

Dispossession of Indigenous Peoples' Living Spaces: Challenges and Prospects for Agrarian Justice in Indonesia

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ABSTRACT

The dispossession of Indigenous Peoples' living spaces in Indonesia represents a persistent manifestation of structural inequality in agrarian resource governance. This phenomenon is largely driven by competing interests among Indigenous communities, the state, and corporate actors, resulting in the loss of access to ancestral lands and natural resources, and posing serious threats to cultural integrity, social cohesion, and environmental sustainability. This article examines the key challenges in achieving agrarian justice in Indonesia, particularly the weak legal recognition of customary land rights, regulatory overlap between sectoral laws, and limited substantive participation of Indigenous Peoples in decision-making processes concerning land and resource allocation. Employing a normative legal analysis supported by socio-legal perspectives, this study also explores prospects for strengthening agrarian justice through equitable policy reform. These include the harmonization of agrarian regulations, acceleration of formal recognition of customary territories, strengthening of law enforcement mechanisms against unlawful land appropriation, and meaningful inclusion of Indigenous Peoples in resource governance frameworks. The findings indicate that despite ongoing agrarian reform initiatives, legal and institutional fragmentation continues to undermine effective protection of Indigenous territorial rights. This article contributes to the discourse on agrarian justice by emphasizing the need to reconceptualize land governance through an Indigenous rights-based and sustainability-oriented approach. It argues that achieving agrarian justice in Indonesia requires not only regulatory reform but also a paradigm shift toward participatory and inclusive governance that balances economic development with ecological and cultural preservation.

KEYWORDS *Indigenous Peoples, Agrarian Justice, Land Rights, Customary Law, Land Dispossession*

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I. INTRODUCTION

The dispossession of Indigenous Peoples' living spaces has become one of the most pressing challenges in contemporary debates on agrarian justice, environmental governance, and human rights. Across the Global South, rapid economic development, extractive industries, agricultural expansion, and large-scale infrastructure projects have increasingly transformed Indigenous territories into contested spaces where competing claims between states, corporations, and Indigenous communities intersect.¹ While governments often justify land acquisition as an instrument of national development, such policies frequently marginalize Indigenous Peoples by disregarding their customary tenure systems, cultural attachments to land, and collective rights over natural resources. Consequently, land dispossession extends beyond the physical loss of territory, encompassing the erosion of cultural identity, traditional knowledge, ecological stewardship, and community resilience.²

Recent scholarship has increasingly conceptualized land dispossession as a manifestation of structural injustice embedded within neoliberal models of resource governance. Rather than representing isolated conflicts over land ownership, dispossession reflects asymmetrical power relations in which state legal systems privilege statutory property regimes while marginalizing customary land tenure institutions.³ Such dynamics have intensified in many developing countries where legal pluralism coexists with centralized land administration, producing overlapping jurisdictions, regulatory inconsistencies, and unequal access to legal remedies.⁴ These conditions create opportunities for land grabbing, concession

¹ United Nations. *United Nations Declaration on the Rights of Indigenous Peoples*. (New York: United Nations, 2007); Borras, Saturnino M., Jr., and Jennifer C. Franco. "Global Land Grabbing and Trajectories of Agrarian Change: A Preliminary Analysis." *Journal of Agrarian Change* 12, no. 1 (2012): 34–59. <https://doi.org/10.1111/j.1471-0366.2011.00339.x>

² See United Nations. *State of the World's Indigenous Peoples: Implementing the United Nations Declaration on the Rights of Indigenous Peoples*. (New York: United Nations, 2019).

³ Hall, Derek, Philip Hirsch, and Tania Murray Li. *Powers of Exclusion: Land Dilemmas in Southeast Asia*. (Honolulu: University of Hawai'i Press, 2011).

⁴ Boone, Catherine. *Property and Political Order in Africa: Land Rights and the Structure of Politics*. (Cambridge: Cambridge University Press, 2014).

expansion, and the systematic exclusion of Indigenous communities from decision-making processes concerning their ancestral territories.⁵

Indonesia represents a particularly significant context for examining these dynamics due to its vast Indigenous population and extensive customary territories. The Indigenous Peoples Alliance of the Archipelago (*Aliansi Masyarakat Adat Nusantara*, AMAN) estimates that millions of Indigenous Peoples continue to inhabit customary territories across the archipelago, many of which overlap with forest estates, mining concessions, oil palm plantations, and national strategic development projects.⁶ Although Article 18B paragraph (2) of the 1945 Constitution recognizes customary law communities and their traditional rights, implementation remains fragmented because legal recognition depends upon complex administrative procedures and sectoral regulations that often contradict one another.⁷ Consequently, Indigenous communities frequently encounter legal uncertainty when asserting their customary land rights against state-issued permits granted to private corporations.

The governance of agrarian resources in Indonesia has long been characterized by tensions between constitutional recognition of Indigenous rights and development-oriented legal frameworks. The Basic Agrarian Law of 1960 established important principles regarding social functions of land and acknowledged customary rights (*hak ulayat*), yet subsequent legislation governing forestry, mining, plantations, and spatial planning introduced overlapping authorities that weakened the effective implementation of these principles.⁸ This regulatory fragmentation has contributed to prolonged agrarian conflicts, particularly in regions where customary territories are classified as state forests despite long-standing Indigenous occupation.⁹ As a result, Indigenous Peoples often face criminalization, forced displacement, restricted access to natural resources, and environmental degradation despite constitutional guarantees of protection.

A significant legal milestone emerged through Constitutional Court Decision No. 35/PUU-X/2012, which declared that customary forests (*hutan adat*) are no longer categorized as state forests but instead constitute forests located within Indigenous territories. This landmark judgment has been widely regarded as an important step toward strengthening Indigenous land rights by redefining the legal status of customary forests.¹⁰ Nevertheless, empirical evidence indicates that implementation has progressed slowly because formal recognition of Indigenous communities remains dependent upon local government regulations,

⁵ See Borrás and Franco. "Global Land Grabbing and Trajectories of Agrarian Change: A Preliminary Analysis."

⁶ AMAN (Aliansi Masyarakat Adat Nusantara). *Catatan Akhir Tahun 2023*. (Jakarta: AMAN, 2023).

⁷ Bedner, Adriaan, and Yance Arizona. "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?" *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–434. <https://doi.org/10.1080/14442213.2019.1670246>

⁸ Lucas, Anton, and Carol Warren, eds. *Land for the People: The State and Agrarian Conflict in Indonesia*. (Athens: Ohio University Press, 2013).

⁹ Butt, Simon. *The Constitutional Court and Democracy in Indonesia*. (Leiden: Brill, 2014).

¹⁰ Myers, Rodd, Martua Sirait, and Dini Intarini. "Claiming the Forest: Inclusions and Exclusions under Indonesia's 'New' Forest Policies on Customary Forests." *Land Use Policy* 66 (2017): 205–213. <https://doi.org/10.1016/j.landusepol.2017.04.033>

administrative verification, and political commitment at regional levels.¹¹ Consequently, only a limited proportion of Indigenous territories has received official recognition, leaving many communities vulnerable to continued dispossession and land conflicts.

Beyond legal recognition, the persistence of land dispossession is closely linked to broader questions of distributive and procedural justice. Agrarian justice requires not only equitable distribution of land and natural resources but also meaningful participation of affected communities in governance processes and recognition of their collective identities, customary institutions, and knowledge systems.¹² However, Indigenous participation in land allocation, environmental licensing, and development planning in Indonesia often remains consultative rather than deliberative, limiting their capacity to influence decisions affecting their livelihoods and cultural survival.¹³ This exclusion reinforces institutional inequalities that perpetuate social conflicts while undermining sustainable resource management.

Previous studies have generated important insights into the protection of Indigenous Peoples' land rights in Indonesia from diverse disciplinary perspectives. A substantial body of legal scholarship has focused on the constitutional recognition of Indigenous communities and the implications of Constitutional Court Decision No. 35/PUU-X/2012 for the legal status of customary forests. For instance, Arizona and Cohen¹⁴ argue that although the Constitutional Court's decision constitutes a significant legal breakthrough, its implementation remains constrained by administrative requirements and inconsistent political commitment across local governments. Similarly, Bedner and Arizona¹⁵ demonstrate that the coexistence of statutory land law and customary legal systems continues to create legal uncertainty, particularly because sectoral legislation governing forestry, plantations, and mining has not been comprehensively harmonized with constitutional guarantees of Indigenous rights.

From the perspective of political ecology and agrarian studies, scholars have highlighted how state-driven development policies and market-oriented resource governance have intensified land dispossession among Indigenous communities. Hall, Hirsch, and Li¹⁶ explain that exclusion from land is not merely a consequence of legal ownership disputes but is produced through interconnected mechanisms of regulation, market expansion, coercion, and the legitimization of state authority.

¹¹ See Arizona, Yance, and Miriam Cohen. "The Recognition of Customary Land Rights at the Constitutional Court of Indonesia: A Critical Assessment of the Jurisprudence." In *Courts and Diversity*. (Leiden: Brill Nijhoff, 2024), pp. 173-194. https://doi.org/10.1163/9789004691698_008

¹² Fraser, Nancy. *Scales of Justice: Reimagining Political Space in a Globalizing World*. (New York: Columbia University Press, 2009).

¹³ Andrianto, Agus, Heru Komarudin, and Pablo Pacheco. "Expansion of Oil Palm Plantations in Indonesia's Frontier: Problems of Externalities and the Future of Local and Indigenous Communities." *Land* 8, no. 4 (2019): 56. <https://doi.org/10.3390/land8040056>

¹⁴ See Arizona, Yance, and Miriam Cohen. "The Recognition of Customary Land Rights at the Constitutional Court of Indonesia: A Critical Assessment of the Jurisprudence." In *Courts and Diversity*. (Leiden: Brill Nijhoff, 2024), pp. 173-194. https://doi.org/10.1163/9789004691698_008

¹⁵ Bedner, Adriaan, and Yance Arizona. "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?" *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416-434. <https://doi.org/10.1080/14442213.2019.1670246>

¹⁶ Hall, Derek, Philip Hirsch, and Tania Murray Li. *Powers of Exclusion: Land Dilemmas in Southeast Asia*. (Honolulu: University of Hawai'i Press, 2011).

Likewise, Borras and Franco¹⁷ identify contemporary land grabbing as a structural phenomenon in which public policies and private investment converge to facilitate the transfer of control over land and natural resources away from local communities. Within the Indonesian context, Lucas and Warren¹⁸ further demonstrate that agrarian conflicts are deeply embedded in unequal political-economic structures that systematically privilege commercial interests over customary tenure systems.

Other studies have examined Indigenous land governance through environmental and natural resource management frameworks. Myers, Sirait, and Intarini¹⁹ emphasize that although the recognition of customary forests has opened new opportunities for Indigenous governance, bureaucratic procedures remain highly selective, resulting in the recognition of only a small proportion of Indigenous territories. Andrianto, Komarudin, and Pacheco²⁰ similarly reveal that the expansion of plantation industries frequently occurs without meaningful participation or free, prior, and informed consent (FPIC) from Indigenous communities, thereby undermining both environmental sustainability and collective rights. More recent studies also suggest that the implementation of agrarian reform has yet to resolve structural inequalities because land redistribution programs often operate independently from mechanisms for recognizing customary territories and Indigenous governance institutions.²¹

Despite these valuable contributions, at least three important gaps remain in the existing literature. First, most studies examine Indigenous land rights through isolated disciplinary lenses, such as constitutional law, environmental governance, or political economy, without integrating these perspectives into a comprehensive framework of agrarian justice. Second, previous research has predominantly concentrated on legal recognition and institutional reforms while paying comparatively less attention to how legal pluralism, distributive justice, procedural justice, and recognition justice interact in shaping Indigenous Peoples' access to land and natural resources. Third, although recent regulatory reforms have introduced new legal instruments relating to agrarian governance and sustainable development, relatively few studies provide a normative legal assessment of whether these reforms adequately address the structural causes of Indigenous land dispossession.

This article addresses these gaps by developing an integrated agrarian justice framework that combines normative legal analysis with socio-legal perspectives to examine Indigenous land dispossession in Indonesia. Rather than focusing exclusively on constitutional recognition or sectoral regulation, this study analyses

¹⁷ See Borras and Franco. "Global Land Grabbing and Trajectories of Agrarian Change: A Preliminary Analysis."

¹⁸ Lucas, Anton, and Carol Warren, eds. *Land for the People: The State and Agrarian Conflict in Indonesia*. (Athens: Ohio University Press, 2013).

¹⁹ Myers, Rodd, Martua Sirait, and Dini Intarini. "Claiming the Forest: Inclusions and Exclusions under Indonesia's 'New' Forest Policies on Customary Forests." *Land Use Policy* 66 (2017): 205–213. <https://doi.org/10.1016/j.landusepol.2017.04.033>

²⁰ Andrianto, Agus, Heru Komarudin, and Pablo Pacheco. "Expansion of Oil Palm Plantations in Indonesia's Frontier: Problems of Externalities and the Future of Local and Indigenous Communities." *Land* 8, no. 4 (2019): 56. <https://doi.org/10.3390/land8040056>

²¹ Dhiaulhaq, Ahmad, and John F. McCarthy. "Indigenous Rights and Agrarian Justice Framings in Forest Land Conflicts in Indonesia." *The Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 34–54. <https://doi.org/10.1080/14442213.2019.1670243>

how overlapping legal regimes, fragmented institutional authority, and limited Indigenous participation collectively reproduce structural inequalities in land governance. The article further advances existing scholarship by proposing a rights-based and sustainability-oriented model of agrarian justice that places Indigenous Peoples not merely as beneficiaries of legal protection but as central actors in the governance of land and natural resources. Through this approach, the study contributes both theoretically and practically to ongoing debates concerning Indigenous rights, legal pluralism, and equitable agrarian governance in Indonesia.

II. STRUCTURAL DRIVERS OF INDIGENOUS PEOPLES' LAND DISPOSSESSION IN INDONESIA

The dispossession of Indigenous Peoples' living spaces in Indonesia cannot be adequately understood merely as a series of isolated land disputes between local communities and corporate actors. Rather, it reflects a broader structural transformation in agrarian governance whereby state authority, market expansion, and sectoral legal regimes collectively reshape patterns of land control and resource allocation. Within this context, dispossession constitutes a systemic process through which Indigenous Peoples gradually lose effective control over their ancestral territories despite the continued existence of constitutional guarantees recognizing customary rights. Consequently, understanding land dispossession requires moving beyond conventional notions of property disputes toward a broader examination of the political, legal, and institutional arrangements that reproduce inequalities in access to land and natural resources.

Contemporary scholarship increasingly conceptualizes land dispossession as an outcome of structural power asymmetries embedded within state-led development and neoliberal resource governance. Hall, Hirsch, and Li²² argue that exclusion from land is produced not only through direct expropriation but also through multiple mechanisms—including regulation, market forces, coercion, and legitimization—that collectively determine who is entitled to access, control, and benefit from land. This perspective broadens the analytical scope of agrarian conflicts by demonstrating that legal dispossession often occurs through formally lawful administrative procedures rather than through overtly unlawful land seizures. Similarly, Borras and Franco²³ contend that contemporary land grabbing is increasingly facilitated by public policies that prioritize investment, food security, energy transition, and infrastructure development while simultaneously weakening the tenure security of local and Indigenous communities. Under these conditions, dispossession becomes institutionalized through legal frameworks that privilege economic development over distributive justice.

From the perspective of agrarian justice, land should not be regarded solely as an economic commodity or productive asset. For Indigenous Peoples, land represents an inseparable component of collective identity, cultural continuity, spiritual beliefs, and environmental stewardship. Indigenous territorial systems are therefore fundamentally different from individual property regimes because

²² Hall, Derek, Philip Hirsch, and Tania Murray Li. *Powers of Exclusion: Land Dilemmas in Southeast Asia*. (Honolulu: University of Hawai'i Press, 2011).

²³ See Borras and Franco. "Global Land Grabbing and Trajectories of Agrarian Change: A Preliminary Analysis."

customary territories embody collective rights transmitted across generations through customary law.²⁴ The loss of customary land consequently entails far-reaching consequences extending beyond economic deprivation to include the erosion of traditional governance institutions, ecological knowledge, cultural practices, and community resilience.²⁵ Such multidimensional impacts distinguish Indigenous land dispossession from ordinary land acquisition disputes and require legal protection that recognizes both material and non-material dimensions of territorial rights.

The multidimensional character of Indigenous territorial rights has increasingly been acknowledged within international human rights law. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognizes Indigenous Peoples' collective rights to own, use, develop, and control lands, territories, and resources traditionally occupied or otherwise used by them.²⁶ Likewise, the International Labour Organization Convention No. 169 emphasizes the obligation of states to recognize Indigenous Peoples' relationship with their territories and to ensure meaningful participation in decisions affecting those territories.²⁷ Although Indonesia has endorsed many principles concerning Indigenous rights in international forums, domestic implementation remains incomplete because recognition continues to depend upon administrative verification conducted by governmental institutions. Consequently, constitutional commitments frequently fail to provide effective legal certainty for Indigenous communities confronted with competing land claims.

The persistence of land dispossession in Indonesia is closely associated with the historical evolution of state control over natural resources. Following independence, the Basic Agrarian Law of 1960 sought to establish a unified national land regime while simultaneously recognizing customary rights (*hak ulayat*) insofar as they remained consistent with national interests. This legal compromise reflected an attempt to reconcile legal pluralism with state sovereignty over land administration. However, subsequent sectoral legislation governing forestry, mining, plantations, and environmental management gradually expanded state authority over extensive areas traditionally occupied by Indigenous Peoples.²⁸ As a result, overlapping legal regimes emerged in which the same territory could simultaneously be regarded as customary land under Indigenous law and state land under sectoral legislation.

This legal fragmentation has produced significant uncertainty regarding the legal status of Indigenous territories. Under the Forestry Law, for example, large areas of customary forests were historically classified as state forests, enabling the government to allocate concessions for logging, mining, or plantation activities without obtaining the consent of Indigenous communities. Although Constitutional

²⁴ United Nations. *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. (New York: United Nations, 2007).

²⁵ United Nations. *State of the World's Indigenous Peoples: Implementing the United Nations Declaration on the Rights of Indigenous Peoples*. (New York: United Nations, 2019).

²⁶ See *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* 2007.

²⁷ See Melander, Göran, and Gudmundur Alfredsson. "Indigenous and Tribal Peoples Convention, 1989." In *The Raoul Wallenberg Institute Compilation of Human Rights Instruments*. (Leiden: Brill Nijhoff, 1997), pp. 299-311. https://doi.org/10.1163/9789004636484_039

²⁸ Lucas, Anton, and Carol Warren, eds. *Land for the People: The State and Agrarian Conflict in Indonesia*. (Athens: Ohio University Press, 2013).

Court Decision No. 35/PUU-X/2012 later clarified that customary forests are not part of state forests, implementation has remained uneven because recognition of customary forests continues to depend upon prior governmental recognition of Indigenous communities themselves.²⁹ Consequently, many Indigenous territories remain legally invisible despite centuries of continuous occupation.

Legal pluralism further complicates the governance of Indigenous territories. Indonesia's agrarian system simultaneously accommodates statutory law, customary law, administrative regulations, and constitutional principles, each operating according to different institutional logics. Griffiths³⁰ distinguishes between weak legal pluralism, where customary law exists only insofar as recognized by the state, and strong legal pluralism, where multiple legal systems coexist with relatively autonomous authority. Indonesia largely reflects the former model because customary law acquires legal force only after formal state recognition. This hierarchical relationship substantially weakens Indigenous communities' bargaining position whenever conflicts arise between customary tenure and state-issued concessions.

The dominance of statutory legal regimes has significant implications for distributive justice. Fraser³¹ argues that justice cannot be reduced solely to the equitable distribution of economic resources but must also encompass recognition of cultural identities and equal participation in political decision-making. Applying this framework to Indigenous land governance demonstrates that dispossession occurs through interconnected dimensions of injustice. First, Indigenous communities experience distributive injustice when customary territories are transferred to commercial concessions without equitable compensation or benefit-sharing. Second, they experience recognition injustice when customary legal systems are subordinated to administrative procedures that fail to acknowledge Indigenous territorial institutions. Third, they experience representational injustice because participation in licensing and land-use planning processes frequently remains symbolic rather than genuinely deliberative. Accordingly, Indigenous land dispossession should be understood as the cumulative product of multiple forms of structural injustice rather than as isolated violations of property rights.

These structural inequalities have become increasingly pronounced alongside Indonesia's development-oriented economic policies. Since the liberalization of investment regulations during the late twentieth century, national development strategies have emphasized natural resource extraction, agricultural expansion, and infrastructure development as key drivers of economic growth. While these policies have generated substantial macroeconomic benefits, they have simultaneously intensified competition over land and natural resources, particularly in regions where customary territories overlap with commercially valuable forests, mineral deposits, and plantation estates.³² Consequently,

²⁹ Bedner, Adriaan, and Yance Arizona. "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?" *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–434. <https://doi.org/10.1080/14442213.2019.1670246>

³⁰ Griffiths, John. "What Is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55. <https://doi.org/10.1080/07329113.1986.10756387>

³¹ Fraser, Nancy. 2009. *Scales of Justice: Reimagining Political Space in a Globalizing World*. (New York: Columbia University Press, 2009).

³² Hall, Derek, Philip Hirsch, and Tania Murray Li. *Powers of Exclusion: Land Dilemmas in Southeast Asia*. (Honolulu: University of Hawai'i Press, 2011).

Indigenous territories have become strategic sites of competing legal claims involving local communities, government agencies, and private investors.

The intensification of land dispossession in Indonesia is inseparable from the expansion of extractive industries, commercial plantations, and national infrastructure projects. Over the past three decades, economic development policies have increasingly relied on natural resource exploitation as a primary engine of national growth. Mining, oil palm plantations, industrial timber estates, and strategic infrastructure have generated substantial fiscal revenues and contributed to regional economic development. Nevertheless, these sectors have also become major sources of agrarian conflicts because concession allocations frequently overlap with Indigenous territories that have not yet received formal legal recognition.³³ Consequently, Indigenous communities often confront a paradox in which their long-standing occupation of ancestral lands is rendered legally subordinate to state-issued licenses granted to commercial actors.

This pattern reflects what Borras et al.³⁴ describe as the contemporary political economy of land grabbing, whereby legal mechanisms facilitate the large-scale transfer of control over land from local communities to state and corporate actors. Unlike classical notions of land expropriation, contemporary dispossession frequently occurs through administrative decisions that formally comply with statutory requirements but fail to recognize customary tenure systems. In Indonesia, concession permits issued for plantations, forestry, and mining are generally based upon cadastral and administrative classifications rather than upon comprehensive verification of Indigenous territorial claims. As a consequence, territories that Indigenous communities have managed for generations may be officially designated as production forests, mining areas, or cultivation zones without meaningful consultation or consent.

The rapid expansion of the oil palm industry illustrates these structural dynamics. Indonesia has become the world's largest producer of crude palm oil, with plantation expansion contributing significantly to export earnings and rural economic transformation. However, numerous empirical studies demonstrate that oil palm development has also generated extensive social and ecological consequences, including deforestation, biodiversity loss, environmental degradation, and displacement of Indigenous communities.³⁵ In many regions of Kalimantan, Sumatra, Sulawesi, and Papua, plantation concessions overlap with customary territories where Indigenous Peoples depend upon forests, rivers, and communal lands for subsistence, cultural practices, and traditional governance. The conversion of these landscapes into monoculture plantations not only restricts

³³ Cotula, Lorenzo. *The Great African Land Grab? Agricultural Investments and the Global Food System*. (London: Zed Books, 2013).

³⁴ Borras, Saturnino M., Jr., Jennifer C. Franco, Sergio Gómez, Cristóbal Kay, and Max Spoor. "Land Grabbing in Latin America and the Caribbean." *The Journal of Peasant Studies* 39, no. 3–4 (2012): 845–872. <https://doi.org/10.1080/03066150.2012.679931>

³⁵ Andrianto, Agus, Heru Komarudin, and Pablo Pacheco. "Expansion of Oil Palm Plantations in Indonesia's Frontier: Problems of Externalities and the Future of Local and Indigenous Communities." *Land* 8, no. 4 (2019): 56. <https://doi.org/10.3390/land8040056>; Cramb, Rob A., and George N. Curry. "Oil Palm and Rural Livelihoods in the Asia-Pacific Region: An Overview." *Asia Pacific Viewpoint* 53, no. 3 (2012): 223–239. <https://doi.org/10.1111/j.1467-8373.2012.01493.x>

physical access to land but also disrupts social institutions that have historically regulated the sustainable management of natural resources.

A similar pattern can be observed in the mining sector. Indonesia's abundant reserves of coal, nickel, gold, copper, and other strategic minerals have attracted extensive domestic and foreign investment. The increasing global demand for critical minerals associated with the energy transition has further accelerated mining expansion in several Indigenous territories, particularly in eastern Indonesia. Although mining projects are frequently justified on the grounds of national economic interests and energy security, they often generate long-term environmental degradation that disproportionately affects Indigenous communities whose livelihoods depend upon intact ecosystems.³⁶ Water pollution, forest degradation, reduced agricultural productivity, and loss of customary hunting and gathering areas collectively undermine Indigenous Peoples' capacity to maintain their traditional socio-economic systems.

The persistence of these conflicts demonstrates that legal recognition alone is insufficient to prevent dispossession when development policies continue to prioritize investment over tenure security. Myers, Sirait, and Intarini³⁷ observe that the implementation of Constitutional Court Decision No. 35/PUU-X/2012 has produced only incremental progress because recognition of customary forests remains contingent upon complex administrative procedures involving multiple levels of government. Consequently, although the legal doctrine concerning customary forests has changed, many Indigenous communities continue to experience uncertainty regarding the legal status of their territories. This gap between constitutional principles and administrative implementation illustrates a broader institutional problem in Indonesian agrarian governance, where progressive legal norms frequently fail to produce substantive changes at the local level.

The implementation of National Strategic Projects (*Proyek Strategis Nasional*/PSN) has further intensified debates concerning Indigenous territorial protection. Designed to accelerate economic growth through infrastructure development, industrial estates, transportation networks, and energy facilities, PSNs occupy a central position within Indonesia's contemporary development agenda. While these projects are intended to improve national competitiveness and regional connectivity, their implementation often requires large-scale land acquisition processes that intersect with customary territories. In practice, Indigenous communities frequently encounter significant obstacles in asserting customary claims because project implementation is supported by administrative procedures that emphasize legal certainty for investment rather than comprehensive verification of customary land tenure. This asymmetry creates structural inequalities in which Indigenous communities bear disproportionate social and environmental costs while receiving limited opportunities to influence development planning.

³⁶ United Nations. *State of the World's Indigenous Peoples: Implementing the United Nations Declaration on the Rights of Indigenous Peoples*. (New York: United Nations, 2019).

³⁷ Myers, Rodd, Martua Sirait, and Dini Intarini. "Claiming the Forest: Inclusions and Exclusions under Indonesia's 'New' Forest Policies on Customary Forests." *Land Use Policy* 66 (2017): 205–213. <https://doi.org/10.1016/j.landusepol.2017.04.033>

These conditions reveal the limitations of a development paradigm that conceptualizes land primarily as an economic asset. Such an approach overlooks the relational character of Indigenous territorial systems, where land constitutes the foundation of cultural identity, social organization, and ecological stewardship. International scholarship increasingly recognizes that Indigenous-managed territories contribute significantly to biodiversity conservation and climate resilience because customary governance institutions often regulate natural resource use through locally embedded norms of sustainability.³⁸ Accordingly, the dispossession of Indigenous territories should not be understood solely as a human rights issue but also as a governance challenge with profound implications for environmental sustainability and long-term resource management.

From the perspective of political ecology, the reproduction of land dispossession is sustained by unequal power relations embedded within institutional decision-making. Hall, Hirsch, and Li³⁹ identify four interrelated mechanisms through which exclusion from land is produced: regulation, force, the market, and legitimation. These mechanisms are readily observable in Indonesia's agrarian governance. Regulation operates through sectoral legislation and licensing systems that define the legal status of land. Market mechanisms encourage the commercialization of land and natural resources through investment incentives and concession allocation. Coercive dimensions emerge when Indigenous communities experience criminalization, forced eviction, or restrictions on customary resource use. Finally, legitimation occurs when development narratives portray Indigenous territories as underutilized or economically unproductive, thereby justifying state intervention in the name of national prosperity. Rather than operating independently, these mechanisms reinforce one another to create institutional conditions under which dispossession becomes legally normalized.

Viewed through Nancy Fraser's⁴⁰ multidimensional theory of justice, these dynamics demonstrate that Indigenous land conflicts cannot be resolved solely through land redistribution or compensation schemes. The underlying problem extends beyond the allocation of economic resources to encompass failures of recognition and representation. Indigenous Peoples are frequently excluded from the processes through which development priorities are determined, concession boundaries are established, and environmental permits are granted. Consequently, decisions affecting Indigenous territories are often made without equal participation by those most directly affected. This procedural imbalance weakens democratic legitimacy while simultaneously reinforcing distributive inequalities in access to land and natural resources.

Taken together, these structural conditions indicate that Indigenous land dispossession in Indonesia is not an incidental by-product of economic development but rather a consequence of institutional arrangements that privilege statutory authority, investment certainty, and administrative efficiency over

³⁸ Garnett, Stephen T., Neil D. Burgess, Julia E. Fa, Álvaro Fernández-Llamazares, Zsolt Molnár, Cathy J. Robinson, James E. M. Watson, et al. "A Spatial Overview of the Global Importance of Indigenous Lands for Conservation." *Nature Sustainability* 1, no. 7 (2018): 369–374. <https://doi.org/10.1038/s41893-018-0100-6>

³⁹ Hall, Derek, Philip Hirsch, and Tania Murray Li. *Powers of Exclusion: Land Dilemmas in Southeast Asia*. (Honolulu: University of Hawai'i Press, 2011).

⁴⁰ Fraser, Nancy. *Scales of Justice: Reimagining Political Space in a Globalizing World*. (New York: Columbia University Press, 2009).

customary tenure and participatory governance. As long as agrarian governance continues to treat Indigenous territorial rights as contingent upon bureaucratic recognition rather than as constitutionally protected collective rights, legal uncertainty and agrarian conflicts are likely to persist. This diagnosis provides the analytical foundation for the following section, which examines more specifically the legal and institutional barriers that continue to impede the effective protection of Indigenous land rights despite ongoing agrarian reform initiatives.

The persistence of Indigenous land dispossession also demonstrates that Indonesia's agrarian governance remains predominantly oriented toward administrative legality rather than substantive justice. In practice, the legality of concession licenses, environmental permits, and spatial planning decisions is frequently assessed based on procedural compliance with statutory regulations, while insufficient attention is given to whether these decisions undermine constitutionally protected Indigenous rights. This legal formalism creates a situation in which state actions may satisfy administrative requirements yet simultaneously produce distributive and procedural injustices for Indigenous communities. Consequently, legality does not necessarily translate into legitimacy, particularly where Indigenous Peoples have been excluded from decision-making processes affecting their ancestral territories.

This institutional paradox reflects a broader tension between legal certainty and justice in natural resource governance. Legal certainty is commonly regarded as an essential prerequisite for attracting investment and ensuring regulatory stability. However, when legal certainty is constructed primarily around state-issued licenses without corresponding certainty regarding customary land tenure, the resulting governance framework systematically disadvantages Indigenous Peoples. Bedner and Arizona⁴¹ argue that the coexistence of constitutional recognition of customary rights with fragmented sectoral legislation has generated persistent legal ambiguity concerning the status of Indigenous territories. Rather than resolving competing claims over land, the current legal framework frequently shifts the burden of proof onto Indigenous communities, requiring them to demonstrate the existence of customary rights through complex administrative procedures before those rights can receive formal protection.

The consequences of this institutional design are evident in the continuing prevalence of agrarian conflicts across Indonesia. Although successive governments have promoted agrarian reform as a central component of equitable development, empirical evidence indicates that land conflicts remain widespread and disproportionately affect Indigenous Peoples and other customary communities. Recent agrarian conflict reports continue to identify plantation expansion, infrastructure development, extractive industries, and forestry concessions as the principal sectors driving disputes over land and natural resources. These conflicts increasingly involve customary territories where overlapping legal claims remain unresolved despite constitutional and judicial recognition of Indigenous rights.

Importantly, these recurring conflicts should not be interpreted merely as implementation failures or isolated governance deficiencies. Instead, they reveal

⁴¹ Bedner, Adriaan, and Yance Arizona. "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?" *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–434. <https://doi.org/10.1080/14442213.2019.1670246>

structural inconsistencies embedded within Indonesia's agrarian legal architecture. Multiple state institutions—including agencies responsible for land administration, forestry, mining, environmental protection, and regional planning—exercise overlapping authority over the same geographical areas while operating under distinct statutory mandates. Such institutional fragmentation encourages inconsistent policy implementation, regulatory competition, and administrative uncertainty, thereby increasing the likelihood that Indigenous territories become subject to multiple and often contradictory legal classifications.⁴² Consequently, Indigenous communities frequently encounter conflicting decisions issued by different government authorities, each claiming legal validity under separate regulatory frameworks.

These institutional inconsistencies are further reinforced by asymmetric access to legal and administrative resources. Government agencies and corporate actors generally possess greater financial capacity, technical expertise, cadastral information, and legal representation than Indigenous communities. By contrast, many Indigenous Peoples continue to rely upon customary evidence, oral histories, participatory mapping, and collective memory to substantiate territorial claims. While such evidence possesses significant cultural and historical legitimacy, it is not always afforded equal evidentiary weight within formal administrative or judicial processes. This imbalance illustrates that access to justice is shaped not only by the availability of legal remedies but also by unequal institutional capacities to navigate complex regulatory systems.

The problem is compounded by the absence of meaningful participation throughout the land governance cycle. International human rights standards increasingly recognize Free, Prior and Informed Consent (FPIC) as a fundamental safeguard against arbitrary interference with Indigenous territories.⁴³ FPIC requires that Indigenous Peoples participate effectively before decisions concerning land acquisition, concession allocation, or resource exploitation are finalized. However, in Indonesia, public consultation frequently remains procedural rather than deliberative. Indigenous communities are often informed of projects after strategic decisions have already been made, thereby limiting opportunities to influence project design, negotiate benefit-sharing arrangements, or reject developments that threaten their cultural and ecological survival. Under such circumstances, participation functions primarily as an administrative formality instead of a substantive mechanism for realizing democratic governance.

These observations reinforce Fraser's⁴⁴ proposition that justice requires the simultaneous realization of redistribution, recognition, and representation. Indonesia's agrarian governance has made gradual progress in recognizing Indigenous rights through constitutional jurisprudence and selected policy reforms. Nevertheless, recognition alone has proven insufficient where institutional arrangements continue to reproduce unequal patterns of resource distribution and political participation. Agrarian justice therefore requires more than the formal acknowledgment of customary rights; it necessitates institutional transformation

⁴² Lucas, Anton, and Carol Warren, eds. *Land for the People: The State and Agrarian Conflict in Indonesia*. (Athens: Ohio University Press, 2013); Butt, Simon. *The Constitutional Court and Democracy in Indonesia*. (Leiden: Brill, 2014).

⁴³ See *United Nations Declaration on the Rights of Indigenous Peoples*.

⁴⁴ See Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World*.

capable of integrating Indigenous legal traditions into decision-making processes governing land and natural resources.

Accordingly, the central challenge confronting Indonesia is not merely the existence of overlapping regulations but the absence of an integrated legal framework capable of reconciling constitutional recognition, sectoral governance, and Indigenous self-determination within a coherent system of agrarian justice. Without such institutional integration, legal reforms will continue to address only the symptoms of land dispossession while leaving its structural causes largely intact. This diagnosis provides the basis for a more detailed examination of the legal and institutional obstacles that continue to impede effective protection of Indigenous land rights, which is the focus of the following section.

III. LEGAL AND INSTITUTIONAL CHALLENGES IN PROTECTING INDIGENOUS LAND RIGHTS

Although Indonesia has progressively incorporated Indigenous rights into its constitutional and statutory framework, the persistence of land dispossession demonstrates that formal legal recognition has not translated into effective legal protection. The central challenge lies not in the absence of legal norms acknowledging Indigenous Peoples but in the fragmented institutional architecture through which these norms are implemented. Constitutional guarantees, judicial decisions, and sectoral legislation operate within separate administrative regimes that frequently pursue different policy objectives, creating inconsistencies in the protection of customary territories. Consequently, Indigenous communities often face a legal system that recognizes their rights in principle while limiting their enforceability in practice.

The constitutional foundation for the protection of Indigenous Peoples is primarily established under Article 18B(2) of the 1945 Constitution, which recognizes customary law communities (*masyarakat hukum adat*) and their traditional rights, provided that these communities continue to exist and their rights are consistent with societal development and the principles of the Unitary State of the Republic of Indonesia. This provision marked a significant departure from earlier state-centric approaches by acknowledging that customary legal communities constitute legitimate legal subjects within Indonesia's constitutional order. However, the constitutional text also introduces conditional requirements that have become a source of continuing legal uncertainty. Rather than granting automatic recognition, Article 18B(2) subjects Indigenous rights to administrative verification and statutory regulation, allowing governmental institutions considerable discretion in determining whether a community satisfies the legal criteria for recognition.⁴⁵

This conditional model of recognition has important legal consequences. In practice, Indigenous communities cannot effectively exercise many of their constitutional rights unless they have first obtained formal recognition through regional regulations or other administrative instruments. The recognition process

⁴⁵ Bedner, Adriaan, and Yance Arizona. "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?" *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–434. <https://doi.org/10.1080/14442213.2019.1670246>

generally requires extensive anthropological studies, historical documentation, participatory mapping, institutional verification, and political approval by local governments. While these procedures are intended to ensure legal certainty, they frequently become lengthy, resource-intensive, and politically contingent. Communities located in districts lacking political commitment or administrative capacity may therefore remain without legal recognition despite possessing well-established customary governance systems. The result is an uneven landscape of legal protection in which access to constitutional rights depends significantly upon local political dynamics rather than upon the intrinsic existence of Indigenous communities themselves.

The limitations of this recognition model became particularly evident following Constitutional Court Decision No. 35/PUU-X/2012. The Court affirmed that customary forests (*hutan adat*) are forests located within Indigenous territories rather than part of state forests, thereby correcting a longstanding interpretation that had facilitated state control over customary forest areas. From a constitutional perspective, the decision represented a transformative affirmation of Indigenous territorial rights because it distinguished customary forests from state forests and reinforced the constitutional status of Indigenous communities as collective rights holders. Nevertheless, the practical implications of the decision have remained constrained because recognition of customary forests continues to depend upon prior governmental recognition of Indigenous Peoples under prevailing administrative procedures.⁴⁶ Accordingly, the effectiveness of the Constitutional Court's jurisprudence remains mediated by institutional mechanisms that often delay or restrict implementation.

The gap between constitutional jurisprudence and administrative practice reflects a broader institutional problem concerning the relationship between judicial decisions and executive governance. Judicial recognition may redefine legal principles, but effective protection requires corresponding administrative reforms capable of translating those principles into operational policies. In the Indonesian context, ministries responsible for forestry, land administration, regional governance, and environmental management continue to exercise overlapping authority over Indigenous territories through distinct regulatory frameworks. As a consequence, judicial clarification regarding the legal status of customary forests has not been accompanied by equivalent harmonization of licensing systems, land registration procedures, or spatial planning regulations. This institutional disconnect weakens the transformative potential of constitutional adjudication by allowing conflicting administrative practices to persist.

Another significant challenge arises from the fragmented character of Indonesia's sectoral legislation. The Basic Agrarian Law of 1960 recognizes customary rights and establishes important principles concerning the social function of land. However, subsequent laws governing forestry, mining, plantations, environmental protection, and spatial planning were enacted within separate regulatory contexts and according to distinct policy priorities. Rather than functioning as complementary legal instruments, these statutes frequently employ different definitions of land, natural resources, territorial authority, and state

⁴⁶ Myers, Rodd, Martua Sirait, and Dini Intarini. "Claiming the Forest: Inclusions and Exclusions under Indonesia's 'New' Forest Policies on Customary Forests." *Land Use Policy* 66 (2017): 205–213. <https://doi.org/10.1016/j.landusepol.2017.04.033>

control. Such inconsistencies create situations in which multiple government institutions may lawfully assert jurisdiction over the same territory while applying different legal standards to Indigenous land claims.⁴⁷

This fragmentation has practical implications for legal certainty. An Indigenous community may obtain recognition of its customary territory under one administrative process while simultaneously encountering concession permits issued under another statutory regime. Similarly, spatial planning decisions adopted at provincial or national levels may not fully correspond with participatory mapping undertaken by Indigenous communities or regional governments. These overlapping legal classifications complicate dispute resolution because each institution relies upon its respective statutory mandate without a unified mechanism for reconciling conflicting legal claims. Consequently, Indigenous communities frequently bear the burden of navigating multiple administrative procedures in order to secure protection of a single customary territory.

From the perspective of legal certainty, the coexistence of overlapping sectoral regulations undermines one of the fundamental objectives of the rule of law. Legal certainty requires that rights and obligations be predictable, coherent, and consistently applied across governmental institutions. Yet the Indonesian regulatory framework often produces the opposite outcome for Indigenous Peoples. While investment licensing procedures are generally supported by standardized administrative mechanisms and defined institutional authority, customary land recognition remains dependent upon discretionary administrative processes that vary considerably among regions. This asymmetry creates unequal legal protection by providing stronger institutional guarantees for concession holders than for Indigenous communities seeking recognition of pre-existing customary rights.

Accordingly, the principal legal challenge is not simply the coexistence of multiple laws but the absence of an integrated institutional framework capable of harmonizing constitutional guarantees, judicial interpretation, and sectoral governance. Without such harmonization, Indigenous land rights remain vulnerable to conflicting administrative decisions despite their constitutional recognition. The following discussion therefore examines a second institutional dimension that further weakens Indigenous territorial protection, namely the limited realization of meaningful participation in land governance and natural resource decision-making.

Beyond regulatory fragmentation, the effectiveness of Indigenous land protection is further constrained by the limited institutionalization of meaningful participation in decision-making processes concerning land and natural resource governance. Contemporary theories of democratic governance emphasize that participation should not be understood merely as the opportunity to attend public consultations or receive information regarding government policies. Rather, meaningful participation requires that affected communities possess genuine opportunities to influence decisions before they are finalized, particularly where those decisions have irreversible consequences for their livelihoods, cultural

⁴⁷ Lucas, Anton, and Carol Warren, eds. *Land for the People: The State and Agrarian Conflict in Indonesia*. (Athens: Ohio University Press, 2013).

identity, and territorial integrity.⁴⁸ Within Indigenous rights discourse, this principle has evolved into the internationally recognized standard of Free, Prior and Informed Consent (FPIC), which requires states to engage Indigenous Peoples in good faith before approving projects affecting their lands, territories, or natural resources.⁴⁹

Indonesia has increasingly incorporated participatory principles into various environmental and natural resource regulations. Environmental impact assessment procedures, spatial planning mechanisms, and certain land acquisition processes formally require public consultation. However, these procedural safeguards have not consistently translated into meaningful participation for Indigenous communities. In many instances, consultation occurs only after strategic policy choices have been made or concession boundaries have already been determined. Consequently, participation functions primarily as a mechanism for disseminating information rather than as a deliberative process through which Indigenous communities may negotiate, modify, or reject proposed developments affecting their customary territories. Such practices diverge from the substantive requirements of FPIC, which emphasize dialogue, consent, and respect for Indigenous self-determination rather than procedural compliance alone.⁵⁰

The institutional limitations of participation are closely linked to unequal bargaining power between Indigenous communities, state institutions, and corporate actors. Decisions concerning mining permits, plantation concessions, forest utilization licenses, or strategic infrastructure projects are generally supported by extensive technical assessments, cadastral data, legal expertise, and financial resources that are largely unavailable to Indigenous communities. By contrast, Indigenous representatives frequently rely upon participatory mapping, customary knowledge, oral history, and community deliberation to substantiate territorial claims. Although these forms of evidence possess considerable historical and cultural legitimacy, they are often afforded limited evidentiary value within formal administrative processes dominated by technical and bureaucratic standards. Consequently, participatory mechanisms may formally exist while substantive influence over decision-making remains highly unequal.

This imbalance illustrates a broader challenge concerning procedural justice in agrarian governance. Procedural justice requires that decision-making processes be transparent, inclusive, impartial, and responsive to the interests of all affected stakeholders.⁵¹ In the context of Indigenous land governance, procedural justice extends beyond access to consultation by ensuring that Indigenous institutions are recognized as legitimate participants within public administration. Where consultation is reduced to an administrative requirement rather than a genuine process of shared decision-making, Indigenous participation risks becoming symbolic, thereby reinforcing rather than correcting existing power asymmetries.

⁴⁸ See Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World*. See also Arnstein, Sherry R. "A Ladder of Citizen Participation." *Journal of the American Institute of Planners* 35, no. 4 (1969): 216–224. <https://doi.org/10.1080/01944366908977225>

⁴⁹ See *United Nations Declaration on the Rights of Indigenous Peoples*.

⁵⁰ Barelli, Mauro. "Free, Prior and Informed Consent in the Aftermath of the UN Declaration on the Rights of Indigenous Peoples: Developments and Challenges." *The International Journal of Human Rights* 16, no. 1 (2012): 1–24. <https://doi.org/10.1080/13642987.2011.597746>

⁵¹ Tyler, Tom R. *Why People Obey the Law*. (Princeton: Princeton University Press, 2006).

Such symbolic participation weakens the democratic legitimacy of land governance while increasing the likelihood of prolonged social conflict.

Closely related to the problem of participation is the continuing challenge of access to justice. Effective legal protection depends not only upon the existence of legal rights but also upon the availability of institutions capable of enforcing those rights fairly and efficiently. International human rights jurisprudence increasingly recognizes access to justice as an essential component of the rule of law because rights lacking effective remedies remain largely aspirational.⁵² In Indonesia, however, Indigenous communities frequently encounter substantial barriers when seeking judicial or administrative remedies against unlawful land appropriation or disputed concession decisions.

One significant obstacle concerns evidentiary requirements within administrative and judicial proceedings. Formal legal institutions generally prioritize documentary evidence, registered land titles, official cadastral records, and administrative permits when determining land ownership or territorial authority. Indigenous communities, by contrast, often possess customary evidence in the form of oral traditions, genealogical histories, customary boundaries, sacred sites, and long-standing patterns of communal occupation. Although Indonesian courts have gradually demonstrated greater willingness to consider customary evidence following constitutional developments concerning Indigenous rights, the evidentiary standards applied across different judicial and administrative forums remain inconsistent. This inconsistency contributes to legal uncertainty by limiting the ability of Indigenous communities to defend customary territories using forms of proof that reflect their own legal traditions.

Institutional fragmentation also affects dispute resolution mechanisms. Agrarian conflicts involving Indigenous territories may simultaneously involve multiple institutions, including the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), the Ministry of Forestry, regional governments, administrative courts, general courts, and, in certain circumstances, the Constitutional Court. Each institution operates under distinct procedural rules and statutory mandates, often without an integrated mechanism for coordinating decisions concerning overlapping territorial claims. As a result, dispute resolution may become lengthy, expensive, and procedurally complex, particularly for Indigenous communities with limited financial and legal resources. Such institutional complexity can itself become a barrier to justice by increasing the costs of pursuing legal remedies while reducing the predictability of legal outcomes.

The challenge of access to justice also extends beyond judicial institutions to encompass law enforcement practices. Reports by national human rights institutions and civil society organizations have documented instances in which Indigenous community members involved in land conflicts face intimidation, criminal prosecution, or restrictions on customary resource use during disputes over concession areas. While the factual circumstances of individual cases vary considerably, these patterns indicate that law enforcement responses are not always perceived as impartial by affected communities. Where criminal law is employed in the context of unresolved land disputes without prior clarification of competing territorial claims, legal enforcement risks reinforcing existing inequalities rather

⁵² See United Nations Development Programme (UNDP). *Access to Justice: Practice Note*. (New York: United Nations Development Programme, 2004).

than facilitating equitable conflict resolution. Strengthening agrarian justice therefore requires law enforcement institutions to adopt approaches that recognize the complexity of customary tenure systems while ensuring equal protection before the law.

Taken together, these institutional shortcomings demonstrate that the effectiveness of Indigenous land protection depends not only upon constitutional recognition or legislative reform but also upon the quality of governance through which legal norms are implemented. Fragmented participation, uneven access to justice, inconsistent evidentiary standards, and uncoordinated dispute resolution mechanisms collectively weaken the practical realization of Indigenous territorial rights. These findings suggest that future agrarian reform should move beyond the enactment of additional legal provisions toward comprehensive institutional transformation capable of integrating constitutional guarantees, administrative governance, and Indigenous participation within a coherent framework of agrarian justice.

IV. RECONSTRUCTING AGRARIAN JUSTICE THROUGH INDIGENOUS RIGHTS-BASED LAND GOVERNANCE

The persistence of Indigenous land dispossession demonstrates that resolving agrarian conflicts requires more than incremental legal adjustments or administrative improvements. While legal recognition, institutional reform, and dispute resolution mechanisms remain important components of Indigenous rights protection, they cannot independently address the structural inequalities embedded within Indonesia's agrarian governance system. A more fundamental transformation requires a shift in the conceptual foundation of land governance: from a state-centered approach that primarily views land as an economic resource toward a rights-based framework that recognizes Indigenous Peoples as legitimate holders of collective territorial rights. Such a transformation is essential for redefining agrarian justice in Indonesia as a framework that integrates recognition, redistribution, participation, and ecological sustainability.

The concept of agrarian justice has evolved beyond traditional approaches focused exclusively on land redistribution. Classical agrarian reform frameworks primarily emphasized the equitable allocation of land resources to address economic inequality and historical concentration of ownership. However, contemporary scholarship demonstrates that justice in agrarian relations also involves recognition of diverse forms of territorial relationships, political inclusion, and the protection of marginalized communities' cultural identities.⁵³ For Indigenous Peoples, therefore, justice cannot be achieved merely through transferring land ownership or providing compensation after dispossession. Instead, it requires recognition of customary territorial systems, protection of collective identities, and institutional arrangements that enable Indigenous communities to participate meaningfully in decisions concerning their territories.

⁵³ See Borrás, Saturnino M., Jr., and Jennifer C. Franco. "Contemporary Discourses and Contestations around Pro-Poor Land Policies and Land Governance." *Journal of Agrarian Change* 10, no. 1 (2010): 1–32. <https://doi.org/10.1111/j.1471-0366.2009.00243.x>. See also Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World*.

Within the Indonesian context, this reconceptualization requires overcoming the limitations of a predominantly administrative understanding of land rights. Current governance structures tend to recognize rights through formal legal categories, such as registered ownership, state concessions, or administrative recognition instruments. While such mechanisms provide important legal certainty, they often fail to accommodate Indigenous territorial relationships that are collective, historically embedded, and governed through customary institutions. Consequently, a rights-based approach requires legal systems to move beyond the assumption that formal registration represents the only legitimate basis for territorial claims. Instead, customary occupation, traditional governance practices, and Indigenous knowledge systems should be incorporated as legitimate foundations of territorial rights.

The first element of a reconstructed agrarian justice framework involves the harmonization of Indonesia's fragmented agrarian legal system. As demonstrated in previous sections, the coexistence of multiple sectoral regulations has created institutional uncertainty regarding the status of Indigenous territories. Therefore, legal reform should not focus solely on producing additional recognition mechanisms but should establish coherence among existing legal regimes governing land, forests, natural resources, and spatial planning. Such harmonization requires the integration of constitutional principles, Constitutional Court jurisprudence, customary law recognition, and sectoral regulations into a unified framework capable of preventing contradictory administrative decisions.

A harmonized legal framework should place Indigenous territorial rights as a foundational principle rather than as an exception dependent upon administrative approval. This approach corresponds with international developments in Indigenous rights law, which increasingly recognize that Indigenous Peoples possess inherent relationships with their traditional territories that precede state recognition.⁵⁴ The role of the state, therefore, should not be understood as creating Indigenous rights but as recognizing, protecting, and ensuring the effective enjoyment of rights that already exist through historical occupation and customary governance. Such a perspective would fundamentally alter the logic of recognition in Indonesia by shifting the burden from Indigenous communities proving the existence of their rights toward state institutions demonstrating that development interventions do not violate those rights.

The second element concerns accelerating the recognition and protection of customary territories. Although Constitutional Court Decision No. 35/PUU-X/2012 significantly strengthened the legal position of customary forests, implementation remains constrained by lengthy administrative procedures and uneven political commitment. A more effective approach requires simplifying recognition procedures while ensuring accuracy, transparency, and community participation. Participatory mapping, customary institutions, and Indigenous knowledge should become central components of territorial identification rather than merely supplementary sources of information. This approach would strengthen legal certainty while respecting the epistemological foundations of Indigenous territorial governance.

⁵⁴ Anaya, S. James. *Indigenous Peoples in International Law*. 2nd ed. (Oxford: Oxford University Press, 2004).

The importance of recognizing customary territories extends beyond questions of ownership or administrative classification. Indigenous territories frequently represent complex socio-ecological systems where cultural practices, governance institutions, and environmental management strategies are interconnected. Research demonstrates that Indigenous-managed territories often contribute significantly to biodiversity conservation and ecosystem protection because customary governance systems regulate resource use through locally adapted institutions and norms.⁵⁵ Therefore, recognizing Indigenous territories should not be framed as an obstacle to development but as a strategy for achieving more sustainable resource governance.

A third component of Indigenous rights-based agrarian justice involves institutionalizing meaningful Indigenous participation in land and resource governance. Participation should not be limited to consultation after policy decisions have been formulated but should be embedded throughout the governance cycle, including spatial planning, environmental assessment, licensing processes, and monitoring mechanisms. In this regard, the principle of Free, Prior and Informed Consent (FPIC) provides an important normative framework for ensuring that Indigenous communities possess genuine authority in decisions affecting their territories.⁵⁶ Implementing FPIC within Indonesian governance would require institutional changes that recognize Indigenous Peoples as decision-making partners rather than merely affected stakeholders.

Such participatory governance also requires strengthening Indigenous institutional capacity and representation within formal decision-making structures. Collaborative governance models provide a potential pathway by enabling state institutions, Indigenous communities, and other stakeholders to jointly manage natural resources through negotiated arrangements rather than hierarchical decision-making.⁵⁷ Applied within the Indonesian context, collaborative governance could support more equitable relationships between government authorities and Indigenous communities by combining statutory authority with customary knowledge and territorial expertise.

Ultimately, reconstructing agrarian justice requires integrating three interconnected dimensions: recognition of Indigenous territorial rights, redistribution of access and benefits from natural resources, and representation in governance processes. These dimensions correspond with Fraser's argument⁵⁸ that justice requires simultaneous transformation of economic structures, cultural recognition, and political participation. A governance framework that addresses only one dimension will remain insufficient. For example, formal recognition without participation may leave Indigenous communities vulnerable to future exclusion, while economic compensation without recognition may fail to address cultural and territorial losses. Therefore, agrarian justice must be understood as a comprehensive process of institutional transformation rather than merely a policy intervention.

⁵⁵ Garnett, et al. "A Spatial Overview of the Global Importance of Indigenous Lands for Conservation."

⁵⁶ See UNDRIP, 2007.

⁵⁷ Ansell, Chris, and Alison Gash. "Collaborative Governance in Theory and Practice." *Journal of Public Administration Research and Theory* 18, no. 4 (2008): 543–571. <https://doi.org/10.1093/jopart/mum032>

⁵⁸ See Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World*.

This rights-based reconstruction provides an alternative approach to Indonesia's agrarian governance by repositioning Indigenous Peoples from passive recipients of protection into active participants in shaping land and resource governance. Such a transformation does not reject economic development but seeks to redefine development through principles of equity, sustainability, and democratic legitimacy. The following discussion further examines how these principles can be translated into concrete institutional reforms, including regulatory harmonization, stronger legal safeguards, and sustainable governance mechanisms capable of balancing development objectives with Indigenous territorial rights.

The reconstruction of agrarian justice in Indonesia requires translating normative recognition of Indigenous rights into concrete institutional mechanisms capable of preventing future dispossession. Although rights-based approaches provide an essential conceptual foundation, their effectiveness depends upon the capacity of legal and administrative institutions to incorporate Indigenous rights principles into everyday governance practices. Therefore, strengthening agrarian justice requires simultaneous reforms in regulatory harmonization, institutional coordination, legal enforcement, and sustainable resource governance.

The first institutional priority is the establishment of a coherent and integrated regulatory framework governing Indigenous territories. As demonstrated throughout this article, one of the primary causes of continuing dispossession is the fragmented relationship between constitutional recognition of Indigenous rights and sectoral regulations governing land, forests, mining, plantations, and spatial planning. Addressing this fragmentation requires a comprehensive harmonization process that places Indigenous territorial rights as a guiding principle across all relevant regulatory sectors. Rather than treating Indigenous recognition as a special exception within sectoral laws, Indigenous rights should become an integral consideration within land allocation, licensing, and development planning procedures.

Such harmonization should include the development of a unified mechanism for identifying, recognizing, and protecting customary territories. At present, recognition processes remain dispersed among different administrative institutions, creating uncertainty regarding institutional authority and procedural requirements. A coordinated framework involving national and regional institutions would reduce administrative inconsistencies while ensuring that recognition processes are conducted transparently and participatively. This approach would also strengthen legal certainty by creating a clear relationship between customary territory recognition, spatial planning systems, land administration, and natural resource licensing.

The second priority involves strengthening legal safeguards against unlawful appropriation of Indigenous territories. Effective protection requires not only recognition of rights but also accessible remedies when those rights are violated. In this regard, Indonesia's agrarian justice framework should incorporate stronger preventive and corrective mechanisms. Preventive measures include mandatory verification of Indigenous territorial claims before issuing land-based permits, integration of customary territory maps into national spatial databases, and institutional requirements ensuring compliance with FPIC principles. Corrective mechanisms should include effective dispute resolution procedures, restoration of

unlawfully transferred territories where appropriate, and accountability mechanisms for state or private actors involved in rights violations.

The development of effective remedies is particularly important because land dispossession often produces irreversible social and ecological consequences. Compensation-based approaches alone are frequently insufficient because they fail to address the cultural and collective dimensions of Indigenous territorial loss. As Anaya⁵⁹ emphasizes, Indigenous rights involve not only economic interests but also relationships of identity, self-determination, and cultural continuity. Accordingly, remedies for Indigenous land conflicts should move beyond conventional compensation models toward restorative approaches that consider territorial restoration, community recovery, and the reconstruction of disrupted social institutions.

The third dimension of agrarian justice reconstruction concerns the transformation of Indigenous participation from procedural consultation into institutionalized co-governance. Contemporary resource governance increasingly recognizes that sustainable management requires collaboration between state institutions, local communities, and other stakeholders possessing relevant knowledge and interests.⁶⁰ In the case of Indigenous territories, co-governance provides an opportunity to combine state regulatory authority with Indigenous ecological knowledge and customary management systems. Such arrangements may include joint management institutions, participatory monitoring mechanisms, and shared decision-making frameworks concerning resource use and conservation.

The institutionalization of co-governance is particularly relevant in addressing the perceived tension between Indigenous rights and national development objectives. Development debates often construct Indigenous territorial recognition as a potential limitation on economic growth. However, this perspective overlooks evidence demonstrating that Indigenous governance systems frequently contribute to environmental sustainability, biodiversity protection, and long-term resource resilience.⁶¹ Therefore, recognizing Indigenous authority should not be framed as opposing development but as an opportunity to develop more inclusive and sustainable models of development.

A rights-based approach also requires reconsidering the meaning of state authority over natural resources. Article 33 of the Indonesian Constitution establishes that natural resources are controlled by the state and utilized for the greatest prosperity of the people. Historically, this provision has frequently been interpreted as providing broad governmental authority over land and natural resources. However, constitutional interpretation should increasingly incorporate principles of social justice, environmental sustainability, and recognition of Indigenous collective rights. State control should therefore function not as an instrument of centralized domination but as a constitutional obligation to protect the interests of all citizens, including Indigenous communities whose livelihoods depend upon customary territories.

⁵⁹ See Anaya, *Indigenous Peoples in International Law*.

⁶⁰ See Ansell, and Gash. "Collaborative Governance in Theory and Practice."

⁶¹ Garnett, et al. "A Spatial Overview of the Global Importance of Indigenous Lands for Conservation."

This reinterpretation aligns with broader developments in international environmental and human rights law, which emphasize that sustainable development requires balancing economic objectives with social equity and ecological protection. The United Nations Sustainable Development Goals, particularly those concerning reduced inequalities, sustainable communities, and climate action, reinforce the importance of inclusive governance and recognition of vulnerable communities in environmental decision-making.⁶² Within this framework, protecting Indigenous territories represents not only a human rights obligation but also an essential component of sustainable resource governance.

Based on the preceding analysis, this article proposes an Indigenous Rights-Based Agrarian Justice Framework consisting of four interconnected elements: (1) recognition justice through formal acknowledgment and protection of customary territories; (2) distributive justice through equitable access to land and natural resources; (3) procedural justice through meaningful Indigenous participation and FPIC-based governance; and (4) ecological justice through recognition of Indigenous contributions to environmental sustainability. These dimensions operate collectively rather than independently, as the absence of one element may undermine the effectiveness of the others.

The proposed framework contributes to existing agrarian justice scholarship by integrating legal, institutional, and ecological dimensions within a single analytical model. Previous studies have often examined Indigenous land rights through separate perspectives, focusing either on legal recognition, political economy, or environmental governance. By contrast, this article argues that Indigenous land dispossession must be addressed through an integrated justice framework capable of explaining both the structural causes of exclusion and the institutional pathways required for transformation. Such an approach expands the understanding of agrarian justice from a question of land redistribution toward a broader project of democratic, culturally responsive, and sustainable territorial governance.

Therefore, at this point, achieving agrarian justice in Indonesia requires a fundamental shift in the relationship between the state, Indigenous Peoples, and natural resources. The state should move from a regulatory model based primarily on control and authorization toward a governance model based on recognition, partnership, and accountability. Indigenous Peoples should no longer be positioned as passive subjects awaiting administrative recognition but as legitimate actors whose knowledge, institutions, and territorial relationships contribute to the broader goals of social justice and sustainability. Through this transformation, agrarian governance can move beyond managing conflicts after dispossession occurs and instead establish institutional conditions that prevent dispossession from occurring in the first place.

V. CONCLUSION

This article argues that Indigenous Peoples' land dispossession in Indonesia represents a manifestation of structural agrarian injustice produced through the

⁶² See Lee, Bandy X., et al. "Transforming Our World: Implementing the 2030 Agenda Through Sustainable Development Goal Indicators." *Journal of Public Health Policy* 37, no. Suppl 1 (2016): 13-31. <https://doi.org/10.1057/s41271-016-0002-7>

interaction of legal, institutional, and political-economic arrangements. The findings demonstrate that the persistence of dispossession cannot be explained solely by weaknesses in land administration or isolated conflicts between communities and development actors. Rather, it is rooted in a governance system that continues to prioritize state control, investment-oriented land allocation, and sectoral regulatory authority over the substantive recognition of Indigenous territorial rights. Although constitutional reforms and judicial developments, particularly Constitutional Court Decision No. 35/PUU-X/2012, have created important legal foundations for Indigenous protection, these advances remain insufficient without institutional transformation capable of translating recognition into effective protection. The continued gap between normative recognition and practical implementation reveals that agrarian injustice in Indonesia is fundamentally a problem of governance, power relations, and unequal access to legal authority.

The theoretical contribution of this article lies in reconceptualizing agrarian justice through an Indigenous rights-based perspective that integrates recognition, redistribution, participation, and ecological sustainability as mutually reinforcing dimensions. Unlike approaches that treat Indigenous land conflicts primarily as questions of ownership, compensation, or regulatory compliance, this study demonstrates that justice requires addressing the deeper structures that determine whose knowledge, institutions, and territorial claims are considered legitimate within agrarian governance. By combining insights from legal pluralism, political ecology, and Indigenous rights scholarship, this article advances the argument that effective agrarian reform must move beyond state-centered recognition toward a more inclusive governance framework in which Indigenous Peoples are acknowledged as collective rights holders and legitimate actors in determining the future of their territories.

The implications of this analysis extend beyond legal reform and require a broader transformation of Indonesia's approach to land and natural resource governance. Achieving agrarian justice requires the harmonization of fragmented regulatory frameworks, simplification and acceleration of customary territory recognition, strengthening of accountability mechanisms for unlawful land appropriation, and institutionalization of meaningful Indigenous participation through rights-based mechanisms such as Free, Prior and Informed Consent (FPIC). These reforms should not be interpreted as constraints on development but as necessary foundations for achieving a more legitimate, sustainable, and socially equitable development model. Ultimately, the protection of Indigenous territories represents not only a matter of human rights compliance but also a critical component of environmental sustainability and democratic governance. Indonesia's future agrarian governance therefore depends on its ability to shift from a paradigm of territorial control toward one of recognition, partnership, and shared responsibility.

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