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PROGRESSIVE ENVIRONMENTAL LAW OF INDONESIA: GLOBAL PRINCIPLES OF STOCKHOLM AND RIO DECLARATIONS AS DEFINED WITHIN THE 2009 ACT ON HUMAN ENVIRONMENT PROTECTION AND MANAGEMENT

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In accordance with the effort of coping and settling more effectively human environment legal problems, as well as natural environment pollution and resources degradation in the country in line with rapid implementation of national development, the Government of Indonesia has time to time been struggling to establish a more progressive national environmental law. Recently, the development of environmental law has come to the progressive era since the enactment of the 2009 Act on human environment protection and management as to replace the 1997 Act on human environment management. The recently Act of 2009 could be noted as a progressive environmental law along with historical environmental law development. It is because the 2009 Act clearly accommodate global principles as constituted within both the 1997 Stockholm and the 1992 Rio Declarations. The paper attempts to outline a historical overview and provide general framework of the development of national environmental law in the country of Indonesia.

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INTRODUCTION

The period of the 1970s could be marked as ultimate apprehensive about environmental pollution and degradation that happened throughout the world. Both developed and underdeveloped countries have been facing diverse environmental problems. In this respect, every country honestly took part in the specific ways and industrial practices that contributing environmental pollution and natural resources degradation in the name of mainly targeted economical development. The problem of environmental degradation from an economic perspective such as pollution and other forms of environmental degradation is generally a by-product of profitable economic activities.[1] The decreasing environmental quality has threatened the continuation of human life and natural environment so that all countries need to undertake environmental preservation and management seriously and consistently.

In order to respond the said international community anxiety, the United Nations has finally taken its initiation to conduct what the so-called the UN-Conference on Human Environment (UNCHE) on June 5th to 16th, 1972 in Stockholm, Sweden. The UNCHE has been participated by delegates from 113 countries, as well as representatives from international non-governmental organizations, academics, and many other professional environmental agencies. This was the first United Nations conference on the environment and the major international gathering focused on human activities as well in line with the human environment preservation and management. The conference laid the substantial foundation for particular environmental attention and action at an international level. This also acknowledged that the goal of reducing human negative impact on the environment would require extensive international cooperation, as many of the problems affecting the environment are global in nature.

At the end of the conference, the 1972 Stockholm Declaration, the United Nations Environmental Programme (UNEP) and Action Plan as well

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[1] RICHARD L. REVESZ, FOUNDATIONS OF ENVIRONMENTAL LAW AND POLICY 3 (Oxford University Press, 1997).

were launched for the purpose of encouraging participated countries as well as the United Nations agencies to integrate environmental measures into their own environmental programs and activities. The Stockholm Declaration and Action Plan defined global principles for the preservation and enhancement of the living environment, as well as highlighted the need to encourage the participated countries in designing environmental assessment, financial assistance, as well as environmental policy and legislation.

Reaffirming the Declaration of the UN-Conference of the Human Environment adopted in Stockholm in June 1972, the so-called UN-Conference on Environment and Development (UNCED) carried out in Rio de Janeiro from June 3rd to 14th, 1992 for the purpose of establishing a new and equitable global partnership through the creation of new levels of collaboration among States with respect to the interests of all and protect the integrity of the global environmental and development system.

The 1992 Rio Declaration defines that the only way to have long term economic progress is to link it with environmental protection. Recognizing the integral and interdependent nature of the Earth, our home, the nations meeting at the Earth Summit in Rio de Janeiro adopted a series of principles to guide future environmental management and development. These principles constitute the rights of people to development, and their responsibilities to safeguard the common environment. The said global principles build on ideas from the Stockholm Declaration on the 1972 United Nations Conference on the Human Environment.

Accordingly, in relation to the development of environmental law, Indonesia, as part of international community, should accommodate those global principles defined within the mentioned Stockholm as well as the Rio de Janeiro Declarations. Therefore, since the mid-1970s and particularly after Indonesian delegates participated in both conferences, the political and legal agendas on environmental law development and reform is seriously taken into action by the Government. In the case of Indonesia, the subject of environmental law was firstly established by the enactment of Basic Human Environment Management Act No. 4 of 1982 (Undang-undang No. 4 Tahun 1982 tentang Ketentuan-ketentuan Pokok Pengelolaan Lingkungan Hidup). In line with the need of legal instruments for encouraging the rapid implementation of national development, the 1984 Act was then replaced by the Human Environment Management Act No. 23 of 1997 (Undang-undang No. 23 Tahun 1997 tentang Pengelolaan Lingkungan Hidup). Furthermore, in the year of 2009 the Government of Indonesia established the Act No. 32 of 2009 concerning living environment protection and management

(Undang-undang No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup) as to amend the 1997 Act on Human Environment Management. The later living environmental legislation enacted with the purpose of enhancing its role and function for handling various environmental problems, as well as strengthening environmental cases enforcement that continued emerge in conjunction with the rapid national development application in the country.

The paper attempts to examine the development of environmental law with special reference to the progressive environmental law reform of Indonesia in which legal substances of the said environmental legislation that accommodate global principles as defined within the 1972 Declaration of Stockholm and the Rio de Janeiro 1992 Declaration as the basis of sustainable and environmentally sound development principles.

I. ENVIRONMENTALLY SOUND PRINCIPLES OF THE 1972 STOCKHOLM AND THE 1992 RIO DECLARATIONS

A. Global Principles of the 1972 Stockholm Declaration

In 1972, the United Nations hosted Conference on the Human Environment in Stockholm to provide a forum to discuss international co-operation in the area of environment preservation and protection, as well as to find solution to problems related to environment. As environmental management principles embodied within the Stockholm Declaration make clear, the numerous ecological crises threatening the planet at the time demanded worldwide attention and effort. [2] Some of the well-known principles among the 26 principles defined within the 1972 Stockholm Declaration are as follows:

- Living environment is a basic human right. It is therefore duty for protecting and preserving the environment is a responsibility for all (Principle 1).
- Natural resources and ecosystem must be safeguarded (Principle 2).
- Recognizes a special responsibility to safeguard and wisely manage the imperiled heritage of wildlife and its habitat (Principle 4).
- Serious or irreversible damage that exceeds the capacity of the environment must be halted (Principle 6).
- Taking steps to prevent pollution is a responsibility of States (Principle 7).
- International technical and financial assistance are necessary to developing countries (Principle 9).

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[2] MARIE-CLAIRE CORDONIER SEGGER & ASHFAQ KHALFAN, SUSTAINABLE DEVELOPMENT LAW, PRINCIPLES, PRACTICES AND PROSPECTS 17 (Oxford University Press, 2004).

- Not to cause damage to the environment of other States or areas beyond the limits of national jurisdiction is a responsibility of States (Principle 21).
- Co-operation of developing international law regarding liability and compensation is a responsibility of States (Principle 22).
- Multilateral or bilateral cooperation to effectively control, prevent, reduce, and eliminate adverse environmental effects is necessary (Principle 24).
- To play coordinated, efficient, and dynamic functions for the protection and improvement of the environment is a role of international organizations (Principle 25).

B. Global Principles of the 1992 Rio Declaration

The 1992 Earth Summit in Rio de Janeiro defined a set of principles to guide future development in which rights of people to environment and development are recognized, and their responsibilities to safeguard the common environment formulated as to build on ideas from the 1972 Stockholm Declaration. The emphasis of the 1992 Declaration of Rio was on the protection of the environment and the advancement of development, giving priority to both, and calling for social and economic development processes to take the environment into account, that the only way to have long-term economic progress is to link it with environmental protection.[3] This will only happen if nations establish a new and equitable global partnership involving governments, their people and key sectors of societies in order to establish international agreements that protect the integrity of the environment and developmental policy. Several urgent principles among the 27 principles include in the 1992 Rio Declaration are as follows:

- Human beings are at the centre of concerns for sustainable development. People are entitled to a healthy and productive life in harmony with nature (Principle 1).
- States have the sovereign right to exploit their own resources pursuant to their own environmental and development policies, but without causing environmental damage beyond the limits of national jurisdiction (Principle 2).
- The right to development must be fulfilled so as to equitably meet development and environmental needs of present and future generations (Principle 3).
- In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process (Principle 4).
- States shall cooperate in the essential task of eradicating poverty and reducing disparities in living standards in different parts of the world to achieve sustainable development and meet the needs of the majority of people of the world (Principle 5).
- States shall enact effective environment legislation. Environmental standards, management, objectives and priority should reflect the environmental and development context to which the apply (Principle 11).

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[3] *Ibid* at 20.

- States shall develop national law concerning liability and compensation for the victims of pollution and other environment damage (Principle 13)
- States shall employ the precautionary approach to protect the environment. Where there are threats of serious or irreversible damage, scientific uncertainty shall not be used to postpone cost-effective measures to prevent environmental degradation (Principle 15).
- National authorities should endeavor to promote the internalization of environmental costs and the use of economic instrument, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment (Principle 16).
- States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental affect and should consult with those States at an early stage in good faith (Principle 19).
- Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development (Principle 20).
- Indigenous people and their communities and other local communities have a vital role in environmental management and development due to their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development (Principle 22).
- The environment and natural resources of the people under oppression, domination and occupation shall be protected (Principle 23).

II. INDONESIAN ENVIRONMENTAL LAW DEVELOPMENT AND REFORM: HISTORICAL OVERVIEW

For the context of Indonesia, the ultimate source of authority for State control over natural environment is primary the 1945 Constitution (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945), and particularly Article 33 paragraph (3) states: "the Earth, water and the natural resources contained therein shall be controlled by the State and be utilized for the greatest welfare of the people". In addition, a substantially provision that improving status of the 1945 Constitution as an "environmentally friendly constitution" formulated in Article 28H paragraph (1) which defines: "Every person shall have the rights to live in physical and spiritual prosperity, have a home and enjoy a good and healthy environment, and shall have the right to obtain medical care".

This is the so called ideology of the State for controlling and managing natural environment in the territory of Indonesia to build the national development paradigm namely economical-growth development which

constituted by Act No. 17 of 2007 concerning Long-term National Development Planning from 2005 to 2025. It is further followed by Presidential Regulation No. 5 of 2010 regarding Mid-term National Development Planning from 2010 to 2014. In this sense, the State's development paradigm in relation to natural environment management namely State-based natural environment and resources management enforced to encourage the national development focusing its objective mainly to enhance State revenue.

The national development policy should further be supported by State law as legal instruments namely laws and regulations regarding natural environment and resources management. Therefore, the control of access to natural resources and human environment become much more than State ideology and legal configuration of the State. In this sense, laws and regulations allocate natural resources access, control and use, define the mechanism of management, and articulate principles and norms of the State pertaining to natural resources and environment. In other words, this is the so-called the ideology of State's authority and legitimacy in controlling and managing natural environment.[4]

In line with framework of the development of human environmental legislation, Indonesia has historically experiences with the long period of colonized Dutch Government. Legal products that relate to the protection and management of natural environment and resources in the period of Dutch colonization can simply be identified within Ordinance (*Ordonnantie*) which enacted sectorally laws by Dutch Government. To mention a few those Dutch Government regulations are as follows:[5]

- Perelvisscherij, Sponsenvisscherijordonnantie (*Staatblad* 1916 No. 157) i.e. Fishery Pearl Cultivation and Coral Reef Conservation Act No. 157/1916.
- Visscherijordonnatie (*Staatblad* 1920 No. 396) i.e. Fishery Sanctuary Act No.396/1920.
- Kustvisscherijordonnantie (*Staatblad* 1927 No. 144) i.e. Fishery Act of 1927.
- Hinderordonnantie (*Staatblad* 1926 No. 226 juncto *Staatblad* 1940 No. 450) i.e. Hindrance Act of 1940.

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[4] Charles V. Barber, *The State, The Environment and Development: The Genesis of Social Forestry Transformation in New Order Indonesia*, unpublished doctoral dissertation, University of California, Berkeley 1989; NANCY L. PELUSO, RICH FOREST POOR PEOPLE, RESOURCE CONTROL AND RESISTANCE IN JAVA (University of California Press, Berkeley 1992); RICHARD L. REVESZ, FOUNDATIONS OF ENVIRONMENTAL LAW AND POLICY 3 (Oxford University Press, New York).

[5] KUSNADI HARDJASOEMANTRI, HUKUM TATA LINGKUNGAN (Environmental Law and Governance) 82-84 (Gadjah Mada University Press, Yogyakarta 1997).

- Bedrijfsreglementeringsordonnantie 1934 (*Staatblad* 1938 No. 86 juncto *Staatblad* 1958 No. 224).
- Dierenbeschermingordonnantie (*Staablad* 1931 No. 134) i.e. Wild Animal Protection Act of 1931.
- Jachtordonnantie 1931 (*Staatblad* 1931 No. 133) i.e. Wild Animal Hunting Act of 1931.
- Natuurmonumenten en Wildreservatenordonnantie 1932 (*Staatblad* 1932 No. 17) i.e. Nature and Wild Animal Preserves Act of 1932.
- Algemeen Waterreglement 1936 (*Staatblad* 1936 No. 489 juncto *Staadblad* 1949 No. 98) i.e. Water Act of 1936.
- Jachtordinnantie Java en Madoera 1940 (*Staatblad* 1940 No. 733) i.e. Wild Hinting Act in Java and Madoera of 1940.
- Natuurbeschermingordonnantie 1941 (*Staatblad* 1941 No. 167) i.e. Nature Preservation Act of 1941.
- Stadsvormingsordonnatie 1948 (*Staatblad* 1948 No. 168) i.e. City Development Act of 1948.

Indonesian environmental law establishment and reform has naturally been encouraged and guided by the outcomes of the United Nation Conference on Human Environment which was carried out from June 5th to 16th, 1972 in Stockholm, Sweden. The 1972 Stockholm Declaration particularly Principle 2 mandated delegates from participated countries included Indonesia to establish the domestic environmental law with the purpose of preserving and managing human environment within the respective country. Principle 2 of the 1972 Stockholm Declaration states:

> The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world: it is the urgent desire of the peoples of the whole world and the duty of all Governments. The natural resources of the earth including water, air, land, flora and fauna and especially representative samples of natural generation through careful planning or management as appropriate.

Ten years after the Conference, the Government of Indonesia at the first time enacted national environmental law namely Basic Human Environmental Law No. 4 of 1982 (Undang-undang No. 4 Tahun 1982 tentang Ketentuan-ketentuan Pokok Pengelolaan Lingkungan Hidup). This was the first national law that particularly addressed to integrate and regulate the protection and management living environment for the advancement of general welfare of the whole people as clearly stipulated in the 1945 Constitution.

The Basic Environmental Act of 1982 was also enacted by the Government with the purpose of sustaining the capability of harmonious

and balanced living environment in order to support continued development by means of an integrated and comprehensive national policy with due consideration of the needs of present and future generations. A legal policy of protecting and developing the living environment in relation to the life among nations was also in accordance and compatible with the growing awareness of mankind's living environment. In order to establish the management of the human environment, which is based on an integrated and comprehensive national policy, it was decided to enact national legislation containing basic provisions as the basis of environmental protection and management. Hence, the Act of 1982 can be noted as the beginning of accommodation, the so-called international environmental law concepts namely sustainable development, intergenerational equity, environmental impact assessment, and polluter-pays principles within the national environmental law.

Ideology of the State in controlling and managing natural environment based mainly upon Article 33 paragraph (3) of the 1945 Constitution. It is, therefore, Article 10 of the 1982 Basic Environment Act of 1982 constitute:

(1) Natural environment and resources shall be controlled by the State and utilized for the maximum welfare of the people.

(2) The utilization of man-made resource which affect the livelihood of the general public shall be regulated by the State for the greatest welfare of the people.

(3) The right to control and regulate by the State as stated in paragraph (1) and paragraph (2) of this Article, gives authority to:

a. regulate the allocation, development, use, reuse, recycling, provision, management and supervision of resources as stated in paragraph (1) and paragraph (2) of this Article;

b. regulate legal actions and legal relations between person and/or other legal subjects pertaining to resources as mentioned in paragraph (1) and paragraph (2) of this Article;

c. regulate environmental taxes and retribution.

(4). Further provisions pertaining to paragraph (3) of this Article shall be established by legislation.

Legal principles that defined within the 1982 Act in the management of the living environment were the sustenance of capability of the harmonious and balanced environment to support sustained national development for the improvement of human welfare. Therefore, the protection and management of the human environment mainly intended:

(a) to achieve harmonious relationship between man and the living environment as the objective of the national development;

(b) to control wisely the use and utilization of natural resources;

(c) to develop the people of Indonesia individually and collectively as a proponent of the living environment;

(d) to implement development with environmental consideration for the interest of present and future generations; and

(e) to protect the nation against the impact of activities beyond the State's territory which causes environmental damage and pollution.

The legal foundation was based upon the principles of environmental law and on the obedience of everyone to these principles, all of which were in turn based upon what the so called *wawasan nusantara* (archipelagic point of view). The Act of 1982 has basically a number of characteristic as follows:

- The Act is simple and yet includes the possibility of development in the future, in accordance with present conditions, time and place;
- The Act contains basic provisions as the basis for further regulations with regard to its implementation and enforcement;
- The Act encompasses all aspects of the living environment in order to form the basis for further regulations regarding each aspect, which shall be formulated in separate regulations.

In addition, the Act of 1982 will serve as the basis for the evaluation and adjustment of all legislations which regulate the management of natural environment and resources, i.e., legislation concerning water resource, forestry, mining and energy, conservation of nature, industry, spatial use management, fishery, settlement, land use and tenure, and so forth. Therefore, all the mentioned legislations can be compiled within one system of Indonesian environmental law. It is hoped that the Act of 1982 which defines mainly principles and norms of human environment management can perform its function as an umbrella act for the revise, adjustment, or establishment of new laws that relate to the protection and management of natural environment and resources.

It is a legal fact that since 1960s prior to the enactment of the Basic Act of 1982, a number of national legislation related to the natural resources management enacted by the Government. Those are as follows:

- Indonesian Water Territory Act No. 4 of 1960 (Undang-undang No. 4 Tahun 1960 tentang Perairan Indonesia).
- Basic Agrarian Act No. 5 of 1960 (Undang-undang No. 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria).
- Basic Forestry Act No. 5 of 1967 (Undang-undang No. 5 Tahun 1967 tentang Ketentuan-ketentuan Pokok Kehutanan).

- Basic Mining Act No. 11 of 1967 (Undang-undang No. 11 Tahun 1967 tentang Ketentuan-ketentuan Pokok Pertambangan).
- Indonesian Sub-Continent Act No. 1 of 1973 (Undang-undang No. 1 Tahun 1973 tentang Landas Kontinen Indonesia).
- Water Irrigation Act No. 7 of 1974 (Undang-undang No. 7 Tahun 1974 tentang Pengairan).

In line with the progress of national law development and in order to support the application of national development policy, the Government enacted a number of legislations based upon the 1982 Act. Those are as follows:

- Exclusive Economic Zone Act No. 5 of 1983 (Undang-undang No. 5 Tahun 1983 tentang Zona Ekonomi Eksklusif).
- Ratification of The UN-Convention on the Law of the Sea Act No. 17 of 1985 (Undang-undang No. 17 Tahun 1985 tentang Pengesahan Convensi PBB tentang Hukum Laut).
- Bio-diversity and Its Eco-system Conservation Act No. 5 of 1990 (Undang-undang No. 5 Tahun 1990 tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya).
- Spatial Use Act No. 24 of 1992 (Undang-undang No. 24 Tahun 1992 tentang Penataan Ruang).
- Ratification of The UN-Convention on Biological Diversity Act No. 5 of 1994 (Undang-undang No. 5 Tahun 1994 tentang Pengesahan Konvensi PBB mengenai Keanekaragaman Hayati).

In the period of twenty years posterior the 1972 Stockholm Declaration, the United Nations carried out the Earth Summit in 1992, namely the UN-Conference on Human Environment and Development in Rio de Janeiro in order to reaffirm the 1972 Stockholm Declaration, but with a new approach and central concept of sustainable development—integration of environment and development sustained over the long-term; for the purpose of achieving sustainable development, environmental protection must constitute an integral part of the development process and cannot be considered in isolation from it.[6] Furthermore, Principle 11 of the 1992 Rio Declaration mandated:

> States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standard applied by some

[6] E. Kula, *Economics of Natural Resources*, The Environment and Policies (Chapman & Hall, London 1994), at 31; DAUD SILALAHI, HUKUM LINGKUNGAN DALAM SISTEM PENEGAKAN HUKUM LINGKUNGAN INDONESIA (Human Environmental Law in the Indonesian Environmental Law Enforcement System), (Alumni Press, Bandung 2001).

countries may be inappropriate and unwarranted economic and social cost to other countries, in particular developing countries.

In line with the said principles of the 1992 Rio Declaration, the Government need to accommodate the recently principles as well as enhance legal substances of the 1982 Act. It is, therefore, with the purpose of reaffirming its environmentally-based commitments within the national development policy, in the year 1997 the Government enacted the Act No. 23 of 1997 concerning Human Environment Management as to replace the Basic Environment Management Act of 1982.

The Act of 1997 was structured as a general framework statute that addressed to cover a whole range of elements in environmental management with the idea of achieving an integrated environmental law and policy.[7] In this sense, several global environmental principles that constituted within the 1992 Rio Declaration adopted to enrich substance of the 1997 Act. Some of them are: (a) right to a good and healthy principle; (b) precautionary principle; (c) information access principle; (d) public participation principle; (e) polluter-pays principle; (f) strict liability principle; (g) class action and legal standing principles; and (h) sustainability principle in the management of living environment for supporting the sustainable national development practices.

Those environmental sound principles have clearly been defined within the 1997 living environmental Act to integrate and synchronize related natural environment laws and regulations. Some particular provisions of the 1997 Act are the recognition of the right of every person to obtain a good and healthy environment, environmental compliance requirements, environmental dispute resolution, as well as basic principles upon which environmental management established, namely the principle of State responsibility, principle of sustainability, and principle of utilization constituted to the achievement of ultimate objective of environmental management that is sustainable national development for the welfare of whole people.

In order to generate environmentally sound national development, a number of Acts with relate to natural environment protection and management reformed based upon the 2009 Act. Those are as follows:

- Forestry Act No. 41 of 1999 (UU No. 41 Tahun 1999 tentang Kehutanan);
- Water Resource Act No. 7 of 2004 (UU No. 7 Tahun 2004 tentang

[7] Laode M. Syarif, *Current Development of Indonesian Environmental Law*, in e-Journal Issue 2010 (1) IUCN Academy of Environmental Law.

Sumber Daya Air);

- Plantation Act No. 18 of 2004 (UU No. 18 Tahun 2004 tentang Perkebunan);
- Fishery Act No. 31 of 2004 (UU No. 31 Tahun 2004 tentang Perikanan);
- Coastal Zone and Small Islands Management Act No. 27 of 2007 (UU No. 27 Tahun 2007 tentang Pengelolaan Wilayah Pesisir dan Pulau-pulau Kecil);
- Garbage Management Act No. 18 of 2008 (UU No. 18 Tahun 2008 tentang Pengelolaan Sampah);
- Mineral Mining and Coal Act No. 4 of 2009 (UU No. 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara).

III. FORMULATION OF THE GLOBAL PRINCIPLES WITHIN THE 2009 ACT ON LIVING ENVIRONMENT PROTECTION AND MANAGEMENT

As mandated by the 1945 Constitution, the national economic development should naturally be executed on the basis of sustainable and environmentally sound development principles. The year of 1998 could be marked as the wake of democratization and decentralization movements started in accordance with the fall of former President Soeharto. It brought about the consequence that the legal reform process continued and the environmental law was not the exception like other targeted field of law. Hence, the period of 1998 can be noted as a process of general reformation era included the era of environmental law reform.[8]

In accordance to the reformation era that regional autonomy movement in the Unitary State of the Republic of Indonesia has brought changes particularly in relation to delegated authority of the central to the regional governments, included the authority of environmental management. In addition, that global warming has resulted in climate change thus worsening the degradation of the environmental quality so that environmental protection and management needed to be renewed by political action of amended the 1997 environmental Act. Finally, in order to better assure legal certainty and provide protection for the right of every person to obtain a proper and healthy environment as part of the protection of the ecological system in the country, the Government enacted Act No. 32 of 2009

[8] Naoyuki Sakumoto, *Reforming Laws and Institutions in Indonesia: An Assessment*, Development of Environmental Law and Legal Reform in Indonesia (Naoyuki Sakumoto & Hikmahanto Juwana eds), ASEDP Series No. 74 Institute of Developing Economies (IDE)—Japan External Trade Organization (JETRO) 2007, at 205.

regarding Living Environment Protection and Management as to replace the 1997 environment management Act.

The Act of 2009 has been a system of regulation in line with the human environment control and management as urgent legal instrument to preserve and protect natural resources and environment in the territory of Indonesia. In relation to the decentralization era, the Act of 2009 designed to integrate and harmonize authority as well as responsibility between central and regional government in human environment protection and management. In other words, environmental protection and management refers to a systematic and integrated effort to preserve the functions of the environment and prevent environmental pollution and/or destruction, which covers the planning, utilization, controlling, maintenance, supervision and law enforcement.[9]

As such, environmental protection and management shall aim at: (a) protecting the territory of the Unitary State of the Republic of Indonesia from environmental pollution and/or damage; (b) guaranteeing human safety, health and life; (c) guaranteeing the continuation of life of creatures and ecosystem conservation; (d) preserving the functions of the environment; (e) achieving environmental harmony, synchronize and equilibrium; (f) guaranteeing the fulfillment of justice for the present and future generations; (g) guaranteeing the fulfillment and protection of right to the environment as part of human right; (h) controlling the utilization of natural resources wisely; (i) realizing sustainable development; and (j) anticipating global environmental issues.[10]

It could be clearly observed that global principles of the 1992 Rio Declaration adopted and formulated within the 2009 Act, such as principles of precautionary, environmental inventory and planning, impact assessment and environmental licensing system, good environmental governance, biological diversity, ecological region, public participation, indigenous wisdom recognition, decentralization of authority, sustainability, balance and harmony, polluter-pays, legal standing of environmental organization, class action of a group of people, strict liability, alternative environmental dispute settlement, and the others. In addition, the 2009 Act provides several new environmental instrument namely environmental-based legislation and budgeting incorporated to environmental legal and policy making for supporting the effectiveness of sustainable national development.[11]

In the economic sense, the 2009 Act defines new instrument that

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[9] *See* Article 1 paragraph (1).
[10] *See* Article 3.
[11] *See* Article 44 and Article 45.

addressed to internalize the cost of environmental protection into development planning and economic activities at the central, provincial, and district governments levels. Accordingly, a particular economic incentive to environmentally sound business practices is granted to encourage the economic regional establishment. It is also constituted that every business and/or activity bringing substantial impact on the environment shall be obliged to have an environmental impact assessment,[12] and any business practice that include potential to bring about consequence of environmental pollution, threat to ecosystem and the life and/or human health and safety mandated to set up an environmental risk assessment and to conduct regularly environmental audits in the framework of enhancing environmental performance. [13] For this purpose, in the framework of preserving the environmental functions, the government and regional governments shall be obliged to develop and apply economic instruments of the environment.[14]

In line with pollution control obligation, it is defined that environmental pollution and/or damage shall be controlled in the framework of preserving environmental functions. It shall cover (a) prevention, (b) mitigation, and (c) restoration. In this respect, the control over environmental pollution and/or damage shall be done by the government, regional government and parties in responsible for businesses and/or activities in accordance with their respective scopes of authority, role and responsibility.[15]

Several essential legal rights of the people are clearly formulated within Article 65 of the 2009 Act namely everybody shall be entitled to a proper and healthy environment as part of human rights, as well as to be entitled to environmental education, access of information, access of participation and access of justice in the fulfillment of the right to a proper and healthy environment. Everyone shall also be righteous to submit recommendation and/or objection to a planned business and/or activity which is predicted to affect the environment, participate in environmental protection and management in accordance with legislation, and has the right to complain the alleged consequences of environmental pollution and/or destruction.

Principle of public participation formulated in the form of every individual and community secure the equal and maximal right and

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[12] *See* Article 22.
[13] *See* Article 47 and Article 48.
[14] *See* Article 42.
[15] *See* Article 13.

opportunity to participate actively in environmental protection and management. It may be included in (a) social supervision, (b) suggestions, opinions, recommendations, objections, complaints; and/or (c) provision of information and/or report. In this sense, public participation is intended to enhance awareness in environmental protection and management, independence, capability of communities and partnership, boost the growth of capability and initiative of communities, as well as encourage communities to conduct social supervision and develop and preserve local culture and wisdom in the framework of the preservation of environmental functions.[16]

In relation to pollution control and management that everyone shall be obliged to preserve the environmental functions as well as control environmental pollution and/or damage. [17] Consequently, as formulated within Article 68 that everyone who run business and/or activity shall be obliged to: (a) provide information related to environmental management and protection truthfully, accurately, transparently and punctually; (b) preserve the sustainability of the environmental functions; and (c) abide by provision on environmental quality standard and/or standard criteria for environmental damage. Furthermore, as to mention within Article 69 that everyone shall be prohibited from (a) committing action polluting and/or destroying the environment; (b) importing hazardous and toxic materials which is forbidden according to legislation into the territory of the Unitary State of the Republic of Indonesia; (c) importing waste from outside the territory of the Unitary State of the Republic of Indonesia into the environmental media of the Unitary State of the Republic of Indonesia; (d) importing hazardous and toxic waste into the territory of the Unitary State of the Republic of Indonesia; (e) disposing waste into the environmental media; (f) disposing hazardous and toxic materials and waste into the environmental media; (g) releasing genetically engineered products to the environmental media, the environmental legislation or licensing; (h) opening land by burning method; (i) formulating environmental impact assessment without having competence certificate of environmental impact assessment formulator; and/or (j) providing fake, misleading information, obscuring information, or spoiling information or providing untruth information.

In accordance to principle of liability especially of strict liability formulation in environmental dispute settlement through the court, it is defined that everybody whose action, business and/or activity uses

[16] *See* Article 70.
[17] *See* Article 67.

hazardous and toxic materials, produces and/or manage waste and/or poses serious threat to the environment shall be responsible absolutely to the arising loss without necessary to prove the substance of the fault.[18] On the other side, for class action principle, it is formulated that communities have right to file class action for their own interests and/or interests in case of the suffer from loss attributable to environmental pollution and/or damage, and be submitted in the case of representatives of the group and members of the group sharing of the same fact or incident, legal case and kind of demand.[19] And what the so called legal standing principle, Article 92 constituted that in the framework of executing responsibility for environmental protection and management, environmental organizations has a right to file lawsuit in the interest of the preservation of environmental functions.

Finally significant progress of the 2009 Act is the formulation of justice system and enforcement within its criminal provisions. It is regulated what the so called a minimum penalty and the improvement of maximum penalty for the violation of the Act in order to limit the power of the judge in determining unimpeded penalties in environmental crimes. It is also urgent to outline that according to Article 113 that anyone providing fake, misleading information, loosing information, destroying information or providing untruth information which is needed in relations to supervision and law enforcement with respect to environmental protection and environment as referred to in Article 69 paragraph (1) letter j shall be subject to imprisonment for one year at the maximum and a fine of IDR 1,000,000,000 (one billion rupiah) at the maximum.

In addition, other progressive formulation refer to criminal sanctions that can be imposed to the State officials who violating the Act.[20] In this respect, officials granting environmental permit that issue environmental permit without environmental impact analyzing document or environmental management and monitoring instruments as referred to Article 37 paragraph (1) shall be subject to imprisonment for 3 (three) years at the maximum and a fine of IDR 3,000,000,000 (three billion rupiah) at the maximum. Besides, officials granting business and/or activity license that issue business and/or activity license without the environmental permit as referred to in Article 40 paragraph (1) shall be subject to imprisonment for 3 (three) years at the

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[18] *See* Article 88.

[19] *See* Article 91.

[20] In order to understand what the legal foundation on how the government officials can be considered the possibility of imposing criminal liability *see* Michael G. Faure, Ingeborg M. Koopmans & Johannes C. Oudijk, *Imposing Criminal Liability on Government Officials Under Environmental Law: A Legal and Economic Analysis*, 18 LOYOLA OF LOS ANGELES INTERNATIONAL AND COMPARATIVE LAW REVIEW 529 (1996). *Available at*: http://digitalcommons.lmu.edu/ilr/vol 18/iss3/3.

maximum and a fine of IDR 3,000,000,000 (three billion rupiah) at the maximum. [21] Finally, it is constituted that every authorized official intentionally not supervising compliance of parties in responsible for business and/or activity with legislation and environmental permit as referred to in Article 71 and Article 72, which causes environmental pollution and/or damage that costs human live shall be subject to imprisonment for one year at the maximum or a fine of IDR 500,000,000 (five hundred million rupiah) at the maximum.[22]

As stated that environmental law violations constituted as crime that is felony.[23] It is because the natural environment is actually a system of human life that should be wisely protected and utilized for the sustainability of human being of present and future generations. Hence, it could be mentioned that environmental crime classified as extraordinary crime is a crime against humanity.

CONCLUSION

Orientation of the said Act of 2009 directed mainly to human environment protection and management for the achievement of sustainable national development. Besides, the legislation was established in order to enhance its role and function in coping various natural resources and environmental problems, as well as enforce legal cases in conjunction with the rapid execution of national development.

In accordance to the emerging environmental problems throughout the world in the last four decades, Indonesia, as part of international community, should conduct both inward and outward looking, and especially incorporate global principles that internationally accepted as environmental justice, democratic, and sustainability sounds in the development of environmental law, as well as to contribute the attempt of international community in securing global climate stability and sustainable environment. Hence, in the effort of environmental law and policy establishment and reform, some basic principles should be taken into consideration as follows:[24]

- Natural resources should be managed and utilized for the purpose of enhancing greatest prosperity for whole people of Indonesia.
- Natural resources should be allocated and distributed as just and

[21] *See* Article 111.
[22] *See* Article 112.
[23] *See* Article 97.
[24] I NYOMAN NURJAYA, PENGELOLAAN SUMBER DAYA ALAM DALAM PERSPEKTIF ANTROPOLOGI HUKUM (Natural Environment Management in Legal Anthropology Perspective) (Prestasi Pustaka Publisher, Jakarta 2008).

fairness way for the present generation and mainly the coming generation.

- Natural resource should be understood as a system of human being livelihood and ecosystem. That is why, in the effort of resources, utilization should be carefully and be better to take preventive action by employing the so-called precautionary principle.
- Natural resources management practices should be directed to employ integrated approach in the sense of policy-making, institutions-building, and resource management mechanism.
- Local community should really be involved in the management of natural environment as they have their own local wisdom in controlling and managing resources for years and generations as reflected within their customary law or *adat* law (*hukum adat*) in Indonesian context. It should be respected and recognized that the local communities throughout Indonesia are important actors and best partner of the Government in the effort of managing natural environment in the country.
- Customary law of the communities should be recognized as part of Indonesia's legal system. In relation to the regulation of natural environment management and utilization, *adat* law may more be effective if compared to the implementation of the State law.
- One should be given into account that natural environment management and practices need to accommodate the local specifications in respect of typical geography, bioregion, as well as dimension of wisdom and beliefs of the local people as social and cultural capitals that can be enforced for protecting and preserving natural resources in the country.

To end the discussion hereby, the author would like to propose such recommendation to eliminate political of ignorance approach in the development of natural environment law. That is the reason why the Government should take into action to realize what the so-called good environmental governance in conjunction with the sustainable national development practices. In addition, what the so-called legal centralism paradigm in environmental protection and management should replace into the ideology of legal pluralism as to provide space for the legally recognition and respect to indigenous communities and their traditional rights over environment and natural resources control and utilization.