

# THE URGENCY OF DESIGN ON INDIGENOUS COMMUNITY LAW BASED ON THE CONFLICT OF TORAKAT INDIGENOUS PEOPLE IN NORTH SULAWESI

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**Abstract:** This study aims to find out and analyze the urgency of the Indigenous Peoples Bill in terms of the Toruakat Indigenous People's conflict in North Sulawesi. The method used in this study is a normative juridical method, with secondary data sources as the primary data, and then the collected data is analyzed qualitatively. After conducting research, it was found that the conflict occurred between the Indigenous Peoples of Touakat and PT. Bulawan Daya Lestari, in Bolaang Mongondow, North Sulawesi, resulted in the death of one indigenous person and the injury of four other indigenous people, arguably revealing that the Government cannot be present to protect indigenous peoples. The protection, fulfilment, and recognition of indigenous peoples should be related to the substance of human rights contained in the 1945 Constitution of the Republic of Indonesia. This means that the existence of confirmation in the Constitution is not only limited to recognizing the constitutional rights of indigenous peoples but also must guarantee the fulfilment of the rights of indigenous peoples. -the constitutional rights. The occurrence of the conflict can ultimately show that there is an urgency for the Indigenous Peoples Bill.

**Keywords:** Urgency, Draft Law, Indigenous People

**Abstrak:** Tujuan penelitian ini adalah untuk mengetahui dan menganalisa urgensi Rancangan Undang-Undang Masyarakat Adat ditinjau dari konflik Warga Adat Toruakat di Sulawesi Utara. Metode yang digunakan dalam penelitian ini adalah metode yuridis normatif, dengan sumber data sekunder sebagai data utama, selanjutnya data yang terkumpul dianalisis secara kualitatif. Setelah dilakukan penelitian ditemukan sebuah kesimpulan bahwa Konflik yang terdiantara Masyarakat Adat Toruakat dengan PT. Bulawan Daya Lestari, di Bolaang Mongondow Sulawesi Utara, yang mengakibatkan satu orang warga adat tewas dan empat orang warga adat lainnya luka-luka, dapat dikatakan menguak fakta bahwa Pemerintah tidak dapat hadir untuk melindungi masyarakat adat. Perlindungan, pemenuhan, dan pengakuan terhadap masyarakat adat seharusnya bertalian dengan substansi hak asasi manusia yang tertuang dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Artinya, adanya pengukuhan dalam konstitusi tidak hanya sebatas pengakuan hak konstitusional masyarakat adat, melainkan juga harus menjamin terpenuhinya hak-hak konstitusional tersebut. Terjadinya konflik tersebut pada akhirnya dapat menunjukkan bahwa terdapat urgensi Rancangan Undang-Undang Masyarakat Adat.

**Kata kunci:** Urgensi, Rancangan Undang-Undang, Masyarakat Adat

## Introduction

Human rights gained legitimacy internationally through ratifying the United Nations (UN) The Universal Declaration of Human Rights on December 10, 1948. The fundamental interest of every citizen is the protection of their rights as human beings. Therefore, Human Rights (HAM) is the core material of the text of the Constitution. Human rights are a set of rights that are inherent in the nature and existence of every human being as a creature of God Almighty and are His gift that must be respected, upheld, and protected by the State, law, Government, and everyone, for the sake of honour and protection of dignity. Man. That is, what is meant by human rights are rights inherent in every human person, and related to this research, they include the rights of indigenous peoples.<sup>1</sup>

The history of the development of recognition of the rights of indigenous peoples through the ILO Convention 107 of 1957 concerning Indigenous Nations and Indigenous Peoples assumes that indigenous peoples are an uncivilized society that must be developed into a modern society. Indigenous peoples can be classified as Indigenous Peoples, as intended in the Declaration on the Rights of Indigenous Peoples in 2007. In addition, the rights of indigenous peoples are also contained in the Covenant on Economic, Social and Cultural Rights, which came into force on January 3, 1976, and has been ratified. Law Number 11 of 2005 concerning Ratification of the

International Covenant on Economic, Social and Cultural Rights.

Recognition of indigenous peoples is contained in Article 18, paragraph (2) of the 1945 Constitution of the Republic of Indonesia (in the future referred to as UUDNRI 1945), that: "The state recognizes and respects customary law community units and their traditional rights throughout life and following with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law". Thus, indigenous peoples have rights guaranteed by the Constitution throughout their lives, following the development of society and the principles of the Unitary State of the Republic of Indonesia. Furthermore, it is also regulated in Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "Cultural identity and rights of traditional communities are respected in harmony with the development of the times and civilization".<sup>2</sup>

Indigenous peoples are communities that live based on ancestral origins from generation to generation on traditional territory. They have sovereignty over land, natural resources, and socio-cultural life regulated by customary law and traditional institutions. According to Bushar Muhammad, in customary law, between the legal community as a unit and the land it occupies, there is a close relationship, namely a relationship that originates from a magical religious view, so that this causes

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<sup>1</sup> Maria Kaban, "Settlement of Inheritance Disputes on Indigenous Lands in the Karo Indigenous Peoples," *Pulpit of Law - Faculty of Law Universitas Gadjah Mada* 28, no. 3 (October 15, 2016): 456, <https://doi.org/10.22146/jmh.16691>.

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<sup>2</sup> Abdullah, RH, Hukum, F., & Mada, UG (2015). Urgency of Customary Law in Renewal of Urgency of Customary Law in the Renewable of National Criminal Law. *Fiat Justisia Journal of Legal Studies: The Urgency of Customary Law in Renewing the National Criminal Law*, 9 (2), 168–181.

the legal community to obtain the right to control the land, utilize the ground, collect the results of the plants that live on the land; and has the right to hunt for animals that live on the land. The rights of the legal community to this land are called lordship rights or hakulayat (beschikkingrecht). Customary law is a custom that is accepted and must be implemented in the community concerned; to maintain the implementation of the traditional law so that there are no deviations or violations, then among the community members, there are those who are entrusted with the task of supervising it, thus gradually these customary officers are appointed as head of the community.<sup>3</sup>

Related to the development of the enforcement of human rights of indigenous peoples, which has become the focus of international human rights enforcement, this is based on the fact that traditional communities are the parties that often experience human rights violations. The existence of indigenous peoples is threatened by many attempts to plunder natural resources and transfer forest functions, which ultimately eliminate the rights of indigenous peoples. Many indigenous peoples have been evicted from their land due to the expansion of mining land and large-scale oil palm plantations in Kalimantan, Sumatra, and even Sulawesi. In many places, the State criminalises indigenous peoples who defend their areas of life. <sup>4</sup>They are forced to follow the legal process in state courts, and not infrequently, they end up in prison. They have been defeated repeatedly by an economic system that prioritizes profits for the owners of capital. They are also dominated by a legal

<sup>3</sup> Erika Erika, "Land Acquisition Conflicts in the Customary Land Areas of Customary Law Communities in Mineral and Coal Mining Concessions," *Journal of Legal Communication (JKH)* 4, no. 2 (August 10, 2018): 8, <https://doi.org/10.23887/jkh.v4i2.15439>.

<sup>4</sup> APRIANI, D. (2015). The Urgency of Customary Law in Criminal Law Reform in Indonesia. *Riau Journal of Law*, 5 (1), 9150.

system that does not respect their traditions and customary laws. This is ironic because economics and law, which should be meant to achieve justice by treating everyone equally, perpetuate injustice.<sup>5</sup>

As for the shooting and mistreatment of the Torukat Indigenous People related to the conflict with the Gold Mining Company, PT. Bulawan Daya Lestari, in Bolaang Mongondow, North Sulawesi. On Monday, September 27 2021, in Bolaang Mongondow Regency, North Sulawesi, there was an attack on the Torukat Indigenous People who checked the boundaries of their customary territory. The attack was carried out by thugs paid by the gold mining company PT. Sustainable Daya Bulawan. The incident has resulted in fatalities, a resident of the Torukat Indigenous Community died from being shot in the chest and 4 (four) other people were injured.<sup>6</sup>

Previously, the Touakat Indigenous People received information that the company had entered the customary area and damaged several plantations belonging to the Indigenous Peoples. Then the Touakat Indigenous Community checked the boundaries of their territory and came to the Bolaang Mongondow Resort Police to convey the purpose of the fieldwork activity. The Police also sent a security team.

However, suddenly the local Indigenous People were attacked by a group of thugs. The Police at the location did not act to

<sup>5</sup> Rachel Farakhayah and Maulana Irfan, "The Existence of Indigenous Peoples Is Eroded by the Needs of the Age of Conflict Analysis Study of the Sunda Wiwitan Indigenous Peoples in Kuningan who were expelled from their own Indigenous Land with Identity Theory," *Journal of Collaborative Conflict Resolution* 1, no. 1 (February 13, 2019): 45, <https://doi.org/10.24198/jkrk.v1i1.20892>.

<sup>6</sup> Ridlwan, Z. (2015). The Urgency of Village Owned Enterprises (Bumdes) in Village Economic Development. *FIAT JUSTISIA: Journal of Legal Studies*, 8 (3), 424-440. <https://doi.org/10.25041/fiatjustisia.v8no3.314>

prevent or disperse the attackers. The incident that befell the Toruakat Indigenous Peoples is a reflection of the many cases of customary land conflicts that the Government has not resolved correctly. Permits are sold out haphazardly to pursue investment regardless of whom the designated location belongs, and there is no monitoring and evaluation as to whether the mining company is destroying the environment or not.

This occurrence is contrary to Article 18 paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia previously mentioned because these two articles are the legal basis for protecting indigenous peoples from all forms of oppression and deprivation of rights. Until now, the draft Law on Indigenous Peoples is still only a discourse, so the pressure and poverty of the rights of indigenous peoples continue to this day. Based on the description above, the problems discussed in this research are: How is the urgency of the Draft Law on Indigenous Peoples viewed from the conflict of the Toruakat Indigenous People in North Sulawesi?

## Method

This study uses a normative juridical method, namely research that refers to legal norms contained in the legislation that applies as a normative footing. This study aims to obtain an overview of the urgency of the Draft Law on Indigenous Peoples regarding the conflict between the Toruakat Indigenous People in North Sulawesi. Sources of data are obtained from secondary data, namely from legislation, jurisprudence, and legal literature books or other written legal materials. Data collection techniques in this study will be carried out through document studies conducted on secondary data to obtain a theoretical basis in the form of opinions or writings of experts or other parties who receive

information either in a standard form or through official data. The data collected in the study were analyzed using qualitative data analysis methods. Qualitative data analysis in the form of exposure and a thorough description of the problem under investigation will be further poured into an explanation.

## Results and Discussion

### Customary Rights Disputes in the Community

This dispute relates to civil rights, both by the subject of the rights and by other parties interested in the object of their requests (land). The main issue is related to the certainty of land rights. Therefore, it is known that determining a matter on the ground, including the issuance of decrees and certificates, depends on physical and juridical data submitted by the party receiving the rights to the National Land Agency. If the data submitted contains weaknesses, the quality of legal certainty regarding land rights will have weaknesses that at one time can be cancelled if proven administrative defects or legal defects.<sup>7</sup>

Obtaining a right to land and obtaining a certificate on the ground as proof of ownership can be done in two ways: the conversion of former rights and former customary property rights and application for rights. The Indonesian land registration publication system, which adheres to a negative system with a positive trend, does not allow for guarantees of legal certainty. The assurance of legal certainty is meant only if the physical and juridical data contained in the land book, certificates and other lists follow the reality on the ground. Therefore, a land right is still open to be

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<sup>7</sup> Ahyar Ahyar, "Legal Protection of Customary Land Rights (Case Study in Aceh Province, Especially Bener Meriah Regency)," *De Jure Legal Research Journal* 18, no. 3 (September 21, 2018): 290, <https://doi.org/10.30641/dejure.2018.V18.289-304>.

cancelled, either based on the decision of the judiciary or based on the facts in the field; thus, the validity of the right as the basis for determining a land right is fundamental to providing legal certainty guarantees.<sup>8</sup>

Although adopting a hostile system, it does not mean that in processing a right, the National Land Agency is favourable in implementing the principles of good general governance; the process of issuing rights is always carried out with a standard of accuracy that can be accounted for by conducting land history research and determining boundaries legally. The delimitative contract is announced, and the opportunity is opened for interested parties to raise objections.<sup>9</sup>

Although adopting a hostile system, it does not mean that in processing a right, the National Land Agency is optimistic; in the context of implementing the general principles of good governance, the process of issuing rights is always carried out with a standard of accuracy that can be accounted for, namely by conducting land history research and contractually setting boundaries delimitation, is announced. The opportunity is opened for interested parties to raise objections.<sup>10</sup>

According to Firdaus and Malau, the problem of *ulayat* land disputes is caused,

among other things, because of the unclear family lineage in a Ranji, social and economic jealousy between members in one line. This customary land rights dispute also arose during the first land registration process at the Regional Land Office. This can be resolved through the Nagari adat court before being processed at the Land Office, but it is not carried out as mandated in Regional Regulation 6 of 2010 concerning Guidelines for the Implementation of Customary Institutions in the Region. It is considering that the customary court does not have executive power. Its implementation often does not produce results because its existence is not mentioned in Law Number 48 of 2009 concerning Judicial Power. However, based on Regional Regulation Number 5 of 2020 concerning Traditional Institutions in the Region, it is said that the existence of the Nagari Customary Density is recognized as a customary court and Nagari customary institution. Most of the traditional land tenure disputes that arise in the land registration process are first settled at the Regional Land Office and resolved through mediation. However, if an agreement is not reached, the settlement will be delegated to the Nagari Adat Density (KAN).<sup>11</sup>

### **The Urgency of the Draft Law on Indigenous Peoples given the Conflict of the Torukat Indigenous People in North Sulawesi**

The existence of indigenous peoples has a long history in the context of legal politics in Indonesia. Before the Proclamation of the Republic of Indonesia in 1945, the Dutch colonial Government, which ruled for a long time in Indonesia, implemented a policy of legal pluralism by dividing the legal system

<sup>8</sup> Lili Abdullah, "Legal Analysis of Land Conflicts in Rural Areas: (Case Study of Land Disputes Between Talonang Village Communities and the Government of West Sumbawa Regency)," *JURIDICA: Journal of the Faculty of Law, University of Mount Rinjani* 2, no. 2 (May 12, 2021): 85, <https://doi.org/10.46601/juridica.v2i2.186>.

<sup>9</sup> Mahrita Aprilya Lakburlawal, "Access to Justice for Indigenous Peoples in Settlement of Customary Land Disputes Granted Cultivation Rights," *ADHAPER: Journal of Civil Procedure Law* 2, no. 1 (February 24, 2016): 66, <https://doi.org/10.36913/jhaper.v2i1.24>.

<sup>10</sup> Adonia Ivonne Laturette, "Settlement of Customary Rights Disputes in Forest Areas," *SASI* 27, no. 1 (April 13, 2021): 106, <https://doi.org/10.47268/sasi.v27i1.504>.

<sup>11</sup> Hesty Wahyuni, Dian Aries Mujiburohman, and Sri Kistiyah, "Handling of Disputes over Land Tenure through the Customary Courts of West Sumatra," *Tunas Agraria* 4, no. 3 (2021): 352–69, <https://doi.org/10.31292/jta.v4i3.150>.

into three legal systems, namely western civil law, law for foreign eastern nations, and customary law for indigenous people. Post-colonialism, the legal unification process was pursued by the Indonesian Government, starting from the 1945 Constitution to Law Number 5 of 1960 concerning Agrarian Principles (UUPA).<sup>12</sup> At the beginning of the establishment of the Republic of Indonesia, Indonesian legal thinkers attempted to adopt customary law, which became the basis for regulating *hakulayat* to be used as the foundation for developing national law. This is facing a big challenge because the social system in Indonesian society consists of various ethnic groups and has its own legal locality. One of these debates is recorded in the legal documents produced.

Although there are provisions governing indigenous peoples, the regulations mentioned above are not sufficient to protect the rights of indigenous peoples. One of the recent facts is the conflict over land grabbing of indigenous peoples by mining companies in North Sulawesi. The gold mining conflict occurred between the Touakat Indigenous Peoples and PT. Bulawan Daya Lestari in Bolaang Mongondow Regency, North Sulawesi on Monday, September 27, 2021, has claimed lives. A resident of the indigenous Toruakat community was shot dead in the chest, and 4 other people were injured as a result of being attacked by a group of paid thugs suspected of being recruited by the company to provide security at the mine site.<sup>13</sup>

Previously, the Touakat Indigenous People received information that the company had entered the customary area and damaged several community-owned gardens. Responding to this information, residents deliberated to determine the location and check the boundaries of their territory. To ensure smooth running, the Toruakat Indigenous People came to the Bolaang Mongondow Resort Police and conveyed the purpose of the field activity. The Police also sent a security team and appealed to the public not to carry sharp weapons. While conducting field checks, suddenly, residents were attacked by a group of thugs.<sup>14</sup> The Police who were present at the location did not appear to have taken any action to prevent a conflict from occurring by disbanding the group of attackers.<sup>15</sup>

Responding to this conflict that has claimed its victims, the Toruakat Indigenous Community asked the Government to evaluate and revoke the permit PT immediately. Sustainable Daya Bulawan. The local Indigenous Community also urged the National Police Chief to immediately take firm action against the shooters and arrest land mafias who take advantage of local residents' expense. The absence of protection from the Government has caused the community to become victims. The Police, who are expected to be the protectors and protectors of the community, are also unable to do much about the violent acts committed by the company thugs.<sup>16</sup>

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<sup>12</sup> Ahyuni Yunus and Ahmad Ali Muddin, "Certified Communal Land Dispute Resolution Based on Malind-Anim Customary Law," *Kertha Patrika* 41, no. 3 (December 29, 2019): 208.

<sup>13</sup> Hardianti, FY, Efendi, R., Lestari, PD, & Puspoayu, ES (2021). The Urgency of Accelerating the Ratification of the Draft Law on the Elimination of Sexual Violence. *Journal of Suara Hukum* , 3 (1), 26. <https://doi.org/10.26740/jsh.v3n1.p26-52>

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<sup>14</sup> Arditama, E., & Lestari, P. (2020). Journal of Citizenship Education Undiksha Vol. 8 No. 2 (May, 2020). *Journal of Citizenship Education Undika* , 8 (2), 157-167.

<sup>15</sup> Shrimanti Indira Pratiwi, "Resolution of Customary Land Disputes Between Indigenous Law Communities and Tessonilo National Park," *Collection of Law Faculty Student Journals* , November 16, 2015, 7, <http://law.studentjournal.ub.ac.id/index.php/law/article/view/1391>.

<sup>16</sup> RD Djari , "The Urgency of the Draft Law on

The conflict in the Toruakat Indigenous Peoples was a reflection of the many cases of customary land conflicts that the Government did not appropriately resolve. Land use permits are facilitated freely and without supervision to pursue investment, no matter who the designated location belongs to and there is no evaluation of whether the mining company is destroying the environment.

Komnas HAM should immediately take decisive and swift steps, investigate allegations of human rights violations in the conflicts, and prevent similar disputes. This act is a form of intimidation, persecution, and discriminatory behaviour by government officials and officials against indigenous peoples because it results in the right to a sense of security and peace as well as protection from threats and fears over the use of natural resources in customary forest areas.<sup>17</sup>

Meanwhile, the Mining Advocacy Network (JATAM) questioned local government policies, especially the Governor and the One Stop Service Investment Agency (DPMPTSP), which issued mining permits to PT BDL through SK 503/DPMPTSP/IUP-OP/241/X/2020. JATAM Coordinator, Merah Johansyah, stated that the licensing PT. Bulawan Daya Lestari is registered in the Mineral One Data Indonesia (MODI) system of the Ministry of Energy and Mineral Resources and holds the status of Clean and Clear (CnC) Phase 1.

Johansyah also said the Government could give a CnC certificate to a company that was rejected by the community from the start, caused conflict, and was even

suspected of operating in a forest area without a Borrow-to-Use Forest Area Permit. Then there are irregularities in the form of allegations of applying a backward date to support PT BDL's operations because, in the ESDM MODI system, the Decree (SK) issued by DPMPTSP is recorded in 2020, but the effective date is listed as March 11, 2019, to March 11, 2029. This raises suspicions about the legitimacy of mining activities from 2019 to 2020 so that it can be suspected as an 'illegal' operation or without a legal basis.<sup>18</sup>

The shooting case that happened to the Toruaka Indigenous People clearly shows that the Government and officials are not serious about resolving all mining conflicts in Indonesia. The shooting of the Indigenous Peoples who defend their traditional territories from irresponsible parties has occurred today.<sup>19</sup> The Production Operation Mining Business License also expired at the beginning of this year, and we ask ESDM not to extend the business license to the company. Johansyah also urged that the company's documents be opened to the public, the Governor and other relevant agencies, including ESDM, to evaluate PT BDL immediately so that law enforcement can carry out the form of revoking the operating license because it has sparked a bloody conflict and is accompanied by violations of human rights and human rights culture.

Based on the search, the company PT. Bulawan Daya Lestari is owned individually by Edwin Efraim Tanesia, who owns 95% (ninety-five per cent) of the ownership shares and Denny Ramon Karwur, who owns 5% (five per cent) of the ownership shares. While in the company structure, Edwin Efraim Tanesia serves as Commissioner,

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Mediation: The Realization of Justice and Legal Certainty for the Parties," *Journal of Education and Development* 8, no. 1 (2020): 141.

<sup>17</sup> Usman, U., Rahayu, S., & Siregar, E. (2021). The Urgency of Absorbing the Values of Islamic Law and Customary Law in the Regulation of the Crime of Adultery. *Law: Journal of Law*, 4 (1), 157

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<sup>18</sup> Bustani, S. (2010). The Urgency of Regulation of Cultural Expression ( Folklore) of Indigenous Peoples. *Priority Law*, 2 (2), 246–255.

<sup>19</sup> Riza, F. (2017). Legal Review on the Urgency of Village Spatial Arrangements. *Nestor's Journal of Master of Laws*, 2 (2), 210

Denny Ramon Kawur as President Director, Jetty Roeroe S.IK as Director, and Michael Tumbol as director. The company has a concession area of 99.84 (ninety-nine point eighty-four) hectares.<sup>20</sup>

As for the conflict, there were several pressures made by the Indigenous Peoples Alliance of the Archipelago (AMAN) and the Mining Advocacy Network (JATAM) against the Government. The contents of the description can be seen in the table below:

No	Name of Institution/ Government	Recommendation
1	Komnas HAM	Komnas HAM immediately assisted the families of the dead and injured and conducted an investigation into alleged human rights violations, including the motives behind the shootings that resulted in death and conflicts involving thugs and police officers.
2	Governor and Regent of Bolaang Mongondow, as well as the Police	Governor and Regent of Bolaang Mongondow, as well as the Police, to immediately withdraw and clean the conflict location from armed thugs and police officers
3	government and law enforcement	Urge the government and law enforcement officials to involve indigenous peoples in resolving land conflicts, as well as the process of resolving disputes that have taken their toll.
4	Governor, Ministry of Environment and Forestry (KLHK) together with Ministry of Energy and Mineral Resources, Regional Government of Bolaang Mongondow	The Governor, the Ministry of Environment and Forestry (KLHK) together with the Ministry of Energy and Mineral Resources, the Regional Government of Bolaang Mongondow Regency, and related agencies such as the DPMPSTP, the Environmental Service (DLH), the ESDM Office according to their respective authorities immediately coordinate to evaluate, revoke and cancel gold mining permits

It can be understood that with the regulation of indigenous peoples in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the Constitution has recognized the existence of Indigenous Peoples in Indonesia. However, unfortunately, the Government does not have an administration system for Indigenous Peoples. So that the absence of the Indigenous Peoples administration system has resulted in unclear integration of the Thematic Maps of Indigenous Areas in the One Map Policy. However, the Regional Government has determined the existence of Indigenous Peoples, and maps of Indigenous Territories cannot be integrated into the One Map Policy geoportal because there is no guardian of the map data in government Ministries and Agencies. Thus, the absence of an Indigenous Peoples administration system has resulted in Indigenous Peoples always being victims of development and their rights not being protected.

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The investment plan should be accompanied by the protection of the rights of the Indigenous Peoples so that if this is done, there will be no conflict like what happened to the Indigenous People of Toruakat. Investment plans that are not accompanied by the protection of indigenous peoples' rights will have an impact on business uncertainty and additional costs incurred by investors to respond to conflicts that occur. Investment in customary areas should be an investment from indigenous peoples and for indigenous peoples, namely in

<sup>20</sup> Komang Sundara and Abdul Gani, "The Role of Tu'a Ulayat Warloka in Land Dispute Resolution," *CIVICUS: Education-Research-Pancasila and Citizenship Education Service* 8, no. 1 (March 31, 2020): 18, <https://doi.org/10.31764/civicus.v8i1.1790>.

<sup>21</sup> Dominikus Rato, "Indigenous Land Dispute Resolution in the Perspective of Local Wisdom in the Ngadhu-Bhaga Community, Ngada-NTT District," *Legal Issues* 42, no. 3 (July 23, 2013): 123, <https://doi.org/10.14710/mmh.42.3.2013.302-309>.

promoting independence based on the protection and recognition of their territory. Thus, investment cooperation with the business world needs to prioritize the voices and interests of Indigenous Peoples.

The Government's plan to ratify the Draft Law on Indigenous Peoples has been around since 2009, namely during the administration of President Susilo Bambang Yudhoyono. However, after 12 years have passed, the Government has yet to ratify the Community Law, even though the DPR is starting to show a signal to ratify the Bill. The Government should immediately provide legal certainty for indigenous peoples because, after all, indigenous peoples have contributed to national development.<sup>22</sup>

The ratification of the Indigenous Peoples Bill is essential because of the importance of carrying out the constitutional mandate of indigenous peoples. It can be used as a legal umbrella for protection for Indigenous Peoples so that there are no more conflicts that cause casualties, improve the quality of natural resource management in Indonesia, and can prevent the practice of - illegal practices that cause damage to the environment and natural resources, because environmental damage will continue to occur if the Government does not protect indigenous peoples. So based on this, the Government must be aware of the urgency of the Indigenous Peoples Bill to be immediately ratified because so far, there has not been a single regulation/policy that is comprehensive and guarantees the rights of indigenous peoples are fulfilled.

Based on the facts described above can illustrate that there are human rights of indigenous peoples are violated. The rights

of indigenous peoples that have been infringed include:

1. Right to recognition as indigenous peoples;
2. Traditional ownership of indigenous peoples;
3. Indigenous peoples' property rights;
4. The right not to be arbitrarily deprived of his property;
5. Right to survive;
6. The right to a good and healthy environment;
7. The right to worship according to the beliefs of indigenous peoples;
8. Right to education;
9. And others

In addition, the expropriation of customary forests or parts of typical forests has so far been determined, designated, and issued without notification and the consent of the indigenous peoples concerned. This ultimately results in indigenous peoples not knowing that their traditional territory has been recognized (claimed) by the State as a state forest area and designated for "certain functions", and management rights over their traditional environment have been granted to other parties (corporations, etc.). Thus, it is essential to ratify the draft Law on Indigenous Peoples that is relevant to their current condition to ensure the fulfilment, respect and protection of the rights of indigenous peoples.<sup>23</sup>

<sup>22</sup> Djari, RD (2020). The Urgency of the Draft Law. *Journal of Education and Development* , 8 (1), 141.

<sup>23</sup> Huda, N. (2017). Honorary Article: Urgency of Village Regulation in the 1945 Constitution of the Republic of Indonesia. *PADJADJARAN Journal of Law (Journal of Law)* , 4 (1), 1-18. <https://doi.org/10.22304/pjih.v4n1.a1>

## Conclusion

The urgency of the Indigenous Peoples Bill in terms of the conflict between the Toruakat Indigenous People in North Sulawesi is now essential because of the absence of comprehensive regulations or policies regarding the protection of indigenous peoples and the lack of an Indigenous Peoples administration system which ultimately resulted in conflict between the indigenous people of Toruakat and the mining company PT. BDL so that 1 resident of the Toruakat Indigenous Community died and four others were injured due to the conflict. The enactment of the Draft Law on Indigenous Peoples to carry out the constitutional mandate for indigenous peoples, is used as a legal umbrella for the protection of Indigenous Peoples so that there are no more conflicts that cause casualties, improve the quality of natural resource governance in Indonesia, and can prevent illegal practices which causes damage to the environment and natural resources, because environmental damage will continue to occur if the Government does not protect indigenous peoples. So based on this, the Government must be aware of the urgency of the Indigenous Peoples Bill to be ratified immediately.

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