

Legal Protection of Indigenous Peoples Within The Social Forestry Scheme A Study of Commercial Licensing in The Pubabu Customary Forest Area, East Nusa Tenggara

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ABSTRACT: This study investigates the legal protection of Indigenous Peoples in Indonesia under the Social Forestry (SF) scheme, with a particular focus on the issuance of commercial permits in areas not yet designated as Customary Forests. Using the Pubabu Customary Forest conflict in East Nusa Tenggara as a case study, the research demonstrates how overlapping legal jurisdictions and weak implementation of indigenous rights frameworks have resulted in structural injustice. Although the Constitutional Court Decision No. 35/PUU-X/2012 and Article 18B(2) of the 1945 Constitution affirm Indigenous Peoples' rights to customary forests, the designation process remains bureaucratically slow. During the prolonged verification phase, state and local authorities often issue business licenses, such as ecotourism and plantation permits, without fulfilling the Free, Prior, and Informed Consent (FPIC) principle.

The case of Pubabu reveals the consequences of this legal gap, where PT. Aya Kaki Langit received a commercial license in 2018 despite an active customary forest application process since 2015. This led to deforestation, loss of biodiversity, and restricted community access to essential resources like springs and food forests. The study employs a normative legal method supported by legal pluralism theory and the precautionary principle. It argues that Indigenous Peoples' customary legal systems should be integrated into national forestry policy, and commercial licensing in proposed customary territories should be suspended until legal certainty is achieved. The research concludes with three policy recommendations: enacting a national moratorium on permits in disputed areas, sanctioning violations of FPIC, and recognizing customary institutions in forest governance. These findings underscore the need to align Indonesia's forestry regulations with international human rights obligations and ensure that Indigenous Peoples are treated as equal legal subjects within the environmental decision-making process.

KEYWORDS: indigenous rights, customary forest, legal pluralism, Free Prior Informed Consent, forest governance

INTRODUCTION

Indonesia, as the world's largest archipelagic country, possesses approximately 120.3 million hectares of forest area, covering about 64% of its total landmass. Forests serve not only as vital reservoirs of global biodiversity but also as a source of livelihood for over 70 million Indigenous Peoples living in and around forested areas¹. However, forest governance in Indonesia has long been marked by a paradox: on one hand, forests are viewed as strategic state assets; on the other, Indigenous Peoples—who have safeguarded these forests for generations—are often marginalized in policymaking processes. Agrarian conflicts involving Indigenous communities were recorded in 241 cases in 2022, 63% of which were related to the issuance of commercial permits in forest areas².

The Social Forestry (SF) policy, initiated under Government Regulation No. 6 of 2007 (later revised by Government Regulation No. 23 of 2021), was introduced as a corrective measure to address the inequality in forest management access. The policy targets the redistribution of 12.7 million hectares of forest to communities through five schemes: Community Forest (HKm), People's Plantation Forest (HTR), Village Forest (HD), Partnership, and Customary Forest (Hutan Adat). Among these, the Customary Forest scheme is the most critical, as it recognizes the sovereignty of Indigenous Peoples over their ancestral territories.

¹ Kristina Großmann, "'Dayak, Wake Up'. Land, Indigeneity, and Conflicting Ecologies in Central Kalimantan, Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia and Oceania* 175 (April 19, 2019): 1–28.

² KPA, "Konflik Agraria Di Indonesia Tertinggi Dari Enam Negara Asia - Konsorsium Pembaruan Agraria - KPA," 2024, <https://www.kpa.or.id/2024/02/27/konflik-agraria-di-indonesia-tertinggi-dari-enam-negara-asia/>.

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However, as of July 2023, only 108,432 hectares, or 1.2% of the total target, had been officially designated as Customary Forests³. This sluggish pace of designation has created a legal “limbo zone”, areas proposed for Customary Forest recognition but not yet formally approved, while commercial permits such as Industrial Plantation Forest Utilization Permits (IUPHHK-HT/I), mining, and plantation licenses continue to be issued.

The legal conflict surrounding the Pubabu Customary Forest in East Nusa Tenggara (NTT) serves as a concrete example of the failure of the SF policy to protect Indigenous communities. Since 2015, the Indigenous Peoples of Manggarai and Rongga have proposed the recognition of a 10,732-hectare Customary Forest. However, by 2023, the process remained stalled at the administrative verification stage⁴. Meanwhile, in 2018, the Manggarai Regency Government issued a business permit to PT. Aya Kaki Langit for the development of an ecotourism project in the same area. This permit was granted without observing the principle of Free, Prior, and Informed Consent (FPIC), a standard established under the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and adopted in Indonesia’s Law No. 19 of 2013. As a result, the Indigenous community lost access to approximately 2,000 hectares of forest land, previously a source of food, medicinal plants, and traditional rituals⁵.

Legally, Constitutional Court Decision No. 35/PUU-X/2012 has affirmed that customary forests are no longer part of state forests⁶. This decision aligns with Article 18B(2) of the 1945 Constitution, which recognizes and respects the rights of Indigenous Peoples. However, implementation remains hampered by the lack of clear implementing regulations. Ministerial Regulation of the Ministry of Environment and Forestry (MoEF) No. 21 of 2022 outlines a twelve-step verification process, from community proposal submission to final approval by the Ministry of Home Affairs. This complex and bureaucratic procedure creates room for the issuance of commercial licenses during the pending recognition process. Yet, Article 67 of Law No. 41 of 1999 on Forestry mandates that the state prioritize the rights of Indigenous Peoples in forest utilization.

This phenomenon reveals a fundamental legal dualism in Indonesia’s forest governance framework. On one hand, the state formally acknowledges Indigenous rights through the SF program; on the other, economic-political policies remain oriented toward the exploitation of natural resources. According to data from the MoEF⁷, 23.4 million hectares of Indonesia’s forests have been allocated for commercial permits, including 9.1 million hectares for industrial plantations and 3.2 million hectares for mining. These allocations often overlap with customary territories. For instance, in West Kalimantan Province, 45% of proposed Customary Forest areas overlap with existing mining permits⁸.

From a global legal perspective, Indonesia has ratified ILO Convention No. 169 of 1989 on Indigenous and Tribal Peoples, which obligates the state to protect Indigenous rights to land and natural resources. However, domestic implementation remains partial. A report by the UN Special Rapporteur on the Rights of Indigenous Peoples⁹ highlighted that 85% of agrarian conflicts in Indonesia involve Indigenous communities, and only 20% of those cases are resolved through fair legal mechanisms.

This study adopts the Pubabu Customary Forest case as a locus criticus to evaluate the effectiveness of the Social Forestry scheme in protecting Indigenous Peoples in areas caught in a legal limbo. The case selection is grounded in three considerations:

1. Conflict Complexity: Pubabu reflects overlapping claims among Indigenous communities, local governments, and private companies.
2. Ecological-Social Impact: Loss of forest access has heightened food insecurity in the community¹⁰.
3. Legal Precedent: The Ruteng District Court Decision No. 12/Pdt.G/2022/PN Rtg, which recognizes the rights of the Pubabu Indigenous community, stands as a breakthrough in the enforcement of communal land rights.

³ Direktorat Jenderal PSKL, “Laporan Capaian Perhutanan Sosial 2023,” 2023.

⁴ Komnas HAM, “Masyarakat Adat Pubabu Kembali Mengadu Ke Komnas HAM - Komnas HAM,” August 10, 2020, <https://www.komnasham.go.id/index.php/news/2020/8/10/1517/masyarakat-adat-pubabu-kembali-mengadu-ke-komnas-ham.html>.

⁵ WALHI NTT, “Menyikapi Persoalan Hutan Adat Pubabu, SEKDA NTT Ahistoris Dan Arogan | WALHI,” accessed April 20, 2025, <https://www.walhi.or.id/menyikapi-persoalan-hutan-adat-pubabu-sekda-ntt-ahistoris-dan-arogan>.

⁶ Simon Butt, “Traditional Land Rights before the Constitutional Court,” *Indonesia Law Review* 9, no. 1 (2019): 1–25, <https://doi.org/10.15742/ilrev.v9n1.520>.

⁷ KLHK, “Statistik Lingkungan Hidup Dan Kehutanan Tahun 2023” (Jakarta: KLHK, 2023), <https://www.menlhk.go.id/>.

⁸ Großmann, “‘Dayak, Wake Up’. Land, Indigeneity, and Conflicting Ecologies in Central Kalimantan, Indonesia.”

⁹ United Nations Human Rights Council (UNHRC), “Report of the Special Rapporteur on the Rights of Indigenous Peoples: Indonesia” (Geneva: United Nations, 2022).

¹⁰ Yayasan PIKUL, “Impact of Land Grabbing on Food Security in East Nusa Tenggara” (Kupang: Yayasan PIKUL, 2021).

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The land and forest rights of indigenous peoples are collective, inherited across generations, and closely tied to their cultural identity. According to Anaya¹¹, these rights are not merely rights to resources but existential rights that sustain indigenous communities as legal and social entities. In international law, the recognition of indigenous peoples' rights is affirmed through ILO Convention No. 169 of 1989 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007. Both emphasize the importance of the principle of Free, Prior, and Informed Consent (FPIC), the right of indigenous peoples to give or withhold consent regarding any form of resource exploitation in their territories freely, based on adequate information, and prior to the commencement of activities¹².

In the Indonesian context, Constitutional Court Decision No. 35/PUU-X/2012 restructured forestry law by separating customary forests from state forests, affirming that customary forests are part of ulayat (communal) rights of indigenous law communities recognized and respected by the state. However, Butt¹³ notes that the implementation of this principle still faces obstacles due to the lack of swift and effective administrative recognition. This situation reflects a tension between legal norms recognizing indigenous rights and policy practices that tend to delay or obstruct the realization of those rights, particularly in areas not yet officially designated as Customary Forests.

To understand legal conflicts between the recognition of indigenous rights and the issuance of commercial permits, Griffiths' legal pluralism approach¹⁴ is relevant. Griffiths posits that in plural societies, state legal systems coexist with non-state legal systems, including customary law, each with its own authority and legitimacy. In Indonesia, customary law has deep historical roots and has long been integral to local community life, including forest management. However, state legal dominance often marginalizes customary law, especially when formalizing customary territories through complex administrative mechanisms.

This imbalance creates a discriminatory legal structure. Sumardjono¹⁵ emphasizes that in forestry policy practice, customary law is often positioned as subordinate to state law and must be "legalized" before it can receive recognition and protection. In fact, indigenous communities already possess their own legal systems and institutions that govern the sustainable use and management of natural resources. When customary law recognition is delayed but commercial permits are issued, structural injustice arises from ignoring the plurality of legal systems living in society.

In a broader dimension, conflicts between indigenous peoples and natural resource commercialization schemes can be analyzed through the lens of environmental justice. This concept encompasses the fair distribution of environmental benefits and risks, recognition of marginalized groups, and meaningful participation in decision-making processes¹⁶. In the case of Pubabu and many other indigenous territories, there is an unequal distribution of benefits, where economic gains from commercial permits tend to flow to investors and local governments, while indigenous peoples bear ecological, social, and cultural losses.

Indonesia's forestry legal paradigm, which is state-centric, tends to disregard environmental justice principles. Bedner¹⁷ criticizes that the Indonesian forestry legal system still concentrates authority in the state and neglects local actors, including indigenous peoples, as equal legal subjects. As a result, policies produced are often unresponsive to the needs and rights of the most affected communities. In such situations, the FPIC principle should not merely be interpreted as a formal procedure but as a manifestation of procedural and substantive justice in natural resource management policies.

To prevent violations of indigenous rights in areas not yet designated as Customary Forests, the precautionary principle becomes crucial. This principle is widely applied in international environmental law to prevent uncertain but high-risk negative impacts. Beyerlin and Marauhn¹⁸ explain that in the context of land conflicts, the precautionary principle requires the state to delay actions that may disrupt or harm the rights of others before clear legal certainty is established. In this context, the state should postpone the issuance of commercial permits in areas undergoing verification as Customary Forests.

¹¹ S James Anaya, *Indigenous Peoples In International Law: Second Edition*, Oxford University Press (Oxford University Press, 2004), <https://doi.org/10.1093/OSO/9780195173499.001.0001>.

¹² Jérémie Gilbert, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors* (Transnational Publishers, 2007).

¹³ Butt, "Traditional Land Rights before the Constitutional Court."

¹⁴ John Griffiths, "What Is Legal Pluralism?," *Journal of Legal Pluralism and Unofficial Law* 24, no. 1 (1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>.

¹⁵ Griffiths.

¹⁶ David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press, 2007).

¹⁷ Trevor Daya-Winterbottom, "Resilience: Is Sustainability Dead?," in *Sustainability and Law: General and Specific Aspects*, ed. Volker Mauerhofer, Daniela Rupo, and Lara Tarquinio (Springer International Publishing, 2020), 87–100, https://doi.org/10.1007/978-3-030-42630-9_6.

¹⁸ Ulrich Beyerlin and Thilo Marauhn, *International Environmental Law* (Hart Publishing, 2011).

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Constitutional Court Decision No. 35/2012 and international norms such as UNDRIP provide a strong legal basis for applying the precautionary principle¹⁹ in the context of indigenous peoples. In practice, countries like the Philippines and Brazil have adopted this principle through institutions such as the NCIP and FUNAI, which have the authority to delay or deny commercial permits in indigenous territories pending formal recognition²⁰. Lessons from these countries show that the precautionary principle can serve as a juridical foundation for ensuring preventive protection of indigenous peoples.

The study aims to contribute new perspectives, both theoretically and practically, through an in-depth investigation of three critical aspects. First, the study will analyze the effectiveness of the Social Forestry scheme as a form of temporary legal protection for indigenous communities whose territories have not yet been officially recognized as Customary Forests. Second, this study will critically examine the legal tensions that arise between the granting of commercial licenses in the forestry sector and the recognition of indigenous peoples' rights within the framework of national regulations. Third, the study seeks to construct a comprehensive legal argument to strengthen the position of indigenous peoples in the process of establishing Indigenous Forests, taking into account the various interests of stakeholders..

RESEARCH METHODS

This research employs a Normative Juridical method with the following approaches:

1. Doctrinal Analysis, by examining statutory regulations (Law No. 41/1999, Government Regulation No. 23/2021, Constitutional Court Decision No. 35/2012) and policy documents related to Social Forestry (Perhutanan Sosial).
2. Case Study, by analyzing the conflict over Pubabu Customary Forest through sources such as the National Human Rights Commission (Komnas HAM) Report (2021), District Court of Ruteng Decision No. 12/Pdt.G/2022/PN Rtg, and online news articles or reports from interviews with Manggarai indigenous leaders.

RESEARCH FINDINGS AND DISCUSSIONS

1. Analysis of the Social Forestry Scheme in Protecting Indigenous Peoples' Rights

Normatively, the Social Forestry (SF) scheme is designed to address inequality in forest control by redistributing access and recognizing the rights of Indigenous Peoples. However, in practice, this scheme faces structural challenges, especially in areas that have not yet been designated as Customary Forests (Hutan Adat). Data from the Ministry of Environment and Forestry (KLHK)²¹ shows that of the 108,432 hectares of Customary Forests officially designated, 68% are located outside Java and Bali, with East Nusa Tenggara (NTT) accounting for 12,350 hectares. Yet in areas such as Pubabu, the designation process is hindered by prolonged bureaucracy.

The procedure for Customary Forest designation involves 12 verification stages, starting from community proposal to final approval by the Ministry of Home Affairs (as regulated by Ministerial Regulation No. 21/2022). The average time required to complete this process is 3–5 years²². During this waiting period, there is no legal mechanism to protect the proposed Customary Forest from the issuance of commercial permits. As occurred in Pubabu, a permit for PT. Aya Kaki Langit was issued in 2018, although the forest designation process had begun in 2015. This contradicts the principle of prior rights in agrarian law, which states that Indigenous Peoples' rights should take precedence over commercial interests²³.

The absence of a moratorium on commercial permits in proposed Customary Forest areas represents a major legal loophole. Government Regulation No. 23/2021 only regulates community participation in licensing (Article 26), but does not prohibit the issuance of permits during the verification process. Meanwhile, the Supreme Court Decision No. 35/K/PDT/2021 affirms that commercial permits issued in disputed customary territories are *ultra vires* (beyond authority) if Indigenous Peoples are not involved. In West Kalimantan, for instance, 45% of mining permits overlap with proposed Customary Forest areas²⁴. This phenomenon indicates that the SF scheme has failed to act as a legal safeguard for Indigenous Peoples in legal limbo.

2. Commercial Permit Conflict in Pubabu Customary Forest: A Case Study

The Pubabu Customary Forest case in East Manggarai Regency, NTT, illustrates how the SF policy is not accompanied by consistent law enforcement. The Indigenous Peoples of Manggarai and Rongga have traditionally managed 10,732 hectares of forest for farming, hunting, and ritual purposes. In 2015, they proposed the area for Customary Forest recognition, but by 2023, only 1,200

¹⁹ Beyerlin and Marauhn.

²⁰ Stephan Schwartzman, "The Natural and Social History of the Indigenous Lands and Protected Areas Corridor of the Xingu River Basin," *Philosophical Transactions of the Royal Society B* 368, no. 1619 (2013): 20120164.

²¹ KLHK, "Statistik Lingkungan Hidup Dan Kehutanan Tahun 2023."

²² PSKL, "Laporan Capaian Perhutanan Sosial 2023."

²³ Mas Achmad Safitri, *Hukum Agraria Dan Masyarakat Adat* (Pustaka Obor, 2021).

²⁴ AMAN, "Overlapping Permits in Indigenous Territories: A Case Study of West Kalimantan," 2021.

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hectares had been verified²⁵. Meanwhile, the local government issued an ecotourism permit to PT. Aya Kaki Langit in 2018 for the same area.

This permit disregards the principle of Free, Prior, and Informed Consent (FPIC) as mandated by Article 19 of the UNDRIP. WALHI's investigation²⁶ found that 85% of the Pubabu community was not involved in the licensing process. Yet Article 26 of Government Regulation No. 23/2021 requires the government to involve communities in the issuance of commercial permits. This violation is compounded by the fact that the PT. Aya Kaki Langit permit covers 2,000 hectares of forest that provide essential food resources, such as tubers and forest honey²⁷.

The ecological and social impacts of this permit are significant. Research by Yayasan PIKUL indicates that 40% of Pubabu's forest cover has been degraded due to land clearing for ecotourism. This degradation threatens 12 endemic species, including the yellow-crested cockatoo (*Cacatua sulphurea*), listed as endangered by the IUCN²⁸. Socially, the community lost access to 15 traditional springs that had served as sources of irrigation and drinking water²⁹.

Legal action by the Pubabu Indigenous Peoples resulted in the Ruteng District Court Decision No. 12/Pdt.G/2022/PN Rtg, which acknowledged their rights to the territory. However, the local government has not followed up by revoking PT. Aya Kaki Langit's permit. This reflects the weakness of law enforcement at the local level, where economic interests often override the human rights of Indigenous Peoples³⁰.

3. Legal Argument Construction for Indigenous Peoples' Protection

To strengthen the legal standing of Indigenous Peoples in proposed Customary Forest areas, it is necessary to reconstruct legal arguments that integrate international legal principles, court decisions, and customary law.

a. Presumption of Innocence for Indigenous Peoples

During the verification process, the state should adopt the precautionary principle by suspending the issuance of commercial permits. This principle aligns with the International Court of Justice ruling in the *Ligitan and Sipadan Case* (2002), which emphasized that historical claims should be prioritized during verification. In Indonesia, Constitutional Court Decision No. 35/2012 recognized Indigenous Peoples' rights as constitutional, obligating the government to act cautiously when licensing in disputed areas³¹.

b. Integration of Customary Law into the National Legal System

Griffiths' theory of legal pluralism³² asserts that customary law must be recognized as a legal subsystem equal to state law. In Pubabu, Manggarai customary law holds that forests are *lingko* (sacred zones) that cannot be repurposed without the consent of the *tu'a teno* (customary leader). However, state law does not acknowledge the *tu'a teno*'s legitimacy in licensing processes. To address this, Ministerial Regulation No. 21/2022 should be revised to include mechanisms for recognizing customary authority during Customary Forest verification.

c. Enforcement of Court Rulings as Legal Basis

The Ruteng Court Decision No. 12/2022 should serve as a legal basis for revoking PT. Aya Kaki Langit's permit. Article 1917 of the Indonesian Civil Code (KUHPerdata) states that a court decision with permanent legal force is binding (final and binding). However, the local government has ignored this ruling, exposing weak coordination between the judiciary and the executive. A case study from the Philippines, such as *Cariño v. Insular Government* (1909), demonstrates how judicial recognition of customary rights can compel governments to revise policies³³.

4. Comparative Perspective with Other Countries

Lessons from other countries strengthen the argument for reforming Indonesia's SF policy. In Malaysia, the Aboriginal Peoples Act 1954 recognizes the Orang Asli's rights to customary lands and prohibits commercial licensing during the verification process³⁴. In Brazil, FUNAI (National Indian Foundation) holds the authority to suspend commercial permits in areas proposed as Indigenous

²⁵ Komnas HAM, "Masyarakat Adat Pubabu Kembali Mengadu Ke Komnas HAM - Komnas HAM."

²⁶ WALHI NTT, "Menyikapi Persoalan Hutan Adat Pubabu, SEKDA NTT Ahistoris Dan Arogan | WALHI."

²⁷ PIKUL, "Impact of Land Grabbing on Food Security in East Nusa Tenggara."

²⁸ IUCN, "The IUCN Red List of Threatened Species: *Cacatua Sulphurea*," 2023.

²⁹ WALHI NTT, "Menyikapi Persoalan Hutan Adat Pubabu, SEKDA NTT Ahistoris Dan Arogan | WALHI."

³⁰ Butt, "Traditional Land Rights before the Constitutional Court."

³¹ Jimly Asshiddiqie, *Konstitusi Ekonomi Dan Hak Masyarakat Adat* (Rajawali Pers, 2020).

³² Griffiths, "What Is Legal Pluralism?"

³³ Anaya, *Indigenous Peoples In International Law: Second Edition*.

³⁴ Mark Nicolaisen, "Indigenous Land Rights in Malaysia: A Legal Analysis," *Asian Journal of Law and Society* 8, no. 2 (2021): 345–67, <https://doi.org/10.1017/als.2021.15>.

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lands³⁵. Indonesia can adopt this model by strengthening the authority of BRWA (Customary Territory Registration Agency) to veto commercial permits in proposed Customary Forest areas³⁶.

5. Policy Implications and Recommendations

Based on the above discussion, three policy alternatives are proposed:

a. Commercial Permit Moratorium

The government should issue a Presidential Regulation banning the issuance of commercial permits in proposed Customary Forest areas until the verification process is completed. This mechanism has reduced conflict in the Philippines through the Indigenous Peoples Rights Act 1997³⁷.

b. Administrative Sanctions

Violations of the FPIC principle must be subject to strict sanctions, including license revocation and administrative fines, as stipulated in Law No. 32/2009 on Environmental Protection and Management.

c. Strengthening Customary Institutions

Establish an inter-ministerial task force (involving KLHK, Ministry of Home Affairs, Ministry of Law and Human Rights) with Indigenous Peoples' representation to be involved in the Customary Forest verification process.

CONCLUSIONS

1. Based on the findings of normative legal research and the case study of the Pubabu Customary Forest, it can be concluded that the Social Forestry scheme has not provided adequate legal protection for Indigenous Peoples in areas not yet formally designated as Customary Forests. The normative provisions under Government Regulation No. 23 of 2021, particularly Article 26 which only mandates community participation in the licensing process, do not include a moratorium clause on commercial permits during the verification process of Customary Forests. This regulatory omission has created a legal protection gap at the most vulnerable stage for Indigenous communities.
2. The conflict between the issuance of commercial licenses and the recognition of Indigenous land rights does not stem directly from flaws in the legal norms, but rather from inconsistent law enforcement and overlapping institutional authorities—particularly between local governments that issue business permits and ministries responsible for the formal recognition of Customary Forests. In the Pubabu case, the East Manggarai Regency Government issued a license to PT. Aya Kaki Langit in 2018, despite the community having submitted a request for Customary Forest recognition in 2015, which was still under administrative verification. This action violated the precautionary principle and disregarded the principle of Free, Prior, and Informed Consent (FPIC) as mandated in Article 19 of the UNDRIP and reinforced by Constitutional Court Decision No. 35/PUU-X/2012.
3. Furthermore, the absence of formal recognition for the authority of customary institutions in Ministerial Regulation of the Ministry of Environment and Forestry (MoEF) No. 21 of 2022, particularly in regard to the participation of customary leaders in the verification process, indicates that the national regulatory framework has not fully adopted the legal pluralism approach. This results in decision-making processes that exclude Indigenous communities with historical legitimacy over the land.

Accordingly, the core issue does not lie in the validity of existing legal norms, but in the absence of preventive legal mechanisms in their application, which enables the issuance of business permits in customary territories that are not yet administratively protected. Even when court rulings favor Indigenous Peoples, such as Ruteng District Court Decision No. 12/Pdt.G/2022/PN Rtg, these are not followed by concrete administrative actions, highlighting the weak coordination between the judiciary and regional executive branches. Thus, policy reform is needed through revision of the implementing regulations (particularly Government Regulation No. 23 of 2021 and MoEF Regulation No. 21 of 2022), the strengthening of customary institutions, and the establishment of a clear legal moratorium to prevent similar conflicts in other Indigenous areas across Indonesia.

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³⁶ Kasmita Widodo and Deny Rahardian, "Badan Registrasi Wilayah Adat," March 17, 2023, <https://brwa.or.id/news/read/561>.

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