



Forest, Green and Health Constitution: Law and Sharia Perspectives

Mohammad Muhibbin

Faculty of Law, Universitas Islam Malang, Malang, Indonesia

E-mails: mohammad.muhibbin@unisma.ac.id,

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Abstract

Type the text of your abstract here. The abstract should include the following: the problem (or object) of the study; the method used (including technical means such as instrumentation, etc.); the results of the test; the conclusions. Note the difference between Results and Conclusions: Results imply only a concrete result, belonging to a particular instance; and Conclusions describe a general case that needs to be generalized from the particular instance. Length of abstract: 300 words and the content of abstracts in English and Chinese should be consistent. When writing abstracts, avoid general statements and conclusions that are general and empty. Try to use the most specific language in the article to explain the research methods, processes, results and conclusions, so that the reader has a clear and comprehensive understanding of the author's research work. Do not simply repeat the information already stated in the title; faithfully reflect the research work done and provide as much quantification as possible.

Keywords: *Protection; Forest; Resource; Islam; Constitution*

Introduction

The approach in regulating the national forest resource administrative order has resulted to a huge economic output, contributing to the Indonesian economy. Unfortunately, it also resulted to some negative impacts. The forest concession is not transparently given to a small number of highly influential individuals and companies who are proximate to those in power. Forests are also used as political vehicles, becoming a potent instrument for economic and political power growths in the hands of several people. In 1998, companies which are closely related to the political and military elite control 60 million hectares of forest concessions in Indonesia [1].

The environment includes all objects, conditions, and influences in the humans' habitual space which influences all living things' lives [2]. It is the key of life in the environment, as it includes all living elements, including objects, energy, condition or situation, health, living things, humans and their behavior, and the living space which synergize and are inseparable [3].

This understanding shows that humans determine the condition of the environment and vice versa. This includes the social ecology related to the forest resources. Environmental changes are highly sensitive to humans' behaviors and protection. Theoretically, the existing physical nature should be used for the humans' interests in the effort to create a better and a healthier life. If not, the environment will be destroyed. If the impacts which arise are not given adequate attention, humans will suffer from the consequences.

The utilization of forest natural resources highly impact environmental and health conditions. It may even remodel the balanced life system between living things and their environment. In reality, the term *utilization* is often contrary to the state and the nation's interests, as the people's actions are not parallel with the Islamic norms nor the constitution.

In utilizing these natural resources, humans should pay attention to the objectives and the impacts which may arise due to the poor environmental utilization. If no adequate attention is given, the future generations will pay the price. This condition may be seen in the present, where the environmental destruction in Indonesia is categorized as severe or even critical. The forest resource destruction is part of a serious root problem of the many natural disasters and health problem.

In utilizing the natural resources, Islam teaches humans to go against anthropocentric behaviors which views humans as the center of the universe, where humans and their interests are viewed the most detrimental in the ecosystem and in creating the policies on nature [4]. Islam is a religion which gives a rather great attention towards the environment, as its teachings (in the Koranic verses) contain environmental ethic principles [5].

In the Koranic verses, God forbids humans to destroy the environment and simultaneously encourages them to maintain it. The environmental maintenance may be carried out by changing the profit-oriented developmental paradigm to the eco-centric perspective, where development is harmonious with nature [6].

There are two things which become Islam's basic perspective on the issue of environmental destruction: (1) Islam realizes that there have been and there will be environmental destruction both in land and in the sea, causing the degradation to the environment's quality in supporting the people's livelihoods; (2) Islam views humans as the main perpetrator of destruction as well as the savior who is able to prevent environmental damage [7].

There is currently a disturbing rate of environmental destruction, endangering the present and the future generations. Thus, as the dominating creature, humans must substitute their destructive behaviors with environmental friendliness [8].

This exposition shows stern critiques towards various kinds of exploitation and ecologic resource destruction. Environmental destruction is a severe and a long-term problem. It is a reflection of human's wrongdoing, carelessness, and insensitivity towards the future of the environment and the civilization. An inseparable part of environmental destruction is forest resource destruction [1].

God has given humans control over the wealth He created. This is called *milkiyah* or ownership. There are three main categories of ownership, namely individual ownership (*milkiyatul fardhiyah*), public ownership (*milkiyatul aam*), and state ownership (*milkiyatud daulah*). Generally, individual ownership is a permit or a right from God to humans, giving them the freedom to use, utilize, or trade resources. A person may own movable assets such as cattle, money, cars or clothes; or fixed assets such as land, property, and factories. Islam has stipulated the terms on how to obtain, develop and consume these assets [9].

Then, state ownership is land or buildings which are co-owned by all Muslims, but are not categorized in public ownership. It is an item or an area which may be individually-owned, such as buildings, land, or movable items. But, because the items contain a mutual right of all Muslims, thus their management, maintenance, and control are under the hands of the caliph or the government. This is because a caliph has the right to manage all goods which are the rights of the Muslims in general, including deserts, mountains, beaches, buildings, offices, schools, hospitals, etc. [9]

The state has the right to grant some of their properties (including land and buildings) to individuals. Authorities may give individuals the right for ownership or for usage. The state permits the society to open unused lands. It has the authority to decide what is deemed as important for the Muslims. Public ownership is wealth in which its ownership has been determined by the Law of God (sharia) to be co-owned by Muslims. Individuals are permitted to use them, but they are prohibited from individually owning the wealth [9]. Unfortunately, some people misinterpret ownership for profit-oriented exploitation [1].

Goods are categorized into three groups: (1) public facilities required by all Muslims in their daily lives, (2) items which are originally prohibited for individual ownership, and (3) unlimited mined goods (natural resources) [9]. The three items and the profit earned from them are co-owned by the Muslim community and other collaborating parties. According to their *ijtihad* (independent reasoning), the state is obliged to distribute wealth for the benefit of the society.

The forest natural resource is part of public ownership from the first category, which is a public facility needed by Muslims for their daily lives, including firewood and its usage for buildings and houses. Prophet Muhammad (peace be upon him) stated, as narrated by Al-Bukhari, “Muslims are partner in three things (natural resources): water, herbage, and fire.”

If it is difficult to utilize the co-owned natural resources (such as fossil fuel and minerals), thus its exploitation is the state’s rights and responsibility. This includes high-potential forest usage. The profit generated is kept in *Baitul Maal*, allocated for the Muslims’ interests. The state allocates the profit from the public ownership in the form of: (1) natural resource administration and exploitation fund, including for developing industrial zones, to open public-owned mines, to develop residential areas and factories, to purchase equipment, and to hire employees, consultants, and experts, (2) the profit from the natural resource production is a right of the owner. The government may distribute it in the form of necessities such as water, gas, fuel, and electricity or also in the form of money. This is based on what is good and beneficial for the Muslims and the society [9].

1. Method

Penelitian ini memakai metode penelitian doctrinal atau yuridis normative. Metode penelitian hukum doktrinal adalah penelitian-penelitian atas hukum yang dikonsepsikan dan dikembangkan atas dasar doktrin yang dianut dalam kajian-kajian hukum¹. Penelitian doktrinal klasik – yang dikenali sebagai doktrin (atau aliran) hukum alam kaum filosof dan doktrin (atau aliran) positifisme para yuris-legis sampai ke doktrin historis dan doktrin realisme-fungsionalisme para ahli hukum yang terbilang kaum realis.

¹ Absori, A., Nugroho, S.S., Budiono, A., Ellyani, E., Nurani, S.S., Fadlillah, M., 2020. Indonesia as an ecocratic country: The state’s responsibility and the people’s participation in preserving and in managing the environment quality. *Quality: Access To Success*. Vol 21 Issue 179. P 140-143

Penelitian doktrinal adalah suatu penelitian hukum yang bersifat preskriptif, ilmu hukum mempelajari tujuan hukum, nilai-nilai keadilan, validitas aturan hukum, konsep-konsep hukum, dan norma-norma hukum. Penelitian nondoktrinal adalah hukum yang dikonsepsikan sebagai pranata riil dikaitkan dengan variabel-variabel social yang lain².

Metode penelitian doktrinal Yaitu suatu penelitian yang bersumber dari undang-undang atau peraturan hukum yang berlaku serta doktrin-doktrin yang berlaku. Penelitian ini membahas konsep perlindungan sumberdaya hutan menurut Islam dan membahas perlindungan hutan dalam konstitusi Indonesia³.

2. Discussion

2.1. The Islamic Law Perspective

Forest resource protection is an activity to protect both in and outside of the forest area from disturbances which may destroy its natural resources including flora, fauna, ecosystem, habitat, water, etc.

All creatures on earth, including humans, depend on their environment. The symbiotic relations between humans and the environment decide their sustainability. The nature's existence depends on the humans' actions and attitudes as caliphs of God on earth or *khalifah fil Ardh*. Even so, humans cannot arbitrarily exploit the nature, as the latter may react through disasters which may cause humans to extinct [10].

The Holy Koran, chapter Al-Hijr verses 19-20 state, "As for the earth, We have spread it out, set firm mountains on it, and made everything grow there in due balance. And We have provided sustenance in it for you and for all those creatures for whom you do not provide."

The humans' role as a nature's subject does not decrease their dependence on nature. This means that preserving the environment is same as preserving the life of human beings and other creatures. On the contrary, environmental destruction is a serious boomerang for all creatures, including humans. This is as written in the Holy Koran, Chapter Al-A'raf verse 56, "Do not corrupt the earth after it has been set right – call on Him fearing and hoping. The mercy of God is close to those who do good."

Islam teaches humans to conserve the environment by: (1) protecting the natural resources (on land and in water) which were created by God, (2) preserving the environment and the ecosystem using their knowledge to support cultivation, and (3) humans may use the natural resource potentials wisely and by conserving the nature and the environment [10].

Life on earth is part of the universe's order with a preserved law to protect and to sustain life and biodiversity. To sustain the natural resources, God has facilitated this earth with the cycles of seasons, rain, clouds, and wind, as explained in the Holy Koran, chapters al-Fathir: 9,27-28; Yasin: 33-34; Rum:48; and Qaf: 9.

² Nugroho, H.S.W., Handoyo, Prayitno, H., Budiono, A., 2019. Sort elements based on priority, in order to improve the quality of e-learning in health using difficulty-usefulness pyramid with weighting (DUP-We). Volume 14, Issue 18. International Journal of Emerging Technologies in Learning. Pages 186-193

³ Absori, Nurhayati, N., Bangsawan, MohI., Budiono, A., Achmadi, Nugroho, H.S.W. 2020. Green and Health Constitution of Green Open Space and Its Implementation in Surakarta. Journal of Global Pharma Technology. Volume 12, Issue 9, September 2020, Pages 70-74

Even though such things have been stipulated in the Islamic norms, the reality is not as good as the expectations. God knows the humans' behavior; thus, they are reminded. They forget to thank God for all of His beautiful Creations (The Holy Koran, Luqman: 20). Humans often lack environmentally-friendly actions. These destructive actions have been reminded of in the Koran and in the hadeeth. The former states that the damages of nature (on land and in the sea) are due to the human's corrupt actions. Thus, the impacts of these destructions are also experienced by the humans (The Holy Koran, chapters al-Baqarah: 205; al-Rum: 41; al-Qashshah: 77).

The nature's destruction is absolute if humans are occupied in reaching development and in fulfilling their needs by overly exploiting and utilizing the natural resources, including land, water, air, minerals, forests, plants, animals, etc. [11]

Prophet Muhammad also reminded humans to conserve and to protect the environment and the ecological natural resources. As narrated by Ibn Majah from Mu'az, the Prophet stated, "Fear defecating on roadsides, second on water springs, and third in the shade." In other hadeeths, the Prophet also prohibited defecation in animal holes and under fruit-bearing trees. His appreciation on environmental preservation and sustainability is clear and stern. It is not allowed to pollute the environment, let alone destroy it such as through deforestation.

The Prophet also stated, "When a Muslim plants a tree, whatever is eaten from it is charity from him and whatever is stolen is charity and whatever is subtracted from it is charity," (narrated by Muslim). Also, "If anyone cuts the lote-tree, Allah brings him headlong into Hell," (narrated by Abi Dawud).

The substance of these references may be understood as efforts to conserve the environment. A way to observe the religious norms regarding the environment (the ecologic resources) is to perceive environmental issues as serious issues.

As God's most perfect creature, humans have the power to act wisely in managing natural resources. Humans should observe environmentally-friendly actions as stipulated by the Islamic laws, including:

First, actively conserving and managing the natural resources (earth) as stated in the Koran, Chapter Ar-Rum verse 9, "Do they not travel in the earth and see how the end of those before them was? They were stronger than those in prowess, and they had dug the earth and built upon it more than those have built. Their Messengers had come to them with clear arguments. Allah was not wronging them, but they were wronging their own souls."

Then, in a hadith narrated by Thabrani, Prophet Muhammad said, "Maintain cleanliness with all of your best efforts. For Allah places Islam on the principle of cleanliness. And no one will enter heaven except for those who are clean."

Second, do not destroy the forest resources, as stipulated in the Koran, chapter Al Qashshah verse 77, "And seek abode of the Hereafter with the wealth that Allah has given you, and do not forget your part in this world, and do favors (to others) the way Allah has favored you, and do not seek to cause turmoil on earth; indeed, Allah does not like the mischievous."

Third, observe environmentally friendly behavior. We are taught to live harmoniously with our surroundings, with other people, and with God. God stated in the Koran, Chapter Al Anbya verse 107, "We sent thee not, but as a Mercy for all creatures."

According to Budiman [12], Islam is a religion with high regard for environmental balance and preservation. Many verses of the Koran and many hadiths discuss environmental matters. The messages of the Koran are clear and prospective. According to the Islamic norms, humans are the best creatures among other creations of God (The Holy Koran, 95:4; 17:70) who are chosen as the caliph (The Holy Koran, 2:30) and who have the responsibility to manage and to develop the earth (The Holy Koran, 33:72).

As the caliphs on earth, humans are obliged to pray to God, to do good deeds, and they are prohibited from destructive actions, as written in Chapter Al-Qasas verse 77, “Do not seek to spread corruption in the land, for God does not love those who do this.” The earth and everything in it are essentially created by God for human beings (The Holy Koran, 2: 29). It includes everything the humans want, both in the skies and on earth, on land and in the sea, rivers, the sun and the moon, plants and fruits, animals and cattle (The Holy Koran, 6:141).

Apart from the concept of doing good to the environment in the Holy Koran, the Prophet Muhammad has given examples to practice them in daily life, as narrated in hadiths. This includes God’s mercy to those who remove thorns from the road. Discarding disturbances from the road is a means of charity, it is a part of faith and is a good deed.

Apart from that, the Prophet prohibits environmental destruction from small things, such as prohibiting defecation in places which may disturb other people, as stated in a hadith narrated by Abu Hurairah, “Beware of those acts which cause others to curse.” They asked, “What are those acts?” He said, “Reliving yourself in people’s walkways and or in the shade.” In another hadith, it is added with reliving at water springs.

The Prophet also has high concern over animal conservation. As narrated by Abdullah, the Prophet stopped in a place and then someone took a bird’s eggs and the bird began to beat its wings around the head of the Messenger of Allah, may Allah bless him and grant him peace. He asked, “Which of you has taken its eggs?” A man said, “Messenger of Allah, I have taken its eggs.” The Messenger of Allah said, “Return them out of mercy to the bird!”

Thus, it is clear that Islam provides clear guidelines that natural resources, which support the humans’ lives, must be conserved well. If not, it will cause natural disasters such as floods, landslides, bush fires, drought, etc. “Corruption has spread on land and sea as a result of what people’s hands have done, so that Allah may cause them to taste (the consequences of) some of their deeds and perhaps they might return (to the Right Path),” (The Holy Koran, 30:41).

Humans have three mandates from Allah: (1) *al-intifa’* where Allah lets humans use the natural resources well to achieve welfare and to bring benefit, (2) *al-i’tibar*, where humans must contemplate and discover secrets behind Allah’s creations, and to obtain understandings from the various occurrences in nature, (3) *al-islah*, where humans are obliged to preserve and to conserve the environment [12].

God has granted the facility in the form of environmental supporting power for the human life. Thus, in the Islamic perspective, environmental conservation and environmental friendliness are obligatory for all individuals. On the contrary, illegal logging which causes ecologic damage and natural disasters are prohibited and despised by God.

Arif [9] opined that Islam has a complete environmental conservation concept, including forest conservation. It is a religion which perceives the environment as an inseparable part of one’s faith to God, meaning one’s actions towards the environment is a manifestation of his/her piety.

Chapter Hud verse 61 of the Koran states, “He has produced you from the earth and settled you in it.” This indicates that humans are made of earth, showing the importance of maintaining the environment on earth as humans are a part of it. The Holy Koran has environmental stipulations, perceived from the human beings’ various aspects, with the main aim to achieve good livelihoods both on earth and in the Hereafter. “It is He who created for you all of that which is on the earth” (The Holy Koran, 2:29). This shows that humans are given power, and they are obliged to observe the natural phenomena which become elements of the ecosystem, such as water (The Holy Koran, 6:95), the shifts between day and night (The Holy Koran, 10:6), the growth of seeds (The Holy Koran, 6:95), etc. [9]

In a hadith, Prophet Muhammad said, “If anyone cuts the lote-tree, Allah brings him headlong into Hell,” Abi Dawud interpreted this hadith as the prohibition from cutting down trees without a good reason. In the Islamic law, it is unlawful to carry out illegal logging. Islam prohibits excessive exploitation of nature or *isyraf* (The Holy Koran, Al An’am: 141-142), as it cuts the right of the future generations to make use of those resources.

Illegal logging is a form of destruction towards natural resources which are vital for the people’s livelihoods. It harms both present and future generations. This act is also against the Islamic law, violating the mission to protect the soul (*hifdzun-nafs*) and to protect the state’s economic resources. The sanctions imposed are based on the severity of the action, and is regulated by the government (*umara’*) or the Islamic scholars in the form of *fatwa* (Islamic ruling). It is prohibited to overly exploit the natural resources; thus, the *fatwa* is aimed to maintain the stability and the livelihoods of all creatures.

2.2. The Health Perspective

Humans’ development of life is related to the development of doctrines on the human right. According to Vasak [13], the human right is divided into three generations: (1) the first generation focuses on civil and political rights, (2) the second generation focuses on economic and socio-cultural rights, and (3) the third generation focuses on developmental rights with different characteristics but Vasak forget about health condition.

The milenial generation reflects a basis of thought on the emergence of acknowledged collective rights, including the right to utilize forest natural resources but lack understanding about how the forest devastation was became a disasted for humanity [14].

Finger [15] argues that the current global health crisis is caused by several things: wrong and unsuccessful policies; inefficient and destructive technologies; lack of political commitment; ideas and ideologies which damage the environment; deviating actions and behaviors of state actors; rampant consumerism and individualism cultural patterns; and also, individuals who lack adequate training. For example perusakan hutan menyebabkan pencemaran udara dan penyakit pernafasan yang akut.

It is generally understood that most Indonesians lack understanding on the importance of the health. They regard it as mere simple objects related to nature, plants, and animals. Though actually, the health comprises of a wider scope, as it regards a holistic entity where all creatures live. To a certain point, activities of state development and social empowerment cannot disregard healthl existence.

Activities which disregard the forest and humans health will result to anti-development and anti-empowerment. Also, environmental protection is closely related to the human health rights fulfillment [16]. This human health right fulfillment is stipulated in the constitution, as it contains basic and futuristic norms which determine the citizen health rights, including those which regard healthy environment. [17] and to increase awareness on the protection of the forest resources.

In the current era, the constitution is no longer regarded as mere stagnant documents. More that, it has transformed and functioned into basic principles in the state establishment which follows the condition of the era – namely the living constitution. In terms of its position, the constitution is a general consensus or a common agreement of all people on the basic things related to the basic principles of life, state establishment, and state's organizational structure [18]. This basic agreement is related to strategic and basic interests of the people's lives. These abundant interests vary and they determine the livelihoods of the people and the state. One of these great interests regard health rights and the right for a sustainable life in relations with the nature or the forest.

In Indonesia, the development of the national health and law departs from constitutional law products or the legislation era. Then, after the Reformation era, the legislation era is substituted with the constitutionalism era, where the Republic of Indonesia's 1945 Constitution experienced dynamics and it was amended four times. In the 1945 Constitution, the health rights are accommodated Article 28H clause (1) and the guarantee of fulfillment of health rights and health environment is accommodated in Article 34 clause (4), reflecting the Green and health Constitution concept. These *ecocracies* are adopted in the amendment the Amendment of the 1945 Constitution, which is commonly known as the constitutionalizing of fulfilment of health rights and environmental health in the Indonesian constitution [19].

Article 28H clause (1) of the Republic of Indonesia's 1945 Constitution stipulates, "Every person has the right to live in welfare both physically and mentally, to have a residence, to live in a good and a healthy environment, and to obtain health services." Then, Article 34 clause (4) states, "The national economy is established based on economic democracy with the principle of togetherness, just efficiency, sustainability, environmental friendliness, independence, and also by maintaining the developmental balance and the national economic unity," [20]. The basic or fundamental rights stipulated in the constitution state that the economic development cannot disregard ecologic resource sustainability, and one of the main supports of this interest is the forest resources.

This shows at least two things: (a) the issuing of Article 28H clause (1) reflects health rights and environmental rights, which doctrinally includes the adoption of the third generation of human rights to the amendment and the existence of Chapter X A on Human Rights. It shows that the state acknowledges, respects, and regards human rights including health rights highly, and (b) the accommodation of an additional clause, namely clause (4), to Article 33 of the 1945 Constitution, is closely related to the concept of sustainable development, whose main reference is sustainable and healthy environmental friendly national health rights. It reflects the juridical review on the green and health constitution in the Article and/or clause formulations in the Post-Amendment 1945 Constitution [21]. It should be understood that the Indonesian constitution has high regard for the health rights and healthy environment, including the protection of the right to live, to obtain good health, and to sustain the life of the citizens. Thus, the forest resource protection, cannot be separated from it.

The Indonesian Supreme Court interprets Article 21 of the Indonesian Constitution on the right to health using the public trust doctrine, which is closely related to environmental and ecological aspects. It stipulates that [22], "The major ecological tenet is that world is finite. The earth can support and bear such quantity of pollution. When the pollutants exceed such quantity, the human and earth cannot bear. Hence the industries are not entitled to pollute the environment and cause danger to the people health and life to live in the surroundings of the industries." This shows that the state and the nation must prioritize giving attention to the futuristic protection of health right, especially regarding the resources which determine the health, happiness, safety, and sustainability of all citizens.

The green and health constitution concept which upholds *ecocracy* in a state constitution reflects environmental sovereignty. It becomes a fundamental footstep in upholding the current development of

human rights [23]. Article 28H clause (1) and Article 33 clause (4) of the Republic of Indonesia's 1945 Constitution strengthen the existence of the green constitution concept in Indonesia's state administration.

Humans are responsible for the implementation of this green and health constitution. Human are those who are given the position by God to manage an area. They are obliged to create a society with good relations with God, who live harmonious lives, and whose religion, conscience, health and environment and cultures are preserved [24].

Conclusion

Illegal damage of forest resources is categorized as destroying the healthy environment and health right of the human for the current and the future generations. This causes serious and fundamental harm to the people. In the Islamic studies, this crime violates the mission to protect the soul and body (*hifdzun-nafs*). The imposed sanctions depend on the severity of the actions. These sanctions to the perpetrators are regulated by the state or the authorities (*umara'*).

Then, the green and health constitution concept upholds *ecocracy* in the state constitution, and is reflected in the existence of the environmental sovereignty. This green and health constitution becomes a fundamental footstep in the current development of health rights with orientation for forest resource protection.

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