

## ***Conceptualizing Nature as a Legal Subject: A Comparative Study of Laws Between Indonesia, New Zealand, and Ecuador***

**Muhamad Akmal Fadillah<sup>1</sup>, Aidul Fitriaciada Azhari<sup>2</sup>**

Faculty of Law, Muhammadiyah University of Surakarta, Surakarta, Indonesia  
c100200379@student.ums.ac.id

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

### **1. INTRODUCTION**

The legal subject comes from the Dutch word *Rechtssubject*, which means everyone who has rights and obligations and has authority in law (*Rechtsbeoegheid*). The concept of legal subjects is a fundamental, central discussion that is often found in the study of legal theory because the law regulates relationships between individuals. The subject of law recognizes another term, namely Legal person. A legal person, whether it be a human or an organization, is acknowledged as having the legal standing to engage in the diverse range of legal actions commonly carried out by individuals. This includes the ability to initiate legal proceedings, defend against legal actions, own assets, and enter into contractual agreements.<sup>1</sup> 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 (*rechtspersoon*), and figures or statuses.<sup>2</sup> Explanations related to the category of legal subjects continue beyond just one or two experts. Still, many legal experts provide explanations related to who is called a legal subject, and Sudikno

<sup>1</sup> Cornell Law School, "Legal Person," 2023, [https://www.law.cornell.edu/wex/legal\\_person](https://www.law.cornell.edu/wex/legal_person).

<sup>2</sup> 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), <https://doi.org/https://doi.org/10.35968/jh.v10i2.464>.

Mertokusumo states that the subject of law is everything that obtains rights and obligations.<sup>3</sup> Slightly different, another legal expert's explanation states that the subject of law is a supporter of rights.<sup>4</sup>

In the context of history from time to time, the notion of a legal subject has expanded, for example, the Industrial Revolution played an important role in reshaping the idea of what a legal subject is. Initially confined to individuals, the evolving complexities of expanding commercial activities led to the recognition of entities beyond individuals, specifically companies, as legal subjects.<sup>5</sup> Then, the discourse regarding the expansion of the legal subject paradigm was mentioned by Christopher D. Stone, a legal expert from the University of Southern California Gould School of Law in his 1972 article entitled "Should Trees Have Standing?: Toward Legal Rights for Natural Objects" Stone explained that in the past the expansion of legal subjects in companies was an unthinkable thing, why not if natural entities such as trees, animals, and others which are the same living things as humans can also become subjects of law, because naturally they are in an equal position with humans, because they are both living things, and to these entities are attached natural rights that should be accommodated by law.

In modern times, Stone's conception of law should be a breakthrough as a result of globalization, which presents a sense of danger to humans with the emergence of massive industrialization with all its consequences on the existence of green nature and good for the sustainability of life. 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.<sup>6</sup> The perspective of the importance of the environment in legal discourse, where the environment is not an object but a subject, can be seen in two countries that have recognized nature as a legal subject, namely New Zealand and Ecuador.

In New Zealand, the local government stipulated in 2017 that a river becomes a full legal subject or equivalent to a person or legal entity. Then Ecuador, which adheres to a civil law legal system, passed and enacted in its Constitution Articles 71-74 which state that the State recognizes the Human Rights of Natural Ecosystems, as well as authorizes authorized individuals to file claims on behalf of ecosystems, and obliges the Government to restore the rights of natural ecosystems that are violated or damaged. From both experiences, 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 and

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<sup>3</sup> Muhammad R M Fayasy Failaq, "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. 2. Negara Hukum Indonesia Yang Antroposentris 3. Transplantasi Teori Fiksi Dan Teori K," *Jurnal Hukum Dan HAM Wara Sains* 1, no. 02 (2022): 121–33.

<sup>4</sup> Failaq.

<sup>5</sup> Herlina Manullang, *Pertanggungjawaban Pidana Korporasi* (LPPM UHN Press, 2020).

<sup>6</sup> 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, <https://doi.org/http://dx.doi.org/10.31314/atlarev.v3i1.2057>.

become a discussion not only interesting but important to study to provide inspiration and discourse for many other countries, especially Indonesia, which has a diversity of natural ecosystems that need to be maintained for the sake of survival.

Some studies that question the importance of enforcement and renewal of environmental law include Kennedy, who mentions various ethical thoughts about the 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.<sup>7</sup>

Meanwhile, another study by Prabowo discusses the embedding of legal subjects to nature in New Zealand and Ecuador. Unlike Kennedy, Prabowo describes more precisely how the concept of "legal person" is given to nonhuman entities, namely nature, and explores the consequences of this conception.<sup>8</sup> Moreover, Prabowo's investigation presents a novel viewpoint by integrating Shodikin's study, which explores the acknowledgment of the environment as a legal entity in Indonesia.<sup>9</sup> However, unlike prior studies that reference legal precedents from diverse nations, this research must specifically illustrate how the Legal Transplantation Theory could be employed to incorporate the notion of nature as a legal entity in Indonesia, guaranteeing its practical suitability within the country's norms. This differentiation distinguishes this paper from others within the discipline.

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, 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.<sup>10</sup> Therefore, this research aims to look at the possibility of nature becoming a legal subject in Indonesia by looking at two previous experiences that have occurred in New Zealand and Ecuador and the possibility of Legal Transplantation Theory accommodating the concept in Indonesia. The aim is to make this paper an input, reference, or idea for other

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<sup>7</sup> Richard Kennedy, "Diskursus Hukum Progresif Dalam Penegakan Dan Pembaharuan Hukum Lingkungan," *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 26, no. 3 (2021): 198–209.

<sup>8</sup> Rian Adhivira Prabowo et al., "Bisakah Alam Menjadi Subyek Hukum? Refleksi Atas Beberapa Pengalaman," *Jurnal Hukum & Pembangunan* 50, no. 1 (2020): 71–90.

<sup>9</sup> Miftakhul Shodikin, "Penetapan Alam Sebagai Subjek Hukum," *Jurnal Mengkaji Indonesia* 2, no. 1 (2023): 18–38, <https://doi.org/https://doi.org/10.59066/jmi.v2i1.219>.

<sup>10</sup> Satjipto Rahardjo, *Ilmu Hukum*, Cetakan ke, 2021.

researchers, communities, and officials in making decisions that correlate with the environment.

## 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.<sup>11</sup> 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.<sup>12</sup> The approaches used in this writing are descriptive comparative and conceptual. The descriptive comparative approach taken in this paper is between Indonesia, New Zealand, and 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 common law system. Therefore, the New Zealand legal system is heavily based on English law.<sup>13</sup> Then Ecuador embraces its civil law legal tradition.<sup>14</sup> 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 has become renowned as the inaugural river to receive formal recognition as a legal entity following over 150 years of contention between the indigenous Maori tribe, Whanganui Iwi, and the government of New Zealand.<sup>15</sup> 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, harboring distinctive systems of values, ideology, economy, politics, and socio-culture within their designated territories. The longstanding conflict

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<sup>11</sup> Anggi Rachma Zakia Fitri and Heru Sugiyono, "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/10.26623/julr.v6i3.7568>.

<sup>12</sup> Muhammad Buchori Ibrahim et al., *Metode Penelitian Berbagai Bidang Keilmuan (Panduan & Referensi)* (PT. Sonpedia Publishing Indonesia, 2023).

<sup>13</sup> Johni R V Korwa and Meyland S F Wambrau, "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).

<sup>14</sup> Wayback Machine, *CIA Factbook List of Legal Systems*, 2020.

<sup>15</sup> Matthias Kramm, "When a River Becomes a Person," *Journal of Human Development and Capabilities* 21, no. 4 (2020): 307–19, <https://doi.org/https://doi.org/10.1080/19452829.2020.1801610>.

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.<sup>16</sup>

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.<sup>17</sup> One representative stands for the New Zealand Government. At the same time, the other represents the Whanganui Iwi Tribe, holding and implementing the customary rights and responsibilities associated with the Whanganui River derived from its ancestral origins.<sup>18</sup> 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.<sup>19</sup>

The Te Awa Tupua (Whanganui River Claims Settlement) Act, which was passed in 2017, is the result of the signing of a dispute settlement agreement between the New Zealand government and the Maori that ended in 2014, then named *Ruruku Whakatupua*.<sup>20</sup> The agreement resulted in two documents. The first document is *Te Mana o Te Awa Tupua*, containing an agreement on the Whanganui River as a *legal person*, as a result of which the Whanganui River now has the rights, powers, duties, and obligations of other legal subjects. Any legal matters will be mandated to *Te Pou Tupua*, the authority body that acts as a physical representation of the rights, powers, duties, and responsibilities of the Whanganui River.<sup>21</sup> The second document is *Te Mana o Te Iwi O Whanganui* which contains a policy that mandates the New Zealand government to compensate for previous abusive use of the Whanganui River and compensation for improving the environmental health of the River with the amount clearly stated in the document.<sup>22</sup>

Moreover, the enactment of the Te Awa Tupua Act not only recognizes the physical characteristics of the river but also incorporates the spiritual elements cherished by the

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<sup>16</sup> Kramm.

<sup>17</sup> 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>.

<sup>18</sup> New Zealand Legislation.

<sup>19</sup> BBC, "The New Zealand River That Became a Legal Person," 2020.

<sup>20</sup> Prabowo et al., "Bisakah Alam Menjadi Subyek Hukum? Refleksi Atas Beberapa Pengalaman."

<sup>21</sup> Prabowo et al.

<sup>22</sup> Prabowo et al.

Maori community.<sup>23</sup> Section 12 of the Te Awa Tupua Act underscores that "Te Awa Tupua is an inseparable and living entity, encompassing the entirety of the Whanganui River from its source to its mouth, including its tributaries and all tangible and intangible aspects." Article 13 further emphasizes the sacred significance of the Whanganui River in the social and spiritual fabric of life. The legal recognition of the river as a statutory entity encompasses foundations, public bodies, authorities, registered collectors of cultural artifacts (taonga), resource management groups, communities dedicated to preserving Maori cultural heritage, and public access facilities.<sup>24</sup>

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 subject,<sup>25</sup> Previously 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. Nonetheless, O'Bryan contends that the execution of this legislation will encounter significant challenges. Specifically, limitations arise regarding the role and authority of Te Awa Tupua if the legal status of the Whanganui River is interpreted strictly within a positivist framework. There exist several legal gaps in various aspects, including the acknowledgment of water ownership, ownership of the riverbed and its contents, addressing damages resulting from river activities such as flooding, and potential discrepancies concerning the involvement of the Whanganui Iwi community in ensuring the river's sustainability.<sup>26</sup>

In contrast to New Zealand, Ecuador, a country with a civil law system, employs a codified approach to ensure the sustainability of its legal framework.<sup>27</sup> This is evident in the Ecuadorian Constitution of 2008, which grants constitutional rights to the environment as a legal entity. The environment's existence is acknowledged as possessing legal personhood with rights in legal relationships within Ecuador. The incorporation of environmental rights in the 2008 amendments to the Ecuadorian Constitution is delineated in at least four articles found in Chapter Seven: Article 71, Article 72, Article 73, and Article 74. These articles outline:<sup>28</sup> 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

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<sup>23</sup> Shodikin, "Penetapan Alam Sebagai Subjek Hukum."

<sup>24</sup> New Zealand Legislation, "Te Awa Tupua (Whanganui River Claims Settlement) Act 2017."

<sup>25</sup> Prabowo et al., "Bisakah Alam Menjadi Subyek Hukum? Refleksi Atas Beberapa Pengalaman."

<sup>26</sup> Loc. Cit Lihat juga Katie O'Bryan, "Giving a Voice to the River and the Role of Indigenous People: The Whanganui River Settlement and River Management in Victoria," *Australian Indigenous Law Review* 20 (2017): 48–77.

<sup>27</sup> Binus University School of Accounting, "Memahami Perbedaan Sistem Civil Law Dengan Common Law," n.d.

<sup>28</sup> National Assembly Legislative and Oversight Committee, "Constitution of The Republic of Ecuador" (2008).

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, b) 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; c) 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; d) Every individual, community, society, and nation is entitled to derive benefits from the environment and natural resources, fostering a quality livelihood.

The provisions outlined in the Article explicitly state that, as per the Ecuadorian Constitution, individuals possess human rights and legal status, while the environment is also acknowledged as a legal entity akin to humans, endowed with its own rights and capacities.<sup>29</sup> The incorporation of environmental rights within this constitutional amendment is contextualized by Whittmore, who observes that Ecuador is home to at least eight indigenous peoples and encompasses 13 million hectares of tropical rainforest in the Amazon basin, as well as the Galapagos Islands.<sup>30</sup> President Correa's amendment in 2008 marked Ecuador as the first country to explicitly recognize environmental rights in its constitution. This conceptualization underscores the idea of ecological sovereignty as a distinct source of legitimacy or foundational authority.<sup>31</sup> Such a notion can illustrate environmental sovereignty as an independent source of legitimacy or a foundational authority.<sup>32</sup>

The concept of nature as a legal entity represents a means of environmental protection aligned with the principle of democracy, specifically environmental sovereignty. This conception closely mirrors the approach adopted in Ecuador, which embraces a constitutional concept recognizing nature as a subject to legal regulations (legal

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<sup>29</sup> I Gede Yusa and Bagus Hermanto, "Implementasi Green Constitution Di Indonesia: Jaminan Hak Konstitusional Pembangunan Lingkungan Hidup Berkelanjutan," *Jurnal Konstitusi* 15, no. 2 (2018): 306–26, <https://doi.org/https://doi.org/10.31078/jk1524>.

<sup>30</sup> Mary Elizabeth Whittmore, "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.

<sup>31</sup> Siti Rohmah and Moh Anas Kholish, *Konstitusi Hijau Dan Ijtihad Ekologi: Genealogi, Konsep, Masa Depan, Dan Tantangannya Di Indonesia* (Universitas Brawijaya Press, 2022).

<sup>32</sup> S H Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia* (Sinar Grafika, 2021).

personhood).<sup>33</sup> However, without reservation, Fish notes that the inclusion of natural rights in Ecuador's constitution is frequently violated.<sup>34</sup> Moreover, the implications for the utilization of nature and nature's rights are always the exception.<sup>35</sup> Furthermore, the implications for the exploitation of nature and the rights of nature are often subject to exceptions. This situation is exacerbated by President Correa's inconsistency regarding nature conservation on one hand and economic interests on the other.<sup>36</sup>

Nevertheless, is what these two countries have done by including nature rights in their constitutions or laws useless? Pietari concludes that such legal breakthroughs are still needed rather than none at all.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> Although unique, the position of nature as a legal subject

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<sup>33</sup> Jimly Asshiddiqie, "Gagasan Kedaulatan Lingkungan: Demokrasi Versus Ekokrasi," *Bunga Rampai, Saduran Dari Buku Green Constitution, Jakarta: RajawaliGrafindo Persada*, 2009.

<sup>34</sup> Laurel Fish, "Homogenizing Community, Homogenizing Nature: An Analysis of Conflicting Rights in the Rights of Nature Debate," *Social Science*, 2013, 6–11.

<sup>35</sup> Fish.

<sup>36</sup> 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): 662-5.

<sup>37</sup> Prabowo et al., "Bisakah Alam Menjadi Subyek Hukum? Refleksi Atas Beberapa Pengalaman."

<sup>38</sup> Zaka Firma Aditya, "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (2019): 37–54, <https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v8i1.305><http://dx.doi.org/10.33331/rechtsvinding.v8i1.305>

<sup>39</sup> Harjono, "Konstitusi Sebagai Rumah Bangsa," *Sekjen Dan Kepanitraan Mahkamah Konstitusi, Jakarta Pusat*, 2008.



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 corresponds with the decline in agricultural land over the past few years, which is often attributed to the El Niño phenomenon, while the yearly expansion of palm oil plantations persists.<sup>40</sup> The absence of legal recognition for nature or the environment does not mean a license for exploitation, and no entity should be silenced when its right to a healthy environment is jeopardized, even by the State. However, there are challenges to address. Indonesia's environmental challenges are compounded by internal factors, such as policies that encourage foreign investors to establish their business networks within the country. It is undeniable that this will lead to environmental concerns in the future, particularly as this regulation restricts public involvement in the preparation process of Environmental Impact Assessments (AMDAL).<sup>41</sup> This policy stems from the implementation of the Job Creation Regulation, now enacted as Law Number 6 of 2023.<sup>42</sup> According to this law, every business or activity with environmental implications must undergo an AMDAL to determine its significant impact on the environment.<sup>43</sup>

Indonesia, as part of the chain of environmental crises, experiences escalating environmental damage in tandem with the advancements of modernity.<sup>44</sup> 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.

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<sup>40</sup> 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>.

<sup>41</sup> Benadito Rompas and Tri Hayati, "Implikasi Kebijakan Sektor Hilir Pertambangan: Ancaman Dan Perlindungan Terhadap Lingkungan Hidup," *Jurnal Ius Constituendum* 7, no. 1 (2022): 177.

<sup>42</sup> 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>.

<sup>43</sup> Dewi Tuti Muryati, Dharu Triasih, and 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/jic.v7i1.4908>.

<sup>44</sup> Lailiy Muthmainnah, Rizal Mustansyir, and Sindung Tjahyadi, "Kapitalisme, Krisis Ekologi, Dan Keadilan Intergenerasi: Analisis Kritis Atas Problem Pengelolaan Lingkungan Hidup Di Indonesia," *Mozaik Humaniora* 20, no. 1 (2020): 57–69, <https://doi.org/10.20473/mozaik.v20i1.15754>.

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.<sup>45</sup>

Indonesia approaches environmental sustainability through Law Number 32 of 2009 concerning Environmental Protection and Management, particularly highlighted in Articles 66 and 91 of the law. These articles state that "anyone advocating for the right to a clean and healthy environment cannot be subject to criminal prosecution or civil litigation." Additionally, Article 91(1) of the same law grants communities the right to initiate legal proceedings. This implies that while the environment is treated as an object, with legal subjectivity attributed to humans, individuals who are entitled to a suitable living environment but do not receive it can bring legal action to court, thus ensuring legal protection for these individuals. 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.<sup>46</sup> Thus, claiming the rules in Indonesia in Articles 66 and 91 of the UUPH 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.<sup>47</sup> Articles 66 and 91 of the UUPH 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.

Examining the ordeal faced by the Awyu Tribe, indigenous inhabitants of Boeven Digoel in Papua, reveals instances of land encroachment stemming from the Papua Provincial Government's approval of an oil palm plantation license to PT Indo Asiana Lestari (PT IAL). It has been disclosed that this plantation license encompasses customary lands belonging to the Awyu Tribe.<sup>48</sup> According to Article 42 paragraph (3) of the Papua Special Autonomy Law, all discussions regarding government actions and investment must first be discussed with indigenous groups, but the relevant companies did not conduct any communication and the Papuan government continued to grant business licenses to the Company. The rationale for development often serves as a pretext for governmental and authoritative entities to assert control over people's land, leading to arbitrary land acquisition by the government. However, customary land does not fall under governmental ownership nor the ownership of any individual. Customary land tenure aims to enhance

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<sup>45</sup> I Gede Sutana, Gede Yoga Satrya Wibawa, and Ni Putu Evi Setiawati, "WANA KERTIH: Konsep Penyucian Dan Pelestarian Hutan Masyarakat Hindu Bali," *Pariksa: Jurnal Hukum Agama Hindu* 5, no. 1 (2021): 90–100.

<sup>46</sup> 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, <https://doi.org/https://doi.org/10.23920/litra.v1i1.573>.

<sup>47</sup> Fauzan.

<sup>48</sup> Greenpeace Indonesia, "Sidang Gugatan Lingkungan Hidup, Saksi Ungkap Izin Lingkungan PT IAL Tak Melibatkan Warga Marga Woro Dan Suku Awyu," 2023, <https://www.greenpeace.org/indonesia/siaran-pers/56779/sidang-gugatan-lingkungan-hidup-saksi-ungkap-izin-lingkungan-pt-ial-tak-melibatkan-warga-marga-woro-dan-suku-awyu/>.

community welfare without individual ownership for personal land utilization.<sup>49</sup> It's recognized that the denial of customary rights without the consent of indigenous peoples constitutes a violation of human rights.<sup>50</sup> This is stated in Article 6 of Law Number 39 of 1999 on how the needs of indigenous peoples must be considered and protected.<sup>51</sup> Profound values must be comprehended by the entire community, including the government, emphasizing that nature is a vital asset for the Indonesian Nation, particularly for numerous Indigenous Peoples who rely on nature. Hence, this ecocentric concept should also be embraced by the Government to ensure the protection of both nature and its people.

Such a mechanical human paradigm, according to Capra, is one of the causes of the difficulty in realizing sustainable community development and a friendly environment.<sup>52</sup> This mechanistic mindset leads to an exploitative approach toward nature, with humans perceiving their interests as paramount, a perspective known in environmental ethics as Anthropocentrism.<sup>53</sup> It poses a dilemma when discussing the sustainability of nature, as economic development pursued by the state may inadvertently harm the environment if not carried out with environmental principles. Economic development requires large amounts of energy and resources, extraction of large amounts of natural resources can cause environmental pollution, so economic development is related to environmental conservation.<sup>54</sup> Not only mechanical regulations are needed, but holistic regulations are needed that view nature as important as humans or public communities, in this case nature as a legal subject.

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 (*rechtsperson*).

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

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<sup>49</sup> Jordan Randy Zethdan Pellokila, "Analisis Penyelesaian Konflik Hak Ulayat Pada Masyarakat Hukum Adat Di Kabupaten Jayapura Papua," *Jurnal Syntax Transformation* 2, no. 08 (2021): 1111–23, <https://doi.org/https://doi.org/10.46799/jst.v2i8.330>.

<sup>50</sup> Ahyar Ari Gayo, "Perlindungan Hukum Hak Atas Tanah Adat (Studi Kasus Di Provinsi Aceh Khususnya Kabupaten Bener Meriah)(Legal Protection For Title Over Customary Land (Case Study In The Province Of Aceh In Particular, The Regency Of Bener Meriah))," *Jurnal Penelitian Hukum P-ISSN* 1410 (2018): 5632, <https://doi.org/http://dx.doi.org/10.30641/dejure.2018.V18.289-304>.

<sup>51</sup> Fifink Praiseda Alviolita, "Perlindungan Hak Masyarakat Hukum Adat Terhadap Perbuatan Kriminalisasi Dalam Mempertahankan Tanah Ulayat," *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia* 1, no. 1 (2022): 69–77, <https://doi.org/https://doi.org/10.2211/jrkhm.v1i1.2>.

<sup>52</sup> Sri Putri Rezeki, Sukiman Sukiman, and Abrar M Dawud Faza, "Nilai-Nilai Filosofis Lingkungan Hidup Dalam Karya A. Sonny Keraf," *Masaliq* 3, no. 5 (2023): 999–1010, <https://doi.org/10.58578/masaliq.v3i5.1733>.

<sup>53</sup> Ismail Ismail and Rita Laksmisari Rahayu, "Ekosentrisme Mengawal Kearifan Arsitektur Indonesia Menuju Peradaban Masa Depan: Diskursus," *Lakar: Jurnal Arsitektur* 3, no. 01 (2020), <https://doi.org/http://dx.doi.org/10.30998/lja.v3i01.6219>.

<sup>54</sup> Haikal Ghifary et al., "Studi Literatur Keterkaitan Pembangunan Ekonomi Dengan Kualitas Lingkungan Hidup Di Indonesia," *Jurnal Pendidikan Dan Konseling (JPDK)* 4, no. 6 (2022): 4409–14, <https://doi.org/https://doi.org/10.31004/jpdk.v4i6.8962>.

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 favorable 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 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.<sup>55</sup>

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.<sup>56</sup> The legal system must possess the capacity to adjust to evolving circumstances. Evaluating a legal system's significance requires consideration of multiple factors, including its impact on the development of other legal systems, geographical reach, and technological and economic advancements. Konrad Zweigert, Hein Kotz, and Tony Weir identify five key elements to define a legal system, namely:<sup>57</sup> 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.<sup>58</sup> 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

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<sup>55</sup> 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.

<sup>56</sup> Rahardjo, *Ilmu Hukum*.

<sup>57</sup> Ibnu Sina Chandranegara, and Syaiful Bakhri, *Sejarah Dan Tradisi Hukum* (Sinar Grafika, 2024).

<sup>58</sup> Chandranegara, SH, and Syaiful Bakhri.

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 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.<sup>59</sup> 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.<sup>60</sup> Otto Kahn Freund identified a two-step process for determining the relationship between the rule of law being transferred and the socio-political structure of the donor state. In the next step, the socio-political context of both donor and recipient countries will be assessed and compared.<sup>61</sup> 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 rules being drafted.<sup>62</sup> As an example, regarding terrorism, the preamble of Law Number 9 of 2013 on the Prevention and Eradication of Criminal Acts of Financing Terrorism illustrates Indonesia's commitment to combatting terrorism financing. It explicitly mentions Indonesia's ratification of the International Convention for the Suppression of the Financing of Terrorism, 1999, and the obligation to enact or align laws and regulations concerning terrorism financing by the convention's provisions. The preamble emphasizes Indonesia's

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<sup>59</sup> Ahmad Fauzi, "Transplantasi Hukum Dan Permasalahan Dalam Penerapan Di Indonesia," *Kumpulan Berkas Kepangkatan Dosen*, 2020.

<sup>60</sup> Holger Spamann, "Contemporary Legal Transplants: Legal Families and The Diffusion of (Corporate) Law," *BYU L. Rev.*, 2009, 1813.

<sup>61</sup> Chandranegara, SH, and Syaiful Bakhri, *Sejarah Dan Tradisi Hukum*.

<sup>62</sup> Chandranegara, SH, and Syaiful Bakhri.

commitment to harmonizing its laws related to the international convention's standards. While national law falls under a state's full jurisdiction, allowing it to adjust regulations as needed, relying solely on national law may appear counterproductive. International law, acting independently, can serve as a mechanism for checks and balances, ensuring that states adhere to their environmental commitments outlined in international treaties or conventions involving multiple states.<sup>63</sup>

The transplantation undertaken through this legislation compels Indonesia to adhere to international norms regarding laws about the prevention and elimination of terrorism financing.<sup>64</sup> This instance demonstrates that the transplantation process can be executed; however, it must align with the principles and legal framework applicable in Indonesia, serving as the foundation for all legislative systems in the country.

#### 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 Zealand history has officially given legal status to nonhuman entities by recognizing the Whanganui river as a legal subject through the Whanganui River deed of the settlement agreement, which was later passed by the Te Awa 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 of 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 UUPH 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 rights 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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<sup>63</sup> Mohammad AL'Rainier Geraldine and Diani Sadiawati, "Perlindungan Hukum Oleh Negara Indonesia Terhadap Lingkungan Dan Kesetaraan Gender," *Jurnal USM Law Review* 7, no. 1 (2024): 110–28, <https://doi.org/http://dx.doi.org/10.26623/julr.v7i1.8154>.

<sup>64</sup> Chandranegara, SH, and Syaiful Bakhri, *Sejarah Dan Tradisi Hukum*.

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