

# The Prospect of Environmental Law to Achieve Healthy Environmental Development in Indonesia

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## Abstract

Every citizen has the right to achieve the constitutional guarantee to live in a good and healthy environment, to be able to grow and develop. The environmental law's role and prospect as the agent of stability, agent of development, and agent of change is something which cannot be negotiated to achieve a healthy environmental development in Indonesia. It is to avoid pollution and environmental devastation for the sake of today's and the future's generations.

**Keywords:** *Environmental law, Healthy environment in Indonesia.*

## Introduction

One of the problems which occur in this modern-day era is ecological problems. These past few decades, the nature has become a real threat for the life of human beings.<sup>1</sup> Even though human beings are actually posing the most serious threat towards the environment compared to other organisms.<sup>2</sup> The action of human beings which places the nature as a commodity which is exploited without taking the environment's carrying capacity into consideration. Such actions will make the environment experience degradation.<sup>3</sup>

There needs to be a combination of teamwork and harmony to prevent and to deter the environmental degradation and pollution. The aspects of environmental management legal regulations and natural resource's conservation in Indonesia must be reviewed intensively. That is the main role of environmental law.<sup>4</sup> The regulatory aspects of environmental management and natural resources conservation in Indonesia need to be studied intensively, this is where the main role of environmental law.<sup>5</sup>

The environmental law has developed rapidly, the legal function acts as protection, control and certainty of the community with the role of agent of stability, also acts as an agent of development or agent of change.<sup>6</sup> Environmental problems are getting bigger, wider and more serious. Like a snowball, the longer it rolls the bigger it comes. The problem is not only local or trans local, but regional, national, transnational, and global. The impacts towards the environment are not only related to one or two aspects, but it interrelates in accordance with the nature of the environment which has multi chains of relation that influence each other sub-systematically. If one aspect of the environment is affected, then the other aspects will also have an impact or effect.<sup>7</sup>

The environmental problems basically are everyone's problem and it is a must that awareness movements to restore environmental conditions to a better direction are built, by taking whatever role can be done by all parties to repair the surrounding environmental damage. The 1945 Constitution of the Republic of Indonesia, Article 1 stated explicitly that the sovereignty is on the hands of the people. Hence, it is the people's authority to make the efforts to save the environment in Indonesia. In the 1945 Constitution Article 28H paragraph (1), it determines "everyone has the right to live in physical and spiritual prosperity, to

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life, and to have a good and healthy living environment and the right to obtain health services”, then explained in the Constitution Number 32 of 2009 regarding The Environment Protection and Management (UUPPLH).

Based on this background, the problem that can be formulated is: how is the environmental law’s prospect in realizing a healthy environmental development in Indonesia?

### Research Method

The research method used in this study is the method of normative legal research, which put law as a structure of norm system<sup>8</sup> with conceptual and constitutional approach.<sup>9</sup>

### Findings and Discussion

Various environmental repairs and recoveries are not in par with the rate of damage and pollution that occur. It indicates that environmental issue is not yet at the center of the Indonesia’s development. Under the pretext of development and free trade, government and companies or national and transnational corporations continuously exploit the environment and the natural resources.<sup>10</sup> According to J. Barros and J.M. Johnston, the disasters occurred are closely related to the development activities by human.<sup>11</sup> This will affect the survival of today’s and the future’s generation.<sup>12</sup>

Based on its development, the conception of healthy environment as a part of the human rights was apparent when the United Nations Conference on the Human Environment was held in Stockholm, Sweden, on June 5<sup>th</sup>-6<sup>th</sup> 1972, which sparked the Stockholm Declaration. This conference is the first step of the awareness from the international community on the importance of the environmental sustainability as basic part of the Human Rights fulfillment. In Principle 21 and Principle 11 of Declaration on the Human Environment from Stockholm Conference, it stated that the States have sovereign rights to exploit their natural resources in accordance with their environmental protection and preservation policies. In its exploitation, the States have the responsibility on every activity that damages the environment or the areas of the other states beyond their national jurisdiction.

The rights to life and to obtain a good and healthy environment mean that every citizen has the right to achieve the constitutional guarantee to live in a good and healthy environment, so as to grow and develop.

This provision can be juxtaposed with the Article 25 of Universal Declaration of Human Rights (DUHAM) which stated, “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family”. Then the Article 12 paragraph (1) of ICESCR emphasized, “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. It means the life needs of Indonesian citizens must also be met with the adequate standard of their health or other matters related to supporting one’s life. More broadly, the meaning of this norm is strengthened by stipulating one of the State’s goals as the purpose of the State (*staadsidee*) in the Fourth Paragraph of the 1945 Constitution’s Preamble, it is to protect the whole people of Indonesia and the entire homeland of Indonesia.<sup>13</sup>

It is very relevant if the author states that the right to the environment as part of the Human Rights is by nature a gift from God to the mankind. Therefore, it is also very relevant if the Human Rights theories or teachings are related to various violations on the environment, which have occurred in almost all levels of the society. The violation on the right to the environment should be defined as a threat towards human civilization. Eventually, it accumulates and leads to the violations of economical right, social and cultural right, civil and political right, or in other words a violation of human rights.<sup>14</sup>

The regulation on the right to the environment is also contained in the Fourth Paragraph of the 1945 Constitution’s Preamble, which stated “...to form a Government of the State of Indonesia that shall protect the whole people of Indonesia...” And based on Article 28H (1) which states that, “Each person has the right to obtain a prosperous life, a proper place to live with good environment and health services.” Article 33 paragraph (4), “The national economy is implemented based on economical democracy by the principles of togetherness, justice, sustainable with environmental-concept efficiency, independency, also by stabilizing the progress and unity of the State’s national economy.

The human rights charter which is an inseparable part of People’s Consultative Assembly’s Decree No. XVII/MPR/1998 which was stipulated by People’s Consultative Assembly’s Special Trial on 1998, stated, that humans are God Almighty’s creature, whose role is to manage and preserve the nature in harmony and

balanced with their loyalty to Him. Humans are blessed with the human rights alongside with the rights and responsibilities for them to ensure their existence, values of being human, and to keep a harmonious life. The perspective and behavior of the nation towards human rights which is based on the religion, universal moral values, and the nation's cultural value itself, are based on Pancasila and 1945 Constitution.<sup>15</sup>

Article 1 of the Human Rights Charter contains a stipulation regarding the rights to live which stated as, "Each person has the right to live, to survive and maintain their lives". However, Article 36 contains a restriction regarding human rights, including the rights to live as stated as, "In implementing their freedom and rights, each person is obliged to comply to the restrictions stipulated by the Law for the sake of ensuring respect and acknowledgment of the rights and freedom of the others, and to meet fair demands in accordance with moral considerations, security and public order in a democratic society".

The preamble "in letter a" of UUPPLH/ Environmental Protection and Management Law states that: "A good and healthy environment is included within the human rights of Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia." In Article 3, the UUPPLH states that protection and environmental management aims: (1) to protect the area from environmental pollution and/or damage; (2) to ensure safety, health, and survival of human beings; (3) to ensure the survival of living creatures and the preservation of ecosystems; (4) to preserve environmental functions; (5) to achieve harmony and environmental balance; (6) to ensure justice for the present and the future generations; (7) to ensure the fulfillment and protection rights of the environment as human rights; (8) to control the use of natural resources wisely; (9) to establish sustainable development; and (10) to anticipate global environmental issues.

If observed closely, the provisions of the UUPPLH and its legal policies intend to protect and manage the environment so that humans can develop according to their dignity. Also, this law emphasizes that the right to obtain a good and healthy environment is a basic human right.<sup>16</sup>

Regarding the right to a good and healthy environment, the provisions of Law Number 40 of 2007 concerning Limited Liability Companies can

be observed, in which this law also regulates social and environmental responsibility. In Article 74, it is specifically stated that "The Company which carries out activities in the field and/or relating to natural resources is obliged to carry out social and environmental responsibility". From contextual perspective, companies are also burdened with social and environmental responsibility, such as companies whose objectives and activities are to explore natural resources. Forms of the said social responsibility may vary, the most important is to "rescue" the natural resources, whose balance is increasingly disrupted. The government begins to consider this as an urgent matter, given the impact may affect the lives of many people.<sup>17</sup>

The lack of the same perspective regarding the environment roles as a life buffer arises a sectoral and short-term approach in its management. There is a tendency for environmental damage escalation due to not considering the integrity of human beings and the environment. The environment is only interpreted as a static object with no human interaction. The rights of the people to a good and healthy environment and the obligation of the state to guarantee citizens' constitutional rights are not being properly depicted as related to various technologies in order to suppress the environmental damage.<sup>18</sup>

The rights to a good and healthy environment is closely related to a number of other human rights, such as:

a. the rights of housing, mainly related to the fulfillment of habitability principle (residential comfort). In the General Comments of the Committee on Economic, Social and Cultural Rights/CESCR, it is stated that, "inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates". To ensure the fulfillment of the right to the people, the government is obliged to coordinate between the ministers and local authorities in formulating policies related to economy, agriculture, environment, energy, etc.);

b. the rights of food, particularly in relation to the government's obligations in formulating environmental policies which can support the fulfillment of the said rights for food. Poor hygiene in the environment may both directly and indirectly end up as a major hazard for food safety;

c. the rights for education. The CESCR states that, “Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth”;

d. the rights to a healthy work environment;

e. the right of each human being to be provided with prevention, treatment, and supervision of disease outbreaks; and

f. the rights for water. The fulfillment of this right aims to realize a number of other rights, including the rights to the environment.

The right to a good, healthy and balanced environment in the UUPPLH, specifically becomes the authority and responsibility of the government in its implementation, by: (1) regulating and developing policies in the framework of environmental management; (2) regulates the supply, designation, use, protection, management of the environment, and the reuse of natural resources, including genetic resources; and (3) regulating instruments for preventing pollution and/or environmental damage.

### Conclusion

Prevention and control of environmental pollution and damage requires cooperation and integration. The legal aspects of environmental management and conservation of natural resources in Indonesia need to be studied intensively, this is where the environmental law roles as the agent of stability and the agent of development/agent of change takes place. The prospect of environmental law in realizing the development of a healthy society in Indonesia is something that is unable to be negotiated as a healthy environment is a part of human rights which is guaranteed in the UDHR/ Declaration of Human Rights and the Constitution of the Republic of Indonesia (1945 Constitution), which is set out in the Act Law Number 32 of 2009 concerning Environmental Protection and Management.

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