

Indonesia Natural Resource Management Arrangement In the Maqashid of Shariah

Sanawiah^{1*}, Moh. Fadli², Rachmad Safa'at³, Moch. Bakri⁴

1. Doctorate Candidate of Law Faculty, Brawijaya Univesity, Malang and Lecturer of University Muhammadiyah Palangkaraya
2. Lecturer Postgraduate Program of Law Faculty, Brawijaya University Malang
3. Lecturer Postgraduate Program of Law Faculty, Brawijaya University Malang
4. Professor of Civil Law abd Agrarian Law, Brawijaya University Malang
*sanawiah.sanaw@gmail.com

ABSTRACT

Development is essentially a process of social change that can not be avoided. Therefore, development is still important to do, but that must be considered is the implementation of development that should not sacrifice the environment in such a way that there is no longer the carrying capacity of the environment that will support life. The cost of living and social costs will be higher if the environment is sacrificed solely for the sake of development. Thus, this method will encourage human beings to always maintain the quality of the environment not only based on environmental ethics, but more than that the implementation of maintaining the quality of the environment placed in the context of worship, ie adherence to the Shari'a to be assessed a record of kindness or merit in the sight of Allah SWT

Key words: Resource, power, natural, Maqshid, Shari's

1. Introduction

Religious law may be applicable law in Indonesia, thus having binding legal force to any person subject to such rules, provided by law. If there is a law that stipulates a provision of religious law as a positive law, then the provision of religious law is changed into Indonesian law (positive law) and has binding legal force (Bakri, 2015).

Islam as the last heavenly religion in the world, brought by the Prophet Muhammad as a refinement of previous religions. Consequently, Islam must be able to answer the challenges of dynamism that exist in the world until the end of the world. Those who challenge could be the challenge that relate with tauhid, jinayah, and muamalah. Although the challenge of the dynamics of the journey of time can be perfectly answered by Islam, many people remain prejudiced that the best way to eliminate such prejudice is to be answered scientifically so that the solution of the problem is answered objectively (Rasjidi,1976).

Science and technology are necessary, but that wasn't enough, we need a religious-based approach to getting involved in out of the environmental crisis. Basically in overcoming the problem of sustainable environmental crisis is not only enough to rely on and develop the strength of science and technology alone, but more than that reactualization or the practice of religious / religious values become an important agenda and should not be forgotten and become the "spirit" which became the foundation And provide power or strength in overcoming the sustainable environmental crisis.

2. Method

The method used in this study uses the type of normative legal research, with the approach of legislation, historical approach, and conceptual approaches and prophetic approach (approach with the basis of instrument texts derived from revelations received by prophets and messengers and sunnah).

3. Law of the Republic of Indonesia Number 32 Year 2009 on Environmental Protection and Management in Natural Resource Management.

Natural resources and ecosystems in the world are no exception in the territory of Indonesia has a position and an important role for international life and national development, therefore must be managed and utilized sustainably for the welfare of Indonesian society and mankind in general, both present and future. In principle 12 of Stockholm Declaration, 1972 mentioned that:

"Rosources should bemade available to preserve and improve the environment, taking info account the circumtences and particular requirement of developing couniries countries and any costs wich may eminate from ther incorporating environmental safeguards info their development planning and the need for making

available to them, upon their request, additional international technical and financial assistance for this purpose”

Natural resources must be used / utilized, protected, and preserved. For developing countries, it is necessary to plan for environmental safeguards in the implementation of their development, as a good and healthy environment at present is a fundamental right of all humanity. This is in accordance with the contents of Article 28 paragraph (1) of the 1945 Constitution (second amendment) and Article 29 paragraph (3) of Law No. 39 of 1999 on Human Rights that everyone has the right to a good and healthy environment.

Regulations governing the protection, management and utilization of natural resources are contained in Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and Ecosystems, and Law No. 4 of 1982 (renewed by Law Number 23 of 1997 On Environmental Management) and the Law of the Republic of Indonesia Number 32 Year 2009 on Environmental Protection and Management.

The optimum utilization of Indonesia's natural resources is possible only if the State-Owned Enterprise that handles all public property is managed professionally and safely. So far, SOEs have become extraordinary inefficiencies due to collusion and corruption practices. As a result, not only did the funds not reach the people's hands, the SOEs also suffered losses. How can a State Power Plant for example, which is a single company in the management of electricity, can lose money. There is no other company that competes with PLN. It all happened because of mismanagement and corruption. With efficiency, funds can be used for the welfare of the people, and SOEs can also run well. The people are prosperous, the state does not need to be in debt as it is today.

Law Number 32 Year 2009 on environmental protection and management, Article 1 "In the Act in question are: First, living environment is the unity of space with all things, power, circumstances, and living things, including humans and their behavior, affecting nature itself, the survival of life, and the welfare of human beings and other living beings.

Second, protection and management of the environment is a systematic and integrated effort undertaken to preserve the function of the environment and prevent the occurrence of pollution and or environmental damage which includes planning, utilization, supervision and law enforcement.

Third, Conscious and planned sustainable development that integrates environmental, social, and economic aspects into the strategies of development to ensure the integrity of the environment and the safety, welfare abilities, and the quality of life of present generation and future generations.

Fourth, The plan for environmental protection and management is a written plan that creates potentials, environmental problems, and safeguards and management within a certain period of time.

Fifth. An ecosystem is an order of environmental elements that constitute a unified whole and affect each other in establishing a balance of stability, and environmental productivity.

Sixth, Conservation of environmental functions is a series of efforts to preserve the continuity of carrying capacity and the capacity of living environment.

Seventh, The carrying capacity of living environment is the ability of the environment to support human life, other living creatures, and the balance between the two.

Eighth, Environmental capacity is the ability of the environmental environment to absorb substances, energy, and / or other components entering or incorporated therein.

Ninth, Resources are elements of the environment consisting of biological and non-biological resources that form the whole ecosystem unity.

Tenth, A strategic environmental assessment, hereinafter abbreviated as SEA, is a systematic, comprehensive, and participatory series of analysis to make it clear that the principles of sustainable development have become the basis and integrated in the development of a region and / or policies, plans and / or programs.

Eleventh, An analysis of environmental impacts, hereinafter referred to as Amdal, is a study of the significant impacts of an undertaken business and / or activity on the environment required for decision-making processes concerning the conduct of business and/or activities.

Twelfth, Environmental management efforts and environmental monitoring efforts, are the management and monitoring of businesses and / or activities that have no significant environmental impacts required for the decision-making process on business and / or activity management.

Thirteen, The quality of the environment, substances, energy, or components that exist or must exist and / pollutant elements that are tolerated in a particular resource as an element of the environment.

Fourteenth, Environmental pollution is the entry or inclusion of living things substances, energy, and / or other components into the environment by human activities so as to exceed the established environmental quality standards.

Fifteenth, standard criteria for environmental damage are the limits of changes in the physical, chemical, and or biological properties of the environment that can be tolerated by the environment to remain able to preserve their functions.

Sixteen, The destruction of the environment is the act of a person who causes direct or indirect changes to the physical, chemical, and or biological nature of the environment so that it exceeds the standard criteria of environmental degradation.

Seventeenth, the damage of living environment is a direct change and/or indirect toward physic, chemical, and / or biological, living environment that exceeds the standard criteria of environmental degradation.

Eighteen, natural resource conservation is the management of natural resources to ensure its wise utilization and continuity of its availability while maintaining and enhancing its value and diversity.

The criteria for assessing the utilization of non-renewable natural resources are efficiency criteria. In general, to assess whether an action is feasible or not, in addition seen from the point of efficiency also seen from the point of fairness in environmental management. In the case of the utilization of natural resources and environmental sustainability, it can be viewed in relation to the use of inter-community members at present (present generation) and can be seen in distribution or intergenerational utilization.

What happens now is how to calculate the present value of the benefits to be received by future generations. With a certain discount rate it is possible that a program of utilizing natural resources of efficiency for the future generation can be considered socially discounted (discounted) deductions.

Similarly, the management, Indonesia must reinforce the limit of environmental damage caused by mining activities. In fact, it is fitting for the company to restore the green and beautiful green environment. The government must be firm, must dare to crack down on rogue companies that do not pay attention to environmental aspects in the mining process.

Philosophical justification refers to the values contained in Pancasila, namely (1) that in accordance with the principle of a just and civilized humanity there must be the treatment of human beings in a fair, impartial and adhering to the truth; (2) That in accordance with the precepts of the unity of Indonesia it must protect the entire nation united in diversity; (3) That in accordance with the principle of democracy led by the hukmat of wisdom in deliberation and representation, it is the people who actually have sovereignty including natural resources; (4) that in accordance with the principle of social justice for all the people of Indonesia, it must be done to protect all the people of Indonesia to live prosperous. (Asshidiqqie, 2009)

With the management of natural resources guided by UUPPLH will make the Indonesian nation prosperous, of course with the seriousness of the government in guarding the policy to the areas where natural resources are located.

4. Natural Resource Management in Maqashid Syariah

The legal basis for the protection and management of natural resources can be found in various laws and regulations, including in the unwritten law in the form of customary law, and local customs that are still in

effect and observed by the community, as well as Islamic Shari'a law. Allah SWT when making *Islamic Shari'a* (Islamic rules) has a purpose, which the goal by the scholars is called *maqasid alshariah*. The scholars interpret the *maqasid shari'a* with the objectives in which the laws and rules of Allah SWT set out to realize it. *Maqashid shariah* is the benefit of human beings both in the world and in the hereafter, and both realized through *jalb al manafi'* (benefit) or through *dar'almafasiid* / refuse damage. (al-'Alim, 1991)

In the viewpoint of Islam, Forest and energy resource are publicly-owned and must be preserved and returned to the societies in the form of low-cost commodities or subsidiaries for primary needs such as education, healthcare and public facilities. The perspectives that privately own natural resource must be changed into publicly owned natural resource that still orienting towards preserving of the natural resources. Is an opinion that publicly owned natural resource must be run by the government so that the benefit can be shared with the citizen. (An-Nabhani, *Hadist At-Tirmidzi*)

The practice of Islamic mining must be based on a regulated process and mechanisms. The mining activity was begun with the in depth study of fit and proper test which involves certain society that holds vital interests, eco-friendly process which didn't cause environmental destruction and hazard through continuing watchover process, and proceeding with reclamation, restoration and rehabilitation, other factor which is pivotal amongst them are energy commodities that's supportive towards national security and can establish citizen prosperity in accordance to constitutional law.

It is mandatorial for mining practice to avoid destruction, which can cause ecosystem meltdown in land and sea, causing water contamination and hydrology recycle (water cycle), triggering extinction and disturbance of natural diversity that surrounds it, which pave way for air pollution and as a chain reaction, make global warming occur in a faster pace, pushing the process of society economic downfall and threatening public health. The MUI Fatwa along with ministry of life and environment in order to shift the behavior of muslims and increasing their awareness as the nations biggest potential, also for the importance of environmental protection and preservation, that must in line with the syariah scope, MUI has signed and have agreed that the MUI Fatwa No.22 year 2011 about eco-friendly mining, this MUI fatwa was a form of moral approach in doing protection and preservation of environment.

Amongst the MUI Fatwa goals are:

- 1) Strengthening positive law enforcement especially in controlling environmental damage in mining sector.
- 2) Giving explanation and correct understanding to all parts of society regarding normative law towards certain troubles that relates to environment.
- 3) As an act to give moral penalties and ethics to interestholders including society as a protector and preserver of the environment sepecially in the mining sector. (MoU) No.14/MENLH/12/2010 dan Kep 621/MUI/XII/2010)

Looking at the present situation, Islam should have been a solution to all the problems occurring in this world, including mining. Indonesian mining, especially civil mining, which is now lack of benefits in terms of civil prosperity and how friendly it is with the environment. Indonesia with its rich natural mining resources must be independent and well-established economically. While, the usage of natural resource are how natural resources are used, preserves and maintain the natural resources in a proper way so that it can be use for human lives.

There are many hadist about natural resource usage, Hadist about natural resource usage are hadist that contains valuable meaning to use the potential of natural resource wisely without ruining the environment, or maintaining the natural resource that contain inside the earth to be beneficial and prerserving natural resource so that it wouldn't be destructive towards nature as ThabraniHadist quote: "From aisyah, May Allah SWT bless her, Rasulullah Saw has spoken: "Find wealth for you people that was hidden in the soil".

The content of this hadits is that Allah Swt order his followers to commodifies and discover wealth or potential that lies within the earth that can be used for the sake of mankind. Using natural sources that buries within the earth, one must monitor how sustainable the nature is, Because orders to look for wealth in that hadist must suitable with rules that have beenoutlined by Allah SWT, Which amongst them are, Thou shalt not make destruction on mother earth after Allah Swt repair it (Al-A'raf: 56).

Islam teaching as a rahmatilil' aalamiin religion have given certain customs on how human should act in maintaining their environment, with wise act and morality, So that the advantage can be felt by all human without violating any bit of influence and attitude of the religious leader in keeping the environment and nature must be examined, analyzed and even strengthened. In Islam for example, there are so many wisdom that have been done by Rasullullah SAW, In respecting organism as been told that Prophet Muhammad SAW warns his best friend who captured a bird who flocked in its nest during their journey together, When the birds lost its offsprings, The adult birds flew and circled above Rasulullah SAW entourage, When Rasulullah witness this he preach "Who is giving a hard times towards this birds? Thou shalt return the offsprings towards the host (Abu Daud, Hadits).

Environment should be treated and use as wise and responsible in accordance to its supportive boost and its capability so that it would not cause disaster to human. This is all because, Human relations with the environment is not an exploitative relations, But itsan interaction that supports and maintain synchronization, Balance and a dynamic harmony. (Safa'at, 2016)

On the contrary, Whoever ignored the understanding and value of the environment which in turn cause disaster and destruction on the face of planet earth and victimize people, He/she will gain sin and torture because of his/her violation toward the environment around him, As Allah SWT have spoke in Quran, Al-Qashash, Verse 77 that "...And desire not corruption in the land. Indeed, Allah does not like corrupters".

Embracing of religion only focused on fiqh *mahdloh* prayers such as salat, shaum, zakat and hajj, while other fiqh such as political fiqh, economy and environment are still largely ignored. Which is why it have become a duty of the preachers and clerics to make society understands about environmental fiqh, Society needs to know that throwing a thrash to its place or removing spikes from the street is consider a prayer (Ardiansyah, 2015). In the Quran, It has been explained that humans are caliph on the face of the earth. Human duty as a caliph on the earth are keeping and maintaining the earth and all affairs that are conducted in there are conducted the way it supposed to be, referencing to caliph as a mission from Allah to maintain the earth the way the creator want it and in relevance to the creator goals (Nasution,1992)

In the meantime according to Nawawi, Humans can create their creative and dynamics thought through establishment activities in the form of existing work of productive effort (Whether it is materially or spiritually), or in the form of conservation and preservation of natural resources. Establishment that are done by human are like second coming (first coming was by the grace of god) with fixing, renewing and also upgrading what has existed into something with more usage towards safety, happiness and human prosperity.

Besides that, Islam teaching have certain values of good deeds and evil deeds that have become the basic standard for human stance in spreading kindness within their daily behavior. The value of good deeds must be bigger than the value of evil deeds in doing daily activities wherever we are, The connection of it with environment maintenance are that the good and bad aspect become something of a relevance that cannot be ignored.

As an example of exploration activities of mine energies are that according to sharia law are "permitted / mubah". Because basically it was used for the sake of mankind, In environment fiqh prespective, Exploration that includes natural gas can be allowed in a *syar'i* way, as long as *Li Ajli al-manfa'ahwa al-mashlahah* (For usage and kindness) to all mankind, However, Exploration become "haram" when the madharat is larger than the usage, For example, during the process of mining energy exploration, Many nrgative aspects occurs such as water contamination, soil and air that have reach beyond limit. The fiqh studies, *La DharaWa La Dhirar* (Not causing damage to others and endangering one self). (Ardiansyah, 2016)

According to MochEksan, Despite Allah SWT, allowed humans to have freedom and flexibility to explore and exploit earth and also all of its natural resources, Human got the duty to make it more prosper and to not make any destruction whatsoever, Because that thing was *Al-Fasad Fi Al-Ard* (Destructor of the earth), Which can be considered as evil behavior, Wrongful act and crime.

To parties that responsible for destruction must also obliged to rehabilitate and give compensation to the victim, They also have to be given law sanction which process will be handled by *UliAmri* based on the environment destruction that it cause, because it is categorized as Jarimahta'zir. Elements of natural resource and its ecosystem will depend on each other, and the usage will affect one another, which made extinction and destruction amongst the threat to nature stability. (Nugroho, 2002)

According to researcher, This is the importance of preserving natural resource, in regards to maqashidsyariah in maintaining natural resource, Don't let any form of violation by the natural resource conglomerates because it can endanger our mental and brain, Human resources as a main preserver of natural resource for prosperity and society wealth for Indonesian citizen in relevance to Indonesia Constitutional Law of 1945, The shattering of human resource is equal to the shattering of nature.

5. Conclusion

1) The lack of guidance within Republic of Indonesia Constitutional Law, Number 32 Year 2009 regarding protection and sustainability regarding protection and sustainability of the environment, Have become a big crisis for Indonesia as a nation in conserving its natural resources that was done by the act of major conglomerates and also foreign interests.

2) Maqashid syariah type of natural conservation must be the guidance for further continuing the natural resources for the upcoming generation, the value of good deeds must be larger than the bad deeds in doing life activity, wherever we are currently residing on, The correlation in conserving and the usage of natural environment is that filtering between the concept of good and bad is something of a relevance that cannot be ignored.

6. Recommendation

1) Government of Indonesia must give strict penalties to prohibited permissions to all conglomerates, major investors and foreign interests, which did not obey the Law of the Republic of Indonesia Number 32 Year 2009 on Environmental Protection and Management regulations.

2) To all parts of Indonesian government and societies to do an in depth studies and also implementing the maqashidsyariah for preserving the continuity of natural resources and life in accordance to the regulation of the owner and the wealthsharer of natural resources which is the God Almighty.

References

- Al Qur'an dan Terjemahnya, (2007), Departemen Agama RI. Bandung, SYGMA.
- Ardiansyah, A.N. "Peranan Agama dalam Pelestarian Alam Lingkungan (Pendekatan Religius untuk Mengatasi Krisis Lingkungan)". Artikel, diakses 14 Februari 2016.
- Nugroho, B.D. "Hukum Adat, Hak Menguasai Negara atas Sumber Daya Alam Kehutanan & Perlindungan Terhadap Masyarakat Hukum Adat".
- Nasution, Harun. (1992) "Ensiklopedi Islam Indonesia", Jakarta: Djambatan.
- Nawawi. "Hakekat Manusia Menurut Islam". Surabaya, al-Ikhlash.
- Asshidiqqie, J. (2009), "Green Constitution: Nuansa hijau UUD Negara Republik Indonesia Tahun 1945", Jakarta: Rajawali Pers.
- Hamidi, J. (2015). "Hermeneutika Hukum Teori Penemuan Hukum Baru dengan Interpretasi Teks." UH Press.
- Tafsir Hadist. *Sunan Al-Baihaqi Al-Kubra*. Juz 6, hlm 69, No 11166
- Safa'at, R., Nurjaya, I.N., Koeswahyono, I., Susilo, E. & Bahar, S. (2016), "Relasi Negara dan Masyarakat Adat, Perebutan Kuasa atas Hak Pengelolaan Sumber Daya Alam", Malang: Surya Pena Gemilang.
- Rasjidi, M., Barwani, A.M. (1976), "Christian Mission In The Muslim World", International Review of Mission 65, World Council of Churches, 427-447.
- Al Qadhai, M., Asy Yihab, M. (1985) "Syahah Az Zarfani alal Mawahib al Laduniyyah bil Minah al Muhammadiyah" Jilid 1. Beirut: Muassasah arisalah.
- Memorandum of Understanding (MoU) No.14/MENLH/12/2010 dan Kep 621/MUI/ XII/2010 pada tanggal 15 Desember 2010.
- Fadli, M., Mukhlis, Lutfi, M. (2016), "Hukum dan Kebijakan Lingkungan", Malang: Penerbit UB Press,
- al-'Alim, Y.H. (1991), "Al-Maqasid Al-'Amah li Al-Shari'ah Al-Islamiyah". Kairo: Dar Al-Hadith, t.t.
- Law
- Undang-Undang NRI Tahun 1945
- Undang-Undang Nomor 23 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup