

## THE MODEL OF ENVIRONMENTAL REGULATION BASED ON AN ECOLOGICAL JUSTICE

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### **Abstract**

*This research was conducted to find out how strong and efficient the policies made by the government in creating a good living environment in order to achieve an ecological justice. This study uses the Socio Legal Research with the sociology of law approach (sociology jurisprudence). Based on several incidents of environmental damage, one of which was released by AMAN (Alliance of Indigenous Peoples of Indonesia) recorded that there were 40 cases of criminalization and violence against indigenous peoples in 2020. Of the 40 cases, there were 39,069 indigenous people grouped into 18,372 heads of households experience losses both economic, social and moral losses. The total area of the 40 cases reached 31,632.67 hectares. The regulations issued by the government through Act No. 32 of 2009 concerning PPLH its application has not been optimal in environmental management efforts based on ecological justice, this is evidenced by the large amount of environmental destruction especially customary forests carried out by corporations for the benefit of plantations, animal husbandry and others.*

**Keywords:** Ecology; Environment; Justice; Regulation.

### **A. INTRODUCTION**

Unknowingly or not, so many graces of the almighty God to the people of Indonesia with the establishment of abundant natural resource wealth consists of approximately 17,500 islands.<sup>1</sup> All matters related to the earth cannot be separated from Indonesian society, this is because the development of society resulted from abundant natural resources and land, both in terms of culture, social up to support the economy.<sup>2</sup>

NKRI is an archipelagic country with archipelago characteristics, this is confirmed in Article 25A of the 1945 Constitution.<sup>3</sup> The biological wealth that comes from the land is forest. Indonesia is an archipelagic country that has forests spread over various islands namely Sumatera, Kalimantan, Sulawesi, Irian Jaya and the island of Java.<sup>4</sup> In article 33 paragraph 3 of the 1945 Constitution earth and water and the natural

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1 Yonathan Pongtuluran, *Manajemen Sumber Daya Alam & Lingkungan*, Yogyakarta, CV. Andi Offset, 2015, page. 49.

2 Stivani, Marantika poro, Ali Imron, Wika Yudha Shanty, *Perlindungan Hukum Hak Tradisional Masyarakat Hukum Adat Terhadap Tindakan Individualisme Tanah Ulayat Untuk Tujuan Kepentingan Komersia*, *Bhirawa Law Journal*, Vol. 2, No. 1, 2021, page.74.

3 Article 25A of the 1945 Constitution of the Republic of Indonesia, t.t.

4 Dhika Laksono, *Paru-Paru Dunia*, Surabaya, CV Media Edukasi Kreatif, 2022, page. 1

resources contained therein are controlled by the state and used for the benefit of the people's prosperity.<sup>5</sup>

Departing from the vastness of Indonesia which consists of oceans and forests and all that is contained therein which is very abundant become the main source of national income for Indonesia. Departing from this the author wants to know how much attention the state pays in making a policy relating to the environment based on ecological justice.

This research is a new study, this is evidenced by the existence of previous studies written by Lailiy Muthmainnah, Rizal Mustansyir, Sindung Tjahyani with the title "Capitalism, Ecological Crisis, and Intergenerational Justice: Critical Analysis of Environmental Management Problems in Indonesia" is research that has been published in a journal *Mosaic Humaniora* Vol. 20 No,1 . 2020.<sup>6</sup> This study explains that there has been an ecological crisis caused by modern rationality with an anthropocentric mindset that runs along with industrialization and capitalization, this is very different from this research which only focuses on government policies towards the environment based on ecological justice.

The purpose of this research the first to make a scientific contribution in the environment, especially environmental law, the second wants to know how strong and efficient the policies made by the government are in the form of a law to create a good living environment so that ecological justice is achieved.

## **B. RESEARCH METHODS**

Based on the explanation of the problem above, this research uses Socio Legal Research with the sociology of law approach (sociology jurisprudence). Review the efficiency of regulations related to environmental management regulations based on ecological justice based on the current environmental crisis.

## **C. RESULT AND DISCUSSION**

### **1. Government Policy in Creating Ecology-Based Environmental Justice**

Ecology is an understanding related to mutual interactions between living things and other living things and its relationship with the environment such as human-to-human relations or between humans and animals, animals and plants and micro-organisms.<sup>7</sup> The relationship that happened because each one needs the other, which is called an ecosystem.<sup>8</sup>

Rules relating to the management and utilization of natural resources basically manifested from article 33 paragraph (3) 1945 Constitution which says that the earth, water and the natural wealth

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5 Article 33 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia

6 Liliy Muthmainnah, et al., Kapitalisme, Krisis Ekologi, dan keadilan Intergenerasi: Anlisis Kritis atas Problem Pengelolaan Lingkungan di Indonesia, *Mozaik Humaniora*, Vol. 20, No. 1, 2020

7 Muhammad Sood, *Hukum Lingkungan Indonesia*, Jakarta, Sinar Grafika, 2019, page.3.

8 K.E.S. Manik, *Pengelolaan Lingkungan Hidup*, 2 ed., Jakarta, Kencana, 2018, page.2.

contained therein are controlled by the state which the overall results are intended for the welfare of the people.<sup>9</sup>

State-controlled natural resources in article 33 paragraph 3 of the 1945 Constitution does not mean the state has, However, it is the state that has the authority to regulate the allotment, use, supply and maintenance of earth, water and space. Determine and regulate the legal relationship between people and the earth, water and space. Regulates and determines legal relations between people and legal requirements regarding the natural resources contained therein, this is explained in article 2 paragraph 1 and 2 of the Act No. 5 of 1960 About Basic Agrarian Regulations.<sup>10</sup>

From Article 33 paragraph 3 of the 1945 Constitution As the highest rule hierarchy, derived rules are made relating to policies to protect and manage the environment life that is regulated clearly and firmly and set forth in a rule Act No. 32 of 2009 Concerning Environmental Protection and Management (UUPPLH).<sup>11</sup>

In article 1 point 1 and 2 UUPPLH Number 32 of 2009 explains that the environment is a unity between space and all objects, power, circumstances, and living things, including humans and behavior that can affect nature, livelihood continuity, and human welfare as well as living things. Therefore, it is necessary to protect and manage the environment in a systematic and integrated manner to preserve environmental functions and prevent pollution and environmental damage.<sup>12</sup> UUPPLH has a philosophy which means the right to a healthy environment is part of the human rights of every Indonesian citizen.<sup>13</sup>

Article 1 point 9 UUPPLH said that the natural resources contained in the environment consist of biological and non-living resources all of which form a unified ecosystem. As for what is said to be environmental destruction is a behavior or action that results in an immediate change or indirectly to the physical, chemical and/or biological characteristics of the environment until it exceeds the standard criteria for environmental damage.<sup>14</sup>

When talking about the environment, then it cannot be separated from the community and specifically customary law communities, This is because problems often arise due to natural damage carried out by a group of people who are only concerned with personal pockets by

9 Obet Robbani, et al., Inkoherensi Persetujuan Penggunaan Kawasan Hutan Pada Kawasan Hutan Lindung Untuk Kegiatan Pertambangan dengan Keadilan Ekologi, *Jurnal Discretie: Jurnal Bagian Hukum Administrasi Negara*, Vol. 2, No. 1, 2021, page.112.

10 Article 2 Paragraphs 1 and 2 of the Act No. 5 of 1960, *Concerning Basic Agrarian Regulations*, t.t.

11 Agung Budi Prastyo, et al., Model Perlindungan dan Pengelolaan Lingkungan Hidup dalam Mewujudkan Good Governance, *Sasi*, Vol. 27, No. 1, 2021, page. 86.

12 Act No. 32 of 2009 concerning, *Environmental Protection and Management*, t.t.

13 Nurul Listiyani, Dampak Pertambangan Terhadap Lingkungan Hidup di Kalimantan Selatan dan Implikasinya Bagi Hak-Hak Warga Negara, *Al'Adl*, Vol. IX, No. 1, 2017, page.80.

14 Marhaeni Ria Siombo, Kearifan Lokal dalam Perpektif Hukum Lingkungan, *Jurnal Hukum*, Vol. 18, No. 3, 2011, page.431.

destroying the location of the community, especially customary land by establishing industrial sites or plantations for economic purposes by sacrificing the rights of certain indigenous peoples who previously controlled the area.

Customary law community is a group of people who come from a common ancestor and live in a place with the group and has the aim of preserving binding legal norms which were previously agreed upon together.<sup>15</sup> Indigenous peoples are led by customary heads who is considered the most respected person. Customary law communities also have their own customary law institutions a place for solving problems between the indigenous people themselves or across the custom law.<sup>16</sup> According to the Human Rights Commission and conventions *internasional labour organization* 1986 said that the rights of indigenous peoples consists of the right to self-determination, the right to take part in government, rights to food, health, habitat and economic security, the right to education, the right to work, the rights of children, the rights of minorities and indigenous and tribal peoples, rights to land, rights to environmental protection, rights to good government administration, rights to fair law enforcement. Based on article 18B paragraph (2) of the 1945 Constitution emphasized that the state respects the Unity of Indigenous Peoples and their traditional rights provided that there are still customary law communities, in accordance with the development of society and the principles of the state, regulated in law.<sup>17</sup>

## 2. Analysis of the Effectiveness of Environmental Regulations Based on Ecological Justice

Environmental problems in Indonesia are often the scourge of endless problems.<sup>18</sup> Displayed very clearly before our eyes that there has been damage to the environment as a place for living things to live. Environmental damage results in damage to the ecosystem between biotic and abiotic elements. As a result of this environmental damage, it causes injustice both to humans and to the environment as a shelter for all types of living things.<sup>19</sup>

In article 28H Paragraph 1 of the 1945 Constitution 1945 Explains "that every person has the right to live in physical and spiritual prosperity, live and get a good and healthy living environment and have the right to obtain health services". Basically the article explains that the

15 Ellyne Dwi Poespasari, *Hukum Adat Suku Toraja*, Surabaya, CV Jakad Publishing, 2019, page.16.

16 Jawahir Thontowi, Pengaturan Masyarakat Hukum Adat dan Implementasinya Perlindungan Hak-Hak Tradisional, *Pendecta*, Vol. 10, No. 1, 2015, page.3–4.

17 Ibid., page.6.

18 Febrian Chandra, Peran Masyarakat Hukum Adat Dalam Mewujudkan Pelestarian Lingkungan Hidup, *Jurnal Ekopendia: Jurnal Ekonomi dan Pendidikan*, Vol. 5, No. 1, 2020, page.103.

19 Adry Yanto Saputra, Konsep Keadilan Ekologi Menurut Ensiklik Loundato Artikel 159-162 Dalam Perpektif Teologi Penciptaan, *AGGIORNAMENTO: Jurnal Filsafat-Teologi Kontekstual*, Vol. 3, No. 1, 2022, page.197.

state recognizes that rights to the environment as part of the basic rights of the Indonesian people and part of human rights.<sup>20</sup> This is reiterated in article 1 point 1 and 2 UUPPLH Number 32 of 2009.

On August 20, 2020 News Indonesia issued an online news with the title The *Besipae* indigenous people in NTT who were 'evicted' from the *pubabu* customary forest: Children and women are 'traumatized' and 'live under the tree'. In the news explained as many as 29 heads of families are forced to live under the roof of the sky and on mats, this is due to the damage done by the authorities. As a result of this need *Basapa* indigenous children and women experience trauma, even violence perpetrated by the apparatus happened the day after their traditional clothes were worn by the president in commemorating Indonesia's 75<sup>th</sup> independence day. The news explained that the land inhabited by indigenous peoples is 3,700 hectares will be used for purposes, plantations, animal husbandry and tourism.<sup>21</sup>

AMAN (Alliance of Indigenous Peoples of Indonesia) recorded that there were 40 cases of criminalization and violence against indigenous peoples in 2020. Of the 40 cases, 39,069 were indigenous people grouped into 18,372 household heads experience losses both economic, social and moral losses. The total area of the 40 cases reached 31,632.67 hectares.<sup>22</sup>

November 15, 2022 through online news, SindoNews.Com launched the news with the title Coal dust pollutes Marunda, community Requests Government Investigation. The news explains that on 10-13 November 2022 coal dust pollution occurred again in the Rusunawa Marunda area and its surroundings.<sup>23</sup> Many more news about pollution and environmental destruction carried out by certain corporations especially the destruction of natural customary forests for the development of plantations and so on, the government seems to ignore ecological justice for the sake of investment and solely for the income of the state.

Environmental issues are a hot topic from various circles due to natural disasters such as tsunamis, landslides, floods, storms, rains, even

20 Elly Kristiani Purwendah., Konsep Keadilan Ekologi dan Keadilan Sosial Dalam Sistem Hukum Indonesia Antara Idealisme dan Realitas, *Jurnal Komunikasi Hukum (JKH) Universitas Pendidikan Ganesa*, Vol. 5, No. 2, 2019, page.148.

21 Anyomi Amindoni, *Masyarakat Adat Bepae di NTT yang digusur dari Hutan Adat Pubabu; Anak-Anak dan Perempuan Trauma dan Hidup Dibawah Pohon*, News Inonesia, 2020, <https://www.bbc.com/indonesia/indonesia-53839101>.

22 Aliansi Masyarakat Adat Indonesia, *Resilensi Masyarakat Adat di Tengah Pandemi Covid-19: Agresi Pembangunan dan Krisis Hak Asasi Manusia (HAM)*, Aman.or.id, 2020, [https://www.aman.or.id/wp-content/uploads/2021/01/CATATAN-AKHIR-TAHUN-2020\\_AMAN.pdf](https://www.aman.or.id/wp-content/uploads/2021/01/CATATAN-AKHIR-TAHUN-2020_AMAN.pdf).

23 Muhammad Refi Sandi., *Debu Batu Bata Cemari Marunda, Masyarakat Minta Pemerintah Investigasi*, Sindo News. Com, 2022, <https://metro.sindonews.com/read/942093/170/debu-batu-bara-cemari-marunda-warga-minta-pemerintah-investigasi-1668499875>.

heat and drought can occur at any time. The entire disaster is a natural phenomenon that is closely related to human life.<sup>24</sup>

The rules made by the government as a whole have not been optimal and efficient in creating an environment based on ecological justice, even exacerbated by the birth of the work copyright law deemed not to support environmental sustainability due to problematic loading, including the abolition of environmental permits.<sup>25</sup> Minimizing public participation, obscuring strict liability or absolute liability, centralized supervision, minimize the operation of administrative sanctions, eliminating corporate criminal responsibility and eliminating environmental administration lawsuit schemes, with a load of rules like this, work copyright law cannot answer the problem of sustainable development which actually happened especially in the environmental sector. The existence of this Regulation is not a guarantee for environmental sustainability, several article papers are not in accordance with environmental sustainability on the grounds that this regulation was made to boost investment so that jobs are created.<sup>26</sup>

According to the opinion of the author of the book, especially the authorities must learn or adopt the norms run by indigenous peoples which has proven successful in preserving the environment, so as to create an ecologically just environment, even before environmental protection and management regulations or similar regulations or their derivatives apply.

Indonesia is a country rich in ethnic culture so as to generate good wisdom in managing the environment. For the customary law community, the earth and the environment are like a mother who nurtures, cares for and gives a good life, which they place as a morality of life. Placing as the morality of life so that they are not greedy in managing natural resources.<sup>27</sup>

Some of the local wisdom of indigenous peoples, such as local wisdom originating from the Javanese community *pranoto mangso, nyabuk gunung* by suggesting that the agricultural areas be planted with plants that can prevent erosion and make *sengke* and follow the contour lines. Inner Bedouins with great-grandparents and *pikukuh* forms and village precepts. The local wisdoms of this tribe play an important role in environmental management. The Balinese tradition of distributing water for agriculture is known as *subak*. *Karuhan* in Sunda and *zoning* in Papua governing the management of forest land and water, *lubuk* ban local wisdom used to conserve rivers, lakes and reservoirs within certain limits, and many other good local wisdoms to be applied in

24 Budiman, et al., *Dilema Transformasi Kearifan Lokal Masyarakat Adat Baduy*, 1 ed., Depok, PT RajaGrafindo Persada, 2020, page.2.

25 Rollys Suriani, Doris Rahmat., *Masa Depan Lingkungan dan Masyarakat Adat dalam Lingkaran Undang-Undang Cipta Kerja*, Jawa Tengah, Lakeisha, 2022, page.17.

26 Nila Amania, *Problematika Undang-Undang Cipta Kerja Sektor Lingkungan Hidup, Syariati*, Vol. VI, No. 2, 2022, page.212.

27 Danggur Konradus., *Kearifan Lokal Terbonsai Arus Globalisasi: Kajian Terhadap Eksistensi Masyarakat Hukum Adat, Masalah-Masalah Hukum*, Vol. 47, No. 1, 2018, page.82.

environmental management.<sup>28</sup> Local wisdom is carried out by limiting logging with the permission of traditional elders, as well as in terms of taking fish.<sup>29</sup>

In managing life, local wisdom is an important part that contributes to running it, Therefore, through legal construction, indigenous peoples must be protected by reconstructing laws and regulations related to natural resource management by adopting the entire culture of Indonesia's indigenous peoples who have been proven to be able to manage nature well,<sup>30</sup> and supported by government officials who have high integrity.

#### **D. CONCLUSION**

From the discussion above a conclusion can be drawn that Rules relating to the management and utilization of natural resources basically manifested from article 33 paragraph (3) of the 1945 Constitution 1945 which was then regulated UUPPLH Number 32 of 2009 that environment the unity between space and all things, forces, conditions, and living things, including humans and behavior which can affect nature, the continuity of life, and the welfare of humans and living things. Based on the problems of the environmental crisis described above environmental management is not yet optimal and efficient plus the issuance of a work copyright law whose contents do not contain environmental preservation under the pretext of boosting investment inflows. According to the author, policy makers must learn from indigenous and tribal peoples who have succeeded in preserving the environment.

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28 H. Munir Salim., Adat Sebagai Budaya Kearifan Lokal Untuk Memperkuat Eksistensi Adat Kedepan, *al-daulah*, Vol. 5, No. 2, 2016, page.247.

29 Hengki Firmanda S, Hukum Adat Masyarakat Petapahan dalam Pengeolaan Lingkungan Sebagai Upaya Pemenuhan Hak Masyarakat Adat, *Journal iaimnumetrolampung*, Vol. 2, No. 1, 2017, page.21–23.

30 Danggur Konradus, Kearifan Lokal Terbonsai Arus Globalisasi: Kajian Terhadap Eksistensi Masyarakat Hukum Adat, *Masalah-Masalah Hukum*, Vol. 47, No. 1, 2018, page.87.

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