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Submission date: 12-Mar-2024 06:52PM (UTC+1100)

Submission ID: 2288366326

File name: Conceptualizing_Nature_As_A_Legal_Subject_A_Comparative_Study_Of_Laws_Between_Indonesia_New_Zealand_And_Ecuador.docx (62.21K)

Word count: 5823

Character count: 33029

Conceptualizing Nature As A Legal Subject: A Comparative Study Of Laws Between Indonesia, New Zealand, And Ecuador

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Abstract

This paper aims to find out the extent to which Indonesia views the concept of nature as a legal subject. This research can provide comprehensive information and understanding, which focuses on comparative law and how the application of the Theory of Legal Transplantation. Two experiences have occurred, namely in New Zealand and Ecuador, which have answered the view of nature as a legal subject. Based on these two experiences, it becomes urgent in the preparation of this research to describe the concept of nature as a legal subject in Indonesia by comparing Indonesian regulations on environmental protection and examining how Indonesia views the concept of nature as a legal subject through the existing legal system, as well as definitive legal subjects. The method used is normative juridical with a comparative approach and conceptual approach. The writing of this legal Article has the novelty of discussing the application of Articles 66 and 91 of Law Number 32 of 2009, which explicitly discusses the concept of nature as a legal subject in Indonesia and the view of Legal Transplantation Theory. The results of this study indicate that Indonesia's Law on environmental protection still does not need to recognize nature as a legal subject. Still, with the experience of two countries that have accommodated nature as a legal subject, it is not impossible through Legal Transplantation Theory that the influence in the form of legal instruments or concepts can be transplanted to the Indonesian State as a source of environmental protection regulation formation.

Keywords: *Legal Subject; Comparations; Legal Transplantation Theory*

1. INTRODUCTION

The legal subject comes from the Dutch word Rechtsubject, which means everyone who has rights and obligations and has authority in law (Rechtsbecoegheid). The concept of legal subjects is a fundamental, central discussion that is often found in the study of legal theory because, basically, the law regulates relationships between individuals. The subject of law recognizes another term, namely Legal person. A legal person, whether human or nonhuman, is recognized as a person in legal contexts possessing the capacity to participate in various legal activities typically undertaken by individuals. This includes the ability to initiate legal proceedings, defend against legal actions, own assets, and enter into contractual agreements.[1] According to J. H. According to Logemann, there are 3 other elements, namely relationships, time, and things. In Logemann's opinion, it emphasizes the importance of the concept of the legal subject. The legal subject is a party related to the legal system. In essence, the legal subject is distinguished between natural persons (natuurlijk persoon), legal persons (rechtpersoon), and figures or statuses.[2] Explanations related to the category of legal subjects continue beyond just one or two experts. Still, many legal experts provide explanations related to

[1] Cornell Law School, "Legal Person," 2023, https://www.law.cornell.edu/wex/legal_person.
[2] Selamat Lumban Gaol, "Penyelesaian Sengketa Pemakaian Nama Badan Hukum Perkumpulan Yang Terdapat Persamaan Pada Pokoknya Antara Satu Perkumpulan Dengan Perkumpulan Lainnya," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 2 (2020).

who is called a legal subject, and Sudikno Mertokusumo states that the subject of law is everything that obtains rights and obligations.[3] Slightly different, another legal expert's explanation states that the subject of law is a supporter of rights.[4]

Over time, the Industrial Revolution played a pivotal role in reshaping the notion of legal subjects, initially confined to individuals, the evolving complexities of expanding commercial activities led to the recognition of entities beyond individuals, specifically companies, as legal subjects.[5] This legal conception, which is called futuristic by some jurists, only emerged later when globalization began to provide a sense of danger for humans. In the latter part of the 20th century, marked by the ramifications of industrialization, the proliferation of massive factories in the 1990s resulted in environmental degradation and pollution, prompting individuals with a heightened awareness of ecological sustainability to advocate for the acknowledgment of nature's rights. This forward-looking legal concept, labelled as futuristic by some legal scholars, only gained prominence with the onset of globalization, as it began to pose perceived threats to humanity. The emergence of various explanations related to environmental awareness and the concept of nature as a legal subject, such as the Green Constitution, shows the importance of adopting the principle of ecological sustainability in all areas of life.[6] As in New Zealand and Ecuador's constitutions, the legal breakthroughs in these countries indicate that their governments are also focused on the condition of nature. Whether we realize it or not, this paradigm shift regarding nature or the subject of law is a revolutionary movement in legal theory, especially environmental law.

Some studies that question the importance of enforcement and renewal of environmental law include Kennedy, who mentions various ethical thoughts about environment as well as a holistic ecocentric view of progressive law as a solution in providing substantive justice for nature without examining how nature is as sovereign as humans as a legal subject. Its enforcement is not only holistically in Indonesian law. This then becomes the difference with this research. In summary, the study concludes that to ensure justice for the environment and safeguard its interests and rights, legal practices must be implemented in a comprehensive and forward-thinking manner.[7]

Meanwhile, another study by Prabowo discusses the embedding of legal subjects to nature in New Zealand and Ecuador. Unlike Kennedy, Prabowo describes more

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[3] Muhammad R M Fayasy Failasufa, "Transplantasi Teori Fiksi dan Konsesi Badan Hukum terhadap Hewan dan Kecerdasan Buatan sebagai Subjek Hukum: 1. Subjek Hukum: Hak dan Kewajiban Manusia dan Badan Hukum Negara Hukum Indonesia yang Antroposentris 3. Transplantasi Teori Fiksi dan Teori K," *Jurnal Hukum dan HAM Wara Sains* 1, no. 02 (2022): 121–33.

[4] Failasufa.

[5] Edina Manullang, *Pertanggungjawaban Pidana Korporasi* (LPPM UHN Press, 2020).

[6] Abdul Hasim, "Perlindungan Terhadap Lingkungan Hidup Merupakan Bentuk Penerapan Green Constitution dalam UUD Tahun 1945," *At-Tanwir Law Review* 3, no. 1 (2023): 18–32.

[7] Richard Kennedy, "Diskursus Hukum Progresif dalam Penegakan dan Pembaharuan Hukum Lingkungan," *Perspektif: Kajian Masalah Hukum dan Pembangunan* 26, no. 3 (2021): 198–209.

precisely how the concept of "legal person" is given to nonhuman entities, namely nature, and explores the consequences of this conception.[8]

Furthermore, Prabowo's study introduces a fresh perspective by incorporating Shodiki's research, which delves into the recognition of nature as a legal subject in Indonesia.[9] However, unlike previous research that cites legal precedents from various countries, this study needs to specifically demonstrate how the Legal Transplantation Theory could be utilized to integrate the concept of nature as a legal subject in Indonesia, ensuring its normative applicability in the country. This distinction sets this paper apart from others in the field.

The various studies above have yet to answer the question of how Indonesia views the concept of nature as a legal subject through the Theory of Legal Transplantation. This research highlights the conception of nature as a legal subject between Indonesia, New Zealand, and Ecuador, so the discussion will focus on the comparison of laws on nature as a legal subject between Indonesia and the two countries and how Indonesia itself, with its legal system and legal transplant theory accommodates the conception of nature as a legal subject.

Discussing the environment is a never-ending discussion and always provides interest for academic research. Because nature is part of society or vice versa, sustaining life offers mutual benefits, meaning that the existence of a good and healthy ecosystem or environment is a benchmark for the survival of humanity. According to Hans Kelsen, a legitimate science of law must encompass objects that can undergo empirical examination and rational logical analysis.[10] Therefore, this study aims to play a role in shaping norms for environmental regulations in Indonesia by advocating for the recognition of nature as an equal legal subject alongside humans. The objective is to ensure comprehensive protection and law enforcement concerning environmental matters.

2. METHOD

The research method used in this writing is normative juridical research conducted by examining library or secondary materials as legal arguments through literature analysis of the subject matter.[11] The type of research analysis used is deductive analysis, which starts with a hypothesis or theory and tests its validity through data collection and analysis.[12] The approaches used in this writing are comparative and conceptual. The comparative approach taken in this paper is between Indonesia, New Zealand, and

[8] Rian Adhivira Prabowo et al., "Bisakah Alam Menjadi Subyek Hukum? Refleksi Atas Beberapa Pengalaman," *Jurnal Hukum & pembangunan* 50, no. 1 (2020): 71–90.
[9] Miftakhul Shodiki, "Penerapan Alam Sebagai Subjek Hukum," *Jurnal Mengkaji Indonesia* 2, no. 1 (2023): 18–38.
[10] Satjipto Rahardjo, *Ilmu Hukum*, Cetakan ke, 2021.
[11] Anggi Rachma Zakia Fitri dan Heru Sulistyono, "Strategi Penanganan Pekerja Migran Indonesia Yang Bekerja Tidak Sesuai Dengan Kontrak Kerja," *Jurnal USM Law Review* 6, no. 3 (2023): 972–87, https://doi.org/https://doi.org/http://dx.doi.org/10.26623/julr.v6i3.7568.
[12] Muhammad Buchori Ibrahim et al., *Metode Penelitian Berbagai Bidang Keilmuan (Panduan & Referensi)* (PT. Sonpedia Publishing Indonesia, 2023).

Ecuador. This is because New Zealand and Ecuador have unique legal breakthrough concepts, especially on the topic of environmental law. At the same time, the conceptual approach is carried out by reviewing the Transplant Theory in Indonesia. Furthermore, the writing in the form of this Article is intended to make it easier for readers to understand the context of the discussion.

3. RESULT AND DISCUSSION

3.1 Comparison of The Concept of Nature as a Legal Subject Between New Zealand And Ecuador

Every country has its legal system and, of course, has different characters and backgrounds. New Zealand and Ecuador both have different legal systems and traditions. New Zealand is a country that adheres to the standard law system. Therefore, the New Zealand legal system is heavily based on English law.[13] Then Ecuador embraces its civil law legal tradition.[14] These various legal systems and traditions influence the background of legal policies in each country, especially in this discussion, namely the concept of nature as a legal subject.

In New Zealand, the Whanganui River is known as the first river to get official legal person status after more than 150 years of dispute between the local Maori tribe, Whanganui Iwi, and the New Zealand Government.[15] The community is identified as "Indigenous peoples," a term employed by the International Labor Organization (ILO). Additionally, according to NGOs featured in the Fundamental Justice Journal, "Indigenous peoples" are characterized as groups with longstanding roots in specific geographical areas, harbouring distinctive systems of values, ideology, economy, politics, and socio-culture within their designated territories. The longstanding conflict between Indigenous Peoples and the New Zealand Government dates back to the mid-19th century when the government imposed a ban on the fishing rights of the Whanganui Iwi. This protracted dispute eventually concluded in 2014 with a mutual agreement reached by both parties, formalized through the signing of the Whanganui River Deed of Settlement.[16] The Te Awa Tupua Act of 2017 provided additional validation to this arrangement. For the Whanganui Iwi, this legislation holds significant importance in addressing issues embedded in centuries of disputes. The Te Awa Tupua Act grants the Whanganui River the rights, powers, duties, and obligations akin to those of a legal entity. These responsibilities are overseen by two trusts entrusted with the preservation of the river.[17] One representative stands for the New Zealand Government. At the same time, the other

[13] John R V Korwa dan Meyland S F Wambrauw, "Constructivist Analysis of the Establishment of the AUKUS Security Pact and its Implications for Regional Stability in the Indo-Pacific.," *Jurnal Hubungan Internasional* 16, no. 1 (2023).
[14] Wayback Machine, *CIA Factbook List of Legal Systems*, 2020.
[15] Matthias Kramm, "When a river becomes a person," *Journal of Human Development and Capabilities* 21, no. 4 (2020): 307–19.
[16] Kramm.
[17] New Zealand Legislation, "Te Awa Tupua (Whanganui River Claims Settlement) Act 2017," 2017, https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html.

represents the Whanganui Iwi Tribe, holding and implementing the customary rights and responsibilities associated with the Whanganui River derived from its ancestral origins.[18]

Whanganui Iwi refers to the Maori tribe residing near the Whanganui River, playing a pivotal role in advocating for the river's recognition as a legal entity. The Whanganui River holds significant importance as one of New Zealand's crucial natural resources, spanning a length of 290 km. The Maori Tribe deeply cherishes and safeguards the river, as it encompasses all facets of their lives. In Maori culture, protecting the river inherited from their ancestors is a communal obligation. Designating the river as a legal subject represents an effort to promote environmental protection.[19]

Section 12 of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 not only acknowledges the river's physical attributes but also incorporates spiritual aspects cherished by the Maori people.[20] Section 12 emphasizes that "Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements." Moreover, Article 13 highlights the sacred value of the Whanganui River in social and spiritual life. The legal subject status of the river encompasses foundational institutions, public bodies, authorities, registered collectors of taonga (cultural treasures), resource management entities, corporate bodies dedicated to preserving Maori cultural heritage, and institutions overseeing public access affairs.[21]

The Te Awa Tupua Act has attempted to consider all the legal consequences arising from the status of the Whanganui River as a Legal Subject. This legal breakthrough not only has implications for the definitive change from "object" to "subject" but also for the redefinition of the concept of legal personhood,[22] Previously expressed by Hans Kelsen through his theory of legal personhood, the potential of which is no longer considered inherent in the human side alone but also applies to nonhuman entities. According to Hutchison, this is the effect of the Te Awa Tupua Act which redefines the concept of legal subjects. From the experience that occurred in New Zealand, through the Te Awa Tupua Act for the first time in history, the legal subject shifted definitively to nonhuman entities, and the legal status was entirely accepted on the Whanganui River through customary representation there. This means that the existence of indigenous peoples is one part of nature as protectors of natural preservation.

Unlike New Zealand, Ecuador, as a country with a civil law system, has a codification system for the sustainability of its legal system.[23] This can be seen in the Ecuadorian Constitution of 2008, where the environment gets its constitutional rights as a legal entity. The existence of the environment is recognized as a person with rights in legal relations in Ecuador. There are at least four articles that include environmental rights

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[18] New Zealand Legislation.
[19] BBC, "The New Zealand river that became a legal person," 2020.
[20] Adlikin, "Penetapan Alam Sebagai Subjek Hukum."
[21] New Zealand Legislation, "Te Awa Tupua (Whanganui River Claims Settlement) Act 2017."
[22] Prabowo et al., "Bisakah Alam Menjadi Subyek Hukum? Refleksi Atas Beberapa Pengalaman."
[23] Binus University School of Accounting, "Memahami Perbedaan Sistem Civil Law dengan Common Law," n.d.

in the 2008 amendments to the Ecuadorian Constitution; the four articles are contained in chapter seven: Article 71, Article 72, Article 73, and Article 74; the four articles read:[24] a) Nature, or Pacha Mama, where life proliferates and occurs, is entitled to comprehensive respect for its existence and for the maintenance and regeneration of its life cycle, structure, functions, and evolutionary processes. All individuals, communities, nations, and states possess the authority to call upon public authorities to uphold the rights of nature. The application and interpretation of these rights must adhere to the principles outlined in the Constitution. It is the responsibility of the State to encourage individuals, legal entities, and communities to actively safeguard nature and foster respect for all components constituting an ecosystem. Additionally, a) Nature is entitled to restoration, and this process should occur independently of the State's and individuals' or legal entities' obligation to compensate those reliant on affected natural systems. In instances of severe or permanent environmental impacts, such as those resulting from the exploitation of non-renewable natural resources, the State is mandated to establish the most effective mechanisms for restoration and implement measures to eliminate or mitigate detrimental environmental effects; b) Article 73 asserts that states should adopt preventative and restrictive measures against activities that may lead to species extinction, ecosystem destruction, and the permanent alteration of natural cycles. The introduction of organisms and materials, whether organic or inorganic, capable of definitively changing a country's genetic assets is expressly prohibited; c) Every individual, community, society, and nation is entitled to derive benefits from the environment and natural resources, fostering a quality livelihood.

The statements within the Article explicitly indicate that, according to the Ecuadorian Constitution. At the same time, individuals possess human rights and legal status, and the environment is also acknowledged as a legal entity akin to humans, possessing its rights and capabilities.[25] The inclusion of the Article on environmental rights in this constitutional amendment is contextualized by Whittemore, who notes that Ecuador is host to at least eight Indigenous Peoples and encompasses thirteen million hectares of tropical rainforests in the Amazon basin, along with the Galapagos Islands within its territory.[26] The constitutional amendment introduced by President Correa in 2008 established Ecuador as the first country to explicitly recognize environmental rights in its Constitution. This conceptualization highlights the notion of ecological sovereignty as a distinct source of legitimacy or a foundational authority.[27] Such a conception can

[24] National Assembly Legislative and Oversight Committee, "Constitution of The Republic of Ecuador" (2

[25] I Gede Yusa dan Bagus Hermanto, "Implementasi Green Constitution di Indonesia: Jaminan Hak Konstitusional Pembangunan Lingkungan Hidup Berkelanjutan," *Jurnal Konstitusi* 15, no. 2 (2018): 306–2

[26] Mary Elizabeth Whittemore, "The Problem Of Enforcing Nature's Rights Under Ecuador's Constitution: Why The 2008 Environmental Amendments Have No Bite," *Pac. Rim L. & Pol'y J.* 20 (2011): 659.

[27] Siti Rohmah dan Moh Anas Kholish, *Konstitusi Hijau dan Ijtihad Ekologi: Genealogi, Konsep, Masa Depan, dan Tantangannya di Indonesia* (Universitas Brawijaya Press, 2022).

illustrate the aspect of environmental sovereignty that stands alone as a source of legitimacy or a foundation that has authority.[28]

The concept of nature as a legal subject is a form of protection of the environment with the principle of democracy, namely environmental sovereignty.[29] This kind of conception is most in line with what takes place in Ecuador, which has a constitutional concept that recognizes nature as an entity subject to the law (legal personhood). However, both countries (New Zealand and Ecuador) have reflected environmental sovereignty with the concept of nature as a legal subject because the ecological protection framework in both countries has an intrinsic value in recognizing the existence of the environment as a legal subject.

The differences in the applicability of a legal concept in both New Zealand and Ecuador are essential because the factors of the legal traditions and legal systems used by the two countries are different. If you look back, each country has its background in implementing the concept of nature as a legal subject, but one thing is the same, namely the ideals to protect the preservation of nature and the environment.

3.2 Conceptualization of Nature as a Legal Subject in Indonesia

Indonesia is a country that adheres to a mixed legal system, meaning that Indonesia has three legal systems or traditions at once, namely the European continental legal system, customary law, and Islamic law. This continental European legal system is inherited from the Dutch colonial era, and this legal system, which has the character of "written law", still survives in the present era and influences legal products in Indonesia.[30] This legal system or tradition influences the background of legal policies in a country, especially when discussing the concept of nature as a legal subject.

Indonesia has historically had a mixed legal system, and there has never been a constitution or policy that mentions nature as having legal standing, i.e., standing alone as a legal entity. Legal standing, also known as legal standing, is a condition in which a person or party is determined to have and fulfil the conditions because it has the right to apply for case settlement before the court.[31] Although unique, the position of nature as a legal subject in Indonesia is a standard narrative in Indonesian law, as a result of which development policies that pay less attention to environmental sustainability, such as investment, mining, and oil palm plantation policies, are rampant. This aligns with the reduction of agricultural land in recent years, attributed to the El Nino phenomenon, while

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[28] Jimly Asshiddiqie, *Konstitusi dan konstitusionalisme Indonesia* (Sinar Grafika, 2021).
[29] Jimly Asshiddiqie, "Gagasan Kedaulatan Lingkungan: Demokrasi Versus Ekokrasi," *Bunga Rampai, Sebelas Wajah dari Buku Green Constitution, Jakarta: RajawaliGrafindo Persada*, 2009.
[30] Zaka Firma Aditya, "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Konstribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding: Media Pembaharuan Hukum Nasional* 8, no. 1 (2019): 37–54.
[31] Harjono, "Konstitusi Sebagai Rumah Bangsa," *Sekjen dan Kepaniteraan Mahkamah Konstitusi, Jakarta Pusat*, 2008.

the expansion of palm oil plantations continues annually.[32] The absence of the concept of legal entities for nature or the environment does not imply a free pass for exploitation, and no entity can remain voiceless when its right to a healthy environment is compromised, even by the State. Nevertheless, this has its challenges. Indonesia's environmental concerns are compounded by internal factors, including policies that facilitate foreign investors in establishing their business ecosystems within the country. It is undeniable that this will pose environmental issues in the future, given that this regulation limits public participation in the Environmental Impact Assessment (AMDAL) preparation process.[33] This policy stems from the implementation of the Job Creation Regulation, now enacted as Law Number 6 of 2023.[34] According to this law, every business or activity with environmental implications must undergo an AMDAL to determine its significant impact on the environment.[35]

Indonesia, as part of the chain of environmental crises, experiences escalating environmental damage in tandem with the advancements of modernity.[36] Despite this trend, specific regions with robust customs and traditions maintain a narrative that views nature as an entity on par with humans. Furthermore, some emphasize that indigenous peoples regard nature as an autonomous subject deserving of respect. An example can be seen in the daily traditions of the people on the island of Bali, where large and old trees are respected and not just cut down. The trees are covered with black and white checkered cloth; this tradition is known as "saput poleng", which means balance in the preservation of nature. Spot polling is not only found on trees in the forest but also spread throughout Bali. It can be found on large trees either near the temple or the edge of the highway. Apart from being a form of belief, this tradition aims to prevent indiscriminate logging and as a form of preservation. Balinese people believe that if anyone deliberately damages or cuts down a poleng tree without permission, bad things will happen to the person who damaged the tree.[37]

Indonesia views the sustainability of the environment through Law Number 32 of 2009 concerning Environmental Protection and Management and more clearly in the

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[32] CNN Indonesia, "Lahan Pertanian Menyusut di Tengah Kenaikan Tanah Kebun Sawit," 2023, https://www.cnnindonesia.com/ekonomi/20231011184811-92-1010038/lahan-pertanian-menyusut-di-tengah-kenaikan-tanah-kebun-sawit.

[33] Benadito Rompas dan Tri Hayati, "Implikasi Kebijakan Sektor Hilir Pertambangan: Ancaman dan Perlindungan terhadap Lingkungan Hidup," *Jurnal Ius Constituendum* 7, no. 1 (2022): 177.

[34] Arrafi Bima Guswara dan Ali Imran Nasution, "Dinamika Konstitusionalitas Undang-Undang Cipta Kerja Pasca Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 dan 54/PUU-XXI/2023," *Jurnal USM Law Review* 6, no. 3 (2023): 1052–72, https://doi.org/https://doi.org/http://dx.doi.org/10.26623/julr.v6i3.7844.

[35] Dewi Tuti Muryati, Dharu Triasih, dan Tri Mulyani, "Implikasi Kebijakan Izin Lingkungan Terhadap Lingkungan Hidup Di Indonesia," *Jurnal USM Law Review* 5, no. 2 (2022): 693–707, https://doi.org/https://doi.org/10.26623/jie.v7i1.3908.

[36] Lailiy Muthmainnah, Rizal Mustansyir, dan Sindung Tjahyadi, "Kapitalisme, Krisis Ekologi, Dan Keadilan Intergenerasi: Analisis Kritis Atas Problem Pengelolaan Lingkungan Hidup Di Indonesia," *Melintas* 36, no. 1 (2020): 57–69, https://doi.org/10.26593/mel.v36i1.4150.

[37] I Gede Sutarya, Gede Yoga Satrya Wibawa, dan Ni Putu Evi Setiawati, "WANA KERTIH: Konsep Penyucian dan Pelestarian Hutan Masyarakat Hindu Bali," *Parikesit: Jurnal Hukum Agama Hindu* 5, no. 1 (2021): 90–100, https://doi.org/10.25078/parikesit.v5i1.2021.90-100.

enactment of Articles 66 and 91 of the UUPPLH, which reads, "Everyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or sued civilly". Then next, the community is given the right to file a lawsuit as regulated in Article 91 paragraph (1) of the UUPPLH, which means that in preserving the environment, it is only limited to making the environment an object and placing the predicate of a legal subject to humans, which if here humans who have the right to a suitable living environment are not implemented, humans can file a lawsuit in court for themselves, which means that legal protection is given to these humans. From there, it clearly indicates that the environment is an object of law and not a legal subject, in contrast to the concept of nature as a legal subject in the examples of the two countries above (New Zealand and Ecuador). Damage to nature without any effects on humans will make it difficult to obtain legal standing to bring a lawsuit before the court.[38] Thus, claiming the rules in Indonesia in Articles 66 and 91 of the UUPLH as a form of conception of preserving nature and the environment by comparing it to the two experiences (New Zealand & Ecuador), although both contain environmental legal norms in state regulations, is not a strong justification.[39] Articles 66 and 91 of the UUPLH do not contain the concept of direct protection of the environment as strong as the Te Awa Tupua Law in New Zealand or the Ecuadorian Constitution.

Before we reveal the legal breakthrough, namely the expansion of the concept of legal subjects adapted to nature or the environment, we need to look back at what is called a legal subject in Indonesia. The civil law of the State of Indonesia listed in the Civil Code classifies legal subjects into two, consisting of persons (natuurlijk person) and legal entities (rechtperson).

From the two definitions of legal subjects in Indonesia and the concept of rights attached to legal subjects, is it possible if there is an expansion of the definition of legal subjects in Indonesia? What if the legal breakthrough is attached to nonhuman entities such as Stone's thoughts on nature and the environment? This thought should be linear with the natural conditions of Indonesia, which is one of the lungs of the world that has tropical forests on the equator, along with various kinds of climate and environmental problems. However, this legal breakthrough is challenging to apply directly in Indonesia even though it has been implemented in two previous countries (New Zealand & Ecuador).

The realization and assurance of human rights to a favourable and healthy environment, as guaranteed by the Constitution, necessitate legal instruments designed to mend the relationship between humans and the environment. According to Munajat Danusaputro, laws governing environmental protection represent one of the most effective means to safeguard environmental rights, as outlined in the Environmental Protection Law. In this context, the ideal legal instrument should be capable of shifting

[38] Muhammad Pasha Nur Fauzan, "Meninjau Ulang Gagasan Green Constitution: Mengungkap Miskonsepsi Dan Kritik," *LITRA: Jurnal Hukum, Lingkungan, Tata Ruang, Dan Agraria* 1, no. 1 (2021): 1–21.
[39] Fauzan.

the traditional paradigm of ecological law, moving from a focus primarily on utilizing the environment to emphasizing its preservation. This transformation signifies the evolution of modern environmental law toward an environment-centric approach (Environmental Oriented Law). Consequently, it is acknowledged that the environment possesses its rights, extending beyond being merely a valuable component of human rights instruments. This conceptual shift is anticipated to lead to the acknowledgment of the environment as a legal entity, influencing the evolution of legal authority in environmental disputes.[40]

One of the factors that influence the actualization of the concept of legal breakthrough is how the legal system is enforced. Between the legal system and the sustainability of law in the social process, there is an interaction relationship that gives mutual influence. What becomes a severe problem for every legal system is how to maintain its continuity amid influences that arise from anywhere.[41] The legal system needs to be able to adapt to changes. Determining a legal system as a significant legal system must be considered based on various factors, including the influence on the development of other legal systems, geographical distribution, and technological and economic progress.[42] The definition of a legal system is identified by Konrad Zweigert, Hein Kotz, and Tony Weir through five elements, namely:[43] 1) Historical background and development; 2) The legal way of thinking; 3) Types of legal sources; 4) Patterns of law enforcement; and 5) Ideology.

Then, Rene David argues that classifying legal systems should not be based on the similarity or dissimilarity of specific legal rules. Rene David suggests that two indicators should be used together, namely, the legal concepts and techniques used.[44] It is essential to know the legal system of a country because the legal system becomes a consideration of a new legal concept that is actualized into a set of legal systems, namely, in this discussion, the concept of nature as a legal subject. By examining how the legal system is determined and classified in a country, we can understand how a legal system works in a country. The classification of legal systems in Rene David's explanation should not be based on this similarity or dissimilarity (rule of law) in the sense that legal systems grouped can borrow legal materials (concepts) from each other that have possibilities or gaps; this is done through legal transplantation.

Legal transplantation is known in various other terms, namely legal transplantation, legal borrowing, legal taking, and others. Regardless, all of them have the same understanding and meaning of the concept, namely, a transplant. In the field of law, the transplantation in question is the grafting of legal provisions from a juridical area

[40] Abdurrahman Supardi Usman, "Lingkungan Hidup sebagai Subjek Hukum: Redefinisi Relasi Hak Asasi Manusia dan Hak Asasi Lingkungan Hidup dalam Perspektif Negara Hukum," *Legality: Jurnal Ilmiah Hukum* 26, no. 1 (2018): 1–16.
[41] Rahardjo, *Ilmu Hukum*.
[42] Ibnu Sina Chandranegara, M H SH, dan S H Syaiful Bakhri, *Sejarah dan Tradisi Hukum* (Sinar Grafika, 2024).
[43] Chandranegara, SH, dan Syaiful Bakhri.
[44] Chandranegara, SH, dan Syaiful Bakhri.

of a country to the juridical area of another country; the provisions in question can mean a legal system that does not originate from a jurisdiction brought to another jurisdiction.[45] Concerning legal history, this transplantation can be in the form of transplantation to an existing legal system or also to past legal traditions. Not without challenges, the implementation of legal transplantation can result in similarities in the applicable legal rules, even though the legal systems are different, whether the country adheres to common law or civil law. Comparative law scholars have long stated that caution is needed in implementing legal transplantation, as there is potential for conflict in its application.[46] Otto Kahn Freund identified a two-step process to determine the relationship between the rule of law to be transplanted and the socio-political structure of the donor country. The next phase involves assessing and contrasting the socio-political contexts of both donor and recipient nations.[47] This process of legal transplantation entails incorporating influences, which could manifest in the form of laws or legal concepts. It is closely tied to legal reforms within a country, representing a legal innovation by adopting the practices of more advanced countries in legal development. In this instance, the focus is on how a country, by emulating others, particularly those at the forefront of legal advancement, can implement a groundbreaking approach to environmental preservation, exemplified by the recognition of nature as a legal subject.

In Indonesia itself, legal transplantation is found in the drafting of laws through internationally recognized standards that are used as references for the rule being drafted.[48] For example, in relation to terrorism, it can be seen in the preamble of Law Number 9 Year 2013 on the Prevention and Eradication of Criminal Acts of Financing Terrorism, which clearly states that Indonesia, which has ratified the International Convention for the Suppression of the Financing of Terrorism, 1999, is obliged to make or harmonize laws and regulations related to the financing of terrorism in accordance with the provisions stipulated in the convention. In the preamble, it is stated that Indonesia is expressly obliged to harmonize laws relating to the international convention on the prevention of the financing of terrorism in accordance with the provisions and standards contained in the convention. Given that national law is under the full power of a state, it can freely tighten or loosen whenever it wants. Therefore, it seems counterproductive to rely on national law and International Law, which can independently act as a check and balance, to ensure that states comply with their environmental commitments through international treaties or conventions among many states.[49] The transplantation carried out under this law is forcing Indonesia to adopt international standards on laws relating to the

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[45] Ahmad Fauzi, "Transplantasi Hukum dan Permasalahan Dalam Penerapan Di Indonesia," *KUMPULAN BAHAN KEPANGKATAN DOSEN*, 2020.
[46] Holger Spamann, "Contemporary Legal Transplants: Legal Families and The Diffusion of (Corporate) Law," *BYU L. Rev.* 2009, 1813.
[47] Chandranegara, SH, dan Syaiful Bakhri, *Sejarah dan Tradisi Hukum.*
[48] Chandranegara, SH, dan Syaiful Bakhri.
[49] Mohammad AL'Rainier Geraldine dan Diani Sadiawati, "Perlindungan Hukum oleh Negara Indonesia Terhadap Lingkungan dan Kesetaraan Gender," *JURNAL USM LAW REVIEW* 7, no. 1 (2024): 110–28.

prevention and eradication of terrorism financing.[50] This example indicates that the splantation process can be implemented, and even so, the legal transplantation must be carried out in accordance with the principles and legal basis applicable in Indonesia, which is the reference for all legislative systems in Indonesia.

4. CONCLUSION

Thinking about the concept of nature as a legal subject will never be finished as an academic study because, however, human life will continue to depend on nature. This groundbreaking legal concept already exists in new zealand and ecuador. New zeal history has officially given legal status to nonhuman entities by recognizing the whanganui river as a legal subject through the whanganui river deed of settlement agreement, which was later passed by the te a tupua act in 2017. Then, ecuador recognized the environment as a right holder in the legal association of the ecuadorian state through the amendment to the ecuadorian constitution in 2008, precisely in chapter seven article 71 to article 74. Then, in indonesia, what is referred to as the concept of nature as a legal subject itself, there is no normative law that accommodates the position of nature as a legal entity, which is contextually mentioned in articles 66 and 91 of the uuplh that nature or the environment is an object. In contrast to the two previous experiences in new zealand and ecuador that have given the same position to the environment and humans, environmental rights are not rights over the environment but ts brought by the environment. However, it is not impossible to apply the concept of nature as a legal subject in indonesia, one of which is the theory of legal transplantation that can be applied, seeing the urgency of environmental and climate damage.

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Run-on This sentence may be a run-on sentence.

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Article Error You may need to use an article before this word. Consider using the article **a**.

Run-on This sentence may be a run-on sentence.

Confused You have used either an imprecise word or an incorrect word.

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