

Intergenerational Environmental Justice as a Human Rights Fulfillment

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Abstract

Environmental issues are currently getting a lot of attention both in Indonesia and internationally. The rise of irresponsible deforestation, air pollution in big cities, irresponsible industries for the waste produced, the use of goods that are difficult to decompose, and so on are examples of how bad environmental conditions are today. In fact, the guarantee for a healthy environment is stated in the 1945 Constitution of the Republic of Indonesia. In addition, the environment is also regulated separately in Law Number 32 of 2009 concerning Environmental Protection and Management. The principle of sustainable development should be applied in carrying out all activities that affect the environment. However, the present generation who are responsible for the availability and preservation of natural resources for future generations so that intergenerational justice can be realized.
Keywords: *Intergenerational Justice; Environmental justice; Human Rights; Sustainable Development.*

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Introduction

Indonesia is a country with a wide geographical landscape and has many kinds of natural resources, both renewable and non-renewable. In utilizing all these potentials, it is necessary to apply an environment-oriented law, where the aim to meet human needs is still fulfilled but does not rule out the preservation of nature. This needs to be implemented because population growth always occurs in Indonesia. Data from the Central Statistics Agency states that in 2020 the population in Indonesia is 270.20 million people. This number has increased by 32.56 million people from 2010.¹

Recognition of customary forests, mining in protected forests, waste management, climate change are environmental problems faced by our country

¹ Badan Pusat Statistik, 'Hasil Sensus Penduduk 2020' (2021) <https://www.bps.go.id/website/images/Hasil-SP2020-ind.jpg>, accessed 23 October 2021.

today. In fact, a healthy environment is one of the rights enshrined in Article 28H of the 1945 Constitution of the Republic of Indonesia. The right to a healthy environment is considered very vital so that it is aligned with other human rights.

The current justice-based natural resource governance needs to be implemented. The environment is one thing that must be considered in development. This is inseparable from the principle of sustainable development. In the principle of sustainable development, the priority aspect is not only economic, but also social and environmental aspects. The general concept of sustainable development is to ensure the availability of the existing environment so that it can still be managed and utilized for both present and future generations.

In the regulation that covers the environment in Indonesia, namely Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH), there has been much mention of sustainable development itself. It should be noted that in an effort to realize sustainable development, justice is also needed. Justice in this case is related to ecological justice and social justice. Justice is also not only for intra generation, but also for intergenerational. The problem is, how do you actually achieve justice? And has this concept of justice been contained in the existing environmental regulations in Indonesia?.

UUPPLH and Sustainable Development

One of the development capital is natural resources. Natural resources are part of the biotic and abiotic environment whose existence cannot be separated from human life.² Indonesia's geographical position, which is located between two oceans and two continents and is crossed by the equator, makes Indonesia a country rich in biodiversity. There is a reciprocal relationship between biotic components and abiotic components so that they influence each other.³ This reciprocal relationship is also stated in Article 1 point 5 UUPPLH.

² Abubakar Sidik Katili, 'Kebijakan Pemanfaatan dan Pengawasan dalam Pengelolaan Sumber Daya Alam' (2009) 2 Jurnal Legalitas.[71-80].

³ A.M. Yunus Wahid, *Pengantar Hukum Lingkungan* (Prenada Media 2018).[19].

The availability of natural resources, both biological and non-biological, can be threatened in terms of quality and quantity due to damage that exceeds the standard criteria for environmental damage. Therefore, we need a set of regulations that provide limits on the use of natural resources. In the sociosystem approach, where there is a kinship system between humans and technology, population, economics, science, health, law, and so on, humans are always related to various aspects of life, both natural and artificial resources. From the sociosystem, it is clear that the relationship is intact and influences each other in forming stability.⁴

Sociosystems in ecological studies are very important to deal with the development of population growth and its effects on the environment. One example is that currently with population growth in Indonesia and changes in consumption patterns, the waste generated from daily activities will also increase in volume, type, and characteristics.⁵ Of course, if the waste management is not carried out from upstream to downstream, it will cause further problems.

People in Indonesia have the right to a good and healthy environment, because this is a human right and a constitutional right. The obligation to carry out environmental protection and management is not only carried out by the government, but also by the community and stakeholders. The principles of sustainable development can be used as the basis for protecting and managing the environment today.

In Article 3 UUPPLH, one of the main objectives of environmental protection and management is to ensure the fulfillment of justice for present and future generations. This is also the difference between Law Number 23 of 1997 concerning Environmental Management and UUPPLH, which in the implementation of environmental protection and management must implement the integration of aspects of transparency, participation, accountability, and justice. Justice in UUPPLH implies that environmental protection and management must reflect proportional justice for every citizen, both across regions, across generations, and across genders.⁶

⁴ *ibid.*[20-21].

⁵ Undang-Undang Nomor 18 Tahun 2008 tentang Pengelolaan Sampah.

⁶ Penjelasan UUPPLH.

The principle of sustainable development according to Sands is divided into four elements, namely:⁷

- a. Justice intergenerations;
- b. Sustainable use;
- c. Intra-generation justice;
- d. The principle of integration.

Intergenerational justice which is the focus of this article makes us who live in the present also obliged to provide natural resources that can be managed by future generations. Environmental justice means fair treatment and meaningful involvement of all people regardless of national origin, race, skin color, and so on.⁸ Environmental justice aims not only to gain economic benefits, but also how to maintain the function of nature itself and its benefits to society.

The concept of sustainable development was discussed at the Stockholm Conference (United Nations Conference on the Human Environment) in 1972 which recommended that development be carried out with due regard to environmental factors. Sustainable development is not a new thing both globally and nationally.⁹ The Stockholm Conference discusses environmental problems and their solutions so that development can be carried out by taking into account the carrying capacity of the environment. Sustainable development which has the main characteristic that it does not damage the environment inhabited by humans, is carried out with integrated and comprehensive policies, and takes into account the needs of future generations, is an effort to repair environmental damage that occurs.¹⁰

In Indonesia, the implementation of sustainable and environmentally sound development is used as the principle of implementing national economic

⁷ Andri G. Wibisana, 'Perlindungan Lingkungan dalam Perspektif Keadilan Antargenerasi: Sebuah Penelusuran Teoritis Singkat' (2017) 46 *Jurnal Masalah-Masalah Hukum*. [9-19].

⁸ Margie Turrin, 'Environmental Justice Through the Eyes of The Next Generation of Hudson River Educators' (Columbia Climate School, 2020) <https://news.climate.columbia.edu/2020/08/31/next-generation-hudson-river-educators/> accessed 24 October 2021.

⁹ Suardi, *Problematika Penerapan Prinsip Sustainable Development dalam Pengelolaan Lingkungan Hidup dan Implikasinya Terhadap Pemenuhan HAM* (2014) Vol 8 No 4 *Jurnal Fiat Justisia*. [96-109].

¹⁰ Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional* (Airlangga University Press 2000). [27].

development. Sustainable development is carried out by the state, government, and all stakeholders in the protection and management of the environment. This is an effort to realize Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia where a good and healthy environment is a human right and constitutional right for every Indonesian citizen.¹¹

Prior to the issuance of Article 28 paragraph (1), Law Number 4 of 1982 concerning Basic Provisions for Environmental Management (hereinafter referred to as UULH) which is the first law owned by Indonesia that regulates the environment, has contained the idea of sustainable development.¹² Article 3 of the UULH states that environmental management is carried out to support sustainable development for improving human welfare. Article 4 of the UULH states that one of the objectives of environmental management is the implementation of environmentally sound development for the benefit of present and future generations. From Article 3 and Article 4 of the UULH, although using the term environmentally sound development, the term is in line with sustainable development, where the idea of intergenerational justice has been seen. In Law Number 23 of 1997 concerning Environmental Management (hereinafter referred to as UUPPLH), it has included the principle of sustainable development as its principle. Article 3 of the UUPPLH states that one of the principles of environmental management is sustainable development with an environmental perspective. In addition, Article 4 of the UUPPLH states that one of the targets of environmental management is to ensure the interests of present and future generations.¹³

In Law Number 32 of 2009 concerning Environmental Protection and Management (hereinafter referred to as UUPPLH), Article 1 number 3 states that “sustainable development is a conscious and planned effort that combines environmental, social, and economic aspects into development strategies to ensure

¹¹ Penjelasan Umum Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

¹² Andri G. Wibisana, *Pembangunan Berkelanjutan: Status Hukum dan Pemaknaannya*, (2013) Tahun ke-43, Nomor 1, Janurai-Maret, Jurnal Hukum dan Pembangunan.

¹³ *ibid.*

the integrity of the environment as well as the safety, ability, welfare, and quality of life of present and future generations. Sustainable development is even used as an integrated basis in the development of a region and/or policies, plans, and/or programs contained in the strategic environmental study (KLHS) which must be owned by every local government.

The decline in the quality of natural resources has the potential to hamper Indonesia's economic growth, which is currently still growing in the natural resources sector. Indonesia, which has a high vulnerability to disaster risks and climate change, causes greater losses, losses, and damages in the future if not handled properly.¹⁴

Pancasila as the Basis of Environmental Justice

One of the rules of national development for 2020-2024 is ensuring justice. Justice in this case is development carried out to provide benefits that are in accordance with what are the rights of citizens, are proportional and do not violate the law in creating a just and prosperous society.¹⁵ Justice can be related to the fifth principle of Pancasila, social justice for all Indonesian people, which is also related to sustainable development. In the fifth precept of Pancasila, there are several important values, including developing a fair attitude towards others, maintaining a balance between rights and obligations, and respecting the rights of others. If these three values are related to sustainable development where the main principle is to ensure the availability of natural resources for future generations, it is understandable that this is a manifestation of social justice. Managing, utilizing, and protecting natural resources by using them wisely can be a manifestation of the value of maintaining a balance between rights and obligations, and respecting the rights of others. Although we who live in the present can utilize and manage natural resources, both renewable and non-renewable, we must remain wise

¹⁴ Kementerian PPN/Bappenas Indonesia, *Rencana Pembangunan Jangka Menengah Nasional IV 2020-2024* (2019).[177].

¹⁵ Kementerian PPN/Bappenas Indonesia, *Loc. Cit.*[26].

in using them, because not only us but also future generations who must be guaranteed the right to manage and utilize these resources. natural. Therefore, sustainable development can be a way to realize social justice, as well as justice between generations.

The basis of the application of environmental justice aspects can also be taken from the fifth principle of Pancasila, namely “social justice for all Indonesian people”. Social justice can support the realization of ecological justice or environmental justice. In an effort to achieve social justice, social development has the aim of increasing community capacity which includes education, health, employment, housing, and poverty alleviation, as well as mobilizing and managing resources to produce sustainable improvements. Although development aims to support economic growth so as to improve the quality of human life, environmental sustainability must be maintained by using natural resources wisely, fairly, efficiently, and responsibly.¹⁶

The RPJMN 2020-2024 states that the wealth of natural resources in Indonesia has given birth to uniqueness, both biological resources and local knowledge and culture. The community has a collective tradition and ethics in preserving the environment. Tradition as local wisdom in preserving the environment is threatened with extinction due to exploitative and extractive development. Development that takes as much natural resources as possible without paying attention to sustainability aspects is a form of classical environmental law that puts forward use-oriented law, while at this time it should be wiser to apply modern environmental law that prioritizes environmental protection. This exploitative development has the potential to produce environmental pollution and damage, deforestation, increased rates of biodiversity loss, decreased ecosystem functions, decreased environmental carrying capacity and capacity, thus causing an increase in ecological disasters.

¹⁶ *ibid.*[301].

Conclusion

Green governance is needed in managing natural resources so that all existing biological diversity can continue to exist and be utilized by future generations. Environmental regulations also need to be adjusted so that intergenerational justice can be realized. The principle of sustainable development which is currently also being applied by the Indonesian state has an important role for generations living now and in the future because the behavior towards environmental management carried out by generations living today affects future generations, such as availability of natural resources. With the existence of sustainable development where there is a combination of three aspects, namely economic, social, and environmental, justice will be realized in line with Pancasila.

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