

# Land Banking Policy (Critical Evaluation of the Economic and Social Rights of Traditional Legal Communities)

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## Abstract

The problem of land acquisition for customary communities is no longer a contemporary problem, but since massive development there has been a shift in the rights of indigenous communities in managing land. In principle, this has an impact on the property rights and economy of indigenous communities in using land as the most important natural resource in their communities. Therefore, land bank policies and schemes are the most comprehensive policies to protect the land rights of indigenous peoples. The objectives of this research are the concept of protecting land rights as economic property rights of indigenous peoples and policy determination. Land Banking Policy Implications and institutional schemes for implementing Land Banking for indigenous communities in Indonesia. This research is categorized as normative legal research with a philosophical and analytical approach, and analyzed using descriptive analytical methods. The research results show that land rights for indigenous peoples have not been explicitly recognized internationally and

nationally, however, the contemporary development of economic ownership rights for customary land is starting to be recognized in several jurisprudence and interpretations. The implications of the land bank policy are carried out and begin with the classification of land objects and strengthening the policies and schemes of land bank institutions.

**KEYWORDS** *Human Rights, Indigenous Peoples, Land, Land Bank*

## Introduction

The term customary law community is an official term contained in various statutory regulations, such as in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as Basic Agrarian Law of Republic Indonesia), Law Number 41 of 1999 concerning Forestry, Law Forestry, Law Number 39 of 20014 concerning Plantations and other statutory regulations as the equivalent of *rechtsgemeenschap*, or what a little literature calls customary law *rechtsgemeenschap*.<sup>1</sup> The term customary law community was created and used by customary law experts, mostly for theoretical and academic purposes. Meanwhile, the term indigenous people is a term commonly expressed in everyday language by non-legal circles and refers to a number of international agreements.<sup>2</sup>

Indigenous peoples should be differentiated from customary law groups, according to numerous scholars. The term "indigenous communities" encompasses specific communities that possess distinct traits. Meanwhile, a customary law community refers to a specific group of individuals residing in a particular area (*ulayat*) and living in a particular environment. These individuals

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<sup>1</sup> Rasyidi, Lili, Syamsul Arifin, and Alvi Syahrin. *Penguasaan Atas Pengelolaan Hutan Adat oleh Masyarakat Hukum Adat (MUKIM) di Provinsi Aceh*. Diss. Universitas Sumatera Utara, 2010.

<sup>2</sup> Scholars engaged in the discourse on the distinctions between Indigenous and non-Indigenous peoples include Sukanto, Sukardi, Mawardi Muzamil, Anis Mashdurohatun, and Mohammad Koesnoe. These experts offer varying perspectives on customary law in Indonesia, addressing its complexity, sources, and patterns. Notable themes within their discussions encompass the influence of magical-religious elements, the communal or community-oriented nature of law, and its democratic dimensions. Their differing viewpoints primarily concern the sources of identification, the content, and the binding authority of customary law, as well as the unique features inherent in Indonesian customary legal practices.

possess wealth and are led by leaders who are responsible for protecting the group's interests both within and outside the community. Additionally, they have a legal system and a government. In this study, indigenous peoples are seen as equivalent within customary law groups, as typically delineated in legislative laws.

Van Vollenhoven in his oration on October 2 1901 emphasized:<sup>3</sup> "In order to know the law, what primarily needs to be investigated is at what time, when, and in what area the nature and composition of the legal association bodies in which the people governed by the law live daily." Based on this opinion, Soepomo expressed his own opinion that "the description of the bodies of the association must not be based on something dogmatic, but must be based on the real life of the community concerned."

The provisions for recognizing the rights of customary law communities over land and natural resources in Indonesia are closely related to the provisions of Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which stipulates that *the State recognizes and respects the unity of the Republic of Indonesia*. The unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law. These provisions establish a constitutional framework for customary law communities in their interactions with the state, as well as a constitutional foundation for state administrators to determine the appropriate treatment of customary law communities. Additionally, they impose a constitutional obligation on state administrators to regulate the acknowledgment and reverence for the presence of customary law communities in various capacities.

Land ownership in customary law communities occurs ipso facto, meaning that land is deemed to be controlled if it is clearly occupied, utilized, cultivated, and cared for by people either as settlers or cultivators.<sup>4</sup> This means that the legal certainty of land ownership in customary law cannot be understood from an ipso jure perspective, as desired by the Basic Agrarian Law of Republic Indonesia, but must be understood from the perspective of customary law itself.

In general, Ranitya Ganindha stated that land banks are an important resource management tool to increase land use productivity. The methods promoted in land banking are market control and local market land

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<sup>3</sup> Setiady, Tolib. *Intisari Hukum Adat Indonesia dalam Kajian Kepustakaan*. (Bandung: Alfabeta, 2008)

<sup>4</sup> Caliari, Aldo. "A Human Rights-Based Response to the Financial and Economic Crisis". *Social Watch* 807 (2009): 13-16. Online at <https://www.socialwatch.org/node/807>

stabilization. Land banks guarantee the availability of land for various development needs in the future, increase the efficiency of the State Budget or Regional Revenue and Expenditure Budget (APBN/APBD), reduce conflicts in the land acquisition process, and reduce the negative impacts of land liberalization. Land bank management is related to how to plan, organize, implement, and supervise land bank activities to realize land bank objectives. Supported by adequate regulations and strong institutions, land bank management can ultimately realize the six functions of land banks, namely: land keeper; land security (*land warrantee*); controller of land control (*land purchase*); land manager (*land management*); land appraiser; and land distributor. Conceptually, land bank activities must include policies and strategies for optimizing land use and utilization.<sup>5</sup>

The establishment of land bank institutions can play a special role in ensuring the availability of scarce land resources caused by increased mobility of land use for the development of public facilities and affordable housing for LIP in urban areas and to facilitate the mediation of local tenant farmers with absentee landowners. Although different land management models with various types of land use already exist in Indonesia,<sup>6</sup>

Based on Article 6 of Law Number 5 of 1960 concerning Agrarian Principles,<sup>7</sup> every land has a social function, which means that the benefits of using the land can not only be owned by the owner of the land rights but also by the wider community (public interests). Procurement of land for development in the public interest is the activity of providing land by providing adequate and fair compensation to those entitled to it. Customary land issues are no longer ordinary issues; they include human rights.

One of the main land issues is the conflict between indigenous communities and land ownership. The main problem is that the administration-oriented approach to land ownership, such as the existence of certificates and permits for land tenure and use, makes the position of

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<sup>5</sup> Ranitya Ganindha, "Urgensi Pembentukan Kelembagaan Bank Tanah Sebagai Solusi Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum Yang Nirkonflik," *Arena Hukum* 9, no. 3 (2017): 442–62.

<sup>6</sup> Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–34.

<sup>7</sup> Article 18 of the UUPA States that *in the public interest, including the interests of the nation and the state as well as the common interests of the people, land rights can be revoked by providing adequate compensation and in the manner regulated by law. See Undang-undang (UU) Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (Law Number 5 of 1960 concerning Basic Agrarian Principles)*

indigenous communities very weak. Therefore, a new approach is needed for this problem, one of which is land banking.

Land rights constitute a significant human rights concern. The possession of land rights is essential for individuals to obtain sustenance, shelter, and progress, as the absence of land access often leads to significant economic instability for several individuals. Land access and rights in numerous countries are frequently stratified, characterized by a hierarchical and segregated system that lacks land ownership security for the poorest and least educated individuals. Throughout history, the exercise of control over land rights has served as a mechanism for both oppression and colonization. An exemplary example of this phenomenon is apartheid South Africa, where land rights were employed as a pivotal component of the apartheid system. The broad social movements of landless peasants in Latin and Central America, albeit less radical, were similarly a response to the land control exerted by affluent and influential elites.<sup>8</sup>

The subject of indigenous land acquisition in Indonesia dates back to Dutch colonial rule. Colonial agricultural policies like the Agrarische Wet of 1870 allowed European firms to lease indigenous lands for extended periods. By disregarding traditional law systems, this tactic enhanced colonial authority over indigenous areas. Indigenous peoples were marginalized when their lands were seized without recompense.<sup>9</sup>

The 1960 Basic Agrarian Law (UUPA) attempted to rectify this issue after Indonesia's independence. Indigenous customary rights were acknowledged by UUPA, but their implementation failed. The colonial legal system nevertheless drove disputes between national development and indigenous rights. In the ensuing decades, industrialization and foreign investment turned many

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<sup>8</sup> Gilbert, Jeremy. "Land Rights as Human Rights: The Case for a Specific Right to Land." *Sur: International Journal on Human Rights* 10, no. 18 (2013): 114-135. See also Artistry, Vitri Dini, and Dewi Sulistianingsih. "Analysis of Grondkaart as Land Ownership Rights in the Perspective of Land Law in Indonesia." *Journal of Private and Commercial Law* 8, no. 1 (2024); Wahhab, Abdul. "Adat Land (Bengkok) Transition Process in Indonesian Land Law." *Unnes Law Journal* 5, no. 2 (2019): 239-254; Yuliyanto, Eko, Maftukhatul Muna Alatiqoh, and Ahmad Husain Alfaruq. "Inter-correlation between Human Rights and Environmental Justice: A Discourse of Right to a Good and Healthy Environment in Indonesia." *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 2 (2022): 213-236.

<sup>9</sup> Sudrajat, Masyrullahushomad. "Penerapan Agrarische Wet (Undang-Undang Agraria) 1870: Periode Awal Swastanisasi Perkebunan di Pulau Jawa." *HISTORIA: Jurnal Program Studi Pendidikan Sejarah* 7, no. 2 (2019): 159-174.

traditional lands into oil palm plantations, mining regions, or massive infrastructure projects without indigenous consultation.<sup>10</sup>

The reform period also opens new doors with numerous key rulings, such as Constitutional Court Decision No. 35/PUU-X/2012, which declares customary forests non-state forests. Due to overlapping sectoral legislation like the Forestry Law and the Mining Law, which privilege companies over indigenous populations, this judgment is difficult to execute.<sup>11</sup>

Land banking policy is an important topic in the discourse on the economic and social rights of indigenous peoples, especially in countries with cultural diversity and complex land ownership systems such as Indonesia. Customary law communities' rights, which should be protected according to the constitution and statutory regulations, are often directly impacted by the implementation of land banking.

One of the main problems that arises from the implementation of land banking is the marginalization of indigenous communities in the decision-making process regarding land use and management. In many cases, decisions regarding land use are made without adequate consultation or consent from the indigenous communities concerned, which is contrary to the internationally recognized principle of free, prior, and informed consent (FPIC). As a result, indigenous peoples often face marginalization from their own ancestral lands, without compensation or appropriate replacement solutions. A clear example of this problem can be seen in the case of infrastructure development or other development projects, which often take over land traditionally controlled by customary communities. In some regions, such as Sumatra and Kalimantan, large-scale plantation projects and exploitation of natural resources have led to protracted land conflicts in which indigenous communities lose access to and control over the land and resources that form the basis of their lives and culture.

In addition, compensation mechanisms in land banking are often inadequate and do not correspond to the true value of the land and the natural resources on it. The compensation provided tends to ignore the social, cultural, and spiritual value of land for indigenous peoples, focusing only on economic value, which is often assessed from a narrow market perspective. This creates

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<sup>10</sup> Lubis, Asmadi, Maria Kaban, and Edy Ikhsan. "The Development of Recognition and Protection of the Customary Rights of Indigenous Peoples in Indonesia." *KnE Social Sciences* (2024): 209-224.

<sup>11</sup> Rachman, Syaiful, Mansyur Nawawi, and M. Chairul Basrun Umanailo. "Yuridis Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 Tentang Keberadaan Hutan Adat Masyarakat." *Journal of Education, Humaniora and Social Sciences (JEHSS)* 3, no. 3 (2021): 823-828.

significant economic and social injustice for indigenous communities. Land banking implementation also frequently disregards aspects of environmental sustainability and justice for future generations. Failure to consider the capacity and sustainability of the ecosystem in land use can damage the environment and diminish the quality of life for indigenous people and future generations.

In this context, land banking policies must be reformed to ensure that the economic, social, and cultural rights of indigenous and tribal peoples are recognized and protected. These reforms must include effective participation mechanisms for indigenous communities in every decision-making process relating to land and natural resources, guaranteeing fair and adequate compensation, and respect for the principles of environmental sustainability and social justice. Policies must be based on recognition and respect for existing customary law systems and land governance, ensuring that land banking is not only an economic tool but also a tool to strengthen the rights and welfare of customary law communities.

Given the significance of a land bank in Indonesia and its connection to the economic rights of customary law communities, it is imperative to conduct a thorough examination of the necessity for the prompt establishment of a land bank. In order to align with the social conditions of society, the government's development objectives, and the applicable land law rules in Indonesia, it is imperative that institutions, accessible land resources, required regulations, and the future potential of land banks are congruent.

The legal foundation and ramifications of Indonesian land banking programs to preserve indigenous peoples' land rights need more research. Article 18B paragraph (2) of the 1945 Constitution recognizes indigenous peoples' rights, however insufficient coordination between sectoral regulations like the Forestry Law and the Mining Law makes its implementation unsatisfactory. Additionally, Article 3 of the UUPA, which specifies that customary rights must be implemented in line with national interests, needs a more extensive interpretation to conform with contemporary customary law. To maintain indigenous peoples' land rights despite development pressures, a stronger legal framework is needed.

Indonesia may learn from other nations' land banking policies. Dutch institutions promote local community engagement in land management when setting land banking regulations.<sup>12</sup> In Canada, municipal governments

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<sup>12</sup> Spit, Tejo. "Strategic land banking in the Netherlands: Experiencing Dutch dilemmas." In *Instruments of Land Policy*. (London: Routledge, 2018), pp. 271-283.

negotiate with indigenous people to promote equality and local customs.<sup>13</sup> This illustrates that land banking programs that respect indigenous peoples' rights must include legal laws, institutional backing, and socio-cultural values. In Indonesia, land banking policies that include local features like customary rights need a thorough assessment of legislation and institutional reforms. State-owned ex-HGU land may be merged into the land bank with a redistribution scheme that benefits indigenous peoples.

The research problem is made up of two main questions. The first is about what it means to protect land rights as the economic property rights of indigenous communities. The second is about what the policy implications are for land banking policy and institutional schemes for putting land banking into practice for indigenous communities in Indonesia. The study utilizes a normative legal framework, employing research methods that fall under the category of normative legal research. This methodology encompasses a comprehensive examination of philosophical and analytical perspectives, emphasizing logical, critical, and philosophical viewpoints. It culminates in a conclusion that seeks to generate novel insights as a solution to the identified primary issue. This study will examine positive law and legal theory's approaches to acknowledging and safeguarding indigenous communities' economic property rights in relation to their land.

Apart from that, this research will also explore the determination of appropriate policies and institutional schemes for implementing land banking that consider the interests of indigenous communities in Indonesia. Descriptive analytical methods will be used to describe and evaluate existing regulations and law enforcement practices, as well as identify the existence or deficiencies in the applicable system that can affect effectiveness and fairness in the implementation of land banking policies. The final aim of this research is to produce new findings that can answer the main problems that have been set by providing clear recommendations for the protection of the economic property rights of indigenous communities in the context of land banking and establishing an optimal policy and institutional framework for its implementation in Indonesia. This research will produce conclusions based on careful legal examination, in-depth philosophical discussions, and critical analysis of existing regulations and practices.

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<sup>13</sup> Sasu, Alexander, Graham Squires, and Arshad Javed. "Land banking and land markets: A literature review." *Habitat International* 130 (2022): 102698.



## Concept of Protecting Land Rights as Economic Property Rights of Indigenous Peoples

Land property rights were one of the main causes of the human rights system. Many Western liberal democracies have relied on property rights to defend individual freedom against official control. The 18th-century US Bill of Rights and the French Declaration of the Rights of Man and Citizen protected property rights alongside life. Landowners with legal rights are protected, guaranteed, and secured by private ownership. Such titles were traditionally reserved for wealthy landowners. So, historically, land property rights are conservative because they safeguard land rights.

Current land ownership, not land acquisition, is covered under property rights. Early human rights declarations from the seventeenth century or earlier sought to protect landowners' property rights against the king. Landowners think land ownership is a fundamental right above politics. Origins affect international human rights property rights. Property rights are important and contested in international human rights. The UDHR stated in Article 17:

1. Everyone has the right to own property alone or jointly with other people.
2. No one may have their property arbitrarily confiscated.

This right was controversially included in the Universal Declaration of Human Rights (UDHR) after considerable debate and negotiating. Scholars debate whether this privilege should be included and how much domestic law should constrain property rights.<sup>14</sup> The future discussion on land rights would distinguish between individual, social, and community property views, even if land ownership was not the main topic. The two Covenants adopted in 1966 did not contain property rights, the only UDHR human right lacking in any legally enforced Covenant. Current land rights reform has grown significantly in the 20th century.

At its most recent worldwide congress in June 2013, the transnational movement *La Via Campesina* included over 164 national and sub-national organizations from 79 different countries. In the early 1990s, farmers from different organizations in Central and South America, North America, Asia, and Europe started exchanging experiences and mobilizing to establish a network. This network's purpose was to express a unified response to the

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<sup>14</sup> Cassin, René. "Les droits de l'homme (Volume 140)", In *The Hague Academy Collected Courses Online / Recueil des cours de l'Académie de La Haye en ligne*. (Leiden: Brill Nijhoff, 1974).

neoliberal reforms that occurred in their regions during the 1980s, resulting in a significant decrease in their means of living.<sup>15</sup>

The fight against gender discrimination also involves property rights. Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires states to guarantee "equal rights for both spouses with respect to the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free or with valuable rewards." Although property rights are mentioned, most international human rights accords do not address land ownership rights. When property rights have been incorporated, notably in the framework of non-discrimination (ICERD and CEDAW), the UDHR explicitly defines property rights, but land rights are weak owing to lack of original design.

The HRC's interpretation of Article 27 of the ICCPR, which covers minority cultural rights, recognizes indigenous peoples' land rights. Article 27 stresses cultural rights and land rights rather than land rights themselves. Therefore, the HRC has incorporated unique safeguards for indigenous peoples' land rights by recognizing that their lifestyles are tied to their land. An often-quoted general statement on HRC Article 27 states:

*"With regard to the exercise of cultural rights protected under Article 27, the Committee observes that culture manifests itself in many forms, including specific ways of life related to the use of land resources, especially in the case of indigenous peoples. These rights may include traditional activities like fishing or hunting, as well as the right to live in nature reserves protected by law."*

Land and indigenous cultural rights are interconnected economically, spiritually, and socially. Uncultural land banking may threaten local customs and values passed down from generation to generation. Indigenous peoples value customary land for identity, religion, and generational connection, not just economics. Community division, social disintegration, and internal strife may result from land banking policies that encourage development or investment without indigenous involvement. The Kalimantan and Sumatra instances show how multinational corporations and indigenous groups have clashed over land management techniques that conflict with indigenous interests.

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<sup>15</sup> Desmarais, Annette Aurélie. *La Via Campesina: Une réponse paysanne à la crise alimentaire*. (Québec: Éditions Écosociété, 2008).

These disputes have damaged community faith in the government and harmed customary institutions that defend cultural values. Thus, land banking policies must follow the free, prior, and informed consent (FPIC) concept to preserve indigenous peoples' cultural rights and traditions. Integrating land banking regulations with cultural values may help balance growth and cultural preservation. The government may follow Canada's inclusive model, where local governments and indigenous groups manage indigenous lands for cultural and economic viability.

Several state report concluding notes and private messages have emphasized the relationship between cultural conservation and indigenous land rights. Where land is vital to a culture's existence, the right to enjoy it demands land preservation.<sup>16</sup> This approach relating land and cultural rights for indigenous peoples has also been central to current IACtHR rulings. In 2001, the Awas Tingni village sued Nicaragua. The court ruled:<sup>17</sup>

*"Indigenous groups, by virtue of their existence, have the right to live freely in their own territories. Indigenous peoples' closeness to their land must be recognized and understood as the fundamental basis of their culture, spiritual life, integrity, and economic survival. For indigenous people, the relationship with land is not just a matter of ownership and production but is a material and spiritual element that they must enjoy to the fullest, even to preserve their cultural heritage and pass it on to future generations."*

Important international papers and verdicts affirm indigenous land rights. Examples include the 2007 UN Declaration on the Rights of Indigenous Peoples. Indigenous peoples have the right to their lands, territories, and resources, including spiritual connection, under Articles 25–28.<sup>18</sup> This remark is necessary based on international law, but it is not mandatory. Indigenous land rights were highlighted in 2001 IACtHR case Awas Tingni v. Nicaragua. The court found that Nicaragua granted foreign firms forest exploitation concessions

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<sup>16</sup> Scheinin, Martin. "The right to enjoy a distinct culture: indigenous and competing uses of land." *The Jurisprudence of Human Rights Law: A Comparative Interpretive Approach* (2000): 253-286.

<sup>17</sup> Anaya, S. James, and Claudio Grossman. "The Case of Awas Tingni v. Nicaragua: A New Step in the International Law of Indigenous Peoples." *Arizona Journal of International and Comparative Law* 19, no. 1(2002): 1-15.

<sup>18</sup> UN General Assembly, United Nations Declaration on The Rights of Indigenous Peoples. Available online at <https://www.converge.org.nz/pma/DRIPGA.pdf>

without Awas Tingni approval. The acknowledgment of indigenous land rights based on strong cultural and traditional connections is significant. This statement is an essential guideline based on existing international law, but it is not legally obligatory. Indigenous land rights were underlined in the 2001 IACtHR ruling *Awas Tingni v. Nicaragua*. The Nicaraguan government awarded foreign companies forest exploitation concessions without the Awas Tingni people's consent, the court determined.<sup>19</sup> The recognition of indigenous peoples' land rights based on strong traditional and cultural links is a milestone.

Indigenous Peoples and Traditional Communities Convention No. 169 compels member nations to recognize and defend indigenous peoples' land rights and collective connection to the land. International recognition legalizes indigenous peoples' rights and encourages human rights-based land conflict settlement. In addition, the ILO Convention No. 169 concerning Indigenous Peoples and Traditional Communities requires member states to recognize and protect indigenous peoples' rights to their lands, including their collective relationship to the land. This illustrates that international recognition supports indigenous peoples' rights legally and promotes a human rights-based land dispute resolution.

Human rights are central to the Global Campaign for Agrarian Reform. To explain agrarian concerns and human rights legislation and methodology, La Via Campesina and FIAN International define land demands as rights. In the early years of the movement, the two networks developed a right to agrarian reform framework, albeit the word was not utilized.<sup>20</sup> This endeavor to give rights life and substance reveals fundamental disparities in how the two networks see human rights. LVC wants GCAR to protect the right to produce, fight the World Bank's land market, recognize land's social role, and maintain or encourage community land usage.

From an Indonesian perspective, the discourse surrounding the rights of customary law communities remains highly complex. Fundamentally, the relationship between these communities and natural resources, the environment, or their areas of life is more appropriately framed as one of obligations rather than rights. Rights are only recognized in this context when they pertain to external parties, such as other communities, businesses, or the

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<sup>19</sup> Hale, Charles R. "Using and refusing the law: indigenous struggles and legal strategies after neoliberal multiculturalism." *American Anthropologist* 122, no. 3 (2020): 618-631.

<sup>20</sup> Mooney, Patrick H., and Scott A. Hunt. "A repertoire of interpretations: Master frames and ideological continuity in US agrarian mobilization." *Sociological Quarterly* 37, no. 1 (1996): 177-197.

government. In such cases, the concept of rights becomes politically charged, contested, and subject to legal regulation.

The determination of economic ownership rights to land used by indigenous communities is still hampered by many problems, including:<sup>21</sup>

1. The right to "master" (own, control) and manage" (guard, utilize) land and natural resources in their customary territory. Indigenous peoples have the right to determine their own destiny, maintain cultural integrity, and use their living space or customary territory in accordance with applicable customary law. International and national law recognize this right as part of human rights. An example of the right to "control" land and natural resources in a customary territory is *ulayat* rights, or customary territory rights.<sup>22</sup> Customary rights are the communal rights of indigenous peoples to control, regulate, manage, and preserve their customary territories and natural resources thereon from generation to generation based on customary law. Customary rights include the right to maintain the identity, language, culture, and traditions of indigenous peoples, as well as the right to participate in and obtain information about development plans that impact their customary territories.
2. The right to self-governance in accordance with customary law (including customary courts) and customary rules mutually agreed upon by customary law communities. is the right that indigenous peoples have to determine, develop, and run their own political, legal, economic, social, and cultural systems without interference from outside parties. This right includes the right to maintain and build customary institutions, such as customary councils, deliberative bodies, or customary courts, which have the authority to resolve disputes, enforce the law, and protect the rights of

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<sup>21</sup> Arizona, Yance. "Satu Dekade Legislasi Masyarakat Adat: Trend Legislasi Nasional tentang Keberadaan dan Hak-hak Masyarakat Adat atas Sumber Daya Alam di Indonesia (1999-2009)." In *Antara Teks dan Konteks: Dinamika Pengakuan Hukum terhadap Hak Masyarakat Adat atas Sumber Daya Alam di Indonesia*, Yance Arizona, ed., (Jakarta: HuMa, Jakarta, 2010).

<sup>22</sup> Asriati, Asriati, and Muh Zulkifli Muhdar. "Studi Perbandingan Hak-Hak Masyarakat Adat: Hukum Nasional Dan Hukum Internasional." *Petitum* 8, no. 2 (2020): 170-186. See also Permadi, Iwan, et al. "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region." *Journal of Law and Legal Reform* 5, no. 2 (2024): 705-748; Fahmi, Chairul, et al. "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 1019-1064.

indigenous peoples.<sup>23</sup> An example of the right to govern oneself in accordance with customary law is the right of the Baduy indigenous community in Banten, which has a customary government system called Puun. Puun, the highest leader, is based in Inner Baduy, which is the cultural and religious center of the Baduy indigenous community. Puun has the authority to create and establish customary rules, supervise their implementation, and provide sanctions for those who violate them. Puun also serves as a traditional judge, resolving disputes between members of the Baduy traditional community.

3. The right to self-management based on the customary legal management and institutional system is the right that indigenous peoples have to form, develop, and run customary institutions in accordance with their customary law and culture. Traditional institutions are social organizations that have the right and authority to regulate,<sup>24</sup> manage and resolve various life problems related to territory, resources, traditions, identity, religion and human rights of indigenous peoples. A number of examples in traditional community institutions in Indonesia include:
  - a) *Puun*, the highest leader of the Baduy traditional community in Banten, has the authority to create and establish customary rules, supervise their implementation, and provide sanctions for those who violate them.<sup>25</sup> Puun also acts as a traditional judge who resolves disputes between members of the Baduy traditional community.
  - b) *Ammatoa* Traditional Council, the highest traditional institution of the Kajang traditional community in South Sulawesi,<sup>26</sup> consisting of Ammatoa (traditional leader), Pasang ri Kajang (customary advisor), and Tana Toa (customary guard). The Ammatoa Traditional Council is tasked with preserving customary forests, regulating social relations, and enforcing customary law.

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<sup>23</sup> Julranda, Rizky, Michael Geremia Siagian, and Michael Ariel Perdana Zalukhu. "Penerapan Hukum Progresif Sebagai Paradigma Pembangunan Hukum Nasional dalam Rancangan Undang-Undang Masyarakat Hukum Adat." *Crepido* 4, no. 2 (2022): 171-183.

<sup>24</sup> Dasor, Yohanes Wendelinus. "Revitalisasi Peran Lembaga Adat dalam Penanganan Konflik Sosial: Studi di Manggarai Nusa Tenggara Timur." *Sosio Konsepsia: Jurnal Penelitian dan Pengembangan Kesejahteraan Sosial* 9, no. 3 (2020): 213-228.

<sup>25</sup> Tihamayati, Ovi Fauzia. "Praktek Sosial Masyarakat Baduy Luar Terhadap Pikukuh". *Thesis*. (Jakarta: UIN Syarif Hidayatullah, 2017).

<sup>26</sup> Rinaldi, Rahmat. "Perilaku Politik Masyarakat Adat Kajang Dalam dan Kajang Luar: Studi Kasus Pada Pemilihan Kepala Daerah di Bulukumba 2015". *Dissertation* (Makassar: Universitas Hasanuddin, 2020).

- c) Forest Village Community Institution (LMDH), a traditional institution formed by indigenous communities living around state forests, whose functions are to manage, utilize and conserve forests in a sustainable manner. LMDH also plays a role as a government partner in monitoring and protecting forests.<sup>27</sup>
  - d) Apart from that, a number of theories support the right to take care of oneself based on customary management/institutional systems, namely:
    - 1) The theory of cultural autonomy,<sup>28</sup> which states that indigenous peoples have the right to determine and develop their own political, legal, economic, social and cultural systems without interference from outside parties. This theory is based on the principles of recognition, respect and protection of cultural diversity and human rights.
    - 2) The theory of legal pluralism, which states that in a country or society there can be more than one legal system that applies simultaneously and interacts with each other.<sup>29</sup> Customary law has legitimacy and power and may bring justice and advantages for indigenous people, according to this view.
4. Indigenous peoples have the right to identity, culture, belief system (*religion*), knowledge system (*wisdom*), and original language. This right is a human right under international and national law. Cultural autonomy holds that indigenous peoples have the freedom to establish and develop their own political, legal, economic, social, and cultural systems without outside influence. Recognition, respect, and preservation of cultural variety and human rights underpin this approach. Will Kymlicka, a political philosopher, advocated for indigenous peoples' collective rights to recognize their identity and culture. Rights to identity, culture, beliefs, knowledge, and native languages include:

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<sup>27</sup> Nursetiawan, Irfan, et al. "Pemberdayaan Lembaga Masyarakat Desa Hutan (LMDH) Maju Lestari Melalui Branding Image Budidaya Lebah Trigona di Desa Sukamaju Kecamatan Cihaurbeuti Kabupaten Ciamis." *J-ABDI: Jurnal Pengabdian kepada Masyarakat* 2, no. 1 (2022): 3593-3600.

<sup>28</sup> Thontowi, Jawahir. "Perlindungan dan pengakuan masyarakat adat dan tantangannya dalam hukum Indonesia." *Jurnal Hukum Ius Quia Iustum* 20, no. 1 (2013): 21-36.

<sup>29</sup> Mujib, M. Misbahul. "Memahami Pluralisme Hukum di Tengah Tradisi Unifikasi Hukum: Studi atas Mekanisme Perceraian Adat." *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 3, no. 1 (2014): 19-33.

- a) The Banten Baduy indigenous people have the right to live simply, cooperatively, and under customary law. They may wear traditional dress, not use modern equipment, and not trim their hair to preserve their culture. They also have the freedom to practice the Sundanese Wiwitan faith, which reveres nature. They also have the right to retain their local expertise for managing forests, land, water, and other natural resources. They can speak Sundanese, their native language.
- b) The Dayak indigenous people of Kalimantan have the right to keep their ancestral identity as customary territory dwellers. They may perform rituals, dance, sing, and obtain tattoos to preserve their culture. They may also practice the Kaharingan religion, which believes in natural spirits. Their local understanding in farming, hunting, and sickness treatment is also theirs to preserve. They can also speak Dayak, their native language.<sup>30</sup>

Due to 1960s regulations, Indonesia's agricultural policies have not improved. Law Number 5 of 1960, the Basic Agrarian Law of Indonesia, restricts customary law communities. The Basic Agrarian Law of Republic Indonesia allows the state to manage Swatantra areas and customary law communities under Article 2, paragraph 4. This scenario gives customary law parties sovereignty over government land, water, space, and natural resources. State land, including those resulting from previous erfpacht land or former land use rights (HGU), may be delegated to customary law groups. This control transfer attempts to maximize prosperity. The regulatory framework recognizes customary rights in customary law-governed communities. Article 3 of the Basic Agrarian Law of Indonesia states that customary rights and similar rights of customary law communities must align with national and state interests, based on national unity, and not violate laws and other higher regulations as long as they exist. Indigenous peoples' claim to cultural authenticity links ancestral lands to religious freedom, cultural rights, and natural resource access. Despite the inadequate acknowledgment of land rights as economic property rights, current regional human rights have recognized the need of protecting land rights for indigenous groups. This acknowledgment is part of property, cultural, and social rights. This sophisticated approach recognizes land rights as human rights.

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<sup>30</sup> Simanjuntak, Hotma, and Sesilia Seli. "Afiksasi Bahasa Dayak Kanayatn dalam Kitab Papakatn Barahu." *Jurnal Pendidikan dan Pembelajaran Khatulistiwa (JPPK)* 7, no. 11 (2018): 1-12.



## Exploring Land Banking Policies, Implications, and Institutional Schemes for Implementing Indigenous Community Land Banks in Indonesia

The answer provided suggests that international law on indigenous peoples' economic rights is still unclear. Various interpretative and jurisprudential viewpoints acknowledge indigenous peoples' land rights, but this alone is not enough to secure their interests. Indonesian land rights legislation are complex by sectoral, departmental, and regional government activities. Legal disagreements between the Basic Agrarian Law, Forestry Law, Mining Law, and Spatial Planning Law might impact indigenous peoples. Constitutional Court Decision Number 35 of 2012 on Article 1 Paragraph 5 of the Forestry Law underlines the necessity for legal clarity about state property, which includes customary land, but creating regional legal instruments is still difficult.<sup>31</sup>

Development Economics can explain how indigenous peoples' land access improves their well-being via sustainable economic usage. Amartya Sen and other economists believe that development should prioritize substantive freedoms, including access to natural resources, to improve well-being.<sup>32</sup> Indigenous communities may combine economic and environmental sustainability with community-based land management.

This Critical Legal Theory examines how law frequently reinforces power hierarchies. Duncan Kennedy's thought shows that legislation is frequently utilized to reinforce group supremacy,<sup>33</sup> including in the context of land management that tends to marginalize indigenous communities. This perspective encourages a revision of land policies that are more inclusive, based on indigenous community participation in decision-making.

Property Law Theory demonstrates land rights' legal social link.<sup>34</sup> Carol M. Rose's new thinking emphasizes land rights as ownership and societal

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<sup>31</sup> Muhtar, Mohamad Hidayat, et al. "Addressing the paradox: Why environmental constitutionalism is more than just rights?." *E3S Web of Conferences*. Vol. 506. EDP Sciences, 2024.

<sup>32</sup> Nussbaum, Martha. "Capabilities and social justice." *International Studies Review* 4, no. 2 (2002): 123-135.

<sup>33</sup> Łakomy, Jakub. "Critical jurisprudence of Duncan Kennedy and the status of the theory of legal interpretation." *Krytyka Prawa* 12, no. 3 (2020): 70-89.

<sup>34</sup> Bell, Abraham, and Gideon Parchomovsky. "A Theory of Property." *Cornell Law Review* 90 (2005): 531-616.

responsibility to manage land fairly and sustainably.<sup>35</sup> This position supports indigenous land management legalization. Social Justice Theory, popularized by John Rawls, stresses distributive justice, or how to equitably share resources like land to alleviate social injustice. Indigenous peoples should have priority access to their land for economic, social, and cultural purposes under land banking policies.

Human Rights Law acknowledges indigenous land rights under ILO Convention No. 169 and the UN Declaration on Indigenous Peoples. Key human rights activist James Anaya highlights indigenous land rights as cultural identity, sustainability, and physical ownership.<sup>36</sup> Thus, land banking programs must respect FPIC in customary land decision-making and human rights.

Knowing how policies protect legal rights and promote economic and social sustainability helps recognize indigenous peoples' land rights. Indigenous groups need land rights for legal justice and access to resources that improve their quality of life. Property fosters spirituality, culture, and local sovereignty as well as economic empowerment.<sup>37</sup> Indigenous peoples typically suffer from development strategies that overlook their demands, including land distribution and natural resource access, without this component.

Land shortages and development pressures exacerbate indigenous groups' land rights issues. Urbanization and infrastructure developments increase land demand, which has serious economic and social ramifications for disadvantaged people. This highlights the need to protect indigenous land rights and address fair land access and sustainable usage in the face of growing development challenges. These issues emphasize the need to study how economic growth and infrastructural development affect land dynamics and vulnerable people.

Economic progress and infrastructure development are causing land to become increasingly scarce and selling prices to rise, even in remote areas.<sup>38</sup>

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<sup>35</sup> Shirley, Mary M. "Institutions and development." In *Handbook of new institutional economics*. (Boston, MA: Springer US, 2005), pp. 611-638.

<sup>36</sup> Calo, Adam, Kirsteen Shields, and Alastair Iles. "Using property law to expand agroecology: Scotland's land reforms based on human rights." *The Journal of Peasant Studies* 50, no. 5 (2023): 2075-2111.

<sup>37</sup> Tobin, Brendan. *Indigenous Peoples, Customary Law and Human Rights-Why Living Law Matters*. (London: Routledge, 2014).

<sup>38</sup> This issue is evident in the planning of the national capital in Kalimantan, where the development has significant implications for numerous Indigenous communities, including the Paser ethnic group, as well as various sub-ethnicities of the Dayak such as Dayak Kenyah and Dayak Modang, along with communities like the Kutai, Benuaq, Tunjung, Punan, and Basab. National law in Indonesia remains inadequate in addressing these concerns. The pathways for recognition are fragmented, sectoral, conflict-averse, and

Due to population growth, land is becoming scarcer since people need somewhere to live and work. Land is scarce, thus costs are rising, particularly in major cities. Because affordable housing is scarce, economically weak areas suffer. Additionally, the government needs property for road infrastructure, ports, airports, public housing, and other community development. These issues slow progress.

In addition, land management and ownership are still uneven, especially between poor and powerful economic groups. Land prices rise uncontrollably because land speculators buy and sell it. Food-producing agricultural land is limited because people sell it because they don't make enough money. This hinders growth since land acquisition is difficult and expensive.

Multi-sectoral regulatory challenges include Permendagri 52/2014, which requires Governors and Regents/Mayors to acknowledge Indigenous Peoples by Decrees. This order cannot be utilized by Indigenous Peoples to propose customary forest rights in forest regions. The Ministry of Environment and Forestry is bound by Article 67 paragraph (2) of the Forestry Law, which requires legal products to recognize indigenous communities in forest areas as *Regional Regulations*. This regulatory disharmony has a major impact on indigenous peoples' economic rights on their own land. Additionally, anybody may take customary land with official authority.

Indigenous people struggle to enforce their land rights because to this regulatory disharmony, which also leads to land disputes and violence throughout Indonesia. The Dayak indigenous group in Kalimantan often challenges palm oil plantation firms over overlapping land claims. The Dayak group claims ancestral rights under traditional rules, while businesses generally operate under government permissions, ignoring these claims. The Ompu Umbak Siallagan indigenous community in North Sumatra battled with PT Toba Pulp Lestari (TPL), whose head was imprisoned for taking land the group had controlled for 11 generations. Indigenous land usage and corporate claims are legally unequal, as shown by this case.<sup>39</sup> In East Kalimantan, mining firms

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laden with numerous restrictions. In the absence of a clear and coherent framework, as exemplified by the Indigenous Peoples Bill, which has yet to be fully defined, Indigenous territories are being displaced with relative ease. See also Rafiqi, Ilham Dwi, Narayana Maha Gotra, and Christine Anderson. "Indigenous Peoples' Rights in Development of the National Capital City: Between Fulfillment and Violation." *Lex Journal: Kajian Hukum dan Keadilan* 8, no. 1 (2024): 70-83; Buana, Mirza Satria, et al. "The Nusantara capital city project: why development and human rights do not always mix." *Law and Development Review* 16, no. 1 (2023): 185-223.

<sup>39</sup> Aliansi Masyarakat Adat Nusantara (AMAN), "Potret Masyarakat Adat dalam Himpitan Krisis", February 16, 2022. Online at <https://aman.or.id/news/read/1368>

have caused agricultural disputes owing to unclear land borders and lack of community input in the permission process, causing indigenous peoples to lose livelihoods and the environment.

The long time needed to start development makes traditional land purchase difficult. The government lacks land reserves to start construction immediately. Discord in the land purchase process prolongs progress. The Land Bank is supposed to speed up development land acquisition by offering access to viable property. Furthermore, creating a land bank needs studying worldwide land regulatory trends.<sup>40</sup> Parallel legislative initiatives that led to the 2007 UN Declaration on the Rights of Indigenous Peoples enhanced this development of law. Several paragraphs of the Declaration address land rights, making them a human rights concern for indigenous peoples.<sup>41</sup> Article 25 of the Declaration says "*Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationships with lands, territories, waters, coastlines, and other resources traditionally owned or occupied, and to uphold their responsibilities to future generations in this matter.*"

The Declaration is not a treaty, but its rights reflect contemporary international legal concepts for indigenous peoples. They also demonstrate the worldwide recognition of the need of a human rights-based framework for indigenous land rights. The International Labor Convention (International Labor Organization) No. 169, which protects Indigenous Peoples and Traditional Communities, also incorporates human rights with land rights. The statement states that governments must respect the cultural and spiritual values of the peoples and their relationship to the area or territory they occupy or use while implementing the Convention. Honoring this relationship's communal elements is part of this. "It is crucial to comprehend that the establishment, policy, and institutional framework of a land bank are pressing issues that require immediate implementation." Article 2 of the 1960 Basic Agrarian Law of Indonesia requires a land control agency.

It seems that this requirement requires a state-owned land management body. The legislation also specifies land's societal purpose in Article 6. Law No. 2 of 2012 defines public interest land procurement entities that implement development projects. This provision is essential for development speed. Law No. 17 of 2007 addresses land management organization building under the

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<sup>40</sup> De Schutter, Olivier. "The emerging human right to land." *International Community Law Review* 12, no. 3 (2010): 303-334. Also see Gilbert, "Land Rights as Human Rights: The Case for a Specific Right to Land."

<sup>41</sup> Gilbert, Jérémie. *Indigenous Peoples' Land Rights Under International Law: From Victims to Actors*. (Leiden: Brill, 2007).

2005–2025 RPJP. Presidential Decree No. 2 of 2015 covers the 2015–2019 RPJMN and requires this. Before 2019, the government must create a land bank under this directive.

International land banking regulations have altered to match local needs and laws. Canadian land banking involves local governments and indigenous peoples with free, prior, and informed consent. The UN Declaration on the Rights of Indigenous Peoples and Canadian Constitution Section 35 of 1982 respect indigenous rights. Indigenous tribes are always engaged in land planning and management, especially for infrastructural and natural resource initiatives.<sup>42</sup>

Dutch land banking is based on communal land governance. The 1954 Land Consolidation Act requires local governments to transfer land for housing, public infrastructure, and green areas via land banking. The land purchasing process is open and monitored to avoid speculation. The land bank may only use property for community-benefitting social programs, controlling land prices and offering low-income access.<sup>43</sup>

Scandinavian land banks, like Finland, value sustainability and the environment. The National Land Survey Act lets Finland integrate land banking in its spatial design. Land banks oversee wind and solar farms and environmental protection. The regulation opens land bank data via GIS, promoting transparency.<sup>44</sup> US land banking addresses unproductive urban property. Local governments may acquire, manage, and transfer idle property to the Detroit property Bank Authority under the 2003 Michigan Land Bank Fast Track Act.<sup>45</sup> This initiative revitalizes economically and socially deteriorated communities by building homes, businesses, and public facilities on vacant lots. This strategy accelerates infrastructure expansion and eliminates administrative burdens.

For years, emerging nations in the US and Europe have been developing the Land Bank idea.<sup>46</sup> These nations' urban planners recommend that local

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<sup>42</sup> Olthuis, Brent. "The Constitution's Peoples: Approaching Community in the Context of Section 35 of the Constitution Act, 1982." *McGill Law Journal* 54, no. 1 (2009): 1–43.

<sup>43</sup> Holtslag-Broekhof, Sanne. "A Dutch perspective on land readjustment: low practicability without mandatory legislation." In *Instruments of Land Policy*. (London: Routledge, 2018), pp. 170–174.

<sup>44</sup> Riekkinen, Kirsikka. "The Cadastral Surveyor in Finland." *Kart og Plan* 117, no. 2 (2024): 222–225.

<sup>45</sup> Michigan Legislature. *Land Bank Fast Track Act. Act 258 of 2003*. Online at <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-258-of-2003.pdf>

<sup>46</sup> This development has occurred, for example, in the United States which has a Land Bank Regulation Housing and Economic Recovery Act/ (HERA), 2008; American Recovery and Reinvestment Act (ARRA), 2009. The concept of Land Bank in the United States

governments buy empty property on the fringe of cities for long-term land use and urban disorder management. The Land Bank manages land acquisition, development, use, security, and maintenance for the government. This institution was founded to provide land accessibility for development, economic progress, and public welfare. This organization regulates land prices, balances land ownership, and manages state public reserve property. Dragana Milicevic's land bank concept:

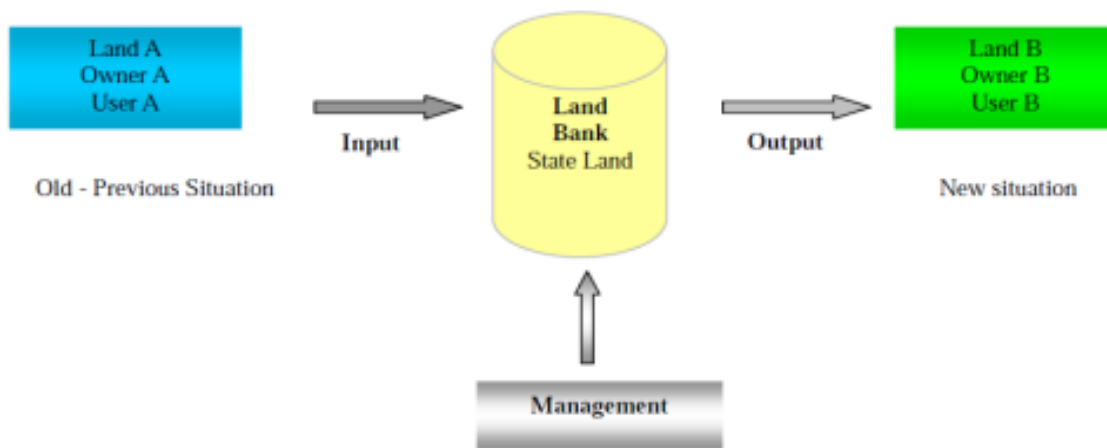


FIGURE 1. Land Bank Concept

Source: Dragana Milicevic (2014)<sup>47</sup>

Dragana Milicevic shows how the Land Bank system may be implemented into Indonesia's legal and social framework with adaptations to accommodate for land ownership and usage variety. A land bank in Indonesia must respect local communities' ulayat, or customary rights, and agricultural reform laws that seek to distribute land equally.

The Land Bank will accept land input from state property or land acquired via purchase or compensation to prior land owners. In Indonesia, this procedure must entail discussion and equitable compensation with traditional land owners (Land A, Owner A), taking into consideration the property's economic, social, and cultural worth to traditional communities. Once land joins the Land Bank, effective and transparent administration is essential. Land management that

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consists of 2 types, including: (1) public land bank; and (2) mixed land bank which is implemented with 3 (three) stages, namely: (1) the collection or acquisition of abandoned or tax confiscated lands; (2) the land management stage; (3) the land reuse stage. See, Alexander, Frank S. "Land banking as metropolitan policy." *Blueprint for American Prosperity* (2008). Available at SSRN: <https://ssrn.com/abstract=1955584>

<sup>47</sup> Milićević, Dragana. "Review of existing land funds in European countries." *Geonauka* 2, no. 1 (2014): 31-42.

supports sustainable development and respects indigenous peoples' rights in Indonesia will require coordination with village to national government agencies, civil society, and non-governmental organizations.

At the output stage, the Land Bank distributes the land to new owners (Land B Owner B), who might be individuals or the government that wishes to develop it. According to national rules, the program must distribute land fairly to create low-income housing or public infrastructure. Starting a land bank requires categorizing land items that may be accommodated:

**TABLE 1.** Classification of Land Objects in the Land Bank

Land Objects	Explanation of Analysis
Abandoned Land	The Head Regulations define abandoned land in Article 1, Number 6. Regulation 4 of 2010 of the National Land Agency of Indonesia governs abandoned land management. Uninhabitable terrain is abandoned. Property, commercial, and building rights are granted by the state. Use and management rights underpin land governance that is not Those who know the conditions, nature, and purpose of awarding rights and the basis for their control can only grow these plants. Land that isn't abandoned under rules Article 2 of Presidential Regulation Number 11 of 2010 defines land rights as ownership or building use rights owned by a non-owner. Despite the gift's conditions, nature, and purpose, many willfully abuse these privileges. The government controls rights and land directly or indirectly. Property status is indirect or unrestricted. Countries or locations that are not intentionally used according to the conditions or rights-granting goals.
Absentee Land	Absentee land is private agricultural property. Family members living beyond the land's subdistrict are included. The Basic Agrarian Law of Republic Indonesia states that a person or family cannot own absentee land, but this is often violated, and it is difficult to prove because agricultural land is bought and sold underhand and not registered, identity cards are manipulated, or an absolute power of attorney is made.
Business Use Rights (HGU)	The unextended HGU land became state land and was reformed. The redistribution pattern helps interested parties learn and use it.

In addition, there are several other land objects, for example:

**TABLE 2.** Source of Land Objects for Other Land Banks

Land Source	Types of Rights	Earning Mechanism
Abandoned Land	HGU, HGB, Ulayat Land	Acquisition / Sale and Purchase
Government Asset Land	HGB	Acquisition / Sale and Purchase
HGU Land	HGU	Acquisition / Sale and Purchase
Absentee Land	Right of ownership	Acquisition / Sale and Purchase
Social/Fassum Land	HPL Developer	Grant
Land Assets of BUMN/BUMD	HGU, HGB	Acquisition/Swap
Confiscated land	BPN Assets, Bank Confiscation, Court Decision	Revocation of Padakpnkl's Purchase Rights

Source: Bernhard Limbong<sup>48</sup>

The Land Bank, founded by the ATR/BPN Ministry, has numerous potential land sources. This land might be abandoned without a management. Therefore, a land bank must be created quickly to maximize development possibilities on abandoned property. The Land Bank helps public-good land purchases. The Land Bank should speed up and improve public land purchases. The Land Bank stores government-useable land, accelerating development.

First in the institutional architecture is the Organizing Organ of the National Land Bank (BATANAS), which includes the Land Bank Committee, Supervisory Board, and Executive Board. The Minister of Agrarian Affairs and Spatial Planning/National Land Agency Head chairs the Land Bank Committee, appointed by the President. Ministers of Finance, Public Works and Public Housing (PUPR), and others serve on the committee. Land Bank Committee determines Supervisory Board and Executive Board membership. Since the Organizing Organ of the National Land Bank (BATANAS)'s primary responsibilities and operations are strategic, a Land Bank Executive Board structure that can handle asset management, planning and development, land use, and the financial sector is needed to perform its duties.

For this reason, the Supervisory Board comprises the BATANAS Head, numerous deputies, and the Internal Supervisory Unit. The Organizing Organ

<sup>48</sup> Limbong, Bernhard. *Politik Pertanian*. (Jakarta: Pustaka Margaretha, 2014).



of the National Land Bank (BATANAS) must have its headquarters in the national capital and regional representation throughout the state due to its strategic role in national development. This effort promotes economic progress and social wellbeing for all Indonesians. Indonesia.

The Ministry of Finance formed the State Asset Management Institute (LMAN) as a BLU under the Directorate General of State Assets on December 23, 2016. LMAN aims to improve state asset management efficiency. LMAN manages state assets, strategizes financing and land use in compliance with the Land Bank, and compensates land purchase losses. Financial allocation is crucial to investing. Build more toll roads, dams, and other transportation infrastructure to implement national strategic plans. To ensure infrastructure development's long-term sustainability, toll road financing has been the main emphasis. The 2016 Revised State Budget (APBN) allotted 16 trillion for land acquisition, while the 2017 APBN authorized 50 more projects. Improving infrastructure to support strong, long-term economic growth and community well-being.<sup>49</sup>

The Organizing Organ of the National Land Bank (BATANAS) provides and manages land assets for development, controls land prices, and follows spatial planning directives. The asset manager-focused State Asset Management Institute (LMAN) will work with the National Land Bank's Organizing Organ (BATANAS) to speed up and improve development. Table 3 shows obstacles and innovations in establishing Indigenous Community Land Banks in Indonesia and organized agricultural governance:

**TABLE 3.** Challenges and Innovation of Land Banking

Challenges	Innovation
Inequality in land control and ownership	Agrarian reform, namely efforts to reduce inequality in land control and ownership, as well as improving people's welfare and justice through proportional land regulation. <sup>50</sup>
Land conflicts	Land conflict mediation, namely an alternative dispute resolution approach that involves various parties, such as the

<sup>49</sup> Sudjarwo, Marsoem, Adi Wahyono, and George Manoppo Pieter. *Pedoman Lengkap Ganti Untung Pengadaan Tanah: Memetakan Solusi Strategis Pengembangan Infrastruktur di Indonesia*. (Jakarta: Rene Book, 2015).

<sup>50</sup> Ismanto, Indri Asra, and Hari Purwadi. "Kebijakan Reforma Agraria Pasca Lahirnya Bank Tanah." *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia*. Vol. 1. No. 3. 2023.

Challenges	Innovation
	government, companies, indigenous communities, NGOs, and academics, to reach a peaceful agreement. <sup>51</sup>
Environmental damage	The development of customary law, namely the recognition and protection of customary law, which regulates the relationship between society and natural resources and contains ecological and conservation values. <sup>52</sup>
Climate change	A land bank is an institution that functions to provide and manage land for public and private purposes, including agrarian reform, climate change adaptation and mitigation, and land rehabilitation. <sup>53</sup>
Ambiguity of regulations	Electronic land certificates, namely the application of information technology to simplify the land registration process, increase legal certainty, and prevent document forgery. <sup>54</sup>
Corruption	Land information system, namely the application of information technology to increase transparency accountability, and participation in managing land data and information. <sup>55</sup>

Based on this, land banks, which represent governmental protection for indigenous populations, must be reformed legally and institutionally. This is essential to address Indonesia's various agricultural issues, including indigenous community disadvantages and inadequate regulatory rules. In addition, strengthening and land banking policy plans allow indigenous peoples to enjoy the land's agricultural products as part of their economic rights. Given the challenges of land banking for indigenous communities in Indonesia and agrarian governance, as well as the proposed solutions, the government and all stakeholders must take proactive steps to formulate and implement comprehensive reforms.

<sup>51</sup> Irawan, Sahrul Ari, et al. "Peran Pemerintah Daerah dalam Penyelesaian Konflik Menahun Masyarakat Adat dengan Perusahaan Perkebunan Karet di Kabupaten Tulang Bawang Barat Provinsi Lampung." *Ganaya: Jurnal Ilmu Sosial dan Humaniora* 6, no. 4 (2023): 922-935.

<sup>52</sup> Salamat, Yusuf. "Pengaturan Mengenai Hak Atas Tanah Masyarakat Hukum Adat (Studi Kasus Pengakuan Terhadap Hak Atas Tanah Masyarakat Hukum Adat Dayak Di Kalimantan Tengah)." *Jurnal Legislasi Indonesia* 13, no. 4 (2016): 411-420.

<sup>53</sup> Puspita, Fidri Fadillah, Fitri Nur Latifah, and Diah Krisnaningsih. "Urgensi Kehadiran Bank Tanah Sebagai Alternatif Memulihkan Perekonomian di Indonesia." *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1761-1773.

<sup>54</sup> Susilowati, Indri Fogar. "Tinjauan Yuridis Sertifikat Tanah Elektronik Sebagai Alat Bukti Kepemilikan Tanah di Indonesia." *Novum: Jurnal Hukum* 10, no. 3 (2023): 57-72.

<sup>55</sup> Pinuji, Sukmo. "Integrasi sistem informasi pertanahan dan infrastruktur data spasial dalam rangka perwujudan One Map Policy." *BHUMI: Jurnal Agraria dan Pertanahan* 2, no. 1 (2016): 48-64.

To maximize indigenous community land banks' effectiveness, legal policy frameworks must recognize and protect indigenous groups' land and natural resource rights. Modifying and harmonizing laws and regulations may improve indigenous community rights protection. All land policy must include social fairness and environmental sustainability. Additionally, land bank organizations must be made more transparent, accountable, and inclusive. This may be achieved by including indigenous people and other stakeholders in decision-making. Land bank policies and procedures should follow the concept of free, prior, and informed consent (FPIC) to include indigenous populations in land and natural resource decisions.

A comprehensive program to raise public knowledge of indigenous rights and land banks' key role in fair and sustainable development is essential. Public education and lobbying may influence public opinion on agricultural reform and resource management. Additionally, it may boost political and social support for indigenous rights legislation and practices. Indigenous peoples' land banks may help achieve social justice, environmental sustainability, and inclusive economic prosperity. This ensures that indigenous peoples are land caretakers and actively participate in national growth.

## Conclusion

This research concluded that land banking legislation has the potential to empower and protect Indigenous Indonesians, but its effective implementation faces significant challenges. A key issue is the lack of clear definition regarding land rights protection as economic rights for Indigenous groups. Land holds not only economic value but also plays a crucial role in sustaining cultural identity and social cohesion. To preserve Indigenous land rights, it is essential to recognize customary law and cultural practices related to traditional land management. Additionally, land banking policies and institutional frameworks require sectoral regulatory reforms and enhanced institutional capacity to address implementation hurdles. Harmonizing overlapping laws, such as the Forestry Law and Agrarian Law, will provide legal clarity and mitigate land disputes. The principle of free, prior, and informed consent (FPIC) should guide all decisions concerning Indigenous lands. This study advocates for promoting equitable agricultural reform, improving land dispute resolution mechanisms, and supporting Indigenous communities in managing their land autonomously. The integration of information technologies, such as GIS mapping, could enhance transparency and accuracy in land management. In conclusion, a multidisciplinary approach is crucial to developing inclusive land

banking policies that balance development needs with the rights of Indigenous peoples and environmental conservation. Future research could focus on establishing performance indicators for land banking programs and exploring innovative models that reconcile these objectives. Ultimately, land banking has the potential to foster greater social, economic, and cultural equity in Indonesia's land management.

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*Without justice,  
courage is weak.*

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