



Relevance between Ecological Justice and Human Rights

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Abstract

This research aims to analyze how the relevance between ecological justice and human rights. This research is a normative legal research using statute approach and conceptual approach. Research results show that the environment is one of the aspects that affect the survival and welfare of humans. However, at the practical level, protection of the right to the environment is often misunderstood by parties who only exercise their rights to exploit the environment, without considering the protection of the environment itself, so that there is a dichotomy between human rights and environmental rights. In fact, in essence both rights are united. The relevance between human rights and ecological justice can be seen from the right to the environment which is an instrument in human rights, namely that one form of human rights is the right to a good and healthy environment, and this right to the environment will be fulfilled if ecological justice is realized.

Keywords: *Ecological Justice; Human Rights; Environmental Rights*

Introduction

Environmental damage issues are caused by consequences of the use of development patterns that tend to be orientated in pursuing economic growth. The mastery and exploitation of natural resources made solely for the economic benefit is a weak state's political will toward the protection of the environment. This can be seen from regulation aimed at development of investment that ignores the interests of conservation and sustainability of the environment (Sutrisno, 2007).

Environmental sustainability is an effort to preserve or preserve environmental function. This is done with the aim of keeping the environment alive to sustain the needs of present and future generations. This as it is defined in Explanation of Article 2 Letter b of the Environmental Protection and Management Act that everyone assumes responsibility for future generations and for one another in a generation by efforts to maintain ecosystem support and improve environmental

quality. However, ecosystem retention efforts and environmental quality improvements take little interest especially in economic and development activities.

Based on data from research conducted by WALHI, 159 million hectares of land have been plotted under extractive industry investment permits. The land area legally controlled by corporations is 82.91%, while the sea area is controlled by 29.75%. IPBES 2018 data also states that every year Indonesia loses 680 thousand hectares of forest and this figure is the largest in Southeast Asia. In addition, based on data collected by the Ministry of Environment and Forestry, it is noted that out of the 105 existing rivers, 101 of them are in moderate to heavily polluted conditions. From the results of WALHI's investigation from 2013 to 2019, data was quite alarming, where only 25 tycoons controlled oil palm land in Indonesia with a total forest area of 12.3 million hectares. Even though there are 50 to 70 million indigenous people who live and depend on the forest for their lives. In the last 20 years there has been deforestation in Papua covering an area of 663,443 hectares. Most of the deforestation was intended for the opening of oil palm plantations, namely an area of 339,247 hectares. However, only 194 thousand hectares have been planted with oil palm, and the rest are in a damaged condition (Walhi, 2021).

The impact of converting forest functions into extractive industrial areas raises various problems. During 2018 based on the report of the Consortium for Agrarian Reform, there were 410 agrarian conflicts where the total area of conflict was 807,177 hectares and involved 87,568 heads of households. As a result of extensive forest destruction, throughout 2020, the National Disaster Management Agency recorded that there were 2,925 natural disasters in Indonesia, including landslides, floods, tornadoes, droughts, heat waves and forest and land fires. From these natural disasters, from 2017 to 2018 there was a threefold increase in the number of fatalities, where the previous number of fatalities was 3.49 million people to 9.88 million people.

Talking about victims, in the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, it is stated that victims are persons who, individually or collectively have suffered harm, including physical or mental injury, emotional suffering economic loss or substantial impairment of their fundamental rights, thought acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power (United Nations Centre for Human Rights, 1993).

The definition of "loss" according to the resolution includes "physical or mental injury", "emotional suffering", "economic loss" or "substantial impairment of their fundamental rights". Environmental problems are becoming more complex because they involve ethical issues, both social and business, so that protection of the environment is not just protection of nature, flora and fauna (the ecological approach) but also protection of the future of humanity which may suffer from environmental degradation (Muladi, 2002).

From this description it can be understood that the victims of environmental pollution and/or damage are very broad. Natural resources, both living and non-biological, energy and conditions as well as other living things also became victims of this incident, so it is not entirely correct if the so-called victims of environmental damage are only humans, because in many cases the pollution or destruction of the environment is the cause. the main victim is the environment itself. Therefore, the environment as a "victim" also has rights that need to be protected from and due to actions that damage it. Based on this, a concept called the "right of nature" emerges.

Awareness of the existence of natural rights has encouraged people to fight for ecological justice. This ecological justice is viewed from two sides. The first side sees ecological justice as part of social justice because it views the environment as resources that must be distributed. The focus is on humans.

Meanwhile, the second side views nature (ecology) as a party that also has the 'dignity' to get justice (Binawan & Sebastian, 2012).

The reality of the implementation of ecological justice that is still relevant today, for example, is that it is still unclear the status of the Lapindo Mudflow incident, whether it is an act of violation of human rights or simply a technical error at work, because the impact of the incident is not only a matter of loss of property, but also loss of identity, namely as the owner of origin and culture. In addition, the phenomenon of water pollution in Buyat Minahasa Bay, Sulawesi.

Both cases illustrate the occurrence of environmental pollution which is certainly very detrimental to humans, because the environment is a source and provider of various basic needs such as water, air and land. These basic needs are the right to the environment as part of human rights. Fulfillment of the right to the environment will be realized if ecological justice is achieved (Gregorius, 2009).

Based on this, this study will examine the extent to which ecological justice and human rights are linked, with the following problem formulations: 1) how is the implementation of fulfillment of the right to the environment in Indonesia; and 2) what is the relevance between ecological justice and human rights?

Research Methods

This research is a normative legal research using statute approach and conceptual approach. The legal material search technique is carried out by means of library research and the legal material analysis technique used is analytical descriptive, namely by providing a thorough and in-depth picture of the relevance between ecological justice and human rights.

Results and Discussion

A. Implementation of Fulfillment of the Right to the Environment in Indonesia

Talking about human rights and their relation to the environment will of course end in a discussion about the right to the environment. Environmental protection and management is a basic and fundamental aspect of the sustainability and guarantee of other types of human rights, such as the right to life, the right to a decent life, and the right to health and a clean environment. Therefore, the environment is seen as one of the instruments in the general conception of human rights, namely that humans or citizens have the right to a healthy and clean environment.

With regard to the right to the environment, there are two components/aspects that make it up, namely the procedural aspect and the substantive aspect (Wardana, 2013). Procedural aspects are rights derived from procedural rights to the environment. This procedural right is a supporting aspect in realizing substantial fulfillment of the right to the environment. These procedural rights to the right to the environment are regulated in the Aarhus Convention 1998 and have been adopted in laws and regulations in the environmental sector in Indonesia which regulate the right to participate in decision-making, for example in terms of preparing an Environmental Impact Assessment (AMDAL - Indonesia), up to determining whether or not a management project is appropriate. environment. The Environmental Protection and Management Act also contains a "participatory principle", meaning that every member of the community is encouraged to play an active role in the decision-making process and the implementation of environmental protection and management, both directly and indirectly. The

implementation of this principle has been reflected through various holdings of public discussions, focus group discussions, seminars, scientific studies, petitions and other forms of participation discussing environmental issues (Yusa & Hermanto, 2018).

Next is the right to get access to justice. This means that people whose rights to the environment are harmed by an environmental policy or business activity related to the environment have the right to use available channels, both formal and informal, for formal channels, for example asking for restoration of rights, restitution, compensation, termination of activities/policy changes, satisfaction and repair. In addition, it can be through informal channels, namely through informal dispute resolution forums, for example customary courts.

While the substantive aspects of the right to the environment are substantive/material substantive rights. This substantive aspect is human rights that are interrelated with the right to the environment in terms of respect, protection and fulfillment, namely the right to live, the right to obtain a decent standard of living and the right to be healthy, the right to obtain intra- and inter-generational justice (Wardana, 2013).

To measure the extent to which the right to the environment from this substantial aspect is fulfilled, we need to look at the portrait of environmental conditions, because the environment is the source and medium for fulfilling the right to the environment itself. Based on Forest Watch Indonesia's records, the number of forest loss in Indonesia in the 2009-2013 range, Indonesia lost 1.13 million hectares of forest each year. In Forest Watch Indonesia's research, in North Sumatra, East Kalimantan and North Maluku, the functions of the forests in the three provinces have changed a lot. In the three provinces, within a period of 3 years, from 2013 to 2016, 718 thousand hectares of deforestation occurred. Even in protected and conservation forest areas, deforestation cannot be separated. During that time, it was recorded that 68 thousand hectares of protected and conservation forests had disappeared.

However, the community's efforts to fight for environmental rights from a substantial perspective often lead to repressive actions by officials who are considered to have violated human rights. One of them is the case that occurred in Wadas Village. Wadas Village is planned to be a mining location for providing andesite stone for the Bener Dam national strategic project. The professional background of the Wadas people, who mostly depend on agricultural products, refuses to have a mining site in their village. This rejection, which had been carried out for a long time, finally culminated on February 8, 2022, when dozens of Wadas residents were arrested by the TNI and Polri for no apparent reason. In fact, according to Indonesian Center for Environmental Law, the act of refusal is a manifestation of the struggle for the right to a good and healthy living space as mandated in Environmental Protection and Management Act (Sahbani, 2022). In this context, Article 65 of the Environmental Protection and Management Act mandates that anyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or be sued civilly.

Ironically, in the phenomenon of environmental damage, those who are most affected are not the main actors causing environmental damage, but the poor and marginalized communities. The poor and marginalized communities as well as minority groups are precisely the parties most affected and bear a greater burden for the dangers of environmental damage and pollution.

B. Relevance between Ecological Justice and Human Rights

The relationship between humans and the environment cannot be separated and influences each other. Likewise, human rights and the environment are interrelated and need each other, so that all efforts to respect and protect the environment are also a form of respect for human rights. This is because a

quality living environment will have a good effect on humans, whereas an unqualified living environment will have a bad impact on humans.

The relationship between humans and the environment was emphasized in the Preamble to The Rio Declaration on Environment and Development in 1992. The Preamble emphasized the central position of the relationship between humans and nature (Rochmani, 2015). Nature is a vehicle for the environment for humans, where nature will survive as a source of life if nature is cared for, cared for and preserved. But if not, there will be damage to nature, so that damage will also occur in human life (El-Muhtaj, 2008).

Philosophically, the state must realize human values (human values), recognize human dignity (human dignity), human rights (human rights), and human freedom (human freedom). Human rights to the environment must also pay attention to ecological ethics (environmental ethics or eco-ethics) and ecological justice (Susmayanti, 2020). Thus the relevance between human rights and ecological justice can be seen from the right to the environment which is an instrument in human rights, where one of the basic human rights is the right to a good and healthy environment (Usman, 2018). Fulfillment of the rights to the environment will be realized if ecological justice is achieved.

Historically, the emergence of the concept of ecological justice was lifted from the idea of "cosmopolitan" in the United States regarding the issue of protests from minorities (skin of color) over the treatment of the majority group (white skin) for environmental damage. However, ecological justice in Indonesia is caused more by the negligent behavior of business actors and/or the state towards the poor and marginalized in terms of fulfilling the right to a good and healthy environment.

This ecological justice can be viewed from two sides. The first side sees ecological justice as part of social justice because it views the environment as resources that must be distributed, so the focus is on humans. Meanwhile, the second side views nature (ecology) as a party that also has the 'dignity' to get justice. In addition, ecological justice can also be seen narrowly and broadly. Narrowly, ecological justice focuses on the 'distribution' of adverse impacts from natural exploitation. Then, broadly, ecological justice is centered on the distribution of both adverse effects and 'benefits' from humans to nature (Binawan & Sebastian, 2012).

In this regard, the Global Alliance for the Rights of Nature (GARN) put forward a concept called the right of nature. Where nature also has rights not only humans. This right includes the right to exist, persist, maintain and regenerate it's vitals cycles (GARN). However, normatively, laws and regulations in the environmental sector in Indonesia currently do not accommodate these natural/environmental interests and rights. It can be seen that the Environmental Protection and Management Act and other environmental regulations do not regulate the obligation to repair damaged and/or polluted environments as a result of criminal acts. Criminal sanctions aimed at repairing environmental damage only have a position as additional punishment which is complementary and optional in nature. Therefore, the imposition of criminal sanctions for environmental improvement is not mandatory and only serves as a complement to the main punishment.

The right to the environment is a subjective right that belongs to everyone. The realization of the right to a good and healthy environment is actually an effort to realize the fulfillment of other human rights, in particular the right to life, the right to a decent standard of living, the right to health, and other rights which are closely related to good and healthy living conditions (Rangkuti, 2015).

One form of state responsibility in efforts to protect human rights and fight for ecological justice is the formation of regulations. Laws related to human rights also contain or contain norms of environmental protection for the common good. The regulation of human rights and the environment in

the constitution is a development in the global era which regulates environmental protection as part of human rights, considering that the right to a clean and healthy environment is a fundamental right for human life. This is embodied in Article 28 H of the 1945 Constitution of the Republic of Indonesia which mandates that a good and healthy environment is the basic right of every Indonesian citizen. Then, the definition of the environment according to Law Number 32 of 2009 concerning Environmental Protection and Management is a spatial unit with all objects, forces, conditions, and living things, including humans and their behavior that affects nature itself, the continuity of life and human welfare. as well as other living things. From this definition it can be said that the environment is one of the components/aspects that affect the survival and welfare of humans.

At the practical level, protection of the right to the environment is often misunderstood by some parties who in this case only exercise their rights to exploit the environment, but do not take into account the protection of the environment itself and its impact on other human lives. In this case, there is still a dichotomy between environmental rights and human rights. In fact, basically these two rights are one entity that cannot be eliminated by one of them (Pasapan, 2020). Environmental rights which are one of the environmental ethics in order to achieve ecological justice have not been optimally agreed upon and implemented as human rights that must be recognized both politically and legally (Arliman S, 2018).

Even in the historical context, the right to the environment is the third generation of human rights. “Third generation rights” or “fraternity” are found in the demand for “rights of solidarity” or “rights together”. These rights were pioneered by developing countries over a just international order. Through these demands, they want to create an economic order and international law that is conducive to guaranteeing the following rights, among others, the right to development, the right to peace, the right to own natural resources, the right to a good environment; and the right to own cultural heritage (Arinanto, 2008).

Human rights in the form of the right to life, the right to obtain a decent standard of living, the right to health, and other rights which are closely related to good and healthy environmental conditions cannot be obtained if ecological justice is not realized. In a damaged natural ecosystem, it is very difficult or even impossible for humans to be able to fulfill their food needs, to obtain the right to health and security as a support for the right to life. Thus, respect, protection, enforcement and fulfillment of human rights will be greatly influenced and dependent on a healthy and livable environment.

Conclusion

Human rights and the environment influence and need each other, so that all efforts to respect and protect the environment are a form of respect for human rights. Fulfillment of human rights to the environment needs to pay attention to ecological ethics and ecological justice. The relevance between human rights and ecological justice can be seen from the right to the environment which is an instrument in human rights, namely that one of the basic rights for humans is the right to a good and healthy environment, and this right to the environment will be fulfilled if ecological justice is achieved. Therefore it is very relevant if the theory or teachings about human rights are associated with various violations in the environmental field. Violation of the right to the environment as a form of ecological injustice needs to be interpreted as a threat to human civilization, because in the end it will result in violations of economic rights, violations of social and cultural rights, civil and political rights, or in other words a violation of human rights.

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