


# Comparative of Environmental Law Enforcement Based on Legal Pluralism in Indonesia and Hungary: Efforts to Protect Indigenous Communities in Achieving Sustainable Environmental Governance

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## Abstract

**Introduction:** Environmental law enforcement is a comprehensive effort that involves all aspects, including indigenous communities, by accommodating the perspective of legal pluralism.

**Purposes of the Research:** This research focuses on analyzing environmental law enforcement based on the concept of legal pluralism and efforts to protect indigenous communities in Indonesia and Hungary as an effort to achieve sustainable environmental governance.

**Methods of the Research:** This research is a normative legal study with a conceptual, comparative, and legislative approach.

**Results of the Research:** Environmental law enforcement based on legal pluralism must be grounded in the concept of environmental sustainability, which is based on several principles, namely the principles of prevention, responsibility, justice, participation, sustainability, and restoration. The comparison of environmental law enforcement between Indonesia and Hungary in protecting indigenous communities reveals substantial similarities regarding the existence of legal instruments to regulate optimal environmental law enforcement. However, the regulations regarding the approach to legal pluralism related to environmental law enforcement in Indonesia and Hungary can be said to still be suboptimal. This research recommends that Indonesia needs a hybrid customary-state forum based on deliberation for the integration of state, customary, and religious laws based on pluralism, while Hungary requires reforms in line with the spirit of the EU Roma Framework 2030 thru post-disaster renovation to avoid environmental racism.

**Keywords:** Environmental Law; Indigenous Communities; Legal Pluralism.


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## INTRODUCTION

The environment is a shared asset that supports the survival of humans, the economy, and ecosystems as a whole.<sup>1</sup> A country's interest in regulating environmental law is crucial, aiming to maintain environmental sustainability. One effort to preserve environmental sustainability is to ensure that the exploitation of natural resources is carried out wisely and

<sup>1</sup> N Naibaho, "Rethinking The Ultimum Remedium Principle To Support Justice And Strong Law Enforcement Institutions In Environmental Crimes," *IOP Conference Series: Earth and Environmental Science* 716, no. 1 (2021): 12068, <https://doi.org/10.1088/1755-1315/716/1/012068>.

in an orderly manner, thereby minimizing environmental damage such as land degradation, loss of biodiversity, and natural disasters that harm the general public.<sup>2</sup> Environmental law serves as a primary instrument to balance economic development with nature conservation.<sup>3</sup>

The importance of environmental law has led some countries to explicitly regulate environmental protection in their constitutions as a constitutional right of citizens or even as a right of nature itself.<sup>4</sup> This regulation reflects a constitutional commitment to balancing development with ecosystem sustainability amid the global crisis. This is embodied in the Indonesian Constitution through Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which guarantees citizens' rights to a good and healthy environment and the right to receive health services.<sup>5</sup> As the highest fundamental law in Indonesia, the Constitution plays an important role as the basis for the validity of legal norms, particularly regarding the substance of environmental law.<sup>6</sup>

Efforts to maintain environmental sustainability are in line with international commitments such as the Paris Agreement and the 2030 Sustainable Development Goals (SDGs 2030), to prevent social conflicts due to environmental injustice, and to ensure food security and public health through industrial waste management, sustainable forest management, and climate change adaptation, which ultimately strengthens national sovereignty amid the dynamics of globalization.<sup>7</sup> Environmental law enforcement is a systematic and structured process carried out by law enforcement agencies, including the police, prosecution service, and courts, to ensure compliance with regulations governing the protection and management of natural resources, with the aim of preventing, addressing, and prosecuting violations that damage ecosystems, such as water pollution, illegal deforestation, or excessive greenhouse gas emissions.<sup>8</sup>

Environmental law enforcement is one of the important issues in various countries around the world, including Indonesia and Hungary. This study focuses on analyzing environmental law enforcement based on the concept of legal pluralism and efforts to protect indigenous communities in Indonesia and Hungary as a means to achieve sustainable environmental governance. There are two legal issues analyzed in this study, namely: (i) the principles and concepts of environmental law enforcement based on legal pluralism in achieving sustainable environmental governance and (ii) a comparison of environmental law enforcement in Indonesia and Hungary in protecting indigenous communities.

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<sup>2</sup> Indra A. Aditya, Tito Wijayanto, and Dzikri F. Hakam, "Advancing Renewable Energy in Indonesia: A Comprehensive Analysis of Challenges, Opportunities, and Strategic Solutions," *Sustainability* 17, no. 5 (March 2025): 2216, <https://doi.org/10.3390/su17052216>.

<sup>3</sup> Nurul Listiyani, M. Yasir Said, and Afif Khalid, "Strengthening Reclamation Obligation through Mining Law Reform: Indonesian Experience," *Resources* 12, no. 5 (2023): 1–14, <https://doi.org/10.3390/resources12050056>.

<sup>4</sup> Stephen J. Turner, "Business, Human Rights and the Environment – Using Macro Legal Analysis to Develop a Legal Framework That Coherently Addresses the Root Causes of Corporate Human Rights Violations and Environmental Degradation," *Sustainability* 13, no. 22 (2021): 12709, <https://doi.org/10.3390/su132212709>.

<sup>5</sup> Alif Pratama and Niken Wahyuning Retno Mumpuni, "Analisis Pengaturan Pajak Karbon Di Indonesia Ditinjau Dari Prinsip Pencemar Membayar (Polluter Pays Principle) (Studi Komparatif Dengan Negara Singapura)," *Jurnal Hukum Lex Generalis* 6, no. 1 (2025): 1–6, <https://doi.org/10.56370/jhlg.v6i1.928>.

<sup>6</sup> Dicky Eko Prasetyo, Muh. Ali Masnun, and Noviyanti Noviyanti, "Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective," *Jambura Law Review* 7, no. 1 (2025): 176–96, <https://doi.org/10.33756/jlr.v7i1.26999>.

<sup>7</sup> Nuradi et al., "Analisis Yuridis Penyelesaian Sengketa Lingkungan Hidup Pasca Berlakunya Uu Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Pakuan Law Review* 8, no. 1 (2022): 154–69, <https://doi.org/10.33751/palar.v8i1.4689>.

<sup>8</sup> Obroma O. Agumagu, Robert Marchant, and Lindsay C. Stringer, "Land Use and Land Cover Change Dynamics in the Niger Delta Region of Nigeria from 1986 to 2024," *Land* 14, no. 4 (2025): 765, <https://doi.org/10.3390/land14040765>.

## METHODS OF THE RESEARCH

This study, which focuses on analyzing environmental law enforcement based on the concept of legal pluralism and efforts to protect indigenous communities in Indonesia and Hungary as a means to achieve sustainable environmental governance, is a normative legal study that aims to identify legal principles, concepts, and norms related to the issues presented.<sup>9</sup> The primary legal materials in this study are the 1945 Constitution of the Republic of Indonesia, the 1948 Universal Declaration of Human Rights, several international conventions addressing environmental law, and legislation in Indonesia and Hungary concerning environmental law enforcement. The secondary legal materials used are journal articles, books, and research findings discussing environmental law enforcement, indigenous communities, and sustainable environmental governance. Non legal materials used include legal dictionaries. The analysis in this study is conducted prescriptively, aiming to provide normative assessments, justifications, or recommendations on what should be done according to the law.<sup>10</sup> The prescriptive analysis process is carried out systematically through the following stages: identification of facts and legal issues, collection of legal materials, interpretation and evaluation, prescriptive argumentation, and conclusion. The approaches used are conceptual, comparative, and statutory.

## RESULTS AND DISCUSSION

### A. Principles and Concepts of Environmental Law Enforcement Based on Legal Pluralism in Realizing Sustainable Environmental Governance

Environmental sustainability as a human right is a fundamental recognition that the right to a good, healthy, and sustainable environment is not merely a moral aspiration or environmental policy alone, but an inherent right attached to human dignity as an integral part of the global ecosystem.<sup>11</sup> Every individual has the right to enjoy clean air, safe drinking water, fertile land, and biodiversity that supports the survival of both present and future generations. The 1948 Universal Declaration of Human Rights (UDHR) does not explicitly mention "environmental sustainability" as a separate human right; instead, it accommodates the concept implicitly through interconnected fundamental rights such as the right to life (Article 3), the right to an adequate standard of living including food, clothing, housing, and sufficient medical care for the maintenance of health (Article 25), and the right to cultural life and the full development of one's personality in a free social and cultural environment (Articles 22 and 27). In this context, a sustainable environment is an essential prerequisite for these rights to be fully realized for all people without discrimination.<sup>12</sup> Various international human rights instruments, such as the 1972 Stockholm Declaration, which was the first to link the environment to the fundamental right to life.<sup>13</sup> This was followed by the

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<sup>9</sup> Maalikatussofa Masnun, Muh. Ali, Prasetio, Dicky Eko, "Reconstruction of the Normative Legal Research Paradigm in Responding to Global Challenges: An Epistemological Analysis," *Novum: Jurnal Hukum* 12, no. 3 (2025): 372–84, <https://doi.org/https://doi.org/10.2674/novum.v12i03.74364>.

<sup>10</sup> Moh. Mujibur Rohman et al., "Methodological Reasoning Finds Law Using Normative Studies (Theory, Approach and Analysis of Legal Materials)," *MAQASIDI: Jurnal Syariah Dan Hukum* 4, no. 2 (2024): 204–21, <https://doi.org/10.47498/maqasidi.v4i2.3379>.

<sup>11</sup> Sonia Brondi, Giacomo Chiara, and Elisa Matutini, "Navigating Environmental Justice Framework: A Scoping Literature Review Over Four Decades," *Environmental Justice* 18, no. 3 (2025): 155–67, <https://doi.org/10.1089/env.2024.0054>.

<sup>12</sup> Qing Miao and Chibuike Nduneseokwu, "Environmental Philosophy and Ethics," in *Environmental Leadership in a VUCA Era* (Singapore: Springer Nature Singapore, (2024), 121–57, [https://doi.org/10.1007/978-981-96-0324-4\\_3](https://doi.org/10.1007/978-981-96-0324-4_3).

<sup>13</sup> Jonas Ebbesson, "Getting It Right: Advances of Human Rights and the Environment from Stockholm 1972 to Stockholm 2022†," *Environmental Policy and Law* 52, no. 2 (2022): 79–92, <https://doi.org/10.3233/EPL-219022>.

1992 Rio Declaration, which affirms the right to a healthy environment as a prerequisite for other rights such as health, food, and adequate housing, as well as United Nations Human Rights Council Resolution 48/13 of 1994, which explicitly states that all people have the right to an environment that supports the full development of human potential.<sup>14</sup> Philosophically, environmental sustainability is aligned with the doctrine of third-generation human rights or collective rights, which emphasizes intergenerational solidarity. Environmental sustainability is also in line with the 2030 Sustainable Development Goals (SDGs 2030), adopted by the United Nations in 2015 as a global agenda to achieve sustainable development by 2030.<sup>15</sup> The principle of sustainability is at the core of the 17 main goals of the 2030 SDGs, which integrate economic, social, and environmental aspects to ensure the well-being of the present generation without compromising the ability of future generations to meet their own needs.<sup>16</sup> Goals 13, 14, and 15 of the 2030 SDGs implicitly bind countries to integrate environmental protection as an obligation extending beyond national jurisdictional boundaries. This further affirms environmental sustainability as a human right that demands systemic transformation from an exploitative to a restorative paradigm, where the state is obligated to establish professional and independent environmental law enforcement institutions.

Efforts to achieve environmental sustainability are grounded in the conceptual framework of sustainable environmental governance, which refers to an integrated system for managing natural resources and ecosystems. This framework prioritizes principles of good governance such as transparency, accountability, public participation, the rule of law, decentralization of authority, precaution, and long-term orientation, all aimed at balancing current economic development needs with the preservation of environmental functions for future generations.<sup>17</sup> The concept of sustainable environmental governance is a holistic and systematic approach involving multi-stakeholder collaboration that includes central and regional governments, the private sector, civil society, indigenous communities, and international institutions.<sup>18</sup> Globally, this concept aligns with the Good Environmental Governance (GEG) framework by the United Nations Environment Programme (UNEP), which emphasizes eight core principles: participation, the rule of law, transparency, responsiveness, consensus-oriented approach, equity, efficiency-effectiveness, and accountability.<sup>19</sup>

The concept of sustainable environmental governance is aligned with the circular economy paradigm, which replaces the linear take-make-dispose model with the principles of reduce-reuse-recycle through zero-waste based waste management and the transition of

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<sup>14</sup> Cristiane Dias Carneiro, Yann Duzert, and Rafael Alves de Almeida, "Culture of Alternative Dispute Resolution (ADR) in Brazil: An Exploratory Study of Business Mediation from the Theory, Laws and Perception of Lawyers," *Beijing Law Review* 13, no. 02 (2022): 365–400, <https://doi.org/10.4236/blr.2022.132024>.

<sup>15</sup> Bagus Surya Dharma et al., "Harmonization of Laws Regulating the Formation of Village Government Work Plan Drafting Teams," *Ex Aequo Et Bono Journal Of Law* 2, no. 2 (2025): 69–81, <https://doi.org/10.61511/eaebjol.v2i2.2025.1092>.

<sup>16</sup> M Alenezi and F Alanazi, "Integrating Environmental Social and Governance Values into Higher Education Curriculum," *International Journal of Evaluation and Research in Education* 13, no. 5 (2024): 3493–3503, <https://doi.org/10.11591/ijere.v13i5.29440>.

<sup>17</sup> H. Aimon, A. P. Kurniadi, and S. Amar, "Scenario of Reducing Carbon Emission through Shifting Consumption of Non-Renewable Energy to Renewable Energy in Asia Pacific 2023-2030," *IOP Conference Series: Earth and Environmental Science* 1151, no. 1 (2023): 1–10, <https://doi.org/10.1088/1755-1315/1151/1/012016>.

<sup>18</sup> Islamul Haq, Sudirman L, and Muhammad Majdy Amiruddin, "Eco-Theological Insights on The Sasi Tradition: Analyzing Environmental Ethics and Sanctions Through Fiqh Al-Bi'ah and Islamic Criminal Law," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 58–80, <https://doi.org/10.29240/jhi.v10i1.9412>.

<sup>19</sup> B. Li et al., "Environmental Governance, Green Finance, and Mitigation Technologies: Pathways to Carbon Neutrality in European Industrial Economies," *International Journal of Environmental Science and Technology* 22, no. 15 (2025): 14899–912, <https://doi.org/10.1007/s13762-025-06608-w>.

energy from coal to solar and geothermal sources.<sup>20</sup> This also focuses on the implementation of Environmental, Social, and Governance (ESG) for corporations. It is also related to the need for efforts to strengthen just and sustainable environmental law enforcement. The concept of law enforcement according to Satjipto Rahardjo centers on a progressive legal paradigm that affirms law as a dynamic, vibrant, creative living instrument, oriented toward achieving substantive justice for humanity as a whole.<sup>21</sup> Law enforcement is essentially an effort to translate abstract legal ideas such as justice, truth, and expediency into realities of everyday life.<sup>22</sup> In this context, environmental law enforcement is defined as a systematic and integrated effort to achieve compliance with regulations in the field of environmental protection and management through three main pillars: preventive supervision, enforcement of administrative sanctions, and civil law enforcement based on strict liability.<sup>23</sup>

The need for legal pluralism in environmental law enforcement has become increasingly urgent amid the complexity of modern ecological challenges, which emphasize substantive participation for all parties. Legal pluralism plays an important role in environmental law enforcement because it enables the convergence of various legal systems and norms including state law, customary law, and religious norms so that resolving environmental damage issues does not rely solely on a positivist legal paradigm that is often rigid and formalistic.<sup>24</sup> In the environmental context, the diversity of local and customary norms is often closer to society's actual values regarding nature for example, prohibitions on cutting down certain trees, hunting specific wildlife, or selectively utilizing forests. Integrating such norms into environmental law enforcement mechanisms can therefore strengthen substantive justice and social acceptance of legal decisions.<sup>25</sup>

Environmental law enforcement based on legal pluralism can accommodate various dispute resolution forums and mechanisms, including customary institutions, customary leaders, customary councils, or religious bodies. This allows conflicts related to natural resource management and environmental pollution to be resolved more quickly, cost-effectively, and in line with local culture, without eliminating the dimension of state legal responsibility.<sup>26</sup> This simultaneously reduces the burden on formal courts and opens space for dialogue between state authorities and society. As a result, communities that were previously only regarded as "objects" of development or law violators can now become active partners in environmental restoration and protection. The legal pluralism approach helps strengthen the humanistic and social justice dimensions of environmental law enforcement, because law is not only seen as a set of technical criminal or civil rules, but

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<sup>20</sup> Yudiantono Yudiantono, Jaka Windarta, and Adiarso Adiarso, "Sustainable Long-Term Energy Supply and Demand: The Gradual Transition to a New and Renewable Energy System in Indonesia by 2050," *International Journal of Renewable Energy Development* 12, no. 2 (2023): 419-29, <https://doi.org/10.14710/ijred.2023.50361>.

<sup>21</sup> Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas, 2010).

<sup>22</sup> Dicky Eko Prasetyo Adam Ilyas Felix Ferdin Bakker, "Membangun Moralitas Dan Hukum Sebagai Integrative Mechanism Di Masyarakat Dalam Perspektif Hukum Progresif," *Mimbar Keadilan* 14, no. 2 (2021): 128-38.

<sup>23</sup> Ahmad Gelora Mahardika, "Implikasi Penghapusan Strict Liability Dalam Undang-Undang Cipta Kerja Terhadap Lingkungan Hidup Di Era Sustainable Development Goals," *Legacy : Jurnal Hukum Dan Perundang-Undangan* 2, no. 1 (2022): 59.

<sup>24</sup> Dita Perwitasari Dicky Eko Prasetyo, Fradhana Putra Disantara, Nadia Husna Azzahra, "The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law," *Rechtsidee* 8, no. 1 (2021): 4.

<sup>25</sup> Dicky Eko Prasetyo, "Perlindungan Dan Pengakuan Hak Ulayat Masyarakat Adat Biak Papua," *Realism: Law Review* 2, no. 1 (2024): 54-82.

<sup>26</sup> Wahyu Nugroho, "Relationship between Environmental Management Policy and the Local Wisdom of Indigenous Peoples in the Handling of Covid-19 in Indonesia," *Onati Socio-Legal Series* 11, no. 3 (2021): 860-82, <https://doi.org/10.35295/OSLS.IISL/0000-0000-0000-1193>.

also as living norms within society that engage with local ecological, economic, and cultural realities.<sup>27</sup> Thus, when environmental law enforcers are able to integrate state, customary, and religious legal norms, it becomes one of the important orientations for more sustainable and equitable environmental management, as communities feel that their legal existence and awareness are recognized.

In the Indonesian context, legal pluralism is highly strategic because the country has numerous sectoral legal systems (agrarian law, forestry law, fisheries law, industrial law, and so on), as well as diverse customary laws and local communities that interact with state law.<sup>28</sup> If environmental law enforcement is implemented in a monolithic manner and only focuses on state legal norms centered on environmental law regulations, it risks failing to respect the existence of customary law and local norms. This can often lead to social resistance, repeated violations, and failure in environmental restoration. Conceptually, according to Werner Menski, legal pluralism is viewed as a global phenomenon that is naturally plural because it consists of three interacting core elements: natural law, community law, and state law.<sup>29</sup> This confirms that there is no single dominant legal system; instead, there is a mutually complementary dynamic among various existing norms. In John Griffiths' view, legal pluralism is relevant because law is not a state monopoly but emerges from various developments in social reality.<sup>30</sup>

Environmental law enforcement based on legal pluralism always refers to a number of interrelated and mutually reinforcing principles, tenets, and concepts both within the framework of state law alongside customary and religious norms. Thus, the law enforcement process does not proceed in a monolithic and formal-technical manner alone, but is also responsive to the socio-cultural and ecological realities of society.<sup>31</sup> Legal principles play a central role in legal science as they form the philosophical, normative, and methodological foundation that guides the entire process of law formation, interpretation, and application within society.<sup>32</sup> In legal science, legal principles are not merely regarded as technical rules, but as fundamental truths that underpin values such as justice, legal certainty, and expediency. Thus, every legal product can be measured to determine whether it remains aligned with the moral and social direction intended by the legal order.<sup>33</sup>

In the Indonesian context, the key principles recognized in environmental law such as the precautionary principle, accountability principle, justice principle, public participation principle, and sustainability principle also serve as the foundation for constructing pluralistic environmental law enforcement. This is because each of these principles can be operationalized in parallel through various forums and legal systems that are alive within

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<sup>27</sup> Duhriah Duhriah et al., "Institutionalization of Islam and Adat: The Legal System of Hak Langgeih in Aceh," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 1 (2024): 41, <https://doi.org/10.31958/juris.v23i1.7482>.

<sup>28</sup> Jansen Edinata Simanjuntak et al., "Customary Law and Multiple Legal Systems in Criminal Justice: Indonesia's Penal Reform Experience," *Architecture Image Studies* 6, no. 3 (2025): 1864–80, <https://doi.org/10.62754/ais.v6i3.528>.

<sup>29</sup> Dicky Eko Prasetyo Disantara, Fradhana Putra, Briggs Samuel, and Mawunyo Nutakor, "The Problematics of the Legal Standing of Deoxyribonucleic Acid (DNA) Test Results Concerning Civil Relationships of Illegitimate Children: A Legal Pluralism Perspective," *Mizani* 11, no. 02 (2024): 435–48.

<sup>30</sup> Dicky Eko Prasetyo and Zeidan Izza Al-farisi, "Lex Sportiva in Indonesian Sports Law: Autonomy, Independence, and Harmonization with National Laws," *Indonesian Journal of Sports Law* 1, no. 2 (2024).

<sup>31</sup> Hilmiyatun et al., "Between Ecology and Economics: A Critical Discourse Analysis of Putri Mandalika Folklore," *Theory and Practice in Language Studies* 12, no. 11 (2022): 2388–96, <https://doi.org/10.17507/tpls.1211.20>.

<sup>32</sup> Tanti Kirana Utami et al., "The Existence of Legal Principles and The Changing Times: Challenges and Adaptations in The Formation of Laws and Regulations," *Indonesian Journal of Law and Justice* 2, no. 4 (2025): 12, <https://doi.org/10.47134/ijl.v2i4.3931>.

<sup>33</sup> Dicky Eko Prasetyo et al., "The Construction Of The Lex Sportiva Principle In Indonesia's Sports Law: Implications And Future Arrangements," *UUM Journal of Legal Studies* 16, no. 2 (2025): 58–69, <https://doi.org/10.32890/uumjls2025.16.2.4>.

society. The precautionary principle emphasizes that any activity with the potential to damage the environment must be regulated from the outset through instruments such as environmental impact assessments (EIA), environmental management and monitoring plans, and administrative oversight. Thus, under the legal pluralism approach, this principle is not only implemented by state authorities through permits and regulations, but can also be internalized in customary norms and local value systems that have long governed limits on natural resource use to ensure they do not exceed the ecosystem's carrying capacity.

The accountability principle requires that every business actor or individual causing environmental pollution or damage must bear responsibility for the resulting impacts, whether through administrative, civil, or criminal sanctions. Within the framework of legal pluralism, the concept of accountability is not only understood through the state's lens of claiming compensation or imposing fines, but also through customary mechanisms that demand both symbolic and material restoration such as customary ceremonies, healing of sacred sites, or collective obligations to carry out environmental restoration efforts. The accountability principle is also closely linked to the "polluter pays" principle, which stipulates that the party causing pollution is obligated to cover environmental restoration costs. Thus, in environmental law enforcement based on legal pluralism, this principle can be integrated into customary agreements, community accords, and alternative decisions recognized by state institutions through mechanisms for acknowledging customary law.<sup>34</sup> Thus, the accountability principle not only becomes an individual legal obligation before the state, but also serves as social capital that strengthens the legitimacy of customary law and communities in safeguarding environmental sustainability.

The environmental justice principle demands that law enforcement processes are not only formally fair, but also substantively so meaning they must be able to protect vulnerable community groups, such as indigenous peoples, fishermen, farmers, and urban poor populations, from the negative impacts of natural resource exploitation and pollution. Therefore, under the legal pluralism approach, this principle requires recognition of both positive legal rights and the rights of indigenous communities.<sup>35</sup> This justice principle also requires fair access to dispute resolution forums, so that communities often marginalized by the high costs and processes of state courts can use customary forums, community mediation, or alternative legal mechanisms that are more closely aligned with local culture and values. In this context, the principles of legality and legal certainty typically regarded as the exclusive domain of state law are no longer understood rigidly, but are constructed through dialogue: the state recognizes that legal certainty can also be found within customary regulations and community agreements that have long existed and functioned effectively in maintaining environmental order.<sup>36</sup>

The public participation principle positions communities as active subjects in environmental management and protection, rather than merely parties forced to comply

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<sup>34</sup> Dicky Eko Prasetyo and Muh. Ali Masnun, "Beneficiary Pays Principle : Rekonstruksi Pengaturan Pelindungan Lingkungan Dalam Mewujudkan Kelestarian Sumber Daya Air," *Jurnal Hukum Lingkungan Indonesia* 11, no. 1 (2025): 1-22, <https://doi.org/10.38011/jhli.v11i1.957>.

<sup>35</sup> Giulio Fornaroli, "On Corrective and Distributive Requirements: The Case of the Beneficiary Pays Principle," *The Philosophical Quarterly* 1, no. 1 (2025): 1-10.

<sup>36</sup> Fakhru'l Fuad, Hambali Thalib, and & Zainuddin, "Penerapan Asas Legalitas Materil Terhadap Hukum Pidana Adat: Studi Tana Toa Kajang," *Journal of Lex Theory (JLT)* 2, no. 1 (2021): 1-18.

with state regulations. Thus, within the framework of legal pluralism, this principle forms the basis for the existence of local forums, customary institutions, and civil society organizations that have the right to formulate policies, provide input, and oversee the implementation of environmental policies. Environmental law enforcement based on legal pluralism can accommodate the role of customary councils in determining sanctions for members who violate environmental conservation norms. The state retains its role as guarantor of the right to a healthy environment and enforcer of public interests, resulting in a division of roles and complementarity between state law and customary law. In this context, the concept of "law as social order" becomes highly relevant, as law is not only viewed as a product of central legislation, but also as the result of negotiations, traditions, and empirical realities emerging from society which can then be recognized and integrated into the national legal system through mechanisms for acknowledging and synchronizing norms.

The sustainability principle both in the context of sustainable development and long-term environmental protection serves as the core ethic in environmental law enforcement. As such, policies and legal decisions not only consider the needs of the present generation, but also preserve the environment's capacity to meet the needs of future generations. Within the framework of legal pluralism, this principle can be operationalized through customary norms that prohibit overexploitation of natural resources. Principles related to the law enforcement process, such as the *primum remedium* principle in environmental criminal law (which emphasizes that environmental restoration should be a priority before or after imposing criminal sanctions), can be integrated with customary mechanisms that emphasize moral, social, and ecological restoration. This ensures that sanctions not only fulfill punitive requirements, but also meet the community's need to restore harmony with the environment and with one another. Thus, environmental law enforcement based on legal pluralism does not merely combine different legal systems in a mechanical way, but builds an ethical and normative framework where the principles of prevention, accountability, justice, participation, sustainability, and restoration mutually reinforce one another and are expressed through various normative systems including state law, customary, and religious norms.

## **B. Comparison of Environmental Law Enforcement in Indonesia and Hungary in Protecting Indigenous Communities**

Comparative law is a scientific method of legal research that systematically compares legal systems, norms, institutions, or legal doctrines across countries. The primary purpose of comparative law is to uncover similarities and differences between legal systems in various countries, including their historical, social, and cultural backgrounds, as well as other factors that give rise to such diversity. This allows for a deeper understanding of the logic, structure, and dynamics of each legal system in addressing similar issues.<sup>37</sup> The activities of comparative law aim to develop legal science theoretically by expanding insights into various approaches to resolving legal issues, identifying the rational basis behind similarities and differences, and providing empirical material for the renewal,

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<sup>37</sup> Werner Menski, *Comparative Law in A Global Context: The Legal System of Asia and Africa*, 2nd ed. (Cambridge: Cambridge University Press, 2006).

unification, and harmonization of national law. Comparative law also seeks to find practical solutions to specific legal problems faced, prevent legal chauvinism that tends to regard one's own system as superior, and promote international cooperation through enhanced understanding of foreign law ultimately contributing to the development of law that is more just, effective, and contextual to global realities.<sup>38</sup>

Comparative law according to Peter de Cruz is a systematic discipline for analyzing the differences and similarities of global legal systems.<sup>39</sup> Michael Bogdan emphasizes that comparative law is the process of comparing different legal systems to systematically identify their similarities and differences, which involves analyzing such data to explain historical origins and evaluate legal solutions to similar issues.<sup>40</sup> In Ratno Lukito's view, comparative law is understood as a discipline that has been shadowed by epistemological debate since the second half of the 20th century, in which this field has been questioned regarding its validity as an autonomous science or merely a branch of general legal theory. This highlights theoretical debates that distinguish two main dimensions: the theoretic-idealist-macro oriented approach, which focuses on broad philosophical and structural analysis of legal systems, and the practical-pragmatic-micro oriented approach, which centers on concrete application and specific cases.<sup>41</sup> Referring to the terms used by Ratno Lukito, this research focuses on the practical-pragmatic-micro oriented aspect.

A legal comparison of environmental law enforcement in Indonesia and Hungary is important because both countries face similar challenges such as industrial pollution, waste management, and nature conservation, despite differing legal backgrounds. In Indonesia, environmental law enforcement for the protection of indigenous communities is a crucial effort to guarantee their constitutional rights to customary land, natural resources, and a sustainable environment. In Indonesia, the regulation of environmental law enforcement is governed by the provisions of Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which guarantees the right to a good and healthy environment; Article 18B paragraph (2) of the 1945 Constitution, which recognizes and respects the unity of indigenous legal communities and their traditional rights as long as they remain viable and in line with societal development; and Article 33 paragraph (4) of the 1945 Constitution, which mandates that the national economy be environmentally conscious. Law Number 32 of 2009 on Environmental Protection and Management (EPM Law) serves as the primary instrument, with Article 1 point 3 defining the environment as living space that includes customary territories; Article 65 guaranteeing public participation (including indigenous communities) in environmental decision-making; Article 66 on access to public environmental information; Article 68 on citizens' right to sue for environmental violations; Articles 82–91 regulating administrative to criminal sanctions (imprisonment of 3–10 years,

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<sup>38</sup> Djoni Sumardi Gozali, *Pengantar Perbandingan Sistem Hukum: Civil Law, Common Law, Dan Hukum Adat* (Bandung: Nusamedia, 2020).

<sup>39</sup> Peter De Cruz, *Comparative Law in a Changing World* (London: Taylor & Francis Group, 2015).

<sup>40</sup> Michael Bogdan, *Pengantar Perbandingan Sistem Hukum* (Bandung: Nusamedia, 2019).

<sup>41</sup> Ratno Lukito, "Compare But Not to Compare': Kajian Perbandingan Hukum Di Indonesia," *Undang: Jurnal Hukum* 5, no. 2 (2022): 273.

finer up to IDR 10 billion) for pollution/damage affecting indigenous communities; and Article 87 allowing strict liability civil lawsuits for restoration efforts such as rehabilitation of customary forests.<sup>42</sup> Constitutional Court Decision Number 35/PUU-X/2012 amended Article 1 point 6 of the 1999 Forestry Law to state that "customary forests are forests within the territories of indigenous legal communities," thereby restoring management authority to indigenous groups. Article 6 of Law Number 39/1999 on Human Rights protects the cultural identity and customary land rights of indigenous peoples, while Article 55 of Law Number 39/2014 on Plantations prohibits the acquisition of customary land for plantation businesses without prior lawful release of rights.<sup>43</sup>

In Indonesia, there is as yet no regulation governing environmental law enforcement based on legal pluralism that accommodates the role of indigenous communities. This stands in contrast to the diversity of customary legal systems spread across regions such as Papua, Kalimantan, Sumatra, and Maluku, where indigenous communities have long practiced sustainable natural resource management through hereditary norms such as *Sasi* (traditional resource management restrictions), customary forests, or chieftaincy systems which function as effective and context-specific environmental oversight mechanisms.<sup>44</sup> Law Number 32 of 2009 on Environmental Protection and Management, along with its implementing regulations, is more oriented toward a formalistic state-centric approach that relies on law enforcement agencies such as the police, public prosecutors, and district courts without inclusive mechanisms to accommodate legal pluralism. This has implications for the frequent emergence of conflicts of interest, such as cases of customary land evictions for large-scale mining or plantation projects. In these instances, environmental law enforcement fails to integrate local indigenous knowledge that is more adaptive to ecosystem degradation, leading to ecological injustice, marginalization of indigenous communities, and low effectiveness of grassroots-level law enforcement. Yet a legal pluralism-based approach could serve as an ideal solution by combining the strengths of state law, Islamic law, and customary law in hybrid forums such as customary-state courts or *musyawarah*-based mediation, enabling the realization of substantive justice.

Unlike in Indonesia, Hungary is not fundamentally a country with numerous and diverse indigenous communities. Environmental law enforcement in Hungary for the protection of indigenous-like groups focuses on the Roma community the largest minority group, comprising approximately 7–10% of the population, and often regarded as "indigenous" in the context of Eastern Europe.<sup>45</sup> Even so, in practice, Roma communities are often located in flood-prone areas, near illegal waste dumps, or without basic sanitation

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<sup>42</sup> Zaskiya Amalina and Radian Salman, "Tanggungjawab Pemerintah Terhadap Perlindungan Lingkungan Hidup Pada Proyek Food Estate," *JATISWARA* 40, no. 1 (2025), <https://doi.org/10.29303/jtsw.v40i1.1180>.

<sup>43</sup> Putri Pertiwi et al., "Implementasi Hukum Adat Dalam Penyelesaian Sengketa Lingkungan: Studi Etnografis Di Kawasan Hutan Adat," *Perkara : Jurnal Ilmu Hukum Dan Politik* 2, no. 4 (2025): 589–602, <https://doi.org/10.51903/perkara.v2i4.2231>.

<sup>44</sup> Yenny Febrianty, Hasliza Ghapa, and Asmida Ahmad, "Integration of Customary Law in The National Legal System Comparative Study of Malaysia and Indonesia," *SASI* 30, no. 4 (2024): 379, <https://doi.org/10.47268/sasi.v30i4.2303>.

<sup>45</sup> Andrea Éltető and Judit Ricz, "Captured Green Aims: The Case of Hungary," *New Perspectives* 32, no. 4 (2024): 347–67, <https://doi.org/10.1177/2336825X241282600>.

infrastructure such as clean water and sewage systems. This was evident in the 2001 floods in Szabolcs-Szatmár-Bereg County and the 2010 floods along the Sajó, Hernád, and Bódva rivers in Borsod-Abaúj-Zemplén County disasters that killed children and caused disabilities due to contamination from illegal car battery recycling.<sup>46</sup> Hungary's primary legal framework is governed by the Fundamental Law of Hungary (2011), with Article IX guaranteeing the right to a clean and healthy environment, and Article XXIV protecting ethnic minorities including the Roma with rights to culture and political participation. Meanwhile, Act LV of 1995 on Environmental Protection regulates enforcement through administrative and criminal sanctions for violations such as pollution (Articles 48–52 on environmental liability and Article 79 on penalties), with the National Environmental and Nature Conservation Authority (NEBIH) responsible for inspections and enforcement under the Ministry of Agriculture.

Act CLXXIX of 2011 on the Rights of Nationalities (Minorities Act) Articles 1–5 recognize 13 national minorities including the Roma, and Articles 29–32 grant rights to local autonomy and cultural protection. Act LVII of 1995 on Water Management Articles 3 and 65 regulate flood prevention and water resource management, which must take into account the vulnerability of at-risk communities. These are supported by EU Directive 2000/60/EC (Water Framework Directive) and Directive 2008/105/EC, which Hungary has adopted as an EU member to ensure equitable access to water and environmental disaster mitigation. However, in practice, law enforcement often fails to protect Roma communities due to systemic discrimination such as inadequate flood prevention infrastructure in Roma settlements (e.g., in Felsőzsolca or Sajószentpéter), forced evictions under environmental pretexts, and injustice in post-disaster compensation as criticized by the European Roma Rights Centre (ERRC) and the Ombudsman for Future Generations. These bodies highlight violations of the non-discrimination right under Article XIV of the Fundamental Law and Article 8 of the ECHR (European Convention on Human Rights) concerning private and family life. As a result, life expectancy among Roma communities is 10–15 years lower due to poor environmental conditions. While post-flood renovation efforts have been made in some areas, reforms are needed to integrate minority rights perspectives into environmental enforcement to align with the EU Roma Strategic Framework until 2030 and address the widespread environmental racism in Central and Eastern Europe.

**Table 1. Comparison of Environmental Law Enforcement in Indonesia and Hungary in Protecting Indigenous Communities**

Comparative Aspects	Indonesia	Hungary
Constitutional Basis	Article 28H paragraph (1), 18B paragraph (2), and paragraph (4) of the 1945	Articles IX and XXIV of the Fundamental Law (2011) guarantee a clean environment

<sup>46</sup> István Takács, Adrien Fenyvesi, and Botond Sinóros-Szabó, "The Analytical Assessment of the Weaknesses of the Agriculture of Szabolcs-Szatmár-Bereg County Based on Empirical Research Results," *Acta Universitatis Sapientiae, Agriculture and Environment* 12, no. 1 (2020): 70–81, <https://doi.org/10.2478/ausae-2020-0006>.

	Constitution guarantee a healthy environment, customary rights to customary land, and an environmentally conscious economy for plural indigenous communities such as those in Papua and Kalimantan.	and the cultural rights of the Roma minority (7-10% of the population, considered indigenous in Eastern Europe), plus Article XIV non-discrimination.
<b>Main Environmental Law</b>	Law No. 32/2009 PPLH: Article 1(3) definition of environment including customary areas; Article 65 participation of indigenous peoples; Article 66 access to information; Article 68 suing citizens; Articles 82-91 criminal sanctions (3-10 years imprisonment, fine of IDR 10 billion); Article 87 strict liability for rehabilitation of customary forests.	Act LV/1995 Environmental Protection: Articles 48-52 environmental responsibility; Article 79 administrative/criminal sanctions; NEBIH inspections; supported by EU Directives 2000/60/EC (Water Framework) and 2008/105/EC.
<b>Special Protection for Indigenous/Minorities</b>	Putusan MK 35/PUU-X/2012 ubah Pasal 1(6) UU Kehutanan jadi hutan adat; Pasal 6 UU 39/1999 HAM melindungi identitas ulayat; Pasal 55 UU 39/2014 Perkebunan larang kuasai ulayat tanpa pembebasan; PP 45/2004 Pasal 8 hutan adat.	Act CLXXIX/2011 Minorities: Articles 1-5 recognize 13 minorities including Roma; Articles 29-32 local autonomy; Act LVII/1995 Water: Articles 3 & 65 flood prevention for vulnerable communities.
<b>Practical Challenges</b>	There is no regulation of legal pluralism; state-centricity through the police/prosecutor's office; mining/plantation conflicts cause evictions, marginalization (sasi/customary forests are ignored), and ecological injustice.	Systemic discrimination: Roma in flood zones (cases 2001 Szabolcs, 2010 Sajó); battery pollution; lack of infrastructure; forced evictions; life expectancy 10-15 years lower; ERRC/ECHR Article 8 criticism.
<b>Implications &amp; Solutions</b>	A hybrid forum (customary-state/consultation) is needed for the integration of Islamic/customary law; increase grassroots effectiveness.	Reforming the integration of minority rights per the EU Rome Framework 2030; avoiding environmental racism through post-disaster renovation.

**(Source: Author's Analysis)**

A legal comparison of environmental law enforcement in Indonesia and Hungary for the protection of indigenous-like communities reveals similar challenges – such as industrial pollution, waste management, and nature conservation – despite differing legal backgrounds. Indonesia relies on constitutional foundations including Articles 28H

paragraph (1), 18B paragraph (2), and 33 paragraph (4) of the 1945 Constitution, which guarantee a healthy environment, plural customary land rights in regions like Papua and Kalimantan, and an environmentally conscious economy. Meanwhile, Hungary draws on Articles IX and XXIV of the 2011 Fundamental Law, which ensure a clean environment and cultural rights for the Roma the largest minority group (7–10% of the population), regarded as "indigenous" in Eastern Europe plus Article XIV on non-discrimination. Indonesia has Law Number 32/2009 on Environmental Protection and Management (EPM Law), with Article 1 point 3 covering customary territories, Article 65 on indigenous community participation, Article 66 on access to information, Article 68 on citizens' right to sue, and Articles 82–91 imposing severe criminal sanctions (3–10 years imprisonment, fines up to IDR 10 billion). Article 87 provides strict liability for customary forest rehabilitation, reinforced by Constitutional Court Decision Number 35/PUU-X/2012 which amends Article 1 point 6 of the Forestry Law to recognize customary forests. Additionally, Article 6 of Law Number 39/1999 on Human Rights protects customary land identity, and Article 55 of Law Number 39/2014 on Plantations prohibits acquisition of customary land without prior lawful release of rights. Conversely, Hungary regulates environmental protection through Act LV of 1995 on Environmental Protection, with Articles 48–52 on environmental liability and Article 79 on sanctions enforced by the National Environmental and Nature Conservation Authority (NEBIH). Act CLXXIX of 2011 on the Rights of Nationalities Articles 1–5 recognize the Roma, and Articles 29–32 grant local autonomy. These are supported by Act LVII of 1995 on Water Management Articles 3 and 65 on flood prevention, plus EU Directive 2000/60/EC (Water Framework Directive) and Directive 2008/105/EC.

However, practical challenges in Indonesia include the absence of regulations on legal pluralism, meaning the state-centric approach through police and public prosecutors triggers conflicts over mining/plantation projects, customary land evictions, and marginalization of local wisdom such as *sasi* (traditional resource restrictions) and customary forests leading to ecological injustice. In Hungary, systemic discrimination places Roma communities in flood-prone areas, as seen in the fatal 2001 Szabolcs-Szatmár-Bereg and 2010 Sajó river disasters linked to battery contamination. Issues also include inadequate infrastructure, forced evictions, and life expectancy 10–15 years lower than the general population, with criticisms from the European Roma Rights Centre (ERRC) and allegations of violations of Article 8 of the European Convention on Human Rights (ECHR).

This research recommends that Indonesia establish hybrid customary-state forums based on *musyawarah* (deliberative consensus-building) to integrate state law, customary law, and religion through legal pluralism. Meanwhile, Hungary needs reforms aligned with the spirit of the EU Roma Framework 2030, including post-disaster renovations to avoid environmental racism. Thus, this comparison underscores the urgency of legal inclusivity in environmental enforcement to achieve substantive justice for indigenous-like communities in both countries.

## CONCLUSION

Environmental law enforcement based on legal pluralism is an integrative approach that recognizes the coexistence of state law, customary law, and religious law to achieve sustainable environmental governance. It integrates the precautionary principle through environmental impact assessments (EIA) aligned with customary norms, strict liability

based on the polluter pays principle and restorative sanctions, prudence in line with local wisdom, public participation through deliberative processes with customary elders (*musyawarah*), environmental justice that accommodates customary land rights, normative coherence in legal pluralism, and living legal sustainability rooted in society. The legal pluralism approach to environmental law enforcement must also be grounded in the concept of environmental conservation based on several mutually reinforcing principles prevention, accountability, justice, participation, sustainability, and restoration which are expressed through various normative systems including state law, customary, and religious norms. A legal comparison of environmental law enforcement in Indonesia and Hungary for the protection of indigenous-like communities reveals substantial similarities in the existence of legal instruments to regulate optimal environmental law enforcement. Nonetheless, regulations on the legal pluralism approach to environmental law enforcement in both countries can be considered suboptimal, as there are no specific rules in place and implementation continues to pose challenges. This research recommends that Indonesia establish hybrid customary-state forums based on *musyawarah* to integrate state law, customary law, and religion through legal pluralism. Meanwhile, Hungary needs reforms aligned with the spirit of the EU Roma Framework 2030, including post-disaster renovations to avoid environmental racism. Thus, this comparison underscores the urgency of legal inclusivity in environmental enforcement to achieve substantive justice for indigenous-like communities in both countries.

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