

Article

Legal Disharmony and Disaster Risks: Ecological Sovereignty Restoration Through the Indigenous Peoples Bill

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Abstract

The escalation of hydrometeorological disasters in the upstream regions of Sumatra reflects a systemic failure in forestry governance, which is increasingly ensnared in an extractive paradigm. This article aims to analyze the correlation between regulatory disharmony and the rising risk of ecological disasters, while repositioning the Indigenous Peoples Bill as a preventive judicial instrument within the national disaster mitigation framework. Utilizing a normative legal research approach through a discourse analysis of sectoral regulations and policies, this study demonstrates that regulatory fragmentation—particularly following the implementation of the Job Creation Law—has precipitated an “administrative disaster” characterized by the legalization of forest area violations and the removal of ecological protection thresholds in upstream regions. Such conditions create a zone of impunity that systemically undermines the role of indigenous communities as guardians of the upstream ecosystem. This article argues that the Indigenous Peoples Bill serves as a crucial legal unification mechanism to resolve the implementation deadlock of the Constitutional Court Decision No. 35/PUU-X/2012 while simultaneously ending management dualism in upstream areas. Consequently, the recognition of customary land rights is not merely a human rights issue, but a fundamental legal prerequisite for public safety and the restoration of national ecological sovereignty.

Keywords

Disaster mitigation, Indigenous Peoples Bill, legal disharmony, public safety, upstream Sumatra

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Abstrak

Eskalasi bencana hidrometeorologi di wilayah hulu Sumatra merefleksikan kegagalan sistemik tata kelola kehutanan yang semakin terperangkap dalam paradigma ekstraktif. Artikel ini bertujuan menganalisis hubungan antara disharmoni peraturan perundang-undangan dengan meningkatnya risiko bencana ekologis, serta merepositori RUU Masyarakat Adat sebagai instrumen yuridis preventif dalam mitigasi bencana nasional. Dengan menggunakan pendekatan penelitian hukum normatif melalui analisis diskursus regulasi dan kebijakan sektoral, kajian ini menunjukkan bahwa fragmentasi regulasi – terutama pasca-implementasi UU Cipta Kerja – telah melahirkan “bencana administratif” berupa pemutihan pelanggaran kawasan hutan dan penghapusan ambang batas perlindungan ekologis wilayah hulu. Kondisi tersebut menciptakan zona impunitas yang secara sistemik melemahkan peran masyarakat adat sebagai penjaga ekosistem hulu. Artikel ini berargumen bahwa RUU Masyarakat Adat berfungsi sebagai mekanisme unifikasi hukum yang krusial untuk mengatasi kebuntuan implementasi Putusan Mahkamah Konstitusi No. 35/PUU-X/2012 sekaligus mengakhiri dualisme pengelolaan kawasan hulu. Dengan demikian, pengakuan hak ulayat tidak semata merupakan isu hak asasi manusia, melainkan prasyarat yuridis bagi keselamatan publik dan pemulihian kedaulatan ekologis nasional.

Kata Kunci

Mitigasi bencana, RUU Masyarakat Adat, disharmoni hukum, keselamatan publik, hulu Sumatra

INTRODUCTION

The flash floods and landslides that struck the Sumatra region—specifically Aceh, North Sumatra, and West Sumatra—at the end of 2025 marked one of the deadliest hydrometeorological tragedies in Indonesia’s post-2018 history. This catastrophe claimed over 1,100 lives (Kompas.com, 2025), displaced approximately 490,000 individuals, and damaged more than 150,000 housing units along with hundreds of bridges, educational facilities, and healthcare services (bangkapos.com, 2025). The most severe impacts were recorded in North Aceh, Aceh Tamiang, and Gayo Lues; Central Tapanuli, South Tapanuli, and Sibolga City in North Sumatra; and the regencies of Agam, Padang Pariaman, and South Pesisir in West Sumatra (BNPB, 2025).

Meteorologically, the disaster was triggered by extreme weather resulting from Tropical Cyclone Senyar, which made landfall in Sumatra around November 26, 2025, bringing daily rainfall exceeding 400 mm in several areas such as Bireuen (ipb.ac.id, 2025). However, ecological analysis indicates that extreme rain served merely as a trigger, while the severity of the disaster was determined by the degradation of hydrological functions in upstream areas. The forests along the Bukit Barisan range—including the Leuser Mountains, Batang Toru, and the West Sumatra highlands—which ought to serve as natural water absorbers, have undergone massive deforestation and land-use conversion (BMKG, 2025). Research from Universitas Gadjah Mada (UGM) demonstrates that the loss of forest cover has led to reduced soil infiltration and increased surface run-off,

accompanied by sediment accumulation that accelerated river overflows and landslides (Andriyani, 2025b).

This damage is evidenced by empirical post-disaster facts, such as thousands of logs carried by floods in regions like Batang Toru and Southeast Aceh, which destroyed bridges and settlements. This phenomenon indicates widespread illegal logging and remnants of land clearing for plantations and infrastructure projects in upstream areas (BBC News Indonesia, 2025). Data from MapBiomass Indonesia recorded that deforestation in Aceh, North Sumatra, and West Sumatra tripled in the first ten months of 2025 (Ayuningtyas, 2025). In Aceh alone, forest loss surged from under 10,000 hectares to nearly 30,000 hectares by October 2025, with most of the land clearing identified for large-scale plantation expansion (Tempo.co, 2025). Watershed (DAS) analysis also reveals that the worst-affected areas are located under watersheds already classified as critical, such as the Batang Toru ecosystem, which lost over 72,000 hectares of forest between 2016 and 2024 due to mining, plantation, and energy activities (Suryanti, 2025).

The ecological degradation in these upstream regions is inseparable from the erosion of indigenous authority over their customary territories (wilayah ulayat). Forest areas traditionally managed through customary law and local wisdom have now transitioned into extractive industrial concessions, while indigenous peoples—who possess the ecological knowledge to maintain upstream stability—have lost the legal capacity to defend their territories (Boen & Andhela, 2025). Thousands of hectares of indigenous forests in Aceh, North Sumatra, Jambi, and South Sumatra have been diverted without Free, Prior, and Informed Consent (FPIC). Yet, various studies, including those by AMAN and the World Resources Institute, show that deforestation rates in territories where indigenous rights are recognized are 3–5 times lower than in other areas (Boen & Andhela, 2025; BRWA, 2023). Millions of hectares of concession permits (HGU and IUP) have been issued over territories that are factually customary lands, simply because these areas remain administratively categorized as “State Forests.” This administratively legitimized land conversion creates a situation where forest management shifts from protective local wisdom to destructive industrial exploitation (Komnas HAM, 2016).

Since the enactment of the Job Creation Law (Law No. 11/2020) and its derivative regulations, the paradigm of forest management has undergone a fundamental shift from an ecological and social buffer instrument into a space for administratively negotiable investment transactions. Analysis by the Independent Forestry Monitoring Network (JPIK) indicates that this change is mediated by several key provisions, including the “whitewashing” mechanism under Articles 10A and 10B, which legalizes unauthorized activities within forest areas without criminal sanctions; the removal of the 30 percent minimum forest cover threshold that previously served as a bastion for upstream protection; and the weakening of Environmental Impact Assessments (AMDAL) alongside the simplification of licensing

by merging environmental permits into business licenses. This regulatory combination has accelerated the conversion of millions of hectares of natural and protected forests in Sumatra, while simultaneously weakening oversight and law enforcement. JPIK findings in 2024 even revealed that serious violations by permit holders (PBPH)—such as logging outside designated Annual Work Plans (RKT)—resulted only in administrative sanctions without any deterrent effect. This overall legal design creates a zone of impunity for corporations, while the ecological and social consequences are borne by indigenous communities and villages in hilly areas that have lost the protective functions of the upstream ecosystem (Ichwan, 2025).

This disparity in spatial control confirms that upstream ecological degradation is a consequence of fundamental judicial problems. The absence of an umbrella act creates a form of legitimacy for land occupation that disregards environmental carrying capacities. Consequently, the protection of indigenous peoples remains fragmented without a unified indicator, causing customary rights (*hak ulayat*) to perpetually clash with political-economic interests (DPR RI, 2010).

Extensive research on indigenous protection within the Indonesian legal system has primarily focused on the gap between normative-constitutional recognition and substantive protection. Several studies emphasize that although Article 18B paragraph (2) of the 1945 Constitution guarantees the existence of indigenous communities, its derivative regulations remain partial and non-operational, thereby triggering prolonged legal uncertainty (Rusdianto & Basani, 2025). Empirically, previous studies have revealed the impact of National Strategic Projects—such as the development of the New Capital City (*Ibu Kota Nusantara*)—on the restriction of customary land access and the escalation of agrarian conflicts (Putra, Anggraeni, Ridwan, & Jamaludin, 2025; Suhendar, Agustin, Saefurrohman, Sutrisno, & Gunawan, 2024). In response, current literature recommends strengthening the principle of Free, Prior, and Informed Consent (FPIC) and establishing a specialized law to provide comprehensive legal legitimacy (Putra et al., 2025; Rayhan, Putri, & Nugroho, 2025).

The urgency of this specialized legislation culminates in the Indigenous Peoples Bill, designed to provide comprehensive legal certainty to address customary rights disputes and the legitimacy of customary law in Indonesia. Various studies assert that this Bill is an effort to operationalize the constitutional mandate in resolving the ambiguous status of customary lands, which frequently triggers conflicts between the community, the state, and the private sector (Hardiyanti & Sugiyanto, 2023; Putri, 2024). The delayed enactment of this Bill is viewed as perpetuating legal uncertainty, exacerbating agrarian conflicts, and increasing the risk of criminalizing indigenous peoples for managing their customary territories (Serfiyani, Purwadi, & Kusumaputra, 2022).

However, current literature still leaves a research gap regarding the correlation between the lack of customary territory recognition and

upstream degradation as well as ecological disaster risks. The dominance of studies within the framework of human rights and agrarian conflict tends to overlook the aspects of disaster mitigation. This article fills that gap by positioning the Indigenous Peoples Bill as a preventive instrument for public safety. By focusing on the ecological vulnerability of Sumatra, this research aims to demonstrate that legal disharmony is a determinant factor in environmental destruction. This analysis will address three primary issues: the failure of sectoral regulations in upstream areas, the mechanism of the Indigenous Peoples Bill in resolving administrative deadlocks, and the urgency of its enactment as a judicial solution to minimize disaster risks. By redefining this Bill as a national mitigation instrument, this study offers an alternative legal framework to restore ecological sovereignty while ensuring sustainable public safety.

INDIGENOUS PEOPLES AS ECOLOGICAL GUARDIANS IN SUMATRA

The upstream regions of Sumatra, stretching along the Bukit Barisan mountain range—a mountainous landscape spanning approximately 1,650 kilometers from the north to the south of the island—have historically served as both a living space and a management domain for various indigenous communities. This region is characterized by rugged topography and dense tropical rainforest cover, functioning as the hydrological heart that dictates the ecological stability of downstream areas. From the Bukit Barisan range, hundreds of Sumatra's major rivers originate, including the Musi, Batanghari, Kampar, Rokan, Indragiri, and Siak, which sustain the lives of millions of inhabitants in the lowlands (Wijaya, 2021). From an ecological perspective, this upstream position establishes Bukit Barisan as the primary buffer for regional water balance. Conversely, from sociological and customary law perspectives, the upstream area is not merely perceived as a space for economic production, but as a sacred territory imbued with high cosmological, ecological, and social values.

The sustainability of these ecological functions over centuries is inseparable from the role of dozens of indigenous communities inhabiting the Bukit Barisan landscape—including the Gayo, Alas, Kluet, Pakpak, Batak (Karo, Toba, Mandailing, Angkola, Simalungun), Minangkabau, Kerinci, Malay, Rejang, Serawai, Pasemah, Semendo, and the Orang Rimba communities. The Traditional Ecological Knowledge (TEK) they have developed is manifested in spatial management systems that are far more stringent than state administrative zoning (Wijaya, 2021). Concepts such as *hutan larangan* (forbidden forests), *hutan titipan* (entrusted forests), and sacred customary areas establish strict exploitation boundaries, particularly in water catchment areas, steep slopes, and headwaters. Within this system, tree felling, land clearing, or extractive activities in designated zones are classified as severe violations of customary law, subject to collective social sanctions that are binding across generations.

Sacred forests constitute a vital element of natural sites and ecosystems protected by indigenous peoples within various cultural contexts across Indonesia. Yohanes Purwanto elaborates on how customary territoriality over community lands is categorized into spatial classifications – a consistent feature in indigenous conservation. As a means of territorial control, resource management, and collective welfare, indigenous peoples maintain distinct land-use categories comprising settlement areas, production areas, local protection areas, reserve areas, anthropic areas (territories impacted by human activity), and natural environments. Local protection areas encompass sacred sites, customary forest zones, holy places, water source areas, and locations of historical and religious significance (Purwanto, 2022). Tree felling or extractive activities in these zones are positioned as grave offenses against customary law, incurring collective and binding social sanctions. This system functions not only as a social control mechanism but also as an ecological instrument that ensures the continuity of forest cover across generations.

The ecological dimension of customary management is further integrated with an ecocentric cosmological worldview. Key mammals, such as the Sumatran tiger, Sumatran elephant, and Sumatran rhino, are not merely viewed as wildlife but are interpreted as part of the moral and social order – positioned as “parents,” “siblings,” or “protectors.” The habitats of these species are frequently designated as forbidden forests that must not be disturbed or converted, thereby indirectly creating effective indigenous-based conservation areas that maintain the integrity of the upstream ecosystem. These practices preserve vegetation continuity, strengthen soil infiltration, and control surface run-off, particularly during extreme rainy seasons (Sigit, 2015).

Ecologically, the preserved forest cover in the upstream Bukit Barisan serves as a natural drainage system that slows water flow, mitigates erosion, and prevents sediment accumulation in major rivers. In the context of Sumatra – which possesses numerous large watersheds with densely populated downstream areas – this function is a primary determinant in preventing flash floods and landslides. Thus, the presence of indigenous peoples in upstream areas is not merely a cultural phenomenon but an integral part of a historically proven ecosystem-based disaster mitigation system. The erosion of customary authority in this region, therefore, signifies not only the loss of customary rights (*hak ulayat*) but also the collapse of the natural ecological bastion that has long ensured public safety across Sumatra (Mardiana, 2025).

From a contemporary environmental law perspective, these customary practices align with the concept of Nature-Based Solutions (NbS) – an approach to disaster mitigation and adaptation that relies on the protection and restoration of natural ecosystems. Unlike technocratic approaches that rely on physical infrastructure and technical engineering, indigenous-based forest management is adaptive to local conditions, cost-effective,

and proven sustainable in the long term. Indigenous peoples serve as the first line of defense in maintaining the upstream-downstream equilibrium, making them key actors in disaster risk governance in Sumatra (UNDP, 2021; Wicaksono, 2021).

However, this strategic role has experienced erosion alongside the weakening of legal recognition for indigenous peoples and their customary territories. When customary authority is undermined by the expansion of concessions and state legal constructions that marginalize customary law, what collapses is not just collective land rights, but the ecological defense system that safeguards public safety. The loss of customary control in upstream areas signifies the loss of the earliest protection mechanism against environmental degradation. Therefore, understanding indigenous peoples as the bastion of upstream ecosystem protection is an essential foundation for interpreting the ecological crisis in Sumatra, as well as an entry point for evaluating the state's legal failure in protecting upstream regions—as will be discussed in the following section regarding the ecological crisis within a legal vacuum.

LEGAL DISHARMONY AND UPSTREAM VULNERABILITY IN SUMATRA

The Academic Draft of the Indigenous Peoples Bill explicitly demonstrates that the state's failure to protect upstream ecosystems is not merely a consequence of weak oversight or law enforcement but is rooted in systemic inconsistencies within the legislative framework. This lack of synchronization is identified as the primary source of agrarian conflict and natural resource degradation, stemming from fragmented legal regimes, overlapping authorities, and the dominance of a sectoral approach in natural resource management (DPR RI, 2020). In this context, the catastrophic floods in Sumatra in 2025 cannot be understood as mere natural events; rather, they serve as an “ecological alarm” regarding the dysfunction of forestry governance that remains extractive-oriented while neglecting the socio-ecological dimensions of upstream regions (Ichwan, 2025).

Normatively, the failure of sectoral regulations reflects the state's failure to fulfill its ecological protection function. Instead, the state reproduces environmental vulnerability through a fragmented legal design biased toward short-term economic interests. This phenomenon can be analyzed through four primary dimensions: legal fragmentation and sectoral ego, procedural inequality in indigenous recognition, the stagnation of Constitutional Court decision implementation, and the escalation of pro-investment policies via the Job Creation Law.

Legal Fragmentation and Sectoral Ego in Upstream Management

The regulations concerning indigenous peoples and customary territories in Indonesia remain sporadically dispersed across various sectoral laws, such as the Forestry Law, the Mining Law, and the Spatial Planning Law.

This fragmentation divides customary territories into competing and often contradictory legal regimes. Consequently, upstream areas—historically managed by indigenous communities as protection zones based on local wisdom—are frequently reconstructed as “State Forests” or “Industrial Allotment Areas” to facilitate the issuance of concession permits.

The dominance of the state’s sectoral ego has eroded the principles of ecosystem sustainability. Hendra Setiawan Boen and Sylviana Andhela (2025) argue that the disregard for customary sovereignty in upstream areas directly dismantles the foundations of Nature-Based Solutions (NbS) practiced by indigenous peoples for centuries. Customary management—which positions upstream forests as sacred and protective spaces—is replaced by an administrative-economic logic that normalizes deforestation. Consequently, the degradation of forest cover within concession areas transforms into the primary driver of downstream hydrometeorological disasters, including flash floods and landslides.

Procedural Inequality and the Erosion of Indigenous Legal Standing

The second dimension of sectoral regulatory failure lies in the procedural design for indigenous recognition, which is contingent upon the enactment of Regional Regulations (*Peraturan Daerah* or *Perda*). This mechanism is widely criticized as a convoluted, costly, and politically charged procedure, making it inaccessible to indigenous communities at the local level. In many cases, indigenous recognition becomes dependent on local political dynamics rather than the social and historical reality of the communities’ existence (DPR RI, 2010).

These conditions create a sharp structural inequality. On one hand, following the Job Creation Law, corporate business permits in upstream areas can be issued through a relatively fast and standardized central administrative route. On the other hand, indigenous peoples lack sufficient legal standing to defend their customary territories from industrial expansion. This disparity reinforces the thesis that ecological disasters in Sumatra are “administrative disasters”—catastrophes born from a legal system that consciously prioritizes short-term economic growth over ecosystem integrity and local livelihoods.

The Implementation Stagnation of Constitutional Court Decision No. 35/PUU-X/2012

The third dimension relates to the weak enforceability of Constitutional Court Decision No. 35/PUU-X/2012, which explicitly declared that customary forests are not part of State Forests. Normatively, this ruling is a significant constitutional milestone in the recognition of indigenous rights. However, more than a decade since the ruling, field implementation still faces serious obstacles.

The lack of executive power behind Decision No. 35/PUU-X/2012 is not due to a deficit of constitutional norms, but rather the absence

of operational legal instruments capable of translating the ruling into administrative practice. The Court's decision is "declarative-constitutional" and requires an umbrella act as a tool for the national unification of indigenous recognition. Until now, recognition remains tethered to *Perda*, a procedure that is political, slow, and inconsistent across regions. This causes the rights over customary forests reaffirmed by the Court to not automatically imply a change in land status on the ground; thus, recognition remains casuistic and dependent on local political will.

This issue is exacerbated by the disharmony of sectoral regulations governing natural resources. Various laws in forestry, plantation, mining, and spatial planning still operate within a paradigm of state control over forests, using differing administrative indicators to define the existence of indigenous peoples. Consequently, although customary forests have been legally removed from the category of state forests, they remain administratively vulnerable to being classified as concession areas. The overlapping authority between ministries and the reliance on technical regulations that do not align with Decision 35/2012 has paralyzed the transformative power of the ruling, rendering the recognition of customary forests structurally ineffective.

In this context, the Indigenous Peoples Bill is positioned as a key instrument to end the implementation deadlock. The Bill is designed to eliminate dependency on *Perda*-based mechanisms, unify national indicators for indigenous recognition, and bind all natural resource management sectors within a single coherent legal framework. Without this Bill, Decision 35/2012 will continue to suffer from an enforcement deficit and be overridden by pro-expansion administrative practices. Therefore, the enactment of the Indigenous Peoples Bill is not merely a constitutional mandate but a structural prerequisite for restoring indigenous sovereignty and integrating forest protection into disaster mitigation and public safety.

The Job Creation Law as an Escalation of Sectoral Regulatory Failure

The crisis of legal uncertainty and ecological vulnerability reached its escalation point following the implementation of the Job Creation Law. Although the Job Creation Law was designed as a strategic instrument to accelerate economic growth and improve the investment climate, its implementation poses serious risks to forest protection if it is not balanced by policies that firmly prioritize environmental sustainability. In the forestry sector, the Job Creation Law has fundamentally altered the legal framework governing forest area confirmation, the determination of forest area size, changes in forest designation and function, the utilization of protected and production forests, business licensing mechanisms, the management of Non-Tax State Revenue (PNBP), and the division of authority between central and regional governments. These regulatory changes, including revisions to prohibitions against forest destruction and adjustments to sanctions—particularly the removal of the principle of strict liability—have the potential

to weaken the effectiveness of forest law enforcement. This new regulatory configuration opens greater opportunities for increased forest area conversion, reduces community participation in forest management, and creates spaces of impunity for business actors who commit environmental violations (Dwiarti, Syarif, & Suhartina, 2025).

The risk of weakening forest protection becomes even more apparent at the level of policy implementation. Galgani's (2025) study on the enforcement of Government Regulation No. 24 of 2010 demonstrates that, even prior to the enactment of the Job Creation Law, the use of forest-area regulation as a preventive instrument against illegal land clearing was already constrained by structural deficiencies. These included weak supervision, overlapping institutional authorities, and ineffective law enforcement, despite forest areas being formally designated for sustainable use. As a result, production forests were frequently subjected to unauthorized land conversion by corporate actors and individuals lacking official permits, threatening ecosystem sustainability and causing significant state losses.

In the post-Job Creation Law context, these pre-existing vulnerabilities are likely to intensify. Licensing deregulation and the increasing centralization of authority risk further diminishing ecological control at the local level, particularly where regional institutions lack sufficient capacity and autonomy. Without strengthened inter-agency coordination, enhanced regional governance structures, and meaningful community participation in forest monitoring, the pro-growth orientation embedded in the Job Creation Law may inadvertently accelerate forest degradation rather than prevent it. This condition underscores the need to rebalance economic development objectives with a strong, consistent, and equitable environmental policy framework to ensure that forest protection remains a cornerstone of sustainable national development (Galgani, 2025).

These structural weaknesses are not merely theoretical but are increasingly substantiated by empirical monitoring. Reports from the Independent Forestry Monitoring Network (JPIK, 2025) reveal that the Job Creation Law has effectively created a "zone of impunity" for forest destruction in Sumatra through a series of judicial and administrative mechanisms (Ichwan, 2025). Among the most critical is the administrative legalization of unauthorized business activities within forest areas, which functions as a form of regulatory "whitewashing." Through this mechanism, activities that were previously illegal are granted formal legal status without the imposition of adequate criminal sanctions. Consequently, the deterrent function of forest law enforcement is weakened, and ecological harm becomes normalized within the legal system itself (Mongabay, 2025).

Second, the removal of the 30 percent minimum forest cover threshold for watersheds or provincial areas has eliminated the last bastion of upstream ecosystem protection. Without a clear normative threshold, ecologically sensitive upstream areas can be fully opened for investment without considering environmental carrying capacity. Third, the weakening of the

Environmental Impact Assessment (AMDAL) and the simplification of business licensing – where environmental permits are merged into business licenses – have curtailed oversight of field-level ecological impacts. JPIK findings indicate that sanctions against corporations violating forestry provisions are often merely administrative-evaluative and lack a deterrent effect.

The combination of sectoral ego and pro-investment regulations within the Job Creation Law creates a policy paradox: the state allows upstream areas to be extractively exploited while simultaneously demanding resilience against disasters. This paradox underscores the failure of sectoral regulations to perform their functions of ecological protection and public safety. The regulatory disharmony, reinforced by the empirical facts of ecological disasters in Sumatra, suggests that a sectoral approach to natural resource management is no longer sufficient. Therefore, legal unification through the enactment of the Indigenous Peoples Bill is an absolute prerequisite for ending the dualism of upstream management, restoring local wisdom-based ecological sovereignty, and ensuring sustainable public safety. In this perspective, the Indigenous Peoples Bill functions not only as an instrument for rights recognition but as the legal foundation for disaster mitigation that places the principle of *salus populi suprema lex esto* as the primary orientation of state policy.

REPOSITIONING THE INDIGENOUS PEOPLES BILL FOR DISASTER MITIGATION

The systemic failures that have birthed “zones of impunity” in Sumatra’s upstream regions demand judicial interventions that are no longer sectoral or reactive, but transformative and integrated. As previously elucidated, the degradation of upstream ecosystems is inextricably linked to the absence of a legal framework that explicitly recognizes, protects, and empowers indigenous peoples as the primary subjects of territorial management. In this context, the Indigenous Peoples Bill must be understood not only as an instrument for identity recognition or the fulfillment of human rights but also as a legal foundation for disaster mitigation centered on the restoration of ecological sovereignty.

The Indigenous Peoples Bill repositions indigenous communities from administrative objects to key actors in upstream ecosystem protection. By terminating regulatory fragmentation and affirming the legal status of customary territories, this Bill introduces a novel approach to natural resource governance – one that integrates legal certainty, social justice, and ecological safety. Based on the normative design within its Academic Draft, there are at least four strategic mechanisms that establish the Indigenous Peoples Bill as an instrument for disaster mitigation and ecological restoration in upstream Sumatra.

The Indigenous Peoples Bill as an Umbrella Act

A primary root of ecological vulnerability in upstream regions is the sluggish pace of legal recognition for indigenous peoples, caused by dependency on bureaucratic, costly, and politically charged Regional Regulation (*Perda*) mechanisms. The Indigenous Peoples Bill offers a fundamental breakthrough through the unification and simplification of recognition procedures that are national, integrated, and grounded in the historical, anthropological, and sociological realities of indigenous existence (DPR RI, 2020). This approach ends the practice of casuistic and inconsistent recognition across different regions.

From a disaster mitigation perspective, the unification of recognition procedures carries crucial preventive significance. Swift and certain recognition allows indigenous communities in Sumatra's upstream regions to obtain legal standing early on, enabling them to protect their customary territories from the expansion of forestry, plantation, and mining concessions. Consequently, potential ecological damage—which in many cases is only addressed after a disaster occurs—can be prevented before forest cover is destroyed and upstream hydrological functions are degraded. Therefore, the Bill serves as an instrument of preventive legal protection that has hitherto been absent from the Indonesian environmental law system.

As an umbrella act, the Indigenous Peoples Bill is designed to perform horizontal synchronization across various sectoral laws that have functioned in isolation and are frequently contradictory. This Bill affirms that the recognition of customary territories carries binding consequences for all natural resource management sectors, including forestry, mining, plantations, and spatial planning.

In this regard, the Indigenous Peoples Bill functions as a regulatory control mechanism against the escalation of deregulation introduced by the Job Creation Law. Once an area is designated as a customary territory, mechanisms for legalizing unauthorized activities (*whitewashing*), the removal of minimum forest cover thresholds, and the simplification of licensing cannot be automatically applied within that territory. This synchronization terminates the dualism in upstream management and asserts that ecological safety and the protection of local communities cannot be sacrificed for short-term investment interests. Thus, the Indigenous Peoples Bill restores the state's function as the protector of public interests and strategic ecosystems.

Restoring Upstream Functions Through Nature-Based Solutions (NbS) and Meaningful Participation Based on Customary Law

The recognition of customary rights through the Indigenous Peoples Bill possesses more than a judicial-administrative dimension; it substantively reactivates customary law as a protective, adaptive, and sustainable ecological management system. In many indigenous communities across Sumatra, customary law has long governed spatial and natural resource

management through strict ecological zoning, such as *hutan larangan* (forbidden forests), *hutan titipan* (entrusted forests), sacred sites, and water buffer zones. These zones are not mere cultural constructions but functional ecological instruments that maintain soil stability, regulate hydrological cycles, and protect headwaters from overexploitation. This customary-based management practice aligns conceptually with the Nature-Based Solutions (NbS) approach, which prioritizes the protection and restoration of natural ecosystems as a primary strategy for disaster mitigation and adaptation (UNDP, 2021; Wicaksono, 2021).

Unlike technocratic approaches that rely on artificial infrastructure—such as dams, embankments, or river normalization—management based on customary law has proven more responsive to local ecological dynamics. Traditional Ecological Knowledge (TEK) enables indigenous peoples to interpret signs of environmental vulnerability, maintain upstream vegetation cover, and naturally preserve the upstream-downstream water balance. The Indigenous Peoples Bill restores this ecological sovereignty by mandating the management of customary forests to indigenous peoples as the natural guardians of the ecosystem. Consequently, the function of upstream regions as ecological bastions for downstream areas is not only restored but managed through systems tested across generations, simultaneously reducing state dependence on technical solutions that are expensive, reactive, and often fail to address socio-ecological complexities.

However, the restoration of upstream ecological functions will not be effective without institutional mechanisms that guarantee the substantive involvement of indigenous peoples in decision-making. In this context, the Indigenous Peoples Bill strengthens the principle of meaningful participation through the application of Free, Prior, and Informed Consent (FPIC) (Anderson, 2011). This principle ensures that any extractive or development plans within customary territories can only be executed after obtaining consent that is free from coercion, preceded by adequate consultation, and based on comprehensive information understood by the community. FPIC thus transcends formalistic consultation procedures and positions indigenous peoples as legal subjects with genuine authority over their living spaces.

In the perspective of public safety and disaster mitigation, FPIC functions as a preventive judicial early warning system. Indigenous peoples—as the group living directly in upstream areas and most vulnerable to the impacts of floods, landslides, and environmental degradation—are given the role of the first line of defense against ecological threats. The right to grant or withhold consent for high-risk projects effectively serves as a social and ecological control mechanism capable of halting destruction before it reaches an irreversible point (Boen & Andhela, 2025). By granting environmental control to local communities, the Indigenous Peoples Bill ensures that upstream management decisions are not based solely on short-term economic calculations, but on local knowledge, historical experience, and the long-term safety interests of both society and the ecosystem.

JUDICIAL IMPLICATIONS AND IMPLEMENTATION CHALLENGES OF THE INDIGENOUS PEOPLES BILL

The enactment of the Indigenous Peoples Bill carries significant judicial implications for the architecture of natural resource management law in Indonesia. This Bill functions not only as an instrument for recognizing indigenous rights but also as a corrective mechanism for the structural failures of sectoral laws that have historically precipitated agrarian conflicts, ecological degradation, and disaster vulnerability. From a public law perspective, the Indigenous Peoples Bill represents a paradigm shift from a state-control approach toward rights-based governance, wherein the state acts as a guarantor of ecological safety and a protector of the collective rights of indigenous peoples.

Judicial Implications for Natural Resource Governance

Normatively, the Indigenous Peoples Bill directly implies a restructuring of natural resource management authority, particularly within customary territories currently ensnared in overlapping sectoral legal regimes. The Bill affirms the recognition of indigenous peoples and their customary territories as subjects of public law; consequently, the existence of customary land rights (*hak ulayat*) is no longer derivative of sectoral policies but obtains direct legitimacy from the law. Thus, all forestry, mining, plantation, and spatial planning policies must align with the established legal status of customary territories.

Another vital implication is the strengthening of legal certainty in upstream management. Through standardized national recognition, the Bill closes the administrative loopholes that previously allowed the state to classify upstream areas as "State Forests" or industrial zones without considering indigenous presence. Consequently, the post-Job Creation Law licensing regime can no longer be automatically applied within customary territories, as *hak ulayat* gains a judicial standing that binds all sectors. In this context, the Bill functions as a legal safeguard that integrates ecological protection into the natural resource legal system.

Furthermore, this Bill provides a legal basis for restoring the ecological functions of upstream areas as a matter of public interest. By positioning indigenous peoples as the primary managers of their customary territories, the state indirectly adopts an ecosystem-based disaster mitigation approach. This underscores that the protection of indigenous peoples is inseparable from environmental protection and public safety, as the degradation of upstream customary territories has direct implications for downstream disaster risks.

Implementation Challenges and Structural Resistance

Although the Indigenous Peoples Bill is designed with a progressive normative framework targeting sectoral legal loopholes, the implementation challenges are complex and structural, transcending mere administrative

hurdles. First, there is significant political resistance and a lack of inter-agency coordination within the legislative process itself. According to reports from the Indigenous Peoples Alliance of the Archipelago (AMAN), the enactment has been delayed for years due to a lack of political commitment and inadequate coordination among ministries in drafting the Problem Inventory List (DIM) required for cross-sectoral deliberation. This stagnant legislative process indicates that structural resistance stems not only from external forces like investment interests but also from a bureaucratic unreadiness to place indigenous protection as a national priority (Baskoro, 2021).

Second, beyond political hurdles, there are substantial challenges regarding the quality of the Bill's substance. Academics from Universitas Gadjah Mada (UGM) note that despite being included in the National Legislation Program (Prolegnas) for over a decade, the circulating drafts are still considered inadequate in resolving fundamental issues such as sectoral regulatory fragmentation and ambiguous recognition indicators (Andriyani, 2025a). This critique suggests that resistance to the Bill is not only political but also normative—reflecting a lack of consensus on how the Bill should be formulated to address the complexities of agrarian conflict and ecological damage caused by sectoral laws.

Third, the potential compromise regarding FPIC (Free, Prior, and Informed Consent) and meaningful participation poses a significant challenge. While the Bill strengthens FPIC as an ecological control instrument, there remains a risk of reducing it to a mere administrative procedure, especially if the bureaucracy lacks a strong commitment to indigenous authority. Without effective sanction mechanisms and guarantees of indigenous involvement in decision-making, FPIC may lose its substantive binding power and function merely as a “pseudo-consultation” ritual.

Fourth, these administrative and substantive challenges are exacerbated by political uncertainty in both the Parliament and the Executive, which tend to prioritize investment agendas. This sectoral resistance demonstrates that without robust political support, the Indigenous Peoples Bill risks becoming mere “paper law”—a legal instrument with no actual capacity to protect customary territories from environmentally destructive exploitation (Wardah, 2021).

Ultimately, the effectiveness of the Indigenous Peoples Bill will depend on its capacity to transcend formal legal certainty and confront entrenched agrarian politics rooted in sectoral fragmentation and extractive economic interests. Implementation challenges extend beyond procedural administration to structural barriers that have long reproduced ecological vulnerability in Sumatra. Without comprehensive bureaucratic reform, regulatory harmonization, and firm political commitment supported by strict oversight, the Bill risks remaining a symbolic instrument rather than a transformative legal framework capable of breaking the cycle of “administrative disasters” in upstream ecosystems.

Despite these challenges, the Indigenous Peoples Bill retains a potent transformative potential to reform natural resource governance and national disaster mitigation policies. By consolidating indigenous recognition into a single umbrella act, it provides a coherent legal framework to integrate indigenous rights, ecosystem protection, and public safety into a unified policy system. It repositions indigenous peoples not as objects of development, but as strategic partners of the state in maintaining ecological stability and reducing disaster risks.

CONCLUSION

This study examines legal disharmony as a determinant factor in environmental destruction in Sumatra, which escalates ecological disaster risks in upstream regions. Furthermore, this research confirms the urgency of the Indigenous Peoples Bill as a preventive disaster mitigation instrument. The primary findings indicate that the failure of sectoral regulations—characterized by legal fragmentation, procedural inequality in indigenous recognition, the stagnation of Constitutional Court Decision No. 35/PUU-X/2012, and the escalation of deregulation via the Job Creation Law—has undermined the protective function of the law and marginalized the role of indigenous peoples as ecosystem guardians. This study asserts that the Indigenous Peoples Bill offers a preventive and transformative judicial solution through the unification of recognition, the strengthening of legal standing, cross-sectoral synchronization, and the mainstreaming of Nature-Based Solutions and the FPIC principle; thus, it warrants a strategic position as a national disaster mitigation instrument. The research further emphasizes that the enactment of the Indigenous Peoples Bill is an urgent judicial solution to resolve the implementation deadlock of Decision No. 35/2012 and to synchronize the historically fragmented governance of natural resources. The limitations of this study lie in its normative-judicial approach without an in-depth quantitative case study across multiple regions. Future research is suggested to empirically test the effectiveness of customary territory recognition in reducing disaster risks and enhancing socio-ecological resilience across diverse regional contexts.

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