

Model of Swamp and Peat Area Protection Policy Based on Justice and Local Community Empowerment

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Abstract

Peatland management in Kutai Kartanegara faces major challenges, especially due to the expansion of the coal mining industry. Regional Regulation No. 1 of 2016 is designed to protect peat swamp ecosystems and support the welfare of local communities, but its effectiveness is questionable amid the rapid exploitation of natural resources. This study aims to evaluate the effectiveness of the 2016 Regional Regulation in maintaining ecological and social balance through normative juridical law analysis that includes related laws and John Rawls' distributive justice theory approach. The Normative Juridical Citation Method and data are collected from primary legal sources, including Law Number 26 of 2007 concerning Spatial Planning, Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, as well as Kutai Kartanegara Regional Regulation Number 1 of 2016 itself and secondary legal sources in the form of relevant literature, such as books, journals, articles and internet sources as well as mass media, both print and online and allow data triangulation to be carried out. The study results show that weak supervision and the absence of strict sanctions for mining companies hinder the optimal implementation of the Regional Regulation, causing adverse impacts on the environment and community welfare. The analysis shows that these regulations are not entirely fair to local communities that are vulnerable to the negative impacts of the mining industry. This study recommends the revision of the Regional Regulation to add strict environmental sanctions provisions and strengthen community participation in peatland management to achieve ecological justice that is in line with regional economic development.

Keywords

Policy; Empowerment; Community; Peat Swamp

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1. INTRODUCTION

Peatland management in Kutai Kartanegara has become increasingly complex in the face of the dynamics of modern society, especially with the existence of coal mining business licenses (Febria, 2018). Peat swamps in the Kukar MPY area are important in maintaining ecosystem balance, storing large



carbon stocks, and supporting biodiversity (Robertua, 2020). However, with the increasing exploitation of natural resources such as coal mines, the sustainability of peatlands faces various threats.

First, converting peat swamp land for mining activities results in serious land degradation. Deterioration in the quality and function of peat swamp ecosystems can lead to significant greenhouse gas emissions, contributing to global climate change (Prasetyo, 2019). In addition, draining land for mining purposes can trigger peat fires, which harm public health and threaten biodiversity. Second, coal mining business licenses often have the potential to create conflicts between economic interests, local communities, and coal mining companies (Masganti et al., 2017).

Understanding the importance of maintaining the ecosystem, the Kukar local government determined Regional Regulation (Perda) Number 1 of 2016 about protecting swamp and peat areas. This Regional Regulation is present as a form of systematic efforts to protect peatlands that are vulnerable to damage due to human activities, as well as a legal framework that aims to empower local communities in the management of the area (*PERDA NO 18 TAHUN 2016 TENTANG PENGELOLAAN RAWA DAN GAMBUT*, n.d.).

The 2016 Regional Regulation targets two main objectives: Environmental Protection and Local Community Empowerment. In terms of environmental protection, this regulation focuses on efforts to prevent the increasing degradation of peatlands, which, if left unchecked, will threaten the sustainability of the ecosystem as a whole. Meanwhile, regarding community empowerment, this regional regulation is expected to be a legal instrument that strengthens community participation in peatland management to maintain their welfare through sustainable land use (Syahriar et al., 2024).

However, as time goes by, new challenges arise along with the social and economic changes in the Kukar area. One of the most prominent problems is the Growth of the mining sector, which contributes significantly to the local economy but also has the potential to damage the environment, especially peatlands (Arisanty et al., 2024). The entry of large-scale mining companies into the Kukar area directly impacts peat ecosystems. Mining activities not only result in drastic landscape changes but also impact the ability of local regulations to maintain environmental balance and empower communities. This fact raises questions about the Effectiveness of The 2016 Regional Regulation in the current context, where the Regional Regulation does not seem to be able to answer the challenge of increasing the exploitation of natural resources.

This development shows that the 2016 Regional Regulation is no longer relevant to the complexity of today's problems. The inability of these local regulations to adapt to the dynamics of socio-economic changes in Kukar is the main highlight of this study. Therefore, reviewing this District Regulation, including whether these rules are still effectively enforceable or require revision to better adapt to current conditions, is necessary. Revision of local regulations Or even the preparation of new regional

regulations is a very urgent agenda, considering the need for a legal framework that is more adaptive to the changing times and economic demands while remaining oriented to ecological justice and Local Community Empowerment(Simamora & Sarjono, 2022).

This study aims to evaluate the effectiveness of Regional Regulation Number 1 of 2016 in protecting peatlands and rice fields in Kutai Kartanegara Regency (Kukar) by using the distributive justice theory approach from John Rawls. Through this approach, the research focuses on the extent to which this regulation can ensure justice in the distribution of benefits and burdens due to the exploitation of natural resources, especially in maintaining a balance between environmental conservation and economic interests(Alfiyah, 2018).

Rawls' distributive approach provides a basis for assessing that any inequality that arises must be able to benefit the most vulnerable communities. In the context of Kukar, this inequality can be seen from the impact generated by the coal mining industry, where the latest data shows that there are around 118 active coal mining business licenses in Kukar with an annual production of more than 50 million tons. The environmental impact of this mining operation is quite significant, including the emergence of 263 former mining pits that are not fully managed, thus potentially damaging the ecosystem and threatening environmental sustainability and the welfare of the local community(Kukarpaper, 2023).

In addition, the rice paddy areas in Kukar that have experienced drought due to mining activities show that the current local regulations do not have enough strength to suppress the negative impact of this industry. Although Regional Regulation No. 1 of 2016 regulates the protection of swamps and peatlands, the absence of firm sanctions for mining companies that damage this land shows weaknesses in implementing these rules. This shortage is a serious challenge, considering that swamps and peatlands have a vital role for local communities as a source of livelihood and to maintain ecological balance(Sucipto, 2023).



Figure 2. Sawang Land Drying Up Due to Coal Mining

Based on Rawls' principle of distributive justice, the losses experienced by local communities should be the main concern in natural resource management policies. The imbalance between the economic benefits enjoyed by mining companies and environmental damage and the decline in the quality of life of local communities needs to be addressed more fairly. Updating local regulations that include clear and firm sanctions for environmental violators can be an important step to ensure that vulnerable communities, especially those who depend on the sustainability of peatlands and rice fields, remain protected from the impacts of overexploitation.

In addition, the analysis will also focus on the importance of regulatory revisions that are responsive to the industry's changing dynamics and ensure justice for local communities by giving them a greater role in peat resource management. This aligns with Rawls' distributive justice principle, which emphasizes community inclusion in decision-making processes so that they can benefit from peatland protection and fairly face the impacts of industrial development.

Thus, this research is expected to significantly contribute to formulating more effective peatland protection policies based on distributive justice. The proposed policy is expected to protect natural ecosystems and ensure a fair distribution of benefits to local communities amid the booming mining sector in Kukar, which is in line with John Rawls' principle of distributive justice.

Regional Regulation Number 1 of 2016 in Kutai Kartanegara (Kukar) is designed to protect swamp and peat areas to protect ecosystems and empower local communities. However, the rapid expansion of coal mines with 118 active companies and around 263 abandoned mine pits has resulted in environmental damage, including drought in rice paddies. The regulation also does not impose strict sanctions on companies that destroy peatlands, and the involvement of local communities in land management is minimal. Revision of local regulations is needed to include clear sanctions for environmental violations and strengthen the participation of local communities in order to ensure ecological and social justice during industrial development.

2. METHOD

This study uses normative legal research methods, which focus on the analysis of written legal materials, such as laws and regulations and legal theories, to assess the effectiveness of Regional Regulation Number 1 of 2016 concerning the Protection of Swamp and Peat Areas in Kutai Kartanegara (Kukar). Primary legal sources in this study include Law Number 26 of 2007 concerning Spatial Planning, which regulates spatial planning and management, including the protection of strategic areas such as peatlands; Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Mineral and Coal Mining Law), which regulates provisions for the exploitation of natural resources; as well as the Kutai Kartanegara Regional Regulation Number 1

of 2016 itself, which is the main object in the analysis of ecological and social protection in the region. To enrich the analysis, this study also uses secondary legal sources in the form of relevant literature, such as books and journal articles (Tan, 2021). In addition, internet and mass media sources, both print and online, such as articles from *Kompas.id*, *Mongabay* and *Kaltim Post*, also used to obtain the latest data and information on the impact of mining on Kukar peatlands and related policy developments in East Kalimantan. In this study, a statute approach will be applied to assess the consistency of the Regional Regulation with national regulations, while the conceptual approach using John Rawls' distributive justice theory aims to evaluate whether this Regional Regulation has prioritized the interests of vulnerable communities. The historical approach is also used to trace socio-economic changes in Kukar that affect the relevance and effectiveness of the Regional Regulation.

3. FINDINGS AND DISCUSSION

3.1. Effectiveness of the Law on Swamps and Peatlands of Kutai Kartanegara Regency 2016

Kutai Kartanegara (Kukar) has a significant wealth of natural resources, including coal reserves, that contribute greatly to regional income and create jobs for the community. However, exploiting this resource often conflicts with environmental conservation efforts, especially protecting swamp and peat areas. Based on data obtained from sources, this study found that mining activities change the quality and conditions of the surrounding environment, for example, polluted water and peatland paddy fields that experience a decrease in productivity. On the other hand, even though there is already a Regional Regulation (Perda) Number 1 of 2016 concerning the Protection of Swamp and Peat Areas, its implementation often encounters obstacles due to weak supervision. Article 12 of the regional regulation states the obligation to manage the environment strictly. However, weak law enforcement causes companies to violate the rules without adequate sanctions, so it is not uncommon for the economic interests of mining to be prioritized over conservation.

The effectiveness of laws and regulations, including the 2016 Regional Regulation, is not only measured from the aspect of legality and formalization but also from its realization in the field and the real impact on environmental conditions and the lives of local communities (Orlando, 2022). In this context, the effectiveness of the Regional Regulation cannot only be seen as a written rule but must include how the rule is implemented. The study results show that the overlapping conflict of interest between peat protection regulations and the encouragement of mining exploitation hampers the implementation of the 2016 Regional Regulation. These regulatory conflicts further weaken implementation, where inadequate supervision results in low control over violations. According to Akella and Cannon (2017), weak law enforcement is the main challenge in ensuring a company's compliance with environmental regulations (Akella & Cannon, 2017). Thus, for the 2016 Regional

Regulation to be effective, there needs to be a comprehensive effort that includes stricter law enforcement, comprehensive environmental protection, and empowerment of local communities to increase awareness and involvement in preserving peat ecosystems.

One factor that weakens law enforcement's effectiveness is the lack of strict sanctions for violators. Lack of clarity or hesitation in applying sanctions against mining companies that violate the rules is the main obstacle to achieving compliance. In addition, the limited resources of law enforcement to effectively monitor all peatlands in Kukar also add to the complexity of this problem. As a result, regulations that should be instruments to control environmental damage do not function optimally (Santoso et al., 2023).

Environmental Protection

Environmental protection is a priority in Regional Regulation Number 1 of 2016 concerning protecting swamp and peat areas in Kutai Kartanegara. However, in its implementation, this regulation has not succeeded in overcoming the threat of environmental damage due to mining activities. Based on data obtained from the resource persons, namely the legal department of the Kukar Regional Government, they admitted that although this regulation has been well-drafted, the challenges in its implementation are very large. One of the representatives of the legal department said that economic pressure from the mining sector has a great influence on decision-making. "We face a dilemma between regional economic needs and environmental conservation. Even though regulations already exist, the reality is that we have difficulty ensuring that all provisions are complied with, especially by large companies," he said (Hasil Wawancara Bagian Hukum Kukar, 2024).

Environmental protection is the main focus of the 2016 Regional Regulation, but in its implementation, this regulation has not been able to ward off the threat of environmental damage caused by mining activities. The conversion of peatlands to the exploitation of natural resources, especially mining, has led to a significant decline in ecosystem quality (Wibowo, 2019). The destruction of peat ecosystems not only has an impact on the decline of ecological functions such as carbon sequestration and flood prevention but also results in the degradation of swamps, which has an important role in maintaining the hydrological balance of the area (Narendra et al., 2023).

In addition, based on data obtained from representatives of the Kukar Land and Spatial Governance Office, it was revealed that peatland governance in Kukar is often not following the agreed spatial plan. According to them, the conversion of peatlands for mining activities leads to a drastic decline in ecosystem quality, including a decrease in the ecological function of peatlands in carbon sequestration and flood control. The agency representative also explained that the overlap of policies between peatland protection regulations and mining permits complicates land management so that often, peatlands that should be protected are threatened by industrial expansion (Hasil Wawancara Bagian

Hukum Kukar, 2024).

The two agencies agreed that the 2016 Regional Regulation has not been able to fully overcome the rate of environmental damage, which is caused by weak supervision and law enforcement mechanisms. According to them, the lack of human resources and supervision funds makes law enforcement efforts less effective in dealing with violations in the field. This gap between regulations and practices is further exacerbated by intensive industrialization, which has visibly resulted in the degradation of peat ecosystems vital to maintaining the hydrological balance of the region. This shows that without a stronger commitment from various parties and coordination between agencies, the effectiveness of the 2016 Regional Regulation in protecting the environment is still far from expectations.

Local Community Empowerment

One of the main objectives of the 2016 Regional Regulation is the empowerment of local communities in peatland management, assuming that local communities, as key stakeholders, can play an active role in the sustainable maintenance and use of peatlands (Rachmawati & Tarigan, 2019). However, data obtained from the people of Kutai Kartanegara shows that empowerment is still far from expectations. Some residents said that their involvement in decision-making related to peatland management was very limited. The community also feels that they do not get adequate access to peatlands to improve the local economy. They mentioned that no training or mentoring program related to peat management or conservation was specifically given to them (Supar & Najwa, n.d.).

Based on further data obtained, several residents expressed concern over the destruction of peatlands that impacted their livelihoods. They feel that the government's attention is more focused on the interests of companies than on the people who live and depend on the land. Many residents complain that agricultural land around peatlands is increasingly unproductive due to environmental damage caused by mining activities. In addition, the community also highlighted the problem of water pollution, which makes it difficult for them to get clean water. This lack of empowerment efforts not only reduces the effectiveness of the 2016 Regional Regulation in achieving environmental goals but also creates injustice for local communities directly affected by this policy without adequate compensation or support (Hasil Wawancara Dengan Hafiza Masyarakat Kota Bangun, n.d.).

This lack of involvement is caused by several factors, including the lack of community access to peatland resources and adequate education or training related to sustainable ecosystem management (Rezi & Ali, 2024). In addition, local communities are often just spectators during an onslaught of mining companies that use land on a large scale without considering the long-term impact on the environment and their lives. Local communities are the most affected by environmental degradation due to mining activities.

For this reason, community empowerment in the context of the 2016 Regional Regulation needs to

be reviewed, especially in terms of providing wider access and a greater role for them in maintaining and managing peatlands. This empowerment will strengthen environmental conservation efforts and improve community welfare through sustainable use of natural resources.

3.2. Theory of Justice in Swamp and Peat Protection Based on John Rawls' Perspective

In the context of swamp and peat protection, the theory of distributive justice put forward by John Rawls provides an important framework for assessing the extent to which public policies, such as Regional Regulation (Perda) Number 1 of 2016 in Kutai Kartanegara, can reflect equal justice for all parties (Alfiyah, 2018). Rawls introduces the concept of *justice as justice*, emphasizing that policies and institutions must be designed in such a way as to provide justice for the most vulnerable parties in society. (Ashri, 2018).

In the context of environmental protection, Rawls' theory can be analyzed through two main principles:

The Principle of Freedom

Rawls emphasized the importance of equal distribution of freedom for everyone. In this case, local communities that depend on swamp and peat ecosystems must be free to use these resources fairly (Bewat, 2021). However, mining activities that dominate peatlands often limit local communities' access to natural resources that they traditionally own (Siburian, 2018). Based on this principle, swamp and peat protection policies must guarantee communities' right to manage peatlands without being marginalized by large industrial economic forces, such as mining companies (Suhardin, 2023).

Principle of Difference

This principle emphasizes that inequality can only be justified if it benefits the most disadvantaged, namely the most vulnerable groups (Dorling, 2015). In the context of Kukar, local communities that depend on peatlands are often the group most affected by environmental damage due to mining exploitation (E. S. Ningsih, 2024). According to this principle, policies taken by the government, including the 2016 Regional Regulation, should be designed in such a way as to provide greater protection for local communities, which are the most vulnerable groups (Triyudiana & Neneng, 2024).

Linking Rawls's theory to the condition of swamps and peatlands in Kukar, ecological and social justice should be at the core of peatland protection policies (Furqoni & Leviza, 2024). Current local ordinances do not fully promote justice for local communities because they do not accommodate their right to participate in decision-making regarding the land they inhabit. In line with Rawls' distributive justice, local communities must engage in sustainable resource management, which encourages equitable redistribution of benefits and burdens between mining companies, governments, and local communities (Tumiwa, 2021).

Ecological Justice

From the perspective of ecological justice, which can also be linked to Rawls' theory, peat ecosystems should be seen as entities worthy of protection because of their impact on environmental balance (Wahyudhi & Baihaqi, 2023). Peatland protection is not only about preventing environmental damage but is also related to the right of every individual to live in a healthy and sustainable environment (Verawati & Dachi, 2021). Therefore, local regulations must ensure that the benefits of peat ecosystems are distributed equally to local communities that rely on them while maintaining the natural balance.

Social justice

The principle of social justice, as initiated by Rawls, emphasizes the importance of equitable access to resources and communities' active involvement in decision-making processes concerning their lives. In the context of peatlands in Kutai Kartanegara, the dominance of the mining industry often creates inequalities that are detrimental to the local community. They lose the right and access to manage and use peatlands sustainably (J. R. Ningsih et al., 2023). Based on data obtained from community representatives that have been carried out, some expressed disappointment that they were not involved in the decision-making process related to peatlands, even though the decision's impact affected their quality of life. They feel the loss of stable and sustainable livelihoods due to land degradation and the lack of support to switch to alternative economic sectors.

In line with Rawls' principle of justice, local regulations, such as Regional Regulation No. 1 of 2016, should provide greater participation to local communities, especially in formulating policies that directly impact them (Syahriar et al., 2024). However, data obtained from the legal department of the Kukar Regional Government and the Land and Spatial Governance Office shows that community involvement in policy formulation is still limited, often only at the socialization stage without a meaningful consultation process. This injustice shows that the 2016 Regional Regulation has not been fully able to implement the principles of social justice for the Kukar community.

Furthermore, a critical analysis of the social impact of the Regional Regulation is important to expand the focus from the environmental aspect to the aspect of community welfare. Changes in the quality of life, such as the loss of livelihoods, reduced access to clean water resources, and damage to the local economy, need to receive more attention so that these regulations can be considered and reviewed based on their real impact on communities directly affected by mining activities. A more thorough analysis of social justice will allow for more just, participatory, and consistent regulation with Rawls' principles of justice to protect the rights of local communities amid industrial dominance.

3.3. The Need for Changes in Regional Regulations and Future Challenges

The rapid development of the mining industry in Kutai Kartanegara (Kukar), especially the coal sector, has increased the urgency to revise Regional Regulation (Perda) Number 1 of 2016 concerning the protection of swamp and peat areas. Based on data from the Kukar Land and Spatial Governance Office, more than 100 active coal mining concessions are spread across various regions, with most of the exploitation activities taking place on peatlands. This has caused significant ecological damage, including drying thousands of hectares of land due to the conversion of land for mining purposes. This impact is confirmed based on data obtained from communities around the mine site, which reveals that environmental conditions, especially water quality and soil fertility, have declined drastically, harming the livelihoods of those who depend on agricultural land (Rachmawati & Tarigan, 2019).

The revision of this Regional Regulation needs to be designed to be more adaptive and able to answer existing challenges by applying the principles of ecological justice and local community empowerment. One of the important aspects that must be strengthened is law enforcement (Asiyah, 2017). Based on data obtained from the local government, the sanction mechanism implemented so far has not provided a deterrent effect, with cases of violations that rarely lead to severe sanctions. Therefore, revising the Regional Regulation must include stricter law enforcement, such as clearer and more consistent administrative and criminal sanctions (Ahadi, 2022). This aligns with the aspirations of the local community, who hope for more concrete environmental protection and justice that is upheld without discrimination.

In addition, the revision of the Regional Regulation must also strengthen the role of local communities in peatland management. During this time, local communities are often marginalized in the decision-making process, even though they are the main stakeholders directly interested in preserving the ecosystem. The empowerment of local communities should be a key focus in drafting the new Regional Regulation by providing greater space for their participation in the planning, management, and monitoring of peatlands (Nurdianti, 2021). Local wisdom owned by local communities must also be integrated into policies so that the sustainability of peatland management can be better maintained. The Land and Spatial Governance Office also recognizes this local wisdom as an important asset that needs to be integrated into peat protection policies (Noor & Sulaeman, 2022).

In addition to law enforcement and community empowerment, the revision of the Regional Regulation must also consider collaboration with the private sector, especially mining companies that play a major role in changing swamp and peat areas in Kukar. The role of the private sector must be accommodated in regulation, provided that ecological and social interests remain a top priority. Clear regulations should facilitate multi-stakeholder collaboration between governments, communities, and mining companies. Based on data obtained from the local government's legal section, it was conveyed that collaboration between the government, the community, and companies is necessary so that

companies not only play a role as resource exploiters but also as partners in preserving the environment. The adoption of corporate social responsibility (CSR) mechanisms can be a solution to encourage companies to invest in local community empowerment and environmental conservation programs (Hidayat, 2015).

The challenges faced in the future are related not only to the revision of the Regional Regulation but also to the complexity of its implementation. One of the main problems must be addressed is the lack of coordination between local and central governments, which often leads to policy missynchronization between economic development agendas and environmental protection. In addition, there is also pressure from strong economic interests, especially from mining companies, that greatly influence policy-making (Prihatiningtyas et al., 2023). Therefore, a strong political commitment from the government is needed to prioritize ecological and social interests in formulating new policies. Considering the above aspects, it is hoped that the revision of the Regional Regulation can produce more inclusive and fair policies that can answer the challenges of sustainable development in Kukar.

4. CONCLUSION

The conclusion of this study shows that the implementation of Regional Regulation Number 1 of 2016 concerning the Protection of Swamp and Peat Areas in Kutai Kartanegara Regency (Kukar) still faces some obstacles that affect its effectiveness. Law enforcement on peatland protection is hampered by suboptimal monitoring mechanisms and the application of undecisive sanctions so that environmental degradation cannot be properly addressed. In addition, although local communities have an important role in peatland management, their participation in policy-making and natural resource management is still limited, even though their local knowledge is invaluable. This study also noted the misalignment between environmental protection and economic development policies, especially related to the mining industry. The lack of coordination between local and central governments leads to non-synergistic policies prioritizing economic interests over environmental conservation. The strong political influence of the mining sector has the potential to ignore environmental protection. To increase the effectiveness of the Regional Regulation, it is recommended that revisions be made to strengthen the law enforcement mechanism, including the application of stricter and clearer sanctions. In addition, it is necessary to expand the participation of local communities in the planning and supervision of peatland protection, as well as ensure better coordination between local and central governments in formulating policies that balance economic development with environmental conservation. Thus, it is hoped that the resulting policies can be more effective in realizing social and ecological justice and supporting sustainable development that benefits society and the environment.

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