

ROLE OF THEORY OF LAW FOR PROTECTION SYSTEMS DEVELOPMENT AND ENVIRONMENTAL MANAGEMENT IN INDONESIA

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Abstract: *The development of environmental law in Indonesian is influenced and not separated from the development of environmental law internationally. Stockholm declaration in 1972 was transformed into Act No. 4 year 1982 on Basic Provision of Life Environment. Then, Rio Declarasion in 1992 was transformed into Act No. 23 year 1997, and Johannesburg Declarasion in 2002 was transformed into Act No. 32 year 2009 on Protection and Life Environment Management.*

Regulating and managing life environment as well as natural resources become a very serious problem faced by the government. With plenty of natural resources, the government of the republic of Indonesian has planned to make a development and make the Indonesian people prosperous in accordance with national goal. On the other side, in fact, the exploitation and the use natural resources frequently give bad impacts to pollution, environmental destruction, and give only a small profit to small groups or certain areas without giving more attention to benefit to make the Indonesian people prosperous, especially the people who live near the areas of natural resources themselves.

The theory of development law was introduced in Indonesian by Mochtar Kusumaatmadja. Definition of law according to Mochtar Kusumaatmadja is a set of norms or principles regulating human beings lives in the society, but it includes institution and the process required to create the law and reality. Norms and principles illustrate the law as a normative syndrome, whereas the words of institution and process illustrate the law as a social syndrome. Those definitions conclude that one of important functions of the law is to gain or obtain orderliness in human being lives in the society. The function of law to guarantee orderliness and regularity is very important so that people make this function equal to the goal of law.

Mochtar Kusumatmadja states that law is and instrument or a means of society reform. This theory of development law can be stated as a concept modification proposed by Roscoe Pound, that is to say law as a tool of social engeneering. The role of development law in the system of protection and law management can be implemented into planning, using, controlling, maintaining, supervising, and law enforcement contained in the Plan of Protection and Management of Life Environment (RPPLH). It is such written plan containing potential, problems of life environment, and efforts of protection and management in a certain period of time.

Keywords: *Theory of development law; life environment; protection and management.*

A. INTRODUCTION

The development of regulations concerning environmental issues in Indonesia begins with the shipwreck of the tanker Showa Maru in the Malacca Strait 1975. At first the Government of Indonesia at the time of the Showa Maru case the plan to make the legislation relating to marine pollution problems, but in the end the government draw up regulations concerning the environment first, Constitution Law No. 4 of 1982 regarding the Principles of the Environment. Furthermore, Constitution Law No. 4 1982 is replaced Constitution Law No. 23 of 1997 on Environmental Management, and the Act is replaced by the latest legislation, Constitution Law No.32 of 2009 on the Protection and Management of the Environment.

Despite the Indonesian state has made arrangements about the environment, but in reality the problem of the environment is still quite a lot. Some examples of cases show that environmental management in Indonesia is still far from expectations that aspired to, among other cases of contamination were conducted by PT. Inti Utama Indorayon in North Sumatra, cases of pollution in Buyat Bay by PT. Newmont Minahasa Raya, a case of pollution by PT. Freeport in Papua, cases of mudflow in Sidoarjo, and much more. Most of area in Indonesia, which has the potential of natural resources, then that's where frequent source of disaster, such as social inequality, conflicts, or disputes over human rights issues (rights), and others.

Organization and management of the environment and natural resources is one of the serious problems faced by the government. With abundant natural resources owned by Indonesia, the government plans to undertake the development and welfare of the community in accordance with the objectives of the state.¹ On the other side turns utilization of natural resources, often cause pollution and destruction of the environment and only benefit (profit) to the fraction class or region without regard to the benefits (benefits) obtained for the welfare of society, especially the people who are around the area source The natural power.

B. DISCUSSION

1. Role of Legal Theory in Management Development and Environmental Protection in Indonesia

Legal Theory Development in Indonesia was introduced and popularized by Mochtar Kusumaatmadja. Mochtar Kusumaatmadja according to the legal definition is a set of rules and principles that govern human life in society, but also institutions and processes needed to realize the law and reality.² Describe the principles and rules of law as a normative phenomenon, while institutions and processes described

the law as a social phenomenon.³ Understanding concluded that one of the most important functions of the law is achieving regularity in human life in society. Ensure the regularity of the functions of law and order is so important that there are people who equate this with the purpose of the law.

Mochtar Kusumaatmadja stated that the law is as a means of community renewal. Construction of legal theory can be described as a modification of the concept put forward by Roscoe Pound namely the law as a tool of social engineering. Legal Theory Development proposed by Mochtar Kusumaatmadja emerged in Indonesia that adheres to the legal system of civil law (continental Europe). In the civil law system are the codification of which is drafting laws similar to the one book that is carried out systematically. In the civil law, legal certainty are preferred, so that legislation (legislation) is in prioritizing in order to create the legal certainty.

Development theory are in fact influenced by the theory of policy oriented raised by Laswell and Mac Dougal (system values) and the philosophy of culture expressed by Northrop (culture values) which next eliminated concept tool from Roscoe Pound (law as a tool of social engineering) and replaced with means, then adjusted to the conditions in Indonesia. Legal Theory This development became more concrete when engaged in the Guidelines 1973-1983 Pelita II, Chapter 27 and Chapter 23 of the law III.

2. Environmental Indonesian Legal System

Mochtar Kusumaatmadja said that the purpose of the law is maintained and ensuring the regularity (certainty), and order.⁴ To ensure the regularity then be made legislation (rules). Earth and water and natural resources contained therein controlled by the State and used for the welfare of the people.⁵ This article gives the authority for the State to manage and exploit the wealth of the State consisting of natural resources, human resources and cultural resources. The utilization of State assets by the State was organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental friendliness, independence, and balancing progress and unity national economic⁶, also concerns the right of every citizen to get a good environment. Protection of the environment, including natural resources, thus has the dual purpose of serving the interests of society as a whole and serve the interests of individuals.⁷

The right to a healthy environment and good as stated in the constitution associated with the obligation to protect the environment. This implies that the environment including its resources is a shared wealth that can be used any person for the benefit of the general public, but the preservation of its functions must be maintained for future generations⁸. The right to a healthy environment and the well is then confirmed in the second amendment of the Constitution which states

that every person has the right to live physical and spiritual prosperity, reside, and get a good living environment and healthy and receive medical care protection of a good environment.⁹

Efforts environmental functions performed by protecting and managing in accordance with the carrying capacity, capacity, and resilience of the environment itself. Protection and management of the environment is not possible without the role of law enforcement. Environmental law as a means to ensure the certainty of environmental protection and management of the environment. Environmental law has developed rapidly, not only in relation to the function of the law as a protection, control and certainty for the community (social control) with the role of an agent of stability, but especially stands out again as a means of changing society.¹⁰ Environmental laws concerning the determination of the values that are expected to apply in the future.¹¹

In the implementation of environmental laws in Indonesia, takes the arrangement and enforcement (compliance and enforcement). Structuring environmental law can be implemented using the instruments of supervision and licensing. Structuring the law is the duty of the whole society and to have an understanding of the rights and obligations of an absolute requirement.¹²

Environmental law concerning the determination of the values (*waardenbeoordelen*) value is the value that is currently valid and the values expected in the future and may be referred to the law governing order environment.¹³ Indonesia's development aims to raise the quality of life of the people. In an effort to improve the quality of life, should be maintained so that the environment's ability to support life at a higher level is not broken, because when damage occurs, instead of improving the quality of life to be achieved, but rather a slump, so construction is not be continued.¹⁴

Development is not just having a large amount of money or merely economic.¹⁵ Development can't continue if too exploit nature so changed the balance of nature itself.¹⁶ Sustainable development as development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. Within that concept contained two important ideas. First, the idea of the need, in particular the essential needs of the poor of the world who should be given priority. Secondly, the idea of limitations which is based on the condition of technology and social organization on the environment's ability to meet present and future needs.¹⁷ Meanwhile, pollution is very prominent development impact caused by B3 waste by its own activities.¹⁸ Pollution of the environment according to Article 1 (14) Constitution of Law No. 32 of 2009 on the Protection and Management of the Environment:

“Environmental Pollution is entered or the inclusion of living creatures, substances, energy, and or other components into the environment by human activities that exceed environmental standards have been established”.

Environmental pollution is one of the problems in the construction. To overcome the many problems that occur in the environmental field, then the government makes policies in managing the environment. Management policy is embodied in the principles of management (management policy).

One effort to overcome the problems in the management of environmental issues in Indonesia can be conducted by Legal Theory Development proposed by Mochtar Kusumaatmadja. Through the Development of Legal Theory, the law as a means of community development, serves to direct the construction is done. Directing development can be interpreted in several different terminology. In such an environment, the direction of development is to be achieved balance anatara fulfillment welfare through optimum utilization of resources (not maksimal) which tend to be economical as well as environmental functions (carrying capacity, capacity, resilience) on the other hand is more ecological to the creation of development (sustainable development).

Role of Legal Theory Development in the system of protection and management of law, can be implemented into the planning, utilization, control, maintenance, supervision, and enforcement contained in the plan of protection and environmental management (RPPLH) is a written plan that includes potential, environmental issues, as well as the protection and management within a certain time.

At this step of control, maintenance, and supervision, the role of administrative law has a central role in environmental law. In administrative law control, maintenance, and monitoring can be done by way of prevention, preventive and repressive. In environmental law, known terminology primary jurisdiction, the primary jurisdiction of environmental law is administrative law (executive rather than *rex judicata*). Role of Legal Theory Development in this case is direct with establishment through consent, as one of the important instruments in administrative law. The implementation of the legal theory of development in the permit, is expected to steer (not only control but also keep an eye) to mencitakan sustainable development.

Furthermore, in law enforcement, a judge becomes a very important role in overcoming the problems of environmental law enforcement, particularly in the case of pollution and environmental destruction. Enforcement of environmental laws take precedence kepada administrative law or at least in the civil law, which is a matter of compensation lawsuit filed by environmental organizations or non-governmental organizations (NGOs). In fact, direct seringkali criminal lawsuits filed regardless of its nature as an *ultimatum remedium* (subsidiarity

principle) which states that the criminal law be the last tool in law enforcement when other means are ineffective or no means to enforce the law. It is also the role of Legal Theory Development in matters of law enforcement, judges are expected to give a verdict that anticipatory and futuristic, in order to avoid further cases of environmental pollution as was the case in Buyat Bay are conducted by PT. Newmont Minahasa Raya.

C. COVER

Based on the description and discussion in the previous section, the following can be delivered conclusions that the role of Legal Theory Development in the system of protection and management of law, can be implemented into the planning, utilization, control, maintenance, supervision, and enforcement contained in the plan of protection and environmental management (RPPLH) is a written plan that includes the potential, issues, environment, and the protection and management within a certain time.

Notes

1. Paragraph 4 of the Preamble of the Constitution of 1945 states.
2. Mochtar Kusumaatmadja and Arief Sidhartha, (2000), Introduction to Law, A First Introduction Scope of Applicability of Legal Studies (Book I), Alumni, Bandung, page 49.
3. Mochtar Kusumaatmadja, (2006), Concepts of Law in Development, Alumni, Bandung, page V.
4. Mochtar Kusumaatmadja and Arief Sidhartha, *op.cit*, page 49.
5. Article 33 paragraph (3) of the Constitution of 1945.
6. Article 33 paragraph (4) of the Constitution of 1945.
7. Koesnadi Hardjasoemantri, *op.cit*, page. 104.
8. Siti Sundari Rangkuti, *op.cit*, page 251.
9. Article 28H paragraph (1) of the Act of 1945.
10. Siti Sundari Rangkuti, *Op. Cit*, page. 2.
11. *Ibid*
12. Koesnadi Hardja soemantri, (2005), "Environmental Law" Gadjah Mada University Press, Yogyakarta, page 375.
13. Siti Sundari Rangkuti, *Op. Cit*. page. 2.
14. Otto Soemarwoto, *op.cit*.p. 146-147.
15. Djoko Sudantoko, (2003), Dilemma Autonomous Region, Publisher Andi, Yogyakarta, hlm. 20.
16. *Ibid*, p. 31
17. <http://bennysyah.edublogs.org/2007/01/23/dasakarya-management-of-life-environment>, accessed on February 5, 2011, At 09:45 pm
18. *Ibid*

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