




Environmental Conservation Policy Model Based on the Protection of Indigenous Peoples in Indonesia

Ilham Aji Pangestu^{1*}, Inas Sofia Latif², Chika Putri Nuralifa³, Rommy Pratama⁴

^{1,2,3,4} Faculty of Law Syekh-Yusuf Islamic University, Tangerang, Indonesia.

 : iapangestu@unis.ac.id

Corresponding Author*

Submitted: 2023-01-07

Revised: 2023-02-07

Published: 2023-03-11



Article Info	Abstract
<p>Keywords: Environment; Environmental Preservation; Indigenous Peoples; Legal Protection.</p>	<p>Introduction: Indigenous peoples are an order of society that existed even before the Indonesian nation was born. The Indonesian state recognizes the existence of indigenous peoples and their rights. The legal protection of indigenous peoples is the responsibility of the state as mandated by the constitution and other relevant laws and regulations regarding the management of natural resources. However, there are still conflicts between indigenous peoples, the government, and companies that have received management permits from the government.</p> <p>Purposes of the Research: This study aims to review and provide a policy model formulation regarding the protection of indigenous peoples in the context of environmental conservation.</p> <p>Methods of the Research: Researchers use normative legal research methods that examine through a statutory approach and a case approach. Legal materials are obtained through literature studies, both primary and secondary legal materials that are relevant to the problem under study.</p> <p>Results of the Research: The results show that currently the arrangements that are a form of recognition and protection of indigenous peoples are still scattered in many laws and regulations. Even though it has been regulated, the arrangement is still not enough, so a policy model for the protection of indigenous peoples is needed that also firmly provides protection in the context of preserving the environment. Because in fact indigenous peoples and the environment are an inseparable part.</p>

1. INTRODUCTION

Community recognition and protection is an integral part of national development planning and implementation.¹ Law Number 39 of 1999 concerning Human Rights (Human Rights Law), as one of the positive legal instruments recognizes the existence and rights of indigenous peoples. Article 6 paragraph (1) of the Human Rights Law, states that in order to uphold human rights, differences and needs in indigenous peoples must be considered and protected by law, society, and the government.²

¹ Helza Nova Lita and Fatmie Utarie Nasution, "Perlindungan Hukum Masyarakat Adat Di Wilayah Pertambangan," *Lex Jurnalica* 10, no. 3 (2013).

² Yahya Ahmad Zein and Dewi Nurvianti, "Konsepsi Hak Masyarakat Hukum Adat Sebagai Hak Asasi Manusia," *Veritas et Justitia* 3, no. 2 (2017), <https://doi.org/10.25123/vej.2689>.

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Furthermore, it is stated in paragraph (2) of the Human Rights Law that the cultural identity of indigenous peoples, including the right to protected customary land, is in line with the times.³ Moreover, the constitution mandates that social justice is the right of all Indonesians, so this must be reflected in applicable laws and regulations, and every action must be based on the existing rule of law.⁴ Likewise, in every action related to the use of the environment, in this aspect, of course, it must be based on legal certainty.⁵ In its implementation, the use of the environment often triggers two problems, namely material and sustainable.⁶

The environment is part of the integrity of human life. So that the environment must be viewed as one of the components of the ecosystem that has the value to be respected, valued, and not harmed, the environment has value towards itself.⁷ The causes of environmental damage which include aspects of land, sea and air are broadly caused by two factors, namely natural factors and human factors.⁸ Meanwhile, environmental damage caused by human factors has a more chronic and long-term impact, and the impact can be direct or indirect.⁹

The damage to the natural environment cannot be separated from human behavior. It is proven, that most of the disasters that occur are not due to natural factors alone, but because of the actions and behavior of man himself.¹⁰ Therefore, actions that pollute the environment are the same as killing oneself. This means that we must take good care of the environment, utilize natural resources and the surrounding environment there is nothing wrong because it is needed by humans but when taking or utilizing the environment you should always pay attention to the balance of the environment and make proper use of it.¹¹

Some examples of environmental damage that harm indigenous peoples as a result of business activities, for example as carried out by companies in North Sumatra that have seized indigenous territories and criminalized indigenous peoples.¹² Likewise, the company

³ Zein and Nurvianti.

⁴ Natalia Lidya Pohwain, Jemmy Jefry Pietersz, and Reveny Vania Rugebregt, "Perlindungan Hukum Bagi Masyarakat Hukum Adat Yang Lingkungan Hidupnya Tercemar," *TATOHI* 1, no. 5 (2021).

⁵ Sulbadana, Irwansyah, and Hatta Roma Tampubolon, "The International Law Perspective of Welfare Against Indigenous People in the Omnibus Law on Job Creation," *Sasi* 28, no. 4 (2022): 647-69, <https://doi.org/10.47268/sasi.v28i4.1160>.

⁶ Febrian Chandra, "Peran Masyarakat Hukum Adat Dalam Mewujudkan Pelestarian Lingkungan Hidup," *Jurnal Ekopendia: Jurnal Ekonomi Dan Pendidikan* 5, no. 1 (2020).

⁷ Elyawati Elyawati and Noor Fatmawati, "Dampak Kerusakan Lingkungan Terhadap Bencana Alam (Studi Kasus Di Rintisan Desa Wisata Wonosoco Kecamatan Undaan Kabupaten Kudus)," *IJTIMAIYA: Journal of Social Science Teaching* 5, no. 1 (2021): 19, <https://doi.org/10.21043/ji.v5i1.8905>.

⁸ Yosef Anata Christie, La Sina, and Rika Erawaty, "Pembangunan Perumahan (Studi Kasus Di Perumahan Palaran City Oleh PT. Kusuma Hady Property)," *Jurnal Beraja Niti* 2, no. 11 (2013): 1-21.

⁹ Dinda Riskanita and Yeni Widowaty, "Upaya Pemerintah Daerah Mengatasi Kerusakan Lingkungan Akibat Alih Fungsi Lahan Berdasarkan Konsep Negara Kesejahteraan," *Supremasi Hukum: Jurnal Penelitian Hukum* 28, no. 2 (2019): 123-35, <https://doi.org/10.33369/jsh.28.2.123-135>.

¹⁰ Juni Ratnasari and Siti Chodijah, "Kerusakan Lingkungan Menurut Sains Dan Ahmad Mustafa Al-Maraghi: Studi Tafsir Al-Maraghi Pada Surat Al-Rum Ayat 41, Al-Mulk Ayat 3-4 Dan Al-A'raf Ayat 56)," *Al-Tadabbur: Jurnal Ilmu AlQuran Dan Tafsir* 5, no. 1 (2020): 121-36, <https://doi.org/10.30868/at.v5i1>.

¹¹ Silfia AINUURRAHMAH and Sudarti, "Analisis Kerusakan Lingkungan Akibat Industri Di Permukiman Warga Desa Karangrejo Kediri," *Jurnal TELUK* 1, no. 2 (2021): 33-37, <https://lp3m-umkendari.ac.id/index.php/telukumkendari/article/view/375%0Ahttps://lp3m-umkendari.ac.id/index.php/telukumkendari/article/download/375/182>.

¹² Daniel Adiasto Pangaribuan and Harapan Tua Ricky Freddy S, "Pengawasan Dinas Lingkungan Hidup Kabupaten Toba (Studi Kasus PT. Toba Pulp Lestari)," *Jurnal Manajemen Dan Ilmu Administrasi Publik (JMIAP)* 3, no. September (2021): 241-45, <https://doi.org/10.24036/jmiap.v3i3.281>.

deliberately occupied the land of the Iwaka indigenous people from the Kamoro Tribe, Mimika Regency.¹³ Next, the company in Riau, which damages the river ecosystem in the Imbo Putui customary forest, is an indigenous area of the Petapahan Kenegerian indigenous people, who live in Petapahan Village, Tapung District, Kampar Regency.¹⁴ Siak River pollution in Riau Province, which is one of the causes of pollution, especially in Pekanbaru City, is caused by the industrial sector, especially those in the Siak River Basin.¹⁵

In addition to the four examples of cases above, there are still other cases that occur in the field.¹⁶ The conflict resolution mechanism of these kinds of cases still cannot be carried out optimally by the existing positive law.¹⁷ In an effort to understand the context of the legal protection of indigenous peoples, it is necessary to examine how the Indonesian constitution actually regulates the recognition and guarantee of indigenous peoples' rights.¹⁸ The constitution exists as a reflection of social relations within the citizens of its society. Therefore the constitution can also be referred to as a monument, an anthropological document because it expresses the cosmology of a nation, embodying ideals, hopes and dreams about building a country.¹⁹

Legal recognition and protection of indigenous peoples is contained in Article 3 of Law Number 5 of 1960 concerning Agrarian Principles (UUPA)²⁰ and Article 18 B paragraph (2) of the 1945 Constitution (1945 Constitution).²¹ In addition, legal protection and recognition of the rights of indigenous peoples have also been determined in various applicable laws and regulations. Among them are Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH), Law Number 41 of 1999 concerning Forestry (Forestry Law), Law Number 39 of 2014 concerning Plantations (Plantation Law) and several other sectoral regulations.

The latest regulation of each of these regulations is regulated in the omnibus law, namely Law Number 11 of 2020 concerning Job Creation (Job Creation Law). It is

¹³ Tim Betahita, "JERAT: Banyak Catatan Kejahatan Lingkungan PT PAL Di Iwaka Papua," Betahita, 2021, jerat: Banyak Catatan Kejahatan Lingkungan PT PAL di Iwaka Papua.

¹⁴ Hengki Firmanda S, "Hukum Adat Masyarakat Petapahan Dalam Pengelolaan Lingkungan Sebagai Upaya Pemenuhan Hak Masyarakat Adat," *Fikri: Jurnal Kajian Agama, Sosial Dan Budaya* 2, no. 1 (2017): 1-26, <https://doi.org/https://doi.org/10.25217/jf.v2i1.82>.

¹⁵ Olivia Anggie Johar, "Pencemaran Sungai Siak Di Kota Pekanbaru Dan Penegakan Hukum Pidana Lingkungan," *Jispo* 9, no. 2 (2019): 489-501.

¹⁶ CNN Indonesia, "KLHK Gugat 29 Perusahaan Penyebab Kebakaran Hutan Dan Lahan," CNN Indonesia, 2021, CNN Indonesia.

¹⁷ Pohwain, Pietersz, and Rugebregt, "Perlindungan Hukum Bagi Masyarakat Hukum Adat Yang Lingkungan Hidupnya Tercemar."

¹⁸ Sefa Martinesya, "Tanggung Jawab Pemerintah Terhadap Pemenuhan Hak Masyarakat Adat," *Nurani Hukum* 3, no. 1 (2020).

¹⁹ Satjipto Rahardjo, *Hukum Adat Dalam Negara Kesatuan Republik Indonesia (Perspektif Sosiologi Hukum) (Edt), Inventarisasi Dan Perlindungan Hak Masyarakat Hukum Adat*, ed. Hilmi Rosyida and Bisariyadi (Jakarta: Komnas HAM, Mahkamah Konstitusi RI, Departemen Dalam Negeri, 2005).

²⁰ Adonia Ivonne Laturette, "Penyelesaian Sengketa Hak Atas Tanah Masyarakat Hukum Adat," *Sasi* 22, no. 2 (2016): 52-66, <https://doi.org/https://doi.org/10.47268/sasi.v22i2.168>.

²¹ Adonia Ivonne Laturette, "Penyelesaian Sengketa Hak Ulayat Pada Kawasan Hutan," *Sasi* 27, no. 1 (2021): 102-12, <https://doi.org/10.47268/sasi.v27i1.504>.

undeniable, despite the renewal of the rules,²² on the ground there are still many conflicts²³ that harm indigenous peoples. ²⁴ Previous research on environmental conservation policy models based on the protection of indigenous peoples has not been carried out, although several related studies have been carried out.

Some of the previous studies include a study conducted by Zainul Akmal entitled *The Existence of Indigenous Peoples in Laws Related to the Environment*. The results of his research stated that in the post-reform era, the existence of indigenous peoples received better treatment than the arrangements in previous laws and regulations. Even Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) provides attribution to the central and local governments to accelerate the implementation of recognition of indigenous peoples.²⁵

The next research is in a study conducted by Mohammad Zamroni and Rachman Maulana Kafrawi with the title *Protection of Indigenous Peoples in Coastal Areas After the Enactment of Law Number 11 of 2020 concerning Job Creation*. The results obtained in this study state that the constitutional protection of indigenous peoples in coastal areas has not been realized, due to the consequences of unclear territorial management and impartial legal instruments on the recognition of the existence of indigenous peoples.²⁶

In addition, there are also the results of research by Elizabeth Arden Madonna with the title *Application of the Rights of Indigenous Peoples in Forest Management in Indonesia*. The results showed that the government has not succeeded in implementing the constitutional mandate and protecting indigenous peoples and their rights in forest management in Indonesia, as evidenced by the continued occurrence of forestry conflicts with indigenous peoples, which are violations of human rights.²⁷

Indigenous peoples as a living entity with rights attached to it and recognized by the constitution, are entitled to protection. Especially related to the preservation of the environment, which is also directly related to the utilization and use of customary forests and other resources. Based on the description above, including previous relevant research that has been carried out, researchers will focus on examining environmental conservation policy models that provide protection to indigenous peoples. So that the legal arrangements can provide certainty and become the basis for action for all relevant parties.

2. METHOD

This research is normative, prescriptive legal research. The investigation involved both a statutory and a comparative approach. In this legal research, the researcher employed

²² Mohammad Zamroni and Rachman Maulana Kafrawi, "Perlindungan Masyarakat Hukum Adat Di Wilayah Pesisir Pasca Berlakunya Uu Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Perspektif Hukum*, no. 1 (2021): 52-73, <https://doi.org/10.30649/ph.v21i2.99>.

²³ Maria S.W. Sumardjono, *Kebijakan Pertanahan Antara Regulasi Dan Implementasi*, ed. P. Cahandar (Jakarta: Kompas Media Nusantara, 2005).

²⁴ Yuliyanto Yuliyanto, "Peranan Hukum Adat Masyarakat Dayak Dalam Menyelesaikan Konflik Untuk Mewujudkan Keadilan Dan Kedamaian," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 37, <https://doi.org/10.33331/rechtsvinding.v6i1.134>.

²⁵ Zainul Akmal, "Eksistensi Masyarakat Adat Dalam Undang-Undang Terkait Lingkungan Hidup," *JIP (Jurnal Industri Dan Perkotaan)* 17, no. 1 (2021).

²⁶ Mohammad Zamroni and Kafrawi, "Perlindungan Masyarakat Hukum Adat Di Wilayah Pesisir Pasca Berlakunya Uu Nomor 11 Tahun 2020 Tentang Cipta Kerja."

²⁷ Elizabeth Arden Madonna, "Penerapan Hak Masyarakat Hukum Adat Dalam Pengelolaan Hutan Di Indonesia," *Bina Hukum Lingkungan* 3, no. 2 (2019), <https://doi.org/10.24970/jbhl.v3n2.19>.

secondary data. The legal materials for this study were gathered through a literature search.²⁸ The primary legal materials to which reference is made are statutes and other associated legislation. Specifically, 1945 Constitution and various applicable laws and regulations. Among them are Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH), Law Number 41 of 1999 concerning Forestry (Forestry Law), Law Number 39 of 2014 concerning Plantations (Plantation Law) and several other sectoral regulations. In contrast, secondary legal resources gathered from articles, books, or scientific publications which are relevant to environmental conservation policy based on the protection of indigenous peoples. Materials can produce a conclusion that can be accounted for, then analyzed using descriptive methods.²⁹

3. RESULTS AND DISCUSSION

3.1 Protection of Indigenous Peoples in the Context of Environmental Conservation in Indonesia

The term indigenous law society was born and used by indigenous law experts who are more widely used for academic theoretical purposes. Meanwhile, the term indigenous peoples is a term commonly expressed in colloquial language by non-legal circles that refers to a number of international agreements.³⁰ The term indigenous people is the equivalent of indigeneous people. It is well known and has been enacted in a number of international agreements, namely: Convention of International Labor Organisation Concerning Indigeneous and Tribal People in Independent Countries (1989), Declaration on the Rights of Indigenous Peoples (1992), Declaration of the Earth of Rio de Janeiro (1992), Declaration on the Right of Asian Indigenous Tribal People Chianmai (1993), De Vienna Declaration and Programme Action formulated by the United Nations World Conference on Human Rights (1993).³¹

Now, the term indigenous people is increasingly officially used with the birth of the United Nations Declaration on the Rights of Indegenous People in 2007.³² The recognition of indigenous peoples is based on declarative recognition. So the customary law community is considered to exist, because of the fact that the customary law community still lives in the Republic of Indonesia since ancient times. In fact, in the customary law society of Negeri Eti, its existence was long before the entry of Europeans into the Maluku region. With the recognition of indigenous peoples constitutively and declaratively, the rights of indigenous peoples will receive legal protection.³³

Indigenous peoples are an inseparable part of their existence from the Indonesian nation from ancient times to the present. The constitution uses several terms to refer to the unity of indigenous peoples, such as the unity of indigenous peoples, indigenous peoples, and traditional communities. So that several of these terms can be used simultaneously or

²⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017).

²⁹ Marzuki.

³⁰ Taqwaddin, "Penguasaan Atas Pengelolaan Hutan Adat Oleh Masyarakat Hukum Adat (Mukim) Di Provinsi Aceh," *Disertasi*, 2010, 1–457.

³¹ Pohwain, Pietersz, and Rugebregt, "Perlindungan Hukum Bagi Masyarakat Hukum Adat Yang Lingkungan Hidupnya Tercemar."

³² PBB, "United Nations Declaration on The Rights of Indigenous Peoples (Deklarasi Perserikatan Bangsa-Bangsa Tentang Hak-Hak Masyarakat Adat)" (Jakarta, 1948), [https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi--\\$R48R63.pdf](https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi--$R48R63.pdf).

³³ Jenny Kristiana Matuankotta, "Pengakuan Dan Perlindungan Hukum Terhadap Eksistensi Pemerintahan Adat," *Sasi* 26, no. 2 (2020): 188, <https://doi.org/10.47268/sasi.v26i2.305>.

interchangeably.³⁴ The constitutional basis for the recognition and protection of the rights of indigenous peoples is contained in Article 18 B paragraph (2) and Article 28 I paragraph (3) of the 1945 Constitution.³⁵ In this article, the legal relationship between the state and indigenous peoples is regulated. At the same time, it is a constitutional foundation for state organizers, how indigenous peoples should be treated. Thus the article is a declaration of:³⁶ a). The constitutional obligation of the state to recognize and respect indigenous peoples, and; b). The constitutional right of indigenous peoples to gain recognition and respect for their traditional rights.

It is undeniable that Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA) is one of the basic foundations of the concept and regulatory material regarding the recognition of indigenous peoples. The birth of UUPA is due to the dualism of law in the regulation of national land law. This is evidenced by the existence of lands subject to western law and lands subject to customary law. To eliminate dualism in the law of the land in Indonesia, the UUPA was enacted, so as to create a national land law. Substantially, the UUPA was created in order to further implement the provisions of Article 33 paragraph (3) of the 1945 Constitution.

The Forestry Law also regulates the existence of customary law communities which is contained in also regulates the existence of customary law communities which are contained in also regulating the existence of customary law communities as stated in Article 67 paragraph (1) which states the existence of indigenous peoples according to reality meets the elements of:³⁷ a). The community is still in the form of a community (*rechtgemenschaap*); b). There are institutions in the form of customary mastery devices; c). There is a clear customary jurisdiction; d). There are institutions and legal instruments, especially customary courts, that are still obeyed; e). Conducting a collection of forest products in the surrounding forest area to meet their daily needs.

If you look at it substantially, the problems that arise in the use of natural resources as described earlier, come from the paradigm of centralized natural resource management. This paradigm centers on a state that uses a sectoral approach, and ignores human rights. In addition to not prioritizing the interests of conservation and protection, the sustainability of the functioning of natural resources is also not considered. Space for community participation is not given as a whole. Likewise, the rights of indigenous peoples to control and utilization of natural resources are also ignored.³⁸

Legal protection for indigenous peoples is still a bill and has not yet been passed. Specific arrangements regarding legal protections for indigenous peoples still do not exist. Meanwhile, the position of indigenous peoples is also part of Indonesian society. Therefore, legal protection efforts against the community need to be regulated and stipulated in concrete and comprehensive laws and regulations. In particular, it covers problems that

³⁴ Pohwain, Pietersz, and Rugebregt, "Perlindungan Hukum Bagi Masyarakat Hukum Adat Yang Lingkungan Hidupnya Tercemar."

³⁵ Victor Juzuf Sedubun, "Involvement of Indigenous People In The Utilization of Natural Resources for Investment Activities," *Sasi* 28, no. 1 (2022): 147–57, <https://doi.org/10.47268/sasi.v28i1.855>.

³⁶ Mohammad Zamroni and Kafrawi, "Perlindungan Masyarakat Hukum Adat Di Wilayah Pesisir Pasca Berlakunya Uu Nomor 11 Tahun 2020 Tentang Cipta Kerja."

³⁷ Hendra Nurtjahjo and Fokky Fuad, *Legal Standing Kesatuan Masyarakat Hukum Adat: Dalam Beperkara Di Mahkamah Konstitusi* (Jakarta: Penerbit Salemba Humanika, 2010).

³⁸ Sulastriyono, "Filosofi Pengakuan Dan Penghormatan Negara Terhadap Masyarakat Hukum Adat Di Indonesia," *Yustisia Jurnal Hukum* 3, no. 3 (2014): 91–108.

often occur and are possible to occur as a basis for the protection of indigenous peoples and the implementation of environmental conservation.

In the environmental management system, the state has power over all natural resources. In other words, the state through the government has the authority to regulate, control, and develop everything related to environmental management. Such great power possessed by the state over the earth, water, air, and everything contained thereon according to constitutional principles.³⁹ This reflects a huge responsibility. Departing from the mandate of the constitution, various kinds of laws and regulations have been issued. However, some regulations related to environmental conservation are still unable to thoroughly collect and solve the problems faced by indigenous peoples.

3.2 Legal Policy for the Protection of Indigenous Peoples

The environment is where humans develop their lives. The environment also provides all human needs as part of society.⁴⁰ A good and healthy living environment is the right of every citizen as mandated in Article 28H of the 1945 Constitution.⁴¹ Therefore, society and the environment must be able to coexist and have a harmonious relationship.⁴² The ban on environmental destruction is reflected in the biodiversity convention signed by 153 countries at a conference in Rio de Janeiro, Brazil. The results of this conference emphasized the prohibition of the destruction of animal, plant, and environmental habitats.⁴³

Indigenous peoples are the unity of society within an autonomous indigenous territory. Where the living system is regulated independently, both in the legal, political, economic and so on systems. The unity of indigenous peoples, born and formed by indigenous peoples themselves.⁴⁴ Indigenous peoples also have a role through their customary law, which is urgently needed, especially in the sustainability and sustainability of the environment in Indonesia.⁴⁵ Social reality shows that the existence of indigenous peoples has been regulated in the 1945 Constitution of the Republic of Indonesia (1945 Constitution) in Article 18B paragraph (2). "The State recognizes and respects the unity of indigenous peoples 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, which are regulated in law".⁴⁶

Recognition of the existence of indigenous peoples based on Article 18B of the 1945 Constitution is a guideline for recognition as well as a form of legal protection for the existence of indigenous peoples in Indonesia. The recognition in question is that indigenous

³⁹ Sedubun, "Involvement of Indigenous People In The Utilization of Natural Resources for Investment Activities."

⁴⁰ Zahratul Idami et al., "Environmental Management Based on Islamic Sharia and Customary Law in Aceh," *Fiat Justisia: Jurnal Ilmu Hukum* 16, no. 3 (2022): 253-68, <https://doi.org/10.25041/fiatjustisia.v16no3.2680>.

⁴¹ Agung Budi Prastyo et al., "Model Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Mewujudan Good Governance," *Sasi* 27, no. 1 (2021): 84, <https://doi.org/10.47268/sasi.v27i1.419>.

⁴² Kurniawan, "Eksistensi Masyarakat Hukum Adat Dan Lembaga-Lembaga Adat Di Aceh Dalam Penyelenggaraan Keistimewaan Dan Otonomi Khusus Di Aceh," *Yustisia Jurnal Hukum* 1, no. 3 (2012): 1-94.

⁴³ A. Sony Keraf, *Etika Lingkungan Hidup* (Jakarta: Kompas Media Nusantara, 2010).

⁴⁴ Besse Sugiswati, "Perlindungan Hukum Terhadap Eksistensi Masyarakat Adat Di Indonesia," *Perspektif* 17, no. 1 (2012).

⁴⁵ Chandra, "Peran Masyarakat Hukum Adat Dalam Mewujudkan Pelestarian Lingkungan Hidup."

⁴⁶ S E M Nirahua and S Kuahaty, "Authority of the Village in Maluku as Indigenous People in the Management of Natural Resources in the Sea Customary Rights," *International Journal of Scientific and Research Publications* 6, no. 3 (2016): 248-55.

peoples are recognized and protected as subjects of law and their traditional rights.⁴⁷ According to Iman Sudiyat in Febrian Chandra, customary law has three properties, namely:⁴⁸ a). Static nature, which means maintaining and maintaining the noble values taught by his ancestors; b). Dynamic nature, which means that customary law always keeps up with changes with the times; c). Elastic/plastic properties, meaning customary law can adapt to a variety of social conditions, including deviant special cases.

Ten years since the reform, Law Number 32 of 2009 concerning Environmental Protection and Management was passed, hereinafter referred to as UUPPLH. This law replaces the previous law, namely Law Number 23 of 1997 concerning Environmental Management (UUPLH).⁴⁹ According to UUPPLH in Article 1 paragraph (31), an indigenous law community is defined as a group of people who have lived in certain geographical areas for generations because of ties to ancestral origins, strong relationships with the environment, and the existence of a value system that determines economic, political, social, and legal institutions.⁵⁰

The establishment of UUPPLH aims to ensure legal certainty and provide protection for everyone's right to a good and healthy environment as part of protecting the entire ecosystem. Here's the basis for consideration:⁵¹ a). A good and healthy living environment is a human right of all Indonesian citizens as stated in Article 28H of the 1945 Constitution; b). National economic development according to the provisions of the 1945 Constitution is carried out based on the principles of sustainable and environmentally sound development; c). The spirit of regional autonomy has brought about a change in the relationship and authority between the government and local governments; d). The decline in environmental quality has threatened the existence of humans and other living things.

However, in UUPPLH Article 63, to obtain recognition of the status of indigenous peoples, they must first obtain approval from the government. Both the central government, as well as provincial and district/city local governments. It further explained that the recognition was limited to policy. So that indigenous peoples have limits to manage or even protect their environment.⁵²

The role of the government as the spearhead of life management and protection in Indonesia, must carefully plan with attention to the environment and provide advice on state land management to indigenous peoples.⁵³ In addition, the government must involve indigenous peoples in environmental management and protection. The success of environmental conservation is largely determined by legislation, because the environment requires rules that are not only beneficial to investment and detrimental to indigenous peoples. So that laws and regulations must clarify the status of indigenous peoples.⁵⁴

The development of Indonesian law and society changes over time. Not only related

⁴⁷ Safrin Salam, "Perlindungan Hukum Masyarakat Hukum Adat Atas Hutan Adat," *NOVELTY* 7, no. 2 (2016).

⁴⁸ Sugiswati, "Perlindungan Hukum Terhadap Eksistensi Masyarakat Adat Di Indonesia."

⁴⁹ Akmal, "Eksistensi Masyarakat Adat Dalam Undang-Undang Terkait Lingkungan Hidup."

⁵⁰ Chandra, "Peran Masyarakat Hukum Adat Dalam Mewujudkan Pelestarian Lingkungan Hidup."

⁵¹ Akmal, "Eksistensi Masyarakat Adat Dalam Undang-Undang Terkait Lingkungan Hidup."

⁵² Chandra, "Peran Masyarakat Hukum Adat Dalam Mewujudkan Pelestarian Lingkungan Hidup."

⁵³ Nadir Nadir and Adi Gunawan, "A Steep Gall in International Environmental Law Enforcement (An Analysis of International Deforestation)," *Sasi* 28, no. 1 (2022): 158-67, <https://doi.org/10.47268/sasi.v28i1.774>.

⁵⁴ Chandra, "Peran Masyarakat Hukum Adat Dalam Mewujudkan Pelestarian Lingkungan Hidup."

to social, cultural, economic, and political demands. Instead, it is the demands of the national legal system that have also changed. This is an evaluation material for the state and government.⁵⁵ The government's task of transforming indigenous peoples who have legal status and authority is very important so that the rights of indigenous peoples can be fulfilled.⁵⁶

In fact, in carrying out various economic, social and cultural activities, indigenous peoples can experience various obstacles from third parties. This occurs as a result of various government regulations and policies related to land, forestry, and plantations, which provide third party permits to carry out activities in the territory of indigenous peoples. Therefore, indigenous peoples are deprived of the rights to carry out economic, social, and cultural activities that have been carried out for a long time and for generations.⁵⁷

Their existence is threatened amid many efforts to plunder natural resources and divert forest functions that eliminate the rights of indigenous peoples, one of which is the right to prosperity. Until now, there are still many indigenous peoples who have been displaced from their own land due to land expansion, be it for mining or large-scale oil palm plantations, especially in Kalimantan and Sumatra.⁵⁸ Actually, the government's responsibility for the rights of indigenous peoples can be carried out through the provision of handling tailored to the needs of indigenous peoples.

If the rights of indigenous peoples are not fulfilled, it will be contrary to the constitution⁵⁹ and normative values in other laws that require that the rights of indigenous peoples must be fulfilled as well as possible.⁶⁰ The regulations or laws and regulations regarding the recognition of indigenous peoples in Indonesia, among others, are contained in Law No. 41 of 1999 concerning Forestry (Forestry Law) Article 67 paragraph (1) jo. Law Number 1 of 2004 jo. Law Number 11 of 2020 concerning Job Creation (Job Creation Law), which states: "Indigenous peoples as long as in reality still exist and are recognized for their existence have the right to: a). Collecting forest products to meet the daily needs of the indigenous people concerned; b). Carrying out forest management activities based on applicable customary law and not contrary to the law; and; c). Gaining empowerment in order to improve their welfare."

In addition, it is also contained in Law Number 39 of 2014 concerning Plantations jo. Job Creation Law, in Article 55 states: "Everyone is unlawfully prohibited: a). Working, using, occupying, and/or controlling plantation land; b). Working, using, occupying, and/or controlling community land or customary rights land of indigenous peoples with a view to plantation business; c). Logging crops within the plantation area; or; d). Harvesting and/or collecting plantation products."

⁵⁵ Muhammad Risky Surya Pratama, Arum Ayu Lestari, and Rimas Intan Katari, "Pemenuhan Hak Bagi Masyarakat Adat Oleh Negara Di Bidang Hutan Adat," *Ius Quia Iustum* 29, no. 1 (2022): 189–210, <https://doi.org/10.20885/iustum.vol29.iss1.art9>.

⁵⁶ Jawahir Thontowi, "Perlindungan Dan Pengakuan Masyarakat Adat Dan Tantangannya Dalam Hukum Indonesia," *Ius Quia Iustum* 20, no. 1 (2013): 21–36.

⁵⁷ Pratama, Lestari, and Katari, "Pemenuhan Hak Bagi Masyarakat Adat Oleh Negara Di Bidang Hutan Adat."

⁵⁸ Pratama, Lestari, and Katari.

⁵⁹ Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2021).

⁶⁰ Martinesya, "Tanggung Jawab Pemerintah Terhadap Pemenuhan Hak Masyarakat Adat."

Although there are already regulations governing indigenous peoples, the above provisions are not sufficient to protect the rights of indigenous peoples.⁶¹ This proves that the policy is still too weak, which should be the responsibility of the state in protecting the rights of indigenous peoples.

Supposedly, if the existence of society has been recognized by the state, then the state must provide full protection of the existence and rights of indigenous peoples in accordance with the ideals of the state, namely to protect all its citizens. However, violations of indigenous peoples' rights to their land and natural resources still occur. In fact, in the development of this country, indigenous peoples have always been victims of government policies.⁶²

It is true, there is already a draft law on indigenous peoples (RUU Masyarakat Adat) that regulates indigenous peoples, one of which regulates the protection of the right to the environment for indigenous peoples.⁶³ Likewise, indigenous peoples have the right to live in a place that has a good, decent environment, and with healthy environmental conditions. This is stated in Article 28 paragraph (1), which states: "Indigenous peoples have the right to a good and healthy living environment". In addition, in the right to the environment, indigenous peoples also have the right to make proposals, or objections and make complaints about their environment and this is stated in Article 28 paragraph (2), namely: "The right to the environment as referred to in paragraph (1) is manifested in the form of: a). submission of proposals and/or objections to business plans and/or activities that may have an impact on the environment; b). complaints due to alleged pollution and/or destruction of the environment; and; c). beneficiaries of the use of traditional knowledge related to environmental management of economic value".

However, the RUU Masyarakat Adat still appears weak and there is no further regulation for indigenous peoples regarding the objection mechanism. It should be the responsibility of the government to follow up on this, so that the protection and rights of these indigenous peoples are clearly regulated in the law.

3.3 Legal Policy Model in the Context of Environmental Conservation in Indonesia

Indonesia is the country with the third largest tropical forest in the world after Brazil and Congo, covering an area of 133.7 million hectares and has an ecological function for the world.⁶⁴ But on the other hand, the ecological function is under pressure due to the emergence of deforestation and forest degradation.⁶⁵ State losses due to various natural and legal events in Indonesia's forests have caused the country to suffer large amounts of losses.⁶⁶ The Universal Declaration of Human Rights (UDHR) of 1948 as the document

⁶¹ Martinesya.

⁶² Muslim Andi Yusuf, "Kepastian Hukum Hak Masyarakat Hukum Adat Atas Tanah Dan Sumberdaya Alam," *Prosiding Seminar Nasional Universitas Cokroaminoto* 2, no. 1 (2016): 675–85.

⁶³ Ria Maya Sari, "Potensi Perampasan Wilayah Masyarakat Hukum Adat Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Mulawarman Law Review* 6, no. 1 (2021): 1–14, <https://doi.org/10.30872/mulrev.v6i1.506>.

⁶⁴ Kementerian LHK, "Tiga Negara Pemilik Hutan Tropis Terbesar Di Dunia Jalin Kerja Sama Trilateral," Kementerian Lingkungan Hidup dan Kehutanan, 2021, Kementerian Lingkungan Hidup dan Kehutanan.

⁶⁵ Josephin Mareta, "Tindak Pidana Illegal Logging Dalam Konsep Keamanan Nasional," *Rechts Vinding* 5, no. April (2016): 33–50.

⁶⁶ Mahfud Mahfud et al., "Satellite Image Data as Environmental Crime Evidence in the Field of Illegal Logging," *Fiat Justitia: Jurnal Ilmu Hukum* 15, no. 3 (2021): 269–86, <https://doi.org/10.25041/fiatjustitia.v15no3.2166>.

underlying international human rights law affirms that respect for inherent dignity and the rights equally possessed by all human beings as inalienable by anyone are the basis of freedom, justice and peace in the world.⁶⁷

Human rights will essentially come to the fore as an issue in power relations,⁶⁸ i.e. the relationship between an individual and a government (or non-governmental entity with a particular power). Human rights limit government power and demand that the government take the necessary steps to ensure that everyone can enjoy those rights.⁶⁹ The government is also responsible for protecting individuals from human rights abuses committed not only by the government itself, but also by third parties. This does not mean that individuals do not bear the responsibility of human rights themselves, but guarantees in the form of regulations and policies, facilities and infrastructure, as well as law enforcement are made by the government.⁷⁰

The welfare state is described as government intervention through public policy, including environmental policy, with the aim of public welfare.⁷¹ Indonesia as a welfare state, harmonizes policies formulated in legal norms implemented by the state apparatus to safeguard the interests of the people. The people have the legitimacy to demand that the state carry out its obligations and demand its rights stipulated in the constitution.⁷² Current conditions show that there are already laws governing the existence and rights of indigenous peoples, especially laws in the field of natural resources.⁷³ Of all the existing regulations, in its implementation it is still less strict on the rights of indigenous peoples to the sources of life and tends to limit their rights.⁷⁴

Indigenous peoples need a special arrangement that not only provides recognition, but can also provide protection for their rights. The government's responsibility for the fulfillment of indigenous peoples' rights remains unfulfilled, because currently many indigenous peoples have lost their rights, especially the right to natural resources, which are currently being arbitrarily taken over by the state. Some customary forests or parts of customary forests are designated, allocated, and issued their utilization rights to other parties for forest, plantation and/or mining companies. Where the takeover is carried out without the notice and consent of the indigenous people concerned.⁷⁵ Special arrangements for indigenous peoples must be set forth in the form of special laws, which must reorganize relations between indigenous peoples and the state in the future by prioritizing the principles of justice, transparency, upholding human rights, non-discriminatory treatment, legal certainty, and environmental preservation. This particular law must also be able to

⁶⁷ PBB, "United Nations Declaration on The Rights of Indigenous Peoples (Deklarasi Perserikatan Bangsa-Bangsa Tentang Hak-Hak Masyarakat Adat)."

⁶⁸ Neil Stammers, "Human Rights And Power," *Wiley Online Library*, 2019, 70-82, <https://doi.org/https://doi.org/10.1111/j.1467-9248.1993.tb01638.x>.

⁶⁹ Niken Savitri, Dyan Franciska, and Dumaris Sitanggang, "Legal Status and Protection for Women Human Rights Defenders in Indonesia" 16, no. 4 (2022): 297-320, <https://doi.org/10.25041/fiatjustisia.v16no4.2455>.

⁷⁰ Rene Provost, *International Human Rights and Humanitarian Law, Cambridge Studies in International and Comparative Law*, vol. 4 (Cambridge: Cambridge University Press, 2004).

⁷¹ Erina Pane and Budiyo, "Prudential Principles in Forest Management Policies," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 1 (2021): 1-9.

⁷² Pane and Budiyo.

⁷³ Pohwain, Pietersz, and Rugebregt, "Perlindungan Hukum Bagi Masyarakat Hukum Adat Yang Lingkungan Hidupnya Tercemar."

⁷⁴ Zein and Nurvianti, "Konsep Hak Masyarakat Hukum Adat Sebagai Hak Asasi Manusia."

⁷⁵ Martinesya, "Tanggung Jawab Pemerintah Terhadap Pemenuhan Hak Masyarakat Adat."

address the problem of sectoralism that has been occurring in various government agencies dealing with indigenous peoples.

With this perspective, the law that will recognize and protect indigenous peoples and their rights becomes a law that will position indigenous peoples as full-fledged Indonesian citizens. This is important because of the situation facing indigenous peoples so far where recognition and protection is still gray and unclear.⁷⁶ So that with this special law, it is hoped that in the future it can become a benchmark for the government's responsibility to fulfill the rights of indigenous peoples in Indonesia. In addition, when associated with several cases of land conflicts between indigenous peoples and the government or third parties, the position of indigenous peoples is also not weak because they have a clear legal umbrella. So every legal action taken by indigenous peoples will be an effort to protect their rights as well as a positive step for environmental conservation.

3.4 ...

4. CONCLUSION

Based on the results of the discussion, it can be concluded that the environmental conservation policies that currently exist and are in force have not sufficiently provided protection for indigenous peoples. Existing policies often still prioritize the interests of certain parties only. Researchers argue that indigenous peoples' recognition, especially of their rights, must be realized and legally protected through a policy. So that in the future indigenous peoples have a clear and firm foundation, especially in maintaining the environment and its use. Therefore, it becomes necessary to make a special arrangement in the form of a law. This law must reimagine the relationship between indigenous peoples and the state in the future by prioritizing the principles of justice, transparency, upholding human rights, non-discrimination treatment, legal certainty, and environmental preservation. Researchers suggest revising or forming laws, which specifically regulate indigenous peoples. Namely, a new law related to environmental conservation based on the protection of indigenous peoples. Then, strengthening the position of indigenous peoples is also carried out through policies outlined in the regulations on special laws, so that indigenous peoples have a strong basis for action and can optimally protect and exercise their rights related to the environment and its use. Furthermore, or as a follow-up step to the previous two steps, it is necessary to synchronize each relevant regulation. This is of course a great hope for all of us to achieve an environmental condition that remains sustainable without prejudice to the rights of indigenous peoples.

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