalam Pengelolaan Sumber Daya Alam Untuk Mewujudkan Kesejahteraan Masyarakat," *De Jure Jurnal Ilmiah Ilmu Hukum* 1, no. 2 (2020): 170, <https://doi.org/10.33387/dejure.v1i2.2526>.

³⁶ Kurube et al., "The Role of Local Government in Improving the Economy and Welfare of the Wamesa Great Tribes Society in West Papua, Through A Sustainable Forest Development Program: In the Perspective of Collaborative Governance in Public Service."

However, the principle of Free, Prior, and Informed Consent (FPIC) has largely failed to function effectively in this context due to the absence of specific legal norms mandating its implementation. In many instances, FPIC is reduced to a procedural formality, such as limited information sessions without ensuring genuine community participation or consent. This indicates that FPIC in Indonesia lacks a binding legal foundation and is often implemented superficially rather than substantively.

Despite its roots in international human rights standards, FPIC should not be viewed merely as an ethical guideline. It must be regarded as a legal obligation embedded in environmental governance and human rights due diligence. Accordingly, the Indonesian legal system should internalize FPIC as a mandatory licensing requirement.

In the context of international law, protection of indigenous peoples' rights, including the right to customary forests, has been recognized through various legal instruments, one of which is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This declaration recognizes that indigenous peoples have full rights to the lands, territories, and natural resources that they traditionally own, occupy, or use. Article 26 of UNDRIP emphasizes that the state must provide legal recognition of these rights, including in the form of protection against unlawful exploitation and land grabbing. In the context of the Awyu Tribe in South Papua, this recognition is very important considering the threat from large companies that want to convert customary forest land into industrial areas or large-scale plantations. Customary forests for the Awyu Tribe not only have economic value, but also social, cultural, and spiritual values that are part of their identity. However, it is crucial to note that UNDRIP is a non-binding, declarative instrument within international law. While it reflects global consensus on the rights of indigenous peoples, it does not constitute a source of binding legal obligation for Indonesia unless integrated into national law.

Furthermore, UNDRIP also emphasizes the principle of Free, Prior, and Informed Consent (FPIC) as the main mechanism to ensure that indigenous peoples have control over decisions that affect their lands and resources. Articles 19 and 32 of UNDRIP state that states or external parties, including companies, must not exploit natural resources without obtaining the legitimate consent of indigenous peoples. This principle requires transparency in the consultation process, so that indigenous peoples can understand the consequences of policies or projects that will be implemented in their territories. If this principle is implemented properly, the Awyu have an international legal basis to reject the exploitation of their forests that is carried out without their consent and without adequate compensation.

In addition to UNDRIP, protection of indigenous peoples is also emphasized in the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.³⁷ This convention is a more binding international legal instrument than UNDRIP, because it

³⁷ Moh. Maulana et al., "Kedudukan Self-Determination Dalam Konteks Otonomi Dan Pengakuan Identitas Kultural Masyarakat Adat Di Indonesia," *Journal Jurnal Hukum Bisnis (J-Kumbis)* 3, no. 1 (2025): 53–70.

specifically regulates the state's obligations to protect the rights of indigenous peoples. Article 14 of this convention emphasizes that indigenous peoples have legal rights to the land they occupy and use for generations.³⁸ The state is required to recognize this ownership right legally and provide effective protection guarantees. This means that the Indonesian government should not only recognize the existence of the Awyu Tribe's customary forests, but also provide clear legal certainty so that the land cannot be converted without a fair legal mechanism.

However, Indonesia has not ratified ILO Convention No. 169. Therefore, although its provisions are normatively strong, they remain non-binding for Indonesia and function as soft law standards that should guide national policy but are not directly enforceable unless domestically legislated.

In addition, ILO Convention No. 169 also emphasizes the importance of indigenous peoples' participation in decision-making related to their land and resources. Articles 6 and 7 stipulate that the state must involve indigenous peoples in every policy that impacts their lives, including environmental and natural resource policies. This participation should not be merely a formality, but should reflect the aspirations and interests of the indigenous peoples themselves. In the case of the Awyu Tribe, this participation can be realized in the form of customary deliberations that prioritize collective decisions, not just the agreement of a handful of individuals who may have certain interests.

Another important aspect of ILO Convention No. 169 is protection against the exploitation of natural resources on customary lands. Article 15 states that indigenous peoples must receive direct benefits from any exploitation of resources in their territories, and if such exploitation has a negative impact, they have the right to receive compensation and protection against possible environmental and social impacts. This is a strong foundation for the Awyu Tribe in facing various companies that want to take over their customary forests for economic interests. In practice, many companies often ignore this aspect and only provide compensation in a form that is not comparable to the losses experienced by indigenous peoples.

The Free, Prior, and Informed Consent (FPIC) principle in international law serves as a safeguard for indigenous peoples, granting them the right to approve or reject any project that affects their lands, territories, and resources.³⁹ FPIC is acknowledged in several international legal instruments, including Articles 10, 19, 28, and 32 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and Articles 6 and 15 of ILO Convention No. 169. Additionally, this principle is supported by guidelines from the UN Committee on Economic, Social, and Cultural Rights and rulings from the Inter-American Court of Human Rights (IACHR), which recognize FPIC as an essential aspect of indigenous peoples' rights to their

³⁸ Yul Ernis, "Perlindungan Hukum Atas Tanah Adat Kalimantan Tengah," *Jurnal Penelitian Hukum De Jure* 19, no. 4 (2019): 435–54, <https://doi.org/10.30641/dejure.2019.v19.435-454>.

³⁹ Herlambang, Husni Abdul Hadi, and Muhammad Haikal Gibran Sudarma, "Analisis Prinsip Hukum Lingkungan Dalam Konflik Hutan Adat Papua: Studi Kasus Pt Indo Asiana Lestari," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 12, no. 2 (2022): 787–99.

lands and resources.

In the context of the Awyu Tribe's customary forest conflict in South Papua, FPIC can be applied in several main aspects to resolve disputes between indigenous peoples, the government, and private parties such as plantation or mining companies that want to access customary forest land. The application of the Free, Prior, and Informed Consent (FPIC) principle in the context of the Awyu Tribe's customary forest conflict in South Papua must be structured through a comprehensive legal and procedural framework to ensure the protection of indigenous rights. This begins with the temporary suspension of corporate activities that have not fulfilled FPIC requirements, thereby halting potentially unlawful land exploitation. Following this, a transparent consultation process rooted in the rights of indigenous peoples must be established, ensuring that information is provided in culturally appropriate ways and that participation is meaningful and inclusive. Recognition of customary forest rights must serve as a prerequisite for the FPIC process, given that consent cannot be deemed valid if the land tenure of the affected community is not acknowledged. In decision-making, a custom-based collective mechanism must be respected, in which traditional authority structures and communal consensus govern the approval or rejection of development projects. To maintain accountability, long-term monitoring and evaluation mechanisms must be put in place to assess adherence to FPIC agreements and environmental safeguards. Where disputes arise, there should be access to fair legal remedies, including effective judicial or administrative processes that uphold indigenous rights and allow for redress. Finally, to ensure legal certainty and compliance, FPIC must be codified in national legislation and regulatory frameworks, establishing it as a mandatory precondition for licensing and land acquisition in indigenous territories and reinforcing the legal obligation of both state and corporate actors in resource governance.

Indonesia further demonstrated its commitment by ratifying the 1992 Convention on Biological Diversity (CBD) through Law No. 5 of 1994, emphasizing the importance of biodiversity protection and the role of indigenous peoples in resource management and conservation. However, Indonesia has not yet ratified ILO Convention No. 169, the most detailed international instrument recognizing the rights of indigenous and tribal peoples. Despite this, Indonesia has enacted several national policies aimed at protecting the rights of indigenous peoples.

In terms of policy implementation, Indonesia has taken steps to address indigenous rights, though challenges persist. For instance, Law No. 41 of 1999 on Forestry, along with Constitutional Court Decision No. 35/PUU-X/2012, acknowledges that customary forests are not state forests but the rightful property of indigenous peoples. Law No. 5 of 1960 on Basic Agrarian Regulations (UUPA) also recognizes indigenous customary rights, though obstacles

remain due to conflicts between investment and concession interests.⁴⁰

Villages Law No. 6 of 2014 further recognized traditional villages and gave these communities autonomy to manage their territories, including natural resources. Presidential Decree No. 88 of 2017, “On Land Control Solutions in Forest Areas,” aims to resolve land control conflicts involving traditional communities. However, delays continue due to bureaucratic obstacles and political interests. The Social Forestry Program is another government initiative to provide legal access to forest management for indigenous communities, though many groups have yet to receive formal recognition of their territories.

In practice, these policies face multiple challenges, including regulatory overlaps and economic interests that often prioritize investment over indigenous rights. Additionally, there are limited mechanisms for effectively recognizing the legal rights of indigenous peoples to their land and resources. Indigenous participation in policy-making related to their territories remains minimal, compounded by bureaucratic delays in recognizing customary forests.

Given these challenges, several legal reforms are urgently needed. First, Law No. 41 of 1999 on Forestry should be revised to explicitly incorporate FPIC as a mandatory precondition for forest licensing. Second, the government should issue implementing regulations or ministerial decrees that operationalize FPIC procedures with clear, enforceable guidelines. Third, local governments in South Papua must be mandated to accelerate the issuance of regional regulations (Perda) recognizing indigenous communities and their customary forest rights. These concrete steps would bridge the current gap between legal recognition and effective protection.

4. CONCLUSION

This study has successfully analyzed the conflict over the ownership of the Awyu Tribe’s customary forests in South Papua, examined the national and international legal protections, and evaluated the challenges in their implementation. Despite existing constitutional guarantees and legal recognition, the protection of indigenous customary forests remains ineffective due to bureaucratic barriers, weak law enforcement, and competing investment interests. International instruments such as UNDRIP and ILO Convention No. 169 offer normative support but lack binding force in Indonesia, further limiting their impact. The principle of Free, Prior, and Informed Consent (FPIC), though central to indigenous rights, is often reduced to procedural formality without genuine participation or legal enforceability. As a result, the state has not yet fulfilled its obligation to deliver ecological and social justice for indigenous communities. To address this, legal and institutional reforms are needed, including revising the Forestry Law to mandate FPIC, issuing implementing regulations that enforce indigenous rights, and accelerating

⁴⁰ Adelina Muthi et al., “Perlindungan Hukum Terhadap Hak-Hak Masyarakat Adat Dalam Pengelolaan Sumber Daya Alam Di Indonesia : Studi Kasus Masyarakat Adat Dayak Di,” *Quantum Juris: Jurnal Hukum Modern* 06, no. 4 (2024): 1–12.

the enactment of local regulations (Perda) in South Papua to formally recognize indigenous communities and their customary forests.

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