

The Dynamics of Customary Law Recognition in Environmental Dispute Resolution in Indonesia

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ABSTRACT

This study investigates the recognition of customary law in environmental dispute resolution in Indonesia, with a specific focus on the Kasepuhan Ciptagelar community in West Java as an example of local legal pluralism. Amid growing conflicts between indigenous peoples and corporations, tensions arise between customary norms and state law in natural resource management. Using a juridical-normative approach supported by case studies and limited interviews, the research evaluates how far customary law is acknowledged and applied within environmental dispute mechanisms. Although national regulations provide formal recognition of customary law, implementation in West Java remains hindered by weak coordination, overlapping authorities, and limited institutional commitment. The study concludes that effective customary law recognition requires harmonized central-regional policies and an adaptive model grounded in ecological justice and environmental sustainability.

INTRODUCTION

Recognition of customary law in the resolution of environmental disputes in Indonesia is an increasingly important issue amid increasing conflicts between indigenous peoples and corporate interests. Indonesia as a country rich in natural resources faces serious challenges in maintaining a balance between economic development and environmental conservation. According to data from the Ministry of Environment and Forestry in 2023, there are more than 500 cases of land disputes involving indigenous peoples in various regions. This phenomenon shows that the issue of customary law recognition is not only related to social identity, but also to the ecological rights of local communities in maintaining their living space (Mahendra, 2022). Therefore, the study of the dynamics of customary law recognition is very relevant in the framework of sustainable legal development in Indonesia.

In the global context, the debate on the position of customary law in environmental governance is also of academic concern. Some countries such as Canada and Australia have integrated customary law systems in environmental policies through a legal pluralism approach (Walker & Grant, 2021). This approach recognizes that ecological sustainability cannot be achieved only by state regulation, but also by respecting the traditional knowledge of indigenous peoples. In Indonesia, legal pluralism is constitutionally recognized, but its implementation in the practice of resolving environmental disputes is still inconsistent (Sumarto & Firdaus, 2022). This shows that there is a gap between legal norms and social realities that need to be analyzed in more depth.

Normatively, Law No. 32 of 2009 concerning Environmental Protection and Management and the Constitutional Court Decision No. 35/PUU-X/2012 have opened up space for the recognition of indigenous peoples' rights to customary forest areas. However, in practice, the recognition has not been fully effective due to limited local government capacity and overlapping authority between agencies (Prayoga, 2021). Many environmental conflicts are resolved through formal mechanisms without considering customary law as a source of dispute resolution that lives in the community. This condition shows that there are challenges in the application of the principle of access to justice for indigenous peoples in the environmental sector.

Previous academic studies have shown that the issue of customary law recognition in resolving environmental disputes is still fragmented. Research by Siregar and Yusuf (2023) highlights the weak coordination between legal institutions in upholding the rights of indigenous peoples. Meanwhile, a study by Kartini et al. (2022) emphasized that regional regulations are often unable to accommodate the social dynamics of indigenous peoples because development orientation is still top-down. Thus, there is a clear research gap between formal recognition of customary law and its actual implementation in the practice of resolving environmental disputes, especially at the regional level such as West Java.

The juridical-normative approach is the main framework in examining the dynamics of customary law recognition. This approach allows researchers to analyze the relationship between national legal norms, judicial decisions, and

empirical realities in the field (Rahmawati & Nugroho, 2024). In the context of this research, the method is combined with a case study on the indigenous people of Kasepuhan Ciptagelar as one of the communities that have obtained legal recognition through local regulations. The study also used secondary data from legal literature, policy documents, and limited interviews with indigenous leaders and local officials to strengthen the validity of the findings.

The main objective of this study is to analyze in depth the extent to which customary law is recognized and implemented in the resolution of environmental disputes in Indonesia, focusing on the local context of West Java as a representation of legal pluralism at the regional level. In addition, this study seeks to assess normative and institutional factors that affect the effectiveness of customary law recognition in the national environmental law system. By understanding these dynamics, it is hoped that the pattern of interaction between state law and customary law in resolving ecological disputes can be identified.

The theoretical contribution of this research lies in efforts to strengthen the concept of legal pluralism in the study of environmental law. The results of this study are expected to provide a new understanding of how customary norms can be integrated into the national legal system without eliminating the local character of customary law communities. Thus, this research contributes to the development of a theory about the relationship between state law and indigenous peoples' law in the context of ecological justice environmental dispute resolution.

In practice, this study provides recommendations for policymakers and law enforcement agencies to strengthen coordination between the central and regional governments in the recognition and protection of the rights of indigenous peoples. This research also emphasizes the importance of community-based dispute resolution mechanisms that integrate local values into formal legal processes. By optimizing the recognition of customary law, environmental dispute resolution can be more adaptive to the needs of local communities and contribute to the achievement of sustainable development goals.

THEORETICAL REVIEW

Recognition of Customary Law and Legal Pluralism

The recognition of communities and customary law norms in Indonesia's national legal system is constitutionally reflected in Article 18B paragraph (2) of the 1945 Constitution which states that the state recognizes and respects the existence of customary law communities and their traditional rights (Hariri, 2024). In the study of legal pluralism, the concept shows that the national legal system is not the only applicable regulation, but coexists with local norms (Manse, 2024). A study by Ramstedt (2023) shows that the process of recognizing customary law in Indonesia is still constrained by overlapping regulations and the lack of harmonization between customary norms and state law. This indicates that although a normative foundation is in place, the realization of customary law recognition still faces structural and institutional obstacles.

Customary Law in Natural Resources and Environmental Governance

Several studies have highlighted the role of customary law in natural resource management and environmental protection in Indonesia. For example, research by Buana and Mamonto (2023) emphasizes that customary norms at the local level have significant social regulatory power in maintaining resource sustainability. Although customary law has been shown to be effective in resource management in local communities, its recognition within national legal frameworks is often inconsistent, fueling conflict and undermining indigenous peoples' rights (Buana & Mamonto, 2023). This condition underscores the importance of integrating customary norms in the environmental legal system in order to achieve ecological justice and community participation.

Environmental Dispute Resolution: Formal vs Customary

In the context of environmental disputes, research by Fajrini (2025) analyzed hundreds of environmental civil cases in Indonesia and found that formal dispute resolution mechanisms still dominate, while customary-based settlements or local wisdom are less visible. In this context, customary law recognition is important as an alternative or complement to the formal process. Research by Arifin (2025) emphasizes that the recognition of customary law is not only a matter of recognized norms, but also the access and standing of indigenous peoples to enter the formal legal process. Barriers such as the unofficial recognition of indigenous communities and lack of representation in environmental cases are the main issues highlighted.

Implementation Challenges and Barriers to Recognition

The latest research also identifies various obstacles in the implementation of customary law recognition. Purnomo, Supeno, and Lisdiyono (2024) stated that the undocumented customary norms, complex bureaucracy, and unclear division of authority between the central and regional governments are the main obstacles. In addition, in Manse's (2024) study, it was found that regulatory changes without strengthening local institutional capacity often result in "empty" normative recognition in practice. Thus, although regulations and court rulings have provided a basis, implementation at the local level often experiences a disjuncture between norms and reality.

The Need for a Dynamic Model of Customary Law Recognition in Environmental Disputes

The current research direction recommends the development of adaptive and dynamic customary law recognition models, especially in the resolution of environmental disputes. The study by Aldyan (2025) examines the integration of legal pluralism in environmental governance and concludes that an effective recognition model must prioritize institutional collaboration between indigenous communities, local governments, and formal institutions. Thus, research that explores the "dynamics" of customary law recognition, namely regulatory changes, interactions between legal actors, and implementation in the field, is very relevant to fill the research gap that still exists.

METHODOLOGY

Research Design and Approach

This research uses a qualitative approach with juridical-normative design and case studies because it aims to deeply understand the dynamics of customary law recognition in environmental dispute resolution in Indonesia, especially in the West Java region. The juridical-normative approach focuses on the analysis of laws and regulations, court decisions, and legal doctrines relevant to the recognition of customary law (Tamanaha, 2021). The case study was chosen to trace the implementation of these legal norms in a real context, namely the indigenous people of Kasepuhan Ciptagelar who have received recognition through local regulations.

Population, Samples, and Sampling Techniques

The research population includes all stakeholders involved in the resolution of environmental disputes involving indigenous peoples in West Java. The determination of participants was carried out using a non-probability sampling technique through a purposive sampling approach, namely the selection of informants based on relevance and competence to customary law issues (Palinkas et al., 2021). A total of 6 key informants were interviewed, consisting of: 2 Kasepuhan Ciptagelar traditional leaders, 1 official of the West Java Provincial Environment Office, 1 environmental law academic, 1 representative of civil society organizations engaged in indigenous community advocacy, and 1 village official who plays a role in the implementation of local regulations. This number is considered adequate because it has reached a data saturation point, where the information obtained shows a repeating and consistent pattern (Guest et al., 2023). The composition of the informants was chosen to represent the legal, social, and institutional perspectives proportionately.

Data Collection Instruments and Techniques

The research data was collected through three main techniques, namely: (1) legal document study, (2) semi-structured in-depth interviews, and (3) limited participatory observation. The study of documents was carried out on primary legal sources such as Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 6 of 2014 concerning Villages, and Constitutional Court Decision Number 35/PUU-X/2012. In addition, secondary legal materials such as journal articles, institutional reports, and regional policies are analyzed to strengthen the theoretical framework. Semi-structured interviews were conducted in person and online using interview guidelines developed based on indicators of customary law recognition according to the theory of legal pluralism (Hooker, 2022). The validity of the data is maintained through triangulation of sources and methods, namely by comparing the results of interviews, documents, and field observations (Flick, 2022). Reliability is maintained through a member checking process with informants to ensure consistency and accuracy of data interpretation (Nowell et al., 2023).

Research Procedure

The implementation of the research was carried out in stages from June to August 2025. The first stage includes a preliminary study in the form of a literature review and mapping of environmental dispute cases involving indigenous peoples in West Java. The second stage is the collection of field data, starting with the application for research permits to the local government and indigenous communities, then continued with interviews and direct observation in the Kasepuhan Ciptagelar area. The entire interview process was carried out by paying attention to the ethical principles of social research, including informed consent and the confidentiality of participants' identities (Silverman, 2023). The third stage is qualitative data analysis that is carried out simultaneously during the data collection process, while the fourth stage is the verification and validation of the results, where the researcher conducts discussions with legal experts and community representatives to test the accuracy of the interpretation of the findings. The final stage includes the preparation of research reports and alignment with customary law theory and ecological justice principles.

Data Analysis Techniques

Data analysis was carried out in a descriptive-qualitative manner using the interactive analysis method of Miles et al., (2020) which includes three main steps: data reduction, data presentation, and conclusion/verification. Interview data was transcribed verbatim, then encoded using NVivo 14 software to identify key themes such as "normative recognition", "institutional implementation", and "overlapping authority". Document analysis is carried out with a legal hermeneutic approach, namely interpreting the text of regulations and court decisions in their social context (Banakar, 2021). All the results of the analysis are then synthesized to produce a comprehensive understanding of the dynamics of customary law recognition in resolving environmental disputes at the national and regional levels.

RESEARCH RESULTS

This study found that the dynamics of customary law recognition in the resolution of environmental disputes in West Java are still colored by tensions between national legal norms and customary practices at the local level. Normatively, Indonesia has recognized the existence of customary law communities in various legal instruments, but their implementation has not been consistent and is often hampered by institutional and political factors of local law. Case studies on the indigenous people of Kasepuhan Ciptagelar show that legal pluralism is still formalistic and has not been fully translated into a fair and sustainable environmental dispute resolution mechanism.

Normative Recognition and Implementation Gaps

Constitutionally, the recognition of customary law communities is listed in the **Article 18B paragraph (2) of the Constitution of the Republic of Indonesia of 1945**, 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 provision is the constitutional basis for the existence of customary law in the national legal system.

Further **Article 63 paragraph (1) letter o of Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law)** affirming the role of customary law communities in environmental supervision. However, in practice, this authority has not been fully implemented by local governments because there is no clear operational mechanism for the recognition and involvement of indigenous peoples in resolving environmental disputes.

The traditional leader of Kasepuhan Ciptagelar highlighted this emphatically: *"We have been mentioned in the regional regulation, but it does not automatically make our customary land safe. When the mining permits come out, we still have to fight on our own."* (A1-12 June 2025). This view is reinforced by environmental law academics who state: *"Regulations already recognize the existence of customary law, but there is no implementing instrument that ensures their rights are protected in environmental disputes."* (H-07 July 2025). Both statements indicate that although normative recognition is strong at the constitutional and legal levels, its effectiveness is still weak in administrative implementation in the regions.

Institutional Fragmentation and Overlapping Authority

Institutional problems are one of the main obstacles in the implementation of customary law in the environmental sector. By **Law Number 6 of 2014 concerning Villages** Especially **Articles 97 to 111**, the government is given the authority to determine *Traditional Villages* by paying attention to the origins and traditional rights of the community. However, in practice, the implementation of this norm is not uniform between regions due to differences in administrative interpretation and regional capacity to carry out customary verification.

Officials of the West Java Provincial Environmental Agency explained: *"Often permits are issued by other institutions without coordination with us. Even though indigenous peoples have been recognized at the provincial level, not all districts have followed up."* (P-03 July 2025). Meanwhile, the village officials added the administrative obstacles faced: *"We want to help strengthen customary recognition, but the administrative procedures are long and not all villages have the manpower or funds to do so."* (D-June 25, 2025).

These two quotes show the existence of **Fragmentation of authority** between the levels of government that cause inconsistency in the implementation of customary law recognition. Whereas **Article 63 paragraph (1) letter k of Law No. 32/2009** Requiring local governments to set environmental policies by paying attention to local wisdom. The absence of institutional synergy causes customary law norms to be recognized only formally without implementing force in dispute resolution practice.

Social Legitimacy and Effectiveness of Customary Mechanisms in Environmental Disputes

The findings of the study show that the indigenous people of Kasepuhan Ciptagelar have a surviving customary law system and function in maintaining ecological balance. This system is known through the principle of *leuweung kolot* (forbidden forest) and *Forest Cover* (protected forest), which plays an important role in preventing environmental damage. The dispute resolution mechanism is carried out through customary deliberation, not through a formal litigation process. This is in line with the spirit **Constitutional Court Decision No. 35/PUU-X/2012**, which confirms that "*Customary forests are no longer national forests*" and must be managed by customary law communities in accordance with their rights of origin.

However, in the local context, the ruling has not been fully implemented because there are still jurisdictional conflicts with forestry agencies and corporations. The traditional leader expressed this clearly: "*We have our own customary rules about land and forests, and they are maintained from generation to generation. But if a company comes in, our rules are not considered valid.*" (A2-18 June 2025). Representatives of civil society organizations added: "*When indigenous peoples are not involved from the beginning, the potential for disputes increases. Recognition of the customary system should be the first step to settlement, not the last alternative.*" (S-21 June 2025). These findings reinforce the view that customary law has **high social legitimacy**, but is not formally recognized in the environmental dispute resolution mechanism based on state law.

Limited Legal Access and Local Government Commitment

In addition to normative and institutional factors, another major obstacle is limited access to the law for indigenous peoples. Even though **Article 65 paragraph (1) of Law No. 32/2009** Giving communities the right to play a role in environmental protection and management, in practice indigenous peoples often do not have access to licensing information and legal mechanisms to file objections. Environmental law academics affirm: "*In one area, the customary regulation is running well because the political support is strong, but in another area it is stagnant because there is no bureaucratic commitment.*" (H-07 July 2025). The traditional leader added: "*If there is a problem with the company, we have to complain to many offices. There is no one door that can help quickly.*" (A1-12 June 2025). The lack of legal assistance and the weak political will of the regions show that **Institutional commitment is still a key factor** which determines the effectiveness of customary law recognition in resolving environmental disputes.

DISCUSSION

This research shows that the recognition of customary law in the resolution of environmental disputes in Indonesia has a strong normative basis, but its implementation still faces various structural and institutional obstacles. Constitutionally, Article 18B paragraph (2) of the 1945 Constitution affirms the state's recognition of the existence of customary law communities and their traditional rights as long as they are alive and in accordance with the principles of the Unitary State of the Republic of Indonesia. This provision is clarified in

Law Number 32 of 2009 concerning Environmental Protection and Management, especially Article 63 paragraph (1) letter o, which requires the central and regional governments to respect local wisdom in the preservation of environmental functions. Furthermore, Law Number 6 of 2014 concerning Villages through Article 97 regulates the existence of customary villages as a form of customary law institution in the local government system. However, empirically, the implementation of the recognition of customary law is still declarative and has not been fully operational in resolving environmental disputes at the regional level.

Theoretically, this finding can be explained through the legal pluralism approach, which states that the existence of various legal systems in one social space often gives birth to a dominance relationship between state law and customary law (Tamanaha, 2021). In the context of natural resource management in West Java, state law tends to occupy a superior position, while customary law only functions as a complementary instrument. This phenomenon indicates an asymmetry of legal power, where the recognition of customary law is not always accompanied by adequate implementation capacity. This condition shows that legal pluralism in Indonesia is still at the stage of formal integration, not yet towards a substantive integration stage that is able to accommodate the interests of indigenous peoples in a fair and equal manner (Soelistyowati, 2024).

Institutional factors are one of the main determinants in the effectiveness of customary law recognition. Hierarchical and sectoral local government structures often do not provide participatory space for indigenous peoples in environmental policy formulation. Although Law Number 23 of 2014 concerning Regional Government has affirmed the principle of decentralization, its implementation is still limited due to the overlapping authority between provincial and district governments, especially in matters of natural resource management. As a result, customary-based environmental dispute resolution mechanisms often do not receive adequate administrative recognition. These obstacles show the gap between progressive national legal design and institutional practice at the local level.

On the other hand, the results of this study show that the indigenous people of Kasepuhan Ciptagelar have a restorative and ecological dispute resolution mechanism, based on the principle of balance between humans and nature. The deliberation approach they use has proven to be able to avoid open conflicts and maintain the preservation of natural resources in customary territories. The mechanism is in line with the concept of restorative environmental justice, which emphasizes ecosystem restoration and social harmony as the main orientation of dispute resolution (Darisera et al., 2024). Therefore, strengthening customary law in the settlement of environmental disputes can be an effective strategy to achieve sustainable ecological justice.

The Constitutional Court Decision No. 35/PUU-X/2012 is an important milestone in the recognition of the existence of customary forests as an area separate from state forests. This ruling affirms that customary law communities have constitutional rights over their territories, including the right to manage natural resources independently based on customary law. However, the

implementation of the decision in the regions is still limited due to the lack of derivative regulations and weak coordination between agencies. This situation shows that the recognition of customary law has not been followed by a more inclusive restructuring of environmental management policies. As noted by Pertiwi et al. (2024), without strengthening regional institutional capacity, formal recognition of indigenous peoples will be difficult to transform into substantive recognition that has a real impact on environmental dispute resolution.

In the framework of ecological justice, the recognition of customary law has a strategic role in bridging the gap between anthropocentric positive laws and ecological values held by indigenous peoples (Descola, 2021). Customary law inherently contains principles of conservation and sustainability that are in line with the goals of sustainable development. Therefore, integrating customary law norms into the national environmental law system can enrich a more contextual and equitable approach to natural resource management. In West Java, this integrative model can be realized through the establishment of regional regulations that regulate indigenous peoples' verification procedures and customary-based environmental dispute resolution procedures.

Academically, this research expands the understanding of the relationship between legal pluralism and ecological justice in the context of contemporary Indonesia. Practically, the results of the study confirm the need for the repositioning of customary law as a legal subject that is parallel to state law in environmental management. This approach has the potential to reduce agrarian conflicts, strengthen the social legitimacy of environmental policies, and increase the participation of indigenous peoples in natural resource governance. In addition, synergy between regional officials, customary institutions, and environmental institutions needs to be improved through collaborative forums that function as a space for coordination and resolution of ecological conflicts in a participatory manner.

The limitations of this study lie in the limited geographical scope and qualitative approach that focuses on a single indigenous community. Therefore, follow-up research with a comparative case study approach between regions or the use of mixed methods is highly recommended to obtain a more comprehensive empirical picture of the pattern of customary law recognition in Indonesia. Further studies also need to examine the effectiveness of derivative regulations after the Constitutional Court Decision No. 35/PUU-X/2012 in strengthening the legal protection of indigenous peoples at the regional level.

CONCLUSION AND RECOMMENDATION

This study confirms that the recognition of customary law in the settlement of environmental disputes in Indonesia has an adequate normative foundation, but its implementation at the regional level still faces institutional and coordination constraints. The fragmentation of authority between the central and regional governments and limited administrative capacity hinder the effectiveness of customary-based dispute resolution mechanisms. The indigenous people of Kasepuhan Ciptagelar show that a living customary law system can maintain ecological balance through deliberation mechanisms and local conservation principles. However, without policy harmonization and

adequate institutional support, the recognition of customary law remains formal and has not been able to guarantee the protection of indigenous peoples' ecological rights. These findings emphasize the need for an adaptive customary law recognition model, which not only recognizes traditional rights but also strengthens local institutional capacity. Thus, integrating customary law into national environmental governance can improve ecological justice and the sustainability of natural resources.

Practically, this study shows that harmonization between national and regional policies is the key to realizing effective recognition of customary law. Inter-agency coordination, verification of indigenous peoples, and local community participation in environmental policy formulation must be strengthened. Adaptive customary law recognition models can be a strategic instrument to prevent environmental conflicts and strengthen the social legitimacy of public policies. This approach also supports the application of the principles of ecological justice by synergistically combining the values of customary law and state law. Therefore, strengthening customary law mechanisms not only has implications for social protection, but also for environmental sustainability and sustainable development.

FURTHER STUDY

Further research is expected to explore the effectiveness of these adaptive models in different regions to strengthen empirical evidence and policy recommendations.

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