


The Principle of Free, Prior, and Informed Consent in Preventing Deforestation in Indigenous Forests

Radhityas Kharisma Nuryasinta<sup>1</sup>, Cholidah<sup>2</sup>

<sup>1,2</sup>Faculty of Law, Universitas Muhammadiyah Malang, Indonesia

 corresponding email: [radhityassinta@umm.ac.id](mailto:radhityassinta@umm.ac.id)

| Article   | Abstract   |
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| <p><b>Keywords:</b><br/>FPIC; Indigenous Forest; Legal Protection.</p> <p><b>Article History</b><br/>Received: Jul 31, 2025;<br/>Reviewed: Oct 4, 2025;<br/>Accepted: Oct 14, 2025;<br/>Published: Oct 15, 2025</p> | <p>Free, Prior, and Informed Consent (FPIC) is an International legal standard that guarantees indigenous peoples' right to consent to projects affecting their territories and lives. Indonesia has not explicitly adopted this principle in its national legal system, so the management of customary forest areas. The absence of clear FPIC regulations creates legal loopholes impacting the legitimacy of business licenses and the protection of indigenous peoples' rights, which can lead to human rights violations. This study aims to analyze how FPIC is regulated and implemented in Indonesian national law, as well as assess the legal consequences of noncompliance in the context of customary forest management. Using normative legal research methods and statutory and conceptual approaches, the study concludes that disregarding FPIC not only goes against the spirit of the constitution and international commitments but also contributes to social disintegration and unequal power relations between indigenous peoples and the state. Therefore, the principle of FPIC must be explicitly recognized in national laws and regulations, and participatory, fair, and legally binding implementation mechanisms must be established to realize inclusive and ecologically just development.</p> |



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## Introduction

Deforestation is one of the most pressing and complex environmental issues. The causes of land deforestation include forest fires, land clearing for oil palm plantations, and illegal logging or timber production originating from Forest Concession Rights. In the last two decades, land clearing for oil palm plantations has been the main cause of forest cover loss, especially in Sumatra, Kalimantan, and Papua. Data from Auriga Nusantara (2025) shows that national deforestation in 2024 reached 261,575 hectares, an increase from the previous year, with more than 59% occurring in areas covered by legal palm oil company concessions. This phenomenon not only causes ecosystem damage and a decline in biodiversity, but also has a direct impact on the rights of indigenous peoples who depend on forests as their economic, spiritual, and cultural resource.<sup>1</sup> One area under severe pressure from the expansion of oil palm plantations is the Singkil Wildlife Reserve in Aceh. Singkil Wildlife Reserve is one of the conservation areas in the form of a Nature Reserve Area (KSA) in Aceh Province. Located in part of the South Aceh Regency, Subulussalam City, and Aceh Singkil Regency, and within the Leuser Ecosystem, one of the biodiversity areas that has the densest population of Sumatran orangutans in the world.

Designation as part of the Leuser Ecosystem Area based on Presidential Decree Number 33 of 1998 concerning the Management of the Leuser Ecosystem Area, makes Rawa Singkil have an important role in protecting environmental services. Based on the basic designation Decree 166/Kpts-II/1998, the initial area was 102,500 ha, but the area was reduced to 81,802.22 ha after the issuance of a decree from the Minister of Environment and Forestry (MenLHK) No. 103/MenLHK-II/2015.<sup>2</sup>

Meanwhile, a report by the Rainforest Action Network (RAN) in the United States found that 17 kilometers of new canals were dug during 2022 and increased to 9 kilometers in 2023.<sup>3</sup> Currently, illegal

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<sup>1</sup> Hilman, "Pemantauan Terhadap Dampak Deforestasi dan Ancaman yang Ditimbulkan Oleh Eksploitasi Sumber Daya Alam," *Auriga*, Oktober 10, 2025, <https://auriga.or.id/2025-monitoring-on-deforestation-impact?lang=id>.

<sup>2</sup> Lathifa Putri Wiedhya Syahrani, et al, "Dinamika Ekologi Lahan Basah Dan Upaya Pelestarian Kawasan Suaka Margasatwa Rawa Singkil, Aceh," *Environmental Pollution Journal* 4, No. 1 (2024): 918-933, <https://doi.org/10.58954/epj.v4i1.174>.

<sup>3</sup> Muhamad Sayuti Hassan, et al, "Free, Prior, and Informed Consent (FPIC) and the Right to Self-Determination: A Case Study of Indigenous Peoples in ASEAN Member States," *Routledge Handbook of the UN Sustainable Development Goals Research*

oil palm plantations in Rawa Singkil cover 300 hectares. With the new canal, the potential for forest loss in the reserve will increase. Based on Tree Map data, in 2022 the Rawa Singkil ecosystem will lose 700 hectares of peat swamp forest. Not much different from the conditions in the previous year, in the first six months, the Singkil Swamp ecosystem in 2023 had lost 372 hectares of forest. The Aceh Natural Forest and Environment Foundation (HakA) satellite assessed that this number increased by 57% compared to 2022. So that in total for 5 years, the Singkil Swamp ecosystem has lost 1,324 hectares.

Singkil Wildlife Reserve is often disturbed by human activities without regard to the impact on the natural balance. The use of wetlands dominated by plantations, especially oil palm plantations, can threaten the existence of wildlife because their habitat is pressured by deforestation and expansion. The increasing rate of deforestation in Singkil Swamp means that the future of Sumatran orangutans is also increasingly threatened. The 1,500 Sumatran orangutans living in Singkil Swamp account for around 10% of Indonesia's total orangutan population.<sup>4</sup> Despite the importance of Rawa Singkil, there has not been a single program designed to end deforestation in the Rawa Singkil ecosystem. The Kompas report shows that illegal oil palm plantations in Rawa Sangkil are managed by local elites. They have sufficient financial resources and can pay local communities to give them land and plant oil palm within the Rawa Singkil ecosystem.

In this context, the principle of Free, Prior, and Informed Consent (FPIC) is a vital legal instrument that ensures that indigenous peoples are given the opportunity to accept or reject projects that directly affect their territories and resources.<sup>5</sup> The principle of FPIC has been recognized in various international legal instruments, such as ILO Convention No. 169 and the United Nations Declaration on the

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*and Policy.* Routledge 1 (2025): 284-296, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003285472-21/free-prior-informed-consent-fpic-right-self-determination-muhamad-sayuti-hassan-rohaida-nordin-izawati-wook-nurul-hidayat-ab-rahman>.

<sup>4</sup> The Tree Map, "Sumatran orangutans on the Brink: Palm Oil Deforestation Breaks Records in key Protected Area," *Nusantara Atlas*, February 9, 2023, <https://nusantara-atlas.org/sumatran-orangutans-on-the-brink-palm-oil-deforestation-breaks-records-in-key-protected-area/>.

<sup>5</sup> Rahmi Jasim, et al, "Setting of free and prior informed consent to the protection of indigenous peoples' rights to water resources in Indonesia," *Edelweiss Applied Science and Technology* 9, no 3 (2025): 2558-2574, <https://doi.org/10.55214/25768484.v9i3.5849>.

Rights of Indigenous Peoples (UNDRIP).<sup>6</sup> However, the implementation of this principle in Indonesia's national legal system still faces various challenges.

There are several national regulations that recognize the rights of indigenous peoples. First, Article 18B paragraph (2) of the 1945 Constitution, which states that the State recognizes and respects 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. Second, Article 65 of Law No. 32 of 2009 concerning Environmental Protection and Management also affirms the rights of indigenous peoples to play a role in environmental protection through access to information, participation, and environmental justice. Third, Constitutional Court Decision No. 35/PUU-X/2012. Fourth, Article 6 paragraph (1) of Law No. 39 of 1999 concerning Human Rights stipulates that discrimination against indigenous peoples is not permitted as long as these communities still exist and are in accordance with the development of the times and the principles of the Unitary State of the Republic of Indonesia.

Meanwhile, as a technical implementation, Regulation of the Minister of Home Affairs No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities provides an administrative mechanism for local governments to identify, determine, and protect the existence of indigenous peoples. All of these instruments confirm that, normatively, Indonesia has provided legal recognition of the existence of customary law communities, although its implementation in the field still faces various structural and political challenges. The FPIC principle has not yet become a fully binding standard in the licensing of development projects, including in the palm oil sector.

The case of deforestation by palm oil companies in Rawa Singkil shows how social and ecological injustice can occur when the principle of FPIC is not properly implemented.<sup>7</sup> Therefore, this research seeks

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<sup>6</sup> Rudolph C Ryser. "A framework for implementing the principle of free, prior, and Informed consent (FPIC)-comity or conflict." *Fourth World Journal* 24, No 1 (June 1, 2024): 125-145, <https://search.informit.org/doi/10.3316/informit.T2024060600003091984076418>.

<sup>7</sup> Hendra, Rahmad, Firdaus Firdaus, and Samariadi Samariadi. "Principle of Free, Prior and Informed Consent as a Resolution of Land Conflicts Between Oil Palm Plantation Companies and Indigenous Peoples in Kampar Regency." *2nd Riau*

to juridically examine the implementation of the FPIC principle as an instrument of forest protection and indigenous peoples' rights, with a focus on the Singkil Swamp deforestation case study.

Previous research on Rawa Singkil covers various aspects of conservation, ecology and indigenous peoples' rights, but has not comprehensively addressed the principle of Free, Prior, and Informed Consent (FPIC) within the framework of national legal protection and its impact on deforestation due to oil palm expansion. The study by Radiana Sofyan et al. (2020) focuses on the effectiveness of SMART Patrol as a mechanism for monitoring illegal activities such as illegal logging and encroachment in Rawa Singkil. Their findings showed a significant decrease in illegal activities from 2016 to 2019, but did not elaborate on the involvement of indigenous peoples or the use of FPIC principles in forest management decision-making.<sup>8</sup> Meanwhile, the research by Sugianto et al. (2021) presents ecological data on vegetation diversity and the importance of the Singkil Swamp area as a carbon store and unique habitat, but does not touch on legal or socio-cultural issues related to indigenous peoples' rights to the area.<sup>9</sup> On the other hand, the article by Nasywa Kayla et al. (2025) on Pulau Rempang directly addresses the principle of FPIC as part of the human rights framework and exposes implementation gaps in national law, lack of public consultation, and conflicts of interest between development and indigenous peoples' collective rights.<sup>10</sup>

Of these three studies, the main shortcomings that can be identified are the lack of analysis of the integration of the FPIC principle into the national legal system in the context of Rawa Singkil and the limited exploration of the legal consequences of ignoring this principle for indigenous peoples and forest ecosystems.

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*Annual Meeting on Law and Social Sciences (RAMLAS 2021)*. Atlantis Press, 2022, <https://doi.org/10.2991/assehr.k.220406.022>.

<sup>8</sup> Radiana Sofyan, et al, "Pengimplementasian SMART patrol terhadap aktivitas ilegal (pembalakan dan perambahan) di kawasan konservasi Suaka Margasatwa Rawa Singkil", *Jurnal Ilmiah Mahasiswa Pertanian* 5, No. 3 (2020): 43-49, <https://doi.org/10.17969/jimfp.v5i3.14843>.

<sup>9</sup> Sugianto, S., A. M. Muslih, U. H. Ar-Rasyid, and A. Anhar, "Vegetation analysis of rawa singkil wildlife reserve in Rantau Gedang Village, Singkil District, Aceh Singkil Regency, Aceh Province", *In IOP Conference Series: Earth and Environmental Science* 667, No. 1 (2021): 1-6, <https://doi.org/10.1088/1755-1315/667/1/012068>.

<sup>10</sup> NA, Nasywa Kayla, Safar Nasa, and Anisa Salsabila, "Prinsip Free, Prior, and Informed Consent (FPIC) Sebagai Pilar Hak Asasi Manusia Dalam Resolusi Konflik Wilayah Adat Pulau Rempang", *Jurnal Retentum* 7, No. 1 (2025): 51-62.

Based on this, the study aims to examine how the adoption of the principles of free, prior, and informed consent (FPIC) as a legal protection instrument for forests and indigenous peoples' rights within the national legal system, and what are the legal consequences of not applying the FPIC principle in the management of indigenous forest areas on the expansion of oil palm plantations in Rawa Singkil. The novelty of this research focuses on the positive legal aspects of FPIC in the management of indigenous forest areas in Rawa Singkil and an in-depth study of the legal consequences of its violation, which have not been fully explained in previous studies.

## Method

This research is conducted using a normative juridical approach, which traces how the principle of Free, Prior, and Informed Consent (FPIC) lives in the legal framework, both as an international norm and in the form of national arrangements in Indonesia. The data search in this research does not rely on interviews or field surveys, but rather relies on laws and regulations, court decisions, international instruments, and other academic literature relevant to the discussion of indigenous peoples' rights, the principle of FPIC, and environmental protection. In the process, a statutory approach is used to read the applicable regulations, a conceptual approach to examine international legal principles related to FPIC and a case approach to critically examine the deforestation event in Rawa Singkil.<sup>11</sup> All legal materials were collected and analyzed qualitatively by comparing the rules' wording with legal realities in the context of customary forest management by palm oil companies.

## Result and Discussion

### A. Integrating the Principle of Free, Prior, and Informed Consent (FPIC) into the National Legal System

In the context of national legal arrangements, the FPIC principle has not been comprehensively adopted. Some legal provisions that reflect the spirit of FPIC include the Constitution of the Republic of

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<sup>11</sup> Radhityas Kharisma Nuryasinta, et al. "Indigenous Peoples' Rights and the Use of Natural Resources: Rethinking the Project of Rempang Eco City." *Proceedings of the International Conference on Law Reform (5th Inclar 2024)*. Vol. 870. [https://doi.org/10.2991/978-2-38476-362-7\\_18](https://doi.org/10.2991/978-2-38476-362-7_18).

Indonesia (UUD 1945) and Law No. 39/1999 on Human Rights which guarantees the right to a good environment. Article 18B(2) of the Constitution reflects the acceptance of indigenous peoples and their rights in Indonesian law, rights collectively governing their territories and passed down from one generation to the next. However, this constitution is general in nature and requires further regulation to be implemented operationally.

In addition, the protection of community rights is contained in Article 28I of the 1945 Constitution paragraph (3). In the context of collective rights, the principle of FPIC aims to ensure that indigenous peoples can maintain control over their territories and resources which includes the ability to determine the management of land or other resources in accordance with customary values passed down from generation to generation.

Furthermore, Article 26 of Law No. 32 of 2009 on Environmental Protection and Management regulates the obligation to conduct public consultation in the Environmental Impact Assessment (AMDAL) process.<sup>12</sup> Although these consultations are participatory in nature, this mechanism does not grant the community substantive rights to approve or reject projects as stipulated in the principles of Free, Prior, and Informed Consent (FPIC). This weakness is further exacerbated by the enactment of Law No. 11 of 2020 on Job Creation (and its amendment through Perppu No. 2 of 2022), which systematically weakens the FPIC principle by removing or reducing the role of AMDAL as an instrument of social and environmental control. Through these changes, the involvement of indigenous peoples in the AMDAL assessment process is limited only to those who are “directly affected,” thereby ignoring the broader ecological, social, and cultural dimensions of a project. This means that the community's opinions can be heard, but they are not given a position to decide on projects that could potentially harm them. In fact, the FPIC principle is essentially a normative mechanism to ensure meaningful participation and the right to self-determination of indigenous peoples. This provision contradicts the core elements of FPIC, which are derived from human rights and the protection of indigenous communities against the exploitation of natural resources, placing the right to

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<sup>12</sup> Arsyi Manggali Arya Putra, Suwirno Prawira, Rohman, and Ilham Dwi Rafiqi. “The Role of Environmental Administration Law: A Study of Environmental Struggle of the Awyu Tribe”. *Hang Tuah Law Journal* 9, no. 1 (April, 2025): 33–58, <https://doi.org/10.30649/htlj.v9i1.258>.

consent as a substantive legal instrument, not merely an administrative formality. This situation shows that the government, through its environmental deregulation policy, is systematically deviating from the spirit of participation and free consent as mandated by the FPIC principle, and has the potential to eliminate substantive legal protection for indigenous peoples who depend on the sustainability of their forests and natural resources.

Third, Law No. 39/2014 on Plantations and Law No. 41/1999 on Forestry regulate the mechanism for granting business licenses and using forest areas, but do not specifically require community consent as a condition of legality. This shows that Indonesia's national legal system has not yet made FPIC a formal requirement in the licensing process, making the legal protection of customary forests still partial and prone to abuse.

Finally, Constitutional Court Decision No.35/PUU-X/2012 separated the legal status of customary forests from state forests. Stating that customary forests belong to indigenous peoples. This is an important milestone in strengthening indigenous peoples' legal position over their territories, and indirectly supports the principle of FPIC. However, without further regulation requiring a community consent process in the issuance of business licenses, this decision is not strong enough to realize the principle of FPIC. As a result, indigenous peoples remain vulnerable to territorial grabbing by large-scale projects, including oil palm plantations.

According to Philipus M. Hadjon's theory of legal protection, the law should function not only as a step to enforce rights after a violation occurs (repressive), but also as a preventive step (preventive) against various kinds of potential conflicts. In line with the contents of Article 33 of the 1945 Constitution paragraph (3) which reads that the State has the authority to control and manage land, water and space. In this case, the principle of FPIC should be adopted as a preventive legal instrument that can ensure the rights of indigenous peoples are protected from the beginning of development planning. The absence of legal norms clearly requiring the principle of FPIC in the licensing and area management process shows that the national legal system has not succeeded in providing proactive legal protection.<sup>13</sup>

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<sup>13</sup> Retno Kusniati, "Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?". *Jambe Law Journal* 7, no 1 (2024): 169-193, <https://doi.org/10.22437/home.v7i1.350>.



In comparison to other countries, the Philippines is one that has concretely adopted FPIC through the Indigenous People's Rights Act (IPRA), which makes FPIC a legal prerequisite for any activity that impacts indigenous territories. Whereas in Indonesia, similar efforts have not yet reached binding arrangements, so that commitment to international principles is limited to declarative only and has not been fully absorbed in the positive legal structure.<sup>14</sup>

According to Rawls' concept of social justice, the principle of FPIC prioritizes equal bargaining power between development actors and indigenous peoples. When development projects are imposed without the genuine participation of indigenous peoples, there is not only a procedural violation, but also structural and ecological injustice.<sup>15</sup> The principle of FPIC should be able to act as an early fence against environmental harm and social conflicts that occur to indigenous peoples from the beginning of project planning.

Article 5 of the Basic Agrarian Law authorizes the state to manage resources for national and state interests, including the welfare of the people.<sup>16</sup> Such provisions serve as a foundation for achieving a balance between the traditional rights of indigenous peoples and the development requirements deemed essential for the nation. It needs to be in line with the principles of clarity and legal certainty, reflected in the form of mechanisms that regulate who is responsible for organizing FPIC, how consent is expressed, and what the consequences are if this principle is ignored. Thus, without clear arrangements and without explicit legal recognition of this principle, national law will only be in a defensive position that is unable to address the needs of vulnerable communities in forest areas.

Through the approach of the concept of human rights, FPIC is not just an administrative procedure, but a guarantee of meaningful participation and also the right to self-determination of indigenous

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<sup>14</sup> Rico Septian Noor, "Rekonstruksi Kedudukan Lembaga Adat Sebagai Sarana Perlindungan Hukum Hak Ulayat Masyarakat Hukum Adat di Kalimantan Tengah Berbasis Nilai Keadilan", Disertasi (Semarang: Universitas Islam Sultan Agung, 2024): 145, <https://repository.unissula.ac.id/38757/>.

<sup>15</sup> Rajat Panwar, Jonatan Pinkse, Benjamin Cashore, Bryan W. Husted. "Why corporate sustainability initiatives fail to reduce deforestation and what to do about it". *Business Strategy and the Environment* 32, no 8 (April 11, 2023): 5121-5127, <https://doi.org/10.1002/bse.3421>.

<sup>16</sup> Radhityas Kharisma Nuryasinta and Padhina Pangestika. "Legalitas Aset dan Manajemen Lahan Sebagai Penguatan Reforma Agraria: Studi Peningkatan Kesejahteraan Petani Gurem." *Tunas Agraria* 8, no 2 (2025): 236-251, <http://dx.doi.org/10.31292/jta.v8i2.421>.

peoples. Rooted in the idea of recognizing and respecting cultural, ecological and spiritual values, the principle of FPIC needs explicit legal recognition. Without explicit legal recognition, national laws will continue to be defensive and unable to address the needs of vulnerable communities in forest areas.

In the national legal system, although there are several legal provisions that contain the spirit of FPIC, this principle has not been fully adopted. The absence of binding, clear and systematic arrangements makes the protection of customary forests and local communities still a formality. Therefore, in order to realize true legal protection, it is necessary to harmonize national law with the standard FPIC principle as has also been practiced in other countries.<sup>17</sup>

The plan to adopt FPIC needs to be carried out by strengthening legal mechanisms in national law. First, the establishment of a special law on indigenous peoples. The ratification of the long-delayed Indigenous Peoples Bill is the most fundamental step that needs to be taken. It is not enough to recognize the existence of the community in general, but also firmly and clearly contain the principle of FPIC as a procedural right that is respected in every development plan that touches indigenous territories. The substance of the article needs to regulate the definition, principles, implementation procedures, and sanctions if violated.

**TABLE 1.** Proposed Additional Regulations in the Draft Law on Indigenous Peoples

| Chapter IV   |   |  |
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| Rights and Duties  |   |  |
| Paragraph 6 Management of Customary Territory and Natural Resources  |   |  |
| Article 32   | Article 33  | Article 34   |
| (1) Every activity plan that has the potential to have an impact on customary territories, customary forests, or natural resources controlled by | (1) The FPIC process shall be conducted through legitimate customary deliberations, attended by | (1) Failure to obtain FPIC as referred to in Article 20 results in:<br>a. Invalidity of the licensing process; |

<sup>17</sup> Mg. Muñoz Marichin, et al. "Prior consultation as a guarantee of the collective rights of indigenous peoples: A literature review." *International Journal of Environmental Sciences* 11, no 3S (2025): 867-891, <https://doi.org/10.64252/q6bkzv19>,

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|---|---|---|
| indigenous peoples, must obtain free, prior, and informed consent from the indigenous peoples concerned;                          | legitimate representatives of indigenous peoples, women, vulnerable   | b. Temporary suspension of activities until FPIC process is fulfilled;  |
| (2) The approval as referred to in paragraph (1) is:  | groups, and conducted in languages and procedures   | c. Administrative and/or criminal sanctions in accordance with laws and regulations.  |
| a. Free, without coercion, pressure, or manipulation of any kind  | acceptable to the community;  | (2) The government and project implementers are responsible for ensuring and financing the conduct of an independent and transparent FPIC process;      |
| b. Prioritization, carried out before project or policy decisions are made and prior to the issuance of permits by the authority; | (2) Evidence of approval shall be set forth in minutes or written approval documents and may be attached to the licensing system;     | (3) Independent FPIC Commissions may be established at the national and sub-national levels to verify, mediate, and monitor the implementation of FPIC. |
| c. Informed, with the delivery of information in a transparent, complete, understandable, and adapted to local culture.           | (3) The consent given by indigenous peoples can be withdrawn if fraud, irregularities, or violations of agreed commitments are found. |   |

Sources: *processed based on the results of the author's analysis*

The proposed addition of three articles in Chapter IV of the Indigenous Peoples Bill is intended to fill the normative void regarding the obligation to obtain the consent of indigenous peoples in the management of customary territories and natural resources. This provision is a form of operationalization of the principle of Free, Prior, and Informed Consent (FPIC), which has been morally and politically recognized in the international legal framework, but does not yet have binding legal force in the national legal system. These additions do not

change the structure or substance of the existing articles, but rather expand the space for legal protection of indigenous peoples through preventive legal instruments. With the insertion of these three articles, it is hoped that the Indigenous Peoples Bill will not only be declarative in recognizing rights, but also operational and guarantee clear, participatory and enforceable legal mechanisms. These provisions will also strengthen the position of indigenous peoples in the face of large-scale exploitation activities, such as oil palm plantations and mining, and reduce the potential for horizontal and vertical conflicts that often arise due to the absence of a fair and equal space for consent.

*Second*, Harmonization of Environmental and Forestry Laws. It is necessary to insert provisions in Law No. 32 of 2009 on Environmental Protection and Management and Law No. 41 of 1999 on Forestry that public consultation is not just a requirement or formality, but must fulfill the elements of free, prior, and informed consent.<sup>18</sup> Harmonization must include FPIC as a substantial and formal requirement in the process of environmental licensing, AMDAL, and forest area release.

*Third*, the stipulation of a Government Regulation or Special Presidential Regulation on FPIC is another normative instrument that can be formulated if the Law is not easy to amend in a short time. However, it needs to be ensured that the content of the regulation must outline who is authorized to implement FPIC, what stages must be passed, what is the legal form of consent, and what are the legal consequences if FPIC is not implemented. *Fourth*, strengthening the role of independent authorities such as Komnas HAM, Ombudsman, or Customary Institutions which are indispensable in FPIC arrangements as supervisory institutions to verify that FPIC is actually implemented, become facilitators of liaison between communities and developers, and provide a fast complaint channel for violations of FPIC.

*Fifth*, integrate FPIC in the OSS Licensing system and AMDAL. So that it is not just "assumed to be done", FPIC can be made a mandatory component in the OSS (Online Single Submission) based licensing system. This means that every project applying for a license in an indigenous territory area needs to attach evidence that the FPIC process has been passed and is legally valid. This can take the form of

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<sup>18</sup> Lydia A Bazzano, Jaquail Durant, and Paula Rhode Brantley. "A modern history of informed consent and the role of key information." *Ochsner Journal* 21.1 (2021): 81-85, <https://doi.org/10.31486/toj.19.0105>.

minutes of deliberations, video documentation, or a letter of consent signed by a legitimate customary official or representative.

With this series of steps, the principle of FPIC will not only live on as an international moral principle, but also as a national legal norm capable of providing real protection for forests and the rights of indigenous peoples. The affirmation of FPIC's position in the legal system will strengthen ecological justice, prevent tenurial conflicts, and strengthen the legitimacy of the state in upholding human rights in the context of sustainable development.<sup>19</sup>

However, efforts to adopt FPIC into the national legal system are not without challenges. The main obstacle arises from overlapping sectoral regulations, particularly between forestry, environmental, and investment laws, which often prioritize economic interests over ecological and social interests. In addition, the lack of capacity of local government institutions to recognize and determine the existence of customary law communities makes it difficult to implement FPIC consistently. On the other hand, the power imbalance between corporations and local communities, as well as weak oversight and law enforcement mechanisms, have the potential to reduce FPIC to a meaningless administrative procedure. Therefore, the successful implementation of FPIC in Indonesia requires not only normative changes through regulations, but also strong political commitment, institutional transparency, and the empowerment of indigenous peoples as legal subjects with sovereignty over their territories.

## **B. Legal Consequences of Noncompliance with FPIC Principle in Managing Rawa Singkil's Indigenous Forests**

Land clearing by companies without proper consent and information to indigenous communities, along with the issuance of permits by the government without a legitimate participatory process, reflects a disregard for the principle of procedural justice in the management of indigenous territories.<sup>20</sup> Even the violation of the

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<sup>19</sup> Ilham Dwi Rafiqi, "Recognition of Indigenous Peoples Values in Indonesia for Policy Addressing Climate Change", *Journal of Law and Legal Reform* 6, no. 1 (2025): 1-40, <https://doi.org/10.15294/jllr.v6i1.11746>

<sup>20</sup> Sawathvong, Soukphavanh, and Kimihiko Hyakumura. "A comparison of the free, prior, and informed consent (FPIC) guidelines and the "Implementation of Governance, Forest Landscapes, and Livelihoods" project in Lao PDR: The FPIC

principle of Free, Prior, and Informed Consent (FPIC) in the management of customary forest areas is a reflection of the weakness of the national legal system in guaranteeing substantive protection for indigenous peoples.<sup>21</sup> Although Indonesia has ratified and supported various international instruments such as UNDRIP, and expressed commitment to the principle of FPIC in various global forums, in practice the implementation of this principle does not yet have a binding legal basis.<sup>22</sup>

Development projects in indigenous territories, including the expansion of oil palm plantations, are often carried out without a valid consent process from the affected indigenous communities.<sup>23</sup> The information provided is one-sided, incomplete, and conducted within a timeframe that does not allow for collective community assessment. As a result, communities do not have the opportunity to reject or negotiate the project according to their values, culture and vision of the land that they have socially and spiritually inherited for generations. This demonstrates the vulnerability of indigenous peoples arising from the weak national legal framework and the dominance of non-participatory development approaches.

In the national context, the absence of legal mechanisms that explicitly require the implementation of FPIC has opened space for the practice of forest area conversion without the legitimate consent of indigenous peoples, where decision-making processes tend to be top-down and ignore the social, cultural values and visions of indigenous communities for the future.<sup>24</sup> Legally, such actions not only undermine the principle of participation but also contradict the

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team composition and the implementation process." *Land* 13, no 4 (March 23, 2024): 408, <https://www.mdpi.com/2073-445X/13/4/408#>.

<sup>21</sup> George Barrie, "Chapter 8 The 'Right' to Free, Prior and Informed Consent: Evolving Customary International Law", In *Courts and Diversity, Leiden, The Netherlands: Brill, Nijhoff* (2024): 195-227, <http://dx.doi.org/10.3390/land13040408>.

<sup>22</sup> Mustafaeva, Dilshodakhon. "An Examination of Indigenous Peoples' Right to Consultation and Free, Prior and Informed Consent: A Case Study of Sveaskog and the Swedish Forestry Industry." Lund University (2024), <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=9175125&fileId=9175126>.

<sup>23</sup> Yuko Osakada. "Pitfalls of the green transition: Towards a genuine understanding of the right to free, prior and informed consent of the Indigenous peoples." *Polar Science* 44 (June 2025): 101119, <http://dx.doi.org/10.1016/j.polar.2024.101119>.

<sup>24</sup> Florence Pendrill *et al.* "Disentangling the numbers behind agriculture-driven tropical deforestation", *Science* 377, no. 6611 (September 9, 2022): 1-20, <https://doi.org/10.1126/science.abm9267>.

spirit of the constitution, particularly Article 18B paragraph (2) of the 1945 Constitution, which guarantees recognition and protection of the collective rights of indigenous peoples. Non-compliance with the principle of FPIC reflects a lack of respect for national law and various international instruments that have been ratified by Indonesia, such as UNDRIP, which makes FPIC a basic principle in the protection of indigenous peoples' rights. According to the juridical aspect, this violation opens the possibility of lawsuits both at the domestic and international levels, and reduces the legitimacy of the state in fulfilling its obligations to protect human rights and environmental governance.<sup>25</sup>

In the field, violations of FPIC are often rooted in the lack of legal recognition of indigenous territories, the absence of adequate consultation procedures, and overlapping regulations between sectors.<sup>26</sup> This results in the neglect of the voices of indigenous peoples in development projects. The information provided is often biased and incomplete, and it is delivered within a timeframe that does not allow communities to critically evaluate it. Consequently, evictions without legitimate consent result in social trauma, community disintegration, and loss of control over living spaces of spiritual and cultural significance. Moreover, violations of Free, Prior, and Informed Consent (FPIC) undermine the trust between indigenous peoples and external actors, such as governments and investors.

FPIC violations also expose structural failures in national regulations.<sup>27</sup> The absence of strong legal recognition of indigenous territories, overlapping authority between the forestry, environment and agrarian sectors, and the absence of standardized procedures for the implementation of consultation and consent make violations of FPIC not just a technical omission, but part of a systemic problem.

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<sup>25</sup> Roro Utari Indra Dewi, Alfan Zuhaiery, Ninda Halimatus Sa'diyah, Tasya Fatchiati Rizqiya, Hany Nurpratiwi. "Harmonisasi Masyarakat Dan Pemerintah Untuk Mengatasi Deforestasi Di Selatan Tulungagung". *Dewantara: Jurnal Pendidikan Sosial Humaniora* 2, no.2 (Juni 2, 2023): 149-157, <https://doi.org/10.30640/dewantara.v2i2.1029>.

<sup>26</sup> Helen Newing, et al. "Participatory conservation research involving indigenous peoples and local communities: Fourteen principles for good practice." *Biological Conservation* 296 (August. 2024): 110708, <https://doi.org/10.1016/j.biocon.2024.110708>.

<sup>27</sup> Afrizal, Elfitra, and Zulfesni. "Analysing the effectiveness of the roundtable on sustainable palm oil's Free, Prior and Informed Consent policy to respect customary land rights." *Journal of International Development* 35, no 5 (September 11, 2023): 761-780, <https://doi.org/10.1002/jid.3700>.

This shows that under Indonesian national law, the right of indigenous peoples to give or withhold consent has not been institutionalized as a legitimate and legally binding mechanism.

In the long run, unequal power relations hinder efforts to achieve inclusive and sustainable development. Growing distrust can lead indigenous peoples to reject all forms of cooperation, including projects designed for their own benefit. Thus, violations of the Free, Prior, and Informed Consent (FPIC) principle not only have legal and administrative impacts, but also create deep structural wounds in the social lives of indigenous peoples and undermine the state's legitimacy as a protector of its citizens' rights.<sup>28</sup>

TABLE 2. Legal Consequences of Non-Compliance with FPIC

| No | Types of Compliance                           | Legal Provisions   | Legal Consequences   |
|----|---|--|--|
| 1  | Legitimacy of Permits and Activities          | An environmental permit is the basis for issuing a business license, not just a formality (Article 36 of the Environmental Law). If it is not legally valid, then the issuance of the permit is procedurally flawed.   | Lawsuit for license cancellation through the state administrative court mechanism (PTUN) or administrative objections  |
| 2  | Corporate Responsibility                      | UN Guiding Principles on Business and Human Rights (UNGPs), explains that companies have an obligation to respect the rights of indigenous peoples, even if the state fails to protect them. Violations of the FPIC principle constitute corporate negligence in human rights due diligence. | Triggering administrative, civil and criminal sanctions under Articles 69 and 97 of the Environmental Law, including environmental compensation and revocation of business licenses. |
| 3  | International Responsibility and Human Rights | The government's failure to ensure that FPIC is practiced before issuing business licenses in customary forest   | Complaints to international institutions, such as the UN Committee   |

<sup>28</sup> Lizarazo-Rodriguez, Liliana, Alice Lopes Fabris, and Doreen Montag. "Indigenous peoples as trustees of forests: a bio-socio-cultural approach to international law." *International Environmental Agreements: Politics, Law and Economics* 25, no 1 (December 20, 2025): 145-170, <https://doi.org/10.1007/s10784-024-09654-w>.



areas may be considered a violation of the right to participation, the right to the environment, and customary land rights.

on Economic, Social and Cultural Rights. In the context of global environmental law, the risk of losing access to safeguards-based financing mechanisms, such as REDD+ or FLEGT-VPA.

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*Source: processed based on the results of the author's analysis*

In terms of the validity of permits and activities, if an environmental permit is obtained without a legitimate participatory process, such as without the involvement of indigenous peoples as required by the FPIC principle, then the permit is procedurally flawed and can be revoked through a lawsuit filed with the State Administrative Court (PTUN) or an administrative objection submitted to the competent authority.

From a corporate responsibility perspective, palm oil companies that clear land without the consent of indigenous peoples or without transparency in the licensing process can be categorized as negligent in respecting the land and environmental rights of indigenous peoples. These violations are subject to administrative, civil, and criminal sanctions as stipulated in Articles 69 and 97 of the Environmental Protection and Management Law, including environmental compensation and revocation of business licenses.

Furthermore, from an international responsibility perspective, the government's failure to ensure that FPIC is implemented before issuing business permits in customary forest areas could undermine Indonesia's position in sustainability-based financing schemes such as REDD+ and FLEGT-VPA, which require respect for the rights of indigenous peoples.

Although Indonesia does not yet have regulations that explicitly govern FPIC mechanisms, the context of the Rawa Singkil case could provide momentum for implementing alternative solutions based on existing positive law. First, the FPIC principle can be internalized in the AMDAL procedure by making the public consultation process a de facto consent mechanism. Second, local governments and the Ministry of Environment and Forestry can use their authority under Permendagri No. 52 of 2014 to accelerate the establishment of customary law communities around the Rawa Singkil area, so that they

have a clear legal entity in fighting for their rights. Third, the establishment of a local multi-stakeholder mediation forum.

Thus, non-compliance with the FPIC principle in the management of customary forest areas not only has social and ecological impacts, but also constitutes a violation of the basic principles of the rule of law, procedural justice, and international obligations. Therefore, strengthening national law through explicit recognition of the FPIC principle as an instrument of protection is an urgent necessity.

To answer the normative void and implementation gap of the Free, Prior, and Informed Consent (FPIC) principle in national law, this study emphasizes the importance of strengthening the legal position of FPIC through the interpretation and harmonization of existing laws and regulations, rather than simply creating new regulations. The FPIC principle should be understood as an interpretative instrument in the application of public participation articles regulated in Law Number 32 of 2009 concerning Environmental Protection and Management, as well as in other environment-based licensing mechanisms. Through a normative juridical approach, this principle can be internalized into the national legal system by emphasizing that the public consultation process in EIA, environmental permits, and forest area releases must be interpreted as part of the implementation of FPIC, which means “not merely an administrative formality.” This affirmation can be reinforced through progressive interpretation by judges, environmental supervisory agencies, and policy makers so that the FPIC principle gains legal force without the need to wait for the formation of new legal instruments. Thus, FPIC will function substantively as a living interpretive norm in Indonesian environmental law practice, strengthening the protection of indigenous peoples' rights and forest sustainability without violating the existing regulatory framework.

## Conclusion

The principle of Free, Prior, and Informed Consent (FPIC) has not been explicitly adopted in Indonesia's national legal system as a binding legal protection instrument for indigenous peoples and customary forest areas. Despite normative recognition in the constitution and several sectoral laws, existing legal arrangements are fragmentary, relying on the principle of administrative consultation

without substantive consent mechanisms. As a result, in practice, development projects such as the expansion of oil palm plantations in the Singkil Swamp area are often carried out without the legal consent of directly affected indigenous communities. Non-compliance with the principle of FPIC not only violates the spirit of the constitution and international commitments such as UNDRIP, but also results in legal consequences in the form of defects in the legality of business licenses, corporate responsibility, and potential lawsuits against the state both at the national and international levels. Socially, violations of FPIC trigger community disintegration, loss of control over indigenous territories, and a collapse of trust in legal institutions and the state.

The government needs to establish a valid, measurable, and participatory FPIC implementation mechanism through concrete steps that can be integrated into the legal system and environmental governance. First, the government can develop national guidelines for the implementation of FPIC that detail the stages of implementation, from the identification of indigenous peoples to the form of legally valid consent documentation. Second, the consultation process in the preparation of environmental impact assessments (EIA) and environmental permits must be expanded in meaning to become a forum for equal negotiation, where indigenous peoples are given adequate opportunity and information to have the right to refuse if their ecological interests are threatened. Third, institutional capacity building is needed through training for local government officials, business actors, and indigenous peoples themselves so that they understand the substance of FPIC and how to implement it in accordance with international human rights law principles. Fourth, an independent monitoring mechanism needs to be established under the coordination of the National Human Rights Commission or the Ministry of Environment and Forestry. These efforts will ensure that FPIC does not remain an ethical norm but develops into a substantive, operational, and binding legal component that becomes an integral part of environmental governance and the protection of indigenous peoples' rights in Indonesia.

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