

Beyond Environmental Crisis: Safeguarding Indigenous Territories from Systemic Threats

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Abstract. Natural resources exploitation often alters the natural function and form of existing ecosystems. Legal issues arise when ecosystem damage in customary territories not only creates environmental problems but also threatens the very identity of indigenous communities in Indonesia. Recognition of indigenous communities still relies heavily on physical control of their customary territories. Meanwhile, economic activities carried out by third parties are beginning to force indigenous communities out of the ecosystems that serve as their livelihoods. The research was conducted using normative juridical methods supported by legislative and conceptual approaches. Normative interpretation will be used to examine how the system of recognition for indigenous communities in Indonesia is constructed and how this concept has the potential to threaten their existence amidst the current ecological crisis. The research results indicate that one of the requirements for recognition as an indigenous community is to demonstrate that they have inhabited a defined customary territory for generations. The model for proving territoriality as a requirement for identity that will be implemented certainly needs to be reviewed to avoid threatening the existence of indigenous communities in the future. This research is important to ensure that the ratification of the Indigenous Peoples Bill is truly capable of supporting the protection of the constitutional rights of indigenous peoples in Indonesia.

1 Introduction

Environmental degradation is a primary cause of climate change, impacting the global environment. Various forms of exploitative economic activity have caused environmental damage across national borders.[1] Awareness that this environmental degradation will significantly impact the quality of life for future generations has given rise to environmental movements and calls for restrictions on global economic activity. In some cases, environmental damage has begun to endanger the survival of vulnerable groups, potentially even escalating into a form of ecocide. The goal is to explore the impact of environmentally destructive economic activities on the existence of indigenous communities in Indonesia. Environmental exploitation that results in changes in the form and function of land in customary territories can, to some extent, be considered an environmental crime. This occurs because, for indigenous communities, their connection to

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the territories inherited from their ancestors no longer merely carries spiritual, social, and cultural values but also constitutes a prerequisite for the legality of their existence.

Indigenous communities in Indonesia existed long before colonialism emerged in the archipelago. It is not surprising that the Dutch East Indies colonial government later recognized the existence of these indigenous communities.[2] However, the Dutch occupation applied the principles of *lex nullus* and *lex legalia*, developed from Hugo de Groot's *mare liberum* theory, to legitimize their existence and conquer their colonies. The Dutch then also developed the *domein verklaring* theory to control customary land. This system began to change along with the development of the views of Cornelis van Vollenhoven and Ter Haar, who began to question the importance of recognizing communal property rights for indigenous communities in the Dutch East Indies colony. This paradigm shift in viewing customary land ownership and management then began to strengthen the doctrine that interprets indigenous communities as a form of legal community (*adatrechtsgemeenschap*). After Indonesian independence, the government also provided constitutional protection guarantees for indigenous peoples in accordance with provisions on human rights protection and their privileges in exercising their traditional rights.

The Constitution's protection system for indigenous peoples stipulates that recognition is granted only to indigenous peoples only when they are still alive according to the legal system and they also have to adapt to the model of national life in Indonesia. This provision implies the importance of legal identity for Indonesian indigenous peoples. Without fulfilling the legal identity requirements for indigenous peoples, these communities will be treated like ordinary Indonesian citizens. Overlapping interests in managing indigenous territories, as experienced by Kasepuhan Cisit in Lebak Regency, also demonstrate that the construction of the system of protection for the rights of indigenous peoples in Indonesia still leaves gaps that have the potential to cause injustice for indigenous peoples in Indonesia. Before Constitutional Court Decision No. 35/PUU/-X/2012, customary forests were part of state forests according to Article 1 Forestry Law. This situation allowed the government to still grant forest management permits to third parties, thus forest exploitation continued to threaten the existence of indigenous communities.[3]

Referring to the Article 67 paragraph (1) of the Forestry Law, it can be said that the process of recognizing indigenous communities can only be carried out when the elements required by the regulations in this Law are fulfilled. According to these provisions, indigenous legal communities must fulfill the form of an association or *rechtsgemeenschap*, customary authority apparatus, have customary legal area, the existence of institutions and legal instruments in the form of customary courts with customary law, and daily living needs provided by the forest. This condition then increases the vulnerability of indigenous communities. Damage to the environment in which they live will cause them to lose their ability to show attachment to the area left by their ancestors. When this condition occurs, environmental damage as a result of economic activities that are actually still in the normal category and legally permitted can trigger the emergence of ecocide.

This research will specifically highlight the indigenous peoples' recognition system established in the Draft Law on Indigenous Peoples (hereinafter referred to as the MHA Bill). Normative interpretation will be used to examine how the system of recognition for indigenous peoples is constructed in Indonesia and how this concept potentially threatens the existence of indigenous peoples amidst the current ecological crisis. The analysis will be based on the perspective of the human territoriality theory proposed by Robert D. Sack to demonstrate the pattern of dependency on the indigenous peoples' identity recognition system in the Draft Law on Indigenous Peoples. The consequences of choosing a territoriality approach in the era of the fight against environmental crises are what then pose potential threats to the sustainability of indigenous peoples' lives in Indonesia. The

exploration of this topic will be presented in several subsections within this research. First, the introduction will provide an overview of the legal issues raised in this research. The second section will explain the research methodology. The third section, the research results and discussion, will be divided into three subsections: the human territoriality perspective, living through the environmental crisis: indigenous vulnerabilities and ecological transitions, and between environmental crisis and indigenous survival: legal recognition for sustainable futures. Finally, this research will conclude with a presentation of conclusions and recommendations.

2 Methods

This research was conducted using a normative juridical research method. A conceptual and legislative approach was used to support the research model. The theory of human territoriality proposed by Robert D. Sack will serve as an analytical tool to examine the approach to the recognition system for indigenous peoples in the MHA Bill. The legislative approach will be used to analyze the legal basis for the recognition of indigenous peoples in Indonesia, such as: (a) the 1945 Constitution; (b) Basic Agrarian Principles Act; (c) Forestry Law; (d) Minister of Home Affairs Regulation concerning Recognition of Indigenous Peoples. This research will be conducted using a literature study model, covering both primary and secondary legal materials. The process of selecting legal materials and references in this research was carried out using the PRISMA method.[4] The analysis was conducted using a deductive method and presented in descriptive form.

3 Result and Discussion

The research findings and discussion in this article are presented in three subsections. The first section examines the perspective of human territoriality on social and societal construction. This theoretical perspective is based on the ideas of Robert D. Sack.[5] This research will critically evaluate the government's strategies for establishing a system that recognizes the identities of indigenous peoples in Indonesia. Additionally, it will examine cases of environmental degradation that threaten the very survival of indigenous communities worldwide. By doing so, we aim to highlight how environmental conditions profoundly affect indigenous peoples' lives and how their reliance on ancestral lands constrains their ability for self-expression. Furthermore, this study analyze the vulnerabilities faced by indigenous peoples through the dual challenges of an environmental crisis and the pressing need for identity recognition to sustain their existence.examines the vulnerability of indigenous peoples, who must confront the environmental crisis and the need for identity recognition to maintain their existence.

3.1 Human Territoriality Perspective

Human territoriality shows how aspects of human behavior are interpreted broadly.[6] The territorial view benefits humans by influencing and controlling actions and interaction patterns through asserting control over a geographic area. Territoriality can be applied at various scales and encompasses many behavioral aspects such as land ownership, sovereignty, demonization, demonstrating territorial authority, and establishing personal space.[6] Interaction patterns that allow x (a person, group, or social class) to control y (a person, group, social class, or resource) represent the law of conservation of energy. Continuous contact can occur through various methods, both direct and indirect.

Furthermore, variations in the form of contact can change historically and depend on technological changes.

The interaction patterns carried out by x towards y do not always reflect a territorial perspective. Sack exemplifies how territorial and non-territorial interaction patterns can be seen in activities carried out under parental supervision of their children. Under certain conditions, children at home will tend to scribble on notebooks and tear up reading books. From a non-territorial perspective, parents will try to explain to their children not to touch books and not to scribble on notes in the workspace. The focus of this approach is on prohibited objects. Meanwhile, in the same case, a territorial approach can be used by parents by prohibiting children from entering the workspace. In this case, the territorial approach clearly asserts control over a geographic area.

Sack's definition of territoriality does not rely entirely on existing general definitions. The human territoriality perspective expects individuals to remain within the territory they wish to defend. Maintaining territory can be an end in itself or a means to achieve specific goals such as controlling population density, controlling food resources, or asserting dominance. Furthermore, a territorial approach that involves expanding contact can be a strategy for providing differential access and adopting non-territorial measures. Territory, in the context of human territoriality theory, can refer to both fixed and portable geographic areas, as the boundaries imposed are specifically related to the ability to influence and control that space. Therefore, there are many ways to assert territoriality, ranging from legal rights to property in land to cultural norms and prohibitions on the use of territory.[7]

Human territoriality places greater emphasis on the relationships within it, allowing a space to become both territory and non-territorial in different temporal contexts. The existence of a territorial domain can strengthen the power and influence held by a person, which are usually invisible, into explicit and tangible forms of potential. The various reciprocal relationships that occur between territorial units and the activities within them can be so complex to explain that it is impossible to describe all the activities that occur within them. It is then that territoriality becomes a general, neutral, and essential way to describe various forms of control over objects distributed within that space.

Understanding human territoriality, which has a broader meaning than simply control and occupation of a territory, naturally brings a different perspective to understanding the relationship between indigenous communities and the territories to which they are attached.[8] This view will then become the standard for assessing the conditions for indigenous communities' ties to their territories within the Indonesian legal system. A narrow understanding of territoriality will limit the space for self-expression and the lives of indigenous communities. Furthermore, the threat of environmental degradation resulting from economic activity has altered the structure and function of natural ecosystems in various regions around the world. The dynamic need to adapt and survive may lead to changes in the patterns of interaction between indigenous communities and their ancestral territories. Therefore, an in-depth discussion of this topic will be provided in the following subsection.

3.2 Living through the Environmental Crisis: Indigenous Vulnerabilities and Ecological Transitions

Indigenous communities are a social group that plays a crucial role in preserving nature and maintaining ecological balance in various parts of the world. Their ability to maintain traditional values and a spiritual connection to nature is an irreplaceable characteristic. Their self-control to refrain from exploitative actions regarding their resources has apparently not ensured the sustainability of their social life. The identity crisis and legality of running a nation are not the only challenges they must overcome. Limited participation

space for indigenous communities has put 60% of indigenous land, or 22.7 million square kilometers, at risk of land conversion. Meanwhile, indigenous communities in 37 countries are also facing greater threats due to increased socio-economic and political vulnerabilities that limit the recognition of their identity and territorial rights.[9]

The practice of aligning life with traditions rooted in the lives of indigenous communities has made a real contribution to efforts to conserve biodiversity, mitigate climate change, and maintain ecosystem balance. However, studies on environmental crimes and climate change have not yet touched on their impact on the lives of indigenous communities. To date, indigenous communities in various parts of the world still have to face pressures from development processes that have the potential to convert land for the purposes of commercial agricultural expansion, mining, renewable energy, and urbanization. Potential threats coming from the pressure of built energy development are common in countries such as China, Central Africa, Argentina, the United States, and Pakistan.[10] In addition to the threat of land conversion, indigenous communities also have to face the direct impacts of environmental change, especially those who depend on fisheries and forestry resources for their livelihoods. The indigenous people of Bangladesh are one of the indigenous communities whose survival is threatened by environmental degradation. The Garo and Hajong communities in Bangladesh are beginning to be impacted by extreme heat and unpredictable rainfall and impact the productivity of their traditional livestock and agricultural sectors. The large population of indigenous communities is a major factor affecting their resilience in adapting to climate change.[11] Indigenous communities are connected to their environment.[12] This commitment aligns with goal 15 of the SDGs regarding protects forest and biodiversity.

3.3 Between Environmental Crisis and Indigenous Survival: Legal Recognition for Sustainable Futures

Studies of the first generation of human rights recognition demonstrate that every individual possesses fundamental freedoms that are essential to ensuring justice and dignity. These fundamental rights are inherently natural and automatically possessed by everyone. Therefore, rights such as citizenship, equality before the law, and protection to engage in lawful activity should not be granted, achieved, or realized, but rather must be protected and guaranteed.[13] Various efforts to guarantee these natural rights can be seen in the mechanisms of lawmaking, inclusion in the Constitution, the creation of international conventions, and their ratification. The struggle to ensure the fulfillment of these fundamental rights also involves ensuring that the government is not complicit in violations of these rights or allows violations to occur with impunity.

Protection of human rights and fundamental rights for indigenous peoples in Indonesia has been constitutionally guaranteed through the provisions of Article 18B paragraph (2) and Article 28I paragraph (3). However, there is no law specifically created to protect indigenous peoples in Indonesia. As a result, the definition of indigenous peoples is still sectoral and has differences in construction between laws and regulations. These differences are contained in the Forestry Law, the Regulation of the Minister of Home Affairs, and the Regulation of the Minister of ATR/BPN. Recognition of the ancestral rights inherent to indigenous peoples inhabiting the archipelago was actually granted by the Colonial government. Recognition of customary rights that require the legal identity of indigenous peoples only emerged after the issuance of the UUPA. The concept of recognizing the existence of indigenous peoples can be found in Article 67, paragraph (1) of the Forestry Law. According to this provision, the process of recognizing indigenous peoples can only be carried out when the elements required by the regulations in this Law are fulfilled. According to these provisions, indigenous legal communities must fulfill the

form of an association or *rechtsgemeenschap*, customary authority apparatus, have customary legal area, the existence of institutions and legal instruments in the form of customary courts with customary law, and daily living needs provided by the forest.

Meanwhile, Article 5 of the MHA Bill states that recognition is granted by the government based on data collection on indigenous communities that are still growing and developing. The existence of indigenous communities must meet requirements such as being in the form of an association and bound by common descent, territory, or a combination of the two; occupying a customary territory that has been hereditarily defined, possessing local wisdom and a shared cultural identity; possessing legal institutions or instruments adhered to by the group as a guideline for indigenous community life; and possessing recognized and functioning customary institutions. These provisions clearly demonstrate that, under the Forestry Law, indigenous communities seeking legal status as indigenous peoples must meet the requirements of a "clear customary legal territory." The MHA Bill currently under discussion also requires that indigenous communities "occupy customary territories that have been traditionally defined."

Referring to Sack's theory of human territoriality, it is clear that the government is still using a narrow definition of territoriality. In fact, in the MHA Bill, customary territories must not only exist but also be occupied by indigenous communities. This provision will undoubtedly create a dilemma in the future. As previously explained, environmental degradation continues and is beginning to threaten the existence of indigenous communities. Referring to Sack's territorial approach, human territoriality places greater emphasis on the relationships within it, allowing a space to become both territory and non-territorial in different temporal contexts. In this context, proving physical control and occupation of customary territories should be a distinct aspect from the system of recognition of indigenous communities.

As in Canada, for example, although the government requires proof of customary territory for First Nations groups seeking legal recognition, there is a requirement for proving ancestral lineage, which is a key factor in the process of recognizing their identity as an indigenous people.[14] This requirement for attachment to customary territory does not restrict Inuit groups from residing within their customary territory. They are free to live wherever they wish to support their livelihoods. However, the government continues to recognize and protect customary territories officially claimed by the Crown. The Indonesian government needs to develop a model to recognize and legitimate the boundaries of customary territories. They also need to consider that the territorial approach no longer requires indigenous peoples' occupation continuously. The indigenous peoples must occupy their ancestral territories for generations, especially for nomadic or semi-nomadic indigenous communities.

4 Conclusion

The acknowledgment system for Indigenous peoples in Indonesia currently relies on a narrow territorial approach that prioritizes physical evidence over the relationships existing within their customary territories. This framework remains part of the MHA Bill, which is currently under discussion. A recognition system that follows this restricted territorial approach could impede the future survival of Indigenous communities. Environmental damage and changes in land use have forced some Indigenous peoples to adapt their lifestyles for survival. These changes do not equate to abandoning their identity as Indigenous peoples so it is essential for the government to consider and address this phenomenon when formulating the criteria for recognizing Indigenous identities. altogether abandon their identity as indigenous peoples. This phenomenon needs to be considered and addressed by the government when formulating the requirements for recognizing

indigenous peoples' identity. However, the identity and legality of indigenous peoples are crucial to ensuring the fulfillment of their fundamental rights.

References

1. Abbey Koenning-Rutherford, Dishonoring the Earth: Ecocide as Prosecutable Genocide Against Indigenous People. *The Georgetown Law Journal*. **111** (1), 1496–1531 (2023)
2. D. Zustiyantoro, Adat, Kelas, dan Indigenitas: Gerakan Masyarakat Adat di Indonesia, by R. Yando Zakaria. *Bijdr. taal-, land- volkenkd.* **181** (2–3), 313–316 (2025)
3. Fauzan Zakir, Tinjauan Yuridis Masyarakat Hukum Adat dalam Hukum Positif Indonesia. *Ensiklopedia Social Review*. **4** (2), (2022)
4. D. Moher, A. Liberati, J. Tetzlaff, and D. G. Altman, Preferred reporting items for systematic reviews and meta-analyses: The PRISMA statement. *International Journal of Surgery*. **8** (5), 336–341 (2010)
5. A. B. Murphy, Entente Territorial: Sack and Raffestin on Territoriality. *Environ Plan D*. **30** (1), 159–172 (2012)
6. R. D. Sack, Human Territoriality: A Theory. *Annals of the Association of American Geographers*. **73** (1), 55–74 (1983)
7. F. Freitas, Hunters, Rangers, Cougars, and Jaguars: Human and Nonhuman Territories at the Argentine-Brazilian Border, 1960s-1990s. *Hist. cienc. saude-Manguinhos*. **28** (1), 59–79 (2021)
8. O. Mazzoleni, Towards a Territory-Oriented Approach,” in *Territory and Democratic Politics*, (Cham: Springer International Publishing, 2024)
9. J. D. Ford, N. King, E. K. Galappaththi, T. Pearce, G. McDowell, S. L. Harper, The Resilience of Indigenous Peoples to Environmental Change. *One Earth*. **2** (6), 532–543 (2020)
10. C. M. Kennedy et al., Indigenous Peoples' lands are threatened by industrial development; conversion risk assessment reveals need to support Indigenous stewardship. *One Earth*. **6** (8), 1032–1049 (2023)
11. C. C. Makondo and D. S. G. Thomas, Climate change adaptation: Linking indigenous knowledge with western science for effective adaptation. *Environmental Science & Policy*. **88**, 83–91 (2018)
12. S. Boillat, F. Berkes, Perception and Interpretation of Climate Change among Quechua Farmers of Bolivia: Indigenous Knowledge as a Resource for Adaptive Capacity. *E&S*. **18** (4), 21 (2013)
13. J. Ife, *Human Rights and Social Work: Towards Rights-Based Practice*, (1st ed. Cambridge University Press, 2001)
14. A. Légaré, Inuit Identity and Regionalization in the Canadian Central and Eastern Arctic: a Survey of Writings about Nunavut. *Polar Geography*. **31** (3–4), 99–118 (2008)