

Legal Pluralism in Handling Environmental Crimes in Indigenous Territories

Heristiawan Aryo Wirotomo^{1*}, Sri Ayu Astuti²

Master of Law Postgraduate Universitas Wisnuwardhana Malang

Corresponding Author: Heristiawan Aryo Wirotomo watunaryo@gmail.com

ARTICLE INFO

Keywords: Law Pluralism,
Environmental Crimes,
Customary Area

Received : 5 April

Revised : 20 April

Accepted: 18 May

©2025 Wirotomo, Astuti: This is an open-access article distributed under the terms of the [Creative Commons Attribution 4.0 International](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

This research examines legal pluralism in the handling of environmental crimes in customary areas, focusing on the interaction between national law and customary law. Although national law, through Law No. 32/2009 on Environmental Protection and Management, has regulated formal mechanisms for environmental criminal law enforcement, the reality is that local wisdom and customary norms are often ignored in practice. This research uses a normative legal approach with the theory of legal pluralism and responsive law as the basis for analysis. It was found that there is disharmony and overlapping authority between state apparatus and customary institutions, which has an impact on the effectiveness of environmental protection and the rights of indigenous peoples. Therefore, a handling model is needed that formally integrates customary law into the national legal framework. This research offers policy recommendations to realize inclusive and contextual ecological justice in indigenous territories

INTRODUCTION

Indonesia is a country that is blessed with abundant natural resources and the diversity of indigenous peoples spread across various regions. Indigenous peoples not only coexist with nature, but also have a customary law system that regulates human relations with their environment. In this context, customary law often has a very vital role in preserving the environment. At the same time, however, the national legal system – especially environmental criminal law – has formal mechanisms to crack down on environmental criminals. When environmental crimes occur in customary territories, legal problems often arise in the form of overlap, disharmony, and even conflicts of authority between customary law and national law. This phenomenon reflects the existence of legal pluralism in the handling of environmental crimes in customary territories that require serious attention from a legal perspective.

Legal pluralism refers to the existence of more than one legal system within a country, where each system has a different source of legitimacy, norms, and institutions. In Indonesia, legal pluralism is inevitable given the recognition of customary law in various regulations. The Constitution of the Republic of Indonesia, in Article 18B paragraph (2) of the 1945 Constitution, states that the state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. This recognition is the juridical basis that indigenous peoples have the right to organize their own legal system, including in handling violations against the environment. However, normative recognition of customary law is often not followed by consistent implementation of environmental criminal law enforcement policies and practices. Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law) and Law Number 6 of 2014 concerning Villages provide space for participation to indigenous peoples in protecting the environment. However, the implementation of criminal law enforcement in cases of pollution and environmental destruction is often dominated by the national legal approach, without considering the existence of customary law. This is exacerbated by the frequent neglect of customary-based settlements, even though local communities have taken collective action to crack down on environmental perpetrators.

Factual cases that reflect this problem of legal pluralism occurred in the Mollo Customary Area, East Nusa Tenggara, when indigenous peoples rejected marble mining activities carried out by private companies. Although indigenous peoples have expressed their rejection under customary law and have carried out customary eviction measures against the perpetrators of vandalism, law enforcement officials continue to process the case under national law, and even indigenous peoples who defend their territories are accused of obstructing the activities of companies that have obtained permits from the government. This case shows the conflict between national law and customary law in dealing with environmental crimes.

From an academic perspective, the theory of legal pluralism as developed by John Griffiths emphasizes that state law is not the only legal system that

applies in society. He distinguishes between legal centralism and legal pluralism. In a pluralistic legal system, societies are recognized as having many legal systems living simultaneously, and the state is supposed to accommodate the existence of non-state legal systems, including customary law. This is in line with the responsive legal approach of Philippe Nonet and Philip Selznick which encourages state law to be able to respond to the social and cultural needs of the community, rather than just emphasizing formal legal certainty.

The relevance of legal pluralism in the context of environmental crimes in customary territories is essential to create substantive justice. Law enforcement that overrides customary law will erode local wisdom in protecting the environment and weaken the position of indigenous peoples in defending their rights to their territories. In addition, a single approach through national law is often ineffective because it does not take into account the socio-cultural context of local communities, resulting in horizontal resistance and conflict. In terms of policy, there is an urgent need to harmonize national law and customary law in handling environmental crimes. This harmonization does not have to be in the form of codifying customary law into national law, but can be in the form of formal recognition of customary law decisions in certain environmental criminal cases. This can strengthen the social legitimacy of law enforcement and encourage the active participation of indigenous peoples in protecting the environment. Some regions such as Bali, Papua, and Kalimantan have implemented forms of collaboration between customary law and national law in environmental protection. For example, in Jayapura Regency, Papua, indigenous peoples are given the authority to apply customary sanctions against illegal logging perpetrators. Local governments then support by establishing local regulations that recognize and protect the practice. This is a positive example of the implementation of legal pluralism that is in line with the values of ecological justice and the empowerment of local communities.

Thus, research on legal pluralism in handling environmental crimes in customary territories is very urgent. This research aims to identify obstacles and opportunities in the implementation of legal pluralism and formulate an inclusive and equitable environmental criminal law enforcement model. With an interdisciplinary approach between criminal law, customary law, and environmental studies, it is hoped that the results of this research can contribute to the development of an Indonesian legal system that is more responsive to socio-cultural diversity and ecological challenges.

LITERATURE REVIEW

Legal Pluralism Theory

Submitted by John Griffiths. He contrasted legal centralism – the view that only the state has legitimate legal authority – and legal pluralism, which is the recognition that in society there are various legal systems that coexist, such as state law, customary law, and religious law. Griffiths asserts that the non-state legal system, including customary law, is not just a residue of the past, but functions actively in the life of modern society.

Responsive Legal Theory

Philippe Nonet and Philip Selznick emphasized the importance of laws that are not only repressive and formalistic, but also able to respond to social values, community needs, and local wisdom. In the context of environmental law enforcement in customary areas, this theory demands that the national legal system accommodate the existence of customary law substantively in order to create ecological justice.

Ecological Justice Theory

Developed by Brian Baxter and Andrew Dobson, it places the environment as an entity that has intrinsic value. Within this framework, legal actions are not only aimed at humans, but also take into account their impact on ecosystems. Therefore, the local wisdom of indigenous peoples who have a spiritual and ecological relationship with their environment must be respected as part of the legal protection system.

Previous Research

Research conducted by Fitriani (2020) entitled "Implementation of Customary Law in Handling Environmental Crimes in the Customary Territory of Central Kalimantan" shows that Dayak indigenous peoples have long had an effective customary law-based environmental control system, such as the prohibition of indiscriminate tree felling or the use of customary sanctions against river polluters. However, repressive national law enforcement often overrides this contribution, even in some cases leading to the criminalization of indigenous peoples. The study concluded that states need to develop a collaborative model between customary law and national law to avoid conflicts of authority and strengthen the effectiveness of environmental protection.

METHODOLOGY

This research uses normative legal research methods, which are research conducted by examining secondary legal materials, such as laws and regulations, court decisions, doctrines, and relevant academic literature. The normative approach is used because the main focus of this research is to examine the legal norms that govern legal pluralism in the handling of environmental crimes in customary territories, as well as to analyze how these norms can be constructed in harmony between national law and customary law.

The types of approaches used in this study include: a) Legislative approach, which is carried out by examining relevant legal provisions such as the 1945 Constitution of the Republic of Indonesia, Law No. 32 of 2009 concerning Environmental Protection and Management, Law No. 6 of 2014 concerning Villages, and regional regulations that regulate the recognition of customary law communities; b) Conceptual Approach, which is an approach used to analyze concepts such as legal pluralism, customary law, ecological justice, and responsive law, as a theoretical basis in understanding the relationship between the state legal system and customary law; and c) Case Approach, by analyzing concrete cases related to conflicts of authority between customary law and national law in handling environmental crimes, such as the case of marble mining rejection in Mollo Customary (NTT) and illegal logging in Papua.

The legal material analysis technique used is qualitative analysis, namely by interpreting and examining legal norms and developing empirical practices, in order to formulate an ideal legal construction and solution to the problem of legal pluralism in handling environmental crimes in customary areas. This research does not attempt to measure quantitatively, but rather prioritizes argumentative and systematic logic based on a normative approach.

RESEARCH RESULT

The Effectiveness of Indigenous Peoples' Involvement in the Environmental Criminal Law Enforcement Process According to the Applicable National Legal Framework

The involvement of indigenous peoples in the enforcement of environmental criminal laws is a strategic issue in the context of environmental protection based on local wisdom. Indigenous peoples in Indonesia have historically coexisted with nature through customary norms that emphasize the principle of ecological balance. In this context, customary law has played a role as an effective social mechanism in preventing and cracking down on environmental violations, long before the presence of state law. However, the effectiveness of indigenous peoples' involvement in environmental criminal law enforcement often faces challenges, both normatively and institutionally. Normatively, the recognition of indigenous peoples and local wisdom has been guaranteed in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. This recognition is strengthened in Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law), especially in Article 63 paragraph (1) letter t, which states that local governments are obliged to empower the community, including customary law communities, in environmental protection and management. In addition, Law Number 6 of 2014 concerning Villages, especially Article 103, provides space for indigenous peoples to carry out customary-based village government functions. Although this normative recognition is relatively strong, the involvement of indigenous peoples in environmental criminal law enforcement practices has not been effective. Philippe Nonet and Philip Selznick in *Law and Society in Transition* emphasize that a responsive legal system is a legal system that is able to adapt to the social needs of its people, including accommodating local institutions. Within the framework of this legal system, the state should not only provide space for symbolic participation, but also substantive authority to indigenous peoples in supervising, reporting, and even handling environmental violations based on living customary law.

Factual cases show that there is an imbalance in the relationship between national law and customary law in handling environmental violations. One significant example occurred in the Mollo Indigenous Territory, South Central Timor Regency, East Nusa Tenggara, when indigenous peoples strongly rejected marble mining activities that damaged their sacred areas. Indigenous peoples have refused based on customary law, even carrying out customary expulsion rituals. However, the state through the security forces continued to impose the project on the basis of legal permits owned by the company. Instead of respecting the collective decisions of indigenous peoples, some indigenous leaders are criminalized because they are considered to hinder investment and development. A similar thing also happened in Papua, precisely in Jayapura Regency, when indigenous peoples punished illegal logging perpetrators through customary sanctions. However, in some cases, the perpetrators were

actually released by the authorities because they were considered insufficient evidence within the framework of national law. This shows an epistemological gap between the perspective of indigenous peoples based on ecological and spiritual experiences, and positive law that emphasizes formal and procedural proof.

John Griffiths' theory of legal pluralism states that in a pluralistic society like Indonesia, the national legal system is only one of many living legal systems. Therefore, ignoring customary law in the enforcement of environmental criminal law means rejecting the sociological and cultural reality of Indonesian society. Griffiths asserts that national laws that reject the existence of non-national laws are "legal centralistic" and tend to be ineffective in the context of respect for local wisdom. The ineffectiveness of indigenous peoples' involvement is also influenced by the lack of institutional integration.

In the criminal justice system, indigenous peoples do not have a structural or legal position that allows them to be part of the law enforcement process formally. The criminal procedure law does not provide explicit space for customary evidence and considerations as part of the evidence in criminal proceedings. In fact, in many cases, it is indigenous peoples who are the first to know, experience, and be able to identify perpetrators of environmental crimes. Furthermore, restrictions on the movement of indigenous peoples also occur due to the unclear legal status of customary territories. Many customary areas have not received formal recognition from the state, so the enforcement of customary laws in these territories is often considered illegal or illegal. The provisions in the PPLH Law Article 69 paragraph (2) which gives the community the right to sue or complain about environmental pollution does not guarantee that complaints from indigenous peoples will be processed effectively if the legality of their territory is still questioned. However, there are several best practices that can be used as a model for the effectiveness of indigenous peoples' involvement. For example, in Bali, the subak system, which is a traditional heritage in irrigation and agricultural management, has been successfully used as a reference in community-based environmental management policies. The local government has even integrated the principles of subak in local regulations. Similarly in Kalimantan, several regional regulations have explicitly mentioned the role of indigenous peoples in monitoring and sanctioning environmental violations.

Through a responsive legal approach, indigenous peoples' involvement can be formulated in the form of granting legal authority to indigenous institutions to handle environmental criminal cases at the initial level (preliminary handling), which can then be forwarded to the country's legal channels if the escalation of violations increases. This requires regulatory revision and harmonization between customary and formal law, for example through the establishment of a dual track justice mechanism that allows for parallel and mutually recognized settlements. In the context of ecological justice, the involvement of indigenous peoples is not only interpreted as a form of social representation, but also as a strategy to ensure environmental sustainability based on local values. Capra states that traditional societies have a local ecological knowledge system that is

proven to be able to maintain the balance of nature. Therefore, empowering them in law enforcement is part of an ongoing legal strategy.

The effectiveness of indigenous peoples' involvement in environmental criminal law enforcement is largely determined by the political will of the state to recognize, respect, and give equal space to the local legal system. This does not mean the subordination of national law, but rather the synergy between two legal systems that have a common goal: preserving the environment and upholding substantive justice. Strengthening the involvement of indigenous peoples requires a legal framework that is inclusive, adaptive, and in favor of ecological protection and collective rights.

An Ideal Model for Handling Environmental Crimes Based on Legal Pluralism to Achieve Ecological Justice and Protection of Indigenous Peoples' Rights

In the context of Indonesia as a multicultural and ecological legal country, the need for a model for handling environmental crimes that is not only legal-formalistic, but also inclusive of local wisdom, is very urgent. Social reality shows that environmental crimes not only have an impact on ecosystem damage, but also threaten the social and cultural existence of indigenous peoples who are directly dependent on the preservation of nature.¹ Therefore, the development of a model for handling environmental crimes must be based on legal pluralism that recognizes and accommodates customary law as part of a legitimate and relevant legal system, for the sake of achieving ecological justice and the protection of indigenous peoples' rights. Constitutionally, the recognition of indigenous peoples and their legal system is affirmed in Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Republic of Indonesia. This provision is strengthened in various sectoral laws such as Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law) which in Article 69 paragraph (2) gives the right to the community to participate in environmental conservation, and Law Number 6 of 2014 concerning Villages, which in Article 103 regulates the recognition of customary villages and their institutions and legal systems.

The ideal model of handling environmental crimes based on legal pluralism requires the recognition of non-national legal systems in law enforcement structures. John Griffiths, in his theory of legal pluralism, rejected the doctrine of legal centralism which states that only national law is valid. Rather, Griffiths argues that in a pluralistic society, various legal systems coexist and interact, and the state must make room for the existence and contribution of local law. In this context, customary law is not just complementary or subordinate, but is an effective legal instrument in protecting the environment and resolving conflicts in a participatory manner. Ecological justice is not only about the protection of nature, but also about social justice for communities that live from and with nature. In Capra's view, indigenous peoples have a local ecological knowledge system that has been historically tested in maintaining natural balance. Therefore, a model of handling environmental crimes that ignores the role of

indigenous peoples means ignoring the key potential in sustainable environmental protection.

A concrete example of the crisis of legal pluralism in the handling of environmental crimes can be seen in the case of the Laman Kinipan Indigenous Territory, Central Kalimantan, where indigenous peoples defended customary forest areas from the expansion of palm oil companies. The Kinipan people use customary law as a basis to reject land clearing that is considered to damage the ecosystem. Unfortunately, the state is more in favor of a formal legal approach, by arresting indigenous leaders without heeding the customary law process that has been carried out. This case reflects the imbalance in the relationship between state law and customary law in dealing with environmental crimes.

The ideal model offered to solve this problem is the coexistential law model, which is a model that recognizes the existence of customary law as a settlement system equivalent to state law. In this framework, the environmental criminal law enforcement process is not solely carried out by formal law enforcement officials such as police, prosecutors, and judges, but involves customary institutions from the early stages. The mechanism of reporting, mediation, evidence collection, and sanctioning can start from the customary law system and, if necessary, synchronize with the state legal system. The first step in the implementation of this model is through mapping customary territories and formal recognition of customary institutions by the state. This is important so that the area of customary law jurisdiction is clear and does not overlap with the authority of the state. Furthermore, synchronization regulations are needed between customary decisions and the national criminal law system, for example through amendments to the PPLH Law and the Criminal Procedure Code that allow the inclusion of customary settlement mechanisms in the criminal justice process. This is in line with the principle of restorative justice that has begun to be adopted in the national criminal justice system. In practice, some regions have shown the success of this model. In Jayapura Regency, for example, a Special Regional Regulation (Perdasus) has been established that recognizes and provides space for indigenous peoples to impose customary sanctions against perpetrators of environmental destruction. The local government works with the customary council to ensure that criminal acts committed in customary territories are also dealt with customarily before being handled by state law enforcement. This model increases public trust in the legal system and decreases the escalation of horizontal conflicts.

In addition to the regulatory approach, legal education and customary institutional capacity building are also integral parts of this ideal model. Formal legal officials need to be trained to understand customary law, and conversely, customary institutions need to be trained on national legal procedures for effective communication and coordination. Thus, collaboration between these two legal systems can create synergies, not friction. In the view of Philippe Nonet and Philip Selznick, a good legal system is one that is responsive to social dynamics and capable of being a bridge between formal values and the needs of society. In a responsive legal framework, law is not imperative and ivory tower, but is adaptive, reflective, and open to local wisdom. Therefore, the ideal model

for handling environmental crimes that prioritizes legal pluralism is actually a tangible form of responsive law application in the context of ecological justice and the protection of indigenous peoples' rights.

Moreover, the application of legal pluralism in handling environmental crimes also supports the principle of sustainability which is the basis of many international legal instruments such as the Rio Declaration (1992) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Indonesia as part of the global community needs to integrate these principles into its legal system, especially in the context of the environment and indigenous peoples. The ideal model for handling environmental crimes based on legal pluralism must be built through an integrative approach between national law and customary law. This model demands legal recognition, inclusive policy formation, and capacity building on both sides. That way, ecological justice can be achieved substantially, and indigenous peoples are no longer positioned as objects of protection, but rather as the main subjects in maintaining environmental sustainability. This is the direction of future legal development that is not only on the side of legal certainty, but also on justice and environmental sustainability.

CONCLUSIONS AND RECOMMENDATIONS

The Effectiveness of Indigenous Peoples' Involvement in the Environmental Criminal Law Enforcement Process According to the Applicable National Legal Framework

The involvement of indigenous peoples in the enforcement of environmental criminal laws is still not effective within the applicable national legal framework. Although normatively there is constitutional recognition and regulation in various laws such as the 1945 Constitution Article 18B paragraph (2), PPLH Law No. 32 of 2009, and Village Law No. 6 of 2014, its implementation is often hampered by the lack of formal recognition of customary territories and institutions. As a result, customary law-based settlements are often marginalized, and law enforcement tends to be centralistic, is not contextual, and does not reflect ecological justice or local wisdom. Therefore, the state needs to accelerate the process of regional and institutional recognition of customary law through operational and participatory regulations, synchronization between the customary law system and national law must be facilitated through implementing regulations or regional policies that allow for functional collaboration, and strengthen the capacity of indigenous peoples so that they can be effectively and dignified in the law enforcement process.

An Ideal Model for Handling Environmental Crimes Based on Legal Pluralism to Achieve Ecological Justice and Protection of Indigenous Peoples' Rights

The ideal model for handling environmental crimes in customary territories based on legal pluralism is a form of legal transformation that recognizes the existence of the customary law system as an important element in the law enforcement structure in Indonesia. In the context of ecological justice and the protection of indigenous peoples' rights, legal pluralism is able to offer a more contextual, participatory, and substantial justice approach. This model requires the state to accommodate local norms within the national legal framework, as well as encourage collaboration between state officials and customary

institutions in the process of resolving environmental criminal cases. Thus, the legal system becomes more responsive to Indonesia's social, cultural, and ecological diversity.

REFERENCES

- Arianto, H., 2010, *Hukum Responsif Dan Penegakan Hukum Di Indonesia*, dimuat dalam *Lex Jurnalica* Vol. 7 No. 2
- Disantara, F. P., 2021, *Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum*, dimuat dalam *Jurnal Al-Adalah: Jurnal Hukum dan Politik Islam* Vol. 6 No. 1
- Fitriani, 2020, *Implementasi Hukum Adat dalam Penanganan Tindak Pidana Lingkungan Hidup di Wilayah Adat Kalimantan Tengah*, dimuat dalam *UNES Law Review* Vol. 6 No. 3
- Handitya, B., 2023, *Rekonstruksi Regulasi Perlindungan Hutan Yang Berbasis Local Wisdom Dalam Mencapai Keadilan Ekologis*, Disertasi, Universitas Islam Sultan Agung Semarang
- Keraf, A. S., 2013, *Fritjof Capra Tentang Melek Ekologi Menuju Masyarakat Erkelanjutan*, dimuat dalam *DISKURSUS* Vol. 12 No. 1
- Kurniawan, J. A., 2014, *Contested Land, Contesting Laws. A Context of Legal Pluralism and Industrialization in Indonesia*, dimuat dalam *Sortuz. Oñati Journal of Emergent Socio-legal Studies* Vol. 6, Issue 2
- Lumbanrau, R. E., 2020, *Masyarakat adat: Penangkapan ketua adat Kinipan dan 'pelegalan negara atas perampokan di tanah adat di era Jokowi'*, tudingan aktivis lingkungan, dmuat pada <https://www.bbc.com/indonesia/indonesia-53890151>, diakses pada 30 April 2025
- Murdiati, E., 2015, *Pengetahuan Ekologi Lokal*, dimuat dalam *Wardah* Vol. XVI No. XXX
- Nagari, H. P., 2020, *Gerakan Sosial Ekofeminisme Melawan Penambangan Marmer di Gunung Mutis Nusa Tenggara Timur*, dimuat dalam *International Journal of Demos* Vol. 2 No. 1
- Pasaribu, R. S., 2022, *Pengakuan Dan Perlindungan Hukum Terhadap Keberadaan Masyarakat Hukum Adat Batak Toba*, dimuat dalam *Nommensen Journal of Legal Opinion (NJLO)* Vol. 3 No. 1
- Pradnyawathi, N. L. M., 2020, *Pengelolaan Air Irigasi Sistem Subak*, dimuat dalam *DwijenARGO* Vol. 3 No. 2

- Putra, M. D., 2025, *Pluralisme Hukum di Indonesia*, Malang: Universitas Wisnuwardhana Press
- Rahman, F., 2022, *Peranan Masyarakat Adat Dalam Konservasi Lingkungan*, dimuat pada <https://pslh.ugm.ac.id/peranan-masyarakat-adat-dalam-konservasi-lingkungan/>, diakses pada 30 April 2025
- Sukmana, T., 2023, *Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo*, dimuat dalam PERADABAN JOURNAL OF LAW AND SOCIETY Vol. 2, Issue 1
- Syarifudin, L., 2019, *Sistem Hukum Adat Terhadap Upaya Penyelesaian Perkara Pidana*, dimuat dalam Risalah Hukum Vol. 15 No. 2
- Tahamata, L., 2023, *Perlindungan Hak Masyarakat Hukum Adat Atas Lingkungan Yang Sehat Dan Bersih*, dimuat dalam JURNAL PENGABDIAN MASYARAKAT BANGSA Vol. 1 No. 9
- Wattimena, R. M., 2024, *Penegakan Hukum Lingkungan Terhadap Masyarakat Adat Yang Melakukan Eksploitasi Di Wilayah Pesisir*, dimuat dalam Balobe Law Journal Vo. 4 No. 2