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Protecting Indigenous Community Sacred Land and Forest against Commercial Exploitation in Indonesia and Lesotho

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Abstract: Indigenous people's sacred lands and forests form fundamental cultural, spiritual, ecological and economic assets which support traditional identity, customary practices and conservation of the environment. Yet increasing commercialization, expropriation, deforestation and exploitation pose a great threat to such lands in Indonesia and Lesotho. The study analyzes legal and institutional means of ensuring the protection of indigenous people's sacred lands and forests from commercial exploitation in both countries. Specifically, the study analyses the applicable laws, challenges faced in customary land ownership and the protection of the forests, as well as ways of enhancing indigenous peoples' participation in the management of natural resources. The study uses a doctrinal research methodology, using a descriptive and analytical approach to analyze the primary and secondary legal sources, including legislation, constitutional law, judicial precedents, international instruments, scholarly works and institutional reports. The study concludes that despite the existence of legal provisions to protect such lands, inadequate customary land recognition, lack of enforcement, competing commercial interests, and poor community participation pose a challenge. The research suggests greater recognition of customary lands, good governance, effective enforcement and sustainable conservation systems.

Keywords: Indigenous Community, Sacred Land, Forest, Commercial, Indonesia, Lesotho

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1. INTRODUCTION

Indonesia is endowed with rich forest resources and many indigenous groups who derive spiritual and socio-economic identity from ancestral land[1]. The Dayak, Baduy, Mentawai and many other indigenous groups have long-term relationships with forests, rivers, mountains and ancestral lands that to them, represent not only economic value but sacred grounds that encapsulate their history, religion and culture. The land supports traditional governance systems, rituals, medicine, agriculture and indigenous knowledge. The sacred forests are used in traditional religious activities, ancestor worship, biodiversity conservation and the transfer of

[1] Liz Alden Wily, "Collective Land Ownership in the 21st Century: Overview of Global Trends," *Land* 7, no. 2 (2018): 68.

culture from one generation to another[2]. Indigenous groups often govern access to these areas by applying customary law, traditional leadership and conservation methods within the community itself. But now, the relationship between indigenous groups and their ancestral lands faces conflicts of interest created by commercial logging, mining, plantation agriculture, infrastructure building and other forms of exploitation[3]. Protection of sacred lands and forests has therefore become an important legal and environmental issue especially on issues of customary land rights, community participation and conservation of indigenous culture[4].

Land and natural landscapes are important elements of the cultural, historic and socio-economic life of the local communities in Lesotho, specifically the Basotho, who, through their customary practices, connect the lands of their ancestors, communal resources and their culture[5]. While Lesotho is mostly known for its mountainous landscapes and grasslands and not for its tropical forests, the indigenous vegetation, forest reserves, natural sites and community woodlands still remain valuable environmental and cultural resources. Some landscapes, such as mountains, caves, springs and ancestral sites, have spiritual and historic value for the local communities[6]. Traditional governance systems and customary practices have traditionally shaped the distribution of land and management of communal resources[7]. In addition, community forests and indigenous vegetation play an important role in biodiversity conservation, soil conservation, water regulation, livestock production and support of local livelihoods[8]. However, commercial agricultural development, infrastructure development, mining operations, unsustainable use of forest products and conflicting land uses pose challenges for those resources[9]. This situation poses some questions about the protection of customary interests, acknowledgement of traditional custodianship and how effectively the existing land and environmental legislation protects culturally significant territories from commercialization and degradation[10].

The preservation of the sacred lands and forests of the indigenous peoples in Indonesia and Lesotho is vital to attaining sustainable development of the environment, culture and social justice[11]. The territories in question provide ecological services in terms of biodiversity conservation, carbon sequestration, watershed protection, soil conservation and natural

[2] Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," AlterNative: *An International Journal of Indigenous Peoples* 20, no. 1 (2024): 157–66.

[3] Salsa Rizkia Meilinda, Darmawan Salman, and Sawedi Muhammad, "Conflict and Compromise, Discourse and Action: Political Ecology in the Complexity of Land Management in Central Kalimantan, Indonesia," *Forest and Society* 9, no. 2 (2025): 422–48.

[4] Ibid

[5] Micah Radandima Fisher, Beyond Recognition: Indigenous Land Rights and Changing Landscapes in Indonesia (PhD diss., University of Hawai'i at Mānoa, 2019).

[6] Marcus Colchester, "Legal Obstacles to Territorial Rights Recognition, Sustainable Commodity Production and Forest Conservation on Forest Peoples' Lands in Southeast Asia with a Focus on Indonesia," *Hunter Gatherer Research* 4, no. 1 (2018): 81–112.

[7] Mukhlis Mukhlis, Raphael D. Jackson-Ortiz, Muwaffiq Jufri, Evis Garunja, and Paul Atagamen Aidonojie, "Rejection of Former Shia Community in Sampang Perspective on Human Rights Law: Discourse of Religious Rights and Freedom in Indonesia," *Lex Scientia Law Review* 7, no. 2 (2023): 959–94.

[8] Ibid

[9] Ndidzulafhi Innocent Sinthumule, Thendo Mugwena, and Mulalo Rabumbulu, "The Conflict between Preserving a 'Sacred Natural Site' and Exploiting Nature for Commercial Gain: Evidence from Phiphidi Waterfall in South Africa," *Sustainability* 13, no. 18 (2021): 10476.

[10] Martin Roestamy, Abraham Yazdi Martin, Radif Khotamir Rusli, and Mohamad Ali Fulazzaky, "A Review of the Reliability of Land Bank Institution in Indonesia for Effective Land Management of Public Interest," *Land Use Policy* 120 (2022): 106275.

[11] Ibid

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ecosystem maintenance[12]. In addition, they preserve indigenous knowledge systems, traditional medicine, spirituality and customs that help maintain community sustainability and environmental stewardship. Customary forest management in Indonesia shows how sustainable utilization of resources can be achieved in combination with biodiversity preservation from excessive exploitation by commercial agents. Likewise, community involvement in the management of indigenous vegetation and communal forests in Lesotho leads to ecological restoration and sustainable livelihoods alongside preservation of traditional heritage[13]. Preservation of these territories also ensures the rights of indigenous peoples in terms of cultural identity, self-determination, participation and resource access[14]. Therefore, sustainability of these territories requires not only environmental conservation policies but also customary ownership recognition, community participation, accountability of commercial actors and natural resource sharing[15].

In both Indonesia and Lesotho, there exist laws that deal with land ownership and environmental protection and forest conservation. For instance, the Constitution of Indonesia 1945, especially articles 18B(2) and 28I(3), recognizes customary communities and their traditional rights, while Laws No. 5 of 1960 concerning principles of basic agrarian law and No. 41 of 1999 concerning forestry form the basis for customary land and forest management[16]. Moreover, Decision No. 35/PUU-X/2012 from the Constitutional Court of Indonesia recognized that customary forests are not state forests[17]. In Lesotho, the constitution of 1993, especially sections 17 and 36, protects from arbitrary property acquisition and declares environmental protection as a policy goal of the state[18]. Land Act 2010, the Forestry Act 1998 and the Environment Act 2008 further regulate land management and forest conservation. Despite all these provisions, indigenous communities still experience problems related to lack of proper recognition of their customary interest, commercial concessions, weak implementation of laws, environmental degradation and lack of participation in making decisions regarding land use[19]. The main problem is the gap between legal and actual implementation of these protections in cases of conflict with commercial development of the area[20].

Prior scholarship has focused on the study of the issues of customary ownership, environmental protection and economic exploitation of land and forest areas of different nations. Yet very little attention has been paid to the comparison of the legal frameworks of Indonesia and Lesotho in terms of protection of the indigenous communities' sacred lands and forests from commercial activities. This gap is evident as there has been no analysis of the

[12] Nicholas K. Tagliarino, "The Status of National Legal Frameworks for Valuing Compensation for Expropriated Land: An Analysis of Whether National Laws in 50 Countries/Regions across Asia, Africa, and ...," *Land* 6, no. 2 (2017): 37.
[13] Stephen A. Hansen and Justin W. VanFleet, A Handbook on Issues and Options for Traditional Knowledge Holders in Protecting Their Intellectual Property and Maintaining Biological Diversity (Washington, DC: AAAS, 2003).
[14] Christo Fabricius, Carl Folke, Georgina Cundill, and Lisen Schultz, "Powerless Spectators, Coping Actors, and Adaptive Co-Managers: A Synthesis of the Role of Communities in Ecosystem Management," *Ecology and Society* 12, no. 1 (2007).
[15] Akinagum Fidelis Esenjor, A Community-Based Conservation Programme for the Management and Conservation of Land Resources in Lesotho (master's thesis, University of the Free State, 2004).
[16] Erma Rusdiana, Darnela Lindra, Muwaffiq Jufri, Paul Atagamen Aidonojie, and Ezzerouali Souad, "The Potential for Corporate Corruption in Mining Licensing Policies for Religious Organizations in Indonesia," *Lex Scientia Law Review* 9, no. 2 (2025): 1587–1636.
[17] Ibid
[18] Ibid
[19] Ndidzulafhi Innocent Sinthumule, "The Role of Traditional Ecological Knowledge in Managing the Collection of Non-Timber Forest Products in Limpopo, South Africa: A Community-Based Resource Governance Approach," *Human Ecology* 53, no. 5 (2025): 959–71.
[20] Ibid

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efficacy of constitutional provisions, recognition of customary lands, laws of forestry and environmental protection of indigenous sacred lands and forests in those countries[21]. Moreover, legal scholarship has traditionally viewed the issue of forest conservation and cultural rights of the indigenous population separately, disregarding their interrelated nature in protecting the sacred land[22]. This work proposes a comparative legal approach in terms of the legal protection of the indigenous communities' customary ties with sacred lands and forests. The innovative aspect of the work lies in the connection between the cultural and spiritual rights of the indigenous population and environmental sustainability and protection. In other words, this research will aim to study the legal framework of sacred land and forest laws in Indonesia and Lesotho, finding the weaknesses and problems in enforcing such laws, examining the effects of commercial utilisation of resources on the local people, and making recommendations regarding necessary reforms to be made.

2. METHOD

The research methodology adopted in this paper is a doctrinal research approach, using the methods of description and analysis of the legal protection of the lands and forests that are sacred to the indigenous communities from any commercial exploitation in the countries of Indonesia and Lesotho. A doctrinal research method can be applied in this case since the study mainly focuses on the legal principles, rules, institutions and interpretation of the law related to the customary right to the lands, indigenous culture and environmental preservation. Primary doctrinal materials will be collected using an analysis of relevant legal sources such as constitutions, national laws, subsidiary laws, court decisions and international legal instruments. Examples of primary doctrinal sources are the Indonesian 1945 Constitution, the Basic Agrarian Law 1960, the Forestry Law 1999, and decisions of the Constitutional Court of Indonesia, while in Lesotho these would be the Constitution 1993, the Land Act 2010, the Forestry Act 1998 and the Environment Act 2008. Examples of secondary doctrinal materials would be peer-reviewed journal articles, legal textbooks, commentaries, academic dissertations, institutional documents and publications by relevant international organisations. The comparative legal analysis is then undertaken to reveal the similarities and differences, as well as the possible lessons for law that can be learned from both jurisdictions.

3. RESULT AND DISCUSSION

3.1. Relevance and Sustainability of Indigenous Community Sacred Land and Forest in Indonesia and Lesotho

The safeguarding of the sacred lands and forests of indigenous communities goes beyond environmental conservation, as it pertains to many other aspects like cultural identity[23], customary ownership, spiritual legacy, human rights, preservation of biological diversity, and sustainable development[24]. The present discussion will address five interrelated aspects by using institutional data, comparative studies, and a theoretical framework[25].

[21] Jahid Siraz Chowdhury, Haris Abd Wahab, Mohd Rashid Mohd Saad, Noralina Omar, Mokbul M. Ahmed, and Parimal K. Roy, "History and Philosophy of Bioprospecting in Bangladesh: Experience from the Rakhain Indigenous People," in Handbook of Research on Protecting and Managing Global Indigenous Knowledge Systems (2022), 133–50

[22] Ibid

[23] Ibid

[24] Harriet Deacon, Luvuyo Dondolo, Mbulelo Mrubata, and Sandra Prosalendis, The Subtle Power of Intangible Heritage: Legal and Financial Instruments for Safeguarding Intangible Heritage (Cape Town: HSRC Press, 2004).

[25] Thomas D. Hall and James V. Fenelon, Indigenous Peoples and Globalization: Resistance and Revitalization (London: Routledge, 2015).

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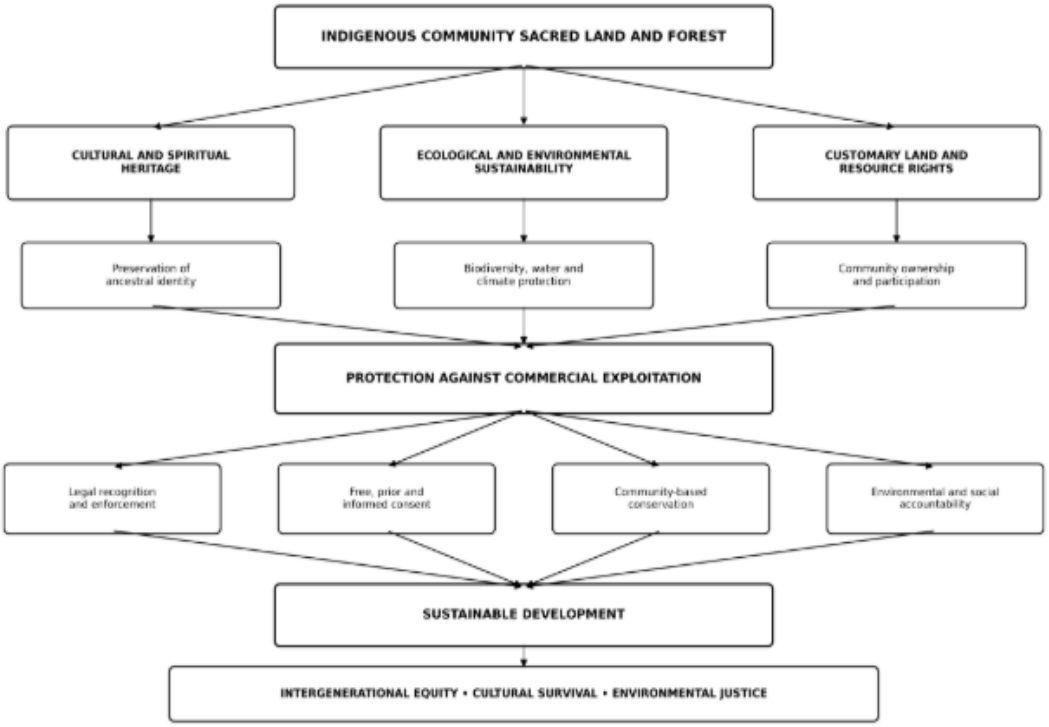
Figure 1: Graphical Representation and Comparative Conceptual Framework



Source: Designed by authors based on data obtained

The sacred lands and forests of indigenous communities should not be seen as empty pieces of land or resources that need to be developed for commercial gain[26]. The concept includes ancestral territories, sacred groves, mountains, caves, rivers, springs, burial sites and other connected ecosystems that are integral to the formation of collective identity, spirituality, customary authority, and livelihoods[27]. Consequently, it is territorial, cultural, ecological and intergenerational in its nature. In Indonesia, the communities known as the masyarakat adat have customary forests and sacred sites under locally based access, harvesting, ceremonial, and conservation rules. In Lesotho, however, the notion has to be applied with caution, as the country is predominantly a Basotho one, whereas the presence of the San culture and their relationship with mountains, caves, springs, grazing lands, and indigenous flora should not be overlooked[28]. Sehlabathebe, for example, is part of the Maloti-Drakensberg World Heritage site, and the rock paintings found there are a record of San spiritual traditions over approximately 4,000 years. The preservation of sacred lands should therefore consider tangible and intangible values, including oral traditions, ceremonies, and customary knowledge[29].

The significance of sacred lands and forests lies first in cultural continuity and human dignity: these are the places where ceremonies take place, the ancestors are honored, traditional laws are taught, and knowledge about plants, seasons, water, and wildlife is passed down to the younger generation[30]. When a forest is cut down to plant a plantation, build a mine, or create a road, the destruction is not only the area of hectares and the value of the timber that

[26] Amity A. Doolittle, "Powerful Persuasions: The Language of Property and Politics in Sabah, Malaysia (North Borneo), 1881–1996," *Modern Asian Studies* 38, no. 4 (2004): 821–50.
[27] Sophie Rose Lewis, The Political Ecology of Illegal Logging in Thailand: Forest Exploitation, Violence, and Anti-Politics (master's thesis, University of British Columbia, 2021).
[28]Albert Kwokwo Barume, Land Rights of Indigenous Peoples in Africa (Copenhagen: IWGIA, 2010).
[29] Ibid
[30] Prodyut Bhattacharya, Lolita Pradhan, and Ganesh Yadav, "Joint Forest Management in India: Experiences of Two Decades," *Resources, Conservation and Recycling* 54, no. 8 (2010): 469–80.

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was there but also the disturbance of graves, the disappearance of sacred flora, the cutting off of paths, and the weakening of community authority[31]. The UN Declaration on the Rights of Indigenous Peoples recognizes the rights of indigenous peoples to have their spiritual relation to traditionally owned lands and obligations to future generations, and also requires the consultation and cooperation in decision-making related to these lands[32]. In Indonesia, traditional forest practices are associated with the adat institution and collective identity, and in Lesotho, the rock art landscapes of Sehlabathebe and the Maloti mountains are part of the living spirituality of the San. According to UNESCO, the rock paintings are the legacy of San spiritual traditions throughout millennia.

Indigenous forest sanctuaries and managed landscapes also have ecological significance as well as climate significance. Proper implementation of customary laws can allow for habitat linkage, protection of water sources, conservation of medicinal and edible plants, sequestration of carbon and avoidance of harmful extraction, as long as these are properly implemented and enforced[33]. The Food and Agriculture Organization states that Indigenous Peoples manage about 28 per cent of the Earth's land area and includes many ecologically intact forests in their customary territory. Moreover, this organization considers their traditional knowledge relevant in combating deforestation, biodiversity loss, and climate change[34]. Scientific research carried out in Frontiers in Ecology and the Environment showed that at least 36 per cent of the world's remaining intact forest landscapes fall within Indigenous Peoples' territories. These findings on a global scale cannot confirm that all customs must be sustainable, but they show the connection between customary law enforcement and ecological results[35]. For Indonesian tropical forests, protection of customary laws can prevent deforestation and fragmentation. For Lesotho, which lacks tree cover, protection of indigenous vegetation, catchments, rangelands and sacred mountain ecosystems is essential for the same purposes.

The case of Indonesia exemplifies both the magnitude of customary territories and the disparity between mapping and legal protection of such lands. As of March 2025, according to data provided by the Indigenous Territory Registration Agency, there were 32.3 million hectares of registered customary territories, with approximately 25.18 million hectares registered as forest areas[36]. In addition, UNDP reported that there were 164 customary forest decrees issued in the period from 2016 to 2025 for the area of 345,257 hectares with 87,963 households. These two numbers represent two separate datasets which should not be mixed: there is a distinction between the mapped customary territories and the forests designated as customary forests[37]. This difference becomes significant since insecure tenure may cause communities to become vulnerable to further plantation, mining, logging, infrastructure development and other state concession areas. According to the Indonesian Constitutional Court Decision No. 35/PUU-X/2012, the customary forests are not state forests; however,

[31] Paul Atagamen Aidonojie, "Environmental Hazard: The Legal Issues Concerning Environmental Justice in Nigeria," *Journal of Human Rights, Culture and Legal System* 3, no. 1 (2023): 17–32.
[32] David Stuart Edmunds and Eva Karoline Wollenberg, Local Forest Management: The Impacts of Devolution Policies (London: Routledge, 2013).
[33] Graeme Worboys, Wendy L. Francis, and Michael Lockwood, Connectivity Conservation Management: A Global Guide (with Particular Reference to Mountain Connectivity Conservation) (London: Earthscan, 2010).
[34] Sean Morenakemang Maliehe, A History of Indigenously-Owned Business in Post-Colonial Lesotho: Politics, Constraints, Marginalisation and Survival, 1966–2012 (PhD diss., University of Pretoria, 2015).
[35] Thaddeus Sunseri, Wielding the Ax: State Forestry and Social Conflict in Tanzania, 1820–2000 (Athens: Ohio University Press, 2014).
[36] Dilys Roe, "The Millennium Development Goals and Natural Resources Management: Reconciling Sustainable Livelihoods and Resource Conservation or Fuelling a Divide?" *Human Ecology* 25 (2004): 91–120.
[37] Robert Alan Hershey, "Paradigm Wars Revisited: New Eyes on Indigenous Peoples' Resistance to Globalization," *Indigenous Peoples' Journal of Law, Culture & Resistance* 5 (2019): 43.

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recognition procedures are required for such determination[38]. The relevance of the protection lies in the fact that such protection means registration of customary claims in order to avoid dispossession when granting commercial licenses.

Lesotho offers a completely different ecological and cultural context, so there is no need to consider the need to protect the territory like the one that has been seen in Indonesia with their large tropical customary forests[39]. According to the data published by the World Bank, sourced from FAOSTAT, Lesotho's forest cover area as of 2023 is 1.1 per cent of the total land area. As such, indigenous vegetation, woodlands, wetlands, rangelands and mountain catchments become crucial here. It is important to understand that the 2022 Voluntary National Review by Lesotho has shown that only 9 per cent of Lesotho is arable land, that the country is losing about 2 per cent of its topsoil every year due to erosion and that approximately 66 per cent of households are living on degraded lands[40]. Under such conditions, the necessity to preserve communal lands from destructive impacts becomes particularly acute. One of the sites listed by UNESCO is the Maloti-Drakensberg site, which includes the Sehlabathebe National Park located in Lesotho on 6,500 hectares. The sustainable protection here requires proper screening for commercial activities in relation to sacred sites, water sources, biodiversity and customary access.

3.2. Legal Protection of Indigenous Community Sacred Land and Forest in Indonesia and Lesotho

The constitutional background of the protection of indigenous customary land and sacred forests in Indonesia is mainly based on the 1945 Constitution of the Republic of Indonesia. In particular, Article 18B paragraph (2)[41] stipulates that "The State recognizes the existence of customary law communities and acknowledges the customary rights thereof, if the customary law communities exist, develop and correspond with the developments of the time and with the principles of the unitary state of the laws." In addition to this fundamental provision, Article 28I paragraph (3) provides that "Cultural identity and the rights of indigenous communities should be acknowledged according to the progress of time and development of civilization." Nevertheless, these constitutional provisions are constantly operating in opposition to the provisions of Article 33 paragraph (3), which states that "the land, the water areas, and natural wealth thereunder are controlled by the State and utilized for the greatest prosperity of the people." This fundamental provision provides the legal framework in which the sovereignty of the State over the national natural resources constantly collides with customary rights[42].

Statutory provisions include the legislation governing agrarian law and local governance, which provides a legal framework for the right of customary land (Hak Ulayat) in Indonesia. The Basic Agrarian Law (Law No. 5 of 1960) indicates in Article 3[43] that the implementation of Hak Ulayat and related rights by the communities of customary law is recognised where there is existence of such communities, without prejudice to national unity and state interest. Article 5 recognizes that Adat law forms the basis of national agrarian law except where such law is inconsistent with the interest of the nation. Moreover, Article 14, section (1), sub-section (b requires that the state is responsible for formulating land allocation plans for religious and

[38] Ahmad Kusworo, Pursuing Livelihoods, Imagining Development: Smallholders in Highland Lampung, Indonesia (Canberra: ANU Press, 2014).
[39] Lily Zeng, Transformations of Indigenous Identity and Changing Meanings of Sacred Nature in Xishuangbanna, China (PhD diss., Yale University, 2018).
[40] Stuart Chape, Mark Spalding, and Martin Jenkins, The World's Protected Areas: Status, Values and Prospects in the 21st Century (2008).
[41] 1945 Constitution of the Republic of Indonesia
[42] Erma Rusdiana, Paul Atagamen Aidonojie, Muwaffiq Jufri, Hassan Ismaila, and Nathan Ibrahim, "Augment Legal Efforts through Artificial Intelligence in Curtailing Economic Fraud in Nigeria: Issues and Challenges," *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025): 115–48.
[43] The Basic Agrarian Law (Law No. 5 of 1960)

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sacred purposes, whereas Article 49 requires state protection of lands for social and religious purposes. In addition to this, the legal provision of customary rights in villages is reinforced by legal institutions through the Village Law (Law No. 6 of 2014). Article 6 recognises traditional villages (Desa Adat). Article 76 refers to communal land (Tanah Ulayat) as assets of villages, whereas Article 103 empowers traditional village institutions to manage customary territory and resolve customary land disputes.

With regard to forest resources, the legal protection of customary sacred forests in Indonesia is outlined in Law No. 41 of 1999 on Forestry. According to Article 1, point (6)[44]Hutan Adat (communal forest) means state forests situated in the territory of a customary law community. In Article 4, point (3), the state's control over forests is obliged to respect customary rights where there are customary communities, recognized by the government, and not contrary to the interests of the state. In Article 5, points (2) and (3), the state forests are defined as customary forests, to be identified by decree from the government according to the reality. Furthermore, Article 8, point (2[45]), sub-paragraph c, allows the government to identify certain forest areas with cultural and religious functions, without affecting the main purpose of those forest areas. According to Article 37, point (1), the customary community has the right to manage customary forests depending on their function. But Article 67, point (2), requires that the existence of the indigenous community should be officially approved by the Regional Regulation (Peraturan Daerah).

The legal regime on land ownership and protection of customary sacred territory in Lesotho is based on the national trust doctrine set up in the Constitution of Lesotho, 1993. Section 107 of the Constitution[46] clearly states that all land in Lesotho is held in trust by the Basotho Nation. Additionally, Section 108 provides that the powers of allocation of land, granting of interest or rights and revocation of allocations of land shall be vested in the King in trust for the Basotho Nation, as per the Constitution and statutes. Land cannot be deprived through constitutional protection as provided in Section 17 of the Constitution[47], which states that there cannot be compulsory acquisition of any property except for purposes of public safety, public order and public benefit and that compensation should be promptly paid for. Section 18 paragraph (4) sub-paragraph c expressly provides for the application of customary law on issues related to land. In contrast, Section 36 provides for state policies for the protection and enhancement of the environment for the current and future generations.

The statutory land and mining laws of Lesotho operationalise the aforementioned constitutional principles and regulate business use. Under the Land Act of 2010, which reaffirms in Section 4 that all land in the Kingdom of Lesotho belongs to the Basotho Nation in trust for the King, local authorities allocate rural land after consulting the traditional chiefs. It is stated in Section 5, Sub-section (1), that there are various overriding interests over the land, such as the right to water, flora, fauna, and compulsory acquisition. Significantly, Section 6, paragraph (1), sub-section (c) states that foreigners will be allowed to get land title to invest in the country with a minimum 20% Basotho shareholding. Concerning the direct regulation of the sacred sites, the Mines and Mineral Act of 2005 provides important statutory limitations in Section 54 paragraph (1), sub-sections (a) and (b)[48] explicitly bans mineral concession holders from prospecting and mining operations on lands reserved as burial places, or containing national or ancient monuments. But Section 57 gives the Minister the right to compulsory acquisition of land for the exploitation of minerals in the public interest.

[44] Law No. 41 of 1999 on Forestry
[45] Ibid
[46] Constitution of Lesotho, 1993
[47] Ibid
[48] the Mines and Mineral Act of 2005

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Tabular Comparison of Legal Frameworks

Comparison Dimension	Indonesia	Lesotho
Constitutional Basis	Constitution of 1945: Article 18B(2) (Recognition of customs), Article 28 I(3) (Cultural Identity), Article 33(3) (State ownership over natural resources).	Constitution of Lesotho 1993: Sec 107 (Land vested in Basotho Nation), Sec 108 (Royal Trust), Sec 17 (Property protection).
Primary Statutory Laws	Basic Agrarian Law (Law No 5/1960); Forests Law (Law No 41/1999); Village Law (Law No 6/2014).	Land Act 2010, Mines and Minerals Act 2005.
Land & Forest Ownership Model	Control by the state (Hak Menguasai Negara) over all untitled land and forest zones.	Basotho Nation Unified National Trust (held by the King in trust).
Recognition Mechanism for Sacred/Customary Lands	Formal statutory recognition through Regional Regulation (Peraturan Daerah) according to Forestry Law Section 67(2) and Section 98 of Village Law.	Allocated by local authorities in consultation with traditional chiefs under Land Act 2010 Sec 14.
Commercial Exploitation Triggers	State lease licenses (Izin Pinjam Pakai) for commercial forestry and mining in State Forests according to Forestry Law section 38.	Title grants for foreign investments (with 20% ownership by Basotho) and land acquisition for development under Land Act Sec 6 & 49-51.
Safeguards for Sacred Sites	Allocation of forests for religious needs (Article 8 of Forestry Law) and Tanah Perwakafan (Article 49 of BAL).	Prohibition by law against prospecting and mining in areas of burials and national monuments (Mines and Minerals Act Sec 54).

3.3. Legal Issues and Challenges

An important legal problem in the Indonesian legal system is the legal doctrine of conditional recognition of customary law communities and sacred sites in accordance with statutory laws. Under Article 18B paragraph (2) of the Constitution of 1945 and Article 3 of the Basic Agrarian Law, "customary rights shall be recognized provided that they still exist and in the interest of the national community". In practice, this conditional doctrine is implemented in Law No. 41 of 1999 on Forestry under Article 67 paragraph (2), which requires indigenous communities to receive legal certification of their existence through a Regional Regulation (Peraturan Daerah)[49]. This requirement leads to serious administrative difficulties and political problems, since, due to long-term bureaucratic delays and legislative expenses, indigenous communities fail to obtain legal confirmation. Therefore, without the adoption of Peraturan Daerah, customary sacred forests (Hutan Adat) are regarded as State Forest in accordance with

[49] Coenraad Visser, "Some Thoughts on Making Intellectual Property Work for Traditional Knowledge," *South African Mercantile Law Journal* 14 (2002): 656.

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Article 1, sub-paragraph 6 of the same Law[50]. Thus, without legal confirmation, sacred sites are at risk of being allocated to third parties through unilateral state decisions for the purposes of logging, palm oil, and mining concessions under Article 38.

Secondly, another important aspect of law in Indonesia is that of state management of statutory forest areas and sectoral legislative conflicts. Article 33 paragraph (3) of the Constitution of Indonesia of 1945 vests absolute authority of the state in regard to utilization and exploitation of natural resources, which Article 4 paragraph (1) of Law No. 41 of 1999 reinforces by stating that all lands which are forest lands without titles vest in the State[51]. Though Article 8 paragraph (2) enables the creation of such forest areas for religious and cultural purposes, the government departments always prefer production and mining licenses as per Articles 28 and 38 over un-gazetted sacred forest areas of the indigenous people. The Ministry of Forestry, under Article 38 paragraphs (3) and (5), is empowered to grant lend-use licenses (Izin Pinjam Pakai Kawasan Hutan) to commercial mining firms for open-cast and underground mining in state forest lands. Due to the absence of statutory title for the sacred forests of the indigenous people, except when declared by law, commercial lessees possess a better legal position in respect of the prohibition rules of Article 50.

Legal challenges in Lesotho arise from the dichotomy between the constitutional provisions on national land trust and commercialization by the state through the Land Act 2010. Even as Sections 107 of the Constitution and 4 of the Land Act 2010 vest all land in the Basotho Nation that is held in trust by the King, land allocations have increasingly been vested in local government councils in consultations with the chiefs[52]. By Section 6, paragraph (1), sub-paragraph c of the Land Act 2010, foreign commercial ventures are expressly permitted to purchase land titles for commercial ventures where the Basotho people have at least a 20% partnership or shareholding. However, the objective of such commercialisation may come into conflict with unregistered customary grazing land and community sacred land. The reason is that mineral interests, water rights and compulsory acquisitions are overriding interests that bind title holders regardless of registration; thus community interest in sacred land is legally subservient to approved projects for commercial purposes by central allocating authorities.

Another significant issue regarding Lesotho's indigenous sacred lands involves the supremacy of statutory mining concessions over customary surface rights and sacred lands. Section 3 (1) of the Mines and Minerals Act 2005 vests all the mineral rights in the Basotho Nation under the management of the Minister of Natural Resources[53]. Section 57 allows for compulsory acquisition of any piece of land that is necessary for the development of mineral resources, which is defined as a public purpose in the Land Act. Although Section 54(1)(a) and (b) do not allow for mining on lands set aside as burial sites or those declared as national or ancient monuments, the provisions are very restrictive. Most of the sacred lands, sacred forests, and ancestral burial grounds in rural Lesotho are not registered or declared as national monuments according to the statute[54]. In cases where there is an unregistered sacred land found within the mining lease area under Section 33, Section 56 limits the community's right only to monetary compensation for the disturbance of the surface, but no veto power.

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When synthesising the legal issues arising from both jurisdictions, it becomes evident that there are significant weaknesses in relation to the protection of the sacred land of the indigenous communities from commercial exploitation. In Indonesia, statutory protection is dependent upon administrative recognition by province or regency (Peraturan Daerah), and hence unverified customary sacred forests are vulnerable to commercial exploitation through forestry and mining concessions. Similarly, in Lesotho, despite having an overarching national trust of land through the constitution, statutory powers of compulsory expropriation for public interest and mineral exploitation override the unrecorded customary land tenure system[55]. Moreover, neither jurisdiction makes provision for statutory mandatory Free, Prior, and Informed Consent (FPIC) that would enable the indigenous communities to stop any commercial ventures on their sacred lands. Rather, the statutory process of dealing with disputes, such as class action lawsuits under Law No. 41 of 1999 in Indonesia and Land Court processes under the Land Act 2010 in Lesotho, concentrates on post-facto compensation rather than preventative protection. Hence, statutory processes in both jurisdictions prioritise economic resource extraction above the spiritual heritage of indigenous communities, thereby making sacred lands and forests vulnerable to commercial exploitation.

4. CONCLUSION

Safeguarding the interests of indigenous communities with regard to sacred lands and forests from commercial exploitation in Indonesia and Lesotho is hindered by several shortcomings in the statutory laws and a state-centric legal system. While Indonesia recognizes the customary rights of the indigenous people through Article 18B of its 1945 Constitution and Lesotho through Section 107 of its Constitution, the implementation of the statute undermines the legal rights of the indigenous communities. In Indonesia, the legal complexities in the recognition of Peraturan Daerah of the customary law communities result in the declaration of sacred forests as state forests that may be exploited for commercial purposes through mining and logging. In a similar fashion, the overriding statutory law of land expropriation in the name of public interest under the Land Act 2010 and Mines and Minerals Act 2005 in Lesotho subordinates the sacred sites from the preservation of customary law.

To give legal protection to the customary sacred lands and forests, legal recommendations must focus on legal certainty, administrative simplicity, and the right of veto for indigenous communities. For starters, Indonesia must amend Law No. 41 of 1999, removing the need for a Regional Regulation under Article 67 and simplifying it into an administrative registration process, which will create Customary Forests (Hutan Adat) through a legal process distinct from the State forest domain. Secondly, Lesotho must amend the Mines and Minerals Act of 2005 and the Land Act of 2010 by broadening the scope of statutory protection from just national monuments to all sacred places and burial sites as identified by the communities. Most importantly, both countries must enact statutory provisions that will give the Free, Prior and Informed Consent (FPIC) right of absolute veto power against commercial lease, logging and mining of any sacred lands.

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