



State responsibility in fulfilling citizens rights to the environment as part of human rights

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Abstract

Based on the state's responsibility, the state will guarantee that the use of natural resources will provide maximum benefits for the welfare and quality of life of the people, both the present and future generations as the goal of implementing sustainable development. The problem to be examined is, how is the state's responsibility as the basis for implementing environmental protection and management? The method used in this study is normative juridical accompanied by a statutory approach. The analyzed method used is qualitative analysis. The results of the study concluded that the position of the state's responsibility to fulfill the right to the environment as part of human rights implies: 1) The state guarantees the utilization of natural resources which will provide maximum benefits for the welfare and quality of life of the people, both the present generation as well as future generations. 2) The state guarantees citizens' rights to a good and healthy environment. 3) The state prevents activities from exploiting natural resources that cause environmental pollution and/or damage.

Keywords: State responsibility, right to the environment

Introduction

The environment as all objects, conditions or conditions and influences contained in spaces inhabited by humans and affecting living things including human life is the key to the existence of life on Earth, which includes all the elements of life, namely objects, power (energy), circumstances (conditions or situations), living things, humans and their behavior as well as the space of life which forms a synergistic order and cannot be separated from one another. In particular, problems in the field of the environment which have become complex in this era of globalization are no longer in accordance with the doctrinal conception of the environment itself. Whereas in the study of national environmental law, that which becomes the concept of protecting and maintaining the place of human life or the environment or the environment regularly and surely, and which is then followed and obeyed by all parties, is then poured into a national legal instrument so that it reflects the law based or oriented to environmental interests (environment oriented law), which in this case is closely related to legal regulation of the behavior of legal subjects in the context of utilizing natural resources in addition to efforts to protect natural resources and the environment as well as protection against all negative impacts arising from such utilization.

In relation to the development of the human rights doctrine in the world, which according to Karel Vasak is strictly divided into 3 (three) generations, namely the first human rights generation which focuses on civil and political rights, the second human rights generation which focuses on civil rights. economic, social and cultural, as well as the third human rights generation that focuses on the right to development, with different characteristics. In particular, in the development of the third generation of human rights, the results of the compromise of the two previous generations reflect a rationale for the emergence of collective rights that are recognized in the third generation of human rights, including the right to use the environment.

In Indonesia, the regime for the development of national environmental law was originally through statutory law products or the era of legislation, then after the reformation era was started, it was marked by the era of legislation leading to the era of constitutionalization, marked by the dynamics of the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia. (1945 Constitution of the Republic of Indonesia) which was amended four times,¹³ and the development of human rights to the environment was accommodated in the provisions of Article 28H paragraph (1)¹⁴ of the 1945 Constitution of the Republic of Indonesia and guarantees for sustainable environmental development in Article 34 paragraph (4). The 1945 Constitution of the Republic of Indonesia which reflects the concept of the Green Constitution as the State's Responsibility to make it happen or known as the Constitutionalization of environmental norms in the Indonesian Constitution.

In the environmental management system, it is known that the state has power over all natural resources. The state through the central government and regional governments has the authority to regulate, control and develop all matters relating to the protection and management of the environment in order to ensure that the utilization of natural resources will provide maximum benefits for the welfare and quality of life of the people, both the present and future generations. front. The state has a responsibility in environmental management to achieve sustainable development. Such a principle of state responsibility, as stipulated in Article 2 letter a, has a fairly broad meaning, including linking the paradigm that involves community participation (community based management). Therefore, the responsibility of the state can be linked to the duties and functions of all apparatus in running good governance (good governance).

Therefore, the state, government and all stakeholders are obliged to protect and manage the environment in the implementation of sustainable development so that Indonesia's environment can remain a source and support

for life for the Indonesian people and other living things. The role of the state is felt to be important because as a country that continues to develop, in Indonesia there have been several important cases related to environmental problems, including the mud flood case that occurred in Sidoarjo, which, although it has been happening for several years, has not yet been completely resolved. Regardless of the debate over whether the mudflow tragedy occurred as a result of a natural disaster or man-made, the state must still carry out its responsibility to manage and protect environmental conditions which are human rights for every Indonesian citizen. In the implementation of environmental protection and management, the state works based on several principles, one of which is the principle of state responsibility, which makes the state the central point and reference. The state has an important and central role.

The problem raised in this research is the concept of state responsibility in an effort to fulfill citizens' rights to the environment as part of human rights. The purpose of conducting this research is to provide an in-depth and comprehensive concept description regarding state responsibility in efforts to fulfill citizens' rights to the environment as part of human rights. The benefits of this research are divided into 2 parts, namely practical and academic benefits. The practical benefits of this research are expected to be a reference for legal practitioners or authorized officials in classifying the basic rights of citizens, especially regarding a clean and healthy environment for the community. Academic benefits are expected to provide clarity regarding the ideal concept so that the state can realize and fulfill citizens' rights to obtain the environment as part of human rights.

Research methods

The approach method used in this study is normative juridical accompanied by a statutory approach. In the statutory approach, it is necessary to understand the hierarchy and principles in statutory regulations. The normative juridical method focuses on the philosophical aspects of forming the basis for regulating state social responsibility. This method will examine the rules regarding state responsibility in environmental protection and management. The normative juridical method that will be used uses primary, secondary and tertiary legal materials. This research will use primary legal materials such as the 1945 Constitution, Law Number 32 of 2009 concerning Environmental Protection and Management. Secondary materials are obtained from library materials, such as articles, products from scientific forums and other written works

Results and discussion

The discussion about the responsibility of the state in fulfilling citizens' rights to the environment as part of human rights will intersect with several terms that must be explained first, some of these terms are: First, the environment, namely the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and the welfare of humans and other living things. Second, sustainable development, which is a conscious and planned effort that integrates environmental, social and economic aspects into a development strategy to ensure the

integrity of the environment as well as the safety, capability, welfare and quality of life of present and future generations. Third, environmental management and protection, namely systematic and integrated efforts made to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement. Fourth, the central government, hereinafter referred to as the Government, is the President of the Republic of Indonesia who holds the powers of government of the Republic of Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia. Fifth, regional governments are governors, regents or mayors, and regional apparatus as elements of local government administration. At least from the beginning of independence there were 3 (three) laws specifically regulating the environment in Indonesia, namely Law Number 4 of 1982, Law Number 23 of 1997 and Law Number 32 of 2009.³⁸ Specifically in Law Number 32 of 2009 concerning the Protection and Management of the Environment, a reflection of the concept and regulation of green constitution is reflected in the following sections:

First, in the Preamble Considering letter a, it is stated that, "... a good and healthy environment is a fundamental right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia. Second, in the preamble considering letter b, it is stated that "National economic development as mandated by the 1945 Constitution of the Republic of Indonesia is carried out based on the principles of sustainable and environmentally sound development." Third, in the Preamble Considering letter f, it is stated that, ". In order to better guarantee legal certainty and provide protection for the right of everyone to obtain a good and healthy environment as part of protecting the entire ecosystem, it is necessary to reform Law Number 23 1997 concerning Environmental Management."

Sixth, in the provisions of Article 1 point (2) UU LH 2009 it is stated that, "Environmental protection and management are systematic and integrated efforts made to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement. Seventh, Part Paragraph 9 of Environmental-Based Laws and Regulations in Article 44 states that, "Every drafting of laws and regulations at the national and regional levels must pay attention to the protection of environmental functions and the principles of environmental protection and management in accordance with the provisions stipulated in the Law -Invite this." Eighth, in the Explanation of Roman I. General Number (1) it is stated that, "The 1945 Constitution of the Republic of Indonesia states that a good and healthy environment is a basic right and constitutional right for every citizen of Indonesia. Therefore, the state, government and all stakeholders are obliged to protect and manage the environment in the implementation of sustainable development so that Indonesia's environment can remain a source and support for life for the Indonesian people and other living things.

Former Minister of the Environment Juwono Sudarsono once said that environmental problems cannot be separated from democracy and human rights, because these problems arise due to the attitude of ignoring people's rights, lack of information disclosure and weak law enforcement. Siti Sundari Rangkuti said that the right to a good and healthy

environment from the point of view of its form and content, the formulation of this right is a classic human right, which requires the authorities to avoid interfering with individual freedom to enjoy the environment. Judging from its operation, this right contains demands that are social rights, because at the same time it is balanced with the obligation for the government to outline policies and take actions that encourage increased efforts to preserve the environment.

The right to the environment is a subjective right of every human being that must be maintained in order to receive protection against outside disturbances. Heinhart Steiger stated that the so-called subjective rights are the broadest form of protection for a person. This right gives those who have it a legitimate claim to demand that their interests in a good and healthy environment be respected, a claim that can be supported by legal procedures, with legal protection by courts and other instruments. Heinhart Steiger stated that the lawsuit has two different functions, namely: The first function is related to the right to defend oneself against disturbances from the law that cause harm to the environment. The second function is associated with the right to take action so that the environment can be preserved, restored or repaired.

Conclusion

From the results of the study it can be concluded, first, the position of state responsibility as part of human rights in the environment means: 1) the state guarantees that the use of natural resources will provide maximum benefits for the welfare and quality of life of the people, both the current generation as well as future generations. 2) the state guarantees the rights of its citizens to a good and healthy environment. 3) the state prevents the carrying out of natural resource utilization activities that cause environmental pollution and/or damage. The principle of state responsibility as the basis for implementing environmental protection and management is carried out through enforcing environmental law. The conception of state responsibility in fulfilling the right to health is a positive legal right, therefore the government is obliged as the personification of the state to fulfill citizens' rights to health. Neglecting the right to public health in the form of denying the protection and provision of proper public health services is a violation of the constitution.

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