



Impact of the Word “Right” in Environmental Law on the Environment Based on Human Rights Concept

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Abstract

Introduction: This paper reviews the impact of the word “rights” in environmental regulations, namely Law Number 32 of 2009. The word “rights” in the regulation causes the community as legal subjects but unfamiliar with the law to assume that rights are an option not something that must be fulfilled to fulfill the human rights of the community as individuals.

Purposes of the Research: This paper aims to ensure that the word “rights” in the Environmental Law is no interpreted as option but necessity to be fulfilled and guaranteed its realization by the state.

Methods of the Research: Using normative legal research consisting of primary legal materials, namely the 1945 Constitution and Law Number 32 of 2009 concerning Environmental Protection and Management. Secondary legal materials are books, research results, legal journals. The method of thinking used is deductive.

Results of the Research: Based on Theory of Integrating Universality and Pluralism, the results of the author's research show that origin of the community understands the word “rights” in environmental laws as an option because in the 1948 Universal Declaration of Human Rights there are economic, social and cultural rights, all of which must be balanced. The word “rights” in environmental laws provides an opening so that the economy and culture must also be considered in running life. Furthermore, the level of education, economy and culture in society also influences the neglect of the “right” to a clean and healthy environment for the community.

Keywords: Right; Human Rights; Environment.

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INTRODUCTION

Based on Article 28D paragraph (1) of the 1945 Constitution which states “everyone has the right to recognition, guarantees, protection and certainty of a fair law and equal treatment before the law. With the emphasis on “equal treatment before the law”, it proves that every human being is not differentiated in treatment based on religion, gender, age or citizenship, meaning that “all are equal and equal before the law”. The words “everyone has the right” mean that there is a legal subject that is the supporter of rights and obligations, which is referred to as a “person”. Persons consist of personal humans and legal entities. Personal humans are legal subjects in a biological sense, as natural phenomena, as cultural beings with reason, feeling, and will. Then, legal entities are legal subjects in a juridical sense, as a symptom of living in society, as a human creation based on law, having rights and obligations like a private human being. The position of humans as legal subjects is not determined (dependent) on religion, gender, age or citizenship with the basics including Article 27 paragraph (1) of the 1945 Constitution stating that all citizens are equal before the

law.¹ The article proves that the Republic of Indonesia as a state of law recognizes personal humans as legal subjects, supporters of rights and obligations. The personal human being in this case is very clear, namely the position of the personal human being in the subject of law is not differentiated and there is no discrimination, meaning that it is not determined by religion gender, age or citizen.

The provisions in the 1945 Constitution, namely Article 27 paragraph (1) of the 1945 Constitution and Article 28D paragraph (1) of the 1945 Constitution are related to human rights (hereinafter abbreviated as human rights). Human rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity. Human rights are inalienable and every party, both producers and consumers, must respect, appreciate, and recognize every right and obligation inherent in them. Human rights as a form of dignity have principles that must be known by everyone. In order for the regulations on the protection of human dignity to be fully protected, the public must know these regulations. Human rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity. Human rights are inalienable and every party, both producers and consumers, must respect, appreciate, and recognize every right and obligation inherent in them. Human rights as a form of dignity have principles that must be known by everyone. In order for the regulations on the protection of human dignity to be fully protected, the public must know these regulations.

The Indonesian state through the government apparatus forms laws on the environment, for example with the establishment and enactment of Law Number 32 of 2009 concerning Environmental Protection and Management or abbreviated as UUPPLH and the 1945 Constitution, especially Article 28H paragraph (1) as a guideline.² Based on this, it provides guidance that the State of Indonesia has provided guarantees in relation to a healthy environment.³ It is known that the presence of UUPPLH is intended to protect and manage the environment. In the UUPPLH, there are principles that become the basis or soul in carrying out every provision in the UUPPLH, of course in relation to protecting and managing the environment, including through various principles, such as prudence, participatory, local wisdom, polluter pays, state responsibility, ecoregion, sustainability and sustainability. Local wisdom is one of the guidelines in implementing environmental sustainability in Indonesia.⁴ In the UUPPLH, it can be seen that every activity carried out by business actors in relation to the potential to cause pollution, then the UUPPLH provides a solution to control the pollution, this is called preventive efforts in the form of supervision instruments and licensing.⁵

However, if pollution has occurred, then repressive efforts can be made, guided by laws that have a good impact, do not deviate and continue to pollute and damage the

¹ Abdurrahman Supardi Usman, "Lingkungan Hidup Sebagai Subjek Hukum: Redefinisi Relasi Hak Asasi Manusia dan Hak Asasi Lingkungan Hidup dalam Perspektif Negara Hukum," *Legality* 26, no. 1 (2018): 1-16, p. 5. <https://ejournal.umm.ac.id/index.php/legalita/article/view/6610/5755>

² Yunus Wahid, *Pengantar Hukum Lingkungan* (Jakarta: Kencana, 2018), p. 90

³ Slamet Riyanto, "Relasi Antara Konstitusionalitas Hak Asasi Manusia dan Kearifan Lokal Budaya Masyarakat dalam Pengelolaan Lingkungan Hidup," *Legalita* 5, no. 2 (2023): 128-142, p. 129. <https://doi.org/10.47637/legalita.v5i2.978>

⁴ Marhaeni Ria Siimbo, *Lembaga Pembiayaan dalam Perspektif Hukum* (Jakarta: Universitas Katolik Indonesia Atma Jaya, 2019), p. 83.

⁵ Anastasha Ruth Nugroho, Fatma Ulfatun Najicha, "Pemenuhan Hak Asasi Manusia Atas Lingkungan Hidup yang Sehat", *Yustitia* 9, no. 1 (2023): 108-121, h. 110. <https://doi.org/10.31943/yustitia.v9i1.175>

environment.⁶ In terms of preventive and repressive measures, UUPPLH also takes administrative, civil and criminal law provisions. The goal is none other than to keep the environment healthy. However, criminal law is only used as an ultimum remedium, which is the last resort if administrative law and civil law have been carried out. In UUPPLH, it is clearly illustrated that protecting and managing the environment in life is not managed by the central government alone, but by local governments, this is illustrated in the clarity of authority between the two listed in each article of UUPPLH.⁷

METHODS OF THE RESEARCH

This research uses normative legal research that analyzes positive legal provisions. The approaches used are conceptual approaches and statutory approaches. This research obtained the main data through secondary data. Secondary data consists of primary legal materials and secondary legal materials. The primary legal materials needed by the author are the 1945 Constitution and Law Number 32 of 2009 concerning Environmental Protection and Management as well as books, legal journals and legal opinions. The technique of collecting legal materials is through literature study. The method of analysis used is the deductive method which departs from the general concept, namely there are laws and regulations faced with legal facts, namely non-compliance with the 1945 Constitution and Law Number 32 of 2009 which are then analyzed using the Theory of Integrating Universality and Pluralism.

RESULTS AND DISCUSSION

A. The Concept of "Rights" in Environmental Law Based on the Concept of Human Rights

When talking about rights according to the concept of nation and state, it is faced with the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights. The concept of "rights" as part of human rights (hereinafter referred to as human rights).⁸ Human rights are related to dignity as a basic right inherent in humans because humans have human dignity (have dignity), dignity is self-respect. Only humans have human rights because only humans have human dignity.⁹ Human rights are rights that humans have simply because they are human. Human beings have them not because they are given to them by society or based on positive law, but solely based on their dignity as human beings. In the context of human rights, there are phases of universality and contextuality. In the context of universality, human rights can be interpreted that human rights are universal and recognized by all human beings, but when contextually implemented in a certain place, human rights are not necessarily applied entirely, so they must be particularistic.

One of the human rights under the 1945 Constitution is the right to a healthy environment. This is included in the second generation of human rights influenced by economic and socio-cultural rights or called ECOSOB rights. This is related to the Universal Declaration of Human Rights (UDHR 1948) that one of the provisions in Article 22 is the right to social security, the right to economic, social and cultural rights for the growth of dignity so that it is followed up with the *International Covenant on Economic, Social and*

⁶ Muhammad Sood, *Hukum Lingkungan Indonesia* (Jakarta Timur: Sinar Grafika, 2019) p. 431

⁷ Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional Edisi Keempat*, (Surabaya: Airlangga University Press, 2020), p. 108

⁸ Sutio Jumagi Akhirno, "Hak Warga Negara Atas Lingkungan Hidup Sebagai Bagian dari Hak Asasi Manusia," *Journal of Lex Theory* 5, no. 2 (2024): 527-536, p. 534. <http://pasca-umi.ac.id/index.php/jlt/article/view/1763>

⁹ Ahmad Arif Fadilah et al, "Konsepsi dan Hak Asasi Manusia Atas Lingkungan Hidup yang Sehat dan Baik," *DIAJAR: Jurnal Pendidikan dan Pembelajaran* 4, no. 1 (2025): 68-75, p. 70. <https://journal.yp3a.org/index.php/diajar/article/view/2381/1289>

Cultural Rights document or called ICESCR. At its core are economic rights relating to the right to obtain health and a healthy environment, social rights relating to life to settle in a residential unit in an atmosphere of peace, cultural rights, namely maintaining their own customs without disturbing the habits of others. These three rights are non-derogable rights so it seems that it still provides a loophole that all these rights depend on the individual or legal subject, namely whether they want their rights to be fulfilled or not. Following up on this, to understand the concept of "rights" in the UUPPLH with the various facts faced by the UUPPLH, the author uses the Theory of Integrating Universality and Pluralism that based on this theory, human rights should be regulated by considering the diverse historical, traditional, cultural, religious, and political and economic contexts. This is because in diversity there are still similarities or universal values, namely human dignity, freedom, equality and justice, which are values that override differences and belong to humanity as a whole.¹⁰

When talking about rights in the environment, it is related to legal protection which is closely related to human rights. Based on the opinion of CST. Kansil, legal protection is all forms of efforts in the field of law that must be provided by law enforcement officials with the aim of providing a sense of security against mind and physical. The main thing is to avoid the emergence of disturbances and various threats from various parties.¹¹ According to Philipus M. Hadjon, legal protection is protection in terms of dignity, and also regarding the recognition of various kinds of human rights that belong to legal subjects based on legal provisions.¹² Based on Andi Hamzah's opinion, legal protection is an effort made by every person or government and private institution with the aim of creating security, control and fulfillment of the welfare of society so that it is the same as human rights.¹³ According to Satjipto Rahardjo, legal protection is the protection of human rights that are harmed by other parties and the protection of the community in enjoying the various rights granted by law.¹⁴

The concept of "legal protection" is used as a foundation that proves that everyone is given rights and obligations in law. This can be seen in the laws and regulations that guarantee legal protection for everyone. The purpose of the law that provides protection is to provide guidance to everyone regarding the importance of carrying out obligations so as not to violate the rights of others. In relation to the environment, there are several articles that accommodate the concept of human rights, namely Article 28D and Article 28H paragraph (1) of the 1945 Constitution. Based on the 1945 Constitution, the rules contained in the 1945 Constitution as the highest legislation, then of course the laws and regulations that are under it must not conflict with the provisions of the 1945 Constitution. Then it is also regulated in Article 9 paragraph (3) of Law Number 39 of 1999 concerning Human Rights, everyone has the right to a good and healthy environment. One that accommodates human rights is Law Number 32 of 2009 concerning Environmental Protection and

¹⁰ Murthada Murthada & Seri Mughni Sulubara, "Implementasi Hak Asasi Manusia di Indonesia berdasarkan Undang-Undang Dasar 1945," *Dewantara: Jurnal Pendidikan Sosial Humaniora* 1, no. 4 (2022): 111-121, p. 113. <https://doi.org/10.30640/dewantara.v1i4.426>

¹¹ Hakim Fadhillah et al, "Implementasi Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup Terhadap Kebersihan Lingkungan Masyarakat," *Cross-border* 5, no. 2 (2022): 1190-1200, p. 1195. <https://journal.iaisambas.ac.id/index.php/Cross-Border/article/view/1260/984>

¹² Hukumonline, "Perlindungan Hukum: Pengertian, Teori, Contoh, dan Cara Memperolehnya," Hukumonline, 2023, <https://www.hukumonline.com/berita/a/perlindungan-hukum-contoh--dan-cara-memperolehnya-1t61a8a59ce8062?page=2>

¹³ Annisa Anugrah Putri et al, "Makalah Hukum Lingkungan Hukum Lingkungan dan Hak Asasi Manusia: Studi Tentang Hak Atas Lingkungan Sehat," *Jurnal Ilmiah Multidisiplin Terpadu* 8, no. 6 (2024): 284-288, h. 285. <https://oaj.jurnalhst.com/index.php/jimt/article/view/1881/1879>

¹⁴ Zulkifli Aspan, "Konstitusionalisasi Tanggung Jawab Negara Terhadap Pelestarian Fungsi Lingkungan Hidup," *Amanna Gappa* 30, no. 2 (2022): 149-155, h. 152. <http://journal-old.unhas.ac.id/index.php/agjl/article/view/26413>

Management, hereinafter referred to as UUPPLH.¹⁵

The public has the right to a healthy environment, a right that is clearly stated in the provisions of the Indonesian Constitution, namely Article 28H of the 1945 Constitution. The question arises, do people not try to exercise their right to complain to the local government about a business or event that threatens their right to a healthy environment. Based on Article 65 paragraph (4), that everyone has the right to play a role and participate in the protection and management of the environment that does not conflict with statutory regulations. Based on Article 65 paragraph (5), that everyone has the right to make complaints if there are allegations of pollution and / or destruction of the environment. In addition to being given rights, obligations are also given, namely in Article 67 to maintain the preservation of environmental functions and control pollution and environmental damage. In addition to rights and obligations, of course there are also prohibitions. In Article 69 paragraph (1), it is clear that every person is prohibited from taking actions that can cause pollution and/or damage to the environment.¹⁶

The concept of environmental protection and management also involves the community. In Article 70, that basically the community has the same and widest possible rights and opportunities in terms of playing an active role in terms of environmental protection and management. The role of the community can be in the form of social supervision; providing suggestions, opinions, proposals, objections, complaints; and / or submitting information and / or reports. The objectives of community participation include increasing awareness in terms of environmental protection and management, increasing independence, community empowerment and partnerships, especially in terms of growing and developing community capacity and reporting. One of the objectives of environmental management is to guarantee the fulfillment and protection of the right to the environment as part of human rights. The rights of every person include participating in environmental management in accordance with applicable laws and regulations, then preparing reports or complaints about if there has been environmental pollution and damage. In addition to rights, obligations are also given, including preventing pollution and / or environmental damage, overcoming or overcoming damage and restoring the environment. Then, another obligation is the obligation for every person who conducts business and/or activities to display correct, accurate, open and timely information in terms of environmental management.

B. The Impact of the Word “Rights” Based on the Concept of Human Rights in the Environmental Law on the Environment

The word most often found in UUPPLH is rights. Actually, rights are very much related to law enforcement. In the UUPPLH, the community is given rights in order for the principles and objectives in the UUPPLH to be enforced and achieved. Law enforcement is closely related to rights and obligations in terms of environmental protection and management, this is because to create a healthy environment, everyone is obliged to carry out their respective rights and obligations. In relation to rights, there are subjective rights or individual rights and social rights. Subjective rights provide opportunities for individuals

¹⁵ Lalu Sabardi, “Peran Serta Masyarakat dalam Pengelolaan Lingkungan Hidup Menurut Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup,” *Yustitia* 3, no. 1 (2024): 67-79, p. 70. <https://jurnal.uns.ac.id/yustisia/article/view/10120/9030>

¹⁶ Arvin Asta Nugraha, I Gusti Ayu Ketut Rachimi Handayani, Fatma Ulfatun Najicha “Peran Hukum Lingkungan Dalam Mencegah Kerusakan dan Pencemaran Lingkungan Hidup,” *Jurnal Hukum tora*, no. 2 (2021): 283-298, p. 286. <https://ejournal.fhuki.id/index.php/tora/article/view/8>

to defend themselves.¹⁷ In this case, self-defense when getting interference from outsiders, its form can be in the form of self-defense.¹⁸ Then, there are social rights, providing opportunities to a group of individuals or individuals in groups, so that they are not obtained individually, but in groups. The guarantee of protection provided by UUPPLH is regarding the preparation of Environmental Protection and Management Plans or abbreviated as RPPLH. RPPLH is prepared and regulated at the national level in the form of government regulations, at the provincial level in the form of regional regulations and at the district / city level in the form of district / city RPPLH.

However, the word “right” can actually be interpreted as an “option”, meaning that there is no obligation to take the right. However, on the other hand, provisions that are rights for one party become obligations for another party, so laws and regulations should not be interpreted piecemeal but systematically. In layman's terms, rights are different from obligations. An obligation is something that must be done, while a right is more of a power, depending on the individual who is given the right whether they want to use their right or not. Many parties consider that they have no obligation to take their “rights”, while everything that becomes the “obligations” of other parties is not their business, on the other hand there is no obligation for them to reprimand or make complaints to the authorities if environmental violations have occurred so that the concept of “rights” can be misused.¹⁹ The words “entitled to a healthy living environment” mean that to get a healthy living environment is the choice of the community so that there are two choices, namely demanding or not demanding the fulfillment of the right to a healthy living environment. If we look at the opinion of RMT Sukanto Notonegoro, it can be seen that basically the right is the authority or authority for a person in terms of receiving or doing something, the person should exercise his rights, especially if the rights have been regulated by the state, then it should be heeded, then if there are parties who conflict with their rights, then they can demand the fulfillment of their rights.²⁰

The causes of people not exercising their right to a clean and healthy environment are due to their level of education, economy and culture in the form of local wisdom. If seen from the social facts that the “right” to a healthy environment is often set aside in communities with a level of education that is not high or experiencing obstacles when receiving compulsory education so that they often do not care whether they are in a good and healthy environment or not because what they prioritize is that they can survive because this is related to the economic level as well. Generally, people who do not receive education until completion are more often less prosperous at the economic level. This implies that they tend to allow everyone, namely individuals and corporations (companies) who will do business to potentially pollute and / or damage the environment because the main thing is that they benefit economically. If they do not benefit economically then they will demand their right to a healthy environment. Culture is also influential in influencing the interpretation of the word “rights” in the environment because if the “right to a healthy

¹⁷ Koenadi Hardjasoemantri, *Hukum Tata Lingkungan* (Yogyakarta: Gadjah Mada University Press, Edisi VIII, 2019), h. 76

¹⁸ Pusat Studi Lingkungan Hidup Universitas Gadjah Mada, “Peran Serta Masyarakat Dalam Pengelolaan Lingkungan Hidup,” Pusat Studi Lingkungan Hidup Universitas Gadjah Mada, 2025, <https://pslh.ugm.ac.id/peran-serta-masyarakat-dalam-pengelolaan-lingkungan-hidup/>

¹⁹ I Gede Yusa dan Bagus Hermanto, “Implementasi Green Constitution di Indonesia: Jaminan Hak Konstitusional Pembangunan Lingkungan Hidup Berkelanjutan”, *Jurnal Konstitusi*, no. 2 (2018): 306–326, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1524/376>

²⁰ Kompas.com, “Pengertian Hak Menurut Ahli,” Kompas.com, 2025, <https://nasional.kompas.com/read/2022/05/08/01000071/pengertian-hak-menurut-ahli?page=all>

environment” is enforced in a society where local wisdom is still strong, then if there is local wisdom related to the utilization of the environment, people will tend to choose local wisdom compared to their rights granted by UUPPLH.²¹

Some of these factors have an impact on the environment, potentially causing environmental pollution. Environmental pollution is not a new problem, but a problem that often occurs as a form of evidence for the need for the state to guarantee the environment so that pollution does not occur. Pollution certainly brings harm to all aspects of life, especially humans who live their daily lives in an environment, if the environment is polluted, human life is disrupted. Pollution has an impact in the form of a decrease in the quality of the environment, so pollution must be stopped. There are elements of environmental pollution, namely to determine the presence or absence of components that are deliberately introduced into the environment, not due to natural processes and if they exceed the Environmental Quality Standards (hereinafter referred to as BML). BML as a benchmark to determine whether or not there is environmental pollution. Talking about human rights in the field of environment, one of them is the right to a good and healthy environment. “Rights” are part of human rights, which means that the state has an obligation to fulfill these rights. However, many citizens ignore these rights by assuming that rights are the choice of each person. In relation to a good and healthy environment, it is still often set aside because people pay more attention to human rights from the economic or cultural side because the right to a healthy environment is part of the social. This is considering that Indonesia is a state with the concept of welfarestate so that it is in line with Article 33 of the 1945 Constitution.²²

CONCLUSION

The word “rights” in Law Number 32 of 2009 concerning Environmental Protection and Management is interpreted as an option because in the Universal Declaration of Human Rights 1948 there are economic, social and cultural rights, all of which must be balanced. Based on the Theory of Integrating Universality and Pluralism, that the word “rights” in environmental laws provides a loophole so that the economy and culture must also be considered in running life, the way to change people's thinking is to understand that rights are something they must get in the life of the state and precisely when there are citizens who do not get these rights, the state is considered to have failed to provide legal protection to its citizens. The second cause that causes the community to interpret “rights” as a choice is motivated by the level of education, economy and culture related to local wisdom that is prioritized by the community. The author's recommendation is that the government, namely the Ministry of Environment and the ministries in charge of education, economy and socio-culture should first ensure that the community has 12 years of formal education, namely elementary school, junior high school and senior high school. The Coordinating Ministry for Economic Affairs should re-examine the level of welfare in society. For the Ministry of Social Affairs to immediately reaffirm how to preserve Indonesian culture without harming the community's right to a healthy environment.

²¹ Kuku Subyakto, “Azas Ultimum Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada UU Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup”, *Jurnal Pembaharuan Hukum*, no. 2 (2015): 209-213, <https://jurnal.unissula.ac.id/index.php/PH/article/view/1431/1104>

²² Atika Tahira, “Penegakan Hukum Administrasi Lingkungan Hidup Ditinjau Dari Konsep Negara Hukum”, (*JCH*) *Jurnal Cendekia Hukum*, no. 2 (2020): 260-274, <https://e-jurnal.stih-pm.ac.id/index.php/cendekiahukum/article/view/229/181>

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