

CONSTRUCTING NATIONAL ENVIRONMENTAL LEGAL POLICIES IN RESPONSE TO THE CHALLENGES OF A WORLD FREE MARKET IN THE AGE OF GLOBALIZATION

Akbar Taufik Amrullah¹, Farida Nur Hidayah²

^{1,2}Institute Technology of Kalimantan
akbar.taufik@lecturer.itk.ac.id, farida.hidayah@lecturer.itk.ac.id

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Abstract

This study's objective is to investigate the policy of national environmental law politics in light of the problems posed by the global free market in the era of globalization. This study employs a legal normative research methodology with a statute approach. The study's findings indicate that environmental protection and management based on environmental legal standards necessitates a balance between economic interests, the maintenance of environmental functions, and social conditions. All this time, the two objects seemed to be divided from each other. Government and the corporate sector are perceived as entities that place commercial interests above environmental protection. Economic development alone has been ineffective in reducing poverty, averting social conflicts caused by unequal access to natural resources, and increasing the rate of environmental degradation. A legal settlement that can be used as a guide for environmental law enforcement officials against environmental laws and regulations that contain criminal penalties that are not in harmony with the provisions of Law No. 32 of 2009 as one of the legal adages: (i) *lex specialis derogat legi generali*, (ii) *lex superior derogat legi inferiori*, and (iii) *lex posterior derogat legi anteriori*.

Keywords: Politics, Environmental Law, Globalization

INTRODUCTION

Trade liberalization is a policy whereby nations agree to eliminate tariff and non-tariff obstacles to trade flows. How to cope with the *trade-off* between achieving development needs on the one hand and maintaining environmental sustainability on the other is an essential issue in economic growth. The 1945 Constitution stipulates that the state and all stakeholders are obligated to protect and manage the environment in the implementation of sustainable development so that the Indonesian environment can remain a source and support of life for the Indonesian people and other living creatures. This obligation is bolstered by the existence of Law No. 32 of 2009 on Environmental Management and Protection, which is a form of Indonesian government policy on the environment.

Realistically speaking, it is understood that commercial industry and the environment are incompatible situations. In actuality, one must be sacrificed for the existence of the other. Currently, globalization as a process of trade liberalization with a capitalist motive is becoming increasingly apparent. This illness poses a significant threat to human survival on Earth. The current pro-market (industrialization) global economic system is frequently cited as a cause of environmental degradation. More than a quarter of global merchandise trade consists of commodities produced directly from the global economy's natural resource basis. In comparison to industrialized nations, exports of these items are dominated by emerging nations. This circumstance is advantageous not just because it generates foreign currency, but also because trade based on natural resources endangers the natural resources of emerging nations.

As a result of globalization, the state is unable to ignore international relations. As a member of ASEAN, Indonesia has signed the *Charter of the Association of Southeast Asian Nations* through Law No. 38 of 2008 concerning Ratification of the ASEAN Charter, making Indonesia automatically obligated and bound to comply with international accords. The environmental development paradigm for Indonesia necessitates the freedom to utilize and exploit existing natural resources. Development (developmentalism) is only possible through the use of natural resources. The United Nations (UN) Resolution on the Utilization of Natural Resources reveals the ambition of developing nations to exploit natural resources about: "*Permanent Sovereignty over Natural Resources*". It is mentioned in point 1 of the Declaration that:

"The right of people and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and well-being of the people of the state concerned".

The period of globalization has resulted in a culture of individualism in which individuals disregard environmental issues. According to *kompas.com*, Jakarta is the second city in the world with the poorest air quality. This can not be isolated from the impact of rapid industrial expansion as a result of the impact of trade liberalization. In the concept of the rule of law, making the law an instrument that prohibits or impedes rulers and individuals from acting arbitrarily. The law establishes limits for individuals and authorities in every social interaction, safeguarding public peace and justice in the context of achieving the public good. Consequently, without the enactment of law and real and fair law enforcement in society, there will be anarchy and arbitrariness, regardless of whether it is carried out by the state or by individuals.

Recognizing the need for environmental management to preserve the ability of a harmonious and balanced environment to support sustainable development, environmental law policies and environmental law enforcement in Indonesia must be further discussed in order to maximize the prosperity of the people by preserving environmental functions and balancing life and sustainable development.

RESEARCH METHOD

This study employs a legal-normative methodology, employing a research methodology in the form of a statute approach, statutory strategy (*Statute Approach*) This is accomplished by studying all applicable laws and regulations pertaining to the legal concerns at hand. The source of the data is secondary legal information, specifically Law No. 32 of 2009 on Environmental Protection and Management.

The technique employed to obtain data for this study is literature review. The technique of data analysis employed is descriptive analytical research, and the analytical form of the data employed is a qualitative approach to primary and secondary data.

RESULT AND DISCUSSION

The policies of Indonesian environmental legislation in the global free market throughout the era of globalization.

Indonesia is currently gaining recognition as a developed nation engaged in international economic activity on a free market. In order to develop a trading system that is in compliance with the mandate of the 1945 Constitution, which seeks the prosperity of the Indonesian people, Indonesia faces its own issues in managing the pace of trade and environmental concerns. Globalization exhibits two characteristics, the first of which is the economic and business dimension (*economic and corporation globalization*). Second, the state and political dimension (political and state globalization). These two dimensions can be observed in the policies planned and devised by industrialized countries that are members of the G8 by way of three globalization engines, namely *International Financial Institutions (IFI)*, *the World Trade Organization (WTO)*, and *Multinational Corporation/MNC*.

As stated in the Pancasila values and Article 33 of the 1945 Constitution, revolutionary legal development entails consciously and fundamentally transforming the legal system of economics and natural resource management, which has thus far been of liberal quality and under the control of developed countries, into a legal system of economics and management of natural resources and the environment with family or populist quality. The economic law system with familial or populist characteristics is really a legal system that prioritizes the *rule of morals* or the *rule of justice* over the *rule of law*. The Pancasila economic system is thus reciprocally connected with the legal system. This is significant because Pancasila represents the nation's historical ethos, which seeks to get a deeper awareness of oneself and actualize it on a global scale.

General provisions of Article 1 number 2 of Law no. 32 of 2009 on Environmental Protection and Management (UU-PPLH), environmental protection and management is a systematic and integrated effort to preserve environmental functions and prevent environmental pollution and/or damage, including planning, utilization, control, maintenance, supervision, and law enforcement. Environmental law has evolved rapidly, not only in terms of its legal function as protection, control, and certainty for the community (*Social Control*) with the role of *Agent of Stability*, but also as a means of development (a tool of social engineering) with the role of *Agent of Stability Development* or *Agent of Change*.

The development strategy of the legal system in Indonesia must also pay attention to the concept of economic law development and sustainable natural resource management. This means that development is no longer simply a matter of dismantling the articles of a law or creating new ones, but also of paying attention to and empowering the carrying capacity of other aspects, namely:

1. Legal Education,
2. Reform of Substantive Law,
3. A Credible and Effective Dispute Settlement Process;
4. Augmentation Of Business Ethics,
5. Legislative Members' Nationalist Spirit Should Be Nurtured.;
6. Commitment of the president and vice president, whose operations are conducted in a coordinated manner and who continually support one another.

The Indonesian government bases its environmental management and protection policies on the contemporary era, where trade liberalization is a driving factor for national economic progress in the era of globalization. In addition to affecting the rate of national economic growth, smooth investment by foreign investors in diverse industrial sectors such as mining, retail, and plantations has an effect on environmental problems. Therefore, the Indonesian government implements specific measures for the administration and preservation of environmental law without impeding the liberalization of trade on the global free market.

The environmental policy direction of the 2005-2025 RPJP pursuant to Law No. 27 of 2007: "The direction of the RPJP for 2005-2025, particularly the Environment"

1. Utilizing natural resources that are renewable. Utilizing renewable natural resources wisely, optimally, efficiently, and responsibly by balancing all functions and benefits.
2. Manage natural resources that are nonrenewable. The management of nonrenewable natural resources, such as mining materials, minerals, and energy sources, is intended not for direct consumption, but as inputs, both raw materials and fuel, for production processes that might maximize domestic added value.
3. Maintain energy availability security. Maintaining the security of energy availability entails supplying energy in a regulated interval between the amount of energy source availability and the level of community demand.

4. Conserve and protect water resources. By conserving the function of the water catchment region and the availability of ground water, management is geared towards ensuring the carrying capacity's sustainability.
5. Develop the ocean's riches. Future growth must take into account the exploitation and oversight of a vast marine area. Utilization of these resources through a multi-sectoral, comprehensive, and integrative strategy to reduce conflict and maintain its sustainability.
6. Enhance the added value of the distinctive and unique usage of tropical natural resources. To be able to generate high-added-value goods and services, product diversity and innovation in the processing of natural resources will continue to be cultivated.
7. Consider and manage the variety of natural resource types that exist in each region. Natural resource management to promote the well-being of local communities, create important and fast-growing areas, and bolster regional support for sustainable development.
8. Natural catastrophe mitigation in accordance with Indonesia's geological conditions. Develop the community's capacity for early detection systems, socialization, and dissemination of knowledge regarding its susceptibility to natural disasters.
9. Control pollution and environmental damage. The objective of economic growth is the utilization of ecologically friendly environmental services. Environmental conditions restoration to raise the carrying capacity of the environment.
10. Increase the capacity for managing natural resources and the environment. Contains institutional reform, law enforcement, qualified human resources, the application of environmental ethics, and the internalization of environmental ethics in production, consumption, formal education, and daily activities.
11. Raise public consciousness to appreciate the environment.

In relation to the legal system's influence on the creation of economic rules and regulations and the management of natural resources, the Indonesian legal system is currently experiencing pressure from both above and below. Despite the fact that *common law* currently dominates Indonesia's legal tradition, once the regional autonomy law was implemented in 2001, the customary law system and the Islamic legal system will also emerge as values to be considered in some sectors. In other words, the pull from below on the Indonesian legal system is the creation of a microtrend of legal system nationalism in a number of Indonesian regions. Legal globalization exerts an upward force on the legal system in Indonesia.

Economic development alone has been ineffective in reducing poverty, averting social conflicts caused by unequal access to natural resources, and increasing the rate of environmental degradation. This condition causes the Indonesian state to fall further into a state of immense destitution accompanied by the rise of horizontal disputes over the utilization of natural resources and vertical conflicts as a result of policies that disregard the people's sense of justice.

Environmental Law Enforcement in Indonesia in the Age of Globalization

Environmental law enforcement in Indonesia involves planning and taking action (*Compliance and Enforcement*). Environmental law enforcement in a broad sense, including preventive and punitive measures. The definition of preventive is identical to that of compliance, which includes negotiation, supervision, information, and counseling, whereas the definition of repressive includes investigations, as well as the implementation of administrative and criminal sanctions. Due to the difficulties of establishing and determining the standard criteria for environmental harm, enforcing environmental management laws is still difficult to achieve at present. Efforts to implement environmental legislation through criminal law are highlighted as one of the three basic challenges in criminal law in laws that have a function in social engineering (*Social Engineering*), include the conception of a criminal conduct (*criminal act*), criminal responsibility and penalties (*sanction*) both criminal and administrative. In accordance with its mission, which is not merely a tool of order, environmental law includes the objective of community revitalization (*social engineering*). The importance of legislation as a tool for social engineering in environmental law. According to Siti Sundari Rangkuti, there are numerous administrative punishments that can be used to regulate environmental pollution in Indonesia, including the following:

- 1) Company bankruptcy "*sluiting van een inrichting*": codification 14 HO.
- 2) Machine cease "*buitengebruikstelling van een toestel*": codification 14 HO.
- 3) Article 62, paragraph 1 of the Government Regulation of B3 Waste Management.
- 4) Temporary suspension of operational activities: paragraphs 3 and 4 of Article 62 of the Government Regulation on B3 Waste Management.
- 5) Temporary suspension and cancellation of operating licenses: article 62, paragraph 2 of the B3 Waste Management Government Regulation.

- 6) Written warning and IUI bookkeeping: articles 33 and 34 of Decree of the Minister of Industry and Trade Number 590 of 1999.
- 7) Revocation of a "intrekking of a license" permit: article 12 paragraph (1) HO and article 10 of Government Regulation No. 13/1995 jo. In accordance with Article 35 of Minister of Industry and Trade Decree No. 590 of 1999 and Article 62, Paragraph 2 of the Government Regulation on B3 Waste Management.

Environmental Protection and Management Law No. 32 of 2009 controls criminal provisions in Chapter XV addressing Criminal Provisions. Article 97's qualifications for environmental criminal actions are typically classified as crimes. The existence of the notion of trial and inclusion in each of the offenses, the calculation of the expiration date being longer than the violation, and the danger of criminal deprivation of liberty in the form of jail are all repercussions of the category of criminal offenses. In addition to Law No. 32 of 2009, environmental offenses are also governed by:

1. the Criminal Code (KUHP), Article 187, Article 188, Article 202, Article 203, Article 502, and Article 503.
2. UU No. 5 of 1960 on Fundamental Agrarian Regulations/UUPA.
3. UU No. 11 of 1967 about Mining.
4. UU No. 1 of 1973 respecting the Indonesian Continental Shelf.
5. UU No. 11 of 1974 Regarding watering.
6. UU No. 5 of 1983 Regarding the Exclusive Economic Zone of Indonesia (EEZ).
7. UU No. 5 of 1984 Regarding Industry.
8. UU No. 9 of 1985 Regarding Fishery.
9. UU No. 5 of 1990 Concerning the Protection of Biological Resources and Their Ecosystems.
10. UU No. 41 of 1999 Regarding forests
11. UU No. 7 of 2004 Regarding Water supplies.

Environmental management or control over all natural resources and the environment is not just the responsibility of the government, but also of the private sector. Companies and organizations are obligated to fulfill social duties for the community and environment surrounding their operations. Corporate social responsibility is the effort to establish a healthy, balanced connection with the environment, values, customs, and culture of the community in which a business operates. Corporate social responsibility for the community and environment surrounding a company's operations is known as *Corporate Social Responsibility*. *Administrative Environmental Law Enforcement* can be conducted both preventively and punitively. Supervision is utilized for the preventative enforcement of administrative environmental legislation, whereas administrative sanctions are utilized for the repressive enforcement of environmental law.

Consequently, a legal settlement that may be used as a reference for environmental law enforcement officers against environmental laws and regulations that contain criminal penalties that are not in compliance with the terms of Law No. 32 of 2009, as one of the maxims in legal science: (i) *lex specialis derogat legi generali*, (ii) *lex superior derogat legi inferiori*, dan (iii) *lex posterior derogat legi priori*. In the enforcement of environmental (criminal) legislation, the employment of the three adages mentioned in the context of punishment for environmental offenses is a "legal norm conflict solution" that must be implemented "case-by-case".

Indonesia has signed and ratified a number of environmental agreements as an indication of the Indonesian government's commitment to preserving the environment amidst the onslaught of free commerce in this globalized era. So that future generations can continue to enjoy the benefits and contribute to Indonesia's sustainable development.

CONCLUSION

On the basis of the research and discussion conducted, it can be concluded that the 2005-2025 long-term development plan (RPJP) for the environment as stipulated by Law no. 27 of 2007 outlines the direction of the Indonesian government's environmental law policy in the free market era of globalization. Legal development based on the major ideals of Pancasila and the 1945 Constitution, including the values inherent in each of Pancasila's precepts, namely a legal system that prioritizes populist or familial principles and lays a greater emphasis on the *rule of morality* than the *rule of law*.

Due to the difficulties of establishing and determining the standard criteria for environmental harm, enforcing environmental management laws is still difficult to achieve at this time. Efforts to enforce environmental law through criminal law are how the three main problems in criminal law are outlined in laws that have a role in social engineering (social engineering), including the formulation of criminal acts (criminal act), criminal responsibility, and criminal and disciplinary sanctions (sanctions). In addition to serving as a tool for maintaining order, environmental law also has the objective of revitalizing communities (social engineering).

The author suggests developing a more autonomous and responsive legal system development concept with a more holistic, comprehensive, and far-reaching way of thinking, so that it can tackle future challenges posed by a variety of national concerns. Carrying out legal development in the context of developing the legal system, is no longer just changing the articles in the legislation, but also a substantial part of the development of national law itself.

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