JURNAL JURISPRUDENCE
Vol. 15, No. 2, 2025, pp. 177-206
p-ISSN: 1829-5045 ; e-ISSN : 2549-5615
Website: https://journals2.ums.ac.id/jurisprudence/issue/view/902

Between Legality and Justice: A Critical Study of the Supreme Court's Judicial Reasoning in Dispute of the Awyu Customary Forest

Achmad Hariri
Faculty of Law Universitas Muhammadiyah Surabaya
achmadhariri@um-surabaya.ac.id

A. Basuki Babussalam
Faculty of Law Universitas Muhammadiyah Surabaya
basuki.babussalam@fh.um-surabaya.ac.id

Muhammad Aunurrochim Mas'ad Saleh
Faculty of Syariah and Law Universiti Sains Islam Malaysia
aunn25@usim.edu.my

DOI: 10.23917/jurisprudence.v15i2.11442

Submission Track:

Received:

30 June 2025

Final Revision:

12 December 2025

Accepted:

27 December 2025

Corresponding Author:
Achmad Hariri
achmadhariri@um-surabaya.ac.id

ABSTRACT

Purpose of the Study: This research aims to analyze the application of legal positivism and living law approaches in judicial reasoning, particularly in the decisions of the Jayapura Administrative Court No. 6/G/LH/2023/PTUN.JPR, the Manado High Administrative Court No. 92/B/LH/2023/PT.TUN.MDO, and the Supreme Court Decision No. 458 K/TUN/LH/2024. In addition, this study evaluates the extent to which the principles of substantive justice and the protection of customary communities are accommodated in Indonesia's judicial practice.

Methodology: This study employed a normative legal research method using three main approaches: the statutory approach, the case approach, and the conceptual approach. The case approach was used to profoundly analyze three judicial decisions involving the Awyu indigenous people, namely the Jayapura Administrative Court Decision No. 6/G/LH/2023/PTUN.JPR, the Manado High Administrative Court Decision No. 92/B/LH/2023/PT.TUN.MDO, and the Supreme Court Decision No. 458 K/TUN/LH/2024. The conceptual approach linked the theories of legal positivism, living law, and substantive justice.

Results: The findings indicate a dominance of formal legality and legal positivism in the judicial reasoning at both the appellate and cassation levels. The Supreme Court rejected the lawsuit of the Awyu indigenous people on the grounds of expiration, as it exceeded the 90-day filing period, without addressing the substantive issues of violations of environmental and indigenous rights. This formal-positivistic pattern of judgment creates a judicial barrier that hinders customary communities' access to justice and disregards living law.

Applications of this Study: This study contributes scientifically to strengthening the discourse on legal pluralism and developing a paradigm of substantive justice within Indonesia's legal system. It emphasizes the importance of integrating customary legal values and ecological justice into judicial processes.

Novelty/Originality of this Study: The novelty of this research lies in its critical and comparative analysis of judicial reasoning across three levels of adjudication in the Awyu case, including the examination of dissenting opinions at the Supreme Court level. It reveals the historical tension between positive law and the substantive justice values of indigenous peoples, highlighting the urgency of reconstructing the judicial paradigm.

Keywords: Judicial Decision; Legal Positivism; Substantive Justice; Indigenous People; Awyu Tribe.

INTRODUCTION

The intersection between formal legality and substantive justice in the Indonesian legal system reflects a complex dynamic in which judicial practices often reveal ongoing tension. This academic analysis highlights the various challenges faced by the judiciary, including overreliance on expert testimony, judicial appointment mechanisms, and ethical implications related to judicial accountability-while still referencing the foundational principles enshrined in the Republic of Indonesia's 1945 Constitution.

Judges' dependence on expert witnesses has become a point of concern, as it is seen to undermine judicial competence and, in turn, diminish public trust in the judiciary. Butt and Nathaniel argue that the excessive use of expert testimony in criminal trials raises doubts about the capacity and credibility of judges, ultimately eroding public confidence in judicial proceedings (Munawar, Jan Butt, and Zaka 2023). Similar concerns are echoed by Riswadi and Santoso, who emphasize that judicial integrity must be upheld through rigorous selection and appointment processes to ensure fair and impartial proceedings, thereby strengthening public trust (Riswadi and Santoso 2024).

Restorative justice has gained traction as an alternative to Indonesia's predominantly punitive legal system. Laia illustrates how restorative principles are embedded in the Dayak

Ngaju customary legal system, offering a resolution model based on social reconciliation and community values (Laia 2024). This demonstrates that indigenous communities have long practiced justice mechanisms that go beyond mere punishment. The relevance of this discourse grows in light of Indonesia's overcrowded correctional facilities, largely due to convictions for minor offenses. As a result, there is an emerging awareness of the need to shift away from retributive approaches toward solutions that address the root causes of social problems.

Similar issues arise in the context of human rights protection. Anisah and Hadi (2023) highlight concerns over the authority of Indonesia's Business Competition Supervisory Commission, which can independently investigate and sanction businesses without open court proceedings. This raises serious questions about due process and the right to a fair trial (Anisah and Hadi 2023). While the Business Competition Supervisory operates within a legal framework, its actions may still infringe upon fundamental rights, illustrating that law enforcement must go beyond formal legality to ensure that the people may truly experience justice.

Pancasila, Indonesia's foundational philosophy, should guide the construction of a just and humane legal system. Rasdi (2020) emphasizes that legal frameworks must reflect the values of Pancasila in order to be perceived as fair and acceptable to all segments of societ. A dignified and equitable conception of justice that is rooted in Pancasila ("The Five Principles" that make Indonesia's state ideals), must underpin all legal processes to ensure that justice is not only normative but also socially resonant.

The role of customary law in achieving justice in Indonesia cannot be overlooked. Customary laws predate national law and continues to guide dispute resolution in many rural communities (Harrisa et al. 2023). This reinforces the argument that Indonesia's legal system should not be rigid and monolithic, but should instead open to legal pluralism that embraces diverse traditions and values.

As Tolkah argues, the Indonesian legal system must continue to foster dialogue between formal law and customary law. He regards customary law not merely as cultural heritage but as a vital instrument for strengthening substantive justice in contemporary legal practice (Tolkah 2021). This approach challenges the normative rigidity of formal law, and through the revitalization of customary systems, the national legal structure can become more responsive to the lived realities of communities.

The Supreme Court Decision No. 458 K/TUN/LH/2024, which dismissed the cassation filed by the Awyu Ethnic Group against the environmental permit granted to PT Indo Asiana Lestari (Indo Asiana Lestari Limited Company, hereinafter called IAL, Ltd.), raises fundamental questions about procedural justice and its implications for substantive claims, particularly concerning indigenous rights and environmental governance in Indonesia. The ruling was based entirely on procedural grounds, citing a lapse in the deadline for filing a lawsuit, without addressing the substantive concerns regarding environmental degradation. This reinforces the tendency within the legal system for procedural justice to eclipse substantive justice, especially in cases involving vulnerable communities such as indigenous peoples (Halkis and Amri 2019; Idrus et al. 2024).

Such procedural dismissals in environmental cases are deeply consequential. As highlighted by Halkis and Amri (2019), claims related to indigenous rights and *ulayat* (customary land) are often subordinated to commercial interests under the framework of regional autonomy. Although regional autonomy is normatively intended to empower indigenous communities, in practice, it often results in a mere transfer of responsibility from the central government to local authorities without adequate mechanisms for protecting these communities. In such conditions, economic development is frequently prioritized over environmental sustainability, and indigenous voices are marginalized in decisions that directly affect their territories (Hairan et al., 2024).

Similar patterns emerge in judicial decisions from other jurisdictions, where procedural barriers restrict affected communities from seeking redress for environmental harm caused by corporations. The Vedanta Resources case, for example, illustrates how transnational courts evaluate corporate responsibility and sets a precedent for how claims from marginalized populations are weighed (Huerta, 2021). These comparative findings suggest that an overemphasis on procedure can make courts ignore the substantive grievances of indigenous peoples.

Furthermore, jurisprudential discourse emphasizes that while legal frameworks may nominally protect environmental and indigenous rights, systemic shortcomings often obstruct meaningful access to justice. Weak judicial reasoning and public scepticism regarding the independence and motivations of court decisions can erode trust in the legal system's ability to uphold equity and fairness (Strother & Glennon, 2020; Supriyadi & Supriyadi, 2024). Although legal procedures may appear formally valid, they often fail to deliver justice for communities most affected by environmental destruction and resource exploitation.

Indigenous rights, environmental protection, and public participation are essential components of modern legal frameworks. However, they frequently suffer from a significant gap between legislative intent and implementation at the local level. This disparity becomes particularly evident in the context of infrastructure projects and land-use policies, as demonstrated by studies from both Indonesia and Latin America.

In Indonesia, the development of the new capital city (Nusantara) on the island of Kalimantan has sparked significant conflict surrounding indigenous peoples' rights. Susmiyati et al. (2024) argue that while the Constitution formally acknowledges and protects indigenous rights, in practice, there remains a sharp disparity between the written legal norms and the lived experiences of indigenous communities, especially regarding their participation in decision-making processes related to development projects in their territories (Susmiyati et al., 2024). Similarly, Rahail et al. (2018) highlight the importance of applying the principle of Free, Prior, and Informed Consent (FPIC), asserting that indigenous environmental rights can only be protected when this principle is fully respected by both government and corporate actors involved in development activities (Rahail et al., 2018).

Recognition of indigenous land rights in Indonesia is further complicated by regulatory overlaps. Muharman notes that while certain regulations are intended to protect indigenous claims, they are often undermined by competing interests from sectors such as forestry and mining (Muharman, 2025). This reveals the need for a more coherent and integrated legal framework, along with genuinely inclusive mechanisms for public participation. Nugraha et al. (2023) stress that the success of customary forest recognition depends largely on meaningful community involvement in legal and policy processes, while Akmal et al. (2025) argue that strengthening legislative protections and encouraging a proactive state role are essential to realizing the constitutional mandate to safeguard indigenous rights.

These national-level challenges mirror issues in international environmental law. Marah (2025) notes that although the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) provides a comprehensive framework, its implementation remains weak across many jurisdictions, allowing continued exploitation of indigenous lands and resources. Voyevodin also emphasizes that indigenous communities globally remain highly vulnerable to environmental change, with insufficient legal protection mechanisms under international law

(Voyevodin, 2023). This underscores the urgent need for global legal reform that goes beyond normative recognition to deliver effective environmental protection.

The experience in the Amazon region further enriches this discussion. Pereira (2021) points out that recognizing indigenous land rights and ensuring meaningful participation in large-scale infrastructure projects remain critical challenges, often worsened by poor governance and a lack of respect for collective indigenous rights (Pereira, 2021). In many cases, indigenous peoples are not only defending their lands and environments but also asserting their existence and voice within formal legal systems that continue to marginalize them.

Meanwhile, the exploration of customary justice systems within the framework of constitutional principles, as articulated by Jodyvash (2025), shows that customary law has significant potential to coexist with and complement national legal systems in promoting social and environmental justice. These findings point to the need to reform legal processes related to indigenous rights and environmental governance through inclusive, participatory approaches grounded in local values and constitutional principles.

The emergence of dissenting opinions in court decisions is increasingly viewed as a sign of a healthy legal system. These opinions are not merely expressions of disagreement, but serve as vital tools for voicing living law and ecological justice. In today's context, judicial dissent reflects a shift toward a more open, participatory legal system that is responsive to social and environmental justice.

Dissent allows judges to express individual or minority views that may differ from the majority decision. This plays a crucial role in opening new dialogues, highlighting overlooked legal dimensions, and encouraging public engagement in legal reasoning. Muro et al. (2020) found that judges are more likely to dissent when institutional risks are low, which allows them to articulate more critical and substantive arguments.

Dunoff and Pollack (2022) further observe that dissent can enhance a court's legitimacy in the eyes of the public. Courts that allow internal disagreement are perceived as more transparent and reflective of diverse perspectives, rather than as monolithic institutions (Dunoff & Pollack, 2022). Kubal (2023) also notes that for marginalized groups who often feel excluded from legal processes, dissent offers hope that their voices might be represented, even if only through a single judge's opposing view.

One of the most vital themes expressed through dissent is ecological justice. In many cases, majority rulings overlook environmental issues entirely. Dissenting opinions, in contrast, often remind us that the law cannot remain blind to ecological crises. Hartiwiningsih et al. (2024) argue that environmental protection should be a foundational element of legal policy, rather than a mere afterthought. Similarly, Bricker (2017) observes that the use of dissent is growing within European constitutional courts in response to the increasing complexity and plurality of legal issues.

Dissent not only shapes legal discourse but also influences the internal dynamics of judicial institutions. One notable example is Justice Radhabinod Pal's dissenting opinion in the Tokyo War Crimes Tribunal after World War II. Although his views did not change the outcome, they have since become influential in international legal debates. Drumbl (2020) notes that such dissent can broaden the scope of international law by offering fresh critical perspectives.

Lastly, Bentsen (2019) emphasizes that a dissenting opinion, although not representing the majority view in a judgment, plays a crucial role in maintaining the moral legitimacy and sense of justice within society. In the context of modern judiciary, dissent does not merely signify disagreement among judges but symbolizes the legal system's openness to interpretive pluralism and diverse values. When part of the public feels that a majority decision fails to reflect substantive justice, the dissenting opinion functions as a "moral alternative space" that validates the public's aspirations for justice. Thus, dissent serves as an internal mechanism of judicial control to prevent legal absolutism and to keep legal discourse dynamic and alive (Bentsen, 2019).

Furthermore, dissenting opinions contribute to the evolution of law by opening pathways for future correction and reform. Many progressive legal principles have emerged from minority opinions that were initially rejected but later became the foundation of new jurisprudence. In the Indonesian context, the courage of judges to express dissent, as seen in the case of the Awyu Ethnic Group, reflects integrity and sensitivity to ecological justice and indigenous peoples' rights—values often overlooked by rigid legal formalism. Therefore, dissent not only enriches judicial discourse but also strengthens accountability and public trust in the judiciary as an institution devoted to upholding substantive justice.

There is an increasing urgency of researching indigenous legal issues, particularly given the historical and ongoing tensions between positive law and the values of substantive justice embedded in indigenous cultures. The case of the Awyu Ethnic Group exemplifies how formal legal frameworks often overlook the justice principles upheld by indigenous communities. This situation demands a critical re-evaluation of Indonesia's legal system to better accommodate the unique needs and rights of indigenous peoples, especially regarding land and environmental matters.

Based on this background, the present study is designed to answer three main research questions. First, what are the characteristics of the legal positivism and living law approaches in the context of judicial reasoning in Indonesia, particularly in cases involving indigenous peoples' rights? Second, what is the form and basis of the Supreme Court's legal reasoning in Decision No. 458 K/TUN/LH/2024 related to the Awyu Ethnic Group's customary forest dispute in Papua? Third, has the legal approach used in the decision adequately considered principles of substantive justice, the protection of indigenous communities, and environmental sustainability as reflected in the concept of living law? These questions serve as the analytical foundation for examining the interplay between formal legal approaches and the values of social and ecological justice in Indonesia's judiciary.

The purpose of this study is to analyze the application of legal positivism and living law approaches in judicial reasoning, particularly in the Supreme Court Decision No. 458 K/TUN/LH/2024, and to assess the extent to which the principles of substantive justice and the protection of indigenous peoples are accommodated within judicial practice. Scientifically, this research contributes to strengthening the discourse on legal pluralism and developing a paradigm of substantive justice within Indonesia's legal system, emphasizing the importance of integrating customary legal values and ecological justice into judicial processes.

RESEARCH METHOD

This study employed a normative legal research method using three main approaches: the statutory approach, the case approach, and the conceptual approach. The statutory approach was used to examine the legal norms forming the basis for resolving indigenous community disputes, particularly those related to environmental law, the rights of indigenous peoples, and administrative courts, in order to assess the extent to which Indonesia's positive law protects these rights (Wiratraman & Putro, 2019).

The case approach was applied to analyze three court decisions related to the Awyu indigenous people's forest dispute, namely the Jayapura Administrative Court Decision No. 6/G/LH/2023/PTUN.JPR, Manado High Administrative Court Decision No. 92/B/LH/2023/PT.TUN.MDO, and Supreme Court Decision No. 458 K/TUN/LH/2024, to trace judicial reasoning patterns between formal-legal and substantive justice approaches. Next, the conceptual approach connected the theories of legal positivism, living law, and substantive justice within the framework of Indonesia's legal pluralism.

The legal materials consist of primary sources (statutes and court decisions), secondary sources (academic literature), and tertiary sources (legal dictionaries). Data were collected through library research and analyzed qualitatively and descriptively to evaluate judicial reasoning in the context of substantive justice, the protection of indigenous peoples' rights, and environmental sustainability.

RESULTS & DISCUSSION

A. Characteristics of Legalistic Approaches in Judicial Practice

The Supreme Court Decision No. 458 K/TUN/LH/2024 clearly reflects the principle of formal legality as explained within Hans Kelsen and John Austin's framework of legal positivism. In the positivist view, the validity of law is determined by the authority that enacts it and by adherence to established procedures. This principle serves as the main basis for understanding the Court's reasoning in rejecting the lawsuit filed by the Awyu Indigenous People, which was deemed to have exceeded the 90-day filing deadline as stipulated in the applicable legislation (Fanani & Zulkarnain, 2022; Wiguna, 2023).

According to John Austin, a legal norm is valid if it originates from a sovereign authority, while Kelsen's Pure Theory of Law emphasizes the importance of a hierarchical structure of norms as the basis for legal validity (Basoeky, 2019). By dismissing the case based solely on procedural grounds, the Supreme Court reaffirmed its adherence to formal legality, asserting that the legitimacy of law depends on procedural compliance, regardless of the moral or social implications of the case (Setiawan & Ismail, 2023). The Court's position thus affirms that legitimate institutions must uphold procedural integrity to preserve the authority of the law.

This formal legality approach significantly influences how law is perceived and applied in Indonesia. In a legal system heavily shaped by positivist thinking, law is understood as a structured body of written norms, with a strong emphasis on legislative frameworks over ethical or justice-oriented considerations (Basoeky, 2019; Setiawan & Ismail, 2023). The Supreme Court's ruling reinforces this model, prioritizing legislative order and minimizing the scope of judicial discretion. As a result, such rigid adherence to the legal system can disregard the cultural and customary legal contexts, particularly when national legal frameworks fail to accommodate the unique legal traditions of indigenous communities (Setiawan & Ismail, 2023; Putrie et al., 2025; Akmal & Lestari, 2022).

Moreover, the formalist approach exemplified by the Court aligns with the principles of legal certainty and predictability, two key tenets of legal positivism. It affirms that for law to be considered valid, it must originate from a recognized authority and follow clear procedural standards. Hence, the rejection of the Awyu people's claims further illustrates the dominance of a proceduralist legal system that often sidelines substantive justice, particularly for marginalized groups (Fanani & Zulkarnain, 2022; Basoeky, 2019; Setiawan & Ismail, 2023).

The differing outcomes in the environmental dispute involving the Awyu Indigenous People reveal a sharp divergence between the application of procedural law and substantive law at each level of the judiciary. At the first instance, through Decision No. 6/G/LH/2023/PTUN.JPR, the Jayapura Administrative Court took a progressive stance by granting all claims submitted by the plaintiffs. The panel of judges concluded that the environmental permit issued by the Head of the Papua Provincial Investment Office violated the principles of environmental protection and management as stipulated in Article 2 of Law No. 32 of 2009, and emphasized the vital importance of customary forests for the livelihood and cultural identity of the Awyu Indigenous People. The judges also found that the lack of indigenous participation in the licensing process constituted a violation of their constitutional rights as guaranteed under Article 18B of the 1945 Constitution, reflecting the application of living law and substantive justice principles.

However, the direction of the decision shifted at the appellate level. The Manado Administrative High Court, through Decision No. 92/B/LH/2023/PT.TUN.MDO, overturned the previous ruling and declared the lawsuit inadmissible (*Niet Ontvankelijke Verklaard/NO*) on the grounds that it had exceeded the 90-day filing limit as stipulated in Article 55 of Law No. 5 of 1986 on the Administrative Courts. By accepting the statute of limitations objection, the appellate judges did not proceed to examine the merits of the case, leaving the environmental and indigenous rights issues unaddressed. This approach demonstrates the dominance of legal formalism, which neglects the social, ecological, and cultural dimensions of the dispute.

At the cassation level, through Decision No. 458 K/TUN/LH/2024, the Supreme Court rejected the appeal filed by the Awyu People and Indonesia's Environmental Forum (WALHI), thereby affirming the appellate court's ruling on the same procedural grounds of expiration.

However, Supreme Court Justice Dr. Yodi Martono Wahyunadi issued a dissenting opinion, arguing that the calculation of the filing period should begin only after the completion of administrative remedies, and that government inaction beyond ten days should be deemed implicit approval (*fiktif positif*) in accordance with Law No. 30 of 2014 and Supreme Court Regulation No. 6 of 2018. He further emphasized the importance of examining the case in its entirety, particularly with regard to the protection of indigenous communities and environmental sustainability.

Thus, this case illustrates the ongoing tension between formal legalism and substantive justice, where the majority's decision reflects the dominance of a positivist legal paradigm, while the dissenting opinion offers a more responsive interpretation of the law, one that aligns with social, ecological, and moral values within the framework of living law.

Taken together, these decisions reveal that judicial reasoning in Indonesia remains largely dominated by strict legal positivism and procedural formalism. Such approaches can restrict avenues for protecting constitutionally-guaranteed rights of vulnerable groups, such as indigenous communities, as outlined in Article 18B of the 1945 Constitution. The first-instance ruling, which leaned toward substantive justice, provides an important example of the need to reconstruct Indonesia's judicial paradigm to be more inclusive of ecological justice and *livi*ng law principles. The dissenting opinion at the Supreme Court level offers hope and direction for the future of indigenous legal protection in environmental disputes.

Judgment No. 35/G/2019/PTUN.JPR which involved the Moi Indigenous Community, Sorong rejected the claim filed by the Moi indigenous community on the grounds that they lacked legal standing. This approach revealed a bias toward formal institutional frameworks and failed to accommodate collective legal recognition of indigenous communities. In this context, the court neglected to apply the principle of juridical recognition of indigenous peoples as collective legal subjects, a principle acknowledged in modern legal theory and international jurisprudence (e.g., UNDRIP/United Nations Declaration on the Rights of Indigenous Peoples). Such an approach weakens the legal position of indigenous peoples in facing corporate expansion.

Judgment No. 166/G/2016/PTUN-JKT which involved Kinipan Indigenous Community focused on the court's view that there was a lack of clear legal interest among the plaintiffs, despite the community's long-standing traditional control over customary land. The court's reasoning disregarded the concept of living law, which recognizes the existence of law in social practices. The rejection illustrates that the administrative court practice in Indonesia still does not recognize customary law as a primary legal source. The court should have examined social facts and historical land control, rather than merely considering formal administrative aspects.

Judgment No. 01/Pdt.G/2018/PN.Ska which involved the Dayak Community, West Kalimantan Province, was based on the lack of formal written evidence for the Dayak community's claim to customary land. This is problematic, as customary law generally does not rely on formal documentation like statutory law. The court should have utilized anthropological or cultural testimony as alternative forms of evidence. The ruling illustrates a lack of interdisciplinary approaches in adjudicating indigenous claims, leading to the exclusion of living law from the judicial process.

Judgment No. 51/Pdt.G/2016/PN-Btl concerning the Bugbug Indigenous Community, Bali, dismissed the case on the grounds that the indigenous community was not officially registered as a legal entity in state records. This highlights the legal system's failure to recognize sociologically-valid non-state legal entities. From a socio-legal perspective, legal subject status should also derive from social and historical recognition, not just formal legal registration. Such a formalist approach perpetuates colonial legal legacies that validate only state-recognized legal authority while sidelining socially legitimate indigenous structures.

The four rulings demonstrate a consistent pattern: a formal-positivist legal approach that tends to overlook the substantive, sociological, and ecological aspects of indigenous communities. Courts remain reluctant to create space for legal pluralism, despite the 1945 Constitution guaranteeing recognition and protection of indigenous peoples. The impact of this formal-positivist pattern is the creation of a judicial barrier that systematically marginalizes indigenous customary communities. Emphasis on formalities, such as legal standing or written evidence, rather than living law and social realities, effectively obstructs indigenous customary communities' access to justice, weakens constitutional protection of their communal land rights (ulayat rights), and ultimately, indirectly facilitates corporate expansion into indigenous territories. This pattern of rejection also erodes indigenous customary communities' trust in the state legal system and disregards the principle of legal pluralism that should be recognized.

However, there are also several court decisions in which judges took into account the protection of indigenous peoples, although such cases remain few compared to the majority of decisions that follow a formalistic approach. The following is the data on legal disputes involving indigenous communities:

JURNAL JURISPRUDENCE
Vol. 15, No. 2, 2025, pp. 177-206
p-ISSN: 1829-5045 ; e-ISSN : 2549-5615
Website: https://journals2.ums.ac.id/jurisprudence/issue/view/902

Table 1. Legal Disputes Involving Customary Communities

No	Decision Number/Year	Court	Customary Community	Disputed Object	Verdict/Reason for Decision	Dominant Approach
1	458 K/TUN/LH/2024	Supreme Court	Awyu Indigenous People, Papua	Environmental permit for palm oil company	Lawsuit rejected due to the 90-day expiration	Legal positivism, formalistic approach
2	35/G/2019/PTUN.JPR	Jayapura Administrative Court	Moi Indigenous People, Sorong	Environmental permit for palm oil concession	Lack of sufficient legal standing	Legal positivism
3	166/G/2016/PTUN-JKT	Jakarta Administrative Court	Laman Kinipan Indigenous People	Forestry Minister's plantation concession decree	Claimant deemed not representing legal interestz	Procedural-formal
4	01/Pdt.G/2018/PN.Ska	Sanggau District Court	Dayak Indigenous People, West Kalimantan	*Ulayat* (customary) land disputes with corporations	A lack of formal proof of traditional land ownership	Administrative evidence favored
5	51/Pdt.G/2016/PN-Btl	Buleleng District Court	Bugbug Indigenous Community, Bali	Land dispute with local government	Community not officially registered as legal subject	Legal formalism
6	6/G/LH/2023/PTUN-JPR	Jayapura Administrative Court	Awyu Indigenous Community, Papua	Environmental permit of IAL, Ltd.	Lawsuit deemed expired and lacking formal evidence	Legal positivism
7	92/B/LH/2023/PT.TUN.MDO	Manado High Administrative Court	Awyu Indigenous Community, Papua	Appeal against previous court decision	Appeal granted, State Administrative Court decision overturned	Balance between legal formality and substance
8	4398 K/Pid.Sus-LH/2025	Supreme Court	Sorbatua Siallagan Indigenous Community, North Sumatra	Accusation of arson on customary land	Supreme Court acquits the defendant	Customary law recognition
9	61/P/HUM/2022	Supreme Court	Cibarani Customary Community	Presidential Decree on Carbon Economic Value	Petition granted; indigenous communities recognized as	Recognition of the living law and community participation principle

					carbon benefit recipients	
10	State Administrative Court pf Manado, 2022	Manado Administrative Court	Sangihe Indigenous People	Suspension of gold mining environmental permit	Lawsuit granted, permit suspended	Recognition of environmental and indigenous rights
11	01/PRP/2024	Maumere District Court	Nangahale Indigenous Community, Sikka	Pretrial for criminalization in land conflict	Pretrial rejected	Formal criminal law
12	Tais District Court, 2025	Tais District Court, Bengkulu	Serawai Semidang Sakti Indigenous Community	Theft of palm fruit on customary land	Sentenced to 1-month probation, custom not considered	Conventional criminal law
13	Dobo District Court, 2021	Dobo District Court	Marafenfen Indigenous Community, Aru Islands	Land conflict with Navy occupation	Lawsuit rejected, no recognition of customary law	Legalistic
14	Makassar High Administrative Court, 2022	Makassar High Administrative Court	Moi Indigenous People, Sorong	Appeal by PLA, Ltd. in environmental case	Appeal granted, annulled indigenous lawsuit	Corporate-favored positivism
15	Bangkinang District Court, 2021	Bangkinang District Court	Pantai Raja Indigenous Community, Riau	Plantation land dispute (business land permit)	Lawsuit rejected, compensation ordered	Non-litigation resolution

Out of 15 court decisions related to legal disputes involving indigenous communities between 2015 and 2025, only around 27% applied a substantive or living law approach in their legal reasoning. This approach was evident in rulings that considered the social context, the living customary values (living law), and substantive justice, such as in the Supreme Court's acquittal of Sorbatua Siallagan (Decision No. 4398 K/Pid.Sus-LH/2025), the judicial review of the Presidential Regulation on Carbon Economic Value (Decision No. 61/P/HUM/2022), and an environmental case at the Manado Administrative Court. Meanwhile, approximately 73% of the decisions were still dominated by legalistic and formalistic approaches, emphasizing procedural aspects, such as expiration of the filing period, the plaintiff's legal standing, and the lack of formal administrative evidence. This dominant approach tends to overlook the social and cultural realities of indigenous peoples, who often do not possess formal legal documentation for their ancestral territories. These findings suggest that although the recognition of indigenous communities has been affirmed in the Constitution and Constitutional

Court rulings, in practice, customary law and living law values remain largely excluded from mainstream judicial considerations in Indonesia.

Going forward, courts in Indonesia must develop a more progressive approach. To achieve progressive justice, the judiciary needs to transform by focusing on three main pillars: legal reasoning methodology, institutional capacity, and the creation of jurisprudence. Methodologically, judges should adopt the *in dubio pro natura* principle and employ a multidisciplinary approach (including anthropology and ecology) to recognize the living law of indigenous customary communities, rather than relying solely on legalistic formalities. Institutionally, there is a need for strong specialization of environmental and indigenous law judges, as well as the integration of non-legal expert perspectives (*amicus curiae*) to enrich the evidentiary process. Finally, the Supreme Court must establish new, responsive jurisprudence that boldly prioritizes substantive justice over formal legality, thereby consistently protecting the collective rights of indigenous peoples and environmental sustainability.

Criticism of legal formalism in the context of justice and morality is especially relevant when analyzed through the perspectives of John Rawls and Gustav Radbruch. Legal formalism, which rigidly applies legal rules without broader interpretive mechanisms, often ignores the moral and social foundations of substantive justice. Although it promises consistency and predictability, this approach can result in rulings that contradict human rights and broader social interests.

Numerous scholars have criticized this rigid formalist method, advocating instead for legal frameworks that integrate ethical dimensions. For example, John Rawls' theory of justice offers a more humane alternative, emphasizing principles that protect individual rights and promote justice within social cooperation (Zeitlin 2021; Chung 2018).

In this case, Rawls' notion of "justice as fairness" is highly pertinent. For Rawls, justice goes beyond mere rule compliance, as it must reflect deep moral values and equitable treatment for all. He proposes redistributing "primary goods" to reduce social inequality, an idea that directly challenges the legal formalism often responsible for reinforcing structural injustice (de Paranhos et al. 2018).

Rawls also introduces the "original position" and "veil of ignorance," conceptual tools that encourage individuals to design principles of justice without knowing their own social status. Decisions derived from this position tend to be more impartial and fairer. This concept inherently critiques legal formalism by demonstrating how overemphasis on procedure can obscure justice and equality (Richards 2020; Kędziora 2019).

Additionally, broader philosophical critiques emerge. Gustav Radbruch, for example, presents a synthesis that links law, morality, and social justice. He argues that a strictly legalistic approach may result in injustice when it fails to uphold moral principles. Badano's work aligns with this, showing that utilitarian logic in healthcare allocation can strip away individual rights, similar to how legal formalism ignores the complex needs of real people (Badano 2017).

Garšanka also reinforces this critique by asserting that justice cannot be evaluated purely through narrow legal lenses, but must involve social relations and moral imperatives (Gališanka 2019; Grey 2018). Hence, a truly just legal system should be holistic and rooted in humanistic values, not merely in procedural compliance.

The ruling that rejected the Awyu community's legal challenge against the palm oil plantation permit clearly demonstrates a failure to integrate living law into the state legal system. The court prioritized formalistic considerations—such as the statute of limitations—over ecological conservation principles and the collective rights inherent in Awyu customary law. The main impact is a serious threat to the cultural and ecological integrity of the Awyu, who risk losing 36,000 hectares of vital peatland that serve as a source of livelihood, cultural heritage, and carbon sequestration. This also underscores that the judicial system continues to inherit colonial biases, failing to apply the principle of FPIC (Free, Prior, and Informed Consent) and indirectly facilitating corporate expansion at the expense of indigenous peoples' rights.

B. Living Law and Indigenous Peoples' Rights

In understanding the Awyu case through the lens of living law, as articulated by Eugen Ehrlich and Satjipto Rahardjo, we are reminded that the law is not merely a collection of statutory provisions. Law is, in essence, alive and evolving within society, i.e., in the social norms, customs, and values applied in daily life (Fuchs 2020; Silipigni 2021).

Ehrlich's concept of living law emphasizes that the law truly at work is the one embedded in society, not necessarily the one codified by the state. His research in the multi-ethnic region of Bukovina revealed that communities often follow their own rules or customs, even if these things are not formally recognized by the state (Fuchs, 2020). This view aligns with Satjipto Rahardjo's belief that the law should serve social justice and be relevant to people's needs. In other words, good law must be sensitive to social realities and adaptable to the community's conditions.

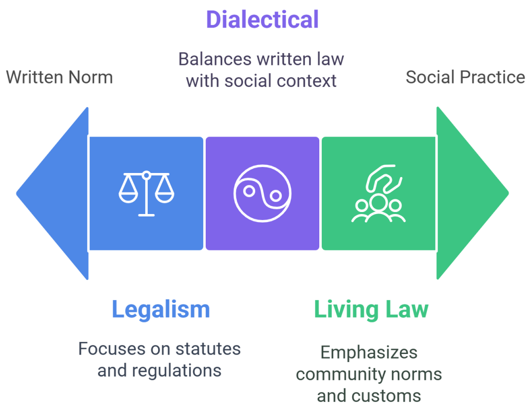

Figure 1. The Relationship Between Legalism and Living Law

Figure 1 illustrates the relationship between two approaches to understanding law: legalism and living law, as well as the dialectical position between them. On the left side, legalism is represented as an approach that emphasizes written law, such as statutes and formal regulations. This approach asserts that law is derived from objective legal norms and must be enforced as written laws, without necessarily considering the social context. On the right side, the concept of living law is presented, portraying law as a form of social practice that evolves and develops within communities. This approach highlights the importance of norms, customs, and traditions that, while often unwritten, carry binding power in social and moral terms. Between these two approaches lies the dialectical position, which serves as a bridge balancing normative legalism and contextual living law. The dialectical approach aims to harmonize written law with the living values of society, so that the law is not only formally valid but also just and socially relevant.

In the Awyu case, the authors observe how customary law and local lifeways frequently clash with state law. A relevant example is the smoking ban in a temple in Denpasar: although a formal regulation existed, deeply rooted social customs made enforcement difficult (Suarjana et al. 2021). The same dynamic can be seen among the Awyu people, where national laws cannot be effectively implemented when they contradict deeply-entrenched local values. This is where state law can become "subordinate" to customary law that enjoys greater community acceptance and legitimacy (Bombang, Haling, and Halim, 2019).

Empirical studies show that law does not operate in a vacuum, it is always influenced by prevailing social norms (Akter et al. 2021; Nadler 2017). People do not automatically obey laws just because they are written in statutes; rather, they evaluate whether the law aligns with their values and customs. If not, such laws are likely to be ignored, even if formally enacted (A and Sunitha 2023; Skerletopoulos, Makris, and Khaliq 2020).

Therefore, in drafting and enforcing laws, the state must look beyond the statutory text. It must listen to indigenous voices and understand their ways of life. Laws cannot simply be imposed without regard to the living law within communities. If that happens, the result is often rejection, injustice, and erosion of public trust in the legal system.

The Awyu community in Papua lives by a value system and norms that govern their *hutan adat* (customary forests), spaces that are not only vital to their economy but also to their cultural identity. However, when this local system intersects with the national legal framework, imbalances and incompatibilities arise. For example, licensing processes for companies often disregard the existence and rights of indigenous communities like the Awyu, leading to conflicts and legal uncertainty. This occurs despite constitutional recognition of indigenous rights, such as Article 18B(2) of the 1945 Constitution and Law No. 21 of 2001 on Special Autonomy for Papua. While these legal instruments are designed to protect indigenous rights, including those related to the environment and customary land, their implementation remains weak in both legal practice and national economic policy (Yuliartini, Sudika Mangku, and Sari Adnyani 2021; Hairan et al., 2024).

One critical element in this discourse is the *ulayat* right, which legally enables the Awyu people to manage and protect their customary forests. In Indonesia's agrarian law, *ulayat* rights are recognized as communal rights held by indigenous peoples over their territory, as long as the community continues to exist and uphold its traditions (Poesoko, Rato, and Prabu Rumiartha 2019). However, in practice, such recognition faces structural obstacles. Deeply-rooted local wisdom and customary systems are often sidelined by commercial interests. For example, in the context of plantation law, regulations and practices often favor corporations over indigenous land claims (Dewi et al. 2023; Hairan et al., 2024). This contradicts the spirit of social and environmental justice enshrined in the 1945 Constitution, particularly its mandate that natural resources must be managed for the greatest benefit of the people, including that of indigenous communities (Frima Sumbara 2023; Br Nababan et al. 2024).

The state's failure to fully integrate indigenous rights into licensing systems underscores a legal protection gap for the Awyu community. Ideally, legal pluralism should allow state law and customary law to coexist and complement each other. In practice, however, this vision is far from reality. The relationship between customary legal systems and statutory law reveals the need for stronger mechanisms to ensure indigenous rights are not excluded from national development agendas (Kharisma Pradana 2018; Bakri et al. 2023; Poesoko et al., 2019). The biggest challenge is translating constitutional principles guaranteeing indigenous existence into concrete policy that upholds their rights amid growing commercial pressure.

The failure to recognize living law reflects a deep divide between state and customary legal systems, resulting in systemic injustice for indigenous peoples. Customary law, often unwritten and grounded in local wisdom, represents evolving norms and values that shape the everyday life of indigenous communities (Setiawan et al. 2024; Tongat et al. 2020). Due to its dynamic and contextual nature, customary law should not be seen as a mere supplement, but rather as an integral part of the formal legal system to achieve justice and inclusivity (The et al. 2022).

Various studies affirm that customary law encompasses not only legal rules but also a cultural and social framework that underpins indigenous life (Aunuh 2024; Muntaha 2024). Recognition of indigenous rights, such as *ulayat*, can strengthen legal protections for indigenous communities (The et al., 2022). Nevertheless, in practice, customary law is often relegated to a secondary role, rather than being treated as a co-equal legal authority. This view leads to marginalization of indigenous peoples and their absence from legal processes (Diala 2021).

Integrating living law into the national legal system is also essential for preserving cultural integrity and promoting equitable natural resource governance (Asteria et al. 2021). In environmental management, recognition of customary legal practices not only bolsters indigenous rights but also supports ecological conservation through local wisdom-based approaches (Tran, Ban, and Bhattacharyya, 2020). On the contrary, when the state fails to accommodate such local values, it inadvertently perpetuates colonial legacies that obstruct indigenous self-determination and weaken their relationship with state law (Dawson and Suich 2025).

Bridging customary and state legal systems requires sensitivity to the historical and ongoing injustices indigenous peoples face. The key challenge lies in harmonizing the flexibility and richness of customary values with the rigidity of written laws. This is where the voices of indigenous peoples must be amplified in national legal discourse (Siregar 2018; Kridasakti, Majid, and Yuningsih 2022). The legal imbalance is evident in many social impact assessments, which frequently overlook indigenous institutions. As a result, their essential role in resource and environmental governance remains inadequately acknowledged (Dawson and Suich, 2025).

C. Critical Analysis of the Supreme Court's Legal Reasoning

The Supreme Court's decision to dismiss the lawsuit on formalistic grounds reflects a broader trend within the legal system, where proceduralism may reinforce exclusionary practices and further marginalize vulnerable groups, particularly indigenous communities. By prioritizing compliance with legal procedures over substantive issues, the court bypasses critical discussions about environmental impacts and the participatory rights of indigenous peoples in the licensing process. Such a rigid legal approach often obstructs meaningful engagement with the lived experiences of indigenous communities who are most affected by environmental degradation caused by industrial activities.

Numerous studies indicate that indigenous ecological heritage rights are severely threatened when their traditional knowledge is disregarded in favor of state-centric or corporate environmental management approaches (Datta and Marion 2021). For example, the imposition of external management frameworks often exacerbates ecological harm and deepens inequalities experienced by indigenous peoples (Mei 2023). These challenges are compounded by a legal framework that fails to substantively integrate indigenous rights into environmental impact assessments and decision-making. The exclusion of indigenous voices from decisions regarding their ancestral territories highlights weak implementation of international obligations regarding their participatory rights (Mei 2023; Nur, Al-Fatih, and Intania 2024).

Environmental degradation also directly affects indigenous food sovereignty and health, as industrial pollution and land-use changes hinder traditional practices and limit access to natural resources (Liddell, Kington, and McKinley 2022). This is particularly relevant in large-scale development projects, where despite international recognition of the need to include Indigenous perspectives in environmental assessments, implementation remains inadequate (Arsenault et al. 2019; Grote 2022). The absence of indigenous voices not only results in environmental injustice but perpetuates systemic exclusion and cultural marginalization.

Environmental justice principles demand a reassessment of decision-making frameworks to affirmatively recognize and integrate indigenous rights (Gimenez 2022; Pereira 2021).

Successful examples of indigenous-led environmental governance demonstrate the potential for empowering communities through collaborative management approaches (Reed et al. 2020; Buell et al. 2020). These models emphasize co-learning and participatory strategies capable of dismantling the formalistic barriers within legal systems (Gimenez 2022). The integration of indigenous knowledge into environmental processes not only enhances ecological stewardship but also preserves cultural heritage, proving that meaningful inclusion improves environmental outcomes while upholding indigenous sovereignty (Arsenault et al. 2019; Nesterova 2020).

From the perspective of substantive justice theory, this decision fails to ensure fairness in both legal procedures and equitable outcomes for all stakeholders involved. Justice, in legal contexts, comprises procedural and substantive dimensions (Foran 2019). Procedural justice demands that legal processes must be fair and provide affected parties with adequate representation and decision-making capacity. Substantive justice seeks outcomes that align with fair and equitable norms. In environmental licensing, such justice is crucial, as decisions often affect not only current stakeholders but future generations and ecological health.

Intergenerational justice principles emphasize the ethical responsibility of the present generation to protect the resources and opportunities of future generations (Teodoro et al. 2022; Zhang 2018). This complexity is evident in regions under environmental stress, where short-term benefits for some can lead to long-term ecological harm for many (Kyllönen 2022; Sanklecha 2017). Legal and ethical frameworks must therefore address these future-facing concerns to ensure justice for unborn generations and alignment with ecological justice principles (Wienhues 2020).

Furthermore, the dissenting opinion in this case opens a critical space to reconsider indigenous rights and ecological impacts of state policies. It reflects a broader and more inclusive understanding of justice that includes voices that are historically marginalized in mainstream legal discourse (Sangren 2022; Wienhues 2020). Indigenous peoples possess in-depth local ecological knowledge and play a key role in maintaining environmental balance. Their integration into legal and policy-making processes not only enhances human rights protection but also advances ecological justice (Jiang, Wang, and Du 2023).

Failing to account for these factors in judicial decisions risks undermining the essence of ecological justice-a framework aimed at identifying and addressing harms to both the environment and the communities reliant upon it (Mazor 2022; Similä and Wallén 2023). Ignoring the intersection of ecological and social concerns exacerbates existing inequalities and threatens sustainable justice for future generations and vulnerable communities (Makhmari et al. 2024). Therefore, the legal system must evolve to embrace a more holistic justice paradigm, ensuring truly equitable rulings.

The ongoing debate between positivist legal theory and progressive legal thought reflects a fundamental difference in perspectives on the role of the judiciary within the social structure, particularly in the context of Indonesia, as noted by Satjipto Rahardjo (1991). Proponents of positivist law, such as Jiménez, argue that a clear and structured understanding of law aligns with democratic principles, because it allows for rational disagreement and prioritizes the principle of majority rule (Jiménez, 2023). This view emphasizes the importance of statutes and regulations as binding guidelines without necessarily considering moral or ethical dimensions (Disantara, 2021). However, Rahardjo challenges this perspective, as cited by Tan and Sugiono, asserting that law should not merely remain as a collection of rules but must serve as a tool for social change that reflects the needs and realities of the society it serves (Tan & Sudirman, 2020).

If legal positivism positions law as an objective framework to maintain order and facilitate governance, progressive legal theory views law as a reflection of societal ideals and a means to promote social transformation. This perspective critiques legal systems that rely too heavily on rigid, outdated doctrines no longer relevant to contemporary social dynamics (Noor et al., 2021). It highlights one of positivism's main weaknesses: its inability to adjust the legal structure to the dynamic and evolving realities of society (Manalu et al., 2023).

The limitation of a legal approach that relies solely on textual interpretation without considering social context lies in its narrow vision of law as merely a technical instrument, rather than as a tool for social engineering that requires reform to better reflect the collective aspirations of society (Soemanto, 2018). In contrast, the positivist approach tends to overlook the complexities of society in the law-making process, marginalizing the lived experiences of citizens (Kaharuddin, 2023). As a result, law enforcement becomes ineffective, because it fails to take the social realities in which the law operates into account (Roseffendi, 2018).

A sociological approach views the law not merely as a set of norms but as a living instrument that must be responsive to societal needs (Kaharuddin, 2023). Legal protection must continually evolve to safeguard not only rights derived from legal texts but also those essential to human dignity and social progress (Jaya et al., 2023; Juhana et al., 2024). Therefore, a more inclusive and flexible judicial approach is required—one that opens space for community participation and considers social realities in legal processes—so that law becomes more empathetic and effective in addressing contemporary challenges.

The Supreme Court's decision in the Awyu customary forest dispute exemplifies the tension between formal legal procedures and efforts to uphold substantive justice, particularly for indigenous communities. The case highlights how dominance of legal-formalist approaches can neglect core values of social, ecological, and cultural justice embodied in customary law. Indigenous communities like the Awyu possess historically and socially entrenched legal systems and governance models.

This reality underscores the Indonesian judiciary's ongoing struggle to operationalize constitutional principles, such as the recognition of indigenous peoples in Article 18B of the 1945 Constitution. Courts often prioritize procedural certainty over protecting vulnerable groups. This is further exacerbated by the insufficient application of legal pluralism, where customary law should be treated as a coequal component of judicial reasoning.

Moving forward, courts must broaden their interpretative space through integrative approaches that incorporate customary law perspectives, ecological justice, and principles of sustainable coexistence. Such an approach will not only strengthen the legitimacy of customary law but also contribute to environmental protection and social stability. Recognition of customary law should extend beyond formal legality to embrace indigenous ways of life, local knowledge, and the right to sustainable community existence. Therefore, reforming the judicial paradigm is imperative to ensure justice is truly accessible to all, including indigenous peoples who were historically marginalized by the national legal system.

CONCLUSION

The conclusion of this analysis highlights the dominance of rigid formal legality in the practice of the Indonesian judiciary, reaching its peak in the Supreme Court Decision No. 458 K/TUN/LH/2024 and the Manado Administrative High Court Decision No. 92/B/LH/2023/PT.TUN.MDO in the case of the Awyu customary community. These rulings disregarded the substance of justice by relying on procedural expiration, thereby creating judicial barriers and systematically marginalizing the rights of indigenous customary communities.

This pattern reflects a systemic failure to integrate living law while perpetuating colonial biases by ignoring the principles of FPIC (Free, Prior, and Informed Consent) and the local wisdom of customary communities, with serious consequences for ecological and intergenerational justice. In line with Satjipto Rahardjo’s critique, this research’s recommendation to the Indonesian judiciary is to reconstruct its paradigm toward a more progressive approach. Such a transformation is necessary to balance legality with substantive justice. It must recognize living laws and develop new jurisprudence that produce inclusive, sustainable decisions that protect the rights of customary communities and the environment.

REFERENCES

A, T. M., & Sunitha, V. (2023). Influence of Societal Norms in Mahesh Dattani's Bravely Fought the Queen. *Migration Letters, 21*(1). https://doi.org/10.59670/ml.v21is1.5935

Akmal, D. U., Kusnandar, M. I., & Muin, F. (2025). Perlindungan Hak Konstitusional Masyarakat Hukum Adat Melalui Pembentukan Hukum. *Jurnal Konstitusi, 22*(1), 66-87. https://doi.org/10.31078/jk2214

Akter, S., Williams, C., Talukder, A., Islam, M. N., Escallon, J. V., Sultana, T., Kapil, N., & Sarker, M. (2021). Harmful Practices Prevail Despite Legal Knowledge: A Mixed-Method Study on the Paradox of Child Marriage in Bangladesh. *Sexual and Reproductive Health Matters, 29*(2). https://doi.org/10.1080/26410397.2021.1885790

Anisah, S., & Hadi, S. (2023). The Human Right to a Fair Trial in Competition Law Enforcement Procedures: A Rising Issue in Indonesian Experiences. *Laws, 12*(3), 55. https://doi.org/10.3390/laws12030055

Arsenault, R., Bourassa, C., Diver, S., McGregor, D., & Witham, A. A. (2019). Including Indigenous Knowledge Systems in Environmental Assessments: Restructuring the Process. *Global Environmental Politics, 19*(3), 120-132. https://doi.org/10.1162/glep_a_00519

Asteria, D., Brotosusilo, A., Negoro, H. A., & Sudrajad, M. R. (2021). Contribution of Customary Law in Sustainable Forest Management for Supporting Climate Action. *Iop Conference Series Earth and Environmental Science*. https://doi.org/10.1088/1755-1315/940/1/012080

Aunuh, N. (2024). Customary Law ``Bolit Mate Nawar Uman" as ``Living Law" in West Kutai Regency, East Kalimantan. *Kne Social Sciences, 8*(21). https://doi.org/10.18502/kss.v8i21.14763

Badano, G. (2017). If You're a Rawlsian, How Come You're So Close to Utilitarianism and Intuitionism? A Critique of Daniels's Accountability for Reasonableness. *Health Care Analysis, 26*(1), 1-16. https://doi.org/10.1007/s10728-017-0343-9

Bakri, M., Damayanti, R., Sandra, G., & Priatama Amar, A. A. (2023). The Role of Customary Law in Regarding Theft Offenses by Minors. *Journal La Sociale, 4*(3). https://doi.org/10.37899/journal-la-sociale.v4i3.847

Basoeky, U. (2019). Legal Reconstruction: Ingsutan Paradigmatic on the Determination of the Positivism Paradigm and Legal Positivism in Law Enforcement in Indonesia. *International Journal of Science and Society, 1*(4). https://doi.org/10.54783/ijsoc.v1i4.323

Bentsen, H. L. (2019). Dissent, Legitimacy, and Public Support for Court Decisions: Evidence From a Survey-Based Experiment. *Law \& Society Review, 53*(2), 588-610. https://doi.org/10.1111/lasr.12402

Bombang, S., Haling, S., & Halim, P. (2019). *Lex Superior Versus Lex Inferior: Selection Between Social Norms and Applicable Legal Norms*. https://doi.org/10.31227/osf.io/rw352

Br Nababan, N. O., Wiwoho, J., Ayu Handayani, I. G., & Karjoko, L. (2024). *Legal Politics of Water Resources Regulation in Achieving Social Welfare*, *9*(4) https://doi.org/10.2991/978-2-38476-218-7_28

Bricker, B. (2017). Breaking the Principle of Secrecy: An Examination of Judicial Dissent in the European Constitutional Courts. *Law & Policy, 39*(2), 170-191. https://doi.org/10.1111/lapo.12072

Buell, M.-C., Ritchie, D., Ryan, K., & Metcalfe, C. D. (2020). Using Indigenous and Western Knowledge Systems for Environmental Risk Assessment. *Ecological Applications,* 30(7). https://doi.org/10.1002/eap.2146

Chung, H. (2018). Rawls's Self-Defeat: A Formal Analysis. *Erkenntnis, 85,* 1169-1197. https://doi.org/10.1007/s10670-018-0079-4

Datta, R., & Marion, W. P. (2021). Ongoing Colonization and Indigenous Environmental Heritage Rights: A Learning Experience With Cree First Nation Communities, Saskatchewan, Canada. *Heritage, 4*(3). https://doi.org/10.3390/heritage4030076

Dawson, N., & Suich, H. (2025). Advancing Social Impact Assessments for More Effective and Equitable Conservation. *Conservation Biology, 39*(2). https://doi.org/10.1111/cobi.14453

de Paranhos, D. G., Matias, E. A., de Sá, N. M., & Garrafa, V. (2018). As Teorias Da Justiça, De John Rawls E Norman Daniels, Aplicadas À Saúde. *Saúde Em Debate, 49*(119), 1102-1011. https://doi.org/10.1590/0103-1104201811917

Dewi, I. G., Wiryani, M., Adhi, Y. P., & Prasetyo, A. B. (2023). *Legal Study on Customary Land Business Agreements by Companies and Indigenous Peoples*. https://doi.org/10.2991/978-2-38476-164-7_17

Diala, A. (2021). Legal Pluralism and the Future of Personal Family Laws in Africa. *SSRN Electronic Journal, 35*(1), 1-17. https://doi.org/10.2139/ssrn.3899110

Disantara, F. P. (2021). Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum. *Al-Adalah Jurnal Hukum Dan Politik Islam, 6*(1). https://doi.org/10.35673/ajmpi.v6i1.1129

Drumbl, M. A. (2020). Memorializing Dissent: Justice Pal in Tokyo. *Ajil Unbound*. https://doi.org/10.1017/aju.2020.26

Dunoff, J. L., & Pollack, M. A. (2022). The Road Not Taken: Comparative International Judicial Dissent. *American Journal of International Law, 116*(2), 340-396. https://doi.org/10.1017/ajil.2022.1

Fanani, A. Z., & Zulkarnain, M. S. (2022). Understanding John Austin's Legal Positivism Theory and Hans Kelsen's Pure Legal Theory. *Peradaban Journal of Law and Society, 1*(2). https://doi.org/10.59001/pjls.v1i2.41

Foran, M. P. (2019). The Rule of Good Law: Form, Substance and Fundamental Rights. *The Cambridge Law Journal, 78*(3), 570-595. https://doi.org/10.1017/s0008197319000618

Frima Sumbara, A. P. (2023). Legal Analysis of Communal Rights of Ammatoa Kajang Customary Law Community on Customary Forest in Bulukumba District. *Edunity Kajian Ilmu Sosial Dan Pendidikan*, *2*(7). https://doi.org/10.57096/edunity.v2i7.114

Fuchs, W. A. (2020). Litigious Bukovina: Eugen Ehrlich's ›Living Law‹ and the Use of Civil Justice in the Late Habsburg Monarchy. *Administory, 5*(1). https://doi.org/10.2478/adhi-2020-0015

Gališanka, A. (2019). *John Rawls: The Path to a Theory of Justice*. Harvard University Press. https://doi.org/10.2307/j.ctvfb6z6f

Gimenez, R. M. (2022). Making Space for Indigenous Law in State-led Decisions About Hydropower Dams: Lessons From Environmental Assessments in Canada and Brazil. *Review of European Comparative & International Environmental Law, 31*(2), 233-245. https://doi.org/10.1111/reel.12432

Grey, C. (2018). Stability and the Sense of Justice. *Philosophy & Social Criticism, 44*(9). https://doi.org/10.1177/0191453718768353

Grote, K. M. (2022). Controlling the Narrative: Critiquing the Geopolitical Narratives of US Environmental Impact Assessments and Exclusion of Indigenous Communities. *Environment and Planning F, 1*(2-4). https://doi.org/10.1177/26349825221123571

Halkis, M., & Amri, F. (2019). Position of the Ulayat Rights in the Law and Government Policy After the Regional Autonomy in Singingi Region, Riau Province, Indonesia. *JLPG, 83*. https://doi.org/10.7176/jlpg/83-05

Harrisa, S. I., Kristanto, Y., Sendra, I. M., & Ridho, R. O. (2023). Development Model of Traditional Ritual Festivalization as Cultural Tourism Attraction in Padang Panjang City, West Sumatra. *Asian Journal of Social and Humanities, 1*(11). https://doi.org/10.59888/ajosh.v1i11.94

Hartiwiningsih, H., Pratiwi, D. E., & Parwitasari, T. A. (2024). Political Shift Law Settlement of Fly Ash and Bottom Ash (Faba) Coal Based on Ecological Justice. *Journal of Law and Sustainable Development, 12*(4). https://doi.org/10.55908/sdgs.v12i4.433

Huerta, E. O. (2021). Transnational Corporate Liability Litigation and Access to Environmental Justice: The Vedanta v Lungowe Case. *Lselr, 6*(3). https://doi.org/10.61315/lselr.166

Idrus, S. H., Sumartono, E., Wartono, W., Suharto, S., & Syahriar, I. (2024). Harnessing Digital Transformation for Improved Public Service Delivery: Lessons From Global Administrative Practices. *Join: Journal of Social Science, 1*(3). https://doi.org/10.59613/k8s6s859

Jaya, I. G. G. M. A., Santiago, F., & Fakrulloh, Z. A. (2023). Restorative Justice as an Effort to Settle Traffic Accident Crime Cases. *Interdiciplinary Journal and Hummanity (Injurity), 2*(2). https://doi.org/10.58631/injurity.v2i2.29

Jiang, W., Wang, X., & Du, L. (2023). Intergenerational Externalities and Corporate Green Innovation. *Sustainable Development, 31*(4), 2212-2221. https://doi.org/10.1002/sd.2501

Jiménez, F. M. (2023). Legal Positivism for Legal Officials. *Canadian Journal of Law \& Jurisprudence, 36*(2), 359-386. https://doi.org/10.1017/cjlj.2022.36

Jodyvash, M. (2025). The Role of Cultural Pluralism in Indigenous Peoples' Defense of Nature's Rights. *Oñati Socio-Legal Series, 15*(4). https://doi.org/10.35295/osls.iisl.2228

Juhana, U., Prasetyo, S. N., & Erdianti, R. N. (2024). Community Service Sentencing: Its Urgency in and Contribution to Future Criminal Law in Indonesia. *JLPG, 140*. https://doi.org/10.7176/jlpg/140-01

Kaharuddin, K. (2023). Legal Sociology Approach: A Critical Study on Understanding the Law. *Veteran Law Review, 6*(Special Issue). https://doi.org/10.35586/velrev.v6ispecialissues.4955

Kędziora, K. (2019). Habermas and Rawls on an Epistemic Status of the Principles of Justice. *Acta Universitatis Lodziensis Folia Philosophica Ethica-Aesthetica-Practica, 34*. https://doi.org/10.18778/0208-6107.34.03

Kharisma Pradana, G. Y. (2018). Legal Pluralism Politics Towards Recognition of Social Unity in Customary Law and Local Regulation. *International Journal of Social Sciences and Humanities, 2*(2). https://doi.org/10.29332/ijssh.v2n2.152

Kridasakti, S. W., Majid, A., & Yuningsih, H. (2022). Restorative Justice Tindak Pidana "Elopement" Hukum Adat Dalam Konstruksi Hukum Pidana Positif Indonesia. *Jurnal Supremasi, 12*(2). https://doi.org/10.35457/supremasi.v12i2.1839

Kubal, A. (2023). Dissenting Consciousness: A Socio-Legal Analysis of Russian Migration Cases Before the European Court of Human Rights. *The International Journal of Interdisciplinary Civic and Political Studies, 18*(2). https://doi.org/10.18848/2327-

0071/cgp/v18i02/57-77

Kyllönen, S. (2022). Towards a Multispecies Population Ethics. *Environmental Ethics, 44*(4), 347-366. https://doi.org/10.5840/enviroethics2022102748

Laia, F. F. D. (2024). Restorative Justice and Living Law Based on Dayak Ngaju Adat Law: A Comprehensive Analysis. *Sign Jurnal Hukum, 6*(2), 363. https://doi.org/10.37276/sjh.v6i2.363

Liddell, J. L., Kington, S., & McKinley, C. E. (2022). "We Live in a Very Toxic World": Changing Environmental Landscapes and Indigenous Food Sovereignty. *Studies in Social Justice, 16*(3). https://doi.org/10.26522/ssj.v16i3.2746

Makhmari, M., Al-Hammouri, A., Al-Billeh, T., Alkhseilat, A., & Almamari, A. (2024). The Role of International Judiciary in Protecting the Environmental Rights of Future Generations. *PJC, 16*(2), 619-634. https://doi.org/10.62271/pjc.16.2.619.634

Manalu, F. H., Saraswati, R., & Yulida, D. (2023). Political Law Interpretation on President's Refusal to Sign an Approved Bill With the House of Representatives. *Jurnal Dinamika Hukum, 23*(1). https://doi.org/10.20884/1.jdh.2023.23.1.3267

Marah, T. S. (2025). Legal Protection of Indigenous Peoples Under International Environmental Law. *Ijlj, 2*(4). https://doi.org/10.47134/ijlj.v2i4.4112

Mazor, J. (2022). On Environmental Justice, Part II: Non-Absolute Equal Division of Rights to the Natural World. *Economics and Philosophy, 39*(2), 256-284. https://doi.org/10.1017/s0266267122000050

Mei, L. C. (2023). Logging and Indigenous Peoples' Well-Being: An Overview of the Relevant International Human Rights Jurisprudence. *The International Forestry Review, 25*(1), 17-27. https://doi.org/10.1505/146554823836902608

Muharman, D. (2025). Analysis of Recognition and Protection of Indigenous Peoples Rights in Land Policy in Indonesia. *Nawala Journal*. https://doi.org/10.62872/xqyx4373

Munawar, S., Jan Butt, M. A., & Zaka, S. (2023). The Influence of Materialism on Politics: An Examination Through the Lens of Karl Marx's Perspective. *Bbe, 12*(3), 352-355. https://doi.org/10.61506/01.00040

Muntaha, S. (2024). Comparison of Sanctions for the Crime of Adultery in Toraja Customary Law and National Law in Indonesia. *Jurnal Hukum Politik Dan Ilmu Sosial*. https://doi.org/10.55606/jhpis.v3i1.3385

Muro, S., Amaral-Garcia, S., Chehtman, A., & Garoupa, N. (2020). Exploring Dissent in the Supreme Court of Argentina. *International Review of Law and Economics*. https://doi.org/10.1016/j.irle.2020.105909

Nadler, J. (2017). Expressive Law, Social Norms, and Social Groups. *Law & Social Inquiry, 42*(1), 60-75. https://doi.org/10.1111/lsi.12279

Nesterova, Y. (2020). Rethinking Environmental Education With the Help of Indigenous Ways of Knowing and Traditional Ecological Knowledge. *Journal of Philosophy of Education, 54*(4), 1047-1057. https://doi.org/10.1111/1467-9752.12471

Noor, H. J., Afkar, K., & Glaser, H. (2021). Application of Sanctions Against State Administrative Officials in Failure to Implement Administrative Court Decisions. *Bestuur, 9*(1). https://doi.org/10.20961/bestuur.v9i1.49686

Nugraha, X., Aryani Wibisono, A. M., Angelia, A., S., B. O., & Answendy, P. R. (2023). Strengthening Customary Forest Rights for Indigenous People in Indonesia Green Constitution Framework. *Jurnal Kajian Pembaruan Hukum, 3*(2). https://doi.org/10.19184/jkph.v3i2.43367

Nur, A. I., Al-Fatih, S., & Intania, C. C. (2024). Revitalising Indigenous Rights Participation in

Mining Lawmaking Process: Evaluation and Proposal for Indonesia. *Law Reform, 20*(1). https://doi.org/10.14710/lr.v20i1.63684

Pereira, R. (2021). Public Participation, Indigenous Peoples' Land Rights and Major Infrastructure Projects in the Amazon: The Case for a Human Rights Assessment Framework. *Review of European Comparative & International Environmental Law, 30*(2). https://doi.org/10.1111/reel.12400

Poesoko, H., Rato, D., & Prabu Rumiartha, I. N. (2019). The Nature of Customary Land Concession in the Customary Law Society. *International Journal of Social Sciences, 3*(1). https://doi.org/10.31295/ijss.v3n1.111

Rahail, E. B., Jotam Kalalo, J. J., Betaubun, H. F., & Kalalo, C. N. (2018). Environmental Law Politics and Malind Anim Indigenous People Rights Protection Based on Free and Prior Informed Consent Principles. *E3s Web of Conferences*. https://doi.org/10.1051/e3sconf/20187302017

Rahardjo, S. (1991). *Ilmu Hukum* (revisi). Citra Aditya Bakti.

Rasdi, R. (2020). Criminal Politics (Enforcement) of Criminal Law Based on Pancasila Equity. *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement) Jphi, 5*(2). https://doi.org/10.15294/ijcls.v5i2.28107

Reed, G., Brunet, N. D., Longboat, S., & Natcher, D. (2020). Indigenous Guardians as an Emerging Approach to Indigenous Environmental Governance. *Conservation Biology, 35*(1), 179-189. https://doi.org/10.1111/cobi.13532

Richards, M. A. (2020). John Rawls: The Path to a Theory of Justice. *Contemporary Political Theory*. Jstor. https://doi.org/10.1057/s41296-020-00394-5

Riswadi, R., & Santoso, H. (2024). Implementation of Investigations and Prosecution by the Corruption Eradication Commission Based on Law of the Republic of Indonesia Number 19 of 2019 Concerning the Corruption Eradication Commission. *International Journal of Engineering Business and Social Science, 2*(3). https://doi.org/10.58451/ijebss.v2i03.132

Roseffendi. (2018). Hubungan Korelatif Hukum Dan Masyarakat Ditinjau Dari Perspektif Sosiologi Hukum. *Al-Imarah*, *3*(2), 189–197. https://doi.org/10.1017/CBO9781107415324.004

Sangren, K. M. (2022). Processual Recognition in Chinese Traffic Disputes. *Polar Political and Legal Anthropology Review, 45*(1), 26-41. https://doi.org/10.1111/plar.12465

Sanklecha, P. (2017). Should There Be Future People? A Fundamental Question for Climate Change and Intergenerational Justice. *Wiley Interdisciplinary Reviews Climate Change, 8*(3). https://doi.org/10.1002/wcc.453

Setiawan, A., & Aisyiah Ismail, R. R. (2023). Paradigma Positivisme Hukum John Austin Di Era Posmodernisme. *Arena Hukum, 16*(3). https://doi.org/10.21776/ub.arenahukum.2023.01603.3

Setiawan, I. Wahyu, A. M., Rahman, A., & Sutrisno, A. (2024). Juridical Study of Customary Law in the Indonesian National Legal System. *Asian Journal of Social and Humanities*. https://doi.org/10.59888/ajosh.v2i8.317

Silipigni, D. (2021). State Law, Dispute Processing, and Legal Pluralism: Unspoken Dialogues From Rural India, by Kalindi Kokal, London: Routledge, 2020, 218 Pp. *Nordic Journal on Law and Society, 4*(2). https://doi.org/10.36368/njolas.v4i02.229

Similä, J., & Wallén, H. (2023). Justice, Mining, and Legal Reforms in the Finnish Arctic. *Arctic Review on Law and Politics, 14*. https://doi.org/10.23865/arctic.v14.5903

Siregar, T. (2018). Adoption of Ethnic Customary System (Adat) in Modern Confliction Resolution. *The Turkish Online Journal of Design Art and Communication, 8*. https://doi.org/10.7456/1080sse/134

Skerletopoulos, L., Makris, A., & Khaliq, M. (2020). "Trikala Quits Smoking": A Citizen Co-Creation Program Design to Enforce the Ban on Smoking in Enclosed Public Spaces in Greece. *Social Marketing Quarterly, 26*(3). https://doi.org/10.1177/1524500420942437

Soemanto, R. B. (2018). *9. Regulation and Social Changes Within Public Bureaucracy*. Proceedings of the 5th International Conference on Social and Political Sciences. https://doi.org/10.2991/icosaps-18.2018.9

Strother, L., & Glennon, C. (2020). An Experimental Investigation of the Effect of Supreme Court Justices' Public Rhetoric on Perceptions of Judicial Legitimacy. *Law & Social Inquiry, 46*(2). https://doi.org/10.1017/lsi.2020.38

Suarjana, K., Chalidyanto, D., Qomaruddin, M. B., & Wahyuni, C. U. (2021). *Factors Associated to Smoking Behavior in Worship Places in Denpasar Bali Indonesia*. International Conference on Public Health. https://doi.org/10.17501/24246735.2020.6102

Supriyadi, M. W., & Supriyadi, S. (2024). Do the Tax Court Decisions Fulfill Tax Justice? Literature Review. *Educoretax, 4*(1). https://doi.org/10.54957/educoretax.v4i1.625

Susmiyati, H. R., Grizelda, G., Harjanti, W., Alfian, A., & Subroto, A. (2024). Affirmative Action Model for the Rights Fulfillment of Indigenous Peoples in the Nusantara Capital (IKN) Area. *Jurnal Ham, 15*(3). https://doi.org/10.30641/ham.2024.15.219-238

Tan, D., & Sudirman, L. (2020). Final Income Tax: A Classic Contemporary Concept to Increase Voluntary Tax Compliance Among Legal Professions in Indonesia. *Journal of Indonesian Legal Studies*, *5*(1). https://doi.org/10.15294/jils.v5i1.37308

Teodoro, J. D., Doorn, N., Kwakkel, J. H., & Comes, T. (2022). Flexibility for Intergenerational Justice in Climate Resilience Decision-Making: An Application on Sea-Level Rise in the Netherlands. *Sustainability Science, 18*, 1355-1365. https://doi.org/10.1007/s11625-022-01233-9

The, S. C., Warka, M., Suhartono, S., & Prasetyawati, E. (2022). Legal Protection of Ulayat Lands of Indigenous Peoples Against the Threat of Land Commercialization. *International Journal of Multicultural and Multireligious Understanding, 9*(12). https://doi.org/10.18415/ijmmu.v9i12.4288

Tolkah, T. (2021). Customary Law Existency in the Modernization of Criminal Law in Indonesia. *Varia Justicia, 17*(1). https://doi.org/10.31603/variajusticia.v17i1.5024

Tongat, T., Prasetyo, S. N., Aunuh, N., & Fajrin, Y. A. (2020). Hukum Yang Hidup Dalam Masyarakat Dalam Pembaharuan Hukum Pidana Nasional. *Jurnal Konstitusi, 1*(17). https://doi.org/10.31078/jk1717

Tran, T. C., Ban, N. C., & Bhattacharyya, J. (2020). A Review of Successes, Challenges, and Lessons From Indigenous Protected and Conserved Areas. *Biological Conservation, 241*. https://doi.org/10.1016/j.biocon.2019.108271

Voyevodin, I. (2023). International Legal Mechanism for the Protection of the Environmental Rights of Indigenous Peoples. *Analytical and Comparative Jurisprudence*. https://doi.org/10.24144/2788-6018.2023.04.89

Wienhues, A. (2020). *Ecological Justice and the Extinction Crisis: Giving Living Beings Their Due*. Bristol University Press, 242. https://doi.org/10.1332/policypress/9781529208511.001.0001

Wiguna, M. O. C. (2023). Implikasi Filsafat Positivisme Terhadap Ilmu Hukum Dan Penegakannya. *Unes Journal of Swara Justisia, 7*(2). https://doi.org/10.31933/ujsj.v7i2.374

Wiratraman, H. P., & Putro, W. D. (2019). Tantangan metode penelitian interdisipliner dalam pendidikan hukum Indonesia. *Mimbar Hukum*, *31*, 402–418.

https://doi.org/10.22146/jmh.44305
Yuliartini, N. P. R., Sudika Mangku, D. G., & Sari Adnyani, N. K. (2021). Recognition of Society Rights in Tradition Specially in Tourism Regulation Based on Article 18b Paragraph (2) of the 1945 Constitution of the Republic Indonesia. *Journal Equity of Law and Governance, 1*(1). https://doi.org/10.55637/elg.1.1.3242.25-36
Zeitlin, S. G. (2021). Rawlsian Jurisprudence and the Limits of Democracy. *Perspectives on Political Science, 50*(4), 278-288. https://doi.org/10.1080/10457097.2021.1950488
Zhang, M. (2018). Intergenerational Justice and Solidarity on Sustainability in China: A Case Study in Nanjing, Yangtze River Delta. *Sustainability, 10*(11). https://doi.org/10.3390/su10114296