

Application of Free, Prior, and Informed Consent Principle in Defending Indigenous People’s Rights: Case Study of Merauke Integrated Food Estate

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Abstract. Albeit the fact that the principle of Free, Prior, and Informed Consent (FPIC) is classified as soft law, the imperative to respect, protect, and fulfil the rights to be informed and involved in development projects is strongly endorsed by international legal instruments, notably the United Nations Declaration on the Rights of Indigenous Peoples (2007). These instruments stand among the most comprehensive and advanced in addressing the rights of indigenous peoples, particularly with regard to FPIC, while simultaneously contributing to the broader corpus of international human rights law, which seeks to secure the environmental and other substantive rights of indigenous communities, especially in the context of land appropriation. Such rights include, for example, the right to be informed and to participate in decision-making processes concerning development initiatives, including national priority programmes such as food estates. This implies a binding obligation on states party to these international frameworks to ensure that indigenous peoples are not only adequately informed but also actively engaged in both the negotiation and implementation of land acquisition agreements. Nonetheless, given that these transactions frequently transpire under opaque and non-transparent conditions inimical to the rights and interests of indigenous peoples, it prompts the question as to why the principle of FPIC is so often disregarded in land acquisition processes. Focusing on the Merauke food estate in Indonesia, this article interrogates instances of land appropriation associated with national food estate projects, with particular emphasis on the application of FPIC. Grounded in international law, the article contends that the application of FPIC serves not only to safeguard the rights and interests of indigenous peoples, but also to fortify and improve the prevailing land governance regime. In conclusion, the article argues that, given FPIC’s embodiment of procedural rights such as the right to information and participation—rights that are conspicuously absent in many land acquisition agreements—its application could provide a vital foundation for the recognition, promotion, and enforcement of local communities’ rights in Merauke, Indonesia.

Keywords: Free, Prior, and Informed Consent (FPIC), Merauke, food estate, indigenous rights.

1. Introduction

The principle of free, prior, and informed consent (FPIC) is widely upheld by both international and regional legal frameworks as it is increasingly recognized as a critical standard aimed at facilitating, promoting, and safeguarding the rights of local communities to access information and participate in decision-making processes, particularly in the context of development projects like land acquisition for

national initiatives, such as food estates. Consequently, local communities frequently invoke FPIC to assert their rights to information, self-determination, consultation, and public participation, especially during land acquisition processes that may threaten their rights and entitlements.

The food estate is an integrated development plan encompassing agriculture, plantations, and livestock within designated program areas (Benedicta & Subekti, 2024). Enhancing access

to food and improving the quality of food consumption is a central priority of the Indonesian government, as outlined in the 2020-2024 National Medium-Term Development Plan (RPJMN) and the 2020 Government Work Plan (RKP). As part of efforts to ensure food security, the food estate is a key strategic initiative aimed at fulfilling the targets set out in Presidential Regulation No. 109 of 2020. In response to the food security challenges exacerbated by the COVID-19 pandemic, the Indonesian government introduced the food estate program as a cornerstone of its food security and crisis mitigation strategy, in anticipation of a global food crisis predicted by the Food and Agriculture Organization (FAO) (Ginting & Pye, 2013). Consequently, the food estate program is envisioned as an integrated hub for agricultural processing and production, designed to bolster national strategic food reserves and enhance national defense capabilities (Yestati and Noor, 2021).

In theory, the food estate offers several benefits, such as increasing the added value of local agricultural production, fostering large-scale agricultural enterprises, unlocking food export potential, boosting production, and stabilizing food prices (Hadiprayitno, 2015). As per the directives of President Joko Widodo, the initial food estate development sites include North Sumatra, Central Kalimantan, South Sumatra, East Nusa Tenggara, and Papua. The program is fundamentally designed to operate within an agribusiness framework deeply rooted in rural communities, emphasizing the empowerment of indigenous and local populations as the foundation for regional development (Setiawan, 2021).

The core concept of the food estate revolves around the integration of sectors and sub-sectors within an agribusiness system that maximizes the sustainable use of resources. This model calls for professional management, supported by skilled human resources, the adoption of environmentally friendly technologies, and the establishment of robust institutions (Agricultural Research and Development Agency, 2011). Human capital, therefore, plays a pivotal role in the success of the food estate. However, while human resources represent a crucial element, they also present challenges. The effective

collaboration and synergy of stakeholders—including the central and regional governments, state-owned enterprises, private sector entities, investors, and local communities—are essential. Community participation must be comprehensive, spanning from the planning phase to implementation, and ensuring that the program's benefits are realized by local communities (McDonnell, 2022). Nonetheless, the food estate program has encountered several obstacles, particularly in the social domain. Key challenges include land acquisition disputes, insufficient labour in terms of both quantity and skill, and conflicts with local and indigenous communities (McDonnell, 2022). Given these issues, addressing the role of human resources and community involvement is vital to ensuring the program's success as a lasting legacy for future food security.

The food estate project was initially launched by President Susilo Bambang Yudhoyono in 2010 under the Merauke Integrated Food and Energy Estate (MIFEE) initiative in Merauke Regency. The administration of President Joko Widodo expanded the program, particularly in response to the anticipated food crisis triggered by the COVID-19 pandemic in early 2020. Under President Widodo's plan, approximately 2,052,551 hectares of land were designated for food estate development, comprising protected forests, production forests, permanent production forests, and conversion forests, alongside other land uses covering a total of 734,377 hectares (Hidayat, 2024a). However, the implementation of the food estate project soon sparked controversy. Critics argued that the program, purportedly aimed at addressing food security during the pandemic, instead introduced new problems. Opposition to the project arose from various civil society groups, indigenous communities, and organizations (Hidayat, 2024c).

A particularly significant case of opposition centred on the MIFEE project in Papua. Civil society organizations, under the banner of the Civil Society Coalition, voiced strong opposition to the implementation of the food estate in Papua (Pusaka, 2023). The issuance of business permits to 45 companies for the cultivation of food crops, sugarcane, oil palm, and industrial forest plantations resulted in the

conversion of over 1.3 million hectares of forested land (Kennial Laia, 2020). Further public criticism emerged following the pre-opening of land in Malind, Merauke, which was awarded to a coal company owned by Andi Shamsuddin, commonly known as Haji Isam. Given Haji Isam's close association with Minister and President-elect Prabowo Subianto, the project was perceived as serving corporate interests rather than addressing the food security needs of local communities and transmigrant farmers (Tempo, 2024b). As a result, the MIFEE initiative was widely viewed as a large-scale agribusiness expansion catering to commercial commodity interests, rather than a genuine effort to resolve the food insecurity faced by the region's indigenous populations (Tempo, 2024a).

The global surge in land acquisitions, often justified by national programs like food estates, has disproportionately harmed indigenous communities, resulting in significant loss of access to their ancestral lands and territories. Deep-rooted discrimination, a lack of land tenure recognition, and severe marginalization have compounded the negative impact on these communities. While contemporary "land grabbing" reflects a continuation of historical infringements on indigenous lands, recent years have seen a marked increase in large-scale land appropriations (Aha & Ayitey, 2017). The factors driving these land deals, along with the legal frameworks facilitating them, have evolved, necessitating a new approach. The international community, through the United Nations, affirmed the legitimacy of indigenous claims to land rights and self-determination with the 2007 adoption of the UN Declaration on the Rights of Indigenous Peoples (Abdulgani et al., 2021). However, the food and financial crises of 2008 triggered a new wave of land grabbing, which has undermined the respect for indigenous rights outlined in the declaration (Iek & Purwadi, 2022). For many indigenous peoples, large-scale land investments for commercial and industrial purposes not only deprive them of their primary livelihoods but also lead to deforestation and the disruption of biodiversity in their ancestral territories (Indrawan et al., 2017).

The rejection of the food estate program also surfaced in South Kalimantan (Setyo & Elly, 2018). During a follow-up meeting on September 23, 2020, President Joko Widodo announced plans for the food estate in the province, covering 148,000 hectares of land with established irrigation for rice cultivation, alongside 622,000 hectares of non-irrigated land designated for cassava, corn, and livestock farming. Similarly, in Central Kalimantan, the food estate was planned on 165,000 hectares of former Peatland Development (PLG) land for rice and 60,000 hectares for cassava. However, the local population remains deeply traumatized by the failure of previous programs during the New Order era, which led to extensive forest and land fires (Marwanto & Pangestu, 2021). Despite being part of the National Strategic Project (PSN) acceleration agenda in 2020, with substantial investment and vast tracts of land, the program has yet to yield results proportionate to the scale of the project. Drawing from these two case studies, this paper identifies three major social issues contributing to the ineffectiveness of the food estate initiative. First, escalating and increasingly complex agrarian conflicts driven by land acquisition for the project. Second, the limited involvement of local communities and farmers in decision-making, with minimal opportunities provided for their participation. Third, the scarcity of human resources and ongoing conflicts with local communities.

This article explores whether land acquisition in Merauke, Indonesia—often occurring on land inhabited by indigenous populations—adequately considers their rights to access information and participate in decision-making, as mandated by the principle of Free, Prior, and Informed Consent (FPIC). While this analysis draws on the legal framework of FPIC, it recognizes the challenges of governance by consensus, as it would be unreasonable for a state to cede its governing authority entirely to the public. Therefore, this article does not engage with the broader debate on FPIC or the complexities surrounding its enforcement and adherence. Instead, it focuses on key elements of the FPIC principle, analysing them in the context of land acquisition activities related to the food estate program in Merauke, Indonesia.

The article proceeds by providing a brief description of the principle and defining the term local community, while making a connection between them. Secondly, the article examines the legal basis of FPIC as a right in relevant international law. Based on the description of FPIC and its legal basis in international law, the article distils relevant benchmarks for the principle. Thirdly, the article investigates the legal framework of Indonesia to determine if this embodies aspects of FPIC distilled from the international legal frameworks. It then examines land grabbing practices by fact-checking the economic projection from what is instilled by the Government vis-à-vis modelling output using Interregional Input-Output (IO-IRIO) framework, as such for the accommodation of national programme such as food estate and sets these practices against the distilled elements of FPIC in an effort to determine whether they adhere to the dictates of FPIC, so as to make a contribution on the topic. This article then concludes with brief conclusion and recommendations.

2. Free, Prior, and Informed Consent in Human Rights Analysis

The fundamental principles of Free, Prior, and Informed Consent (FPIC) are designed to ensure that local communities are not subjected to coercion or intimidation and that their consent is genuinely sought and freely given before any proposed development activities begin (Ashukem, 2016). This framework guarantees that communities have comprehensive, accurate, and reliable information about the scope and potential impacts of such activities, allowing them the option to grant or withhold their consent (UNESCO, 2021). The term "free" signifies the absence of coercion, intimidation, or manipulation, while "prior" indicates that consent must be secured before the initiation of any activities. This necessitates that prior consent is obtained early in the planning stages of a development or investment project, rather than only when community approval is needed (Ashukem, 2016).

Furthermore, as Anderson notes, the concept of prior consent is tied to the decision-making

process and includes sufficient time for local communities to comprehend and make informed decisions during public participation and negotiation phases. This time is essential for understanding, analysing, and evaluating the proposed activities in light of local customs and traditions (Anderson, 2011).

The term "informed" in FPIC means that local communities must receive all relevant information regarding the activity in question, which should be presented in an objective, accurate, and comprehensible manner. This highlights the importance of the right to access information, emphasizing that local communities must be aware of development projects before they commence. Prior information is crucial for enabling meaningful and genuine consent. In contrast, providing information only after a project has begun undermines the ability of communities to freely consent or refuse and reflects a lack of transparency and accountability in managing development projects, including instances of land grabbing to support national initiatives like the food estate (Anderson, 2011).

The principle of consent implies that local communities must agree to the proposed activities, which may include specific conditions. As noted by Ward (2011), consent is the most critical aspect of FPIC because it fundamentally concerns the rights of local communities to engage in dialogue, negotiate, and decide whether to grant or deny consent. In some cases, a development project, such as land grabbing, can be halted if local communities choose not to engage further or withhold their consent (Ward, 2011). However, analyses by Tempo indicate that this is not always the case in Indonesia (Tempo, 2024b). Additionally, the requirement for consent to be free means that it must be given voluntarily, without coercion, bribery, or undue influence. Local communities should have the autonomy to dictate the process, timeline, and decision-making framework, ensuring that information is provided transparently and objectively, thus facilitating genuine consent.

After examining the meaning of FPIC and the rights it encompasses, it is essential to establish a connection between FPIC and local communities. This discussion will highlight the

significance of FPIC and its broader application to local communities during land grabbing activities. The following section will clarify the term "local communities" and explore how these communities can assert their rights as defined by FPIC in the context of land acquisition to support national programs, such as the food estate.

3. Defining indigenous people and local communities

In this writing, the author would like to use Owen and Kemp's (2014) definition of local community, that is:

"A group of people living in a given geographical area by reason of their ancestral lineage, and sharing common cultural and traditional characteristics, and having a strong relationship to their land, which serves as an important sacred ground for spiritual and traditional rituals and cleansing and on which they practise diverse economic activities such as hunting, food and cash crops farming, and pastoral farming, among other activities". (Owen & Kemp, 2014)

Whilst for the definition of the indigenous people, the author would like to use the definition as stated on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (which will be the basic convention used for this writing later), that is:

"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them". (UNDRIP, 2008)

From the two definition, two distinct overlapping characteristics can be considered: long-term sustained territory, agreed unique identity (ancestral claim, cultural products), and specific lifestyle shall compared to others.

The above characteristics epitomise the value and composition of most if not all traditional Indonesian communities, including those in Merauke and Papua, who from time immemorial have traditionally used and occupied land based on native laws and customs, on which they

engage in diverse farming practices. They consequently exhibit a close relationship with the natural resources they depend upon, a phenomenon which is a marker of indigenous and tribal people's way of life. The terms "indigenous people" and "local communities" are practically synonymous, and for this reason they are often paired together, as in the UN Declaration on Environment and Development (1992). This presupposes that indigenous people, and local communities should as a matter of right be accorded similar protection, and that any right granted to indigenous people, as is the case with FPIC, should in principle be extended to local communities as well (Owen & Kemp, 2014). The reason for this is that indigenous people are a subset of local communities, and "communal law and indigenous law are so closely intertwined that it is almost impossible to deal with one without dealing with the other".

In human rights analysis, FPIC is crucial for addressing the power imbalances that often exist between governments, corporations, and indigenous communities. Historically, indigenous peoples have been marginalized and subjected to land dispossession, forced assimilation, and environmental degradation without their consent (Ward, 2011). By embedding FPIC into development policies and project planning, governments and businesses can help rectify these historical injustices and ensure the protection of indigenous rights. Thus, it is apposite to view the concept of FPIC as part of the broader international law of political participation, the right to self-determination and the right to development which includes local communities in governmental decision-making.

Many international laws are regulating, or trying to set standards, the usage of the FPIC to further advance the local communities and/or indigenous people's right, in this context includes ILO Convention 169 Concerning Indigenous and Tribal People in Independent Countries (1989) (ILO Convention) and the UN Declarations on the Rights of Indigenous and Tribal People (2007) (UNDRIP).

4. UN Declaration on the Rights of Indigenous and Tribal People (UNDRIP)

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides essential guidance for creating societies that uphold equality and the rights of indigenous peoples. Ignoring these rights can result in violations during land acquisition processes (Saa, 2024). According to Article 1 of UNDRIP, indigenous peoples are entitled to fully enjoy all human rights and fundamental freedoms as outlined in the Universal Declaration of Human Rights (UDHR) of 1948. They also possess the right to enjoy all rights granted by relevant international and national laws. Moreover, Free, Prior, and Informed Consent (FPIC) is part of a broader framework of human rights and has emerged as a best practice for protecting the rights of indigenous peoples in relation to food, development, property, culture, and a healthy environment, among other matters. Their right to FPIC is fundamentally linked to the principle of self-determination under international law (Kenner et al., 2016).

Article 3 of UNDRIP highlights the importance of indigenous peoples' right to self-determination, granting them the ability to freely choose their political status and pursue their economic, social, and cultural development. A broad interpretation of this right suggests that indigenous peoples should be involved in decision-making processes concerning land acquisition, which may adversely affect their social, economic, and cultural welfare, thus ensuring the protection of their livelihoods and opportunities for development (Astuti & McGregor, 2017).

According to UNDRIP, the right to self-determination entails that indigenous peoples should be able to participate in decisions that impact their rights and establish terms and conditions for land acquisition that address potential social, economic, cultural, and environmental consequences. Additionally, Article 18 mandates that indigenous participation must occur through their elected representatives, chosen by community members in accordance with their customary procedures

and decision-making frameworks. Moreover, indigenous peoples have the authority to freely identify and develop priorities and strategies regarding the use and development of their lands and resources.

Consequently, states are required to engage in consultations and cooperate in good faith with the representatives of these institutions to secure the Free, Prior, and Informed Consent (FPIC) of indigenous communities before implementing relevant development projects or enacting legislative and administrative measures related to land tenure. At a minimum, consultations with indigenous representatives must be conducted in good faith to obtain their FPIC prior to approving any projects related to the development, use, or exploitation of minerals, water, or other resources that impact their territories.

Some human rights activists (Das & Grant, 2014) believed that because land grabbing activities, like the one in the implementation of food estate programme, often apply to vast areas of land, they often result in attempts to evict indigenous communities from their land. The need for consultation is especially important here. Thus, article 26 guarantees the rights of indigenous people to own, develop, control and use the land and resources they possess by reason of traditional ownership or other traditional occupation or use, as well as the land and possessions they have acquired in other ways. States are accordingly obliged to give legal recognition and protection to the lands and resources, traditions and land tenure systems of indigenous people (Das & Grant, 2014).

A possible way of recognising and protecting the tenure rights of indigenous people is to observe and promote adherence to their right to FPIC where land grabbing activities are concerned (Kariuki & Ng'etich, 2016). Lastly, the author would like to mention that article 38 obliges states to take appropriate measures, including legislative measures, to promote the potential of indigenous people to enjoy their fundamental human rights and freedoms. Later in the discussion, the author would prove that in the case of MIFEE, the Government of Indonesia had done otherwise.

5. Indonesia's legal framework

In terms of usage of land and spatial management, the Indonesian Constitution 1945 (UUD 1945) mandated the Government to manage all land, resources, and any geographically inherited kind within the Indonesia's territory as long as it is used to further advance the betterment of welfare state of the Indonesian people. Hereby, justifying the food estate as national programme to secure food supply and increase the intra-regional income is by logic justified. Further to the FPIC principles, explanation below detailed the regulations.

6. Right to access to information

In Indonesia, the right to access information, particularly in relation to land use and indigenous peoples' rights, is addressed through various legal frameworks and regulations. The country has made strides in recognizing and protecting the rights of indigenous peoples, although challenges remain in practice. First and foremost, the Preamble to the Indonesian Constitution recognizes the ideals of a just and prosperous society, emphasizing the importance of human rights. While it does not explicitly mention the rights of indigenous peoples or the right to access information, it lays the groundwork for subsequent laws and regulations that aim to protect human rights, including those of marginalized groups. On the Constitution itself, Article 28F suggested the guarantees to the right to communicate and obtain information. This provision is crucial for indigenous peoples as it allows them to access information relevant to their land rights, resource management, and development activities that may affect them.

Indonesia also has law no. 14/2008 on Public Information Disclosure which promotes transparency and public access to information held by state institutions. It establishes the right of individuals, including indigenous communities, to access information regarding governmental decisions and policies, particularly those affecting their rights to land and natural resources. Furthermore, on law no. 6/2014 on Villages also acknowledges the

existence of indigenous peoples and their rights to manage and utilize their customary lands. This law actually emphasizes the importance of local governance and community participation, providing a legal framework for recognizing and protecting the rights of indigenous communities over their traditional territories. Lastly, law no. 32/2009 on Environmental Protection and Management includes provisions that recognize the role of indigenous peoples in environmental management and conservation. It emphasizes the need for participation and consultation of local communities in decisions regarding environmental impact assessments (EIAs) for projects that may affect their lands and resources. Looking at these regulations, supplying information of this nature serves to promote the effective implementation of the environmental laws and policies in the country.

2. Public participation and consultation

Aside from law no. 6/2014 on Villages which underscores the importance of local governance and the participation of community members in decision-making processes at the village level, law no. 32/2009 on Environmental Impact Assessment (EIA) also includes provisions for public participation in the EIA process for development projects that may impact the environment and local communities. Same tone to this provision also provided in law no. 26/2007 on Spatial Planning which gives mandate to local government to consult with communities.

In 2021, the Government launched regulation no. 3/2021 on Indigenous Peoples which emphasized the importance of recognizing the rights of indigenous peoples and mandates the involvement of indigenous communities in policymaking processes that affect their lands and livelihoods. The regulation actually has three articles which outlines the obligation of the government to consult with indigenous peoples prior to making decisions that may affect their rights over land and resources, aligning with international standards such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

7. The vision to Merauke Integrated Food Estate

Idea of building national chain of food production came about the time of Covid-19, where President Widodo then launched Presidential Regulation no. 109/2020 which serves as primary legal framework for establishing food estates in Indonesia. The regulation outlines the objectives, targets, and strategic approaches for developing food estates to enhance national food security and to advance intra-regional economy for domestic consumption and lessening the dependency to import. Specifically, the

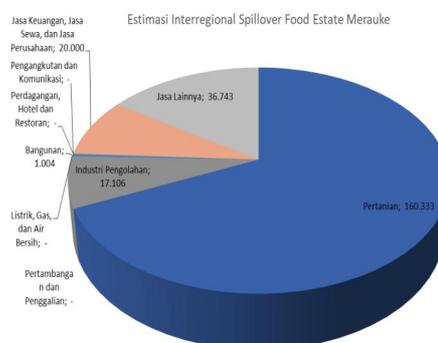
mandate of the Presidential Regulation is to establish food estate in various provinces, including Merauke, which focuses on area with existing infrastructure and agriculture potential (Laia, 2023). This regulation then further emphasized on the National Medium-Term Development Plan (RPJMN) 2020-2024 that outlines the government's development priorities and strategies. According to Bappenas, upon the calculation using Input-Output Interregional (IO-IRIO) model, the estimate economical leverage from Merauke Food Estate as follows:

Figure 1. Contribution to Province Economy Estimate Food Estate Merauke



Source: Bappenas, 2022.

Figure 2. Contribution to Regional Economy Estimate Food Estate Merauke



Source: Bappenas, 2022.

Looking at the estimate, Bappenas stated that MIFEE would contribute to a total aggregate of 8% increase of national food supply chain and contribute to significant increase to the absorption of local worker force (Bappenas, 2022).

The IO-IRIO (Input-Output and Interregional Input-Output) estimation model is an extension of traditional input-output analysis used to analyse economic transactions within and between regions. This model was developed by economist Wassily Leontief to examines the relationships between different sectors of an economy to further detail how the output of one industry can become an input for another, creating a comprehensive overview of economic interdependencies (Marx & Soares, 2016). This model is the most used estimate to predict the development of changing development impact as it gives clear structure (in the model of matrices) which each represents the flow of goods and services between sectors and regions

(Murdie & Watson, 2021). Typically, the model includes production function, final demand, interregional transactions, and regional input-output tables (Murdie & Watson, 2021). Using the data from Centre for Statistics (BPS) in 2022 for Food Estate in Merauke, processed with the same IO-IRIO methodology used in the Government Workplan, the author found that the actual increase in both interregional and provincial profit, is not quite significant.

Figure 3. Author Estimate of IO-IRIO result of Food Estate Merauke

	Dampak Shock Output FE Merauke	PDB Awal	% Perubahan
Aceh	4.702	144.470.351	0%
Sumatera Utara	380.665	646.428.430	6%
Sumatera Barat	4.910	193.286.202	0%
Riau	8.349	532.836.450	0%
Jambi	3.580	134.708.216	0%
Sumatera Selatan	307.204	369.939.127	8%
Bengkulu	955	60.469.174	0%
Lampung	6.206	280.335.415	0%
Kep Bangka Belitung	606	66.630.471	0%
Kep Riau	1.670	315.257.805	0%
DKI Jakarta	80.835	2.565.174.764	0%
Jawa Barat	18.847	2.082.561.069	0%
Jawa Tengah	14.494	1.228.638.618	0%
DI Yogyakarta	3.575	141.027.057	0%
Jawa Timur	42.915	2.016.422.886	0%
Banten	19.781	713.622.690	0%
Bali	2.425	236.594.942	0%
Nusa Tenggara Barat	1.785	136.892.277	0%
Nusa Tenggara Timur	292.377	103.176.370	28%
Kalimantan Barat	5.143	149.390.477	0%
Kalimantan Tengah	412.609	123.710.466	33%
Kalimantan Selatan	5.040	196.287.219	0%
Kalimantan Timur	14.572	484.785.957	0%
Kalimantan Utara	948	61.651.979	0%
Sulawesi Utara	2.512	114.883.094	0%
Sulawesi Tengah	4.472	119.693.953	0%
Sulawesi Selatan	9.733	394.242.880	0%
Sulawesi Tenggara	3.651	91.333.174	0%
Gorontalo	153	33.918.007	0%
Sulawesi Barat	167	36.053.459	0%
Maluku	1.067	50.161.085	0%
Maluku Utara	1.292	35.315.906	0%
Papua Barat	2.781	68.575.764	0%
Papua	289.389	159.468.463	18%
Indonesia	1.949.410	14.087.944.194	1%

Source: Calculated using data from BPS 2022 with Haver Analytics, 2024.

From the same data source used to calculate same estimate and using the same model of IOIRIO (it is out of norm to otherwise modify matrices in IO-IRIO calculation. Further to this, see for example Okuyama, 2009; Trinh et. al, 2005; Soulie and Valle, 2014; Xing et. al, 2017), it can be concluded that the actual increase and output impact is not as distributed and as significant as estimated. In fact, the biggest detected impacts are only found on the food estate provinces itself rather than spreading nationally as planned. Detailed calculations can be found in Annex I.

8. Discussion: FPIC and food estate in Merauke

In 2015, the government officially launched the Merauke Integrated Food and Energy Estate (MIFEE) initiative, aimed at transforming 1.2 million hectares of land into an agricultural hub primarily for rice, corn, and soybeans, as well as biofuel production (Hidayat, 2024c). This initiative was framed as a response to food security challenges, increase intra-regional economy, and aimed to reduce Indonesia's dependency on food imports. In March 2024, media reported that Haji Islam, also known as Andi Shamsuddin, a prominent businessman in Indonesia primarily known for his involvement in the coal and agricultural sectors, bought excavators worth of Rp 4billion from China to open land in Merauke surrounding five biodiversity hotspots for a period of 99 years, for the production of palm oil (Tempo, 2024b). According to the company the project will be beneficial to the country, particularly as the company is a member of the roundtable of sustainable palm oil that requires adherence to best practice for palm oil production. Defence Minister Prabowo Subianto, during his visit to the project area in July 2024, promised the programme to create jobs within the local area and to build and improve infrastructure like roads, schools and hospitals in the area (CNN Indonesia, 2024).

After the excavators arrived and land clearing process started, it is reported (Tempo, 2024a) that local communities were not made aware of the proposed development and that their land was leased for the development of the palm oil plantation without their consent, despite the statutory guarantee of the right to access to information. The lack of such information makes it difficult for local communities to demand respect for, the protection of and the fulfilment of their procedural and substantive rights-based entitlements in such cases. Despite the fact that participatory governance is peremptorily required in the Indonesian legal framework, it remains doubtful if local communities (indigenous people) often participate in decision making at all or if their views are ever taken into consideration during land grabbing activities. In fact, Tempo Investigation showed that local

communities were not even aware of the expansion mapping as visualised by the central government (Tempo, 2024b).

Furthermore, Tempo reported that during the implementation of the land clearing project, representatives of the village of Malind expressed dissatisfaction about the composition and function of the Board and the demarcation of the areas to be developed (Saa, 2024). The selection of a few members of a community who were paid large sums of money to consent to the project development does not amount to the free giving of consent by a community and constitutes a violation of one of the principles of FPIC (Hidayat, 2024b). It is reported that during the land clearing deals, the company paid some chiefs and notables large sums of money in order to buy the consent of the community (Andryanto, 2024). Thus, it seems that the land deal was implemented without the prior participation of local communities affected, as required by FPIC. This demonstrates the lack of transparency and accountability in the performance of land grabbing activities to support food estate programme in Merauke, as well as the weakness of the land governance regime in the country. Furthermore, it is surprising that the presidential regulation that ushered in the implementation of the food estate, including one in Merauke, did not envisage a participatory approach. One would have expected the President before signing the regulation to have at least instructed the local authority of the communities concerned to ensure that the communities were allowed to actively participate in decision-making relating to the project.

The deep spiritual connection that local communities have with the land they have historically owned, occupied, or utilized suggests they possess the right not only to continue owning, using, and developing this land but also to participate actively in decisions regarding it when outsiders seek to use it. However, the Malind community, where land was acquired for the Merauke project, felt compelled to send a letter to the presidency expressing their disappointment that "2,532 hectares of forest, including farms, have been mapped out ... without our consent" and lamenting that "the people of Malind are not

well-informed about a project that will impact their lives and the lives of future generations" (Hidayat, 2024c).

In line with the principles of Free, Prior, and Informed Consent (FPIC), it would have been both appropriate and necessary to engage the Malind community—who are most affected by the project—in the decision-making process. This would have allowed them to voice their opinions regarding the use, management, and conservation of their land and resources, especially since the concept that those governed should participate in their own governance, particularly concerning land matters, is gaining recognition in both legal and practical contexts. This principle should have influenced the planning and execution of land acquisition activities in Merauke, as evidenced by the situation of the Malind community. However, this engagement did not occur in the Merauke Integrated Food Estate (MIFE) project.

Moreover, it has been contended that because customary land tenure reflects and incorporates the cultural values of local communities, legal recognition and protection of these customary land rights are essential (Dewi, 2016). Consequently, local communities, as the rightful legal owners of the land, have a right to be involved in decision-making processes when their land and resources are at stake. According to Article 8 of Law No. 6/2014, it is reasonable that the chief and two village elders—representatives of the local community—should actively participate in good faith in decision-making processes to ensure that any proposed land acquisition respects their cultural beliefs, customs, traditions, and way of life. Nonetheless, the community was not included in the decision-making processes concerning the Merauke Food Estate, which threatens both the country's rich biodiversity and the traditional practices of the affected local communities. The absence of local community participation directly contradicts the principles of participatory governance outlined in international and regional legal frameworks discussed earlier.

9. Conclusion and recommendation

This article has illustrated that compliance with the principle of Free, Prior, and Informed Consent (FPIC), as outlined in international and regional legal frameworks, provides local communities with the means to be informed and actively engaged in decision-making processes during land grabbing incidents. Furthermore, it serves as a vital platform for safeguarding, protecting, and fulfilling the rights of these communities in such contexts. While FPIC is not explicitly mentioned in Indonesia's legal structures, it is evident that its fundamental elements, such as the rights to access information and public participation, are integrated into the Indonesian legal framework. Thus, in principle, these rights are acknowledged as essential tools for the protection of local communities.

However, evidence from land grabbing practices supporting the Merauke food estate initiative (and potentially similar projects in four other provinces) starkly contrasts the requirements of FPIC with actual on-the-ground realities; especially noting the fact that the economic gain and worker force absorption are not as vast as previously calculated. The significant disregard for the rights to information access and participation—core components of FPIC—clearly indicates that land grabbing activities to support food estate programme in Indonesia fall short of complying with this principle, with both investors and governments failing to uphold it.

It has been noted that local communities and indigenous people are seldom informed about land grabbing initiatives and do not partake in the decision-making processes surrounding them. This lack of involvement threatens their rights-based entitlements when land grabbing occurs and reveals a broader issue of accountability and transparency in these transactions. The disregard for FPIC requirements represents a clear violation of the government's obligations under international law.

Nonetheless, it can be argued that the primary issue lies in the lack of enforcement and implementation of existing laws rather than the laws themselves. It is advisable for the

Indonesian government to regularly update the public about land grabbing activities through media and official government websites, establish a comprehensive database of such activities, and consistently consult local communities prior to project implementation. Additionally, the government should create platforms and mechanisms to raise awareness among local communities, ensure their genuine participation in decision-making processes, and avoid intimidation, coercion, and unlawful evictions during land grabbing activities; taking the proactive approach vis-à-vis reactive one. Furthermore, the Indonesian government should consider signing and ratifying ILO Convention 169. Doing so could facilitate adherence to FPIC by establishing appropriate platforms for informing, consulting, and enabling local communities to participate freely in decision-making processes related to land grabbing, ultimately aiming to protect their land-related rights.

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