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THE CONCEPTION OF ENVIRONMENTAL SOVEREIGNTY FOR THE DISCOVERY OF JUST LAW IN THE FIELD OF ENVIRONMENT IN INDONESIA

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ABSTRACT

Purpose: The purpose of this research is to analyze the conception of environmental sovereignty for the discovery of just law in the field of environment in Indonesia and analyze the Implementation of the Concept of Environmental Sovereignty in Legislation in the Field of Environment and Natural Resources.

Theoretical reference: The theoretical framework for this research will draw upon concepts of environmental sovereignty, legal pluralism, socio-ecological systems theory, environmental justice, international environmental law, and indigenous rights. It will also integrate perspectives from scholars specializing in environmental law, policy studies, anthropology, and environmental ethics.

Method: The method of approach used in the research is a normative approach in this case analyze, the level of legal synchronization both vertically and horizontally related to environmental sovereignty for the discovery of fair law in the field of environment.

Results and Conclusion: The results of this research show that The conception of environmental sovereignty for the discovery of just law in the field of environment in Indonesia is to form a harmonious, just, democratic and sustainable environmental law, then the conception of environmental sovereignty in the sense of creating a balance of rights between humans and nature, with a legal pluralism approach to realizing environmental justice and the Implementation of the Concept of Environmental Sovereignty in Legislation in the Field of Environment and Natural Resources is to form norms in laws and regulations governing the management of natural resources and the environment.

Implications of research: The research findings will have significant implications for policymakers, environmental organizations, indigenous communities, and scholars working in the field of environmental law and policy. It will provide insights into the strengths and weaknesses of current legal frameworks, offer recommendations for enhancing environmental governance, and suggest ways to balance sovereignty with global environmental responsibilities.

Originality/Value: This research contributes to the existing body of knowledge by providing a comprehensive analysis of the interplay between environmental sovereignty and the development of just laws in Indonesia. It offers original insights into how the concept of sovereignty influences environmental decision-making and its impact on environmental justice,

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policy implementation, and sustainable development in a diverse and ecologically rich country like Indonesia.

Keyword: conception, environmental sovereignty, equity.

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A CONCEPÇÃO DE SOBERANIA AMBIENTAL PARA A DESCOBERTA DE JUSTO DIREITO NO CAMPO DO MEIO AMBIENTE NA INDONÉSIA

RESUMO

Objetivo: O objetivo desta pesquisa é analisar o conceito de soberania ambiental para a descoberta de uma lei justa no campo do meio ambiente na Indonésia e analisar a implementação do conceito de soberania ambiental na legislação no campo do meio ambiente e dos recursos naturais.

Referência teórica: A estrutura teórica desta pesquisa se baseará nos conceitos de soberania ambiental, pluralismo jurídico, teoria dos sistemas socioecológicos, justiça ambiental, direito ambiental internacional e direitos indígenas. Ela também integrará perspectivas de acadêmicos especializados em direito ambiental, estudos de políticas, antropologia e ética ambiental.

Método: O método de abordagem usado na pesquisa é uma abordagem normativa; neste caso, analisamos o nível de sincronização legal, tanto vertical quanto horizontalmente, relacionado à soberania ambiental para a descoberta de uma lei justa no campo do meio ambiente.

Resultados e conclusões: Os resultados desta pesquisa mostram que A concepção de soberania ambiental para a descoberta de uma lei justa no campo do meio ambiente na Indonésia é formar uma lei ambiental harmoniosa, justa, democrática e sustentável, então a concepção de soberania ambiental no sentido de criar um equilíbrio de direitos entre os seres humanos e a natureza, com uma abordagem de pluralismo legal para realizar a justiça ambiental e a Implementação do Conceito de Soberania Ambiental na Legislação no Campo do Meio Ambiente e Recursos Naturais é formar normas em leis e regulamentos que regem a gestão dos recursos naturais e do meio ambiente.

Implicações da pesquisa: Os resultados da pesquisa terão implicações significativas para os formuladores de políticas, organizações ambientais, comunidades indígenas e acadêmicos que trabalham no campo das leis e políticas ambientais. Fornecerão percepções sobre os pontos fortes e fracos das estruturas jurídicas atuais, oferecerão recomendações para aprimorar a governança ambiental e sugerirão maneiras de equilibrar a soberania com as responsabilidades ambientais globais.

Originalidade/valor: Esta pesquisa contribui para o conjunto de conhecimentos existentes ao fornecer uma análise abrangente da interação entre a soberania ambiental e o desenvolvimento de leis justas na Indonésia. Ela oferece percepções originais sobre como o conceito de soberania influencia a tomada de decisões ambientais e seu impacto sobre a justiça ambiental, a implementação de políticas e o desenvolvimento sustentável em um país diversificado e ecologicamente rico como a Indonésia.

Palavra-chave: concepção, soberania ambiental, equidade.

1 INTRODUCTION

For Indonesia, the constitutional recognition of environmental sovereignty was established through the second amendment of the 1945 Constitution as a result of the annual session of the People's Consultative Assembly in 2000, precisely on 7-18 August 2000, by adding Article 28H paragraph (1) and then through the fourth amendment in 2002 again adding Article 33 paragraph (4), This is the momentum of the state's constitutional recognition of environmental sovereignty, with the raising of the issue of the right to the environment as a human right and the adoption of the principle of sustainable and environmentally sound development into the Indonesian constitution, this has illustrated that the Constitution of the Republic of Indonesia has a green constitution. It is that the human right to the environment is rooted in the dignity of the human being as an individual (as actually considered), and simultaneously presents an objective dimension, which relates to protection against public (and private) aggression within the constitutionally protected sphere, and a positive dimension, which creates concrete duties to act or simple tasks, which are the responsibility of public authorities.[3]

Environmental sovereignty is actually affirmed in the constitution of a country, however, sovereignty is the highest, absolute power and no other institution can equal it or master it, which can regulate citizens, regulate what is the purpose of a country, regulate various aspects of government, take various actions in a country, not limited to the power to make laws, implement and enforce laws, punish people, collect taxes, make peace and declare war, sign and implement treaties, and so on. Furthermore, the concept of sovereignty also contains the principle of authority (power). What is meant by power is a freedom (liberty), power (authority), or ability (ability) owned by a person or body to carry out a legal action, which can cause an influence, strength, coercion, domination, and control over others. In the history of mankind's understanding of supreme power or sovereignty, there are at least five conceptions or theories of sovereignty, namely, the teachings of God's sovereignty, the teachings of the king's sovereignty, the teachings of legal sovereignty, the teachings of popular sovereignty, and the teachings of State sovereignty. In addition to these five concepts of sovereignty, there is now a conception of environmental sovereignty. Environmental sovereignty is the power over a country in

[3] Vasco Pereira da Silva, *Green Constitution: The Right to the Environment,* https://link.springer.com/referenceworkentry/10.1007/978-3-319-31739-7_160-1

the environment, or nature as the universe gets a higher position and position in the sense that in every state management, the environment gets a high position.[4]

The origin of the conception of environmental sovereignty comes from an environmental case between the Sierra Club and Morton in the United States in 1972, the dissenting opinion of Supreme Court Justice William O Douglas, who stated that if a mountain peak suddenly became a party to a court case, we could be sued by lakes and hills for the damage done, and how could we be said to be resting peacefully under a shady tree, if that tree could later sue us in court. We can be sued by lakes and hills for damage done, and how can we be said to be resting peacefully under a shady tree, if that tree can later sue us in court. Justice Douglas's opinion then developed in the discourse of environmental law which gave birth to environmental tort if so, the concept of environmental sovereignty can be said to have originated from legal discovery (rechtsvinding), if you look at the definition of legal discovery put forward by Vasco Pereira da Silfa as the process of forming law by judges or other law enforcement officials who are given the task of applying general legal rules to concrete legal events.[5]

In reality, environmental management is still found that is not in accordance and contrary to the 1945 Constitution of the Republic of Indonesia which mandates that everyone has the right to a good and healthy environment, as well as the management of natural resources and the national economy must be carried out with sustainable, equitable and environmentally sound principles, while there are already very many laws governing natural resource management, so it is important to review the existence of the concept of environmental sovereignty as something that can be used as a constitutional basis in realizing justice in the management of natural resources and the environment in Indonesia.

Based on the background of the problem, the problem of this research is how the conception of environmental sovereignty for the discovery of just law in the field of environment in Indonesia? and how is the Implementation of the Concept of

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[4] Susan Park, *The role of the Sovereign state in 21st century environmental disasters,* Department of Government and International Relations, University of Sydney, Australia and Hans Fischer Senior Fellow at the Technical University Munich, Germany, https://www.tandfonline.com/doi/abs/10.1080/09644016.2021.1892983?journalCode=fenp20
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[5] Muliadi Nur, Rechtsvinding; Penemuan Hukum, suatu perbandingan metode penemuan hukum konvensional dan hukum islam, Jurnal Ilmiah Al-Shir'ah, Vol.2 No.1 Tahun 2004, IAIN Manado. file:///Users/prof.dr.h.laode/Downloads/216-380-1-SM%20(1).pdf

Environmental Sovereignty in Legislation in the Field of Environment and Natural Resources?

2 DISCUSSION

2.1 THE CONCEPTION OF ENVIRONMENTAL SOVEREIGNTY FOR JUST LEGAL DISCOVERY IN THE FIELD OF ENVIRONMENT IN INDONESIA

The concept of environmental sovereignty in Indonesia after the amendment of the 1945 Constitution has become a new paradigm in governance that requires that governance must balance with the natural environment. This can be seen from the regulation of the guarantee of human rights in the 1945 Constitution as the essential nature of human life to return to nature. This shows that the 1945 Constitution embraces the notion of environmental sovereignty which is associated with the term ecocracy or ecological power, where humans as one of the components of the environment that has a major role in the environment, that is why the 1945 Constitution embraces the notion of environmental sovereignty. This is emphasised in Article 28(A): ... Article 28H paragraph (1) of the 1945 Constitution states that everyone has the right to live in physical and mental prosperity, to have a place to live, and to have a good and healthy environment, and to receive health services.

Thus, the right to a good and healthy environment is the most basic and essential right that cannot be reduced and humans can enjoy a good and healthy environment. This is because the environment is an ecological unit which is also a cycle of life (recyling) or an ecosystem where humans are in it. Ecosystem which is a relationship.

It is well understood that long before the presence of environmental laws in Indonesia, there have been various legal regulations governing this matter, both those made by the Dutch government, for example regarding Fisheries, pearl and sponge fisheries, namely Parelvisscherij, Sponserviss cherijordonantie (Stbl. 1916 No. 157) issued in Bogor by Governor General Indenburg on 29 January 1916 and Ordinances that are very important for the environment, namely Hinderordonnantie (Stbl. 1926 No. 226 as amended / added, lastly by Stbl. 1926 No. 226). 1926 No. 226 as amended/added, most recently by Stbl. 1940 No. 450), as well as regulations made by the Government of Indonesia in the form of laws and their implementing regulations, among others, Law No. 5 of 1967 concerning Forestry, Law No. 11 of 1967 Concerning Basic Mining, Law No.

1 of 1973 Concerning the Indonesian Continental Shelf; and Law No. 11 of 1974 concerning irrigation.

Furthermore, Indonesia has started the drafting of the Environmental Law in 1976 and followed up with the establishment of the Working Group on Legal and Apparatus Development in the Management of Natural Resources and the Environment in 1979 by the State Minister for Development Supervision and the Environment, which after going through the formulation process between the Government, on 11 March 1982 was passed Law Number 4 of 1982 concerning Basic Provisions for Environmental Management as the first legal umbrella that unites and becomes the basis of all other laws and regulations made sectorally at that time. However, over time, the existing regulations are considered to contain less environmental aspects, this is inversely proportional to environmental awareness in society in general, especially Indonesian producers and consumers have entered the stage of industrialization. For this reason, it is deemed necessary to establish laws and regulations as a basis for development (building without destroying), which is then known as "environmentally sound development" and "sustainable development".

In 1992, the Third Decade of the Environment was commemorated with the Earth Summit in Rio de Jeneiro, Brazil. The main outcome of the Summit was the development of the whole earth and environmental protection as well as a new path that includes three dimensions, namely:

a.The intellectual dimension, in the form of recognition of the interdependence between one another on this earth.

b.The economic dimension, in the form of a common concern for under-development and over-development, which must then be replaced by whole-earth development.

c.The political dimension is the emergence of a clear awareness of political obligations, in the form of long-term obligations.

The Rio Summit also produced "agenda 21" which is a depiction of the 21st century work agenda, which in turn also inspired the Indonesian government to amend Law No. 4 of 1982 into Law No. 23 of 1997, and finally on September 19, 1997 Law. No. 23 of 1997 concerning Environmental Management, appeared to replace the previous law. One of the fundamental considerations of this law is that public awareness and life in relation to the environment have developed in such a way that the subject matter regulated in Law No. 4 of 1982 needs to be refined to achieve the goals of

environmentally sound sustainable development. In addition, the issue of rights and obligations for the community in general still requires better regulation. As stated by the Minister of Environment in the Open Plenary Meeting of the House of Representatives, there are substantial changes in this law (Law No. 23 of 1997), among others, the issue of procedural rights such as the lawsuit of environmental organizations. After operating for about 12 years to protect the Indonesian environment (including the community), it turns out that this law has failed to carry out the mission of "preservation" and "sustainable and environmentally sound development".

A long list of facts are ready to be analyzed to reveal the failure of this law. Starting from natural disasters, the rate of degradation, deforestation, to the synchronization of various regulations, environmental disputes and including environmental law enforcement, neglect of human rights related to the environment and environmental rights themselves. Why there needs to be a revision of the Environmental Management Law that gave birth to Law No. 32 of 2009, lyas Asaad, said that the most basic argument for the revision is the inability of the old law to answer various environmental problems in Indonesia. "After twelve years in force, environmental damage is still dominant, as well as environmental cases that can never be resolved properly". In this case, Law No.23. 1997 on Environmental Management is only limited to recognizing the right of everyone to information and participation and has not regulated public access to their rights, including legal consequences if their rights are not fulfilled or violated (access to justice). [6]

These facts provide a strong foundation for the immediate enactment of a new law, which is expected to change the paradigm as well as provide a new philosophy for Indonesia's environmental management. Therefore, Law No. 23/2009 was born with the term "protection", a term that was not found in its two predecessors. The use of this term is intended so that the law rationally gives meaning to the importance of the environment receiving protection. In addition, norms guaranteeing the right of public access to information, participation, and justice related to environmental and natural resource management can be regulated in a firm and detailed manner.

Until now, Indonesia's environmental legislation package has been more than when the 1982 UUPLH was enacted, but the making of national legislation should not only meet the needs of legislation, because the important thing that must also be

[6] Ibid, p. 6

considered is the sector of integration (integral legislation), harmonized legislation, and its implementation (to enforce Consistently).

Sectoral laws relating to the management of natural resources and the environment can be divided into the following sectors:

a. population sector
b. settlement/housing sector
c. agriculture sector
d. forestry sector
e. livestock sector
f. mining sector
g. industrial sector
h. irrigation sector
i. transportation sector
j. health sector
k. land sector
l. transmigration sector
m. marine sector
n. river basin sector and tourism/recreation sector.

The results of the study of legislation in the field of natural resource management and the environment conducted by the constitutional review team on the management of natural resources to ensure the prosperity of the people, in fact found some fundamental problems of disharmony in the substance of legislation in the field of environment and natural resource governance as follows;

a.The mechanism of integration and coordination between sectors of environmental and natural resource management has not been regulated explicitly and in detail;
b.Approaches to natural resource management are not comprehensively regulated;
c.The rights of indigenous/local communities over the control and use of natural resources have not been fully recognized;
d.Space for community participation and transparency in natural resource management is still limited;
e.Government accountability to the public in natural resource management has not been explicitly regulated.

This is in line with the results of the author's review of ten laws relating to the environment and natural resource management, there is disharmony of substance arrangements, inconsistency, overlapping, ambiguity, and contradiction between one law and another, especially in the regulation of the authority of state institutions which are regulated sectorally, not in an integrated manner, in natural resource governance.

2.2 IMPLEMENTATION OF THE CONCEPT OF ENVIRONMENTAL SOVEREIGNTY IN LEGISLATION IN THE FIELD OF ENVIRONMENT AND NATURAL RESOURCES THAT IS EQUITABLE AND DEMOCRATIC

The Idea of Ecocracy and environmental sovereignty is realized in the context of power constructed in the mechanism of the relationship between God, Nature and Humans. Because nature and humans must live in balance, and to ensure this balance, the presence of God is needed, this is also what changes the perspective of modern humans today towards nature, which was previously very anthropocentric to theocentric. To form environmental law or natural resource management law that is just, democratic, and sustainable, the concept of environmental sovereignty can be used as a legal political basis in the harmonization of environmental law and natural resource management law in Indonesia, especially if the concept has been embodied in the form of norms in the 1945 Constitution, namely Article 33 paragraph (3) and Article 28 H paragraph (1). This aims to ensure balance, secular modern life needs to reconsider the presence of God in human thinking in dealing with the surrounding nature and even nature as a whole, even God, Nature and Humans must be seen as having their respective rights and contexts of power.

In reality, it shows that the implementation of the concept of sovereignty in the perspective of justice in the environmental field is the weakest in legislation, then how can this aspect be realized, according to the author, the concept of environmental justice can be found in the values of Pancasila, especially the fifth principle, namely social justice for all Indonesian people, the concept of social justice is in line with what John Rawls stated that the main subject of justice is society, Rawls asserted that the justice enforcement program with a populist dimension must pay attention to two principles of justice, namely: First, providing equal rights and opportunities for the widest possible basic freedoms, the widest possible freedom for everyone. Second, being able to reorganize the socio-economic disparities that occur so that they can provide mutual benefits for everyone, both those from the advantaged and disadvantaged groups.

The formulation of law in the field of environmental and natural resource management, justice can be seen from two aspects, first; justice can be seen as a virtue, which arises from individual reflective efforts regarding a good and ethical way of life (the idea of justice according to Plato), and second; justice seen as a virtue only arises and exists in the personal niches of each individual, but further than that, justice is present in the situation and community of human life. Therefore, Article 28 H paragraph (1) which states that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment, and to receive health services. This indicates that the state is obliged to ensure the fulfilment of every person's right to a good and healthy environment as part of ecological human rights.

Thus, as a form of implementation of the concept of environmental sovereignty, all economic activities in society and social activities in general, as well as socio-cultural and socio-political activities, should not only consider short-term interests for today, if today's benefits are obtained through ways or steps and actions that can damage the potential and carrying capacity of nature for future generations, then activities that are considered to provide benefits for the present can be said to be incompatible with the principle of sustainable development, if this is reflected in the formulation of policies, it means that the policy can be said to be contrary to the constitution (unconstitutional), if this is reflected in government actions, then it can also be said to be contrary to the 1945 Constitution.

Concrete legal norms as the implementation of the 1945 Constitution of the Republic of Indonesia are as follows:

1.Law No. 32 Year 2009 on Environmental Protection and Management;

2.Law No. 5 of 1960 concerning Basic Agrarian Principles;

3.Law No. 5 of 1990 on the Conservation of Living Natural Resources and their Ecosystems;

4.Law No. 5 of 1994 on the Ratification of the United Nations Convention on Biological Diversity;

5.Law No. 6 of 1994 on the Ratification of the United Nations Framework Convention on Climate Change;

6.Law No. 41 of 1999 on Forestry, as amended by Law No. 19 of 2004 on Government Regulation in Lieu of Law No. 1 of 2004 on Amendment to Law No. 41 of 1999 on Forestry into Law;

7.Law No. 22 Year 2001 on Oil and Gas;

8.Law No. 27 Year 2003 on Geothermal;

9.Law No. 7 Year 2004 on Water Resources;

10.Law No. 17 Year 2004 on the Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change;

11.Law No. 18 Year 2004 on Plantations;

12.Law No. 45 Year 2009 on the Amendment to Law No. 31 of 2004 on Fisheries;

13.Law No. 23 Year 2014 on Regional Government;

14.Law No. 17 Year 2005 concerning the National Long-Term Development Plan 2005-2025;

15.Law No. 26 Year 2007 on Spatial Planning;

16.Law No. 27 Year 2007 on the Management of Coastal Areas and Small Islands as amended by Law No. 1 Year 2014;

17.Law No. 4 Year 2009 on Mining Minerals and Coal;

18.Law No. 18 of 2013 on Prevention and Eradication of Forest Destruction.

From the review of the legislation in the field of natural resource management and the environment, it was found that there are several fundamental problems of disharmony in the substance of legislative arrangements in the field of environment and natural resource management as follows:

a.The mechanism of integration and coordination between sectors of environmental and natural resource management has not been regulated explicitly and in detail;

b.Approaches to natural resource management are not comprehensively regulated;

c.The rights of indigenous/local communities over the control and use of natural resources have not been fully recognized;

d.Space for community participation and transparency in resource management;

e. Government accountability to the public in natural resource management has not been explicitly regulated.

3 CONCLUSION

3.1 THE RESULTS OF THIS RESEARCH SHOW THAT

1. The conception of environmental sovereignty for the discovery of just law in the field of environment in Indonesia is to form a harmonious, just, democratic and sustainable environmental law, then the conception of environmental sovereignty in the sense of creating a balance of rights between humans and nature, with a legal pluralism approach to realising environmental justice.
2. Implementation of the Concept of Environmental Sovereignty in Legislation in the Field of Environment and Natural Resources is to form norms in legislation governing the management of natural resources and the environment.

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