ANALYSIS OF LAW AND PUBLIC POLICY ON ENVIRONMENTAL JUSTICE IN INDONESIA

Mas Subagyo Eko Prasetyo[1], and Siti Mastoah[2]

[1]National University
massubagyoekoprasetyo@yahoo.co.id

[2]National University
mastoahsiti22@gmail.com

ABSTRACT

Law and public policy are likened to two sides of a coin that cannot be separated. Therefore, law and public policy have a role in environmental management. Such management is a basic need for all people who are physically in a changing environment, in the sense that the quality of the environment continues to decline. This condition requires the participation of the community to be something absolute in the framework of creating a healthy living environment. Thus, there is an error regarding the role of the state in environmental issues, namely viewing the role of the state solely as the delivery of information (public information), counseling, and even just a public relations tool so that these activities can run without obstacles. This study aims to analyze the law and public policy on the environment that can create environmental justice. This qualitative research method is carried out using the type of synchronization research that examines the synchronization of the upper and lower laws and regulations. The results of this study describe the role of the state in planning to evaluating environmental management as a principle of compliance to create environmental justice.

Keywords: *law, public policy, environmental justice*

1. INTRODUCTION

Environmental problems have become one of the concerns of the world community today(Han 2021;Soares et al. 2021;Rahman and Alam 2021; Tawalbeh et al. 2020). The decline in quality, capacity and carrying capacity of the environment gradually occurs naturally, but on the environmental pollution and damage caused by human activities contributes quite significantly to the decline in the quality and function of the environment in supporting human life and other living things(Yin et al. 2020;Chang et al. 2019). One of the global problems that must be faced by all countries in the world today is global warming which causes climate change. Global warming causes growth and development of living organisms, including disease-carrying organisms, increase in temperature due to transportation activities, use of air conditioners and shrinkage of green area(Soemarwoto 2004). This has an impact on the environment globally and one of the efforts to solve it is through international cooperation and the commitment of countries in the world, including the role of countries in formulating and implementing state policies in efforts to prevent and overcome climate change problems. Therefore, in this global era, environmental problems have become a problem that threatens human life as residents of the planet earth and its contents. For this reason, environmental problems are a human obligation to be managed properly.

Managing the environment is an effort that can be integrated into environmental planning, environmental utilization, environmental control, environmental maintenance, environmental monitoring, and environmental law enforcement(Aidonojie et al. 2020;Wen et al. 2020;Uittenbroek et al. 2019;Zhang et al. 2019). In this case that from an arrangement can be located in terms of environmental management. To carry out a protection and management, a principle

is needed. Arrangements regarding the right to a good and healthy environment are also balanced with the community's obligations to the environment. Arrangement of rights and obligations over the environment accompanied by space for the community to participate in environmental management(Li et al. 2020;Mengist 2020). Based on this, the role of the state becomes absolute in the framework of creating a healthy living environment. The meaning of health is not only physical with a good environment. More than that, physical health as a result of a good environment is a prerequisite for a healthy mind, which is of course a very basic and important human resource asset. Thus, this study aims to analyze law and public policy through the juridical meaning of the state's role in environmental management. In addition to identifying the relevance of the state's role in environmental protection and management.

2. RESEARCH METODOLOGY

This research is a legal research carried out on the legal principles contained in the provisions on the environment, specifically with regard to the state's role in environmental management(Christiani 2015). In this regard, elaboration is a type of synchronization research that examines the laws above and the rules below them. Horizontal synchronization conducts studies on similar regulations on environmental regulations. The legal materials are then analyzed qualitatively and then deductively drawn conclusions. In Indonesia, a good and healthy environment is a basic right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia. To carry out what has been mandated in the 1945 Constitution of the Republic of Indonesia, the government by the approval of the House of Representatives has promulgated several laws regarding environmental management: Law Number 4 of 1982 concerning Basic Provisions for Environmental Management; Law Number 23 of 1997 concerning Environmental Management; Law Number 32 of 2009 concerning Protection and Management of the Environment. The right to a good and healthy environment is a form of human rights as stipulated in the 1945 Constitution. Law Number 32 of 2009 also stipulates that everyone has the right to a good and healthy environment. Thus, the researcher collected data through a literature review. After collecting the data through tracing, reading and taking notes, the next step is compiling the data, classifying it, which is then followed by analyzing the data on environmental justice. The data that has been collected through the literature study is then analyzed using qualitative methods supported by logical, deductive thinking.

3. RESULTS AND DISCUSSIONS

Based on the results of literature, law and public policy studies offered by the Indonesian government in achieving environmental justice contained in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia that, "Everyone has the right to live in physical and spiritual prosperity, to have a home, and get a good and healthy environment and have the right to obtain health services. On the basis of these arrangements, citizens for a good and healthy environment are a form of social right in the fundamental right. The form of embodiment is guaranteed the right to a good and right environment in Law no. 32 of 2009 concerning Environmental Protection and Management, which is called *UUPPLH*. Based on these regulations, there are eight rights recognized in the *UUPPLH*, namely: the right to a good and healthy environment as a human right, the right to receive environmental education, the right to access information, the right to participate, the right to propose or object to a business or activity plan. Which are expected to have an impact on the environment, the right to play a role in protecting and managing the environment, the right to make complaints due to alleged environmental pollution or damage and the right not to be prosecuted criminally and civilly in fighting for rights to a good environment and healthy(Mengist 2020;Donelson et al. 2019).

However, Indonesia is still experiencing various environmental management problems caused by the role of the state through positive law in the form of legislation that regulates the management of natural resources in Indonesia. Thus, various environmental problems are grouped into 4 (four) groups, namely: environmental problems stemming from population, poverty, dirtiness and damage as well as policies(Latulippe and Klenk 2020). Wisdom in laws and regulations in the field of environment has an important role in preserving environmental functions in Indonesia, so that the function of law in providing order, certainty and justice for society, the environment and future generations is very important. However, the disharmony in the drafting of laws has resulted in many sectoral laws that do not prioritize environmental protection so that there are many problems in synchronizing implementing regulations.

On the other hand, Indonesia's environmental and forestry management is currently focused on balancing ecological, economic and social aspects. This is in line with the commitment of the Government of Indonesia to achieve the Sustainable Development Goals (SDGs). Efforts made cover issues of climate change, forest and land fires, management of peatlands, social forestry, marine debris and solid waste management. Basically environmental protection is a joint responsibility of all Indonesian citizens, but the state has obligations and responsibilities based on the constitution. In environmental conditions that have experienced a decline that is quite alarming due to development that is not environmentally sound and sustainable, the state must be able to provide solutions and affirmations regarding environmental protection issues through various efforts including clear and strict regulations in laws and regulations both in the constitution, laws and regulations. other laws and implementing regulations(Soemarwoto 2004).

Within the framework of the role of society and the state, to protect the right to a good and healthy environment, various environmental economic instruments have been implemented by the government. Environmental law instruments that function as a means of preventing environmental pollution due to mining such as Environmental Impact Analysis (AMDAL), Environmental Permits, Economic Instruments and Environmental Audits. In practice, the existing direct instruments have not been able to control pollution effectively. The existence of economic instruments is a complement to direct regulatory instruments that have not been maximized, to strengthen control of environmental pollution in the environmental sector.

Communities have equal and broad rights and opportunities to play an active role in protecting and managing the environment. The community also has the right to file a class action lawsuit for their own interests and/or for the benefit of the community if they experience losses due to environmental pollution and/or damage (Article 91 *UUPPLH*). In relation to community participation, Instruction of the Minister of Home Affairs Number 8 of 1990 concerning the Development of NGOs, what is meant by NGOs are organizations or institutions formed by the community, citizens of the Republic of Indonesia voluntarily of their own free will and are interested and engaged in certain fields of activity determined by organization or institution as a form of community participation or participation in an effort to improve the standard of living and welfare of the community which focuses on self-help service.

The role of the state has the meaning of preventive legal protection for the people. Communities can express interests through objections, hearings, and other forms of participation. For this reason, it is necessary to have the obligation of government organs to provide information and the people's right to be heard. As is the case in other developing countries, for Indonesia the problem of environmental pollution as a disturbance to the order of human life is mainly caused by a rapid increase in population, excessive use of natural resources, use of technology that is not in accordance with existing natural conditions and patterns of human behavior. towards nature, in this connection the role of the community and the government will be very important in balancing the use of nature and the improvement of nature.

Current environmental management does not reflect justice. The concept of justice in the Indonesian state is guided by Pancasila as a state philosophy that promotes justice for all Indonesian people(Zhang et al. 2019). Justice in the environmental aspect must be interpreted as justice in the protection and management of the environment for the welfare of society and the environment which has provided its function in supporting human life and other living things. Environmental justice is currently reflected in justice based on sectoral laws where environmental aspects must also be seen as a system. The legal system consists of legal sub-systems, which include the environmental law sub-system(Hartono 1991). The environmental law sub-system consists of principles, rules and also includes institutions and processes to make it happen in reality(Elliott, Borja, and Cormier 2020). The legal system is also a legal entity that is integrated and composed of its complete parts according to a definite purpose. According to Taufiqurokhman et al. (2020) environmental law in Indonesia, in a narrow sense, includes laws and regulations that are hierarchical. Power in the state comes from various theories, including the theory of state sovereignty which emphasizes that sovereignty lies with the state. it is the state that makes and establishes laws and the theory of the rule of law, the highest authority in a country is the law itself. Rulers and people or citizens, including the state itself are all subject to the law.

In relation to power, the state is given responsibility in efforts to achieve social welfare including environmental protection and management. The United Nation Conference on the Human Environment, Stockholm 1972 has formulated the principle of state responsibility(Khanduri 2022). Furthermore, this principle was later confirmed and confirmed in the Second Principle Conference in Rio de Janeiro 1992 (Declaration of the United Nations Conference on the Human Environment and Development Rio de Janeiro 1992). Based on this principle, the state has sovereignty over the management of natural resources in its territory, but the state is obliged to protect and preserve environmental functions within its jurisdiction and sovereign rights from damage and destruction. Sovereignty and sovereign rights are the highest authority for the country(Zhang 2020).

The most influential problem is human behavior that no longer respects nature where humans are part of nature and the real conditions in society are exemplified by logging forests which are not accompanied by replanting, free disposal of industrial waste and household waste regardless of the implications of these actions(Gwenzi et al. 2018). Finding out who is at fault and who should be responsible for environmental damage is not a wise and prudent way. The environment is a collective issue that requires the participation of all components of the nation to take care of and manage it. The government, community leaders, non-governmental organizations (NGOs), all citizens, and other components of the nation must have the "political will" to jointly protect the environment from the ignorant hands of thugs and environmental criminals. In the legal system in Indonesia, environmental protection is not regulated explicitly either directly in the body of the constitution or explicitly regulated through its articles which instruct delegates to draft laws on environmental protection which become the basis for all laws and regulations regarding environmental management. In the history of the development of environmental law regulations through statutes, when Law Number 4 of 1982 was enacted concerning Basic Provisions for Environmental Management has actually placed these regulations as the basis for environmental regulations.

The function of law is to maintain the public interest in society, safeguard human rights, realize justice in living together(Tania and Kurniawan 2020). The current form of justice in Indonesia is justice based on laws and regulations. This means something that is considered fair if it complies with laws and regulations, even though it is not in accordance with the sense of social justice and environmental justice. The implementation of laws and regulations governing the management of natural resources which are sectoral in nature has resulted in justice which is one of the objectives of sectoral law by not paying attention to the interests and sustainability

of the sector or other fields. Justice for the environment does not get more attention from the legal aspect, even though the environment has carried out its functions or obligations in supporting human life and other living things(Dobson 2007). At present, laws and regulations in the field of environmental management prioritize utilization by exploiting as many natural resources as possible without paying attention to aspects of sustainability and preservation of environmental functions for the benefit of future generations.

Therefore, there are still many things that need to be fixed in the *UUPPLH*, such as in Article 26 paragraph (2) that "community involvement must be carried out based on the principle of providing transparent and complete information and notifying it before activities are carried out". A total of 13 (thirteen) instruments for preventing environmental pollution and/or damage contained in Article 14 of Law no. 32 of 2009 is the basis for the role of the state. In this law, there is actually a new instrument that was not contained in the previous UUPLH, namely the Strategic Environmental Assessment (KLHS) which must be carried out by the government and regional governments to ensure the integration of the principles of sustainable development into the development of an area and/or policies, plans and/or programs. Of course, when examined properly, there is nothing wrong with this article. However, the elucidation of this article reads that this provision is intended to protect victims and/or reporters who take legal action as a result of environmental pollution and/or damage and protection is intended to prevent acts of retaliation from the reported party through criminal prosecution and/civil lawsuits while still paying attention to the independence of the judiciary.

The last sentence which is also the closing of the explanation "while taking into account the independence of the judiciary is a key sentence intended to break/defy the promise of article 66. This means that the enactment of the right to protection as stipulated in article 66 still has to be determined and re-examined by the court. Whereas in court everything (anything) is still possible, including ignoring the application of Article 66 because judges are free and have the absolute right to make/impose their decisions. Increasing the participation of the community to participate in protecting and maintaining the environment can be carried out with various concrete efforts, both individually and in groups that are functionally incorporated in environmental organizations. These organizations both exist and have to be formed as an integral part of the community's participation in a good and healthy environment.

4. CONCLUSION

The function of law is to provide order and justice in society. The environment as the heritage of all mankind is a right for present and future generations. In an effort to overcome various environmental problems caused by laws and regulations that are not harmonious, causing disharmony in their implementation, as well as overcoming sectoral egos in various fields that manage natural resources, the state must be responsible through the state constitution, namely the 1945 Constitution. Indonesia is a written text, the highest and valid and used as the basis for administering the state. Affirmation of just environmental protection for across generations in the constitution (green constitution concept) which will at least reduce and overcome the problem of overlapping laws and regulations and encourage them to be harmonious because the aspects of protection, rights and obligations to protect the environment originate directly from the constitution of the Republic of Indonesia.

REFERENCE

Aidonojie, Paul Atagamen, Osikemekha Anthony Anani, Omohoste Patience Agbale, John Ovie Olomukoro, and Adetunji Oluwaseun Charles. 2020. “Environmental Law in Nigeria: A Review on Its Antecedence, Application,

Judicial Unfairness and Prospects." *Archive of Science & Technology* 1(2):212–21.

Chang, Xiaoru, Yuying Xue, Jiangyan Li, Lingyue Zou, and Meng Tang. 2019. "Potential Health Impact of Environmental Micro- and Nanoplastics Pollution." *Journal of Applied Toxicology* 40(1):4–15. doi: 10.1002/jat.3915.

Christiani, Theresia Anita. 2015. "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object." Pp. 201–7 in *3rd Global Conference on Business and Social Science*. Vol. 219. Procedia - Social and Behavioral Sciences.

Dobson, Andrew. 2007. "Environmental Citizenship: Towards Sustainable Development." *Sustainable Development* 15(5):276–85. doi: 10.1002/sd.344.

Donelson, Jennifer M., Jennifer M. Sunday, Will F. Figueira, Juan Diego Gaitán-Espitia, Alistair J. Hobday, Craig R. Johnson, Jeffrey M. Leis, Scott D. Ling, Dustin Marshall, John M. Pandolfi, Gretta Pecl, Giverny G. Rodgers, David J. Booth, and Philip L. Munday. 2019. "Understanding Interactions between Plasticity, Adaptation and Range Shifts in Response to Marine Environmental Change." *Philosophical Transactions of the Royal Society B: Biological Sciences* 374(1768). doi: 10.1098/rstb.2018.0186.

Elliott, Michael, Ángel Borja, and Roland Cormier. 2020. "Managing Marine Resources Sustainably: A Proposed Integrated Systems Analysis Approach." *Ocean and Coastal Management* 197. doi: 10.1016/j.ocecoaman.2020.105315.

Gwenzi, W., L. Mangori, C. Danha, N. Chaukura, N. Dunjana, and E. Sanganyado. 2018. "Sources, Behaviour, and Environmental and Human Health Risks of High-Technology Rare Earth Elements as Emerging Contaminants." *Science of The Total Environment* 636:299–313. doi: 10.1016/j.scitotenv.2018.04.235.

Han, Heesup. 2021. "Consumer Behavior and Environmental Sustainability in Tourism and Hospitality: A Review of Theories, Concepts, and Latest Research." *Journal of Sustainable Tourism* 29(7):1021–42. doi: 10.1080/09669582.2021.1903019.

Hartono, Sunaryati. 1991. *Legal Politics towards a National Legal System*. Bandung: Alumni Bandung.

Khanduri, Sushil. 2022. "Disastrous Events of 2021 in Uttarakhand Province of India : Causes , Consequences and Suggestions for Disaster Risk Reduction (DRR)." 3(2021):178–88.

Latulippe, Nicole, and Nicole Klenk. 2020. "Making Room and Moving over: Knowledge Co-Production, Indigenous Knowledge Sovereignty and the Politics of Global Environmental Change Decision-Making." *Current Opinion in Environmental Sustainability* 42:7–14.

Li, Guang, Desmond Ato Koomson, Jingyu Huang, Ebenezer Impriam Amponsah, Williams Kweku Darkwah, Nicholas Miwornunyuie, Ke Li, and Xiaohang Dong. 2020. "A Review from Environmental Management to Environmental Governance: Paradigm Shift for Sustainable Mining Practice in Ghana." *Environment, Development and Sustainability* 23(7):9710–24. doi: 10.1007/s10668-020-01050-z.

Mengist, Wondimagegn. 2020. "Historical Development of Environmental Management Tools and Techniques: A Review Paper on Its Driving Forces." *International Journal of Energy and Environmental Science* 5(5):90. doi: 10.11648/j.ijees.20200505.12.

Rahman, Mohammad Mafizur, and Khosrul Alam. 2021. "Clean Energy, Population Density, Urbanization and Environmental Pollution Nexus: Evidence from

Bangladesh." *Renewable Energy* 172:1063–72. doi: 10.1016/j.renene.2021.03.103.

Soares, Joana, Isabel Miguel, Cátia Venâncio, Isabel Lopes, and Miguel Oliveira. 2021. "Public Views on Plastic Pollution: Knowledge, Perceived Impacts, and pro-Environmental Behaviours." *Journal of Hazardous Materials* 412. doi: 10.1016/j.jhazmat.2021.125227.

Soemarwoto, Otto. 2004. *Atur Diri Sendiri: Paradigma Baru Pengelolaan Lingkungan Hidup [Self-Management: A New Paradigm for Environmental Management]*. Yogyakarta: Gadjah Mada University Press.

Tania, Neysa, and Rio Kurniawan. 2020. "The Urgency of Amendment to Law Number 32 of 2002 Concerning Broadcasting as the Legal Umbrella for OTT Services." *Constitutionale* 1(2):107. doi: 10.25041/constitutionale.v1i2.2125.

Taufiqurokhman, E. Sulastri, and H. Hafiid. 2020. "Indonesian Government's Policy on Environmental Law in the Era of Regional Autonomy." *Systematic Reviews in Pharmacy* 11(12):1203–9.

Tawalbeh, Muhammad, Amani Al-Othman, Feras Kafiah, Emad Abdelsalam, Fares Almomani, and Malek Alkasrawi. 2020. "Environmental Impacts of Solar Photovoltaic Systems: A Critical Review of Recent Progress and Future Outlook." *Science of the Total Environment* 759:143528. doi: 10.1016/j.scitotenv.2020.143528.

Uittenbroek, Caroline J., Heleen L. P. Mees, Dries L. T. Hegger, and Peter P. J. Driessen. 2019. "The Design of Public Participation: Who Participates, When and How? Insights in Climate Adaptation Planning from the Netherlands." *Journal of Environmental Planning and Management* 62(14):2529–47. doi: 10.1080/09640568.2019.1569503.

Wen, Yueming, Jiawei Leng, Xiaobing Shen, Gang Han, Lijun Sun, and Fei Yu. 2020. "Environmental and Health Effects of Ventilation in Subway Stations: A Literature Review." *International Journal of Environmental Research and Public Health* 17(3). doi: 10.3390/ijerph17031084.

Yin, Zhihong, Liandong Zhu, Shuangxi Li, Tianyi Hu, Ruoyu Chu, Fan Mo, Dan Hu, Chenchen Liu, and Bin Li. 2020. "A Comprehensive Review on Cultivation and Harvesting of Microalgae for Biodiesel Production: Environmental Pollution Control and Future Directions." *Bioresource Technology* 301(January):122804. doi: 10.1016/j.biortech.2020.122804.

Zhang, Chen, Guangming Zeng, Danlian Huang, Cui Lai, Ming Chen, Min Cheng, Wangwang Tang, Lin Tang, Haoran Dong, Binbin Huang, Xiaofei Tan, and Rongzhong Wang. 2019. "Biochar for Environmental Management: Mitigating Greenhouse Gas Emissions, Contaminant Treatment, and Potential Negative Impacts." *Chemical Engineering Journal* 373(January):902–22. doi: 10.1016/j.cej.2019.05.139.

Zhang, Junjie. 2020. "An Overview of One Belt and One Road Initiative and the Sustainable Development Concept." Pp. 34–38 in *Proceedings of the 4th International Symposium on Business Corporation and Development in South-East and South Asia under B&R Initiative (ISBCD 2019)*. Vol. 146.