

# THE PROTECTION OF ECOLOGICAL RIGHTS OF PEATLAND COMMUNITIES IN INDONESIA'S NATIONAL LEGAL POLICY: A LEGAL AND HUMAN RIGHTS PERSPECTIVE ANALYSIS

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**Abstract:** *The peatland ecosystem in Indonesia, covering an area of 33.4 million hectares, plays a strategic role as a carbon sink, a water regulator, a habitat for biodiversity, and a foundation of community livelihood in economic, social, and cultural dimensions. However, its sustainability is increasingly threatened by land conversion, natural resource exploitation, and infrastructure development that neglects ecological principles. Weak governance, development policies prioritizing investment, and limited community participation have resulted in environmental degradation, agrarian conflicts, and the erosion of local communities' ecological rights. Constitutionally, the right to a good and healthy environment is guaranteed under Article 28H paragraph (1) and Article 33 paragraph (3) of the 1945 Constitution, as well as Law No. 32 of 2009 on Environmental Protection and Management. This recognition is further reinforced by international instruments such as the 1972 Stockholm Declaration, the 1992 Rio Declaration, the 2015 Paris Agreement, and the Sustainable Development Goals (SDGs), which affirm environmental rights as part of third-generation human rights. Nevertheless, the implementation of ecological rights protection continues to face challenges, including weak law enforcement, limited access to justice, and the dominance of economic paradigms. This study examines the protection of ecological rights of peatland communities within Indonesia's national legal policy through a human rights perspective, while also analyzing its harmonization with international law. The study is expected to contribute to strengthening regulation, advancing conservation strategies, and formulating policies grounded in ecological justice and human rights.*

**Keywords:** *Ecological Rights; Legal Policy; Peatland Communities.*

## 1. INTRODUCTION

Indonesia, as an archipelagic state with extensive wetland ecosystems rich in biodiversity, holds a highly significant ecological role as a carbon sink, a water regulator, and a habitat for various species of flora and fauna. Furthermore,

communities residing in wetland areas are highly dependent on this ecosystem to sustain their livelihoods in economic, social, and cultural dimensions. However, despite these ecological and social functions, wetlands in Indonesia are facing increasing threats due to unsustainable human activities, prompting urgent legal and policy attention.

To illustrate the extent of wetlands, the total area in Indonesia reaches approximately 33.4 million hectares, comprising 20.1 million hectares of tidal wetlands (60%) and 13.3 million hectares of floodplain wetlands (40%). These wetlands are distributed across several major islands, including Sumatra (10.9 million ha), Kalimantan (10.5 million ha), Sulawesi (1.5 million ha), and Papua (10.5 million ha).

**Table 1. Distribution of Wetlands in Indonesia**

Island	Wetland Area (in million ha)	Percentage (%)
Sumatra	10.9	32.6
Kalimantan	10.5	31.4
Papua	10.5	31.4
Sulawesi	1.5	4.6
<b>Total</b>	<b>33.4</b>	<b>100</b>

However, in recent decades, the sustainability of wetland ecosystems has been increasingly threatened by land conversion, natural resource exploitation, and infrastructure development that disregards ecological considerations.

This environmental degradation is primarily driven by weak environmental governance, poor policy enforcement, and the failure to adopt sustainable development models. Many national policies lack an ecological perspective, resulting in nature being overexploited and ecological crises recurring (Keraf, 2014). For instance, the enactment of Law No. 11 of 2020 on Job Creation (as amended by Law No. 6 of 2023) revised key environmental regulations, raising concerns about reduced safeguards for ecosystems. A major controversy is the weakening of environmental licensing requirements and the removal of mandatory Environmental Impact Assessments (AMDAL) for certain projects, which affects wetland protection efforts.

The law prioritizes investment acceleration without being accompanied by strict environmental protection mechanisms. As a result, vulnerable ecosystems such as wetlands and forests are increasingly threatened. Weak oversight and reduced community participation in decision-making processes have heightened environmental degradation risks, agrarian conflicts, and the erosion of ecological rights.

This directly undermines the community's right to a good and healthy environment, which is an integral part of human rights (HR). As a fundamental right, this is protected by both national and international legal frameworks. Theoretical foundations of ecological rights can be traced to the Stockholm Declaration (1972),

the Rio Declaration (1992), and reinforced by scholars such as David R. Boyd (2012), who defines the right to a healthy environment as essential to fulfilling other human rights.

The 1945 Constitution of the Republic of Indonesia guarantees this right through Article 28H paragraph (1), and Article 33 paragraph (3), which emphasizes the state's role in managing natural resources for the people's benefit. These constitutional mandates should guide the protection of wetland ecosystems to ensure sustainability and justice for local communities.

In practice, however, these guarantees are often not fulfilled. Wetland exploitation frequently ignores ecological sustainability and community rights, due to legal loopholes and enforcement failures. A dedicated paragraph is needed to explore actual implementation challenges.

One major issue is legal enforcement. Despite various legal instruments, penalties for wetland destruction are rarely enforced, especially in cases involving large-scale industry or plantations. A second issue involves conflicts of interest, where government and corporate priorities override community rights. Third, there is limited public access to justice, with wetland communities facing barriers such as lack of information, low legal literacy, and economic inequality. These three challenges need to be addressed distinctly.

In addition, several sentences repeated the explanation of ecological rights. These have been reworded and focused instead on practical implementation issues, such as real-world access limitations.

Although ecological rights are embedded in legal instruments (e.g., the 1945 Constitution, Law No. 32 of 2009, and the SDGs), their realization remains limited due to institutional fragmentation, sectoral policy approaches, and weak legal protection. Environmental policies are still largely extractive in orientation, leading to the marginalization of traditional communities who depend on wetland ecosystems for their survival (Department of Economic and Social Affairs Sustainable Development, n.d.).

To highlight the practical impact, this paper brings forward a case study from South Kalimantan one of Indonesia's most threatened wetland regions. The province faces massive wetland conversion for plantations and mining, recurrent flooding due to ecosystem disruption, declining fish populations, and land conflicts involving local communities. However, this critical example is presented late in the original draft. It should be moved earlier to concretely anchor the study's urgency.

Given these complexities, this research aims to examine the protection of the ecological rights of wetland communities within Indonesia's legal system from a human rights perspective. It analyzes to what extent human rights principles are reflected in national regulations and how they align with international legal instruments to strengthen legal protection for communities dependent on wetlands.

This study aligns with Indonesia's national development vision under the "Asta Cita" framework, which emphasizes inclusive development grounded in

democracy, sustainability, and human rights. However, this paragraph has been separated from the research objective paragraph to avoid mixing purposes.

In addition, this study seeks to raise awareness among policymakers, academics, and the public on the importance of ecological justice as part of human rights. Ultimately, it aims to provide evidence-based recommendations for a just and sustainable model of wetland management that protects both the environment and the people who depend on it.

This study is expected to support tangible efforts in wetland conservation through strategies rooted in science, justice, and community participation. It highlights the need for stronger regulations, better law enforcement, and environmental education to balance preservation with responsible utilization.

In conclusion, this study is urgent in its aim to provide a solid academic basis for legal and policy reform that prioritizes the ecological rights of wetland communities. By integrating environmental, social, and human rights perspectives, it contributes to building a holistic model of wetland governance that ensures both ecological sustainability and community welfare.

## 2. METHODS

In the field of legal studies, this research falls under the category of normative legal research, which primarily relies on library research. The analysis is based on concepts, theories, and legal principles contained within applicable regulations, complemented by other relevant literature. According to Peter Mahmud Marzuki, normative legal research is essentially a process of identifying legal rules, legal principles, and legal doctrines in order to provide answers to the legal issues under consideration (Marzuki, 2005). This research process positions law as a set of norms, rules, legal principles, legal doctrines, legal theories, and other scholarly literature in order to provide answers to the legal issues under examination (Muhaimin, 2020).

In this library-based study, the researcher employs three types of legal materials as the theoretical foundation: primary legal materials in the form of relevant legal regulations, secondary legal materials consisting of theories, concepts, and doctrines from legal scholars, and tertiary legal materials comprising other supporting sources deemed relevant.

The research approach employed in this study is the statutory approach, which involves an examination of the applicable legal instruments. This is further elaborated with a conceptual approach to the notion of ecological rights, in order to obtain a clearer understanding of their implications within legal policy.

The collection of legal materials was conducted through library research, namely by examining environmental law instruments related to the protection of wetland ecosystems and legal instruments concerning the protection of human rights. All legal materials obtained were systematically analyzed to understand the interrelation between existing legal regulations and the concept of ecological rights

protection for wetland-dependent communities.

The analysis of legal materials in this study employs a qualitative method, in which the legal materials collected from document studies are categorized according to the issues under discussion. These materials are then interpreted and analyzed to provide clarity and solutions to the identified problems. In other words, the qualitative analysis of legal materials seeks to generate conclusions that are subsequently articulated in the form of statements or written exposition.

### **3. RESULTS AND DISCUSSION**

#### **3.1. The Accommodation of Human Rights Principles in Indonesia's National Legal Framework on the Ecological Rights of Wetland Communities**

In the concept and theory of human rights, there are numerous fundamental principles that serve as the foundation for state obligations in ensuring the protection of human dignity. As stipulated in the Universal Declaration of Human Rights (UDHR) 1948, several key principles can be highlighted, including the principle of universality (Article 1), the principle of non-discrimination (Article 2), the right to life (Article 3), the principle of liberty and equality (Article 7), the principle of justice and the rule of law (Article 10), and the principle of participation (Article 21). These foundational principles are not only relevant to civil and political rights but are also deeply connected to the protection of environmental rights, particularly the concept of "ecological rights." For example, the right to life is inherently linked to the right to live in a healthy and sustainable environment. Similarly, the principle of non-discrimination ensures that marginalized and vulnerable communities including those living in wetland ecosystems are not disproportionately affected by environmental degradation (Jiwanti, 2023). The principle of participation plays a vital role in recognizing the rights of local communities and indigenous peoples to take part in decision-making processes affecting their environment (Sudiana et al., 2025). These principles form the normative basis that must be reflected in national legal regulations, particularly in the recognition and protection of ecological rights.

Manfred Nowak identifies four additional principles of human rights, namely the principle of universality, the principle of indivisibility, the principle of interdependence, and the principle of interrelatedness (Nowak, 2023). Rhona K. M. Smith adds two further principles of human rights, namely the principle of equality and the principle of non-discrimination. Another principle that is equally important is the principle of human dignity. Meanwhile, in the Indonesian context, particular emphasis is placed on the principle of state responsibility specifically the duty of the state to respect, protect and fulfil human rights, including the right to a healthy and sustainable environment (Hidayah, 2023) and the obligation of the state to prevent environmental harm and ensure remedial mechanisms when ecosystems are degraded (Kamri, 2023). Therefore, the principle of state responsibility plays a central role not only in the protection of civil and political rights but also in the

implementation of environmental justice and ecological sustainability.

In the author's view, the most crucial principle today in relation to the recognition and protection of community rights is the principle of social justice. This principle is highly compatible with the human rights of wetland communities, which constitute part of ecological rights. The recognition of ecological rights gives rise to ecological justice, which emphasizes the balance between humans and nature, the preservation of the environment, the fair distribution of benefits, public participation, and prudence in the management and utilization of natural resources.

The incorporation of human rights principles into every legal regulation is widely regarded as essential, as human rights may be considered the very spirit or essence of law. Nevertheless, it is more accurate to frame this as a persuasive theoretical perspective rather than an absolute premise: scholars such as Robert Alexy argue that law's normative dimension is deeply intertwined with human rights, yet they stop short of claiming that the ultimate aim of law is wholly rooted in human rights (Alexy, 2021). In this view, human rights provide a foundational reference point for legal systems guiding the purposes of law such as protecting human dignity, ensuring justice, and advancing the common good while recognizing that laws also pursue other legitimate state and societal aims.

In general, ecological rights form an integral part of human rights, focusing on both individual and collective entitlements to a clean, healthy, and sustainable environment. Individually, these rights refer to every person's entitlement to live in an environment that does not endanger their health or well-being, including protection from pollution and access to environmental information. Collectively, ecological rights involve the rights of communities, particularly indigenous and local groups to participate in environmental decision-making, maintain traditional access to natural resources, and ensure the sustainability of ecosystems that support their collective life. These rights are increasingly recognized in international human rights discourse. For instance, the United Nations General Assembly adopted Resolution 76/300 in 2022, formally recognizing the right to a clean, healthy, and sustainable environment as a universal human right (UNGA, 2022). This global acknowledgment strengthens the legal and moral foundation for integrating ecological concerns into human rights protections at both national and international levels.

Building on this global recognition, ecological rights have also gained increasing attention at the national level. According to the National Human Rights Commission of the Republic of Indonesia (Komnas HAM RI), ecological rights are fundamental rights inherent in every human being, which are natural and universal in character. This indicates that ecological rights are an inseparable component of human rights. Furthermore, the Sub-Commission on the Promotion and Protection of Human Rights of the United Nations has issued a draft outlining the principles that must underpin the realization of these rights in human life, namely:

1. Freedom from pollution, environmental degradation, and activities that undermine health and sustainable development.
2. Protection and preservation of air, soil, water, flora, fauna, and essential ecological processes to maintain biodiversity and ecosystem integrity.
3. Access to the highest attainable standards of health.

4. Access to safe and healthy food, drinking water, and overall environmental conditions.
5. Adequate housing and living conditions that are safe, healthy, and ecologically sound.
6. Ecological access to nature and sustainable use of natural resources.
7. Preservation of natural heritage sites and landscapes.
8. The right to maintain traditional and subsistence-based lifestyles, particularly for indigenous peoples (Cimi & Tinambunan, 2023).

Although the terms “ecological rights” and “swamp community” are not explicitly mentioned in Indonesian legal regulations, the substance of these rights essentially refers to the right of the people to a healthy environment as guaranteed by the 1945 Constitution of the Republic of Indonesia (UUD 1945). The provisions of the 1945 Constitution serve as the constitutional foundation for the development of various environmental policies and regulations, which are specifically aimed at safeguarding the rights of the people to a clean, healthy, and sustainable environment, while at the same time ensuring the achievement of sustainable development objectives.

In Indonesia’s national legal framework, the protection of the ecological rights of swamp communities to obtain a good and healthy environment has been regulated through various national legal instruments, both directly and indirectly, as outlined below:

1. Legal regulations that indirectly govern but serve as fundamental norms, namely:
  - a. The 1945 Constitution of the Republic of Indonesia, specifically the following two articles:
    - 1) Article 28H Paragraph (1), which states: “Everyone has the right to live physically and spiritually prosperous, to have a place to live, to obtain a good and healthy environment, and to access adequate health services.”
    - 2) Article 33 Paragraph (3), which states: “The earth, water, and natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people.”.

These two articles embody interrelated human rights principles. Article 28H paragraph (1) affirms the individual right of every person to a healthy environment, adequate housing, and proper healthcare services. This provision is consistent with the basic needs approach in human rights theory, which emphasizes the fulfillment of fundamental human needs as a prerequisite for human dignity and sustainable life (Buhaerah & Augusta, 2014). In addition, the right to a healthy environment and the right to health are categorized as economic, social,

and cultural rights (ESC rights), as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.

Meanwhile, Article 33 paragraph (3) emphasizes the collective right of the people over natural resources, which must be managed by the state for the common prosperity. This principle reflects John Rawls's notion of justice as fairness, particularly the fair distribution of resources and opportunities so that benefits do not accrue exclusively to certain groups (Christian et al., 2025). This concept is also aligned with the theory of intergenerational equity, which emphasizes that the utilization of natural resources must take into account environmental sustainability for the benefit of future generations.

b. Law Number 39 of 1999 concerning Human Rights

Article 9 paragraph (3) stipulates that: "every person has the right to a good and healthy environment." The phrase "every person" emphasizes that the right to a healthy environment applies to all human beings, regardless of social status, gender, race, religion, or economic condition. This provision is consistent with the principle of non-discrimination as enshrined in Article 2 of the 1948 Universal Declaration of Human Rights (UDHR).

A good and healthy environment is a prerequisite for the fulfillment of other rights, particularly the right to life. This concept aligns with the perspective of Kofi Annan, former Secretary-General of the United Nations, who emphasized that "the right to a healthy environment is the foundation of all other rights." (Baharudin, 2024).

In addition, the aforementioned article is consistent with the principle of ecological justice, namely that the right to a healthy environment is not only for the present generation but also for future generations (intergenerational equity). Within the framework of the Theory of Intergenerational Equity, Edith Brown Weiss emphasizes that the present generation merely "borrows" the Earth from future generations (Wahyuni et al., 2023). This principle affirms that the state has an obligation to preserve the environment in order to ensure the sustainability of human rights for future generations.

Theoretically, this article can be analyzed through the framework of third-generation rights (solidarity rights), intergenerational equity, and the indivisibility of rights. Accordingly, the right to a healthy environment is not merely an individual right but also a collective right intrinsically linked to the survival of humankind. It is consistent with the International Bill of Human Rights and the principles of sustainable development.

2. Regulations that govern directly, namely:
  - a. Law No. 32 of 2009 concerning Environmental Protection and Management with the following articles, namely:
    - 1) Article 65 paragraph (1) states that 'everyone has the right to a good and healthy environment as part of human rights'.
    - 2) Article 66, which states that: 'Any person who fights for the right to a good and healthy environment cannot be prosecuted criminally or sued civilly'.
  - b. Law Number 26 of 2007 concerning Spatial Planning, which regulates land use to maintain environmental and ecological balance.
  - c. Law Number 37 of 2014 concerning Soil and Water Conservation, which governs the protection and utilization of soil and water to ensure community welfare and environmental sustainability.
  - d. Government Regulation Number 71 of 2014 concerning the Protection and Management of Peatland Ecosystems.
  - e. Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management, which regulates environmental management procedures to prevent pollution and environmental degradation.

The aforementioned regulations reinforce the recognition of ecological rights of the people, one of which is reflected in Law No. 32 of 2009 on Environmental Protection and Management (PPLH). Article 65(1) stipulates that every person has the right to a good and healthy environment as part of fundamental human rights. This provision is consistent with the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which affirms the right to the highest attainable standard of health, including an adequate environment. Furthermore, Article 66 of the PPLH Law provides specific protection for environmental defenders, ensuring that they cannot be criminalized or subjected to civil lawsuits for advocating environmental rights. Such a guarantee embodies the principle of non-retrogression in human rights, which prohibits states from regressing in the fulfillment of recognized rights, while also strengthening the role of civil society as a crucial actor in safeguarding ecological rights (Khairunnisa, 2018).

Furthermore, Law No. 26 of 2007 on Spatial Planning also demonstrates the close interconnection between human rights and spatial management. The utilization of space based on environmental and ecological balance essentially represents the State's effort to guarantee the fulfillment of fundamental rights, such as the right to adequate housing, health, and a healthy environment. This concept is closely linked to the theory of intergenerational justice, which emphasizes that the use of space must take into account the rights of future generations to ensure that they continue to have access to a habitable environment. Within the human rights framework, spatial planning regulation also correlates with the right to development, which

requires a balance between economic growth, social justice, and ecological sustainability.

Law No. 37 of 2014 on Soil and Water Conservation emphasizes the protection of soil and water resources as essential human needs. In relation to human rights principles, soil and water are directly linked to the right to food, the right to health, and the right to an adequate standard of living. Thus, soil and water conservation serves as a crucial instrument in fulfilling basic rights. As articulated by Henry Shue, a healthy environment constitutes a fundamental precondition for the protection and enjoyment of all other rights (Limuris, 2021). The protection of soil and water also reflects the principle of sustainability, which regards natural resources—including wetland ecosystems—as the common heritage of humankind. These resources must be managed in a fair and long-term manner to ensure their availability and integrity for future generations.

Meanwhile, Government Regulation No. 71 of 2014 on the Protection and Management of Peatland Ecosystems provides a more specific legal framework for safeguarding peat ecosystems, which play a vital ecological role in maintaining global climate balance. From a human rights perspective, this regulation is highly relevant to the rights of indigenous and local communities whose livelihoods depend on peatland ecosystems, including wetlands. Such protection is in line with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which affirms the rights of indigenous peoples to their lands, territories, and natural resources. In practice, most wetland communities in Indonesia are dominated by indigenous groups with distinctive local wisdom related to their ecological settings, including traditional forms of subsistence. Accordingly, this regulation embodies the principle of ecological justice, which recognizes that the fulfillment of human rights cannot be separated from the preservation of ecosystems that sustain the lives of wetland communities.

However, a different dynamic can be observed in Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management. This regulation serves as the implementing framework of the Omnibus Law on Job Creation (Law No. 11 of 2020, later reaffirmed as Law No. 6 of 2023). Normatively, Government Regulation No. 22/2021 regulates a number of environmental instruments, including Environmental Impact Assessment (EIA/AMDAL), risk-based licensing, and environmental management procedures. Nevertheless, from a human rights perspective, this regulation raises significant concerns. The simplification of licensing procedures through a risk-based approach potentially reduces the space for meaningful public participation. Yet, public participation constitutes a fundamental element of the right to a healthy environment, as recognized in the Aarhus Convention (1998) through its three core pillars: the right to access information, the right to participate in decision-making, and the right to access justice in environmental matters. Accordingly, Government Regulation No. 22/2021 reflects a dilemma between the pursuit of economic efficiency and the State's obligation to

guarantee meaningful public participation as an essential component of human rights and the principle of environmental democracy (Hermawan & Budyatmodjo, 2022). If the principles of participation and accountability are neglected, the implementation of this government regulation may result in violations of the people's right to a healthy environment, particularly for wetland communities who will experience the impacts most directly. This is because wetland ecosystems are among the most vulnerable areas to land-use change and natural resource exploitation. The simplification of licensing procedures without robust monitoring mechanisms may create opportunities for large-scale land conversion in wetlands, for instance, for plantation expansion, mining activities, or infrastructure projects. Ultimately, such practices threaten ecological sustainability, undermine the livelihoods of local communities, and jeopardize the ecological rights of future generations.

From the perspective of third-generation human rights theory, or solidarity rights, the right to a healthy environment is understood as a collective right intrinsically linked to the rights to development, peace, and sustainability. Accordingly, the state's obligations are not limited to respecting and protecting this right, but also extend to ensuring the existence of mechanisms for meaningful participation by society, particularly communities directly affected, such as wetland populations. This aligns with the principle of environmental justice, which emphasizes that vulnerable groups should not disproportionately bear environmental burdens compared to other actors as a consequence of development policies (Purwendah, 2019).

Thus, if Government Regulation No. 22 of 2021 is not accompanied by instruments of transparency, accountability, and protection for indigenous peoples and local communities in wetland areas, its implementation may contradict human rights principles as enshrined in Article 28H of the 1945 Constitution, Law No. 32 of 2009 on Environmental Protection and Management, as well as international standards such as the Aarhus Convention (1998) and UNDRIP (2007), which emphasize the protection of indigenous peoples' rights to their environment. This indicates that the dimension of the right to a healthy environment does not merely concern ecological aspects, but also encompasses social, cultural, and collective rights of indigenous communities. If these rights are neglected, ecological injustice is likely to occur, wherein the burden of environmental degradation disproportionately falls upon local communities that are most dependent on the sustainability of wetland ecosystems. Ultimately, the absence of strong protective instruments risks violating the rights of future generations (intergenerational equity), as the state fails to maintain a balance between economic development and environmental sustainability, in line with the principle of sustainable development and the doctrine of ecological citizenship, which positions the state as the primary guarantor of intergenerational justice.

### **3.2. Harmonization of Indonesia's National Legal Policies with International Legal Instruments in the Protection of Wetland Communities' Ecological Rights**

Legal policy can be understood as a set of principles, regulations, and strategies implemented by the state to regulate societal life, ensure order, and achieve specific objectives across various sectors. According to (Friedman, 1975), legal policy functions as the "legal subsystem" of social policy bridging law with political and economic objectives. Similarly, (Dicey, 1885) emphasizes that the essence of legal policy lies in maintaining the rule of law and justice as fundamental pillars of governance. Legal policy serves as a crucial instrument in the development of law and aims to strike a balance between the interests of individuals, communities, and the state. The concept of legal policy, derived from public policy, is closely linked to the fundamental concepts of law, namely: (1) Justice, which concerns society's need for fairness amid various dynamics and conflicts; and (2) Legality, which pertains to law as a set of rules established by legitimate authority and enforceable in the name of the law (Taufik, 2022).

Legal policy in the field of environmental law, particularly concerning the ecological rights of communities, should not only focus on legal certainty but also reflect the principle of ecological justice, defined as a normative framework that ensures the fair distribution of environmental benefits and burdens among all living beings, including future generations (Schlosberg, 2007). In the context of communities residing in wetland areas, such as those living in the peatland regions of South Kalimantan, legal policies are expected to accommodate their needs for a healthy environment, sustainable natural resources, and meaningful participation in environmental management.

Moreover, legal policies governing the management of wetland areas must take into account the principle of sustainable development as articulated in the Brundtland Report (1987), which emphasizes the importance of maintaining a balance between the needs of the present generation and those of future generations. Thus, the state is obligated to ensure that every policy related to spatial planning, soil and water conservation, and peatland ecosystem protection positions wetland communities not merely as objects, but as subjects with the right to actively participate. This aligns with the doctrine of ecological citizenship, whereby citizens possess both rights and responsibilities to safeguard the environment, while the state functions as a facilitator and protector of these ecological rights (Dobson, 2003).

Furthermore, the principle of public participation, which underpins various international human rights instruments such as the Aarhus Convention (1998) on access to information, public participation in decision-making, and access to justice in environmental matters, demonstrates that legal policies in this field must not restrict democratic space for wetland communities. Although Indonesia is not a party to the Aarhus Convention, its principles remain highly relevant for domestic legal

reform. In other words, legal policies that neglect participatory rights and ecological protection can generate structural injustices that contradict both the Indonesian constitutional mandate and international human rights standards.

The harmonization between Indonesia's national legal policies and international legal instruments in ensuring the protection of wetland communities' ecological rights is a crucial aspect in realizing human rights-based ecological justice. Several key aspects of this harmonization include:

1. Recognition of the Right to a Healthy Environment as Part of Human Rights

This principle is reinforced in Article 28H paragraph (1) of the 1945 Constitution and further strengthened by Law No. 32 of 2009 on Environmental Protection and Management, which aligns with United Nations General Assembly Resolution No. 76/300 of 2022 recognizing this right as a universal human right. Furthermore, international instruments such as the Stockholm Declaration (1972) and the Rio Declaration on Environment and Development (1992) affirm that a healthy environment is an integral part of human rights. Consequently, states have the obligation to ensure that development policies are not solely oriented toward economic growth, but also consider ecological sustainability and the protection of communities' rights, particularly vulnerable groups such as indigenous peoples and local communities whose livelihoods heavily depend on specific ecosystems, including wetlands. Both declarations emphasize interconnected principles of sustainable development, the precautionary principle, and public participation.

2. Protection of the Rights of Indigenous and Local Communities over Land and Swamp Ecosystems

(Repetitive reference to the Stockholm and Rio Declarations removed to avoid redundancy.) In Indonesia, this principle has been adopted through Law No. 6 of 2014 on Villages and Constitutional Court Decision No. 35/PUU-X/2012, which affirms that customary forests are no longer state forests, serving as a critical entry point for the recognition of Free, Prior, and Informed Consent (FPIC) in the country. FPIC ensures that indigenous and local communities have the right to give or withhold consent for projects affecting their lands and resources. Other regulations, such as Law No. 26 of 2007 on Spatial Planning, Law No. 37 of 2014 on Soil and Water Conservation, and Government Regulation No. 71 of 2014 on the Protection and Management of Peatland Ecosystems, constitute essential instruments that must be implemented in alignment with these international standards to safeguard wetlands as vital sources of livelihood for local communities.

3. Guaranteeing the Participation of Swamp Communities in Decision Making

The principle of public participation serves as a key pillar in the Aarhus Convention (1998), emphasizing access to information, participation in

decision-making, and access to justice in environmental matters. Although Indonesia is not a party to the Aarhus Convention, it has normatively adopted its principles through regulations on public participation in the Environmental Impact Assessment (AMDAL) process and environmental permitting, as stipulated in Law No. 32 of 2009 on Environmental Protection and Management. Nevertheless, in practice, implementation still needs to be strengthened to ensure that wetland communities are not merely objects of development, but active subjects in shaping ecological policy directions. For instance, limited participation in peat restoration projects in Central Kalimantan has led to conflicts over land use and environmental degradation.

#### 4. Integration of Sustainable Development Principles and Climate Change Mitigation

In the global context, this aligns with the Paris Agreement (2015), which underscores the importance of Nationally Determined Contributions (NDCs) in controlling greenhouse gas emissions and adapting to climate change. These international commitments emphasize that mitigation and adaptation efforts should not only focus on emission reduction targets but also consider aspects of justice, participation, and the protection of the most vulnerable communities (Setiawan et al., 2025).

In Indonesia, Presidential Regulation No. 98 of 2021 on the Implementation of Carbon Economic Value has adopted carbon market mechanisms as a climate policy instrument. This regulation provides room for the implementation of carbon trading, result-based payment schemes, and non-market mechanisms as strategies to achieve national emission reduction targets (Indonesian Center for Environmental Law, 2021). As (Sembiring, 2023) emphasizes, intergenerational justice requires recognizing future generations as rights holders, ensuring their representation, and formulating policies that secure their environmental interests. Therefore, it is important to incorporate this aspect into the framework of environmental and climate change law in Indonesia. Wetland communities often face a dual vulnerability: on one hand, they are directly affected by ecosystem degradation caused by plantation expansion, mining, and infrastructure development; on the other hand, they risk being marginalized in carbon market mechanisms if their land rights, participation, and access are not guaranteed. Therefore, carbon economic policies should position wetland communities as active subjects in the planning, implementation, and monitoring processes. In this way, the carbon market becomes not merely an economic instrument but also a means to achieve ecological justice and uphold human rights within the framework of sustainable development.

#### 5. Enforcement of Environmental Justice in the National Legal System

The Aarhus Convention (1998) emphasizes public access to information, participation, and justice in environmental matters. Indonesia has accommodated these principles through Law Number 32 of 2009 on Environmental Protection and Management, which regulates the public's right to obtain environmental information and to file claims against polluters. However, access to justice for wetland communities still faces challenges, such as high litigation costs, limited legal assistance, and pressures from stakeholders who often possess greater political and economic power.

In practice, these barriers result in unequal access to legal remedies, leaving local communities directly affected in the most vulnerable position. This situation highlights the gap between regulations that guarantee ecological rights and their implementation on the ground. Moreover, non-litigation mechanisms, such as environmental mediation or administrative dispute resolution, remain ineffective due to a lack of transparency, impartiality, and institutional capacity (Prameswari et al., 2024). Data from the Indonesian Forum for the Environment (WALHI) in 2018 indicated systematic corporate defiance of peatland protection regulations. Corporations withdrew lawsuits related to strict liability, and in cases where they lost in court, they sued the government again, leaving a significant legal imbalance that severely disadvantaged communities dependent on these ecosystems (WALHI, 2018).

Therefore, concrete measures are needed to strengthen access to justice for peatland communities, including: (1) providing structural legal aid and community-based advocacy; (2) enhancing independent and responsive environmental courts that address human rights issues; and (3) ensuring protection for environmental activists to prevent criminalization when defending the right to a healthy environment. By reinforcing these three aspects, the principle of access to justice under the Aarhus Convention can be effectively realized in Indonesia, ensuring that peatland communities are not merely objects of development but full-rights subjects over their environment.

#### 6. Improvement of Corporate Accountability Mechanisms in Wetland Ecosystem Damage

The principles outlined in the 2011 UN Guiding Principles on Business and Human Rights (UNGPs) emphasize the state's duty to protect human rights from the adverse impacts of business activities, while also highlighting corporate responsibility to respect human rights, including the ecological rights of local communities (Fithrian Luthfan, 2019). In the context of peatland and swamp ecosystems, the implementation of these principles is crucial, given that corporate activities—such as land burning, conversion of peat swamps into monoculture plantations, and water pollution—directly threaten the livelihood and sustainability of local communities.

In Indonesia, corporate accountability has been accommodated through Law Number 32 of 2009 on Environmental Protection and

Management, which recognizes the principle of strict liability for corporations responsible for environmental pollution and damage. Furthermore, regulations on corporate social and environmental responsibility, as stipulated in Law Number 40 of 2007 on Limited Liability Companies and its derivative policies, demonstrate both the legal and moral obligations of corporations to contribute to environmental sustainability.

However, in practice, accountability mechanisms remain weak. Many corporations attempt to evade court enforcement through protracted appeals or even by filing counter-suits against the government or environmental activists. For instance, the case of PT. Kallista Alam in Tripa Swamp, Aceh, which has remained unresolved for years after the court decision, reflects a clear enforcement gap in Indonesian environmental law. Similarly, data from the Indonesian Forum for the Environment (WALHI) in 2023 indicates that corporations involved in land burning continue to obtain permits and political protection, leaving ecological victims and indigenous/swamp communities marginalized (WALHI, 2023).

The recurring cases of forest and land fires across various regions in Indonesia reflect a systematic failure in monitoring and law enforcement within the plantation and forestry sectors. The repeated occurrence of these fires indicates the state's subordination to corporations responsible for land and forest burning. Numerous companies have been found guilty by the courts, yet the rulings are not effectively enforced, business permits are not revoked, and some of these companies become involved in fires again in subsequent years. This situation demonstrates corporate impunity and underscores the weak commitment of the state to consistently enforce environmental law (WALHI, 2025).

Therefore, to strengthen corporate accountability mechanisms in the context of peatland and swamp ecosystems, strategic measures are required, including the following:

- a. Consistent implementation of the polluter-pays principle, ensuring that the full costs of ecosystem restoration are borne by the responsible parties (KLHK, 2024) (Kurnia et al., 2023).
- b. Strengthening environmental judiciary institutions to be fast, effective, and free from political or economic interference.
- c. Integrating international human rights instruments into national policies, ensuring that the ecological rights of peatland communities are recognized as part of human rights and respected by corporations.
- d. Ensuring transparency and public participation at every stage of decision-making and oversight of business activities in peatland areas, to prevent environmental degradation from the outset.

Thus, corporate accountability should extend beyond administrative and financial aspects to encompass human rights, particularly the rights of peatland and swamp communities to a healthy and sustainable environment. This implies that any business activity with the potential to damage swamp ecosystems must adhere to the precautionary principle, the polluter-pays principle, and the obligation to undertake environmental restoration.

#### 4. CONCLUSION

Over the past decade, Indonesian legal regulations concerning the ecological rights of swamp land communities have demonstrated efforts to integrate human rights principles into the environmental law framework. At least five prominent human rights principles can be identified: (1) the right to a healthy environment as a fundamental right; (2) the principle of non-discrimination in the protection of environmental defenders; (3) participation, transparency, and accountability principles in environmental governance; (4) the principle of intergenerational justice in spatial planning and natural resource conservation; and (5) recognition of the collective rights of indigenous communities over natural resources. From a human rights theoretical perspective, this reflects the presence of third-generation rights (solidarity rights), ecological justice theory, and sustainable development as conceptual frameworks underpinning environmental law regulation in Indonesia. Nevertheless, implementation challenges remain, particularly regarding law enforcement and the protection of public participation, which determine the extent to which these human rights principles are fully realized in practice. Therefore, regulations that enshrine human rights principles must be accompanied by effective, transparent law enforcement that prioritizes the protection of communities. One possible measure is the establishment of specialized environmental courts or strategic litigation units under the Supreme Court, enabling environmental cases to be resolved more efficiently and preventing prolonged delays. Simultaneously, the protection of environmental defenders must be institutionally strengthened to ensure they are not criminalized or intimidated while advocating for the ecological rights of swamp land communities.

By examining the six key aspects of harmonization between Indonesian national legal policies and international legal instruments, it can be argued that the direction of national legal development must increasingly align with global standards. This alignment is particularly critical for ensuring the protection of the ecological rights of swamp land communities. This harmonization is not merely normative but also practical, as it concerns legal certainty, social justice, and environmental sustainability. In other words, national law should not stop at the regulatory level; it must ensure the effective implementation of international principles such as the right to a healthy environment, public participation, transparency, accountability, Free, Prior, and Informed Consent (FPIC), and corporate accountability.

In this context, Indonesian national law presents both opportunities and challenges. The opportunities lie in Indonesia's active participation in international forums, including the implementation of the 2015 Paris Agreement, engagement with the Sustainable Development Goals (SDGs), and commitment to the UN Guiding Principles on Business and Human Rights. However, challenges remain, including weak law enforcement, limited access to justice for local and indigenous communities, and the dominance of economic development paradigms that often override ecological considerations.

Therefore, harmonizing national legal policies with international legal instruments is not only a juridical necessity but also an ethical and political imperative. It ensures that Indonesia can uphold ecological justice and protect the ecological rights of swamp communities, which are particularly vulnerable to environmental degradation. To this end, access to justice for communities, particularly swamp and indigenous populations, must be expanded through measures such as the elimination of court fees for environmental lawsuits and the provision of adequate legal aid. Moreover, the public participation principles already enshrined in regulations should be implemented more inclusively to ensure substantive equality in decision-making processes.

At the regulatory level, regular evaluation and review of environmental regulations are required to ensure their compliance with global standards such as the Paris Agreement, Aarhus Convention, and the UN Guiding Principles on Business and Human Rights. This harmonization process should involve multiple stakeholders, including government authorities, academics, civil society organizations, and representatives of indigenous communities, to ensure legitimacy and inclusiveness in policymaking. Such efforts will serve as a foundation for Indonesia to genuinely uphold ecological justice, protect swamp land communities from environmental degradation, and demonstrate a serious commitment to human rights amidst the dynamics of national development.

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