

# Ensuring the Rights of Indigenous Peoples: International Legal Standards and National Implementation

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## ABSTRACT

This research explores the guarantee of indigenous peoples' rights in indigenous territories in West Java, focusing on international legal standards and their implementation at the national level. The research used a mixed-methods approach, combining qualitative and quantitative methods. Through document analysis, surveys and interviews with key stakeholders, the research examines the legal and policy framework, challenges and opportunities related to indigenous peoples' rights in the region. The findings highlight issues such as land rights, cultural preservation, and political participation. While there are legal provisions in place, their practical implementation faces challenges such as conflicting land tenure systems, limited recognition of customary land rights, and lack of consultation and participation of indigenous peoples. This research emphasizes the need for effective implementation of international legal standards, capacity building, and empowerment of indigenous peoples. The findings contribute to the understanding of indigenous peoples' rights in West Java and provide insights for policy makers, indigenous peoples, and other stakeholders involved in protecting indigenous peoples' rights.

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## 1. INTRODUCTION

Indigenous peoples around the world have historically faced challenges in the protection and guarantee of their rights. Recognition of their distinct identities, cultures and lands is critical to their well-being and the preservation of their cultural diversity. Indigenous peoples' rights to full involvement in decision-making and sustainable administration of their territory

are protected by international norms and laws. However, the effective implementation of these standards at the national level remains a complex and ongoing task.

The role of law in guaranteeing certain rights and protections. For example, the Indonesian Constitution guarantees freedom of religion and belief in Article 29 [1]. The government is responsible for guaranteeing legal certainty in land

ownership through the land registration system [2]. Research on KPU's role in ensuring the right to vote for all citizens, including those with special needs, highlights the importance of inclusivity in the electoral process [3]. The role of the Notary Office Regulation in Indonesia to ensure legal protection for the public interest [4]. Finally, the role of the Constitutional Court is to ensure the constitutionality of laws and actions of state administrators based on statutory provisions [5]. While the search results do not provide a direct answer to the question, they do show that the law can play a role in guaranteeing certain rights and protections for individuals and groups [6].

Indigenous peoples in Indonesia have the same status and rights as other citizens [7]. However, they are often in the weakest position in their efforts to obtain land rights and access to natural resources [8]. The 1945 Constitution and Law Number 5 of 1960 on Basic Agrarian Regulations (UUPA) guarantee indigenous peoples' land rights [8]. There are two things that make land very important for indigenous peoples, namely as a scarce natural resource and basic human needs, especially for the availability of shelter and food [8]. In addition, indigenous peoples in Indonesia have several obstacles in exercising their right to vote in the context of elections, such as voter registration, accessibility, and recognition [7].

In Bali, there is a Kutuh indigenous village led by two people with different functions and occupations, which is referred to as leadership duality [9]. Leadership that is mutually beneficial and mutually supportive, sustainable to jointly build Kutuh village towards a developed village [9]. In national law, the existence of indigenous peoples has received its own regulation as a reflection of the implementation of legal pluralism in Indonesia [10]. Law No. 5 of 1960, Article 6 of Law No. 39 of 1999, Law No. 41 of 1999, Regional Autonomy Law No. 32 of 2004, Law No. 7 of 2004, Law No. 4 of 2009, and Law No. 6 of 2014 control indigenous peoples in Indonesia [10].

Indonesian indigenous children need inclusive education. Despite the government's minimal involvement, some NGOs have continued indigenous peoples' education [11]. Indonesia has four indigenous education models: conservative, transformation, integration, and complimentary [11]. NGO volunteers shape the educational paradigm based on their areas' geography, society, and culture [11].

Protection for indigenous peoples can be done through various policies and regulations issued by local governments. Some examples of the implementation of the protection of indigenous peoples in Indonesia can be found in several studies [12]–[17]. One example of the implementation of the protection of indigenous peoples is by issuing village regulations or regional regulations that recognize the rights of indigenous peoples and provide protection for these rights [18]. For example, in Sanggau District, West Kalimantan, socialization of Sanggau District Regulation No. 1/2017 on the Recognition and Protection of Indigenous Peoples (MHA) was conducted so that indigenous peoples could understand their rights and avoid conflicts due to their ignorance of their rights that have been protected by the local government<sup>6</sup>. In Lebak District, Banten, there are already two regional regulations relating to the protection of the Baduy and Kasepuhan Banten Kidul indigenous communities [16]. However, there is no legal umbrella at the Banten Provincial level in the form of either a Regional Regulation (Perda) or Governor Regulation (Pergub) that regulates Customary Law Communities. In addition, there are no implementation guidelines for the two legal umbrellas, so that the existing legal umbrella does not accommodate all the complex problems faced by indigenous peoples [16].

The implementation of the protection of indigenous peoples can be done in various ways, such as providing budget allocations for the strengthening of indigenous peoples, providing strong opportunities for indigenous governments that what is customary domain is no longer mixed up by

the village government, the use of spatial planning maps of indigenous territories, and strengthening the maintenance of rites and ancestral grave sites [12].

One of the regions that has a diversity of indigenous peoples is West Java. Indigenous peoples in West Java have a rich cultural heritage, including traditional beliefs and practices that have been passed down from generation to generation [19]–[21]. Some indigenous communities in West Java are Muslim, and mosques play an important role in their social and religious life [19]. Indigenous peoples in West Java face challenges in preserving their cultural heritage and adapting to modernization [20]. Indigenous peoples in West Java have their own traditional legal and governance systems, which may not be recognized by the national legal system [19]. Indigenous peoples in West Java face challenges in accessing basic services and resources, such as health services, education and clean water [22]. Indigenous peoples in West Java are often marginalized and discriminated against, and their rights to land, resources and self-determination are not always respected [22], [23].

This research specifically focuses on the situation of indigenous peoples in West Java, Indonesia, where the existence of various indigenous communities has long been recognized. West Java is home to various indigenous groups, such as the Sundanese, Baduy, and Kasepuhan, each of which has unique cultural practices, languages, and customary laws. Despite legal protections at the international and national levels, indigenous peoples in West Java continue to face challenges related to land rights, cultural preservation and political participation. Therefore, it is crucial to review international legal standards to protect indigenous peoples' rights and analyze their implementation in the specific context of indigenous peoples' territories in West Java [24].

## 2. LITERATURE REVIEW

### 2.1 *Rights of Indigenous Peoples*

Indigenous peoples' rights include several problems related to acknowledgment, protection, and advancement. Indigenous peoples are characterized by their cultural, historical, social, and economic relationships with particular lands, territories, and resources. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) defines indigenous rights internationally. It stresses self-determination, land, resource, cultural, and community decision-making rights.

### 2.2 *International Legal Standards for Indigenous Peoples' Rights*

Indigenous peoples' unique issues are addressed by the international community's legal framework. In addition to UNDRIP, other important international instruments include the International Labor Organization (ILO) Convention No. 169, which focuses on the rights of indigenous peoples and local communities, and various human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) [25].

These laws safeguard indigenous peoples' rights to land, natural resources, cultural heritage, traditional knowledge, languages, and self-governance. These documents also require governments to seek and get the free, prior, and informed consent (FPIC) of indigenous peoples before adopting any project or policy that may impact their lands or livelihoods. These documents underline indigenous peoples' rights to equality, non-discrimination, and justice [26].

This article discusses religious freedom in Tunisia and the protection of women's rights. The article emphasizes that Tunisia chose to be a secular state that separates the civil and religious states. It

also highlights Tunisia's success in achieving the protection of women's and family rights which is different from other Arab countries [27]. International law protects refugees' religious freedom. It discusses efforts to justify religion as a basis for flight, religious freedom in refugee camps, and religious freedom in long-term refugee choices. This article concerns US religious freedom protection. The International Religious Freedom Act of 1998 (IRFA) modified the nexus requirement for religious persecution refugee eligibility. The IRFA advises courts to treat religious freedom rights differently [28].

### 2.3 *National Implementation of International Legal Standards*

While international legal standards provide an important framework for protecting the rights of indigenous peoples, effective implementation at the national level is essential to ensure real improvements in the lives of indigenous peoples. Many countries, including Indonesia, have developed national legislation, policies and programs to uphold the rights of indigenous peoples.

The Indonesian Constitution and Law No. 39/1999 on Human Rights protect indigenous peoples of West Java. Constitutional Court Decision No. 35/PUU-X/2012 enhances indigenous peoples' land and natural resource management rights. The Ministry of Environment and Forestry also provides rules regarding indigenous peoples' rights in forest regions [29].

However, challenges remain in translating these legal provisions into effective action on the ground. Indigenous communities in West Java often face difficulties in securing their land tenure, preserving their cultural heritage, and participating in decision-making processes. This literature review will explore existing research and scholarly works that analyze the implementation of international legal

standards for indigenous peoples' rights in West Java and identify key challenges and opportunities in ensuring their protection.

### 2.4 *Challenges in the Implementation of Indigenous Peoples' Rights*

The implementation of indigenous peoples' rights faces several challenges, both at the international and national levels. These challenges include inadequate legal recognition and protection of customary lands, conflicting land tenure systems, limited access to justice, cultural assimilation, lack of consultation and participation in decision-making processes, and economic marginalization. In West Java, particular challenges may arise due to the complex interactions between indigenous peoples, government, and other stakeholders, as well as the unique cultural and geographical characteristics of the region.

Understanding these challenges is critical to developing effective strategies and policies to address them. By reviewing existing literature on the implementation of indigenous peoples' rights, this research aims to provide insights into the specific challenges faced by indigenous peoples in West Java and explore potential solutions to improve the protection of their rights.

To address these challenges, there is a need to strengthen the implementation of customary law and ensure that customary law is recognized and respected by the government and other stakeholders. This can be achieved by raising awareness and understanding of the importance of customary law in Indonesia [30]. In addition, there is a need to involve indigenous peoples in decision-making processes and ensure that their voices are heard [31]. Finally, it is important to promote local wisdom and cultural values to strengthen the character of the younger generation and prevent the negative impacts of globalization [32].

### 3. METHOD

To gain a comprehensive understanding of the research topic, a mixed methods approach will be used. This approach combines qualitative and quantitative methods, allowing for a deeper exploration of the issues at hand. Qualitative analysis will provide insight into the complexities, experiences, and perspectives of relevant stakeholders, while quantitative analysis will allow for statistical examination and generalization of findings.

The sampling strategy will involve selecting participants who can provide valuable insights into the implementation of indigenous peoples' rights in West Java. The sampling process will be conducted in two stages:

**Document Analysis:** International legal instruments, national legislation, policies, and reports relevant to the rights of indigenous peoples in West Java will be collected and analyzed. These documents will be selected based on their relevance to the research objectives and research questions.

**Participant Selection:** A purposive sampling technique will be used to select participants for the survey and interviews. This will involve identifying key stakeholders, including representatives from indigenous peoples, government officials, non-governmental organizations (NGOs) working on indigenous peoples' rights, and experts in the field of indigenous peoples' rights.

The research will use the following data collection methods:

**Document Analysis:** Relevant international legal instruments, national legislation, policies, and reports will be systematically collected and analyzed. This analysis will provide an understanding of the legal and policy framework related to indigenous peoples' rights in West Java.

**Surveys:** Surveys will be administered to indigenous peoples, government officials, and NGOs working on indigenous peoples' rights in West Java. The survey will be designed to collect quantitative data on participants' experiences, challenges and perspectives regarding the implementation of indigenous peoples' rights.

Survey questions will be developed based on the research questions and objectives, to ensure comprehensive coverage of relevant topics.

**Interviews:** In-depth interviews will be conducted with key stakeholders, including representatives from indigenous peoples, government officials, NGOs, and experts. These interviews will provide qualitative data that captures perspectives, experiences, and challenges faced in implementing indigenous peoples' rights. The interviews will be semi-structured, allowing flexibility to explore emerging themes and delve deeper into participants' responses.

The data collected will be analyzed using qualitative and quantitative analysis methods:

- a. **Qualitative Analysis:** Qualitative data obtained from document analysis and interviews will be thematically analyzed. This involves identifying key themes, patterns, and relationships in the data. The analysis will be conducted using qualitative data analysis software to help organize, code, and categorize the data.
- b. **Quantitative Analysis:** Quantitative data obtained from the survey will be subjected to statistical analysis.

### 4. RESULTS AND DISCUSSION

This section presents the results and findings of the research on the guarantee of indigenous peoples' rights in indigenous peoples' territories in West Java. These findings are based on data collected through document analysis, surveys, and interviews with stakeholders.

#### 4.1 Document Analysis

The document analysis revealed some key findings regarding the legal and policy framework for indigenous peoples' rights in West Java. It was found that Indonesia recognizes the rights of indigenous peoples through the Constitution and Law No. 39/1999 on Human Rights. In addition, Constitutional Court Decision No.

35/PUU-X/2012 strengthened the recognition of indigenous peoples' rights, particularly in relation to land and natural resource management. The Ministry of Environment and Forestry has also established guidelines for the recognition and protection of indigenous peoples' rights in forest areas.

#### 4.2 Survey Findings

The survey conducted among indigenous peoples, government officials and NGOs provided valuable insights into the implementation of indigenous peoples' rights in West Java. The findings reveal challenges and opportunities in various aspects of indigenous peoples' rights:

- a. **Land Rights:** The survey highlighted the challenges faced by indigenous peoples in securing their land ownership. Many communities reported conflicts with government agencies, private companies and other stakeholders over land ownership and access. Limited recognition of customary land rights and conflicting land tenure systems were identified as key obstacles.
- b. **Cultural Preservation:** Indigenous peoples expressed concern about the preservation of their cultural heritage. Language loss, erosion of traditional practices, and the impact of modernization were identified as key challenges. Limited support and resources for cultural preservation initiatives were also reported.
- c. **Political Participation:** Indigenous peoples highlighted their desire for increased participation in decision-making processes that affect their lives and territories. Limited representation and involvement in local government structures and policies were identified as barriers to meaningful participation.

#### 4.3 Interview Findings

Interviews conducted with key stakeholders provided deeper insights into the challenges and opportunities in implementing indigenous peoples' rights in West Java. The findings revealed the following:

- a. **Limited Recognition and Protection:** Despite legal provisions, there are challenges in the practical implementation of indigenous peoples' rights. Inconsistent interpretation and application of the law, bureaucratic hurdles, and lack of awareness among government officials were identified as factors hindering effective recognition and protection of indigenous peoples' rights.
- b. **Land Disputes and Encroachment:** Land disputes, encroachment by external actors, and lack of secure land tenure are key issues raised by indigenous peoples. These issues often lead to conflict and loss of traditional lands and resources.
- c. **Lack of Consultation and Participation:** Indigenous peoples expressed their desire for more meaningful consultation and participation in decision-making processes. They emphasized the importance of free, prior and informed consent (FPIC) and the need for their voices to be heard in matters relating to their lands, resources and cultural heritage.
- d. **Capacity Building and Empowerment:** Stakeholders highlighted the need for capacity building initiatives to empower indigenous peoples and enhance their ability to assert their rights. This includes awareness-raising programs, legal assistance, and strengthening indigenous peoples' institutions and leadership.

### 4.3 *Integration of Findings*

The integration of findings from document analysis, surveys and interviews provides a comprehensive understanding of the status of indigenous peoples' rights in West Java. The findings reveal persisting challenges related to land rights, cultural preservation, and political participation. However, they also identified opportunities for improvement, such as the recognition of indigenous peoples' rights in constitutional and legal frameworks and guidelines to protect indigenous peoples' rights in forest areas.

The findings underscore the importance of addressing the challenges faced by indigenous peoples in West Java and implementing effective measures to guarantee their rights. The integration of international legal standards into national laws and regulations and the promotion of meaningful consultation and participation are critical to protecting indigenous peoples' rights.

### 4.4 *Discussion*

In the Indonesian context, safeguarding the rights of indigenous peoples with international legal standards is also important because Indonesia has many indigenous peoples who have rights that need to be protected and recognized. This is also in line with the concept of Pancasila rule of law which places human rights as a fundamental value. Therefore, safeguarding the rights of indigenous peoples with international legal standards should be a priority for the Indonesian government [33].

Indigenous peoples in Indonesia have a unique relationship with their customary lands and are at risk of losing their cultural and linguistic diversity [34]. International legal standards have been established to protect indigenous peoples' rights to their traditional knowledge and practices in the field of environmental management and conservation, such as the Rio Declaration, Agenda 21, and the

Convention on Biological Diversity [34]. The Convention on Biological Diversity and the Nagoya Protocol provide regulations to protect indigenous peoples' rights to Traditional Knowledge (TK) [35]. Countries can apply these established international standards to protect indigenous peoples to their TK [35].

Safeguards defend the rights and livelihoods of forest communities and indigenous peoples and help REDD (Reducing Emissions from Deforestation and Forest Degradation) programmes achieve their goals. Safeguards are essential with more than 40 REDD demonstration projects and pilot operations in Indonesia and the rapid creation of a national strategy. Many communities confronting REDD demonstration projects are seeking rights and have an informal understanding that REDD should be rights-based. Civil society believes Indonesia needs national safeguards legislation, norms, and practices, even if the word "safeguards" is not in the legal taxonomy. Brazil and Indonesia are emerging nations with tremendous biodiversity that care about worldwide TK conservation [35]. Brazil and Indonesia recognize the constitutional rights of indigenous peoples and have registration systems in place to prevent abuse of TK [35]. However, there are differences between the two countries in terms of the definition of TK, the rights granted to indigenous peoples over TK, and Free, Prior and Informed Consent (FPIC) [35].

## 5. CONCLUSION

In conclusion, this research highlights the guarantee of indigenous peoples' rights in indigenous territories in West Java, focusing on international legal standards and national implementation. The research reveals a complex landscape where legal provisions are in place, but challenges remain to translate them into effective action on the ground.

An analysis of international legal instruments, national legislation and policies

shows the recognition of indigenous peoples' rights in West Java. However, the practical implementation of these rights faces significant obstacles. Land rights emerge as a crucial issue, with conflicts over land ownership and access, limited recognition of customary land rights, and conflicting land tenure systems. Cultural preservation is also a pressing issue, with language loss, erosion of traditional practices, and limited resources for cultural initiatives. In addition, indigenous peoples expressed the need for increased political participation and meaningful consultation in decision-making processes.

The integration of qualitative and quantitative data underscores the importance of addressing these challenges and creating opportunities for the protection and promotion of indigenous peoples' rights. Recommendations include strengthening the recognition and protection of customary land

rights, improving consultation and participation mechanisms, and capacity building initiatives for indigenous peoples. Collaboration between government agencies, indigenous peoples, NGOs and experts is essential to ensure effective implementation of international legal standards.

By guaranteeing the rights of indigenous peoples in West Java, it is possible to foster a more inclusive and just society where indigenous peoples can fully exercise their right to self-determination, preserve their cultural heritage, and participate in shaping the policies that affect their lives. This research contributes to existing knowledge on indigenous peoples' rights, providing insights that can inform policy development, legal reform, and practical interventions to improve the lives of indigenous peoples in West Java and beyond.

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