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Indigenous Alienation Resistance in Structural Agrarian Conflict

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Abstract: The Indonesian Constitution explicitly mentions recognition of the unity of customary law communities, specifically in Article 18B paragraph (2) and Article 28I paragraph (2), so it should be. Meanwhile, data from the Agrarian Reform Consortium (KPA) states that from 2005 to 2022 there were 4,009 structural agrarian conflicts covering 11.4 million hectares of land and affecting 2.4 million people. This has the potential to result in the alienation of indigenous communities from their traditional territories, where based on Law Number 21 of 1999 this action is a form of discrimination against traditional jobs of indigenous peoples. This article analyzes the influence of government policies in the field of agrarian law on the territorial rights of indigenous peoples and the implementation of the principles of Free, Prior, and Informed Consent in Indonesia. This research uses the normative legal research method, the statute approach method. The author concludes that the protection of land rights of customary law communities has not been realized optimally so it is felt necessary to formulate several regulations that have the spirit of Article 18B paragraph (2) of UUD NRI 1945 using the principles of Free, Prior and Informed Consent.

1. Introduction

Indonesia is one of the countries that has the largest population with the consequence of diverse patterns of society in all aspects of national life, including ethnicity, race, culture, religion, and customs. According to the central statistics agency, the Central Statistics Agency (BPS), there are 1,128 ethnic groups inhabiting Indonesia. These tribes have their styles and characteristics in living their lives, which cannot be separated from the legal aspects. In every custom, language, tribe, and religion, there is a value system and knowledge system that developed hundreds or even thousands of years ago. Our country has been governed and managed for generations by thousands of customary laws, guided by hundreds of belief systems and religions. Indonesia is a nation built from hundreds or even thousands of sovereign, independent, and dignified nations, each of which has experienced ups and downs in its history. These thousands of customary laws are a logical consequence of Indonesia's diverse ethnic groups.

The Constitution explicitly states in Article 18B paragraph (2) and Article 28I paragraph (2) regarding the recognition of the unity of customary law communities. This recognition means that

traditional rights are also recognized and protected, but everything must remain based on the framework of the Unitary State of the Republic of Indonesia (NKRI). In other words, customary law communities are part of the Indonesian state whose existence also influences political, social, economic, legal, and human rights development to achieve national resilience and security[1]. The recognition and respect in the Constitution has the logical consequence that customary law communities have equal and as important rights to life as other government entities, such as districts and cities. Meanwhile, article 28 I paragraph (2) of the Constitution means that customary law communities have the right to maintain their original existence and authority, where their existence and authority are in the context of maintaining traditional identity and traditional community rights, inseparable from land rights[2].

However, on the other hand, data from the Agrarian Reform Consortium (KPA) states that from 2005 to 2022 there were 4,009 structural agrarian conflicts covering 11.4 million hectares of land and affecting 2.4 million people[3]. This fact raises various questions in the implementation of guaranteeing the constitutional rights of indigenous peoples in Indonesia. The agrarian conflicts that occur will always increase by 13 to 15 percent every year[4]. Meanwhile, the Alliance of Indigenous Peoples of the Archipelago (AMAN) also recorded data related to the seizure of customary territories by the government and investors covering an area of 3.1 million hectares, which was legalized through various permits, including HTI, HA, mining and plantation permits[5]. These activities tend to use repressive measures to create a subservient attitude for indigenous peoples, so it isn't surprising that the data gives a minimum figure of criminalization of farmers, indigenous peoples, and agrarian activists of 2,964 people.

This condition has become even more complicated with the emergence of Law (UU) Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the Job Creation Law). This regulation contains provisions for the potential confiscation of customary territories for State investment purposes, as happened to the Cek Bocek indigenous community with PT. Newmont Nusa Tenggara. As a result, indigenous peoples will become increasingly alienated from their territories and of course, there will be various forms of discrimination and even violence against them.

The main problem here is not in resolving disputes one by one because in reality what is occurring is a structural conflict so special efforts are needed. In addition, the passing of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter referred to as Minerba Law) provides space for disharmonization of business licensing policies and the protection of indigenous communities between the central and regional governments. The government also does not hesitate to succeed in its oligarchic agenda, where the Land

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1 Ateng Syarifudin and Suprin Na'a, *Republik Desa, Pergulatan Hukum Tradisional Dan Hukum Modern Dalam Desain Otonomi Desa* (Bandung: Alumni, 2010) 43.

2 Ni'matul Huda, *Otonomi Daerah/ : Filosofi, Sejarah Perkembangannya, Dan Problematika* (Yogyakarta: Pustaka Belajar, 2010) 16.

3 Konsorsium Pembaruan Agraria, "B*ara Konflik Agraria: Tak Tersentuh, Kriminalisasi Rakyat Meningkat, Catatan Akhir Tahun KPA 2022*," 2022, https://www.pustakaagraria.or.id/2023/05/ptpn-tak-tersentuh-kriminalisasi-rakyat.html.

4 Aliansi Masyarakat Adat Nusantara, "*Mengarungi Badai Investasi: Catatan Akhir Tahun 2019*," Catatan Akhir Tahun, 2019, http://www.aman.or.id/2020/01/mengarungi-badai-investasi-catatan-akhir-tahun-2019-aliansi-masyarakat-adat-nusantara-aman/.

5 Aliansi Masyarakat Adat Nusantara, "*Tangguh Di Tengah Krisis: Catatan Akhir Tahun 2021*," Catatan Akhir Tahun, 2021, https://www.aman.or.id/files/organization-document/57108Catatan Akhir Tahun AMAN, 2021 Fix (1).pdf.

Bill which is oriented towards encouraging land liberalization is included in the 2023 National Legislation Program (Prolegnas)[6].

This has the potential to result in the alienation of indigenous peoples from their traditional territories. Alienation is a form of discrimination against the traditional work of indigenous peoples which violates Law Number 21 of 1999 concerning the Ratification of ILO Convention Number 111 concerning Discrimination in Employment and Position. The application of legal regulations which so far have only favored a few groups and in their implementation actually "usurped" the rights of indigenous peoples, requires changes and improvements to create a system that is fair and can provide recognition and protection for the rights of indigenous peoples.

Therefore, the author will examine the solution to the alienation of indigenous peoples over their territory due to structural agrarian conflict. To overcome this problem, a special regulation or law is needed that can provide recognition and protection of their rights. It is hoped that the existence of these special laws or regulations will be able to reconstruct the relationship between indigenous peoples and the State in the future by taking into account the principles of recognizing and protecting the rights of indigenous peoples, especially the principles of Free, Prior, and Informed Consent.

This article analyzes the influence of government policies in the field of agrarian law, especially since the passing of the revision of the Mining and Coal Law and the Job Creation Law, on the territorial rights of indigenous peoples and the implementation of the principles of Free, Prior and Informed Consent in Indonesia. For this purpose, an appropriate case study is the case of the Cek Bocek indigenous community and PT. Newmont Nusa Tenggara and several other similar cases. The theory of national legal development is the analytical tool used to strengthen the author's argument.

Apart from that, several international conventions, especially ILO Convention Number 169 of 1989 concerning Indigenous Peoples, provide material for comparison regarding ideal arrangements for overcoming structural agrarian conflicts which will be explained in this article. Therefore, this article explores the following research question; How has the recognition and protection of indigenous peoples in Indonesia been implemented so far? What is a just and sustainable solution to structural agrarian conflicts in Indonesia?

2. Method

This research uses normative legal research methods, which focus on several legal products related to customary law communities, including land rights. Regarding the approach method used, namely the statutory approach method. The legal materials used are divided into two, primary and secondary. The primary legal materials used are materials in the form of regulations regarding customary law communities. Meanwhile, the secondary legal materials used are several books and journals that clarify primary legal materials.

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[6] Agus Surono, "Persetujuan Bebas dan Didahulukan Dalam Konflik Pengelolaan Sumber Daya Hutan," *Jurnal Hukum Ekonomi Dan Teknologi Fakultas Hukum Universitas Al Azhar Indonesia* 1 (2006).

3. Recognition and Protection of Indigenous Peoples in Indonesia

3.1. Definition of Indigenous Community

In essence, customary law is a form of law that originates from traditions or norms of daily life that arise directly from a cultural statement of indigenous Indonesian people, in this case, a statement about the meaning of justice in interested relationships, so it is clear here. Customary law existing in the territory of the Unitary State of the Republic of Indonesia is original Indonesian law which was created by the Indonesian people from generation to generation based on an awareness of values which are manifested in daily living habits using a measure of reason and reason[7]. justice. Thus, if we return to Von Savigny's thinking which states that law is a reflection of the soul of society, then customary law is the soul of the Indonesian nation[8].

A customary law community is an autonomous community unit within a customary territory, which regulates its life system independently (including law, politics, economy, etc.) and is also autonomous, namely a customary community unit that is born or formed. by the company itself. Maria S. W. Sumardjono defines a customary law community as a society that arises spontaneously in a certain area with a great sense of solidarity between its members and views non-members as outsiders, using its territory as a source of wealth that can only be fully exploited by parties who are not interested. its members, who are exploited by outside parties, must be given permission and certain rewards in the form of recognition[9]. In the literature and statutory regulations, there are two mentions of the term indigenous peoples, namely some say customary law communities and others call it customary law communities. However, these differences in terminology do not deny or emphasize the customary rights of the communities concerned[10].

The International Labor Organization (hereinafter referred to as the ILO) issued ILO Convention No. 169 of 1989 which defines indigenous peoples as people living in independent countries whose social, cultural, and economic conditions differentiate them from other parts of society in that country, and whose status is regulated in whole or in part by the customs and traditions of said indigenous peoples or by regulations. special legislation.[11]

The term indigenous peoples began to become global, after in the 1950s the ILO, a world body at the UN (from now on referred to as the UN) popularized the issue of indigenous peoples or indigenous peoples. After being promoted by the ILO as a global issue at the UN, the World Bank also adopted this issue for development funding projects in several countries, through the OMP (1982) and OD (1991) policies, especially in third countries, such as Latin America and Africa. The emergence of indigenous peoples' issues began with various protest movements of indigenous peoples in North America demanding development justice, following the presence of several transnational mining sector companies operating in their managed areas, and the development of several transnational companies in the mining sector, especially in conservation areas by the American and Canadian governments[12].

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7 Wardah Fathiyah, "M*engapa RUU Masyarakat Hukum Adat Tak Kunjung Disahkan?*," Voa Indonesia, 2021, https://www.voaindonesia.com/a/mengapa-ruu-masyarakat-hukum-adat-tak-kunjung-disahkan-/6324774.html.

8 Soerojo Wignjodipoero, *Pengantar Dan Asas-Asas Hukum Adat* (Jakarta: Haji Masagung, 1995) 67.

9 Abrar Saleng, *Hukum Pertambangan* (Yogyakarta: UII Press, 2005) 1.

10 Lisman Sumardjani, *Konflik Sosial Kehutanan: Mencari Pemahamam Untuk Penyelesaian Terbaik* (Indonesia: Flora Mundial Communications, 2007) 11.

11 Abrar Saleng, *Op.Cit.*, 4.

12 Azmi A.R Sirajudin, *Pengakuan Masyarakat Adat Dalam Instrumen Hukum Nasional* (Sulawesi Tengah: Yayasan Merah Putih, 2010) 6.

3.2. The Condition of Indigenous Peoples in Indonesia's National Legal Construction

The 1989 Indigenous Peoples Convention held by the International Labour Organization (ILO) introduced a change in approach between the ILO and indigenous peoples that aims to protect customary law and indigenous peoples based on the respect and faith that indigenous peoples have the right to continue to live with their own identity and the right to determine the way and pace of their development[13]. The Convention applies to indigenous peoples residing in independent countries, where their social, cultural, and economic conditions and legal status distinguish them from other sections of society in the country. In addition, the convention also applies to people living in independent countries who are considered to be indigenous peoples. In this convention, the government has the responsibility to develop by involving the participation of the indigenous people concerned in a coordinated and systematic manner.

This is solely done to protect the rights of indigenous peoples and maintain the integrity of local communities. With the protection of the rights of indigenous peoples, it is sought to realize the equality of the degree of rights and opportunities provided by law, the realization of such as the social, economic, and cultural rights of indigenous peoples, and to help indigenous peoples to eliminate the socio-economic disparities that occur.

In reality, indigenous peoples often experience things that discredit their constitutional rights, and the most worrying is the occurrence of structural agrarian conflicts where indigenous peoples have no power over government policies. Structural agrarian conflict is interpreted as the granting of permits or concessions from the government to investors to exploit and extract territories belonging to indigenous peoples under the pretext of improving the State's economy and people's welfare[14].

This is done by seizing territories that are successfully legalized through policies, laws and regulations so that there is very little way for indigenous peoples to fight for their rights. In this case, activities to seize the rights and living space of indigenous peoples have been freer since the Minerba Law was revised and the Job Creation Law was passed, which is considered only oriented towards accelerating investment.

Since the discussion, the revision of the Minerba Law has been showered with criticism because it is considered a manifestation of oligarchic interests and the government's neglect of its obligation to protect the environment and surrounding communities. Provisions for supervision and law enforcement in mining areas that are withdrawn to the central government in the Minerba Law are not in line with the spirit of regional autonomy adopted in Law No. 23/2014 on Regional Government so potential inconsistencies in the government's attitude towards protecting the rights of indigenous peoples cannot be avoided.

All forms of recognition and protection for indigenous peoples are carried out through regional laws and regulations. In addition, articles that are considered to further alienate indigenous peoples, namely Article 162 and Article 164 of the Minerba Law, provide flexibility for repressive

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[13] Muazzin Muazzin, "Hak Masyarakat Adat (Indigenous Peoples) Atas Sumberdaya Alam: Perspektif Hukum Internasional," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 1, no. 2 (2014).

[14] Besse Sugiswati, "Perlindungan Hukum Terhadap Eksistensi Masyarakat Adat Di Indonesia," *Perspektif* XVII No. 1 (2012).

actions and silencing the resistance of indigenous peoples in their territories through criminal sanctions under the pretext of obstructing or disrupting mining business activities.

Meanwhile, the Job Creation Law contains a new concept of a land bank in Article 129 which authorizes the holder of the management right to facilitate business licensing, but the land used here comes from community land, including indigenous peoples. The same happens, in Article 17 of the Job Creation Law which contains the nomenclature "approval of space utilization activities" so that electronic maps are used as a medium in business planning used to obtain approval for the utilization of an area without surveying the ground[15]. These provisions will only decrease State control thanks to the bloated bureaucracy at the central government and expand corporate power over indigenous peoples' territories, thus distancing indigenous peoples from their sources of independence and livelihood. These problems can be categorized as structural agrarian conflicts that still haunt indigenous peoples in Indonesia to get guarantees for their rights.

3.3. Structural Agrarian Conflict in Indonesia

Structural agrarian conflict is defined as conflicting claims over a particular agrarian resource that results in the loss of one right or claim over another and is rooted in various inequalities in the structure of control, ownership, access, utilization, and distribution of agrarian resources. The structural causes of agrarian conflicts, which relate to how the capitalistic market economy works, have not been revealed. It must be understood that a capitalistic market economy works completely differently from a simple market economy where there is an exchange of goods through the act of buying and selling mediated by money. In a capitalist market economy, "it is not the economy that is embedded in social relations, but social relations that are embedded in the capitalist economic system"[16]. The capitalist market has its powers that it believes are self-regulating. But, as Karl Polanyi points out, it is state agencies that make such capitalist markets work.

The capitalist market can produce merchandise from many things. But land is one thing that the capitalist market will never be able to merchandise due to the social relations attached to it. Karl Polanyi argues that land is a fictitious commodity where if the capitalist market forces land into commerce by separating it from the bonds of social relations attached to it, it will undoubtedly produce shocks that destroy the joints of the sustainability of the community's life and then there will be a counter-movement to protect the community from further damage[17]. This makes structural agrarian conflicts very detrimental to affected communities, as explained in the following chart.

[15] Ria Maya Sari, "Potensi Perampasan Wilayah Masyarakat Hukum Adat Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Mulawarman Law Review*, 2021, 1–14.
[16] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 1944) 57.
[17] Ibid, 46

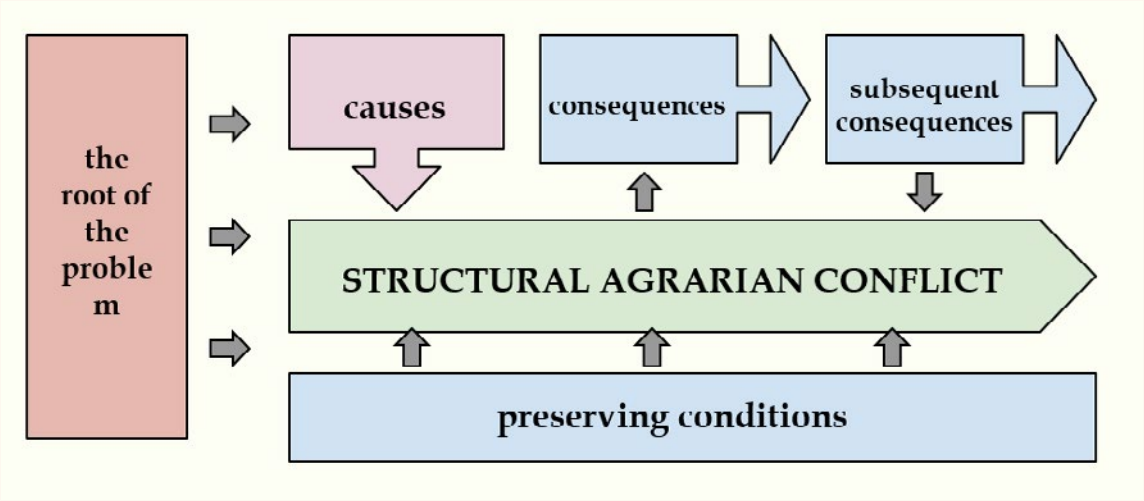

Figure 1. Diagram / Explanatory Framework of Structural Agrarian Conflict
Source: self-made

This structural agrarian conflict in indigenous communities is caused by several things. First, the granting of licenses/rights/concessions by government officials covering natural resource management areas belonging to indigenous peoples which are concessions of giant business entities in the fields of production, extraction, and conservation. Second, the use of violence, manipulation, and fraud in large-scale land acquisition for development projects, giant corporations, and other concessionaires in the fields of production, extraction, and conservation. Third, the exclusion of indigenous groups from land or natural resource management areas that are included in the concessions of giant corporations. Fourth, direct resistance from indigenous groups regarding this exclusion.

The preserving conditions for structural agrarian conflict are caused by government actions that do not take much of a toll on the conflict. Government agencies never disclose information to the public, let alone controlled by the public, regarding the issuance of rights/permits/licenses under their authority. Furthermore, decisions by public officials to include people's lands/natural resources in the concessions of large business entities or government agencies for production, extraction, or conservation and vice versa to the process of granting licenses have little to no correction; they tend to be easily passed.

This is also influenced by the absence of institutions that have full authority, cross-sectoral government institutions, and are adequate in handling agrarian conflicts that occur and will occur. The Agrarian Reform program initiated by the Indonesian government is still hampered in resolving the disparity in the control of land and natural resources. Moreover, we are witnessing various scandals in the implementation of land redistribution, such as giving land not to those who fought for it, reducing the amount of land that should be redistributed, fraud, and manipulation of the names of recipients and objects of redistribution.

The root causes of these structural agrarian conflicts can be viewed from several perspectives. In terms of government, policies that provide tenure security for access to indigenous peoples' management areas do not yet exist and agrarian legislation in Indonesia still suffers from hyper-regulation where one regulation overlaps with another. In terms of government institutions, the label "land acquisition agency" is still attached to government agencies because it is easy to grant

rights/permits/licenses for land and natural resources to parties with capital. Meanwhile, from a social perspective, indigenous peoples with their customary laws still do not have strong legitimacy to stand on their own, and their existence is often ignored or eliminated by laws and regulations, resulting in increasingly sharp inequality in the control, ownership, use, and allocation of the area concerned.

In this case, the logical consequence of structural agrarian conflict is that there will be changes in some of the elements that have lived in indigenous communities, especially those related to the loss of their territories that are used as places to live and livelihoods. Indigenous peoples cannot freely use their living space so there will be a decrease in community independence in meeting their daily needs. In the long term, a further consequence has been the transformation of indigenous peoples' occupations from farmers to wage laborers. In this socio-ecological crisis, special attention needs to be paid to various forms of gender injustice, where women from marginalized groups face and bear a much more significant burden. The longer the conflict goes on, the more alienated the affected indigenous peoples will become; their trust in the government will decline and their sense of nationalism will erode.

In situations of prolonged agrarian conflict, people who are victims will ask about the position and role of the government in this conflict. People can come to feel that there is no government to protect and nurture them. At first, they will only protest against the government. When criminalization is imposed on them, they will feel antagonized by the government. If this continues, they will feel that the government during Reformasi acts as a ruler and does whatever it wants, including being a servant of the capitalist market. If this conflict continues, what will happen is a decline in the legitimacy of the government in the eyes of its people. This will certainly take our country further away from what was envisioned by the Proclamation of Independence of the Republic of Indonesia as stated in the Preamble of the 1945 Constitution. The decline in the legitimacy of the people towards the government has led those who were initially in the position of victims in the agrarian conflicts to ask whether they "have rights"?[18]

4. The Principle of Free, Prior, and Informed Consent as a Just and Sustainable Solution to The Indonesian Structural Agrarian Conflict

The term "ubi societas, ibi ius" provides a legal paradigm that is developing today. Society and law are two entities that are bound to each other in the development of human life. The law becomes a guide for the behavior of society and becomes an object of development in realizing an ideal state following what lives in that society. That way, the law also always moves towards progress as long as people's lives continue to develop and are inseparable from various changes. However, in reality, the rate of change that occurs in society is not proportional to the rate of change made by the law[19]. To keep up with the changes in society, the law also needs to be updated and built sustainably. Considering the aspect of legal development, the function of law in society is to drive and provide protection for development and the results of it which will form a role for law in society, namely as a means of changing society (law as a tool of social engineering).

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[18] Marcus Colchester et al., *Promised Land: Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples* (Perkumpulan Sawit Watch, 2006).

[19] Soejadi, *Pancasila Sebagai Sumber Tertib Hukum Indonesia* (Lukman Offset, 1999) 37, https://books.google.co.id/books?id=iu2JAAAAMAAj.

Based on the thoughts of Roscoe Pound, the law is not only used as a means of regulating people's lives or can also be referred to as a means of social engineering, but can also be used as a means of controlling each individual in society to achieve common goals[20]. Therefore, legal development for a country is essential to answer the needs of society and realize the country's goals[21].

Indonesia is one of the legal countries in the world that still requires various studies and research to develop ideal laws with changes in its society. It cannot be denied that many problems in Indonesian society require special attention from the State in its legal framework. Legal development in Indonesia refers to the five precepts of Pancasila to realize the State goals in the preamble of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). In this case, the value in Pancasila is a noble value that shows synergy and unity in a society that is devoted to God, civilized, and just which comes from the community itself so that it is used as a way of life for the nation and state of Indonesia.

This attempt to grab Indigenous peoples' territories ignores the principle of Free, Prior, and Informed Consent (FPIC) enshrined in Article 16 of ILO Convention No. 169 of 1989 on Indigenous Peoples. This principle is intended to give indigenous peoples a voice over their land ownership if there is a plan to transfer it for reasons of public interest and if this provision is not obtained then the implementation of this transfer cannot be carried out. In addition, Article 6 paragraph (1) of the Convention includes several conditions for the application of its content, one of which relates to consultation with the population involved, which can be done through deliberation or representative institutions. Subhi Mahmassani also helps emphasize this principle with his argument that the State's interest in limiting a person's property rights based on public interest is carried out by compensating the owner as a logistical consequence of relinquishing ownership rights[22]. In other words, the transfer of land from indigenous peoples is only possible through due process of law with the free and prior informed consent of local indigenous peoples.

Historically, the concept of FPIC was utilized to protect patients undergoing treatment in hospitals to personally know every process and type of treatment they will undergo. Initially, this principle only included prior informed consent, which had been embedded in the 1947 Nuremberg Code as a condition for conducting medical experiments on humans. After developing into the non-medical and public spheres, this principle became FPIC as a communal international legal principle. In Agus Surono's view, the communal nature of FPIC must have four things, including freedom from coercion (free), obtaining permission from the community before activities are permitted by the government (prior), disclosure of information on activities (informed), and approval by the community itself (consent). The right to consent from indigenous peoples, which is carried out in good faith and in line with their circumstances, is a direct recognition and protection mechanism so that they feel recognized. In this case, the implementation of decision-making from indigenous peoples must be carried out without coercion, threats, or fraud from any party and beforehand there has to be clear information provided to them.

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[20] Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: Rajawali Press, 2017) 44.

[21] Ikbal Ikbal, "Prinsip Free and Prior Informed Consent Terhadap Perlindungan Masyarakat Adat Atas Tanah Dalam Perspektif Hukum Hak Asasi Manusia Internasional," *Fiat Justisia: Jurnal Ilmu Hukum* 6, no. 3 (2012).

[22] Subhi Mahmasani, *Konsep Dasar Hak Asasi Manusia: Studi Dibandingkan Syariat Islam Dan Perundang-Undangan Modern* (Jakarta: Tintamas Indonesia, 1993) 175-176.

In this case, the implementation of FPIC needs to take into account several stages, which include: Precondition, This activity includes increasing stakeholder understanding through workshops, training, and disseminating information through leaflets, brochures, and other relevant media as well as an inventory of land use models. This understanding improvement activity is carried out so that the information provided is consistent, uniform, complete, and clear. In parallel, it is necessary to appoint a companion who is independent and accepted by all parties as a catalyst for the process of determining the approach/method for implementing FPIC.

In this precondition stage, institutional mapping activities need to be carried out in all affected areas to obtain information on stakeholders who must be involved and their representatives in all processes. The expected result is the availability of data regarding interested parties in the area and an inventory of land use models. This stage is very important to ensure the stakeholders who will be involved and their representatives as well as the methods and stages of the process that will be passed. This stage will take the longest and will answer Free, Prior, and Inform.

Decision/agreement making, This stage will answer the Consent component in FPIC. All competent representatives will discuss making decisions about the impacts that will arise, compensation options for the impacts that arise and other rights if necessary, involvement in the management process, and the obligations of indigenous communities and/or local communities who depend on the forest. This process will be guided by a local facilitator who has been appointed at the precondition stage. The time it will take will depend on the success of the precondition stages in increasing stakeholder understanding.

Verification, A verification team will be appointed by the business owner/executor to assess whether all FPIC processes have been completed under FPIC principles and the stages of implementing FPIC in its activities. Socialization of results, This stage is to socialize the recorded results of the process and decisions to all components of society that will be affected, including core stakeholders at the district, provincial, and national levels.

Therefore, the principle of FPIC needs to be present in every legislation concerning the livelihoods of indigenous peoples, especially in regulations that have not yet been passed. The Draft Law on the Recognition and Protection of Indigenous Peoples (hereinafter referred to as the PPMHA Bill), which has been completed in the House of Representatives Legislative Body since September 4, 2020, is the biggest hope for the resistance to the seizure of indigenous peoples' territories. However, the existence of FPIC needs to be further emphasized in the PPMHA Bill before it is finalized, considering the Minerba Law and Job Creation Law that oppress indigenous peoples. In its implementation, it is also necessary to make a paradigm transition towards justice and sustainability, especially in law enforcement officials, through active participation from indigenous peoples so that a strong legal structure is guaranteed.

5. Conclusion

Based on the discussion above, the author can conclude several things, namely as follows. The protection of land rights for customary law communities has not been realized optimally, especially as there are still many structural agrarian conflicts, so it is necessary to formulate legislative regulations that are in line with Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The principles of Free, Prior, and Informed Consent provide a just and sustainable solution to structural agrarian conflicts. Therefore, it is deemed necessary for investors and the

government to prioritize the FPIC principle in all actions taken. Especially in the case of establishing legal products regarding land rights of customary law communities, all stakeholders must prioritize the FPIC principle in the process.

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