

UNPACKING THE INDEPENDENCE OF THE INDIGENOUS PEOPLES BILL: A CRITIQUE

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Article	Abstract
<p>Keywords:</p> <p>Indigenous Peoples; Bill; Political Will; rights; regulations.</p> <p>DOI: 10.28946/scls.v3i1.4736</p>	<p>Although the Indigenous Peoples Bill has been included in the National Legislation Programme since 2015, it has not yet entered the discussion stage at the time of writing. The bill has not been considered a concrete necessity for indigenous peoples. Regulation of Masyarakat Hukum Adat in the form of regional regulations is sufficient to recognise their existence within Indonesian society. However, Indigenous Peoples need protection to guarantee their rights, including those relating to natural resources and land, culture, and self-determination. Therefore, what is needed is more than just administrative recognition. The aim of this paper is to criticise the stagnation of the Indigenous Peoples Bill and to promote its enactment. This paper uses the normative legal research method to achieve its objectives, namely, to criticise the stagnation of the bill due to conflicts of interest in development and the underrepresentation of indigenous peoples in the power structure.</p>

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A. INTRODUCTION

The various problems that indigenous peoples face due to development and economic needs require the state's presence to further guarantee their rights and provide them with protection. Conflicts over customary rights and the decline of traditional indigenous lifestyles are just two of the many issues they face. However, it seems that the government is not willing to push the Indigenous Peoples Bill into law. The Indigenous Peoples Bill has stagnated for a long time. It is in the planning stage of the law-making process. Various writings released by community organisations and academics concerned about indigenous peoples and the environment show that the government's lack of commitment is one of the reasons why the Indigenous Peoples Bill has not become law. Of course, in addition to the government's lack of commitment, there are other issues preventing the relevant bodies from approving the bill.

In an article released by the Indigenous Peoples Alliance of the Archipelago (AMAN), it was pointed out that the Indigenous Peoples Bill has stalled because the government is not

taking the discussions in the Special Committee (Pansus) seriously. AMAN quoted the Chairman of the Special Committee on the Recognition and Protection of the Rights of Indigenous Peoples Bill (PPHMA), as saying that 'the government is always attended by people who are not competent or authorised to make decisions regarding the PPHMA Bill'.¹

This is consistent with the views expressed by Yayan Hidayat, also from AMAN, in a policy brief. According to Yayan, the reason for the stalled discussion of the Indigenous Peoples Bill is that 'the government has never intended to treat Indigenous Peoples as a category of citizens' and 'the executive still dominates the determination of the priority of discussion and ratification of a draft law'.² Another article by Mongabay mentions five things that prevent the Indigenous Peoples Bill from being discussed in the DPR: diverse interests, experiences and knowledge; limited commitment; communication barriers; and ineffective participation.³

The stagnation of the Indigenous Peoples Bill poses a problem for the legal protection of Indigenous Peoples. The number of conflicts involving Indigenous Peoples should encourage the relevant institutions to act. Indigenous peoples in Indonesia are protected under Articles 18B (2) and 28I(3) of the 1945 Constitution. These articles translate as the state's obligation to protect the existence of Indigenous Peoples from all pressures and influences of modernity in every aspect of life. With this article, development can continue, and life transformation pursued while indigenous peoples continue to be protected by their rights, enabling them to live sustainably and ensuring that their cultural identity and traditional communities are respected in line with development and life transformation.

However, the state has not fully embraced the protection and guarantee of the rights of Masyarakat Hukum Adat. Current laws and regulations, such as Law Number 32 of 2009 on Environmental Protection and Management, last amended by Law Number 6 of 2023 on the Stipulation of Perpu Number 2 of 2022 on Job Creation; and Law Number 41 of 1999, last amended by Law Number 6 of 2023 on the Stipulation of Perpu Number 2 of 2022 on Job Creation, The Minister of Home Affairs' Regulation No. 52 of 2014 on Guidelines for the Recognition and Protection of Indigenous Peoples and regional regulations on the recognition and protection of Indigenous Peoples are insufficient to address the various problems arising from the weak recognition of Indigenous Peoples as legal subjects with special rights. Meanwhile, violations of Indigenous Peoples' rights by the state, especially about customary rights, are becoming increasingly common.⁴

These problems are further exacerbated by current global conditions. Climate change has a significant impact on the sustainability of life and the environment. Protecting indigenous peoples can be one way to preserve forests and the environment. An article by the Centre for Environmental Studies at Gadjah Mada University recognised indigenous communities as the most effective at maintaining and preserving their natural environment across generations. This is achieved without restricting the community's use of the environment for livelihood purposes. This approach contrasts sharply with the poor track record of conventional conservation, which often expels indigenous peoples and local communities from

¹ Aliansi Masyarakat Adat Nusantara, "Mengapa Indonesia Memerlukan UU Pengakuan Dan Perlindungan Hak Masyarakat Adat," 2017, accessed on May 25, 2025, <https://www.aman.or.id/wp-content/uploads/2017/04/Mengapa-Indonesia-Memerlukan-UU-Masyarakat-Adat.pdf>.

² Yayan Hidayat, "Analisis Hambatan Politik Legislasi RUU Masyarakat Adat," n.d., accessed on May 6, 2025, <https://openparliament.id/wp-content/uploads/2021/08/POLICY-BRIEF-YH-IPC-2.docx>.

³ Wahyu Chandra and Della Syahni, "Menanti UU Masyarakat Adat, Belasan Tahun Proses Tak Ada Kejelasan," Mongabay, 2023, accessed on May 26, 2025, <https://mongabay.co.id/2023/08/09/menanti-uu-masyarakat-adat-belasan-tahun-proses-tak-ada-kejelasan/>.

⁴ "Mekanisme Pengakuan Masyarakat Hukum Adat," 2015, https://bphn.go.id/data/documents/mekanisme_pengakuan_masy_hkm_adat.pdf, 3.

government-designated conservation areas. A recent study of marine protected areas in Indonesia, cited by the UGM Centre for Environmental Studies, also highlights the success of indigenous peoples in protecting conservation areas. The researchers found that areas sustainably controlled by indigenous peoples had a greater biomass than areas managed by the state, which rely on penalties for violations.⁵

The article written by the UGM Centre for Environmental Studies appears to be corroborated by various articles released by non-governmental organisations. According to WALHI, despite exploitative natural resource policies, Indigenous Peoples in Indonesia have managed to preserve 574,119 hectares of forest. In the context of climate change, the forest protection practices carried out by Indigenous Peoples have proven effective in stopping the decline in forest cover, contributing up to 34.6%. Ratification of the Indigenous Peoples Bill is expected to enhance natural resource governance in Indonesia, ensuring the protection and fulfilment of indigenous women's rights within both state and indigenous frameworks.⁶

The objectives of the Indigenous Peoples or Masyarakat Hukum Adat Bill are highly relevant to the concept of climate justice, which is closely linked to the issue of climate change. Climate justice is based on a human-centred approach that links human rights and development to protect the rights of the most vulnerable people and equitably and fairly share the burdens and benefits of climate change and its impacts.⁷ Climate justice is based on and responds to scientific evidence, recognising the need for the equitable management of the world's resources. Climate justice recognises that climate change can have negative social, economic, public health and other impacts on disadvantaged populations. It demands a shift in discourse from global warming and the greenhouse effect to a civil rights movement involving the people and communities who are most vulnerable to the impacts of climate change. These impacts include major storms and floods, increased forest fires, extreme heat, poor air quality, limited access to food and water, and the loss of coastlines. According to UNICEF, climate justice means 'linking human rights to development and climate action.'⁸

Thus, when Indonesia faces the threat of global climate change, the question arises as to why the Bill on Indigenous Peoples is stalled in Parliament. The critical question is what is causing the stagnation: is it merely legal politics, or is there a 'magical' bargaining power in the name of development within the vague realm of regulation? This paper critically examines this issue.

B. RESEARCH METHODS

This critical question is answered using a normative legal research method. This method uses secondary data collected from document studies, sourced from both primary and secondary legal materials. In this research, the primary legal materials are the 1945 Constitution of the Republic of Indonesia and the Constitutional Court Decision, while the secondary legal materials are the Bill on Customary Law Communities, as well as published and unpublished journal articles and research results. The data is analysed using a conceptual approach to determine the reasons for the stagnation of the Indigenous Peoples Bill. This

⁵ Faisol Rahman, “Peranan Masyarakat Adat Dalam Konservasi Lingkungan,” Pusat Studi Lingkungan Hidup Universitas Gadjah Mada, 2022, accessed on February 09, 2025, <https://pslh.ugm.ac.id/peranan-masyarakat-adat-dalam-konservasi-lingkungan/>.

⁶ WALHI, “Urgensi Pengesahan RUU Masyarakat Adat,” Wahana Lingkungan Hidup Indonesia (WALHI), 2020, accessed on February 09, 2025, <https://www.walhi.or.id/urgensi-pengesahan-ruu-masyarakat-adat>.

⁷ Mary Robinson Foundation, “Principles of Climate Justice,” 2022, accessed on February 09, 2025, <https://www.mrfcj.org/principles-of-climate-justice/>.

⁸ Ricca Anggraeni, “Balancing Climate Justice with Sustainable Development Needs in A Policy : Questioning about Government Regulations for National Strategic Projects Facilitation,” *Unifikasi: Jurnal Ilmu Hukum* 11, no. 1 (2024): 11–20.

research will prove the hypothesis that the stagnation of the Indigenous Peoples Bill is due to a lack of political will, based on secondary data.

C. ANALYSIS AND DISCUSSION

1. The Journey of the Indigenous Peoples Bill in Parliament

The Academic Manuscript and the Bill on Indigenous Peoples were both proposed to the House of Representatives in 2010. Even in expert news published by Universitas Airlangga, the Indigenous Peoples Bill has been promoted since 2003.⁹ Since then, it has been included in the National Legislation Programme (Prolegnas) in 2013, 2017 and 2020.¹⁰ In 2020, the bill was discussed alongside the Indigenous Peoples Bill.¹¹ However, since then, progress on the Indigenous Peoples Bill has stalled and it has not yet become law.

In fact, the Indigenous Peoples Bill could establish a new system for recognising and respecting the unity of indigenous peoples, as mandated in Article 18B of the 1945 Constitution. The government is still adhering to the principles set out in the Environmental Protection and Management Law, which states that the government is responsible for establishing policies regarding the procedures for recognising the existence of indigenous peoples, local wisdom, and the rights of indigenous peoples related to environmental protection and management.¹² Another paragraph of the same article (Article 63) also regulates the duties and authorities of the provincial government in environmental protection and management. One of these is “to establish policies regarding the procedures for recognising the existence of indigenous peoples, local wisdom, and the rights of indigenous peoples related to environmental protection and management at the provincial level”.¹³ The following paragraph specifies the duties and authorities of the regency/city government: “To implement policies regarding the procedures for recognising the existence of indigenous peoples, local wisdom, and the rights of indigenous peoples related to environmental protection and management at the regency/city level”.¹⁴

Meanwhile, the Forestry Law stipulates that “the state's control of forests continues to pay attention to the rights of customary law communities as long as they are recognised and do not conflict with national interests.”¹⁵ In its articles, the Forestry Law prioritises the existence of indigenous peoples, for example in the status and function of forests. This is the basis on which the government can take back management rights for indigenous forests. The Forestry Law also recognises customary law communities as stakeholders in the management of special-purpose forests. However, it also stipulates that protected and conservation forests can be utilised, provided this does not interfere with their function.

⁹ Muhammad Naqsyia Riwanisa, “14 Tahun RUU Masyarakat Adat Tak Disahkan, Begini Tanggapan Pakar UNAIR,” Unairnews, 2024, accessed on May 25, 2025, <https://unair.ac.id/14-tahun-ruu-masyarakat-adat-tak-disahkan-begini-tanggapan-pakar-unair/>.”

¹⁰ Madani Insight, “Menakar Perkembangan RUU Masyarakat Hukum Adat,” Madani, 2021, accessed on March 03, 2025, <https://madaniberkelanjutan.id/menakar-perkembangan-ruu-masyarakat-hukum-adat/>..

¹¹ Perkumpulan HuMa, “RUU Masyarakat Adat Dan Masa Depan Masyarakat Adat Nusantara,” HuMa, 2022, accessed on March 03, 2025, <https://www.huma.or.id/isu-strategis/ruu-masyarakat-adat-dan-masa-depan-masyarakat-adat-nusantara>.

¹² Indonesia, “Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup” (2009), Article 63.

¹³ Ibid., Article 63 (2).

¹⁴ Ibid., Article 63 (3).

¹⁵ Indonesia, “Undang-Undang Republik Indonesia Nomor 41 Tahun 1999 Tentang Kehutanan” (1999), Article 4.

The law also delegates authority to local regulations to confirm and eliminate the existence of Masyarakat Hukum Adat. This explains why various local regulations have been introduced to establish Masyarakat Hukum Adat, such as the Sorong District Regulation and the Paser District Regulation.

In 2003, the Constitutional Court (MK) issued Decision No. 10/PUU-I/2003, the Court's first decision to outline the constitutional rights of indigenous peoples. The decision clarified four requirements of Masyarakat Hukum Adat, namely:¹⁶

- a. The existence of a community in groups; the existence of customary government institutions; the existence of customary property/objects; the existence of customary legal norms and territory;
- b. In accordance with societal development, its existence is recognised under applicable laws as reflecting the development of values considered ideal today; the substance of traditional rights is recognised and respected by the relevant community and wider society, and does not conflict with human rights;
- c. In accordance with the principles of the Republic of Indonesia, it does not threaten the sovereignty and integrity of the Republic of Indonesia, and the substance of its customary legal norms is in accordance with, and does not conflict with, laws and regulations;
- d. It is regulated by law.

In addition to the Constitutional Court's decision, Decision No. 35/PUU-X/2012 changed the concept of customary forests being state forests, as specified in Article 1, Point 6, of Law No. 41/1999 on Forestry. The Constitutional Court found that certain articles of Law No. 41/1999 on Forestry conflicted with the 1945 Constitution. Article 18B(1) of the 1945 Constitution of the Republic of Indonesia states that 'The State recognises and respects units of local government that are special or of a special nature, which are regulated by law', and Paragraph (2) of the same Article states that 'The State recognises and respects customary law communities and their traditional rights, as long as they still exist, in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia'. The Constitutional Court is of the opinion that customary law communities have constitutional rights as legal subjects. Following Decision No. 35/PUU-X/2012, indigenous peoples can now manage their customary forests more effectively to fulfil their needs, thereby granting customary forests the status of rights forests.¹⁷

Thirteen years on from Constitutional Court Decision No. 35/2012, many new regulations intersecting with indigenous peoples have emerged. Although these are technical regulations, they pose a threat to the survival of indigenous peoples. These include the Forestry Ministerial Regulation (Permen) No. 62 on forest area gazettement; the Environment and Forestry Ministerial Regulation on indigenous forests and social forestry; the Home Affairs Ministerial Regulation No. 52/2014 on guidelines for recognising indigenous peoples; and the new Agrarian and Spatial Planning/State Land Agency (ATR/BPN) Regulation No. 14/2024. However, these measures are insufficient to protect the rights of indigenous peoples in the face of technological advances and global conditions.

International law also emphasises the importance of the state recognising and providing protection for the rights of indigenous peoples. The Paris Agreement, for

¹⁶ Sulaiman, Muhammad Adli, and Teuku Muttaqin Mansur, “Ketidakteraturan Hukum Pengakuan Dan Perlindungan Masyarakat Hukum Adat Di Indonesia,” *Law Reform* 15, no. 1 (2019): 12–24, <https://doi.org/10.14710/lr.v15i1.23352>.

¹⁷ Alfaenawan, “Kedudukan Hutan Adat Paska Putusan MK,” *LEX et ORDO Jurnal Hukum Dan Kebijakan* 1, no. 1 (2023): 14–21.

instance, calls for the respect of Indigenous Peoples' rights, including their rights to land and resources, and acknowledges their traditional knowledge.¹⁸ Consequently, Indigenous Peoples play a vital role in each country's efforts to fulfil its climate commitments. This further reinforces the idea that ratifying the Indigenous Peoples Bill would fulfil state obligations and demonstrate Indonesia's commitment to tackling climate change.¹⁹ During this period, the DPR and DPD re-entered the Indigenous Peoples Bill into the Priority National Legislation Programme (Prolegnas) for 2025.

2. Criticism of the Stalled Indigenous Peoples Bill

Even after two presidential periods, the Indigenous Peoples Bill remains unclear. In the era of President Joko Widodo, a Presidential Letter ordered the acceleration of the Bill, yet it still did not become law and has stagnated. The stagnation of the Indigenous Peoples Bill is caused by several factors, one of which is the government's lack of political commitment. This has been highlighted in several articles. Another cause is that the importance of the indigenous peoples issue is not recognised, meaning the state is unable to fulfil its constitutional mandate.²⁰

In addition to the above, the stalled process of the bill becoming law is also due to a lack of support from the legislature. Members of the House of Representatives are nominated by political parties and must voice the party's stance. This creates a difference between individual members of the House of Representatives and members of the House of Representatives as members of factions, who must reflect the statements of political parties.²¹ The lack of community participation in political processes in the DPR is also one of the reasons for the stagnation of the Indigenous Peoples Bill.

During President Prabowo Subianto's administration, the Indigenous Peoples Bill (RUU MHA) was proposed by the DPR and DPD for inclusion in the 2025 Priority National Legislation Programme (Prolegnas). However, indigenous peoples and those interested in natural resources and the environment should not yet be celebrating, as the bill has yet to enter the discussion stage. According to HUMA's outlook in 2020, one administrative official was found to understand the right to customary territories as private rights only. Officials in the ministry still want the Indigenous Peoples Bill to adhere to the normative framework of sectoral laws and their implementing regulations.²² Some argue that the bill should not be discussed or passed because it could hinder national strategic projects, including the Development of the Capital City of the Archipelago (IKN), which affects the interests of indigenous peoples.²³ Some parties in the DPR and the government have also argued that passing this bill could hinder national development projects, particularly in sectors such as plantations, mining, and infrastructure. This is due to the potential for land disputes between indigenous communities and companies that manage natural resources.

¹⁸ UNDP Climate Promise, "Indigenous Knowledge Is Crucial In The Fight Against Climate Change," 2023, accessed on May 26, 2025, https://climatepromise-undp-org.translate.goog/news-and-stories/indigenous-knowledge-crucial-fight-against-climate-change-heres-why?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=sge#:~:text=Masyarakat%20Adat%20adalah%20penjaga%20pengetahuan,Adat%20ke%20dalam%20kebijakan%20iklim.

¹⁹ Madani Insight, "Menakar Perkembangan RUU Masyarakat Hukum Adat."

²⁰ Riwansia, "14 Tahun RUU Masyarakat Adat Tak Disahkan, Begini Tanggapan Pakar UNAIR."

²¹ Indra Nugraha, "Kajian: Dukungan DPR Pada RUU Masyarakat Adat Rendah," Mongabay, 2019, accessed on May 26, 2025, <https://mongabay.co.id/2019/02/13/kajian-dukungan-dpr-pada-ruu-masyarakat-adat-rendah/>.

²² Mega Dwi Yulyandini, "OUTLOOK HuMa 2021: Sikap Pemerintah Dan DPR Dalam Legislasi Nasional Terkait Hak Masyarakat Adat Di Tahun 2020," HuMa, 2021, <https://www.huma.or.id/isu-strategis/outlook-huma-2021>.

²³ Badan Legislasi, "Berkaitan Dengan PSN, Pembahasan RUU Masyarakat Hukum Adat Menjadi Molor," JDIH DPR RI, 2024, accessed on March 09, 2025, <https://jdih.dpr.go.id/berita/detail/id/50890/t/javascript;>

The Indigenous Peoples Bill may not become law because the process of forming laws in Indonesia is carried out not only by the DPR, as the holder of legislative power, but also by the President, who requires joint approval. Article 20, paragraph (3), of the 1945 Constitution of the Republic of Indonesia explicitly states that “If the draft law does not receive joint approval, it may not be submitted again in the House of Representatives during that parliamentary term.” This means that an agreement between the DPR and the President is needed to turn the Indigenous Peoples Bill into law. However, if one of the parties does not take the Indigenous Peoples Bill seriously or does not consider it important for guaranteeing the rights of and providing protection for Indigenous Peoples, the bill may not become law.

The stagnation of the Indigenous Peoples Bill means that the protection and guarantee of the rights of indigenous peoples is hindered by formalistic and procedural requirements. Meanwhile, Indigenous Peoples continue to face gross human rights violations, agrarian conflicts, dispossession of customary territories, criminalisation, and violence.²⁴ According to the 2023 year-end report by the Indigenous Peoples Alliance of the Archipelago (AMAN), the situation of indigenous peoples deteriorated throughout 2023 due to legislation concerning agrarian and natural resources, as well as the denial of indigenous peoples' existence and traditional rights. Examples of such legislation include the Job Creation Law, the Amendments to the Archipelago Capital Law, and the Criminal Code.²⁵ Without the passing of the Indigenous Peoples Law, forests and the environment are at real risk of ecological disaster because, as previously mentioned, Indigenous Peoples are at the forefront of forest and environmental protection.

In addition, conflicts over land and natural resources will continue to occur, especially with the rise of the National Strategic Project (PSN). In 2018 alone, hundreds of thousands of indigenous people were affected by 326 natural resource and agrarian conflicts across Indonesia. According to Mongabay's records, these conflicts affected an area of 2,101,858 hectares and impacted up to 186,631 people, of whom 176,673 were indigenous.²⁶

Especially when linked to the Development of National Strategic Projects (PSN) and the interests of mining and plantation companies. These companies often play a crucial role in shaping policies and regulations that impact both the economy and the environment. As a result, their interests can sometimes overshadow the needs of local communities and sustainable development efforts. The Indigenous Peoples Bill has become a concern for investors, as this bill will serve as a legal umbrella to resolve land dispute conflicts that have long affected Indigenous Law Communities.

With the non-passage of the Indigenous Law Community Bill into law, this will not resolve the overlapping issues of regulations that sectoral govern Indigenous Law Communities. Like the Minister of Home Affairs Regulation Number 52 of 2014 concerning the Recognition and Protection of Customary Law Communities. In those provisions, indigenous communities must go through a series of stages conducted in a hierarchical manner to obtain legal recognition of the customary law community itself. The stages include the identification of customary law communities, verification and validation of customary law communities, and if these three stages are passed, the establishment of customary law communities is carried out as the output of these stages.

²⁴ Utari Putri Wardanti, “Melindungi Hak-Hak Masyarakat Adat,” KOMNAS HAM Republik Indonesia, 2023, accessed on March 09, 2025, <https://www.komnasham.go.id/index.php/news/2023/8/9/2403/melindungi-hak-hak-masyarakat-adat.html>.

²⁵ Aliansi Masyarakat Adat Nusantara (AMAN), “Catatan Akhir Tahun 2023 Aliansi Masyarakat Adat Nusantara,” 2023, accessed on March 09, 2025, [https://aman.or.id/files/publication-documentation/39048CATAHU AMAN 2023 - LYTD.pdf](https://aman.or.id/files/publication-documentation/39048CATAHU%20AMAN%2023-LYTD.pdf).

²⁶ Nugraha, “Kajian: Dukungan DPR Pada RUU Masyarakat Adat Rendah.”

The stagnation of the ratification of this Customary Law Community Bill can also be an obstacle for Customary Law Communities to gain clarity in administrative matters such as the National Identity Card (KTP), which has not yet been fulfilled. And, for investors, there is a potential for conflicts to arise with indigenous communities. So far, there have been many conflicts between indigenous communities and companies, especially regarding land rights recognition. This is in line with what was conveyed by the National Commission on Human Rights (KOMNAS HAM), that with the existence of the Bill on Indigenous Peoples, the rights of Indigenous Peoples will be fulfilled, respected, and protected by the State with clear, complete, and relevant regulations. There are many policies regulating indigenous peoples, but they are unclear, incomplete, and irrelevant. Therefore, with the existence of the Indigenous Peoples Law, there will be a harmonization of these policies so that they do not become obstacles in realizing human rights.²⁷ In an article released by WALHI, it is stated that the ratification of the Indigenous Peoples Bill ensures the protection and fulfilment of indigenous women's rights both in the realm of the state and in the realm of indigenous peoples. With the enactment of the Indigenous Peoples Bill, it also aims to legally regulate the guarantee of the existence of legal communities living in Indonesia as a form of citizen equality, which is important as a manifestation of respect for human rights (HR). In addition, with the presence of the Indigenous Peoples Bill, it is hoped that it can reduce the rate of criminalization against indigenous communities under the pretext of preserving customary land or implementing customary law.²⁸

If we look at the rocky path of the Customary Law/Indigenous Community Bill, Roger Cotterrell's writing in the book titled *Sociology of Law* is worth quoting: "The position of an organization within the broader power structure in society places less emphasis on the organization's negotiation of its position in relation to other organized power centers and more on its integration as part of the bureaucratic expansion in social life within the state or other large-scale power structures." Even the situational context of England quoted by Roger Cotterrell can be a key to analysis when it is said that in the context of the relationships occurring in England, between the regulator and the regulated, it cannot be simply described with the word trap. Even research results in England indicate the serious issue of the ineffectiveness of law enforcement. Stronger political pressures occur in the administration of legislation. Agencies can protect businesses from the full enforcement of laws, and businesses can offer agencies protection and support to regulatory agencies. The entire regulatory process is viewed by regulatory agencies as dependent on cooperation, goodwill, and mutual appreciation of the issues.²⁹ From what Roger Cotterrell has conveyed, it becomes very relevant to uncover the reasons behind the stagnation of the Customary Law Community/Indigenous Peoples Bill. The position of Indigenous Peoples/Customary Law Communities does not exert significant pressure within the power structure; in other words, Customary Law Communities are marginalized and vulnerable groups, thus requiring inclusivity in regulations. If compared to companies and regulatory bodies, they become larger organizations or institutions that exert significant pressure in this power structure compared to Indigenous Peoples/Customary Law Communities or non-governmental organizations focused on

²⁷ Komnas HAM Republik Indonesia, "Menyoal RUU Masyarakat Hukum Adat," *Kabar Latuharhary*, 2020, accessed on March 09, 2025, <https://www.komnasham.go.id/index.php/news/2020/6/30/1460/menyoal-ruu-masyarakat-hukum-adat.html>.

²⁸ Mochamad Januar Rizki, "Rawan Kriminalisasi, DPR Dan DPD Diminta Proses RUU Masyarakat Hukum Adat Jadi UU," *Hukum Online*, 2024, accessed on March 09, 2025, <https://www.hukumonline.com/berita/a/rawan-kriminalisasi--dpr-dan-dpd-diminta-proses-ruu-masyarakat-hukum-adat-jadi-uu-lt6743eb50c2fdd/>.

²⁹ Roger Cotterrell, *Sosiologi Hukum: The Sociology of Law, An Introduction* (Bandung: Nusamedia, 2012), 354-366.

the protection of Indigenous Peoples and the environment.³⁰ Thus, the Draft Law on Customary Law Communities does not have enough support from the Customary Law Communities themselves, making it dependent on the political will of the DPR and the government. Meanwhile, the DPD, which is an institution that stands on behalf of the regions, also has limited legislative space, including for discussions in granting agreements in a joint agreement.

Meaningful participation from the community is greatly needed, because the paradigm of the actors with regulatory authority still states that the MHA Law is not yet a concrete need for indigenous communities. The bill has the potential to cause new conflicts, revive beliefs that have not been regulated within the unity of the Republic of Indonesia, and impose a very heavy burden on the state budget. That statement is quite a stumbling block in breaking the deadlock of the Indigenous Peoples Bill. If officials who have significant negotiation pressure within the state organizational structure do not yet have a unified stance on the importance of the Indigenous Peoples/Customary Law Communities Bill to protect and guarantee the human rights of Indigenous Peoples/Customary Law Communities. Therefore, meaningful participation from the community is needed as a strong impetus to break the deadlock of the Indigenous Peoples Bill.

The Indigenous Law Community Bill will also break the regulatory deadlock on Indigenous Law Communities in Indonesia and become a significant investment in addressing the impacts of climate change, especially for vulnerable groups, in this case, Indigenous Law Communities. According to the World Bank Group, it is estimated that there are 476 million indigenous peoples worldwide. Although they make up only 6 percent of the global population, Indigenous Peoples account for about 19 percent of the extremely poor. The life expectancy of indigenous peoples is up to 20 years lower compared to the life expectancy of non-indigenous peoples worldwide. Indigenous peoples often receive little formal recognition of their land, territories, and natural resources, frequently being the last to receive public investment in basic services and infrastructure and face various barriers to fully participating in the formal economy, enjoying access to justice, and engaging in political processes and decision-making. This legacy of inequality and exclusion has made Indigenous Peoples more vulnerable to the impacts of climate change and natural disasters, including disease outbreaks.³¹ And this must end by recognizing the rights of Indigenous peoples through a law.

³⁰ Kementerian Lingkungan Hidup dan Kehutanan, “Masyarakat Adat Butuh UU,” 2018, accessed on March 08, 2025, http://perpustakaan.menlhk.go.id/pustaka/home/index.php?page=detail_news&newsid=392.

³¹ World Bank, “Indigenous Peoples,” 2025, accessed on March 05, 2025, <https://www.worldbank.org/en/topic/indigenouspeoples>.

D. CONCLUSION

The cause of the stagnation of the Indigenous Community/Customary Law Community Bill in becoming a law is the issue of legal politics or regulations from the institutions that have the authority in the formation of legislation. This regulation has not yet received dominant pressure in the name of Indigenous Peoples Bill, so over time and through various parliamentary periods, the Indigenous Peoples Bill has still not become law. This stagnation causes various issues regarding the rights and protection of customary law communities in their lives. The development of PSN, investment in the plantation sector, and mining remain strong considerations in determining regulatory steps for the Draft Law on Customary Law Communities, making this draft law considered not urgent enough to become a law. Conflict and the lack of guarantees and protection for customary law communities/Indigenous Peoples are considered less urgent, especially since customary law communities have been regulated in sectoral legislation, and even the recognition of Indigenous communities has been regulated to be established through regional regulations. The presence of the state is necessary to provide guarantees of rights protection for customary law communities/indigenous peoples. Roger Cotterrell's opinion is very relevant in stating that significant pressure is needed to become the dominant voice in the structure of state power. Those who hold economic power tend to have bargaining power over the full enforcement of laws against regulators. If the regulator does not have the same political will and continues to be caught in the ebb and flow of bargaining positions, the Indigenous Peoples Bill will continue to face stagnation.

REFERENCES

- Alfaenawan. "Kedudukan Hutan Adat Paska Putusan MK." *LEX et ORDO Jurnal Hukum Dan Kebijakan* 1, no. 1 (2023): 14–21.
- Aliansi Masyarakat Adat Nusantara. "Mengapa Indonesia Memerlukan UU Pengakuan Dan Perlindungan Hak Masyarakat Adat," 2017, accessed on May 25, 2025. <https://www.aman.or.id/wp-content/uploads/2017/04/Mengapa-Indonesia-Memerlukan-UU-Masyarakat-Adat.pdf>.
- Aliansi Masyarakat Adat Nusantara (AMAN). "Catatan Akhir Tahun 2023 Aliansi Masyarakat Adat Nusantara," 2023, accessed on March 09, 2025. <https://aman.or.id/files/publication-documentation/39048CATAHU-AMAN-2023-LYTD.pdf>.
- Anggraeni, Ricca. "Balancing Climate Justice with Sustainable Development Needs in A Policy : Questioning about Government Regulations for National Strategic Projects Facilitation." *Unifikasi: Jurnal Ilmu Hukum* 11, no. 1 (2024): 11–20.
- Badan Legislasi. "Berkaitan Dengan PSN, Pembahasan RUU Masyarakat Hukum Adat Menjadi Molor." *JDIH DPR RI*, 2024, accessed on March 09, 2025. <https://jdih.dpr.go.id/berita/detail/id/50890/t/javascript;>
- Chandra, Wahyu, and Della Syahni. "Menanti UU Masyarakat Adat, Belasan Tahun Proses Tak Ada Kejelasan." *Mongabay*, 2023, accessed on May 26, 2025. <https://mongabay.co.id/2023/08/09/menanti-uu-masyarakat-adat-belasan-tahun-proses-tak-ada-kejelasan/>.
- Cotterrell, Roger. *Sosiologi Hukum: The Sociology of Law, An Introduction*. Bandung: Nusamedia, 2012.

- Hidayat, Yayan. “Analisis Hambatan Politik Legislasi RUU Masyarakat Adat,” n.d., accessed on May 26, 2025. <https://openparliament.id/wp-content/uploads/2021/08/POLICY-BRIEF-YH-IPC-2.docx>.
- Indonesia. Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (2009).
- — —. Undang-Undang Republik Indonesia Nomor 41 Tahun 1999 Tentang Kehutanan (1999).
- Kementerian Lingkungan Hidup dan Kehutanan. “Masyarakat Adat Butuh UU,” 2018. accessed on March 08, 2025. http://perpustakaan.menlhk.go.id/pustaka/home/index.php?page=detail_news&newsid=392.
- Komnas HAM Republik Indonesia. “Menyoal RUU Masyarakat Hukum Adat.” Kabar Latuharhary, 2020, accessed on March 09, 2025. <https://www.komnasham.go.id/index.php/news/2020/6/30/1460/menyoal-ruu-masyarakat-hukum-adat.html>.
- Madani Insight. “Menakar Perkembangan RUU Masyarakat Hukum Adat.” Madani, 2021, accessed on March 03, 2025. <https://madaniberkelanjutan.id/menakar-perkembangan-ruu-masyarakat-hukum-adat/>.
- Mary Robinson Foundation. “Principles of Climate Justice,” 2022, accessed on February 09, 2025. <https://www.mrfcj.org/principles-of-climate-justice/>.
- “Mekanisme Pengakuan Masyarakat Hukum Adat,” 2015, accessed on May 25, 2025. https://bphn.go.id/data/documents/mekanisme_pengakuan_masy_hkm_adat.pdf.
- Nugraha, Indra. “Kajian: Dukungan DPR Pada RUU Masyarakat Adat Rendah.” Mongabay, 2019, accessed on May 26, 2025. <https://mongabay.co.id/2019/02/13/kajian-duktungan-dpr-pada-ruu-masyarakat-adat-rendah/>.
- Perkumpulan HuMa. “RUU Masyarakat Adat Dan Masa Depan Masyarakat Adat Nusantara.” HuMa, 2022, accessed on March 03, 2025. <https://www.huma.or.id/isu-strategis/ruu-masyarakat-adat-dan-masa-depan-masyarakat-adat-nusantara>.
- Rahman, Faisol. “Peranan Masyarakat Adat Dalam Konservasi Lingkungan.” Pusat Studi Lingkungan Hidup Universitas Gadjah Mada, 2022, accessed on February 09, 2025. <https://pslh.ugm.ac.id/peranan-masyarakat-adat-dalam-konservasi-lingkungan/>.
- Riwansia, Muhammad Naqsyah. “14 Tahun RUU Masyarakat Adat Tak Disahkan, Begini Tanggapan Pakar UNAIR.” Unairnews, 2024, accessed on May 25, 2025. <https://unair.ac.id/14-tahun-ruu-masyarakat-adat-tak-disahkan-begini-tanggapan-pakar-unair/>.
- Rizki, Mochamad Januar. “Rawan Kriminalisasi, DPR Dan DPD Diminta Proses RUU Masyarakat Hukum Adat Jadi UU.” Hukum Online, 2024, accessed on March 09, 2025. <https://www.hukumonline.com/berita/a/rawan-kriminalisasi--dpr-dan-dpd-diminta-proses-ruu-masyarakat-hukum-adat-jadi-uu-lt6743eb50c2fdd/>.
- Sulaiman, Muhammad Adli, and Teuku Muttaqin Mansur. “Ketidakteraturan Hukum Pengakuan Dan Perlindungan Masyarakat Hukum Adat Di Indonesia.” *Law*

- Reform* 15, no. 1 (2019): 12–24. <https://doi.org/10.14710/lr.v15i1.23352>.
- UNDP Climate Promise. "Indigenous Knowledge Is Crucial In The Fight Against Climate Change," 2023. accessed on May 26, 2025. https://climatepromise-undp-org.translate.google/news-and-stories/indigenous-knowledge-crucial-fight-against-climate-change-heres-why?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=sge#:~:text=Masyarakat Adat adalah penjaga pengetahuan,Adat ke dalam kebijaka.
- WALHI. "Urgensi Pengesahan RUU Masyarakat Adat." Wahana Lingkungan Hidup Indonesia (WALHI), 2020, accessed on February 09, 2025. <https://www.walhi.or.id/urgensi-pengesahan-ruu-masyarakat-adat>.
- Wardanti, Utari Putri. "Melindungi Hak-Hak Masyarakat Adat." KOMNAS HAM Republik Indonesia, 2023. accessed on March 09, 2025. <https://www.komnasham.go.id/index.php/news/2023/8/9/2403/melindungi-hak-hak-masyarakat-adat.html>.
- World Bank. "Indigenous Peoples," 2025, accessed on March 05, 2025. <https://www.worldbank.org/en/topic/indigenouspeoples>.
- Yulyandini, Mega Dwi. "OUTLOOK HuMa 2021: Sikap Pemerintah Dan DPR Dalam Legislasi Nasional Terkait Hak Masyarakat Adat Di Tahun 2020." HuMa, 2021. <https://www.huma.or.id/isu-strategis/outlook-huma-2021>.