

## **Juridical Analysis Of The Impact Of The Preparation And Implementation Of The National Strategic Project (Food Estate) On The Rights Of Indigenous Peoples In Merauke Regency From The Perspective Of Customary Law**

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### **Abstract**

*This research analyzes the role of law in supporting community economic development in Yapen Islands Regency from a Constitutional Law perspective. Economic development in resource-rich regions like Yapen Islands Regency requires a strong and progressive normative framework to achieve fair and equitable welfare, emphasizing the need for a robust framework aligned with Article 33 of the 1945 Constitution. Using a Normative Juridical method with a Statutory and Conceptual Approach, this research relies solely on library data analyzed descriptively and qualitatively. Findings indicate that law functions as a tool for social engineering, providing guidance and protection through local regulations. However, its effectiveness is hampered by various multidimensional constraints, including low bureaucratic capacity, weak institutional coordination, and ongoing geographical challenges. This conclusion highlights that realizing equitable development requires superior quality of law enforcement and the application of progressive law to bridge the gap between legal texts and socio-economic realities, ensuring that the law truly empowers the community.*

**Keywords:** *Constitutional Law, Progressive Law, Role of Law, Economic Development, Yapen Islands Regency*

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## **INTRODUCTION**

The National Strategic Project (PSN) of the Food Estate in Merauke represents the Indonesian government's policy to strengthen national food security while simultaneously developing the agricultural sector in Papua. The selection of Merauke is based on its vast and fertile land potential, making it ideal as a large-scale national food granary. The project aims to produce strategic commodities such as rice, corn, cassava, and sugarcane to reduce import dependency and enhance food self-sufficiency. This policy is also part of the government's strategy to achieve food sovereignty, particularly in Eastern Indonesia, which faces distribution challenges. Recent studies, however, show that similar large-scale schemes in Merauke such as the Merauke Integrated Food and Energy Estate (MIFEE) have generated serious social and ecological problems, including land dispossession of the Malind people and increased food insecurity at the local level (Ginting & Pye, 2013; Suryani, 2016).

However, the implementation of the Food Estate program is inseparable from various issues, especially land tenure conflicts between the government and local indigenous communities. The indigenous peoples of Merauke, such as the Malind, Maklew, Khimaima, and Yei, possess a communal land ownership system passed down through generations, where customary land serves not only as an economic resource but also as the foundation of social identity and cultural heritage. Empirical reports estimate that more than 50,000 indigenous people in around 40 villages lie within or around the PSN Food Estate area, exposing them to the project's impacts (Forest Peoples Programme, 2024). The designation of parts of customary territories as Food Estate areas has triggered resistance, as it is perceived to threaten communal rights (hak ulayat) and cultural values. Recent juridical and socio-legal analyses of the Merauke Food Estate underline how land acquisition processes tend to marginalize indigenous tenure systems and weaken their bargaining position in negotiations with the state and investors

(Prawira et al., 2025; Yuwono, 2024). This situation reflects the lack of harmony between state law and customary law.

This phenomenon illustrates the gap between *das sein* (empirical reality) and *das sollen* (normative ideals). According to the Basic Agrarian Law (UUPA) No. 5 of 1960, the customary land rights of indigenous peoples are recognized as part of the national agrarian system. Recent scholarship on agrarian law and legal pluralism notes that UUPA and Article 18B(2) of the 1945 Constitution provide a constitutional basis for the recognition of adat communities and their territorial rights, but implementation remains fragmented and often subordinated to developmentalist agendas (Fitri, 2025; Wijaya, 2024). In the context of the Food Estate policy, state authorities tend to apply a formalistic positive law approach that neglects the existence of customary law and living legal practices. As a result, inequality arises in the planning and execution process, where indigenous peoples are not fully involved in decision-making. Although public consultations are formally conducted, empirical assessments of Free, Prior, and Informed Consent (FPIC) in Indonesia show that procedures are often partial, implicit, and fail to meet international standards, particularly when projects are framed as national strategic interests (Kusniati, 2024; UN-REDD Programme, 2013; Winarsih & Wulandari, 2024).

Beyond legal and social dimensions, the Food Estate project in Merauke also generates significant ecological implications. Large-scale land conversion threatens local ecosystem balance, particularly in forest and peatland areas, leading to biodiversity loss and declining welfare among local communities who depend on natural resources. Earlier research on MIFEE and related plantation expansion in Merauke demonstrates accelerated deforestation, disruption of sago groves and hunting grounds, and reduced food security among Marind communities who are forced to abandon local food systems (Ginting & Pye, 2013; Suryani, 2016; Yayasan Pusaka Bentala Rakyat, 2025). Recent legal environmental critiques of the national Food Estate policy also argue that it conflicts with principles of ecological justice and sustainable land use planning (Tobing, 2024). Agrarian conflicts are further complicated by overlapping regulations and weak synchronization between central and local policies, resulting in legal dualism and exacerbating land control disputes, as also observed in other large-scale development projects such as the Nusantara Capital City (IKN) (Putra et al., 2025). From a juridical perspective, this problem reflects a normative conflict between national law, which prioritizes economic development and food security, and customary law, which emphasizes communal rights protection and intergenerational stewardship of land. Contemporary studies on legal pluralism in Indonesia emphasize that adat law is a living law that emerges from collective social practices, recognized for its social sanctions, and reflects a sense of justice grounded in local cosmologies (Hariri & Babussalam, 2024).

This resonates with Soepomo's theory of the integralistic state, which views the nation as an organic unity integrating all groups for the common good, while at the same time raising tensions when the state claims to embody the "common interest" but sidelines peripheral communities. Similarly, Eugen Ehrlich's living law theory asserts that the true source of law arises from social practices rather than legislative products, which aligns with Indonesia's pluralistic legal system where state, religious, and customary laws coexist as acknowledged by Article 18B(2) of the 1945 Constitution. Griffiths' theory of legal pluralism further distinguishes between "weak" and "strong" pluralism, positioning customary law as a parallel legal system that must be respected by the state rather than merely tolerated. Recent comparative research on customary land disputes confirms that substantive justice for indigenous peoples requires a more pluralistic approach in adjudication and administration of land rights (Fitri, 2025; Prawira et al., 2025).

The disharmony between centralized state law and communal customary law often gives rise to agrarian conflicts, illustrating the disparity between *das sollen* and *das sein*. The roots of these conflicts generally involve land control inequality, regulatory overlap, and limited

community participation. Within the framework of National Strategic Projects, agrarian conflicts emerge due to weak land rights protection, despite regulations under Law No. 2 of 2012 and Government Regulation No. 42 of 2021. Recent socio-legal work on PSN projects concludes that land acquisition procedures frequently prioritize administrative efficiency over substantive participation and rights recognition, thus reproducing structural inequality (Prawira et al., 2025; Saputra et al., 2024).

Conflict resolution should therefore prioritize administrative and alternative approaches such as negotiation or mediation that are culturally sensitive and grounded in FPIC principles to ensure social justice for indigenous communities. With the welfare state paradigm and sustainable development principles, National Strategic Projects should not only promote economic growth but also guarantee social justice, environmental preservation, and sustainable community welfare. In line with the emerging literature on indigenous land rights and sustainable agrarian governance, scholars argue for stronger recognition of adat territories, clearer integration of customary law into agrarian regulations, and robust safeguards against environmental degradation as preconditions for legitimate development in Papua and other resource frontiers (Erdika et al., 2024). Against this backdrop, this study aims to analyze the dynamics of land tenure conflicts within the Food Estate project in Merauke through a juridical approach by emphasizing the dichotomy between *das sein* and *das sollen*. It also examines the role of the government in resolving conflicts through more humanistic and participatory legal mechanisms and identifies the key factors and policy alternatives for equitable land governance in indigenous territories.

## RESEARCH METHODS

This study employs a normative juridical method, also known as doctrinal legal research. In line with Soerjono Soekanto, normative juridical research is directed at studying positive law as a coherent system of norms, focusing on legislation, legal principles, and court decisions rather than on direct empirical observation of social behavior (Soekanto, 2006). It examines law in books rather than law in action, with the aim of constructing systematic, logical, and consistent arguments about what the law is and what it ought to be in relation to a particular legal issue. Similarly, Marzuki (2005, 2017) emphasizes that doctrinal legal research is prescriptive in nature because it not only describes existing legal norms but also evaluates their coherence and adequacy in resolving concrete legal problems. In the broader comparative literature, doctrinal research is likewise understood as the core method of legal scholarship, concerned with the analysis, systematization, and interpretation of legal rules and principles (Hutchinson, 2015; Hutchinson & Duncan, 2012).

Within this framework, the research relies primarily on secondary data derived from statutory regulations, official documents, policy papers, academic literature, case law, and reports from national and international institutions. Ibrahim (2006) notes that such secondary data constitute the main corpus of materials in normative legal research and are used to identify, systematize, and interpret the norms governing a given field of law. HS & Nurbani (2013) similarly underline that in normative research, the primary “data” are legal materials both primary legal materials (legislation, official records, court decisions) and secondary legal materials (doctrine, commentary, expert opinions) which are then analyzed through legal reasoning to produce conclusions about the applicable law. Accordingly, this study focuses on deriving legal principles from both written and unwritten positive law regulating indigenous land rights (*hak ulayat*), land acquisition for development, and the implementation of National Strategic Projects.

The research adopts two main approaches commonly used in normative legal studies: the Statute Approach and the Conceptual Approach. The Statute Approach involves close examination, interpretation, and systematic analysis of laws and regulations relevant to indigenous land rights and national development projects, including the 1945 Constitution, the Basic Agrarian Law (UUPA), legislation on land acquisition for public interest, and regulations governing National Strategic Projects and environmental protection. Marzuki (2017) and Ishaq (2017) describe the statute approach as a method that places legislation at the centre of analysis, examining its structure, hierarchy, and internal consistency, as well as its relationship with other legal instruments. Through this approach, the present study analyzes the normative structure, hierarchy, and potential conflicts of norms affecting the recognition and protection of hak ulayat in the context of the Food Estate project.

The Conceptual Approach, on the other hand, is grounded in legal doctrines and theoretical perspectives developed within legal scholarship and jurisprudence. It draws on concepts such as legal pluralism, living law, indigenous rights, agrarian justice, and the dichotomy between *das sein* (empirical reality) and *das sollen* (normative ideals). As explained by Ibrahim (2006) and HS & Nurbani (2013), the conceptual approach uses doctrinal and theoretical constructs as analytical tools to clarify legal notions and to assess the internal logic of the legal system. By engaging with these doctrinal and theoretical frameworks including Soepomo's theory of the integralistic state, Ehrlich's living law, and Griffiths' concept of strong legal pluralism the research identifies and clarifies key legal ideas and principles that are relevant to understanding the tension between state law and customary law in land governance, as well as to evaluating the adequacy of existing legal instruments in protecting indigenous land rights in Merauke.

Although the method is normative, the analysis is contextually situated in Merauke Regency, South Papua Province, one of the main locations for the implementation of the National Strategic Project (Food Estate). Merauke is home to indigenous communities possessing communal land rights (*hak ulayat*) that are directly affected by large-scale agricultural development. Empirical reports and socio-legal studies concerning Merauke are therefore used as supporting materials consistent with the view that normative research may be informed by empirical findings to sharpen its evaluative and prescriptive conclusions Wignjosoebroto (2002) in order to illuminate how legal norms are implemented in practice and to refine the normative assessment of the coherence, effectiveness, and justice of the current legal framework.

## RESULT AND DISCUSSION

### **Juridical Analysis of the Implementation of the National Strategic Project (Food Estate) in Merauke.**

#### **1. Juridical Conflict Between Central Government Policy and the Recognition of Customary Right.**

The analysis reveals that the implementation of the National Strategic Project (PSN) for the Food Estate in Merauke Regency has generated a normative tension between national development policies and the constitutional recognition of indigenous peoples' rights. Based on Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Article 3 of the Basic Agrarian Law (UUPA) No. 5 of 1960, the state explicitly acknowledges and respects the rights of customary law communities (*masyarakat hukum adat*) as long as such rights are still alive and consistent with societal development. However, in practice, this principle of recognition has been distorted by a development paradigm oriented toward economic acceleration and national food security.



An analysis of derivative regulations such as Presidential Regulation (Perpres) No. 3 of 2016, Government Regulation (PP) No. 42 of 2021, and Presidential Regulation No. 12 of 2025 demonstrates a top-down policy pattern prioritizing investment efficiency and licensing acceleration. These regulatory frameworks risk neglecting participatory mechanisms such as Free, Prior and Informed Consent (FPIC), which is a fundamental principle for the protection of indigenous peoples' rights. This weakness creates a juridical gap between *das sollen* (normative ideals) and *das sein* (empirical practice), as evidenced by numerous agrarian conflicts and the resistance of indigenous communities to the appropriation of customary lands for PSN purposes.

Furthermore, spatial analyses using NDVI and MNDWI indices indicate significant vegetation loss following project implementation, reinforcing concerns of environmental degradation resulting from large-scale land clearing. This condition contradicts the principles of sustainable development and participatory governance as stipulated in Law No. 32 of 2009 on Environmental Protection and Management. Public consultation processes, which should serve as substantive dialogue between the government and indigenous peoples, have been reduced to mere administrative formalities without meaningful participation. Field observations also reveal the militarization of the project through the deployment of security forces and heavy machinery, creating an atmosphere of intimidation and infringing upon the right to security.

These findings are consistent with reports from the National Human Rights Commission (Komnas HAM, 2024) and the United Nations (2025), which assess that the PSN implementation in Merauke potentially violates the rights to land, to a healthy environment, and to public participation. Consequently, the project has not only triggered agrarian legal issues but has also produced a broader crisis of social and ecological justice for indigenous communities.

## **2. Implementation of the Principle of Free, Prior and Informed Consent (FPIC)**

The findings confirm that the principle of FPIC has not been substantively implemented in the execution of the National Strategic Project in Merauke. Although Indonesia has ratified several international instruments such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and recognizes norms within ILO Convention No. 169, there is no national regulation explicitly establishing FPIC as a legal prerequisite for development projects in indigenous territories. Both Presidential Regulation No. 3 of 2016 and Government Regulation No. 42 of 2021 emphasize investment facilitation and licensing acceleration, without providing consultation mechanisms ensuring indigenous peoples' freedom, awareness, and consent.

Empirical evidence shows that the consultation processes conducted in Merauke were informative rather than deliberative. Indigenous communities lacked access to complete and comprehensible information, as project documents were drafted in technical language and not translated into local dialects. This prevented communities from fully understanding the ecological and social risks associated with the project. Consequently, indigenous participation failed to meet the "free" and "informed" requirements as stipulated in Article 6(2) of ILO Convention No. 169 and Article 32(2) of UNDRIP.

These findings emphasize that the Food Estate project in Merauke reflects a centralized legal-political orientation in development policy. The dominance of central government regulation without adequate synchronization with local authorities has weakened the protection of customary land rights (*hak ulayat*) and created jurisdictional conflicts. To bridge this gap, a reorientation of the development paradigm is required one that positions indigenous peoples as key subjects of public policy rather than passive objects of development.

Several strategic measures can be undertaken, including:

1. Institutionalizing the FPIC principle into the national legal system through amendments to the land acquisition law and PSN implementing regulations.
2. Enacting a Merauke Regency Regional Regulation (Peraturan Daerah) on the protection of indigenous peoples' rights and the resolution of agrarian disputes based on customary law.

3. Integrating the principles of sustainable development in every project phase to ensure a balance between economic growth, ecological preservation, and social justice.

In conclusion, the results and discussion affirm that the success of national strategic projects cannot be measured solely by economic output, but also by the state's ability to maintain harmony between national law and customary law as the foundation of substantive justice in Indonesia.

### **Evaluation of the Role and Authority of the Government and Supporting Institutions in the Implementation of the National Strategic Project (Food Estate) in Merauke**

#### **1. Authority of the Central and Regional Governments (Provincial and District/Municipal Levels)**

The analysis indicates that the governance architecture established under Law No. 23 of 2014 through the classification of absolute, concurrent, and general affairs, as well as the formulation of national standards (NSPK) is normatively designed to ensure synergy between national interests and regional needs. However, in practice, particularly in the implementation of the Food Estate National Strategic Project (PSN) in Merauke, two critical findings emerge.

First, the practice of public consultation often ends as a mere administrative formality. The Free, Prior and Informed Consent (FPIC) principle is not treated as a substantive prerequisite, and in several preparatory stages it has even been weakened by coercive approaches. Second, from a Rawlsian justice perspective, the policy design fails to fulfill the difference principle it does not provide greater protection to the most vulnerable groups, namely the indigenous landholding communities (komunitas ulayat). Within Amartya Sen's capability framework, the restriction of access to land and traditional resources undermines the substantive capabilities of indigenous peoples to maintain their valuable way of life. These findings suggest that although the legal framework aims to harmonize national and regional authority, the operational dynamics have deviated from the normative design of participatory and distributive justice. Consequently, the implementation of PSN Food Estate reflects a gap between juridical mandates and ethical governance in ensuring equal access, social inclusion, and ecological sustainability for indigenous communities..

#### **2. Inter-Agency Coordination (Ministries and Government Institutions)**

Normatively, Government Regulation No. 42 of 2021 designates the Coordinating Ministry for Economic Affairs (Kemenko Perekonomian) as the lead institution for cross-sectoral coordination including planning, budgeting, licensing, land acquisition, and social impact management. Beneath it, the Ministry of Agriculture (Kementan) oversees technical and commodity planning; the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) manages land location and acquisition; the Ministry of Environment and Forestry (KLHK) handles Environmental Impact Assessments (AMDAL) and forest areas; and the National Development Planning Agency (Bappenas) together with the Ministry of Finance (Kemenkeu) govern financing schemes such as PDF and PPP (Public Private Partnership). At the regional level, the South Papua Provincial Government and Merauke Regency Government are responsible for spatial planning alignment and local licensing.

The key coordination findings are as follows:

##### **1. Asymmetry of Objectives and Incentives**

The central government's acceleration targets (investment absorption and production output) are not always aligned with regional objectives (customary land dispute resolution and socio-ecological resilience). In the absence of shared indicators, coordination meetings tend to focus on compliance checking rather than problem-solving.

2. Deficit of Deliberative Mechanisms

The technocratic coordination chain spanning licensing, land acquisition, forestry, and financing fails to internalize the FPIC procedure as a substantive gatekeeping requirement. This omission affects both the terms of reference for environmental assessments (AMDAL) and location determinations over customary land. Consequently, coordination functions have failed to serve as a platform for multi-actor negotiation among ministries, local governments, customary institutions, and state-owned enterprises/PPP operators.

3. Spatial and Data Fragmentation

Inconsistencies between mapping systems covering regional spatial plans (RTRW), forestry areas, customary territories, and project operational maps create overlapping spatial claims. Without a single source of truth in spatial data recognized by all parties, coordination decisions risk generating new disputes rather than resolving existing ones.

To restore the intended synergy between national and local interests, several measures are necessary:

- a. Institutionalizing FPIC as a legal gatekeeping mechanism within project licensing and land acquisition processes.
- b. Establishing an integrated spatial data repository accessible to all relevant institutions to eliminate overlapping claims.
- c. Aligning central and regional incentives through binding performance metrics that balance economic output with social legitimacy and ecological resilience.

Ultimately, the success of the Food Estate National Strategic Project must not be assessed solely by agronomic outputs or investment absorption, but also by its ability to uphold social legitimacy, legal certainty, and environmental integrity. A truly sustainable PSN implementation is one that reconciles national development priorities with the pursuit of justice for indigenous communities and the preservation of local ecosystems.

## CONCLUSION

Based on the results of the analysis, it can be concluded that the implementation of the National Strategic Project (Food Estate) in Merauke Regency has generated complex impacts on the local indigenous communities. The preparation and execution of this project demonstrate a significant imbalance between *das sein* (empirical reality) and *das sollen* (normative expectation) in the enforcement of law. The principles of recognition and protection of indigenous peoples' rights, as guaranteed by the 1945 Constitution of the Republic of Indonesia and relevant statutory regulations, have not been substantively implemented. Environmental impacts such as land degradation, ecosystem damage, and socio-economic disruption reveal the weakness of participatory mechanisms for indigenous communities. The Free, Prior and Informed Consent (FPIC) principle has been applied merely in an administrative manner, without ensuring meaningful participation and consent, thereby failing to effectively protect indigenous land rights (*hak ulayat*). This confirms that the Food Estate development policy is more aligned with national economic priorities than with the principles of ecological and social justice that form the foundation of customary law.

Furthermore, the findings indicate that from the perspective of law and governance, the implementation of the Food Estate National Strategic Project in Merauke has not reflected harmony between national law and customary law. The division of authority among central,

provincial, and district governments still produces overlapping jurisdictions, while inter-ministerial coordination remains suboptimal. Regulations such as Government Regulation No. 42 of 2021 on the Facilitation of National Strategic Projects provide a framework for acceleration, yet they do not explicitly incorporate mechanisms for the protection of indigenous peoples' rights. The absence of national-level legal provisions recognizing FPIC further weakens the position of indigenous communities in decision-making processes. Therefore, the Food Estate project in Merauke illustrates a structural problem within Indonesia's national legal system, namely the lack of harmonization between development-oriented state policies and the principles of justice for indigenous peoples. Ensuring legal certainty and social legitimacy in future strategic projects requires embedding customary law values, participatory governance, and ecological justice into the very framework of national development law.

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