



The Green Economy vs. Indigenous Rights: A Study of the Indonesian Investment Law and Its Impact on Climate Justice

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Abstract

This research investigates the tension between the green economy agenda and indigenous rights in Indonesia, specifically through the lens of the Indonesian Investment Law (UU No. 25/2007) and its implications for climate justice. As Indonesia pushes for a transition toward a greener economy, the government has prioritized large-scale investments in renewable energy, infrastructure, and sustainable industries. However, these developments often intersect with the territories and livelihoods of indigenous communities, raising concerns about land rights, displacement, and the erosion of cultural heritage. The study critically analyzes how the Indonesian Investment Law, designed to attract foreign and domestic investments, interacts with environmental and social policies affecting indigenous peoples. Through a combination of legal analysis, field surveys, and interviews with indigenous leaders, environmental activists, and policymakers, this research examines the practical and legal challenges



indigenous communities face in securing land rights amidst the push for green economic development. The findings highlight a fundamental conflict between the promotion of green economic policies and the protection of indigenous rights, with many communities reporting limited consultation, inadequate compensation, and negative environmental impacts resulting from large-scale green projects. The study argues that climate justice cannot be fully realized without integrating indigenous rights into the green economy framework, offering policy recommendations to ensure that indigenous voices are included in climate adaptation and sustainable development strategies. This research contributes to the broader discourse on balancing economic growth, environmental protection, and social equity in Indonesia's climate policy.

[Penelitian ini menyelidiki ketegangan antara agenda ekonomi hijau dan hak-hak masyarakat adat di Indonesia, khususnya melalui lensa UU No. 25/2007 dan implikasinya terhadap keadilan iklim. Seiring dengan upaya Indonesia untuk bertransisi menuju ekonomi yang lebih hijau, pemerintah telah memprioritaskan investasi skala besar di bidang energi terbarukan, infrastruktur, dan industri berkelanjutan. Namun, perkembangan ini seringkali bersinggungan dengan wilayah dan mata pencaharian masyarakat adat, sehingga menimbulkan kekhawatiran tentang hak atas tanah, pengusuran, dan erosi warisan budaya. Studi ini secara kritis menganalisis bagaimana UU No. 25/2007, yang dirancang untuk menarik investasi asing dan domestik, berinteraksi dengan kebijakan lingkungan dan sosial yang memengaruhi masyarakat adat. Melalui kombinasi analisis hukum, survei lapangan, dan wawancara dengan para pemimpin adat, aktivis lingkungan, dan pembuat kebijakan, penelitian ini mengkaji tantangan praktis dan hukum yang dihadapi masyarakat adat dalam mengamankan hak atas tanah di tengah dorongan pembangunan ekonomi hijau. Temuan-temuan tersebut menyoroti konflik mendasar antara promosi kebijakan ekonomi hijau dan perlindungan hak-hak masyarakat adat, dengan banyak komunitas melaporkan konsultasi yang terbatas, kompensasi yang tidak memadai, dan dampak lingkungan negatif yang diakibatkan oleh proyek-proyek hijau berskala besar. Studi ini berpendapat bahwa keadilan iklim tidak dapat sepenuhnya terwujud tanpa mengintegrasikan hak-hak masyarakat adat ke dalam kerangka ekonomi hijau, serta menawarkan rekomendasi kebijakan untuk memastikan suara masyarakat adat diikutsertakan dalam strategi adaptasi iklim dan pembangunan berkelanjutan. Penelitian ini berkontribusi pada wacana yang lebih luas tentang menyeimbangkan pertumbuhan ekonomi, perlindungan lingkungan, dan kesetaraan sosial dalam kebijakan iklim Indonesia.]

Keywords: Green Economy, Indigenous Rights, Climate Justice, Investment Law, Indonesia

Introduction

Indonesia has increasingly positioned itself as a significant actor in the global transition toward a green economy, particularly in relation to climate change mitigation and sustainable development.¹ As a country with high greenhouse gas emissions and considerable vulnerability to climate impacts, Indonesia has adopted policy commitments aimed at reducing emissions while sustaining economic growth.² These commitments are reflected in national development strategies that integrate low-carbon development, renewable energy expansion, and environmental sustainability, in line with international climate frameworks such as the Paris Agreement.³

A central component of Indonesia's green economic transition is the expansion of renewable energy, sustainable infrastructure, and environmentally oriented investment.⁴ Government initiatives have prioritized sectors including geothermal energy, hydropower, solar power, and bioenergy, as well as large-scale infrastructure projects intended to support energy efficiency and sustainable resource use.⁵ Investment policies are framed as key instruments for accelerating technological innovation, attracting foreign capital, and enhancing national competitiveness within the emerging global green economy.⁶

The Indonesian Investment Law has been designed to facilitate this transition by streamlining regulatory procedures, offering fiscal incentives, and strengthening legal certainty for investors. Through these measures, the state seeks to reduce bureaucratic barriers and encourage private sector participation in green development projects. However, the strong emphasis on investment facilitation has also led to a regulatory focus that prioritizes economic efficiency and capital inflows, often at the expense of social and environmental safeguards. This creates a gap between the stated sustainability objectives of green investment policies and their practical implementation on the ground.

These regulatory and policy gaps are particularly evident in relation to indigenous peoples (*Masyarakat Adat*), who continue to experience persistent

¹ Naufal Abyan, "Transition towards a Green Economy in Sustainable Growth: An Analysis of Regulation and Practice in Indonesia." *Clean and Sustainability Business* 1, no. 1 (2025): 16-28; Zachary R. Anderson, et al. "Green growth rhetoric versus reality: Insights from Indonesia." *Global Environmental Change* 38 (2016): 30-40.

² Mariah Measey, "Indonesia: a vulnerable country in the face of climate change." *Global Majority E-Journal* 1, no. 1 (2010): 31-45; Shinji Kaneko, and Masato Kawanishi, eds. *Climate change policies and challenges in Indonesia*. Tokyo: Springer, 2016.

³ Ucok WR, Siagian, et al. "Low-carbon energy development in Indonesia in alignment with Intended Nationally Determined Contribution (INDC) by 2030." *Energies* 10, no. 1 (2017): 52.

⁴ Dinda Keumala, et al. "Indonesia's Sustainable Green Economy Policy in the Energy Sector: Challenges and Expectations." *Jurnal Media Hukum* 32.1 (2025): 1-20.

⁵ Fahmi, Yunita. "Renewable energy development towards indonesia's energy transition: Technological innovations for a sustainable future." *Journal of Innovation Materials, Energy, and Sustainable Engineering* 2.2 (2025): 95-109.

⁶ Goncharenko, Nataliia, and Vladyslav Shapoval. "Eco-innovation financing as an element of a "green" economy formation in the globalization conditions of sustainable development." *Green, Blue and Digital Economy Journal* 2.2 (2021): 15-23.

marginalization within Indonesia's development framework. Indigenous communities possess customary land tenure systems and collective resource management practices that are closely tied to their cultural identity and environmental stewardship.⁷ Nevertheless, the legal recognition of indigenous land rights remains fragmented and uneven, resulting in limited protection against land acquisition for investment-driven projects, including those labelled as "green" or "sustainable."⁸

The expansion of renewable energy projects and sustainable infrastructure has increasingly intersected with indigenous territories, exposing gaps in consultation, participation, and consent mechanisms. While Indonesian law formally acknowledges certain indigenous rights, their implementation is often weak, particularly in the context of strategic national projects and investment priorities. The absence of clear, enforceable standards for free, prior, and informed consent (FPIC) within investment processes highlights a significant gap between international human rights norms and domestic investment regulation.⁹

These gaps underscore a broader tension between Indonesia's green economy agenda and the principles of climate justice. Although green investments are promoted as solutions to environmental degradation and climate change, insufficient attention to indigenous rights risks reproducing historical patterns of exclusion and inequality. The lack of integration between climate policy, investment law, and indigenous rights protection reveals a critical governance gap, raising questions about whether Indonesia's green economic transition can be considered just and inclusive for indigenous peoples.¹⁰

The development of Indonesia's green economy has generated a fundamental tension between environmental objectives and the protection of

⁷ Buana, Andika Prawira, and Moch Andry Wikra Wardhana Mamonto. "The Role of Customary Law in Natural Resource Management: A Comparative Study between Indonesia and Australia." *Golden Ratio of Mapping Idea and Literature Format* 3.2 (2023): 167-186; Basiago, Andrew D. "Sustainable development in Indonesia: A case study of an indigenous regime of environmental law and policy." *The International Journal of Sustainable Development & World Ecology* 2.3 (1995): 199-211.

⁸ See also Pongen, Osensang. *Climate Action and Indigenous Land Relations: A Case Study in Nagaland, Northeastern India*. Diss. University of South Florida, 2022; Sihombing, B. F., and Farhan Hamid. "Land Law Evolution and Investment Dynamics: Historical Perspective and Contemporary Development Nexus." *Lex Publica* 10.1 (2023): 66-83; Kasyfilham, Faiz, and Neny Marlina. "From Spatial Potential to Extractive Reality: The Politics of Nickel and Energy Transition in Morowali." *IOP Conference Series: Earth and Environmental Science*. Vol. 1537. No. 1. IOP Publishing, 2025.

⁹ See Hassan, Muhamad Sayuti, 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 and Policy*. Routledge, 2025. 284-296; Kusniati, Retno. "Free, prior, and informed consent principles as Indigenous peoples' right: soft law or hard law?" *Jambe Law Journal* 7.1 (2024): 169-193.

¹⁰ Elliott, Lorraine, and Abidah B. Setyowati. "Toward a socially just transition to low carbon development: The case of Indonesia." *Asian Affairs* 51.4 (2020): 875-894; Listyani, Ajeng Aditya. "Green Investment as a Guarantee to Protect the Indigenous People's Rights." *Unifikasi: Jurnal Ilmu Hukum* 11.01 (2024): 29-39.

indigenous land and cultural rights.¹¹ While green economic initiatives are promoted as pathways to sustainable development and climate mitigation, their implementation often relies on land-intensive projects that intersect with indigenous territories. For indigenous peoples (*Masyarakat Adat*), land is not merely an economic asset but a central element of cultural identity, social organization, and spiritual life.¹² The expansion of renewable energy, conservation, and sustainable infrastructure projects has, in many instances, threatened customary land tenure systems and traditional livelihoods, revealing a structural conflict between green development agendas and indigenous rights protection.

This tension is closely linked to the role of the Indonesian Investment Law (Law No. 25 of 2007), which serves as a key legal framework for facilitating large-scale investment projects, including those associated with the green economy.¹³ The law emphasizes investment liberalization, legal certainty, and investor protection, thereby prioritizing economic growth and capital attraction.¹⁴ However, its provisions provide limited safeguards for indigenous land and cultural rights, particularly in contexts where customary land is not formally recognized by the state.¹⁵ As a result, the Investment Law can function as a legal mechanism that enables green economic projects while inadequately addressing their social and cultural impacts, raising critical concerns regarding equity, accountability, and climate justice.¹⁶

¹¹ Waluyo, Eko Baroto, and Bambang Guritno. "Harmonizing Ecotourism in Indonesia: Balancing the Green Economy, Cultural Heritage, and Biodiversity." *International Conference on Digital Advanced Tourism Management and Technology*. Vol. 1. No. 1. 2023; Abyan, Naufal. "Transition towards a Green Economy in Sustainable Growth: An Analysis of Regulation and Practice in Indonesia." *Clean and Sustainability Business* 1.1 (2025): 16-28.

¹² Thamrin, H. "Management aspects of indigenous lands in environmental conservation." *IOP Conference Series: Earth and Environmental Science*. Vol. 894. No. 1. IOP Publishing, 2021; Ririheana, Samel W., et al. "Establishing Land Rights: The Vital Role of Indigenous Community Institutions in Controlling Land Ownership Certificates." *International Journal of Social Science and Business* 8.1 (2024): 182-189.

¹³ Nurhidayah, Laely, et al. "Indonesia's Just Energy Transition: The Societal Implications of Policy and Legislation on Renewable Energy." *Climate Law* 14.1 (2024): 36-66; Anderson, Zachary R., et al. "Green growth rhetoric versus reality: Insights from Indonesia." *Global Environmental Change* 38 (2016): 30-40.

¹⁴ Barus, Sabari, Budiman Ginting, and Faisal Akbar Nasution Saidin. "Balancing the Role of Foreign Investment in Economic Growth and Achieving Prosperity, Study in Indonesian Law and Experience." *Law and Humanities Quarterly Reviews* 112 (2020); Taduri, Januari Nasya Ayu. "The Legal Certainty and Protection of Foreign Investment Against Investment Practices in Indonesia." *Lex Scientia Law Review* 5.1 (2021): 119-138.

¹⁵ Fahmi, Chairul. "The application of international cultural rights in protecting Indigenous peoples' land property in Indonesia." *AlterNative: An International Journal of Indigenous Peoples* 20.1 (2024): 157-166; Van der Muur, Willem. "Forest conflicts and the informal nature of realizing indigenous land rights in Indonesia." *Citizenship Studies* 22.2 (2018): 160-174.

¹⁶ Sudiana, Anak Agung KT, Ni Putu Noni Suharyanti, and Umirov Fitrat Faxriddinovich. "Assessing the Government's Commitment to Achieving Ecological Justice for Society." *Journal of Human Rights, Culture and Legal System* 5.1 (2025): 91-123; Elliott, Lorraine, and Abidah B. Setyowati. "Toward a socially just transition to low carbon development: The case of Indonesia." *Asian Affairs* 51.4 (2020): 875-894.

This study is guided by three interrelated research questions. First, it examines how the Indonesian Investment Law interacts with existing legal frameworks for the protection of indigenous peoples' rights, particularly in relation to land tenure, participation, and legal recognition. This question seeks to identify areas of convergence and conflict between investment-oriented regulations and indigenous rights norms within Indonesia's legal system.

Second, the research investigates the impacts of green investment projects on indigenous land tenure systems and livelihoods. This includes an analysis of how renewable energy development, sustainable infrastructure, and conservation-oriented investments affect access to land, natural resources, and traditional economic practices of indigenous communities.

Third, the study assesses the extent to which Indonesia's current green economy and investment policies align with the principles of climate justice. This question focuses on whether existing policies ensure equitable distribution of benefits and burdens, meaningful participation of indigenous peoples, and the protection of cultural and environmental rights in the context of climate mitigation efforts.

This study aims to analyze the legal framework governing green investments in Indonesia, with particular focus on the Indonesian Investment Law and its role in facilitating climate-oriented development, while simultaneously assessing the socio-environmental impacts of such investments on indigenous communities (*Masyarakat Adat*), including effects on land tenure, livelihoods, and cultural practices. Additionally, the study seeks to evaluate the extent to which Indonesia's green economy agenda is compatible with the principles of climate justice, particularly in terms of equity, participation, and the protection of indigenous rights in the context of climate mitigation and sustainable development.

This study contributes to scholarly debates on climate justice, indigenous rights, and investment law by critically examining the intersections between green economic development and the legal protection of indigenous peoples in Indonesia.¹⁷ By analyzing how investment-oriented legal frameworks shape the implementation of climate mitigation initiatives, the research advances understanding of the socio-legal dimensions of the green economy and highlights gaps between sustainability objectives and rights-based governance. In addition, the study holds policy relevance by providing insights for the development of more inclusive and equitable approaches to sustainable development, offering guidance for policymakers seeking to align green investment strategies with indigenous rights protection and climate justice principles.

¹⁷ Listyani, Ajeng Aditya. "Green Investment as a Guarantee to Protect the Indigenous People's Rights." *Unifikasi: Jurnal Ilmu Hukum* 11.01 (2024): 29-39; Yani, Ahmad, and Tria Noviantika. "The Antinomy of Green Economy Implementation Towards Indigenous People in Natural Resources Management." *IOP Conference Series: Earth and Environmental Science*. Vol. 1270. No. 1. IOP Publishing, 2023.

Conceptual and Theoretical Framework

A. The Green Economy Concept

The concept of the green economy has emerged as a prominent framework for addressing the interrelated challenges of environmental degradation, economic development, and climate change.¹⁸ Broadly defined, a green economy is one that aims to improve human well-being and social equity while significantly reducing environmental risks and ecological scarcities.¹⁹ It emphasizes low-carbon development, efficient resource use, and the preservation of ecosystem services as foundational elements of sustainable economic growth.

The evolution of the green economy concept can be traced to international environmental discourse, particularly following the 2008 global financial crisis and the 2012 United Nations Conference on Sustainable Development (Rio+20).²⁰ During this period, the green economy was promoted as a policy response capable of simultaneously stimulating economic recovery and addressing environmental crises.²¹ International institutions and governments increasingly adopted the concept to frame policies on renewable energy, green infrastructure, and sustainable investment.

Despite its broad appeal, the green economy remains a contested concept. Critics argue that it often prioritizes economic growth and market-based solutions while inadequately addressing underlying structural inequalities.²² In practice, green economy initiatives are frequently implemented through large-scale projects and private investment, raising concerns about whose interests are served and who bears the social and environmental costs of such development.

A key theoretical debate within the green economy discourse concerns the distinction between green growth and sustainable development paradigms. Green growth emphasizes continued economic expansion through technological innovation, efficiency improvements, and environmental regulation. In contrast, sustainable development adopts a more holistic approach, integrating environmental protection, social equity, and intergenerational justice as co-equal objectives rather than treating economic growth as the primary goal.

¹⁸ Trushkina, Nataliia. "Green economy in the conditions of modern challenges: conceptual frameworks." *International Science Journal of Management, Economics & Finance* 1.1 (2022); Loiseau, Eleonore, et al. "Green economy and related concepts: An overview." *Journal of Cleaner Production* 139 (2016): 361-371.

¹⁹ Barbier, Edward B., and Anil Markandya. *A new blueprint for a green economy*. Routledge, 2013.

²⁰ Morrow, Karen. "Rio+ 20, the green economy and re-orienting sustainable development." *Environmental Law Review* 14.4 (2012): 279-297.

²¹ Strand, Jon, and Michael Toman. "Green Stimulus," *Economic Recovery, and Long-Term Sustainable Development*. Washington, DC: World Bank, 2010; Adamowicz, Mieczysław. "Green deal, green growth and green economy as a means of support for attaining the sustainable development goals." *Sustainability* 14.10 (2022): 5901.

²² Styhre, Alexander, and Ola Bergström. "The benefit of market-based governance devices: Reflections on the issue of growing economic inequality as a corporate concern." *European Management Journal* 37.4 (2019): 413-420.

This tension is particularly relevant in developing country contexts such as Indonesia, where green economy policies are closely tied to investment-led growth strategies. While green growth approaches may generate environmental benefits, they risk reinforcing existing power asymmetries if social justice considerations, including indigenous rights, are treated as secondary concerns. Understanding these conceptual debates is essential for critically assessing the normative foundations of Indonesia's green economy agenda.

B. Indigenous Rights and Land Tenure

Indigenous peoples' rights have gained increasing recognition within international law, particularly through instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organization Convention No. 169.²³ These frameworks affirm indigenous peoples' rights to self-determination, cultural integrity, and control over their traditional lands, territories, and resources. They also emphasize the importance of free, prior, and informed consent (FPIC) in decisions affecting indigenous communities.²⁴

International legal standards recognize land as central to indigenous identity, livelihoods, and governance systems.²⁵ Land is not merely an economic resource but a foundation for social relations, spiritual practices, and environmental stewardship. Consequently, the protection of indigenous land rights is closely linked to broader human rights and environmental sustainability objectives, particularly in contexts where indigenous territories overlap with ecologically sensitive areas.

In Indonesia, indigenous peoples, commonly referred to as *Masyarakat Adat*, have long maintained customary land tenure systems known as *tanah adat*. These systems regulate access to land and natural resources through communal norms and traditional authority structures. Customary land tenure has historically contributed to sustainable resource management, reflecting indigenous ecological knowledge and long-standing relationships with the environment.²⁶

²³ Barnabas, Sylvanus Gbendazhi. "The legal status of the United Nations Declaration on the Rights of Indigenous Peoples (2007) in contemporary international human rights law." *International Human Rights Law Review* 6.2 (2017): 242-261; Cambou, Dorothée. "The UNDRIP and the legal significance of the right of indigenous peoples to self-determination: a human rights approach with a multidimensional perspective." *The United Nations Declaration on the Rights of Indigenous Peoples*. Routledge, 2020. 33-49.

²⁴ Tamang, Parshuram. "An overview of the principle of free, prior and informed consent and indigenous peoples in international and domestic law and practices." *Australian Indigenous Law Reporter* 9.2 (2005): 111-116; Hanna, Philippe, and Frank Vanclay. "Human rights, Indigenous peoples and the concept of Free, Prior and Informed Consent." *Impact Assessment and Project Appraisal* 31.2 (2013): 146-157.

²⁵ Gilbert, Jérémie. *Indigenous Peoples' land rights under international law*. Brill Nijhoff, 2016.

²⁶ Moniaga, Sandra. "From Bumiputera to Masyarakat Adat: A Long and Confusing Journey." *The Revival of Tradition in Indonesian Politics*. Routledge, 2007. 295-314;

However, the legal recognition of *tanah adat* within the Indonesian legal system remains fragmented and conditional.²⁷ Although the Constitution acknowledges the existence of indigenous peoples and their traditional rights, recognition is often subject to state approval and administrative procedures. This conditional recognition creates legal uncertainty and leaves many indigenous communities vulnerable to land appropriation for development and investment projects.

The gap between international indigenous rights standards and domestic legal practice has significant implications for green economy initiatives.²⁸ When green investments are implemented in areas governed by customary land tenure, the lack of clear legal protection for indigenous land rights can facilitate dispossession and marginalization.²⁹ This disjunction highlights the need to critically examine how indigenous rights are operationalized within national legal frameworks governing investment and development.

C. Climate Justice Framework

Climate justice provides a normative framework for evaluating climate change policies by emphasizing fairness, equity, and human rights.³⁰ Rather than treating climate change solely as an environmental or technical problem, climate justice highlights its social dimensions, including the unequal distribution of climate impacts and responsibilities. This framework is particularly relevant for communities that contribute least to climate change yet experience its most severe consequences.

The climate justice framework is commonly articulated through three interrelated dimensions: distributive, procedural, and recognitional justice.³¹ Distributive justice concerns the equitable allocation of the benefits and burdens of climate policies, including who gains from green development and who bears

Pradhani, Sartika Intaning. "Traditional rights of indigenous people in Indonesia: legal recognition and court interpretation." *Jambe Law Journal* 1.2 (2018): 177-205.

²⁷ Anggoro, Syahriza Alkohir, and Tunggul Anshari Setia Negara. "The struggle for recognition: Adat law trajectories under Indonesian politics of legal unification." *International Journal on Minority and Group Rights* 29.1 (2021): 33-62.

²⁸ Morgera, Elisa, and Annalisa Savaresi. "A conceptual and legal perspective on the green economy." *Review of European, Comparative & International Environmental Law* 22.1 (2013): 14-28; Dehm, Julia. "Indigenous peoples and REDD+ safeguards: rights as resistance or as disciplinary inclusion in the green economy?." *Journal of Human Rights and the Environment* 7.2 (2016): 170-217.

²⁹ Domínguez, Lara, and Colin Luoma. "Decolonising conservation policy: How colonial land and conservation ideologies persist and perpetuate indigenous injustices at the expense of the environment." *Land* 9.3 (2020): 65.

³⁰ Schlosberg, David. "Climate justice and capabilities: A framework for adaptation policy." *Ethics & International Affairs* 26.4 (2012): 445-461; Schapper, Andrea. "Climate justice and human rights." *International Relations* 32.3 (2018): 275-295.

³¹ Sultana, Farhana. "Critical climate justice." *The Geographical Journal* 188.1 (2022): 118-124; Porter, Libby, et al. "Climate justice in a climate changed world." *Planning Theory & Practice* 21.2 (2020): 293-321; Gardiner, Stephen M. "Climate justice." *The Oxford handbook of climate change and society* (2011): 309-322.

its costs. Procedural justice emphasizes inclusive and transparent decision-making processes, ensuring that affected communities have meaningful participation in climate governance.

Recognitional justice focuses on acknowledging and respecting the identities, values, and rights of marginalized groups. In the context of indigenous peoples, recognitional justice requires the formal recognition of indigenous knowledge systems, cultural practices, and land tenure arrangements. Without such recognition, climate policies risk reproducing historical patterns of exclusion and inequality.

Indigenous peoples are increasingly recognized as frontline actors in climate justice. Many indigenous territories are located in environmentally sensitive regions, such as forests and coastal areas, that play a critical role in climate mitigation and adaptation. Indigenous communities often possess sophisticated ecological knowledge that contributes to biodiversity conservation and sustainable resource management.

However, despite their contributions, indigenous peoples are frequently excluded from climate policy design and implementation. Climate justice scholarship emphasizes that effective and equitable climate action must center indigenous rights and leadership.³² This perspective provides a critical lens for assessing whether green economy initiatives genuinely advance climate justice or merely reframe extractive and exclusionary development models.

D. Analytical Framework

This study adopts an analytical framework that links investment law, climate governance, and indigenous rights to examine the justice implications of green economy development in Indonesia. Investment law is treated not merely as a technical regulatory tool, but as a governance mechanism that shapes power relations, land use decisions, and access to resources. Its interaction with climate policies and indigenous rights frameworks is therefore central to understanding the outcomes of green development.

The framework situates the Indonesian Investment Law within broader climate governance structures, including national climate commitments and environmental regulations. By analyzing how investment facilitation measures intersect with climate mitigation objectives, the study explores whether legal frameworks prioritize economic efficiency over social and environmental justice. This approach highlights the role of law in mediating competing policy goals.

³² Newell, Peter, et al. "Toward transformative climate justice: An emerging research agenda." *Wiley Interdisciplinary Reviews: Climate Change* 12.6 (2021): e733; Schlosberg, David, and Lisette B. Collins. "From environmental to climate justice: climate change and the discourse of environmental justice." *Wiley Interdisciplinary Reviews: Climate Change* 5.3 (2014): 359-374; Martinez, Deniss J., et al. "Climate Justice and Climate Adaptation in California: Indigenous Community Climate Adaptation Leadership and Opportunities for Scientific Collaboration." *Weather, Climate, and Society* 16.3 (2024): 399-409.

Indigenous rights are incorporated into the framework as both legal norms and lived realities.³³ The analysis considers not only formal legal recognition but also the practical effects of investment-driven projects on indigenous land tenure, livelihoods, and cultural practices. This enables an assessment of how legal gaps and institutional weaknesses translate into concrete socio-environmental impacts.

To evaluate justice and equity in green development, the study employs criteria derived from the climate justice framework. These include distributive criteria, such as the allocation of economic and environmental benefits; procedural criteria, such as participation and consent; and recognitional criteria, such as respect for indigenous identity and customary land systems. Together, these criteria provide a multidimensional assessment of green investment outcomes. By integrating these elements, the analytical framework allows for a critical examination of whether Indonesia's green economy agenda aligns with principles of climate justice. It offers a structured approach for identifying legal and policy gaps, as well as opportunities for reform, in order to promote a more inclusive and rights-based model of green development.

Legal and Policy Framework in Indonesia

A. Indonesian Investment Law (Law No. 25/2007)

The Indonesian Investment Law (Law No. 25 of 2007) constitutes the central legal framework governing domestic and foreign investment in Indonesia.³⁴ Enacted to promote economic growth and enhance Indonesia's competitiveness, the law aims to create a favorable investment climate by ensuring legal certainty, transparency, and equal treatment between domestic and foreign investors. Its overarching objectives emphasize capital accumulation, job creation, technology transfer, and national economic development, including in sectors associated with environmental sustainability and green growth.

The principles underpinning the Investment Law include non-discrimination, openness, accountability, and efficiency.³⁵ These principles are operationalized through provisions that simplify bureaucratic procedures, guarantee investor protections, and limit state intervention in business activities. In recent years, the law has been increasingly invoked to support large-scale

³³ Tobin, Brendan. *Indigenous peoples, customary law and human rights-why living law matters*. Routledge, 2014.

³⁴ Rajenthiran, Arumugam. "Indonesia: An Overview of the Legal Framework for Foreign Direct Investment-Indonesia: An Overview of The Legal Framework for Foreign Direct Investment." *ISEAS Working Papers. Economics and Finance* (2002): 1; Lindblad, J. Thomas. "Foreign direct investment in Indonesia: Fifty years of discourse." *Bulletin of Indonesian Economic Studies* 51.2 (2015): 217-237.

³⁵ Orellana, Marcos. "Investment agreements & sustainable development: The non-discrimination standards." *Sustainable Development Law & Policy* 11.3 (2011): 4.

projects framed as part of Indonesia's green economy transition, such as renewable energy development and sustainable infrastructure initiatives.³⁶

A critical aspect of the Investment Law concerns land acquisition and licensing.³⁷ The law facilitates access to land for investment purposes through state-controlled allocation mechanisms and streamlined permitting processes. While these provisions are intended to reduce regulatory barriers and accelerate project implementation, they often rely on formal land classifications that do not adequately recognize customary land tenure systems. As a result, land categorized as state land may overlap with indigenous territories, creating potential conflicts.³⁸

The emphasis on efficiency and investment security within the Investment Law tends to prioritize investor interests over social considerations. Safeguards related to community consultation and social impacts are limited and often delegated to sectoral regulations. This legal orientation has significant implications for indigenous peoples, particularly where green investment projects require extensive land use and long-term control over natural resources.

B. Environmental and Climate Governance Laws

Indonesia's environmental governance framework is primarily anchored in the Environmental Protection and Management Law (Law No. 32 of 2009). This law establishes fundamental principles of environmental protection, including sustainability, precaution, and public participation. It provides the legal basis for environmental impact assessments (AMDAL), pollution control, and environmental licensing, which are intended to mitigate the negative effects of development activities, including investment projects.³⁹

In principle, Law No. 32/2009 requires that development activities balance economic interests with environmental protection and social welfare. Environmental impact assessments are designed to identify and manage risks to ecosystems and affected communities.⁴⁰ However, the effectiveness of these

³⁶ Diebold, Nicolas F. "Standards of non-discrimination in international economic law." *International & Comparative Law Quarterly* 60.4 (2011): 831-865.

³⁷ Zainuddin, Zainuddin. "The legal due diligence of land acquisition for the public interest: a critical review." *SIGn Jurnal Hukum* 4.1 (2022): 46-57.

³⁸ Diergarten, Yorck, and Tim Krieger. "Large-scale land acquisitions, commitment problems and international law." *Law and Development Review* 8.1 (2015): 217-233; Mann, Stefan, and Elisabeth Bürgi Bonanomi. "Grabbing or investment? On judging large-scale land acquisitions." *Agriculture and Human Values* 34.1 (2017): 41-51.

³⁹ Saputra, Rahmat, and Rama Dhianty. "Investment Licensing and Environmental Sustainability in the Perspective of Law Number 11 The Year 2020 Concerning Job Creation." *Administrative and Environmental Law Review* 3.1 (2022): 25-38; Syafril, R., et al. "Analysis of environmental utilization in sustainable development based on environmental law perspective." *IOP Conference Series: Earth and Environmental Science*. Vol. 1414. No. 1. IOP Publishing, 2024.

⁴⁰ See also Alan, Boyle. "Human rights and the environment: where next?." *Challenges In International Human Rights Law*. Routledge, 2017. 765-794.

mechanisms often depends on enforcement capacity, institutional coordination, and political priorities, which can be uneven across regions.

Indonesia's climate governance is further shaped by its international climate commitments, particularly under the Paris Agreement. Indonesia's Nationally Determined Contributions (NDCs) outline targets for greenhouse gas emission reductions, with a strong focus on energy transition, land use, and forestry sectors.⁴¹ Green investments are frequently positioned as essential instruments for achieving these targets, linking climate policy closely with investment policy.

Despite this alignment, climate commitments are not always fully integrated into domestic legal and regulatory frameworks. The pursuit of emission reduction targets through large-scale projects can create trade-offs between climate mitigation objectives and social justice concerns.⁴² In the absence of strong rights-based safeguards, climate-oriented development risks undermining the livelihoods and land rights of indigenous communities.⁴³

C. Indigenous Rights Protection in National Law

The protection of indigenous peoples' rights within Indonesian national law has evolved through constitutional interpretation and judicial intervention. A landmark development is Constitutional Court Decision No. 35/PUU-X/2012, which clarified that customary forests (*hutan adat*) are not state forests but belong to indigenous peoples. This decision marked a significant step toward recognizing indigenous land rights and correcting long-standing legal assumptions about state control over customary territories.⁴⁴

The decision reinforced constitutional provisions that acknowledge the existence of indigenous peoples and their traditional rights, provided they remain consistent with national development and state interests. In theory, this recognition creates a legal basis for stronger protection of *tanah adat* and greater inclusion of indigenous communities in land governance. It also has implications

⁴¹ Hastuti, Ika Sri. "Assessing Indonesia's Enhanced Nationally Determined Contributions (NDC) to The Paris Agreement: Identifying the Obstacles Indonesia has in Addressing Climate Change." *International Conference on Business, Economics, Social Sciences, and Humanities-Humanities and Social Sciences Track (ICOBEST-HSS 2024)*. Atlantis Press, 2024.

⁴² Wood, Benjamin T., et al. "Socially just triple-wins? A framework for evaluating the social justice implications of climate compatible development." *Sustainability* 10.1 (2018): 211.

⁴³ Kok, Marcel, et al. "Integrating development and climate policies: national and international benefits." *Development Policy as a Way to Manage Climate Change Risks*. Routledge, 2015. 103-118.

⁴⁴ Hidayat, Herman, et al. "Forests, law and customary rights in Indonesia: Implications of a decision of the Indonesian Constitutional Court in 2012." *Asia Pacific Viewpoint* 59.3 (2018): 293-308. See also Rachman, Noer Fauzi, and Mia Siscawati. "Forestry law, masyarakat adat and struggles for inclusive citizenship in Indonesia." *Routledge handbook of Asian law*. Routledge, 2016. 238-263.

for investment and development projects that rely on access to forested and rural areas.⁴⁵

However, significant gaps remain between legal recognition and practical implementation. Recognition of indigenous status and customary land rights often requires complex administrative processes at the regional level, leaving many communities without formal acknowledgment. This conditional and fragmented recognition limits the practical impact of Constitutional Court Decision No. 35/2012, particularly in areas targeted for strategic investment projects.⁴⁶

Implementation challenges are further compounded by overlapping sectoral laws and competing policy priorities. Investment and infrastructure development are frequently prioritized over indigenous rights protection, resulting in continued land conflicts and marginalization. These challenges underscore the limitations of existing legal protections when they are not supported by coherent and enforceable policy frameworks.

D. Policy Coherence and Legal Tensions

The interaction between Indonesia's investment, environmental, and indigenous rights frameworks reveals significant issues of policy coherence.⁴⁷ While investment and climate policies promote green development as a national priority, indigenous rights protections are often treated as secondary or conditional considerations. This imbalance creates structural tensions within the legal system, particularly where green investment projects intersect with indigenous territories.

Conflicts commonly arise between investment facilitation measures and rights-based protections.⁴⁸ Streamlined licensing, land acquisition mechanisms, and national strategic project designations can bypass or weaken consultation requirements. In such cases, indigenous communities may have limited opportunities to influence decisions that directly affect their land, resources, and cultural practices.⁴⁹

⁴⁵ Pradhani, Sartika Intaning. "Traditional rights of indigenous people in Indonesia: legal recognition and court interpretation." *Jambe Law Journal* 1.2 (2018): 177-205.

⁴⁶ Astomo, Putera, and Asrullah Asrullah. "Legal Protection for the Indigenous Law Communities and Their Traditional Rights based on the Verdict of the Constitutional Court." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 6.1 (2019): 90-108; Simarmata, Rikardo. "The The Current Updates of the Progresses and the Challenges of Recognition of Customary Forests in Indonesia." *Jurnal Ilmu Kehutanan* 18.2 (2024): 142-152.

⁴⁷ Harahap, Fumi, Semida Silveira, and Dilip Khatiwada. "Land allocation to meet sectoral goals in Indonesia—An analysis of policy coherence." *Land Use Policy* 61 (2017): 451-465.

⁴⁸ Campese, Jessica. *Rights-based approaches: Exploring issues and opportunities for conservation*. CIFOR, 2009.

⁴⁹ Aguirre, Daniel, and Irene Pietropaoli. "Heightened human rights due diligence in practice: Prohibiting or facilitating investment in conflict affected areas?." *Journal of Human Rights Practice* 15.2 (2023): 541-558.

Safeguards for indigenous communities within investment and climate governance frameworks remain relatively weak. Although environmental laws mandate public participation, these processes do not always ensure meaningful engagement or free, prior, and informed consent.⁵⁰ As a result, participation may be procedural rather than substantive, failing to address power imbalances between investors, the state, and indigenous peoples.

These legal and policy tensions highlight the challenges of aligning Indonesia's green economy agenda with climate justice principles. The lack of coherence between investment facilitation and indigenous rights protection risks perpetuating historical patterns of exclusion under the guise of sustainability. Addressing these tensions is essential for developing a legal framework that supports both environmental objectives and the rights of indigenous communities.

Methods

A. Research Design

This study adopts a qualitative socio-legal research design, combining legal analysis with an examination of social impacts on indigenous communities.⁵¹ The socio-legal approach enables a comprehensive understanding of how laws, policies, and regulations—particularly the Indonesian Investment Law and environmental frameworks—interact with the lived realities of affected communities. By integrating legal interpretation with empirical fieldwork, the research aims to capture both the formal regulatory structures and their practical implications for indigenous peoples in the context of green economy development.

The qualitative design allows for in-depth exploration of complex socio-legal issues that cannot be fully captured through quantitative methods alone. It emphasizes understanding the perspectives, experiences, and knowledge of indigenous communities while situating these insights within broader legal and policy frameworks. This approach is particularly suitable for addressing research questions related to rights, equity, and climate justice.

Moreover, the socio-legal framework provides the flexibility to examine multiple layers of governance, including national legislation, regional implementation practices, and customary norms.⁵² This multi-scalar perspective is essential for identifying gaps between formal law and actual practice, as well as

⁵⁰ Foster, George K. "Indigenous participation in resource development: the promise and limitations of international safeguards." *Research Handbook on the International Law of Indigenous Rights*. Edward Elgar Publishing, 2022. 202-225.

⁵¹ Fatima, Samza. "Employability of a Research Method and Methodology in a Socio-Legal Study." *Global Social Sciences Review* 8.1 (2023): 341-351; Banakar, Reza, and Max Travers, eds. *Theory and method in socio-legal research*. Bloomsbury Publishing, 2005.

⁵² Creutzfeldt, Naomi, Agnieszka Kubal, and Fernanda Pirie. "Introduction: Exploring the comparative in socio-legal studies." *International Journal of Law in Context* 12.4 (2016): 377-389.

for understanding how legal frameworks facilitate or hinder green investment projects in indigenous territories.

The research design also prioritizes contextualized analysis, recognizing the diversity of indigenous communities in Indonesia and the variation in how green projects impact local social, cultural, and environmental systems. This allows for nuanced insights into the differential effects of investment-driven green development. Finally, the qualitative socio-legal approach facilitates an iterative process of data collection and analysis, enabling the research to adapt to emerging themes and insights from fieldwork while maintaining rigorous legal and policy analysis.

B. Data Collection Methods

Data collection in this study combines legal and policy analysis with empirical fieldwork to generate a holistic understanding of the interaction between green investments and indigenous rights. First, legal and policy analysis involves a review of primary sources, including the Indonesian Investment Law (Law No. 25/2007), Environmental Protection and Management Law (Law No. 32/2009), Constitutional Court decisions, and relevant regulations governing land, investment, and climate policy. Secondary sources, such as scholarly articles, reports, and policy briefs, provide additional context and critical perspectives.

Field surveys are conducted in selected indigenous territories affected by green economy projects, including renewable energy, infrastructure, and conservation initiatives. These surveys document the socio-environmental impacts of investment activities on land tenure, livelihoods, and cultural practices. They also provide insights into community perceptions of participation in project planning and decision-making processes.

Semi-structured interviews constitute a core method for gathering qualitative data from multiple stakeholders.⁵³ Interviews are conducted with indigenous leaders to capture their experiences, knowledge systems, and perspectives on land and resource governance. Environmental activists are engaged to provide critical analyses of the environmental and social implications of green projects. Government officials and policymakers are interviewed to understand the rationale, design, and implementation of investment and climate policies.

This triangulation of sources ensures that the research captures multiple perspectives, enhancing the validity and reliability of findings. The combination of legal documents, field observations, and stakeholder narratives allows for a

⁵³ Varela, Jorge G., Forrest R. Scogin, and Robert K. Vipperman. "Development and preliminary validation of a semi-structured interview for the screening of law enforcement candidates." *Behavioral Sciences & the Law* 17.4 (1999): 467-481.

comprehensive assessment of both regulatory frameworks and their practical consequences.

C. Data Analysis

Data analysis employs thematic analysis to interpret interview and field survey data. Themes are identified based on recurring patterns, issues, and concerns raised by participants, including land rights conflicts, participation in decision-making, and perceived benefits or burdens of green investments. This approach facilitates the systematic identification of key socio-legal dynamics and their implications for indigenous communities.

Comparative legal interpretation is applied to examine the alignment, gaps, and tensions between domestic law, international indigenous rights standards, and climate governance frameworks. By comparing legal provisions and judicial decisions with field realities, the study assesses the effectiveness, coherence, and justice implications of existing policies and regulations.

The integration of thematic analysis and legal interpretation allows the research to link empirical observations with legal norms, providing a robust framework for evaluating the compatibility of green economy initiatives with indigenous rights and climate justice principles. Furthermore, this analytical approach enables the identification of structural patterns and governance gaps, informing recommendations for policy reform and more inclusive legal frameworks.

D. Ethical Considerations

Ethical considerations are central to this study, particularly given the engagement with indigenous communities and sensitive data related to land, culture, and traditional knowledge. Informed consent is obtained from all participants, ensuring that they are fully aware of the research objectives, methods, and potential uses of the data. Participation is voluntary, and interviewees retain the right to withdraw at any stage of the study.

Cultural sensitivity is maintained throughout the research process, including respecting local customs, protocols, and decision-making structures within indigenous communities. Researchers take care to engage in a manner that acknowledges indigenous authority and values, avoiding practices that could be perceived as intrusive or disrespectful.

The protection of indigenous knowledge and data is a key ethical priority. Information collected during fieldwork is handled confidentially, and sensitive details related to customary practices, sacred sites, or resource management are anonymized or omitted as necessary. Data storage and dissemination follow strict protocols to prevent misuse or unauthorized access. Therefore, the study emphasizes reciprocity and benefit-sharing by ensuring that findings are communicated back to participating communities in accessible formats. This

approach reinforces ethical responsibility and contributes to building trust between researchers and indigenous stakeholders, aligning with broader principles of justice and equity in socio-legal research.

Analysis and Disucssion

A. Investment Law vs Indigenous Community Protection

1. Green Investment Projects and Indigenous Territories

The field investigation and document analysis reveal that a wide range of green investment projects are being implemented on or near indigenous territories in Indonesia. These include renewable energy initiatives such as geothermal, hydropower, and solar projects, as well as large-scale sustainable infrastructure and conservation programs. Although framed as environmentally beneficial, these projects often require extensive land use, bringing them into direct conflict with the territorial claims and livelihoods of indigenous communities.⁵⁴

Patterns of land acquisition show a strong preference for state-mediated mechanisms, facilitated through the Indonesian Investment Law and related regulations. In many cases, land designated as “state-controlled” overlaps with customary land (*tanah adat*), enabling project developers to bypass the formal recognition of indigenous ownership. This approach has resulted in partial or full displacement of indigenous households in some regions, particularly where renewable energy or forest-based projects are prioritized as strategic national investments.⁵⁵

Displacement is not uniform, however, and tends to be concentrated in areas with high ecological or economic value, such as forested uplands or river basins suitable for hydropower. Communities affected by these projects frequently report limited access to compensation or alternative land, which exacerbates socio-economic vulnerability and undermines traditional resource management systems.⁵⁶

Furthermore, the prioritization of investor interests creates patterns of asymmetrical power, where communities are often negotiating with state and corporate actors with significantly greater legal and technical capacity. These

⁵⁴ Kennedy, Christina M., et al. "Indigenous Peoples' lands are threatened by industrial development; conversion risk assessment reveals need to support Indigenous stewardship." *One Earth* 6.8 (2023): 1032-1049.

⁵⁵ Wiryani, Fifik, Febriansyah Ramadhan, and Mokhammad Najih. "Indigenous People's Land Rights in Post-Soeharto Indonesia: The Continuing Problem of Land Grabbing." *International Journal on Minority and Group Rights* 31.5 (2024): 954-991; Gilbert, Jérémie. "Land grabbing, investors, and indigenous peoples: new legal strategies for an old practice?." *Community Development Journal* 51.3 (2016): 350-366.

⁵⁶ Bakker, Laurens, and Gustaaf Reerink. "Indonesia's land acquisition law: Towards effective prevention of land grabbing?." *Land Grabs in Asia*. Routledge, 2015. 83-99.

dynamics reinforce historical marginalization and limit indigenous agency in shaping project outcomes.⁵⁷

The findings indicate that while green investment projects are designed to achieve environmental objectives, their implementation often conflicts with indigenous territorial rights, reflecting a structural tension between economic growth-oriented green development and the protection of customary lands.

2. Consultation and Participation

A key issue identified in the field is the inadequacy of consultation and participation processes with indigenous communities. While Free, Prior, and Informed Consent (FPIC) is recognized in international frameworks such as UNDRIP and ILO Convention No. 169, its implementation in Indonesia is inconsistent and often symbolic. Many affected communities report being consulted only after major project decisions have already been made, limiting their ability to influence outcomes.⁵⁸

In practice, consultation meetings are frequently formalistic, with limited opportunities for meaningful dialogue. Information about project scope, environmental risks, or compensation mechanisms is often presented in technical language that is difficult for local communities to understand. As a result, indigenous groups may be unable to fully exercise their rights to consent or objection.⁵⁹

Even when consultation is conducted, it is often mediated by local authorities or project developers who prioritize compliance with minimal procedural requirements over substantive engagement. This approach undermines the legitimacy of participatory processes and creates perceptions of coercion or manipulation.

Instances where FPIC has been effectively applied remain limited and usually involve communities with strong organizational capacity or external legal support. These cases suggest that FPIC is not systematically embedded in green investment governance, highlighting a critical gap between policy rhetoric and practice. Overall, consultation and participation practices in green investment projects demonstrate procedural weaknesses, limiting indigenous agency and

⁵⁷ Van der Muur, Willem. "Forest conflicts and the informal nature of realizing indigenous land rights in Indonesia." *Citizenship studies* 22.2 (2018): 160-174; Dhiaulhaq, Ahmad, and John F. McCarthy. "Indigenous rights and agrarian justice framings in forest land conflicts in Indonesia." *The Asia Pacific Journal of Anthropology* 21.1 (2020): 34-54.

⁵⁸ Anderson, Patrick. "Free, prior, and informed consent? Indigenous peoples and the palm oil boom in Indonesia." *The palm oil controversy in Southeast Asia. A transnational perspective* (2013): 244-258.

⁵⁹ Elfitra, Elfitra, Afrizal Afrizal, and Zulfesni Zulfesni. "Free, Prior and Informed Consent (FPIC) as a Conflict Mitigation Instrument: FPIC Applicability for Mitigation of Structural Agrarian Conflicts in Indonesia." *International Conference on Social Sciences, Humanities, Economics and Law*. European Alliance for Innovation (EAI), 2018.

contributing to broader patterns of marginalization in the decision-making process.⁶⁰

3. *Environmental and Social Impacts*

Despite being labeled as “green” or sustainable, many projects have produced unintended environmental and social consequences for indigenous communities. Ecological degradation has been observed in areas affected by hydropower dams, geothermal plants, and plantation-based bioenergy projects, including deforestation, water pollution, and disruption of local ecosystems. Such impacts compromise the environmental stewardship roles that indigenous communities have traditionally maintained.⁶¹

Socially, the loss of land and resources has disrupted livelihoods that depend on agriculture, forest products, and fishing. Households affected by green projects often experience decreased food security and reduced economic resilience, exacerbating pre-existing vulnerabilities. The erosion of traditional practices and customary governance systems further undermines cultural continuity and community cohesion.⁶²

Cultural heritage, including sacred sites, ritual spaces, and traditional knowledge, is frequently threatened by project development. Communities report that sacred forests, ancestral burial grounds, and ceremonial areas are often disregarded during project planning, reflecting a lack of recognition of indigenous cultural values in environmental decision-making.

These findings underscore the paradox of green development: projects designed to mitigate climate change or promote sustainability can simultaneously generate ecological and social harm when implemented without sufficient attention to local knowledge and rights.⁶³ The cumulative impact of these ecological and social changes points to a misalignment between green economy objectives and the lived realities of indigenous peoples, revealing the need for more integrated and rights-based planning approaches.

4. *Legal Barriers to Indigenous Land Claims*

Analysis of legal and policy frameworks reveals significant barriers to indigenous land claims. While Constitutional Court Decision No. 35/PUU-

⁶⁰ Prihandono, Iman, Ekawestri Prajwalita Widiati, and Juozas Valčiukas. "Free, Prior, Informed Consent as a Legal Principle and Its Link to The Right to Freedom of Conscience." *International Comparative Jurisprudence* 9.2 (2023): 182-196.

⁶¹ Nurhidayah, Laely, et al. "Indonesia's Just Energy Transition: The Societal Implications of Policy and Legislation on Renewable Energy." *Climate Law* 14.1 (2024): 36-66.

⁶² Setyawati, Dinita. "Injustice and environmental harm in extractive industries and solar energy policies in Indonesia." *International Journal for Crime, Justice and Social Democracy* 11.1 (2022): 14-27; Elliott, Lorraine, and Abidah B. Setyowati. "Toward a socially just transition to low carbon development: The case of Indonesia." *Asian Affairs* 51.4 (2020): 875-894.

⁶³ Fathoni, Hilman S., Abidah B. Setyowati, and James Prest. "Is community renewable energy always just? Examining energy injustices and inequalities in rural Indonesia." *Energy Research & Social Science* 71 (2021): 101825.

X/2012 formally recognizes customary forests (*hutan adat*), practical recognition remains limited due to complex administrative procedures and inconsistent regional implementation. Many communities lack the legal documentation required to assert land rights, leaving them vulnerable to state or investor appropriation.⁶⁴

Investor-friendly licensing mechanisms further complicate indigenous claims. Streamlined land acquisition, simplified permits, and state-mediated allocations favor the speed and certainty of project implementation, often at the expense of customary land recognition. These mechanisms create structural incentives for prioritizing investor interests over community rights. The fragmentation of laws across investment, environmental, and forestry sectors exacerbates these barriers. Overlapping regulations and unclear institutional responsibilities make it difficult for indigenous communities to navigate legal processes and defend their claims effectively.⁶⁵

In practice, legal avenues for challenging land appropriation or contesting project approvals are limited by resource constraints, technical complexity, and procedural delays. This legal environment contributes to the continued marginalization of indigenous communities in areas targeted for green investment. These legal barriers highlight the structural dimensions of injustice, where formal recognition of rights exists in theory but is undermined by implementation gaps, bureaucratic hurdles, and prioritization of investment facilitation.⁶⁶

5. *Implications for Climate Justice*

The findings have significant implications for climate justice in Indonesia. Procedural injustice is evident in the exclusion or limited participation of indigenous communities in decision-making processes, undermining the legitimacy and fairness of green development initiatives. Without meaningful engagement, communities are unable to influence the distribution of benefits and burdens associated with climate mitigation projects.

Distributive injustice is also apparent, as the environmental benefits of green investments—such as renewable energy production and carbon reduction—are largely captured by investors, the state, or global markets, while the burdens, including land loss, livelihood disruption, and cultural erosion,

⁶⁴ Putri, Fatma Ayu Jati, and Jasurbek Rustamovich Ehsonov. "The Impact of Land Reform Policies on the Sustainable Management of Natural Resources in Local Communities." *Journal of Human Rights, Culture and Legal System* 4.2 (2024): 510-537.

⁶⁵ Astuti, Rini, and Andrew McGregor. "Indigenous land claims or green grabs? Inclusions and exclusions within forest carbon politics in Indonesia." *The Journal of Peasant Studies* 44.2 (2017): 445-466.

⁶⁶ Ikhsan, Edy. "The omnibus law in Indonesia: assessing its consequences on environmental sustainability and land rights." *Journal of Human Security* 18.2 (2022); Srinivas, Shivakumar, et al. "Towards Indonesian Land Reforms: Challenges and Opportunities." *World Bank* 606 (2014).

disproportionately affect indigenous communities. This imbalance contradicts fundamental principles of climate justice, which emphasize equitable sharing of responsibilities and outcomes.⁶⁷

Recognitional justice is compromised as indigenous knowledge systems, cultural practices, and customary governance structures are often disregarded in project planning and implementation. The failure to acknowledge these values perpetuates historical patterns of marginalization and diminishes the role of indigenous peoples as custodians of environmental stewardship.⁶⁸

The study illustrates that current green economy initiatives in Indonesia, despite their environmental intentions, reproduce structural inequalities and create justice gaps. Addressing these issues requires stronger legal safeguards, meaningful participatory mechanisms, and integration of indigenous rights into the governance of green investments to ensure that climate mitigation efforts are socially just as well as environmentally effective.

B. Controversial and Contemporary Discourse on the Green Economy vs. Indigenous Rights in Indonesia

1. The Green Economy Paradox

Indonesia's green economy initiatives reveal a persistent paradox: projects marketed as environmentally sustainable and socially progressive frequently reproduce extractive practices historically associated with conventional development. While the green economy is conceptually intended to reconcile economic growth with environmental protection, the practical implementation in Indonesia demonstrates a prioritization of large-scale, capital-intensive projects over local socio-cultural and ecological sustainability. This paradox aligns with critiques from critical political economy scholars, who argue that market-based green interventions—such as carbon trading, renewable energy quotas, and large-scale reforestation—often prioritize investor interests while marginalizing vulnerable communities.⁶⁹

From a legal perspective, this paradox is observable in the application of environmental laws and climate commitments. The Environmental Protection and Management Law (UU No. 32/2009) and Indonesia's Nationally Determined Contributions (NDCs) under the Paris Agreement emphasize emission reductions and sustainable development but lack enforceable mechanisms for protecting indigenous land rights or ensuring meaningful participation in project planning.

⁶⁷ Elliott, Lorraine, and Abidah B. Setyowati. "Toward a socially just transition to low carbon development: The case of Indonesia." *Asian Affairs* 51.4 (2020): 875-894.

⁶⁸ Setyawati, Dinita. "Injustice and Environmental Harm in Extractive Industries." *State-of-the-Art Indonesia Energy Transition: Empirical Analysis of Energy Programs Acceptance*. Singapore: Springer Nature Singapore, 2023. 111-123.

⁶⁹ Hill, Hal, Muhammad Ehsan Khan, and Juzhong Zhuang, eds. *Diagnosing the Indonesian economy: Toward inclusive and green growth*. Anthem Press, 2012; Anderson, Zachary R., et al. "Green growth rhetoric versus reality: Insights from Indonesia." *Global Environmental Change* 38 (2016): 30-40.

This illustrates a gap between formal legal recognition of sustainability and the substantive social and ecological outcomes at the local level. Legal positivism helps explain this: while projects comply with formal legal requirements, the law fails to guarantee justice for affected communities in practice.⁷⁰

The divergence between “green growth” and holistic sustainable development frameworks further clarifies this paradox. Green growth, which underpins much of Indonesia’s policy, presumes that economic expansion can be decoupled from environmental harm. In contrast, sustainable development theory, particularly in post-development scholarship, emphasizes that ecological health is inseparable from social equity. The Indonesian experience demonstrates that green growth strategies may produce environmental benefits at the cost of distributive and recognition justice for indigenous populations.

Finally, the political economy of green investments exacerbates this paradox. Large-scale renewable energy and carbon sequestration projects are often linked to global capital flows and climate finance incentives, prioritizing macroeconomic and international agendas over local needs. As a result, community-led sustainability initiatives and traditional ecological knowledge are frequently marginalized, reinforcing socio-environmental inequities under the banner of climate mitigation.⁷¹

2. Investment Law as a Structural Driver of Injustice

The Indonesian Investment Law (Law No. 25 of 2007) functions as a structural driver of inequity by embedding investor primacy into the regulatory framework.⁷² Drawing on Law and Economics Theory, the law emphasizes investment facilitation, fiscal incentives, and legal certainty for investors, aiming to attract capital and stimulate economic growth.⁷³ However, from the perspective of distributive justice (Rawls, 1971)⁷⁴ and Critical Legal Studies (CLS),⁷⁵ the law structurally marginalizes communities whose rights—particularly customary land tenure—are subordinated to state-sanctioned investment objectives.

⁷⁰ Rodiyah, Rodiyah, et al. "Capturing the Opportunity of Green Economic Policy for Environmental Sustainability." *IOP Conference Series: Earth and Environmental Science*. Vol. 1248. No. 1. IOP Publishing, 2023.

⁷¹ Harsono, Iwan. "Green Development in Indonesia: Socioeconomic Impacts, Environmental Effects, and the Role of Social Entrepreneurship." *International Journal of Business, Law, and Education* 5.1 (2024): 412-430.

⁷² Subedi, Surya P. *International investment law: reconciling policy and principle*. Bloomsbury Publishing, 2024.

⁷³ Klevorick, Alvin K. "Law and economic theory: an economist's view." *The American Economic Review* 65.2 (1975): 237-243.

⁷⁴ Frohlich, Norman, Joe A. Oppenheimer, and Cheryl L. Eavey. "Laboratory results on Rawls's distributive justice." *British Journal of Political Science* 17.1 (1987): 1-21.

⁷⁵ Unger, Roberto Mangabeira. "The critical legal studies movement." *Harvard law review* (1983): 561-675.

In practice, the Investment Law facilitates expedited land acquisition and streamlined licensing for green projects, effectively displacing customary tenure without requiring enforceable recognition of indigenous claims. Environmental impact assessments (AMDAL), mandated under UU 32/2009, are often limited to formal compliance, lacking mechanisms to substantively integrate Free, Prior, and Informed Consent (FPIC) or community-driven planning. The legal architecture thus channels decision-making power toward investors, exemplifying a form of regulatory displacement where statutory law overrides traditional governance structures.

Furthermore, the law's investor-centric orientation is reflected in the weak enforceability of community claims through judicial or administrative processes. Although Constitutional Court decisions (e.g., Putusan MK No. 35/PUU-X/2012) recognize indigenous forests (*hutan adat*), these rulings have limited operational impact due to the dominance of investor-friendly regulations.⁷⁶ This structural imbalance demonstrates how legal instruments, even when neutral in text, can operate as mechanisms of systemic injustice when embedded in broader political and economic contexts.

3. Indigenous Knowledge and Climate Solutions

Indigenous knowledge represents a critical, yet underutilized, resource for sustainable development and climate resilience. Communities in Indonesia maintain extensive expertise in ecosystem management, agroforestry, water conservation, and biodiversity stewardship, developed over generations of intimate interaction with their landscapes. Epistemic Justice Theory (Fricker, 2007) emphasizes that disregarding such knowledge constitutes testimonial injustice, marginalizing indigenous voices and undermining the legitimacy of policy interventions.⁷⁷

From a regulatory standpoint, current environmental and investment laws do not mandate incorporation of indigenous ecological knowledge into project planning. This exclusion reflects an epistemic hierarchy privileging technocratic or market-based knowledge over traditional expertise. Yet, empirical studies suggest that integrating indigenous practices—such as rotational agroforestry, sacred grove protection, and fire management—can enhance both ecological and social resilience, achieving multiple climate mitigation and adaptation objectives.

The failure to integrate indigenous knowledge not only represents a justice deficit but also reduces environmental efficacy. Projects that ignore local

⁷⁶ Gayo, Ahyar Ari. "Penegakan Hukum Konflik Agraria Yang Terkait Dengan Hak-hak Masyarakat Adat Pasca Putusan Mk No. 35/puu-x/2012 (Agrarian Conflict Law Enforcement That Was Related to the Rights of Indigenous Peoples Following the Ruling of the Constitutional Court no. 35/Puu-X/2012)." *Jurnal Penelitian Hukum De Jure* 16.2 (2016): 157-171.

⁷⁷ Anderson, Elizabeth. "Epistemic justice as a virtue of social institutions." *Social Epistemology* 26.2 (2012): 163-173.

expertise risk ecological mismanagement, social conflict, and reduced legitimacy, ultimately compromising long-term sustainability. Legal scholars have argued for codifying mechanisms that enable knowledge co-production between communities, state agencies, and investors, thereby operationalizing recognitional justice and advancing the goals of climate justice.

4. Comparative Insights

Comparative analysis offers instructive lessons on aligning green development with indigenous rights. In Canada, New Zealand, and Norway, legal frameworks incorporate mechanisms for FPIC, co-management, and formal recognition of indigenous land tenure in renewable energy and conservation projects. These frameworks demonstrate that indigenous participation and rights protection can coexist with national development and climate objectives.

Legal pluralism theory provides an analytical lens to understand these approaches, recognizing the coexistence of statutory law and customary law in natural resource governance. In Indonesia, although *hutan adat* is constitutionally recognized, fragmentation across UU Investasi, UU Kehutanan, and UU Lingkungan hinders practical enforcement. Comparative examples suggest that integrating customary law into statutory frameworks, combined with binding FPIC requirements, can enhance legitimacy, environmental outcomes, and social equity.

Furthermore, the principle of subsidiarity supports devolving decision-making authority to the most immediate level, empowering communities to manage resources sustainably. Legal pluralism and subsidiarity together suggest that reconciling green economy objectives with indigenous rights requires institutional innovation that bridges national law, customary law, and participatory governance.

5. Policy Implications

The analysis indicates several key policy implications. First, harmonization of investment, environmental, and indigenous rights laws is necessary to prevent systemic conflicts between economic and social objectives. Environmental Justice Theory underscores that distributive, procedural, and recognitional dimensions of justice must be integrated into green development policy. Current gaps allow benefits to accrue to investors and global stakeholders while imposing disproportionate costs—land loss, livelihood disruption, and cultural erosion—on indigenous communities.

Second, FPIC should be codified as a mandatory, enforceable requirement for all green investments. Existing international frameworks (UNDRIP, ILO 169) provide normative guidance but lack domestic enforceability. Embedding FPIC into licensing, environmental assessment, and monitoring mechanisms will ensure procedural justice and prevent tokenistic consultation.

Third, policies must recognize and operationalize indigenous knowledge systems, supporting co-production of climate solutions that respect cultural practices and enhance ecological effectiveness. Finally, robust accountability and monitoring mechanisms are essential to enforce compliance, prevent greenwashing, and safeguard community rights.

C. Policy Recommendations

1. Reforming the Indonesian Investment Law

Reforming the Indonesian Investment Law (Law No. 25/2007) is critical to ensure that economic development does not occur at the expense of indigenous rights or environmental integrity. One central recommendation is the mandatory integration of Free, Prior, and Informed Consent (FPIC) into all investment approvals. Codifying FPIC as a binding requirement would provide indigenous communities with substantive participation in project planning and the authority to withhold consent without fear of reprisal.

Additionally, the law should include strengthened social and environmental safeguards that go beyond procedural compliance. Current investment regulations often prioritize investor certainty and capital efficiency over community welfare, allowing projects to advance even in contexts of unresolved land claims or significant ecological risk. By embedding enforceable safeguards—such as mandatory impact mitigation, benefit-sharing mechanisms, and community monitoring—the Investment Law can align investor activity with principles of environmental justice and sustainable development.

2. Strengthening Indigenous Land Recognition

Accelerating the legal recognition of customary territories (*tanah adat*) is essential to protect indigenous land rights and prevent dispossession under green investment projects. While Constitutional Court decisions, such as MK No. 35/PUU-X/2012, acknowledge indigenous forests, implementation at the local and national levels remains fragmented. A systematic, expedited process for recognizing and registering customary territories would provide legal clarity and secure indigenous tenure against investor encroachment.

In tandem, there is a need for harmonization of sectoral laws—including the Investment Law, Forestry Law, and Environmental Law—to reduce conflicting provisions that weaken protection for indigenous lands. Legal pluralism theory emphasizes that recognizing both statutory law and customary law within a coherent regulatory framework enhances legitimacy and prevents structural marginalization of local communities. Such harmonization would ensure that investment facilitation does not occur at the expense of rights-based development objectives.

3. *Inclusive Climate Governance*

Inclusive governance mechanisms are necessary to ensure that indigenous communities participate meaningfully in climate and green economy decision-making. Institutional structures should guarantee representation of indigenous stakeholders in planning, monitoring, and evaluation of renewable energy, conservation, and carbon sequestration projects. This approach aligns with procedural justice frameworks, emphasizing that equitable participation is as critical as distributive outcomes.

Moreover, support should be provided for indigenous-led green initiatives, such as community-managed forests, agroforestry, and local renewable energy projects. Recognizing and resourcing these initiatives not only protects cultural heritage but also harnesses indigenous ecological knowledge to enhance climate mitigation and adaptation. Legal frameworks should incorporate mechanisms for co-management, technical assistance, and access to finance for community-based sustainability projects.

4. *Aligning Green Economy with Climate Justice*

A rights-based approach should guide the alignment of Indonesia's green economy with climate justice principles. This involves integrating distributive, procedural, and recognition justice into all aspects of sustainable development policy, ensuring that environmental benefits are equitably shared and that indigenous voices and knowledge are valued. Projects should be evaluated not only on economic returns or carbon reductions but also on social equity, cultural preservation, and long-term ecological resilience.

Embedding climate justice into green economy planning also requires accountability and transparency mechanisms, including independent monitoring, grievance procedures, and reporting obligations. These measures would prevent superficial compliance with sustainability standards and ensure that green development contributes substantively to both ecological and social objectives. By operationalizing a rights-based framework, Indonesia can advance a green economy that is truly sustainable, inclusive, and just for indigenous communities and future generations.

Conclusion

This study has examined the complex interplay between Indonesia's green economy agenda, indigenous rights, and climate justice, with a particular focus on the role of the Indonesian Investment Law (Law No. 25/2007). The findings reveal that while green investment projects aim to promote renewable energy, sustainable infrastructure, and ecological mitigation, they often reproduce structural inequalities by marginalizing indigenous communities. Patterns of land acquisition, limited consultation, and weak recognition of customary tenure

illustrate that economic and environmental objectives are frequently prioritized over social justice and cultural preservation.

The analysis underscores that climate justice cannot be achieved without robust protection of indigenous rights. Distributive, procedural, and recognitional dimensions of justice are systematically undermined when indigenous communities are excluded from decision-making processes, deprived of access to land and resources, and deprived of opportunities to contribute their ecological knowledge. Legal frameworks, while providing formal recognition of rights, are insufficient without effective enforcement, harmonization, and incorporation of indigenous perspectives in policy and project implementation.

From a policy standpoint, these findings have significant implications for Indonesia's climate and investment strategy. Achieving a truly sustainable green economy requires legal and regulatory reform, mandatory FPIC protocols, strengthened social and environmental safeguards, and institutional mechanisms that facilitate meaningful indigenous participation. Aligning investment law, environmental governance, and indigenous rights protection is essential to ensure that green development contributes equitably to climate mitigation, adaptation, and socio-cultural resilience.

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