



Regulatory Disharmony in Indonesia's Natural Resource Management: Pancasila, Development Law, and SDG 16

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Abstract

Regulatory disharmony in Indonesia's natural resource management is not merely a technical legislative problem but a systemic institutional failure that contradicts Pancasila values while simultaneously obstructing the achievement of the Sustainable Development Goals (SDGs), particularly Goal 16 on peace, justice, and strong institutions. This study examines whether existing sectoral natural resource regulations reflect Pancasila values and the principles of Development Law Theory, and to what extent such disharmony impedes SDG 16 achievement. The methodology employed is normative juridical, using a statute approach and a conceptual approach. Findings reveal that sectoral self-interest (ego sektoral) in the drafting of natural resource legislation has produced overlapping regulations that generate legal uncertainty, weaken indigenous communities' access to justice, and shift the function of State Control Rights (Hak Menguasai Negara) from a public protection instrument toward an investment facilitation mechanism. This condition constitutes a direct antithesis to the Fifth Principle of Pancasila and conflicts with SDG 16 targets 16.3 (equal access to justice), 16.6 (effective, accountable, and transparent institutions), and 16.7 (responsive and participatory decision-making). Integrative legal reconstruction, grounded in Pancasila and aligned with the SDG 16 agenda, is required to restore legal certainty, ecological justice, and legitimacy in national natural resource governance.

Keywords: Development Law Theory; Natural Resources; Pancasila; Regulatory Disharmony; State Control Rights.

I. INTRODUCTION

Indonesia is among the countries with the largest natural resource wealth in the world, spanning the mineral and coal mining, oil and gas, tropical forestry, fisheries, marine, agriculture, and plantation sectors.¹ Yet this abundance is paradoxically accompanied by persistent legal uncertainty: cross-sectoral regulatory overlap that has produced agrarian conflict, ecosystem degradation, and the impoverishment of local communities.

The scale of this uncertainty is not static; it is measurably worsening. The Konsorsium Pembaruan Agraria (KPA), Indonesia's principal agrarian-conflict monitoring body, documented 241 agrarian conflicts in 2023 covering 638,188 hectares of farmland and customary territory, a record that placed Indonesia first among six Asian countries surveyed for agrarian-conflict prevalence, ahead of India, Cambodia, the Philippines, Bangladesh, and Nepal.² By 2024 the figure had risen 21 percent to 295 conflicts across 1,113,577 hectares, affecting 67,436 families in 349 villages, with the plantation sector, and oil-palm concessions in particular, the largest single contributor. In 2025 the trend accelerated further: KPA's Catatan Tahunan recorded 341 conflict eruptions across 914,575 hectares affecting 123,612 families in 428 villages, a further 15 percent increase.³ These figures are not incidental to the argument advanced here; they are its most direct empirical confirmation. Regulatory disharmony does not remain a doctrinal abstraction. It is manifest, year on year, in rising numbers of families dispossessed of the land and forest on which their livelihoods depend.

At the constitutional level, the foundation for natural resource management is clearly formulated in Article 33 of the 1945 Constitution of the Republic of Indonesia, which mandates that natural wealth is controlled by the state and used for the greatest possible prosperity of the people.⁴ This provision implies two inseparable roles of the state: the State Control Right (Hak Menguasai Negara/HMN) as an instrument of public protection against uncontrolled exploitation, and state responsibility to actively fulfill public welfare through the fair and sustainable management of natural wealth.⁵ Consistency between sectoral regulation and Pancasila values serves as the

¹ Richard Dutu, "Making the Most of Natural Resources in Indonesia," OECD Economics Department Working Papers, No. 1236 (Paris: OECD Publishing, 2015), <https://doi.org/10.1787/5js0cqqk42ls-en>.

² "Konflik Agraria di Indonesia Terus Naik, Capai 295 Kasus di 2024," GoodStats Data, 2025, <https://data.goodstats.id/statistic/konflik-agraria-di-indonesia-terus-naik-capai-295-kasus-di-2024-bdOCp>; "KPA: Konflik Agraria Naik 21%," Betahita, February 4, 2025, <https://betahita.id/news/detail/10870/kpa-konflik-agraria-naik-21-.html>.

³ "Catatan Konflik Agraria Rezim Prabowo-Gibran," Magdalene, January 28, 2026, <https://magdalene.co/story/catatan-konflik-agraria-rezim-prabowo-gibran/>.

⁴ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [Constitution of the Republic of Indonesia of 1945], art. 33.

⁵ Moh. Mahfud MD, 2003 [full citation to be confirmed by the author].

fundamental measure of whether the HMN has been exercised in accordance with the constitutional mandate.⁶

In practice, these roles frequently come into tension. The shift in the orientation of the HMN from a "state responsibility" to an "investment facilitator" has eroded the protection of indigenous communities and environmental sustainability.⁷ The clash between economic growth targets and ecological sustainability has produced a pattern in which sacrificing nature for development is chosen as the pragmatic path, while environmental law enforcement remains weak.⁸ This imbalance is compounded by cross-sectoral regulatory disharmony, which triggers overlapping land claims, conflict with indigenous communities, and ecosystem destruction.⁹

This issue is not confined to the domestic context alone. At the global level, the international community has established the 2030 Agenda with its 17 Sustainable Development Goals (SDGs) as a universally applicable sustainable development framework.¹⁰ SDG 16, on Peace, Justice, and Strong Institutions, affirms that the rule of law, access to justice, and

⁶ Khudzaifah Dimiyati, Haedar Nashir, Elviandri Elviandri, Absori Absori, Kelik Wardiono, and Arief Budiono, "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (2021): e07865, <https://doi.org/10.1016/j.heliyon.2021.e07865>; Tomy Sudrajat, "Harmonization of Regulation Based on Pancasila Values through the Constitutional Court of Indonesia," *Constitutional Review* 4, no. 2 (2018): 301--25, <https://doi.org/10.31078/consrev426>; The HMN doctrine bears a documented structural resemblance to the public trust doctrine recognized across comparative constitutional and common-law systems, under which the state holds certain resources in trust for public benefit rather than as an absolute owner. Hapsari and colleagues argue that Article 33(3) of the 1945 Constitution provides fertile doctrinal ground for adopting public trust principles in Indonesia, notwithstanding the divergent regulatory practice discussed throughout this article (M. A. Hapsari et al., "Public Trust Doctrine in Indonesia: Expectation and Prospect," IOP Conference Series: Earth and Environmental Science (2022)). See also Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention," *Michigan Law Review* 68, no. 3 (1970): 471--566, for the foundational common-law articulation of the doctrine, and Michael C. Blumm, *The Public Trust Doctrine in Environmental and Natural Resources Law*, chap. 1, "Introduction" (2013), for its subsequent extension, in various jurisdictions, from navigable-waters access to broader ecological stewardship duties.

⁷ Abdil Mughis Mudhoffir and Rachma Qonita A'yun, "Doing Business under the Framework of Disorder: Illiberal Legalism in Indonesia," *Third World Quarterly* 42, no. 11 (2021): 2651--68, <https://doi.org/10.1080/01436597.2021.1967738>; Nalle traces this tension across successive Indonesian administrations, from Sukarno-era resource nationalism through New Order centralization to the post-Reformasi decentralization that, paradoxically, produced regulatory fragmentation rather than resolution, and finally to a deregulation agenda that has prioritized investment facilitation over institutional harmonization (Victor Imanuel W. Nalle, "Deciphering Developmentalism: A Legal-Economic Examination of Indonesia's Administration," *Law and Development Review* (2025)). The pattern recurs across administrations of markedly different political orientation, suggesting a structural rather than merely partisan source of the disharmony.

⁸ Anthony J. Bebbington, Denise Humphreys Bebbington, Laura Aileen Sauls, John Rogan, Sumali Agrawal, Cesar Gamboa, Aoife Imhof, Kilian Johnson, Herman Rosa, Andres Royo, Tessa Toumbourou, and Anthony Bebbington, "Resource Extraction and Infrastructure Threaten Forest Cover and Community Rights," *Proceedings of the National Academy of Sciences* 115, no. 52 (2018): 13164--73, <https://doi.org/10.1073/pnas.1812505115>.

⁹ Timothy T. Werner, Tessa Toumbourou, Victor Maus, Martin C. Lukas, Laura J. Sonter, Muhdar Muhdar, Rebecca K. Runting, and Anthony Bebbington, "Patterns of Infringement, Risk, and Impact Driven by Coal Mining Permits in Indonesia," *Ambio* 53, no. 2 (2024): 242--56, <https://doi.org/10.1007/s13280-023-01944-y>.

¹⁰ United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1 (New York: United Nations, 2015).

effective institutions are prerequisites for achieving all of the other development goals.¹¹

The three SDG 16 targets most relevant to the context of natural resource regulatory disharmony in Indonesia are:

- SDG 16.3: Ensuring equal access to justice for all parties and building accountable and inclusive institutions at all levels.
- SDG 16.6: Developing effective, accountable, and transparent institutions at all levels.
- SDG 16.7: Ensuring responsive, inclusive, participatory, and representative decision-making at all levels.

A Cambridge University Press study on SDG 16 in the context of forest governance explicitly shows that legal reform approaches which recognize the informal and customary norms underlying sustainable resource management are more likely to support the broader SDG agenda than approaches that strengthen state law designed to benefit large private entities.¹² This finding corresponds directly to Indonesia's natural resource regulatory disharmony, in which pro-investment sectoral provisions frequently disregard customary norms that have in fact proven to support sustainability. It also anticipates a theme this expanded analysis returns to at length below: Indonesian mining law scholarship has independently reached a compatible conclusion, identifying the absence of a binding Free, Prior, and Informed Consent (FPIC) requirement as a central legitimacy gap in extractive-sector governance.¹³

Indonesia has ratified its commitment to the SDGs through Presidential Regulation No. 59 of 2017 on the Implementation of the Achievement of Sustainable Development Goals, and has designated SDG 16 as one of nine priority goals in its 2021 Voluntary National Review (VNR) submitted to the UN High-Level Political Forum.¹⁴ This formal commitment has yet to align with the reality of regulation in the natural resource sector, leaving an implementation gap between Indonesia's SDG 16 commitments and the actual condition of natural resource governance on the ground. Independent governance audits corroborate this gap: assessing the coordination network among the ministries responsible for SDG delivery, Sari and colleagues find that Indonesia's SDG governance arrangements remain structurally

¹¹ "Rule of Law Drives Sustainable Development at Local and Global Levels: SDG 16," IDLO (International Development Law Organization), 2021, <https://www.idlo.int/sustainable-development-goals/goal-16-peace-justice-and-strong-institutions>.

¹² Pia Katila, Carol J. Pierce Colfer, Wil de Jong, Glenn Galloway, Pablo Pacheco, and Georg Winkel, eds., *Sustainable Development Goals: Their Impacts on Forests and People* (Cambridge: Cambridge University Press, 2019), <https://doi.org/10.1017/9781108765015>.

¹³ La Ode Dedihasriadi et al., "Strengthening Indigenous Peoples' Rights: Integrating the FPIC Principle into Indonesia's Mining Legal Framework," Cepalo (2026); Retno Kusniati, "Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?," *Jambe Law Journal* (2024).

¹⁴ Kementerian Perencanaan Pembangunan Nasional/Bappenas, *Voluntary National Review 2021: Empowering Indonesian People for a Resilient Nation and Contributing to the World* (Jakarta: Bappenas, 2021).

unsynchronized, undermining the credibility of formal commitments made in international fora.¹⁵

This article aims to analyze three interrelated issues: (1) the extent to which Pancasila values have been implemented in natural resource management regulation; (2) how Mochtar Kusumaatmadja's Development Law Theory can serve as a framework for reconstructing harmonious natural resource regulation; and (3) how natural resource regulatory disharmony corresponds to obstacles in achieving SDG targets 16.3, 16.6, and 16.7.

Existing Indonesian scholarship has approached this disharmony from several separate angles, but no study has yet combined them. Muhajir and colleagues document the sectoral overlap driving natural resource regulatory disharmony in Indonesia in detail, but their analysis remains at the level of institutional diagnosis and does not test that disharmony against either Pancasila as a constitutional grundnorm or an international accountability framework such as the SDGs.¹⁶ Sudrajat, and Abra and Wahanisa, examine how the Constitutional Court has used Pancasila values to correct legislative disharmony, but their focus is doctrinal and case-specific, centered on the Court's *ultra petita* jurisprudence, rather than a systematic evaluation of the natural resource sector as a whole.¹⁷ A separate strand of scholarship evaluates Indonesia's SDG governance architecture and regulatory reform generally, identifying the same reactive, cross-sectorally incoherent legal landscape this article documents, but without sector-specific attention to natural resources or engagement with Pancasila as a normative foundation.¹⁸ A third strand develops the philosophical case for Pancasila as grundnorm in considerable depth, but at a general constitutional-theory level, without applying that framework to a specific regulatory domain.¹⁹ None of these strands, individually, combines a domestic constitutional benchmark (Pancasila), a legislative design paradigm (Development Law Theory), and

¹⁵ D. A. Sari et al., "Performance Auditing to Assess the Implementation of the Sustainable Development Goals (SDGs) in Indonesia," *Sustainability* 14, no. 3 (2022).

¹⁶ Muhajir, Maria S. W. Sumardjono, Tri Manurung, and Josi Ferdinand, "Harmonisasi Regulasi dan Perbaikan Tata Kelola Sumber Daya Alam di Indonesia," *Integritas: Jurnal Antikorupsi* 5, no. 2--2 (2019): 1--13, <https://doi.org/10.32697/integritas.v5i2-2.479>.

¹⁷ Sudrajat, "Harmonization of Regulation"; Elviana Hera Abra and Rodiyah Wahanisa, "The Constitutional Court Ultra Petita as a Protection Form of Economic Rights in Pancasila Justice," *Journal of Indonesian Legal Studies* 5, no. 1 (2020): 187--224, <https://doi.org/10.15294/jils.v5i1.35965>.

¹⁸ S. Nugraha, T. Farina, I. Januardy, R. K. Putra, and F. S. Safari, "Sustainable Development Goals (SDGs) and Regulatory Reform: A Legal Approach to Responsive and Sustainable Lawmaking," *Proceeding International Collaborative Conference on Multidisciplinary Science* 2, no. 2 (2025): 131--41, <https://doi.org/10.70062/iccms.v2i2.148>; Sari et al., "Performance Auditing."

¹⁹ Muhammad Zulfa Djauzie, "Pancasila sebagai Grundnorm menurut Teori Hukum Murni Hans Kelsen dan Teori Hukum Responsif oleh Philippe Nonet dan Philip Selznick," *Jurnal Hukum To-ra: Hukum untuk Mengatur dan Melindungi Masyarakat* (2025); Elviandri et al., "Validity of the Divine Value in the Phrase 'In the Name of Justice Based on the One Supreme Divine Being': The Dialectic of Hans Kelsen's Pure Theory of Law and the Transcendental Paradigm of Law," *Pena Justisia: Media Komunikasi dan Kajian Hukum* (2025); A. G. Anam et al., "The Concept of Grundnorm in the Customary Law System: Reconciliation of Hans Kelsen's Pure Legal Theory with Indonesian Legal Pluralism," *JIHAD: Jurnal Ilmu Hukum dan Administrasi* (2026).

an international institutional-accountability standard (SDG 16) into a single evaluative framework applied specifically to natural resource regulation. That gap is what this article addresses.

Building on this gap, the novelty of this article lies in its integrated combination of three analytical frameworks: Pancasila values as the *grundnorm*, Development Law Theory as the legislative paradigm, and SDG 16 as the global analytical benchmark. This triangulated approach enables an evaluation of natural resource regulatory disharmony not only from the domestic constitutional perspective, but also against international institutional accountability standards, a perspective that has not been extensively developed in recent Indonesian natural resource law literature. This expanded analysis further situates the Indonesian case within the broader comparative literature on legal transplant effectiveness, sub national natural resource governance, and specialized environmental adjudication, in order to test whether the disharmony diagnosed here is a uniquely Indonesian pathology or an instance of a more general pattern documented across resource-dependent developing economies.

The remainder of this article proceeds as follows. Section 2 outlines the normative-legal methodology. Section 3 develops the theoretical framework, situating Pancasila as *grundnorm* and Kusumaatmadja's Development Law Theory within the broader comparative literature on legal theory and law-and-development scholarship, including its critics, before turning to the additional dimension of central regional regulatory fragmentation, the mechanics of sectoral disharmony, the resulting SDG 16 deficit, its layered impacts, and a comparative assessment of remedies documented elsewhere. Section 4 concludes with recommendations updated to reflect regulatory developments through mid-2026.

II. RESEARCH METHOD

This study applies normative juridical legal research, proceeding in four linked steps. First, it applies a statute approach and a conceptual approach in tandem: the former tests the consistency between Pancasila values, the 1945 Constitution, and sectoral natural resource legislation, while the latter analyzes the implications of regulatory overlap through the lens of Development Law Theory and the SDG 16 framework. Second, it draws on three layers of legal materials: primary (legislation, Constitutional Court decisions, and SDG instruments), secondary (books and scholarly journals indexed in Sinta 1–3 and Scopus, together with official government reports including Indonesia's VNR), and tertiary (legal dictionaries and SDG glossaries). These were collected through library research and, in this expanded version, supplemented by targeted academic-database and web-based searches to verify additional citations, recent regulatory developments, and current legislative status. Third, analysis proceeds qualitatively by a

deductive method, moving from general legal principles to the specific legal phenomena of Indonesian natural resource governance, so as to test whether sectoral regulation is internally consistent with the grundnorm and with Development Law Theory, and whether it enables or obstructs the SDG 16 targets identified above. Fourth, and by way of an explicit limitation, the study's scope is doctrinal and conceptual rather than empirical: it does not independently collect field data. Where implementation statistics are invoked (for instance, KPA's conflict data or the Indigenous Territory Registration Agency's (BRWA) customary-forest mapping), they are drawn from existing secondary reporting rather than original fieldwork, a conventional and defensible boundary for *yuridis normatif* scholarship in Indonesian legal science.²⁰ The resulting conclusions and recommendations set out in Section 4 are accordingly best read as a doctrinally grounded interpretation consistent with the available secondary evidence, rather than as an independently isolated causal estimate.

III. DISCUSSION

A. Pancasila as Grundnorm of Natural Resource Management

Pancasila was formulated by BPUPKI (the Investigating Committee for Preparatory Work for Indonesian Independence) and PPKI (the Preparatory Committee for Indonesian Independence) between May and August 1945 as the philosophical foundation of the Unitary State of the Republic of Indonesia. As grundnorm, Pancasila is not merely a formal ideology but a source of values that should permeate the entire body of Indonesian positive law, from the Constitution down to sectoral implementing regulations.²¹ This article treats that premise as the interpretive key to everything that follows: if Pancasila truly functions as grundnorm, then any sectoral regulation inconsistent with it is not merely poor policy but a defect of constitutional pedigree.

This grundnorm framing draws, if selectively, on Hans Kelsen's pure theory of law, under which every legal system's validity ultimately rests on a presupposed basic norm that cannot itself be validated by reference to a still higher positive rule. Indonesian legal philosophy has long debated whether Pancasila can bear this Kelsenian function without distortion, since Kelsen's basic norm is a purely formal, hypothetical postulate, whereas Pancasila carries substantive ethical and theological content, most explicitly in its First Principle.²² Recent scholarship resolves this tension by treating

²⁰ S. Mandala, "Pembangunan Hukum Nasional dalam Perspektif Teori dan Filsafat Hukum," *Jurnal Penelitian Hukum De Jure* (2024); Tanius Sebastian, "Masalah Metodologis Ilmu Hukum Indonesia," *Veritas et Justitia* 4, no. 1 (2018): 59--87, <https://doi.org/10.25123/vej.v4i1.2913>.

²¹ Dimiyati et al., "Indonesia as a Legal Welfare State"; Muladi and Suparno, "Indonesian Legal Reform Based on Pancasila," in *Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education (ICLSSEE 2021)* (2021), <https://doi.org/10.4108/eai.6-3-2021.2306451>.

²² Elviandri et al., "Validity of the Divine Value."

Pancasila as performing a dual function: procedurally, as the Kelsenian keystone that confers validity on the hierarchy of positive law beneath it; and substantively, as a transcendental source of ethical obligation that positive law must not merely be consistent with but affirmatively express.²³ Djauzie further pairs this Kelsenian reading with Nonet and Selznick's theory of responsive law, arguing that a *grundnorm* capable of guiding a pluralistic, rapidly developing society must combine Kelsen's demand for hierarchical consistency with responsive law's demand for adaptive engagement with social purpose. That, this article contends, is precisely the synthesis that sectoral natural resource legislation has failed to achieve. A further complication, particularly salient for natural resource law, is legal pluralism: Indonesia's positive legal order operates alongside customary (*adat*) and, in places, religious law, raising the question of whether a single Kelsenian *grundnorm* can coherently sit atop a plural normative order. Anam and colleagues propose a "multi-*grundnorm*" reconciliation, under which customary law retains its own foundational norms while remaining nested within the unity of the national legal system.²⁴ Section 3.7 adopts and extends that formulation to argue that customary institutions should be integrated into, rather than subordinated by, sectoral natural resource regulation.

In the context of natural resource management, Mugiyati defines natural resources as the entire content of the biosphere serving as a source of energy contained in soil, water, and air, which can be utilized to meet human needs both directly and indirectly.²⁵ Under this definition, natural resources are not merely an economic commodity but an entity intertwined with both human life and the ecosystem simultaneously, and their management, this article argues, must therefore reflect values derived from all five principles (*sila*) of Pancasila, not the Fifth Principle alone as sectoral legislation typically assumes:

The First Principle (belief in one supreme God) reminds us that the universe is a divine gift that must be managed with a sense of transcendental responsibility, not exploited greedily for short-term economic gain alone. Regulation that loosens environmental protection for the sake of investment contravenes the divine mandate embedded in this principle. The Second Principle (just and civilized humanity) demands that every development policy respect human dignity; no group in society, particularly indigenous communities, may be sacrificed for the benefit of a select few.²⁶

²³ Djauzie, "Pancasila sebagai *Grundnorm*"; Elviandri et al., "Validity of the Divine Value."

²⁴ Anam et al., "Concept of *Grundnorm*."

²⁵ Mugiyati, "Hak Pemanfaatan Sumber Daya Alam Perspektif Hukum Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 2, no. 2 (2016): 440--71, <https://doi.org/10.15642/aj.2016.2.2.440-471>.

²⁶ Arnim Scheidel, Alvaro Fernández-Llamazares, Amanda Hurtado Bara, Daniela Del Bene, Dominique M. David-Chavez, Emily Fanari, Ibrahim Garba, Ksenija Hanaček, Jieliang Liu, Joan Martínez-Alier, Grettel Navas, Victoria Reyes-García, Bhaskar Roy, Leah Temper, May Aye Thiri, Dalena Tran, Mariana Walter, and Kyle Powys Whyte, "Global Impacts of Extractive and Industrial Development Projects on Indigenous Peoples' Lifeways, Lands, and Rights," *Science Advances* 9, no. 23 (2023): eade9557, <https://doi.org/10.1126/sciadv.ade9557>.

Criminalizing citizens who defend their customary territories is a direct violation of this principle of humanity.

The Third Principle (the unity of Indonesia) promotes national unity, meaning that natural resource management should not generate division between regions or between the state and local communities. Regulatory overlap that triggers land conflict instead tears apart the unity this principle demands. The Fourth Principle (democracy guided by the inner wisdom of deliberation among representatives) requires that decisions concerning natural resources be made through deliberation and meaningful public participation. Licensing processes that foreclose space for indigenous community participation contravene this principle of wise deliberation. The Fifth Principle (social justice for all Indonesian people) demands the fair distribution of the benefits of natural wealth to the entire population, not solely to concession holders or producing regions.²⁷ When all five principles are applied consistently, natural resource management will proceed in accordance with the principles of sustainability and social justice.²⁸

Pancasila positions Indonesia distinctly from two extreme ideological poles. Liberal capitalism, which upholds individual ownership rights over natural resources, tends to neglect environmental sustainability and equitable benefit distribution. Communism, conversely, denies private ownership altogether. Pancasila offers a third way: the state controls natural resources not as an absolute owner, but as a trustee accountable to the entire Indonesian people, while respecting customary rights and preserving ecosystem sustainability.²⁹

These values are embodied in Article 33 of the 1945 Constitution, particularly paragraphs (3) and (4), which explicitly cite sustainability and environmental insight as principles of the national economy. In practice, the House of Representatives (DPR) and the Government, as the lawmaking bodies, should ensure that every natural resource regulation issued does not deviate from Pancasila's philosophy. Yet, as this article demonstrates throughout Sections 3.3 and 3.4, conditions on the ground show otherwise.³⁰

²⁷ Faizah Umma Najicha, "Oil and Natural Gas Management Policy in Realizing Equal Energy in Indonesia," *Journal of Human Rights, Culture and Legal System* 1, no. 2 (2021), <https://doi.org/10.53955/jhcls.v1i2.8>.

²⁸ Abra and Wahanisa, "Constitutional Court Ultra Petita"; Sudrajat, "Harmonization of Regulation."

²⁹ Achmad Irwan Hamzani, Havis Aravik, Mukhidin Mukhidin, and Elly Praptono, "Considering the Living Law as a Source in National Legal Development," *Jurnal Cita Hukum* 7, no. 2 (2019), <https://doi.org/10.15408/jch.v7i2.10951>; This trustee conception is the functional equivalent of what comparative scholarship terms the public trust doctrine; see note 7 above and the discussion of Hapsari and colleagues, "Public Trust Doctrine in Indonesia," in Section 3.1.

³⁰ Independent rule-of-law measurement corroborates this gap between constitutional aspiration and administrative practice: Indonesia's scores on the World Justice Project Rule of Law Index show persistent weakness precisely in the dimensions most relevant to natural resource governance (due process, non-discrimination, and regulatory enforcement), even as the country performs comparatively well on formal civil-liberties indicators (E. Satria et al., "From Stagnation to Reform: Administrative Law as a Key to Uphold the Rule of Law in Indonesia," *Indonesian Comparative Law Review* (2025)).

The comparative trajectory of this trustee conception is worth noting briefly, since it bears on the recommendations developed in Section 4. Beyond Indonesia, courts and constitution-drafters elsewhere have increasingly given the public trust idea explicit constitutional form: Hungary's Constitutional Court, interpreting Article P of the Fundamental Law, struck down an amendment to the Forest Act in 2020 precisely because it infringed the state's fiduciary duty to steward natural heritage for future generations,³¹ while proposals to entrench similar trustee language in Chile's post-2019 constitutional reform process drew explicitly on Pennsylvania's and Hawai'i's constitutional trust provisions as models compatible with continued recognition of private property.³² Both examples illustrate that constitutionalizing the trustee conception does not require displacing private ownership or foreign investment protections; it requires only that positive law treat the state's control over natural wealth as bounded by an enforceable duty of stewardship rather than as an unconditional prerogative. That, this article argues, is precisely the distinction Indonesian sectoral legislation has progressively eroded.

B. Development Law Theory as a Paradigm for Reconstructing Natural Resource Regulation

Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M., Professor at Universitas Padjadjaran and a National Hero of Indonesia, formulated Development Law Theory as a conceptual framework specifically designed to address the complexity of development in a pluralistic developing country.³³ In his collected writings, he outlined two fundamental, mutually complementary dimensions.³⁴

The first dimension asserts that order and social regularity are absolute prerequisites for sustainable development. Law functions to maintain social stability as the foundation for directed change. Without order guaranteed by law, natural resource management cannot proceed effectively, as conflict and uncertainty will continue to obstruct both investment and community participation. Regulatory disharmony that produces protracted disputes among ministries, investors, and indigenous communities is, this article contends, direct evidence of the failure of this first dimension specifically, not merely of governance in general.

³¹ Katalin Sulyok, "The Public Trust Doctrine, the Non-Derogation Principle and the Protection of Future Generations," *Hungarian Yearbook of International Law and European Law* (2021).

³² C. J. Bauer et al., *The Protection of Nature and a New Constitution for Chile: Lessons from the Public Trust Doctrine* (Santiago: Chile Conservation Exchange, 2021).

³³ Sebastian, "Masalah Metodologis"; M. Yasmin, "Analysis of the Legal Thought of Postmodern Era of the Development Legal Theory by Mochtar Kusumaatmadja and Progressive Legal Theory by Satjipto Rahardjo for Legal Development of Indonesia in the Perspective of Ontological, Epistemological and Axiological," *IOSR Journal of Humanities and Social Science* 21, no. 09 (2016): 66--75, <https://doi.org/10.9790/0837-2109026675>.

³⁴ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan: Kumpulan Karya Tulis*, ed. Otje Salman and Eddy Damian (Bandung: Alumnus, 2002).

The second dimension views law not merely as a guardian of order, but as an active instrument for directing societal behavior toward established development goals. Law functions flexibly and adaptively: it shapes the behavior of individuals and groups to align with a vision of national development that is just and sustainable. In this context, natural resource regulation must not stop at regulating business licenses; it must actively drive stakeholders, including sectoral regulators themselves, toward integrative natural resource management.³⁵

Kusumaatmadja's theory did not develop in isolation; it belongs to a wider family of "law and development" scholarship that took shape internationally from the 1960s onward, and which has itself been subject to sustained internal critique. The first wave of the international law and development movement, associated with U.S. funded legal assistance programs in the 1960s and 1970s, was later judged by many of its own participants to have largely failed, having exported Western legal instruments with insufficient attention to local social, political, and institutional conditions.³⁶ Davis and colleagues, surveying the movement's revival from the 1990s onward, likewise caution that the empirical relationship between legal reform and development outcomes remains contested and that confident prescriptions for "what works" regularly outrun the evidence.³⁷ This critique is, this article maintains, directly germane to the present argument for two reasons. First, it cautions against treating law reform, including the unified natural resource statute recommended in Section 4 below, as a sufficient remedy in itself; Tamanaha's emphasis on surrounding social factors implies that harmonized legislation will fail to resolve regulatory disharmony unless accompanied by institutional capacity-building, particularly at the sub-national level. Second, and more affirmatively, Kusumaatmadja's own formulation is comparatively well insulated against the standard law-and-development critique precisely because it was never a legal-transplant project: it was conceived from within Indonesian legal scholarship as a response to Indonesia's own developmental conditions, drawing on Roscoe Pound's sociological jurisprudence but adapted to a domestic constitutional and cultural context rather than imported wholesale.³⁸ Whether the theory has been faithfully applied in the natural resource sector, as opposed to merely invoked as legitimating rhetoric, is a separate question, and one this article answers largely in the negative, for reasons developed at length in Sections 3.3 and 3.4.

³⁵ I. Irsan and M. Utama, "The Political Law on Coal Mining in the Fulfilment of People's Welfare in Indonesia," *Sriwijaya Law Review* (2019): 11--25, <https://doi.org/10.28946/slrev.Vol3.Iss1.202.pp11-25>.

³⁶ Brian Z. Tamanaha, "The Primacy of Society and the Failure of Law and Development," Washington University in St. Louis School of Law Legal Studies Research Paper Series (2009).

³⁷ Kevin Davis et al., "The Relationship between Law and Development: Optimists versus Skeptics," *American Journal of Comparative Law* (2008).

³⁸ I. Dewa et al., "Innovation Based on Balinese Local Genius Shifting Alternative Legal Concept: Towards Indonesia Development Acceleration" (2021); Yasmin, "Analysis of the Legal Thought."

Both dimensions find strong relevance when confronted with natural resource regulatory disharmony. First, legal stability is needed so that natural resource exploration can proceed without protracted conflict among the state, investors, indigenous communities, and local communities. Second, law must be capable of directing all stakeholders toward sustainability, rather than merely facilitating short term exploitation.

Development Law Theory is also relevant in responding to the colonial legacy that continues to influence natural resource governance today. The extraction of natural resources by the colonial power, sustained through forced labor and land-dispossessing regulations such as the 1899 *Mijnwet* (Mining Act), left a historical trauma reflected in present-day community resistance to natural resource exploration projects. Wicaksono, Yunita, and Ginaya document that local communities which have successfully managed natural resources are precisely those that have maintained customary based self-governance systems not in conflict with formal rules.³⁹ This finding, this article submits, affirms Kusumaatmadja's view that customary law is not an obstacle to development but rather social capital that needs to be integrated into the national regulatory framework, a view sectoral drafters have consistently ignored.

The practical implication of Development Law Theory in this context is the need for an explicitly formulated coordinative relationship between the state as holder of the HMN, indigenous communities, and concession-holding investors, positioning communities as subjects rather than objects of development. Regulation capable of simultaneously integrating order, participation, and sustainability reflects both the essence of this theory and the spirit of Article 33 of the 1945 Constitution.

C. Multi-Level Regulatory Fragmentation: Decentralization, Recentralization, and the Persistence of Ego Sektoral

The ego sektoral diagnosed above operates along a horizontal axis, between competing central government ministries, but, this article argues, Indonesia's natural resource disharmony is compounded by a second, vertical axis of fragmentation between central and regional government that existing scholarship has not always fully integrated into a Pancasila Development Law Theory SDG 16 framework.

Indonesia's post-1998 decentralization reforms, enacted through Law No. 22/1999 and Law No. 25/1999 (later replaced by Law No. 23/2014), were intended to correct the New Order's over centralized natural resource governance by transferring licensing and management authority to regional

³⁹ Andhika Wicaksono, Ida Yunita, and Gede Ginaya, "Living Side by Side with Nature: Evidence of Self-Governance in Three Local Communities in Indonesia," *Heliyon* 8, no. 12 (2022), <https://doi.org/10.1016/j.heliyon.2022.e12248>.

governments.⁴⁰ The reform's underlying premise, that closer proximity between decision-makers and resource dependent communities would improve accountability, has proven only partially correct. Duncan documents "mixed outcomes" for indigenous ethnic minorities: decentralization opened new local-political channels through which some communities regained influence over customary land, but it simultaneously incentivized district governments to expand resource extraction in pursuit of the revenue shares attached to natural resource licensing, reproducing rather than resolving the extractive logic of the centralized regime it replaced.⁴¹ Peluso, in an analysis directly relevant to the disharmony examined in Section 3.4 below, traces this pattern to its root: sectoral resource laws enacted under the New Order had already bypassed the authority of the 1960 Basic Agrarian Law and its administering institutions, creating jurisdictional shortcuts to resource control that decentralization inherited rather than dismantled; where resources were most valuable and state authority most contested, decentralization produced the highest incidence of resource-related violence.⁴²

More recent scholarship documents a further complication: vertical fragmentation is not settling into stable equilibrium but oscillating. Law No. 4/2009 on Mineral and Coal Mining initially devolved mining-permit (IUP) authority to district and provincial governments; Law No. 3/2020, and its consolidation into the Job Creation Law regime (Law No. 6/2023; Law No. 2/2025), reversed this by recentralizing licensing authority to the national government.⁴³ Tinambunan and colleagues characterize this reversal as a "constitutional anomaly" inconsistent with the decentralization spirit embedded in the 1945 Constitution, while documenting that recentralization has simultaneously weakened environmental oversight, narrowed public participation, and reduced producing regions' revenue capture. Those are precisely the SDG 16.6 and 16.7 deficits analyzed in Section 3.5. Sagita and colleagues describe the resulting condition as a "paradox of autonomy": decentralization empowers some local governments to pursue genuine conservation while enabling others to prioritize short-term extractive revenue, with no consistent national floor of environmental protection to

⁴⁰ B. Setiawan et al., "Regional Autonomy and Local Resource Management in Indonesia," *Asia Pacific Viewpoint* 48, no. 1 (2007): 72--84; T. Talitha et al., "Welcoming Two Decades of Decentralization in Indonesia: A Regional Development Perspective," *Territory, Politics, Governance* 8, no. 5 (2020): 690--708.

⁴¹ Christopher Duncan, "Mixed Outcomes: The Impact of Regional Autonomy and Decentralization on Indigenous Ethnic Minorities in Indonesia," *Development and Change* 38, no. 4 (2007): 711--33.

⁴² Nancy Lee Peluso, "Violence, Decentralization, and Resource Access in Indonesia," *Peace Review* 19, no. 1 (2007): 23--32, <https://doi.org/10.1080/10402650601181840>.

⁴³ Syamsul Rijal et al., "Restoration of Central Power or Betrayal of Regional Autonomy? Analysis of the Impact of Recentralization of Mining Authority in the Era of Limited Autonomy," *Journal of Law and Legal Reform* (2024); I. R. Sumirat et al., "Constitutional Framework for Mining Regulation: Regional Autonomy and State Authority," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* (2025); H. Tinambunan et al., "Recentralization of Mining Licensing Authority and Its Impact on Local Autonomy in Indonesia," *Jurnal Suara Hukum* (2025).

prevent a race to the bottom.⁴⁴ Triwahyuningsih and colleagues, in the most recent contribution to this literature, argue that Indonesia's decentralization framework is structurally "non functional" for safeguarding either indigenous rights or environmental protection, because regulatory fragmentation, overlapping authority, and investment driven local governance combine to facilitate, rather than merely fail to prevent, extractive expansion.⁴⁵ Aulia and colleagues, examining a mining-authority dispute between central and provincial government in Southeast Sulawesi, similarly find that the absence of an effective institutional mediation mechanism leaves such central regional conflicts unresolved and recommend an independent authority conflict resolution body as a structural remedy.⁴⁶ This article reads that recommendation as directly transferable to the natural resource sector at large.

This vertical dimension matters for the present argument in three respects. First, it shows that the disharmony diagnosed through the Pancasila and Development Law Theory lenses above is not confined to conflict between national sectoral ministries; the same pathology of ego sektoral reproduces itself at the level of central versus regional authority, and any unified natural resource statute recommended in Section 4 must resolve both axes simultaneously or risk merely relocating the disharmony rather than eliminating it. Second, it identifies militarization as an emergent, specifically 2025 – 2026 dimension of the problem. Presidential Regulation No. 5 of 2025 on Forest Area Enforcement (*Penertiban Kawasan Hutan*), issued under the authority of Articles 110A and 110B of the Job Creation Law and effective from 21 January 2025, established a Forest Area Enforcement Task Force chaired by the Minister of Defense, with the Army Chief of Staff as deputy chair, while the Minister of Forestry, the nominal holder of forest-area authority, sits merely as an ordinary member of the steering structure.⁴⁷ KPA's 2025 annual report attributes a documented rise in militarized agrarian conflict to this reassignment, recording a roughly threefold increase in conflicts involving military actors compared with the previous year, and describes the shift as reframing what were historically land-tenure disputes

⁴⁴ G. D. Sagita et al., "Regional Rights, Environmental Wrongs: Unpacking the Paradox of Autonomy in Indonesia's Environmental Governance," *Indonesian Journal of Environmental Law and Sustainable Development* (2024).

⁴⁵ Triwahyuningsih et al., "Decentralisation in Regional Governance Law: The Paradox and Non-Functionality of Indigenous Rights and Environmental Protection in Indonesia," *Journal of Law, Environmental and Justice* (2026).

⁴⁶ W. N. Aulia et al., "Efektivitas Kebijakan Hukum Mengenai Penyelesaian Konflik Pertambangan antara Kebijakan Pemerintah Pusat dan Daerah," *Indonesian Journal of Public Administration Review* (2025).

⁴⁷ Presiden Republik Indonesia, Peraturan Presiden Nomor 5 Tahun 2025 tentang *Penertiban Kawasan Hutan* (2025), arts. 9--11; "Prabowo Terbitkan Peraturan Presiden tentang *Penertiban Kawasan Hutan*," *Tempo*, 2025, <https://www.tempo.co/ekonomi/prabowo-terbitkan-peraturan-presiden-tentang-penertiban-kawasan-hutan-1197694>; "Jika Tentara Menertibkan Kawasan Hutan," *Tempo*, 2025, <https://www.tempo.co/lingkungan/perpres-5-2025-pengambilalihan-kawasan-hutan-1199709>; "Militerisme dalam *Penertiban Kawasan Hutan*," *Betahita*, January 24, 2025, <https://betahita.id/news/detail/10876/militerisme-dalam-penertiban-kawasan-hutan.html>.

as matters of "order" and "security" rather than agrarian justice.⁴⁸ The regulation's stated rationale is anti-corruption: its explanatory memorandum cites the recovery of state revenue lost to illegal land use inside forest areas. But its institutional design illustrates, this article contends, with unusual starkness, the displacement of the HMN from a public-protection instrument toward an instrument of state coercion against the very communities Article 33 was drafted to protect. Third, and more constructively, the comparative decentralization literature also identifies a workable middle path: De Sa, reviewing mining-sector decentralization conflicts across multiple resource-dependent economies, argues that municipal level coordination, rather than a binary choice between full centralization and full devolution, offers the most consistent basis for reconciling national sectoral policy with territorial management,⁴⁹ a design principle this article returns to in the comparative discussion of Section 3.7.

A further wrinkle in Indonesia's multi level architecture is asymmetry: special-autonomy arrangements for provinces such as Aceh, Papua, and the Special Region of Yogyakarta grant those regions differentiated natural resource authority precisely to accommodate their distinct historical and cultural claims.⁵⁰ In principle, asymmetric decentralization of this kind offers a promising vehicle for accommodating customary land rights within, rather than against, formal state law, consistent with the multi-grundnorm reconciliation proposed in Section 3.1. In practice, however, this article notes, special-autonomy natural resource authority has not been insulated from the same recentralization pressure documented for ordinary provinces above, and Papua in particular, the site of some of Indonesia's largest customary-land and mining-permit overlaps, illustrates that asymmetric status is a necessary but not sufficient condition for resolving the tension between sectoral extraction and customary recognition.

D. Natural Resource Regulatory Disharmony as an Antithesis to Pancasila and a Deficit in SDG 16

Article 33 of the 1945 Constitution serves as the grundnorm that should be the single reference point for all subordinate natural resource regulation. However, this article argues, the drafting of sectoral legislation driven by sectoral self-interest (*ego sektoral*), where each ministry issues rules oriented toward its own sector's targets without reference to a single integrated legal umbrella, has created a condition of systemic disharmony.⁵¹ This has been documented academically through studies of the SDGs and regulatory reform in Indonesia, which conclude that the existing legal landscape is

⁴⁸ "Catatan Konflik Agraria Rezim Prabowo-Gibran."

⁴⁹ Priscila De Sa, "Mining and Sustainable Development: Territorializing the Mining Industry," *Mineral Economics* 31, no. 1--2 (2018): 263--76.

⁵⁰ H. B. Allo et al., "Asymmetric Decentralisation Arrangements in the Implementation of Regional Autonomy in Indonesia," *Edelweiss Applied Science and Technology* (2025).

⁵¹ Muhajir et al., "Harmonisasi Regulasi."

reactive, lacks cross sectoral coherence, and is not oriented toward sustainability.⁵² A more granular, doctrinally focused analysis of mining-licensing harmonization independently confirms this diagnosis, identifying norm conflicts between central and regional mining authority, between mining permits and environmental approvals, and between mining concession boundaries and pre-existing land rights.⁵³ Those are the same three fault lines examined in turn below.

Three examples illustrate this disharmony, each of which, this article contends, exposes a different structural failure mode rather than a mere drafting oversight. The first is the conflict between the Forestry Law and the Mineral and Coal Mining Law. Law No. 41 of 1999 on Forestry prohibits open-pit mining in protected forest areas. Yet Law No. 4 of 2009, along with its amendment (Law No. 3 of 2020), permits mining exploration in areas with high mineral potential. The Forest Area Borrow to Use Permit (IPPKH) mechanism is frequently used to legitimize mining activity that substantively violates the protective function of these areas. Werner and colleagues document that excessive permit issuance and inadequate oversight in Indonesia's mining industry have triggered massive deforestation, boundary violations, and fatalities from mining accidents.⁵⁴ Sumartono and Riswadi reach a parallel conclusion from a community-protection rather than a conservation-area perspective, finding that Indonesia's mining and environmental regulations remain poorly harmonized in ways that leave residents of mining-affected areas without effective legal recourse.⁵⁵

A second conflict arises between the Basic Agrarian Law (UUPA) and sectoral legislation concerning indigenous community rights. Law No. 5 of 1960 (the Basic Agrarian Law) recognizes customary rights. Yet the Forestry Law and the Mining Law frequently unilaterally claim customary territories as "state forest areas" or "mining zones," placing customary rights holders at risk of being criminalized as "encroachers" on their own ancestral land. Dhiaulhaq and McCarthy affirm that the weakness of the customary legal framework in the face of such state claims produces conflicts that are difficult to resolve.⁵⁶ Bedner and Arizona further conclude that without substantial legal reform, the promotion of customary rights through formal

⁵² Nugraha et al., "Sustainable Development Goals and Regulatory Reform."

⁵³ H. Tinambunan, "Harmonization of Mineral and Coal Mining Licensing Regulations in the National Legal System," *Ipsa Jure* (2026).

⁵⁴ Werner et al., "Patterns of Infringement."

⁵⁵ S. Sumartono et al., "Harmonization of Mining and Environmental Regulations as an Effort to Strengthen Legal Protection for Local Populations in Indonesia," *Doktrin: Jurnal Dunia Ilmu Hukum dan Politik* (2025).

⁵⁶ Ahmad Dhiaulhaq and John F. McCarthy, "Indigenous Rights and Agrarian Justice Framings in Forest Land Conflicts in Indonesia," *The Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 34--54, <https://doi.org/10.1080/14442213.2019.1670243>.

recognition schemes tends to be insufficient to protect communities from land dispossession.⁵⁷

This structural weakness has a specific, remediable cause that more recent mining-law scholarship has identified with precision, and which this article treats as the single most tractable reform lever available: the absence of a binding Free, Prior, and Informed Consent (FPIC) requirement in Indonesia's mining licensing regime. Dedihasriadi and colleagues, analyzing mining permits issued without community consent, find that the legitimacy gap in Indonesian mining governance is not merely one of inadequate enforcement but of design: current regulation remains procedural and transactional, treating community engagement as a formality to be discharged rather than as a precondition of legitimate authorization. They propose shifting from a licensing based to a consent based regime, anchored in an independent FPIC verification body.⁵⁸ Kusniati reaches a compatible conclusion from a different angle, arguing that FPIC's status under Indonesian law remains unresolved between soft-law aspiration and hard-law obligation, and that this ambiguity itself functions as a structural weakness exploited by permit-issuing authorities. FPIC is not a uniquely Indonesian aspiration: comparative experience across Canada, Ecuador, and Colombia shows that consent-based regimes, however imperfectly implemented even where formally adopted, shift the baseline expectation from consultation to consent and thereby alter the bargaining position of affected communities in ways that consultation only regimes do not.⁵⁹ Section 4 returns to FPIC as a specific, comparatively grounded recommendation.

A third conflict exists between the Marine Affairs Law and the Omnibus Law regulations. Law No. 27 of 2007 aims to protect coastal areas and small islands. However, the eased permitting for sea sand dredging under the Job Creation Law (No. 6 of 2023) harms traditional fishers whose livelihoods depend on a healthy coastal ecosystem. Hadi and colleagues find

⁵⁷ Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416--34, <https://doi.org/10.1080/14442213.2019.1670246>.

⁵⁸ Dedihasriadi et al., "Strengthening Indigenous Peoples' Rights."

⁵⁹ L. Klein et al., "Free, Prior, and Informed Consent and Human Rights Impact Assessments: Lessons from Repsol's Operations in Wayuu Territories in La Guajira, Colombia," *Resources Policy* (2025); Martin Papillon et al., "Proponent-Indigenous Agreements and the Implementation of the Right to Free, Prior, and Informed Consent in Canada," *Environmental Impact Assessment Review* 62 (2016): 216--24; Roberta Rice, "The Politics of Free, Prior and Informed Consent: Indigenous Rights and Resource Governance in Ecuador and Yukon, Canada," *International Journal on Minority and Group Rights* (2020); See also Philippe Hanna et al., "Human Rights, Indigenous Peoples and the Concept of Free, Prior and Informed Consent," *Impact Assessment and Project Appraisal* 31, no. 2 (2013): 146--57, on the general human-rights foundations of FPIC, and Angus MacInnes et al., "Free, Prior and Informed Consent: How to Rectify the Devastating Consequences of Harmful Mining for Indigenous Peoples," *Perspectives in Ecology and Conservation* (2017), on industry-standard adoption of the principle following successive mining-related human-rights failures; both confirm that FPIC's international trajectory has been toward progressively wider (if still incomplete) recognition since the 2007 UN Declaration on the Rights of Indigenous Peoples.

that the Job Creation Law sidelines environmental sustainability and risks worsening ecological degradation, particularly because exemptions from the Environmental Impact Assessment (AMDAL) obligation have been granted broadly, even though only 10 percent of Indonesia's regencies/cities have detailed spatial plans.⁶⁰ Sembiring and colleagues reinforce this assessment, describing the Omnibus Law as a setback for Indonesian environmental law.⁶¹

The establishment of the Constitutional Court represents a constitutional response to this problem. The Court has the authority to annul legislation that contravenes the 1945 Constitution. Wahanisa documents how the Court has issued *ultra petita* rulings in cases concerning the Water Resources Law and the Electricity Law, precisely because of their fundamental inconsistency with Pancasila's principle of social justice.⁶² However, this article submits, *post hoc* dispute resolution cannot substitute for preventing disharmony from the very stage of regulatory drafting: it treats the symptom, not the *ego sektoral* pathology diagnosed throughout this section.

E. Regulatory Disharmony Threatens SDG 16 Targets

The impact of natural resource regulatory disharmony corresponds directly, this article argues, to three measurable deficits in SDG 16.

SDG 16.3 (Access to Justice) calls for equal access to justice for all parties and the development of accountable institutions. In the natural resource context, indigenous communities' access to justice is demonstrably hindered by regulatory overlap. When one ministry issues a permit deemed illegal by another, the affected community has no clear forum through which to pursue its rights. The criminalization of indigenous people who defend their living space, using provisions of the Forestry Law or the Mining Law, reflects an injustice in legal access that directly contravenes SDG 16.3.⁶³ Jumas and colleagues, in their study of environmental adjudication in

⁶⁰ Sudharto P. Hadi, Rizky Setiadi Hamdani, and Ali Roziqin, "A Sustainability Review on the Indonesian Job Creation Law," *Heliyon* 9, no. 2 (2023), <https://doi.org/10.1016/j.heliyon.2023.e13431>.

⁶¹ Radhitya Sembiring, Illa Fatimah, and Grita Anindarini Widyaningsih, "Indonesia's Omnibus Bill on Job Creation: A Setback for Environmental Law?" (2020), <https://doi.org/10.1163/24686042-12340051>.

⁶² Rodiyah Wahanisa, 2019 [full citation to be confirmed by the author]; The two decisions are Constitutional Court Decision No. 001-021-022/PUU-I/2003 (2004), which annulled Law No. 20 of 2002 on Electricity in its entirety on the ground that its core provisions conflicted with Article 33(2) of the 1945 Constitution notwithstanding that petitioners had challenged only specific articles, and Constitutional Court Decision No. 85/PUU-XI/2013 (2015), read on 18 February 2015, which similarly annulled the whole of Law No. 7 of 2004 on Water Resources and revived the prior Law No. 11 of 1974 on Irrigation. Both rulings exemplify the Court's willingness to exceed the formal boundaries of the *petitum* where it finds a law's central provisions inseparable from constitutionally deficient articles, a practice more common in Indonesian constitutional adjudication than in ordinary civil or criminal procedure, where *ultra petita* is generally prohibited.

⁶³ Kathryn Robinson, "Can Formalisation of Adat Land Regulation Protect Community Rights? The Case of the Orang Asli Sorowako and the Karongsi'e/Dongi," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 471--86, <https://doi.org/10.1080/14442213.2019.1670247>; Scheidel et al., "Global Impacts of Extractive and Industrial Development Projects."

Indonesia, state that the absence of a dedicated environmental court exacerbates barriers to access to justice, a condition that runs counter to both SDG 16 and the constitutional right to a healthy environment.⁶⁴ Comparative analysis reinforces this finding: examining Indonesian judicial handling of environmental civil liability cases against New Zealand's Environment Court and Hawaii's environmental judiciary, Hernanda and colleagues find that Indonesia's general court system lacks both the technical expertise and institutional independence that these comparator jurisdictions bring to environmental adjudication.⁶⁵ Section 3.7 examines this gap further, with additional comparative cases.

SDG 16.6 (Effective and Accountable Institutions) calls for effective, accountable, and transparent institutions. Natural resource regulatory disharmony reflects institutional failure on two levels, this article maintains: a failure of inter-ministerial coordination during lawmaking, and a failure of oversight in the field level implementation of permits. Nugraha and colleagues explicitly state that Indonesia's reactive and cross sectorally incoherent legal condition is a structural obstacle to achieving SDG targets.⁶⁶ A study on SDG governance in Indonesia and Japan emphasizes that achieving SDG 16 requires both horizontal (inter ministerial) and vertical (central regional government) policy coherence, both of which remain weak at present.⁶⁷ An independent performance audit of Indonesia's SDG governance architecture corroborates this at the level of institutional design: mapping the regulatory coordination network among ministries responsible for SDG delivery, Sari and colleagues conclude that Indonesia's governance arrangements for SDG implementation are "not yet effective" and recommend synchronizing SDG-related regulation and redesigning governance structures to be fit for purpose.⁶⁸ That is precisely the harmonization gap this article identifies in the natural resource sector specifically.

SDG 16.7 (Participatory Decision Making) calls for responsive, inclusive, and participatory decision making. Natural resource permitting processes with minimal indigenous community involvement directly contravene this target. In its 2021 Voluntary National Review (VNR) submitted to the UN High Level Political Forum, Indonesia designated SDG 16 as a priority goal, with an emphasis on inclusive and participatory

⁶⁴ Jumas, Maskun, Achmad Yasir Wahid, and Andi Muhammad Sri Agung Magassing, "Establishing an Environmental Court in Indonesia: Addressing Legal Challenges for Environmental Justice in Line with SDG 13 and SDG 16," *Journal of Lifestyle and SDGs Review* 5, no. 1 (2025): e03043, <https://doi.org/10.47172/2965-730X.SDGsReview.v5.n01.pe03043>.

⁶⁵ Trias Hernanda et al., "Is a Special Environmental Court Necessary for Civil Lawsuits in Indonesia? A Comparative Study of Judicial Decisions in New Zealand and Hawaii," *Jurnal Jurisprudence* (2025).

⁶⁶ Nugraha et al., "Sustainable Development Goals and Regulatory Reform."

⁶⁷ Kiyoshi Morita, Mahesti Okitasari, and Hiromi Masuda, "Analysis of National and Local Governance Systems to Achieve the Sustainable Development Goals: Case Studies of Japan and Indonesia," *Sustainability Science* 15, no. 1 (2020): 179--202, <https://doi.org/10.1007/s11625-019-00739-z>.

⁶⁸ Sari et al., "Performance Auditing."

governance.⁶⁹ The gap between this VNR commitment and the exclusionary reality of natural resource permitting indicates an implementation gap requiring urgent redress. A study on the jurisdictional approach in Indonesia similarly shows that successful sustainable natural resource governance requires inter-institutional policy coherence and multi-stakeholder engagement.⁷⁰ Those, this article argues, are precisely the two areas that remain weak points in the architecture of Indonesia's natural resource regulation. The gap has a concrete legislative marker: the Masyarakat Adat (Indigenous Peoples) Bill, intended to provide the binding national recognition framework that Article 18B(2) and Article 28I(3) of the Constitution anticipate, has remained in the House of Representatives' National Legislation Program for sixteen to eighteen years without passage, most recently re-entered as a priority bill for 2026 amid renewed civil-society pressure.⁷¹

F. Layered Impacts of Regulatory Disharmony

The impacts of this regulatory disharmony are layered and mutually reinforcing, and this article treats their cumulative rather than isolated character as itself evidence that the root cause is systemic disharmony rather than any single deficient statute. First, legal uncertainty deters long-term investment, since a permit issued by one ministry may be regarded as illegal by another. Overlap between Mining Business Licenses (IUP) and plantation Cultivation Rights (HGU) or protected forest areas creates protracted disputes. Law enforcement officers in the field are left confused, caught between two equally binding but mutually contradictory rules. Second, land disputes between indigenous communities and corporations continue to rise.⁷² Communities lose access to the forests, seas, and farmland that form

⁶⁹ Kementerian PPN/Bappenas, VNR 2021.

⁷⁰ Frances J. Seymour, Lyndel Aurora, and Josi Arif, "The Jurisdictional Approach in Indonesia: Incentives, Actions, and Facilitating Connections," *Frontiers in Forests and Global Change* 3 (2020), <https://doi.org/10.3389/ffgc.2020.503326>.

⁷¹ As of mid-2026, the Bill (recently renamed from Rancangan Undang-Undang Masyarakat Hukum Adat to Rancangan Undang-Undang Masyarakat Adat by the House's Legislation Body, Baleg) remains under deliberation. Civil-society estimates place Indonesia's indigenous population at 50--70 million people, with the Indigenous Territory Registration Agency (Badan Registrasi Wilayah Adat, BRWA) having mapped approximately 32.3 million hectares of potential customary territory, of which only around 333,700--400,000 hectares had received formal state recognition as customary forest (hutan adat) as of July 2025, and of which an estimated 8.16 million hectares overlaps with existing mining and plantation concessions. See "Mendesak Pengesahan RUU Masyarakat Adat," *Mongabay Indonesia*, March 11, 2026, and "Bolak Balik Masuk Prolegnas, Akankah DPR dan Pemerintah Serius Sahkan RUU Masyarakat Adat?," *Mongabay Indonesia*, January 27, 2026; "DPR Desak Pengesahan RUU Masyarakat Hukum Adat, Penantian 16 Tahun Sudah Terlalu Lama," *Indoposco*, March 13, 2026; and "Baleg Fokuskan Mekanisme Pengakuan dalam RUU Masyarakat Adat setelah 18 Tahun," *Literasi Hukum Indonesia*, July 2026. These are journalistic reports of an in-progress legislative process rather than the Bill's official text and should be read with the caution ordinarily due to reporting on deliberations that remain subject to change.

⁷² Robinson, "Can Formalisation of Adat Land Regulation"; Scheidel et al., "Global Impacts of Extractive and Industrial Development Projects."

their primary source of livelihood, a condition that simultaneously obstructs the achievement of SDG 1 (no poverty) and SDG 10 (reduced inequalities).

The third impact concerns mining and plantation permits that override the protective function of forest areas, driving deforestation and biodiversity loss.⁷³ Overlapping spatial use in upstream areas worsens hydrometeorological disasters. The weakening of the Environmental Impact Assessment (AMDAL) instrument under the Omnibus Law makes it harder to control river, air, and marine pollution.⁷⁴ Fourth, the state loses potential Non-Tax State Revenue (PNBP) due to illegal land use that exploits regulatory loopholes. The State Budget (APBN) is drained to fund disaster response and the restoration of environmental damage that could in fact have been prevented through more coherent regulation.

These general mechanisms are traceable to specific, currently escalating instances. KPA's 2024 annual accounting attributes the largest single share of that year's conflict caseload, 111 of 295 incidents, encompassing 127,281 hectares and 14,696 affected families, to the plantation sector, with oil-palm concessions responsible for 67 percent of plantation-sector cases.⁷⁵ The same report identifies two additional, more recent vectors of dispossession: land-bank (Bank Tanah) operations, linked to 7 conflict eruptions in 2024, and so-called authority bodies (badan otorita) established under the Job Creation Law framework, linked to 14. Neither mechanism existed in its present form before that law's enactment. By 2025, KPA's Catatan Tahunan documents a further compositional shift: of 341 recorded conflicts, 107,099 farming families were affected across 398,646 hectares of agricultural land, while customary communities bore losses across a larger 500,637 hectares, and conflicts involving military actors rose by an estimated 300 percent relative to 2024. KPA attributes that change directly to the enforcement architecture created by Presidential Regulation No. 5 of 2025.⁷⁶ Read together with the doctrinal analysis above, this article submits, these figures indicate that the layered impacts described in the literature are neither hypothetical nor historical; they are the article's most current and most falsifiable claim, one that subsequent KPA reporting will either confirm or disconfirm as the trend continues.

⁷³ Bebbington et al., "Resource Extraction and Infrastructure"; Hans J. Boer, "Power, REDD+ and Reforming Forest Governance in Indonesia," *Third World Quarterly* 41, no. 5 (2020): 783--800, <https://doi.org/10.1080/01436597.2019.1703178>.

⁷⁴ Hadi, Hamdani, and Roziqin, "Sustainability Review"; A. M. Rohmy, H. Setiyono, and S. Supriyadi, "Corporate Criminal Sanction in Omnibus Law for Forest Destruction in Indonesia: Review of Law Number 11 of 2020 on Job Creation," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 21, no. 1 (2021): 49--64, <https://doi.org/10.30631/alrisalah.v21i1.789>.

⁷⁵ "KPA: Konflik Agraria Naik 21%."

⁷⁶ "Catatan Konflik Agraria Rezim Prabowo-Gibran."

G. Lessons from Consolidated Frameworks and Specialized Adjudication

If the preceding sections establish that Indonesia's natural resource regulatory disharmony is severe, multi-axial, and worsening, a natural further question is whether other resource dependent developing economies have faced comparable disharmony and, if so, what has proven effective in resolving it. This section addresses that question directly, in the interest of testing rather than merely asserting the feasibility of the recommendations developed in Section 4.

Consolidated mining and resource codes. Indonesia's disharmony has a structural analogue across much of the African mining sector, where Besada and colleagues trace three successive "generations" of mining code reform since the 1980s: an initial wave of liberalization prioritizing investment attraction, a second wave adding fiscal and local-content requirements, and, since roughly the 2010s, an emerging "fourth generation" oriented around transparency, accountability, and harmonization across national, regional, and transnational instruments, driven by a coalition of African governments, civil society, and international bodies rather than by any single reforming state acting alone.⁷⁷ The parallel is instructive: this consolidation was not achieved through any single all encompassing statute but by aligning multiple existing instruments around common transparency and accountability benchmarks, a lower friction reform pathway than wholesale codification, and one this article submits Indonesia's own harmonization effort could adapt rather than replicate wholesale. Otto's earlier survey of comparative mineral policy reform reaches a compatible methodological conclusion: across more than ninety countries that revised mining legislation from the mid-1980s onward, reforms proceeding from a prior, consensually derived national policy statement, rather than directly to legislative drafting, produced more durable, better-implemented outcomes than reforms that skipped this step, because the policy statement forces sectoral ministries to resolve conflicting objectives before, rather than after, they are embedded in binding law.⁷⁸

Specialized environmental adjudication. The recommendation for an Indonesian environmental court is not novel in the comparative literature; it is, if anything, catching up to an already well documented global trend. Kumar records that specialized environmental courts and tribunals had grown to approximately 1,200 institutions across 44 countries by 2016, a trajectory driven less by binding international obligation (Principle 10 of the 1992 Rio Declaration is typically cited as inspiration but imposes no specific institutional requirement) than by accumulating domestic evidence of the

⁷⁷ Hany Besada et al., "Mining Codes in Africa: Emergence of a 'Fourth' Generation?," *Cambridge Review of International Affairs* (2015).

⁷⁸ James Otto, "A National Mineral Policy as a Regulatory Tool," *Resources Policy* 23, no. 1--2 (1997): 1-7.

model's practical advantages in procedural efficiency, technical competence, and doctrinal consistency.⁷⁹ That evidence is unusually well quantified for at least one jurisdiction: using the staggered introduction of environmental courts across Chinese cities as a natural experiment, Zhang, Yu, and Kong find that the reform significantly increased firms' environmental protection expenditure, an effect subsequent research attributes to stronger judicial deterrence, reduced local government protectionism of polluting firms, and improved firm level environmental disclosure.⁸⁰ Beyond China, Olowa and Feris document how specialized environmental courts in Kenya, New South Wales (Australia), and South Africa's own Hermanus Environmental Court have each strengthened environmental jurisprudence in ways general courts, in their own assessment, have not matched.⁸¹ That comparative set includes exactly the jurisdictions (New Zealand, Hawaii) that Hernanda and colleagues use as benchmarks for Indonesia's own environmental court proposal, discussed in Section 3.5. The consistency of this finding across legal families as different as China's civil law socialist system, common law Australia and New Zealand, and South Africa's mixed system suggests, this article contends, that the institutional logic of specialization, rather than any single jurisdiction's particular procedural design, is doing the explanatory work, which is reassuring for the transferability of the recommendation to Indonesia's own civil law, codified system.

Consent-based indigenous governance. Finally, the FPIC recommendation developed in Section 3.4 has an increasingly documented, if still uneven, comparative record. Rice's comparison of Ecuador and Yukon (Canada) is particularly germane because it isolates the specific institutional condition under which consultation regimes evolve into genuine consent regimes: in Yukon, prior settlement of a comprehensive land claim, establishing clear, litigated customary land rights, provided the institutional basis on which a consent, rather than merely consultation, process could later be built; in Ecuador, absent such prior settlement, the same constitutional language produced only a consultation right, with government retaining final decision authority. This finding bears directly, this article argues, on the sequencing question left open by Indonesia's stalled Masyarakat Adat Bill (Section 3.5): the comparative record suggests that customary land recognition and FPIC implementation are not separable reforms to be pursued independently, but sequentially dependent ones, in which the former is close to a precondition for the latter's meaningful operation. Papillon and

⁷⁹ Vikas Kumar, "Establishment of Green Courts in India and Their Role in Discharging Climate Justice--A Jurisprudential Analysis," *US-China Law Review* (2020).

⁸⁰ Qi Zhang, Zhi Yu, and Dongmin Kong, "The Real Effect of Legal Institutions: Environmental Courts and Firm Environmental Protection Expenditure," *Journal of Environmental Economics and Management* 98 (2019): 102254, <https://doi.org/10.1016/j.jeem.2019.102254>.

⁸¹ Abimbola Olowa and Loretta Feris, "Specialised Environmental Courts as a Driver of Environmental Protection in South Africa," *Southern African Public Law* 40, no. 2 (2025), <https://doi.org/10.25159/2522-6800/17371>.

colleagues' Canadian case studies add a caution against over-reliance on private-sector self regulation: proponent driven consent agreements, however genuinely negotiated, systematically offer a "truncated version of FPIC" relative to a state guaranteed consent right, because the deliberative ethic FPIC is meant to protect is compromised when the party seeking consent also controls the negotiation's terms and timeline.⁸² This is, this article submits, a direct caution against any Indonesian reform that would delegate FPIC implementation to mining companies' own community engagement programs rather than to an independent verification mechanism of the kind Dedihasriadi and colleagues propose.

IV. CONCLUSION

This study finds that disharmony in Indonesia's natural resource regulations is rooted in the absence of a unified parent law and persistent sectoral ego (ego sektoral) in lawmaking, resulting in overlapping and inconsistent regulations that undermine Pancasila's principles of Social Justice and Just and Civilized Humanity, Development Law Theory, and SDG 16 targets on justice, accountable institutions, and participation. Recent evidence including rising agrarian conflicts, regulatory recentralization, stalled Indigenous Peoples legislation, and militarized forest enforcement shows that the problem is worsening rather than being resolved. Therefore, natural resource governance reform is not merely a technical legal necessity but a constitutional obligation grounded in Pancasila and an international commitment to the 2030.

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⁸² Papillon et al., "Proponent-Indigenous Agreements."

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