

International Jurnal Islamic Education, Research and Multiclturalism (IJIERM)

Available online https://journal.yaspim.org/index.php/IJIERM/index

REFORMULATING CONSERVATION POLICIES FOR INDIGENOUS PEOPLES IN INDONESIA

Muhammad Arsyad[1], Imam Koeswahyono[2], Indah Dwi Qurbani[3]
[1,2,3] Faculty of Law, Brawijaya University Malang, Indonesia
[1]Email: arsyad19@student.ub.ac.id, [2]imam.koes@ub.ac.id,
[3]indah.qurbani80@ub.ac.id

Abstrak

Tata kelola konservasi di Indonesia masih sangat tersentralisasi sehingga menimbulkan ketegangan antara kewenangan negara, perlindungan lingkungan, dan hak Masyarakat Hukum Adat (MHA). Penelitian ini menganalisis kesenjangan regulasi dalam kerangka konservasi sumber daya alam hayati di Indonesia serta merumuskan model reformasi kebijakan berbasis utilitarianisme progresif. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual untuk menganalisis Undang-Undang Nomor 5 Tahun 1990, Undang-Undang Nomor 32 Tahun 2024, bahan hukum terkait, literatur ilmiah, dan dokumen kebijakan. Hasil analisis mengidentifikasi empat persoalan utama, yaitu dominasi negara dalam tata kelola konservasi, fragmentasi dan tumpang tindih regulasi, lemahnya pengakuan hukum adat, serta tokenisme partisipasi MHA yang hanya memberikan ruang konsultasi tanpa kewenangan substantif dalam pengambilan keputusan. Penelitian ini menawarkan kerangka reformasi yang mengintegrasikan *Indigenous Self-Governance* dan *Full Community-Based Conservation*. Kerangka tersebut bertumpu pada empat pilar: pengakuan hukum adat, desentralisasi kewenangan konservasi kepada masyarakat adat, penerapan wajib prinsip *Free, Prior, and Informed Consent* (FPIC), dan pembagian manfaat yang adil. Dalam perspektif utilitarianisme progresif, hukum konservasi harus memaksimalkan manfaat ekologis dan sosial sekaligus melindungi kelompok rentan dari eksklusi dan perampasan hak. Model ini memosisikan MHA sebagai subjek hukum dan mitra utama dalam tata kelola konservasi berkelanjutan.

Kata kunci: Tata Kelola Konservasi; Masyarakat Hukum Adat; Utilitarianisme Progresif; Persetujuan Atas Dasar Informasi di Awal Tanpa Paksaan; Keadilan Ekologis

Abstract

Indonesia's conservation governance remains marked by tensions between state authority, environmental protection, and the customary rights of Indigenous peoples (*Masyarakat Hukum Adat*, MHA). This study examines regulatory gaps in Indonesia's legal framework for biodiversity and ecosystem conservation and develops a reform model grounded in progressive utilitarianism. Employing normative legal research, it adopts statutory and conceptual approaches to analyse Law No. 5 of 1990, as amended by Law No. 32 of 2024, alongside related legal materials, scholarly literature, and policy documents. The analysis identifies four

Corresponding Author	Muhammad Arsyad		
Article History	Submitted: 22 April 2025	Accepted: 02 June 2025	Published: 10 June 2025

interrelated challenges: the dominance of state authority in conservation governance, regulatory fragmentation and overlap, inadequate legal recognition of customary institutions, and tokenistic participation that affords Indigenous communities consultative opportunities without substantive decision-making authority. In response, the study proposes an integrated framework combining Indigenous self-governance with comprehensive community-based conservation. The framework rests on four pillars: legal recognition of customary rights and institutions, the devolution of appropriate conservation authority to Indigenous communities, the meaningful application of free, prior and informed consent (FPIC), and equitable benefit-sharing. Drawing on progressive utilitarianism, the study argues that conservation law should pursue ecological integrity and collective welfare without sacrificing the rights and interests of historically marginalised communities. It conceptualises Indigenous peoples as rights-bearing legal subjects and substantive partners in conservation governance, rather than merely as stakeholders to be consulted. The proposed framework offers a normative basis for aligning biodiversity protection with Indigenous self-determination, procedural justice, and socially sustainable conservation in Indonesia.

Keywords: Indigenous peoples; conservation law; Indigenous self-governance; community-based conservation; progressive utilitarianism; free, prior and informed consent

INTRODUCTION

Conserving biological resources is essential for maintaining both human well-being and environmental stability. As a megabiodiversity country, Indonesia has a significant responsibility in sustaining ecological balance. However, conservation arrangements often overlook the role and contribution of Masyarakat Hukum Adat (MHA), who have long upheld local wisdom in natural resource management. The Conservation of Natural Resources and Ecosystems Law (Law No. 5 of 1990) positions the state as the sole authority, limiting fair opportunities for MHA participation and recognition (Susanto, 2022, p. 16).

Indigenous peoples have a historical and spiritual relationship with the surrounding nature, which is realized through customary practices that are oriented towards conservation. Local wisdom-based management systems such as sasi in Maluku and customary forests in Kalimantan have been proven to maintain ecological balance in a sustainable manner (Masrillurahman, 2021, p. 66). Unfortunately, these systems are often seen

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

as incompatible with modern science-based conservation approaches applied by the state, resulting in conflicts of interest in conservation policy. The result is the marginalization of indigenous peoples and the marginalization of customary rights in the management of conservation areas.

The revision of the KSDAHE Law through Law No. 32 of 2024 does show progress by including elements of recognition of indigenous peoples. However, substantial problems still remain, such as conditional recognition of MHA, strict supervision by the state, and potential criminalization of customary practices that are not explicitly listed in the formal legal framework (Ariyanto et al., 2023, p. 8). This shows the duality of conservation law: on the one hand, it aims to protect nature, but on the other hand, it has the potential to threaten the existence of communities that have been living in harmony with nature. Large-scale projects wrapped in the spirit of national development are often instruments of exclusion of Indigenous Peoples. For example, the Merauke Integrated Food and Energy Estate (MIFEE) project in Papua visibly displaced the Malind Anim's customary lands, led to loss of access to traditional food sources, and increased social and ecological vulnerability (Azis et al., 2023, p. 14). This practice reflects a form of forest stateization that unilaterally claims indigenous territories as state property, without going through a process of consultation and free, prior, and informed consent.

In responding to these issues, this research uses the progressive utilitarianism approach as a philosophical foundation to reformulate conservation policy. Jeremy Bentham's greatest happiness principle emphasizes that public policies should produce the greatest benefits for the greatest number of people (Jeremy Bentham, 1823, p. 23). In this context, conservation policies should not only pursue ecological success, but should also guarantee the social welfare and rights of local communities, especially MHA. Thus, conservation management must move from a top-down paradigm towards a Full Community-Based Conservation and Indigenous Self-Governance model that places MHA as the main subject, not just an object of conservation. The problems in this research include two main points: first, identifying problems and gaps in the regulation of conservation of biological natural resources and ecosystems towards MHA

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

in Indonesia; and second, formulating strategies for reformulation of conservation policies based on the perspective of progressive utilitarianism. This reformulation is expected to be able to build environmental governance that is not only ecologically just, but also socially and culturally, by ensuring active participation and recognition of the rights of MHA in every stage of the conservation process.

LITERATURE REVIEW

This research uses the theory of progressive utilitarianism (Mill, 2020, p. 41) as the basis for formulating a fair biological resource conservation policy for Masyarakat Hukum Adat (MHA). This theory develops from Jeremy Bentham's thoughts on the principle of "the greatest happiness for the greatest number" which emphasizes the importance of policies that provide the greatest possible benefits for the greatest number of people (Rahmatullah, 2021, p. 7). In its progressive version, this theory does not only focus on the number of benefits, but also pays attention to social justice, protection of vulnerable groups, and long-term sustainability.

This theory is very relevant in the context of conservation in Indonesia, because so far existing policies tend to ignore the rights and roles of MHA in protecting the environment. In fact, local practices such as sasi and customary forests have proven effective in protecting the ecosystem. The progressive utilitarianism approach helps to see that ecological benefits and social benefits should go hand in hand (Efendi, 2018, p. 34). Policies that only focus on conservation, but harm MHA such as evictions or criminalization of customary practices are actually contrary to the principle of mutual happiness (Imtihani & Nasser, 2024).

With this theory, the research is directed to answer how conservation regulations can be changed to be more equitable and inclusive. This theory also serves as a reference in developing a new policy model that places Indigenous Peoples as the main partners, not just as parties that must be subject to the state. Through this approach, conservation policies can encourage environmental conservation while improving the welfare of indigenous peoples in a sustainable manner. (Mutiarawati et al., 2024; Sayuti, 2021)

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

RESEARCH METHODS

This study employs a normative juridical approach to examine how laws and regulations regulate the conservation of biological natural resources and ecosystems, focusing on Law No. 5/1990 and Law No. 32/2024, especially regarding the role and rights of Masyarakat Hukum Adat (MHA). This approach integrates a statutory approach (examining legal texts) and a conceptual approach (analyzing legal concepts and theories) to identify existing gaps, challenges, and reform opportunities (Yuliani et al., 2018; Zafra-Calvo et al., 2017) . The normative method is chosen because the analysis centers on legal norms, rather than community behavior or practices. Normative research was chosen because the main focus lies on analyzing the content of the law, not on community behavior, and to examine the extent to which existing norms are able to answer the needs of ecological and social justice within the framework of national law.

In its implementation, the approach used is a statutory approach (statute approach) and conceptual approach (conceptual approach) (Schuster et al., 2019; Sze et al., 2024) . The statutory approach is carried out by examining and comparing the legal substance in the Old KSDAHE Law and the New KSDAHE Law, to see weak points, structural bias, and the potential for criminalization of MHA who carry out customary practices. Meanwhile, a conceptual approach is used to link the theory of progressive utilitarianism as an analytical knife to the applicable legal norms. This approach provides an ethical and philosophical perspective on how the law should reflect the principle of greatest happiness that also includes vulnerable groups such as MHA.

The data used in this research comes from secondary data, namely primary legal materials in the form of laws and regulations, secondary legal materials such as scientific literature, journals, and policy documents, as well as tertiary legal materials that support the understanding of the context. The analysis technique used is qualitative analysis, namely by interpreting legal norms and theoretical concepts in order to formulate recommendations for reformulation of conservation policies that are more inclusive, socially just, and in line with the values of environmental sustainability. With this method, it is hoped that the research results will be

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

able to make a concrete contribution to conservation law reform that is more humanist and adaptive to the local wisdom of MHA.

RESULTS AND DISCUSSION

Problems and Gaps in Conservation Regulations for Indigenous Peoples

The regulation of biological resources conservation in Indonesia still faces major challenges in recognizing and engaging the role of Masyarakat Hukum Adat (MHA). Although Law No. 32 of 2024 on the Conservation of Living Natural Resources and their Ecosystems has tried to rectify previous weaknesses, recognition of the rights of Indigenous Peoples is still limited (Santika et al., 2017; Schleicher et al., 2017). This has resulted in customary practices that have proven effective in safeguarding ecosystems often finding no place in national conservation policies. For example, research by Yuliani shows that indigenous communities in Kalimantan face difficulties in maintaining their customary land and forest rights due to a lack of clear legal recognition (Sahide et al., 2016; Santika et al., 2017).

This gap is exacerbated by a top-down conservation approach, where the state is the main actor without meaningfully involving MHA in the decision-making process. This not only ignores local knowledge held by MHA, but also has the potential to cause social conflict and ecological injustice. The study by Fisher et al. (2020) emphasizes the importance of multi-stakeholder collaboration in customary forest management to ensure sustainability and equity for local communities (Rakatama & Pandit, 2020; Robinson et al., 2014) .

Furthermore, conservation approaches that are insensitive to the social and cultural context of MHA can lead to the criminalization of customary practices that actually support environmental conservation. For example, conservation projects that do not actively involve MHA can lead to the dispossession of customary lands and disrupt the ecosystem balance that these communities have maintained for centuries (Persha et al., 2011; Porter-Bolland et al., 2012). Therefore, a more inclusive and equitable reformulation of conservation policies is needed, integrating the principles of progressive utilitarianism that balances ecological benefits and social welfare.

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

Centralization and State Domination

Indonesia's conservation arrangements under Law No. 5 of 1990 and Law No. 32 of 2024 (KSDAHE Law) demonstrate a highly centralized approach. Article 5A paragraphs (2) and (3) of the New Law on Conservation of Natural Resources and Ecosystems explicitly stipulates that nature reserves and nature conservation areas are under the control of the Minister of Forestry, without providing substantial participation mechanisms for Masyarakat Hukum Adat (MHA) (Indonesia, Pemerintahan Pusat, 2024). This reflects the mindset that the state has full authority over forests and customary territories, while the role of MHA who have traditionally preserved their territories is sidelined (Martin et al., 2016; Myers et al., 2017) . As a result, local wisdom such as the practice of sasi in Maluku or customary forest management by Dayak communities becomes irrelevant in formal policies (Oldekop et al., 2016; Papillon & Rodon, 2017)

Criticism of this approach has been conveyed by James C. Scott through the concept of "high modernism" which states that the state tends to formulate technocratic policies without understanding the social complexities on the ground (Harada et al., 2022; Mahanty & McDermott, 2013) . Cases in Kerinci Seblat and Lorentz National Parks show that the establishment of conservation areas often removes indigenous peoples from their customary lands without meaningful consultation, triggering agrarian conflicts and social impactsc. Conservation policies have also become a tool of state domination, not just to protect the environment, but also to rearrange power relations between the state and indigenous communities.

Furthermore, the legacy of colonialism such as the concept of domein verklaring is still alive in the Indonesian legal system. Indigenous territories that lack formal proof of ownership are often claimed as state forests, even though they historically and culturally belong to indigenous communities. As of 2024, only around 16% of the total 30.1 million hectares of customary territories have been formally recognized (BRWA, 2024). This is in direct contradiction to the Constitutional Court Decision No. 35/PUU-X/2012 which affirms that customary forests are not part of state forests (Indonesia, Mahkamah Konstitusi, 2012). This legal imbalance shows that the state has not yet fully transformed from the colonial paradigm towards true recognition of indigenous peoples' rights.

In addition, the law is also often used to maintain state power. Pierre Bourdieu's theory calls law a tool for the reproduction of domination, and this

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

is evident in the case of MIFEE in Papua, where conservation and agribusiness programs seize Indigenous Peoples' land without giving them access to traditional food sources (Gavin et al., 2018; Hanna & Vanclay, 2013) . Conservation approaches that ignore Indigenous Peoples' spirituality and social structures, such as the tembawang system in Kalimantan or sasi in Maluku, undermine social networks and deepen ecological injustice. Moreover, weak coordination between government agencies exacerbates overlapping policies and claims to customary land so that conservation efforts that should be inclusive instead create counterproductive policy fragmentation.

Tokenism in Indigenous Peoples' Participation

Tokenism in the participation of Masyarakat Hukum Adat (MHA) refers to symbolic or mere formality involvement in decision-making processes related to policies for the conservation of biological resources and ecosystems in Indonesia. In this case, MHA are often only involved to fulfill administrative requirements or create an impression of inclusiveness, without being given real power to influence decisions. This phenomenon is evident in the New KSDAHE Law, which mentions the involvement of MHA but does not provide concrete mechanisms for meaningful participation.

An example of tokenism can be seen in Article 37 paragraph (3) of the New KSDAHE Law which states, "Community participation in the Conservation of Living Natural Resources and Ecosystems includes the involvement of customary law communities." However, this article is not followed by a clear explanation or procedure to ensure that participation is effective. In addition, Article 37 paragraph (4) adds that the involvement of Indigenous Peoples must be "implemented in accordance with the provisions of laws and regulations," which often does not explicitly support indigenous rights and is more inclined towards the interests of the state or corporations (Indonesia, Pemerintahan Pusat, 2024). According to Sherry Arnstein's Ladder of Citizen Participation theory (1969), MHA participation in this law is at the level of tokenism, such as "informing" or "consultation" At this stage, MHA are only informed or consulted, but have no control over the final decision, far from the ideal level of Citizen Power.(Fontana & Grugel, 2016; Garnett et al., 2018)

One clear example of tokenism is the case of Kerinci Seblat National Park, where MHA are often excluded from the management of areas they have

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

traditionally managed. Despite legal provisions suggesting their involvement, MHA rights are often violated by state or corporate interests, with participation limited to symbolic gestures without effective governance (ECOS, 2023). A similar case occurred in Lorentz National Park, Papua, where the Asmat and Amungme indigenous communities faced marginalization as a result of conservation policies that did not recognize their customary management systems, such as traditional hunting restrictions that are an integral part of their culture. In both cases, MHA participation was little more than a formality, without giving them any real power to influence conservation policies. Another relevant case is the conflict in Gunung Sahilan Village, Kampar, where MHA is involved in a dispute with PT RAPP due to overlapping customary land claims with industrial timber plantation concessions. Although MHA were invited to consult, the final decision remained in the hands of the company and the government, suggesting that their involvement was only symbolic. These cases illustrate how tokenism creates the illusion of inclusivity while maintaining state and corporate dominance.(Fisher et al., 2018; Fisher & van der Muur, 2020)

Legal Gaps and Overlapping Regulations

The regulation of conservation of biological resources and ecosystems in Indonesia is still characterized by significant legal gaps, especially in the context of recognition and protection of indigenous peoples' rights. These gaps arise from inconsistencies between regulations, overlapping authorities, and unclear implementation mechanisms, which ultimately exacerbate the marginalization of MHA. The centralized approach in the KSDAHE Law often contradicts other regulations, such as Law No. 41/1999 on Forestry and Law No. 3/2020 on Mineral and Coal Mining (Minerba Law). This lack of synchronization creates legal uncertainty that disadvantages MHA, both in access to customary land and participation in conservation management.

One of the main gaps is the neglect of customary rights of indigenous peoples in the designation of conservation areas. The New Law on Conservation of Living Natural Resources and Ecosystems, while mentioning the involvement of MHA in Article 37 paragraph (3), does not provide a clear mechanism to accommodate customary law in the management of nature reserves or nature conservation areas. In contrast, Article 5A paragraphs (2) and (3) of the New Law on Conservation of Living Natural Resources and Ecosystems asserts that full authority rests with the Minister of Forestry,

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

reflecting a *command and control* approach that overrides local wisdom (Indonesia, Pemerintahan Pusat, 2024). This is contrary to the constitutional recognition of indigenous peoples' rights in Article 18B paragraph (2) of the 1945 Constitution and Constitutional Court Decision No. 35/PUU-X/2012, which states that customary forests are not part of state forests and must be managed by MHA (Widowati et al., 2014, p. 25). However, implementation of this ruling remains weak, with only 16% of the 30.1 million hectares of indigenous territories legally recognized by 2024.

Overlapping regulations further complicate the situation. The KSDAHE Law is often inconsistent with the Forestry Law, which prioritizes forest exploitation through industrial timber concessions (HTI) or forest concession rights (HPH). For example, a case in Gunung Sahilan Village, Kampar Regency, shows the conflict between MHA and PT Riau Andalan Pulp and Paper (RAPP) due to overlapping customary land claims with HTI concessions. This conflict led to physical clashes and material losses, demonstrating the failure of regulations to resolve agrarian disputes. In addition, the Minerba Law allows mining activities in forest areas through the mechanism of forest area borrow-to-use permits (IPPKH), which often sacrifices customary territories without adequate consultation with MHA. The case of Lorentz National Park, Papua, illustrates how conservation area designations and mining licenses collide, leading to the dispossession of indigenous lands and the destruction of ecosystems (Erbaugh, 2019; Fa et al., 2020) .

This legal gap is also exacerbated by a bureaucratic approach that makes it difficult to recognize customary territories. The process of recognizing customary forests through Minister of Environment and Forestry Regulation No. 32/2015 requires complex procedures, including verification of history and boundaries, which MHA often cannot fulfill due to limited resources and formal documentation. As a result, many customary territories remain claimed as state forests, reinforcing the phenomenon of *forest stateization* that overrides customary rights. Pierre Bourdieu in *The Force of Law* asserts that law is often a tool of power reproduction that benefits the elite, while marginalized groups such as MHA continue to be marginalized (Dawson et al., 2024; Dhiaulhaq & McCarthy, 2020) . In the Indonesian context, conservation law tends to serve the interests of corporations and the state, rather than protecting the rights of MHA.

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

The impact of these gaps and overlapping regulations is an increase in agrarian conflicts and criminalization of MHA. In Senama Nenek Village, Riau, Indigenous Peoples have faced disputes with PT Perkebunan Nusantara V since 1983, leading to bloody clashes in 2013, with injuries and detentions. Unharmonized regulations also hamper the effectiveness of conservation itself, as legal uncertainty encourages illegal practices such as deforestation and poaching. To address these issues, harmonization of regulations between sectors is imperative, *prioritizing* the recognition of customary laws and the application of the principle of *Free, Prior, and Informed Consent* (FPIC) as a standard in the designation of conservation areas. Without fundamental reforms, legal gaps will continue to be a barrier to inclusive and equitable conservation (Corrigan et al., 2018; Dawson et al., 2021)

Reformulation of Conservation Regulations Based on Progressive Utilitarianism

The reformulation of policies for the conservation of biological resources and ecosystems in Indonesia requires an innovative approach that balances environmental conservation with social justice for Indigenous Peoples. Progressive utilitarianism, as a synthesis of utilitarianism ethics and progressive law, offers a framework to achieve this goal. This approach emphasizes Jeremy Bentham's greatest happiness principle, which requires policies to maximize happiness for as many parties as possible, including MHA as custodians of local wisdom-based ecosystems. Here are the three main pillars of this reformulation:

1. **Progressive Utilitarianism Theory: Innovation in Conservation**

   Progressive utilitarianism combines Jeremy Bentham's *greatest happiness principle* with Satjipto Rahardjo's progressive legal theory, which demands laws that are dynamic, responsive, and in favor of community empowerment. Bentham argued that policies should maximize collective happiness, but classical utilitarianism is often criticized for ignoring minority rights and the difficulty of objectively measuring happiness. Progressive utilitarianism overcomes these weaknesses by integrating the flexibility of progressive law, which demands laws that are responsive to local social and cultural dynamics.

   In the context of conservation, progressive utilitarianism places MHA as active subjects, not objects of policy. This approach recognizes

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

the local wisdom of MHA, such as the *sasi* system in Maluku that regulates the taking of marine resources to maintain sustainability, or Dayak customary forest management in Kalimantan that supports biodiversity without external intervention. The novelty of progressive utilitarianism lies in its ability to create an inclusive conservation paradigm, which not only focuses on environmental preservation but also ensures the social welfare of MHA.

This approach is also in line with the concept of ecological justice, which demands recognition of MHA's contribution to protecting the environment without compromising their rights to customary land. For example, MHA cultural practices in Papua, such as customary rituals that honor wildlife, have supported biodiversity conservation without state intervention. Thus, progressive utilitarianism not only expands the scope of conservation benefits but also strengthens the socio-economic structure of MHA, reflecting the ideals of law in favor of people and humanity.

2. Critical Analysis of Current Conservation Policy

The New KSDAHE Law still reflects a rigid protectionist approach, with a primary focus on environmental conservation that often overrides the rights and needs of MHA. Historically, conservation policy in Indonesia has evolved from the Old KSDAHE Law, which provided almost no space for MHA participation, to the New KSDAHE Law, which despite mentioning the involvement of MHA, remains symbolic (tokenism).

Article 37 paragraph (3) of the New KSDAHE Law mentions the involvement of MHA in the management of conservation areas, but in practice, this participation is limited to formal consultation without substantial authority. This can be seen in the case of the conflict in Gunung Sahilan Village, Kampar Regency, where MHA clashed with PT Riau Andalan Pulp and Paper (RAPP) due to overlapping customary land claims with industrial plantation forest (HTI) concessions (Jikalahari, 2012). In addition, Article 21 paragraphs (1) and (2) of the New KSDAHE Law have the potential to criminalize traditional practices of MHA, such as the collection of medicinal plants or animals for rituals, which actually contribute to the balance of the ecosystem. This approach contradicts the principle of progressive utilitarianism, which demands a balance between ecological and social benefits.

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

Article 5A paragraph (2) and (3) of the New KSDAHE Law confirms the dominance of the Minister of Forestry over conservation areas, strengthening centralization that ignores the sovereignty of MHA. Legal certainty, as emphasized by Gustav Radbruch, is a crucial issue in this context. Currently, only 16% of the 30.1 million hectares of indigenous territories are legally recognized (BRWA, 2024), reflecting the weak legal guarantees for MHA. This uncertainty has triggered agrarian conflicts, such as the case in Senama Nenek Village, Riau, which led to bloody clashes in 2013, and the case in Kerinci Seblat National Park, where the designation of conservation areas without meaningful consultation led to the socio-economic marginalization of MHA (Blackman et al., 2017; Brondizio & Tourneau, 2016) .

3. Policy Reformulation Direction Based on Progressive Utilitarianism

The reformulation of conservation policy based on progressive utilitarianism demands a fundamental change in the approach to natural resource management, placing Indigenous Peoples as the primary managers of their customary territories through the Indigenous Self Governance and Full Community Based Conservation models. This reform includes four main elements:

Table 1: Progressive Utilitarianism-based Conservation Policy Reformulation

Elements of Reform	Description	Purpose & Impact
1. Recognition of Customary Law	Integrate customary law as a legitimate source of law in conservation area management. This is in line with Constitutional Court Decision No. 35/PUU-X/2012 that customary forests are not state forests.	Provide legal legitimacy for MHA to manage their customary territories independently and preserve ecological and spiritual values in local traditions.
2. Total Decentralization	Delegate all authority to manage indigenous territories to MHA, with the state acting as a facilitator and technical assistant. Example of successful practice: Philippines.	Increase conservation effectiveness by utilizing local knowledge; strengthen MHA sovereignty over their land and natural resources.

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

3. Active Participation and FPIC	Implement the principle of Free, Prior, and Informed Consent (FPIC) as a mandatory standard in every policy that affects the indigenous territories of MHA.	Ensure that MHA are not only consulted, but have the right to accept or reject interventions, thus ensuring procedural and substantive justice.
4. Fair Distribution of Benefits	Equitably share conservation gains, such as from ecotourism, blue carbon and research, with MHA communities.	Improving the economic welfare of MHA, strengthening social structures and promoting long-term sustainability of community-managed conservation areas.

The implementation of this reformulation requires concrete steps, such as:

- Revise Article 9 paragraph (2) of the New KSDAHE Law which threatens MHA with loss of land rights if they do not meet state conservation standards. This article needs to be replaced with a local wisdom-based capacity building mechanism.
- Integration of customary law as a legal source in conservation area management.
- Establishment of FPIC as an absolute prerequisite for conservation area designation.

Key challenges include resistance from governments concerned about losing control over strategic resources and limited technical capacity of MHA. Proposed solutions include technical training, harmonization of regulations between sectors, and strengthening of indigenous institutions. Collaboration with international organizations, such as the United Nations Environment Programme (UNEP), can provide technical and financial support for community-based conservation initiatives.

Examples of successful conservation management by MHA reinforce this argument. The sasi system in Maluku has proven effective in maintaining sustainable fish populations and marine biodiversity. In Kalimantan, the Wehea Dayak community manages the 38,000-hectare Wehea Protection Forest, which is now a tropical biodiversity research site and ecotourism destination. The Sungai Utik Customary Forest in West Kalimantan, managed

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

by the Dayak Iban, even received the Equator Prize from the United Nations for its conservation contributions. By adopting progressive utilitarianism, this reformulation not only ensures ecosystem sustainability but also realizes ecological and social justice, reflecting the ideals of pro-human and pro-humanitarian law.

CONCLUSION

The current framework for regulating biological resources conservation in Indonesia remains overly centralized and marginalizes the role of Masyarakat Hukum Adat (MHA), as reflected in Law No. 5/1990 and Law No. 32/2024. These laws predominantly place the state as the sole authority over conservation areas, leaving limited space for MHA participation and recognition. This exclusion is further reinforced by the criminalization of customary practices and weak recognition of customary territories. To address these issues, this study proposes a progressive utilitarianism-based conservation policy that centers MHA as key actors through Indigenous Self-Governance and Full Community-Based Conservation models. Essential measures include the legal recognition of customary law, decentralization with the state as a facilitator, application of the FPIC principle, equitable benefit-sharing, and targeted regulatory reforms. Strengthening the capacity of MHA is also vital to promote ecological balance and social justice in alignment with the principles of progressive law.

BIBLIOGRAPHY

1) Arnstein, S. R. (1969). A ladder of citizen participation. *Journal of the American Institute of Planners, 35*(4), 216–224. https://doi.org/10.1080/01944366908977225
2) Artelle, K. A., Zurba, M., Bhattacharyya, J., Chan, D. E., Brown, K., Housty, J., & Moola, F. (2019). Supporting resurgent Indigenous-led governance: A nascent mechanism for just and effective conservation. *Biological Conservation, 240*, 108284. https://doi.org/10.1016/j.biocon.2019.108284
3) Astuti, R., & McGregor, A. (2015). Responding to the green economy: How REDD+ and the One Map Initiative are transforming forest governance in Indonesia. *Third World Quarterly, 36*(12), 2273–2293. https://doi.org/10.1080/01436597.2015.1082422
4) Astuti, R., & McGregor, A. (2017). Indigenous land claims or green grabs? Inclusions and exclusions within forest carbon politics in Indonesia. *The Journal of Peasant Studies, 44*(2), 445–466. https://doi.org/10.1080/03066150.2016.1197908

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

5) Ban, N. C., Frid, A., Reid, M., Edgar, B., Shaw, D., & Siwallace, P. (2018). Incorporate Indigenous perspectives for impactful research and effective management. *Nature Ecology & Evolution, 2*, 1680–1683. https://doi.org/10.1038/s41559-018-0706-0
6) Bedner, A., & Arizona, Y. (2019). Adat in Indonesian land law: A promise for the future or a dead end? *The Asia Pacific Journal of Anthropology, 20*(5), 416–434. https://doi.org/10.1080/14442213.2019.1670246
7) Bentham, J. (1996). *An introduction to the principles of morals and legislation*. Clarendon Press. (Original work published 1789).
8) Blackman, A., Corral, L., Lima, E. S., & Asner, G. P. (2017). Titling indigenous communities protects forests in the Peruvian Amazon. *Proceedings of the National Academy of Sciences, 114*(16), 4123–4128. https://doi.org/10.1073/pnas.1603290114
9) Brondizio, E. S., & Le Tourneau, F.-M. (2016). Environmental governance for all. *Science, 352*(6291), 1272–1273. https://doi.org/10.1126/science.aaf5122
10) Corrigan, C., Bingham, H., Shi, Y., Lewis, E., Chauvenet, A., & Kingston, N. (2018). Quantifying the contribution to biodiversity conservation of protected areas governed by Indigenous peoples and local communities. *Biological Conservation, 227*, 403–412. https://doi.org/10.1016/j.biocon.2018.09.007
11) Dawson, N. M., Coolsaet, B., Sterling, E. J., Loveridge, R., Gross-Camp, N. D., Wongbusarakum, S., Sangha, K. K., Scherl, L. M., Phan, H. P., Zafra-Calvo, N., Lavey, W. G., Byakagaba, P., Idrobo, C. J., Chenet, A., Bennett, N. J., Mansourian, S., & Rosado-May, F. J. (2021). The role of Indigenous peoples and local communities in effective and equitable conservation. *Ecology and Society, 26*(3), 19. https://doi.org/10.5751/ES-12625-260319
12) Dawson, N. M., Coolsaet, B., Bhardwaj, A., Brown, D., Lliso, B., Loos, J., Mannocci, L., Martin, A., Oliva, M., Pascual, U., Sherpa, P., & Worsdell, T. (2024). Reviewing the science on 50 years of conservation: Knowledge production biases and lessons for practice. *Ambio, 53*(10), 1395–1413. https://doi.org/10.1007/s13280-024-02049-w
13) Dhiaulhaq, A., & McCarthy, J. F. (2020). Indigenous rights and agrarian justice framings in forest land conflicts in Indonesia. *The Asia Pacific Journal of Anthropology, 21*(1), 34–54. https://doi.org/10.1080/14442213.2019.1670243
14) Erbaugh, J. T. (2019). Responsibilization and social forestry in Indonesia. *Forest Policy and Economics, 109*, 102019. https://doi.org/10.1016/j.forpol.2019.102019
15) Fa, J. E., Watson, J. E. M., Leiper, I., Potapov, P., Evans, T. D., Burgess, N. D., Molnár, Z., Fernández-Llamazares, Á., Duncan, T., Wang, S., Austin, B. J., Jonas, H., Robinson, C. J., Malmer, P., Zander, K. K., Jackson, M. V., Ellis, E., Brondizio, E. S., & Garnett, S. T. (2020). Importance of Indigenous Peoples' lands for the conservation of Intact Forest Landscapes. *Frontiers in Ecology and the Environment, 18*(3), 135–140. https://doi.org/10.1002/fee.2148

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

16) Fisher, M. R., Moeliono, M., Mulyana, A., Yuliani, E. L., Adriadi, A., Kamaluddin, Judda, J., & Sahide, M. A. K. (2018). Assessing the new social forestry project in Indonesia: Recognition, livelihood and conservation? *International Forestry Review, 20*(3), 346–361. https://doi.org/10.1505/146554818824063014
17) Fisher, M. R., & van der Muur, W. (2020). Misleading icons of communal lands in Indonesia: Implications of adat forest recognition from a model site in Kajang, Sulawesi. *The Asia Pacific Journal of Anthropology, 21*(1), 55–76. https://doi.org/10.1080/14442213.2019.1670244
18) Fontana, L. B., & Grugel, J. (2016). The politics of Indigenous participation through "Free Prior Informed Consent": Reflections from the Bolivian case. *World Development, 77*, 249–261. https://doi.org/10.1016/j.worlddev.2015.08.023
19) Garnett, S. T., Burgess, N. D., Fa, J. E., Fernández-Llamazares, Á., Molnár, Z., Robinson, C. J., Watson, J. E. M., Zander, K. K., Austin, B., Brondizio, E. S., et al. (2018). A spatial overview of the global importance of Indigenous lands for conservation. *Nature Sustainability, 1*, 369–374. https://doi.org/10.1038/s41893-018-0100-6
20) Gavin, M. C., McCarter, J., Berkes, F., Mead, A. T. P., Sterling, E. J., Tang, R., & Turner, N. J. (2018). Effective biodiversity conservation requires dynamic, pluralistic, partnership-based approaches. *Sustainability, 10*(6), 1846. https://doi.org/10.3390/su10061846
21) Hanna, P., & Vanclay, F. (2013). Human rights, Indigenous peoples and the concept of Free, Prior and Informed Consent. *Impact Assessment and Project Appraisal, 31*(2), 146–157. https://doi.org/10.1080/14615517.2013.780373
22) Harada, K., Habib, M., Sakata, Y., & Maryudi, A. (2022). The role of NGOs in recognition and sustainable maintenance of customary forests within indigenous communities: The case of Kerinci, Indonesia. *Land Use Policy, 113*, 105865. https://doi.org/10.1016/j.landusepol.2021.105865
23) Mahanty, S., & McDermott, C. L. (2013). How does Free, Prior and Informed Consent (FPIC) impact social equity? Lessons from mining and forestry and their implications for REDD+. *Land Use Policy, 35*, 406–416. https://doi.org/10.1016/j.landusepol.2013.06.014
24) Martin, A., Coolsaet, B., Corbera, E., Dawson, N. M., Fraser, J. A., Lehmann, I., & Rodríguez, I. (2016). Justice and conservation: The need to incorporate recognition. *Biological Conservation, 197*, 254–261. https://doi.org/10.1016/j.biocon.2016.03.021
25) Myers, R., Intarini, D., Sirait, M. T., & Maryudi, A. (2017). Claiming the forest: Inclusions and exclusions under Indonesia's "new" forest policies on customary forests. *Land Use Policy, 66*, 205–213. https://doi.org/10.1016/j.landusepol.2017.04.039
26) Nolte, C., Agrawal, A., Silvius, K. M., & Soares-Filho, B. S. (2013). Governance regime and location influence avoided deforestation success of

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

protected areas in the Brazilian Amazon. *Proceedings of the National Academy of Sciences, 110*(13), 4956–4961. https://doi.org/10.1073/pnas.1214786110

27) Oldekop, J. A., Holmes, G., Harris, W. E., & Evans, K. L. (2016). A global assessment of the social and conservation outcomes of protected areas. *Conservation Biology, 30*(1), 133–141. https://doi.org/10.1111/cobi.12568
28) Papillon, M., & Rodon, T. (2017). Proponent-Indigenous agreements and the implementation of the right to free, prior, and informed consent in Canada. *Environmental Impact Assessment Review, 62*, 216–224. https://doi.org/10.1016/j.eiar.2016.06.009
29) Persha, L., Agrawal, A., & Chhatre, A. (2011). Social and ecological synergy: Local rulemaking, forest livelihoods, and biodiversity conservation. *Science, 331*(6024), 1606–1608. https://doi.org/10.1126/science.1199343
30) Porter-Bolland, L., Ellis, E. A., Guariguata, M. R., Ruiz-Mallén, I., Negrete-Yankelevich, S., & Reyes-García, V. (2012). Community managed forests and forest protected areas: An assessment of their conservation effectiveness across the tropics. *Forest Ecology and Management, 268*, 6–17. https://doi.org/10.1016/j.foreco.2011.05.034
31) Rahardjo, S. (2009). *Hukum progresif: Sebuah sintesa hukum Indonesia*. Genta Publishing.
32) Rakatama, A., & Pandit, R. (2020). Reviewing social forestry schemes in Indonesia: Opportunities and challenges. *Forest Policy and Economics, 111*, 102052. https://doi.org/10.1016/j.forpol.2019.102052
33) Robinson, B. E., Holland, M. B., & Naughton-Treves, L. (2014). Does secure land tenure save forests? A meta-analysis of the relationship between land tenure and tropical deforestation. *Global Environmental Change, 29*, 281–293. https://doi.org/10.1016/j.gloenvcha.2013.05.012
34) Sahide, M. A. K., Supratman, Maryudi, A., Kim, Y.-S., & Giessen, L. (2016). Decentralisation policy as recentralisation strategy: Forest management units and community forestry in Indonesia. *International Forestry Review, 18*(1), 78–95. https://doi.org/10.1505/146554816818206168
35) Santika, T., Meijaard, E., Budiharta, S., Law, E. A., Kusworo, A., Hutabarat, J. A., Indrawan, T. P., Struebig, M., Raharjo, S., Huda, I., Sulhani, Ekaputri, A. D., Trison, S., Stigner, M., & Wilson, K. A. (2017). Community forest management in Indonesia: Avoided deforestation in the context of anthropogenic and climate complexities. *Global Environmental Change, 46*, 60–71. https://doi.org/10.1016/j.gloenvcha.2017.08.002
36) Schleicher, J., Peres, C. A., Amano, T., Llactayo, W., & Leader-Williams, N. (2017). Conservation performance of different conservation governance regimes in the Peruvian Amazon. *Scientific Reports, 7*, 11318. https://doi.org/10.1038/s41598-017-10736-w
37) Schuster, R., Germain, R. R., Bennett, J. R., Reo, N. J., & Arcese, P. (2019). Vertebrate biodiversity on Indigenous-managed lands in Australia, Brazil, and Canada equals that in protected areas. *Environmental Science & Policy, 101*, 1–6. https://doi.org/10.1016/j.envsci.2019.07.002

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

38) Sze, J. S., Childs, D. Z., Carrasco, L. R., Fernández-Llamazares, Á., Garnett, S. T., & Edwards, D. P. (2024). Indigenous Peoples' Lands are critical for safeguarding vertebrate diversity across the tropics. *Global Change Biology, 30*(1), e16981. https://doi.org/10.1111/gcb.16981
39) Yuliani, E. L., de Jong, E. B. P., Knippenberg, L., Bakara, D. O., Salim, M. A., & Sunderland, T. (2018). Keeping the land: Indigenous communities' struggle over land use and sustainable forest management in Kalimantan, Indonesia. *Ecology and Society, 23*(4), 49. https://doi.org/10.5751/ES-10640-230449
40) Zafra-Calvo, N., Pascual, U., Brockington, D., Coolsaet, B., Cortes-Vazquez, J. A., Gross-Camp, N., Palomo, I., & Burgess, N. D. (2017). Towards an indicator system to assess equitable management in protected areas. *Biological Conservation, 211*, 134–141. https://doi.org/10.1016/j.biocon.2017.05.014

PRIMARY LEGAL AND POLICY MATERIALS

Indonesia. (1990). *Undang-Undang Republik Indonesia Nomor 5 Tahun 1990 tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya*.

Indonesia. (2024). *Undang-Undang Republik Indonesia Nomor 32 Tahun 2024 tentang Perubahan atas Undang-Undang Nomor 5 Tahun 1990 tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya*.

Mahkamah Konstitusi Republik Indonesia. (2012). *Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 tentang Hutan Adat*.

United Nations. (2007). *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.