

The Principles of Responsive Participatory in Protection and Management Environmental As an Alternative Solution on Environmental Issues of National at the National Spatial

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Abstract

Environmental issues the day shows an increase. This indicates that environmental policies have not been successful. Exploitation of natural resources and the environment has led to the deterioration of environmental quality in natural resources, especially in matters of public participation in environmental conservation. In line with regional autonomy, in this case the delegation of authority to local governments in the field of natural resource management and environmental conservation have the intent to increase public participation (responsive participatory) in environmental protection and management. Public participation is to ensure dynamism in the protection and management of the environment so that life is able to answer the challenge. The mechanism of public participation (participatory principles) need to be implemented in everyday life through democratic mechanisms. So it can be said that one of the strategies that effective environmental management is to fully involve community participation in environmental protection and management. The trend has been shown by the decision makers of spatial planning is lacking to raise the spirit of community participation. The method used is a normative legal research with the approach of legislation. The results showed that the responsive participatory principle is absolutely necessary in order to eliminate, at least reduce the potential for conflict of interest in the utilization of space and protection and management of the environment.

Keywords: Participatory Principle - Responsive - Environment – Spatial

1. Introduction

Humans in fulfilling their needs require natural resources such as land, water, and air and other natural resources are included in the natural resources of renewable and non-renewable. However, it must be realized that the natural resources that we need to have limitations on availability according to quantity and quality. Certain natural resources also have limitations in space and time.

Space is a resource that can be utilized in general that can be exploited if utilization exceeds the carrying capacity and is a place where the whole social interaction with the ecosystem take place in a balanced and mutually benefit all parties that exist because of different abilities and interests so that necessary arrangements in their utilization.

Space of Indonesia both as an integrated container covering land space, sea space and air space, including space in the earth, as well as natural resources, needs to be improved management efforts wisely, efficient and effective manner so it can be maintained sustainability in accordance with the mandate of article 33 paragraph (3) the Constitution of the Republic of Indonesia. Where are the "earth, water and natural resources contained in it are controlled by the state and used for the welfare of the people".

As we know that the Constitution of the Republic of Indonesia Year 1945 has guaranteed the sustainability of the environment in Indonesia. This was stated in paragraph H of article 28 (1) and article 33 paragraph (4) of the 1945 Constitution of the regulation of the environmental norms in the constitution. Both the article reads as follows: Article 28 H paragraph (1) "Everyone has the right to live prosperous spiritual and physical, reside and earn a good living environment and healthy and receive medical care". Whereas Article 33 (4) reads: "The national economy shall be organized based on economic democracy with the principles of togetherness, the efficiency with justice, sustainability, environmental friendliness, independence and balancing economic progress and national unity".

Implementation of national development in relation to the environment and spatial during tending to unplanned and unsustainable has had an impact on decreasing the quality and function of the environment, including the natural resources therein.¹

Development that has the aim to improve the welfare of society cannot be inevitable from the use of natural resources but exploitation of the natural resources that are not heeding the abilities and resources support neighborhood resulted in a deterioration in the quality of the environment. For example, based on the data of the

¹ Maret Priyanta. Renewal and harmonization of Environmental Legislation and Spatial Towards sustainable development. Hasanuddin. Law Review. Volume 1, Issue 3 (December 2015), P. 39.

Ministry of forestry in 2009 that the 1982-1990 forest damage only 900,000 hectares/year. Then between the years 1990-1997 increased to 1.8 million hectares/year and risen again into 2.83 million hectares/year in the 1997-2000 period (beginning of the autonomous region), while on the 2000-2006 damage the forest still reached 1.08 million hectares/year.¹ This is one form of deterioration of the environment in Indonesia.

The global environmental crisis which took place in the last three decades, this is a consequence of the use of patterns of development activity that is solely oriented to achieve economic growth. The damage that occurs in tropical forest countries are now developing including Indonesia for example, tend to come from the paradigm of mastery and the utilization of the resources of the forest dominated by State (state dominated forest control and management) solely to the pursuit of economic growth.

The consequences that arise later that besides real has led to degradation of the quantity and quality of natural resources that cause global climate change (Ecological Loss) as well as the pattern of the centralized closing the space for public participation and public access to forests as a source of life and displace and ignore-function the function of the local culture that reflects the wisdom of the environment (Ecological wisdom) indigenous communities in the management and utilization of forest resources.²

Protection and management of the environment under Article 1 paragraph (2) the Constitution No. 32 of 2009 on the Protection and Environmental Management means a systematic and integrated undertaken to preserve the environment and prevent pollution or damage to the environment that includes planning, utilization, control, maintenance, supervision and law enforcement. In the era of regional autonomy in terms of delegation of authority to local governments in the management of natural resources and environmental conservation, exercise was to increase community participation in environmental protection and management.

Public participation is to ensure dynamism in environmental protection and management. The mechanism of public participation needs to be manifested in everyday life through democratic mechanisms.

Implementation of Development in relation to the environment and spatial planning that have tended unplanned and unsustainable has had an impact on decreasing the quality and function of the environment, including the natural resources therein, the presence of natural resources, water, land, and other resources determine human activity every day. Humans can not live without air and water, otherwise, there is also a very human activity affecting the availability of natural resources and the surrounding environment.

Damage to the natural resources of mostly determined by the activity. Many examples of cases of pollution and environmental degradation, all of which can not be separated from human activity that will ultimately harm to the man himself.

Environmental impact control is an attempt to take action against an activity reduction is done by everyone especially companies that pose a great impact on the environment. In this case the environmental impact is defined as the influence of changes in the environment caused by a business/activities. So the protection will be environmental management obligations for the State, the Government and all stakeholders in the implementation of sustainable development so that the environment can Indonesia remains a source of living for the people supporting and Indonesia as well as other living beings.

According Jimly Asshiddiqie that the sustainable development of the environment can be formulated as a conscious and planned effort that combines the environment, including its resources into the development process that ensures the ability, well-being, and quality of life of the present generation and the generations to come³.

2. Methodology

This type of research is the normative legal research i.e. research by performing the steps of the study as follows:⁴

- a. Identifying the facts of the law and eliminate the things that are not relevant to the legal issues that would set
- b. Collection of legal materials and if deemed relevant are also ingredients of non law.
- c. Do the review over legal issues raised on the basis of the materials that have been collected.
- d. Draw conclusions in the form of argumentation which answers legal issues.
- e. Give prescriptions based on the arguments that have been built in the conclusion.

¹ Muhammad Akib, Institutional Authority environmental management in the Era of Regional Autonomy. Journal Of Media Law. Volume 19 number 2, December 2012, P. 240.

² Rachmat Safa'at. I Nyoman Nurjaya, Imam Koeswahyono, Eddy Susilo, Saafriedin Bahar in Relation to State and Tribal Peoples (Seizing power over the Management of Natural Resources). Malang. Rena Surya Gemilang. 2016, P. 7

³ Jimly Asshiddiqie. *Green Shades of Green Constitution Constitution of the Republic of Indonesia Year 1945*. Jakarta. Rajawali Press.2010, P.135.

⁴ Peter Mahmud Marzuki. *Legal Research*. Jakarta. PT. Prenada Media Group. 2013, P.213.

3. Result And Discussion

3.1 *The Principles Of Responsive Participatory*

The principle of making good spatial policy planning is highly recommended to foster participatory principles responsive, especially public participation in the legislative process. Participation is defined as a process of community involvement in development is driven by the determination and awareness of the meaning of such involvement. If that appears only elements of any involvement but not encouraged by the determination and consciousness then it is not included in the category of participation but rather a mobilization.

While the legal principle of "responsive" as first conceived by Nonet and Selznick interpreted as a principle that allows a legal order can grow and capture the demands and wishes of the people included in the scope of a particular social life. Some of the key requirements to drive development towards a modern legal order that is responsive, among others:

- a. The dynamics of the law increasing the authority of interest in the legal considerations.
- b. Goals make increasingly problematic legal obligation to determine a legal claim against compliance and opens up the possibility for a conception of public order is not rigid and be civil.
- c. Because the law has the openness and flexibility, legal advocacy entering a political dimension and increasing the forces that can help correct and change legal institutions but could also threaten to weaken the institutional integrity.
- d. Authorities are continuing from the purpose of law and the integrity of the legal order depends on the model of competent legal institutions.¹

3.2 *The Principles Of Responsive Participatory Protection And Environmental Management As An Alternative Solution On Environmental Issues Of National Living Spatial*

The trend has been shown by the decision makers of spatial planning is less foster the spirit of community participation. Just a politicized community participation for promoting the interests of the others are even more distant from people's expectations. Therefore, public participation is not too neglected it is not surprising that the decisions generated "Top Down" is then met with resistance from the public. Society rebelled because they consider that their interests really neglected. A good policy making process is indispensable community participation, therefore the public should be involved early in the process, they need to be heard and to talk in an atmosphere without any pressure. In principle, policies or regulations made and issued by the government, including regarding the development should be beneficial to society.

Public participation in spatial planning is one of the important factors in order to eliminate at least reduce the potential for conflict of interest in the utilization of space. Moreover, the results of space research are ultimate to the benefit of society. According to Hardjasoemantri, if action is taken for the benefit of society, and if people are expected to accept and abide by these actions, the community should be given the opportunity to contribute and to express his opinion. In other words, required participation from the community.

In this case, Lothar Gaundling in Hardjasoemantri tell four The basis for public participation, namely:²

1. *Provide information to the government.*

Public participation is especially government will increase the knowledge about a certain aspect derived from specialized knowledge of society itself and of the experts consulted by the public. This participation is indispensable to give advice to the government about problems that can be caused by a plan of government action, including the various interests that can be affected by such actions that need to be considered in the decision-making process, so as to improve the quality of decisions and actions taken by the government and its agencies regarding specific plans as to protect the environment, including of course the determination of the RTRW.

2. *Improving the public's willingness to accept the decision.*

Citizens who have the opportunity to participate in the decision-making process and are not faced with a fait accompli, it will tend to have a greater willingness to accept and adjust to the decision. More importantly is that public participation in the decision-making process will reduce the possibility emergence of various conflicts, with the understanding that public participation be implemented at the right time it should be noted, that the decision was never going to satisfy all interests and all community groups society, but society's willingness to accept the decision of the government can be improved.

3. *Assist legal protection.*

If a final decision by taking into account the objections (including suggestions) submitted by the public during the decision-making process takes place, then in many cases there will be no necessity that is not to apply to the

¹ Philippe Nonet and Philip Selznick. *Responsive Law: Options in the Transitional Period*. Jakarta. Huma. 2003 (translation), P. 439-440.

² Koesnadi Hardjasoemantri. *Environmental Protection Law of Conservation of Natural Resources and Ecosystems*. Yogyakarta. Gajahmada Press.1991

court. Further pointed out that if a decision could have consequences so far, it is expected that everyone will be affected by the decision need to be notified and given the opportunity to raise objections before the decision was taken.

4. *Democratize Decision.*

In connection with the participation of these communities, there is an opinion, that in the government system of representation, the right to exercise power is in the people's representatives elected by the people, so there is no necessity of forms of citizen participation as representatives of the people it acts in the interests of the people. The other argument, that the system of representation, public participation in the administrative decision-making process will cause problems legitimacy of democracy, because of citizens, groups or organizations that participate in the decision-making process, not elected or appointed officially. Regarding these criticisms, Lothar Gundling respond namely: that the democratic system is a form of representative democracy, not the only one; that the representative system does not cover the forms of direct democracy; and that is not the community, a community group or organization who actually make decisions. They only participate in the preparation stages of decision-making. Monopoly state and its institutions to make decisions are not disputed by the participation of this community. According to Hardjosoemantri, community participation it can be seen (as an effort to help the state and its institutions in order to carry out the task in a way that is more acceptable and effective. The participation of these people needs the information to the public in a way that is effective and efficient. For it points to consider are assurance Admission information; information Transboundary (Transfrontier information) primarily related to the impact of activities in border areas including national boundaries; timely (timely information); Complete information (Comprehensive information); and information understood (Comprehensible Information). Regarding thought to increase people's willingness to accept the decision and help the legal protection is actually related to the interests of society that must be taken into account. this is in line with the idea Benidickson which suggested that analysis or assessment of environmental law legal analysis with regard to the rights of and the interests of preserving the quality of the environment (including the specific nature such as the arrangement of space), considering all the interests and rights of other related, including various the possibility of a conflict with the values of the society. With their active community participation in the decision-making process, it is expected all the rights and interests related to spatial planning should be considered carefully.

The settings in the laws regarding public participation in the spatial plan set forth in Chapter VIII of Rights, Duties and Role of Civil Society is in chapters 60 to 66 and stated also in Chapter VII on the Control of Spatial Planning, Article 55 of Law No. 26 of 2007 on Spatial planning. When listened to load these chapters show that the role of the community is an integral part of the rights and other obligations. That means that the role of the community is part of the rights and obligations of the communities in the arrangement of space, and is a determining factor for the achievement of objectives of spatial planning. Regarding the rights and obligations of the communities in the spatial plan is generally discussed separately. However, in Article 65 paragraph (1) affirmed that the implementation of spatial planning carried out by the government by involving the community in the spatial plan as referred to in paragraph (1) include:

- a. Participation in the preparation of spatial plans
- b. Participation in the utilization of space
- c. Participation in the control space utilization

The explanation of this article stated that the role of the community as the executor of space utilization, both individuals, and corporations, among others, include the activities of utilization of space in accordance with the Spatial Planning. This verse confirms that the procedures and forms of public participation in the spatial plan regulated by Government Regulation

This means that in order to ensure the realization of the arrangement of space required their active community participation in all phases (Planning, Establishment, Use and Control of Land Use at a National level, Provincial, District/City) Spatial Planning process. The objectives to be achieved by the arrangement of the room, namely the implementation of the space utilization of environmentally. As for the indicator which marks the achievement of the objectives of spatial planning are:

- a. The realization of the harmony between the natural and artificial environment
- b. The realization of integration in the use of natural resources and artificial resources with due regard to human resources
- c. The realization of protection function space and prevention of negative impacts on the environment due to the use of space

The purpose of environmental protection and management will be achieved when the government both central and regional government and all members of society in coordination with the state in the implementation of the principle of national responsibility. Protection and management of the environment demand the development of an integrated system in the form of a national policy, environmental protection and management should be implemented in strict accordance with principles and consequences from the center area.

Given the complexity of the protection and management of the environment and the problem of cross-sectoral and area then in the building of the necessary planning and implementation of protection and environmental management that is consistent with the principles of sustainable development, namely economic development, social, cultural, environmental impartial as pillars are interdependent and mutually reinforce one another.

In its implementation involves sharing parties, as well as firmness in structuring environmental law. Hopefully, by the application of the principle of participatory involving various parties, and supervision and application of the law can really be enforced referable together to manage the environment with a thoughtful way so that the goals of sustainable development can really be implemented in the field and not just end up being a slogan.

According to Yeni Widow at that the use of natural resources must be harmonious, balanced with the function of the environment as a consequence of the policy, plan or program development continues imbued by the obligation to make environmental preservation and realize the goal of sustainable development and the main thing is the participation of all members of society.¹

In Law No. 32 of 2009 on the Protection and Management of the Environment Article 70 on the participation of the community stated that:

- a. The public has the same rights and opportunities and the broadest to play an active role in the protection and management of the environment
- b. The role of the community can be:
 1. Social control
 2. Provision of advice, suggestions, objections, complaints and or Submission of information or reports
- c. The role of the community is done to:
 1. Increase awareness in environmental protection and management
 2. Increasing self-reliance, community empowerment, partnership
 3. Cultivate community capacity and initiative
 4. Cultivate community responsiveness to social supervision
 5. Develop and maintain culture and local wisdom in order to conserve the environment functions

Welfare and ecosystem sustainability are two interrelated goals that should be developed in the legal arrangements for environmental management. The achievement of these two objectives in harmony in this context requires institutional environmental management is strong and able to reflect upon the Principles of Participatory Responsive each policy.

Therefore, in order to realize a good Rules of Making Law (Law Making Good Governance) then the next agenda to do the government and the Legislature are as follows:²

1. Conducting the review of all laws that do not reflect democratic justice, and sustainability as mandated by statute MPR No. IX / MPR / 2001 on Agrarian Reform and Natural Resources Management.
2. Create a policy and regulatory legislation that reflects justice, democracy and sustainable functions and benefits of natural resources by integrating at least five principles as follows:
 - a. Management of natural resources should be achieve welfare and prosperity oriented of the people in a sustainable manner from generation to generation.
 - b. Natural resources should be utilized and allocated equitably and democratically between the current generation and generations to come in gender equality.
 - c. Management of natural resources should be able to create the cohesiveness of society in different layers and groups as well as able to protect and defend the existence of the local culture, including the legal system that lives and thrives in the local indigenous peoples
 - d. Management of natural resources must be made with the ecological systems approach (Ecosystem) to prevent the occurrence of management practices that partial-sectoral ego, ego-area, not integrated and coordinated.
 - e. Natural resource management policies should be specific local and adapted to the ecosystem and socio-cultural conditions of local communities.

Using these principles are interrelated with each other and influence each other as a unity which implies that natural resource management is intended to achieve prosperity and well-being equitable and sustainable in accordance with the mandate of the 1945 Constitution and based on cultural diversity and the unity of the Indonesian nation.

The essence of the principles as follows:

¹ Yeni Widowaty. *The concept of Sustainable Development as a form of protection against Environmental Crime Victims*. Journal of Media Law. Volume 19, Number 2 (December 2012), P. 269.

² I Nyoman Nurjaya. *Towards Recognition of Local Wisdom in Natural Resource Management: Perspective of Legal Anthropology*. Malang. Pena Surya Gemilang. 2016, P. 19-23.

1. The natural resources management policy is not oriented on exploitation (use oriental) but puts the interests of the sustainability of natural resources (sustainable resource management)
2. Natural resource management is not centralized but patterned decentralization of authority, management, management of natural resources does not promote a sectoral approach but prioritizing a holistic approach / comprehensive.
3. Provide space for public participation and transparency recognize and protect the access and the rights of communities over the possession and use of natural resources.
4. Give the living space for local culture including the wisdom of local environmental, legal pluralism are actually living and growing in the community.

In the context of regional autonomy, the central government and the regional government plays a role and function more as an administrator and facilitator for:

1. Encourage increased capacity of communities in the management of natural resources.
2. Ensure the distribution and protection of access and rights of indigenous/local people in the area on the acquisition and utilization of natural resources.
3. Protecting and accommodate social capital (social capital) such as wisdom, ethics, image, religious and social institutions in the community in the area.
4. Recognize and accommodate the legal pluralism that actually grows and thrive in society.

Thus, to put an end or at least eliminate the making of policies and laws are patterned centralized, sectoral and exploitative, including the practices of natural resource management that displace, ignore and marginalize access and the rights of indigenous/local people and systems of normative society area, it is recommended to the government to immediately realize the political will (political will), into concrete political roots for:

First, replace the natural resource management paradigm based state (state-based resource management) to be based community (community-based resource management) in the sense of more to give the role and responsibilities of natural resource management to the public.

Secondly, in the context of national development to replace the ideology of legal centralism (legal centralism) with legal pluralism (legal pluralism) aligned with the mandate R.,I MPR No. IX / MPR / 2001 concerning the reform and management of natural resources.

If the recommendations are realized, the policy and legal products become the more responsive government in line with the principle of participatory Responsive management and environmental protection, with the following characteristics:

1. Management of natural resources oriented to the preservation and sustainability for the benefit of inter and intergenerational (resource-based management)
2. The approach is comprehensive and integrated by treating natural resources as an ecological entity.
3. The paradigm of natural resource management based on community, which allows more room propositional for public participation and transparency.
4. Management of natural resources carried out in accordance with the characteristics of the area with the bio-region approach and local social and cultural conditions.
5. Recognizing the existence of access and the rights of indigenous/local people on the acquisition and utilization of local natural resources
6. Recognize in until and proportionately accommodate the legal pluralism that grows and thrive in the community into a state of legal products.

4. Conclusion

Good environmental management is a concept that can be executed if all stakeholders related to the management and protection of the environment is active and participatory. The process of policy making good spatial planning is highly recommended to foster participatory principles responsive especially public participation in any development process. Participation is defined as a process of community involvement in development is driven by the determination and awareness of the meaning of such involvement. If that appears only without the engagement element is driven by the determination or consciousness, then it is not included in the category of participation, but more appropriately referred to as mobility. While that is a principle of responsive interpreted as a principle that allows a legal order to survive and be able to capture the demands and wishes of the people who is covered in a particular social life.

A good policy making process is indispensable community participation, the public should be involved early in the process, they need to be heard and to talk without pressure. In principle, public participation is crucial for the achievement of development objectives are capable of prospering the people and not neglect the protection and preservation of the environment. Welfare and ecosystem sustainability are two interrelated goals that should be developed in the legal arrangements in the field of environmental management. The achievement of these two objectives in harmony in this context the need for institutional environmental management is strong and able to reflect the principles of participatory responsive in every policy.

Welfare and sustainability Ecosystems are two interrelated goals that should be developed in a regional autonomy law setting the environmental field. The achievement of these two objectives must be in harmony. In that context, the need for institutional environmental management is strong and reflects the principles of sustainable development or the principles of ecological sustainability.

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