Hierarchies of Power and Civic Politics: Dynamics of Affirmative Action of Marginalized Communities on Government Policies through FPIC

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Abstract

Public participation is an important factor in policymaking. This participation must be viewed as meaningful rather than merely symbolic. Recently, the government's power structure set a bad precedent for policymaking that does not provide affirmative action to affected communities, particularly Indigenous ones. Marginalized communities are forced to follow and implement government policies. This study will examine the dynamics of marginalized communities' affirmative action toward government policies using FPIC (free, Prior, Informed, and Consent). To formulate the argument, this research uses normative legal research with a conceptual and statutory approach. According to this hypothetical research, 1) there are at least three problems in public participation and affirmative action towards marginalized communities; First, non-inclusive governance undermines not only the democratic credo, but also the political role of community citizenship, which has four major dimensions: membership, legal status, rights, and participation. Second, the government wields power through state institutions, including acts of violence that result in persecution and criminal activity. Third, the government through state institutions needs to prioritize political will to present policy products that provide protection to Indigenous peoples. 2) Based on these issues, the power hierarchy has a significant influence in policy making. Recognizing civic politics is critical for meaningful participation. The author proposes that in order to improve inclusive governance, the government's implementation of the FPIC approach allows communities to exercise their fundamental right to state whether they agree or disagree with a policy that will be implemented in their living space, ensuring that governance runs smoothly and inclusively.

Keywords: Government, Citizenship Politics, Affirmative Action, FPIC

1. Introduction

Indigenous peoples are generally viewed as marginalized groups because they have limited access to policies that impact them. This vulnerability originates from the state's treatment of indigenous peoples through policy products that fail to benefit them. In reality, indigenous groups are one of the organizations recognized by the state constitution. This acknowledgment, mutatis mutandis, acknowledges Indigenous peoples' ownership of rights. This is explicitly provided for in Article 18B(2): "The State recognizes and respects customary law community units and their traditional rights as long as they exist and are consistent with societal development and the principles of the Unitary State of the Republic of Indonesia".

However, the state routinely fails to recognize and respect indigenous peoples. Legal norms that prohibit involvement legitimize the state's violence and atrocities against indigenous peoples. According to the Indigenous Peoples Alliance of the Archipelago (AMAN), the state and businesses would acquire 2,578,073 hectares of customary land under the pretense of investment between now and 2023. Some traditional territory confiscations were accompanied by acts of violence and criminalization against 247 people; one person died as a result of a gunshot wound, 204 people were injured, and 100 indigenous people's homes were evicted and destroyed because they were deemed to impede national development. Between 2015 and 2023, the agricultural Reform Consortium (KPA) reported 2,939 agricultural disputes involving indigenous people, with 1,759 million victims.

The State's stance, which tends to downplay indigenous peoples' rights, is accused of being the root cause of the various controversies that arise in the name of national development or progress. Indigenous groups have relatively little influence or participation in the development of policies that impact them. In addition to legitimizing authority, legislation is limited to formal rules, administrative authorizations, and procedural processes. Rulers and law enforcement no longer respect essential parts of humanity, such as the right to life, which is guaranteed by the constitution. Deprivation of rights also has an adverse effect on indigenous peoples' citizenship. Rasmusen established four characteristics of civic politics: membership, legal status, rights, and involvement. The Constitution explicitly acknowledges the features of membership and legal status; hence, failing to recognize indigenous peoples is a violation of the Constitution. Meanwhile, the aspects of rights and participation allude to indigenous peoples' basic civil, political, and social rights.

The power arrangement between the Center and the Regions further weakens indigenous communities' standing. The main barriers to indigenous peoples' recognition and protection include the disintegration of the functions of Central and Regional institutions, such as overlapping spatial planning and regulatory authority, competition for land and forests, and gaps in access to community-related data and information. So yet, only the Regional Government has agreed to recognize indigenous groups. Regions can utilize their jurisdiction to establish legal frameworks that acknowledge indigenous people. Nonetheless, regions lack the authority to issue rights.

The presence of regional goods is solely used as a formal factor for deciding which rights are handled by the Central Government, which does so through sectoral ministries. As a result, indigenous community identification occurs at different levels, from the regions to the center, with the common issue being that the center is less effective than the regions in recognizing varied indigenous community concerns. As a result, indigenous communities have a minimal influence in defining national policy.(2) According to the Customary Area Registration Agency (BRWA), at least 26.9 million hectares of customary lands throughout the archipelago have been registered with BRWA, with only 14% receiving recognized status. This should not be interpreted as a finding of rights because the 14% figure is a recognition amount provided by the Regional Government.(3) Keep in mind that Regional Government recognition primarily demonstrates the space for Indigenous Peoples to exist, rather than determining rights. The central government has the jurisdiction to determine rights through sectoral ministries. This recognition method is likewise unlikely to result in broad acknowledgment of customary territory as dwelling spaces for Indigenous Peoples. What happens is that customary territories are partially recognized based on the sectors of each ministry which by law is given the authority to regulate natural resources. This complicated and long road is what makes it difficult to recognize, protect, and fulfill Indigenous Peoples' rights to their traditional rights, including rights to customary territories, so that customary territories can easily be confiscated, resulting in violence and criminalization of Indigenous Peoples. For example, the National Strategic Project (PSN), which is the Center's authority, is facing implementation challenges owing to different forms of resistance from indigenous groups, such as Rempang (Riau). In fact, in order to achieve this objective, the State favors measures that are looting and oppressive, with state personnel carrying out violence and criminalizing indigenous populations. As a result, the existing power structure lacks the political will to speed the acknowledgment of indigenous peoples.

2. Method

This research was conducted using normative legal research, which involves the use of secondary legal materials, specifically documented legal materials. As with law books, legal journals, papers, and other scientific writings related to the Revision of the Law on State Ministries, it is critical for researchers to outline the problems and solutions to problems concerning power hierarchies and citizenship politics: the dynamics of affirmative action of indigenous communities toward policy. The government uses FPIC. This research is explanatory in character; the researcher will test hypotheses about government policy concerns before fully describing deviations from public participation, which is a fundamental principle of

popular sovereignty. The methodologies adopted are statutory and conceptual. Using these two approaches, the researcher will analyze the Hierarchy of Power and Citizenship Politics: Dynamics of Affirmative Action of Indigenous Peoples against Government Policy through FPIC, which is the main object of study in this research, and explore several issues in the hierarchy of power and participation carried out by marginalized communities, particularly indigenous communities, by linking them. With several theories and concepts in legal sciences.

3. Results and Discussion

3.1 Public Participation and Civic Politics

Indigenous peoples and local communities (Indigenous Peoles and Local Communities) are acknowledged for their long history of managing and harvesting natural resources without jeopardizing ecological processes and functions. The publishing of the Rio Declaration on Environment and Development (1992) was one of the most significant milestones in terms of recognizing and strengthening indigenous communities. As a result, the state must recognize and completely support these entities, as well as their culture and interests, while also allowing for active engagement in sustainable development. Aside from that, the state undoubtedly recognizes the existence of indigenous communities under article 18B paragraph (2) of the 1945 Constitution, which reads: "The state recognizes and respects customary law community units and their traditional rights". Furthermore, this provision includes limits as a condition for recognition and respect, namely that the indigenous community must be alive and in conformity with societal growth (4).

The knowledge of indigenous peoples in managing natural resources can be proven by the island of Maluku, which is one of the Indonesian provinces whose sea area is wider than the land area, with a total of 976 islands and is administratively divided into 8 (eight) city districts. Maluku's population is spread across various coasts. Abundant sources of livelihood from the sea and land are still protected by customary law, this is proven by the existence of an organized community unit that has leaders in each petuanan (ulayat) area. This customary law unit has an influence on various aspects of life, and is proven to have important value in protecting environmental conservation, including in the social context and empowering customary law communities through economic development based on local wisdom, especially indigenous communities whose lives depend on fishery and agricultural products.

surely, the Maluku indigenous community's actions are part of the state government structure and must be viewed as an integral element of the development process. This means that the government must favorably respond to Indigenous communities' active participation. Furthermore, indigenous peoples must be granted the right to participate in all natural resource management policies, allowing for balance. The success of indigenous communities in managing natural resources can also be seen in marine conservation areas in Indonesia, where the amount of biomass in areas controlled sustainably by indigenous communities is greater than in areas managed by the state, which only focuses on punishment for every form of violation. The researchers also propose that indigenous people may administer marine protected areas (KKL) using a far more extensive method than punishment. The researchers also proposed that new MPAs be given over to indigenous tribes as a platform to conserve coastal regions across Indonesia, and maybe even further afield in other conservation zones around the world.(5)

The engagement of indigenous peoples and local communities is based on their knowledge, skills, and understanding, which may be shared with the public, particularly during decision-making processes. This can undoubtedly accelerate the creation of new ethics for human wellbeing that are in sync with nature. This information may assist the general public and policymakers in considering the best ways for people to create, consume, and exploit every living area while also respecting nature and the survival of indigenous groups whose livelihoods rely on it.(6)

This position is undoubtedly consistent with environmental protection, namely the mission of Law Number 32 of 2009 on Environmental Protection and Management (UUPPLH). Where UPLH attempts to conserve and manage the environment, it must recognize and value local and environmental wisdom.

Aside from UUPPLH, components of conservation by indigenous peoples and local communities are governed under Article 52 of Law Number 31 of 2004 on Fisheries (UUP). This article states that the government controls, supports, and/or coordinates fisheries research and development to provide the information and technology required to establish fisheries enterprises that are more effective, efficient, economical, competitive, and ecologically friendly.

Today, indigenous peoples face a complex scenario in which the climatic disaster is both the most pressing hazard to human life and a direct challenge to human rights (HAM). Indigenous communities are suffering the most as a result of the climate catastrophe, despite the fact that they are not the group responsible for it. For example, the indigenous people of Praijing Village, West Sumba, East Nusa Tenggara's harvest has decreased due to the long dry season, which has reduced the residents' food storage, and there is no excess supply, reducing the indigenous people's purchasing power. (7)

Although the government is attempting to speed up the energy transition by supporting the construction of clean energy and renewable energy infrastructure such as solar power plants (PLTS), hydroelectric power plants, geothermal power plants, and biomass power plants. However, these ecologically beneficial measures do not benefit indigenous peoples. In reality, as a result of this development process, many people have lost land and natural resources that were previously utilized for noncommercial purposes.

Unfortunately, the climate crisis and unfavorable legal policies continue to portray indigenous peoples as a vulnerable group, despite the fact that indigenous peoples can be change agents when equipped with local knowledge and experience and supported by equitable and inclusive legal policies. Their knowledge of nature is essential for creating effective frameworks and policies to safeguard biodiversity and ecosystems. Their involvement in the process of drafting policy measures, conducting problem assessments, and supporting indigenous community projects is a step toward increasing affirmative action for indigenous populations. This aims to protect human rights while promoting equitable participation in decision-making by all stakeholders, including indigenous tribes.

4. Domination and Hierarchy of Power

Dominance and power hierarchies address how power is dispersed in society and govern individual and group relationships based on power structure or who is more powerful. According to Max Weber, power is a person's or group's capacity to enforce their will despite resistance. Weber identified three (three) forms of power that form a dominance structure that legitimizes society's power hierarchy.(8) First, traditional authority is founded on long-standing traditions and conventions that are widely recognized by society. Second, charismatic power is founded on individual appeal or charisma and is seen to have remarkable traits, therefore it is willingly followed by others. Third, legal-rational power is founded on formal norms and legality; authority is exerted through bureaucracy or the law.

Weber defines three forms of authority: customary law communities, royal power (privileges), religious leadership, and the application of laws in modern government systems. Recognizing indigenous populations' rights is inextricably linked to power dynamics and dominance, which involve a variety of central and regional players. In terms of indigenous peoples and their natural resources, a variety of legislation exist to ensure the recognition and preservation of customary law communities' rights.(9)

Some of these rules are the 1945 Constitution, Law No. 39 of 1999 on Human Rights, the Basic Agrarian Law (UUPA), Law No. 41 of 1999 on Forestry, and Law No. 5 of 1990 on the Conservation of Biological Natural Resources and Their Ecosystems. International human rights documents such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) protect indigenous people' collective and individual rights, including the right to a clean and healthy environment. Aside from that, there are the National Human Rights Commission's Standard Norms and Regulations No. 7 of 2021 concerning Human Rights over Land and Natural Resources, MPR Decree No. IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management, and Regulations on Free, Prior, and Informed Consent (FPIC).

Dominant economic and political interests frequently exert pressure on the execution of these numerous rules/regulations. As a result, indigenous peoples' challenges are no longer restricted to formal legal issues, but also to who has decision-making authority and control over natural resources. Historically, customary law communities have existed and coexisted with the customary law system, as well as their traditional rights to resources, land, and culture. However, within the framework of a modern state, they frequently face subordination and marginalization under the guise of governmental and corporate interests in pursuing national development as specified in national strategic plans (PSN). State dominance and political economic power eventually transformed indigenous peoples' positions in the sociopolitical system.

The government's commitment to recognizing, protecting, and promoting the rights of customary law communities at both the central and regional levels is shown in the sharing of rules and policies. However, this dedication frequently conflicts with the government's ambitious national development goals, which prioritize natural resource extraction. The goal is to achieve maximum economic expansion without regard for indigenous peoples' rights. Mining, agricultural, and infrastructural developments will eventually deplete indigenous peoples' lands.

The central government manages National Strategic Projects using a top-down method. This approach views the community solely as the receivers of policy impacts (target group), with people participating exclusively through mobility or mobilization. (10) As a result, policy implementation and decision making are concentrated at the central level. National development initiatives are seen as critical and crucial, thus they are carried out by grabbing customary property, breaching rules, and employing regulations carelessly. Dam projects, toll highways, PLTU/PLTPB, airports, and other developments frequently result in indigenous populations losing their land without adequate and fair socialization, consultation, or compensation. The state's domination in PSN projects demonstrates how significant choices are made without the participation of customary law communities.

The development of Yogyakarta International Airport in Kulon Progo is one of several National Strategy Project (PSN) examples. This project was designed to improve road infrastructure, however it was built on the productive agricultural land of Temon and its adjacent communities. Large-scale evictions include people' land that has been handled for generations. The pretense of national interests is utilized arbitrarily, with little citizen input in the process. Wadas villagers in Purworejo have lost agricultural land as a result of an andesite mining project disguised as public interest. In this scenario, it is evident that the government is using rules carelessly and improperly. We are all aware that the public interest regime and the mining regime are extremely different, thus the application of mining rules varies.

Mineral and Coal Law, whereas the Public Interest employs Law No. 2 of 2012. Aside from that, Sasak indigenous people in Lombok have had their land seized in order to create a Special Economic Zone (KEK) in Mandalika. The Sasak indigenous people's rights were neglected, and land of cultural and spiritual importance to the population was given to investors to develop into a tourist destination. In Wae Sano, West Manggarai, NTT discusses the construction of a geothermal project that confiscates indigenous tribes' land, as well as how the state's policies encourage this project, consequently influencing access and control over natural resources. These natural resources help to support the Wae Sano indigenous people's economy and everyday lives, particularly for women. Natural resources should be handled effectively by the state in accordance with needs analysis, sustainability principles, and people's prosperity.

The dominance of capital and state authority in projects (PSN) erodes indigenous peoples' rights, making them more susceptible to losing their land and cultural identity. Because of the vast theft of land and customary lands, hopes for the implementation of perfect policies are fading, if not disappearing entirely. In the end, acknowledgment of indigenous peoples was deemed incomplete and

uneven. Meanwhile, the regional government's perspectives differ. There are places that actively acknowledge and encourage it, while others are inhibited by economic and political interests.

There are several problems and impediments to achieving full recognition. Indigenous groups have made significant decolonialization attempts. These initiatives involve restoring land and resource rights, as well as reclaiming cultural and political sovereignty. Indigenous peoples should be recognized not just formally, but also given the freedom to manage their own territory, culture, and social life.

5. Affirmative Action and FPIC Method

In public policy practice, the affirmation of disadvantaged groups, such as indigenous peoples, serves as the foundation for humanitarian measures. Law's operation in society is not confined to legal norms and law enforcement, but also as a social and cultural role that must create meaning in society. (11) Meanwhile, there are two types of human rights abuses: significant violations and procedural violations. Substantial abuses of indigenous peoples' rights, including the right to life, a good living environment, health, food, and other constitutionally protected rights. Meanwhile, procedural infractions are violations of the state's compliance with three primary obligations: notifying, consulting, and obtaining the approval of indigenous groups. First, there is the responsibility to inform, which requires indigenous populations to be informed about decisions made and their consequences. Second, there is a duty to consult, which entails incorporating indigenous populations in decision-making and explaining all attempts to reduce policy impacts.

Third, the duty to obtain Free and Prior Informed Consent (FPIC). FPIC is a global concept adopted by a number of government agencies and environmentally minded companies as Free, Prior and Informed Consent (FPIC). This is the most important thing that the government or corporations must achieve from affected indigenous communities. These three steps must be taken as a basis for determining policies for indigenous communities. Indigenous communities can autonomously refuse if the policy could disturb or harm their lives. (12)

Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that "indigenous peoples shall not be forcibly removed from their lands or territories." No relocation shall take place without the free, prior, and informed permission of the indigenous peoples involved, following agreement on appropriate and fair compensation, and, where practicable, with the opportunity of return. "The point in article 10 states emphatically that there is no relocation which may be carried out freely, takes priority and is informed to indigenous peoples to obtain their consent".(13 In layman's words, Free Prior and Informed Consent (FPIC) refers to a particular privilege granted to Indigenous Peoples that is recognized under UNDRIP. This right entitles them to offer or withhold agreement to a project that may impact them or their area. Once they have provided their approval, they can remove it at any time. In addition, FPIC enables them to negotiate the terms under which initiatives will be created, implemented, monitored, and assessed. FPIC is more than simply the end result of a procedure to acquire clearance for a specific project; it is also a process in and of itself, allowing Indigenous Peoples to carry out their own activities independently and collectively.(14)

The FPIC requirements include the Free Element, which states that the community approves or rejects an activity plan, initiative, or policy without pressure from any side. Society is free of pressure and threats to voice thoughts; people are not under time and location constraints to negotiate; and people have the right to pick who should represent them. Aside from that, free refers to permission obtained willingly and without compulsion, intimidation, or manipulation. (15) More exactly, it is described as follows:

- a. Rights holders determine the decision-making process, schedule, and structure;
- b. Information is provided transparently and objectively at the request of the rights holder;
- c. The process is free from coercion, bias, conditions, bribes, or kickbacks;
- d. Meetings and decisions take place at the location and time determined by the rights holder; And
- e. All community members are free to participate regardless of gender, age, or position.

Meanwhile, the prior element means that obtaining approval is carried out before the policy or activity is carried out. However, in cases of coercion, community consent can also be obtained while the activity is taking place. To gain approval from the community it is necessary to note that:

- a. Prior implies that time is provided to understand, access, and analyze information about the proposed activity. The amount of time required will depend on the decision-making process of the rights holder;
- b. Information must be provided before activities can begin, at the start or initiation of an activity, process or implementation stage, including conceptualization, design, proposals, information, implementation and subsequent evaluation; And
- c. The decision-making schedule established by the rights holder must be respected, as it reflects the time required to understand, analyze and evaluate the activities under consideration in accordance with their customs
 - The informed element requires that, prior to the consent procedure, the public get comprehensive information in a language and format that is easily understood by the public. Personnel who understand the local cultural context should convey information, together with parts of local community capacity building. Information should be thorough and objective, covering possible social, political, cultural, and environmental implications, and it should tell the community about both potential advantages and potential dangers that the community will accept before consent is granted. Information should:
- a. ccessible, clear, consistent, accurate, and transparent;
- b. Delivered in local languages and in formats appropriate to local culture (including radio, traditional/local media, video, graphics, documentaries, photos, oral presentations, or new media);
- c. Objectives, including the potential positives and negatives of the proposed activity and the consequences of granting or withholding consent;
- d. Complete, including a preliminary assessment of possible economic, social, cultural and environmental impacts, including potential risks and benefits;
- e. Accessible to the most remote rural communities, including young people, women, the elderly and people with disabilities, who are sometimes overlooked;
 - The element of consent refers to a collective decision made by rights holders and reached through the customary decision-making processes of the affected Indigenous Peoples or communities. Consent must be sought and given or withheld according to the unique formal or informal political-administrative dynamics of each community. Indigenous peoples and local communities must be able to participate through freely chosen representatives, while ensuring the participation of as many young people, women, the elderly and people with disabilities as possible, including: The freely given decision includes the option to reconsider if the proposed activity changes or if new information becomes available that is relevant to the proposed activity:
- a. Collective decisions (e.g. by consensus or majority) determined by affected communities in accordance with their own customs and traditions;
- b. Expression of rights (to self-determination, land, resources and territory, culture); And
- c. Given or withheld in stages, over a certain period of time for different stages or phases of project activities. This is not a one-time process.

5. Conclusion

According to this research, indigenous peoples continue to be victims of hierarchical and centralized government policies. Even though the constitution recognizes their existence, governmental policy actions frequently undermine indigenous people's rights and disregard the concept of Free, Prior, and Informed Consent (FPIC). First, non-inclusive government undermines civic politics by failing to recognize indigenous groups' membership rights, legal status, participation, and other rights. Second, the dominance of central government power is frequently represented in the form of violence and criminalization, which violate indigenous people's rights.

This study also discovered that the fulfillment of indigenous peoples' rights to their land and culture is still highly limited, dependent on the political will of various central and regional administrations. Implementing FPIC is an important step in preventing human rights violations and increasing equitable participation for indigenous peoples in public decision-making. According to the author, promoting inclusive governance through the FPIC model can provide indigenous peoples the opportunity to exercise their fundamental rights in deciding whether to approve or reject policies that affect their territory and lives.

6. Conflict of Interest

The authors declare that there is no conflict of interest in the creation or publishing of this paper, "Power Hierarchy and Citizenship Politics: Dynamics of Affirmative Action of Indigenous Peoples against Government Policy through FPIC". The whole research, analysis, and conclusion-drawing process was carried out independently, with no interference or interest from outside parties, and no affiliations that may compromise the impartiality of this work.

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