

Enforcement of Environmental Law as Fulfillment of Human Rights

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Abstract

The right to a good and healthy environment is one of the human rights stipulated in the 1945 Constitution of the Republic of Indonesia. As a constitutional mandate, the government has ratified several laws and regulations relating to the management and preservation of the environment. Recently, cases of pollution and environmental degradation still occur, which cause a decline in the quality of the environment. Therefore, law enforcement efforts are needed to save people from the hazards of a degraded environment, especially the next generation of humans. This study employs qualitative research to uncover and analyse how law enforcement against environmental degradation constitutes a fulfillment of human rights. The results of the study show that the enforcement of laws relating to the environment by the state is not carried out optimally. Otherwise, non-fulfillment of the right to a healthy environment is a violation of human rights; therefore, it is the responsibility of the state to enforce environmental law in order to protect and fulfill the right to a healthy environment. Certain actions should be taken to enhance law enforcement, such as changing environmental regulations, synchronising the environmental management law with the human rights law, as well as active cooperation between the government, law enforcement agencies and the community in handling environmental issues based on the principles of justice and transparency

Keywords: Law Enforcement, Environmental Rights, Human Rights

Introduction

One of the issues addressed by the presidential candidates of the Republic of Indonesia aspiring to rule the country from 2019 to 2024 in the second debate, broadcast live by various electronic media, is the environmental issue. However, environmental issues did not get an adequate proportion of the discussion, so it is considered that environmental problems are not important. Nonetheless, a healthy

environment is the right of every citizen as mandated by the 1945 Constitution of the Republic of Indonesia.

Environmental degradation is an issue that has been a subject of discussion, but it is still ongoing. Activities such as burning of bushes on the island of Sumatra for the purpose of plantations, river pollution by disposing garbage or household waste, sea pollution, air pollution, forest conversion to plantation land, mining waste (tailings) and exploitation of protected flora and fauna are forms of environmental degradation. The state's objective of achieving a good and healthy environment has not been realised because there are still forest fires, which cause air pollution, and rivers are contaminated by industrial and household wastes.

Global issues concerning the environment can be seen in the International Monetary Fund's (IMF) suggestion on the economic crisis that hit Indonesia in 1998, which led to the reduction of kerosene subsidies. As a result, people were forced to look for other alternatives, such as firewood. Forest became a victim. Old issues have not been resolved, such as forest fires and illegal mining, but new issues are developing, which confirms the link between globalisation and biodiversity management (Yayasan Kehati, 2001: 4-5).

Natural resources are owned by the state, and their exploitation by the state or investors has turned out to be a problem that has a negative impact on the environment. An example is the environmental degradation caused by PT. Freeport Indonesia. Due to their activities, mining waste (tailings) covers the river and no environmental restoration has been carried out. Therefore, it is believed that closure of the mine will leave an environmental impact on the people in Mimika Regency.

Regarding to result of research of a team from United States and Australia led by Jenna Jambeck, an analyzed plastic waste levels in the world's oceans. They found that China and Indonesia are the top sources of plastic bottles bags and other rubbish clogging up global sea lanes. Together, both nations account for more than a third of plastic detritus in global waters. Data in 2010, about 8.8 million metric tons of mismanaged plastic waste came from China with an estimated 3.53 million metric tons of it ending up in the ocean. A total of 3.2 million metric tons of mismanaged plastic waste came from Indonesia and it is estimated that 1.29 million metric tons became plastic marine debris (Niall MC Carthy, 2019).

The consequences of environmental degradation are very detrimental, especially to the quality of the environment itself, for example green house effect. Forests are the lungs of the earth and have the function of absorbing carbon dioxide (CO₂) gas. Destruction of forests causes temperature rise and changes in the earth's climate in general (global warming). The use of chemicals such as freon for air conditioning and the results of massive combustion carried out by various industries damage the ozone layer (O₃), which in turn leads to cancer and new diseases.

Due to the various cases of illegal logging, it is estimated that the state loses about 30-42 trillion rupiah per year, not to mention that this aspect of environmental degradation creates man-made disasters, such as floods, flash floods, soil damage, drought, water scarcity, declining water and air quality, high pollution in river and

sea waters (making them very toxic), and so on. Tropical rainforest damage reduces the supply of oxygen not only to the region but also to the earth as a whole. Also, reduced air quality certainly results in decreased health quality of humans who breathe it.

Environmental damage occurring on land, sea and air results in decreased quality of human life. The quality of life of citizens is certainly the responsibility of the state, in which can be achieved by law enforcement against the increasingly complex environmental problems. The role of the state in ensuring the preservation of the environment is the basis for fulfilling human rights to the environment. According to Hunter (Hunter, 1998: 1305), recognising and protecting human rights means protecting the environment.

Environmental degradation is currently experienced by all countries, so law enforcement efforts are needed to save people, especially the next generation, from the dangers of a degraded environment. Based on these problems, the purpose of this research is to analyse how law enforcement of environmental law is an effort in fulfilling human rights.

Material and Method

The study uses normative, also known as doctrinal, research to uncover and analyse how law enforcement against environmental damage is a fulfillment of human rights. In order to obtain complete data, the authors used the following types and sources of data:

1. Primary data

This term refers to a binding legal material and consists of the following: basic norms or rules, such as the Preamble of the 1945 Constitution of the Republic of Indonesia; basic regulations, such as the body of the 1945 Constitution; government regulations and regulation equivalent; uncodified legal materials, such as customary law and jurisprudence.

2. Secondary Data

This term includes materials that provide an explanation of primary legal materials. Such documents are available in the form of books, articles, etc. They are usually obtained from the library or are the personal properties of researchers.

The collected data were analysed qualitatively. The data were grouped according to the focus of the study. From the categorisation, existing theories were described logically and systematically to obtain significant results, so that the focus of the research can be explained in accordance with phenomena that occur.

Literature Review

The Right to a Healthy Environment: Human Rights Perspective

The right to a good and healthy environment is one of the objectives of the State of Indonesia as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia: "...forming an Indonesian Government to protect the entire Indonesian nation". This is associated with state ownership rights over the earth and water and the natural wealth contained in it for the greatest prosperity of the people. To achieve the objectives of the country, the right to a good and healthy environment is regulated in Article 28H, Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which involves living a healthy life and possessing the right to obtain health services.

Human rights in the Indonesian context are described in Article 1, Number 1 of Law No. 39 of 1999 concerning Human Rights, stating that human rights are a set of rights that are inherent in the nature and existence of human beings as bestowed by God Almighty and must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity.

From the above explanation, there is a sentence that deserves closer attention, i.e. the existence of human rights as bestowed by God Almighty. This view is evident in the context of human rights in Indonesia regarding the flow of natural law. The Thomistic view of natural law postulates that natural law is part of God's perfect eternal law, which can be known through the use of human reason. An aspect of the philosophy of natural law in the past is the idea that the position of each person in life is determined by God, but all people whatever their status are subject to God's authority (Melkias Hetharia, 2012: 69).

Thus, it could be stated that not only is the power of the king limited by divine rules, all humans are also endowed with unique individual identities, separate from the state. Davidson, as cited by Muhammad Ashri (2018: 28), states that the last aspect of natural law can be seen as containing the seeds of the idea of natural rights, which states that each person is an autonomous individual. The limited power of the king is meant to prevent actions that are arbitrary to human dignity according to John Locke, which suggests that state authorities ignore the social contract by violating individual rights. The people are free to remove the ruler and replace him with a government that is willing to respect those rights (Rhona K.M. Smith, 2005: 12).

Furthermore, as explicitly stated by Hugo Grotius' natural law, if a tyrant applies arbitrariness to humans and destroys human civilisation, then other people have the right to intervene, for the sake of humanity. Grotius based his theory on the principle of *sociatashumana*, i.e. universal community of humankind (Hamid Awaludin, 2012: 200).

Humans need good environment, which should be fulfilled in the context of a country. In the development of human rights, there are three generations (Eko Riyadi, 2018: 42-45) which is one of the third generation rights called collective rights or solidarity rights. The term collective rights or solidarity rights is given because all people and all parties, both on a national and international scale, are required to fight for the fulfillment of these rights for the benefit of humanity (Eko Riyadi, 2018: 45).

A legal basis for the emergence of these third generation rights is Article 28 of the Universal Declaration of Human Rights: "Everyone has the right to a social and international order in which the rights and freedoms set forth in this Declaration can be fully implemented". In addition, other legal bases for the third generation rights are the International Convention on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights that all nations, for their own purposes, can manage their wealth and natural resources without reducing the obligations arising from international economic cooperation, based on the principle of mutual benefit and international law. In any case, it is not justified to seize the rights of a nation for its own sources of livelihood.

The States Parties to the Covenant, including those responsible for administering the Territory without Self-Government and the Trusteeship Area, must advance the realisation of the right to self-determination and must respect these rights in accordance with the provisions of the Charter of the United Nations. In another context, human rights are the basis for the protection of humans against inhuman behaviour based on historical contexts. In this regard, Frans Magnis Suseno (1992: 231) stated as follows:

Human rights are a means to protect modern humans from threats that have been proven to be violent. These rights are realised as a reaction to the experience of the threat against intrinsic aspects of humanity. Through understanding human rights, the demand to respect human dignity has an operational formula in legal and political language

Regarding to Max Boli Sabon (2008:14), in the relationship between individuals and the state in the context of the environment, several terms are used, namely:

- a. Human rights are those rights that apply universally without limits of space and time but can be differentiated by the laws of the country concerned;
- b. Fundamental rights are rights that cannot be eliminated under any circumstances;
- c. Citizen's rights are those rights that only apply to humans who become citizens of the country concerned;
- d. Constitutional rights only apply insofar as they are contained in the constitution concerned;

- e. Legal rights only apply insofar as they are contained in the laws and regulations of the country concerned.

The above terms show that human rights are inseparable from the basic characteristics possessed by humans. These rights also cover issues related to the environment. On this basis, a declaration was made at the United Nations Conference on Human Environment, held in Stockholm on 5-16 June 1972, considering the need for a general view and general principles to inspire and guide all human beings in conservation and improvement of the human environment.

It was proclaimed that humans are a creation and creator of their environment, which gives them physical strength and abilities in terms of intelligence, thinking, morality, social and spiritual growth. In the long and winding evolution of human life in the world, tremendous achievements have been. Through the acceleration of science and technology, humans have gained the power to change their environment in various ways and on an unprecedented scale. The two aspects of the human environment, namely nature and human creation, are equally important for welfare and the realisation of human rights.

After Stockholm, a 1992 United Nations Conference on Environment and Development was held, known as the Earth High Level Conference in Rio de Janeiro, Brazil. The Rio de Janeiro Declaration is a blueprint for sustainability in the 21st century. Agenda 21 was agreed upon by many countries and governments of the world monitored by the International Commission on Sustainable Development. This agenda discusses the development of society and its economy by focusing on the conservation and preservation of the environment and natural resources.

Enforcement of Environmental Law

The environment is the totality of space with all objects, resources, conditions, and living things, including humans and their behaviour that affects the survival of life and the welfare of humans and other living beings (Article 1, Number 1 of Law Number 32 of 2009 concerning Environmental Protection and Management).

The above provision explains that a healthy environment greatly influences the quality of life of living things. A healthy environment is an aspect of human rights and is expressly recognised in the constitution. In addition, the government has ratified several laws and regulations aimed at environmental conservation efforts. According to Bagir Manan (1997: 8), the success of a law depends on its implementation and enforcement; law enforcement is the essence of the legislation.

According to Sundari Rangkuti (cited in Muhammad Erwin, 2009: 117), the enforcement of environmental law is closely related to the ability of the apparatus and the compliance of the community to the applicable regulations, including supervision and the application of administrative, civil and criminal sanctions. In

addition, the participation and role of the community is very important in the enforcement of human rights. Without community participation and support, the enforcement of human rights will be unsuccessful. The participation and role of the community are also regulated in the Environmental Management Law.

The instrumental function of administrative sanctions is the control of prohibited acts. Administrative law enforcement tools are as follows: (1) forced action, (2) forced money, (3) closure of place of business, (4) termination of company activities, and (5) revocation of permission (Muhammad Erwin, 2009: 117).

Pollution or environmental degradation damages the environment and harms the community, causing both material and immaterial losses. Therefore, law enforcement through civil law instruments is carried out by paying compensation and restoring the environment, as stipulated in Article 20 of the Law on the Environment.

Enforcement of environmental law in criminal law involves the threat of minimum and maximum penalties, expansion of evidence, punishment for violations of quality standards, integration of criminal law enforcement, and regulation of corporate criminal acts. In addition, it pays attention to the principle of *ultimum remedium*, that is, the enforcement of criminal law is the final step after the application of administrative and civil sanctions.

Law enforcement using administrative, civil and criminal sanctions is a repressive form of law enforcement that is targeted at perpetrators of environmental degradation or damage. However, preventive efforts include conducting intensive supervision and maximising licensing. Therefore, the government should apply the principles of environmental protection and management based on good governance because in every process, the formulation of preventive and repressive efforts must integrate aspects of transparency, participation, accountability and justice.

However, according to Erwin (2009:120-121), in the enforcement of environmental law, many obstacles still exist: (1) Inconsistency in policies: the various operational policies issued are often inconsistent with the principles of environmental management. (2) Institutional ambivalence: the function of environmental management is ambivalent in the authority and division of tasks among institutions. (3) Law enforcement officials: some cases of environmental degradation are not followed up in the form of investigations, prosecutions and examinations in court even though the impact and facts about forest destruction are clear enough. (4) Licensing: licensing is one of the factors that promotes the development of environmental problems rather than limiting them. (5) The AMDAL (Analysis of Environmental Impact) system: in practice, AMDAL is more directed at the prominence of fulfilling administrative provisions than the substance. This means that the rapid demand for AMDAL is a chain of liabilities in licensing matters because it is seen as a performance for investment permits.

Discussion

According to Soerjono Soekanto (1980: 13), there are several factors that influence law enforcement, such as legal factors, law officers, supporting facilities, community, and cultural. In line with Friedman (1975) which asserted that legal system influenced by legal substance, structure, and culture. In the field of environmental law, sometimes, there is a conflict between legal certainty and justice, where is the conception of justice as an abstract formulation, while legal certainty is a normatively determined procedure. The legal functions, mentality or personality of law enforcement officers play an important role, because if the regulations are good but the quality of the officers is not good, there is a problem. Therefore, one of the keys to success in law enforcement is a positive law enforcement mentality or personality.

Another factor is supporting facilities, include soft-skill and hard-skill. One example of soft-skill is education. The education received by the police today tends to be on conventional practical matters, so in many cases, the police experience obstacles in meeting their objectives, such as poor knowledge of about environmental crimes. However, it was also realised that the tasks that the police had to carry out were so broad and numerous.

Community knowledge about environmental law is serious factor in the law enforcement. Every citizen or group has to legal awareness. The existence of a degree of community legal compliance with the law is an indicator of the functioning of the law concerned. Indeed, it is influenced by cultural factors. Culture has a very important function in humans and society, namely regulating human understanding regarding how they should act and their attitude towards others. Thus, culture is a basic line of behaviour that establishes rules about what must be done and what is prohibited.

The current developmental efforts by all countries have caused various problems, especially environmental problems. The activities of various industries and the exploitation of natural resources have led to global warming and depletion of natural resources. The current development only pursues the welfare of the current generation but does not consider the next generation of humans. This is a serious threat to future generations. Therefore, it is necessary to deal with environmental problems by adopting environmental law approaches, including legal elements (legal substance), legal structures, facilities and society (legal culture).

Indeed, the right to a healthy and good environment as regulated in the Constitution of the Republic of Indonesia, so the state must provide a good and healthy environment. Thus, the guarantee of human rights is stronger in a country where it has been regulated in the constitution. Stated in the Preamble of the 1945 Constitution of the Republic of Indonesia, which states as follows: "...forming an Indonesian Government to protect the entire Indonesian nation". This is associated

with state ownership rights over the earth and water and the natural wealth contained in it for the greatest prosperity of the people.

To achieve the objectives of the country, the right to a good and healthy environment is regulated in Article 28H, Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which involves living a healthy life and possessing the right to obtain health services. From this basis, the state is obliged to safeguard the environment. Safeguarding and preserving the environment is a constitutional order; therefore, the government has promulgated several laws and regulations aimed at preserving the environment, which is a human right.

The implementation of Article 28H, Paragraph (1) of the 1945 Constitution is regulated in Law Number 39 of 1999 concerning Human Rights. A healthy and good environment is the right to life because with a healthy environment, humans can maintain life. A degraded environment is harmful to human life. The state of the environment will determine if humans will continue in future generations to control the earth or will become extinct due to environmental degradation. The assertion of the right to a good and healthy environment as a right to life is regulated in Article 9 of Act Number 39 of 1999 concerning Human Rights, which involves human rights in the form of the right to live, maintain life and improve living standards as well as the right to peaceful living, happiness, inner and outer prosperity (Article 9 of Law Number 39 of 1999 concerning Human Rights).

The linking of human rights to the environment is further regulated in Article 65, Paragraph (1) of Law Number 32 Year 2009 concerning Protection and Management of the Environment: "Everyone has the right to a good and healthy environment as part of human rights". Therefore, the state, government and all stakeholders are obliged to protect and manage the environment by implementing sustainable development so that the Indonesian environment remains a source of support for the people of Indonesia and other living beings. In addition, seriousness from law enforcement officials is needed to follow up on various findings based on the principles of justice and transparency.

According to Erwin (2009: 122), the police should develop a criminal system structuring model, especially the utilisation of information as disincentives for anyone who pollutes and damages the environment. One of the preventive efforts taken in fulfilling human rights related to the environment is environment-based budgets (Article 45, Paragraph (2) of Law Number 32 of 2009 concerning Environmental Protection and Management). In respecting, protecting and fulfilling human rights in Indonesia, the state has several responsibilities (explanation of Article 2, Letter a of Law Number 32 of 2009 concerning Environmental Protection and Management):

- a. The state guarantees that the use of natural resources will provide the greatest benefit for the welfare and quality of life of the people, both present and future generations.
- b. The state guarantees the rights of citizens to a good and healthy environment.

- c. The state prevents the use of natural resources that cause pollution and/or environmental damage.

A healthy environment determines human survival, so violations concerning the environment are categorised as human rights violations in public matters. Therefore, in order to enforce environmental law, it is necessary to improve and synchronise environmental management regulations with other regulations, especially the Human Rights Law.

Human rights are rights that are inherent in human nature and life. The state plays a big role in fulfilling human rights because the state is formed on a collective agreement. To fulfill human rights, especially protection from attacks and dangers that arise from the power possessed by the formation of society in the form of the state, the relationship between individuals and the community (in this case the state) is of utmost importance.

Environmental degradation is caused not only by natural factors but also by human factors due to lack of attention to the environment. Therefore, community members are expected to always play an active role in environmental management. This will foster public awareness of the importance of maintaining environmental safety. The government must support the involvement of the community in controlling the management of natural resources and the environment.

The right to a good and healthy environment as stated in various laws is associated with the obligation to protect the environment. This means that the environment with its resources is a shared wealth that can be used by everyone; it must be safeguarded for the benefit of society and for the benefit of future generations. Without a good and healthy environment, humans cannot fulfill their needs properly because the source of resources is nature. If food and drinks are not produced from a good and healthy environment, human needs will be disrupted. On the basis of the environment, humans can create and develop talents or art. A healthy environment is very important for the survival of the components of living things that exist on earth.

A healthy environment is a sign of good living system by humans. On the contrary, if the environment is not well maintained, human life will be affected both directly and indirectly (Majda El Muhtaj, 2013: 194). Human rights and the environment have a direct link in improving the condition of the nation. This is because legal protection of human rights is a way to protect the environment, so human rights and the environment are dependent on each other. However, because there are many violations of human rights in various countries, environmental degradation also occurs often. A country must be able to provide environmental protection arrangements so that it can simultaneously protect human rights, especially those relating to the right to life. The right to life simply means the right to get a decent life and livelihood, including a good and healthy environment. The criteria for a good and healthy environment are the right to a healthy environment,

the right to a healthy life, the right to protection of property, and the right of protection for rural communities.

A good and healthy environment allows humans to develop optimally, in harmony and balance. The existence of this guarantee provides the motivation for everyone to demand from the government a good and healthy environment. Therefore, it is also an obligation for the state to always create a good and healthy environment for its citizens and continuously make efforts towards environmental improvement and sanitation efforts.

Conclusion

The right to a healthy environment is a human right that applies universally, so it is appropriate to apply human rights to the environment in the 1945 Constitution of the Republic of Indonesia. The implication is that the state is responsible for providing a good and healthy environment for its citizens, but at the implementation level, it has not shown positive change regarding respecting, protecting and fulfilling the right to a healthy environment. Therefore, law enforcement related to the environment should be enhanced by changes and synchronisation of legislation as well as active cooperation between the government and the community in dealing with environmental issues based on the principles of justice and transparency, so that the right to a good and healthy environment can be realised.***

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