



Legal Implications of the Merauke Food Estate: A Critical Analysis of Customary Rights and Environmental Concerns

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Abstract. The Food Estate program in Merauke, part of Indonesia's National Strategic Project (PSN), aims to enhance food security through large-scale land management. However, its implementation has faced significant criticism for disregarding the Free, Prior, and Informed Consent (FPIC) principle, leading to violations of the rights of Indigenous Peoples and severe environmental degradation, including extensive deforestation. The involvement of military personnel in facilitating the program further complicates the situation, drawing international scrutiny, particularly in light of Indonesia's participation in COP29. This study employs a normative legal research method with a qualitative approach, analyzing secondary data from various sources, including laws, regulations, books, journals, and online resources. The findings reveal that the Merauke Food Estate program exhibits substantial flaws in planning and execution, neglecting sustainable development principles and the FPIC standard. The study also suggests that conflict resolution mechanisms, such as class action lawsuits, could be a viable solution, provided these processes are grounded in FPIC principles and actively involve MHA to ensure equitable outcomes for affected communities.

Keywords: Food Estate, FPIC, Customary Rights, Environmental Impact, Conflict Resolution.

Abstrak. Program Food Estate di Merauke, yang merupakan bagian dari Proyek Strategis Nasional (PSN) Indonesia, bertujuan untuk meningkatkan ketahanan pangan melalui pengelolaan lahan skala besar. Namun, pelaksanaannya mendapat kritik tajam karena mengabaikan prinsip Free, Prior, and Informed Consent (FPIC), yang berdampak pada pelanggaran hak-hak Masyarakat Hukum Adat (MHA) dan kerusakan lingkungan yang parah, termasuk deforestasi yang luas. Keterlibatan personel militer dalam kelancaran program ini semakin memperburuk situasi, menarik perhatian internasional, terutama dalam konteks partisipasi Indonesia di COP29. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan kualitatif, menganalisis data sekunder dari berbagai sumber, termasuk undang-undang, peraturan, buku, jurnal, dan sumber online. Temuan penelitian menunjukkan bahwa program Food Estate di Merauke memiliki kelemahan signifikan dalam perencanaan dan pelaksanaannya, mengabaikan prinsip pembangunan berkelanjutan dan standar FPIC. Penelitian ini juga menyarankan bahwa mekanisme penyelesaian konflik, seperti gugatan class action, dapat menjadi solusi yang layak, asalkan proses tersebut didasarkan pada prinsip FPIC dan melibatkan secara aktif MHA untuk memastikan hasil yang adil bagi komunitas yang terdampak.

Kata kunci: Food Estate, FPIC, Hak Adat, Dampak Lingkungan, Resolusi Konflik.

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1. Introduction

The purpose of a nation in achieving public welfare is manifested through development that can fulfill public needs. These needs are related to clothing, food, shelter, worthy work, and a healthy environment. The era of President Joko Widodo's government (2014-2024) places development as a key priority.¹ Currently, development through the food estate program has become a frequently discussed topic, as this program is a government initiative to increase food resilience by developing agriculture or plantations on a massive scale, allocating forest areas for development focused on food production and reducing import dependence. A food estate is a planned, integrated food production development that includes agriculture, plantations, and even livestock farming on large land areas.²

The government issued Presidential Decree Number 3 of 2016, concerning the Acceleration of the Implementation of National Strategic Projects, as last amended by Presidential Decree Number 109 of 2020, with the hope that Indonesia will improve economic growth and development equality, thereby enhancing public welfare. The government supports this policy by issuing Government Regulation Number 42 of 2021 regarding the Convenience of National Strategic Projects. According to the 2022 Government Work Plan (RKP), the food estate program is being developed in five locations: North Sumatra, South Sumatra, East Nusa Tenggara (Central Sumba), and South Papua. The selection of South Papua as a food estate target is based on its vast agricultural land potential.³ This selection is further reinforced by the government's policy to establish Presidential Decree Number 15 of 2024, concerning the Task Force for the Acceleration of Sugar and Bioethanol Self-Sufficiency in Merauke Regency, South Papua Province.

The Merauke Integrated Food and Energy Estate (MIFEE) project, located in southern Papua, Indonesia, exemplifies the broader trends of agrarian expansion and land conversion driven by global demands for food and biofuels. MIFEE has been a focal point in discussions about agricultural modernization and land dispossession. A major state-led initiative, MIFEE aims to transform local agriculture through large-scale corporate investments, primarily for food crops and

¹ Ah Maftuchan, "Pemenuhan HAM dan Pembangunan Infrastruktur: Kajian Regulasi Proyek Strategis Nasional di Indonesia," *Jurnal Hak Asasi Manusia* 14, no. 14 (2018): 112.

² Rizkia Diffa Yuliantika, Imamulhadi Imamulhadi, and Supraba Sekarwati, "Analisis Yuridis Terhadap Program Pembangunan Food Estate Di Kawasan Hutan Ditinjau Dari Eco-Justice," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 2, no. 1 (2022): 48.

³ Maria Maghdalena Diana Widiastuti, Yusman Syaikat, A. Faroby Falatehan, and Dedi Budiman Hakim, "Tinjauan Implementasi Program Food Estate Dan Prospeknya Di Merauke Papua," In *Forum Penelitian Agro Ekonomi* 40, no. 2 (2022): 123.

biofuels targeted at foreign markets.⁴ The MIFEE has led to the transformation of vast areas of Papua's forests and agricultural land into oil palm plantations, displacing indigenous communities and disrupting local ecosystems.⁵ This expansion has been framed as a “frontier-making” process, where remote and marginal regions are reimagined as spaces of opportunity for economic development. However, this process is not without significant social and ecological consequences.

The ecological impact of MIFEE is particularly severe for the Malind Anim, an indigenous group whose traditional lands are being converted for commercial agriculture. The project has caused what has been termed an “ecologically induced genocide” through the destruction of the environment that is vital to the Malind Anim's cultural and physical survival.⁶ Additionally, MIFEE has exacerbated land conflicts between the Indonesian state and local communities, with large companies encroaching on ancestral lands, undermining community sovereignty, and further impoverishing the indigenous population.

The government's imposition of new customary institutions, such as the Lembaga Masyarakat Adat, further complicates these dynamics by weakening traditional governance structures that resist MIFEE's development agenda.⁷ These ongoing challenges underscore the need for a comprehensive analysis of how MIFEE's expansion affects both the environment and indigenous rights in Papua, posing a critical research problem in the intersection of land use, colonialism, and indigenous sovereignty.

This showed that the implementation of the food estate program in Merauke faces significant challenges, as it is viewed by some as an environmental crime due to its reliance on massive deforestation. Additional issues include the disregard for indigenous peoples' customary rights and land use conflicts. Research by the Pusaka Bentala Rakyat Foundation (PUSAKA) indicates that the program's location is within a customary forest area of high conservation value. The food estate program in Merauke is criticized for not adhering to the principle of Free, Prior, and Informed Consent (FPIC) because directly affected communities and environmental organizations were not involved in discussions regarding

⁴ Takeshi Ito, Noer Fauzi Rachman, and Laksmi A. Savitri, “Power to make land dispossession acceptable: a policy discourse analysis of the Merauke Integrated Food and Energy Estate (MIFEE), Papua, Indonesia,” *Journal of Peasant Studies* 41, no. 1 (2014): 43.

⁵ Nanang Indra Kurniawan, Indah Surya Wardhani, and Muhammad Djindan, “Oil Palm Plantation Expansion and Frontier-Making in Papua, Indonesia,” In *Local Responses to Global Challenges in Southeast Asia: A Transregional Studies Reader*, pp. 319. 2023.

⁶ Jhon. E McDonnell, “The Merauke Integrated Food and Energy Estate (MIFEE): An Ecologically Induced Genocide of the Malind Anim,” *Journal of Genocide Research* 23, no. 2 (2021): 259.

⁷ Rosita Dewi, “Hijacking adat recognition through the establishment of new Customary Community Council in Papua, Indonesia,” *Asia & the Pacific Policy Studies* 4, no. 3 (2017): 559.

environmental reference and information documents. The implementation of National Strategic Projects (PSN) through the food estate program generates conflicts related to the neglect of the FPIC principle, leading to violations of indigenous peoples' rights and their natural resources.

The expansion of the Merauke Integrated Food and Energy Estate (MIFEE) has led to extensive land dispossession, which threatens the livelihoods and cultural identity of indigenous communities. While the project is often justified under the guise of national food security, it has caused significant social and ecological harm, undermining customary land rights and exacerbating environmental degradation.⁸ The growing scale of agricultural development, particularly in the form of timber and large plantations, undermines the project's potential for sustainability, with certifications like RSPO and ISPO being difficult to achieve.⁹ Furthermore, indigenous groups such as the Marind, who traditionally rely on subsistence farming, are increasingly vulnerable as their land becomes commodified, threatening their cultural practices and connection to the environment.¹⁰ This situation highlights the urgent need to address the broader implications of agricultural modernization for indigenous sovereignty and environmental sustainability. As these law communities struggle to maintain their cultural and ecological relationships with the land, the intersection of human rights, land tenure, and agricultural modernization becomes a critical area of research, necessitating a closer examination of the broader implications for indigenous sovereignty and environmental sustainability. This research aims to explore these issues in conflict resolution efforts related to the food estate program in Merauke and indigenous communities, specifically concerning the application of the FPIC (Free, Prior, and Informed Consent) principle.

2. Research Methods

This research aims to explore the complexities of conflict resolution efforts related to the Merauke Integrated Food and Energy Estate (MIFEE) program, specifically focusing on the application of the FPIC (Free, Prior, and Informed Consent) principle in relation to indigenous communities. A qualitative research approach was chosen to understand the nuances of these issues from a socio-

⁸ Irene I. Hadiprayitno, "Behind transformation: The right to food, agricultural modernisation and indigenous peoples in Papua, Indonesia," *Human Rights Review* 16 (2015): 140.

⁹ Krystof Obidzinski et al., "Can large scale land acquisition for agro-development in Indonesia be managed sustainably?," *Land use policy* 30, no. 1 (2013): 958.

¹⁰ Lintang Sudibyo and Lyn Parker, "'Menjadi Manusia' (Becoming Somebody): The Aspirations and Realities of Marind Young People, Papua, Indonesia," *Oceania* 94, no. 3 (2024): 209.

cultural and legal perspective. The study employs a normative legal research design, emphasizing the interpretation of laws, policies, and regulations as they pertain to indigenous land rights and FPIC. This approach allows for an in-depth examination of the legal frameworks governing land dispossession and the rights of indigenous peoples in Papua, Indonesia.

Data were gathered primarily through secondary sources, including legal documents, academic journals, books, and reputable online resources. These materials provide insights into the legal context of MIFEE, indigenous rights, and the FPIC principle, offering a comprehensive understanding of the challenges faced by local communities. The data analysis utilized a descriptive qualitative approach. This method involved categorizing and interpreting the data to identify recurring themes, patterns, and key issues related to the FPIC principle and its application in the context of MIFEE. The analysis aimed to describe the legal and socio-political dynamics impacting indigenous communities and their land rights. Ethical standards were met by ensuring the use of credible, publicly accessible secondary sources and maintaining respect for the privacy and dignity of indigenous communities. The research acknowledges the importance of Indigenous perspectives while analyzing policy and legal implications.

3. Results and Discussion

3.1. Free prior and informed consent in the context of Merauke Integrated Food and Energy Estate (MIFEE) program

The principle of Free, Prior, and Informed Consent (FPIC) is a crucial international standard that requires states and corporations to consult with indigenous peoples before implementing projects that impact their lands, resources, or cultural practices.¹¹ FPIC is grounded in the rights of indigenous peoples to self-determination and control over their territories, ensuring they have the opportunity to provide or withhold consent for any proposed activities.

Several authors highlight the core elements of Free, Prior, and Informed Consent (FPIC). First, FPIC ensures that indigenous peoples are fully informed about the potential impacts of a project, enabling them to make knowledgeable

¹¹ Andréanne Brunet-Bélanger, "Bridging the Gap between Compliance and Translation: Unveiling the Challenges in FPIC Enforcement in Paraguay," *International Journal on Minority and Group Rights* 1, no. 2, (2025): 12. See also, Erick Guapizaca Jiménez, "An Old Dilemma in Deep Seabed Mining: Free, Prior, and Informed Consent of Indigenous Peoples in Areas Beyond National Jurisdiction," *AJIL Unbound* 118 (2024): 85; Retno Kusniati, "Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?," *Jambe Law Journal* 7, no. 1 (2024): 169; Natalia Yakovleva et al., "Free prior informed consent in the extractive industry: Approaches to involving Indigenous peoples in decision-making in Russia," *Journal of Environmental Management* 344 (2023): 118341.

decisions regarding their land and resources.¹² It also emphasizes that consent must be given freely and without coercion, manipulation, or external pressure, ensuring indigenous peoples retain autonomy over their decisions.¹³ Additionally, FPIC requires that consultation takes place before any project begins, providing indigenous communities ample time to assess the potential impacts and make informed decisions.¹⁴ Furthermore, FPIC safeguards the rights of indigenous peoples by stressing the importance of incorporating local customs, values, and knowledge into decision-making processes.¹⁵ Lastly, some scholars argue that FPIC has evolved into a customary international law, thus holding legal weight in many regions, rather than merely being a soft law.¹⁶ Collectively, these definitions stress the need for genuine engagement with indigenous communities, ensuring that their voices are heard and respected in decisions that affect their lives and lands.¹⁷

Free, Prior, and Informed Consent (FPIC) is an internationally recognized principle that mandates states and corporations consult with indigenous peoples before initiating projects that impact their lands, resources, or culture. FPIC is rooted in the right to self-determination, ensuring indigenous peoples have the authority to approve or reject projects affecting their territories. It requires informing communities about potential impacts, obtaining consent without coercion, and securing their agreement before any project begins.¹⁸ This principle is vital for safeguarding indigenous rights, ensuring meaningful participation in decision-making.¹⁹

¹² Laurence Klein, María Jesús Muñoz-Torres, and María Ángeles Fernández-Izquierdo, “Free, Prior, and Informed Consent: A Norm in Development or a Corporate Obligation?,” *International Journal on Minority and Group Rights* 31, no. 5 (2024): 899.

¹³ Peter Bille Larsen and Chantaly Chanthavisouk, “Free, prior, and informed consent, local officials, and changing biodiversity governance in Hin Nam No, Laos,” *Conservation Biology* 38, no. 6 (2024): e14388.

¹⁴ Brunet-Bélanger, “Bridging the Gap between Compliance and Translation”. 14

¹⁵ Yakovleva et al., “Free prior informed consent in the extractive industry,” 118382.

¹⁶ Cristobal Carmona Caldera, “Free Prior and Informed Consent in the Context of Extractive Projects in Indigenous Territory: General Rule and International Customary Law,” *Revista Brasileira de Políticas Públicas* 9, no. 3 (2019): 379. See also, Kusniati, “Free, Prior, and Informed Consent Principles as Indigenous Peoples’ Right,” 161.

¹⁷ Angga Dwiartama et al., “Conservation, Livelihoods, and Agrifood Systems in Papua and Jambi, Indonesia: A Case for Diverse Economies,” *Sustainability* 16, no. 5 (2024): 1996. See also, Matthew Storey, “A Failure of Praxis: The Application of Free, Prior and Informed Consent (FPIC) in the Australian Resources Sector,” *In the Routledge Handbook on Meaningful Stakeholder Engagement*, 138. 2024; Longgena Ginting, and Oliver Pye, “Resisting agribusiness development: The merauke integrated food and energy estate in West Papua, Indonesia,” *Advances in Southeast Asian Studies* 6, no. 1 (2013): 167.

¹⁸ Larsen and Chanthavisouk, “Free, prior, and informed consent, local officials,” e14388.

¹⁹ Yakovleva et al., “Free prior informed consent in the extractive industry,” 118382.

Free, Prior, and Informed Consent (FPIC) is a crucial principle for protecting indigenous peoples' rights to control their land and resources, promoting their participation in decision-making processes. It ensures development projects respect the values, traditions, and needs of indigenous communities, fostering sustainable and culturally sensitive practices.²⁰ FPIC also serves as a safeguard against exploitation and land dispossession, which can occur in large-scale projects like mining and agriculture without indigenous consent.²¹ The principle is increasingly recognized in international law, as highlighted by the United Nations Declaration on the Rights of Indigenous Peoples.²² However, its implementation often falls short, with states and corporations sometimes engaging in "false compliance," undermining its effectiveness.²³ FPIC is not merely a legal formality but a vital tool for ensuring justice and safeguarding indigenous rights amidst development pressures.²⁴

The implementation of Free, Prior, and Informed Consent (FPIC) in developing countries, particularly regarding indigenous and customary communities, faces significant challenges. In countries like Paraguay, FPIC is often reduced to superficial compliance, with states adopting international norms without genuinely integrating them into national policies or practices.²⁵ This "false compliance" undermines the intended benefits of FPIC, as consultations are conducted without meaningful consent, silencing indigenous voices. In Laos, the involvement of local officials in mediating FPIC processes has proven effective in reconciling community grievances with conservation goals, illustrating that localized governance can improve implementation.²⁶ Conversely, in Uganda and Sierra Leone, FPIC struggles with the formalization of land rights, where large-scale investments sometimes bypass indigenous communities' consent, highlighting the tension between global norms and local land tenure realities.²⁷

The Merauke Integrated Food and Energy Estate (MIFEE) project was launched in 2007 by the Merauke local government with the aim of transforming the region into a major agricultural and energy production hub. Initially proposed as the Merauke Integrated Rice Estate (MIRE), it was later expanded due to its vast land potential, making it a national priority for boosting food production, particularly rice, in Papua. By 2010, 1.2 million hectares out of the planned 2.4

²⁰ Brunet-Bélanger, "Bridging the Gap between Compliance and Translation," 16.

²¹ Kusniati, "Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right," 162.

²² Jiménez, "An Old Dilemma in Deep Seabed Mining," 81.

²³ Brunet-Bélanger, "Bridging the Gap between Compliance and Translation," 20.

²⁴ Caldera, "Free Prior and Informed Consent," 372. See also, Carolin Dieterle, "When 'best practice' means formalising: foreign large-scale land investments on customary tenure in Uganda and Sierra Leone," *Review of International Political Economy* 3, no. 1 (2025): 21.

²⁵ Brunet-Bélanger, "Bridging the Gap between Compliance and Translation," 22.

²⁶ Larsen and Chanthavisouk, "Free, prior, and informed consent, local officials," e14388.

²⁷ Dieterle, "When 'best practice' means formalising," 19.

million hectares were earmarked for development. The project focused on large-scale cultivation of rice, maize, soybeans, sugarcane, and cattle, with promising early results in crop yields.²⁸

However, the MIFEE program faced significant challenges after its launch. Despite securing investments of around Rp 50-60 trillion by 2014, only a fraction of the planned land was developed, and many of the local communities raised concerns about land seizures and the dominance of foreign investors. There were clashes over the loss of communal lands and the environmental impact of the project, with increasing resistance from indigenous populations who saw their rights and livelihoods threatened by the large-scale agricultural operations.²⁹

MIFEE also drew international attention due to the role of the military in protecting investor interests and the environmental degradation caused by the expansion of agricultural plantations, particularly palm oil. The project contributed to deforestation, the destruction of conservation areas, and the displacement of indigenous communities, leading to calls for halting the project until proper consent from local populations could be obtained.³⁰

This food estate program is planned for an area of 2,684,680.68 hectares, with approximately 2,684,461.54 hectares located within forest areas. This includes around 1.4 million hectares in convertible production forest areas, 560,000 hectares in limited production forest areas, 360,000 hectares in production forests, and 243,000 hectares in protected forests. Additionally, 190 hectares have an unknown area status.³¹ Furthermore, the food estate development in Merauke will utilize 2.29 million hectares of land.³² It is also noted that the project location includes customary forests and areas of high conservation value. This situation triggers conflicts between project implementers and the Customary Law Communities (*Masyarakat Hukum Adat/MHA*), who feel their customary rights are being ignored, especially given the area's significant cultural and ecological value.

²⁸ Edi Santosa, "Percepatan pengembangan food estate untuk meningkatkan ketahanan dan kemandirian pangan nasional," *Risalah Kebijakan Pertanian Dan Lingkungan Rumusan Kajian Strategis Bidang Pertanian Dan Lingkungan* 1, no. 2 (2014): 84.

²⁹ Michael Reder. *Global Common Good: Intercultural Perspectives on a Just and Ecological Transformation*. (Frankfurt: Campus Verlag, 2015), 171. See also, Christopher Rosin, Paul Stock, and Hugh Campbell. *Food systems failure: The global food crisis and the future of agriculture*. (New York: Taylor & Francis, 2013), 154.

³⁰ Samira Homerang Saunders, Angela Sherwood, and David Whyte, "Autonomy over Life: The Struggle against Capitalist Development in West Papua," *State Crime Journal* 13, no. 2 (2024): 194.

³¹ L. Yu Elizabeth, and Jeffrey B. Schwimmer, "Epidemiology of pediatric nonalcoholic fatty liver disease," *Clinical liver disease* 17, no. 3 (2021): 198.

³² Ariyani Yakti Widyastuti, 2024, "List of Companies Working on Jokowi's Merauke Food Estate Project", Tempo, accessed on October 28, 2024, at 15:31 WIB. <https://bisnis.tempo.co/read/1920768/daftar-perusahaan-penggarap-proyek-food-estate-merauke-jokowi>.

The food estate program presents challenges that directly impact the MHA in Merauke, particularly concerning their rights, land, environment, economy, social structure, and culture. This is evidenced by government laws and regulations regarding National Strategic Projects, including Law Number 6 of 2023 concerning Job Creation, Government Regulation Number 42 of 2021 concerning the Facilitation of National Strategic Projects, Presidential Decree Number 109 of 2020 on the Acceleration of National Strategic Project Implementation, and Presidential Decree Number 15 of 2024 concerning the Task Force for the Acceleration of Sugar and Bioethanol Self-Sufficiency in Merauke Regency, South Papua Province. These policies are perceived as hastening the food estate program's implementation through National Strategic Projects, as the Task Force's formation for customary land conversion did not involve the directly affected MHA.

The food estate program policy is considered part of sustainable development, aiming to fulfill current food needs. This requires a legal foundation, such as Law Number 32 of 2009 concerning Environmental Protection and Management. The development process, particularly sustainable development, mandates Strategic Environmental Assessment (KLHS). Furthermore, the Regulation of the Minister of Environment and Forestry Number 7 of 2021 concerning Forestry Planning, Change of Allocation and Function of Forest Areas, and Use of Forest Areas highlights the food estate program through Article 485, stating that forest area provision for the program can occur in protected and/or production forest areas. Legally, protected forests have a crucial primary function: protecting life support systems, including water management, flood prevention, erosion control, seawater intrusion prevention, and soil fertility maintenance. However, the regulation lacks further clarification on the boundaries of protected forests that no longer fully function as protected areas, creating conflict with Law Number 41 of 1999 on Forestry. However, the process of this program does not seem to involve meaningful consultation with or the consent of the MHA, the communities directly impacted by this development. This raises concerns over the violation of their land rights and self-determination. The Task Force set up for the acceleration of the food estate program does not engage with the MHA as stakeholders, which is a violation of their rights under international frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

3.2. Exploiting Land, Ignoring Consent: The Legal and Environmental Failures

The food estate program includes three projects. Firstly, a sugarcane and bioethanol plantation development managed by ten companies, supported by the Ministry of Investment/Head of the Capital Investment Agency, granting land permits exceeding 500,000 hectares. These companies are owned and managed by

businessmen Martias Fangiono and his son Wirastuty Fangiono, who control First Resources Group and/or Fangiono Agro Plantation (FAP) Agriculture Group, and Parents Sitorus, owner and founder of KPN Corp. Group. Secondly, a project optimizing agricultural land, aiming to increase productivity through agricultural mechanisms, irrigation channel construction, and agricultural machinery provision in six districts: Kurik, Tanah Miring, Merauke, Semangga, Jagebob, and Malind.

This covers 40,000 hectares, with planned expansion to 100,000 hectares, and is managed by the Ministry of Agriculture, local government, the Indonesian National Armed Forces (TNI), farmers, and students from the Agricultural Development Polytechnic (Polbangtan). Thirdly, a new rice field printing project, managed by the Ministry of Defense, the Ministry of Agriculture, and the private company John Lin Group, owned by Hajj Andi Syamsuddin Arsyad, also known as Haji Isam, with a total land area of 1,000,000 hectares.³³

To ensure the food estate program's smooth operation, the government employs military personnel to facilitate, streamline, and secure company activities that may cause concern and make the Customary Law Communities (MHA) feel unsafe in the area. Government and investor investments impact customary land, causing MHA to lose their connection to it, as their life sources are taken over.³⁴ This conflict aligns with the "Profit Taking" theory, which explains the emergence of natural resource and environmental conflicts. This theory states that third parties exploit others' difficulties by engaging parties with conflicting interests to gain benefits.³⁵

The food estate program has faced resistance from affected Customary Law Communities (MHA). The Merauke Solidarity Group sent a letter to the Regional Representative Council (DPD RI) rejecting the program, citing land damage that is a life source and sacred to them, and the program's implementation without public agreement and environmental studies.³⁶ Demonstrations were also held in Jakarta to reject the program, emphasizing its crude implementation without

³³ Bhawono, Aryo. 2024, "Merauke Reject Half Bruised Because Food Estate", Bethany, accessed on 28 October 2024, o'clock 16.23 WIB. <https://betahita.id/news/detail/10633/merauke-refuses-to-be-beaten-by-food-estate.html?v=1729118191>.

³⁴ Rahmad Hendra, Rosa Agustina, and Ratih Lestari., "The Effects of Conflict and Palm Oil Investment Between Investors and Communities in Indonesia," *International Journal of Environmental, Sustainability, and Social Science* 4, no. 1 (2023): 149.

³⁵ Eko Setiawan, "Konflik Pada Kawasan Konservasi Taman Nasional Alas Purwo Dan Solusi Penyelesaiannya," *Jurnal Ilmu Sosial dan Ilmu Politik Malikussaleh (JSPM)* 3, no. 2 (2022): 289.

³⁶ Vera Tua Tobing, "Problematic Analysis of the Legal Policy of the Food Estate Program (Government Era 2020-2024)," *Journal of Law, Politic and Humanities* 5, no. 2 (2024): 988.

socialization or consultation with MHA. This conflict is vertical, involving the Government, investors, and military personnel, who are opposed to MHA.³⁷

PUSAKA determined that the food estate program lacked a Strategic Environmental Assessment (KLHS) because the affected Customary Law Communities (MHA) and environmental organizations were excluded from discussing the terms of reference and Environmental Impact Assessment (AMDAL) preparation.³⁸ Furthermore, there was no transparency regarding environmental documents. Minimal participation and conflicts of interest among actors involved in the Merauke food estate program highlight inequality in planning, decision-making, and policy implementation. This is evident in the government's dominance to achieve food security and investors' pursuit of profitability, resulting in the exclusion of MHA, who hold customary rights, from land function transfer decisions. The government and investors appear to exploit regulatory loopholes, such as the Minister of Environment and Forestry Regulation Number 7 of 2021 concerning Forestry Planning, Change of Allocation and Function of Forest Areas, and Use of Forest Areas.³⁹

This lack of consultation and transparency further exacerbates the ongoing conflicts, as MHA find themselves systematically excluded from decisions that directly impact their land and livelihoods. The absence of meaningful engagement with these communities has led to the erosion of trust between the government, investors, and the affected populations. As a result, the implementation of development projects like the Merauke food estate fails to address the legitimate concerns of the people it affects.

The Merauke food estate program has generated conflicts across legal, environmental, and social dimensions. A core weakness contributing to these conflicts is the failure to implement Free, Prior, and Informed Consent (FPIC). The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) establishes FPIC as a fundamental principle that countries and investors must adhere to when dealing with Customary Law Community (MHA) lands globally.⁴⁰

³⁷ Syamsuri Yusup, and Yoneta Sonia, "Can Rice Farming through the National Strategy Food Estate Increase Regional Production?," *Jurnal Laban Suboptimal: Journal of Suboptimal Lands* 13, no. 2 (2024): 189.

³⁸ Pusaka, "Proyek Strategis Nasional Pengembangan Pangan dan Energi Merauke Berpotensi Melanggar Hak Asasi Manusia dan Memperparah Krisis Ekologi," *Pusaka*, August 2, 2024. <https://pusaka.or.id/news/proyek-strategis-nasional-pengembangan-pangan-dan-energi-merauke-berpotensi-melanggar-hak-asasi-manusia-dan-memperparah-krisis-ekologi/>.

³⁹ Kirsi Laitala, Ingun Grimstad Klepp, and Beverley Henry, "Does use matter? Comparison of environmental impacts of clothing based on fiber type," *Sustainability* 10, no. 7 (2018): 2529.

⁴⁰ Elfitra, Afrizal Afrizal, and Zulfdesni Zulfdesni, "Free, Prior and Informed Consent (FPIC) as a Conflict Mitigation Instrument: FPIC Applicability for Mitigation of Structural Agrarian Conflicts in Indonesia," In *International Conference on Social Sciences, Humanities, Economics and Law*. European Alliance for Innovation (EAI), 2018.

FPIC is a process that empowers communities, particularly MHA, to express their approval or rejection of activities, projects, or policies that will be implemented in their territories. It addresses potential impacts on land, resources, and community life (National Forestry Council & UN-REDD Programmed Indonesia, 2011).

The absence of FPIC in the Merauke food estate program has led to significant grievances. MHA feel their customary rights are being violated, as the program proceeds without their informed consent. The program's implementation, marked by deforestation and land conversion, has raised environmental concerns. The lack of transparency regarding environmental impact assessments further exacerbates these concerns. Socially, the program has disrupted the MHA's traditional way of life, severing their connection to ancestral lands. The government's use of military personnel to secure the project has heightened tensions, leading to protests and resistance from MHA. The conflict reflects a power imbalance, with the government and investors prioritizing food security and profit over the rights of MHA. Regulatory loopholes have been exploited, undermining sustainable development principles. The situation underscores the need for genuine dialogue and respect for FPIC to mitigate conflicts and ensure equitable and sustainable development.

The exclusion of Customary Law Communities (MHA) from the Merauke food estate program reveals flaws in Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Principles, which recognizes customary rights. This oversight fuels vertical conflicts between the government, investors, and military personnel—the power holders—and the MHA, escalating social tensions. The program's implementation, lacking MHA consent, disregards their rights and traditional land connections.⁴¹ This disparity highlights a power imbalance, where state and investor interests override indigenous rights, leading to social unrest and undermining the law's intent to protect customary rights.⁴²

The principle of Free, Prior, and Informed Consent (FPIC) is enshrined in Indonesian law, notably in Government Regulation Number 46 of 2016 and Ministerial Regulation of the Environment and Forestry Number 13 of 2024. However, the Merauke food estate program has disregarded FPIC, violating a fundamental right of the Customary Law Communities (MHA). The government, investors, and military personnel have proceeded without crucial documents like the Strategic Environmental Assessment (KLHS) and Environmental Impact

⁴¹ Jawahir Thontowi, and Sri Wartini, "Effectuating Food Sovereignty without Violating the Rights of Indigenous People: A Case Study of the Merauke Integrated Food and Energy Estate Project," *KnE Social Sciences* 2, no. 4 (2023): 618.

⁴² Mispansyah Mispansyah, Nurunnisa Nurunnisa, Agus Mulyawan, and Muhammad Al Faqih, "Legal Policy of the National Food Granary Program (Food Estate) on Peat Land in Central Kalimantan Which Is Environmentally Investigated," *International Journal Political, Law, and Social Science* 4, no. 2 (2023): 2314.

Assessment.⁴³ FPIC's intended purpose is to mitigate natural resource conflicts and safeguard community rights while ensuring business and development project sustainability. Its absence in Merauke has exacerbated tensions, as MHA feel marginalized and their rights disregarded. The program's rapid implementation, without proper consultation, undermines the spirit of FPIC, which emphasizes informed decision-making and community participation. This disregard for FPIC not only fuels social conflict but also raises concerns about the program's long-term environmental and social sustainability.

The situation intensified globally, particularly during Indonesia's participation in the UN Climate Change Conference (COP 29). The Indonesian President's special envoy's speech, focusing on climate crisis trade schemes like carbon credits and capture technology, drew criticism for lacking concrete commitments to address the climate crisis (WALHI, 2024). WALHI highlighted a conflict of interest in the speech, accusing the government of “marketing” the climate crisis to mask ecological damage caused by large corporations (WALHI, 2024). This approach contrasts sharply with the urgent need for tangible actions to mitigate climate change. Simultaneously, WALHI called for an immediate halt to the ecosystem-damaging food estate program. They urged the government to acknowledge and protect the public's rights over their managed territories and to restore damaged ecological functions. This demand underscores the disconnect between Indonesia's global climate rhetoric and its domestic environmental policies. The focus on carbon trading, without addressing the root causes of ecological destruction, raises concerns about the government's priorities. The food estate program, with its significant environmental impact, directly contradicts the principles of sustainable development and climate action. This global stage conflict highlights the necessity of aligning international climate commitments with domestic environmental policies and respecting the rights of indigenous communities.

3.3.Conflict Resolution from a Legal and Environmental Perspective: An FPIC Approach

As mandated by Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, state authority over agrarian resources, for the purpose of regulating and utilizing land rights, is delegated to the state as an extension of the community. Therefore, legal products and policies must be capable of creating good, safe, and orderly social conditions, free from conflict and potential conflict. However, the food estate program does not appear to reflect the essence of a responsible state. This program clearly generates problems, including deforestation

⁴³ Nino Viartasiwi, Agus Trihartono, and Hary Yuswadi, “The West Papua imagined community: A bondless plural society,” *Sustainable Future for Human Security: Society, Cities and Governance* (2018): 82.

in protected forests.⁴⁴ In the case of the food estate in South Papua, nearly 2.7 million hectares of forest area will be utilized, inevitably accelerating land conversion and deforestation, which will threaten environmental sustainability and the customary legal relationship between communities and nature (Fakultas Pertanian UGM, 2021). According to Article 1, number 8 of Law Number 41 of 1999 concerning Forestry, protected forests are forest areas whose primary function is to protect life support systems by regulating water management, preventing floods, controlling erosion, preventing seawater intrusion, and maintaining soil fertility. Therefore, the conversion of protected forests into agricultural land should not be carried out.

In this such context, the Merauke Integrated Food and Energy Estate (MIFEE) project has raised significant concerns in several areas, particularly regarding involuntary land conversion, lack of indigenous consultation, and environmental impacts. The project, aimed at boosting Indonesia's food self-sufficiency, involves large-scale agricultural operations, including oil palm plantations, rice, and maize farming. However, it has led to the forced displacement of indigenous communities and the conversion of forests into industrial agricultural lands, threatening the livelihoods and cultural heritage of the local populations. MIFEE has been criticized for neglecting the rights of indigenous people, with consultations often viewed as insufficient or non-consensual, leading to resistance from these communities.⁴⁵

In terms of environmental concerns, the conversion of forests for agricultural use is causing significant ecological degradation, including deforestation and loss of biodiversity. This is particularly concerning in Papua, home to one of the world's largest rainforests, which is being rapidly transformed under MIFEE.⁴⁶ The clearing of land for plantations disrupts local ecosystems, impacting both human and non-human species. Additionally, the expansion of large-scale monoculture plantations has been linked to various environmental issues, such as soil degradation and water contamination.⁴⁷

The Merauke Integrated Food and Energy Estate (MIFEE) has sparked significant controversy due to its potential violation of indigenous rights and its environmental implications, reflecting broader challenges in Indonesia's pursuit of

⁴⁴ Mulya Anshari, and Cahaya Permata, "Deforestasi Hutan Lindung dalam Proyek Strategis Nasional Food Estate: Perspektif Maqashid Syariah," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 18, no. 3 (2024): 2036.

⁴⁵ Agus Andrianto, Heru Komarudin, and Pablo Pacheco, "Expansion of oil palm plantations in Indonesia's frontier: Problems of externalities and the future of local and indigenous communities," *Land* 8, no. 4 (2019): 56.

⁴⁶ Saunders, Sherwood, and Whyte, "Autonomy over Life," 91.

⁴⁷ Miles Kenney-Lazar and Noboru Ishikawa, "Mega-plantations in Southeast Asia: Landscapes of displacement," *Environment and Society* 10, no. 1 (2019): 68.

food self-sufficiency. The implementation of MIFEE often clashes with national and local laws meant to protect indigenous lands and biodiversity, creating legal gaps that facilitate exploitation. While the project aims to enhance food security, its focus on short-term economic benefits over long-term sustainability raises concerns about its impact on food security and social stability.⁴⁸

MIFEE's implementation in Merauke has disrupted local ecosystems, particularly affecting water resources and exacerbating the risks of extreme weather events linked to climate change. As the region was designated as a national food basket in 2006, agricultural development became a priority, but it has led to heightened tensions between stakeholders, including investors, the government, NGOs, and the indigenous Malind-Anim people. These tensions underline the importance of considering diverse stakeholder perspectives in evaluating the project's sustainability.⁴⁹

In this context, the need for a comprehensive conflict resolution framework, such as Free, Prior, and Informed Consent (FPIC), becomes crucial. As defined by previous research, the conflict resolution model within the FPIC framework involves several key measures such as legal mobilization, resistance, and the creation of alternative mechanisms by indigenous peoples to ensure their rights are respected and their agency is central in development processes. This means that, in the context of FPIC, various indigenous movements have shaped conflict resolution strategies to address the growing tensions between indigenous communities, states, and corporations. Several studies explore indigenous agency in the FPIC process, highlighting different models and approaches for asserting and protecting their rights in decision-making processes.

One key model of conflict resolution is identified by Schilling-Vacaflor and Flemmer,⁵⁰ who categorize indigenous actors into four typologies: (1) mobilizing for a strong legal interpretation of FPIC, (2) mobilizing for meaningful and influential FPIC processes, (3) mobilizing against prior consultation processes, and (4) blockading these processes to discuss broader grievances. These typologies reflect a strategic engagement with state-driven processes and show how

⁴⁸ Indrawan, Caldecott, and Ermayanti, "Mitigating tensions over land conversion in Papua, Indonesia," 151. See also, Natasha Hamilton-Hart, "Indonesia's quest for food self-sufficiency: a new agricultural political economy?," *Journal of Contemporary Asia* 49, no. 5 (2019): 738.

⁴⁹ Elisabeth Veronika Wambrau, "The Sustainability of the Merauke Integrated Food and Energy Estate (MIFEE)," *The International Journal of Environmental Sustainability* 13, no. 2 (2017): 15. See also, Rosita Dewi, "Gaining recognition through participatory mapping? The role of adat land in the implementation of the Merauke Integrated Food and Energy Estate in Papua, Indonesia," *ASEAS-Austrian Journal of South-East Asian Studies* 9, no. 1 (2016): 89.

⁵⁰ Almut Schilling-Vacaflor and Riccarda Flemmer, "Mobilising free, prior and informed consent (FPIC) from below: A typology of indigenous peoples' agency," *International journal on minority and group rights* 27, no. 2 (2020): 295.

indigenous communities leverage legal tools or resist consultations that do not align with their needs or cultural practices.

Klein, Muñoz-Torres, and Fernández-Izquierdo, focus on the disconnect between corporate commitments to FPIC and their implementation, underscoring the lack of genuine participation of indigenous communities. Their critique highlights that while companies may claim adherence to FPIC, the absence of meaningful engagement often leads to marginalized voices. The authors assert that companies not only have a duty to respect FPIC but also a normative obligation to operationalize it in their business practices, reflecting a gap in corporate accountability in the face of indigenous rights. Similarly, Flemmer⁵¹ explores contestation within prior consultation processes, using fieldwork from the Peruvian Amazon. He demonstrates how indigenous grassroots movements sometimes reject consultation processes that merely reflect state interests, not indigenous self-determination. By contesting consultation frameworks, indigenous groups assert veto rights and challenge narrow interpretations of FPIC, seeking to redefine it as a process for genuine self-determination.

Additionally, Montambeault and Papillon⁵² examine the growing use of community-based FPIC protocols in Canada and Brazil. These protocols, developed unilaterally by indigenous groups, aim to reshape the participatory process to better reflect their cultural values and decision-making autonomy. By establishing their own standards for consultation, indigenous communities re-politicize the process, challenging state and corporate practices and asserting their status as self-determining entities. Finally, Papillon and Rodon⁵³ highlight the transformative potential of indigenous-driven FPIC mechanisms. They argue that, by creating their own decision-making structures, indigenous communities can more effectively operationalize FPIC, as seen in the Cree Nation's mining policy and the Squamish Nation's community-driven impact assessments. These initiatives underscore the importance of indigenous agency in defining FPIC practices that align with their rights and priorities.

Moreover, in the legal perspective, conflict resolution efforts arising from the Merauke food estate program can be pursued through adversarial or court-based settlements, notably via the class action lawsuit mechanism. This approach, applicable through District Courts (PN) and State Administrative Courts (PTUN),

⁵¹ Riccarda Flemmer, "Contesting state monologues: Indigenous grassroots' struggles with prior consultation norms in the Peruvian Amazon," *International Studies Quarterly* 67, no. 3 (2023): sqad068.

⁵² Françoise Montambeault and Martin Papillon, "Repolicising indigenous participation: FPIC protocols in Canada and Brazil," *The International Journal of Human Rights* 27, no. 2 (2023): 339.

⁵³ Martin Papillon and Thierry Rodon, "The transformative potential of Indigenous-driven approaches to implementing free, prior and informed consent: Lessons from two Canadian cases," *International Journal on Minority and Group Rights* 27, no. 2 (2020): 334.

originates from Anglo-Saxon or Common Law legal systems, such as those in England and the United States. A class action lawsuit allows a group of individuals with similar grievances to collectively sue a defendant, in this case, the government and investors involved in the food estate program. This mechanism is particularly relevant for addressing widespread impacts on Customary Law Communities (MHA) whose rights have been affected.

By pursuing a class action, MHA can consolidate their claims, presenting a unified front against the alleged violations of their customary rights and environmental damage. This approach can also increase efficiency and reduce the burden on individual community members, who may lack the resources to pursue legal action independently. Furthermore, a class action lawsuit can bring greater public attention to the conflict, potentially influencing policy changes and promoting accountability. It serves as a powerful tool for marginalized communities to seek justice and assert their rights in the face of large-scale development projects.

Environmental conflicts form the foundation for class action lawsuits, which involve disputes between parties over alleged environmental pollution or destruction. These disputes are specialized conflicts concerning environmental issues, often stemming from differing interests in natural resource management. The United States utilizes class action mechanisms in environmental conflicts not only to address private property claims or damages but also to champion citizens' rights to a healthy environment.⁵⁴

In Indonesia, environmental conflicts have become increasingly common, and the use of class action lawsuits has emerged as an important tool for addressing environmental damage. The class action mechanism provides a way for affected communities to seek justice, especially when multiple individuals or groups suffer from similar environmental issues. In Indonesia, citizens have the legal standing to file lawsuits in response to environmental damage caused by government decisions or business activities. These lawsuits are typically adjudicated in State Administrative Courts, which have jurisdiction over cases related to environmental disputes, including those arising from government policies, such as the issuance of business licenses that harm the environment.⁵⁵ Additionally, the expansion of state administrative decisions under the Government Administrative Law has broadened the scope of citizen lawsuits, enabling communities to bring cases related to public interest and environmental rights.⁵⁶

⁵⁴ Alisia Revalina Memah, "Kajian Yuridis Gugatan Class Action Dalam Hukum Positif Di Indonesia," *Lex Privatum* 11, no. 3 (2023): 214.

⁵⁵ Bachrul Amiq et al., "Environmental Damage: Community Lawsuit Against the Government Over Industrial Business Licenses," *Law Reform* 20, no. 1 (2024): 11.

⁵⁶ Kadek Agus Sudiarawan et al., "Discourses on Citizen Lawsuit as Administrative Dispute Object: Government Administration Law vs. Administrative Court Law," *JILS* 7 (2022): 449.

In the context of the Merauke food estate program, class action lawsuits could address the alleged environmental damage caused by deforestation and land conversion. The Malind-Anim (MHA) community could argue that their right to a healthy environment has been violated, seeking redress for ecological harm and demanding the restoration of their customary lands. This approach highlights the interconnectedness of environmental and social issues, recognizing that environmental degradation directly impacts the well-being and livelihoods of affected communities. By leveraging class action mechanisms, MHA can collectively seek legal remedies, holding the government and investors accountable for their actions and advocating for sustainable development practices. Furthermore, the principle of strict liability, as applied to companies responsible for environmental damage, reinforces the need for corporate accountability, ensuring that those causing harm are required to pay compensation for the damage caused.⁵⁷ This strengthens the case for environmental justice in Indonesia, enabling communities to pursue litigation to protect both their land and the environment.

In the context of the Merauke food estate program, class action lawsuits could address the alleged environmental damage caused by deforestation and land conversion. MHA could argue that their right to a healthy environment has been violated, seeking redress for ecological harm and demanding restoration of their customary lands. This approach acknowledges the interconnectedness of environmental and social issues, recognizing that environmental degradation directly impacts the well-being and livelihoods of affected communities. By leveraging class action mechanisms, MHA can collectively seek legal remedies, holding the government and investors accountable for their actions and advocating for sustainable development practices.

Indonesia addresses environmental conflicts through litigation in District Courts, involving lawsuits claiming compensation for material and immaterial losses resulting from pollution or environmental damage caused by the defendant.⁵⁸ Alternatively, litigation through State Administrative Courts (PTUN) is based on harmed interests, specifically the right to a healthy environment, due to a State Administrative Decision (KTUN), such as a permit.⁵⁹ Therefore, to resolve this vertical conflict, litigation should be pursued with careful adherence to the Free, Prior, and Informed Consent (FPIC) principle. This approach

⁵⁷ Muhammad Ainurrasyid Al Fikri, "Implementation of strict liability by companies in cases of environmental damage in Indonesia: An overview of state administrative law in Indonesia", *Indonesian State Law Review (ISLRev)* 5, no. 2 (2022): 46.

⁵⁸ Sarah E. Light, "The law of the corporation as environmental law," *Stan. L. Rev.* 71 (2019): 142.

⁵⁹ Joseph Nwazi, "Assessing the efficacy of alternative dispute resolution (ADR) in the settlement of environmental disputes in the Niger Delta Region of Nigeria," *Journal of Law and Conflict Resolution* 9, no. 3 (2017): 34.

acknowledges the dual nature of environmental conflicts, allowing for claims of direct damages in District Courts and challenges to administrative decisions in PTUN. By prioritizing FPIC, litigation can ensure that the rights of affected communities are respected and that development projects are implemented in a sustainable and equitable manner.

4. Conclusion

In conclusion, the Merauke Food Estate program highlights critical issues regarding indigenous sovereignty and environmental sustainability, particularly the failure to respect the principle of Free, Prior, and Informed Consent (FPIC). The research reveals that the program's implementation has neglected indigenous communities' rights, leading to legal, environmental, and social conflicts. The exclusion of Customary Law Communities (MHA) from decision-making processes has undermined their self-determination and resulted in significant environmental degradation, such as deforestation and biodiversity loss. This situation underscores the importance of adhering to international legal standards like FPIC, which ensures that indigenous peoples have a meaningful say in projects that impact their lands and resources.

The study also emphasizes the need for robust conflict resolution mechanisms, particularly class action lawsuits, as tools to hold both the government and investors accountable. Such mechanisms, when based on FPIC principles, can help restore justice and support sustainable development. However, the research highlights that the current legal and institutional frameworks are insufficient in addressing these issues, with some actors engaging in "false compliance" to bypass FPIC requirements. Looking ahead, future research could focus on the implementation of FPIC in other regions and explore how legal reforms can better protect indigenous rights in large-scale development projects. Additionally, studying the role of local governance and community-led initiatives could offer valuable insights into improving the effectiveness of FPIC implementation.

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