

A peer-reviewed journal published by Faculty of Law
Universitas Negeri Semarang, Indonesia. The title has been
indexed by [SCOPUS](#), [SINTA](#), [GARUDA](#), [BASE](#), [OneSearch](#).
ISSN 2654-8313 (Print) 2654-8305 (Online)
Online at <https://journal.unnes.ac.id/journals/JPHI/index>
DOI: <https://doi.org/10.15294/jphi.v9i2.54355>

Submitted	: June 14, 2026
Revised	: July 22, 2026
Accepted	: August 7, 2026
Published	: September 29, 2026
Available Online	: October 1, 2026

Reconstructing Indigenous Self-Determination through Maqashid al-Shari'ah: An Inter-Madhhab Analysis of the O'Hongana Manyawa Community in Indonesia

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Abstract

This study examines the legitimacy of indigenous self-determination in Indonesia under national and Islamic law, using the O'Hongana Manyawa community of Halmahera, North Maluku, as an empirical case. Although the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ICCPR, and ICESCR recognize self-determination as a fundamental right, its foundation in Islamic jurisprudence remains underexplored. At the same time, Indonesia's constitutional recognition of indigenous peoples has not translated into effective legal protection. Using a socio-legal (juridical-empirical) approach, this study draws on semi-structured interviews with 11 informants, including O'Hongana Manyawa community members, indigenous rights advocates, academics, and state and international actors, supported by analysis of legislation, court decisions, international instruments, and Islamic legal literature. The findings reveal structural weaknesses in Indonesia's protection framework, including declaratory recognition under Article 18B(2) of the Constitution, fragmented institutional authority, and the absence of a legally binding Free, Prior, and Informed Consent (FPIC) requirement. These weaknesses have facilitated nickel-mining expansion into customary territories without meaningful indigenous consent and contributed to the criminalization of community members between 2013 and 2023. The Islamic legal analysis shows that the four Sunni madhabs support the protection of indigenous self-determination through distinct doctrines: *maslahah mursalah* (Maliki), *'urf* (Shafi'i), *istihsan* (Hanafi), and *sadd al-dhara'i* (Hanbali). The study concludes that indigenous self-determination constitutes internal autonomy within Indonesia's constitutional framework and is normatively grounded in Maqashid al-Shari'ah and international human rights law. This approach contributes to the achievement of Sustainable Development Goal (SDG) 8 on Decent Work and Economic Growth and SDG 11 on Sustainable Cities and Communities.

KEYWORDS *Indigenous Peoples, Self-Determination, Maqashid al-Shari'ah, Legal Pluralism, Sustainable Development Goals (SDGs).*

Introduction

In contemporary legal discourse, the recognition of indigenous peoples' rights to determine their own political, cultural, and territorial affairs has emerged as an increasingly significant issue. This issue is particularly relevant at the intersection of national constitutional frameworks and the international human rights legal regime, where the protection of indigenous peoples' rights must be considered alongside the principles of state sovereignty, self-determination, and human rights protection.¹ The right to self-determination constitutes a fundamental principle of modern international law and has been affirmed through various international legal instruments. Its recognition is particularly evident in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as in the two principal international human rights covenants, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).² Within this framework, this right is not understood solely as a political right, but also encompasses autonomy in the economic, social, and cultural spheres.

Over time, Islamic legal studies have increasingly expanded their scope of analysis to include issues of collective rights and indigenous communities in Indonesia, although these are examined through diverse substantive perspectives. El Guyanie and Baskoro (2021), for example, examine the constitutional recognition of adherents of the belief in the One Supreme God through the perspective of *fiqh al-aqalliyat*, and demonstrate that Islamic jurisprudence can serve as an ethical foundation for providing protection to marginalized religious minority groups.³ Rozikin et al. (2025)

¹ Jeff Corntassel, "Toward Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse," *Alternatives* 33, no. 1 (2008): 105–32.

² Siegfried Wiessner, "United Nations Declaration on the Rights of Indigenous Peoples," *The Diversity of International Law*, 2009, 343–62.

³ Gugun El Guyanie and Aji Baskoro, "The Constitutional Rights of Indigenous Beliefs Adherents in Minority Fiqh Perspective," *Ijtihad: Jurnal Wacana Hukum*

examined the contextualization of Maqasid al-Shari‘ah in the resilience of indigenous households, highlighting the dynamic relationship between Islamic law and customary norms in sustaining family life.⁴ Similarly, Disemadi et al. (2024) employ the Maqasid al-Shari‘ah perspective to strengthen the normative foundation for communal intellectual property rights, demonstrating that the principles of Islamic law possess the adaptability to provide protection for collective interests within Indonesia’s pluralistic legal system.⁵

Collectively, these studies demonstrate the growing application of Islamic legal thought to questions of communal rights and legal pluralism. Nevertheless, several important questions remain unanswered. First, none conceptualizes indigenous self-determination as a distinct legal entitlement anchored in international human rights instruments, including UNDRIP, the ICCPR, and the ICESCR.⁶ Second, none examines contemporary conflicts between indigenous peoples and extractive industries as an empirical context for evaluating the legitimacy of state action from the perspective of Islamic law. Third, while these studies invoke Islamic legal doctrines, they do not systematically employ the interpretative methodologies of *Usul al-Fiqh* through a comparative inter-madhhab analysis to evaluate competing claims over indigenous territorial autonomy

Islam Dan Kemanusiaan 21, no. 2 (2021): 155–75, <https://doi.org/10.18326/ijtihad.v21i2.155-175>.

⁴ Opik Rozikin, Oyo Sunaryo Mukhlas, Aden Rosadi, Ine Fauzia, Muharir, Hisam Ahyani, and Nurul Ilyana Muhd Adnan, “Contextualizing Maqāṣid Al-Shari‘ah in Indigenous Legal Practices: A Comparative Study of Family Resilience in Kasepuhan Ciptagelar and Kampung Naga,” *NURANI: Jurnal Kajian Syariah Dan Masyarakat* 25, no. 2 (2025): 344–62.

⁵ Emiliya Febriyani Hari Sutra Disemadi, Sholahuddin Al-Fatih, Ninne Zahara Silviani, Shelvi Rusdiana, “Revitalizing Intellectual Property Rights in Indonesia: A Maqasid Al-Sharia Perspective on Communal Ownership,” *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 625–48.

⁶ Robert McCorquodale, “Self-Determination: A Human Rights Approach,” *International & Comparative Law Quarterly* 43, no. 4 (1994): 857–85.

and collective governance.⁷ Unlike previous studies, which examine minority fiqh, *Maqāṣid al-Sharī'ah*, or indigenous customary rights as separate fields of inquiry, this article develops an integrated analytical framework that connects the international legal recognition of indigenous peoples' right to self-determination under UNDRIP, the ICCPR, and the ICESCR with the interpretive approaches of *Usul al-Fiqh*, *Maqāṣid al-Sharī'ah*, and comparative *inter-madhab* analysis. The framework is further complemented by Sustainable Development Goal 16 (SDG 16), particularly its emphasis on justice, inclusive institutions, effective governance, and participatory decision-making in matters affecting vulnerable communities. Through this framework, the article evaluates the Islamic legal legitimacy of indigenous territorial autonomy and employs the O'Hongana Manyawa community as an empirical case for examining contemporary conflicts over indigenous land rights, collective autonomy, and the protection of indigenous communities.⁸

Obviously, Indonesia provides a highly relevant context for examining this issue. In addition to having the biggest Muslim population in the world, Indonesia is home to millions of indigenous people dispersed throughout its many areas. Although the existence and traditional rights of indigenous peoples have been constitutionally recognized, the implementation of that recognition in practice still reveals various inconsistencies.⁹ Empirical data reveal recurring patterns of land grabbing, exploitation of natural resources, and structural marginalization that reflect

⁷ Asif Mohiuddin, "Human Rights Law in Muslim Majority Countries: An Assessment," in *Human Rights Law in Egypt and Malaysia: Freedom of Religion and Expression, Volume 1* (Springer, 2024), 35–74.

⁸ Abdullahi Ahmed An-Na'im, "Islam, Islamic Law and the Dilemma of Cultural Legitimacy for Universal Human Rights 1," in *Asian Perspectives on Human Rights* (Routledge, 2021), 31–54.

⁹ Annisa Faradina et al., "The Existence Of The Indigenous Peoples Of The Sakai Tribe On The Ulayat Lands In The Industrial Plantation Forest Area," *Jurnal Ilmiah Living Law* 15, no. 2 (2023): 142; Uche Nnawulezi et al., "Evaluating the Right to Life: Lessons from Nigeria, the African Charter, and Indonesian Regulations," *Jurnal Hukum Novelty* 16, no. 1 (2025), <https://doi.org/10.26555/jhn.v16i1.29985>.

a gap between normative recognition and the realities faced by communities on the ground.¹⁰

Nonetheless, the O'Hongana Manyawa community in North Maluku is a prime example of this circumstance. The community is entwined with the ancestral woods and customary territories they have lived in for generations since they rely on the forest for their livelihood. However, the expansion of extractive industries, particularly mining, into their territories has sparked serious conflicts, threatening their livelihoods, economic systems, and cultural identity.¹¹ This phenomenon underscores a fundamental problem, namely the inability of the current legal system to effectively accommodate and guarantee the protection of indigenous peoples' autonomy.¹²

This circumstance presents important normative concerns about the validity of state policies toward indigenous peoples from the standpoint of Islamic law.¹³ The Maqashid al-Shari'ah framework, which emphasizes the protection of fundamental human interests such as life, property, lineage, intellect, and religion,¹⁴ provides a comprehensive approach for evaluating this issue. When applied to the situation faced by the O'Hongana Manyawa community, it becomes evident that various aspects of these objectives are

¹⁰ Nathan Andrews, "Land versus Livelihoods: Community Perspectives on Dispossession and Marginalization in Ghana's Mining Sector," *Resources Policy* 58 (2018): 240–49.

¹¹ Ciaran O'Faircheallaigh, "Extractive Industries and Indigenous Peoples: A Changing Dynamic?," *Journal of Rural Studies* 30 (2013): 20–30.

¹² Catherine J Iorns, "Indigenous Peoples and Self Determination: Challenging State Sovereignty," *Case W. Res. J. Int'l L.* 24 (1992): 199; Septhian Eka Adiyatma, Ana Silviana, and Dorcas Adesola Thanni, "Criminalizing the Guardians: Eco-Justice and Indigenous Struggles in Indonesia and Nigeria," *Indonesian Journal of Criminal Law Studies* 10, no. 2 (November 2025): 901–50, <https://doi.org/10.15294/ijcls.v10i2.33536>.

¹³ Abdullahi Ahmed An-Nacim, "The Compatibility Dialectic: Mediating the Legitimate Coexistence of Islamic Law and State Law," *The Modern Law Review* 73, no. 1 (2010): 1–29.

¹⁴ Dr K H Mir and Dr Md R Anjum, "Universal Ethics for a Divided World: Maqasid Al-Shari'ah and the Pursuit of Human Brotherhood," *Journal of Islamic Studies and Culture* 13 (2025): 21–37.

under threat, indicating a tension between prevailing legal practices and the principles of justice in Islamic law.¹⁵

Furthermore, the methodological tools in Usul al-Fiqh provide a systematic foundation for developing Islamic legal reasoning regarding contemporary issues not explicitly addressed in classical sources.¹⁶ Concepts such as *maslahah* (public interest) and *‘urf* (custom) allow for flexibility in responding to ever-evolving social dynamics. Thus, the right to self-determination for indigenous peoples can be understood not as an external concept, but as a justifiable part of the framework of Islamic legal thought itself.¹⁷

In this context, this study seeks to bring together the discourse on international human rights law and Islamic legal thought through a critical analysis of the experiences of the O’Hongana Manyawa community as a concrete case study.¹⁸ This study argues that the protection of indigenous peoples’ right to self-determination is not only consistent with the fundamental principles of Islamic law but can also derive normative legitimacy through the interpretive frameworks of Usul al-Fiqh and Maqasid al-Shari‘ah. Furthermore, this study compares the views of various schools of thought regarding *maslahah*, *‘urf*, *istihsan*, and *sadd al-dhara’i* in providing a foundation for the normative assessment of collective land

¹⁵ Sahin Husain, Nasir Purkon Ayoub, and Mukhammadolim Hassmann, “Legal Pluralism in Contemporary Societies: Dynamics of Interaction between Islamic Law and Secular Civil Law,” *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 1, no. 1 (2024): 1–17.

¹⁶ Muhammad Jefry, Mahmul Mujahidin, and Endah Tri Wisudaningsih, “Convergence of Usul Fiqh Methodology in the Dynamics of Law, Tempo Development and Context Sensitivity,” *Al-Wadh’iyyah: Journal of Sharia Law and Legal Studies* 1, no. 3 (2025): 99–107.

¹⁷ Rashwet Shrinkhal, “‘Indigenous Sovereignty’ and Right to Self-Determination in International Law: A Critical Appraisal,” *AlterNative: An International Journal of Indigenous Peoples* 17, no. 1 (2021): 71–82.

¹⁸ Syed Maisoor Hussain, “The Intersection of Islamic Law and Modern Human Rights,” *Journal of Religion and Society* 3, no. 01 (2025): 382–94.

rights.¹⁹ This study aims to enrich the study of Islamic law through the integration of doctrinal analysis and empirical research, particularly in addressing contemporary global issues related to the protection and respect for the rights of indigenous peoples.

Methods

This study employs a socio-legal (juridical-empirical) design that integrates a doctrinal analysis of Islamic law-including *usul al-fiqh*, *maqasid al-shari'ah*, as well as a comparison of views across legal schools (*madhhabs*), with qualitative field research on the experiences of the O'Hongana Manyawa community in dealing with disputes related to indigenous peoples' rights. This approach is used to link the normative constructs of Islamic law with the practical protection of indigenous peoples' rights within the context of Indonesia's rule of law. This methodological framework was designed not only to explain the legal problems experienced by the O'Hongana Manyawa community, but also to translate the research findings into practical legal resources capable of supporting ongoing community-based advocacy.²⁰

In addition, the field research was conducted from June 1 to July 28, 2025, in Halmahera, North Maluku, and in Jakarta, Bogor, and Ternate. Primary data were collected through semi-structured interviews with 11 informants who were selected through purposive sampling and further identified using snowball sampling.²¹ Research informants consisted of three members of the O'Hongana Manyawa community, an indigenous peoples' advocacy organization, academics, and state and international actors with experience, authority, or expertise related to the recognition of indigenous peoples' rights and the application of the principle of self-

¹⁹ Gaetano Pentassuglia, "Self-Determination, Human Rights, and the Nation-State: Revisiting Group Claims through a Complex Nexus in International Law," *International Community Law Review* 19, no. 4-5 (2017): 443-84.

²⁰ Irwansyah, *Penelitian Hukum Pilihan Metode Dan Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).133

²¹ Peter Mahmud Marzuki, *Pengantar Penelitian Hukum* (Jakarta: Kencana Prenada Media, 2017).166

determination. Secondary data includes international legal instruments (UNDRIP, ICCPR, and ICESCR), Indonesian laws and court decisions, literature on *usul al-fiqh* and *maqasid al-shari'ah*, and documents related to conflicts and the criminalization of the O'Hongana Manyawa community.

The Alliance of Indigenous Peoples of the Archipelago (AMAN) in North Maluku helped facilitate access to informants from indigenous communities, and since some of the informants communicated in local languages, the Association for the Defense of Indigenous Peoples of the Archipelago (PPMAN) provided interpreters during the interviews. With the informants' permission, all of the interviews were performed according to semi-structured criteria, taped, and verbatim transcribed.²² Given that the translator used in this study was also affiliated with one of the advocacy organizations, the potential for interpretive bias was acknowledged as a methodological limitation and minimized through triangulation with academic and government informants, as well as document analysis.

Furthermore, the data were analyzed thematically using the six-phase framework developed by Braun and Clarke (2006). The process involved familiarizing the researchers with the data, generating initial codes, identifying potential themes, reviewing and refining the themes, defining and naming the final themes, and producing the research report. The coding process was conducted inductively, with all codes derived directly from the empirical data collected in the field. Consequently, the central themes emerged from the experiences and perspectives of the informants rather than being imposed in advance through predetermined theoretical categories.²³ To explain the normative basis for the protection of indigenous peoples' right to self-determination, the empirical findings are further analyzed by integrating them into the framework of *maqasid al-shari'ah*, the theory of *usul al-fiqh*, and a comparison of the views of the four Sunni schools of jurisprudence.²⁴

²² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Group, 2007).35

²³ Namirah Adelliani, Citra Afny Sucirahayu, and Azmiya Rahma Zanjabila, *Analisis Tematik Pada Penelitian Kualitatif* (Penerbit Salemba, 2023).40

²⁴ Soerjono Soekanto, *Sosiologi Hukum Dalam Masyarakat* (Jakarta: Rajawali Press, 1982). 62

Furthermore, the trustworthiness of the research findings was established through source and methodological triangulation. Information obtained from different groups of informants was compared and cross-checked against relevant legal documents, judicial decisions, and human rights reports. The study adopted the four criteria of trustworthiness proposed by Lincoln and Guba, namely credibility, dependability, transferability, and confirmability. These criteria were supported through the use of verbatim interview transcripts, systematic audit trails, detailed contextual descriptions, and consistency checks across the data, coding process, thematic development, and interpretation. These procedures were applied to ensure the reliability, transparency, and overall trustworthiness of the research findings. This study did not undergo review by an institutional ethics committee because such review was not required for socio-legal research at Universitas Hasanuddin. Nevertheless, all of the informants provided informed consent before the interviews either directly or through an interpreter for community informants with an explanation of the research objectives, the voluntary nature of participation, and the informants' right to stop the interview at any time.²⁵ The absence of formal ethical approval and the use of interpreters affiliated with advocacy organizations were acknowledged as limitations of the study, particularly given the vulnerability of the O'Hongana Manyawa community.

Overall, the study generated a documented evidence base concerning the experiences of the O'Hongana Manyawa community. By systematically documenting indigenous perspectives and integrating them with international human rights law, Indonesian constitutional law, and Islamic legal principles, the research strengthened the availability of credible legal evidence that may support future advocacy, policy development, and initiatives aimed at recognizing and protecting indigenous rights. In this respect, the study contributed to community strengthening by providing a normative and empirical foundation for evidence-based protection of the O'Hongana Manyawa community.

²⁵ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Pres, 2020).⁸⁹

Results and Discussion

I. Structural Failure of Indigenous Self-Determination in Indonesian Legal Frameworks: Evidence from the O'Hongana Manyawa Community

The right to self-determination is widely recognized as a cornerstone of contemporary international human rights law.²⁶ Nevertheless, in a pluralistic postcolonial state such as Indonesia, the implementation of this principle remains uneven. Formal legal recognition has not translated into effective protection in social and political practice.²⁷ The experience of the O'Hongana Manyawa community in Halmahera showed that this failure was structural rather than incidental. It operated through three interconnected dimensions: normative incompleteness, institutional fragmentation, and procedural exclusion. When combined, these requirements reduce the right to self-determination to legalese.²⁸

The concept of the right to self-determination has undergone significant development and has become firmly established within the framework of international human rights law. In its early development, this right was primarily associated with the decolonization process. However, its application has gradually broadened to acknowledge indigenous peoples as collective rights holders. Rukka Sombolinggi, Secretary General of the

²⁶ Claire Charters, "A Self-Determination Approach to Justifying Indigenous Peoples' Participation in International Law and Policy Making," *International Journal on Minority and Group Rights* 17, no. 2 (2010): 215–240, <https://doi.org/10.1163/157181110X495872>.

²⁷ Eric Stenly Holle, Abrar Saleng, Aminuddin Salle, and A.Suriyaman Mustari Pide. et al., "Nature of Exploitation of Forest Resources towards the Welfare of the Customary Law Community in Maluku Province (Perspectives on Pancasila Law and Legal Pluralism)," *Journal of Law, Policy & Globalization* 95, no. 1 (2020): 83.

²⁸ Halim Moris, "Self-Determination: An Affirmative Right or Mere Rhetoric?," *ILSA J. Int'l & Comp. L.* 4 (1997): 201.

Alliance of Indigenous Peoples of the Archipelago (AMAN), emphasized this historical transformation by stating that:²⁹

“In the early stages of decolonization, the principle of self-determination was not yet part of intergovernmental discussions. It was not until the 1960s, as the decolonization movement gained strength and the struggles of Black communities, formerly enslaved peoples, women, and other marginalized groups emerged, that self-determination began to be understood as a right inherent to various social groups, not limited to nations that had once been under colonial rule. This development was subsequently gradually incorporated into various international human rights instruments and ultimately became one of the indicators of the rights of indigenous peoples recognized by the United Nations.”

Rukka Sombolinggi's explanation emphasizes that indigenous peoples' self-determination in a contemporary context should not be interpreted as a demand for external sovereignty, but rather as an internationally recognized collective right to preserve their institutions, territories, and traditional governance systems within the framework of existing states.

Although the right of indigenous peoples to self-determination has been recognized under international law, the field interviews revealed that the idea is frequently misinterpreted in Indonesia. Rather than internal self-governance, it is often read as a claim to political separation. Indigenous leaders have often stressed that self-determination should be interpreted as internal self-governance carried out within the State's constitutional framework.³⁰ Abdon Nababan of the Asia Indigenous Peoples Pact (AIPP)

²⁹ Interview with Rukka Sombolinggi (Secretary General of the Indigenous Peoples Alliance of the Archipelago [AMAN]), conducted by the author, Indigenous Peoples Alliance of the Archipelago (AMAN) Office, Bogor City, West Java, Indonesia, July 18, 2025.

³⁰ Fredrickus W A Maclarimboan, A Suriyaman M Pide, and Amir Ilyas, “Aktualisasi Nilai-Nilai Hukum Adat Dalam Penanganan Kecelakaan Lalu Lintas,” *Jurnal Ilmiah Dunia Hukum* 4, no. 2 (2020): 46.

Executive Council provided an explanation of this idea, saying:³¹

“In the Indonesian context, self-determination should be understood as a form of self-governance exercised within the constitutional framework of the Unitary State of the Republic of Indonesia. This principle allows indigenous peoples to exercise meaningful authority over their social, economic, and cultural affairs while maintaining their status and participation within the broader structure of the Indonesian state.”

At the constitutional level, Indonesia acknowledges the existence and rights of indigenous communities through Article 18B(2) of the 1945 Constitution. This recognition was subsequently strengthened by Constitutional Court Decision No. 35/PUU-X/2012, which clarified the legal distinction between customary forests belonging to indigenous communities and forests classified as being under state control.³² However, this recognition remains largely declaratory. Without comprehensive national legislation, indigenous peoples must rely on local administrative recognition.³³ Consequently, recognition depends on political discretion rather than on the acknowledgment of inherent collective rights. This situation highlights a state ambiguity: indigenous peoples are recognized normatively, but substantive protection of their rights has not been adequately established.³⁴

³¹ Interview with Abdon Nababan (Executive Council Member, Asia Indigenous Peoples Pact [AIPP]), conducted by the author at the Indigenous Peoples Alliance of the Archipelago (AMAN) Office, Bogor City, West Java, Indonesia, July 24, 2025.

³² Sartika Intaning Pradhani, “Traditional Rights of Indigenous People in Indonesia: Legal Recognition and Court Interpretation,” *Jambe Law Journal* 1, no. 2 (2018): 177–205.

³³ Sue Jackson, “Water and Indigenous Rights: Mechanisms and Pathways of Recognition, Representation, and Redistribution,” *Wiley Interdisciplinary Reviews: Water* 5, no. 6 (2018): e1314.

³⁴ Siegfried Wiessner, “The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges,” *European Journal of International Law* 22, no. 1 (2011): 121–40.

This gap between constitutional recognition and substantive legal protection was also emphasized by Rukka Sombolinggi, Secretary General of the Alliance of Indigenous Peoples of the Archipelago (AMAN), stated that:³⁵

“As long as the State has not recognized the sovereignty of indigenous peoples over their territories and governance systems, self-determination will remain merely rhetorical.”

In contemporary legal discourse, the recognition of indigenous peoples' rights to determine their own political, cultural, and territorial affairs has emerged as an increasingly significant issue. This issue is particularly relevant at the intersection of national constitutional frameworks and the international human rights legal regime, where the protection of indigenous peoples' rights must be considered alongside the principles of state sovereignty, self-determination, and human rights protection.

From the perspective of Critical Legal Studies, Indonesia's fragmented recognition regime was not merely the result of legislative omission. It reflected the political character of law itself. CLS rejects the assumption that law operates as a neutral system detached from social and economic interests.³⁶ Instead, legal norms often preserved existing distributions of political authority and economic power.

From this perspective, the absence of a comprehensive Indigenous Peoples Law is more than a legislative gap. It preserves broad state discretion to determine which indigenous peoples are recognized and under what conditions. Such discretion enables governmental institutions to retain

³⁵ Interview with Rukka Sombolinggi (Secretary General of the Indigenous Peoples Alliance of the Archipelago [AMAN]), conducted by the author, Indigenous Peoples Alliance of the Archipelago (AMAN) Office, Bogor City, West Java, Indonesia, July 18, 2025.

³⁶ Almut Schilling-Vacaflor, “Who Controls the Territory and the Resources? Free, Prior and Informed Consent (FPIC) as a Contested Human Rights Practice in Bolivia,” in *New Mechanisms of Participation in Extractive Governance* (Routledge, 2018), 16–32.

control over strategic territories rich in natural resources while simultaneously presenting constitutional recognition as evidence of legal protection.

The field interviews consistently indicated that one of the major barriers to indigenous recognition lay in the absence of implementing legislation at the regional level. This concern was repeatedly raised by civil society organizations working directly with indigenous peoples. Azkar Ahsinin, Senior Researcher at ELSAM, explained:³⁷

“The O’Hongana Manyawa require a Regional Regulation (Perda) that formally recognizes them as an indigenous community.”

Azkar Ahsinin’s observation reinforced that constitutional recognition alone was insufficient to secure indigenous peoples’ rights. Without implementing legislation, particularly at the regional level, constitutional provisions remained largely symbolic and failed to provide legal certainty regarding indigenous identity, indigenous peoples, and systems of collective governance. Accordingly, the realization of self-determination required not only constitutional recognition but also operational legal instruments capable of translating constitutional principles into enforceable rights.

Taken together, these interviews revealed a consistent empirical pattern. Both informants concluded that the principal obstacle was not the absence of constitutional recognition, but the lack of operational legal instruments capable of implementing that recognition.

These limitations are further reflected in the wording of Article 18B, paragraph (2) of the 1945 Constitution, which recognizes indigenous peoples on the condition that they “continue to exist and adapt to societal developments.” This formulation grants the state broad discretion to

³⁷ Interview with Azkar Ahsinin (Senior Researcher, Institute for Policy Research and Advocacy [ELSAM]), conducted by the author at the Institute for Policy Research and Advocacy (ELSAM) Office, South Jakarta, Jakarta Special Capital Region, Indonesia, July 21, 2025.

determine the legitimacy of indigenous peoples' existence.³⁸ In practice, this provision was used to challenge the existence of communities such as the O'Hongana Manyawa, who still maintain a semi-nomadic way of life. Thus, the very characteristics that define their indigenous identity become the basis for questioning their legal recognition.³⁹

The weakness of this constitutional recognition was further exacerbated by contradictions in sectoral regulations. The forestry regime has historically classified indigenous territories as part of state forests, thereby reinforcing state dominance over indigenous lands.⁴⁰ On the other hand, the Job Creation Law accelerates the investment permitting process by reducing procedural protections for affected communities.⁴¹ Although Constitutional Court Decision No. 35/2012 sought to correct this situation, its implementation had been slow and has not altered the fundamental structure of state control over indigenous territories. As a result, national law not only failed to provide protection but also reproduced the structural vulnerabilities of indigenous peoples.⁴²

In addition to normative issues, the state's approach to indigenous peoples was also marked by serious institutional fragmentation. Authority over indigenous peoples is scattered across various ministries and agencies without effective coordination, resulting in overlapping jurisdictions and

³⁸ Steven Wheatley, "Conceptualizing the Authority of the Sovereign State over Indigenous Peoples," *Leiden Journal of International Law* 27, no. 2 (2014): 371–96, <https://doi.org/DOI: 10.1017/S092215651300037X>.

³⁹ Patrick Macklem, "Indigenous Recognition in International Law: Theoretical Observations," *Mich. J. Int'l L.* 30 (2008): 177.

⁴⁰ Janette Bulkan, "Indigenous Forest Management," *CABI Reviews*, no. 2017 (2017): 1–16.

⁴¹ Joko T Suroso, Dani Durahman, and Indra Budi, "The Simplification of Licensing Procedure in Job Creation Law: The Effectiveness to Attract Foreign Investor," *Cogent Social Sciences* 10, no. 1 (2024): 2414509.

⁴² Richard Howitt, Olga Havnen, and Siri Veland, "Natural and Unnatural Disasters: Responding with Respect for Indigenous Rights and Knowledges," *Geographical Research* 50, no. 1 (2012): 47–59.

weak accountability.⁴³ Presidential Regulation No. 62 of 2023 on the National Strategy for the Protection and Recognition of Customary Law Communities acknowledges these issues but has not addressed their structural roots.⁴⁴ Empirically, the absence of state-recognized mapping of indigenous peoples remains one of the primary obstacles to the formal recognition of the O'Hongana Manyawa community.⁴⁵

Institutional fragmentation should not be understood solely as an administrative coordination problem. More fundamentally, it reflects competing political-economic interests embedded in Indonesia's natural resource governance. Different institutions derive authority, budgets, and regulatory influence from overlapping responsibilities for forests, mining, land administration, and indigenous affairs.⁴⁶ Accordingly, fragmented governance may unintentionally reproduce institutional incentives to maintain overlapping authority rather than resolve it. This explains why successive regulatory reforms have produced procedural adjustments without fundamentally altering the underlying governance structure.

The most obvious indication of this structural weakness is evident in the ineffective implementation of the principle of Free, Prior, and Informed Consent (FPIC) within the framework of the national permitting system.⁴⁷

⁴³ Alfonso Peter Castro and Erik Nielsen, "Indigenous People and Co-Management: Implications for Conflict Management," *Environmental Science & Policy* 4, no. 4–5 (2001): 229–39.

⁴⁴ Hariyanto Hariyanto, Mabarroh Azizah, and Nurhidayatuloh Nurhidayatuloh, "Does the Government's Regulations in Land Ownership Empower the Protection of Human Rights?," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (2024): 391–421.

⁴⁵ Michael Luoma, "Group-Differentiated Rights for Indigenous Peoples that Straddle Borders," *Critical Review of International Social and Political Philosophy* 28, no. 1 (2025): 121–42.

⁴⁶ Benedict Kingsbury, "Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law," in *Indigenous Rights* (Routledge, 2017), 185–246.

⁴⁷ Juan Pablo Sarmiento Barletti, Léna Prouchet, and Anne M Larson, "Rights-Based Approaches and Indigenous Peoples and Local Communities: Findings from a Literature Review," *CABI Reviews*, no. 2023 (2023).

Under international law, the principle of Free, Prior and Informed Consent (FPIC) is closely connected to the broader right of indigenous peoples to self-determination, as affirmed in Article 1 of both the ICCPR and the ICESCR. This legal foundation is further strengthened by Articles 18 and 19 of the UNDRIP, which recognize indigenous peoples' participation in decision-making processes concerning matters that may affect their rights and interests. Taken together, these international instruments establish that indigenous peoples are entitled to meaningful and effective participation in decisions concerning their territories and natural resources. FPIC therefore requires more than mere consultation, as it recognizes the right of indigenous peoples to influence decisions and to consent to or withhold consent from policies, projects, and other initiatives that may affect their ancestral lands, natural resources, and the continuity of their collective cultural life.⁴⁸

FPIC is more than just a consultation process. It is an official manifestation of the right to self-determination of indigenous peoples. By guaranteeing that the State or corporate actors cannot unilaterally impose decisions affecting their lands, territories, and natural resources, FPIC operationalizes the substantive autonomy of indigenous peoples.⁴⁹ As a result, the legal significance of FPIC extends beyond participatory governance and constitutes an institutional safeguard against arbitrary interference with indigenous collective rights.

FPIC was expressly recognized in Articles 10, 19, 28, 29, and 32 of UNDRIP. However, scholars continued to debate whether it had attained the status of customary international law. UNDRIP was formally a non-binding declaration rather than a treaty. Nevertheless, its principles have

⁴⁸ Dorothee Cambou, "The UNDRIP and the Legal Significance of the Right of Indigenous Peoples to Self-Determination: A Human Rights Approach with a Multidimensional Perspective," in *The United Nations Declaration on the Rights of Indigenous Peoples* (Routledge, 2020), 33–49.

⁴⁹ Brian Z. Tamanaha, "Legal Pluralism across the Global South: Colonial Origins and Contemporary Consequences," *Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 168–205, <https://doi.org/10.1080/07329113.2021.1942606>.

gained increasing authority through judicial practice, domestic legislation, and international human rights bodies.⁵⁰

This development became clearer when Indonesia was compared with jurisdictions that had institutionalized FPIC through different constitutional and legislative models. Rather than relying solely on constitutional recognition, these jurisdictions have transformed FPIC into an enforceable administrative obligation.⁵¹ As a result, indigenous consent directly influences governmental decision-making concerning indigenous territories.

The Philippines is one of the clearest examples of the institutionalization of the FPIC principle through the Indigenous Peoples' Rights Act (IPRA) of 1997. No development project that impacts ancestral lands may be carried out without obtaining FPIC from the affected indigenous communities. Compliance with the FPIC principle is a legal requirement for the issuance of government permits. The consultation process is overseen by the National Commission on Indigenous Peoples (NCIP), which also ensures that consent is obtained in accordance with the decision-making mechanisms in place within the indigenous communities. As a result, FPIC operates not merely as a consultative process but as a legally enforceable condition for administrative approval.⁵²

Canada has adopted a different institutional model. After ratifying the UNDRIP and enacting the United Nations Declaration on the Rights of Indigenous Peoples Act in 2021, Canada public authorities have increasingly aligned domestic law with UNDRIP principles. Although Canadian courts distinguished consultation from an absolute Indigenous

⁵⁰ Rauna Kuokkanen et al., "Are Indigenous Conceptions of Sovereignty as Non-Interference Patriarchal?," *Review of International Studies* 51, no. 1 (2025): 1–21, <https://doi.org/DOI: 10.1017/S0260210524000846>.

⁵¹ Mauro Barelli, "Free, Prior and Informed Consent in the Aftermath of the UN Declaration on the Rights of Indigenous Peoples: Developments and Challenges Ahead," *The International Journal of Human Rights* 16, no. 1 (January 2012): 1–24, <https://doi.org/10.1080/13642987.2011.597746>.

⁵² Cathal Doyle, "The Philippines Indigenous Peoples Rights Act and ILO Convention 169 on Tribal and Indigenous Peoples: Exploring Synergies for Rights Realisation," *The International Journal of Human Rights* 24, no. 2–3 (2020): 170–90.

veto, recent decisions provided stronger protection where projects substantially affect traditional territories.⁵³

New Zealand likewise illustrated a distinctive approach rooted in the constitutional significance of the Treaty of Waitangi. While the Treaty did not explicitly employ the terminology of FPIC, judicial interpretation and statutory practice increasingly required meaningful participation of Māori communities in environmental governance, resource management, and cultural heritage protection.⁵⁴ Decision-making processes therefore emphasized negotiated partnership rather than unilateral governmental determination, reflecting the evolving recognition of Indigenous self-governance within a constitutional framework.

Norway provided one of the strongest institutional models through the Sámi Parliament (Sámediggi). Rather than limiting indigenous participation to project-specific consultation, Norwegian law established permanent consultation procedures. Government agencies must negotiate with Sámi institutions whenever proposed measures may affect Sámi interests.⁵⁵

Despite their institutional diversity, these jurisdictions shared an important normative feature. None treats indigenous participation as a matter of governmental discretion. Instead, each incorporates indigenous consent into public decision-making through different constitutional mechanisms. These included statutory recognition, judicially enforceable consultation, treaty-based partnerships, and permanent representative institutions. Their common objective was to embed indigenous self-determination within domestic legal processes.

⁵³ Martin Papillon, Jean Leclair, and Dominique Leydet, “Free, Prior and Informed Consent: Between Legal Ambiguity and Political Agency,” *International Journal on Minority and Group Rights* 27, no. 2 (2020): 223–32.

⁵⁴ Karen Fisher and Meg Parsons, “River Co-Governance and Co-Management in Aotearoa New Zealand: Enabling Indigenous Ways of Knowing and Being,” *Transnational Environmental Law* 9, no. 3 (2020): 455–80, <https://doi.org/DOI:10.1017/S204710252000028X>.

⁵⁵ John B Henriksen, “The Continuous Process of Recognition and Implementation of the Sami People’s Right to Self-Determination,” *Cambridge Review of International Affairs* 21, no. 1 (2008): 27–40.

Despite differences in constitutional design, these jurisdictions revealed a common legal pattern. Effective implementation of FPIC depended not only on constitutional recognition but also on institutional mechanisms that make indigenous consent legally enforceable.⁵⁶ Indonesia has not yet established such mechanisms. Instead, fragmented sectoral regulations reduce consultation to an administrative formality rather than a substantive guarantee of indigenous autonomy.

From a comparative legal perspective, the principal deficiency of Indonesian law therefore lay not in the absence of constitutional recognition of indigenous peoples, but in its failure to institutionalize FPIC as a mandatory legal requirement governing administrative decision-making.⁵⁷ Unlike the Philippines, Canada, New Zealand, and Norway, Indonesian sectoral legislation continued to treat indigenous consultation as a discretionary administrative process rather than a legally enforceable condition for authorizing projects affecting indigenous peoples. Therefore, the comparative analysis demonstrated that effective realization of indigenous self-determination depends upon institutionalizing FPIC through comprehensive legislation rather than relying solely upon constitutional recognition.

Comparative experience suggested that constitutional recognition alone is insufficient. Indonesia also requires comprehensive legislation that integrates FPIC as a mandatory condition for decisions affecting indigenous territories.⁵⁸

However, Indonesian law had not yet established FPIC as a legally binding obligation in the process of granting investment permits and exploiting natural resources. This absence was not merely a regulatory gap

⁵⁶ Sabaa Ahmad Khan, "Rebalancing State and Indigenous Sovereignities in International Law: An Arctic Lens on Trajectories for Global Governance," *Leiden Journal of International Law* 32, no. 4 (2019): 675–93, <https://doi.org/DOI:10.1017/S0922156519000487>.

⁵⁷ Simon Butt, "Traditional Land Rights before the Indonesian Constitutional Court," *Law Env't & Dev. J.* 10 (2014): 1.

⁵⁸ Retno Kusniati, "Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?," *Jambe Law Journal* 7, no. 1 (2024): 169–93.

but a structural mechanism that allows the state and corporations to make unilateral decisions regarding indigenous territories.⁵⁹ In the case of O'Hongana Manyawa, the expansion of the nickel industry proceeded without adequate notification, without linguistically and culturally understandable consultation, and without effective mechanisms for refusal. This fact demonstrates that the procedural standards required by international law have not been integrated into domestic legal practice.

Decolonial legal theory provided an important explanation for why the principle of Free, Prior and Informed Consent remains difficult to institutionalize within Indonesian law. Although Indonesia was no longer formally colonized, many regulatory structures governing land and natural resources continued to reproduce colonial assumptions that position the State as the ultimate owner and administrator of territory. Indigenous territories were recognized only after administrative validation by the State rather than as territories governed by pre-existing legal orders.⁶⁰ Consequently, FPIC remained optional because indigenous authority itself has not been fully recognized as legally autonomous.⁶¹ In this sense, the persistence of procedural exclusion represents not merely a failure of implementation but the continuation of colonial patterns of legal authority through contemporary state institutions.

The impact of these conditions was not limited to material loss. For the O'Hongana Manyawa community, the forest was not only an economic resource but also an ontological foundation that underpinned their social identity, collective knowledge, and spiritual practices.⁶² As a result, the

⁵⁹ Hairunnisa Rahmi Fadiyah and Fadhel Ally Muhammad, "Legal Protection of Indigenous Peoples from Natural Resource Exploitation: A Comparative Study of Indonesia and the Philippines," *Journal of Law, Politics and Humanities* 6, no. 3 (2026): 2031–42.

⁶⁰ Megan Youdelis et al., "Decolonial Conservation: Establishing Indigenous Protected Areas for Future Generations in the Face of Extractive Capitalism," *Journal of Political Ecology* 28, no. 1 (2021): 990–1022.

⁶¹ Schilling-Vacaflor, "Who Controls the Territory and the Resources? Free, Prior and Informed Consent (FPIC) as a Contested Human Rights Practice in Bolivia."

⁶² Sean Weaver and Paul Roughan, "Forests, Climate Change and Indigenous Knowledge. Reflecting Indigenous Ontologies in the Economics of Restoration," in

taking of territory without permission destroyed the social and cosmological systems of the community in addition to depriving them of resources.⁶³ In this context, a violation of FPIC was simultaneously a violation of the internal dimension of the right to self-determination.⁶⁴

In the case of the O'Hongana Manyawa community, persistent overlaps in institutional authority, limited recognition of customary governance, and the absence of a legally binding mechanism to secure indigenous participation in decisions affecting customary territories demonstrate that the problem extends beyond the formal recognition of substantive rights. It also concerns the quality, inclusiveness, and accountability of state governance. From this perspective, protecting indigenous self-determination requires institutional arrangements that enable indigenous communities to participate meaningfully in decisions concerning their territories and resources. SDG 16 therefore serves as a complementary normative perspective for assessing whether state action reflects justice, inclusion, and accountable governance, while the substantive legitimacy of such protection remains grounded in international human rights law and the interpretive principles of Islamic law.

This conclusion was strongly supported by field evidence obtained from members of the O'Hongana Manyawa community themselves. As explained by Enos Pepedol, one of the community members:⁶⁵

Traditional Knowledge and Climate Change: An Environmental Impact on Landscape and Communities (Springer, 2024), 145–85.

⁶³ Moses Mosonsieyiri Kansanga, Godwin Arku, and Isaac Luginaah, "Powers of Exclusion and Counter-Exclusion: The Political Ecology of Ethno-Territorial Customary Land Boundary Conflicts in Ghana," *Land Use Policy* 86 (2019): 12–22.

⁶⁴ Nathan Yaffe, "Indigenous Consent: A Self-Determination Perspective," *Melb. J. Int'l L.* 19 (2018): 703; Filiberto Penados, Levi Gahman, and Shelda Jane Smith, "Land, Race, and (Slow) Violence: Indigenous Resistance to Racial Capitalism and the Coloniality of Development in the Caribbean," *Geoforum* 145 (2023), <https://doi.org/10.1016/j.geoforum.2022.07.004>.

⁶⁵ Interview with Enos Pepedol (Member of the O'Hongana Manyawa Indigenous Peoples), conducted by the author at Tukur-Tukur Hamlet, Dodaga Village, East Wasile District, East Halmahera Regency, North Maluku Province, Indonesia, June 19, 2025.

“The forests and mountains are disappearing because of mining. Our indigenous community has always respected the forest. That is what we have given to nature, but our relationship with the forest is now disappearing because it has been cut down for mining interests.”

Enos Pepedol's testimony showed that the O'Hongana Manyawa experienced mining as more than environmental degradation. It disrupted the reciprocal relationship between indigenous identity, customary law, and ancestral territory. For the community, forests were the foundation of collective existence. Their loss therefore threatened cultural continuity and the effective exercise of self-determination. This community perspective was further reinforced by Azkar Ahsinin, Senior Researcher at ELSAM, who explained:⁶⁶

“For the O'Hongana Manyawa, the forest is not merely a source of livelihood but a shared living space that does not recognize individual ownership.”

Azkar Ahsinin's explanation complemented Enos Pepedol's testimony. It showed that the relationship between the O'Hongana Manyawa and their forests could not be understood through conventional concepts of private property. Instead, the forest functioned as a collective living space that sustained indigenous identity, customary governance, cultural continuity, and spiritual values. Thus, the loss of customary forests not only indicates environmental degradation but also reflects the erosion of the collective foundation for the exercise of the right to self-determination.

In addition to their significant ecological value, customary forests are also closely linked to the governance of the O'Hongana Manyawa community. Findings from field interviews indicate that this community has a well-established customary governance system for managing natural

⁶⁶ Interview with Azkar Ahsinin (Senior Researcher, Institute for Policy Research and Advocacy [ELSAM]), conducted by the author at the Institute for Policy Research and Advocacy (ELSAM) Office, South Jakarta, Jakarta Special Capital Region, Indonesia, July 21, 2025.

resources and social relations within the community. According to Mrs. Dona, a leader of the O'Hongana Manyawa indigenous People:⁶⁷

“Traditional leaders are responsible for upholding customary law, resolving disputes, and ensuring compliance with customary rules governing the use of natural resources.”

Mrs. Dona's testimony demonstrated that the O'Hongana Manyawa possessed functioning customary institutions. Traditional leaders resolved disputes, enforced customary norms, and to collectively manage the use of natural resources. Denial of the right to self-determination therefore could not be justified by the absence of indigenous governance. Instead, it reflected the State's failure to recognize institutions that continue to operate effectively.

In addition to the existence of functioning customary institutions, the field interviews also revealed that the importance of customary forests this also includes efforts to preserve the cultural identity of the O'Hongana Manyawa community. This cultural dimension was emphasized by Malkiel Ori, a prominent figure in the O'Hongana Manyawa indigenous people, who explained:⁶⁸

“For the O'Hongana Manyawa people, culture is inseparable from the forest. Forests are not viewed merely as economic spaces, but also as spiritual, social, and cultural spaces landscape where language, traditions, and traditional knowledge are preserved.”

These testimonies came from three different perspectives: a community member, an external researcher, and a cultural leader. Despite

⁶⁷ Interview with Mrs. Dona (Traditional Leader of the O'Hongana Manyawa Indigenous Peoples), conducted by the author at Tukur-Tukur Hamlet, Dodaga Village, East Wasile District, East Halmahera Regency, North Maluku Province, Indonesia, June 19, 2025.

⁶⁸ Interview with Malkiel Ori (Traditional Leader of the O'Hongana Manyawa Indigenous Peoples), conducted by the author at Tukur-Tukur Hamlet, Dodaga Village, East Wasile District, East Halmahera Regency, North Maluku Province, Indonesia, June 19, 2025.

these differences, they presented the same understanding of the forest. None separated the forest from its legal, spiritual, or epistemological significance. This convergence strengthened the credibility of the findings. Yet Indonesian law continued to frame land primarily in terms of individual property rights. As a result, the legal framework failed not only procedurally but also epistemologically.

Indigenous jurisprudence offered a fundamentally different understanding of the relationship between law, territory, and community from that embodied in modern state legal systems. Whereas Indonesian natural resource law predominantly conceptualized land as an object of ownership, licensing, and economic utilization, the legal worldview of the O'Hongana Manyawa treated forests as relational spaces that simultaneously sustained identity, spirituality, collective memory, and customary governance. For this reason, conflicts over customary forests should not be viewed merely as disputes over property rights but as conflicts between competing legal epistemologies.⁶⁹ The inability of Indonesian law to recognize this relational conception of territory explained why legal protection remained largely ineffective despite constitutional recognition.

The erosion of indigenous identity was further intensified through state policies that sought to transform the traditional way of life of the O'Hongana Manyawa. Rather than recognizing indigenous autonomy, government programmes had frequently encouraged the relocation of indigenous peoples into permanent settlements. This issue was critically addressed by Saiful Madjid, a sociologist from the University of Muhammadiyah North Maluku, who stated:⁷⁰

“What the government calls protection is actually resistance. Through the KAT programme, indigenous peoples are relocated in the name of welfare. In my view, this is a politics of domestication.”

⁶⁹ Willem Van der Muur, “Forest Conflicts and the Informal Nature of Realizing Indigenous Land Rights in Indonesia,” *Citizenship Studies* 22, no. 2 (2018): 160–74.

⁷⁰ Interview with Saiful Madjid (Lecturer, Faculty of Sociology, Universitas Muhammadiyah Maluku Utara), conducted by the author in South Ternate District, Ternate City, North Maluku Province, Indonesia, June 1, 2025.

Saiful Madjid's observation suggested that state protection has often taken the form of assimilation rather than recognition. The KAT programme measures welfare according to mainstream standards while overlooking indigenous values and governance. Consequently, relocation weakens customary institutions, cultural identity, and the community's relationship with ancestral forests.

From the perspective of legal pluralism, Indonesia continues to exhibit what Griffiths describes as weak legal pluralism, whereby customary law is acknowledged only insofar as it remains subordinate to state law.⁷¹ Rather than recognizing indigenous legal systems as autonomous normative orders, state institutions selectively incorporate customary norms into the formal legal system according to administrative convenience.⁷² As a result, indigenous peoples did not exercise jurisdiction based upon inherent legal authority but instead depend upon continuing state recognition. This hierarchical relationship explained why constitutional acknowledgment had failed to produce genuine legal equality between state law and indigenous law.⁷³ The O'Hongana Manyawa case demonstrated that legal pluralism in Indonesia remained predominantly symbolic rather than genuinely pluralistic.

This structural failure was also manifested in patterns of criminalization against community members who defend their indigenous peoples.⁷⁴ Various cases revealed criminal prosecutions accompanied by procedural violations, such as the absence of interpreters, the use of circumstantial evidence, and coercive interrogation practices. This pattern indicated that the criminal justice system often functioned not not not as a

⁷¹ Suci Flambonita, "The Concept of Legal Pluralism in Indonesia in the New Social Movement," *Jurnal Analisa Sosiologi* 10, no. 3 (2021): 363.

⁷² Marvin Joseph F Montefrio, "State versus Indigenous Peoples' Rights: Comparative Analysis of Stable System Parameters, Policy Constraints and the Process of Delegitimation," *Journal of Comparative Policy Analysis: Research and Practice* 16, no. 4 (2014): 335–55.

⁷³ Hanisah Binte Abdullah Sani, "State Law and Legal Pluralism: Towards an Appraisal," *The Journal of Legal Pluralism and Unofficial Law* 52, no. 1 (2020): 82–109.

⁷⁴ John Gledhill, "Indigenous Autonomy, Delinquent States, and the Limits of Resistancet," in *De-Pathologizing Resistance* (Routledge, 2017), 93–115.

means of protecting rights, but as an instrument of territorial control aligned with extractive interests.⁷⁵

The field interviews further revealed that the criminalization of the O'Hongana Manyawa was not limited to isolated criminal cases but reflects a broader patterns of human rights violations experienced by indigenous peoples defending their rights. This concern was emphasized by Syamsul Alam Agus, Chairperson of the Indigenous People Defenders Association (PPMAN), who explained:⁷⁶

"During our assistance to the O'Hongana Manyawa community, we documenting various human rights violations, including arbitrary arrests, intimidation, physical violence, the absence of interpreters during criminal proceedings, and restrictions on indigenous peoples' access to justice."

Syamsul Alam Agus' testimony indicated that criminal proceedings against members of the O'Hongana Manyawa could not be viewed merely as ordinary law enforcement. Rather, they formed part of a broader pattern in which criminal law was used against indigenous peoples who sought to defend their indigenous peoples and collective rights. This pattern could be empirically identified through several cases documented over the past decade, as summarized in the following table:

⁷⁵ David Szablowski, "'Legal Enclosure' and Resource Extraction: Territorial Transformation through the Enclosure of Local and Indigenous Law," *The Extractive Industries and Society* 6, no. 3 (2019): 722–32.

⁷⁶ Interview with Syamsul Alam Agus (Chairman of the Association of Defenders of Indigenous Peoples of the Archipelago [PPMAN]), conducted by the author at the office of the National Association of Defenders of Indigenous Peoples (PPMAN) in Bogor Regency, West Java, Indonesia, on July 28, 2025.

Table 1: Documented Human Rights Violations Involving the O'Hongana Manyawa Community (2013–2023)

Year / Period	Type of Case	Alleged Human Rights Violations
2013–2015	Criminal case involving Bokum and Nuhu	Allegations of torture by Central Halmahera Police to extract confessions, absence of qualified interpreters during legal proceedings
2020–2023	Criminalization of six O'Hongana Manyawa members	Physical abuse, intimidation using firearms, lack of interpreter access, exclusion of exculpatory evidence
August 2023	Prosecution of Samuel Gabe and Alen Baikole	Charges based primarily on <i>testimonium de auditu</i> , cultural stigmatization and discriminatory prosecutorial framing
September 2023	Court decision in premeditated murder case	Sentencing (20 years) exceeding prosecution demand (18 years) (<i>ultra petita</i>), multiple procedural irregularities
2020-present	Nickel mining expansion in customary territory	Land dispossession, environmental degradation, pollution, existential threat to community survival, denial of land rights

The O'Hongana Manyawa case thus clearly illustrated how the right to self-determination, as recognized under international law, had been reduced to a formal commitment lacking operational power in domestic practice. This failure was not merely a policy gap, but a form of systemic

injustice that eroded the legitimacy of the law itself. The findings of this study further suggested that addressing these structural deficiencies requires comprehensive legal reform rather than incremental administrative adjustments. This perspective was also emphasized by Agung Wibowo, Executive Coordinator of HuMa, who proposed:⁷⁷

“The ideal model enables indigenous peoples to declare and register themselves without being obstructed by conflicting sectoral legislation. A comprehensive Indigenous Peoples Law must serve as the principal legal framework.”

Agung Wibowo's proposal shifted the focus of indigenous recognition from administrative approval toward indigenous self-identification. Rather than requiring indigenous peoples to repeatedly demonstrate their existence before the State, the legal framework should recognize indigenous communities as holders of inalienable collective rights through the enactment of a comprehensive Indigenous Peoples Act capable of harmonizing the various sectoral laws and regulations that remain fragmented. While Agung Wibowo emphasized the need for a comprehensive legal framework, effective implementation also required an institutional mechanism capable of ensuring uniform recognition of indigenous peoples throughout Indonesia. This issue was highlighted by Saurlin P. Siagian, Commissioner of the National Human Rights Commission, who proposed:⁷⁸

“The best way to reconcile self-determination with existing regulations is for the State to establish a single national registry of indigenous peoples rather than qualifying or disqualifying indigenous peoples.”

⁷⁷ Interview with Agung Wibowo (Executive Coordinator, HuMa Association Indonesia), conducted by the author at the HuMa Association Indonesia Office, South Jakarta, Jakarta Special Capital Region, Indonesia, July 25, 2025.

⁷⁸ Interview with Saurlin P. Siagian (Commissioner for Monitoring and Investigation, National Commission on Human Rights of the Republic of Indonesia [Komnas HAM]), conducted by the author via Google Meet, July 18, 2025.

Saurlin P. Siagian's proposal complemented the call for legislative reform. It argued that legal recognition should not depend on fragmented regional procedures or political discretion. Instead, a National Registry of Indigenous Peoples could establish a uniform recognition mechanism based on self-identification and objective legal criteria. Such a system would strengthen legal certainty and improve implementation of Articles 3 and 4 of UNDRIP.⁷⁹

While the proposal advanced by Saurlin P. Siagian emphasized the need for a nationally coordinated recognition mechanism, field interviews further demonstrated that institutional efforts toward such a mechanism had already begun through the establishment of the National Registry of Indigenous Territories (Registri Nasional Wilayah Adat/RNWA). This institutional development was explained by Syamsul Hadi, Directorate of Belief in One Supreme God and Indigenous Peoples, Ministry of Culture, who stated:⁸⁰

“The establishment of the National Registry of Indigenous Territories (RNWA) serves as a national database that documents the existence of indigenous peoples and the official boundaries of their indigenous territories. This registry serves as a reference for development planning, natural resource management, and the resolution of tenure conflicts.”

Syamsul Hadi's statement indicated that the National Registry of Indigenous Territories (Registri Nasional Wilayah Adat/RNWA) represented an important institutional development toward a more integrated national recognition system. The registry provided a centralized database documenting indigenous communities and the boundaries of their customary territories. Such documentation strengthened the availability of reliable data for public administration and future

⁷⁹ United Nations, “United Nations Declaration on the Rights of Indigenous Peoples. Resolution 61/295,” *United Nations General Assembly*, no. March (2007).

⁸⁰ Interview with Syamsul Hadi (Directorate of Belief in God Almighty and Indigenous Peoples, Ministry of Culture of the Republic of Indonesia), conducted by the author at the Ministry of Education and Culture Complex, Senayan, Central Jakarta, Indonesia, on July 21, 2025.

policymaking.

A centralized registry might reduce inconsistencies in spatial information and improve coordination among government agencies. It also supported evidence-based decision-making in development planning, natural resource governance, and the resolution of tenure conflicts. In this respect, the RNWA strengthened administrative coordination across sectors dealing with indigenous territories. Nevertheless, the RNWA should not be equated with legal recognition. Its function remained administrative rather than constitutive. Registration alone neither creates nor confirms indigenous peoples' collective rights.⁸¹ Effective realization of Thus, the right to self-determination still depends on the existence of a comprehensive legal framework for Indigenous Peoples legislation capable of transforming administrative documentation into legally enforceable recognition and protection.

II. Reframing Indigenous Self-Determination through Maqashid al-shari'ah and Inter-Madhab Perspectives

The normative recognition of self-determination within Islamic legal thought requires a more comprehensive engagement with classical fiqh literature, particularly through the perspectives of Maqasid al-Shari'ah and a comparative analysis of various schools of thought in Islamic law. Although the contemporary concept of self-determination, as articulated in Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), has developed primarily within the intellectual tradition of Western liberalism, the substantive principles embodied in its protection demonstrate considerable compatibility with

⁸¹ Monica Obeng Gyimah, "Recognition and Registration Issues and Their Impacts on the Religious Rights of Indigenous Peoples," *Journal of Astronist Studies Volume 1 Issue 1*, 2024, 163.

the fundamental objectives of Islamic jurisprudence.⁸² From this perspective, the rights of indigenous peoples to preserve their cultural identity, ancestral lands, and social institutions, and collective decision-making mechanisms should not be regarded as notions foreign to Islamic law. Instead, these rights can be understood as expressions of the broader objective of protecting human welfare and advancing social justice, both of which constitute fundamental dimensions of Maqasid al-Shari‘ah.⁸³

The Maqasid al-Shari‘ah framework provides a relevant normative foundation for understanding the various issues faced by contemporary indigenous communities, emphasizing the protection of life (hifz al-nafs), property (hifz al-mal), lineage (hifz al-nasl), reason (hifz al-‘aql), and religion (hifz al-din).⁸⁴ In the case of the O’Hongana Manyawa community in Halmahera, threats to indigenous peoples through the expansion of extractive industries not only resulted in the loss of economic resources but also destroyed the ontological foundation that sustains the community’s survival, cultural transmission, ecological knowledge, and spiritual practices. Therefore, the seizure of indigenous territory without consent must be viewed as a multifaceted breach of the main goals of Islamic law rather than as a simple agrarian issue.⁸⁵

From the standpoint of the Maliki school, the normative basis for recognizing indigenous self-determination derived from *maslahah mursalah*, public-interest reasoning in matters not explicitly regulated by textual sources. Through this approach, the survival of communities such as the O’Hongana Manyawa constituted a fundamental public interest the

⁸² Abdelrahman Alasttal and Abdul Maasba Magassing, “The Role of the United Nations in Realizing the Right of the Palestinian People to Self-Determination,” *The Journal of Human Rights* 17, no. 2 (2022): 173.

⁸³ Nikolaos Gaitenidis, “Indigenous Peoples, Cultural Heritage, and Traditional Knowledge: Untying the Gordian Knot of Human Rights and Intellectual Property in International Law,” *International Journal on Minority and Group Rights* 1, no. aop (2025): 1–45.

⁸⁴ Khaled Al-Farsi, “Exploring Sharia Law in Islamic Jurisprudence,” *Social Science Chronicle* 2, no. 1 (2022): 1–20.

⁸⁵ 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 (2020): 34–54.

state is obligated to protect, since the destruction of their territories threatens *hifz al-nafs*, *hifz al-mal*, and *hifz al-nasl* simultaneously.⁸⁶ Recognition of self-determination therefore becomes not merely permissible but a moral and legal obligation for the state as *wali al-amr*.⁸⁷

The Shafi'i school provides a more direct basis through the concept of *'urf* (custom or tradition) as one of the secondary sources of law: living customs not in conflict with sharia carried normative force. O'Hongana Manyawa customary governance-land management, dispute resolution, resource distribution- qualified as *'urf sahih*, elevating it from informal practice to a normative system with legal legitimacy. Thus, the O'Hongana Manyawa customary law cannot be viewed merely as an informal social practice but must be regarded as a normative system possessing legal legitimacy. This perspective also broadens the scope of protection reflected in the concepts of *hifz al-'aql* and *hifz al-nasl*, insofar as it pertains to the ecological wisdom, linguistic traditions, and cultural identities of indigenous peoples constitute forms of intellectual and social heritage that warrant preservation and continuity across generations.⁸⁸

The Hanafi school contributed through the doctrine of *istihsan*, a legal preference that allowed for deviations from general principles to prevent *haraj*, or undue hardship.⁸⁹ The uniform application of national law to communities such as the O'Hongana Manyawa-which remained

⁸⁶ Mohammed Saeed A. Alamri et al., "Text, Context and Natural Conservation: An Analysis of Muhammadiyah's and Nahdlatul Ulama's Islamic Legal Thought on Fiqh of Environment," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 2 (December 2025): 690–715, <https://doi.org/10.19109/nurani.v25i2.31305>.

⁸⁷ Mojtaba Hemmati, Alireza Kianpour, and Muhammad Nasser Vaezi, "Two-Element Legitimacy as a Theory of Legitimacy of the Islamic Republic of Iran's Constitution with a Look at the Detailed Annotated Deliberations," *Journal of the Socio-Political Thought of Islam* 3, no. 1 (2021): 25–54, <https://doi.org/10.22034/jspt.2024.425119.1014>.

⁸⁸ Hassaan Shahawy, "How Subjectivity Became Wrong: Early Hanafism and the Scandal of *Istihsan* in the Formative Period of Islamic Law (750-1000 CE)" (University of Oxford, 2019).

⁸⁹ Uthman Mehdad Al-Turabi and Jasser Auda, "Toward a Maqāsid-Based Legal Reform: Systemic Thinking for Social Transformation in the Modern Muslim World," *Indonesian Journal of Islamic Law* 8, no. 2 (2025): 209–28.

outside the market economy and modern state administration-results in structural inequality rather than justice. Istihsan therefore legitimized differentiated arrangements-recognition of collective territories, community autonomy, and internal decision-making-as a form of substantive justice, rather than a discriminatory exception.

The Hanbali school reinforces this argument through the doctrine of sadd al-dhara'i, which is the principle of preventing any means that could potentially cause harm. This doctrine asserted that a policy that was formally permitted must be prevented if it had the potential to cause greater harm.⁹⁰ The O'Hongana Manyawa community's spiritual ties to their ancestral lands were severed, food sources were lost, water sources were contaminated, and forest ecosystems were destroyed as a result of mining permits being granted in indigenous areas. Therefore, it is the state's religious duty to stop extractive practices that endanger the existence of indigenous peoples. Furthermore, the Hanbali tradition's ibahah asliyyah theory holds that everything is assumed to be acceptable unless there is an explicit religious ban to the contrary. Because of this, Islamic law had no normative defense for denying the right of indigenous peoples to self-determination.

Normative justifications for the protection of indigenous peoples each employed a different methodological foundation, reflecting significant epistemological divergences in their approaches to legal reasoning and the construction of authority. It should be emphasized that the convergence of these four schools occurs at the level of normative conclusions-namely, that the rights of indigenous peoples may legitimized under Islamic law-rather than at the level of method: the argumentative paths each takes are fundamentally different, and as will be shown below, these differences have non-neutral consequences when these doctrines are tested against the empirical practices of the state.⁹¹ The following inter-school analysis therefore did not stop at a doctrinal mapping but explored

⁹⁰ Haidar Masyhur Fadhill, "Reshaping Minority'Fiqh': The Ideas of Abd Allah Ibn Bayyah," *Australian Journal of Islamic Studies* 9, no. 2 (2024): 37–65.

⁹¹ Yusra Suedi, "Self-Determination in Territorial Disputes before the International Court of Justice: From Rhetoric to Reality?," *Leiden Journal of International Law* 36, no. 1 (2023): 161–77.

the extent to which each methodological approach was vulnerable to or resistant to the instrumentalization of power, as presented in the following table: Although the four major schools of Islamic jurisprudence offer.

Table 2: Comparative Analysis of Classical Islamic Legal Doctrines Relevant to the Recognition and Protection of Indigenous Peoples' Rights

Madhhab	Relevant Doctrine	Comparative Position on Indigenous Rights	Potential Limitation
Maliki	Maslahah mursalah	Compared with the Shafi'i school, which conditions legal recognition upon conformity with textual authority, the Maliki approach grants broader normative flexibility by treating the protection of indigenous territories as an independent public interest. Unlike the Hanafi doctrine, which primarily legitimizes case-specific legal exceptions, Maliki reasoning provides a stronger basis for comprehensive legislative reform, including statutory recognition of	Because <i>maslahah</i> depends on determining the public interest, the doctrine remains vulnerable to political reinterpretation. Governments may redefine "public interest" to prioritize extractive industries rather than indigenous welfare.

		indigenous territories and mandatory FPIC obligations.	
Shafi'i	'Urf (custom)	Unlike the Maliki and Hanafi schools, which allow broader contextual reasoning, the Shafi'i school recognizes indigenous customs only insofar as they remain consistent with textual authority and established <i>usul al-fiqh</i> . This approach offers stronger methodological certainty but provides a comparatively narrower basis for recognizing autonomous indigenous governance.	Since the legal validity of custom remains subordinate to textual authority, indigenous law risks being incorporated only as a subordinate normative system rather than an equal legal order, thereby reinforcing weak legal pluralism.
Hanafi	Istihsan	Compared with the Maliki doctrine, which emphasizes collective public welfare, the Hanafi approach focuses on preventing hardship in individual or concrete legal situations. It therefore provides the strongest doctrinal justification for differentiated legal	Because <i>istihsan</i> relies heavily on juristic discretion, its application may become inconsistent or vulnerable to abuse by state authorities exercising broad administrative powers.

		treatment of indigenous peoples where uniform application of national law would generate structural injustice, although its primary strength lies in judicial and administrative discretion rather than legislative transformation.	
Hanbali	Sadd al-dhara'i and ibahah asliyyah	Unlike the Maliki and Hanafi schools, which primarily emphasize legal flexibility, the Hanbali approach prioritizes preventive governance by prohibiting policies likely to produce future harm. Its contribution therefore lies less in expanding indigenous autonomy than in justifying constitutional precautionary measures, including moratoria on mining permits and preventive environmental protection.	The historical emphasis on obedience to the wali al-amr may permit governments to characterize indigenous resistance as a threat to public order, potentially limiting protection of collective rights despite the doctrine's preventive orientation.

The comparative matrix shows that the four Sunni schools of thought share a common recognition of the normative legitimacy of protecting indigenous peoples, yet they differed significantly regarding the jurisprudential approaches used to justify such protection. The Maliki school offered the broadest legal foundation by prioritizing the public welfare, while the Hanafi school emphasized fair judicial flexibility through *istihsan*. In contrast, the Shafi'i school maintained methodological discipline by requiring that recognition of customary practices must conform to textual authority, while the Hanbali school contributed primarily through preventive constitutional governance by blocking policies that cause foreseeable harm. These differences did not result in conflicting normative outcomes, but rather in complementary institutional functions, demonstrating that indigenous peoples' self-determination within contemporary constitutional governance was best understood through an integrated inter-school framework, rather than by relying on a single doctrinal approach.

Although the four Sunni schools of thought ultimately reached a relatively similar normative conclusion—namely, that the protection of the rights of indigenous peoples is grounded in Islamic law—this commonality was arrived at through methodological approaches that differed from one another and, in some respects, even conflicted. Therefore, an inter-school analysis must not only identify the doctrines of *maslahah mursalah*, *'urf*, *istihsan*, and *sadd al-dhara'i*, but also explain the jurisprudential tensions that shaped the development of each of these doctrines.⁹² These tensions did not merely reflect variations in legal deduction techniques but reveal fundamental differences regarding the sources of legal legitimacy, the limits of rationality, and the relationship between textual sources, social reality, and state authority.

The most fundamental methodological tension was evident in the debate regarding the scope of legal reasoning beyond the text (*nash*). The Hanafi school accepted *istihsan* as a mechanism to correct the application

⁹² 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): 155–76.

of qiyas when it resulted in injustice or harm (haraj), thereby granting judges the discretion to achieve substantive justice based on the concrete conditions of society.⁹³ Conversely, Imam al-Shafi'i categorically rejected istihsan as an independent source of law, as it was viewed as potentially making the law dependent on the subjective preferences of a mujtahid and undermining methodological certainty. This debate was not merely a matter of reasoning technique but reflects two distinct paradigms regarding whether justice was best achieved through contextual flexibility or through methodological consistency grounded in the nash and qiyas.⁹⁴ When it comes to acknowledging indigenous peoples' rights, this distinction determined whether protection for indigenous communities could be established by adapting the law to social realities or must always derive its legitimacy from a pre-established normative framework.

A second point of tension arose between the *maslahah mursalah* approach in the Maliki school and the methodological approach from the Shafi'i school of jurisprudence in the formation of law. Even when there is no clear textual basis, the Maliki school permitted more latitude for public interest concerns as long as they continued to align with the goals of Sharia (*maqashid al-shari'ah*).⁹⁵ In contrast, the Shafi'i school placed *maslahah* within a more limited framework, emphasizing that the expansion of legal reasoning must not override the authority of the nash or the systematic structure of *usul al-fiqh*. These distinctions had different effects regarding the rights of indigenous peoples. The Maliki approach allows the state to implement affirmative measures, including the obligation to obtain Free, Prior, and Informed Consent (FPIC) and recognition of indigenous areas.-based on the public interest, whereas the Shafi'i approach tended to confine

⁹³ Mohammad Hashim Kamali, "Istihsān and the Renewal of Islamic Law," *Islamic Studies* 43, no. 4 (2004): 561–81.

⁹⁴ Wan Zulkifli Wan Hassan, Jamsari Alias, and Nazri Muslim, "Imam Al-Shafi'i's Standing On The Use Of Reason Through Al-Qiyas And Al-Istihsan In The Determination Of Law," *International Journal of Academic Research in Business and Social Sciences* 13, no. 11 (2023): 534–45.

⁹⁵ Imtiaz Mohammad Sifat and Azhar Mohamad, "Revisiting Fiat Regime's Attainability of Shari'ah Objectives and Possible Futuristic Alternatives," *Journal of Muslim Minority Affairs* 38, no. 1 (2018): 1–23.

such recognition within the boundaries defined by textual and methodological legitimacy.⁹⁶

The link between political power and the law was the next source of conflict. The Hanbali school, through the doctrine of *sadd al-dhara'i*, placed greater emphasis on the preventive function of law by restricting actions that could potentially cause social harm in the future, while historically placing greater emphasis on the importance of maintaining stability through obedience to the *wali al-amr*. In contrast, the Maliki school allowed more room for social realities as a source of legal thought via the *amal ahl al-Madinah* tradition, while the Hanafi school permitted judges to deviate from general principles to prevent concrete injustices. Thus, the differences between the schools of thought relate not only to how the law is interpreted, but also to how the law is situated in relation to the authority of the state, society, and the protection of vulnerable groups.⁹⁷ The historical development of these methodological differences explained why each school of thought applies a distinct *fiqh* approach in addressing contemporary legal issues.

The doctrine from the concept of *istihsan* in the Hanafi school of thought developed in Kufa, a city characterized by complex social dynamics and economic activity. Under these conditions, the rigid application of *qiyas* often resulted in rulings that were deemed not to reflect substantive justice. Therefore, *istihsan* was developed as a corrective mechanism that allowed for limited deviations from *qiyas* to prevent *haraj* (hardship) and achieve *maslahah* (public interest). In contrast, Imam al-Shafi'i rejected the use of *istihsan* as basis for legal rulings because it was seen as potentially opening the door to the subjectivity of the *mujtahid* and reducing

⁹⁶ Alyasa Abu Bakar and S Sahman, "The Renewing of Usul Al-Fiqh: Challenges, Limitations and Future Directions," *Indonesian Journal of Islamic Economic Law* 1, no. 2 (2024): 105–22.

⁹⁷ Martha Albertson Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition," in *Transcending the Boundaries of Law* (Routledge-Cavendish, 2010), 177–91.

methodological certainty.⁹⁸ This historical difference explained why the Hanafi school was more open to legal adjustments based on social conditions. Meanwhile, the Shafi'i school places greater emphasis on methodological consistency in the process of law formation.

The development of *maslahah mursalah* in the Maliki school was also influenced by the need to address administrative and social issues that grew increasingly complex as the Islamic world expanded. Many public issues lacked an explicit textual basis, Imam Malik allowed for consideration of the public interest as long as it did not conflict with the objectives of Sharia (*maqasid al-shari'ah*). This doctrine was later systematized by al-Ghazali and given a more refined formulation through the thought of al-Shatibi. In contrast, Imam al-Shafi'i sought to develop a more systematic methodology of *usul al-fiqh* by limiting the use of public interest considerations outside the mechanisms recognized within *usul al-fiqh*.⁹⁹ This difference indicated that the debate between the two schools of thought was not about the importance of public interest, but rather about the limits of its legitimacy as a basis for the formation of law.

In the meantime, the Shafi'i school recognized *'urf* in an attempt to accommodate societal customs without undermining the *nash*'s primacy. As long as custom did not contradict the Qur'an, the Sunnah, or the principles of *usul al-fiqh*, it continued to be accepted as a legal factor. On the other hand, the Hanbali school of thought's *sadd al-dhara'i* theory emerged from the necessity to stop harm before it happens.¹⁰⁰ This preventative strategy placed a higher priority on safeguarding the public interest, which served as the foundation for limiting behaviors that were legally allowed but had the potential to be more harmful.

The evolution of *Maqashid al-Shari'ah* theory in modern scholarship revealed a change from a framework that prioritized human rights, good

⁹⁸ Nadirsyah Hosen, "Natural Law in Islam from Theological and Legal Perspectives," in *Research Handbook on Natural Law Theory* (Edward Elgar Publishing, 2019), 148–63.

⁹⁹ Abd Hakim Abd Razak, "Multiple Sharia'board Directorship: A *Maslahah* (Public Interest) Perspective," *Journal of Islamic Marketing* 11, no. 3 (2020): 745–64.

¹⁰⁰ Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law," *Islamic Law and Society* 4, no. 2 (1997): 131–55.

governance, and the preservation of human dignity to one that concentrated on defending the five core goals of Shari'ah (al-daruriyyat al-khams). This change was mainly brought about by Jasser Auda's systems approach, which saw maqashid as a normative paradigm that was multifaceted, open, and sensitive to the complexity of contemporary social situations rather than just a technique of legal deduction.¹⁰¹ According to this viewpoint, protecting indigenous peoples included preserving their cultural identity, ecological sustainability, political engagement, and intergenerational justice.

Following this approach, Mohammad Hashim Kamali identifies Maqasid al-Shari'ah as the ethical foundation for the development of Islamic law focused on the protection of human rights. According to Kamali, the objectives of sharia were not only directed toward compliance with normative provisions but also toward the realization of the public interest, justice, and respect for human dignity.¹⁰² Therefore, in within the framework of a contemporary rule-of-law state, while recognizing the rights of indigenous peoples rights to protect their territory, cultural identities, and traditional institutional structures can be seen as a component of achieving the goals of sharia.

Mashood A. Baderin supported this viewpoint by arguing that the maqashid al-shari'ah approach can be used to establish Islamic law and international human rights legislation as complementing systems rather than as two opposing systems.¹⁰³ Within this framework, the right of indigenous peoples to self-determination, as recognized in the UNDRIP and the ICCPR, can be understood as a manifestation of the protection of human dignity (karamah al-insan), social justice, and the public interest-principles that have been central to Islamic law from the very beginning.

By presenting Sharia as an ethical framework focused on substantive

¹⁰¹ Luqman Rico Khashogi Luqman, "Menakar Rekonstruksi Maqashid Syariah:(Telaah Genealogis Pendekatan System Jasser Auda)," *POLITEA: Jurnal Politik Islam* 5, no. 1 (2022): 64–82.

¹⁰² Robby Kurniawan, "Maqasid Syariah Dan Pembangunan Hak Asasi Manusia," *Al-Mazaahib: Jurnal Perbandingan Hukum* 6, no. 2 (2018): 243.

¹⁰³ Muhammad Zamroni, "Hukum Islam Dan HAM;(Analisis Kritis Atas Pandangan Mashood A. Baderin)," *Qolamuna: Jurnal Studi Islam* 1, no. 2 (2016): 325–48.

justice and the restraint of state power, Wael Hallaq broadened the conversation on Islamic law by arguing that the law's legitimacy is based on its capacity to uphold moral principles in public life rather than just political authority.¹⁰⁴ This perspective provided a normative basis for assessing that recognition of indigenous peoples is not sufficiently achieved through formal recognition in the constitution, but must be reflected in governance practices that guarantee justice, accountability, and protection for vulnerable communities. However, Abdullah Saeed emphasized the importance of a contextual approach to interpreting Islamic law so that the universal principles of Sharia remain relevant to developments in contemporary society, particularly in protecting the rights of indigenous peoples and accommodating legal diversity.¹⁰⁵ In line with this, Tariq Ramadan had developed the idea of Islamic ethical reform, which places human dignity, public participation, and social responsibility as the primary guiding principles for the application of Sharia in modern states.¹⁰⁶ Taken together, these three schools of thought demonstrated that contemporary Islamic law was moving toward a paradigm that increasingly emphasizes ethical governance, respect for social diversity, and One of Sharia's main goals is the defense of group rights.

A comparative analysis across schools of thought showed that the primary contribution of the Sunni fiqh tradition the normative legitimization The right to self-determination is just one aspect of efforts to protect the rights of indigenous peoples; another was the creation of a complementary framework for constitutional governance. Together, these strategies created four mutually reinforcing institutional functions within a constitutional state under the rule of law: bolstering legislative policies that acknowledge indigenous peoples' rights; offering judicial remedies against

¹⁰⁴ Nur Sulistiyarningsih and Bahar Elfudllatsani, "Moral Politik Hukum Islam: Menyeimbangkan Hak Asasi Manusia Dan Konservasi Lingkungan," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 22, no. 1 (2024): 62–64.

¹⁰⁵ Sun Choirol Ummah, "Metode Tafsir Kontemporer Abdullah Saeed," *Humanika: Kajian Ilmiah Mata Kuliah Umum* 18, no. 2 (2018): 126–42.

¹⁰⁶ Ahmad Nabil Amir, Tasnim Abdul Rahman, and Sofyan Alvin, "Tariq Ramadan: Eksponen Islam Modern," *Al-Din: Jurnal Dakwah Dan Sosial Keagamaan* 7, no. 1 (2021): 5–6.

the application of laws that cause substantive injustice; bolstering legal pluralism by acknowledging customary law as part of the national legal system; and applying the principle of prudence in the management of natural resources to prevent ecological harm and violations of indigenous peoples' rights. Within this framework, methodological differences between schools of thought were no longer understood as doctrinal conflicts, but rather as sources of complementary institutional functions in building a more comprehensive constitutional protection system. Thus, the inter-school synthesis shows that Maqasid al-Shari'ah can serve as a normative foundation for the development of a constitutional governance system that prioritizes justice, the protection of collective rights, environmental sustainability, and respect for human dignity as the primary objectives of state administration.¹⁰⁷

The results of this study indicate that the protection of indigenous peoples' right to self-determination from an Islamic legal perspective depends on the integration of various complementary approaches within *usul al-fiqh*, rather than on the dominance of any single *fiqh* approach. Therefore, the main contribution of this study lies not only in affirming the harmony between *maqasid al-shari'ah* and international human rights instruments, but also in developing a conceptual framework for the formation of constitutional governance that incorporates legal pluralism, collective rights protection, ecological sustainability, and the limitation of state power.

The results of this study show that the protection of indigenous peoples' right to self-determination under Islamic law was dependent on the integration of several complementary *usul al-fiqh* approaches rather than the supremacy of any one *fiqh* philosophy. Therefore, this study's main contribution is not only to show how *maqasid al-shari'ah* and international human rights instruments are compatible, but also to provide a conceptual framework for the creation of constitutional governance that incorporates legal pluralism, collective rights protection, ecological sustainability, and the limitation of state power. From this perspective, *maqasid al-shari'ah*

¹⁰⁷ Al-Turabi and Auda, "Toward a Maqāṣid-Based Legal Reform: Systemic Thinking for Social Transformation in the Modern Muslim World."

serves as a normative paradigm that transforms the rights of indigenous peoples into constitutional recognition from a formal proclamation into a concept that needs to be implemented thru institutions, laws, and governance practices.

Conclusion

This study examined why Indonesia's constitutional recognition of indigenous peoples has not translated into effective protection and whether the self-determination claimed by the O'Hongana Manyawa can be grounded normatively in Islamic law and international human rights law. The empirical findings demonstrate that this failure is structural rather than incidental. A permissive constitutional formula under Article 18B(2), fragmented and overlapping sectoral authority, and the absence of binding legal provisions requiring Free, Prior, and Informed Consent (FPIC) have together enabled nickel-mining expansion into customary territories without meaningful indigenous consent. These conditions have also been accompanied by a documented pattern of criminalization of community members between 2013 and 2023.

The doctrinal analysis demonstrates that the four Sunni madhhabs converge on the legitimacy of protecting indigenous self-determination while reaching this position through distinct, and at times competing, methodological approaches. *Maslahah mursalah* in the Maliki school provides a strong basis for legislative recognition and mandatory FPIC. *Istihsan* in the Hanafi school supports judicial and administrative correction where uniform application of legal rules produces unjust outcomes. *Urf* in the Shafi'i school offers a textually disciplined basis for recognizing customary governance, although within a framework of legal pluralism that does not necessarily place customary law on an equal normative footing with state law. Meanwhile, *sadd al-dhara'i*, together with *ibahah asliyyah*, in the Hanbali school provides a basis for precautionary measures, including restrictions or moratoria on mining permits in customary territories. These doctrines therefore do not compete for a single correct legal solution but perform complementary legislative,

judicial, pluralist, and precautionary functions within the same constitutional order.

This article contributes to Islamic human rights scholarship in three respects. First, unlike previous Indonesian fiqh scholarship addressing minority rights, household resilience, or communal intellectual property, it conceptualizes indigenous self-determination as a legal entitlement grounded simultaneously in UNDRIP, the ICCPR, the ICESCR, and the interpretative methodology of *usul al-fiqh*. Second, it examines this entitlement through a documented conflict between an indigenous community and an extractive industry rather than treating Islamic legal legitimacy as a purely doctrinal question. Third, it develops a comparative inter-madhab framework in which normative convergence and methodological divergence are treated as equally significant findings. This demonstrates that Islamic legal pluralism can support indigenous rights protection through multiple doctrinal pathways rather than through the authority of a single school.

The findings further indicate that protecting indigenous self-determination corresponds with the governance objectives reflected in Sustainable Development Goal 16 (SDG 16), particularly in promoting justice, strengthening inclusive institutions, and ensuring meaningful participation in decisions affecting indigenous territories. In this respect, Islamic legal principles provide a normative basis for translating these governance objectives into more responsive and equitable state policies.

On this basis, the article proposes an integrated framework combining international human rights law, *usul al-fiqh*, *Maqashid al-Shari'ah*, and comparative inter-madhab analysis for evaluating indigenous and customary rights claims within plural legal systems in Muslim-majority constitutional states. However, this framework is derived from a single documented case within one national jurisdiction, and its transferability to Muslim-majority states with different constitutional structures and indigenous or minority populations remains to be tested. Comparative research involving other cases of indigenous or customary land conflict would therefore be valuable for determining the extent to which these findings can be generalized beyond the O'Hongana Manyawa case.

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Declaration of Conflicting Interests

There is no conflict of interest in the publication of this article.

Funding Information

None.

Acknowledgment

The authors thank the anonymous reviewer of this article for their valuable comments and highlights.

Generative AI Statement

The authors declare that no generative artificial intelligence (AI) tools were used to generate the scientific content, data analysis, interpretations, or conclusions presented in this manuscript. If AI-assisted tools were used, they were limited to language editing, grammar checking, or improving readability under the authors' full supervision. The authors take full responsibility for the originality, accuracy, and integrity of the manuscript.