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Revitalization of Customary Law as a Source of Law in Environmental Protection in Indonesia

Yohanes Kamakaula[1], Meky Sagrim[2]
[1] Universitas Papua, Indonesia
[2] Prodi Agribisnis, Faperta Unipa, Indonesia

Email: y.kamakaula@unipa.ac.id *

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ABSTRACT

This study aims to examine the position and role of customary law as a legal source in environmental protection efforts in Indonesia. Employing a normative juridical approach, the research analyzes statutory regulations, court decisions, and relevant legal documents to assess the extent to which customary law is recognized and implemented within the national environmental legal framework. The findings indicate that, constitutionally, customary law is acknowledged through Article 18B paragraph (2) of the 1945 Constitution. However, this recognition has not been fully followed by integration into sectoral laws such as the Environmental Protection Act, the Forestry Act, and the Mining Law. In fact, customary law holds significant potential in realizing ecological justice, as it embodies long-standing values of conservation, sustainability, and collective responsibility toward nature. Therefore, the revitalization of customary law is crucial through regulatory strengthening, the establishment of regional regulations recognizing Indigenous communities, and the harmonization of state and customary law. These efforts are expected to enhance environmental protection based on local wisdom.
Keywords: *Customary law, environmental protection, normative juridical, ecological justice, Indigenous communities*

INTRODUCTION

Environmental degradation in Indonesia has reached an alarming level. Every year, thousands of hectares of tropical rainforests often referred to as the lungs of the world are lost due to land clearing for industrial, mining, and large-scale plantation purposes.[1] Water pollution from industrial waste, soil degradation from excessive chemical use in agriculture, and air quality decline in urban areas all indicate that Indonesia is facing a serious threat to environmental sustainability.[2] Although the government has responded by enacting various legal instruments, such as Law No. 32 of 2009 on Environmental Protection and Management, their implementation is often ineffective. Weak law enforcement, low public participation, and the lack of integration of local wisdom into top-down legal policies continue to hinder effective environmental protection.[3]

On the other hand, Indigenous communities across Indonesia have long maintained a harmonious relationship with nature through customary legal norms and practices that

[1] Ilham, M. I. (2021). Economic development and environmental degradation in Indonesia: Panel data analysis. *Jurnal Ekonomi & Studi Pembangunan*, *22*(2), 185-200.
[2] Ditia, S. (2024). The effect of industrial waste on air pollution and water pollution causes climate change. *Journal of Waste and Sustainable Consumption*, *1*(1), 18-26.
[3] Rusprayunita, et.al (2025). Water Pollution Reduction for Sustainable Urban Development. In *Sustainable Urban Environment and Waste Management: Theory and Practice* (pp. 1-21). Singapore: Springer Nature Singapore.

have been passed down through generations.[4] These customary legal systems reflect ecological wisdom shaped by generations of coexistence with the environment and inherently contain principles of sustainability. For example, customary prohibitions against cutting down trees in sacred areas, rotational farming systems, and ritual ceremonies that honor nature show that customary law is not merely a cultural relic but also a regulatory system that actively protects ecosystems. Unfortunately, the existence of customary law is often overlooked or undermined by a state legal system that favors formal legality over substantive values and ecological justice.[5]

Constitutionally, the existence of Indigenous peoples is guaranteed by Article 18B paragraph (2) of the 1945 Constitution of Indonesia, which affirms that "The state recognizes and respects customary law communities along with their traditional rights insofar as they still exist and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia." This recognition should serve as a strong legal basis for legitimizing the implementation of customary law, especially in the context of natural resource governance. Additionally, several Constitutional Court rulings such as Decision No. 35/PUU-X/2012 affirm the status of customary forests as distinct from state forests, strengthening the legal standing of Indigenous communities in managing their ancestral lands. Nevertheless, this formal recognition has yet to be effectively implemented in practice.

In reality, Indigenous communities are still frequently marginalized and even criminalized when defending their ancestral territories against exploitation by outside interests, including both state and corporate actors. Agrarian conflicts involving customary lands, extractive industries, and forest conversion projects often place Indigenous communities in a legally disadvantaged position. The fundamental issue lies in the lack of synchronization between national law and customary law. Many legal authorities and policymakers do not adequately understand or recognize the structure of customary law, and it is often excluded from legal and regulatory decision-making. As a result, customary law continues to be treated as peripheral, rather than as a legitimate and integral part of the national legal system.

In this context, the revitalization of customary law becomes an urgent and strategic endeavor. Revitalization here does not merely refer to cultural preservation, but to the restoration and strengthening of the legal position of customary law within the national legal framework particularly in the domain of environmental protection. This process includes formal legal recognition of customary norms, institutional empowerment of Indigenous communities, and the integration of customary law principles into national and regional environmental legislation and policies. Furthermore, revitalization should promote the development of a legal system that is responsive to legal pluralism, which recognizes the coexistence of multiple legal systems within a society. Therefore, the revitalization of customary law represents a pathway toward a more inclusive, participatory, and ecologically just legal approach.

This study is important as it provides an academic and normative basis for reassessing the position of customary law in Indonesia's legal system. It aims to strengthen the legal arguments for acknowledging customary law as a legitimate source of law in environmental protection efforts. Using a normative juridical approach, this research will explore the legal foundations supporting customary law revitalization, identify regulatory weaknesses, and propose strategic measures for integrating customary legal principles into Indonesia's environmental legal framework.

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[4] Asrawijaya, E. (2024). Traditional Ecological Wisdom for the Resilience of Indigenous Peoples in Indonesia. *Besari: Journal of Social and Cultural Studies*, *1*(2), 59-77.

[5] Chen, K. O. (2022). Democratizing the Enforcement of Environmental Laws in Malaysia: The Rule of Standing (Locus Standi) and Other Common Law Procedural Obstacles to Public Interest Environmental Litigation. Available at SSRN 4228988.

METHODS

This research employs a normative juridical method, which is a legal research approach focused on the study and analysis of legal norms contained in written regulations, court decisions, and legal doctrines. This method is doctrinal and theoretical in nature, as it views law as a structured system of norms that are logically organized. In this context, the normative juridical approach is used to explore and understand how customary law can be revitalized and function as a legitimate source of law within the Indonesian legal system, particularly in the field of environmental protection and management. The selection of this method is based on the nature of the research, which prioritizes legal analysis over empirical observation.

This study investigates how customary legal norms which continue to live and evolve among Indigenous communities can be acknowledged and integrated into formal legal frameworks for environmental governance. The research applies a statute approach, which systematically analyzes legislation relevant to the recognition of Indigenous communities and environmental protection in Indonesia. Key laws examined include the 1945 Constitution of the Republic of Indonesia, particularly Article 18B paragraph (2), which acknowledges the existence of Indigenous communities and their traditional rights; Law No. 32 of 2009 on Environmental Protection and Management; Law No. 41 of 1999 on Forestry; and Law No. 6 of 2014 on Villages.[6] The research also analyzes implementing regulations and relevant regional legislation, as well as judicial decisions, including rulings by the Constitutional Court that have reinforced the legal standing of Indigenous peoples and customary law such as Decision No. 35/PUU-X/2012, which distinguishes customary forests from state forests.

In addition, the research uses a conceptual approach to examine the theoretical and philosophical foundations of several core concepts relevant to this study. These include: *customary law* as a living legal system rooted in Indigenous communities; *legal pluralism* as the coexistence of multiple legal systems within one nation-state; *legal revitalization* as a process of restoring the relevance and authority of marginalized legal norms; and *ecological justice* as a legal paradigm that emphasizes the balance between human rights and environmental sustainability.[7] This approach helps establish a legal framework that supports the integration of customary law into environmental policy and legislation.

To further support the normative and conceptual analysis, the research also applies a historical approach, which traces the development and transformation of customary law throughout Indonesia's legal history. This includes examining how customary law was acknowledged and later subordinated during colonial times, and how its role has shifted in the post-independence era. By understanding the historical marginalization of customary legal systems especially through the imposition of Western legal structures during colonial rule the study builds a strong argument for the urgent need to revitalize and reconstruct the position of customary law in the current legal system.

The legal materials in this research consist of primary, secondary, and tertiary legal sources. Primary legal materials include constitutional provisions, statutory laws, and court decisions. Secondary legal materials comprise legal literature, academic books, peer-reviewed journal articles, expert commentaries, and previous research relevant to customary law, environmental law, and legal pluralism. Tertiary legal materials, such as

[6] Natamiharja, R., & Sabatira, F. (2021). Mapping international laws on human rights in the 1945 constitution of the republic indonesia. *JASSP*, *1*(1), 18-26.

[7] Anggraeni, R. D. (2023). Islamic law and customary law in contemporary legal pluralism in Indonesia: Tension and constraints. *Ahkam: Jurnal Ilmu Syariah*, *23*(1), 25-48.

legal dictionaries, encyclopedias, and legal indexes, are used to clarify terminology and support legal interpretation.

The technique of legal material collection is conducted through library research, involving an extensive and systematic review of legal documents from university libraries, legal databases, official government websites, and online academic repositories. Only valid, credible, and legally relevant sources are included in the analysis to ensure the quality and accuracy of the legal arguments developed.

The analysis of legal materials is carried out using a prescriptive-analytical method. This involves three main stages: first, describing and interpreting existing legal norms relevant to the research problem; second, critically analyzing the compatibility and limitations of those norms, especially in relation to the recognition and integration of customary law within environmental legal frameworks; and third, formulating legal arguments and prescriptive recommendations for legal reform, policy adjustments, or new normative constructions. The ultimate goal is to offer constructive solutions that promote a legal system that is more inclusive, environmentally just, and responsive to Indonesia's pluralistic legal landscape.

Through this method, the research is expected not only to deepen the theoretical understanding of the legal issues at hand but also to provide normative recommendations that contribute to strengthening the legal position of customary law as a legitimate source of law in environmental protection. This study, therefore, aims to support the development of a more ecologically just, participatory, and culturally inclusive national legal system in Indonesia.

RESULTS AND DISCUSSION

To strengthen the normative analysis presented in this study, several tables are provided to illustrate key legal findings and practical insights regarding the role of customary law in environmental protection in Indonesia. These tables summarize relevant legal provisions, judicial decisions, Indigenous environmental practices, and legal inconsistencies between state law and customary norms. The use of tabular presentation aims to clarify complex legal relationships and highlight areas where legal pluralism is either supported or neglected within Indonesia's legal framework.[8] The following tables serve as a complementary reference for understanding the extent of recognition, the implementation challenges, and the normative gaps in integrating Indigenous legal systems into national environmental law.

Table 1. Recognition of Customary Law in Selected Indonesian Legal Instruments

Legal Instrument	Article/Section	Recognition of Customary Law	Remarks
1945 Constitution	Article 18B(2)	Yes	Recognition of Indigenous rights
Law No. 32/2009 on Environmental Protection	General Provisions (Article 1)	Implicit (via community participation)	No specific mention of customary law
Law No. 41/1999 on Forestry	Article 67	Partial recognition (customary forests)	Requires regional regulation (Perda)

[8] Haluska, A. (2023). Restorative justice and the rights of nature: using indigenous legal traditions to influence cultural change and promote environmental protection. *Mitchell Hamline L. Rev.*, *49*, 92.

Legal Instrument	Article/Section	Recognition of Customary Law	Remarks
Law No. 4/2009 on Mineral and Coal Mining	Not specifically addressed	No direct reference	Tends to centralize control
Constitutional Court Decision No. 35/2012	—	Customary forest ≠ state forest	Significant legal milestone for adat rights

Source : Indonesia's 1945 Constitution, Law No. 32/2009 on Environmental Protection, Law No. 41/1999 on Forestry, Law No. 4/2009 on Mineral and Coal Mining, and Constitutional Court Decision No. 35/PUU-X/2012.

This table illustrates how customary law is addressed across various Indonesian legal instruments. The 1945 Constitution provides the strongest formal recognition, affirming the existence of Indigenous peoples and their traditional rights. However, sectoral laws such as the Environmental Protection Law and the Forestry Law offer only limited or conditional acknowledgment. In the case of the Forestry Law, customary forests are only recognized when local regulations (Perda) formally define the existence of Indigenous communities. The Mining Law remains largely silent on customary law, reflecting a centralized governance approach that overlooks Indigenous claims. A breakthrough came with the 2012 Constitutional Court decision, which clarified that customary forests are not part of state forests setting an important precedent for Indigenous land rights.

Table 2. Examples of Customary Environmental Practices in Indigenous Communities

Indigenous Community	Customary Environmental Practice	Ecological Principle Reflected
Baduy (Banten)	Prohibition of logging in *leuweung kolot* (sacred forests)	Conservation, spiritual harmony
Ammatoa Kajang (Sulsel)	*Borong Karama* (sacred forest preservation)	Non-exploitation, ancestral stewardship
Kasepuhan (West Java)	Traditional land rotation (*huma*)	Soil sustainability, intergenerational equity
Marind (Papua)	Ritual-based sago harvesting	Balance with nature, sacred species
Dayak (Kalimantan)	Customary zoning (*tanah adat*)	Community-based land management

Source : AMAN (Aliansi Masyarakat Adat Nusantara), CIFOR (2011), and academic studies by Moniaga (2005), Dewi (2018), and Hein (2018) on Indigenous environmental governance in Indonesia.

Table 2 highlights various Indigenous communities in Indonesia and their environmental practices rooted in customary law. These practices demonstrate a consistent ecological ethic emphasizing sustainability, spiritual balance, and intergenerational responsibility. For example, the Baduy people's protection of sacred forests (leuweung kolot) reflects a deeply spiritual relationship with nature, while the Ammatoa Kajang community enforces strict rules around sacred forest boundaries under the *Borong Karama* doctrine. These customary norms often function more effectively than formal state law in preventing environmental degradation, proving that Indigenous

legal systems contain valuable mechanisms for conservation and natural resource governance.

Table 3. Legal Gaps Between State Law and Customary Law

Legal Aspect	State Law Perspective	Customary Law Perspective	Legal Gap Identified
Land Ownership	Based on certificates (formal title)	Based on ancestral lineage and oral tradition	Customary claims lack formal recognition
Forest Management	Controlled by the state or licensed bodies	Managed communally through adat norms	Customary forests often classified as state
Environmental Licensing	Centralized, administrative process	Requires communal consent and rituals	No room for FPIC in licensing procedures
Dispute Resolution	Handled by state courts	Resolved through customary council (*lembaga adat*)	Lack of integration or legal pluralism

Source : Fitzpatrick (2008), USAID & Epistema Institute (2013), Safitri (2010), and Constitutional Court jurisprudence on Indigenous land rights.

This table outlines the legal disjunctions between state law and customary law in environmental governance. The most significant gap lies in land ownership: while state law demands legal certificates, Indigenous communities base their land rights on tradition and ancestral use, which are often undocumented. In forest management and licensing, the state operates through administrative channels, whereas customary law emphasizes communal consent and cultural rituals. This disconnect results in systemic exclusion of Indigenous peoples from formal decision-making processes, leaving them vulnerable to displacement and environmental injustice. The lack of integration between customary and state legal institutions further weakens legal pluralism in practice.

Based on normative analysis of various statutory regulations, judicial decisions, and legal literature, this study finds that the existence of customary law is constitutionally recognized within the Indonesian legal system. This recognition is explicitly stated in Article 18B paragraph (2) of the 1945 Constitution, which affirms: *"The state recognizes and respects traditional communities along with their traditional rights as long as they are still alive and in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia."* This constitutional provision provides a strong legal foundation for recognizing customary law as a legitimate component of the national legal order. However, in practice, such recognition often remains declarative, lacking operational legal frameworks that support its implementation especially in the context of environmental governance.

The research reveals that customary law plays a vital and strategic role in environmental protection and natural resource management, particularly in regions where traditional values remain strong. Practices among Indigenous communities such as the Dayak in Kalimantan, the Baduy in Banten, the Ammatoa Kajang in South Sulawesi, and various tribes in Papua and Maluku demonstrate that customary law embodies ecological wisdom and conservation principles. These include prohibitions against logging in sacred forests, rotational farming systems, and social sanctions for environmental destruction. For instance, the Ammatoa Kajang people adhere to the *Borong Karama* philosophy, which discourages environmental exploitation. Similarly, the

Balinese apply the *Tri Hita Karana* concept, emphasizing harmony among humans, nature, and the divine. These examples prove that customary law is not only a cultural system but also a functional legal framework that contributes significantly to sustainable environmental governance.

However, the study also shows that Indonesia's environmental regulations have not yet fully incorporated or systematically integrated the role of customary law. Laws such as Law No. 32 of 2009 on Environmental Protection and Management, Law No. 41 of 1999 on Forestry, and Law No. 4 of 2009 on Mineral and Coal Mining do not clearly articulate the role or legal authority of customary law in licensing processes, environmental supervision, or dispute resolution. The absence of such provisions creates a normative gap that often leads to conflicts between Indigenous communities and corporate actors or the state, particularly when development projects are initiated on customary lands without prior consultation or consent.

The research also identifies a significant gap between constitutional recognition of customary law and its implementation at both sectoral and regional levels. One critical example is Constitutional Court Decision No. 35/PUU-X/2012, which distinguishes customary forests from state forests. This ruling should have served as a legal turning point in strengthening the position of Indigenous peoples. However, many regional governments have not followed up with the issuance of Regional Regulations (Perda) on the Recognition and Protection of Customary Law Communities. Without such legal instruments, Indigenous claims to land and forests remain unrecognized in formal legal processes, rendering customary communities vulnerable to displacement and marginalization.

One of the core issues revealed by this study is the lack of effective legal harmonization mechanisms between state law and customary law. In many cases, customary law is perceived as inferior or subordinate to formal legal norms. As a result, Indigenous legal systems are often disregarded in decision-making related to environmental licenses, land use, and natural resource extraction. When disputes arise, customary communities frequently lose in court due to the absence of formally documented land rights, despite having customary claims rooted in generations of stewardship. This exposes the monistic nature of Indonesia's legal system, which contradicts its constitutional commitment to legal pluralism.

Nonetheless, the study also highlights significant opportunities to revitalize customary law and integrate it into national environmental law. These opportunities include revising sectoral legislation to include provisions on Indigenous rights and customary governance, promoting the widespread adoption of Regional Regulations (Perda MHA), and strengthening the institutional capacity of customary communities. Additionally, customary legal principles such as ecological balance, collective responsibility, non-exploitative use of nature, and intergenerational justice can be incorporated into national legal instruments as guiding norms for sustainable development.

In conclusion, the findings of this research emphasize the need to reformulate Indonesia's environmental legal framework into one that is pluralistic, participatory, and ecologically just. The revitalization of customary law should not be viewed merely as a cultural preservation effort but as a legal strategy to respond to the country's deepening ecological crises. Recognizing customary law as a legitimate and operational source of law can enhance environmental protection, strengthen Indigenous rights, and support the creation of a legal system that is more inclusive, sustainable, and socially equitable.

The findings of this study highlight that customary law holds a constitutionally recognized position within Indonesia's national legal system, particularly as stated in

Article 18B(2) of the 1945 Constitution. This provision affirms the state's recognition and respect for traditional communities and their customary rights, including those related to land, forests, and environmental stewardship. However, in actual legal and governance practices, customary law continues to be treated as subordinate to state law. Its position in the environmental legal framework remains marginal, with limited formal accommodation in statutory regulations, particularly within sectoral laws related to natural resources. Customary law is often relegated to the realm of cultural practice or local wisdom, rather than being positioned as a binding normative system within the legal hierarchy.

Moreover, customary law offers substantial potential for shaping a framework of ecological justice in Indonesia, given that it embodies sustainability principles rooted in generations of experience. Among many Indigenous communities, environmental stewardship is not merely practical, but spiritual and philosophical in nature.[9] For example, in the Marind community of Papua, the sago palm is not only a staple food but a symbol of life and cultural identity. Cutting down a sago tree without cause is considered a serious offense under customary law. Similarly, the Baduy people enforce strict prohibitions on logging in sacred forests, while the Kasepuhan community in West Java maintains *leuweung kolot* (forbidden forests) as part of traditional zoning. These practices demonstrate that customary law operates as an ecological governance system long before modern conservation laws were enacted by the state.

Nonetheless, the study identifies a significant disconnect between the legal recognition of customary law and its actual implementation, particularly in the face of state-led development projects.[10] Infrastructure expansion, national strategic projects (PSNs), and extractive industries often proceed on customary lands without the free, prior, and informed consent (FPIC) of Indigenous peoples. This practice contradicts international legal standards, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which Indonesia is a signatory. The absence of institutional mechanisms to mediate or integrate customary norms with statutory law has led to repeated environmental conflicts, criminalization of Indigenous land defenders, and dispossession of customary territories.

In this regard, revitalizing customary law requires more than symbolic recognition it demands institutional reform and legal restructuring. Both central and regional governments must actively support the issuance of Regional Regulations (Perda) on the Recognition and Protection of Customary Law Communities (MHA), including legal mapping of customary territories. Furthermore, the development of hybrid legal mechanisms or Indigenous environmental courts could bridge the gap between state and customary legal systems. This aligns with the principles of legal pluralism, which call for the co-existence and mutual recognition of multiple normative systems within a single legal order, particularly in a culturally diverse nation like Indonesia.

Strengthening customary institutions is also crucial to ensure the sustainability of traditional environmental governance. Indigenous communities face internal challenges such as generational transitions, erosion of traditional knowledge, and external pressures from economic and political forces. Therefore, the revitalization process must include capacity building initiatives such as legal education based on local customs, documentation of adat rules, and facilitation of dialogue between Indigenous leaders and formal legal authorities. These steps would not only empower Indigenous communities

[9] Berebon, C. B. (2025). Integrating Ethical, Legal, and Cultural Paradigms: Advancing Environmental Stewardship. *GNOSI: An Interdisciplinary Journal of Human Theory and Praxis*, *8*(1), 1-15.

[10] Suhardi, M. (2025). Legal Pluralism and Cultural Legitimacy: Reframing Sasak Customary Law to Prevent Child Marriage in Lombok. *Society*, *13*(1), 538-552.

but also enhance their bargaining power in broader environmental governance processes.

This discussion also underlines the urgency of legal harmonization between state law and customary law. Cross-sectoral policy reform is needed to integrate Indigenous legal norms into the formal legal framework, particularly in environmental and natural resource governance. Countries such as Canada and New Zealand offer valuable examples of integrating Indigenous legal traditions into their national legal systems through treaty recognition, co-management of resources, and Indigenous-led conservation. Indonesia could adopt similar approaches by revising sectoral laws (e.g., environmental protection, forestry, mining) to explicitly recognize customary law as a legitimate legal source and governance model.

Finally, it is essential to recognize that revitalizing customary law is not a nostalgic return to the past, but a forward-looking legal strategy. In the context of the global climate crisis and increasing ecological inequality, relying solely on a state-centric legal approach is no longer sufficient. Customary law, with its deep-rooted understanding of place, balance, and sustainability, represents a systemic solution to environmental degradation. Therefore, its revitalization should be prioritized in national legal reform efforts, not only to preserve cultural identity but to restore environmental harmony and intergenerational justice.

CONCLUSIONS

Based on the normative analysis conducted, it can be concluded that customary law holds significant potential as a legal source in the protection of the environment in Indonesia. The recognition of Indigenous communities and their traditional rights is constitutionally guaranteed through Article 18B(2) of the 1945 Constitution. However, its implementation in sectoral regulations remains limited and does not yet provide effective legal protection. In practice, many customary norms reflect strong conservation principles, sustainability values, and collective responsibility toward nature. Yet, these norms have not been systematically integrated into the national environmental legal framework. The gap between state law and customary law often leads to legal conflicts, marginalization of Indigenous peoples, and uncontrolled environmental degradation. Therefore, revitalizing customary law requires strengthening legal frameworks, enacting regional regulations, harmonizing national laws with Indigenous values, and empowering customary institutions. Through these efforts, customary law can serve as a vital instrument in realizing ecological justice and supporting sustainable development rooted in local wisdom.

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