

Original Article

Towards Inclusive Governance: Regulatory Innovations in Licensing to Protect Indigenous Rights

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Abstract

Changes to Indonesia's licensing system through Law Number 11 of 2020 and Government Regulation Number 28 of 2025 have improved government efficiency and digitalization. However, these changes have not adequately addressed inclusion and the rights of indigenous peoples. This study aims to explore innovations in licensing regulations to protect indigenous rights through three main approaches: procedural, substantive, and institutional innovation. Procedural innovation involves indigenous communities in public consultations, in line with the principle of Free, Prior, and Informed Consent (FPIC). Substance innovation calls for integrating customary law and local wisdom into regulations, aligning state law with local practices. Institutional innovation seeks to strengthen cooperation between the government and indigenous institutions to address licensing issues. The findings suggest that inclusive licensing promotes social legitimacy, ecological justice, and culturally based sustainable development. Thus, recognizing customary law is crucial for developing fair governance that reflects local wisdom.

Keywords: Customary Rights; Digitalization; Ecological Justice; FPIC; Sustainable Development;

Introduction

A shift in government management necessitates innovation in regulations that not only focus on administrative efficiency but also on social justice and the recognition of societal diversity. In the Indonesian context, permit regulations are often a crucial aspect of interactions among the state, business actors, and indigenous communities.¹ For a long time, the permitting system has emphasized investment certainty and ease of doing business, while protection of the rights of indigenous communities related to the environment and traditional management areas has often been neglected. The regulation, Law Number 11 of 2020 concerning Job Creation, through the omnibus law method, brings changes to various laws, including efforts to reform the business licensing sector. Various implementing regulations, including Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Licensing (which has now been replaced by Government Regulation Number 28 of 2025), introduce a more efficient, digital-based licensing system by simplifying the licensing process. However, concerns have been raised that this simplification process could obscure the ways in which indigenous communities participate and weaken their legal position in decision-making. This situation shows that innovation in regulation needs to focus not only on efficiency, but also on inclusivity and the protection of indigenous peoples' constitutional rights, as guaranteed in Article 18B, paragraph (2), of the 1945 Constitution and Constitutional Court Decision Number 35/PUU-X/2012.²

¹ Wahyu Wulandari, Testriono and Moch Faisal Karim, 'Adopting the Palm Oil Moratorium Under External Pressure: Indonesia's Response to the EU's RED II', *Forest Policy and Economics*, 182 (2026), 103692 <<https://doi.org/https://doi.org/10.1016/j.forpol.2025.103692>>.

² John F McCarthy and others, 'Land Reform Rationalities and Their Governance Effects in Indonesia: Provoking Land Politics or Addressing Adverse Formalisation?', *Geoforum*, 132 (2022), 92–102 <<https://doi.org/10.1016/j.geoforum.2022.04.008>>.



Inclusive governance requires a regulatory system that integrates local values, community involvement, and environmental justice principles.³ Changes in regulations in the licensing sector should provide an opportunity to accommodate traditional recommendations, consultations with indigenous communities, and environmental monitoring tools based on local wisdom, such as *awig-awig* and *perarem* in Bali. From the perspective of customary law, licensing should not be seen solely as administrative approval, but also as social recognition, obtained through community consensus and respect for local norms. This idea became the concept of Intergenerational Equity, a principle for preserving the Earth for future generations. The idea of Intergenerational Equity states that the natural resources available on Earth are owned by the current generation as a trust to be used by future generations. Each generation protects this earth for the benefit of the next generation and also as beneficiaries of the previous generation. As a result, the current generation is responsible for preserving the heritage, or legacy, just as previous generations had the right to use it.⁴

Internalizing these values not only enhances the social legitimacy of the licensing policy but is also a concrete step toward achieving sustainable development that respects the rights of indigenous communities to land, water, and natural resources.⁵ In the Indonesian context, the licensing process also incorporates social and ecological justice values that are directly related to indigenous communities' rights over their environment and natural resources. Therefore, regulatory changes in the licensing sector require a more inclusive approach, responsive to local wisdom, and sensitive to the presence of indigenous communities that have historically protected ecological balance. Currently, the rights of indigenous peoples are becoming increasingly important, not only for their survival but also for the preservation of the natural environment they protect. The Program Manager of the Working Group on ICCAs in Indonesia (WGII) stated that indigenous communities need to be involved in conservation efforts and recognized as the main stakeholders in maintaining sustainability. The position of indigenous communities in Indonesia is often fraught with conflict; their existence is frequently praised as protectors of nature and biodiversity, yet government policies often disregard their rights and displace them from their ancestral lands. This includes the licensing process, which often overlooks the role of indigenous communities as subjects who are very close to and always prioritize environmental preservation as a core value.⁶

Furthermore, innovation in regulations protecting indigenous peoples' rights is not merely a normative action but also a shift in mindset from a hierarchical management system to a more collaborative and participatory model. The central and local governments must provide opportunities for customary input in the permitting process, strengthen the function of customary village institutions in environmental monitoring, and apply the principle of free, prior, and informed consent for indigenous communities affected by development projects.⁷

Most research emphasizes the effectiveness of bureaucracy, the simplification of OSS (Online Single Submission), and its impact on the ease of doing business. Meanwhile, other writings focus more on economic and administrative aspects and have not deeply explored the socio-cultural and environmental impacts of the permitting system on local communities' rights. On the other hand, research on cooperation between local governments and traditional villages in environmental supervision remains very limited. Nevertheless, strengthening the role of traditional villages, as

³ Anyualatha Haridison, 'Why Did the Common Objective Be Biased in the Execution Collaborative Governance Program? The Case from Dayak Indonesia', *Land Use Policy*, 140 (2024), 107050 <<https://doi.org/https://doi.org/10.1016/j.landusepol.2024.107050>>.

⁴ Nyayu Aisyah and others, 'Estimating a National Critical Mineral Security Index in Indonesia Using Analytical Hierarchy Process', *Environmental and Sustainability Indicators*, 24 (2024), 100510 <<https://doi.org/https://doi.org/10.1016/j.indic.2024.100510>>.

⁵ Pisca A Tias, Constance L McDermott and Mari E Mulyani, 'Navigating the Nexus between Customary Norms and State Laws in Shaping Rural Forest Governance: A Case Study in Aceh Province, Indonesia', *Forest Policy and Economics*, 182 (2026), 103672 <<https://doi.org/https://doi.org/10.1016/j.forpol.2025.103672>>.

⁶ Yuan Zhang and others, 'Intellectual Property Protection in the Oil, Gold Sectors and Mineral Resources Rent on Indigenous Populations: Preserving Innovation and Value', *Resources Policy*, 95 (2024), 105090 <<https://doi.org/https://doi.org/10.1016/j.resourpol.2024.105090>>.

⁷ Ibhah Veza and others, 'Hydrogen Fuel Cell Electric Vehicles (FCEV) in Indonesia: Policy for Clean Transport, Net-Zero Emissions, and Energy Security of Hydrogen Fuel Cell Electric Vehicles', *Energy* 360, 4 (2025), 100041 <<https://doi.org/https://doi.org/10.1016/j.energ.2025.100041>>.



regulated in Bali Regional Regulation No. 4 of 2019, has significant potential to serve as an example of inclusive and sustainable management.⁸

In this way, moving toward inclusive management means creating a permitting system that is not only administratively efficient but also socially just and ecologically sustainable. Improving licensing regulations plays an important role in connecting state law and traditional law, shaping tangible ways to protect indigenous rights, and ensuring development is carried out in a way that respects environmental sustainability and local culture. Strengthening regulations in the licensing sector is a crucial context for addressing spatial planning disparities across regions. This provides an open space for indigenous legal communities to be involved in every regulation that affects their environment.⁹

Method

This research employs qualitative descriptive data to outline the study. The qualitative descriptive data analysis advances theory development grounded in field data. The initial qualitative phase involves exploration, followed by comprehensive data collection methods, from observation to report compilation. Qualitative data analysis consists of three steps: data reduction, data display, and conclusion formulation. Data reduction entails selecting, condensing, abstracting, and transforming raw data from field notes. This process is ongoing throughout the research, beginning even before data collection, as reflected in the conceptual framework, research questions, and chosen data collection strategies.¹⁰

Results and Discussions

New Paradigm of the Licensing Governance System

Effective governance is the state's effort to bring government institutions and society closer together through justice. Placing citizens' rights within the framework of good governance gives the public a chance to participate in balancing government policies. The government's regulatory updates in the investment sector respond to global economic dynamics. These updates also affirm Indonesia's responsibility in international collaborations. The aim is to create a supportive investment environment that ensures legal certainty, justice, and efficiency, while safeguarding national economic interests.¹¹

The legal policy of the Job Creation Law began when the Government showed political will to simplify and reduce regulations that hinder investment. The hope was to create more jobs. Therefore, legal policies related to the Job Creation Law in environmental matters should be presented comprehensively. They should cover economic, social, and environmental aspects. However, rather than achieving these goals, the Job Creation Law contains several provisions on environmental permit management that could endanger environmental sustainability.¹²

The Risk-Based Business Licensing System was created to expedite the business licensing process. It aims to facilitate investment and enhance Indonesia's competitiveness. This model raises concerns that potential environmental damage could be overlooked, especially in low-risk sectors, even though cumulative environmental impacts could be significant. Risk assessments under this approach reduce the thoroughness once found in Environmental Impact Assessments, which analyzed long-term and

⁸ Shuai Li, Zhenyu Dan and Tubing Yin, 'Mining-Induced Land Use Change and Ecological Restoration: Lessons from Three Developing Economies', *Physics and Chemistry of the Earth, Parts A/B/C*, 142 (2026), 104267 <<https://doi.org/https://doi.org/10.1016/j.pce.2025.104267>>.

⁹ Arnoldus S Ananta and Reniel B Cabral, 'Achieving Sustainable Fisheries and Livelihoods from Sasi Laut in a Blue Economy in Indonesia', *Marine Policy*, 187 (2026), 107032 <<https://doi.org/https://doi.org/10.1016/j.marpol.2026.107032>>.

¹⁰ William R I Sopaheluwakan and others, 'Two-Decade Decentralization and Recognition of Customary Forest Rights: Cases from Special Autonomy Policy in West Papua, Indonesia', *Forest Policy and Economics*, 151 (2023), 102951 <<https://doi.org/https://doi.org/10.1016/j.forpol.2023.102951>>.

¹¹ Rospita Odorlina Situmorang and others, 'Assessment of Community Sustainability on Social Forestry Program Implementation in Indonesia: Insights from Agroforestry Model in Java and Sumatra', *Trees, Forests and People*, 23 (2026), 101124 <<https://doi.org/https://doi.org/10.1016/j.tfp.2025.101124>>.

¹² Preetmoninder Lidder, Andrea Cattaneo and Mona Chaya, 'Innovation and Technology for Achieving Resilient and Inclusive Rural Transformation', *Global Food Security*, 44 (2025), 100827 <<https://doi.org/https://doi.org/10.1016/j.gfs.2025.100827>>.



widespread impacts in detail.¹³ The risk-based licensing approach has not fully met the demands of regions with strong social and cultural characteristics, such as Bali, Kalimantan, or Papua. Regulatory innovation needs to incorporate local values and the principle of inclusivity. The licensing process should function not only as an economic tool but also to achieve social and environmental justice. Good local governance that is responsive to community needs requires cooperation between the formal government system and community social institutions. Amid various management challenges, indigenous organizations remain important in implementing governance based on local wisdom.¹⁴

Customary Law as the Foundation for Inclusive Management

Indigenous legal communities, or traditional communities, are distinguished by their unique historical, cultural, and territorial ties preceding colonization. Defined by the UN Economic and Social Council and Law No. 32/2009, these communities maintain distinct values and beliefs across economic, political, cultural, and social spheres. The main argument is that indigenous legal communities face escalating environmental threats from capitalism, such as deforestation and mining, which jeopardize their existence. In response, these communities organize to oppose government policies that threaten them, not only to defend their rights but also to secure environmental sustainability. Their relationship with nature, recognized in Article 8(j) of the Convention on Biological Diversity, is foundational to their survival and identity.¹⁵

For indigenous communities, the central point is that the environment shapes their 'cosmovision,' a worldview that shapes their identity, survival, and intergenerational wisdom. Customary law communities, such as *desa adat*, do more than serve an administrative role: they are essential for cultural and legal conservation. Amid Indonesia's diversity, traditional villages crucially sustain local values and informal legal norms governing social, economic, and environmental relationships through inherited local wisdom.¹⁶

The main argument is the need to protect indigenous communities' rights within Indonesia's legal system to preserve their traditions and territories.¹⁷ Achieving this requires integrating customary law into national law by revising regulations and recognizing indigenous land rights. The persistent dominance of formal legal approaches marginalizes customary law, keeping recognition largely symbolic without real protection. Regulatory reform must treat customary law as an equal partner to create inclusive governance. In resource management, policies must involve local communities to maintain their role as stewards of environmental protection and to adapt regulations to evolving social realities.¹⁸

Regulatory Innovation as a Means of Protecting the Rights of Indigenous Communities

Regulatory innovation refers to adapting legal norms to changing social conditions and has become a key tool in modern governance.¹⁹ It bridges the gap between evolving societal needs and

¹³ M Rutherford Jessica and others, 'Examining Inclusivity of Participation and Engagement in Aotearoa New Zealand's Offshore Petroleum Governance', *The Extractive Industries and Society*, 26 (2026), 101878 <<https://doi.org/https://doi.org/10.1016/j.exis.2026.101878>>.

¹⁴ Andrew Buckwell and others, 'The Social Licence of Salmon Aquaculture in Tasmania: Fulfilling the Social Bargain', *Marine Policy*, 176 (2025), 106653 <<https://doi.org/https://doi.org/10.1016/j.marpol.2025.106653>>.

¹⁵ Md. Mehedi Alam and Mohammad Mahfujul Haque, 'Status of Aquaculture Governance in Bangladesh and Steps to Achieve Responsible Aquaculture', *Aquaculture and Fisheries*, 2025 <<https://doi.org/https://doi.org/10.1016/j.aaf.2025.11.011>>.

¹⁶ Haoxuan Yu and others, 'From Devastation to Restoration: Charting the Course towards Sustainable Mining Practices', *Journal of Environmental Management*, 391 (2025), 126660 <<https://doi.org/https://doi.org/10.1016/j.jenvman.2025.126660>>.

¹⁷ Paikene Mangani, Ghulam Dastgir Khan and Naseer Ahmad, 'Sustainable Governance, Conflict and Environmental Justice in Critical Mineral Extraction in Latin America and Africa', *Peace and Sustainability*, 1.3 (2025), 100017 <<https://doi.org/https://doi.org/10.1016/j.nerpsj.2025.100017>>.

¹⁸ Vlado Vivoda, Lachlan Nieboer and Rowan Bishshop, 'Narrative Warfare in Critical Minerals: Information Manipulation and Governance Challenges', *The Extractive Industries and Society*, 25 (2026), 101798 <<https://doi.org/https://doi.org/10.1016/j.exis.2025.101798>>.

¹⁹ Peci Lyons, Sara Mynott and Jess Melbourne-Thomas, 'Enabling Indigenous Innovations to Re-Centre Social Licence to Operate in the Blue Economy', *Marine Policy*, 147 (2023), 105384 <<https://doi.org/https://doi.org/10.1016/j.marpol.2022.105384>>.



established legal norms by not only amending laws but also embedding justice, public participation, and environmental sustainability into the legal framework.²⁰ The main argument is that regulatory innovation is essential to ensuring effective and fair governance, particularly in protecting the rights of indigenous communities.²¹ This can be pursued through three mutually supportive approaches: (1) strengthening procedural mechanisms of public consultation with indigenous communities in the permitting process; (2) incorporating customary law and local values into regional regulations; and (3) fostering cooperation among government agencies, local governments, and indigenous communities for environmental oversight and law enforcement. Together, these approaches support more inclusive, just, and sustainable permit management.²²

An important regulatory innovation is procedural innovation, which adds a public consultation mechanism based on indigenous communities before issuing permits. The aim is to ensure transparency, meaningful public participation, and respect for communities' collective rights.²³ This mechanism serves as a space for formal dialogue among the government, industry, and indigenous communities.²⁴ The process involves not only administrative notification but also participation, including presenting business plans, conducting impact analyses, and negotiating compensation or plan changes in line with the interests of indigenous communities. The core principle of this mechanism aligns with Free, Prior, and Informed Consent (FPIC), which is recognized in the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). FPIC states that indigenous communities have the right to approve or reject activities that affect their territories, resources, or lives. This consent must be given voluntarily without coercion, before the activity begins, and based on complete information about the potential impacts.²⁵

Meanwhile, substantial innovation is legal reform aimed at aligning the law with society's social, cultural, and environmental values.²⁶ In protecting indigenous peoples' rights, this involves incorporating customary law norms and local wisdom into official regulations at national and regional levels. Law is considered plural and lives within society; true law functions within social interaction, not just in statutes. This innovation can be implemented by incorporating traditional values into Regional Regulations (*Perda*), Governor Regulations (*Pergub*), or Regent/Mayor Regulations. For example, in Bali, the principle of *Tri Hita Karana* appears in Bali Provincial Regional Regulation Number 4 of 2019 on Customary Villages and Regulation Number 2 of 2023 on Bali Spatial Planning for 2023–2043. These regulations emphasize the position of customary villages as both socio-cultural entities and legal subjects in managing space and the environment. Such integration is an important indicator of the harmonious integration of state and customary law. The main challenge in implementing substantial innovation is aligning national and regional regulations. Many regional

²⁰ Kim Kaze, Nazmiye Balta-Ozkan and Elisabeth Shrimpton, 'Connecting Power to People: Integrating Community Renewable Energy and Multi-Level Governance towards Low-Carbon Energy Transition in Nigeria', *Energy Research & Social Science*, 121 (2025), 103938 <<https://doi.org/https://doi.org/10.1016/j.erss.2025.103938>>.

²¹ Nathanael T Bergbusch and others, 'A Systematic Scoping Review of the Collaborative Governance of Environmental and Cultural Flows', *Environmental Reviews*, 33 (2025), 1–28 <<https://doi.org/https://doi.org/10.1139/er-2024-0015>>.

²² Xiaoyi Jiang, You Li and Xiaobo Zhao, 'Addressing Ocean Noise Pollution in the Artificial Intelligence Era: Regulatory Challenges and Future Responses', *Marine Policy*, 186 (2026), 107021 <<https://doi.org/https://doi.org/10.1016/j.marpol.2025.107021>>.

²³ Josephine Lusi, Birgy Lorenz and Ingrid Pappel, 'Innovation or Reinvention? A Systematic and Bibliometric Review of Public Sector Digital Infrastructure', *Journal of Open Innovation: Technology, Market, and Complexity*, 11.3 (2025), 100593 <<https://doi.org/https://doi.org/10.1016/j.joitmc.2025.100593>>.

²⁴ Mahesh Chougule, 'Democratizing AI in Transportation through International Collaboration: A Case Study of Open-Source Mobility Platforms in the Global South', *Transportation Research Interdisciplinary Perspectives*, 35 (2026), 101801 <<https://doi.org/https://doi.org/10.1016/j.trip.2025.101801>>.

²⁵ Carolijn van Noort and others, 'Conceptualizing the Interplay between Blue Justice, Blue Economy, and Blue Governance', *Marine Policy*, 184 (2026), 106939 <<https://doi.org/https://doi.org/10.1016/j.marpol.2025.106939>>.

²⁶ Francis Arthur-Holmes, Emmanuel Selasi Tomude and David Damtar, 'Is a Licence for Small-Scale Mining a Means, an End, or Both? Politics of ASM Formalisation and Environmentally-Responsible Mining in Ghana', *Environmental Science & Policy*, 175 (2026), 104290 <<https://doi.org/https://doi.org/10.1016/j.envsci.2025.104290>>.



regulations incorporate customary law but may conflict with higher laws. Policy alignment is needed among ministries, local governments, and traditional institutions to ensure local values are accepted in practice. This can make the legal system more participatory, fair, and rooted in local culture, emphasizing the importance of legal diversity in Indonesia and the essential role of customary law in modernization.²⁷

The final innovation concerns institutional innovation, an important means of creating a fair and inclusive permitting system. Procedural innovation focuses more on ways to encourage public participation, while substantive innovation strengthens existing laws.²⁸ Institutional innovation aims to improve the structure and cooperation between stakeholders in decision-making and permit supervision. Therefore, the success of permit management that respects the rights of local communities depends not only on effective regulations but also on institutions that can effectively implement the principle of inclusion. Innovation in institutions follows the principles of good governance, such as transparency, accountability, participation, and collaboration. Inclusive institutional design allows indigenous communities to participate in development, not just the state. Indigenous communities serve as protectors of local policies and environmental stewards, making the permitting process more than just a legal step; it is also a tangible example of governance that synergizes with local values.²⁹ Therefore, institutional innovation is crucial for developing fair and sustainable permit-granting governance. This ensures that indigenous communities are genuinely involved in decision-making, monitoring, and conflict resolution. Here, customary law and state law can coexist, creating institutions that are responsive to social change while still respecting local wisdom.³⁰ These three innovation models create an inclusive permit management system in which customary law is no longer seen as marginalized by state law, but rather as an equal partner in maintaining social and environmental balance. This approach not only increases social recognition of the permit policy but also strengthens the law's effectiveness by fostering a sense of ownership among indigenous communities.³¹

Conclusion

Through innovation in procedural, substantive, and institutional regulations, the permitting system can transform into a means of protecting the rights of indigenous communities while also serving as a tool for equitable development. This approach revives the concept of law as a means to achieve social justice, rather than just an administrative process. By involving indigenous communities as equal partners in the decision-making process, Indonesia not only strengthens the rule of law but also upholds its pluralistic identity as a just, inclusive, and culturally rich legal state. The strategic steps needed to achieve inclusive and equitable licensing governance include strengthening regional regulations to recognize the role of indigenous communities at every stage of licensing, establishing collaborative indigenous-government forums for consultation and oversight, and incorporating the principles of Free, Prior, and Informed Consent (FPIC) and *Tri Hita Karana* into the risk-based licensing system. In addition, local governments must enhance the institutional

²⁷ M Imran Khan and others, 'Digital Sustainability as an Emerging Paradigm: Insights from the Saudi Arabian Experience and Global Implications', *Journal of Open Innovation: Technology, Market, and Complexity*, 12.1 (2026), 100731 <<https://doi.org/https://doi.org/10.1016/j.joitmc.2026.100731>>.

²⁸ Shawkat Alam and Jona Razzaque, 'Contested Forests: How Transnational Networks Mitigate and Reproduce Conflict', *World Development*, 200 (2026), 107301 <<https://doi.org/https://doi.org/10.1016/j.worlddev.2025.107301>>.

²⁹ Lol Dahlet, 'Equitable Participation as a Key Mechanism towards Sustainable Fisheries Management: A Case Study of the Pargo (*Lutjanus Purpureus*) Fishery Governance in Northern Brazil', *Ocean & Coastal Management*, 270 (2025), 107914 <<https://doi.org/https://doi.org/10.1016/j.ocecoaman.2025.107914>>.

³⁰ Maruge Zhao and Tiho Ancev, 'Water Governance and Water Markets', in *Encyclopedia of Energy, Natural Resource, and Environmental Economics (Second Edition)*, ed. by Tommy Lundgren, Moriah Bostian, and Shunsuke Managi, Second Edition (Oxford: Elsevier, 2025), pp. 269–77 <<https://doi.org/https://doi.org/10.1016/B978-0-323-91013-2.00059-9>>.

³¹ Ahmed Koko Suleiman Dalbon and others, 'Challenges and Sustainability of Contiguous Mining Leases in India: Legal, Environmental, and Socio-Economic Perspectives from Goa, Karnataka, and Odisha States', *Social Sciences & Humanities Open*, 13 (2026), 102426 <<https://doi.org/https://doi.org/10.1016/j.ssaho.2025.102426>>.



capacity of customary villages and harmonize national and customary laws to ensure that the involvement of indigenous communities becomes a substantial part of a transparent, participatory, and sustainable licensing system.

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