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Efforts to Harmonize National and Regional Legal Norms in Local Wisdom-Based Land Clearing Practices: A Comparative Study of Article 69 of Law No. 32 of 2009 and West Kalimantan Provincial Regulation No. 1 of 2022

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Abstract

Regulating land clearing by burning in Indonesia requires balancing environmental protection with Indigenous communities' rights to maintain customary farming practices. Article 69(2) of Law No. 32 of 2009 on Environmental Protection and Management provides limited scope for land burning based on local wisdom. Without detailed technical and administrative rules, traditional farmers may face uncertainty about which practices could expose them to criminal prosecution. This study examined how West Kalimantan Provincial Regulation No. 1 of 2022 gives effect to Article 69. It compared the national and provincial provisions through doctrinal legal research using statutory and conceptual approaches, with a focus on legal harmonization, legal certainty, and environmental protection. The analysis found that the provincial regulation translates the statutory exception into concrete requirements for firebreaks, administrative notification, and the availability of firefighting equipment. It also prohibits burning on peatlands and restricts burning under specified conditions. The comparison shows how clear, verifiable regional requirements can clarify farmers' obligations, protect customary farming rights, and support the prevention of forest and land fires. The study illustrates how provincial regulation can give practical effect to

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national recognition of local wisdom while advancing environmental protection.

Keywords: Customary Land Clearing; Environmental Protection Law; Legal Harmonization; Local Wisdom; West Kalimantan

INTRODUCTION

The phenomenon of forest and land fires in Indonesia constitutes a recurring and structurally rooted ecological crisis, particularly in regions with high hydrological vulnerability, such as the island of Kalimantan (Rahmadi, 2015). From the perspective of modern environmental law, the issue of land clearing through burning is not merely regarded as an administrative violation or an ordinary criminal offense. Rather, it lies at the intersection of two potentially conflicting constitutional mandates: the protection of ecosystem functions and the recognition of the traditional rights of indigenous peoples (Rangkuti, 2005). On the one hand, the paradigm of green constitutionalism, as embodied in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, requires the state to guarantee every citizen's right to a good and healthy environment through the implementation of sustainable and environmentally sound development (Asshiddiqie, 2009). This constitutional mandate is consistent with fundamental principles of environmental law, including the precautionary principle, the principles of conservation and sustainability, and the principle of intergenerational equity, all of which require the prevention of irreversible ecosystem damage (Muhjad, 2015). On the other hand, Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia expressly mandate the state to recognize, respect, and protect the cultural identities and traditional rights of indigenous peoples. Historically, these communities have practiced rotational shifting cultivation, utilizing fire in a controlled manner as an integral part of their local ecological wisdom (Republik Indonesia, 1945).

The legislature's efforts to integrate these two potentially conflicting constitutional interests are reflected in Law Number 32 of 2009 concerning Environmental Protection and Management (Environmental Protection and Management Law). In principle, Article 69 paragraph (1) letter h of the Environmental Protection and Management Law establishes a general prohibition on land clearing through burning as an instrument for preventing environmental pollution and degradation (Republik Indonesia, 2009). Nevertheless, the

legislature introduced a conditional exemption through Article 69 paragraph (2), which stipulates that the prohibition must take into serious consideration local wisdom in the respective regions. The Elucidation of Article 69 paragraph (2) of the Environmental Protection and Management Law limits the scope of this local wisdom to land-burning practices covering a maximum area of two hectares per household, intended for cultivating local plant varieties, provided that the land is surrounded by firebreaks to prevent the spread of fire. Although, philosophically, this provision reflects an accommodation of legal pluralism and community-based ecological justice, its normative formulation in both the statutory provision and its elucidation remains relatively abstract, thereby creating normative ambiguity (*vagueness of norms*). The requirements concerning firebreaks and the criteria for local wisdom are not accompanied by measurable technical parameters regarding the physical dimensions of fire barriers, administrative supervision procedures prior to burning, or climatic thresholds governing the permissible conditions for burning during the dry season (Lasmi., 2021).

The normative ambiguity at the statutory level has generated a dual pathology in the practical enforcement of environmental law. First, the absence of objective operational standards has resulted in traditional farmers who burn small plots of land in accordance with ancestral practices being vulnerable to excessive criminalization (*over-criminalization*) through the imposition of severe criminal sanctions under Article 108 of the Environmental Protection and Management Law. Law enforcement authorities frequently become confined to a positivistic and textual approach, focusing exclusively on the material element of land burning without adequately considering the sociological dimensions and traditional fire-control mechanisms implemented by indigenous communities (Wijayanto et al., 2022). Second, conversely, the lack of clear parameters governing the exemption for local wisdom creates opportunities for the abuse of rights (*abus de droit*) by commercial actors and other irresponsible parties, who may conduct illegal land clearing under the pretext of preserving local traditional practices (Purba et al., 2025). This normative ambiguity not only undermines the sense of justice among indigenous communities but also weakens the effectiveness of national forest and land fire prevention instruments, as the state lacks clear legal criteria for distinguishing between legally permissible controlled burning and destructive burning that exceeds the environmental carrying capacity (Safitri, 2023; Soedomo et al., 2020).

Within the framework of Indonesia's legislative system, the operational limitations of general and abstract national legal norms necessitate vertical legal harmonization through the

regulatory authority vested in regional governments (Goesniadhie, 2010). Article 63 of the Environmental Protection and Management Law grants regional governments the authority to formulate environmental protection and management policies at the local level in accordance with the characteristics of their respective ecoregions. One of the most progressive manifestations of this vertical harmonization effort is the enactment of West Kalimantan Provincial Regulation Number 1 of 2022 concerning Land Clearing for Cultivation Based on Local Wisdom (Pemda Kalbar, 2022). This regional regulation functions as an operational bridge that translates the abstract mandate of Article 69 paragraph (2) of the Environmental Protection and Management Law into concrete, measurable, and administratively as well as ecologically monitorable rules of conduct. This concretization of legal norms is reflected in provisions governing measurable technical specifications for the construction of firebreaks, the obligation to provide administrative notification to village governments prior to burning as a preventive control mechanism, an explicit prohibition on land clearing through burning in peatland ecosystems, which are particularly vulnerable to permanent hydrological damage, and restrictions on the timing of burning under extreme dry-season conditions based on climate early-warning information (Sari & Sudharma, 2024).

Academic discourse and environmental law studies concerning forest and land fires in Indonesia have predominantly focused on corporate strict liability in civil litigation under Article 88 of the Environmental Protection and Management Law or have examined the existence and recognition of indigenous communities primarily from the perspective of legal anthropology. Juridical research specifically examining the mechanisms of vertical harmonization between national environmental law and regional regulations as instruments for resolving normative conflicts (*conflict of norms*) in local wisdom-based land clearing practices remains limited. Accordingly, this article offers a novel contribution by evaluating the normative synergy between Article 69 paragraph (2) of the Environmental Protection and Management Law and West Kalimantan Provincial Regulation Number 1 of 2022 in establishing legal certainty (*legal certainty*) that balances the protection of the constitutional rights of traditional farmers with measurable ecological disaster mitigation. Based on the foregoing background, this study addresses two principal research questions: (1) What are the juridical implications of the normative ambiguity surrounding the exemption for local wisdom-based land clearing under Article 69 paragraph (2) of Law Number 32 of 2009 for legal certainty in environmental law enforcement?; and (2) How is the harmonization of legal

norms between Article 69 paragraph (2) of Law Number 32 of 2009 and West Kalimantan Provincial Regulation Number 1 of 2022 implemented to protect the traditional rights of farmers while strengthening forest and land fire mitigation efforts? Accordingly, this study focuses on analyzing and evaluating the harmonization of national and regional legal norms governing local wisdom-based land clearing practices, particularly through a comparative examination of Article 69 of Law Number 32 of 2009 and West Kalimantan Provincial Regulation Number 1 of 2022. This research aims to identify the juridical implications of normative ambiguity for legal certainty in environmental law enforcement and to examine the extent to which regional regulations can operationalize national legal provisions through more concrete and measurable regulatory mechanisms.

METHODS

This study employs normative legal research with a prescriptive-analytical approach to examine the vertical harmonization between national environmental legal norms and their derivative regional regulations (Marzuki, 2017). The approaches adopted in this study consist of the statutory approach and the conceptual approach. The statutory approach is conducted by examining the hierarchy and *ratio legis* of the 1945 Constitution of the Republic of Indonesia, particularly Article 18B paragraph (2) and Article 28H paragraph (1), Law Number 32 of 2009 concerning Environmental Protection and Management (Environmental Protection and Management Law), Law Number 12 of 2011 concerning the Formation of Laws and Regulations, as last amended by Law Number 13 of 2022, and West Kalimantan Provincial Regulation Number 1 of 2022 concerning Land Clearing for Cultivation Based on Local Wisdom. Meanwhile, the conceptual approach is employed to analyze the legal doctrines of vertical legal harmonization, legal certainty, green constitutionalism (*green constitution*), and the precautionary principle.

The sources of data in this study consist of secondary data collected through library research, comprising primary legal materials in the form of relevant laws and regulations (Soekanto & Mamudji, 2018), secondary legal materials consisting of environmental law literature and accredited scientific journal articles, and tertiary legal materials in the form of legal dictionaries. All legal materials are analyzed qualitatively using grammatical, systematic, and teleological interpretation methods to examine how the technical parameters stipulated in Article 69 paragraph (2) of the Environmental Protection and Management Law are

concretized through West Kalimantan Provincial Regulation Number 1 of 2022 (Mertokusumo, 2009).

RESULTS

The regulation of land clearing based on local wisdom within Indonesia's environmental legal system demonstrates an effort to balance environmental protection with the recognition of the rights of indigenous communities and traditional farmers. Article 69 paragraph (1) letter h of Law Number 32 of 2009 concerning Environmental Protection and Management (Environmental Protection and Management Law) essentially prohibits everyone from clearing land through burning. However, this provision is subject to an exemption under Article 69 paragraph (2), which allows communities to conduct land burning while giving due consideration to local wisdom in their respective regions. This exemption is further restricted by the Elucidation of Article 69 paragraph (2), which stipulates that land burning may cover a maximum area of two hectares per household, must be intended for cultivating local plant varieties, and must be surrounded by firebreaks to prevent the spread of fire.

Although it recognizes traditional farming practices, Article 69 paragraph (2) of the Environmental Protection and Management Law still raises concerns regarding legal certainty. This is attributable to the absence of detailed technical regulations concerning firebreak construction standards, notification procedures prior to burning, the characteristics of land permitted for burning, and restrictions on burning periods based on weather conditions and fire risk levels. Such circumstances may lead to differing interpretations in law enforcement practices. Traditional farmers may face the risk of criminalization when burning activities carried out in accordance with customary practices cannot be proven to have fulfilled the requirements of local wisdom. Conversely, the lack of clear limitations may also be exploited by irresponsible parties to disguise large-scale commercial land clearing activities as traditional farming practices.

These issues demonstrate that the exemption provision under Article 69 paragraph (2) of the Environmental Protection and Management Law requires further regulation to ensure that it not only recognizes local wisdom but also guarantees effective control over forest and land fire risks. In this context, West Kalimantan Provincial Regulation Number 1 of 2022 concerning Land Clearing for Cultivation Based on Local Wisdom serves as a

regional legal instrument that elaborates the statutory provisions into more concrete implementation mechanisms. This regional regulation does not abolish the prohibition on land burning established under the Environmental Protection and Management Law. Rather, it establishes limitations and requirements for the limited and controlled burning practices carried out by traditional farming communities.

The harmonization between the two regulations is reflected in the technical requirements for land clearing, administrative supervision mechanisms, ecological restrictions, and the types of crops permitted. West Kalimantan Provincial Regulation Number 1 of 2022 stipulates the obligation to construct firebreaks in accordance with technical standards for forest and land fire control, provide firefighting equipment, notify owners of adjacent land or business license holders whose areas directly border the land to be burned, and ensure that the fire has been completely extinguished before leaving the burning site. Furthermore, farmers are required to submit prior notification of their land-clearing plans to the village head, urban village head, or hamlet officials, who must subsequently forward the notification to the subdistrict head and coordinate with the Subdistrict Leadership Coordination Forum (*Forum Koordinasi Pimpinan Kecamatan* or Forkopimcam). This mechanism strengthens regional government supervision while providing administrative clarity for land-clearing activities based on local wisdom.

A comparison of the regulatory substance of Article 69 of the Environmental Protection and Management Law and West Kalimantan Provincial Regulation Number 1 of 2022 is presented in the following table.

Table 1. Comparison of Regulations on Local Wisdom-Based Land Clearing under the Environmental Protection and Management Law and West Kalimantan Provincial Regulation Number 1 of 2022

Regulatory Aspect	Article 69 of the Environmental Protection and Management Law	West Kalimantan Provincial Regulation No. 1 of 2022
Regulatory principles	Prohibits land clearing through burning, subject to an exemption based on local wisdom.	Regulates limited and controlled burning as part of traditional farming practices.
Land area	A maximum of two hectares per household.	Maintains the maximum limit of two hectares per household.
Legal subjects	Recognizes the local wisdom of local communities.	Clarifies its application to traditional farmers who have practiced farming systems across generations.
Firebreaks	Requires firebreaks to prevent the spread of fire.	Regulates the construction of firebreaks in accordance with technical provisions for forest and land fire control.

Administrative supervision	Does not provide detailed notification procedures.	Requires notification to the village or urban village government, to be forwarded to the subdistrict head and coordinated with Forkopimcam.
Ecological control	Does not specifically regulate land typologies in the formulation of Article 69 paragraph (2).	Prohibits limited and controlled burning on peatlands.
Types of crops	Requires the use of local plant varieties.	Restricts permitted crops to subsistence food crops, such as rice, secondary crops, and local vegetables.
Control and enforcement	Establishes prohibitions and criminal provisions concerning land clearing through burning.	Regulates guidance, supervision, and administrative sanctions in the implementation of local wisdom-based farming practices.

Source: Processed by the authors based on Law Number 32 of 2009 and West Kalimantan Provincial Regulation Number 1 of 2022.

Based on the table, it is evident that West Kalimantan Provincial Regulation Number 1 of 2022 provides more operationally detailed provisions than Article 69 of the Environmental Protection and Management Law. The differences primarily concern the clarity of technical requirements, administrative procedures, and ecological restrictions. The law establishes a general legal framework governing the prohibition and exemption of land burning, whereas the regional regulation translates these provisions into requirements that can be directly implemented and supervised. Accordingly, the harmonization of the two regulations is reflected not only in the substantive consistency of their legal norms but also in the ability of the regional regulation to address the gaps in technical provisions that have not been elaborated in detail at the statutory level.

Another important aspect concerns the protection of peatland ecosystems through the prohibition of burning, as stipulated in Article 6 of West Kalimantan Provincial Regulation Number 1 of 2022. This provision constitutes an important ecological safeguard because peatlands are highly susceptible to fire, including underground fires that are difficult to control and may cause long-term environmental damage. This restriction is further reinforced by the regulation of crop types under Article 8, which directs farming activities toward subsistence food crops, such as rice, secondary crops, and local vegetables. This provision emphasizes that the exemption for land burning is intended to protect traditional farming practices undertaken to meet community subsistence needs, rather than to legitimize large-scale commercial land-clearing activities.

Overall, the research findings demonstrate that the harmonization between Article 69 of the Environmental Protection and Management Law and West Kalimantan Provincial Regulation Number 1 of 2022 constitutes an effort toward vertical legal harmonization aimed at establishing legal certainty while ensuring environmental protection. The regional regulation functions as an implementing instrument that clarifies the boundaries of local wisdom through technical requirements, supervisory procedures, and ecological restrictions. The existence of these provisions provides legal protection for traditional farming communities without disregarding their obligation to preserve environmental sustainability. Therefore, the harmonization of national and regional legal norms represents an important effort to establish a land-clearing management system that promotes justice, provides legal certainty, and minimizes the risk of forest and land fires in West Kalimantan Province.

DISCUSSION

1. Juridical Implications of the Vagueness of Article 69 Paragraph (2) of the Environmental Protection and Management Law for Legal Certainty in Environmental Law Enforcement

In modern environmental law doctrine, regulatory instruments governing prohibitions and exceptions concerning activities that potentially cause environmental pollution and damage must be formulated precisely to ensure a balance between ecological protection and the protection of the social rights of communities (Santosa, 2001). The normative construction of Article 69 of Law Number 32 of 2009 concerning Environmental Protection and Management (the Environmental Protection and Management Law) essentially reflects the legislature's efforts to reconcile these two competing interests (Rahmadi, 2021). On the one hand, Article 69 paragraph (1) letter h establishes a general prohibition prohibiting any person from clearing land by burning as a concrete manifestation of the preventive principle and the precautionary principle. On the other hand, Article 69 paragraph (2) introduces a conditional exemption clause, requiring that the prohibition on land burning take into serious consideration the local wisdom prevailing in each respective region. Nevertheless, from the perspective of legislative drafting theory, the exception provided under Article 69 paragraph (2) of the Environmental Protection and Management Law constitutes a vague norm (*normvaagheid*), as it formulates standards of conduct in overly

abstract terms without providing operational limitations that can be objectively measured in practice (S. & Farida, 2007).

The vagueness of this provision becomes particularly evident when examining the Elucidation of Article 69 paragraph (2) of the Environmental Protection and Management Law, which limits the concept of local wisdom to land-burning practices involving a maximum area of two hectares per household, intended for the cultivation of locally adapted plant varieties, and required to be surrounded by firebreaks to prevent the spread of fire. Although the elucidation attempts to establish a quantitative limitation on the maximum land area, the legislature has nevertheless left four critical gaps in technical parameters for forest and land fire risk management. First, the law does not establish the physical dimensions or technical standards for constructing firebreaks. Consequently, there is no legal benchmark concerning their width, the depth of vegetation clearance, or the fire-resistant materials considered sufficient to meet the required standard of precaution. Second, there is no preliminary administrative supervision mechanism, such as an obligation to provide notification or obtain verification from village authorities and customary stakeholders before burning is carried out. Third, Article 69 paragraph (2) does not distinguish between different land ecosystem characteristics, even though burning on mineral soils presents ecological risks that differ substantially from those associated with peatland ecosystems, which contain highly flammable organic materials beneath the surface and are vulnerable to permanent hydrological damage. Fourth, the statutory provision disregards climatological variables, as it does not impose restrictions on burning during periods of extreme dry-season conditions or when early warnings of dry weather have been issued.

The absence of measurable technical parameters in Article 69 paragraph (2) of the Environmental Protection and Management Law has serious juridical implications for the principle of legal certainty (*rechtszekerheid*), particularly the *lex certa* principle, which requires that the formulation of criminal offenses and their exceptions be clear and free from multiple interpretations. The first implication is the vulnerability to over-criminalization of indigenous communities and traditional farmers. When land-fire incidents occur in remote areas or around forest regions, law enforcement officials operating within a legal positivist framework tend to apply Article 69 paragraph (1) letter h textually and directly subject small-scale farmers to the severe criminal penalties stipulated in Article 108 of the Environmental Protection and Management Law. In the absence of standardized legal requirements concerning firebreak dimensions and legally recognized reporting procedures, traditional

farmers are placed in a particularly weak evidentiary position when seeking to demonstrate that their rotational shifting cultivation practices constitute a legitimate form of local wisdom. Consequently, environmental criminal law instruments, which should primarily target large-scale ecological crimes, may instead undermine the constitutional rights of indigenous communities guaranteed under Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Republik Indonesia, 2009; Anggono, 2018).

The second juridical implication of the vagueness of Article 69 paragraph (2) of the Environmental Protection and Management Law is the emergence of opportunities for the abuse of rights (*abus de droit*), which undermines the overall effectiveness of environmental disaster mitigation. The loosely defined concept of "local wisdom" may potentially be exploited by irresponsible parties and medium-scale business operators who divide land-clearing areas into smaller plots of less than two hectares in order to create the appearance of compliance with the statutory exemption criteria. On the other hand, for investigators and environmental supervisory officials at the regional level, such normative ambiguity creates hesitation in enforcement because the boundary between legally protected traditional land-burning practices and the criminal offense of land burning becomes unclear. This situation not only obstructs preventive law enforcement efforts before fires spread but also threatens the fulfillment of citizens' constitutional right to a good and healthy environment, as guaranteed under Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, particularly when fires spread to peatland areas and trigger transboundary haze disasters (Republik Indonesia, 1945; Nurhidayat & Sutiana, 2018).

Accordingly, both theoretically and practically, exclusive reliance on the abstract formulation of Article 69 paragraph (2) of the Environmental Protection and Management Law is inadequate to guarantee legal certainty and ecological justice in regional land-clearing governance. The exception at the statutory level is open-textured and therefore requires implementing legal instruments capable of translating the values of local wisdom into measurable technical, administrative, and ecological parameters (Dermawan et al., 2023). Within the framework of the national legal system, resolving this normative impasse requires vertical legal harmonization through the enactment of regional regulations based on the attribution of authority under Article 63 of the Environmental Protection and Management Law. In this way, the protection of traditional farmers' rights can proceed alongside precise measures for controlling forest and land fire risks.

Based on the overall data and analysis, it can be concluded that law enforcement against illegal fishing in Indonesia's Exclusive Economic Zone (EEZ) has demonstrated significant efforts, although it continues to face various structural and technical challenges. Therefore, strategic measures are required that focus not only on enforcement but also on strengthening the monitoring system, enhancing institutional capacity, and optimizing international cooperation in order to establish a more effective and sustainable law enforcement system (Fadhli, 2019).

The effectiveness of law enforcement is also strongly influenced by coordination among institutions vested with authority in the maritime sector. Synergy among the Ministry of Marine Affairs and Fisheries of the Republic of Indonesia (KKP), the Indonesian Navy, and other law enforcement agencies needs to be strengthened through an integrated coordination mechanism to prevent overlapping authorities. Effective coordination will improve responses to violations and accelerate law enforcement processes in the field. Furthermore, strengthening international cooperation is an essential factor in addressing transnational illegal fishing practices. Indonesia needs to expand cooperation with other countries through information exchange, joint patrols, and cross-jurisdictional law enforcement. These efforts aim to close loopholes frequently exploited by illegal fishing operators when conducting their activities in international waters and border areas.

2. Forms of Normative Harmonization between Article 69 Paragraph (2) of the Environmental Protection and Management Law and West Kalimantan Provincial Regulation Number 1 of 2022 in Realizing Legal Certainty and Forest and Land Fire Mitigation

In legislative theory, vertical legal harmonization refers to the process of aligning lower-level legislation with higher-level legal norms in order to prevent normative conflicts (*antinomy*) while simultaneously addressing operational gaps in provisions that remain abstract (Goesniadhie, 2010). Pursuant to Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 63 paragraph (2) of Law Number 32 of 2009 concerning Environmental Protection and Management (the Environmental Protection and Management Law), provincial governments possess attributed authority to establish environmental protection and management policies at the regional level in accordance with the characteristics of their respective ecoregions. In this context, the enactment of West Kalimantan Provincial Regulation Number 1 of 2022 concerning Land

Clearing for Cultivation Based on Local Wisdom cannot be regarded as a regulation that deviates from (*contra legem*) the prohibition on land burning under Article 69 paragraph (1) letter h of the Environmental Protection and Management Law. Rather, the regional regulation functions as an implementing instrument (*uitvoeringsregeling*) that translates the conditional exemption clause under Article 69 paragraph (2) of the Environmental Protection and Management Law into provisions with sociological applicability and juridical certainty for traditional farming communities (Rohman & Syafruddin, 2021).

The first form of normative harmonization between the two regulations lies in the concretization of technical parameters for fire control through measurable firebreak specifications. Whereas the Elucidation of Article 69 paragraph (2) of the Environmental Protection and Management Law merely uses the general phrase "surrounded by firebreaks to prevent the spread of fire," Article 5 paragraphs (1) through (8) of West Kalimantan Provincial Regulation Number 1 of 2022 establishes a strict mechanism for limited and controlled burning. In addition to maintaining the maximum land area of two hectares per household, as stipulated in the Environmental Protection and Management Law, Article 5 paragraph (4) of West Kalimantan Provincial Regulation Number 1 of 2022 requires farmers to construct firebreaks around their land with sufficient and safe widths, referring to the technical guidelines set out in the Regulation of the Minister of Environment and Forestry concerning forest and land fire control. Furthermore, the regional regulation requires adequate firefighting materials and equipment to be available at the burning site, obliges farmers to notify adjacent landowners or business license holders so that they can participate in fire prevention measures, and prohibits farmers from leaving the site before the fire has been completely extinguished (Seko et al., 2024). The concretization of these technical requirements transforms the precautionary principle from a previously subjective concept into physical parameters that can be verified by supervisory and law enforcement officials.

The second form of vertical harmonization is implemented through the establishment of a tiered administrative supervision mechanism and the regulation of burning schedules based on climatological variables. The absence of reporting procedures under Article 69 paragraph (2) of the Environmental Protection and Management Law is addressed more precisely through Article 7 paragraphs (1) to (3) of West Kalimantan Provincial Regulation Number 1 of 2022, which requires every farmer to notify the Village Head, Urban Village Head, or local hamlet officials of their land-clearing plans before burning is carried out. The notification is subsequently forwarded through a tiered administrative process to

the Subdistrict Head, who is required to coordinate with the Subdistrict Leadership Coordination Forum (Forkopimcam) within a maximum period of 1 × 24 hours. From the perspective of environmental administrative law, this reporting mechanism serves a dual function as both an instrument of legal recognition and an ecological safeguard. On the one hand, proof of administrative notification provides traditional farmers with legal protection against arbitrary criminalization, as their activities are officially recorded as legitimate local wisdom practices. On the other hand, tiered coordination with subdistrict authorities and disaster management agencies enables regional governments to regulate or suspend burning schedules during periods of extreme dry-season conditions or when an emergency alert status for forest and land fires has been declared based on climate early-warning information.

The third and most crucial form of harmonization, from the perspective of ecosystem protection, is the explicit prohibition of land clearing by burning in peatland ecosystems, accompanied by restrictions on the types of crops that may be cultivated. Article 69 paragraph (2) of the Environmental Protection and Management Law does not expressly distinguish between land types in which local wisdom practices may be implemented. Consequently, it leaves a potentially serious ecological risk if burning practices are carried out on peat domes. West Kalimantan Provincial Regulation Number 1 of 2022 addresses this ecological gap through Article 6, which expressly stipulates that limited and controlled burning may not be conducted on peatland. From both scientific and juridical perspectives, an absolute prohibition on burning peatland constitutes a manifestation of the principles of conservation and sustainability because peat soils store substantial reserves of organic carbon beneath the surface. Such conditions can trigger underground fires (*ground fires*), which are difficult to extinguish and may cause permanent hydrological damage (*irreversible damage*). In addition, Article 8 of West Kalimantan Provincial Regulation Number 1 of 2022 reinforces the local-variety requirement under the Environmental Protection and Management Law by stipulating that cleared land may only be planted with subsistence food crops, namely rice, secondary food crops, and/or vegetables cultivated through generations. This restriction closes opportunities for commercial monoculture plantation operators to misuse the justification of local wisdom (Suhardiman et al., 2026).

When examined comparatively in terms of the substance of their respective norms, the differences in regulatory construction between Article 69 of Law Number 32 of 2009 and West Kalimantan Provincial Regulation Number 1 of 2022 demonstrate a shift from abstract norms toward precise operational provisions. In terms of legal status and legal

subjects, Article 69 paragraph (1) letter h and paragraph (2) of the Environmental Protection and Management Law establish only a general prohibition on land burning, accompanied by a conditional exemption based on local wisdom, limited to a maximum of two hectares per household, without specifically defining the qualifications of the eligible subjects. In contrast, Article 1 and Article 5 paragraph (3) of West Kalimantan Provincial Regulation Number 1 of 2022 clarify that the exemption applies only to traditional farmers who have practiced rotational shifting cultivation for generations (Perda Kalbar, 2022a; 2022b; Pergub, 2025). At the same time, the regulation shifts the emphasis of law enforcement away from the repressive criminal approach under Article 108 of the Environmental Protection and Management Law toward guidance, supervision, and administrative sanctions as stipulated in Articles 11 and 13 of the regional regulation.

Furthermore, fundamental differences can also be identified in the aspects of ecological risk control, administrative procedures, and restrictions on crop types. Whereas the Elucidation of Article 69 paragraph (2) of the Environmental Protection and Management Law merely requires the presence of firebreaks without providing technical specifications and does not regulate reporting procedures, land typologies, or restrictions on burning periods, West Kalimantan Provincial Regulation Number 1 of 2022 addresses these gaps through four layers of safeguards. These safeguards include the obligation to construct firebreaks in accordance with the technical standards established by the Regulation of the Minister of Environment and Forestry (Article 5 paragraphs (4) and (8)); the obligation to submit written notification to the village government, which must then be forwarded to the subdistrict level within 1 × 24 hours (Article 7); the absolute prohibition of limited burning in peatland ecosystems and the regulation of burning schedules during extreme weather conditions (Articles 6 and 11); and the restriction of cultivated crops to subsistence food crops, including rice, secondary food crops, and local vegetables (Article 8). Accordingly, each clause in the regional regulation operates in a complementary manner to prevent potential abuse of rights (*abus de droit*) while providing legal certainty for indigenous communities.

CONCLUSION

Based on the results of the normative legal analysis, it can be concluded that the regulation of local wisdom-based land clearing under Article 69 paragraph (2) of Law

Number 32 of 2009 concerning Environmental Protection and Management still contains normative ambiguity, as it does not provide measurable technical and administrative parameters for the implementation of land burning. This condition has implications for legal uncertainty, both in protecting the rights of traditional farming communities and in preventing the misuse of the land-burning exemption by irresponsible parties. These regulatory gaps potentially lead to the over-criminalization of indigenous communities while simultaneously undermining the effectiveness of forest and land fire control. In this regard, West Kalimantan Provincial Regulation Number 1 of 2022 serves as an instrument of vertical legal harmonization that operationalizes the statutory provisions through regulations concerning technical firebreak requirements, tiered administrative notification procedures, the availability of firefighting facilities and equipment, the prohibition of burning on peatland, and restrictions on local food crops. Accordingly, the harmonization of these two regulations demonstrates that the recognition of local wisdom can go hand in hand with ecological protection through clearer, measurable, and prevention-oriented regulations. Such harmonization can strengthen legal certainty, protect the traditional rights of communities, and sustainably minimize the risk of forest and land fires.

This research contributes to the development of environmental law scholarship, particularly in the study of legislative harmonization between national and regional laws governing local wisdom-based land clearing practices. Its primary contribution lies in identifying the normative ambiguity of Article 69 paragraph (2) of the Environmental Protection and Management Law and analyzing the role of West Kalimantan Provincial Regulation Number 1 of 2022 in addressing gaps in technical and administrative regulations. This research also offers the perspective that the protection of traditional farming practices should not be placed in opposition to environmental conservation efforts. Rather, both should be situated within a regulatory framework that integrates legal certainty, recognition of indigenous communities' rights, and ecological risk mitigation. In practical terms, the findings of this research may serve as a consideration for central and regional governments in formulating more harmonious and proportionate land-clearing policies that are responsive to the sociocultural characteristics and ecological conditions of each region.

Future research is recommended to develop this study further through an empirical approach by directly examining the implementation of West Kalimantan Provincial Regulation Number 1 of 2022 among traditional farming communities. Such research should focus on the effectiveness of administrative notification mechanisms, the implementation of

technical firebreak standards, the involvement of village governments and subdistrict officials, as well as the implementation of supervision and guidance concerning land-clearing activities. Furthermore, subsequent research may conduct comparative studies with other regions that have different characteristics of traditional farming practices and peatland ecosystems in order to assess the suitability of the legal harmonization model being implemented. Accordingly, future research is expected to produce more comprehensive policy recommendations, particularly in formulating operational standards for controlled burning, clarifying legal protection for indigenous communities, and strengthening locally grounded systems for forest and land fire supervision and prevention.

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