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Legal-Political Reform for Indigenous Peoples' Rights Based on *Maslahah* Principles

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Abstract

The rights of indigenous peoples have been normatively recognized but remain ambiguous, triggering marginalization, agrarian conflict, criminalization, and the loss of their living space. This study analyzes legal ambiguity and its implications for protecting indigenous peoples' rights and makes legal-political reforms based on the *maslahah* principle. This study adopts a normative legal method with a statutory, conceptual, and philosophical approach based on Islamic law. The research findings indicate that the ambiguity of norms in the recognition and protection of indigenous peoples' rights has created legal uncertainty and strengthened the dominance of state and corporate economic-political interests over indigenous territories. Disharmony in sectoral regulations and the lack of recognition of indigenous peoples as legal subjects have weakened their



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collective rights' protection. The orientation of agrarian legal politics, emphasizing administrative and procedural approaches, has not fully achieved substantive justice in the protection of indigenous peoples' rights. This study provides a legal-political reform model based on the *masalah* principle as a philosophical foundation for national legal reform, oriented toward protecting the public interest and preventing harm. The reform model is directed through the integration of Islamic legal values into the national legal system, strengthening the constitutional and regulatory recognition of indigenous communities, harmonizing agrarian and sectoral regulations, and affirming collective rights to indigenous territories. Through this framework, the protection of indigenous peoples' rights will be realized in a just, legally certain, responsive, and public welfare-oriented manner.

KEYWORDS: Agrarian conflict; Customary land rights; Indigenous peoples; *Maslahah*; Substantive justice

Abstrak

Hak-hak masyarakat adat telah diakui secara normatif, namun masih bersifat ambigu sehingga memicu marginalisasi, konflik agraria, kriminalisasi, serta hilangnya ruang hidup masyarakat adat. Studi ini menganalisis ambiguitas hukum dan implikasinya terhadap perlindungan hak-hak masyarakat adat serta merumuskan reformasi politik hukum berdasarkan prinsip masalah. Penelitian ini mengadopsi metode hukum normatif, dengan pendekatan perundang-undangan, konseptual, dan filosofis berbasis hukum Islam. Temuan penelitian menunjukkan bahwa ambiguitas norma dalam pengakuan dan perlindungan hak masyarakat adat telah menimbulkan ketidakpastian hukum serta memperkuat dominasi kepentingan ekonomi-politik negara maupun korporasi atas wilayah adat. Disharmoni regulasi sektoral dan belum tegasnya pengakuan masyarakat adat sebagai subjek hukum turut memperlemah perlindungan hak kolektif mereka. Orientasi politik hukum agraria yang masih menitikberatkan pada pendekatan administratif dan prosedural belum sepenuhnya mampu mewujudkan keadilan substantif dalam perlindungan hak masyarakat adat atas wilayah adat. Studi ini menawarkan model reformasi politik hukum berbasis prinsip masalah yang berorientasi pada perlindungan kemaslahatan umum dan pencegahan kerugian sebagai landasan filosofis reformasi hukum nasional. Model reformasi diarahkan melalui integrasi nilai-nilai hukum Islam ke dalam sistem hukum nasional, penguatan pengakuan konstitusional dan regulatif terhadap masyarakat adat, harmonisasi regulasi agraria dan sektoral, dan penegakan hak kolektif atas wilayah adat. Melalui kerangka tersebut diharapkan terwujud perlindungan hak-hak masyarakat adat yang berkeadilan, berkepastian hukum, responsif, dan berorientasi pada kemaslahatan umum.

KATA KUNCI: Hak ulayat; Konflik agraria; Keadilan substantif; Masyarakat adat; Masalah.

Introduction

The rights of indigenous peoples in Indonesia have been normatively recognized in the Basic Agrarian Law. However, this recognition remains ambiguous because of being limited by several requirements, such as the recognition of the existence of indigenous peoples, their suitability to national interests, and compliance with existing laws and regulations.¹ These conditions create broad interpretative discretion for the state, which often results in governmental subjectivity in determining the existence and validity of indigenous rights.² As a result, indigenous peoples occupy a marginalized position when confronted with state policies and development agendas, even though customary rights are hereditary in nature and have long existed as an integral part of indigenous legal systems.

In practice, the exercise of indigenous peoples' rights faces persistent challenges resulting from economic expansion and resource exploitation.³ Illegal mining activities, deforestation, and plantation development have markedly weakened indigenous control over customary lands and disrupted traditional livelihoods. Such conditions have led to various agrarian conflicts involving indigenous peoples, governments, and private actors, often leading to environmental degradation and displacement of indigenous peoples from their ancestral territories.⁴ The restriction of access to natural

¹ Ahmad Dhiaulhaq and John F McCarthy, "Indigenous Rights and Agrarian Justice Framings in Forest Land Conflicts in Indonesia," *The Asia Pacific Journal of Anthropology* 21, no. 1 (2019): 34–54, <https://doi.org/10.1080/14442213.2019.1670243>.

² Mirza Satria Buana, "Development as a Threat to Indigenous Peoples' Rights in Indonesia," *International Journal on Minority and Group Rights* 27, no. 3 (2020): 442–71, <https://doi.org/10.1163/15718115-02703003>.

³ Noer Fauzi Rachman and Hasriadi Masalam, "The Trajectory of Indigeneity Politics Against Land Dispossession in Indonesia," *Sriwijaya Law Review* 1, no. 1 (2017): 122, <https://doi.org/10.28946/slrev.vol1.iss1.13.pp122-142>.

⁴ Aryogito Nindyatmoko, Kristina Setyowati, and Rina Herlina Haryanti, "Conflict Resolution in Community Governance Perspective: Social Capital Analysis on Land Tenure Conflict in Bebidas Village, Lombok," in *Proceedings of the 6th International Conference*

resources that traditionally sustain indigenous life further shows the structural vulnerabilities experienced by these communities. These circumstances highlight the urgent need to strengthen legal protection and ensure more effective recognition of the rights of indigenous peoples in Indonesia.

Normatively, the recognition and protection of indigenous peoples in Indonesia are constitutionally guaranteed under Article 18B (2) and Article 28I (3) of the 1945 Constitution of the Republic of Indonesia. These provisions affirm state recognition of indigenous peoples, including their rights to preserve cultural identity, maintain traditional values, and exercise customary rights over their territories.⁵ However, constitutional recognition has not automatically ensured effective protection in practice, as legal implementation often remains constrained by administrative and regulatory limitations.⁶

Empirically, indigenous peoples continue to face structural challenges because of agrarian conflicts, overlapping land claims, and resource exploitation driven by investment-oriented development policies. The issuance of business permits on customary lands, weak legal recognition of indigenous peoples as legal subjects, and fragmented sectoral regulations have created legal uncertainty and reduced the effectiveness of indigenous rights protection.⁷ Recent policy developments, such as the expansion of land management schemes under the Job Creation Law, are viewed as

on *Social and Political Sciences (ICOSAPS 2020)* (Atlantis Press, 2020), 283–88, <https://doi.org/10.2991/assehr.k.201219.043>.

⁵ M Y Aiyub Kadir and Alexander Murray, “Resource Nationalism in the Law and Policies of Indonesia: A Contest of State, Foreign Investors, and Indigenous Peoples,” *Asian Journal of International Law* 9, no. 2 (2019): 299, <https://doi.org/DOI:10.1017/S204425131900002X>.

⁶ Ramiah Lubis and Hijriyana Safithri, “Lega Protection of Ulayat Rights,” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 21, no. 1 (2021): 81–92, <https://doi.org/10.19109/nurani.v21i1.6627>.

⁷ Ward Berenschot, “Land-Use Change Conflicts and Anti-Corporate Activism in Indonesia: A Review Essay,” *Journal of East Asian Studies* 22 (2022): 337, <https://doi.org/10.1017/jea.2022.12>.

strengthening state and corporate control over customary territories.⁸ These conditions threaten indigenous peoples' access to land and natural resources and also contribute to the erosion of cultural identity, traditional knowledge systems, and ecological sustainability, exhibiting that indigenous peoples' rights constitute a multidimensional issue that extends beyond agrarian concerns alone.

In Indonesia, the discourse on the rights of indigenous peoples has been widely examined from various legal perspectives, particularly about customary land recognition, legal protection, and agrarian conflicts. Laurens Bakker analyzes the prolonged land conflicts between indigenous peoples and corporations, highlighting that the legal recognition of *adat* rights remains formally acknowledged yet practically weak, thereby generating structural injustice and prolonged disputes.⁹ Similarly, Sukirno and Malik trace the historical evolution of legal politics concerning customary land rights from the colonial era to the post-Reformation period and conclude that Indonesian legal policy has predominantly adopted a repressive orientation, with indigenous rights frequently subordinated to state and economic interests.¹⁰ Their study proposes responsive legal policies but remains primarily focused on the historical and political dimensions of state legal development.

Several recent studies also address indigenous rights from a localized and policy-oriented perspective. Sakmaf et al. examine the implementation of Special Autonomy in West Papua and identify persistent obstacles, including overlapping claims, weak institutional coordination, and

⁸ Ditta Dwi Damayanti, Rofi Wahanisa, and Rini Fidiyani, "Legal Implications of the Job Creation Law on the Protection of Community Land Rights in National Strategic Areas," *Journal of Law, Politic and Humanities* 5, no. 5 (2025): 4024–37, <https://doi.org/https://doi.org/10.38035/jlph.v5i5.2018>.

⁹ Laurens Bakker, "Social Sciences & Humanities Open Custom and Violence in Indonesia's Protracted Land Conflict," *Social Sciences & Humanities Open* 8, no. 1 (2023): 2, <https://doi.org/10.1016/j.ssaho.2023.100624>.

¹⁰ Sukirno Sukirno and Muhammad Fahad Malik, "Shifting Legal Landscapes: The Evolution and Future of Customary Land Rights Recognition in Indonesia," *Masalah-Masalah Hukum* 54, no. 3 (2025): 353–71, <https://doi.org/https://doi.org/10.14710/mmh.54.3.2025.353-371>.

inadequate participation of indigenous peoples in decision-making processes.¹¹ Meanwhile, Simamora investigates the protection of customary land rights among the Batak Toba Indigenous Community and highlights the gap between formal legal recognition and practical implementation due to technical and administrative limitations within local governance structures.¹² In another study, Iswari et al. focus on ulayat land conflicts within Minangkabau customary communities and propose dispute settlement mechanisms grounded in Islamic law through *ishlah* (peaceful reconciliation).¹³ Although this study introduces Islamic legal principles into the discourse of customary rights, its focus remains limited to conflict resolution mechanisms rather than broader legal reform.

Studies on the rights of indigenous peoples in Indonesia focus on legal recognition, institutional arrangements, conflict resolution, and various challenges in implementing the protection of indigenous peoples' rights. However, studies on legal politics with an integrative normative framework capable of harmonizing state interests, indigenous peoples' rights, and social justice demands are still limited. This study evaluates three main aspects: first, legal ambiguity and its implications for indigenous peoples' rights are analyzed. Second, the relevance of the *maslahah* principle as a normative foundation in national legal policy is examined. Third, *maslahah*-based legal policy reforms are proposed to achieve responsive, equitable, and sustainable protection of indigenous peoples' rights. In this context, the *maslahah* principle serves as a normative and philosophical

¹¹ Marius Suprianto Sakmaf et al., "Special Autonomy and Protection of Customary Land Rights in West Papua: Promise or Illusion?," *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 11, no. 1 (2026): 479–501, <https://doi.org/https://doi.org/10.22373/petita.v11i1.1000>.

¹² Janpatar Simamora, "Regional Government Policy in Protecting Customary Land Rights : A Case Study of the Toba Batak Indigenous Community Regional Government Policy in Protecting Customary Land Rights : A Case Study of the Toba," *Khazanah Hukum* 7, no. 3 (2025): 339–56, <https://doi.org/10.15575/kh.v7i3.45647>.

¹³ Fauzi Iswari, I Gusti Ayu Ketut Rachmi Handayai, and Lego Karjoko, "Portrait of Ulayat Land Conflicts in Minangkabau Customary Law Community: Alternative Resolutions Under Islamic Law," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 219–49, <https://doi.org/10.29240/jhi.v10i1.11066>.

foundation for building responsive, just, and certain legal policies that are oriented toward the public interest and sustainability of indigenous peoples. Thus, this study offers a new conceptual framework that bridges national legal politics with Islamic legal principles to strengthen Indonesia's substantive protection of indigenous peoples' rights.

Methods

Adopting normative legal research methods with a statutory and conceptual approach, this study analyzes legal norms, legal principles, and theoretical concepts related to the protection of indigenous peoples' rights. The statutory approach is used to identify inconsistencies, normative ambiguities, and regulatory disharmony affecting the recognition and protection of the rights of indigenous peoples. The conceptual approach examines the *maslahah* principle from an Islamic legal perspective, particularly through the *maqāṣid al-sharī'ah* framework, as a normative and philosophical basis in formulating legal-political reforms for the protection of indigenous peoples. The legal materials used include the 1945 Constitution of the Republic of Indonesia, the Basic Agrarian Law, relevant sectoral laws and regulations, Islamic legal literature, and other scientific sources related to the research theme. The legal materials were collected through a document study with stages of inventory, categorization, and systematization of legal materials. Furthermore, the legal materials were prescriptively analyzed using interpretation techniques and deductive legal reasoning. This analysis not only identifies existing legal problems but also develops normative arguments and formulates recommendations for legal-political reforms based on the *maslahah* principle to realize fairer, more responsive, and more sustainable protection of indigenous peoples' rights.

Discussion

Legal Ambiguity and Its Impact on the Rights of Indigenous Peoples

In Indonesia, indigenous peoples' rights encompass authority over customary territories, natural resource management, and traditional legal systems that have historically governed indigenous peoples. Although these rights possess constitutional legitimacy under Article 18B paragraph (2) of the 1945 Constitution and Article 3 of the Basic Agrarian Law, their recognition remains legally ambiguous.¹⁴ Such ambiguity occurs because of constitutional recognition dependence on abstract requirements; i.e., indigenous peoples must still exist, align with national interests, and not contradict statutory regulations. These limitations form broad interpretive discretion for the state, enabling governmental authorities to determine the existence and validity of indigenous rights according to political and developmental priorities. Consequently, formal recognition often fails to provide substantive legal protection.¹⁵

From the perspective of legal politics theory proposed by Mahfud MD, law is a product of political configuration reflecting dominant state interests.¹⁶ Within this framework, the ambiguity surrounding indigenous peoples' rights cannot be understood merely as a technical legal problem but rather as a manifestation of legal policy shaped by state priorities. Legal arrangements concerning customary rights have largely favored economic growth and state control over natural resources since the colonial era through postindependence development policies. Colonial doctrines such as *domein verklaring* established state authority over lands lacking formal

¹⁴ Yoserwan, "Implications of Adat Criminal Law Incorporation into the New Indonesian Criminal Code: Strengthening or Weakening?," *Cogent Social Sciences* 10, no. 1 (2024): 2, <https://doi.org/https://doi.org/10.1080/23311886.2023.2289599>.

¹⁵ Rikardo Simarmata, "The Enforceability of Formalised Customary Land Rights in Indonesia," *Australian Journal of Asian Law* 19, no. 2 (2018): 300, <https://ssrn.com/abstract=3396381>.

¹⁶ Moh. Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajawali Press, 2020), 122, <https://books.google.co.id/books?id=ZhCKAAAAMAAJ>.

ownership evidence, whereas postindependence policies continued centralistic approaches through investment-oriented land governance.¹⁷ This historical trajectory demonstrates the legal recognition of indigenous peoples, which has often been subjected to broader political and economic agendas.

Structurally, the Indonesian legal system continues to experience tension between codified state law and living customary law. The dominance of legal positivism has resulted in fragmented regulations, overlapping institutional authority, and bureaucratic resistance toward legal harmonization. Recognition mechanisms for indigenous peoples and customary territories remain inconsistent across regions, creating legal uncertainty and administrative barriers.¹⁸ Moreover, the absence of clear mechanisms for verification and registration further weakens indigenous legal standing. Existing regulations tend to focus on recognizing customary land as a legal object while inadequately addressing indigenous peoples as legal subjects. This inconsistency creates a significant gap between constitutional norms and practical implementation.¹⁹

These legal and political arrangement consequences are evident in several agrarian conflicts involving indigenous peoples, state institutions, and private corporations. Cases such as Rempang Eco City,²⁰ the National Capital City project in East Kalimantan,²¹ and disputes involving the

¹⁷ Chairul Fahmi et al., "The State's Business Upon Indigenous Land in Indonesia: A Legacy from Dutch Colonial Regime to Modern Indonesian State," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1566–96, <https://doi.org/https://doi.org/10.22373/sjhk.v8i3.19992>.

¹⁸ Leni Devinta and M Nur Rofiq Addiansyah, "Politik Peminggiran Masyarakat Adat Dibalik Pembangunan IKN Nusantara," *Masyarakat Indonesia* 50, no. 2 (2024): 301–16, <https://doi.org/https://doi.org/10.55981/jmi.2024.8845>.

¹⁹ Sartika Intaning Pradhani, "Traditional Rights of Indigenous People in Indonesia: Legal Recognition and Court Interpretation," *Jambe Law Journal* 1, no. 2 (2019): 177–205, <https://doi.org/10.22437/jlj.1.2.177-205>.

²⁰ Nella Dyah Puspita et al., "Konflik Agraria Masyarakat Adat Melayu Tua Dalam Pembangunan Eco City Di Pulau Rempang, Batam," *Brawijaya Journal of Social Science* 4, no. 1 (2024): 46–62, <https://doi.org/https://doi.org/10.21776/ub.bjss.2024.004.01.4>.

²¹ Henny Warsilah, "Reconstruction of Ethnic Identity in The Development of a New Capital City in East Kalimantan: Participation and Access to City Resources," in *Assembling Nusantara: Mimicry, Friction, and Resonance in the New Capital*

Pandumaan-Sipituhuta community illustrate recurring patterns of land dispossession, forced displacement, and indigenous participation exclusion.²² Although these cases occurred in different geographical contexts, they reflected a similar legal-political pattern in which development discourse and public interest narratives frequently legitimized state intervention in customary territories. In practice, when defending ancestral lands, indigenous peoples often encounter criminalization, coercion, and unequal bargaining positions.

From a *maslahah* perspective, this condition demonstrates a fundamental failure of legal policy to realize public welfare and justice. Al-Syatibi emphasized that legal arrangements should protect essential human interests, including life (*hifz al-nafs*), property (*hifz al-mal*), lineage and social continuity (*hifz al-nasl*), and human dignity.²³ Disposing of customary territories not only eliminates economic resources but also threatens cultural identity, traditional knowledge systems, and ecological sustainability. Therefore, the marginalization of indigenous peoples represents a legal problem and a failure to achieve substantive justice and social welfare objectives.

Over the past decade, data from the Indigenous Peoples Alliance of the Archipelago (AMAN) has recorded at least 687 agrarian conflict cases in customary territories, covering an area of approximately 11.07 million hectares. These conflicts have had severe impacts on indigenous peoples, with more than 925 individuals criminalized, 60 subjected to violence by

Development (Singapore: Springer Nature Singapore, 2023), 81–97, https://doi.org/https://doi.org/10.1007/978-981-99-3533-8_7.

²² Lasron P Sinurat, "Hak Atas Tanah Adat: Gerakan Masyarakat Adat Pandumaan-Sipituhuta Selama Era Reformasi," *Al-Qalam* 25, no. 3 (2019): 485–98, <https://doi.org/https://doi.org/10.31969/alq.v25i3.784>.

²³ Soni Zakaria, Syariful Alam, and Agus Supriadi, "Review of Maslahah Theory of Shari'a Regulation in Indonesia," in *Proceedings of the International Conference on Law Reform* (INCLAR 2019) (Atlantis Press, 2020), <https://doi.org/10.2991/aebmr.k.200226.020>.

state authorities, and at least one fatality.²⁴ Such conditions exacerbate economic inequality, positioning indigenous peoples as the most disadvantaged parties within national development processes.

Agrarian conflicts involving indigenous peoples reached significant levels in 2021, with 13 recorded cases covering ~251,000 hectares of seized customary territory. These conflicts directly affected 103,717 indigenous peoples, illustrating the extensive scale of social harm incurred. In 2021, the most striking tragedy was the death of a member of the Toruakat indigenous people in Bolaang Mongondow, North Sulawesi, who was fatally shot during a clash with the mining company PT Bulawan Daya Lestari. This incident symbolized how the dispossession of customary land is often accompanied by brutal violence, causing loss of life.²⁵

In 2022, agrarian conflicts affecting indigenous peoples continued to display alarming trends. Altogether, 19 conflict cases were recorded, involving the seizure of approximately 600,000 hectares of customary land. This figure confirms that dispossession of indigenous living spaces remains systematic and recurrent, with no meaningful state resolution efforts. More broadly, the period from 2018 to 2022 reported at least 301 cases of customary land dispossession covering 8.5 million hectares, with 672 indigenous individuals criminalized. These facts suggest that each instance of ancestral land seizure deprives communities of their means of subsistence and is frequently accompanied by criminalization and violence. This period reflects a prolonged escalation of agrarian conflicts that continue to erode indigenous living spaces and reveal the inability of the state to provide equitable protection.²⁶

²⁴ Aliansi Masyarakat Adat Nusantara, *Catatan Akhir Tahun 2024 Aliansi Masyarakat Adat Nusantara: Transisi Kekuasaan & Masa Depan Masyarakat Adat Nusantara* (Jakarta: Rumah AMAN, 2024).

²⁵ Aliansi Masyarakat Adat Nusantara, *Catatan Akhir Tahun 2021 Aliansi Masyarakat Adat Nusantara: Tangguh Di Tengah Krisis* (Jakarta Selatan: Rumah AMAN, 2021), 1.

²⁶ Aliansi Masyarakat Adat Nusantara, *Catatan Tahun 2022 Aliansi Masyarakat Adat Nusantara: Melawan Penundukan* (Jakarta Selatan: Rumah AMAN, 2022), 26.

Throughout 2023, the agrarian conflict situation faced by indigenous peoples escalated to a highly alarming level. A total of 2,578,073 hectares of customary territory were seized, reflecting the massive scale of dispossession. This was accompanied by violence and criminalization affecting at least 247 individuals, of whom 204 were injured, and one was fatally shot during a clash in Seruyan, Central Kalimantan. In addition, approximately 100 indigenous homes were demolished on the pretext that they were located within conservation areas. These facts underscore that customary land dispossession in 2023 not only deprived indigenous peoples of their ancestral lands but also directly threatened their survival, security, and dignity. The year 2023 stands as one of the darkest periods for indigenous peoples, marked by land seizures accompanied by structured violence, loss of life, and extensive destruction of living environments.²⁷

In 2024, the agrarian conflict reached a critical point. Throughout the year, 121 conflict cases were reported across various regions of Indonesia, affecting 140 indigenous peoples, with approximately 2,824,118.36 hectares of customary land seized. These figures demonstrate the massive escalation of dispossession of indigenous land. These conflicts directly threaten the survival of communities that have safeguarded their territories for centuries. Accordingly, 2024 represents another grim chapter for indigenous peoples, not only in terms of losing land as their source of life but also facing direct threats to their security, dignity, and fundamental human rights.²⁸

From an environmental perspective, the exploitation of natural resources without consideration of local wisdom has resulted in ecosystem degradation and biodiversity loss. Indigenous peoples play a crucial role in maintaining ecological balance through traditional management systems;

²⁷ Aliansi Masyarakat Adat Nusantara, *Catatan Akhir Tahun 2023 Aliansi Masyarakat Adat Nusantara (Masyarakat Adat Di Tahun Politik: Di Tengah Hukum Represif Dan Cengkraman Oligarki)* (Jakarta Selatan: Rumah AMAN, 2023), 5.

²⁸ Aliansi Masyarakat Adat Nusantara, *Catatan Akhir Tahun 2024 Aliansi Masyarakat Adat Nusantara: Transisi Kekuasaan & Masa Depan Masyarakat Adat Nusantara*, 27.

therefore, marginalization deprives Indonesia of its natural biodiversity guardians. From a legal and political standpoint, systematic criminalization reflects the marginalization of customary land rights. The Indigenous Peoples Alliance of the Archipelago (AMAN) data indicate that in 2024 alone, 121 criminalization cases were reported alongside the seizure of 2.8 million hectares of customary land, affecting 140 communities. Criminalization has become an instrument to weaken indigenous resistance. Moreover, human rights violations, including arbitrary arrests, torture, and the killing of indigenous activists, have intensified the situation. The psychological impacts of forced evictions and violence, particularly among children, cannot be ignored. The loss of security and legal certainty creates prolonged conditions of fear in the daily lives of indigenous peoples.²⁹

The marginalization of customary land rights is not a random phenomenon but follows a systematic pattern. The process often begins with infiltration and propaganda through local actors who disseminate misleading information about the benefits of development projects.³⁰ When this approach fails, divide-and-rule strategies are employed by exploiting local elites. If resistance persists, the state or corporations resort to repression through the criminalization of customary leaders, and in extreme cases, physical elimination.³¹ This pattern illustrates marginalization as a planned and multilayered process.

²⁹ Hayatul Ismi et al., "Settlement of Disputes Over the Transfer of Rights to the Ulayat Land of the Piliang Tribe in Kuok Village, Kuok District, Kampar Regency," in *Riau Annual Meeting on Law and Social Sciences (RAMLAS 2019)*, 2020, 41–47, <https://doi.org/https://doi.org/10.2991/assehr.k.200529.264>.

³⁰ Hunggul Y S H Nugroho, Andrew Skidmore, and Yousif A Hussin, "Verifying Indigenous Based-Claims to Forest Rights Using Image Interpretation and Spatial Analysis: A Case Study in Gunung Lumut Protection Forest, East Kalimantan, Indonesia," *GeoJournal* 87, no. 1 (2022): 403–21, <https://doi.org/https://doi.org/10.1007/s10708-020-10260-x>.

³¹ Fifik Wiryani and Mokhammad Najih, "Regulations of Recognition and Protection on Ulayat Rights of Indigenous Peoples in Indonesia," in *3rd International Conference on Education, Sports, Arts and Management Engineering (ICESAME 2018)*, 2018, <https://doi.org/10.2991/amca-18.2018.197>.

The marginalization and ambiguity of customary land rights in Indonesia germinate from a combination of interrelated structural factors, such as regulatory weaknesses, the dominance of economic interests, and the lack of recognition of indigenous peoples as legal subjects.³² Cases such as Rempang, the National Capital City project, Pandumaan-Sipituhuta, and several other agrarian conflicts exhibit that this issue is part of a systematic pattern that has persisted for decades and is not incidental. Its impacts extend across social, economic, cultural, environmental, legal-political, and psychological dimensions, with data showing a surge in indigenous peoples' customary land dispossession and criminalization from year to year.³³ This situation threatens the very existence of indigenous peoples in Indonesia and underscores the urgent need for fundamental reform in the recognition and protection of customary land rights so that unequal development trajectories do not marginalize them.

Empirical evidence further confirms the systematic nature of this problem. Over recent years, data from AMAN indicate an upward trend in customary land dispossession, agrarian conflicts, criminalization, and violence against indigenous peoples. These conflicts reveal a structural pattern in which legal ambiguity, political interests, and investment-oriented development collectively weaken the protection rights of indigenous peoples. This condition highlights the urgent need for legal-political reforms capable of shifting from formal recognition to substantive protection based on justice and *maslahah* principles.

The Principle of *Maslahah* in National Law: Relevance and Operationalization

³² M Nazir Salim et al., "Reconciling Community Land and State Forest Claims in Indonesia: A Case Study of the Land Tenure Settlement Reconciliation Program in South Sumatra," *Forest and Society* 5, no. 1 (2021): 1–22, <https://doi.org/https://doi.org/10.24259/fs.v5i1.10552>.

³³ Moch Rif'an et al., "Environmental Legal Protection Regulation through a Judicial Process Based on Legal Certainty and Anti-SLAPP Principles," *Jurnal Suara Hukum* 8, no. 1 (2026), <https://doi.org/https://doi.org/10.26740/jsh.v8n1>.

The concept of *maslahah* in Islamic law refers to the benefit or public interest aimed at promoting welfare and preventing harm to humanity, in line with the law's objectives (*maqasid al-shari'ah*).³⁴ Etymologically, *maslahah* denotes goodness, utility, propriety, and harmony and is often contrasted with *mafsadah* (harm or damage). From the perspective of Imam al-Ghazali, *maslahah* is defined as the preservation of the objectives of shari'ah in terms of five essential elements: religion, life, intellect, lineage, and property. Anything that protects these five principles constitutes *maslahah*, while neglecting them results in *mafsadah*. The Qur'an and Hadith indicate that Islamic legal doctrine inherently contains wisdom (*hikmah*) and effective cause (*'illah*). This ultimately aims at realizing *maslahah* for society and individuals.³⁵

Maslahah develops within the framework of *maqasid al-syariah*, i.e., the objectives of Islamic law, serving to maintain the benefit of people. The ulama, such as Muhammad Taufiq, emphasized that *maslahah* is the axis of the circulation of Islamic law; therefore, *ijtihad* responds to changing times through the interpretation of sacred texts.³⁶ The identification of *maslahah* is grounded in *an-nuṣūṣ al-shar'iyyah* (commands and prohibitions), *'illah* and *hikmah*, and inductive reasoning (*istiqrā'*), as practiced by scholars such as al-Shatibi.³⁷ This concept distinguishes between legal rules derived directly from the Qur'an and Sunnah and those made through *ijtihad* based on *maslahah*, although both ultimately aim to realize public welfare.

³⁴ Zahrul Mubarrak et al., "The Urgency of the Islamic Law and Contemporary Societal Challenges: The Flexibility of Al-Maslahah in Determining the Hierarchy of Maqasid Al-Shari'ah," *El-Usrah: Jurnal Hukum Keluarga* 8, no. 1 (2025): 344–65, <https://doi.org/https://doi.org/10.22373/pxydd884>.

³⁵ Nur Asiah Kudaedah, "Maslahah Menurut Konsep Al-Ghazali," *DIKTUM: Jurnal Syariah Dan Hukum* 18, no. 1 (2020): 118–28, <https://doi.org/https://doi.org/10.35905/diktum.v18i1.663>.

³⁶ Jaenal Aripin, "Hajj Fund Investment: A Comparative Contemporary Fiqh Study on Maslahah and Public Policy Perspectives in Indonesia," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 360–88, <https://doi.org/https://doi.org/10.32332/milrev.v4i1.10424>.

³⁷ Amir Tajrid, "Tracing The Genealogy of Maqasid Al-Shari'ah Concept: A Historical Approach," *Al-Ahkam* 31, no. 1 (2021): 69–90, <https://doi.org/https://doi.org/10.21580/ahkam.2021.31.1.6696>.

Maslahah mursalah, as a form of public interest, is not explicitly mentioned in the primary texts (*naṣṣ*). However, it requires that the benefit be genuine, universal, not contradicting Shari‘ah evidence, and capable of providing tangible advantages to society. Scholars of *uṣūl al-fiqh* assert that such *maslahah* must encompass the preservation of the five objectives of the *Shari‘ah*, must not contradict the Qur‘an, and must be grounded in sound methodological principles. In the Maliki school, Imam Malik established three main criteria: the *maslahah* must not contradict the objectives of the *Shari‘ah*, must align with definitive evidence (*dalil qat‘i*), and must possess rational justification to resolve societal difficulties. This approach has historically been applied in matters of *mu‘amalah*, such as the policy of Caliph ‘Umar ibn al-Khaṭṭab suspending zakat payments to new converts (*muallaf*) for the greater public interest.³⁸

The application of the *maslahah* principle in national policies can be understood as an effort to position public welfare (*maslahah ‘ammah*) as the central guiding principle in the formulation, implementation, and evaluation of public policies across economic, social, environmental, and governance sectors.³⁹ From Islamic legal and ethical perspectives, *maslahah* is not only a moral principle but also a normative guideline that directs policies toward goodness, welfare, and harm prevention for society at large. This principle has been translated into the framework of *maqāṣid al-shari‘ah* and integrated with concepts such as good governance and sustainable development. As such, *maslahah* can serve as an evaluative framework for assessing Indonesia’s public policies, both in terms of legislation and practical implementation. It is also highly relevant to sustainable development and the reduction of social inequality because it

³⁸ Tarmizi Tarmizi, “The Concept of Maslahah According to Imam Al-Ghazali,” *Jurnal Al-Dustur* 3, no. 1 (2020): 22–29, <https://doi.org/https://doi.org/10.30863/jad.v3i1.642>.

³⁹ Asma Afsaruddin and Mehrzad Boroujerdi, *Maslahah as a Political Concept, Mirror for the Muslim Prince: Islam and the Theory of Statecraft* (New York: Syracuse University Press, 2013), 16–44.

emphasizes social justice, environmental protection, and community enablement as core dimensions of public welfare.⁴⁰

Policies ensuring justice, access to public services, and protection of vulnerable groups in the social and welfare sector reflect the *maslahah* principle. In Indonesia, many education, healthcare, and social security policies implicitly embody *maslahah*-oriented principles, such as the fulfillment of basic rights, poverty alleviation, and community capacity-building. This principle encourages the state to design policies extending beyond administrative efficiency by incorporating moral and social considerations, such as social assistance programs, national health insurance, and subsidies for low-income groups.⁴¹ *Maslahah* guides the government in economic policy to promote fair systems that do not harm the poor, ensure fiscal sustainability, and protect the public from exploitative practices. This concept is relevant to fiscal policy, taxation, and market regulation, all of which aim to increase state revenue while considering social impacts and public affordability.⁴² *Maslahah* encourages the adoption of strict regulations on natural resource exploitation, the promotion of sustainable management, and efforts to mitigate climate change in the environmental sector.⁴³

The implications of applying the principle of *maslahah* to substantive justice, utility, and sustainability are extensive, both in national law and

⁴⁰ Efik Yudianty, "The State Administrative Decision-Making in the Adoption of *Maslahah Mursallah* Principle in Indonesia," *Sriwijaya Law Review* 7, no. 2 (2023): 287–99, <https://doi.org/10.28946/slrev.vol7.iss2.2557.pp287-299>.

⁴¹ Aulia Rahmawati and Bagus Satrio, "Re-Actualization of the Concept of Al-Maslahah Al-Mursalah in Sharia-Based Public Policy Formulation," *Samarinda International Journal of Islamic Studies (SIJIS)* 1, no. 2 (May 2024): 89–100, <https://doi.org/10.64093/sijis.v1i2.596>.

⁴² Rr Hesti Setyodyah Lestari, Andia Kusuma Damayanti, and Mowafg Abraham Masuwd, "Optimising Societal Welfare: The Strategic Role of Maqashid Shariah and *Maslahah* in Contemporary Islamic Economics and Business," *Al-Insyiroh: Jurnal Studi Keislaman* 11, no. 1 (2025): 20–40, <https://doi.org/https://doi.org/10.35309/alinsyiroh.v11i1.363>.

⁴³ Lina Marlina Susana et al., "Reconstructing Islamic Legal Norms in Environmental Governance: A Maqasid-Based Legal Critique of Indonesia's Resource Policies," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (2025): 650–670, <https://doi.org/10.29240/jhi.v10i2.13038>.

public policy. In contemporary discourse on Islamic and national law, *maslahah* no longer functions merely as a juristic principle but as a normative foundation guiding legal formulation and implementation toward justice grounded in social realities, rather than merely procedural formality, while ensuring tangible benefits and long-term sustainability for society and the environment. Substantive justice, in this context, refers to justice realized through the substance and impact of legal norms or decisions, rather than mere procedural compliance. By employing *maslahah* as an evaluative principle, the law can be brought closer to social realities, ensuring that decisions are not only formally correct but also equitable and responsive to the needs of the parties involved. In the development of national law, *maslahah* can serve as a foundation for balancing and justice, whereby lawmakers assess the benefits and harms of regulations not only for specific groups but for the broader public interest (*maslahah 'ammah*).⁴⁴

The implication of *maslahah* for utility is that every legal norm and policy must be measured by its capacity to promote benefits (*jalb al-maṣalih*) and prevent harms (*dar' al-mafasid*) for society. In the context of public policy, a policy is considered lawful if it complies with statutory provisions and is *maslahah*-compliant if it genuinely enhances social, economic, and spiritual welfare. *Maslahah* encourages reformulation of policies to ensure they meet current needs while preserving the capacity of future generations. In natural resource management, infrastructure development, and environmental regulation, policies must balance economic demands with environmental preservation to prevent excessive exploitation that could damage ecosystems.⁴⁵ This principle is reflected in

⁴⁴ Bagio Kadaryanto, Ardian Kurniawan, and Burhanuddin Burhanuddin, "Reconstruction of Indigenous Community Inclusion in Village Autonomy Policy: Towards a Substantive Autonomy Model in Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 1 (2025): 1–19, <https://doi.org/10.30631/alrisalah.v25i1.1845>.

⁴⁵ Jochen Lobah, "The Islamic Principle of Maslaha as Practical Wisdom for Human Development," in *CSR, Sustainability, Ethics & Governance*, 2016, 145–51, https://doi.org/10.1007/978-3-319-28287-9_11.

stricter environmental regulations, emphasis on environmental impact assessments, and community empowerment in environmental governance, as *maslahah* requires that policies strengthen societal well-being in the long term rather than in the short term.

The application of the *maslahah* principle guides legal systems and national policies toward integrating substantive justice, utility, and sustainability within a unified ethical-normative framework. Legal decisions and policies are no longer considered valid solely on formal grounds but are deemed just and meaningful if they (1) strengthen substantive justice for vulnerable groups; (2) ensure real and widespread benefits for society; and (3) uphold social, economic, and environmental sustainability. These implications position *maslahah* as a key principle in building more just, responsive, and sustainable governance systems within the context of a modern state.

Legal-Political Reform Based on Maslahah: Responsive and Equitable Protection of Indigenous Peoples' Rights

According to Satjipto Rahardjo, legal politics is the activity of determining the methods or strategies used to attain specific social and legal objectives within society.⁴⁶ This perspective demonstrates that law is not created neutrally but is made to respond to the evolving social needs within the community. In line with this view, Mahfud MD defines legal politics as the *legal policy* or direction that serves as the foundation for the formation and enforcement of law. He emphasizes that the configuration of political forces that shape legislative processes and legal implementation strongly influences law.⁴⁷ Therefore, legal politics is concerned not only with the formal establishment of legal norms but also with value orientations, social interests, and the pursuit of justice by the state.

⁴⁶ M Zulfa Aulia, "Hukum Progresif Dari Satjipto Rahardjo," *Undang: Jurnal Hukum* 1, no. 1 (2018): 159–85, <https://doi.org/10.22437/ujh.1.1.159-185>.

⁴⁷ MD, *Politik Hukum Di Indonesia*, 122.

These perspectives may be further enriched by the theory of Hans Kelsen (1967) on the *Pure Theory of Law*. Kelsen sought to separate law from political, moral, and social elements by positioning law as a hierarchical system of norms that must be obeyed. According to him, a legal norm's validity must derive from a higher norm, ultimately culminating in *Grundnorm*, the fundamental norm that forms the basis for the entire legal system.⁴⁸ From this perspective, legal politics plays a crucial role in maintaining the legal system's order, consistency, and legitimacy so that every regulation remains within a coherent legal framework. Kelsen's thought is particularly relevant in the Indonesian context, especially in maintaining consistency among legal formation, the fundamental values of the state, and society's needs during continuously evolving social and political dynamics.

Based on these various perspectives, legal political reform grounded in the principle of *maslahah* may be understood as an effort to construct a legal system that is not only well-structured and normatively legitimate, but also responsive to society's actual needs. The principle of *maslahah* places public benefit and collective welfare at the center of legal formation. Within the Indonesian context, this concept possesses substantial potential as a normative foundation for establishing a legal system that is just, adaptive, and oriented toward substantive justice.⁴⁹ This approach seeks to integrate the values of Islamic law with the framework of the modern state legal system, thereby ensuring that law functions not merely as an instrument of formal legal certainty but also as a means of realizing social welfare and protecting the rights of society.

In relation to indigenous law communities, the *maslahah*-based model of legal-political reforms explicitly encourages the recognition of the

⁴⁸ Alexandre Travessoni Gomes Trivisonno, "On the Continuity of the Doctrine of the Basic Norm in Kelsen's Pure Theory of Law," *Jurisprudence* 12, no. 3 (2021): 321–46, <https://doi.org/10.1080/20403313.2020.1866843>.

⁴⁹ Nasrullah et al., "Reconstructing the Indonesian Legal System through the Lens of Maṣlaḥah Mursalah," *Al-Manāḥij: Jurnal Kajian Hukum Islam* 19, no. 1 (2025): 117–32, <https://doi.org/https://doi.org/10.24090/mnh.v19i1.7861>.

collective rights of indigenous peoples, particularly regarding communal land rights (*tanah ulayat*), the protection of cultural identity, and the acknowledgment of local knowledge systems as an integral part of national legal governance. Accordingly, legal-political reforms are directed not only toward establishing a consistent legal system, as emphasized by Kelsen, but also toward creating a socially just legal order capable of substantively accommodating public interests, as highlighted by Satjipto Rahardjo and Mahfud MD. To illustrate the relationship among the reform components, the following conceptual framework is proposed:

Figure 1: *Legal-Political Reform Based on the Maslahah Principle*



Source: *author framework*

Implementing this *maslahah*-based legal-political reform model requires a comprehensive, structured strategy. Strengthening the legal recognition of indigenous peoples through various normative instruments, including constitutional provisions, national legislation, and regional regulations, is one of the primary steps. In Indonesia, the Draft Law on Indigenous Peoples represents a strategic effort to provide a comprehensive

legal basis for protecting indigenous rights. In addition, institutional strengthening is necessary to ensure the effective implementation of such policies, so that normative recognition does not remain merely symbolic.⁵⁰

Beyond strengthening the normative framework, this model highlights the importance of participatory mechanisms in decision-making. The principle of *shūra* ensures that indigenous peoples are not only objects of policy but also active subjects in policy formulation, particularly in matters related to land and natural resource management. Such participation is essential to ensure that policies genuinely reflect indigenous peoples' needs, aspirations, and values. Policies without inclusive participatory mechanisms risk neglecting indigenous interests and may even reinforce longstanding patterns of marginalization.

The implementation strategy also includes efforts to enhance indigenous peoples' capacity. Empowerment can be achieved through legal education, political capacity-building, and economic support that enable indigenous peoples to advocate for their rights independently. In this regard, the state plays a crucial role in providing access to resources, information, and fair economic opportunities. With increased capacity, indigenous peoples are better equipped not only to defend their rights but also to actively participate in the sustainable management of natural resources.

Harmonization between customary and national law is another equally important aspect. Historically, conflicts between these two legal systems, particularly in the agrarian and natural resource sectors, have been a major source of disputes. The *maslahah*-based reform model provides an innovative approach to synergistic integration of these systems, thereby creating coherence in legal governance. Such harmonization does not eliminate the distinctive characteristics of customary law but accommodates local values within a broader national legal framework. As a

⁵⁰ Dina Lupin Townsend, "Silencing, Consultation and Indigenous Descriptions of the World," *Journal of Human Rights and the Environment* 10, no. 2 (2019): 193–214, <https://doi.org/10.4337/jhre.2019.02.03>.

result, legal conflicts can be reduced, and legal certainty can be better ensured. Moreover, transparency and accountability principles in governance are essential for implementing this reform. Transparent legal and administrative systems can prevent power abuse, resource exploitation, and discriminatory practices against indigenous peoples. In this context, strengthening oversight mechanisms by the state and civil society is crucial to ensure that policies are genuinely oriented toward the public.

The impact of implementing a *maslahah*-based legal-political reform model on the recognition and protection of indigenous peoples' collective rights is highly significant. In the land and natural resource sectors, such reforms can strengthen the recognition of indigenous peoples' rights and protect customary territories from uncontrolled exploitation.⁵¹ The recognition of customary forests as entities distinct from state forests, as affirmed by the Constitutional Court, represents a concrete example of this reform trajectory. With strong legal recognition, indigenous peoples gain a more solid position in defending their territories and resources.

In the cultural sphere, *maslahah*-based reform also contributes to the preservation of indigenous identity and cultural heritage. The integration of cultural values and local knowledge into public policy fosters a more inclusive legal system that is sensitive to cultural diversity.⁵² This approach supports the continuity of traditions, spiritual practices, and value systems passed down through generations. Thus, law functions not only as an instrument of social control but also as a means of cultural preservation.

This model also yields positive impacts from an economic perspective by enabling indigenous peoples. With adequate legal protection and supportive policies, indigenous peoples can manage their resources more

⁵¹ Jaja Ahmad Jayus, "Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System," *Jurnal Media Hukum* 27, no. 1 (2020), <https://doi.org/10.18196/jmh.20200144>.

⁵² Kamaljit K Sangha, Jeremy Russell-Smith, and Robert Costanza, "Mainstreaming Indigenous and Local Communities' Connections with Nature for Policy Decision-Making," *Global Ecology and Conservation* 19 (2019): e00668, <https://doi.org/https://doi.org/10.1016/j.gecco.2019.e00668>.

optimally and sustainably. This enhances economic welfare and strengthens social resilience and community self-reliance.⁵³ Furthermore, integrating *maslahah* principles into economic policy enables a more equitable distribution of benefits.

Harmonizing customary law with national law helps reduce agrarian conflicts and disputes over natural resources. Conflicts stemming from overlapping regulations and unclear legal status can be reduced through a more integrative approach grounded in shared public interest. With fewer conflicts, social stability can be maintained, and more sustainable development can be achieved. Overall, the *maslahah*-based legal-political reform model represents a comprehensive and progressive approach to protecting indigenous peoples' rights. This model addresses various structural issues faced by indigenous peoples, including marginalization, injustice, and resource conflicts, by placing public welfare at its core. However, the success of its implementation ultimately depends on political commitment, institutional strength, and society's sociocultural readiness.

Conclusion

The main problem faced by indigenous communities lies not only in the ambiguity of legal recognition but also in the political-legal configuration that still subordinates their rights to the interests of natural resource development and exploitation. This condition indicates that formal legal certainty does not automatically lead to fair protection of indigenous communities. Therefore, a shift in the orientation of legal politics from an administrative-procedural approach to one centered on substantive justice and the public interest is required. Within this framework, the *maslahah* principle provides a normative and philosophical foundation that allows for reconstructing the relationship between the state, the law, and indigenous

⁵³ Ken Coates and Carin Holroyd, "Participation of Indigenous Peoples in Global Economic Activity," in *Research Handbook on the International Law of Indigenous Rights* (Cheltenham, UK: Edward Elgar Publishing, 2022), 308–30, <https://doi.org/10.4337/9781788115797.00027>.

communities through stronger recognition of collective rights, harmonizing regulations, and strengthening indigenous community participation in decision-making processes. This approach emphasizes that the protection of indigenous communities must be positioned as part of efforts to realize broader public interests, encompassing social justice, environmental sustainability, and respect for national legal systems' diversity. This study is still limited to a normative analysis, so further research is warranted to empirically test how the principle of *maslahah* can be translated into the implementation of indigenous community policies, particularly in resolving agrarian conflicts and establishing customary territories at the local level.

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