

RECONSTRUCTION OF INDIGENOUS COMMUNITY INCLUSION IN VILLAGE AUTONOMY POLICY: Towards a Substantive Autonomy Model in Indonesia

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Abstract: This study examines the inclusion of indigenous peoples in village autonomy policies following the enactment of the Village Law (Law No. 6 of 2014). Although the law promotes decentralization and cultural recognition, its implementation remains primarily administrative, neglecting the socio-cultural realities of indigenous communities. Only a small percentage of indigenous villages are officially recognized. At the same time, structural marginalization persists due to unequal access to resources, limited political representation, and the supremacy of national law over customary law. Using a normative legal approach, this study examines the gap between legal norms and empirical practices, drawing on primary legal materials and secondary sources, including government regulations, forestry and mining laws, research findings, and case reports. The findings suggest that the Village Law's failure lies not only in bureaucratic issues but also in the absence of structural justice and legal pluralism in policy design. Procedural and uniform autonomy fails to reflect local indigenous contexts, rendering legal recognition largely symbolic. Therefore, a shift toward substantive independence is essential, grounded in recognition, subsidiarity, and legal pluralism. This approach requires harmonization of sectoral regulations, empowerment of indigenous institutions, and fiscal reform, offering a transformative path toward more just, participatory, and inclusive village governance.

Keywords: Decentralization; Indigenous Peoples; Social Justice; Village Autonomy.

Abstrak: Penelitian ini mengkaji tentang keterlibatan masyarakat adat dalam kebijakan otonomi desa pasca berlakunya Undang-Undang Desa (UU No. 6 Tahun 2014). Meskipun undang-undang tersebut mendorong desentralisasi dan

pengakuan kultural, implementasinya sebagian besar masih bersifat administratif, mengabaikan realitas sosial-budaya masyarakat adat. Hanya sebagian kecil desa adat yang diakui secara resmi, sementara marginalisasi struktural terus berlanjut karena akses yang tidak merata terhadap sumber daya, terbatasnya representasi politik, dan supremasi hukum nasional atas hukum adat. Dengan menggunakan pendekatan hukum normatif, penelitian ini menganalisis kesenjangan antara norma hukum dan praktik empiris berdasarkan bahan hukum primer dan sumber sekunder, termasuk peraturan pemerintah, undang-undang kehutanan dan pertambangan, temuan penelitian, dan laporan kasus. Temuan tersebut menunjukkan bahwa kegagalan UU Desa tidak hanya terletak pada masalah birokrasi tetapi juga pada tidak adanya keadilan struktural dan pluralisme hukum dalam desain kebijakan. Otonomi prosedural dan seragam gagal mencerminkan konteks masyarakat adat setempat, sehingga pengakuan hukum sebagian besar bersifat simbolis. Oleh karena itu, pergeseran ke arah otonomi substantif sangat penting yang didasarkan pada pengakuan, subsidiaritas, dan pluralisme hukum. Pendekatan ini memerlukan harmonisasi regulasi sektoral, pemberdayaan lembaga adat, dan reformasi fiskal, yang menawarkan jalur transformatif menuju tata kelola desa yang lebih adil, partisipatif, dan inklusif.

Kata Kunci: Desentralisasi; Masyarakat Adat; Keadilan Sosial; Otonomi Desa.

Introduction

Indigenous peoples are community units that have a relationship with ancestral territories, both historically, socially, and spiritually.¹ They apply traditional knowledge and unique conservation practices, which are passed down from one generation to the next as part of a sustainable cultural system.² Currently, their existence faces various challenges due to the processes of modernization, globalization, and development policies that are not always in line with local values.³ In this disharmony,

indigenous peoples are faced with structural marginalization of their identity, rights, and local wisdom as collective entities that should be recognized and protected.

The issue of recognizing and protecting the rights of indigenous peoples has long been a global concern on the sustainable development agenda. The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) explicitly recognizes the rights of indigenous peoples, including the right to their customary territories, resources, and participation in political affairs.⁴ However, despite this declaration, social exclusion, marginalization, and discrimination against many indigenous communities in various countries are still serious problems, especially in terms of access to basic services and participation in development.⁵ The

¹ Stephen T. Garnett et al., "A Spatial Overview of the Global Importance of Indigenous Lands for Conservation," *Nature Sustainability* 1, no. 7 (2018), <https://doi.org/10.1038/s41893-018-0100-6>.

² Eduardo S. Brondízio et al., "Locally Based, Regionally Manifested, and Globally Relevant: Indigenous and Local Knowledge, Values, and Practices for Nature," *Annual Review of Environment and Resources*, 2021, <https://doi.org/10.1146/annurev-environ-012220-012127>.

³ Kyle P. Whyte, "Indigenous Science (Fiction) for the Anthropocene: Ancestral Dystopias and Fantasies of Climate Change Crises," *Environment*

and Planning E: Nature and Space 1, no. 1-2 (2018), <https://doi.org/10.1177/2514848618777621>.

⁴ United Nations, "United Nations Declaration on the Rights of Indigenous Peoples. Resolution 61/295," *United Nations General Assembly*, 2007.

⁵ S. James Anaya and Antony Anghie, "Introduction to the Symposium on the Impact of Indigenous

implementation of protection and protection for them often faces resistance from the state on the pretext of prioritizing national sovereignty and territorial integration. It is not uncommon for states to view indigenous peoples' rights as a threat to national unity, thereby creating tension between international principles and local practices. This phenomenon often occurs, especially in developing countries.⁶

In Indonesia, the empowerment of indigenous communities is being realized through state policies that ensure the sustainability of their culture and rights. Law Number 6 of 2014 concerning Villages is one of the legal instruments that aims to encourage and empower local communities, including indigenous communities, through the principle of participatory decentralization.⁷ This policy offers opportunities for indigenous communities to gain recognition for the diversity of their social and customary systems through the implementation of village autonomy.⁸ The concept of village autonomy within the legal framework of the Village Law ideally provides recognition for indigenous communities as an integral part of Indonesia's pluralistic government system, which is in line with the constitutional

mandate to respect the rights of indigenous communities.⁹

However, on the other hand, the village autonomy policy in the Village Law faces a paradox in providing space for indigenous communities. The complexity and challenges in realizing the promise of decentralization are often confined to administrative aspects alone and do not address the cultural and social dimensions, as emphasized in the rhetoric of state policy. What has drawn considerable criticism, despite its participatory rhetoric, is that the current Village Law prioritizes bureaucratic uniformity over the socio-cultural diversity of indigenous communities.¹⁰ As if the same thing happened again during the New Order era, when Law Number 5 of 1979 imposed a uniform Javanese village model, which damaged the non-Javanese customary structures. The increasingly strong formal bureaucratization ultimately pushed aside the traditional role of indigenous communities.¹¹

The hope of providing more expansive space for the inclusion of indigenous communities after the issuance of the Village Law has not yet been realized, even a decade after its implementation. Several empirical data show that marginalization still often occurs in the form of minimal recognition by the

Peoples on International Law," *AJIL Unbound* 115 (2021), <https://doi.org/10.1017/aju.2021.11>.

⁶ Zuzana Brixiova, "Decentralization and Local Governance in Developing Countries: A Comparative Perspective," *Comparative Economic Studies* 50, no. 1 (2008), <https://doi.org/10.1057/palgrave.ces.8100233>.

⁷ Richard Timotius, "Revitalisasi Desa Dalam Konstelasi Desentralisasi Menurut Undang-Undang Nomor 6 Tahun 2014 Tentang Desa," *Jurnal Hukum & Pembangunan* 48, no. 2 (2018), <https://doi.org/10.21143/jhp.vol48.no2.1666>.

⁸ Hans Antlöv, Anna Wetterberg, and Leni Dharmawan, "Village Governance, Community Life, and the 2014 Village Law in Indonesia," *Bulletin of Indonesian Economic Studies* 52, no. 2 (2016), <https://doi.org/10.1080/00074918.2015.1129047>.

⁹ "The Indonesian Constitution" (1945).

¹⁰ Sampean, "Paradoks Revisi Undang-Undang Desa," *Kompas*, 2023, <https://www.kompas.id/baca/opini/2023/07/19/paradoks-revisi-undang-undang-des>.

¹¹ Riza Multazam Luthfy, *Potret Legislatif Desa Pasca Reformasi (Telaah Kritis Berdasarkan Undang-Undang Nomor 22 Tahun 1999 Tentang Pemerintahan Daerah Dan Undang-Undang Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah)* (Yogyakarta: Diandra Creative, 2014); Suwandi Suwandi and Teguh Setyobudi, "The Synthesis of Islamic Law and Javanese Culture A Prophetic Approach," *De Jure: Jurnal Hukum Dan Syar'iah* 12, no. 2 (2020), <https://doi.org/10.18860/j-fsh.v12i2.10090>.

state of thousands of existing communities.¹² According to records from the Indigenous Peoples Alliance of the Archipelago (AMAN), until 2022, only around 10% of the total indigenous villages had received official recognition.¹³ This reflects the structural inequality experienced by indigenous communities in accessing their fundamental rights. A condition that is further exacerbated by Indonesia's decentralization policy, which, in practice, remains under the control of both the central and regional governments. So that villages do not have full authority in determining the direction of their development.¹⁴ In other words, although village autonomy provides opportunities for indigenous communities to be more independent, the policies implemented still refer to the state administration system rather than the customary system that respects their social structure.

The Village Law was drafted as a legal instrument to strengthen the capacity of local communities through decentralization mechanisms and active participation in

development.¹⁵ After a decade of its implementation, a critical evaluation is undoubtedly needed to assess the extent to which this regulation has contributed to increasing village independence and the welfare of its people. Substantially, the Village Law emphasizes a human-centered development paradigm. The expected direction of development is not only focused on poverty alleviation, but also on strengthening social, economic, and cultural institutions at the community level, including the empowerment of indigenous communities as an inseparable part.¹⁶

Unfortunately, the role of indigenous communities is often ignored because it is considered not to provide a significant direct contribution to development. Indigenous communities have the wisdom to manage resources sustainably, which should be an integral part of the national development strategy.¹⁷ The reality shows that indigenous communities are often marginalized in the development process.¹⁸ Social exclusion occurs because the customary system is considered inferior to the national legal system.¹⁹ As a result, indigenous

¹² Jawahir Thontowi, "Perlindungan Dan Pengakuan Masyarakat Adat Dan Tantangannya Dalam Hukum Indonesia," *Jurnal Hukum Ius Quia Iustum* 20, no. 1 (2013), <https://doi.org/10.20885/iustum.vol20.iss1.art2>; Jauhar Nashrullah and Georges Olemanu Lohalo, "The Establishment of a New Autonomous Region of Papua in State Administrative Law Perspective," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 2 (2022), <https://doi.org/10.24090/volksgeist.v5i2.6901>.

¹³ Aliansi Masyarakat Adat Nusantara (AMAN), "Catatan Akhir Tahun 2023 Aliansi Masyarakat Adat Nusantara," 2023, https://aman.or.id/files/publication-documentation/39048CATAHU_AMAN_2023_LYTD.pdf.

¹⁴ J. A.C. Vel and A. W. Bedner, "Decentralisation and Village Governance in Indonesia: The Return to the Nagari and the 2014 Village Law," *Journal of Legal Pluralism and Unofficial Law* 47, no. 3 (2015), <https://doi.org/10.1080/07329113.2015.1109379>.

¹⁵ Betha Rahmasari, "Paradigma Pembangunan Desa Dalam Pengelolaan Keuangan Desa Berdasarkan Undang-Undang Nomor 6 Tahun 2014 Tentang Desa," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (2020): 117-32, <https://doi.org/10.24090/volksgeist.v3i2.4001>.

¹⁶ Timotius, "Revitalisasi Desa Dalam Konstelasi Desentralisasi Menurut Undang-Undang Nomor 6 Tahun 2014 Tentang Desa."

¹⁷ Mongabay.co.id, "Kontribusi Masyarakat Adat Dalam Pembangunan Berkelanjutan Tak Bisa Diremehkan," 2021, <https://www.mongabay.co.id/2021/03/08/kontribusi-masyarakat-adat-dalam-pembangunan-berkelanjutan-tak-bisa-diremehkan/>.

¹⁸ Djaja Hendra, "Marginalisasi Masyarakat Adat," *Jurnal Ilmiah Mimbar Demokrasi* 13, no. 2 (2014): 15-24.

¹⁹ Dedi Sumanto, "Hukum Adat Di Indonesia Perspektif Sosiologi Dan Antropologi Hukum

communities face difficulties in accessing resources and participating in development, which should be at the core of local empowerment.

This inequality reflects the existence of a structural bias in policies that prioritize modern government systems over traditional values held by indigenous communities. Ultimately, the village autonomy promised in the Village Law has the potential to widen social disparities and hinder the independence of indigenous communities in managing their territories and resources. Therefore, village autonomy should not be treated as merely an administrative project, but must be optimally utilized as an instrument to encourage and strengthen village independence, and ensure the welfare of the entire community, including indigenous communities.

A conceptual framework is necessary to understand the injustices experienced by indigenous communities in this issue. According to Nancy Fraser, achieving ideal social justice requires simultaneously addressing three dimensions: recognition, redistribution, and representation.²⁰ A just system not only provides cultural recognition but also ensures equal economic distribution, as well as meaningful political involvement. These three aspects must be fulfilled together, not separately.²¹ If there is only recognition without redistribution, indigenous communities can remain poor even though their culture is respected. If

there is only redistribution without recognition, identity injustice will continue to occur. If there is only representation without other aspects, then their voice (indigenous peoples) is only a formality without any real change in their welfare or rights. These three dimensions are interrelated and must be integrated into village autonomy policies.

There are many perspectives from several previous studies on the Village Law and the regulation of village autonomy in Indonesia. However, these studies tend to focus on administrative aspects, such as village financial management and village governance, within autonomous regions.²² Other studies on the form of customary villages also highlight additional aspects of their regulation within the national legal system, emphasizing the formal legal mechanisms of their formation.²³ On the other hand, numerous studies have discussed conflicts in customary communities triggered by state policies or private sector investments. These conflicts are generally related to issues of control over natural resources and agrarian disputes.²⁴

Islam," *JURIS (Jurnal Ilmiah Syariah)* 17, no. 2 (2018), <https://doi.org/10.31958/juris.v17i2.1163>.

²⁰ Nancy Fraser, "Reframing Justice in a Globalizing World," in *Nationalism and Global Solidarities*, 1st Editio (London: Routledge, 2006), 19, <https://www.taylorfrancis.com/chapters/edit/10.4324/9780203085981-18/reframing-justice-globalizing-world-nancy-fraser>.

²¹ Nancy Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a 'postsocialist' Age," in *The New Social Theory Reader*, 2nd Editio (Routledge, 2008), 9.

²² Antlöv, Wetterberg, and Dharmawan, "Village Governance, Community Life, and the 2014 Village Law in Indonesia."

²³ Jacqueline Vel, Yando Zakaria, and Adriaan Bedner, "Law-Making as a Strategy for Change: Indonesia's New Village Law," *Asian Journal of Law and Society* 4, no. 2 (2017), <https://doi.org/10.1017/als.2017.21>; Sarip, Nur Rahman, and Rohadi, "Hubungan Kemendagri Dan Kemendes Dalam Tata Desa Dan Administrasi Desa," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (2020), <https://doi.org/10.24090/volksgeist.v3i2.3980>.

²⁴ Dwi Wulan Pujiriyani and Widhiana Hestining Puri, "Suku Anak Dalam Batin IX Dan Konflik Seribu Hektar Lahan Sawit Asiatic Persada," *Bhumi: Jurnal Agraria Dan Pertanahan* 37, no. 1 (2013); Nurdin Karim et al., "Environmental Conservation of Coral Reefs in the Wakatobi Region Based on Islamic Education and Customary Law Approaches," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1547-65.

State policies that tend to prioritize formal ownership over customary rights held by indigenous communities often create disharmony between customary practices and state law, thus triggering long-term problems.²⁵

Although these studies have made significant contributions to understanding the Village Law and its autonomy, a research gap remains in analyzing it from a social justice perspective, particularly in terms of recognition, redistribution, and representation for indigenous communities. The dominant approach focuses more on administrative and legal-formal aspects, while the cultural and social dimensions, which are the substance of the diversity of indigenous communities, are still neglected. The lack of studies on social justice and legal pluralism in village autonomy also shows that the technocratic approach in decentralization policies has not been able to accommodate the social realities of indigenous communities. Therefore, a critical review is needed so that customary village policies are not only administrative instruments, but also reflect the principles of sustainable justice.

This research is expected to provide a perspective that village autonomy should not only focus on administrative aspects, but should also pay attention to cultural and

social dimensions. The identification of structural injustices experienced by indigenous communities to date should provide relevant policy recommendations at the local level. Thus, this research is expected to contribute to the development of fairer and more sustainable village autonomy policies, as well as enrich the discourse on the rights of indigenous peoples, especially in developing countries facing similar challenges.

Method

This study uses a normative legal approach to analyze relevant legal documents. This legal study focuses on the analysis of library materials and secondary data as its primary basis. The normative legal approach is employed to examine legal norms as expressed in laws, regulations, doctrines, and other legal literature, to theoretically and conceptually understand and explain various aspects of law.²⁶ National and local policies, as well as fiscal decentralization policies related to village autonomy and indigenous peoples, are the objects of study. This allows researchers to identify gaps and inconsistencies between legal norms and evaluate the effectiveness of decentralization policies in the context of social justice. The analysis of this legal document focuses on how the rights of indigenous peoples are recognized and implemented, as well as the impact of village autonomy policies on their social and cultural lives.

The data sources for this study comprise primary and secondary legal materials. Primary legal materials include Law Number 6 of 2014 concerning Villages, as well as other related laws and regulations, such as the Forestry Law and the Minerals and Mining Law. Meanwhile, secondary

<https://doi.org/http://dx.doi.org/10.22373/sjhk.v8i3.24067>.

²⁵ Yance Arizona and Erasmus Cahyadi, "The Revival of Indigenous Peoples: Contestation Over a Special Legislation on Masyarakat Adat," in *Adat and Indigeneity in Indonesia: Culture and Entitlements Between Heteronomy and Self-Ascription*, ed. Brigitta Hauser-Schaublin, vol. 7 (Göttingen Universitätsverlag, 2013), 43–62; Gugun El Guyanie and Aji Baskoro, "The Constitutional Rights of Indigenous Beliefs Adherents in Minority Fiqh Perspective," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (2021), <https://doi.org/10.18326/ijtihad.v21i2.155-176>.

²⁶ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cet. Ketig (Jakarta: Penerbit Universitas Indonesia (UI Press), 2008).

legal materials are obtained from reports by ministries or state institutions, as well as research from non-governmental organizations such as the Indigenous Peoples Alliance of the Archipelago (AMAN) and Forest Watch Indonesia (FWI), and several other studies. These secondary data provide an empirical picture of natural resource conflicts and the marginalization of indigenous peoples, which complement the normative analysis of legal documents. By combining normative and empirical analysis, this study aims to provide more inclusive and equitable policy recommendations for indigenous peoples in Indonesia.

Discussion

The Inconsistency of Village Autonomy in the Inclusivity of Indigenous Communities

The Village Law paradoxically offers village autonomy while building a rigid administrative framework. This model tends to adopt a one-size-fits-all approach, emphasizing technical procedures such as preparing the RPJMDs (Village Medium-Term Development Plan) and APBDs (Village Revenue and Expenditure Budget), as well as performance reporting based on national indicators.²⁷ Aspinall and Fealy's²⁸ A study criticized the fact that decentralization in Indonesia is often trapped in bureaucratic formalism, forcing villages to adhere to the same planning standards, regardless of cultural diversity and local wisdom. For example, the rules on village deliberations in the Village Law limit the space for customary participation by requiring the use of standardized document formats and meeting structures. This ignores

the principle of self-governance, which should be the core of substantive autonomy.

A tight fiscal policy further reinforces this bureaucratic tendency. Government Regulation Number 60 of 2014 concerning Village Funds regulates budget allocation based on quantitative criteria, including population and poverty rates.²⁹, which are not sensitive to the specific needs of indigenous communities, such as the protection of customary areas (ulayat), so that communities are always vulnerable to conflict.³⁰ The administrative model of the Village Law further emphasizes the logic of the modern state, which is oriented towards a state-centric view. The village authority is viewed as an extension of the central bureaucracy, rather than an autonomous entity that operates independently based on local values and traditions.³¹ As a result, the space for the inclusion of indigenous communities is increasingly reduced by procedures that should facilitate their independence.

Marginalization of indigenous peoples is not only related to bureaucracy and administration, but in a more critical approach, several events show that the concept of village autonomy tends to place indigenous peoples only as cultural symbols written in regulations. They have no significant role and participatory space for

²⁷ "Law Number 6 of 2014 Concerning Villages, Articles 72-79" (2014).

²⁸ Edward Aspinall and Greg Fealy, "Introduction: Decentralisation, Democratisation and the Rise of the Local," in *Local Power and Politics in Indonesia: Decentralisation & Democratisation* (Singapore: ISEAS Publishing, 2003), 296.

²⁹ "Government Regulation Number 60 of 2014 Concerning Village Funds" (2014).

³⁰ Boyke Sinurat, "Komnas HAM: Konflik Agraria, Masyarakat Adat Paling Rentan," 2023, <https://rri.co.id/index.php/hukum/408396/kom-nas-ham-konflik-agraria-masyarakat-adat-paling-rentan>; Citranu Citranu, "Penerapan Sanksi Tindak Pidana Adat Dayak (Singer/Denda) Terhadap Pelaku Pembakaran Hutan Dan Lahan Di Wilayah Kalimantan Tengah," *El-Mashlahah* 10, no. 1 (2020), <https://doi.org/10.23971/maslahah.v10i1.1786>.

³¹ Tania Murray Li, "Beyond 'the State' and Failed Schemes," *American Anthropologist* 107, no. 3 (2005), <https://doi.org/10.1525/aa.2005.107.3.383>.

their independence in village autonomy. So, what has happened so far is that indigenous peoples have become objects of exploitation in the policy system. Various empirical studies demonstrate that the process of resource plundering (dispossession) occurs systematically and involves multiple actors, including the state and corporations, which manage and control resources for their interests.³² In 2023, the National Human Rights Commission (Komnas HAM) received more than 700 complaints related to conflicts involving indigenous peoples. They are often the most disadvantaged parties. The Komnas HAM issued 18 letters of protection to prevent criminalization, which were specifically designed to protect indigenous peoples.³³

Some data shows various forms of marginalization for indigenous communities, as in the following table.

Table 1 Marginalization

Forms of Marginalization	Figure	Descriptions	Sources
Contradictions between village progress and the conditions of indigenous communities		The positive trend in village development following the implementation of the Village Law has left behind an irony regarding the inclusivity of indigenous communities, who are being increasingly marginalized.	https://www.kompas.id/baca/03/07/19/paradoks-revisi-undang-undang-desas

³² Komnas HAM, *Konflik Agraria Masyarakat Hukum Adat Atas Wilayahnya Di Kawasan Hutan*, ed. Muntaza Eko Cahyono, Ana Mariana, Siti Maimunah, Saurlin Erwas, Yesua Y.D.K Pellokila, Winna Khairina, and Nu Siagian, Nani Saptariyani, 1st ed. (Jakarta: Komisi Nasional Hak Asasi Manusia Republik Indonesia, 2016).

³³ Sinurat, "Komnas HAM: Konflik Agraria, Masyarakat Adat Paling Rentan."

Political interests that do not favor indigenous peoples		The government's political will remains weak, with a tendency to maintain a sectoral legal approach that separates administrative processes from the recognition of indigenous peoples.	https://a.man.or.id/files/publication-documentation/39048CA%20AMANA%202023%20-%20LYTD
Contributions that are not accommodated in government policy		Development tends to ignore the contribution of indigenous communities, which is reflected in the minimal attention from the state and the less-than-optimal recognition in village autonomy policies.	https://www.mongabay.co.id/2021/03/08/kontribusi-masyarakat-adat-dalam-pembangunan-berkelanjutan-tak-bisa-diremehkan/
Agrarian conflicts involving indigenous communities continue to increase.		Data fr. The National Human Rights Commission shows a significant increase in agrarian conflicts involving indigenous communities, with violations of the right to welfare being the most common case.	https://rri.co.id/index.php/hukum/408396/komnas-ham-konflik-agraria-masyarakat-adat-paling-rentan

The hope for indigenous peoples to obtain participatory opportunities while maintaining their local entities through the Village Law is still challenging to realize. This identity is primarily used as a symbolic instrument by the state and corporations to support the development agenda and economic policies, including the implementation of the concept of village autonomy, which encompasses indigenous villages. Within the framework of the capitalist system, local identities, such as those held by indigenous communities, are

often exploited as a means to gain legitimacy and control over land and natural resources for economic gain.³⁴

The bias of this symbolic recognition has the potential to become a means of legalizing the seizure of indigenous peoples' rights. Legal mechanisms and policies that are ostensibly designed to regulate or manage the collective rights of indigenous peoples ultimately deepen the process of marginalization.³⁵ The process of land and resource seizures is not always carried out directly, but through legal mechanisms and policies that are claimed as a form of legitimacy for the management and protection of indigenous peoples' rights.³⁶ This situation reveals that interests still drive development policies and legal protections for indigenous peoples, and have not fully supported social justice and sustainability based on local wisdom as the goal of village autonomy within the legal framework of Law Number 6 of 2014.

Based on the various facts and realities that exist, an analysis of the factors that caused the failure of the village autonomy policy in accommodating the inclusiveness of indigenous peoples can be drawn. Some of these factors include:

1. Dominance of State Intervention in Customary Village Governance

State intervention in the governance of customary villages tends towards

dominance over the living areas of customary communities. Although Village Law Number 6 of 2014 recognizes customary villages, sectoral regulations such as Forestry Law Number 41 of 1999 and Mineral and Coal Law Number 3 of 2020 still claim customary areas as state assets.³⁷ The absence of harmonization between these regulations creates legal dualism, where one side of the law provides recognition (through the Village Law). In contrast, the other side maintains the state's control approach (such as the Forestry Law and the Mineral and Coal Law).

As a consequence of this disharmony, indigenous communities face legal and bureaucratic obstacles when demanding rights to their land and resources. In practice, the recognition of indigenous villages is primarily administrative. It requires legitimacy from local governments, which, in many cases, do not take a stance or lack the political will to provide substantive recognition; however, this does not translate into more operational policies. What happened in the following periods was violations or denial of several original rights, such as socio-economic rights, socio-political rights, and socio-cultural rights inherent in the "original structure". This is a form of state failure to accommodate the diversity of

³⁴ Timo Duile, "Indigenous Peoples, the State, and the Economy in Indonesia: National Debates and Local Processes of Recognition," *Austrian Journal of South-East Asian Studies* 3, no. 1 (2020): 155–60, <https://doi.org/10.14764/10.ASEAS-0034>.

³⁵ William R.I. Sopaheluwakan et al., "Two-Decade Decentralization and Recognition of Customary Forest Rights: Cases from Special Autonomy Policy in West Papua, Indonesia," *Forest Policy and Economics* 151, no. 102951 (2023), <https://doi.org/https://doi.org/10.1016/j.forpol.2023.102951>.

³⁶ Sopaheluwakan et al.

³⁷ Recognition of customary villages in Law Number 6 of 2014 concerning Villages as a normative step in guaranteeing the existence of customary law communities is still partial and not harmoniously integrated with other sectoral legal frameworks. Forestry Law Number 41 of 1999, especially Article 1 number 4 and Article 5, explicitly includes customary forests in the category of state forests before recognition by the government. Likewise, Law Number 3 of 2020 concerning Mineral and Coal Mining (a revision of Law No. 4/2009) gives dominant authority to the state in managing mineral resources, without adequate mechanisms to accommodate the customary rights of indigenous communities.

indigenous ownership systems.³⁸ The case of the Liquefied Natural Gas (LNG) Terminal project in Intaran Traditional Village, Bali (2022) is an example of state intervention that ignores customary rights and is implemented without adequate consultation. The project imposes the state's agenda on the customary rights of local communities, despite being constitutionally contrary to Article 18B of the 1945 Constitution, which guarantees the existence and rights of indigenous legal communities.³⁹ This situation reflects a development pattern that ignores the principles of participation and local wisdom. Other empirical data also strengthens this picture, as reported by the National Commission on Violence Against Women (2008), as many as 72% of agrarian conflicts in Indonesia involve indigenous communities who are evicted due to state or corporate projects.⁴⁰ This fact indicates that instead of protecting, state policies often become instruments of domination over the living space of indigenous communities.

2. Centralistic Bureaucracy and Fund Dependency

The Village Fund Allocation (ADD) mechanism, as regulated in Government Regulation No. 60 of 2014, stipulates that distribution based on demographic and geographical variables often results in inaccurate allocation, leading to disproportionate budget distribution between villages and potentially triggering

horizontal conflict.⁴¹ This condition is exacerbated by the lack of community participation, including indigenous communities. A study in the Bandung area suggests that the limited capacity of village officials and weak supervision by the sub-district government are the primary factors contributing to the potential for misuse in the planning and budgeting process.⁴² Therefore, increasing institutional capacity and strengthening participatory supervision are crucial strategies to improve village financial governance.

The dependence of villages, including traditional villages, on central transfer funds, such as the General Allocation Fund (GAF) and Village Fund Allocation (VFA), also creates structural vulnerabilities. Studies in Papua and Bengkalis indicate that non-contextual allocations have led to the failure of around 65% of village programs.⁴³ The complexity of bureaucracy in disbursement, which requires the fulfillment of documents such as the Village Medium Term Development Plan (RPJMDes) and Village Revenue and Expenditure Budget (APBDes), further complicates the situation for villages with limited technical capacity. The accumulation of inaccurate data, bureaucratic rigidity, and weak support for local capacity emphasizes the urgency of

³⁸ Tania Murray Li, "Indigeneity, Capitalism, and the Management of Dispossession," *Current Anthropology* 51, no. 3 (2010): 385–414, <https://doi.org/https://doi.org/10.1086/652436>.

³⁹ The Indonesian Constitution, Article 18B.

⁴⁰ National Comissions on Violence Against Women, "Siaran Pers Komisi Nasional Anti Kekerasan Terhadap Perempuan Memperingati Hari Agraria, Percepat Pembaruan Agraria Berkeadilan Gender," 2022,

⁴¹ Siti Nuraini et al., "Village Funds: A Study of Community Village Monitoring," in *Proceedings of the International Conference on Management, Business, and Technology (ICOMBEST 2021)*, vol. 194, 2022, <https://doi.org/10.2991/aebmr.k.211117.011>.

⁴² Arwanto Harimas Ginting et al., "Village Fund Program in Cibeureum and Sukapura Village, Bandung Regency, Indonesia: Problems, Risks, and Solutions," *Cogent Social Sciences* 10, no. 1 (2024), <https://doi.org/10.1080/23311886.2024.2303452>.

⁴³ Novita Briliani Saragi, "Indonesia's Village Fund Program: Does It Contribute to Poverty Reduction?," *Jurnal Bina Praja*, 2021, <https://doi.org/10.21787/jpb.13.2021.65-80>.

reforming village fund governance to be more adaptive and inclusive of the social and cultural characteristics of indigenous communities.⁴⁴

3. Minimal Participation of Indigenous Peoples in Village Development

Village development planning in Indonesia remains dominated by a top-down approach from the central government to local governments, which often fails to align with local needs, particularly in traditional village areas. Although Article 79 of the Village Law requires village planning to refer to district and provincial development plans, in practice, the socialization of spatial policies from local governments often does not reach villages. Therefore, decentralization of this nature is usually hindered by bureaucratic formalism, which overlooks the principles of self-governance and regional diversity.⁴⁵

Ideally, the planning process in the context of a large area must be carried out in a participatory manner from the lower level. With fragmented social conditions and a multi-layered government system, it is often trapped in procedural formalities and faces serious representation challenges.⁴⁶ In practice, marginalized groups often lack adequate representation in the regional development planning process. The participation that is carried out usually does not reflect authentic and meaningful involvement, but rather merely fulfills the required administrative stages without a

substantive commitment to inclusiveness and social justice. In Intaran Traditional Village, Bali, strategic decisions, such as the construction of an LNG Terminal, were made by the central and provincial governments without adequately involving the indigenous communities, thereby disregarding the principles of participation and respect for customary rights (ulayat).⁴⁷

Another weakness that hinders the effectiveness of village planning is the weak institutional capacity, particularly that of the Village Consultative Institution (BPD). In traditional villages, the BPD often does not function optimally due to a lack of understanding of the customary law system and the collective rights of indigenous peoples. Additionally, political pressure from local elites renders the BPD's position less independent in carrying out its supervisory and advocacy functions for village policies.⁴⁸ The imbalance in planning structures, the exclusion of indigenous peoples from decision-making, and the overall weak institutional capacity indicate a need for reformulating the village development approach to be more participatory, contextual, and responsive to local values.

To overcome the failure of the administrative model, especially since the enactment of the Village Law, a more substantial approach is needed through a direction that places indigenous peoples as the main subject in a more substantive manner. This requires policy reform that is not only legally formal but also oriented towards social justice and the recognition of the sovereignty of indigenous peoples. This is the tangible

⁴⁴ Fajar Sidik and Muchtar Habibi, "A Prize for the Village Ruling Class: 'Village Funds' and Class Dynamics in Rural Indonesia," *Journal of Contemporary Asia* 54, no. 3 (2024), <https://doi.org/10.1080/00472336.2023.2193968>.

⁴⁵ Aspinall and Fealy, "Introduction: Decentralisation, Democratisation and the Rise of the Local."

⁴⁶ Brian Cooksey and I. Kikula, "When Bottom-Up Meets Top-Down: The Limits of Local Participation in Local Government Planning in Tanzania," *Research on Poverty Alleviation*, no. Special Paper No: 17 (2005).

⁴⁷ Suriyani, "Aksi Protes Warga Desa Adat Intaran Sanur Terhadap Rencana Proyek Terminal LNG."

⁴⁸ Abdul Chalik, *Pertarungan Elite Dalam Politik Lokal* (Yogyakarta: Pustaka Pelajar, 2017), [http://repository.uinsa.ac.id/id/eprint/1336/1/ Abdul Chalik_Pertarungan Elite dalam Politik Lokal.pdf](http://repository.uinsa.ac.id/id/eprint/1336/1/Abdul%20Chalik_Pertarungan%20Elite%20dalam%20Politik%20Lokal.pdf).

manifestation of the constitutional mandate.⁴⁹ Substantive autonomy will require the recognition of indigenous peoples' territories as parallel autonomous entities, not subordinate to the state's legal system. The customary-based village autonomy model must have full authority to regulate itself based on their legal system as an autonomous entity. The hierarchical view that has ignored the role of indigenous communities in effectively controlling their lives⁵⁰, as well as narrowing the space for the sustainability of their autonomy, must be immediately removed. By recognizing indigenous villages as a whole as parallel autonomous entities, the state can create space for more inclusive and equitable legal pluralism.⁵¹

Reconstructing Indigenous Peoples' Inclusivity Through The Substantive Autonomy Model

Reconstruction of indigenous peoples' inclusiveness through the substantive autonomy model requires the integration of three pillars: legal harmonization, strengthening of indigenous institutions, and fiscal policy reform. This approach not only supports legal pluralism and distributive justice but also addresses the failure of administrative autonomy that has so far ignored the rights of origin.

1. The Concept of Substantive Autonomy as a Basis for Reconstruction

The concept of substantive autonomy emphasizes the importance of recognizing the rights of indigenous peoples to exercise self-governance based on their customary legal systems, local wisdom, and ecological sustainability principles that have been

passed down through generations.⁵² This approach is fundamentally different from administrative autonomy, which tends to be limited to the delegation of bureaucratic authority without touching on the dimensions of identity and the original rights of indigenous peoples. Referring to Van Vollenhoven's (1918) thinking, indigenous peoples are viewed as *rechtsgemeenschap* or legal communities that possess internal sovereignty, obliging the state to recognize their original rights as legitimate elements within the framework of constitutional sovereignty.⁵³

Normatively, substantive autonomy has strong legitimacy as stated in various national and international legal instruments. Article 18B Paragraph (2) of the 1945 Constitution explicitly recognizes the existence of the unity of indigenous legal communities along with their traditional rights, as long as they are still alive, and by the principles of a unitary state.⁵⁴ Further strengthening is also stated in Law Number 6 of 2014 concerning Villages, which provides space for customary villages to regulate and manage community interests based on ancestral rights. At the international level, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, particularly Articles 3 and 4, affirms the rights of indigenous peoples to self-determination and exercise autonomy within

⁴⁹ The Indonesian Constitution, Article 18B.

⁵⁰ Hendra, "Marginalisasi Masyarakat Adat."

⁵¹ Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a 'postsocialist' Age."

⁵² Benjamin J Richardson, "The Ties That Bind: Indigenous Peoples and Environmental Governance," in *Indigenous Peoples and the Law*, 2021, <https://doi.org/10.5040/9781509955565.ch-013>.

⁵³ C van Vollenhoven, *Het Adatrecht van Nederlandsch-Indië, Het Adatrecht van Nederlandsch-Indië*, 2023, <https://doi.org/10.1163/9789004592971>.

⁵⁴ The Indonesian Constitution, Article 18B.

the state structure.⁵⁵ Thus, substantive independence is not only declarative, but also a constitutional right that should be implemented in real terms in development policies and governance of customary areas.

2. Elimination of Structural Barriers and Sectoral Regulatory Conflicts

Reconstruction of village autonomy policies must begin with the elimination of structural obstacles that stem from sectoral regulatory conflicts and non-inclusive bureaucratic practices. One source of disharmony is the enactment of Forestry Law Number 41 of 1999, which still stipulates around 90% of customary areas as state forests or mining concessions.⁵⁶ This position is contrary to the spirit of recognizing customary rights in the Village Law, as well as the Constitutional Court Decision Number 35/PUU-X/2012 which has emphasized that customary forests are not part of state forests.⁵⁷ Data from Forest Watch Indonesia (FWI) shows that in Papua, there is a significant discrepancy between mining permits and customary areas, reaching 85%.⁵⁸ The lack of harmonization between regulations and the weak political will of state institutions means these judicial decisions have no implementative impetus.

In addition to the regulatory aspect, state dominance in the bureaucratic structure is also a significant obstacle to recognizing the substantive autonomy of customary villages. As stated by Aspinall and Fealy (2003), decentralization in Indonesia tends to be

state-centric, with local governments remaining the dominant actors in budget management and spatial planning, and indigenous communities having minimal involvement.⁵⁹ The Indigenous Peoples Alliance of the Archipelago (AMAN) noted that only around 12% of indigenous villages have succeeded in gaining recognition through Regional Regulations, most of which are constrained by administrative burdens and local political resistance.⁶⁰

Furthermore, formal procedures such as village deliberations (*musrenbangdes*) are often unable to bridge the values and interests of indigenous communities. According to James C. Scott (1998), the modern state usually simplifies local diversity into a technocratic administrative scheme that overlooks social reality.⁶¹ A notable example is the conflict on Rempang Island, where the implementation of the Special Economic Zone (KEK) project was carried out without adhering to the principle of Free, Prior, and Informed Consent (FPIC), thereby triggering social resistance.⁶² This condition highlights the need for a comprehensive overhaul of the regulatory

⁵⁵ United Nations, "United Nations Declaration on the Rights of Indigenous Peoples. Resolution 61/295."

⁵⁶ "Law Number 41 of 1999 Concerning Forestry" (1999).

⁵⁷ Constitutional Court of the Republic of Indonesia, "Decision Number 35/PUU-X/2012 Concerning the Judicial Review of the Forestry Law" (2013).

⁵⁸ Forest Watch Indonesia, *Bioregion Papua: Hutan Dan Manusianya* (bogor: Forest Watch Indonesia (FWI), 2019).

⁵⁹ Aspinall and Fealy, "Introduction: Decentralisation, Democratisation and the Rise of the Local."

⁶⁰ Aliansi Masyarakat Adat Nusantara (AMAN), "Catatan Akhir Tahun 2023 Aliansi Masyarakat Adat Nusantara."

⁶¹ James C Scott, "Chapter Title: Thin Simplifications and Practical Knowledge: Mētis Book Title: Seeing Like a State Book Subtitle: How Certain Schemes to Improve the Human Condition Have Failed," in *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, 1998; Thomas Johnson and James C. Scott, "Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed," *African Studies Review* 44, no. 1 (2001), <https://doi.org/10.2307/525426>.

⁶² SETARA Institute for Democracy and Peace, "Tragedi Pulau Rempang: Jangan Korban Rakyat Untuk Proyek Strategis Nasional," *Siaran Pers*, 2023, <https://setara-institute.org/tragedi-pulau-rempang-jangan-korbankan-rakyat-untuk-proyek-strategis-nasional/>.

and bureaucratic structures, enabling the substantive and fair recognition of the collective rights of indigenous communities.

3. *Strengthening of Legal Principles and Recommendations for Substantive Autonomy Policy*

To reconstruct a more inclusive and equitable village autonomy policy, the application of relevant legal principles is an essential normative basis. The principle of recognition, as stated in Article 18B Paragraph (2) of the 1945 Constitution, provides constitutional legitimacy for the existence of customary law communities and their traditional rights.⁶³ The principle of subsidiarity places local authority as the main principle, where state intervention is only carried out if local communities are unable to resolve their problems. The principle of legal pluralism, as stated by Franz von Benda-Beckmann, emphasizes the importance of equal dialogue between state law and customary law as legitimate normative systems. Benda-Beckmann highlights that recognition of diverse legal systems can reduce conflict and increase the legitimacy of policies at the local level.⁶⁴

From a policy perspective, harmonizing sectoral regulations is an urgent initial step, including revisions to the Forestry Law and the Mineral and Coal Law, to recognize customary rights (*ulayat*) explicitly. The implementation of the Regulation of the Minister of Home Affairs of Indonesia Number 52 of 2014 concerning the recognition of customary villages also needs to be strengthened so that it is not only

administrative but also substantive.⁶⁵ Strengthening the institution of customary villages can be done through the establishment of an Independent Customary Council that functions as an intermediary between customary communities and the state, as well as the adoption of the principle of Free, Prior, and Informed Consent (FPIC) as stipulated in UNDRIP (2007) in every development planning process.⁶⁶ In terms of finance, the Village Fund allocation system must be reformed so that it is not solely based on quantitative parameters such as population or area, but also considers ecological and cultural aspects. An example of success can be seen in the implementation of the Customary Village Fund in Bali, which integrates local principles, such as the Subak System, in water management.⁶⁷ Theoretically, this recommendation is supported by John Rawls' perspective in *A Theory of Justice*.⁶⁸, which emphasizes the importance of redistributing resources to ensure justice for vulnerable groups, including indigenous peoples who have been marginalized in state policies.

Based on these three pillars, the reconstruction of the inclusiveness of indigenous communities in the village through the substantive autonomy model will mark a crucial step in building fair,

⁶⁵ "Regulation of the Minister of Home Affairs of Indonesia Number 52 of 2014" (2014).

⁶⁶ United Nations, "United Nations Declaration on the Rights of Indigenous Peoples. Resolution 61/295."

⁶⁷ Coordinating Ministry for Maritime Affairs and Investment of Indonesia, "Subak, Sistem Pertanian Di Bali Sarat Filosofi, Tradisi Menjaga Alam Dan Budaya," 2022, <https://maritim.go.id/detail/subak-sistem-pertanian-di-bali-sarat-filosofi-tradisi-menjaga-alam-dan-budaya>.

⁶⁸ John Rawls, *A Theory of Justice* (New York: Harvard University Press, Belknap Press, 1971), <https://doi.org/https://doi.org/10.2307/j.ctvjf9z6v>.

⁶³ The Indonesian Constitution.

⁶⁴ Franz Von Benda-Beckmann and Keebet Von Benda-Beckmann, "Myths and Stereotypes about Adat Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles over Adat Law in Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 167, no. 2-3 (2011).

participatory governance rooted in the recognition of indigenous ancestral rights. This model rejects the technocratic administrative approach and replaces it with a focus on strengthening the self-governance rights of indigenous communities through the integration of customary law, local wisdom, and ecological sustainability principles. With the support of the principles of recognition, subsidiarity, and legal pluralism, substantive autonomy necessitates the harmonization of exploitative sectoral regulations, the establishment of independent customary institutions, and fiscal policy reform grounded in ecological and cultural justice. This approach is not only a response to structural marginalization, but also a conceptual offer to correct the state's bias towards legal and development centralism. Therefore, the reconstruction of village autonomy based on substantive recognition is not only a legal agenda, but also a strategy for socio-political transformation towards more inclusive, just, and dignified governance for indigenous communities.

To strengthen substantive village autonomy, the principles of social justice must be the primary basis in the formulation and implementation of policies. Justice as recognition demands respect for the customary legal system and cultural identity of indigenous communities, so that their rights can be legally recognized in governance. Meanwhile, redistributive justice emphasizes the importance of equal access to natural and economic resources, so that indigenous communities do not experience marginalization in development. In addition, representational justice must be guaranteed through inclusive political participation for indigenous communities in the decision-making process, both at the local and national levels. By ensuring that these principles are implemented in village autonomy policies, it is hoped that indigenous communities can be sovereign in

managing their territories and achieve sustainable prosperity without compromising their identity and rights.⁶⁹

According to Nancy Fraser's theory of justice, social justice encompasses three primary dimensions: redistribution, recognition, and representation. Redistribution relates to the fair distribution of economic resources; recognition concerns respect for the identity and culture of marginalized groups; while representation relates to equal political participation in decision-making.⁷⁰ In village autonomy, these three dimensions must be integrated to achieve comprehensive justice for indigenous communities.

The implementation of village autonomy policies for indigenous communities must be able to accommodate these three dimensions so that they not only provide legal recognition but also guarantee fair access to resources and active involvement in the political process. Formal recognition through legal regulations must be followed by fair redistribution of resources and equal political representation. Without the integration of these three dimensions, village autonomy policies risk becoming merely symbolic without providing real change for indigenous communities. Therefore, an approach that combines recognition, redistribution, and representation is crucial to achieving substantial social justice for Indigenous communities. Administrative decentralization is insufficient without a more substantive "epistemic decentralization" that values local wisdom and acknowledges the contributions of indigenous communities. This requires a paradigm shift in state policy, from a top-down to a bottom-up approach, involving

⁶⁹ United Nations, "United Nations Declaration on the Rights of Indigenous Peoples. Resolution 61/295."

⁷⁰ Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a 'postsocialist' Age."

indigenous communities as equal partners in the development process.

Conclusion

The failure of the Village Law to provide genuine autonomy for indigenous communities is not only a technical-bureaucratic issue, but also reflects the absence of a structural justice orientation and recognition of legal plurality in the design of village policies. Procedural and uniform autonomy has proven incapable of answering the needs of indigenous communities living in a unique social, cultural, and ecological framework. The primary criticism of the current Village Law stems from its tendency to affirm autonomy at the declarative level. Still, it ties its implementation to a hierarchical and centralistic state administration framework. This causes recognition of indigenous communities to become symbolic, without adequate space for actualization in village governance.

In this context, reconstruction towards a substantive autonomy model becomes a conceptual and strategic necessity. This model, grounded in the principles of recognition, subsidiarity, and legal pluralism, provides a new direction in formulating village policies that are fairer, more participatory, and contextually relevant. Three main pillars should drive this policy: the harmonization of sectoral regulations that have been exploitative and fragmented, the establishment of independent and empowered customary institutions within the framework of self-governance, and fiscal policy reform that supports ecological and cultural justice.

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