

The Contribution of Customary Law to Sustainable Development: Social and Environmental Perspectives

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ABSTRACT

This article analyzes the contribution of customary law to sustainable development from social and environmental perspectives within Indonesia's plural legal system. Although sustainable development is formally embedded in national legal and policy frameworks, its implementation remains predominantly state-centric and technocratic, often marginalizing customary legal systems that have long regulated land use, natural resource management, and social relations. This study identifies three central legal issues: normative ambiguity in positioning customary law within sustainable development governance, a legal vacuum regarding the formal role of customary institutions in environmental regulation, and conflicts of norms between customary law and sectoral development-oriented legislation. Employing a normative juridical method with statute, conceptual, and case approaches, this article examines constitutional provisions, environmental and natural resource laws, and legal doctrines on sustainable development and legal pluralism. The analysis demonstrates that customary law embodies normative principles aligned with sustainability, including ecological balance, communal responsibility, and intergenerational justice. However, these principles remain underutilized due to the absence of explicit legal integration mechanisms. This article argues that the marginalization of customary law weakens both social and environmental dimensions of sustainable development. It proposes a prescriptive framework for integrating customary law into sustainable development governance through statutory clarification, administrative incorporation, and pluralistic judicial interpretation, aimed at enhancing legal certainty, social justice, and environmental protection.

Keywords customary law, sustainable development, environmental governance, indigenous communities, legal pluralism

INTRODUCTION

The discourse on sustainable development has increasingly emphasized the importance of integrating social justice and environmental protection into development policies. However, dominant legal and regulatory frameworks often prioritize economic growth and state-centric governance models, marginalizing alternative normative systems such as customary law. In many indigenous territories, customary law continues to regulate land use, natural resource management, and social relations in ways that directly contribute to environmental sustainability and social cohesion. Despite this practical relevance, the contribution of customary law to sustainable development remains normatively underrecognized within Indonesia's positive legal system.¹

The concept of sustainable development, as reflected in national and international legal instruments, rests on the integration of environmental protection, social equity, and

¹ B. Surjanti et al., "Customary Law in Indonesia: A Legacy for a Sustainable Future," *Journal Evidence of Law* 4, no. 1 (2025)



economic development.² Yet, Indonesian environmental and natural resource laws tend to operationalize sustainability through administrative licensing, technical standards, and state control mechanisms. This approach often overlooks customary legal systems that have historically governed natural resources through norms of collective responsibility, intergenerational stewardship, and ecological balance. As a result, a normative disjunction emerges between formal sustainability policies and lived customary practices.

From a constitutional perspective, Article 18B paragraph (2) of the 1945 Constitution recognizes indigenous peoples and their traditional rights.³ This recognition, however, is conditional and lacks clear implementing norms that articulate the role of customary law in advancing sustainable development objectives. Sectoral regulations governing forestry, mining, spatial planning, and environmental protection further exacerbate this problem by prioritizing state-issued permits and development agendas over customary governance systems.⁴ Consequently, customary law is frequently treated as a cultural artifact rather than as a functional legal system capable of contributing to sustainable development.

Empirical and doctrinal studies demonstrate that customary law plays a significant role in environmental conservation and social sustainability. Asteria et al. (2021) show that customary forest management supports climate action and sustainable forest governance.⁵ Handayani and Suparno (2023) highlight the role of customary norms in sustaining agrarian culture and local livelihoods.⁶ More recent studies by Kamakaula (2025) and Khuan et al. (2025) further confirm that indigenous legal norms contribute to biodiversity conservation and environmental resilience.⁷ However, these studies often stop at demonstrating effectiveness and do not interrogate the normative position of customary law within the formal legal framework of sustainable development.

The research gap addressed in this article lies in the absence of a normative juridical analysis that conceptualizes customary law as an integral component of sustainable development law, rather than as a peripheral or informal practice. Existing scholarship tends to emphasize empirical success or sociological relevance without critically examining the legal coherence between customary law and state-driven sustainable development policies. This article therefore seeks to analyze the contribution of customary law to sustainable development from a normative legal perspective, focusing on social and environmental dimensions. It argues that the marginalization of customary law reflects normative ambiguity and conflicts of norms that undermine sustainability goals. Accordingly, this article proposes a prescriptive framework for integrating customary law into sustainable development governance to enhance legal certainty, social justice, and environmental protection.

METHODS

This research employs a normative juridical method to analyze the contribution of customary law to sustainable development from social and environmental

² B. Santoso, “Pendekatan Hukum terhadap Pembangunan Berkelanjutan,” *Mimbar Hukum* (2012).

³ Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia*, art. 18B(2).

⁴ W. Nugroho et al., “Kebijakan Pengelolaan Tambang dan Masyarakat Hukum Adat,” *Jurnal Konstitusi* (2019).

⁵ D. Asteria et al., “Contribution of Customary Law in Sustainable Forest Management,” *IOP Conference Series: Earth and Environmental Science* 940 (2021).

⁶ E. Handayani and S. Suparno, “The Role of Customary Law in the Governance of Sustainable Agrarian Culture,” *Corporate Law and Governance Review* (2023).

⁷ Y. Kamakaula, “Local Wisdom in Customary Law as an Instrument for Environmental Protection,” *Journal of Adat Recht* (2025); H. Khuan et al., “The Role of Customary Law in Environmental Conservation,” *Journal of Adat Recht* (2025).

perspectives. The normative approach is appropriate because the central issues examined concern normative ambiguity, legal vacuums, and conflicts of norms between customary law and positive law governing sustainable development, environmental protection, and natural resource management. Rather than measuring empirical outcomes, this study focuses on legal norms, doctrines, and principles that shape the recognition and function of customary law within the formal legal system.⁸

The statute approach is used to examine constitutional provisions, environmental legislation, natural resource laws, and development policies relevant to sustainable development. Primary legal materials include the 1945 Constitution, environmental protection statutes, and sectoral regulations governing land and natural resources. This approach allows for the identification of normative inconsistencies between constitutional recognition of customary law and its marginal treatment in statutory frameworks related to sustainability.⁹ The conceptual approach is employed to analyze key legal concepts such as sustainable development, customary law, and indigenous rights. Sustainable development is examined not merely as a policy objective but as a legal principle that requires normative coherence across legal systems. Customary law is analyzed as a living legal system that embeds social and environmental values aligned with sustainability principles.¹⁰ This conceptual analysis exposes the limitations of positivist approaches that exclude customary norms from sustainability governance.

The case approach complements statutory and conceptual analysis by examining patterns in judicial and administrative treatment of customary law in environmental and natural resource cases. Although this research does not focus on a single landmark decision, it analyzes tendencies that reveal the subordinate positioning of customary law in sustainability-related disputes. The integration of these approaches forms the basis for prescriptive recommendations aimed at strengthening the legal role of customary law in sustainable development governance.

RESULTS AND DISCUSSION

Normative Ambiguity in Positioning Customary Law within Sustainable Development Governance

The contribution of customary law to sustainable development is normatively constrained by the ambiguous positioning of customary norms within Indonesia's formal legal framework. Although sustainable development is widely endorsed as a guiding principle of environmental and development law, statutory instruments tend to conceptualize sustainability through technocratic and administrative mechanisms that marginalize non-state normative systems. This ambiguity manifests in the inconsistent recognition of customary law as a legally relevant instrument for achieving social and environmental sustainability.¹¹

From a constitutional standpoint, the recognition of indigenous peoples and their traditional rights provides a normative foundation for integrating customary law into sustainable development governance. However, Article 18B paragraph (2) of the 1945 Constitution conditions such recognition on conformity with national development objectives, thereby creating interpretative uncertainty.¹² This conditionality allows sectoral legislation to subordinate customary governance systems to development-

⁸ Peter Mahmud Marzuki, *Legal Research*, rev. ed. (Jakarta: Kencana, 2017).

⁹ A. Buana and M. Mamonto, "The Role of Customary Law in Natural Resource Management," *Golden Ratio of Mapping Idea and Literature Format* (2023).

¹⁰ M. Natsir and M. Iqbal, "Reviving Adat Law: The Middle Way between Tradition and Modernity in Ecology," *Media Syari'ah* (2024).

¹¹ B. Santoso, "Pendekatan Hukum terhadap Pembangunan Berkelanjutan," *Mimbar Hukum* (2012).

¹² Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia*, art. 18B(2).

driven regulatory priorities, particularly in natural resource exploitation and infrastructure expansion. As a result, customary law is often treated as a cultural consideration rather than as a normative framework with regulatory authority.

Environmental and natural resource legislation further illustrates this normative ambiguity. Laws governing forestry, mining, and spatial planning emphasize licensing regimes, environmental impact assessments, and state supervision as the primary instruments of sustainability.¹³ While these mechanisms aim to prevent environmental degradation, they frequently overlook customary norms that have historically regulated resource use through collective restraint and ecological stewardship. This exclusion reflects a conflict of norms between state-centric sustainability models and customary governance systems rooted in social and environmental reciprocity.

Scholarly analyses have demonstrated that customary law contributes substantively to sustainable development outcomes. Asteria et al. (2021) show that customary forest management practices enhance climate resilience and biodiversity conservation.¹⁴ Buana and Mamonto (2023) highlight comparative evidence indicating that customary governance systems in both Indonesia and Australia promote sustainable resource management through localized control and community accountability.¹⁵ Despite these findings, formal legal frameworks rarely translate empirical effectiveness into normative recognition, perpetuating a legal vacuum regarding the role of customary law in sustainability governance.

The ambiguity surrounding customary law also affects social sustainability. Customary norms regulate land tenure, resource access, and communal obligations in ways that support social cohesion and intergenerational equity.¹⁶ However, development policies that prioritize economic growth often disrupt these social structures, leading to displacement, resource conflicts, and social fragmentation. The failure to recognize customary law as a legal instrument of social sustainability undermines the integrative objectives of sustainable development.

Prescriptively, resolving normative ambiguity requires explicit statutory acknowledgment of customary law as a component of sustainable development governance. Such acknowledgment should move beyond symbolic recognition and articulate concrete roles for customary institutions in environmental management and social regulation. Without normative clarity, customary law will remain vulnerable to marginalization, limiting its potential contribution to sustainable development objectives.

Customary Law as a Normative Instrument for Social and Environmental Sustainability

Customary law embodies normative principles that align closely with the core dimensions of sustainable development, particularly social equity and environmental protection. Unlike formal regulatory systems that rely on abstract standards and centralized enforcement, customary law operates through context-specific norms that regulate human–environment interactions. This normative character positions

¹³ W. Nugroho et al., “Kebijakan Pengelolaan Tambang dan Masyarakat Hukum Adat,” *Jurnal Konstitusi* (2019).

¹⁴ D. Asteria et al., “Contribution of Customary Law in Sustainable Forest Management,” *IOP Conference Series: Earth and Environmental Science* 940 (2021).

¹⁵ A. Buana and M. Mamonto, “The Role of Customary Law in Natural Resource Management,” *Golden Ratio of Mapping Idea and Literature Format* (2023).

¹⁶ E. Handayani and S. Suparno, “The Role of Customary Law in the Governance of Sustainable Agrarian Culture,” *Corporate Law and Governance Review* (2023).

customary law as a potential instrument for advancing sustainability, yet its contribution remains insufficiently institutionalized within formal legal frameworks.¹⁷

From an environmental perspective, customary law often prescribes rules governing land use, resource extraction, and conservation practices that prioritize ecological balance. Studies on indigenous communities demonstrate that customary norms impose restrictions on resource exploitation, seasonal use, and habitat preservation.¹⁸ These norms function as preventive mechanisms against environmental degradation, complementing statutory environmental protection measures. However, formal legal systems rarely recognize these norms as legally binding environmental standards, resulting in parallel but disconnected governance regimes.

Social sustainability is similarly embedded in customary legal systems. Customary law regulates access to resources based on communal membership, social responsibility, and intergenerational continuity. This regulatory logic promotes social cohesion and equitable resource distribution, mitigating conflicts that often arise from market-driven resource allocation.¹⁹ Yet, development policies frequently disrupt customary social arrangements by imposing uniform regulatory frameworks that disregard local social dynamics. The resulting tension undermines both social stability and environmental stewardship.

The following table illustrates the normative contribution of customary law to sustainable development across social and environmental dimensions:

Table 1. Normative Contributions of Customary Law to Sustainable Development

Dimension	Customary Contribution	Law	Formal Orientation	Legal
Environmental protection	Ecological balance and restraint		Technical compliance and licensing	
Resource governance	Collective stewardship		State control and privatization	
Social equity	Communal access and responsibility		Individual rights orientation	
Intergenerational justice	Long-term sustainability norms		Short-term regulatory cycles	
Conflict prevention	Consensus-based regulation		Adversarial enforcement	

Despite these contributions, the absence of legal integration limits the effectiveness of customary law in achieving sustainable development. Legal pluralism is often acknowledged rhetorically but inadequately operationalized. Jaenong et al. (2025) emphasize that strengthening indigenous rights in environmental management requires formal legal recognition of customary governance systems.²⁰ Similarly, Kamakaula (2025) argues that local wisdom embedded in customary law can serve as an instrument of environmental protection if supported by normative legal frameworks.²¹

¹⁷ M. Natsir and M. Iqbal, “Reviving Adat Law: The Middle Way between Tradition and Modernity in Ecology,” *Media Syari’ah* (2024).

¹⁸ Y. Erwin, “The Actualization of Kemalik as a Legal Document of Local Wisdom in Environmental Law Enforcement,” *Society* (2025).

¹⁹ P. Pahlefi and E. Alissa, “Perlindungan dan Penghormatan Hak-Hak Masyarakat Hukum Adat,” *Recital Review* (2023).

²⁰ D. Jaenong, L. Ahimi, and Z. Zubaedillah, “Customary Law and Natural Resource Governance,” *Hakim: Jurnal Ilmu Hukum dan Sosial* (2025).

²¹ Y. Kamakaula, “Local Wisdom in Customary Law as an Instrument for Environmental Protection,” *Journal of Adat Recht* (2025).

Prescriptively, integrating customary law into sustainable development governance requires a recalibration of legal priorities. Formal legal systems must recognize customary norms as complementary regulatory instruments rather than as informal practices. This integration should include mechanisms for incorporating customary standards into environmental planning, resource management, and social policy frameworks. By doing so, the law can harness the normative strengths of customary systems to advance sustainable development objectives more effectively.

Prescriptive Integration of Customary Law into Sustainable Development Frameworks

The effective contribution of customary law to sustainable development requires a prescriptive legal framework that moves beyond symbolic recognition toward substantive integration. As demonstrated in the preceding discussions, customary law contains normative principles that support environmental protection, social equity, and intergenerational justice. However, these principles remain underutilized due to the absence of clear legal mechanisms that incorporate customary norms into formal sustainable development governance. This deficiency reflects not only normative ambiguity but also a structural bias toward state-centric and technocratic regulatory models.²²

A central prescriptive issue concerns the legal hierarchy and authority of customary law in sustainability-related decision-making. Although constitutional recognition provides a foundational basis, statutory frameworks governing environmental protection, spatial planning, and natural resource management rarely assign decision-making power to customary institutions.²³ Instead, customary law is often consulted informally or post factum, after key development decisions have already been made. This practice undermines the preventive and regulatory potential of customary norms, which are most effective when applied *ex ante* to guide resource use and development planning.

Integrating customary law into sustainable development frameworks requires statutory clarification of its normative function. Legislators should explicitly recognize customary law as a complementary source of environmental and social regulation, particularly in indigenous territories. Such recognition should define the scope of customary authority in land use planning, environmental conservation, and resource governance.²⁴ By doing so, the law can transform customary norms from peripheral considerations into operative legal standards that inform sustainability policies.

Administrative reform is equally critical. Environmental licensing and spatial planning processes should incorporate customary norms as substantive assessment criteria rather than as procedural formalities. This integration would require state authorities to evaluate development proposals not only against technical standards but also against customary rules governing ecological balance and social responsibility.²⁵ The inclusion of customary perspectives at the administrative level would enhance participatory governance and reduce conflicts arising from development projects that disregard local sustainability norms.

Judicial interpretation also plays a pivotal role in prescriptive integration. Courts adjudicating environmental and land disputes should adopt a pluralistic interpretative

²² B. Santoso, “Pendekatan Hukum terhadap Pembangunan Berkelanjutan,” *Mimbar Hukum* (2012).

²³ W. Nugroho et al., “Kebijakan Pengelolaan Tambang dan Masyarakat Hukum Adat,” *Jurnal Konstitusi* (2019).

²⁴ A. Buana, “Hak Masyarakat Adat atas Sumber Daya Alam,” *Padjadjaran Jurnal Ilmu Hukum* 4 (2017).

²⁵ A. Rasyadi, “Politik Tata Ruang Pesisir dan Resiliensi Hukum Adat,” *Tunas Agraria* (2025)

approach that accords normative weight to customary law. Judicial reluctance to engage with customary norms often stems from concerns over legal certainty and uniformity. However, these concerns can be addressed through principled interpretation that recognizes customary law as a contextual legal standard rather than as an exception to positive law.²⁶ Such an approach would strengthen the judiciary's role in advancing sustainable development while respecting constitutional commitments to indigenous rights.

Finally, prescriptive integration must address accountability and inclusivity within customary systems. While customary law promotes collective responsibility, it may also reflect internal power dynamics that require oversight. Legal frameworks should therefore establish minimum standards to ensure that customary governance aligns with broader principles of human rights and environmental justice.²⁷ By embedding safeguards without eroding customary autonomy, the law can enhance the legitimacy and effectiveness of customary contributions to sustainable development.

In sum, the integration of customary law into sustainable development frameworks demands a recalibration of legal priorities. Recognizing customary law as a normative instrument of sustainability can enrich legal responses to environmental degradation and social inequality, provided that integration is grounded in clear statutory mandates, administrative practices, and judicial interpretation.

CONCLUSIONS

This article demonstrates that customary law constitutes a substantive normative resource for advancing sustainable development from social and environmental perspectives. Customary norms regulate land use, resource management, and social relations in ways that promote ecological balance, social cohesion, and intergenerational justice. However, the contribution of customary law remains constrained by normative ambiguity, legal vacuums, and conflicts of norms within Indonesia's formal legal framework.

The analysis confirms that sustainable development policies grounded solely in administrative and technocratic approaches are insufficient to address complex social-environmental challenges. The marginalization of customary law not only undermines indigenous rights but also weakens the effectiveness of sustainability governance. Without formal legal integration, customary law's preventive and restorative capacities remain underutilized.

Prescriptively, this article argues for the explicit recognition and integration of customary law into sustainable development frameworks through statutory clarification, administrative reform, and pluralistic judicial interpretation. Such integration must respect customary autonomy while ensuring accountability and alignment with constitutional principles. By repositioning customary law as a normative instrument of sustainable development, the legal system can enhance legal certainty, social justice, and environmental protection in a manner consistent with Indonesia's constitutional and developmental commitments.

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