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Unheard Voices: Analyzing Non-Compliance with the FPIC Principle in Protecting Indigenous Peoples' Rights in Indonesia

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Abstract. *This study aims to investigate the implementation of the Free, Prior, Informed, and Consent (FPIC) principle as a measure to protect the rights of indigenous communities in Indonesia, by analyzing Decision No. 6/G/LH/2023/PTUN.JPR. In Indonesia, indigenous communities still seem to be overlooked, as their right to make decisions about projects within their traditional territories remains unacknowledged. This situation calls for urgent discussion, as violations of indigenous rights continue to occur, despite such rights are protected by the Constitution of the Republic of Indonesia. This research employs a normative legal approach. The findings, derived from Decision No. 6/G/LH/2023/PTUN.JPR, indicate that the Defendant proceeded to issue the disputed object without facilitating any discussion among the government, company, and the indigenous community. Furthermore, the Second Intervening Defendant failed to include the Plaintiff in the Environmental Impact Assessment (Amdal) process. Additionally, the panel of judges issued a decision that did not adhere to the Guidelines for Adjudicating Environmental Cases. These actions collectively contravene the principle of Free, Prior, and Informed Consent (FPIC), which is mandated by both international and national legal frameworks, underscoring the importance of obtaining consent and ensuring participation from indigenous communities.*

Keywords: *Consultation; FPIC; Indigenous; Principle; Public.*

1. Introduction

The principle of FPIC (Free, Prior, Informed, and Consent) is a process that ensures the fundamental rights of indigenous communities to express their views and make decisions concerning activities in their customary territories, based on

initial information without coercion.[1] In other words, it can be concluded that Indigenous communities have the right to receive information (informed) about any development or project planned in their territories before (prior) the development progresses to the next stage. Based on this, indigenous communities, without pressure and freely, can give their approval for the development or project (consent). Therefore, Indigenous communities have the right to approve or reject the presence of development/projects in their customary territories.[2] The FPIC principle ensures indigenous and minority groups to actively engage and provide informed consent in decisions impacting their rights, safeguarding their cultural heritage and ensuring fair, non-discriminatory treatment of their land, property, resources, and related rights.[3]

In practice, however, the FPIC principle has not been effectively implemented and has often been disregarded in the case of the Awyu Tribe in Papua, Indonesia. This paper examines the lack of compliance to the FPIC principle in relation to Indigenous Communities in Papua, as outlined in Decision Number 6/G/LH/2023/PTUN.JPR. The decision shows that the Plaintiff, part of the indigenous community, initiated an administrative lawsuit against the Defendant and Second Defendant Intervenor (the Defendants) concerning the Object of Dispute, which is the Decree issued by Defendant. The Plaintiff requested that the court declare the Object of Dispute null or legally invalid and that the Object of Dispute be revoked by the Defendant.

Globally, the FPIC principle has been a major topic of discussion among intergovernmental organizations and international bodies for many years.[4] Therefore, the FPIC principle is enshrined in several legal instruments and is increasingly recognized as a binding norm for states.[5] It is formally incorporated into the International Labour Organization Convention 169 (ILO 169) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). ILO

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[1] Dewan Kehutanan Nasional dan UN-REDD Programme Indonesia. (2011). Rekomendasi Kebijakan: Instrumen Free, Prior, Informed Consent (FPIC) Bagi Masyarakat Adat dan atau Masyarakat Lokal yang Akan Terkena Dampak dalam Aktivitas REDD+ di Indonesia. Jakarta: DKN. hlm. 3.

[2] Tim Penulis Pokja IV. (2012). Panduan Pelaksanaan Free Prior Informed Consent (FPIC) Dalam Program UN-REDD+ Di Sulawesi Tengah. Palu: UN-REDD Programme Indonesia.

[3] Southalan, John., and Joe Fardin. (2018). Free, prior and informed consent: how and from who? An Australian analogue. Journal of Energy & Natural Resources Law: p.3. DOI: https://doi.org/10.1080/02646811.2018.1524436, accessed from https://www.tandfonline.com/doi/full/10.1080/02646811.2018.1524436

[4] MacKay, Fergus. (2004). Indigenous Peoples' Right to Free, Prior and Informed Consent and the World Bank's Extractive Industries Review. Sustainable Development Law and Policy: Vol. 4, No. 2: p.43-65. Accessed from https://digitalcommons.wcl.american.edu/sdlp/vol4/iss2/12/

[5] UN-REDD Programme. (2013). Guidelines on Free, Prior and Informed Consent. Geneva: UN-REDD Programme Secretariat.

169, adopted in 1989, was the first convention to specifically focus on the rights of indigenous peoples,[6] promoting an approach that safeguards their laws and communities, enabling them to maintain their identity and direct their own development.[7] ILO 169 is designed to protect the rights of Indigenous peoples, ensuring they are free from discrimination and actively engaged in public consultations and decision-making processes that influence their lives.[8] Likewise, UNDRIP, established in 2007, stands as the most straightforward and detailed framework for defining the rights of Indigenous peoples. It underscores the responsibility of states to uphold the FPIC principle, requiring them to engage in consultations with Indigenous communities prior to enacting measures or approving projects that affect their lands, cultures, and natural resources.[9]

In Indonesia, the spirit of the FPIC principle can be found in various legal frameworks. It is reflected in Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 on Special Autonomy for the Province of Papua (Law 2/2021 on Special Autonomy for the Province of Papua) and in Government Regulation Number 22 of 2021 on the Implementation of Environmental Protection and Management (PP PPLH). Law 2/2021 on Special Autonomy for the Province of Papua, mandates that the Papua Government conduct negotiations and deliberations to reach agreements between the government, companies, and indigenous communities.[10] This aims to provide safe space for indigenous entities within society to exercise their rights, including creating mechanisms that ensure safety and promote the protection of indigenous rights.[11]

Meanwhile, in PP PPLH, mandates that the FPIC principle must be implemented by ensuring the participation of indigenous communities in the process of drafting Environmental Approvals/Amdal. Through Amdal, as one of the Environmental Approvals specified by PP PPLH, enables the government to

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[6] International Labour Organization. "30th Anniversary of the Indigenous and Tribal Peoples Convention, 1989 (No. 169)". https://www.ilo.org/resource/30th-anniversary-indigenous-and-tribal-peoples-convention-1989-no-169, accessed on 15 September 2024.

[7] Larsen, Peter Bille., and Jérémie Gilbert. (2020). Indigenous Rights and ILO Convention 169: Learning from the Past and Challenging the Future. The International Journal of Human Rights: Vol. 24, No. 2–3: p.83–93. DOI: https://doi.org/10.1080/13642987.2019.1677615, accessed from https://www.tandfonline.com/doi/full/10.1080/13642987.2019.1677615

[8] International Labour Organization Convetion (ILO 169).

[9] UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

[10] Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 on Special Autonomy for the Province of Papua (Law No. 2/2021 on Special Autonomy for the Province of Papua).

[11] Effendy, Revana Giara. (2023). Analisis Otonomi Khusus Papua Dalam Perspektif Orang Asli Papua. Binamulia Hukum: Vol. 12, No. 2: p.22. DOI: https://doi.org/10.37893/jbh.v12i2.436, accessed from https://ejournal.hukumunkris.id/index.php/binamulia/article/download/436/168/1676

ensure that businesses consider both environmental and social factors in their activities.[12] Specifically, PP PPLH requires businesses to create opportunities for dialogue and consultation, enabling indigenous communities to share their opinions on business plans that could potentially impact their lives.[13]

Research on the protection of Indigenous peoples' rights has indeed been conducted in previous studies, but none have thoroughly examined specifically on the implementation of the FPIC principle and applied it to analyze cases involving indigenous communities in Indonesia. For example, looking at the study conducted by Dea Ayu Rizki (2024), the research examines the protection of Indigenous rights in land acquisition by analyzing the judicial considerations that did not support the protection of the community and Indigenous rights, particularly in the case of the Saumolewa Indigenous community, which did not receive recognition of their customary land.[14] There is also a study by Nicholas Ardy Wibisana et al. (2023), which examines the Indigenous community of the former Sendi Village, Pacet-Mojokerto, who have not received recognition and protection of their rights despite making various efforts to gain acknowledgment as an Indigenous community, but still have not received a response from the government.[15] There is also research conducted by Husni Abdul Azis et al. (2023) discusses the issue of customary lands concerning the Kinipan Indigenous People in Lamandau Regency, Central Kalimantan. This Indigenous community has often been victimized, with their natural resources and customary lands frequently targeted by companies.[16]

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[12] Lutfi, Mohammad., M. Fahrudin Andriyansyah, and Abid Zamzami. (2024). Perubahan Izin Lingkungan Hidup Menjadi Persetujuan Lingkungan Hidup Sebagai Upaya Perlindungan Lingkungan Hidup Di Indonesia. DINAMIKA: Vol. 30, No. 2: p.10022. Accessed from https://jim.unisma.ac.id/index.php/jdh/article/view/24700

[13] Government Regulation Number 22 of 2021 on the Implementation of Environmental Protection and Management (PP PPLH).

[14] Rizki, Dea Ayu. (2024). Perlindungan Hukum Eksistensi Masyarakat Adat Dalam Pengadaan Tanah Untuk Kepentingan Umum Sebagai Upaya Mewujudkan Keadilan (Studi Kasus Putusan Pengadilan Tinggi Tata Usaha Negara Makassar Nomor 01/B/2016/PT.TUN.MKS). UNES Law Review: Vol. 6, No. 4: p.73. DOI: https://doi.org/10.31933/unesrev.v6i4.1989, accessed from https://review-unes.com/index.php/law/article/view/1989

[15] Wibisana, Nicholas Ardy., Bernadeth Gisela Lema Udjan, and Solfian (2024). Perlindungan Masyarakat Hukum Adat Dalam Bentuk Pengakuan Masyarakat Adat (Studi Kasus Masyarakat Eks Desa Sendi, Pacet-Mojokerto). SAPIENTIA ET VIRTUS: Vol. 9, No. 1: p.94. DOI: https://doi.org/10.37477/sev.v9i1.441, accessed from https://jurnal.ukdc.ac.id/index.php/SEV/article/view/441

[16] Azis, Husni Abdul., Iskandar Iskandar, and Khaerul Anwar. (2022). Pelanggaran Hak Asasi Dalam Konflik Agraria Terhadap Kelompok Masyarakat Adat Di Indonesia. Definisi: Jurnal Agama Dan Sosial-Humaniora: Vol. 2, No. 1: p.4–11. DOI: https://doi.org/10.1557/djash.v2i1.24981, accessed from https://journal.uinsgd.ac.id/index.php/definisi/article/view/24981

Apart from the existing studies elaborated above, there are numerous other research initiatives focused on the protection of indigenous communities. Nevertheless, no research has specifically explored the FPIC principle concerning the rights protection of indigenous communities, especially in Papua. This research distinguishes itself from earlier studies; while it also addresses the rights of Indigenous peoples, it will concentrate on analyzing the implementation of the FPIC principle for Indigenous communities through the lens of Decision Number 6/G/LH/2023/PTUN.JPR. Therefore, there is a compelling interest in conducting this research to further analyze the decision, recognizing the urgency that the enforcement of Indigenous peoples' rights has not yet been fully realized, particularly in implementing the FPIC principle. Thus, this study aims to specifically address the implementation of the FPIC principle for indigenous communities, as well as the various regulations that guarantee its enforcement, both internationally and nationally.

2. Research Methods

This research utilizes a normative legal method (juridical normative) in analyzing the application of legal rules within the context of positive law.[17] Normative legal research involves a structured and systematic study of regulations.[18] The study employs a statute approach, by examining relevant international and national laws and regulations,[19] particularly from UNDRIP and ILO 169, as well as the Law No. 2 of 2021 on Special Autonomy for the Province of Papua and the Government Regulation Number 22 of 2021 on the Implementation of Environmental Protection and Management. Additionally, this research uses a case approach by analyzing Court Decision,[20] that demonstrate non-compliance with the FPIC principle for Indigenous communities. Data collection for this study is Library Research, that involves analyzing court decision, diverse types of laws and regulations, research papers, scholarly journals, reviews, and other references relevant to the research.[21] The research draws on secondary data or library resources, which includes primary, secondary, and tertiary legal materials. Data analysis in this study is conducted using qualitative methods, by explaining the concept of legal issues without using numerical data. It organizes and

[17] Achmad, Yulianto., and Mukti Fajar. (2010). Dualisme Penelitian Hukum Normatif & Empiris. Yogyakarta: Pustaka Pelajar.
[18] Syahrum, Muhammad. (2006). Pengantar Metodologi Penelitian Hukum Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi, Dan Tesis. Riau: Dotplus Publisher.
[19] Marzuki, Peter Mahmud. (2010). Penelitian Hukum. Jakarta: Prenada Media Group.
[20] Ibrahim, Johnny. (2006). Teori Dan Metodologi Penelitian Hukum Normatif. Malang: Bayu Media Publishing.
[21] Prastowo, Andi. (2016). Metode Penelitian Kualitatif Dalam Perspektif Rancangan Penelitian. Yogyakarta: Ar-Ruzz Media.

examines international principle and legal materials to better understand and address the Court Decision.

3. Results and Discussion

3.1. Background of Decision No. 6/G/LH/2024/PTUN.JPR.

The spirit of human rights highlights the significance of justice and equality, often requires specific actions to foster the inclusion and welfare of communities.[22] Therefore, the FPIC principle exists to carry out actions to foster the inclusion, by fulfilling indigenous peoples' right to participate, ensuring responsible infrastructure development.[23] However, due to lack of involvement or participation from the affected communities, large-scale infrastructure development frequently creates conflicts that disrupt the welfare of indigenous peoples.[24]

An example of this can be traced to Decision No. 6/G/LH/2023/PTUN.JPR, which involved a dispute over the development of a palm oil plantation in the territory of an indigenous community in Papua. In this case, the Jayapura Administrative Court issued a ruling in a matter between Hendrikus Woro as the Plaintiff, Yayasan Wahana Lingkungan Hidup Indonesia (WALHI) as Intervening Plaintiff 1, and Yayasan Pusaka Bentala Rakyat as Intervening Plaintiff 2, against the Investment and One-Stop Integrated Services Office of Papua Province as the Defendant, and PT. Indo Asiana Lestari as Second Defendant Intervenor. The Plaintiff filed a lawsuit concerning the issuance of the Disputed Object, namely, the Decree of the Head of the Papua Provincial Office of Investment and One-Stop Integrated Services No. 82 of 2021 on the Environmental Feasibility of the Palm Oil Plantation and Palm Oil Processing Plant Development Plan with a capacity of 90 tons TBS/per hour, covering an area of 36,094.4 hectares by PT. Indo Asiana Lestari in Mandobo and Fofi Districts, Boven Digoel Regency, Papua Province, dated November 2, 2021, which was issued by the Defendant. This case highlights the ongoing tension between infrastructure development and the

[22] Malloy, Tove H. (2024). The Law of Diversity and Indonesia's Village Law: Creating Procedures for Completeness in Diverse Societies. Brills's Asian Law Series: Chapter 4. p.96. DOI: https://doi.org/10.1163/9789004691698_005, accessed from https://brill.com/edcollchap-oa/book/9789004691698/BP000004.xml

[23] Tomlinson, Kathryn. (2017). Indigenous rights and extractive resource projects: negotiations over the policy and implementation of FPIC. The International Journal of Human Rights: Vol. 23, No. 5: p.2. DOI: https://doi.org/10.1080/13642987.2017.1314648, accessed from https://www.tandfonline.com/doi/abs/10.1080/13642987.2017.1314648

[24] Ilyasa, Raden Muhammad Arvy. (2020). Prinsip Pembangunan Infrastruktur Yang Berlandaskan HAM Terhadap Eksistensi Masyarakat Hukum Adat Di Indonesia. SASI: Vol. 26, No. 3: p.381, https://doi.org/10.47268/sasi.v26i3.296, accessed from https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/296

protection of indigenous rights, where large-scale projects often proceed without sufficient regard for the FPIC principle and the welfare of the local indigenous communities.

It is important to note that the Court in this decision ruled in favor of the Defendants and Second Defendant Intervenor, reasoning that the Defendant issued the Object of Dispute in accordance with procedures. Means that during the preparation of the Environmental Impact Assessment (Amdal), a Support Letter from the Indigenous Community (LMA) and an Environmental Feasibility Recommendation issued by the Environmental Feasibility Assessment Team of Papua Province were included. Subsequent to this ruling, the Plaintiff appealed to the Manado Administrative High Court, identified as Appeal Decision No. 92/B/LH/2023/PT.TUN.MDO. However, the Court determined that the Plaintiff's appeal was inadmissible due to being time-barred. Given this context, this writing will not delve into Appeal Decision No. 92/B/LH/2023/PT.TUN.MDO. Instead, this analysis will focus exclusively on Decision No. 6/G/LH/2023/PTUN.JPR, seeking to unravel the inconsistencies, particularly regarding potential violations of the FPIC principle or the absence of participation by the Plaintiff in the preparation of the Environmental Impact Assessment/Amdal, which served as the basis for the issuance of the Object of Dispute. By emphasizing these aspects, this writing aims to highlight the shortcomings in the judicial process and the implications for the rights of indigenous communities affected by development projects in their territories.

As is known based on Decision No. 6/G/LH/2023/PTUN.JPR, on August 19, 2017, a socialization meeting regarding the planned development of a palm oil plantation took place in Ampera Village, Mandobo District, Boven Digoel Regency, organized by PT. Indo Asiana Lestari in collaboration with certain government officials from Boven Digoel Regency. During this socialization, the Plaintiff firmly expressed their opposition to the inclusion of their customary territory in the palm oil plantation development plans. After the Plaintiff expressed their rejection in 2017, some local government officials remarked that they would "overlook" the situation, indicating that the Plaintiff's customary land would not be included in the plans for the palm oil plantation development. Following this socialization event, Plaintiff actively opposed the development plan proposed by Second Defendant Intervenor through peaceful means.

Suddenly In March 2022, Plaintiff received information from the surrounding community that there was suspected activity by the Second Defendant Intervenor’s company, conducting surveys along the banks of the Digul River to build a heavy equipment port. This activity was also rejected by the community, who marked their opposition by establishing a Red Cross. Experiencing these events, the Plaintiff harbored fears and concerns that if the development project

were to proceed, it would result in significant harm to both the Plaintiff and other affected indigenous communities. These potential harms included: a. The loss of forests and the Plaintiff's customary lands; b. The loss of the Plaintiff's historical way of life; c. The loss of the Plaintiff's and the community's food sources; d. The loss of livelihood and economic income; e. The loss of centers for learning and traditional knowledge; f. The loss of historical sites; g. The loss of ritual sites, sacred places, and holy grounds; h. The destruction and loss of endemic biodiversity; and i. Environmental degradation and the decline in water and soil quality. These concerns underscore the profound impact that the proposed development could have on the Plaintiff and the surrounding indigenous communities, highlighting the importance of adhering to the FPIC principle in such situations.

In response to these concerns, on July 26, 2022, the Plaintiff sought clarification regarding the company's licensing by submitting a public information request to the Information and Documentation Management Officer (PPID) of the Papua Provincial Forestry and Environment Office regarding the Environmental Permit for PT. Indo Asiana Lestari. On August 25, 2022, the Plaintiff obtained the Environmental Impact Assessment (Amdal) document, which included the Object of the Dispute. This situation clearly demonstrates a violation of the FPIC principle concerning the Plaintiff as an affected indigenous community. Given that the Plaintiff was unaware of the issuance of the Object of Dispute before 25th August 2022, it confirms that there has been a breach of the FPIC principle with respect to the Plaintiff as the impacted indigenous community.

It is important to note that the Plaintiff is the chief of the Woro Clan and part of the indigenous community affected by the establishment of the palm oil plantation. This fact is reinforced by findings in court, where the judges clearly recognized the Plaintiff as a member of the customary law community of the Awyu Tribe. This finding is also validated by evidence from a letter from the Boven Digoel community, dated November 8, 2018, regarding the rejection of PT. Indo Asiana Lestari palm oil company, that feature the Plaintiff's name on the list (Evidence P-25). Furthermore, this fact is supported by the testimony of a witness named Yustinus Bung, who affirmed that he knows the Plaintiff from the same village. He stated that the Plaintiff was appointed as the Chief of the Woro clan in accordance with the customary decision of the Woro Clan and is also a member of the impacted indigenous community, similar to Yustinus Bung.

On the other hand, both of the Defendants claim to be unaware that the Plaintiff is part of the indigenous community affected by the establishment of the palm oil plantation. This is evidenced by the main response from the Second Defendant Intervenor, which states that the Plaintiff is not part of the affected Indigenous community based on the Investment Support Letter from the

Indigenous Community Institution (LMA) of Boven Digoel, numbered 30/LMA-BVD/VIII/2018, dated August 29, 2018 (Evidence T-31), which was issued by the LMA to the Second Defendant Intervenor. This letter does not mention the Plaintiff as part of the affected indigenous community, which may raise questions and concerns regarding its validity. This letter is particularly concerning given the numerous rejections made by the affected Indigenous community and environmental organizations both before and after August 29, 2018. For instance, according to the letter from the Indigenous Community Institution (LMA) of Boven Digoel numbered 06/LMA-BD/XI/2018, dated November 8, 2018, regarding the rejection of PT. Indo Asiana Lestari palm oil company (Evidence P-25), there was a clear objection from the affected indigenous community towards the palm oil company owned by the Second Defendant Intervenor, which occurred after August 29, 2018. Therefore, it is indeed peculiar that the LMA letter is used as a basis for the decision, considering the substantial opposition from the affected Indigenous community.

Furthermore, both of the Defendants also claim to be unaware that the Plaintiff is part of the affected Indigenous community. Specifically noted in the Defendant's Exception, that the Plaintiff Lacks Legal Standing and the Second Defendant Intervenor's Exception regarding the Plaintiff's Legal Standing. Both Exception Responses essentially assert that the Plaintiff is not part of the affected indigenous community. These exceptions were rejected by the judges in their considerations, on the grounds that the Plaintiff is a member of the customary law community of the Awyu Tribe, based on the letter from the Indigenous Community Institution of Boven Digoel dated November 8, 2018, concerning the rejection of PT. Indo Asiana Lestari palm oil company (Evidence P-25). Consequently, both exceptions claiming that the Plaintiff is not a member of the affected indigenous community were deemed legally unfounded and dismissed by the judges, affirming that the Plaintiff is indeed part of the affected indigenous community.

3.2. Analyzing the Inconsistencies of the FPIC principle in Decision No. 6/G/LH/2023/PTUN.JPR.

In more detail, this study will outline the discrepancies regarding the FPIC principle in Decision No. 6/G/LH/2023/PTUN.JPR. First, the FPIC principle begins with the word "Free," which means free from pressure, threats, and coercion in expressing their opinions.[25] However, in this Decision, it appears that the

[25] Saly, Jeane Neltje., et al. (2024). Akselerasi Hukum Adat: Penerapan Prinsip Free, Prior, Informed Consent (FPIC) Bagi Masyarakat Adat. Yustitiabelen: Vol. 10, No. 1: p.15. Accessed from https://journal.unita.ac.id/index.php/yustitia/article/download/923/603/

Indigenous community is still not free and often faces pressure and coercion in asserting their rights recognized by the Constitution.

Referring from the Decision No. 6/G/LH/2023/PTUN.JPR, evidence from the Defendants shows that a lengthy process was involved in the establishment of the Object of Dispute, which included approvals from the Regent of Boven Digoel Regency (Evidence T-1) even up to Public Consultation Official Report (Evidence T-5), as part of the basis for the Environmental Impact Assessment (Amdal) submitted by the Second Intervening Defendant, which involved the indigenous community. However, this apparently lawful process hides the reality that there was resistance from the indigenous community, especially the Woro Clan, who were neither informed nor invited prior to the Public Consultation. Not to mention, the ancestral land of the Woro Clan is included in the plans for the palm oil plantation development by the Second Defendant Intervenor. But when representatives from the Woro Clan expressed their concerns about the lack of indigenous community participation in the Public Consultation, they faced repressive measures from local authorities.[26] Consequently, the Indigenous communities can not freely have the opportunity to provide their responses regarding the issuance of the disputed Object and the EIA/Amdal.

According to the witness testimonies shared during the trial, there were efforts to reject the project that led to threats and acts of violence against Indigenous community members who opposed the development. First, a witness named Kasmilus Abe, who resides in Mandobo District, Boven Digoel Regency, explained that around August 2017, he and other residents were invited to a meeting with the Second Defendant Intervenor. However, during this event, he and the other attendees were instructed to remain silent and listen, with no opportunity given for them to respond.

Recognizing that his rights had been violated, on September 21, 2022, the Plaintiff submitted an Administrative Objection through a Power of Attorney from Hendrikus Woro to the Head of the Investment and One-Stop Integrated Services Office of Papua/Defendant (Evidence P-5), requesting the Defendant to revoke the Object of the Dispute, primarily on the following grounds: a. The process of issuing the decision did not involve the Plaintiff and other affected Indigenous communities, b. From the outset, the Plaintiff and other affected Indigenous communities have opposed the establishment of the palm oil plantation, and this opposition has not been documented in the decision-making process; c. The presence of the palm oil plantation will have negative impacts on

[26] Aji, Sekar Banjaran. "Kasus Amdal Suku Awyu dan Alasan Anda untuk Khawatir". https://betahita.id/news/detail/10460/kasus-Amdal-suku-awyu-dan-alasan-anda-untuk-khawatir.html?v=1721891291, accessed on 20 September 2024.

the lives of the Indigenous community and the surrounding environment; and d. The plan for establishing the palm oil plantation has led to social conflict among the indigenous community. However, as of October 11, 2022, the objection had not been addressed by the Defendant. Subsequently, the Plaintiff submitted an Administrative Appeal to the Governor of Papua Province on October 18, 2022. Nevertheless, by the deadline of November 7, 2022, no decision had been issued by the Governor of Papua. This indicates that the Plaintiff is unable to freely exercise their right to express objections to the Disputed Object due to a lack of response from the Governor of Papua.

The inconsistency of the "Free" principle is also connected to the actions of the local government in response to the situation faced by the affected indigenous communities. Kasmilus Abe also added that on August 28, 2020, a protest took place, where the Awyu Community held a peaceful demonstration at the Office of the Boven Digoel Regency Council and the local government, to oppose Second Defendant Intervenor (Evidence P-28). It is evident that the Plaintiff and other affected indigenous communities had voiced their opposition to the proposed development project to the Regent of Boven Digoel. However, the Regent of Boven Digoel still submitted a request to the Governor of Papua to proceed with the assessment of the Environmental Impact Assessment (Amdal) documents of PT. Indo Asiana Lestari (Second Defendant Intervenor) under letter number 525/3257/Bup/XII/2020, dated December 20, 2020. From the statements above, it can be concluded that the issuance of the Object of Dispute on November 2, 2021, followed by multiple rejections by the affected communities before and after the issuance of the Object of Dispute, illustrates that there was a failure to comply with the "Free" principle concerning the indigenous communities.

Secondly, there is an inconsistency with the "Prior" principle in this case. Before the issuance of the Object of Dispute, Defendant did not involve the Awyu indigenous community, particularly the Plaintiff and the Woro clan, in any discussions or public consultation prior to the issuance of the Object of Dispute. In Plaintiff's argument, Defendant failed to create a dignified Negotiation Space to facilitate discussions between Defendant, Second Defendant Intervenor /PT Indo Asiana Lestari, and Plaintiff regarding the plans, implementation schedules, and permits related to investments in the palm oil industry within the Plaintiff's customary territory. As a result, Plaintiff was unable to provide feedback, opinions, or suggestions directly regarding the proposed activities that would encroach upon Plaintiff's indigenous land.

This fact is substantiated by the information in the Terms of Reference for the Environmental Impact Assessment (KA Andal), specifically in Table 2-10 on pages II-21 to II-22, which describes land area by clan, as well as in the Environmental

Impact Assessment/Amdal document, Table 1-10 on pages 1-14 to 1-15, which also details land area by clan, including a map of land ownership by clan within the proposed development site. Notably, the lists of clans included in these documents do not mention the Woro Clan. Therefore, Defendant's issuance of the Object of Dispute without providing a Negotiation Space with Plaintiff, along with Second Defendant Intervenor 's failure to involve and inform Plaintiff—who is also part of the affected Indigenous community—in the Environmental Impact Assessment (a prerequisite for creating the Amdal), raises legitimate concerns regarding a violation of the "Prior" principle.

Thirdly, there has been inconsistency of the "Informed" principle. The Plaintiff was not informed about the existence of the development project in their customary territory or the issuance of the Object of Dispute. It is factual that the Plaintiff is part of the affected indigenous community and one of the rightful owners of the Woro customary land. However, in the Environmental Impact Assessment Framework (KA Andal), specifically in Table 2-10 on pages II-21 to II-22 regarding land area descriptions by clan, and in the EIA/Amdal document in Table 1-10 on pages 1-14 to 1-15, the preparation of KA Andal and EIA/Amdal failed to consider and evaluate the rightful owners in the planned activity area, including the Woro clan. The EIA/Amdal preparation did not recognize the Plaintiff's existence as one of the landowners and the Head of the Woro clan, as the Woro customary territory was not included in the proposed project area, which falls within the plantation area or the Object of Dispute. Consequently, the Plaintiff was unaware of the development project and the issuance of the Object of Dispute.

The Second Defendant Intervenor also conducted public consultations during the preparation of the EIA/Amdal with the indigenous community, as evidenced by the Public Consultation Official Report for the EIA/AMDAL of PT. Indo Asiana Lestari (Evidence T.II.Intv-11). However, this public consultation did not invite the Plaintiff and the Woro clan community, who are part of the Indigenous community affected by the issuance of the Object of Dispute. This is evidenced by the response from the Second Defendant Intervenor, which states that they used data from the Indigenous Community Institution (LMA) (Evidence T-31), indicating that the Plaintiff's location is outside the area managed by the Second Defendant Intervenor. However, the accuracy of this data warrants evaluation, as the judges in their considerations have stated that the Plaintiff and the Woro Indigenous community are part of the indigenous community affected by the issuance of the Object of Dispute. Therefore, the letter from the Indigenous Community Institution (LMA) becomes increasingly necessary to question its validity.

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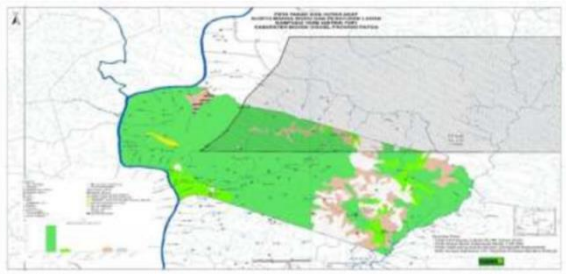
Wilayah Adat Marga Woro (warna hijau)



Tanah Adat Marga Woro (warna hijau) berada dalam peta Objek Gugatan

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Figure 1. The Customary Land of the Woro Clan (*green area*) is located within the Map of the Disputed Object.

Based on the image above, it is clear that the Plaintiff's customary territory (colored in green) partially overlaps with the map of the Object of Dispute. This means that the customary territory which belongs to the Plaintiff and other members of the Woro Clan, is located and planned within the map of the Disputed Object. Therefore, it is indeed strange that the Second Defendant Intervenor relied on the flawed LMA data to assess and decide the livelihood needs of the Indigenous community.

Furthermore, based on the testimonies of witnesses Kasmilus Abe, Yustinus Bung, and Antonia Noyagi, who reside in the same area as the Plaintiff, namely Mandobo District, Boven Digoel Regency, it was stated that there are no newspapers in the witnesses' village, and the witnesses were not invited to the Amdal socialization. As a result, the witnesses and the Plaintiff were unaware of any announcements or public consultations. Consequently, the witnesses, Plaintiff, and many other indigenous people were unable to provide feedback on the planned activities that would encroach upon their customary land. It is the responsibility of the business entity, in this case, the Second Defendant Intervenor, to ensure that all affected indigenous communities receive information concerning the development projects in their customary areas. Therefore, the preparation of the Amdal, which did not provide information to the Plaintiff, appears to be inconsistent with the principle of Informed.

Fourth, there has been an inconsistency of the “consent” principle. Essentially, indigenous communities have the right to participate and make decisions regarding any development projects that will be carried out, including the

utilization of natural resources and their customary territories.[27] Based on the aforementioned statements, various incidents have occurred that do not support the affected Indigenous communities, specifically the Plaintiff and other members of the Awyu tribe, in providing their consent regarding the issuance of the disputed Object. An analysis of the case uncovers several actions that clearly show the Plaintiff and other members of the Woro Clan withheld their consent for the Object of the Dispute.

The Plaintiff and other Indigenous communities have been opposing the palm oil plantation plan since 2018 through written objections, including the Letter from the Indigenous Community Institution of Boven Digoel dated November 8, 2018, regarding the Rejection of PT. Indo Asiana Lestari Palm Oil Company (Evidence P-25); the Letter from the Indigenous Community Institution of Boven Digoel dated September 14, 2020, concerning Awyu Customary Fines to PT. Indo Asiana Lestari (Evidence P-26); the Letter from Indigenous Communities, Clan Leaders, and Indigenous Figures dated September 10, 2021, regarding the Rejection of Palm Oil Plantation Presence (Evidence P-29); the Letter from the Awyu Indigenous Community dated April 25, 2022, requesting the Revocation of PT Indo Asiana Lestari's Permits (Evidence P-86 and P-87); the Letter from the Pusaka Bentala Rakyat Foundation to the Head of the Provincial Forestry and Environment Office of Papua dated November 12, 2020, regarding the Rejection of the Issuance of PT Indo Asiana Lestari's Permits (Evidence P-88); and the Letter from the Pusaka Bentala Rakyat Foundation to the Head of the Provincial Investment and One-Stop Integrated Services Office of Papua dated November 12, 2020, regarding the Rejection of the Issuance of PT Indo Asiana Lestari's Permits (Evidence P-89).

Furthermore, the rejections were not only expressed in writing but also carried out directly. A witness named Antonia Noyagi, testified about the different ways the community expressed their rejection, including the installation of traditional markers, the planting of peace crosses, and raising Red and White flags as powerful symbols of their resistance against the company's encroachment on their ancestral land. Ideally, business enterprises are expected to uphold human rights, by acting responsibly to prevent violations and involvement of the indigenous peoples' rights.[28] Even so, the objections raised by the Plaintiff and other indigenous communities were not included in the materials for the

[27] Kusniati, Retno. (2024). Free, Prior, and Informed Consent Principles as Indigenous Peoples' Right: Soft Law or Hard Law?. Jambe Law Journal: Vol. 7, No. 1: p.171. DOI: 10.22437/jlj.7.1.169-193, accessed from https://mail.jlj.unja.ac.id/index.php/home/article/view/350/75

[28] Elfitra, Afrizal, and Zuldesni. (2019). Free, Prior and Informed Consent (FPIC) as a Conflict Mitigation Instrument: FPIC Applicability for Mitigation of Structural Agrarian Conflicts in Indonesia. EAI: p.4. DOI: http://dx.doi.org/10.4108/eai.5-9-2018.2281040, accessed from https://eudl.eu/doi/10.4108/eai.5-9-2018.2281040

preparation of the Environmental Impact Assessment (Amdal) created by the Second Defendant Intervenor, and there was an attempt to omit information (disinformation) in the preparation of the Amdal, which prevented these objections from being considered in the decision-making process for the Amdal. Thus, the Plaintiff and other members of the Woro indigenous community were unable to provide suggestions, responses, or decisions regarding the development project that would take place within their customary territory. Therefore, there has been an inconsistency in the principle of consent toward the indigenous community in Decision No. 6/G/LH/2023/PTUN.JPR.

3.3. Legal Framework Addressing the Inconsistencies with the FPIC Principle in Decision No. 6/G/LH/2023/PTUN.JPR

It has been recognized that there is a discrepancy with the FPIC Principle in ruling No. 6/G/LH/2023/PTUN.JPR, which is also inconsistent with both international and national legal provisions that uphold the spirit of the FPIC Principle. According to international regulations, the situation of violating the FPIC principle in ruling No. 6/G/LH/2023/PTUN.JPR does not align with the provisions of UNDRIP. UNDRIP serves as an international instrument that guarantees the implementation of the FPIC Principle for Indigenous peoples, aimed at protecting their rights over natural resources and their customary territories.[29]

There has been a violation of the FPIC principle in the process of preparing the environmental impact assessment (Amdal), as it occurred without the involvement of the Plaintiffs and other affected Indigenous communities, disregarding various rejections from the Indigenous peoples. According to Articles 26 (1), (2), and (3) of UNDRIP, Indigenous peoples have the right to own, use, and control the land, territories, and natural resources they possess, which must be recognized and protected by the state. As a form of implementing these provisions, the state must consult, cooperate, and ensure the good-faith implementation of the FPIC Principle with Indigenous peoples before issuing and deciding on any actions in the customary lands of these communities, as outlined in Article 19 of UNDRIP. Article 32 (2) of UNDRIP further clarifies that the state is required to consult in good faith with Indigenous peoples through their authorized representative institutions to obtain consent based on prior informed consent without coercion regarding any project or activity that may affect their natural resources, land, and customary territories. Based on the above provisions, it can be stated that the state must first consult and seek approval

[29] Winarsih, Winarsih., and Cahya Wulandari. (2024). Implementation of Free, Prior and Informed Consent Principles Towards Utilization of Natural Resources in Indonesian Regulatory Framework. Annual Review of Legal Studies: Vol. 1, No. 2: p.291. DOI: https://doi.org/10.15294/arls.vol1i2.6136, accessed from https://journal.unnes.ac.id/journals/arls/article/view/6136

from these Indigenous communities before issuing or deciding on projects or activities that affect their livelihoods, such as natural resources, land, and territories, before utilizing their customary lands.[30]

In relation to the case, the Defendant, as an institution/representative of the state, issued the Disputed Object without opening space for discussion or negotiation with the company and the Indigenous community to discuss and seek approval/decisions from the Indigenous community regarding the proposed development project within their customary territory. This is inconsistent with the provisions of UNDRIP, as there was no implementation of the FPIC Principle by the state before issuing the Disputed Object, meaning there was no room for discussion and consultation. Furthermore, if the development project were to proceed, it would damage the environment, natural resources, land, and the customary territories of the Indigenous peoples, forcing them to relocate from their ancestral lands. Therefore, the case in ruling No. 6/G/LH/2023/PTUN.JPR seems to be inconsistent with international provisions, namely UNDRIP.

In addition to UNDRIP, other international instruments such as ILO 169 also specifically discuss the role of FPIC in protecting the rights of Indigenous peoples, particularly regarding public participation. According to ILO 169, a key aspect of implementing the concepts of consultation and participation within the FPIC principle is the relationship between Indigenous peoples and the state. The state is required to ensure a clear and firm consultation process for Indigenous communities.[31] This is evident in Article 6 (a) of ILO 169, which states that the state must conduct consultations through appropriate procedures and relevant institutions. Article 6 (2) further stipulates that these consultations must be conducted in good faith, through proper processes, and to reach an agreement. Regarding the rights of Indigenous peoples over natural resources and their customary territories, Article 15 (1) of ILO 169 states that these rights must be protected and respected, including the right of Indigenous peoples to participate in the use, management, and conservation of their natural resources and territories. Additionally, Article 15 (2) requires the state to ensure procedures that mandate consultations with Indigenous peoples, to understand the extent to which their interests may be harmed before the government permits programs for the exploitation of natural resources and Indigenous territories.

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[30] Agybay, Zh., Zh. Tolen, and D. Orynbassarov. (2020). Protecting the Rights of Indigenous Peoples in International Law," KazNU BULLETIN. International Relations and International Law Series: Vol. 90, No. 2: p.60. DOI: https://doi.org/10.26577/IRILJ.2020.v90.i2.08, accessed from https://bulletin-ir-law.kaznu.kz/index.php/1-mo/article/download/1095/1034

[31] International Labour Standards Department. (2013). Handbook for ILO Tripartite Constituents, Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Geneva: International Labour Office.

Concerning the case in ruling No. 6/G/LH/2023/PTUN.JPR, the Defendant is the one who issued the Disputed Object in this case. The issuance of the Disputed Object will cause harm to the Indigenous community, as it will impact both the environment and the cultural identity of the Indigenous peoples due to the development of a 36,094.4-hectare palm oil plantation in Mandobo District, Boven Digoel Regency. It is known that Defendant did not provide space for negotiation or consultation with the Indigenous community and the company concerning the issuance of the Disputed Object. The Defendant was also aware of the rejections made by the Plaintiffs but continued with the issuance of the Disputed Object. Based on this, the actions of Defendant as a representative of the state appear to be inconsistent with the provisions of ILO 169, as Defendant issued the Disputed Object without implementing the FPIC Principle for the Indigenous community.

Based on national legal provisions, the spirit of the FPIC Principle is also not effectively reflected in ruling No. 6/G/LH/2023/PTUN.JPR. The spirit of the FPIC Principle can be found in the Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management (PP PPLH), specifically in Article 28 (2) of PP PPLH, which states that the businesses (the company) must involve the affected communities through actions such as announcing the business plan and conducting public consultations. Furthermore, Article 33 (1) of PP PPLH stipulates that before conducting consultations, the responsible party must invite the affected Indigenous communities to participate in the public consultation. In relation to the case in the ruling, Second Defendant Intervenor did not inform/invite the Plaintiffs as the affected Indigenous community to participate in the public consultation during the preparation of the environmental impact assessment (Amdal). As a result, the Indigenous community could not engage in the consultation process and did not have the opportunity to provide input, feedback, or approval regarding the development project in their customary territory. Additionally, the Plaintiffs have made various rejections of the proposed development project but have still not received any response from Second Defendant Intervenor. Based on the above explanation, the actions of Second Defendant Intervenor indicate a discrepancy with the FPIC Principle as regulated in PP PPLH.

Not only in the Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management (PP PPLH), but the spirit of the FPIC Principle is also specifically found in Law No. 2/2021 on Special Autonomy for the Province of Papua. Referring from Article 42 (3) of Law No. 2/2021 on Special Autonomy for the Province of Papua, essentially states that Indigenous communities must be involved in negotiations or consultations conducted by the government and investors (companies). This is because negotiations or consultations between the parties should indeed take precedence over the

issuance of permits by the relevant authorities. The agreement reached from the consultation serves as a fundamental requirement for the issuance of the permit, as it is explained in the explanation of Article 43 paragraph (4) Law No. 2/2021 on Special Autonomy for the Province of Papua. From both articles, it can be concluded that the government must create a space for negotiation or consultation among the government, the company, and indigenous communities. This negotiation space should take precedence over the issuance of acquisition permits. This is because the outcomes of the negotiations are crucial requirements for issuing permits and decisions granting rights to the company. This law is fundamentally aimed at ensuring that the government can actively contribute to the welfare of the Papuan people.[32] This means that the Special Autonomy for the Province of Papua involves the Papua Government and its people to govern and manage the use of natural resources for the welfare of the Papuan population.[33]

However, in practice, it has not been optimally implemented to provide welfare, especially for Indigenous communities in Papua. In relation to the case, the Defendant, in issuing the Object of the Lawsuit, has never created a dignified negotiation space to bring together the Defendant, Second Defendant Intervenor, and the Plaintiffs to discuss the investment plans for the development of palm oil businesses and industries. Referring from Article 42 (3) and Article 43 (4) of Law No. 2/2021 on Special Autonomy for the Province of Papua, it is clear that the government must create a discussion space with companies and Indigenous communities to facilitate deliberations leading to a fair agreement among the parties. However, in this case, the Defendant did not provide a negotiation or deliberation space involving the Defendant, the Company or Second Defendant Intervenor, and the Plaintiffs along with other affected Indigenous communities. Additionally, the Defendant's action of approving the Disputed Object, despite knowing about the various rejections made by the Plaintiffs and other Indigenous communities, indicates a failure to adhere to the FPIC Principle as regulated in Law No. 2/2021 on Special Autonomy for the Province of Papua.

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[32] Kuswantoro, Suryo Febry. (2023). Analisis Yuridis Undang-Undang Nomor 2 Tahun 2021 Tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Daerah Provinsi Papua (Perspektif Teori Hukum Progresif) Analisis Yuridis Undang-Undang Nomor 2 Tahun 2021 Tentang Perubahan Kedua Atas Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Daerah Provinsi Papua (Perspektif Teori Hukum Progresif). Jember: Digital Library UIN Khas Jember, Undergraduate Thesis, Syariah.

[33] Nurcahyati, Fifi. (2021). Kemaslahatan Dalam Keistimewaan Otonomi Khusus Papua. As-Salam: Jurnal Studi Hukum Islam & Pendidikan: Vol. 10, No. 2: p.67. DOI: https://doi.org/10.51226/assalam.v10i02.470, accessed from: https://staidarussalamlampung.ac.id/ejournal/index.php/assalam/article/view/470

This research will also analyze the inconsistencies of the panel of judges in ruling No. 6/G/LH/2023/PTUN.JPR. Ruling No. 6/G/LH/2023/PTUN.JPR is an environmental case adjudicated by the Environmental Court. According to Article 2 of the Supreme Court Regulation No. 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases (Perma 1/2023 on PMPLH), Perma 1/2023 on PMPLH aims to provide guidelines for judges in carrying out their duties in adjudicating environmental cases. However, the actions of the panel of judges in ruling No. 6/G/LH/2023/PTUN.JPR appears to be inconsistent with the guidelines or provisions for adjudicating environmental cases as stipulated in Perma 1/2023 on PMPLH.

The panel of judges in the considerations regarding the Object of the Case stated that:

"*Based on the facts related to the Disputed Object with the Environmental Impact Assessment (Amdal) held by Second Defendant Intervenor, the Court found that the Disputed Object is the Decree of the Head of the Investment and One-Stop Service Office of Papua Province and not the Recommendation of the Head of the Forestry and Environmental Office of Papua Province as the Environmental Impact Assessment Assessment Commission (KPA). Therefore, the Court will not further examine the substance and procedures of the environmental feasibility recommendation or the assessment of the Amdal, as it is not the Disputed Object being examined in this case*." (See: Ruling No. 6/G/LH/2023/PTUN.JPR, pages 277-278).

It is evident from the considerations of the panel of judges that the Court will not further examine the substance and procedures of the environmental feasibility recommendation or the Environmental Impact Assessment (Amdal). According to Article 21, paragraph (1), letter (d) and Article 21, paragraph (3) of Supreme Court Regulation 1/2023 on PMPLH, it is stated that the panel of judges examining environmental cases must assess the feasibility of the Amdal, which includes the validity of various resources and documents that form the basis for the issuance of the Amdal. The validity in question refers to these documents not containing errors, inaccuracies, or falsifications of information.[34] Relating this to the case, it presents an inconsistency in the panel of judges' considerations. The panel of judges in examining environmental cases needs to conduct testing and verification of the documents that form the basis for issuing the Amdal, including an examination of the Recommendation Letter from the Head of the Forestry and Environmental Office of Papua Province as the Environmental Impact

[34] Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases (Perma 1/2023 on PMPLH).

Assessment Assessment Commission (KPA), as stated in Article 21 of Supreme Court Regulation 1/2023 on PMPLH.

The panel of judges must not only examine and evaluate the Recommendation Letter from the KPA, but they must also assess other documents that serve as the basis for issuing the EIA/Amdal, one of which is the Public Consultation Official Report of the Amdal PT. Indo Asiana Lestari (Evidence T.II.Intv-11). If the panel of judges had examined at least these two documents, along with their finding that the Plaintiff is indeed part of the affected Indigenous community, then the panel should have already recognized that the Plaintiff, along with the Woro clan and other Indigenous communities, were not included in the KPA Recommendation Letter and were not present in the public consultation as noted in the Public Consultation Official Report of the Amdal PT. Indo Asiana Lestari (Evidence T.II.Intv-11). The panel of judges should have identified the invalidity in both documents in order to find the absence of the Plaintiff and other Indigenous communities in those documents.

The panel of judges also stated in the consideration of the Object of the Case that:

"*The Court will not further examine the substance and procedures of the environmental feasibility recommendation (results of the feasibility test) or the assessment of the Amdal, as it is not the object of the dispute being examined in this case*." (See Decision Number 6/G/LH/2023/PTUN JPR, pages 279).

Based on that consideration, it is stated that the Court will not further examine the **substance** and **procedures** of the environmental feasibility recommendation or the Amdal, as it is not the Object of the Dispute being tested. Referring to Article 21, paragraphs (1) letters (b) and (c), and paragraph (2) letter (d) of Supreme Court Regulation 1/2023 on Guidelines for Adjudicating Environmental Cases (Perma 1/2023 about PMPLH), it essentially states that the panel of judges must examine the feasibility of the Amdal that forms the basis for government administrative decisions, which includes the Procedure Preparation and Substance. In examining the substance, the panel of judges must consider the responses given by the indigenous communities.

Based on these articles, the panel of judges is indeed obligated to examine and reassess the procedures and substance of the EIA/Amdal. Regarding the procedure, the presiding judge should examine the EIA/Amdal, particularly concerning the procedure for preparation, to ensure that the rights of access to information and the rights of the community to participate in the preparation of the Amdal have been fulfilled. Furthermore, regarding the substance, the presiding judge should assess whether any community members have given suggestions and responses regarding the preparation of the EIA/Amdal. However

as is known from the decision, the Plaintiffs, who are the affected Indigenous communities, did not have access to information needed to participate in the procedure for making EIA/Amdal. Consequently, were not documented and were unable to provide suggestions and responses regarding the preparation of the EIA/Amdal. Therefore, it is a contradiction that the panel of judges did not re-examine the Amdal as stated in Article 21, paragraphs (1) letters (b) and (c), and paragraph (2) letter (d) of Supreme Court Regulation 1/2023 on Guidelines for Adjudicating Environmental Cases (Perma 1/2023 about PMPLH). This is a discrepancy, as the environmental judges did not conduct a proper examination and reassessment of the procedures and substance of the EIA/Amdal, thus not aligning with the Guidelines for Adjudicating Environmental Cases. The panel of judges should act and decide the case following the Guidelines so that those entitled to environmental rights (indigenous communities) can receive protection and respect through the judges' decisions, as explained in the considerations of Perma 1/2023 about PMPLH. As a result, the judges' inaction in reviewing the EIA/Amdal reveals a glaring inconsistency in their ruling, undermining the principles of FPIC and defying the guidelines for adjudicating environmental cases set forth in Perma 1/2023 about PMPLH.

4. Conclusion

Research findings indicate that Decision No. 6/G/LH/2023/PTUN.JPR is one of the decisions that highlight the inconsistency with the FPIC principle which was carried out by the Defendant, Second Defendant Intervenor, and the Panel of Judges. First, the Defendant never created a space for negotiation and discussion between the Defendant, Second Defendant Intervenor, and the affected indigenous communities. Second, the Second Defendant Intervenor neither informed nor invited the Plaintiff to the public consultations. There was also violence and pressure exerted towards the affected indigenous communities. Third, the Panel of Judges, in its considerations, stated that it would not reassess the substance and procedure of the documents used as the basis for preparing the EIA/Amdal. This study revealed that the actions of the Defendants and the Judges did not adhere to the FPIC principle, as outlined in both international and national law. Through this research, it can be illustrated that violations of the FPIC principle against indigenous communities continue to occur, perpetrated by the state and companies. Therefore, this study is expected to serve as a learning resource for the state, companies, and law enforcement, enabling them to exercise caution in taking actions that will affect the lives and rights of indigenous communities in the future.

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