

# The Construction of Law System in the Field of Environmental Governance in Realizing Justice and Green Legislation in Indonesia

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**Abstract--** *Environmental development which is an important part of the ecosystem that has function as a supporter for all living things on the earth and it is directed at the realization of the sustainability of the environmental function in a dynamic balance and harmony with the development of the population to ensure the realization of sustainable development. A good and healthy environment is a human right and constitutional right for every Indonesian citizen. The general objective of this research is to examine the system of environment according to Indonesia regulation with the development of a regulatory system of spatial patterns that harmonize the the land use, water and other natural resources in a harmonious and dynamic environment and supported by harmonious management of population development.*

**Keywords—***Legislation, Regulation, Environment*

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## I. INTRODUCTION

Environmental law is created with the aim of protecting the environment and providing benefits to the community. In other words, there must be legal certainty in it. In the development of environmental law, there is a need for legal certainty because it requires how the law is implemented, regardless of how bitter it is (*fiat justitia et pereat mundus*, even though the world is collapsed the law must be implemented). This is intended to create order in society. For example: "Whoever pollutes the environment, they must be punished", this requirement requires that anyone (no matter his position if he or she create environmental pollution, he must be punished. Remember: the

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punishment of polluters here is not because he pollutes (so it is not based on cause and effect), but because of an existing regulation that forbids some activities which make pollution. That is what is required in legal certainty, what the statement of the law is, it must be implemented.[1]

On the contrary, the community wants to get the benefit of implementing the regulation or enforcement of environmental law. Environmental law is created to protect the environment and to give benefit to the community. This means that the regulation was made for the benefit of the community, so that it should not happen, because of the implementation of the regulation, the community became restless. The third element is justice. In the enforcement of environmental law, justice must be considered. However, the law is not identical with justice, because the law is general, binds everyone, and generalizes; the statement of the law: "Whoever pollutes the environment must be punished," it means that every person who pollutes the environment must be punished, without discriminating on whose position or the position of people who pollute. But on the contrary, justice is subjective, individualistic, and does not generalize, it means fair to A is not necessarily fair to B, the polluted winner will say that the decision is fair, but it is certainly unfair to the victim.[2]

From the description above, it can be concluded, that without legal certainty, people do not know what to do and finally there is anxiety. The law will be cruel if it is implemented strictly: *Lex dura, sed tamen skripta* (the law is cruel, but its statement does not sound like that). According to Merto Kusumo, if law enforcement is concerned only with certainty law, the other elements are sacrificed. Likewise, if only its benefit becomes attention, then certainty and justice are sacrificed, and so on, in the enforcement of environmental laws the three laws, namely certainty, usefulness, and justice must be compromised. This means that all those three elements must get proportionally balanced attention in handling it, although in practice it is not always easy to do.[3]

A good and healthy environment is a human rights and constitutional rights for every Indonesian citizen. Protecting and managing the environment in carrying out sustainable development so that the environment of Indonesia remains a source and support for the people of Indonesia and other living creatures. Therefore, the state, government and all stakeholders are obliged to make "The Construction of Law System in the Field of Environmental Governance in Realizing Justice Green Legislation". The general objective of this research is to examine the environmental-based legislation system in Indonesia with the development of a regulatory system of spatial patterns that harmonize land use, water, and other natural resources in a harmonious and dynamic environment and supported by the management of humorous population development. Every change and the following environmental functions and all of their elements need to be carefully managed and controlled so that handling and protecting can be carried out as quickly as possible.[4]

Management of natural resources and the environment needs to be followed by actions in the form of preservation of natural resources to increase public welfare as stated in the 1945 Constitution. Law Number 4 of 1982 concerning the Basic Provisions for Environmental Management as amended and revised by Law Number 23 of 1997 concerning Environmental Management (hereinafter named as *UUP LH*), it is an umbrella in the field of environmental management in Indonesia right now. Thus, *UUP LH* is the basis and in implementing provisions in

environmental management and as a basis for adjusting toward changes of existing regulations, and making it a unified entity within a system. According to academics, environmental law is a field of law called the functional law field, which is a field of law that contains provisions of state, criminal and civil administrative law. If we look at them, both Indonesia Environmental Law 1982, Indonesia Environmental Law 1997 and *UUPPLH* 2009 contained the norms of law that entered into the fields of state administrative, criminal and civil law.[5]

## II. LITERATURE REVIEW

The number of streams in the field of law has resulted in a lot of understanding of different laws. Therefore, to equate perception in discussing the definition of environmental law, it should be stated that in general, the law is a whole set of rules or rules in common life. Gatot P. Soemartono, who said that the law is the whole regulation about human behavior whose contents are about what should be done or not done in a community life where the implementation of the regulation can be implemented with a sanction by the authorities. From the description of the definition of law, environmental law is the whole regulation that regulates people's behavior about what should be done to the environment, the implementation of the regulation can be enforced with a sanction by the competent authority. Meanwhile, according to Danusaputro, the law that underlies the implementation of protection and management and enhancing environmental security. He is the one who distinguishes between modern environmental law that is environmentally oriented or Environment oriented law and classic environmental law which oriented to the use of the environment or user-oriented law.[6]

Wisdom is a form of overriding the rules, it relates to a provision that there is a provision on the prohibition to do or do something, but then there is the overriding rule that something can be done or may do something that has been banned, allowed to do or do something which is prohibited accompanied by conditions. Wisdom is closely related to the conditions that must be fulfilled by the party that obtain the policy, the candidate recipient of the policy must make or give appropriate things so that the policy can be issued, if the condition for the released of the policy is not fulfilled, then the policy cannot be issued by the party who has the authority to release wisdom. An example of this policy is there is a prohibition of disposing of liquid industrial waste into the river, but can be given the wisdom to be allowed (can permit) to dispose of waste into the river based on the condition of the waste to be discharged must be managed first so that it does not change the quality standard of water.[7]

The literature of national policy literature on the national environment is closely related to government policy regarding its commitment to the environment which was an agreement with the United Nations Conference on Environment and Development in Stockholm Sweden in 1972. At that time, Indonesia was one of the participants in the conference so that it was tied to the substance of the results agreed. The current environmental policy of Indonesia is not separated from Law Number 32 of 2009 concerning Environmental Protection and Management, hereinafter it called *UUPPLH*. Different from those two previous laws which use the term environmental management in its name, Law Number 32 of 2009 was released the name as environmental protection and management. The addition of the term "protection" is based on the views of members of the house of representative

of Republic of Indonesia with rationalization in order to provide meaning about the importance of the environment to obtain protection. The executive party, the drafting team and the expert team have actually explained to the members of the house of representatives that environmental management is a concept which contains environmental protection besides the use of the environment itself. [8]

However, according to the Article 124 of *UUPPLH* which contains transitional provisions, it states that all laws and regulation which are as the implementation of the regulation of Indonesia Environmental Law 1997 are declared to remain valid as long as they are not contrasted with the *UUPPLH* until the issuance of *UUPPLH* legislation. The article 126 of the *UUPPLH* states that within 1 year after the *UUPPLH* is promulgated, the mandated regulations are stipulated. But in reality, the target in 1 year to enact several government regulations in implementing the *UUPPLH* cannot be achieved. The *UUPPLH* was promulgated on October 3, 2009, but up to a year after the *UUPPLH* enactment, namely October 3, 2010, there is no a single new government regulation that has been promulgated. According to Article 4 *UUPPLH* environmental protection and management includes the following elements: (a) planning, (b) utilization, (c) control, (d) maintenance, (e) supervision, (f) law enforcement. According to Article 5 of the *UUPPLH*, protection plans and environmental management are done through stages, namely: (a) environmental inventory, (b) determination of ecoregion areas, (c) preparation of RPPLH. [9]

The *UUPPLH* contains 39 formulations of concepts used in the body of the law which as many as 39 as formulated in Article 1. Compare that with Indonesia Environmental Law 1997 which only contains 25 meaning. The *UUPPLH* still contains the formulation of the understanding of several concepts in environmental management that come from the previous law. The *UUPPLH* contains an understanding of 35 concepts relevant to environmental management in the *UUPPLH*, namely: (1) the environment, (2) environmental protection and management, (3) sustainable development, (4) environmental protection and management plan, (5) ecosystem, (6) preservation of environmental function, (7) carrying capacity, (8) environment, (9) environmental capacity, (10) natural resources, (11) strategic environmental studies, (12) analysis of environmental impacts, (13) environmental management efforts, (14) environmental monitoring efforts, (15) environmental quality standard, (16) environmental pollution, (17) environmental standard criteria, (18) environmental destruction, (19) environmental damage, (20) conservation of natural resources, (21) climate change, (22) waste, hazardous and toxic materials, (25) environmental impacts, (26) environmental organization, (27) environmental audits, (28) ecoregion, (29) local wisdom, (30) legal community, (31) people, (32) economic environmental instruments, (33) serious threats, (34) environmental permits, (35) business licenses. [10]

### III. METHOD

In this study, the researcher here used descriptive doctrinal juridical methodology with a qualitative approach. The method was used with the approach of legislation and regulation (statute approach) and conceptual approach which started from the views and doctrines that develop in the science of law. Primary data collection in this research was done through literature study at the 1945 Constitution of the Republic of Indonesia, Indonesia

Environmental Law Number 4 of 1982 concerning Basic Provision for Environmental Management, Law Number 23 of 1997 about Environmental Management, and Law Number 32 of 2009 concerning Environmental Protection and Management. Then, the secondary data collection was done toward the results of previous studies, and journals related to justice environmental management regulation. In this study, the researchers used the second legal concept, namely law positive norms in the national system of legislation and regulation, this means that the law which will be examined is applicable law, it is a normative concept.[11]

#### IV. RESULTS AND FINDING

Environmental law in the field of law, it is one of the most strategic fields of law because environmental law has many aspects, namely in terms of administrative law, criminal law, and civil law. In a simple sense, environmental law is defined as a law that regulates the environment, in which the environment includes all objects and conditions, including human beings and their behavior in the space where humans are located and influence human welfare and the bodies of other living things. In the modern definition, environmental law is more oriented to the environment or environment-oriented Law, while classical environmental law more emphasizes on environmental use orientation or Use-Oriented Law. The development of modern environmental law in Indonesia was born since the enactment of Law Number 4 of 1982 concerning the Basic Provisions for Environmental Management, March 11, 1982 which was commonly abbreviated as Indonesia Environmental Law 1982. The 1982 Indonesia Environmental Law on September 19, 1997 was revised by Law Number 23 of 1997 and then Law Number 23 of 1997 (*UULH* 1997) was also declared invalid by Law Number 32 of 2009 concerning Protection and Management o Environment (State Gazette 209: 140, abbreviated as *UUPPLH*).[12]

According to the academician, environmental law is a field of law which called as the functional law field, it is a field of law that contains provisions of administrative law, criminal and civil law. If we carefully analyze those three Indonesia Environmental Law 1982, Indonesia Environmental Law 1997 and *UUPPLH* 2009, they contain norms of law that belong to the field of administrative law, criminal and civil administration law. The focus of these environmental issues began with the Economic and Social Council of the UN. The first discussion was submitted by the representative of Sweden on May 28, 1968 accompanied by a suggestion to conduct an International Conference on the human environment. This suggestion received a response from the Secretary-General of the United Nations and through the General Assembly confirmed with resolution No. 2581 (XXIV) on December 15, 1969, based on the resolution of the General Assembly of UN, it accepted the Swedish Government's offer to hold a conference in Stockholm in June 1972. [13]

The birth of the Stockholm Declaration of 1972 greatly influenced the development of Indonesia's modern environmental law. This was evidenced by the attachment of environmental management issues in 1973-1978 of State policy guidelines (*GBHN*) for the first time. In Chapter III of the general pattern of long-term development outlines the need for environmental protection in the implementation of development. On July 3, 1981, the Minister of State PPLH sent a legislation draft (*RUU*) that had been approved by several relevant Ministers to the Minister of

State Secretariat. Based on the Presidential Letter dated January 12, 1982, No. R.01 / PU / I / 1982, the draft of legislation was submitted to the House of Representatives of Republic of Indonesia (DPR RI) of the Republic of Indonesia. After having a long process, finally on February 25, 1982 the DPR-RI approved its draft. Fourteen days later, precisely on March 11, 1982, the Government promulgated the Law Number 4, 1982 concerning Basic Provisions for Environmental Management.[14]

After being implemented for 15 years, the *UU KPPLH* is considered to have some elementary strengths and weaknesses that do not support law enforcement efforts (law enforcement). On September 19, 1997, we officially had a new law in the field of environmental management, namely Law Number 23 of 1997 concerning Environmental Management or abbreviated as *UUPLH*. This law was previously ratified by the House of Representatives of the Republic of Indonesia in the Open Plenary Meeting on August 22, 1997. Through the enactment of this Law, the *UUKPPLH* had officially been revoked, and from that time all new provisions contained in the *UUPLH*. Even though it is still eleven years old, *UUPLH* seems to have been changed or completed. The improvement of the law is a must based on various reasons. On October 3, 2009, the government released the Law Number 32 of 2009 concerning Environmental Protection and Management (*UUPPLH*) and after that several laws appeared, such as government regulation, and ministerial regulation relating to the environment were published, they are as follow:[15]

Table 1  
The legislation of the Republic of Indonesia/ Materials or content :

Law of Indonesia	Regulatory Material
Law Number 32 of 2014	concerning marine affairs
Law Number 18 of 2013	concerning Prevention and Eradication of Forest Destruction
Law Number 04 of 2009	concerning Mineral and Coal Mining
Law Number 18 of 2008	concerning Waste
Law Number 26 of 2007	concerning Spatial Planning
Law Number 27 of 2007	concerning Management of Coastal Areas and Small Islands
Law Number 41 of 1999	concerning forestry
Law Number 05 of 1994	concerning Biodiversity
Law Number 05 of 1990	concerning Conservation of Natural Resources and Ecosystem.

Source: *Legislation and regulation of the Republic of Indonesia*

Within the scope of pollution control, civil law enforcement and solving of disputes outside the court are the main activities. The indicators of this activity are the increased effectiveness of civil law enforcement and the solving of environmental disputes outside the court, the formation of the relationship between experts, non-political organizations (NGOs), lawyers in handling environmental claims, the availability of procedures for civil lawsuits

about strict liability (absolute responsibility) and polluters pay principle (principle of polluting pay) and the increase of environmental civil litigator. Legal arrangement in the environmental field by actors in the environmental field is necessary to prevent the negative impacts of the activities done. According to the constitutional structure in the era of regional autonomy, coordination of environmental management including legal arrangement is at the National level, Provincial, District and City levels. Therefore, good cooperation is needed between institutions at the central level, in this case, the Ministry of Environment with the Provincial Environment Agency, mainly in terms of strengthening the institutional capacity in the field of law enforcement.[16]

In the Environmental Protection and Management, Law Number 32 of 2009, it is stated that to realize a better quality of the environment, a function of supervision, monitoring and investigation is needed. Supervision and investigation are some of the important components in law enforcement both administrative, civil and criminal law. In implementing the supervision and monitoring of the quality of the environment in the area, the Government of Indonesia has an abbreviated Regional Environmental Supervisory Officer (*PPLHD*) as mandated in the Environmental Protection and Management, UU Number 32 of 2009 that in carrying out supervision, the Minister, Governor, or the Regent / Mayor determine an environmental supervisor who is the as functional staff. The role, function, and position, as well as the authority of PPLHD, is intended to be further emphasized by the Decree of the Minister of Environment of the Republic of Indonesia Number 58 of 2002 concerning the Work Procedures of Environmental Supervisors in Provinces / Regencies / Cities.[17]

In the case of environmental management in Indonesia, it becomes a serious problem that must be implemented immediately because of the largest level of environmental damage that has occurred. These efforts are closely related to human activities that have been considered to threaten environmental sustainability and stability. With these efforts, it is expected to reduce and even eliminate environmental damage. One of the things that should become the main concern is the high level of environmental pollution, such as soil pollution caused by throwing rubbish anywhere. Pollution has a very broad impact and it brings some disadvantages to humans. Therefore, efforts must be made to reduce environmental pollution if necessary to eliminate it. To overcome the level of environmental damage various efforts have been carried out by the government, especially the Ministry of Environment, to minimize the impact of the damage that is stated into several programs.[18]

*AMDAL* (Analysis of Environmental Impacts) *AMDAL* is a study of large and important impacts on the environment, made at the stage of planning, and used for decision making. Some aspects examined in the *AMDAL* process are as follows physical-chemical, ecological, socio-economic, socio-cultural, and public health aspects as a complement to the feasibility study of a business and/or activity plan. *AMDAL* is a study of the major and important impacts for the decision making of planned business and/or activity on the environment that is needed for the decision making process regarding the operation of a business and / or activity (Government Regulation Number 27 of 1999 about Environmental Impact Analysis). "... a study of major and important impacts on the environment; made at the planning stage ... "To make the implementation of the *AMDAL* so running effectively and be able to

achieve the expected target, its supervision is linked to the license mechanism. Government regulation on *AMDAL* clearly states that *AMDAL* is one of the license requirements, where decision makers must consider the results of *AMDAL* studied before giving business / activity licenses. *AMDAL* is used to make decisions about the implementation / granting of business and / or activity licenses.[19]

The Corporate Performance Rating Assessment Program (*PROPER*) is one of efforts of the Ministry of Environment to encourage the arrangement of company in environmental management through information instruments. Conducted through various activities which aimed at: (i) encouraging companies to obey the laws and regulations through reputation incentives and disincentives, and (ii) encouraging companies that have good environmental performance to implement cleaner production. Indonesian government has ratified the Vienna Convention, the Montreal Protocol and the London Amendment through Presidential Decree Number 23 of 1993. Furthermore, the implementation of the ozone layer protection program in Indonesia is facilitated by the Ministry of Environment as the agency which has responsibility for environmental conservation efforts.[20]

Management of Hazardous & Toxic Materials Environment needs to be preserved its conservation so that it is still able to keep the implementation of sustainable development and increase development in all fields, especially development in the industrial sector also increasing the amount of waste produced, including those that are dangerous and toxic which can endanger the environment and human health. In the region itself, the local government also released several policies regarding the environment, such as policies issued by the local government of Makassar. The policy of implementing development in the Regional Environment of Makassar refers to the Spatial and Environmental Area Development Policy as mandated in the Medium Term Development Plan (RPJMD) of Makassar 2009-2014. This policy is a manifestation of the realization of Article 3 of Law Number 32 of 2009 concerning Protection and Management of the Environment, it shows that environmental management which is carried out with the principle of state responsibility, sustainability and benefits has the aim to realize environmentally based sustainable development for human development of whole Indonesian and the development of the whole Indonesian society who are all believers and devoted to God Almighty. In-Law Number 32 of 2009, Article 1 paragraph 3 on Environmental Protection and Management, it explains that the definition of environmentally based sustainable development is a conscious and planned effort that integrates environmental, social and economic aspects into a development strategy to ensure the integrity of the environment and the safety, capability, welfare and quality of life of present and future generation, as explained in Article 4 of the constitution, namely: Protection and management of the environment which include planning; utilization; control, maintenance, supervision and law enforcement.

The term "environmental law" is a relatively new conception in the scientific world in general and especially in legal sciences in particular, which grows along with the growing awareness of the environment. Through the growth of understanding and awareness of protecting and maintaining the environment, there is also the growth of legal attention in it. Thoughts to study and develop environmental problems in Indonesia for the first time began in 1972, when Mochtar Kusuma-Atmadja, delivered some thoughts and his advice on how to regulate the law concerning



human environmental issues by showing how important the role of law is for this need. As a subsystem or part (component) of the Indonesian "national legal system", in Indonesia, environmental law in itself forms a system, and as a system, environmental law of Indonesia has a subsystem which consist of environmental management law, environmental procedural law, environmental civil law, environmental criminal law and International environmental law.

## V. CONCLUSION

There are three meanings of state administration, namely as follows as a state apparatus, government apparatus, or as a political institution (state), which means covering organs in governors. Starting from the president, minister (including General Secretary, General Director, General Inspector), Governor, Regent and so on, in short, all the organs that run the state administration. As a function or activity, which is an activity of "government", meaning that its activity is "takes care of the interests of the state" and as a technical process in implementing the legislation, it means covering all actions of the state apparatus in carrying out the legislation. Constitutional Law is the rules that determine the necessary agencies, the authority of each agent, the relationship between one agent to another, and the relationship between those agencies with individuals within a country. The words "Civil Law" in a broad definition covering all "private material" laws, namely all laws which govern individual interests. The words "Civil Law" is also used in a narrow sense as opposed to commercial law. Criminal law is part of the whole law that applies in a country, which establishes the basics or rules to Determine which actions should not be done, which are prohibited, accompanied by a threat or sanction in form of a particular crime for anyone who violates the prohibition Determine when and in what cases to those who have violated the prohibitions, they can be imposed or punished as threatened Determine how the imposition of the criminal can be done if there are people who are suspected of violating the prohibition.

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