

Legal Politics of Environmental Protection and Management in Indonesia



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ABSTRACT: This paper examines the position of Law No. 32 of 2009 concerning Environmental Protection and Management as a legal product based on the legal ideals of Pancasila and examines the legal politics of the position of Law No. 32 of 2009 concerning Environmental Protection and Management so that it can become a legal product that creates environmental sustainability. This paper uses a normative juridical method. The results of this paper indicate that Law No. 32 of 2009 concerning Environmental Protection and Management has a position under the goals of the Indonesian state, namely to create a good and healthy environment that makes people prosperous. It has been stated in Article 65 that everyone has the right to a good and healthy environment as part of human rights. The legal politics of Law Number 32 of 2009 concerning Environmental Protection and Management in accordance with the provisions of Article 28 H paragraph (1), Article 33 paragraph (3), (4) and (5) of the 1945 Constitution, which is the state's legal policy in managing the environment and use of natural resources.

KEYWORDS: Legal Politics, Environment, Welfare

INTRODUCTION

Indonesia has abundant biodiversity and natural resources. This wealth needs to be protected and managed in an environmentally minded marine, land, and air environment protection and management system. Environmentally minded means that the interests of environmental sustainability become the main thing.¹ Indonesia is also in a very vulnerable position to the impacts of climate change. These impacts include decreased food production, disruption of water availability, the spread of pests and human diseases, rising sea levels, sinking of small islands, and the loss of biodiversity. The availability of natural resources in quantity or quality is not evenly distributed, while development activities require increasing natural resources. Development activities also carry the risk of pollution and environmental damage.²

Environmental problems in Indonesia and even in the world are multidimensional problems related to many groups. Environmental problems are very important because the quality of the environment directly affects the quality of human life. Environmental cleanliness is a measure of people's quality of life. A prosperous and peaceful life by having a clean environment is a basic right of every Indonesian citizen as mandated in Article 28 H of the 1945 Constitution of the Republic of Indonesia which reads, Everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy environment, and have the right to obtain health services.

A healthy life begins with a healthy environment too. But today, many problems occur due to environmental pollution and destruction. One of the impacts of environmental problems is the damage to public health in the environment. Various kinds of community diseases arise due to environmental pollution.³ For example, water-borne diseases such as diarrhea, cholera, typhus abdominalis.⁴

The great influence due to the damage or contamination of the environment on health makes the importance of environmentally-minded development. Apart from health, pollution and environmental damage also have an impact on all components around the environment. The environment includes the physical environment and the social environment. The physical environment is everything around humans that is in the form of inanimate objects. The social environment is an environment that has several aspects, including social aspects, psychological attitudes, spiritual attitudes, and so on.

¹ Jimly Asshiddiqie, *Green Constitution* (Jakarta: Raja Grafindo Persada, 2009). Hlm. 34.

² Muhamad Sadi Is, "Legal Certainty for Environmental Protection," *Jurnal Yudisial* 13, no. 3 (2020): 311–327.

³ Putu Ary Prasetya Ningrum, "Perlindungan Hukum Lingkungan Terhadap Dampak Perilaku Masyarakat Yang Membuang Sampah Di Sungai," *Pariksa* 5, no. 1 (2021): 60–66.

⁴ I Wayan Redi Aryanta, "Pengaruh Pencemaran Lingkungan Terhadap Kesehatan Masyarakat," *Prosiding Seminar Nasional* 978-602-91 (2016): 224–231.

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Seeing the complex problems regarding environmental pollution and destruction, Indonesia as a state of the law with a modern system has a function as a means to facilitate the process of social interaction, namely by viewing law as a social control mechanism that is general and operates equally in almost all sectors of people's lives. Bredemeier stated that the main function of a legal system is integrative, meaning to reduce the elements of potential conflict in society and to smoothen the process of social interaction.⁵ Legislation exists to provide legal certainty for the entire community, so to ensure legal certainty against problems of environmental destruction and pollution, the community must be able to contribute to the protection and management of the environment. The government has prepared a special environmental law to ensnare the destroyers and polluters of the environment, namely Law Number 4 of 1982 concerning the Environment and Law Number 23 of 1997 concerning environmental management and has been refined by Law Number 32 of 2009 concerning Environmental Protection and Management.

Pancasila as a legal ideal (*rechtsidee*) is the source of all sources of national law. The formation of statutory regulation is the embodiment of the values contained in Pancasila as the legal ideals of the Indonesian nation. The task of the legislators is to implement the values of Pancasila into the content of the law, not to normative Pancasila with the law.

Laws and regulations that are influenced by the direction of political policies from legislators will produce political products through a sequence of laws and regulations which meet the aspirations of all Indonesian people. Law Number 32 of 2009 concerning Environmental Protection and Management must be able to realize its policy directions philosophically, juridically, and sociologically so that it can become a legal product that creates the welfare of citizens in the protection and management of the environment and natural resources in Indonesia. So here the author was interested in studying more deeply about the legal politics of Law Number 32 of 2009 concerning Environmental Protection and Management to realize environmental welfare and preservation. Based on the description above, this paper will specifically discuss issues regarding; What is the position of Law No. 32 of 2009 concerning Environmental Protection and Management as a legal product based on the legal ideals of Pancasila? How is the legal politics of Law No. 32 of 2009 concerning Environmental Protection and Management in realizing environmental welfare and protection?

RESEARCH METHOD

The approach method in this study used a normative juridical approach. The research used descriptive-analytical, which described the norms studied and associated with theories, and opinions of legal experts. The source of data in this study was sourced from library research, which research was conducted based on books, literature related to the problem to be studied. The type of data collected was in the form of secondary data obtained from the literature consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Data processing began after all the required data was completely fulfilled. The collected data were sorted based on their relevance and usefulness in this research. After the data was grouped according to its purpose and use, then it was processed and described accurately. The data analysis method used in this research was descriptive qualitative analysis, namely analyzing data by describing the symptoms or phenomena and facts obtained in the field objectively to answer research problems.⁶

DISCUSSION

1. Law No. 32 of 2009 concerning Environmental Protection and Management position as a legal product based on the legal ideals of Pancasila

Indonesia is a legal state that has civil law characteristics with the characteristics of written legal regulations (codified law) and the main source of law in state administration, as an antinomy to the common law system centered on jurisprudence (Judge made law). Codification is important in the characteristics of civil law.⁷ These written regulations are known as statutory regulations (*wettelijke regeling*). The Black's Law Dictionary defines it as a legal regulation that comes from the law, in addition to the constitution or judicial decisions.⁸ Law is the normative life of the state and its citizens. The law determines and regulates how the relationship is carried out and what the consequences are. The law provides guidelines for behavior, whether it is prohibited, required, or permitted. This normalization is carried out by making a general framework and then further elaborated in various forms of existing laws and regulations.⁹

As a source of Indonesian legal order, Pancasila is contained in the highest provision, namely the Preamble to the 1945 Constitution, which was later concretized or described in the articles of the 1945 Constitution and the regulations below. Pancasila as the basis of the state is the source of all sources of Indonesian law. With this source of law, Hans Klases formulated a legal

⁵ Esmi Warasih, *Pranata Hukum Sebuah Telaah Sosiologis* (Semarang: Badan Penerbit Universitas Diponegoro, 2011).

⁶ Suteki and Galang Taufani, "Metode Penelitian Hukum (Filsafat, Teori, Dan Praktik)," ed. 3 (Depok: Rajawali Pers, 2020), 176.

⁷ Fais Yonas Bo'a, "Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional," *Jurnal Konstitusi* 15, no. 1 (2018): 27–49. Hlm. 27.

⁸ Azwad Rachmat Hambali, Rizki Ramadani, and Hardianto Djanggih, "Politik Hukum PERMA Nomor 1 Tahun 2020 Dalam Mewujudkan Keadilan Dan Kepastian Hukum Terhadap Pemidanaan Pelaku Korupsi" 5, no. 36 (2021): 200–223.

⁹ Warasih, *Pranata Hukum Sebuah Telaah Sosiologis*.

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system in the form of a pyramid building known as *stufenbau theory*. This legal view is then adopted in the Indonesian legal system, where legal norms are placed in a tiered, layered, and grouped system. In the sense that these legal norms must be sourced from higher legal norms, and higher legal norms must be sourced from higher legal norms, and so on until a norm of the state's highest legal source, namely Pancasila. Thus, Pancasila as the source of all sources of law is placed at the top of the pyramid, which is likened to a flowing spring that feeds and animates the norms under it.¹⁰

Pancasila as a legal ideal (*rechtsidee*) is the source of all sources of national law. In other words, statutory regulation is nothing but the embodiment of the values contained in Pancasila. The task of the legislators is to implement the values of Pancasila into the content of the law. However, in practice, there are still problems in the formation of laws and regulations in Indonesia. In general, the issue of rigidly forming laws and regulations in Indonesia has been regulated in Law Number 12 of 2011 jo. Law Number 15 of 2019 concerning the Establishment of Legislation. In this regulation, statutory regulations are defined as written regulations that contain legally binding norms in general and are established or stipulated by state institutions or authorized officials through the procedures stipulated in the laws and regulations (Article 1 point 2).¹¹

According to Burkhadt Krem as quoted by Attamimi, the formation of laws and regulations includes activities related to the content or substance of regulations, methods of formation, as well as processes and procedures for establishing regulations. Each part of the activity must meet its requirements so that the legal product can apply properly, both juridically and politically, and sociologically. Therefore, according to Krems, the formation of laws and regulations is not a mere juridical activity, but an interdisciplinary activity. This means that every activity of forming laws and regulations requires the assistance of these sciences so that the resulting legal products can be accepted and receive recognition from the community.

In the explanation of the 1945 Constitution of the Republic of Indonesia Article 1 paragraph 3, it is expressly stated that the Republic of Indonesia is a state of law. Eine Rechtsstaat, "a state based on law, a state governed by law". It means that the law is not a product formed by the highest institutions of the state alone. Rather, it underlies and directs the actions of the Institute. Law is the basis and guide for all aspects of social, national, and state activities. The Indonesian people both in political, economic, social, cultural, defense and security life as well as in legal life (in a narrow sense) must always be guided by the institution, namely the law.¹²

The process of making laws as a form of legal development is a series of events that begin with planning, proposing, discussing, and ratifying, all of these processes are carried out by actors who in a modern democratic system are called the executive (the president and his line ministries) and the legislature (DPR). In a democratic system of law formation, the process of the formation of the law has a bottom-up type, which requires that the legal material that is intended is a reflection of the values and will of the people.¹³

Making laws and regulations, and realizing the values contained in legal ideals into legal norms, really depends on the level of awareness and appreciation of the legislators. The absence of awareness and appreciation of these values will create a gap between legal ideals and legal norms that are made. Therefore, in the Republic of Indonesia, which has the legal ideals of Pancasila as well as the State's Fundamental norm, every regulation made should be colored and flowed by the values contained in the legal ideals.¹⁴

The legal ideals under the objectives of the State of Indonesia have been stated in Law Number 32 of 2009 Article 65 which states that everyone has the right to a good and healthy environment as part of human rights. Indonesia's environmental law enforcement system, which results in court decisions against perpetrators of environmental pollution and environmental law products can achieve legal ideals and realize democratic values for all Indonesian people.¹⁵

2. The legal politics of Law No. 32 of 2009 concerning Environmental Protection and Management in realizing environmental welfare and protection

Moh. Mahfud MD argued that legal politics is an official policy direction or line that is used as a foothold and a way to make and implement laws to achieve the goals of the nation and state.¹⁶ The official policy in force and currently in effect in Indonesia is Law Number 32 of 2009 concerning Environmental Protection and Management. Padmo Wahyono argued that legal politics is a basic policy that determines the direction, form, and content of the law to be formed.¹⁷

Moh. Mahfud MD stated that legal politics is a legal policy that will be or has been implemented nationally by the Indonesian

¹⁰ Ahmad Ainun Najib, "Pergeseran Peran Partai Politik Dalam Mewujudkan Produk Hukum Yang Berdasarkan Pancasila," *Nurani Hukum* 2, no. 2 (2020): 1.

¹¹ Warasih, *Pranata Hukum Sebuah Telaah Sosiologis*.

¹² Ibid.

¹³ Muhammad Reza Maulana, "Upaya Menciptakan Produk Hukum Berkualitas Konstitusi Melalui Model Preventif Review," *Jurnal Konstitusi* 15, no. 4 (2019): 774.

¹⁴ Warasih, *Pranata Hukum Sebuah Telaah Sosiologis*.

¹⁵ A Y Pawestri, "Cita Hukum Dan Demokrasi Dalam Sistem Penegakan Hukum Lingkungan Indonesia," *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 17 (2019): 96–111.

¹⁶ Moh Mahfud MD, *Politik Hukum Di Indonesia*, Cetakan ke. (Jakarta: Pers, Rajawali, 2014).

¹⁷ Padmo Wahyono, "Politik Hukum Nasional" makalah (1966): Jakarta.

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government. This Legal Policy consists of, first, the development of the law with the core of making and updating legal materials so that they are following the needs. Second, the implementation of existing legal provisions, including the affirmation of the function of the institution and the guidance of law enforcers. So according to Moh Mahfud MD, legal politics includes the process of making and implementing laws that can show the nature and direction in which the law is built and enforced.¹⁸ When talking about legal policies, the 1945 Constitution as a basic norm is the main basis, including in the management of the environment and natural resources. Law Number 32 of 2009 concerning Environmental Protection and Management has complied with the provisions of Article 28 H paragraph (1), Article 33 paragraph (3), (4), and (5) of the 1945 Constitution, which is the state's legal policy in environmental management and use of natural resources. Article 28 H paragraph (1) 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 living environment and have the right to obtain health services". Article 33 paragraph 4 of the 1945 Constitution "The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity". Article 33 paragraph (5) states that further provisions are regulated in law.

From the provisions of Article 28 H paragraph (1), Article 33 paragraph (3), (4) and (5) of the 1945 Constitution, 5 important things become legal state policies in environmental management and utilization of natural resources, namely:¹⁹

- a. Environmental management and utilization of natural resources must be placed within the framework of recognizing, protecting, and fulfilling the human rights of every citizen to a good and healthy environment. In other words, the human right to a good and healthy environment cannot be sacrificed due to the implementation of development and utilization of natural resources;
- b. Environmental management and utilization of natural resources are the responsibility of the state, where through the state's right to control, the state makes rules and policies for the use of the environment and natural resources; The welfare of the people becomes the philosophical and sociological basis for all activities and activities of environmental management and utilization of natural resources for the welfare of the people;
- c. Environmental management and utilization of natural resources is a means to achieve sustainable development with an environmental perspective, in the sense that the objectives of environmental management and utilization of natural resources include not only the welfare of the people but also aspects of environmental sustainability and national economic progress.
- d. There is a delegation of further regulations regarding environmental management by law.

Thus, Law Number 32 of 2009 concerning Environmental Protection and Management states that a good and healthy environment is a human right and a constitutional right for Indonesian citizens. Therefore, the State and the government, and all elements of Indonesian society are obliged to protect and manage the environment to realize the welfare of the Indonesian people.

Thus, Law Number 32 of 2009 concerning Environmental Protection and Management was born as a policy in environmental protection and management. Philosophically, Law Number 32 of 2009 concerning Environmental Protection and Management views and respects the importance of the right to a good and healthy environment for citizens.

Associated with the opinion of Moh. Mahfud MD that the policy directions of Law Number 32 of 2009 concerning Environmental Protection and Management which are used as the basis for achieving the goals of the nation and state are as follows:

- a. That a good and healthy environment is a human right of every Indonesian citizen as mandated in Article 28 H of the 1945 Constitution of the Republic of Indonesia
- b. Whereas the national economic development as mandated by the 1945 Constitution of the Republic of Indonesia is carried out based on the principles of sustainable development and is environmentally minded.
- c. That the spirit of regional autonomy in the administration of the government of the Unitary State of the Republic of Indonesia has brought about changes in the relationship and authority between the Government and regional governments, including in the field of environmental protection and management.
- d. That the declining quality of the environment has threatened the sustainability of human life and other living creatures, so it is necessary to carry out serious and consistent environmental protection and management for environmental protection and management by all stakeholders.
- e. That increasing global warming results in climate change that exacerbates the decline in the quality of the environment, therefore it is necessary to protect and manage life.
- f. That in order to better guarantee legal certainty and provide protection for everyone's right to get everyone's environment to get a good and healthy environment as part of the protection of the entire ecosystem, it is necessary to reform Law

¹⁸ MD, *Politik Hukum Di Indonesia*.

¹⁹ Dani Amran Hakim, "Politik Hukum Lingkungan Hidup Di Indonesia Berdasarkan Undang-undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Fiat Jurnal Ilmu Hukum* 9, no. 2 (2015).

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Number 23 of 1997 concerning Environmental Management.

Based on the content of the preamble contained in Law Number 32 of 2009 concerning Environmental Protection and Management, if the law is analyzed juridically, the regulations established by the state aim to overcome legal problems by considering existing regulations, which will be changed, or which will be functioning in ensuring legal certainty and a sense of community justice. So the basis for the realization of Law Number 32 of 2009 concerning Environmental Protection and Management aims to provide legal certainty and provide protection for everyone's right to a good and healthy environment as part of the protection of the entire ecosystem, and this goal has become the basis the realization of Law Number 23 of 1997 in the preamble of the letter (f).

With this goal to be achieved, there must be authority holders to be able to discipline this Law by the Government and regional governments, as well as aiming to create a regional autonomous economy spirit in the administration of the government of the Unitary State of the Republic of Indonesia. This has been written in the preamble to the letter (c) of Law Number 23 of 1997.

If a law is analyzed sociologically, then the law must be able to meet the needs of the community in terms of the development of problems, the needs of the community, and the state. So the basis for the realization of Law Number 32 of 2009 concerning Environmental Protection and Management aims to provide solutions to the declining quality of the environment which has threatened the sustainability of human life and other living things, so it is necessary to protect and manage the environment, conscientiously and consistently, by all stakeholders. In this case, it has been written in the preamble to the letter (d) of Law Number 23 of 1997.

Thus, the *Ius Constituendum* (direction of legal formation) related to Law Number 32 of 2009 concerning Environmental Protection and Management is quite responsive through legislation in the environmental sector. In order to realize the creation of environmental protection and management, Law Number 32 of 2009 concerning Environmental Protection and Management states 6Ps, namely planning (*Perencanaan*), utilization (*Pemanfaatan*), control (*Pengendalian*), maintenance (*Perawatan*), supervision (*Pengawasan*), and law enforcement (*Penegakan hukum*).²⁰ The direction of the formation of this law will guide the formation of laws and regulations so that they are following the national objectives, namely the management and protection of the environment.

CONCLUSION

Based on the description above, it has been explained that Indonesia as a legal state that has a modern system has a legal source, namely Pancasila. Pancasila as a legal ideal is the source of all sources of national law. The process of forming the law is an embodiment of the values contained in the legal ideals of the Indonesian state, namely Pancasila. Law No. 32 of 2009 concerning Environmental Protection and Management has a position under the goals of the Indonesian state, to create a good and healthy environment that makes people prosperous. It has been stated in Article 65 that everyone has the right to a good and healthy environment as part of human rights.

The legal politics of Law No. 32 of 2009 concerning Environmental Protection and Management is a directive or official policy line that is used as the basis and method for making and implementing laws to achieve the goals of the nation and state. These legal politics includes the process of making and implementing laws that can indicate the nature and direction in which the law is built and enforced. Law Number 32 of 2009 concerning Environmental Protection and Management has complied with the provisions of Article 28 H paragraph (1), Article 33 paragraph (3), (4), and (5) of the 1945 Constitution, which is the state's legal policy in environmental management and use of natural resources. Legislation in the environmental field has a function to realize the creation of good and healthy environmental protection and management. Law Number 32 of 2009 concerning Environmental Protection and Management states 6Ps, planning (*Perencanaan*), utilization (*Pemanfaatan*), control (*Pengendalian*), maintenance (*Perawatan*), supervision (*Pengawasan*), and law enforcement (*Penegakan hukum*).

RECOMMENDATION

Political law and legislation in Indonesia must be carried out in a straight line based on the ideals of the Indonesian state law, Pancasila. To create legislation that has fair content material following the interests of the community, to be able to reduce the birth of legislation that is not responsive and aspirational and does not reflect the values of Pancasila.

Law No. 32 of 2009 concerning Environmental Protection and Management must as well as maintain legal politics that have sought the basis of footholds, directions to realize the goals of the Indonesian state which expects the realization of welfare and environmental sustainability of the community.

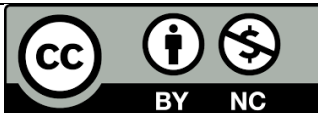
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