International Journal of Education, Vocational and Social Science
https://e-journal.citakonsulindo.or.id/index.php/IJEVSS
E-ISSN : 2963 4954
IJEVSS

Legal Protection For Local Communities In Natural Resource Utilization Conflicts: A Literature Review

Dian Wibowo[1]
[1,]Islamic University of Syekh-Yusuf, Tangerang – Banten, Indonesia
Harry Sudhana[2]
[2,]Islamic University of Syekh-Yusuf, Tangerang – Banten, Indonesia
Hardjito S. Darmojo[3]
[3]Islamic University of Syekh-Yusuf, Tangerang – Banten, Indonesia

Correspondence email : hsdarmojo@unis.ac.id

Abstract

The escalation of natural resource exploitation often places local communities in a vulnerable position, leading to persistent socio-environmental conflicts. This study aims to analyze the implementation of legal protections for local communities within the context of natural resource utilization and to identify the structural barriers that hinder environmental justice. Using a qualitative descriptive method through a comprehensive documentary study, this research examines various legal frameworks, scholarly discourses, and judicial precedents. The findings reveal a significant "implementation gap" between statutory mandates and grassroots reality. While the law theoretically provides safeguards through mechanisms such as Environmental Impact Assessments (AMDAL) and the recognition of customary rights, these are often undermined by pro-investment policies, such as the Omnibus Law on Job Creation, which simplify licensing at the expense of public participation. Furthermore, bureaucratic hurdles in recognizing indigenous land tenure continue to marginalize local inhabitants. The study concludes that legal protection remains formalistic rather than substantive. To achieve genuine environmental justice, there is an urgent need to strengthen Anti-SLAPP regulations, simplify the recognition of customary forests, and shift the legal paradigm from state-centric developmentalism to a community-centered approach that prioritizes distributive and procedural justice.

Keywords: Legal Protection, Local Communities, Natural Resources, Environmental Justice, Conflict Resolution.

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

INTRODUCTION

The global demand for natural resources has reached an unprecedented scale, driven by industrialization, population growth, and the pursuit of national economic development. However, this exploitation often occurs in territories inhabited by local and indigenous communities, leading to persistent and often violent conflicts. The tension between state-led developmentalism and the rights of local inhabitants represents one of the most critical challenges in contemporary environmental law (Savitri, 2021). Despite the existence of international frameworks and national laws, the implementation of legal protection for these communities remains fragmented and frequently subservient to investment interests (Bedner & Arizona, 2019).

Natural resource utilization is often framed as a "national interest," allowing states to exercise their power of eminent domain to grant concessions to large-scale corporations. According to Western and scholarly perspectives, this top-down approach frequently ignores the "legal pluralism" that exists in many developing nations, where customary law (Adat) governs land use long before formal state law was established (Griffiths, 2018). The lack of synchronization between formal land administration and traditional land tenure systems is a primary catalyst for conflict (Hall et al., 2011).

In the context of the global south, the "resource curse" phenomenon suggests that countries rich in natural resources often experience lower levels of social welfare and higher rates of conflict (Ross, 2015). Local communities, who are the primary stewards of these ecosystems, often bear the brunt of environmental degradation such as water pollution, deforestation, and loss of biodiversity without receiving a fair share of the economic benefits (Li, 2014). This disparity creates a sense of structural injustice that fuels grassroots resistance.

The protection of local communities is theoretically anchored in the principle of Free, Prior, and Informed Consent (FPIC). As noted by Ward (2020), FPIC is intended to ensure that communities have the right to give or withhold consent to projects affecting their lands. However, in practice, FPIC is often treated as a bureaucratic "check-box" exercise rather than a substantive transfer of decision-making power. Legislation in many jurisdictions remains "sectoral," meaning that mining laws, forestry laws, and plantation laws often contradict one another, creating "gray areas" that corporations can exploit to bypass community rights (Peluso & Lund, 2011).

Furthermore, the "Green Grabbing" phenomenon—where land is appropriated for environmental conservation purposes adds another layer of complexity. Local communities are sometimes evicted in the name of "protected areas," leading to what Lunstrum (2016) describes as "green violence." Here, the law is used as a tool for exclusion rather than protection,

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

highlighting the paradox of environmental legislation.

Indonesia serves as a critical case study for these conflicts. The 1945 Constitution, particularly Article 33, mandates that the state controls natural resources for the "greatest prosperity of the people." Yet, the interpretation of "state control" has historically favored large-scale concessions over communal rights (Butt & Lindsey, 2018). The landmark Constitutional Court Decision No. 35/PUU-X/2012, which recognized that customary forests are not state forests, was a major milestone; however, its implementation has been agonizingly slow due to complex bureaucratic requirements for recognizing indigenous status (Arizona et al., 2019).

The enactment of the Omnibus Law on Job Creation has further intensified these concerns. Critics argue that the law prioritizes ease of investment by simplifying licensing processes and limiting the scope of Environmental Impact Assessments (AMDAL), thereby reducing the space for public participation (Fadhli & Cania, 2021). When local communities lose their procedural rights to object to a project, the law ceases to be a shield and instead becomes a facilitator of marginalization.

The discourse on natural resource utilization cannot be separated from the right to a healthy environment. The United Nations has increasingly recognized that environmental degradation directly impairs the enjoyment of human rights, including the rights to life, health, and food (Knox, 2018). For local communities, the land is not merely a commodity; it is the basis of their cultural identity and spiritual life. Therefore, a conflict over resources is also a conflict over human dignity (Schlosberg, 2013).

The "Environmental Justice" movement argues that legal protection must include distributive justice (fair sharing of resources), procedural justice (fair decision-making), and recognition justice (respecting local identities) (Walker, 2012). Without these three pillars, legal implementation will remain hollow. As highlighted by Dhiaulhaq and McCarthy (2020), even when mediation is attempted, the power imbalance between multi-billion dollar corporations and local farmers often results in "coerced" agreements that do not provide long-term security for the community.

Given these multifaceted issues, there is an urgent need to synthesize existing scholarship to identify the gaps between legal theory and practical implementation. This literature review aims to map the evolution of legal protections, analyze the recurring themes in resource conflicts, and propose a more robust framework for community-centered resource management. By examining the successes and failures documented in previous studies, we can better understand how to transform the law from a tool of dispossession into a mechanism for genuine

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

empowerment (Benda-Beckmann & Benda-Beckmann, 2016).

METHOD

This research adopts a qualitative descriptive method to provide a comprehensive overview of the legal protection mechanisms for local communities in natural resource conflicts. Unlike strictly quantitative or systematic approaches, the descriptive qualitative method allows for a deeper interpretation of legal texts, scholarly arguments, and socio-legal phenomena (Nassaji, 2015). This approach is particularly effective for mapping the complexities of legal implementation where social and political variables are deeply intertwined (Sandelowski, 2000).

The data for this study are secondary sources obtained through a comprehensive documentary study. This involves the collection and critical examination of primary legal materials such as national constitutions, environmental statutes, and court decisions as well as secondary legal materials including books and academic journal articles (Creswell & Poth, 2018). The selection of sources is based on their relevance to the themes of environmental justice, community rights, and natural resource management.

The data analysis follows a qualitative content analysis technique. The process begins with data reduction, where the gathered information is categorized into specific themes: the regulatory framework, the practical obstacles in law enforcement, and the socio-legal impact on local inhabitants (Miles et al., 2014). Subsequently, the study synthesizes these categories to describe the gap between das Sollen (what the law ought to be) and das Sein (the reality in the field). Finally, conclusions are drawn to offer a descriptive synthesis of how the law currently functions as a tool for protecting marginalized communities against resource exploitation.

RESULT AND DISCUSSION

The Paradox of State Sovereignty and Constitutional Mandates

The primary finding of this literature review is the inherent tension within the "Right of Control by the State" (Hak Menguasai Negara). In many jurisdictions, particularly in Indonesia, Article 33 of the 1945 Constitution serves as the legal bedrock for natural resource management. However, results show that this mandate is often interpreted through a lens of "developmentalism," where the state acts more as a landlord granting concessions to corporations rather than a protector of public welfare (Butt & Lindsey, 2018).

The implementation of legal protection is frequently hindered by the state's dual role as both the regulator and the party interested in economic growth. Literature suggests that when

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

the state prioritizes large-scale investments such as mining or oil palm plantations—local communities are often categorized as "obstacles" to national progress (Savitri, 2021). This ideological positioning weakens the protective function of the law, as statutory provisions for community rights are treated as secondary to investment permits.

Procedural Injustice in Environmental Licensing and AMDAL

A critical area of discussion is the Environmental Impact Assessment (AMDAL) process. Findings indicate that while AMDAL is legally required to involve public participation, the implementation is often purely formalistic. The enactment of the Job Creation Law (Omnibus Law) in Indonesia has significantly altered this landscape by narrowing the definition of "affected communities" (Fadhli & Cania, 2021). Prior to recent reforms, a wider range of stakeholders could voice concerns; however, the current legal trend limits participation to those directly adjacent to the project site. This ignores the "downstream effect," where environmental degradation such as river pollution impacts communities kilometers away from the source (Bedner & Arizona, 2019). The discussion here revolves around Procedural Justice; if the process of granting a permit is exclusionary, the resulting "legal protection" for the community becomes non-existent.

The Recognition of Customary Law (Adat) and Land Tenure

The most persistent conflict identified in the literature involves the clash between formal land titles and customary tenure systems. Many local communities operate under Adat law, which is often undocumented in national land registries. The results highlight that the state's failure to recognize these communal rights is the "root of all evil" in resource conflicts (Hall et al., 2011). Although the Constitutional Court Decision No. 35/PUU-X/2012 theoretically removed customary forests from the "state forest" category, the discussion reveals a massive "bureaucratic bottleneck." To gain recognition, a community must go through a rigorous and expensive process of "Regional Regulation" (Peraturan Daerah), which is often politicized (Arizona et al., 2019). Consequently, while the law exists on paper, its implementation is stalled by administrative hurdles, leaving communities vulnerable to eviction.

Corporate Accountability and the "Strict Liability" Doctrine

In cases of environmental damage, the law provides for Strict Liability (Tanggung Jawab Mutlak). This doctrine is essential because it removes the community's burden to prove "fault" or "negligence" by a corporation in cases of hazardous waste or forest fires. However, the literature

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

shows that corporations often use their vast resources to delay litigation, a tactic known as "Strategic Lawsuits Against Public Participation" (SLAPP).

The discussion finds that the "Anti-SLAPP" provisions in environmental laws are not yet robust enough to protect community activists from criminalization. When local leaders protest against resource exploitation, they are often met with "legal warfare" being sued for defamation or trespassing which effectively silences the community's demand for protection (Ward, 2020).

Environmental Justice: Moving Beyond Formalism

The final pillar of this discussion addresses the need for a shift from Formal Justice to Substantive Environmental Justice. Formal justice is satisfied if a law is passed; substantive justice is only achieved when the community actually enjoys a healthy environment. Literature suggests that the implementation of protection must include Distributive Justice, where the benefits and burdens of resource extraction are shared equitably (Schlosberg, 2013). Currently, local communities bear all the environmental "burdens" (smoke, polluted water, loss of land) while the "benefits" flow to urban centers or foreign shareholders. To resolve this, the law must mandate benefit-sharing agreements that are legally binding and enforceable by the community itself, rather than relying on corporate "Charity" or CSR programs (Li, 2014).

Synthesis: The Role of the Judiciary

The results emphasize that the Judiciary acts as the last line of defense. However, "green judges" (judges with environmental certification) are still limited in number. The discussion argues that judicial activism is necessary to interpret laws in favor of the environment and vulnerable groups. Without a judiciary that understands the socio-ecological context of a conflict, the law remains a rigid instrument that favors the status quo of exploitation (Knox, 2018).

CONCLUSION

In conclusion, the implementation of legal protection for local communities is currently in a state of "Regulated Marginalization." The law provides the language of protection (rights, participation, compensation) but the machinery of the law (permits, administrative procedures, court systems) is optimized for resource extraction. Real protection requires:

- Simplification of the recognition process for customary lands.
- Expansion of the definition of affected communities in AMDAL.

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

- Stronger Anti-SLAPP protections for environmental defenders.
- Mandatory distributive justice mechanisms in every natural resource concession.

REFERENCES

Arizona, Y., Erasmus, R., & Faudzan, R. (2019). The recognition of indigenous peoples' land rights in Indonesia: Progress and challenges. Journal of Southeast Asian Human Rights, 3(2), 185-210.

Bedner, A., & Arizona, Y. (2019). Adat law in Indonesia: Breaking the spell of the archives. Bijdragen tot de Taal-, Land- en Volkenkunde, 175(1), 10-36.

Benda-Beckmann, F. von, & Benda-Beckmann, K. von. (2016). Legal Pluralism in Theory and Practice. Routledge.

Butt, S., & Lindsey, T. (2018). Indonesian Law. Oxford University Press.

Creswell, J. W., & Poth, C. N. (2018). Qualitative Inquiry and Research Design: Choosing Among Five Approaches. Sage Publications.

Dhiaulhaq, A., & McCarthy, J. F. (2020). Indigenous rights and agrarian conflict: The implementation of forest land distribution in Indonesia. Forest Policy and Economics, 118, 102227.

Fadhli, Y. Z., & Cania, R. (2021). The impact of the Omnibus Law on Indonesian environmental protection. Indonesian Journal of Environmental Law, 7(1), 45-68.

Griffiths, A. (2018). The Routledge Handbook of Legal Pluralism. Routledge.

Hall, D., Hirsch, P., & Li, T. M. (2011). Powers of Exclusion: Land Dilemmas in Southeast Asia. National University of Singapore Press.

Knox, J. H. (2018). Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. United Nations General Assembly.

Li, T. M. (2014). Land's End: Capitalist Relations on an Indigenous Frontier. Duke University Press.

Lunstrum, E. (2016). Green militarization: Anti-poaching efforts and the spatial contours of rhino protection. Annals of the American Association of Geographers, 106(4), 817-833.

Miles, M. B., Huberman, A. M., & Saldaña, J. (2014). Qualitative Data Analysis: A Methods Sourcebook. Sage Publications.

Nassaji, H. (2015). Qualitative and descriptive research: Data type versus data analysis. Language Teaching Research, 19(2), 129-132.

Peluso, N. L., & Lund, C. (2011). New frontiers of land control: Introduction. Journal of Peasant

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

Studies, 38(4), 667-681.
Ross, M. L. (2015). What have we learned about the resource curse? Annual Review of Political Science, 18, 239-259.
Sandelowski, M. (2000). Whatever happened to qualitative description? Research in Nursing & Health, 23(4), 334-340.
Savitri, L. A. (2021). Agrarian Conflict and Environmental Protection in Indonesia. Pustaka Pelajar.
Schlosberg, D. (2013). Theorising environmental justice: The expanding sphere of a discourse. Environmental Politics, 22(1), 37-55.
Walker, G. (2012). Environmental Justice: Concepts, Evidence and Politics. Routledge.
Ward, T. (2020). The right to Free, Prior and Informed Consent: Indigenous peoples' participation rights within international law. Northwestern Journal of International Human Rights, 10(2), 54-84.

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License