Jurnal Saniri

Volume 7 Issue 1, November 2026: p. 24-34
E-ISSN: 2774-1850
https://fhukum.unpatti.ac.id/jurnal/saniri/
: 10.47268/saniri.v7i1.4233

Jurnal Saniri

Good Forest Governance Principles In Protected Forest Management: A Comparative Study Of Indonesia And Brazil

Muklis Al'anam*, Nabilla Desyalika Putri, Rocmad Dwi Riwayanto

Faculty of Law, Universitas Negeri Surabaya, Surabaya, Indonesia.

: muklisalanam@unesa.ac.id

Abstract

***Introduction**: The management of protected forests plays a strategic role in maintaining global ecological stability, particularly in megadiverse tropical nations such as Indonesia and Brazil. However, implementing good forest governance principles such as transparency, accountability, and ecological justice remains challenged by regulatory overlaps and enforcement gaps.*

***Purposes of the Research**: This study explicitly aims to analyze and compare the legal frameworks, institutional structures, and implementation of good forest governance principles in protected forest management between Indonesia and Brazil.*

***Methods of the Research**: The novelty of this research lies in its comparative normative legal synthesis that bridges international environmental principles with domestic enforcement mechanisms, specifically contrasting Indonesia's strict liability doctrine with Brazil's constitutional social function of property and polluter pays principle. Using a normative legal methodology with statutory, conceptual, and comparative approaches, this study examines primary and secondary legal materials from both jurisdictions.*

***Results / Main Findings / Novelty/Originality of the Research**: The results demonstrate that Indonesia has integrated governance principles through Law Number 41 of 1999 and strict liability mechanisms, yet faces hurdles from sectoral legal disharmony and overlapping authority. Meanwhile, Brazil's governance rests upon constitutional guarantees of environmental rights, the polluter pays principle under Lei Nº 9.605/1998, and indigenous community tenure rights, though political and economic pressures continue to hamper enforcement efficacy.*

***Conclusion**: In conclusion, achieving effective protected forest governance requires harmonizing regulatory frameworks and strengthening enforcement; Indonesia can integrate Brazil's constitutional environmental rights and indigenous participation, while Brazil can adopt Indonesia's strict liability model to enhance preventive ecological protection.*

Keywords: Good Forest Governance Principles, Ecological Justice, Forest.

Submitted: 2026-10-05 *Revised: 2026-11-11* *Accepted: 2026-11-15* *Published: 2026-11-16*

How To Cite: Muklis Al'anam, Nabilla Desyalika Putri, Rocmad Dwi Riwayanto. "Good Forest Governance Principles In Protected Forest Management: A Comparative Study Of Indonesia And Brazil". 2026. *Jurnal Saniri* 7(1): 24-34.
https://doi.org/10.47268/saniri.v7i1.4233

Copyright © 2026 Author(s) Creative Commons Attribution-NonCommercial 4.0 International License

INTRODUCTION

The development of global forestry law in the modern era began around 1825, when private forestry schools were first established. The National School of Forestry was founded in Nancy, France, in 1825. These institutions evolved from earlier master schools, such as the Cotta Master School, which subsequently developed into the forestry college in Tharandt, Germany. Throughout the nineteenth century, the reputation of German foresters was so highly regarded that they were employed across most of continental Europe.[1] Early American foresters, including forest conservation pioneer Gifford Pinchot, received their

[1] Philip E. Pope & Herbert Leeson Edlin, "Forestry," Britannica, 2025, https://www.britannica.com/science/forestry.

training in Europe. On the other hand, regulation and accountability in forest management became increasingly imperative due to the surge of purely profit-driven timber merchants. Consequently, the twentieth century saw steady growth in forestry legislation and policies designed to protect forests as perpetual assets.[2]

Forests are fundamental national assets that serve a critical function in environmental preservation, community welfare, and sustainable development.[3] Charged with managing natural resources, the government plays a strategic role in policy formulation, utilisation oversight, and the protection of forested areas from degradation and unchecked conversion. The connection between forests and governance transcends mere administrative mechanics, incorporating a moral and constitutional obligation to safeguard the right to a healthy environment for present and future generations.[4] Effective forest governance therefore demands that state authorities uphold transparency, accountability, and public participation throughout every phase of forestry policy design and execution.[5]

Forests are intrinsically linked to environmental development, a process that inevitably brings about change encompassing both positive and negative dimensions. The positive aspects are referred to as development outcomes, whereas the negative aspects are termed development impacts. In Indonesia, the framework of development is recognised as sustainable development namely, development conducted to fulfill present needs while preserving the capacity to meet the requirements of future generations.[6]

In Indonesia, forestry management is enshrined in Article 3 of Law Number 41 of 1999 on Forestry, which stipulates that state forest governance aims to achieve the greatest welfare for the public. Conversely, persistent challenges continue to arise in its implementation, such as land disputes, regulatory infractions, and overlapping forestry policies among government agencies. This indirectly highlights the weaknesses of administrative forestry law from both normative and practical perspectives.[7]

Brazil is one of the countries with the largest forest areas in the world. Brazil possesses the Amazon rainforest, regarded as one of the most valuable assets on the planet, as its dense rainforest covers nearly 60% of Brazil's total territory, spanning 477,698,000 hectares just under 1,844,394 square miles or slightly below 3 million square kilometres encompassing Pará, Amazonas, Maranhão, Goiás, Mato Grosso, Acre, Amapá, Rondônia, and Roraima..[8]

In June 2009, the administration of President Luiz Inácio Lula da Silva announced the establishment of a national community forestry policy to promote the sustainable management of forests utilised by farmers, settlers, indigenous peoples, and forest

---

[2] *Ibid.*

[3] Richard G. Tarasofsky, "The International Forests Regime Legal and Policy Issues," in *International Union for Conservation of Nature and Natural Resources and World Wide Fund For Nature* (Bellegarde/Valserine, France: Sadag, 1995), 23.

[4] Muklis Al'anam dan Radian Salman, "The Relevance Of Jürgen Habermas's Theory Of Communicative Action As The Philosophical Foundation Of Human Rights Enforcement In Indonesia," *Mimbar Hukum* 36, no. 1 (2024): 61–82, https://doi.org/https://doi.org/10.22146/mh.v36i1.11513.

[5] Dzulkarnain Alghafuru Syahputra, *et-al,* "Legal Policy in Forest Management for The Development of The Capital City of Nusantara," *Jurnal Akta* 12, no. 4 (2025): 1334–44, https://doi.org/10.30659/akta.v12i4.49612.

[6] I Gusti Ayu Ketut Rachmi Handayani, "Green Constitution Sebagai Penguatan Norma Hukum Lingkungan Dan Pedoman Legal Drafting Peraturan Daerah Dalam Rangka Praktik-Praktik Tata Kelola Pemerintahan Yang Baik Di Daerah," *Yustisia Jurnal Hukum* 1, no. 1 (2012): 137, https://doi.org/https://doi.org/10.20961/yustisia.v1i1.10612.

[7] Taufan Fajar Sasongko, et-al "Legality of Community Agricultural Activities in Forest Areas Based on Constitutional Court Decision Number 181/Puu-Xxii/2024," *Jurnal Akta* 12, no. 4 (2025): 1324–33, https://doi.org/10.30659/akta.v12i4.50065.

[8] Ali Sadikin, *et-al* "Analisis Hukum Internasional Terkait Deforestasi Dan Hak-Hak Masyarakat Adat Hutan Amazon Di Brazil," *Jurnal Hukum Dan Kenotariatan* 5, no. 3 (2021): 391.

Jurnal Saniri, 7 (1) November 2026: 24-34
E-ISSN: 2774-1850
Published by: Faculty of Law, Universitas Pattimura

communities. This initiative was spurred by momentum from the Rights and Resources Initiative, which influenced policy shifts and supported tenure reform programmes in Brazil, impacting over one million Brazilians and 200 million hectares of forest.[9]

METHODS OF THE RESEARCH

This study employs a normative legal research methodology with a normative comparative approach. The selection of this research type is rooted in the nature of jurisprudence as a *sui generis* discipline (a distinct field of study), wherein scholarly inquiry focuses on establishing normative coherence to achieve justice as the primary objective of law.[10] To address the legal issues raised, this research integrates three primary approaches: the comparative approach, the statutory approach, and the conceptual approach.

The legal materials utilised encompass both primary and secondary legal sources. Primary legal materials comprise the national legal instruments of both states alongside international regulations, such as the 1945 Constitution of the Republic of Indonesia, Law Number 41 of 1999 concerning Forestry, and various legislative enactments related to spatial planning and environmental protection in Indonesia. On the Brazilian side, primary legal materials include the Forest Code of 1934, Lei Nº 14.590/2023 on public forest management, and Lei Nº 9.605/1998 on environmental crimes, in addition to international instruments such as the 1992 Rio Declaration, the 1972 Stockholm Declaration, and the ASEAN Agreement on Transboundary Haze Pollution. Meanwhile, secondary legal materials were gathered from academic textbooks, legal journal articles, and relevant research reports.

The processing and analysis of legal materials are conducted in a descriptive-comparative manner by examining the regulatory frameworks, institutional structures, and forest management practices in Indonesia and Brazil. This study focuses on evaluating the implementation of good forest governance principles, the application of environmental protection norms, and oversight and law enforcement mechanisms, in order to formulate recommendations for enhancing forestry governance.

RESULTS AND DISCUSSION

A. The Relationship Between Forestry Law and the Environment

Forests represent a key national natural resource holding strategic value and playing a vital role in social life, development, and environmental sustainability. At the international level, a consensus has been established that forests, as a primary pillar of global life support, must be safeguarded and managed sustainably to prevent degradation that could disrupt the balance of the world's ecosystem.[11]

Forestry law maintains an intrinsic link with environmental law, as both are oriented towards the regulation, utilisation, and protection of natural resources for ecological sustainability. As an integral component of the environment, forestry requires a legal framework that not only governs its economic exploitation, but also ensures the preservation of its ecological functions.

[9] Margaret Anne (Peggy) Smith, "Brazil: Mendorong Sebuah Kerangka Kebijakan Kehutanan Yang Progresif," Rights and Resources Group, 2007.

[10] Muklis Al'anama & Hendro Prabowo, "Eradicating All Rules Through Article 42 of Law 21 of 2023 on The National Capital: A Study of Legal Norms and Morality," *Simbur Cahaya* 32, no. 1 (2025).

[11] Magdariza, "Pengaturan Hukum Lingkungan Internasional Terkait Pencemaran Udara Akibat Kebakaran Hutan Dalam Perspektif Hukum Islam," *Prosiding Nasional Hukum Aktual Hukum Internasional Dalam Perspektif Islam* 2, no. 1 (2024): 237.

Jurnal Saniri, 7 (1) November 2026: 24-34
E-ISSN: 2774-1850
Published by: Faculty of Law, Universitas Pattimura

Forestry law is viewed as a subsystem of the broader scope of environmental law, wherein regulations concerning forest protection, management, and restoration serve as vital instruments in safeguarding overall environmental quality. This is aligned with several principles enshrined in the 1992 Rio Declaration on Environment and Development.[12]

Efforts to protect and manage the environment, including forests, represent a universal necessity, as they concern the collective interest of all humanity. Consequently, environmental and forestry management demands significant responsibility, transparent and accountable governance practices, alongside active public participation.[13]

Principle 21 of the 1972 Stockholm Declaration affirms that states have the sovereign right, in accordance with the Charter of the United Nations and the principles of international law, to exploit their own resources pursuant to their own environmental policies. Nevertheless, states simultaneously bear the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.[14]

State responsibility regarding forest fires represents both a constitutional and legal duty to protect the environment and guarantee citizens' right to a healthy environment. The state is obligated to ensure the prevention, mitigation, and environmental restoration resulting from forest fires through policy instruments, strict oversight, and law enforcement against parties committing negligent or deliberate burning.

The ASEAN Agreement on Transboundary Haze Pollution (AATHP) comprises thirty-two (32) Articles and one (1) Annex. The primary provisions of the AATHP govern, inter alia, monitoring, assessment, prevention, preparedness, national emergency response, technical co-operation, and scientific research related to land and/or forest fire control, including fire suppression. These measures are enshrined in Articles 3 and 4.[15]

B. Principles of Forest Governance in Indonesia

As a nation with vast forest expanses, Indonesia faces significant challenges in maintaining forest sustainability amidst developmental pressures, population growth, and economic demands. Good forest governance is key to ensuring that the ecological, social, and economic functions of forests operate in a balanced and sustainable manner. Indonesia bears a constitutional responsibility to manage and safeguard forests for the prosperity of its people. This aligns with the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that 'The land, the water, and the natural resources contained therein shall be controlled by the State and utilised for the greatest prosperity of the people. The principles of forest governance in Indonesia must anchor themselves in the philosophical and legal foundations of the 1945 Constitution, particularly the tenets of justice, sustainability, and public welfare.[16] Only through transparent, participatory, and

[12] Nur Nashriany, *et-al* "Pengelolaan Lingkungan Hidup Dalam Pengalihan Fungsi Kawasan Hutan Untuk Usaha Pertambangan," *Jurisprudentie* 7, no. 1 (2020): 2.

[13] Rocmad Dwi Riwayanto & Muklis Al'anam, "Implementing The Polluter Pays Principle As The Basis For Corporate Criminal Liability In The Context Of Forest Clearance Crimes," *Bengkoelen Justice : Jurnal Ilmu Hukum* 16, no. 1 (2026): 67.

[14] Tri Hayati, "Hak Penguasaan Negara Terhadap Sumber Daya Alam Dan Implikasinya Terhadap Bentuk Pengusahaan Pertambangan," *Jurnal Hukum & Pembangunan* 49, no. 3 (2019): 769.

[15] Intan Sekar Arum, *et-al* "Pertanggungjawaban Indonesia Terhadap Pencemaran Udara Akibat Kebakaran Hutan Dalam Hukum Internasional," *Justitia Jurnal Hukum* 1, no. 6 (2021): 41.

[16] Muklis Al'anam & Ledy Diana, "Legal Implications Of Mining Business Licensing Policies For Community Organisations In The Religious Sector," *Melayunesia Law* 9, no. 1 (2025): 76.

Jurnal Saniri, 7 (1) November 2026: 24-34
E-ISSN: 2774-1850
Published by: Faculty of Law, Universitas Pattimura

long-term governance can protected forests truly serve their constitutional mandate as ecosystem supports, guardians of biodiversity, and national heritage for generations to come.

A wide array of policies has been enacted by the government, spanning from Laws to Government Regulations governing spatial planning, disaster management, energy administration, and forest utilisation. However, practical realities indicate that these regulations frequently place greater weight on resource exploitation and utilisation rather than on environmental protection and damage prevention. Consequently, the function of protected forests which ought to serve as ecological bulwarks is frequently marginalised.

Several forestry-related policies in Indonesia can be identified, namely: Law Number 41 of 1999 on Forestry, Law Number 24 of 2007 on Disaster Management, Law Number 26 of 2007 on Spatial Planning, Law Number 30 of 2007 on Energy, Law Number 27 of 2007 on the Management of Coastal Areas and Small Islands, Government Regulation Number 59 of 2007 on Geothermal Energy, Government Regulation Number 58 of 2007 on the Reforestation Fund, Government Regulation Number 33 of 2007 on Ionising Radiation Safety and Radioactive Source Security, and Government Regulation Number 6 of 2007 on Forest Governance and the Formulation of Forest Management and Forest Utilisation Plans. In practice, these instruments lack the capacity to function effectively as mechanisms for preventing degradation or protecting the carrying capacity of the environment and natural resources, exhibiting instead a tendency to facilitate natural resource exploitation.[17]

In principle, all forests within the territory of Indonesia, including the natural wealth contained therein, are controlled by the State for the greatest prosperity of the people. This is stipulated under Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 4 of Law Number 41 of 1999.[18] The objective of conferring this right of state control is to achieve the greatest prosperity of the people, defined as happiness, welfare, and freedom within an independent, sovereign, just, and prosperous Indonesian state governed by the rule of law. It can be formulated that the State's Right to Control encompasses five functions: [19]

1. Policy-making (*beleid*);
2. Regulatory action (*regelendaad*);
3. Administrative governance (*bestuurdaad*);
4. Operational management (*beheerdaad*); and
5. Supervision and oversight (*toezichthoudensdaad*).

The State's Right to Control fundamentally reflects the authority of the state to regulate, manage, and supervise resources for the greatest prosperity of the people.[20] This authority is operationalised through five approaches: policy-making (*beleid*), wherein the state establishes the direction, strategy, and management principles; regulatory action (*regelendaad*), namely formulating laws and regulations as legal instruments; administrative

[17] I Gusti Ayu Ketut Rachmi Handayani, "Penegakan Hukum Kehutanan Dalam Rangka Antisipasi Dampak Climate Change Di Indonesia," *Mimbar Hukum* 21, no. 2 (2009): 375, https://doi.org/10.22146/jmh.16263.

[18] Ananda Prima Yurista, "Implikasi Penafsiran Kembali Hak Menguasai Negara Terhadap Pengelolaan Wilayah Pesisir Dan Pulau Pulau Kecil," *Jurnal Rechtsvinding* 5, no. 3 (2016): 341.

[19] Diyan Isnaeni, "Pengadaan Tanah Untuk Pembangunan Jalan Tol Dalam Perspektif Hak Menguasai Negara," *Yurispruden* 3, no. 1 (2020): 95.

[20] Tatiek Sri Djatmiati, et-al "Paradigm of Certificate of Rights to Residence on The Coast," *Pakistan Journal of Life and Social Sciences* 22, no. 1 (2024): 6442.

Jurnal Saniri, 7 (1) November 2026: 24-34
E-ISSN: 2774-1850
Published by: Faculty of Law, Universitas Pattimura

governance (*bestuurdaad*), consisting of administrative actions to maintain ongoing management; operational management (*beheerdaad*), involving the direct administration and utilisation of resources; and supervision (*toezichthoudensdaad*), comprising control and oversight to ensure implementation aligns with the law and the goal of public prosperity.[21] Through these five approaches, the state acts not merely as a sovereign authority, but also as a manager and guardian of the public interest.

Principle 25 of the Rio Declaration on Environment and Development states that: Peace, development and environmental protection are interdependent and indivisible. This principle constitutes a jus cogens or peremptory norm, meaning that it is mandatory, non-derogable, and cannot be breached, set aside, or invalidated. Consequently, forest governance in Indonesia integrates assessments encompassing several critical areas, namely:[22]

a. Assessment of baseline environmental and social conditions;
b. Sustainable development and the utilisation of renewable natural resources;
c. Protection of human health, cultural property, and biodiversity, including endangered species and sensitive ecosystems;
d. Socio-economic impacts;
e. Forest release and land use;
f. Resettlement;
g. Impacts on local and indigenous communities;
h. Cumulative impacts of existing projects, proposed development projects, and anticipated future projects;
i. Participation of affected parties in the design, review, and implementation of development projects; and
j. Consideration of environmentally and socially viable alternatives.

Regarding forestry oversight in Indonesia, the government should execute monitoring over timber logging, land preparation, controlled burning, tree planting, the application of fertilisers, herbicides, and pesticides, weed control, animal damage control, fire management, insect and disease control, forest road construction, and other generally accepted forestry practices.[23]

The principles enshrined in Article 2 of Law Number 41 of 1999 encompass benefit and sustainability, democracy, justice, togetherness, transparency, and integration. These principles aim to achieve the greatest prosperity of the people in an equitable and sustainable manner, as stipulated in Article 3 of Law Number 41 of 1999, namely: 'a) guaranteeing the existence of forests with adequate area and proportional distribution; b) optimising the diverse functions of forests, comprising conservation, protection, and production functions, to achieve balanced and sustainable environmental, social, cultural, and economic benefits; c) enhancing the carrying capacity of watersheds; d) developing community capacity and empowerment in a participatory, equitable, and environmentally

[21] Muklis Al'anam & Ledy Diana, "Legal Implications Of Mining Business Licensing Policies For Community Organisations In The Religious Sector."

[22] Feja Lesniewska, "Laws for Forests" (Sakhalin, 2005).

[23] Nabilla Desyalika Putri & Dian Agung Wicaksono, "Implikasi Legislasi Pengambilalihan Kewenangan Di Bidang Pertambangan Mineral Dan Batubara Oleh Pemerintah Pusat," *Jurnal Legislasi Indonesia* 13, no. 1 (2016): 20.

Jurnal Saniri, 7 (1) November 2026: 24-34
E-ISSN: 2774-1850
Published by: Faculty of Law, Universitas Pattimura

conscious manner, thereby fostering socio-economic resilience and adaptability to external changes; and e) ensuring an equitable and sustainable distribution of benefits.

The principles and objectives set out in Articles 2 and 3 of Law Number 41 of 1999 demonstrate that forest management, including protected forests, is not solely oriented towards economic aspects, but also emphasises sustainability, social justice, and active community involvement. By guaranteeing a proportional forest area, optimising ecological and social functions, and encouraging public participation, forest governance is expected to maintain a balance between utilisation and preservation. This aligns with the mandate of the 1945 Constitution, which requires state control over natural resources to be exercised for the greatest prosperity of the people in an equitable and sustainable manner.

Forest utilisation in Indonesia must be conducted under specific permits, namely area utilisation permits, environmental service utilisation permits, timber forest product utilisation permits, non-timber forest product utilisation permits, and timber harvesting permits, with permit holders bearing full responsibility for any disturbances to the forests and forest areas entrusted to them.

The principle of strict liability enshrined in Article 49 of Law Number 41 of 1999 in conjunction with Article 30 of Government Regulation Number 45 of 2004 concerning Forest Protection imposes absolute liability on perpetrators of forest degradation. Consequently, through supervision and the application (or threatened enforcement) of administrative, criminal, or civil legal instruments, compliance with statutory provisions is attained.[24]

The application of this strict liability principle means that perpetrators of forest destruction can be held liable without requiring proof of fault. This mechanism strengthens the state's position in enforcing environmental law, whilst simultaneously providing a deterrent effect against forestry crime offenders. Furthermore, the integrated use of administrative, criminal, and civil instruments aims to ensure the restoration of forest functions, the protection of biodiversity, and ecosystem sustainability.

The principle of absolute liability functions not merely as a tool for law enforcement, but also as a preventive measure in safeguarding environmental sustainability.[25] Within a normative framework, the strict liability principle provides a clear legal foundation for the state to enforce regulations without being bound by the burden of proving fault. This aligns with the ethos of environmental law, which emphasises preventive protection and rapid ecological restoration. Under this principle, all forms of forest destruction are viewed as serious infractions that must be acted upon, thereby ensuring that legal instruments deliver legal certainty and justice. Ultimately, strict liability plays a vital role in realising sustainability-oriented environmental governance and internalising the value of ecological responsibility into the national legal system.[26]

[24] Malvin Edi Darma & Ahmad Redi, "Penerapan Asas Polluter Pay Principle Dan Strict Liability Terhadap Pelaku Pembakaran Hutan," *Jurnal Hukum Adigama* 1, no. 1 (2018).

[25] Nabilla Desyalika Putri, et-al "Membangun Kesadaran Ekologis Melalui Penyuluhan Hukum Tentang Pengelolaan Hutan Di Desa Girisekar, Gunungkidul," *Jurnal Darma Loka* 1, no. 1 (2025): 31–47, https://doi.org/https://ejournal.unesa.ac.id/index.php/darmaloka/article/view/72934.

[26] Nabilla Desyalika Putri, "Menjamin Hak Masyarakat Adat Atas Sumber Daya Alam Melalui Mekanisme Constitutional Complaint," *ADILARA: Journal of Law, Justice and Legal Reform* 1, no. 2 (2026): 66–87.

Jurnal Saniri, 7 (1) November 2026: 24-34
E-ISSN: 2774-1850
Published by: Faculty of Law, Universitas Pattimura

C. Principles of Forest Governance in Brazil

Brazil has a tropical climate and possesses the second-largest forest expanse in the world. The country is a major producer of timber and wood products, with the states of Pará and Mato Grosso representing the highest timber producers in Brazil. Forests in Brazil are under both public and private ownership. Commercial forest management is carried out on privately owned land, through forest concessions in public forests, and by indigenous communities. The following bodies/ministries oversee the regulation and management of land and forest products in Brazil:[27]

1. Ministry of Environment and Climate Change (MMA): The central body responsible for formulating and implementing national forestry policies.
2. Brazilian Forest Service (SFB): The federal government agency tasked with managing public forests and administering forest concessions.
3. Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA): The federal authority charged with executing forestry law enforcement, implementing environmental policies and licensing, conducting environmental monitoring, and authorising the utilization of natural resources.
4. Chico Mendes Institute for Biodiversity Conservation (ICMBio): The federal agency that manages federal conservation units and national conservation centres.

The Forestry Act in Brazil was first approved in 1934 under the Forest Code of 1934 (Decree 23,793/1934), establishing the conviction that the conservation of forests and natural ecosystems is essential for the collective interest of society.[28] This regulation was drafted by a commission with Luciano Pereira da Silva serving as rapporteur, declaring that forests, when viewed collectively, represent a common interest for all inhabitants of the country. While the 1934 Forest Code marked a significant leap forward for forest protection and broader environmental governance, it suffered from severe implementation hurdles. The legislation came about as a direct response to deforestation as the Atlantic Forest was rapidly cleared to make way for coffee plantations.[29]

In its subsequent legal developments, Brazil governs forest management under *Lei Nº 14.590, De 24 De Maio De 2023 Sobre A Gestão De Florestas Públicas Para A Produção Sustentável* (Law on Public Forest Management for Sustainable Production). Article 1, paragraph 3 specifies that: 'Public agencies are responsible for using the necessary means and efforts to prevent and eradicate invasions in areas granted under forest concessions, whether ex officio or upon receiving notification that must be submitted by the concessionaire.

Article 5, item XXIII of the Brazilian Constitution integrates environmental preservation into the social function of property, empowering the government to expropriate specific landholdings that fail to fulfil their social function. Furthermore, the Brazilian Constitution recognises the right to an environment that obliges both the Brazilian government and the broader society to defend and preserve the environment for present and future generations. Brazil adheres to the Intergenerational Equity Principle, which is understood as a form of justice between generations, affirming that the present generation must not overexploit the

[27] World Resources Institute, "Forest Governance and Policy," World Resources Institute, 2024, https://forestpolicy.org/sites/default/files/pdf/brazil.pdf.

[28] Thiago Bandeira Castelo, "Brazilian Forestry Legislation And To Combat Deforestation Government Policies In The Amazon (Brazilian Amazon)," *Ambiente & Sociedade* 18, no. 4 (2015): 217.

[29] *Ibid.*

Jurnal Saniri, 7 (1) November 2026: 24-34
E-ISSN: 2774-1850
Published by: Faculty of Law, Universitas Pattimura

environment or natural resources. This ensures that future generations retain an equal opportunity to enjoy a clean and healthy environment.[30]

The polluter pays principle dictates that the polluter must bear the cost, meaning that the allocation of costs for environmental pollution and damage has ultimately impacted the development of environmental law at both international and national levels. This impact is particularly evident in the liability for compensating or bearing environmental costs assigned to legal entities and public authorities. This is stipulated under *Article 3* of *Lei Nº 9.605, De 12 De Fevereiro De 1998* (Environmental Crimes Law), which specifies that: 'Corporate entities may be held administratively, civilly, and criminally liable in accordance with the provisions of this Law, where the infraction is committed pursuant to a decision by their legal or contractual representative, or by their collegial body, in the interest or for the benefit of the corporate entity.[31]

The application of this polluter pays principle serves as a crucial instrument in environmental law enforcement, as it promotes the prevention and control of environmental damage from the outset. Furthermore, this principle reflects a paradigm shift from merely repairing damage towards ensuring environmental sustainability for future generations.[32]

The Brazilian government applies regulations by establishing social norms balanced with the needs of indigenous communities whose economies rely on forests. By establishing norms that regulate sustainable forest utilisation, the state seeks to prevent overexploitation while guaranteeing resource continuity for coming generations. Additionally, this policy strengthens the position of indigenous peoples as legal subjects who hold the right to derive benefits from the forest without disregarding the obligation to preserve it. Consequently, such regulations function not merely as legal instruments, but also as mechanisms for social and ecological justice.

CONCLUSION

The relationship between forestry law and environmental law demonstrates that forests constitute an integral part of the ecosystem whose sustainability must be safeguarded through legal instruments. In Indonesia, forest governance is directed towards protection and sustainable utilisation, emphasising the principle of state responsibility, the application of strict liability, and public participation. Meanwhile, Brazil implements forest management policies aimed at balancing environmental preservation imperatives with the socio-economic needs of forest-dependent indigenous communities. Consequently, both Indonesia and Brazil face shared challenges in realising effective, equitable, and sustainable forest governance as part of global commitments to safeguard the world's ecosystems.

[30] Paul Rink, "Regulating The Trees For The Forest: How Indonesia And Brazil Attempt To Reduce Deforestation Through Forestry Policy," *Journal of Animal and Environmental Law* 10, no. 1 (2019): 41.

[31] Alan Boyle, *Impact of International Law and Policy" Dalam Environmental Regulation and Economic Growth* (Oxford: Clarendon Press, 1994).

[32] Caroline A Schmidt & Constance L McDermott, "Deforestation in the Brazilian Amazon: Local Explanations for Forestry Law Compliance," *Social & Legal Studies* 24, no. 1 (2015): 807.

Jurnal Saniri, 7 (1) November 2026: 24-34
E-ISSN: 2774-1850
Published by: Faculty of Law, Universitas Pattimura

REFERENCES

Journal

Arum, Intan Sekar, Rina Yuliana, and Tri Hapsari. "Indonesian Liability for Air Pollution Caused by Forest Fires under International Law." Justitia Jurnal Hukum 1, no. 6 (2021): 41–58

Castelo, Thiago Bandeira. "Brazilian Forestry Legislation and Government Policies to Combat Deforestation in the Amazon." Ambiente & Sociedade 18, no. 4 (2015): 217–234

Darma, Malvin Edi, and Ahmad Redi. "Application of the Polluter Pays Principle and Strict Liability Against Forest Fire Perpetrators." Jurnal Hukum Adigama 1, no. 1 (2018): 1–25

Handayani, I Gusti Ayu Ketut Rachmi. "Green Constitution as a Means to Strengthen Environmental Law Norms and Local Legislative Drafting Frameworks for Good Governance." Yustisia Jurnal Hukum 1, no. 1 (2012): 137–149

Handayani, I Gusti Ayu Ketut Rachmi. "Forestry Law Enforcement in Anticipating Climate Change Impacts in Indonesia." Mimbar Hukum 21, no. 2 (2009): 375–389. https://doi.org/10.22146/jmh.16263

Hayati, Tri. "The State's Right of Control over Natural Resources and Its Implications for Mining Operations." Jurnal Hukum & Pembangunan 49, no. 3 (2019): 769–787

Magdariza. "International Environmental Law Regulation Concerning Air Pollution from Forest Fires in an Islamic Law Perspective." Prosiding Nasional Hukum Aktual Hukum Internasional Dalam Perspektif Islam 2, no. 1 (2024): 237–250

Nashriany, Nur, Andi Syahrizal, and Muhammad Ashar. "Environmental Management in the Conversion of Forest Function for Mining Activities." Jurisprudentie 7, no. 1 (2020): 2–18

Putri, Nabilla Desyalika. "Guaranteeing Indigenous Rights over Natural Resources Through the Constitutional Complaint Mechanism." ADILARA: Journal of Law, Justice and Legal Reform 1, no. 2 (2026): 66–87

Putri, Nabilla Desyalika, Dian Agung Wicaksono, and Hendro Prabowo. "Building Ecological Awareness Through Legal Outreach on Forest Management in Girisekar Village, Gunungkidul." Jurnal Darma Loka 1, no. 1 (2025): 31–47

Rink, Paul. "Regulating the Trees for the Forest: How Indonesia and Brazil Attempt to Reduce Deforestation Through Forestry Policy." Journal of Animal and Environmental Law 10, no. 1 (2019): 41–72

Riwayanto, Rocmad Dwi, and Muklis Al'anam. "Implementing the Polluter Pays Principle as the Basis for Corporate Criminal Liability in the Context of Forest Clearance Crimes." Bengkoelen Justice: Jurnal Ilmu Hukum 16, no. 1 (2026): 67–84

Sadikin, Ali, Budi Santoso, and Ahmad Rifa'i. "International Legal Analysis Concerning Deforestation and Indigenous Rights in the Brazilian Amazon." Jurnal Hukum Dan Kenotariatan 5, no. 3 (2021): 391–406

Sasongko, Taufan Fajar, Muklis Al'anam, and Radian Salman. "Legality of Community Agricultural Activities in Forest Areas Based on Constitutional Court Decision Number 181/PUU-XXII/2024." Jurnal Akta 12, no. 4 (2025): 1324–1333. https://doi.org/10.30659/akta.v12i4.50065

Schmidt, Caroline A., and Constance L. McDermott. "Deforestation in the Brazilian Amazon: Local Explanations for Forestry Law Compliance." Social & Legal Studies 24, no. 1 (2015): 807–828

Syahputra, Dzulkarnain Alghafuru, Muklis Al'anam, and Hendro Prabowo. "Legal Policy in Forest Management for the Development of the Capital City of Nusantara." Jurnal Akta 12, no. 4 (2025): 1334–1344. https://doi.org/10.30659/akta.v12i4.49612

Book

Boyle, Alan. "The Impact of International Law and Policy on Environmental Regulation." In Environmental Regulation and Economic Growth, edited by Alan Boyle, 23–45. Oxford: Clarendon Press, 1994.

Lesniewska, Feja. Laws for Forests: An Overview of International and National Legal Frameworks. Sakhalin: Rights and Resources Initiative, 2005.

Smith, Margaret Anne. Brazil: Promoting a Progressive Forestry Policy Framework. Washington, D.C.: Rights and Resources Group, 2007.

Thesis, Online Web and Others

Primary Legal Sources and International Instruments

Indonesia:

The 1945 Constitution of the Republic of Indonesia.

Law Number 41 of 1999 concerning Forestry.

Law Number 32 of 2009 concerning Environmental Protection and Management.

Republic of Indonesia.

Government Regulation Number 45 of 2004 concerning Forest Protection.

Brazil:

Decreto Nº 23.793, de 23 de Janeiro de 1934 (Código Florestal de 1934).

Lei Nº 9.605, de 12 de Fevereiro de 1998 (Lei de Crimes Ambientais)

Lei Nº 14.590, de 24 de Maio de 2023 (Dispõe sobre a Gestão de Florestas Públicas para Produção Sustentável)

International Instruments:

ASEAN Agreement on Transboundary Haze Pollution

Rio Declaration on Environment and Development 1992

Stockholm Declaration on the Human Environment 1972