

Culture-Based Justice: Legal Decisions on Forest and Land Fires by Indigenous People with Local Wisdom Approach in the Middle Sentence

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ABSTRACT

The complex interaction between formal legal systems and indigenous local wisdom in managing forest and land fires in Central Kalimantan highlights the need for a nuanced regulatory approach. This study aims to explore how local wisdom is integrated into the formal legal framework governing forest and land fires by indigenous communities in the region. Conducted from September 2023 to April 2024, the research employed qualitative methods, including purposive sampling through interviews, observations, and field studies on local wisdom, focusing on community members and government agencies in Gunung Mas and Murung Raya regencies. The findings reveal that legal decisions concerning forest and land fires must incorporate the deep-rooted traditions and practices of indigenous communities, particularly those of the Dayak people. Their traditional agricultural practices and rituals, including pre-land use ceremonies, are integral to land management and fire prevention. This study concludes that aligning legal frameworks with local wisdom not only respects cultural heritage but also enhances the effectiveness of fire management policies. The implications suggest that policies should integrate traditional practices to create a more adaptive and sustainable legal system.

Keywords: Culture-Based Justice; Forest; Indigenous People; Land; Local Wisdom

INTRODUCTION

Over the past few years, the territory of Indonesia, precisely when the dry season arrives, will be followed by forest and land fires. In general, forest fires occur due to two factors, namely natural factors and human factors. Forest fires caused by natural factors usually occur through natural processes due to friction between dried parts of tree organs, lightning strikes, and volcanic lava eruptions, thus triggering sparks which then gusts of wind in the forest help forest and land fires occur. Forest fires caused by human factors occur due to accidental and deliberate processes. Humans can inadvertently do actions that result in forest and land fires such as throwing cigarette butts carelessly around the forest, leaving the rest burned in the forest without turning it off first. Next is the act of humans who deliberately burn forests with the intention of converting land use from forest plants to oil palm and other types of crops.

Referring to the designation that Indonesia is an agricultural country, the majority of people's livelihoods in rural areas are by farming. Farming livelihoods are closely related to land because the land used by farmers originally came from forests around community settlements. Procedures for converting forests into land are carried out in various ways such as cutting down forests and burning forests. Clearing land by cutting down trees and burning forests is not without legal consequences. People/business entities that cut trees illegally can be entangled in illegal logging legal cases as stipulated in Law Number 41 of 1999 concerning Forestry ([Audit Board of Indonesia \[BPK RI, 1999\]](#)) and Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction ([BPK RI, 2013](#)). Likewise, people/business entities are prohibited from burning forests as stipulated in Law Number 18 of 2004 concerning Plantations ([BPK RI, 2004](#)) and Law Number 32 of 2009 concerning Environmental Protection and Management ([BPK RI, 2009](#)).

The indigenous people of Central Kalimantan, comprising various ethnic groups such as the Dayak, Ngaju, and Ma'anyan, have a deep connection with their natural environment. These communities are often closely tied to forests and indigenous lands, which are integral to their cultural identity and economic sustainability ([Sutardjo, 2019](#)).

Recent developments indicate that the lifestyles of indigenous people have been impacted by climate change, deforestation, and land conversion. The issue of forest and land fires has become a critical concern, affecting both the environment and the social and economic lives of these communities. These fires are often triggered by traditional land-clearing practices, such as burning, which can lead to widespread damage to forests and land ([Sutardjo, 2019](#)).

In the context of Central Kalimantan's indigenous people, customary regulations or traditional laws play a crucial role in managing and preventing forest and land fires. These practices often involve traditional rituals to maintain ecological balance and prevent fires, including prayers, offerings, and ceremonies aimed at warding off evil spirits or invoking protection from natural disasters. Customary rules also govern fire use, with violations subject to traditional sanctions such as fines or social work to ensure compliance. Additionally, sustainable land management practices, such as crop rotation and environmentally friendly farming techniques, are employed to maintain ecosystem balance and reduce fire risks ([Setiawan, 2021](#)).

Given the current challenges faced by indigenous people in Central Kalimantan, it is urgent to consider how customary regulations and local wisdom interact with national laws regarding forest and land fires. This research has the potential to provide valuable insights for developing better policies and strategies for fire prevention, ultimately

enhancing the sustainability and well-being of indigenous communities in Central Kalimantan.

However, in the provisions of Article 69 Paragraph 2 of Law 32 of 2009, there are regulations that allow land clearing by burning, taking into account local wisdom in each area. This forms the background for the research on "Culture-Based Justice: Legal Decisions on Forest and Land Fires by Indigenous People with a Local Wisdom Approach in Central Kalimantan." The interview data derived from this study will contribute to government regulations in Central Kalimantan. The purpose of this study is to determine how local wisdom is regulated according to legal rulings on forest and land fires by indigenous people in Central Kalimantan.

LITERATURE REVIEW

Customary Law

Since 1945 Indonesia has formally declared itself as a state of law. This is contained in the pre-amendment explanation to the 1945 Constitution which expressly states "Indonesia is a state based on law and not a state based on mere power" ([Asshiddiqie, 2013](#)). The 1945 Constitution was amended in Article 1 paragraph (3) which stipulates "The State of Indonesia is a State of Law" ([Tampemawa, 2022](#)).

The law of a nation is actually a reflection of the social life of the nation itself ([Musa et al., 2022](#)). When talking about the law in Indonesia, then what comes to mind is the subject of law will directly aim at the Law, legislation, or other written regulations. In fact, law has many aspects and consists of many components or other elements. Which aspect or element is considered the most important depends on the legal philosophy adopted by the legal system concerned ([Ulil, 2019](#)).

Most law enforcement officials assume that enforcing the law means enforcing the law ([Ali, 2007](#)). This understanding means that the Law is the axis of law. In fact, the problem of law enforcement cannot only be seen from a regulatory perspective, but must be seen as a whole which includes all existing elements such as morality, behavior, and culture of the nation ([Aryesam, 2023](#)).

Indonesia's society is characterized by its rich diversity, with over 1,128 ethnic groups spread across thousands of people living in 76,655 villages throughout the archipelago. Among these, 9,410 villages are situated near forest areas ([Nugroho et al., 2017](#)). Indigenous people have existed long before Indonesia's independence, initially recognized more for their diverse cultural value systems rather than their rights ([Mandala, 2021](#)). The 1945 Constitution acknowledges this diversity in Article 28 I, paragraph (3), which states, "The cultural identity and rights of traditional people are respected in harmony with the development of times and civilizations." Additionally, Article 18 B, paragraph (2) of the Constitution formally recognizes indigenous people units and their traditional rights, as long as these align with societal developments and the principles of the Unitary State of the Republic of Indonesia.

The recognition of indigenous people's rights took a significant step forward in 1960 when the Provisional People's Consultative Assembly (MPRS) enacted Decree No. 2/1960, which established that the National Land Law would be based on customary law ([Ismi, 2012](#); [Laike, 2019](#)). Customary Law Communities have defined territories that include settlements, economic zones, cultural areas, and customary forests. These communities possess local wisdom, indigenous knowledge, and cultural practices that are integral to their way of life ([Sinapoy, 2018](#)). Some of these customary rules have evolved into what are known as "living laws," which are recognized and observed by the communities.

According to Article 2, paragraph (2) of the RKUHP, living laws must meet four indicators to be recognized: (1) They must be applicable in the area where they are observed; (2) They must align with the values of Pancasila and the 1945 Constitution; (3) They must respect human rights; and (4) They must adhere to common law principles recognized by civilized society. These indicators are cumulative and must all be satisfied for a living law to be officially recognized. However, [Putri \(2021\)](#) notes that this requirement can pose challenges in the law enforcement process, as proving compliance with all four indicators can be difficult.

The living laws of indigenous people can vary significantly from one region to another, sometimes aligning harmoniously or, conversely, conflicting with each other ([Pellokila, 2021](#)). These differences in customary laws between groups of Customary Law People or between them and external entities such as migrant communities, business groups, and the government have occasionally led to disputes, some of which have escalated into physical conflicts ([Putri, 2021](#)).

To address these conflicts, both within and between Customary Law People and external parties, it is necessary to involve external entities ([Busroh, 2017](#)). The government is seen as the most appropriate authority to regulate how Customary Law interacts with external rules, values, or laws. Such regulations are crucial for maintaining justice within the community, both individually and collectively, especially when deviations occur—whether through actions of perpetrators, victims, or negligence by stakeholders. These regulations help ensure a balance between community life and its natural environment.

Conflicts frequently arise within communities over the use of natural resources, including both land and water areas (Cahyono et al., 2019). As demands for space, clothing, food, shelter, health, and education grow, the interaction between Indigenous People and external parties has intensified. Law Number 32 of 2009 concerning Environmental Protection and Management ([BPK RI, 2009](#)) addresses these issues, specifically prohibiting land clearing by burning. Article 69 paragraph (1) letter h of the law states: "Everyone is prohibited from clearing land by burning." Additionally, Article 108 outlines the sanctions for violations: "Anyone who burns land as referred to in Article 69 paragraph (1) letter h shall be punished with imprisonment for no less than three years and up to ten years, along with a fine of at least IDR 3,000,000,000 (three billion rupiahs) and up to IDR 10,000,000,000 (ten billion rupiahs)."

The handling of various cases that arise in the community actually allows a mechanism for resolution through the courts and in certain cases can be resolved through Customary Law. Settlement through customary law mechanisms is possible as long as it is mutually desired by the parties (suspects and victims), and to achieve broader interests, namely the maintenance of social harmonization. Local wisdom is cultural values and conceptual ideas that are good and live in the community ([Suyitno, 2012](#)). The dimension of local wisdom of Customary Law based on cosmic, magical, and religious thoughts is correlated with sociological aspects of the perspective and culture of Indonesian society ([Rahardjo, 1980](#)).

The accommodation of Customary Law based on local wisdom in the law enforcement process (for example in solving minor criminal cases) not only aims to produce justice for the parties but is an effort to conserve the values of local wisdom as the basis of Customary Law to build a national criminal law system. The model of a just criminal law system based on the local wisdom of Customary Law often produces justice that exceeds the value of positive Indonesian law ([Fathoni, 2021](#); [Resmini & Sakban, 2018](#)).

Forest and Land Fires

Dayak communities on the island of Kalimantan generally have a livelihood system as farmers or subsistence farmers where farming activities are carried out in shifts following the harvest period. To start shifting cultivation, they clean up the fields by burning them. Before land burning is carried out, Indigenous People usually perform rituals so that the burning is controlled and gets good results ([BPK RI, 2020](#)). On the other hand, a positive law in force in Indonesia has prohibited every citizen from burning in the context of land clearing. In Central Kalimantan Province, Regional Regulation No. 1 of 2020 concerning Land Fire Control ([BPK RI, 2020](#)) has limited traditional farming activities in peat and non-peat areas and outside forest areas that have the potential to damage the environment. Thus, burning land in the name of traditional ceremonies, local wisdom, and customary customs has the potential to be an unlawful act and can be subject to criminal sanctions.

Land clearing by burning is in principle permissible in accordance with the mandate of Article 69 paragraph (2) of Law Number 32 of 2009 concerning Environmental Protection and Management ([BPK RI, 2009](#)), namely: The provisions referred to in paragraph (1) letter h pay serious attention to local wisdom in their respective regions. Furthermore, in the explanation of Article 69 paragraph (2), it is stated that what is meant by "local wisdom" is to burn land with a maximum land area of 2 hectares per head of family to plant plants of local varieties and surrounded by fire barriers as a deterrent to the spread of fire to the surrounding area. This means that clearing land by burning is allowed under certain conditions ([Rizky et al., 2021](#)).

The challenges related to indigenous people's activities, natural resource utilization, and conflicts with external parties are particularly evident in Central Kalimantan Province. A significant legal issue in this region is forest and land fires (*Karhutla*), which involve complex interactions between indigenous communities and external entities ([Akbar, 2011](#); [Pasai, 2020](#)). From January to October 2021, Central Kalimantan experienced forest and land fires covering 642.84 hectares, with 2,375 hot spots reported ([BPBPK Prov Kalteng, 2021](#)). According to the [Indonesian Ministry of Environment and Forestry \(2023\)](#), the cumulative area affected by forest and land fires in Central Kalimantan from 2015 to 2021 nearly reached 1 million hectares, making it the second highest after South Sumatra. This province's vast land area, with 7,868,657 hectares classified as having high or very high fire vulnerability, represents about 34% of Kalimantan's area at risk. In response, the government has allocated IDR 174.25 trillion, which constitutes 10% of Indonesia's State Budget for FY 2021, specifically for controlling fires in these highly vulnerable areas.

Forest and land fires in Central Kalimantan have resulted in significant material and non-material losses. Ecologically, the province has the highest average CO₂ emissions from these fires in Indonesia, with 46,798 tons of CO₂-equivalent emissions recorded between 2017 and 2021 ([Indonesian Ministry of Environment and Forestry, 2023](#)).

Research identifies several factors contributing to forest fires, including natural causes such as leaf friction and lightning, as well as human activities. These activities include land clearing by fire, careless disposal of cigarette butts, intentional burning out of frustration, and pranks by individuals. In Indonesia, 99% of forest and land fires are attributed to human actions, driven by factors such as bad habits, land needs for settlements and agriculture, land conflicts, and accidental activities like collecting firewood or burning garbage. [Akbar \(2011\)](#) notes that farmers and fishermen are the primary sources of these fires, reflecting a broader pattern of human-induced environmental damage.

Land burning activities for various purposes have received serious attention from the government. Some engineering technologies offered to reduce land burning by the community include making fire blocks, reducing fuel, carrying out fire hazard patrols, regulating combustion systems, clearing land without burning (PLTB), controlled burning techniques, developing agroforestry planting patterns, and the help of simple extinguishers ([Akbar, 2011](#)). However, burning still occurs, so the government enforces regulations against land burners, and some have reached a final verdict. Court rulings on forest and land fire cases involving Dayak People or those on behalf of Indigenous People have occurred in several areas. Some of the litigations took place safely and others were accompanied by commotion. For example, as many as 42 organizations on behalf of Dayak residents held a demonstration in front of the Central Kalimantan Regional Police and asked the police to release the arrested farmers ([Kasriadi & Wibowo, 2019](#)). In West Kalimantan, the Police even deployed thousands of personnel during the reading of the trial verdict at the Sintang District Court over a forest and land fire case involving six farmers ([CNN Indonesia, 2020](#)). The root of the dispute is when forest and land burning perpetrators claim that what they are doing is in accordance with customs or traditions that follow local wisdom or have obtained permission from local customary stakeholders.

The handling of various cases that arise in the community actually allows a mechanism for resolution through the courts and in certain cases can be resolved through Customary Law. Settlement through customary law mechanisms is possible as long as it is mutually desired by the parties (suspects and victims), and to achieve broader interests, namely the maintenance of social harmonization. Local wisdom is cultural values and conceptual ideas that are good and live in the community ([Suyitno, 2012](#)). The dimension of local wisdom of Customary Law based on cosmic, magical, and religious thoughts is correlated with sociological aspects of the perspective and culture of Indonesian society ([Rahardjo, 1980](#)).

Incorporating Customary Law, rooted in local wisdom, into the law enforcement process—particularly in resolving minor criminal cases—not only seeks to deliver justice but also aims to preserve and integrate traditional values into the national criminal law system. This approach often results in justice that aligns more closely with the community's values than with Indonesia's statutory laws ([Resmini & Sakban, 2018](#)). [Fathoni \(2021\)](#) highlights that Indonesian positive law, which includes various regulations against forest and land burning, has evolved over time. Key regulations include Law Number 6 of 2023, which amends earlier laws on environmental protection and management, and Law Number 41 of 1999 on Forestry ([BPK RI, 1999](#)). Additionally, the prohibition of forest and land burning is addressed in the Criminal Code (KUHP) and Central Kalimantan Province's Regional Regulation Number 1 of 2020 on Land Fire Control ([BPK RI, 2020](#)). The Criminal Code specifically addresses forest burning, whether intentional or negligent, with corresponding penalties outlined in Articles 187 and 188. This comprehensive legal framework reflects Indonesia's commitment to environmental protection while integrating local legal traditions.

RESEARCH METHOD

The research was conducted in Central Kalimantan Province, focusing on the Dayak communities in Gunung Mas Regency and Murung Raya Regency, both of which deal with legal cases related to land burning. These regions were chosen for their significant legal proceedings on land burning offenses by Dayak communities and for their judicial rulings from the local District Court. The study aimed to uncover the legal facts presented during the judicial process and understand the legal reasoning employed by the judges in their decisions. Additionally, the research extended to other districts where customary

law on land clearing by burning is still practiced. Traditional leaders or *Mantir Adat*, recommended by the local government, were also interviewed.

The research spanned from September 2023 to April 2024 and involved several key institutions: the Law Bureau, the Prosecutor's Office, the Environment Service, the Forestry Service, and the local communities. Purposive sampling was used to select Gunung Mas Regency and Murung Raya Regency as the primary study areas. The tools and materials for this study included questionnaires, interview guidelines, case decision documents related to forest and land fires, tape recorders, stationery, and other documentation equipment.

A qualitative research design was employed, utilizing a juridical-normative approach with a descriptive-analytical focus. Data collection involved library research, which included analyzing statutory documents and literature. The qualitative analysis method integrated secondary data, such as theories and legislative content, with primary data from interviews, observations, and field studies on local wisdom. This approach allowed for a comprehensive analysis of the local wisdom of the Dayak people in Central Kalimantan within the framework of Indonesian positive law, specifically regarding forest and land fires.

RESULTS

Based on the results of interviews with stakeholders such as the Legal Bureau, the Prosecutor's Office, the Environment Service, the Forestry Service, and the Community, the results of field observations and documentation studies, the results of research on various customary laws related to the efforts to make legal decisions on forest and land fires by indigenous people in the Gunung Mas and Murung Raya areas in Central Kalimantan can be seen in [Table 1](#).

Table 1. Results of Interviews with Stakeholders Related to the Legal Decision on Forest and Land Fires in the Gunung Mas and Murung Raya Areas

No.	Topic	Aspects Discussed	Research Results
1	Legal Handling of Land Burning Cases by the Dayak Community	<ol style="list-style-type: none"> 1. Formal law enforcement 2. Integration of customary law 3. The role of each agency 	<ul style="list-style-type: none"> • Formal law enforcement is often slow and inconsistent • Customary law is often overlooked in formal processes • Coordination between the Legal Bureau, the Prosecutor's Office, DLH, and the Forestry Service still needs to be improved
2	Perception of Legal Decisions	<ol style="list-style-type: none"> 1. Dayak people's view of legal decisions 2. Community satisfaction 3. Impact on the community 	<ul style="list-style-type: none"> • The Dayak people often feel that the verdict is unfair and does not consider traditional values • Satisfaction with legal decisions is low • Social impacts including increased tensions between communities and governments

3	Factors Influencing Legal Decisions	<ol style="list-style-type: none"> 1. Customary law factors 2. Socio-economic factors 3. Political factors 4. Quality of evidence and witnesses 	<ul style="list-style-type: none"> • Customary law is often not well integrated into the formal legal system • Socio-economic factors such as poverty affect the verdict • Political influence can affect the independence of decisions • The quality of evidence and witnesses is often inadequate
4	Efforts to Promote Justice and Harmony	<ol style="list-style-type: none"> 1. Integration of customary law and national law 2. Training for law enforcement officials 3. Community education programs 4. Improving coordination between agencies 	<ul style="list-style-type: none"> • Integration of customary law with national law is necessary for justice • Training of law enforcement officials to understand the context of customs • Educational programs can increase understanding of the law and rights • Better coordination between the Legal Bureau, the Prosecutor's Office, DLH, and the Forestry Service is needed for the effectiveness of law enforcement

The interview results in [Table 1](#) provide a detailed understanding of the challenges and perspectives surrounding the legal handling of land burning cases by the Dayak community.

In terms of legal handling of land burning cases by the Dayak Community, formal law enforcement is often criticized for being slow and inconsistent. Moreover, the integration of customary law into formal legal processes is frequently overlooked, leading to a lack of consideration for the traditional values upheld by the Dayak community. The coordination among various agencies, including the Legal Bureau, the Prosecutor's Office, the Environmental Agency (DLH), and the Forestry Service, is identified as insufficient, suggesting the need for significant improvements in collaboration to ensure more effective and cohesive law enforcement.

When discussing the perception of legal decisions within the Dayak community, it was noted that many feel the legal verdicts are unfair and fail to consider their traditional values. This has led to a general dissatisfaction with legal decisions, as they are perceived to be disconnected from the cultural context of the community. The social impact of these legal decisions has been negative, with increased tensions reported between the Dayak people and government authorities, highlighting the disconnect between formal legal outcomes and community expectations.

Regarding the factors influencing legal decisions, the interviews revealed that customary law is not well integrated into the formal legal system, which diminishes its influence on legal outcomes. Socioeconomic factors, such as poverty, were found to significantly affect the verdicts, as individuals from lower socio-economic backgrounds are often disadvantaged in legal proceedings. Additionally, political factors can sometimes undermine the independence of legal decisions, further complicating the pursuit of

justice. The quality of evidence and witnesses presented in court was also reported to be frequently inadequate, which can compromise the fairness and accuracy of the legal process.

Finally, the interviews addressed efforts to promote justice and harmony within the Dayak community. There is a recognized need to better integrate customary law with national law to ensure that justice is served in a manner that respects both traditional and formal legal frameworks. Training for law enforcement officials is necessary to enhance their understanding of the customs and context of the Dayak community, which would lead to more informed and sensitive legal decisions. Community education programs were also highlighted as a means to increase awareness and understanding of legal rights and responsibilities among the Dayak people. Furthermore, improving coordination between key agencies, such as the Legal Bureau, the Prosecutor's Office, DLH, and the Forestry Service, is crucial for the effective enforcement of laws and the promotion of justice and harmony in the region.

DISCUSSION

Legal Handling of Land Burning Cases by Dayak Communities

Research findings from various government and community respondents reveal a general consensus that the legal handling of land burning cases involving the Dayak communities in Central Kalimantan is generally affirmative. This is largely attributed to the Governor's Regulation, which is detailed in several derivatives of Regional Regulation No. 1 of 2020 concerning Land Fire Control ([BPK RI, 2020](#)). Despite this consensus, some community members remain uncertain about the legal verdicts in land burning cases involving the Dayak communities. The Central Kalimantan Governor Regulation Number 4 of 2021, which addresses Non-Peat Land Clearing and Management for Customary Law People ([BPK RI, 2021](#)), permits indigenous people to clear non-peat land up to a maximum area of 1 hectare. This policy reflects careful consideration from various perspectives, balancing traditional practices with environmental protection.

The legal framework for these regulations is anchored in Law No. 32/2009 on Environmental Protection and Management ([BPK RI, 2009](#)), which permits land clearing of up to 2 hectares under specific circumstances. The drafting of Governor Regulation No. 4/2021 demonstrates a commitment to the PLTB initiative ([BPK RI, 2021](#)), providing technical instruction rather than a blanket permit for land clearing by burning. This regulation aligns with the UUCK and its derivatives, emphasizing that exceptions to the general prohibition on land burning are narrowly defined and subject to stringent conditions. It is important to note that Governor Regulation Number 4 of 2021 should not be misinterpreted as an open "permit" for land clearing by burning. Instead, it serves as an implementation guide for when exceptions apply, with burning allowed only after meeting specific, legally defined conditions.

Moreover, the regulation strictly prohibits land clearing by burning during a forest and land fire alert status or on peat-characteristic land, making it unlikely that permits will be issued. Even if the legal conditions for burning are met, the process must incorporate local wisdom to ensure that fires are controlled and do not spread. [Nasution \(2020\)](#) further elaborates that forestry law defines the forest as an integrated system comprising land, forest plants, wild animals, and other natural elements, all governed by specific legal provisions, particularly in the context of forest civil law. This legal understanding reinforces the need for careful regulation of land clearing practices, particularly when traditional methods are involved.

Perception of Legal Verdicts

The research on perceptions of legal rulings and actions reveals that government interventions, particularly concerning land burning, are grounded in the enforcement of existing laws and regulations within the applicable jurisdiction. The Dayak community's practice of burning land, deeply rooted in generations of local wisdom and customary law, is traditionally utilized for agricultural purposes. The central issue revolves around how positive law interprets and interacts with this customary law—whether it supports or challenges it within the framework of law enforcement. According to those interviewed, the government's actions in prosecuting land-burning cases involving the Dayak community are viewed as legitimate, provided all criminal elements are satisfied. This highlights the need for Indonesian laws and regulations to more explicitly safeguard citizens' rights, not only to a clean and healthy environment but also in terms of compensating for material losses caused by forest and land fires.

[Kamarudin et al. \(2022\)](#) emphasize that, under Law No. 32 of 2009, Article 13, the state is responsible for forest and land fires that infringe upon the right of citizens to a good and healthy environment. This law mandates that controlling pollution and environmental damage—through prevention, countermeasures, and recovery—must be carried out by the government, local authorities, and businesses, each according to their respective roles and responsibilities. As such, forest and land fires that result in pollution or environmental damage are unequivocally a state responsibility. This responsibility is further reinforced by Law No. 18 of 2013 ([BPK RI, 2013](#)), which governs the prevention and eradication of forest destruction.

The discussion surrounding legal verdicts and actions highlights two significant issues. First, under Law No. 32/2009 ([BPK RI, 2009](#)) and Environmental Regulation No. 10/2010 ([JDIH Environment Ministry of Life and Forestry, 2010](#)), there are specific provisions that exclude certain protections for Customary Law communities if a member is proven to have committed arson. This can potentially lead to legal consequences such as the loss of certain rights. Second, there is an ongoing debate regarding the Dayak people's traditional practice of clearing land by burning and its contribution to forest and land fires. While this practice has been an integral part of Dayak culture for generations, long before the establishment of the Republic of Indonesia, the recent increase in forest fires raises concerns. This situation suggests a pressing need to reassess the impact of traditional land-clearing practices within the context of modern environmental challenges.

Factors Influencing Legal Decisions

The research findings from interviews on factors influencing legal decisions in cases of community arson have been clearly illustrated in Central Kalimantan Regional Regulation No. 1/2020 ([BPK RI, 2020](#)). The distinguishing factor in how legal subjects are treated lies in whether the arsonist is a recognized member of the indigenous people. If the arsonist is legally confirmed as an indigenous people member, it is crucial to investigate the methods and processes used for obtaining burning permits. Conversely, if the arsonist is not an indigenous people member, criminal provisions can be immediately imposed. The indigenous people designation itself follows specific legal requirements, ensuring that their members are treated differently from the general public. The research on the influence of customary law and positive legal factors in land burning cases has yielded mixed responses: some respondents acknowledge the relevance of customary law in these cases, while others express concern over the public's lack of understanding regarding the positive legal issues surrounding land burning. [Aslati and Silawati \(2019\)](#) argue that forest and land burning have severe environmental consequences, including ecosystem destruction and the production of hazardous haze, which poses a significant threat to life. They emphasize that such acts of arson should be addressed comprehensively by all stakeholders.

In the context of land clearing by burning, which is part of local wisdom, culture, tradition, and customary law play essential roles. Sources involved in preparing the Academic Paper for Regional Regulation No. 1/2020 ([BPK RI, 2020](#)), including *damang* (customary leaders) and farmer communities in several Central Kalimantan areas, describe the land-clearing process through customary burning by the Dayak community as highly regulated and intricate. This complexity reflects the Dayak community's deep awareness of the dangers associated with uncontrolled land fires. Rituals, such as releasing birds to gauge air humidity, conducting preparatory ceremonies, involving neighboring landowners in the burning process, and constructing burn bulkheads, illustrate the community's commitment to ensuring that land clearing by burning is carried out in a controlled and responsible manner.

[Evans \(2011\)](#) categorizes societal reactions to crime into two types: those stemming from distance or unfamiliarity, and those arising from closeness or recognition. Distance acts as a barrier to achieving integrated crime reduction, while closeness serves as a supportive factor. Field research indicates that the community's reaction to forest and land fire crimes reflects a form of closeness or recognition, as it is based on legal provisions and local regulations. This reaction is driven by legal awareness within the community, where members take into account positive laws, such as forestry laws that govern forest tenure for plantations. The evolving public reaction to crime is understandable, given the rising crime rates influenced by factors such as population growth, technological advancements, and increasing living costs. Communities, therefore, must organize and implement crime prevention and mitigation efforts rooted in local wisdom ([Johnstone, 2013](#)).

These efforts should be proactive rather than reactive, with communities preparing long before crime becomes a significant threat. Crime reduction strategies must be institutionalized through collaboration between the community and law enforcement officials. Currently, society's response is primarily directed at crimes involving property, self-esteem, and frustration. If society reacts only after a crime has occurred, it indicates a lack of preparedness to address such issues. Generally, society tends to take repressive actions against crime, often accompanied by emotional outbursts ([Laws, 2019](#)).

For these community reactions to be effective, cooperation between law enforcement officials and the community is essential. The goal of punishment should be to rehabilitate and reintegrate the offender into society, preventing them from reoffending. This goal cannot be achieved solely through harsh penalties, exile, or other severe measures; it must also include efforts to reintegrate the offender into community life, recognizing that social interaction is crucial for rehabilitation. This approach aligns with [Durkheim's \(1983\)](#) concept that societal stability depends not only on internal laws but also on the broader social context.

[Durkheim \(1983\)](#) identifies two types of legal systems: repressive law, associated with homogeneous societies based on mechanical solidarity, and restitutive law, which emerges as societies become more complex. Repressive law, characterized by severe penalties, is prevalent in societies where members share similar values and a strong collective conscience. In contrast, restitutive law, which focuses on reintegration and involves specialized law enforcement groups, reflects the shift from repressive systems to more differentiated societies. As societies evolve, informal methods of crime control and punishment become less effective ([Andani et al., 2024](#)). It is essential to move beyond reactive measures to criminal behavior and involve law enforcement in addressing these issues, ensuring that justice is served.

Repressive forms of crime control, especially those based on harsh and cruel retribution, must be avoided, as they offer little benefit to either the perpetrators or society. Law enforcement operations must be guided by rational insights, enabling a comprehensive understanding of the causes of crime and the circumstances surrounding it. This understanding is more easily achieved through careful identification of different types of crime, considering factors such as the perpetrator's community association, level of involvement, role within group crimes, and level of professionalism. These factors are essential for analyzing crime strategically and for developing more effective training programs for those who violate the law. Strategic analysis must take into account social dynamics, community reactions, and the responses of law violators themselves. By incorporating these elements, society can better address crime and work toward more effective and just solutions.

Efforts to Promote Justice and Harmony

Research interviews reveal that local governments in Central Kalimantan have undertaken various efforts to reconcile positive legal provisions with the traditional practice of land clearing by burning. Key measures include the enactment of Regional Regulation No. 1/2020 ([BPK RI, 2020](#)) and Governor Regulation No. 4/2021 ([BPK RI, 2021](#)), which aim to carefully balance legal requirements with the cultural practices of the Dayak community. These regulations establish strict and limited exemptions for members of Customary Law communities, recognizing their local wisdom while adhering to environmental laws. The objective is for the concept of PLTB to gain acceptance across Central Kalimantan, ensuring that cultural practices align with legal and environmental standards.

Local governments face significant challenges in addressing conflicts that intertwine legal, sociological, and economic aspects of the Dayak way of life. The increasing number of Customary Law Community Designations at both district and provincial levels underscores the government's commitment to managing these conflicts thoughtfully. Despite these efforts, regional governments remain closely aligned with the central government's policy, which prioritizes PLTB as the ultimate goal. The current phase focuses on knowledge transfer and addressing exceptions to existing regulations, with the hope that, over time, community perspectives will shift toward alternative land-clearing methods that do not involve burning.

During this transitional period, it is crucial for the regional government to provide both practical and policy-based support to protect and guide the Dayak community. This support includes not only educational initiatives to foster an understanding of non-burning land-clearing techniques but also policy frameworks that respect cultural traditions while promoting environmental sustainability. The success of these efforts will depend on the government's ability to navigate the complex interplay of legal obligations, cultural preservation, and environmental protection, ultimately leading to a more harmonious and sustainable approach to land management in Central Kalimantan.

CONCLUSION

Based on the results and discussion, the author concludes that justice based on cultural values in legal decisions concerning forest and land fires by indigenous people, particularly through a local wisdom approach in Central Kalimantan, must consider community traditions deeply rooted in their ancestral practices. For the Dayak community, traditional farming practices and rituals play a crucial role in land management. Traditional leaders conduct rituals before land use, reflecting the integration of cultural practices into land management. However, existing regulations on

forest and land fires appear overly generalized, lacking specific clarity on what is permissible or prohibited.

Furthermore, the sanctions imposed for land clearing by burning are often uniform and may not account for the context of the offense. The penalties of imprisonment for 3 to 10 years and fines ranging from 3 to 10 billion rupiah are primarily designed for companies, not individuals. This one-size-fits-all approach fails to address the underlying reasons for land clearing by burning, such as financial constraints or the inability to implement alternative land management methods. Therefore, there is a need for legislation that differentiates between "burning to save investment costs" and "burning due to the inability to adopt PLTB", ensuring a more nuanced and humane approach to legal enforcement.

This research underscores the critical importance of integrating local wisdom into legal policies concerning forest and land fires in Central Kalimantan. Traditional Dayak farming practices and rituals, such as pre-land use ceremonies, play a vital role in managing land and reducing fire risks. The study suggests that policies and regulations must be crafted with a deep understanding of these cultural contexts, as overlooking them could lead to ineffective law enforcement and conflicts with indigenous communities. Additionally, the research reveals significant weaknesses in existing regulations, which are often too broad and lack specificity, making it difficult to implement and enforce laws effectively. This ambiguity also risks creating injustices in the sanctions imposed. Furthermore, the current uniform sanctions for land clearing by burning, which are primarily designed for large corporations, are often misaligned with the scale of violations committed by indigenous individuals or communities. There is a clear need to tailor these sanctions more closely to the context and nature of the violations.

To address these issues, it is crucial for governments and policymakers to develop and implement culturally sensitive policies that take into account the local traditions and practices of indigenous people. This process should involve meaningful dialogue with local stakeholders to ensure that solutions are equitable and effective. Regulatory reforms are necessary to provide clearer and more detailed guidance on permissible and prohibited practices, incorporating local wisdom and adapting to the unique needs of each community. Moreover, sanctions should be adjusted to reflect the context and scale of the violation, ensuring that law enforcement is fair and proportionate. Implementing a more flexible and contextual approach to punishment can significantly improve the effectiveness of efforts to prevent and control forest and land fires. Additionally, education and counseling programs are essential to enhance the understanding of indigenous communities regarding regulations and the importance of sustainable land management. By fostering greater awareness of the environmental impact of fires, these educational initiatives can help prevent future incidents and encourage more environmentally responsible practices.

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DECLARATION OF CONFLICTING INTERESTS

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