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RECOGNITION OF INDIGENOUS LAND RIGHTS WITHIN THE ENVIRONMENTAL SOCIAL GOVERNANCE (ESG) FRAMEWORK: A LEGAL COMPARATIVE ANALYSIS OF INDONESIA AND THAILAND

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Abstract

This study offers a comparative analysis of the recognition and protection of indigenous land and natural resource rights within the Environmental, Social, and Governance (ESG) framework in Indonesia and Thailand. Using a normative legal method with statutory and comparative approaches, it examines how national legal and institutional systems integrate indigenous rights and how ESG functions as a mechanism for mitigating agrarian and environmental conflicts. The findings show that Indonesia has a stronger legal basis for recognizing indigenous rights through the 1945 Constitution and Constitutional Court Decision No. 35/PUU-X/2012, but faces inconsistent implementation of the Free, Prior, and Informed Consent (FPIC) principle, while Thailand demonstrates more advanced ESG reporting and transparency yet lacks explicit legal protection for indigenous communities. This study positions ESG as a system of social risk governance and underscores the need for stronger synergy among national law, financial institutions, and indigenous participation to achieve inclusive and equitable ESG implementation in Southeast Asia.

***Keywords**: Environmental, Social, and Governance (ESG); Indigenous Peoples' Rights; Social Risk Mitigation.*

A. Introduction

The growing global emphasis on sustainability has driven significant changes in corporate governance practices and public policy worldwide. The international community increasingly expects corporations to address not only economic performance but also the social and environmental impacts of their activities.[1] In response, Environmental, Social, and Governance (ESG) principles[2] have emerged as a framework that integrates non-financial considerations into corporate decision-making. ESG broadens performance measurement beyond profit to

[1] Svante Andersson et al., "Sustainable Development—Direct and Indirect Effects between Economic, Social, and Environmental Dimensions in Business Practices," *Corporate Social Responsibility and Environmental Management* 29, no. 5 (September 6, 2022): 1158–72, https://doi.org/10.1002/csr.2261.

[2] Selina Neri, "Environmental, Social and Governance (ESG) and Integrated Reporting," in *Global Challenges to CSR and Sustainable Development*, ed. Stephen Vertigans and Samuel O. Idowu (Cham: Springer, 2021), 293–302, https://doi.org/10.1007/978-3-030-62501-6_14.

include contributions to social and environmental sustainability.[3] As a result, ESG performance now influences corporate reputation, market value, and access to global investment, making it a key benchmark for long-term sustainability.

The ESG framework is structured around three pillars: Environmental, Social, and Governance. The Environmental pillar addresses the management of environmental impacts, including carbon emissions, energy efficiency, and natural resource conservation.[4] The Social pillar concerns a company's relationship with society, encompassing human rights, labor standards, and community development.[5] The Governance pillar emphasizes transparent, accountable, and ethical decision-making.[6] Together, these interconnected pillars support the development of sustainable and socially responsible business practices.

Within this framework, the Social pillar holds a strategic role. It covers critical issues such as human rights protection, community engagement, decent working conditions, and respect for the rights of indigenous peoples. This pillar requires meaningful participation of local communities in decision-making processes that affect their livelihoods and territories. The recognition and implementation of the principle of Free, Prior, and Informed Consent (FPIC) related to land and natural resource rights serve as key indicators of social performance for both states and corporations.[7] Strong social performance under ESG reflects a genuine commitment to social justice and the protection of vulnerable communities.

The implementation of ESG in many countries continues to face significant challenges. Companies and institutions often prioritize environmental and economic considerations, while the social dimension is frequently neglected or treated as a procedural requirement. This imbalance raises questions about whether ESG genuinely serves as a tool for equitable social transformation.[8] Gaps between ESG principles and their practical application risk generating social conflict, particularly in regions inhabited by indigenous peoples. Failure to recognize indigenous rights can provoke resistance to development projects and ultimately undermine sustainability objectives.

Southeast Asia, with its abundant natural resources, has a long history of interaction between large-scale development and indigenous communities that rely on ancestral lands for their livelihoods.[9] Countries in the region have sought to adopt ESG principles and ratified various international instruments on indigenous rights. However, a significant gap persists between regulatory commitments and implementation, driven by legal uncertainty, overlapping

[3] Susanne Arvidsson and John Dumay, "Corporate ESG Reporting Quantity, Quality and Performance: Where to Now for Environmental Policy and Practice?," *Business Strategy and the Environment* 31, no. 3 (March 24, 2022): 1091–1110, https://doi.org/10.1002/bse.2937.

[4] Sachini Supunsala Senadheera et al., "Scoring Environment Pillar in Environmental, Social, and Governance (ESG) Assessment," *Sustainable Environment* 7, no. 1 (January 1, 2021), https://doi.org/10.1080/27658511.2021.1960097.

[5] Melissa Ribeiro do Amaral Amaral, Inara Vieira Antunes Willerding, and Édis Mafra Lapolli, "ESG and Sustainability: The Impact of the Pillar Social," *Concilium* 23, no. 13 (July 11, 2023): 186–99, https://doi.org/10.53660/CLM-1643-23J43.

[6] Mário Parra da Silva and Ana Saraiva, "Governance and Transparency: Ethical Leadership in the Information Age," in *Environmental, Social, Governance and Digital Transformation in Organizations.* (Cham: Springer, 2025), 201–27, https://doi.org/10.1007/978-3-031-86079-9_9.

[7] Afrizal, Elfitra, and Zuldesni, "Analysing the Effectiveness of the Roundtable on Sustainable Palm Oil's Free, Prior and Informed Consent Policy to Respect Customary Land Rights," *Journal of International Development* 35, no. 5 (July 11, 2023): 761–80, https://doi.org/10.1002/jid.3700.

[8] Pooja Mishra and Tatavarty Guru Sant, "Examine the Level of Environmental, Social and Governance Disclosure in Sustainability Report – a Study of the Indian Banking Sector," *International Journal of Innovation Science* 16, no. 2 (February 22, 2024): 420–42, https://doi.org/10.1108/IJIS-08-2022-0136.

[9] Dundin Zaenuddin, Dwi Purwoko, and Dicky Sofjan, "Civil Society and Social Capital in Community-Based Forest Management in Southeast Asia," in *Approaching Natural Resources for Sustainable Development in Indonesia*, ed. Henny Warsilah and Agus Heri Purnomo (Singapore: Springer Singapore, 2025), 235–45, https://doi.org/10.1007/978-981-96-6913-4_20.

concession regimes, and economic pressures. This context highlights the need to assess the effectiveness of ESG, particularly in relation to social and legal realities in the region.

Indonesia provides a relatively strong legal framework for recognizing indigenous peoples. Article 18B paragraph (2) of the 1945 Constitution affirms state recognition and respect for Masyarakat Hukum Adat (customary law communities) and their traditional rights, provided they remain viable and consistent with national principles and social development. This recognition is further detailed in Article 97 of Law No. 6 of 2014 on Villages, which acknowledges *Desa Adat* as traditional community units with distinct historical, territorial, and governance systems. Operational support is reinforced by Article 63 paragraph (1) letter t of Law No. 32 of 2009 on Environmental Protection and Management, which obliges authorities to protect and empower customary communities in environmental governance, and by Article 67 of Law No. 41 of 1999 on Forestry, which recognizes their rights to manage forests based on customary norms/customary forest (*Hutan Adat*). In addition, Constitutional Court Decision No. 35/PUU-X/2012 clarified that customary forests are not state forests but fall within the territories of customary communities. This ruling strengthens legal certainty and affirms Indonesia's commitment to protecting indigenous rights within its national legal system.

Despite a constitutional framework and progressive Constitutional Court rulings, the recognition of communal rights in practice continues to face serious obstacles, particularly where extractive industry permits overlap with customary territories. The formal determination of customary lands, which should be undertaken by local governments through local regulations (*Perda*), has progressed slowly.[10] Meanwhile, the state has issued permits for industrial plantation forests, mining, and plantations on lands claimed as customary territories. This has resulted in prolonged agrarian and environmental conflicts, forcing indigenous communities to confront corporations holding official permits.[11] The conflict between the Kinipan Indigenous Community in Central Kalimantan and PT Sawit Mandiri Lestari illustrates how communities struggle to defend customary forests from land clearing.[12] This case highlights the gap between legal recognition and economic policy in practice. ESG should therefore function as an instrument to advance social justice, rather than merely as a mechanism for formal compliance.

Thailand adopts a different approach to the recognition of indigenous rights. Its legal system remains highly centralized, with customary land rights often constrained by conservation policies and national economic priorities.[13] Indigenous groups such as the Karen frequently face restrictions on access to forests and ancestral lands. Living mainly in mountainous border areas, the Karen are often stigmatized as encroachers or environmental destroyers.[14] Their traditional practices, including rotational farming, are labeled as harmful, despite evidence from experts and human rights advocates that these methods support biodiversity and reflect sustainable

[10] Nonce Kristin Gaman Kristin, Dwi Pratiwi Markus, and Hadi Tuasikal, "Legal Protection of Customary Forests of the Awyu Tribe in South Papua From a National and International Law Perspective," *Jurnal Ius Constituendum* 10, no. 2 (June 29, 2025): 296–315, https://doi.org/10.26623/jic.v10i2.12042.

[11] Rassela Malinda, "Dispossession, Extractive Capitalism and Political Reactions From Below in West Papua," *Journal of Agrarian Change* 25, no. 4 (October 26, 2025), https://doi.org/10.1111/joac.70032.

[12] Raja Eben Lumbanrau, "Masyarakat Adat: Penangkapan Ketua Adat Kinipan Dan 'Pelegalan Negara Atas Perampokan Di Tanah Adat Di Era Jokowi', Tudingan Aktivis Lingkungan," August 28, 2020, https://www.bbc.com/indonesia/indonesia-53890151.

[13] Stephen Chitengi Sakapaji et al., "Navigating Legal and Regulatory Frameworks to Achieve the Resilience and Sustainability of Indigenous Socioecological Systems," *Resources* 13, no. 4 (April 8, 2024): 56, https://doi.org/10.3390/resources13040056.

[14] Arratee Ayuttacorn, "Community Forest Management and the Resilience of Karen Indigenous Knowledge in Northern Thailand," *Environmental Management* 74, no. 5 (November 29, 2024): 1006–19, https://doi.org/10.1007/s00267-024-02034-9.

ancestral knowledge.[15] Such stigma is used to justify limitations on land rights and subsistence activities, reinforcing unequal power relations between conservation authorities and indigenous communities. This situation indicates that ESG principles have not been fully embedded in Thailand's social and environmental governance.

A comparison between Indonesia and Thailand is therefore instructive, as the two countries represent distinct ESG approaches in Southeast Asia. Indonesia serves as the *primum comparationis*, characterized by a state-centered ESG framework grounded in a strong forestry legal regime and the prominent role of state-owned enterprises in resource management. Thailand represents the *secundum comparationis*, reflecting a more community-oriented model shaped by social constitutionalism and local participation in environmental governance. The *tertium comparationis* lies in the legal and institutional mechanisms through which both states integrate ESG principles, particularly in relation to customary land rights and indigenous protection. Although both countries face growing pressure from international investors and financial institutions to enhance ESG compliance, their policies continue to reveal a gap between stated commitments and the effective realization of indigenous rights. This study therefore contributes to understanding how ESG frameworks are translated into local social and legal contexts within these two Southeast Asian jurisdictions.

Several studies have examined ESG implementation in relation to indigenous peoples' rights, but important gaps remain. Yulianti, published in Arkus, shows that ESG can strengthen local wisdom, yet the analysis is limited to a single corporation and does not systematically address indigenous rights.[16] Nattavud Pimpa, writing in Frontiers, identifies structural and cultural barriers to ESG communication in Thailand but does not connect ESG to customary land recognition. Shin Imai, in an SSRN paper, explores ESG, social conflict, and Free, Prior, and Informed Consent (FPIC), but focuses mainly on the mining sector and lacks a comparative perspective.[17] These studies share a common limitation in the absence of a comparative analysis that integrates legal, social, and institutional dimensions of ESG at the national level.[18] This research addresses that gap by comparing Indonesia and Thailand, contributing to the literature on the effectiveness of the social pillar of ESG as an instrument of social justice in Southeast Asia.

This research aims to analyze and compare the recognition and protection of indigenous peoples' rights to land and natural resources in Indonesia and Thailand within the ESG framework. It also examines the role of ESG as a risk mitigation mechanism in managing agrarian and environmental conflicts related to customary land rights. Through comparative analysis of legal, social, and institutional contexts, the study evaluates the effectiveness of the social pillar of ESG in promoting social justice and equitable sustainability for indigenous communities in the region.

The study adopts a normative legal research method using statutory and comparative approaches. Primary legal materials include constitutions, statutes, and judicial decisions, such as the 1945 Constitution, Constitutional Court Decision No. 35/2013, and Law No. 32 of 2009 in Indonesia, as well as the 2017 Constitution of Thailand, the National Park Act, and relevant

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[15] Yingluck Kanchanaroek and David Wells Engstrom, "Development Policy Affects the Indigenous Group: The Case of the Karen Community, Ban Klang Village, Northern Thailand," *World Development Perspectives* 40 (December 2025): 100733, https://doi.org/10.1016/j.wdp.2025.100733.

[16] Yulianti Yulianti, "Analysis of Environmental Social Governance (ESG) Impact Study on Local Cultural Wisdom: A Case Study at PT Bukit Asam Tanjungenim, South Sumatera, Indonesia," *Arkus* 10, no. 2 (March 14, 2024): 554–60, https://doi.org/10.37275/arkus.v10i2.543.

[17] Nattavud Pimpa, "Environmental, Social, and Governance Communication and Actions in Thailand: Opportunities and Challenges," *Frontiers in Communication* 10 (February 28, 2025): 1–16, https://doi.org/10.3389/fcomm.2025.1543893.

[18] Shin Imai, "Social Conflict and Indigenous Consent in Mining: A Primer on CSR, ESG and Social Disclosures to Investors," *SSRN Electronic Journal*, December 15, 2024, 1–55, https://doi.org/10.2139/SSRN.5057458.

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ESG and community rights policies. Secondary materials consist of academic literature, peer-reviewed journals, international reports including UNDRIP, and prior studies on ESG and customary land rights. Tertiary materials include legal dictionaries, encyclopedias, and official online sources. Legal materials are analyzed through systematic classification and qualitative descriptive comparison to assess similarities, differences, and implications for the effectiveness of ESG in protecting indigenous peoples' rights.

B. Discussion

1. Recognition and Protection of Indigenous Peoples' Rights to Land and Natural Resources in Indonesia and Thailand Within the ESG Framework

Environmental, Social, and Governance (ESG) principles form a global framework for assessing the social responsibility and sustainability of business and government actors. ESG emphasizes not only environmental performance and transparent governance but also the social dimension, which includes human rights, equality, and community participation.[19] Within this context, the recognition of indigenous peoples' rights is central, as it concerns identity, livelihoods, and social justice.[20] Such recognition is therefore a key indicator of effective implementation of the social pillar of ESG.

Indigenous peoples' rights are internationally recognized through the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007 and ILO Convention No. 169, which affirm rights to land, territories, and natural resources traditionally owned and managed by indigenous communities.[21] In the ESG context, respect for these rights is reflected in social indicators that measure corporate and state compliance. The principle of Free, Prior, and Informed Consent (FPIC) is particularly significant, as it evaluates the extent of indigenous participation in decision-making. ESG thus functions as an analytical tool to assess how states and corporations uphold social justice for indigenous peoples.

FPIC is a human rights principle that grants indigenous peoples the right to approve or reject projects affecting their lands, territories, and resources. It requires consent that is freely given, obtained prior to project implementation, and based on complete and accessible information.[22] Within the ESG framework, FPIC operates as a core social performance indicator, ensuring that investment activities respect collective indigenous rights. Failure to apply FPIC can expose corporations to increased legal, financial, and reputational risks.

The constitutional basis for recognizing indigenous peoples in Indonesia is set out in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution. These provisions affirm that the state recognizes and respects customary law communities and their traditional rights, provided they remain viable and consistent with societal development and the principles of the Unitary State of the Republic of Indonesia. This recognition was strengthened by Constitutional Court Decision No. 35/PUU-X/2012, which removed customary forests from the category of state forests and affirmed indigenous peoples' rights to manage their natural

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[19] Mariusz Karwowski and Monika Raulinajtys-Grzybek, "The Application of Corporate Social Responsibility (<scp>CSR</Scp>) Actions for Mitigation of Environmental, Social, Corporate Governance (<scp>ESG</Scp>) and Reputational Risk in Integrated Reports," *Corporate Social Responsibility and Environmental Management* 28, no. 4 (July 19, 2021): 1270–84, https://doi.org/10.1002/csr.2137.

[20] Oren Mooneeapen, Subhash Abhayawansa, and Naushad Mamode Khan, "The Influence of the Country Governance Environment on Corporate Environmental, Social and Governance (ESG) Performance," *Sustainability Accounting, Management and Policy Journal* 13, no. 4 (May 25, 2022): 953–85, https://doi.org/10.1108/SAMPJ-07-2021-0298.

[21] Yahya Ahmad Zein et al., "Indigenous, Diversity, and the Future of Human Rights in Regional Legal Systems," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (August 28, 2025): 581–607, https://doi.org/10.53955/jhcls.v5i2.573.

[22] Abhishek Trivedi, "Implementing REDD+ Safeguards and Protecting the Rights of Tribal and Forest Communities in India: With Special Emphasis on the Principle of Free, Prior, and Informed Consent," *Jindal Global Law Review* 16, no. 1 (June 17, 2025): 179–216, https://doi.org/10.1007/s41020-025-00264-4.

resources.[23] Collectively, these provisions establish a strong normative framework for indigenous rights protection.

Beyond the constitutional level, several sectoral regulations further support indigenous peoples' rights. Law No. 32 of 2009 on Environmental Protection and Management recognizes the right of all persons, including indigenous communities, to a healthy environment and to participate actively in environmental governance. The law emphasizes public participation in the Environmental Impact Assessment (AMDAL) process and provides a legal basis for the involvement of indigenous peoples when projects affect their territories. This framework supports the application of the FPIC principle, although FPIC is not explicitly regulated in the statute.

Additional regulatory support is provided by the Ministry of Environment and Forestry through Regulation No. P.17/MENLHK-II/2015, which sets guidelines for the recognition of customary forests as protection of customary territories. In parallel, the Financial Services Authority, through Regulation No. 51/POJK.03/2017 on sustainable finance, promotes the integration of ESG principles in corporate reporting.[24] These measures reflect an effort to align economic and financial governance with social responsibility toward indigenous peoples.

Despite progress at the policy level, ESG implementation in Indonesia remains uneven in practice. The government has encouraged sectors such as mining and forestry to apply FPIC as part of corporate social responsibility,[25] yet community participation is often formalistic and limited to administrative consultation, as illustrated by the Kinipan Indigenous Community case.[26] Corporate sustainability reports tend to emphasize philanthropy rather than substantive impacts on indigenous land rights.[27] This gap indicates that effective integration of the social pillar of ESG in Indonesia still requires stronger institutions, better inter-agency coordination, and robust community-based oversight.

Thailand applies a more centralized legal framework to the regulation of indigenous peoples and local communities.[28] Article 43 of the 2017 Constitution recognizes the right of local communities to participate in sustainable natural resource management but does not explicitly guarantee land tenure or indigenous land rights. Legislation such as the National Parks Act B.E. 2562 (2019) further reinforces state control over protected areas and prioritizes conservation without acknowledging the historical presence of indigenous peoples.[29] Sections 64 and 65 prohibit settlement, residence, and traditional land use within national parks without official

[23] Bagio Kadaryanto, Ardian Kurniawan, and Burhanuddin Burhanuddin, "Reconstruction of Indigenous Community Inclusion in Village Autonomy Policy: Towards a Substantive Autonomy Model in Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 1 (June 19, 2025): 1–19, https://doi.org/10.30631/alrisalah.v25i1.1845.

[24] Meifaza Ainur Rosyidah and Sri Ningsih, "Strengthening Governance for Sustainability : The Role of ESG Committees in Enhancing Corporate Sustainability Performance in Indonesia," *Owner* 9, no. 2 (April 4, 2025): 977–93, https://doi.org/10.33395/owner.v9i2.2644.

[25] Teguh Soedarto and Sahbuddin, "Quantifying Sustainability Trade-Offs in Forest Licensing (IPPKH): A Multi-Criteria Analysis of Ecological, Social, and Economic Outcomes," *Tarjih : Agribusiness Development Journal* 5, no. 01 (June 30, 2025): 218–27, https://doi.org/10.47030/tadj.v5i01.982.

[26] Ahmad Dhiaulhaq et al., "Joined-up Governance and Sustainable Finance for Inclusive Ridge-to-Reef Conservation in Southwest Papua, Indonesia," *Environmental Development* 57 (January 2026), https://doi.org/10.1016/j.envdev.2025.101360.

[27] Kadaryanto, Kurniawan, and Burhanuddin, "Reconstruction of Indigenous Community Inclusion in Village Autonomy Policy: Towards a Substantive Autonomy Model in Indonesia."

[28] Keebet von Benda-Beckmann, "Trajectories of Legal Entanglement Examples from Indonesia, Nepal, and Thailand," *Legal Pluralism and Critical Social Analysis* 54, no. 1 (January 2, 2022): 13–30, https://doi.org/10.1080/27706869.2022.2056372.

[29] Panornuang Sudasna and Na Ayudhya, "Influence of Cultural and Linguistic Distance on Specific Terminology Equivalent Translation," *BRU ELT JOURNAL* 1, no. 3 (December 27, 2023): 1–17, https://doi.org/10.14456/BEJ.2023.15.

permission and impose criminal sanctions for violations.[30] These provisions overlook the ancestral land use of the Karen Indigenous People, whose customary practices long predate the establishment of national parks. As a result, indigenous communities are frequently labeled as encroachers or environmental threats,[31] and their traditional livelihoods are criminalized within newly designated protected areas.[32] This reflects a persistent gap between environmental governance and the recognition of indigenous rights in Thailand.

The Community Forest Act B.E. 2562 (2019) introduces participatory elements in forest management but simultaneously restricts indigenous access to customary territories. Although the Act allows local communities to establish and manage community forests, Section 25 prohibits such forests within national parks, wildlife sanctuaries, and other strictly protected areas that often overlap with indigenous ancestral lands. Section 34 further empowers the Minister to revoke community forest status if practices are deemed inconsistent with conservation objectives.[33] Consequently, indigenous groups living within or near protected areas remain excluded from registration and management rights under the Act.[34] This demonstrates that participatory mechanisms do not extend to the territories of the most vulnerable indigenous communities, reinforcing their marginalization despite formal commitments to community-based forest governance.

ESG implementation in Thailand is advancing primarily through initiatives by the business sector and financial institutions. The Stock Exchange of Thailand (SET) has issued ESG reporting guidelines requiring listed companies to disclose social and environmental performance,[35] and the government has adopted the National Action Plan on Business and Human Rights to promote human rights protection in business activities. These measures represent progress in corporate governance and transparency.[36] However, the social pillar of ESG remains largely confined to large corporations and has limited impact on indigenous communities due to weak implementing regulations and insufficient local-level enforcement mechanisms.[37]

The comparison between Indonesia and Thailand reveals contrasting approaches to integrating indigenous rights within the ESG framework. Indonesia relies on a constitutional and decentralized legal approach, while Thailand adopts a more conservative and centralized administrative model. Indonesia holds a normative advantage in the legal recognition of

[30] Sakapaji et al., "Navigating Legal and Regulatory Frameworks to Achieve the Resilience and Sustainability of Indigenous Socioecological Systems."

[31] Eli Elinoff and Vanessa Lamb, "Environmentalisms in Twenty-First Century Thailand: Continuities, Discontinuities, and Emerging Trajectories," *Journal of Contemporary Asia* 53, no. 3 (May 27, 2023): 375–97, https://doi.org/10.1080/00472336.2022.2051062.

[32] Mark R. Herse et al., "Expanding Protected Areas Globally Post-2020: A Critical Perspective from Thailand, with Implications for Community Forestry," *Critical Asian Studies* 56, no. 3 (July 2, 2024): 371–402, https://doi.org/10.1080/14672715.2024.2368161.

[33] Jarunee Khongswasdi, "Community Forests as Intangible Cultural Heritage and the Community Forest Act of 2019," *The Journal of the Siam Society* 110, no. 1 (May 6, 2022): 69–86, https://so06.tci-thaijo.org/index.php/pub_jss/article/view/256323.

[34] Patrawan Rattanakaset, "Legal Measures for Forest Conservation in Transboundary Protected Areas in the ASEAN Community," *Journal of East Asia and International Law* 16, no. 1 (May 1, 2023): 71–86, https://doi.org/10.14330/jeail.2023.16.1.04.

[35] Muttanachai Suttipun and Thanyaorn Yordudom, "Impact of Environmental, Social and Governance Disclosures on Market Reaction: An Evidence of Top50 Companies Listed from Thailand," *Journal of Financial Reporting and Accounting* 20, no. 3/4 (July 12, 2022): 753–67, https://doi.org/10.1108/JFRA-12-2020-0377.

[36] Danielle Anne Pamplona, Carolina Olarte-Bácares, and Olena Uvarova, eds., *Business and Human Rights from the Lens of Women*, vol. 13, Interdisciplinary Studies in Human Rights (Cham: Springer Nature Switzerland, 2025), https://doi.org/10.1007/978-3-032-04036-7.

[37] Nathathai Rattanasuksri, Rattaphong Sonsuphap, and Thunwa Chatikavanij, "Socio-Economic Sustainability Strategy from the Perspective of the Agricultural Business in Developing Countries," *Corporate Governance and Sustainability Review* 9, no. 1 (February 5, 2025): 8–17, https://doi.org/10.22495/cgsrv9i1p1.

customary rights, whereas Thailand demonstrates stronger institutional coordination in ESG governance and reporting. The Securities and Exchange Commission of Thailand and the Stock Exchange of Thailand have introduced mandatory sustainability disclosure requirements aligned with the Thailand Sustainability Investment criteria and the National ESG Framework (2021). This top-down regulatory model promotes consistency and comparability in ESG reporting but tends to emphasize corporate compliance over community participation. As a result, Thailand’s ESG system achieves institutional efficiency yet offers limited opportunities for indigenous involvement in decision-making. In both countries, weak implementation of FPIC and limited community participation remain key challenges, highlighting that effective ESG integration requires alignment among legal frameworks, social policies, and institutional capacity.

Table 1. Comparison of Recognition of Indigenous Peoples' Rights in the ESG Framework Between Indonesia and Thailand

Comparative Aspect (Tertium Comparationis)	**Indonesia**	**Thailand**
Legal Basis for Recognition	*Article 18B(2) of the 1945 Constitution* – explicit recognition of indigenous communities; *Constitutional Court Decision No. 35/PUU-X/2012* separates customary forests from state forests.	*Constitution of Thailand (2017), Section 43* – recognition of community participation in resource management but no specific clause for indigenous rights.
Sectoral Regulations	*Law No. 32/2009 on Environmental Protection, Law No. 41/1999 on Forestry, Ministerial Regulation P.17/2015* – provide operational basis for social forestry and indigenous forest governance.	*National Parks Act (2019)* – Sections 64–65 criminalize traditional occupation in protected areas; *Community Forest Act (2019)* – Section 25 excludes community forests within national parks.
ESG Policy Framework	*POJK No.51/POJK.03/2017* and *Sustainable Finance Roadmap (2015–2024)* mandate ESG integration in financial and corporate sectors.	*ESG Reporting Guidelines (SET)* and *National Action Plan on Business and Human Rights (2019–2022)* enforce mandatory ESG disclosure for listed companies.
Governmental Approach	Decentralized, customary law-based system – governance shared between state and adat institutions; recognition depends on local verification.	Centralized, conservation-based system – resource management under state control; local participation is permitted but tightly regulated.

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Comparative Aspect (Tertium Comparationis)	Indonesia	Thailand
Indigenous Community Involvement	Constitutionally recognized and supported by legal pluralism; practical implementation limited by bureaucratic verification of *Masyarakat Hukum Adat* status.	Administratively involved through community forest programs but excluded from protected areas; indigenous participation is consultative rather than rights-based.

Source: Author

In both countries, including the forestry sector, FPIC principles have begun to be adopted, but often without a sustained commitment to community empowerment.[38] In Thailand, corporate ESG reporting largely prioritizes compliance with capital market requirements rather than substantive social impacts on local communities.[39] This indicates that ESG remains positioned more as a compliance tool than as an instrument of social transformation.

The effectiveness of ESG implementation is strongly shaped by national legal and institutional contexts. Indonesia integrates customary law into its national legal system, while Thailand treats it as a social entity regulated by the state. These differences lead to distinct outcomes for indigenous peoples. ESG can function as a harmonizing mechanism only if it is consistently embedded in socially just public policies and corporate strategies.

Both countries face similar challenges in implementing the social dimension of ESG, including weak inter-agency coordination, overlapping permits, and economic pressure on natural resources. In Indonesia, poor coordination among the Ministry of Environment and Forestry, the Ministry of Agrarian Affairs and Spatial Planning, and local governments has resulted in overlapping forestry, mining, and plantation concessions, particularly in Kalimantan and Sumatra, triggering agrarian conflicts with indigenous communities. In Thailand, comparable tensions arise from conservation-oriented policies that restrict or relocate Karen and other hill tribes from protected areas, often without adequate consultation or compensation. In both contexts, policy priorities tend to favor extractive and conservation interests over indigenous tenure security. Although dialogue and social justice are central to ESG, they remain weakly institutionalized, limiting its capacity to address structural inequalities.

Protecting indigenous peoples' rights is therefore central to the effectiveness of the social pillar of ESG. Both countries must strengthen alignment between national legal frameworks and international standards to make ESG implementation more inclusive. Governments and corporations should also develop community-based monitoring mechanisms to ensure meaningful indigenous participation, thereby enhancing social justice and reinforcing the legitimacy of ESG as a sustainable governance framework.

2. ESG as a Risk Mitigation Mechanism in Addressing Agrarian Conflicts and Customary Land Rights in Indonesia and Thailand

Agrarian conflicts and violations of customary land rights constitute social risks (S-Risks) that companies are required to mitigate under the Environmental, Social, and Governance

[38] Colin Filer, Sango Mahanty, and Lesley Potter, "The FPIC Principle Meets Land Struggles in Cambodia, Indonesia and Papua New Guinea," *Land* 9, no. 3 (February 27, 2020): 67, https://doi.org/10.3390/land9030067.
[39] Muttanachai Suttipun et al., "Environmental, Social, and Governance Disclosures and Market Reaction of Thai-Listed Companies in the Alternative Capital Market," *Journal of Risk and Financial Management* 18, no. 3 (February 21, 2025): 113, https://doi.org/10.3390/jrfm18030113.

(ESG) framework. Failure to address these issues in an ethical and lawful manner can result in the loss of a company's social license to operate, directly undermining project sustainability.[40] Disregard for customary land rights signals a weakness in the social pillar of ESG and negatively affects corporate sustainability and investment ratings.[41] Accordingly, the recognition and protection of indigenous peoples' rights are integral to social and environmental risk mitigation.

Land conflicts have a direct bearing on ESG performance, particularly in social and governance assessments. Such conflicts expose companies to legal sanctions, fines, operational delays, increased production costs, reputational harm, and potential loss of social legitimacy.[42] These risks disrupt business continuity, erode public trust, and reduce sustainable investment scores. Investors generally avoid companies with a record of agrarian conflict due to their heightened long-term risk profile.[43] ESG therefore functions not only as an ethical benchmark but also as a strategic tool for corporate risk management.

As a risk governance framework, ESG assists companies and governments in identifying, assessing, and managing social and environmental risks.[44] The social pillar requires respect for human rights, including indigenous land and resource rights, and promotes transparency, participation, and accountability in development processes.[45] This approach positions indigenous peoples as key stakeholders rather than passive beneficiaries, enabling ESG to operate both as a conflict prevention mechanism and a framework for fair conflict resolution.

The principle of Free, Prior, and Informed Consent (FPIC) is a core element of the social pillar of ESG and is central to mitigating agrarian conflict. FPIC guarantees indigenous peoples the right to consent to or reject activities affecting their territories[46] for transparent communication and preventing disputes arising from exclusion.[47] Within ESG assessments, FPIC serves as a key indicator of social compliance and helps reduce legal and reputational risks, while enhancing project legitimacy and investor confidence.

In Indonesia, the recognition of indigenous peoples is supported by a relatively strong legal foundation. Article 18B paragraph (2) of the 1945 Constitution affirms state recognition and respect for customary law communities and their traditional rights. This provision provides a constitutional basis for companies to mitigate social risks under ESG. Compliance therefore requires not only conflict avoidance but also proactive respect for indigenous existence and rights within operational areas. Companies claiming ESG compliance must demonstrate that their activities do not violate constitutionally protected indigenous rights.

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[40] Alero Akporiaye and D G Webster, "Social License and CSR in Extractive Industries: A Failed Approach to Governance," *Global Studies Quarterly* 2, no. 3 (September 19, 2022): 1–14, https://doi.org/10.1093/isagsq/ksac041.

[41] Manpreet Kaur Makkar et al., "The ESG Paradox: Risk, Sustainability, and the Smokescreen Effect," *Sustainability* 17, no. 16 (August 21, 2025): 1–17, https://doi.org/10.3390/su17167539.

[42] Saenz Cesar and Ostos Jhony, "Making or Breaking Social License to Operate in the Mining Industry: Factors of the Main Drivers of Social Conflict," *Journal of Cleaner Production* 278 (January 2021), https://doi.org/10.1016/j.jclepro.2020.123640.

[43] Priti Khatri et al., "Understanding the Intertwined Nature of Rising Multiple Risks in Modern Agriculture and Food System," *Environment, Development and Sustainability* 26, no. 9 (August 6, 2023): 24107–50, https://doi.org/10.1007/s10668-023-03638-7.

[44] Magdalena Zioło et al., "Environmental, Social, Governance Risk versus Cooperation Models between Financial Institutions and Businesses. Sectoral Approach and ESG Risk Analysis," *Frontiers in Environmental Science* 10 (January 4, 2023): 1–23, https://doi.org/10.3389/fenvs.2022.1077947.

[45] María Isabel Sánchez-Hernández, "Strengthening Resilience: Social Responsibility and Citizen Participation in Local Governance," *Administrative Sciences* 14, no. 10 (October 15, 2024): 260, https://doi.org/10.3390/admsci14100260.

[46] Sujith Xavier et al., eds., *Decolonizing Law* (Milton Park, Abingdon, Oxon ; New York, NY : Routledge, 2021. | Series: Indigenous peoples and the law: Routledge, 2021), https://doi.org/10.4324/9781003161387.

[47] Winsherly Tan et al., "Human Rights Protection in Business Practices: Between Social Responsibility and Legal Compliance," *Lex Publica* 12, no. 1 (October 26, 2025): 147–72, https://doi.org/10.58829/lp.12.1.2025.293.

Constitutional Court Decision No. 35/PUU-X/2012, which reclassified Customary Forests from state forests to forests within the territories of customary law communities, has become a key instrument for mitigating legal and operational risks. Prior to this ruling, extractive companies frequently obtained state-issued concessions over areas claimed as customary land, triggering agrarian conflicts.[48] Following the decision, ESG-compliant companies are required to ensure that their concession areas do not overlap with territories that may be designated as Customary Forests. Accordingly, the recognition and mapping of customary territories by the Ministry of Environment and Forestry are not merely administrative acts but form part of corporate due diligence to ensure legal certainty and operational sustainability.

Law No. 32 of 2009 on Environmental Protection and Management provides an additional foundation for mitigating social and environmental risks by emphasizing community participation in resource management. Provisions on Environmental Impact Assessment (AMDAL) require the involvement of directly affected communities, including indigenous peoples. Failure to ensure meaningful participation increases legal risks due to non-compliance with the law.[49] ESG compliance under this framework must therefore extend beyond procedural permitting to include early and substantive engagement with indigenous communities. Integrating indigenous knowledge into environmental management plans serves not only as legal risk mitigation but also enhances project sustainability.

Beyond environmental regulation, Financial Services Authority Regulation No. 51/2017 on Sustainable Finance functions as an important risk mitigation mechanism. This regulation requires financial institutions and public companies to incorporate social and environmental risks into financing and investment decisions,[50] effectively making customary land rights a due diligence concern.[51] Where land disputes or rights violations are identified, financiers must suspend funding or require corrective measures. POJK No. 51/2017 thus strengthens the governance pillar of ESG by linking access to capital with transparent social risk management and compliance with indigenous rights standards.

The interaction of these regulations creates a comprehensive risk mitigation framework that addresses social and legal risks arising from violations of customary land rights from project planning through financing. In this sense, ESG in Indonesia functions not only as a reporting mechanism but also as a practical guide for preventing social and environmental conflict.

Indonesia's social context is marked by a plurality of indigenous communities with strong historical and spiritual ties to ancestral lands, alongside complex and overlapping natural resource governance structures.[52] The Ministry of Environment and Forestry (*KLHK*) has the authority to designate Customary Forests (*Hutan Adat*), which often overlap with Industrial Plantation Forest (*HTI*) permits previously issued under its jurisdiction. At the same time, the Ministry of Agrarian Affairs and Spatial Planning and the National Land Agency (*ATR/BPN*)

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[48] Daniel Peterson, Adriaan Bedner, and Ward Berenschot, "The Perils of Legal Formalism: Litigating Land Conflicts in Indonesia," *Journal of Contemporary Asia*, January 21, 2025, 1–22, https://doi.org/10.1080/00472336.2024.2440855.

[49] Herlina Lusmeida and Magda Siahaan, "Combined Effect of Company Risk Management, Intellectual Capital and Shareholder Rights on Sustainable Finance in Indonesian Financial Service Sector," *International Journal of Sustainable Development and Planning* 20, no. 8 (August 31, 2025): 3453–67, https://doi.org/10.18280/ijsdp.200826.

[50] Daniel Peterson, Adriaan Bedner, and Ward Berenschot, "The Perils of Legal Formalism: Litigating Land Conflicts in Indonesia," *Journal of Contemporary Asia*, January 21, 2025, 1–22, https://doi.org/10.1080/00472336.2024.2440855.

[51] Carolin Dieterle, "When 'Best Practice' Means Formalising: Foreign Large-Scale Land Investments on Customary Tenure in Uganda and Sierra Leone," *Review of International Political Economy* 32, no. 3 (May 4, 2025): 847–70, https://doi.org/10.1080/09692290.2025.2451149.

[52] Ilim Abdul Halim et al., "Wisdom toward Nature: A Perennial Approach to the Cultural Perspective of Indigenous People in Indonesia," *Religió Jurnal Studi Agama-Agama* 15, no. 1 (March 5, 2025): 64–83, https://doi.org/10.15642/religio.v15i1.3107.

issue Cultivation Rights (*Hak Guna Usaha* or *HGU*) for plantations, many of which overlap with customary territories located within or adjacent to forest areas managed by *KLHK*. These institutional overlaps weaken the function of ESG as a social risk mitigation tool. Institutional strengthening, clearer allocation of authority, and consistent law enforcement are therefore necessary to ensure ESG operates as an effective and equitable risk management system.

Although Indonesia's legal framework formally supports the principle of Free, Prior, and Informed Consent (FPIC), its implementation remains uneven. Many companies conduct consultations as procedural formalities without securing genuine consent from indigenous communities. The Indigenous Peoples Alliance of the Archipelago (*AMAN*) documented 110 unresolved land conflicts in early 2025,[53] largely linked to plantation activities, where indigenous groups reported exclusion from meaningful consultation processes. Legal uncertainty regarding which institution has the authority to validate FPIC, whether *KLHK* or local governments, further weakens accountability.[54] Inconsistent enforcement at the regional level also enables companies to exploit administrative gaps to accelerate licensing. These conditions demonstrate that, despite a robust legal framework, the effectiveness of ESG and FPIC implementation depends heavily on institutional coordination, transparency, and genuine participatory commitment.

In Thailand, weak explicit recognition of indigenous land rights presents a fundamental barrier to using ESG as a risk mitigation mechanism. Companies often rely on conservation laws to justify restrictions on indigenous access to ancestral territories. While instruments such as the National Action Plan on Business and Human Rights (NAP-BHR)[55]and the Public Company Act promote responsible business conduct, they lack sufficient legal force to protect collective indigenous rights. Initiatives led by the Stock Exchange of Thailand have improved ESG reporting and transparency, but progress remains concentrated in the governance dimension, with limited impact on the social pillar.

The National Action Plan on Business and Human Rights (NAP-BHR) contributes to Thailand's risk mitigation framework by promoting corporate awareness of human rights standards.[56] However, its effectiveness is constrained by weak local implementation and limited monitoring mechanisms. Empirical evidence shows that land and tenure conflicts persist despite formal compliance with ESG disclosure and reporting requirements.[57] Data from the National Human Rights Commission of Thailand indicate that more than 100 land-related complaints were filed between 2019 and 2021, mainly involving Karen and Hmong indigenous communities in areas designated as national parks and forest reserves.[58] This pattern suggests that while ESG reporting is formally adopted, substantive protection for indigenous and local

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[53] Sultan Abdurrahman, "AMAN Reports 110 Indigenous Land Conflicts in Early 2025, Largely Linked to Plantation - Environment En.Tempo.Co," March 18, 2025, https://en.tempo.co/read/1987800/aman-reports-110-indigenous-land-conflicts-in-early-2025-largely-linked-to-plantation.

[54] Mohamad Nasir, Laurens Bakker, and Toon van Meijl, "Challenges to Implementing Oil Palm Plantation Legislation in Indonesia," *The Theory and Practice of Legislation* 13, no. 1 (January 2, 2025): 86–107, https://doi.org/10.1080/20508840.2024.2435776.

[55] Sununta Nophet and Titaporn Sincharoonsak, "ESG Integration and Sustainable Value Creation: A Qualitative Study on Corporate Performance, Financial Resilience, and Investor Confidence in Thailand's Capital Market," *Journal of Cultural Analysis and Social Change*, November 25, 2025, 1–9, https://doi.org/10.64753/jcasc.v10i3.2372.

[56] Stanislav Gubenko, "Chinese-Led Energy Projects in the Western Balkans: Where Do CSR and Human Rights Fit In?," *Journal of East-West Business*, October 9, 2025, 1–34, https://doi.org/10.1080/10669868.2025.2569830.

[57] Clive L. Spash, "Conservation in Conflict: Corporations, Capitalism and Sustainable Development," *Biological Conservation* 269 (May 2022): 1–9, https://doi.org/10.1016/j.biocon.2022.109528.

[58] Daniel Hayward, Philip Hirsch, and Natalia Scurrah, *Key Themes in Land Governance: Synopses of Research, Policy and Action in the Mekong Region* (Thailand: The Regional Center for Social Science and Sustainable Development (RCSD), 2021).

communities remains limited, particularly in regions affected by conservation and land-use policies. As a result, ESG in Thailand tends to function more as a declarative framework than as a transformative tool for preventing rights-based conflicts.

In Thailand, indigenous peoples are commonly classified as hill tribes or ethnic minorities, a categorization that weakens their legal standing.[59] This framing positions them as peripheral to the state and undermines their claims to ancestral lands, making such claims easier to dismiss in disputes with the government or corporations. The resulting legal ambiguity constitutes a structural barrier to the recognition of indigenous land rights. Conservation policies in protected forest areas therefore remain a major source of conflict between the state and indigenous communities.

The Thai government has designated extensive protected areas, including national parks and wildlife sanctuaries, often without acknowledging long-standing indigenous occupation and land management. The National Park Act B.E. 2562 (2019), particularly Sections 64 to 67, authorizes park officials to remove or prosecute individuals residing or carrying out activities within national park boundaries without official permission. These provisions have been used to justify forced evictions and criminal charges against indigenous peoples, notably Karen communities in Kaeng Krachan National Park, whose presence predates the park's establishment. This legal framework reflects a fortress conservation approach that prioritizes strict preservation and state control over participatory and rights-based management. Consequently, indigenous peoples are frequently labeled as forest encroachers or environmental offenders, a characterization that conflicts with the principles of social justice and human rights recognized in Section 43 of the 2017 Thai Constitution. This situation highlights an enduring tension between conservation enforcement and the customary land rights of indigenous communities.

Institutions such as the National Human Rights Commission of Thailand (NHRCT) seek to promote human rights based ESG through advocacy of due diligence and the UN Guiding Principles on Business and Human Rights.[60] However, the NHRCT's role in resolving indigenous land conflicts remains limited due to weak enforcement authority and the dominance of state conservation policies. When disputes arise between unrecognized indigenous communities and state backed conservation laws, the NHRCT's interventions are largely persuasive and rarely able to reverse adverse administrative decisions.[61] This imbalance between conservation priorities and social justice constrains ESG from functioning effectively as a conflict mitigation mechanism.

ESG implementation in Thailand follows a top-down model driven by corporate initiatives and international market pressure. Companies are encouraged to disclose ESG and human rights performance, but compliance is motivated mainly by access to capital rather than binding legal obligations to respect indigenous land rights. In the absence of a strong and enforceable legal framework for indigenous tenure recognition, ESG practice in Thailand emphasizes reporting and transparency under the Governance pillar rather than substantive social risk mitigation at the community level.

ESG nevertheless holds significant potential as a tool for mitigating social and environmental risks related to land rights, provided it is supported by an appropriate legal and

[59] Siwarak Kitchanapaibul et al., "Status of the Stateless Population in Thailand: How Does Stigma Matter in Their Life?," ed. Ghaffar Ali, *PLOS ONE* 17, no. 3 (March 14, 2022): 1–14, https://doi.org/10.1371/journal.pone.0264959.

[60] Pimpilai Rumthum, "Human Rights Due Diligence: Roles and Contributions of Sustainability Professional in Thailand," *Universitas Chulalongkorn 20Tesis Dan Disertasi (Chula ETD)* (Chulalongkorn University, 2022), https://doi.org/10.58837/CHULA.IS.2022.39.

[61] Puspa Pokharel, "Interface between the Judiciary and National Human Rights Institutions: A Means to Ensure Effective Remedies for Business-Related Human Rights Abuses?," in *Business and Human Rights* (Leiden: Brill | Nijhoff, 2025), 387–406, https://doi.org/10.1163/9789004715158_016.

institutional framework. Indonesia benefits from a stronger legal foundation but continues to face challenges in enforcing FPIC, while Thailand lags in formal recognition of indigenous communities. In both countries, ESG frameworks require stronger binding force to protect indigenous rights. FPIC should be established as a mandatory legal requirement prior to project approval, and indigenous institutions and civil society organizations should be actively involved in shaping ESG policies. The development of multi stakeholder grievance mechanisms for land disputes would further enhance transparency and fairness. Through these measures, ESG can better function as a bridge between economic development, environmental sustainability, and indigenous rights in Southeast Asia.

C. Conclusion

The integration of Environmental, Social, and Governance (ESG) principles in recognizing and protecting indigenous peoples' rights is not merely a matter of corporate governance but a strategic mechanism for social justice and risk mitigation. The effectiveness of ESG in reducing agrarian conflict depends largely on the capacity of national legal and institutional systems to ensure substantive application of social principles, particularly through Free, Prior, and Informed Consent (FPIC). ESG should therefore operate not only as a compliance or reporting tool, but as an ethical framework that facilitates dialogue among economic interests, environmental protection, and indigenous rights.

The scientific contribution of this research lies in affirming ESG as a system of risk governance in which respect for customary rights is integral to investment stability and social sustainability. The environmental pillar further strengthens sustainable governance by encouraging ecosystem-based management, climate-resilient resource use, and community-driven conservation. When these environmental objectives are integrated with participatory governance, they generate reinforcing feedback loops that enhance accountability, resilience, and intergenerational equity. An ESG framework grounded in environmental ethics and indigenous stewardship thus supports a more adaptive, inclusive, and sustainable model of governance in Southeast Asia.

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