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History and Dynamics of Environmental Law in Indonesia

Robert¹, T Manggaranap Sirait², Aung Kyaw Myint³

¹Universitas Salakanagara, Indonesia

²Universitas 17 Agustus 1945, Indonesia

³University of Yangon, Myanmar

Email: akmyint@uy.edu.mm

Abstract

Environmental law in Indonesia has undergone significant development, reflecting a paradigm shift from traditional conservation to more comprehensive and sustainable natural resource management. This study examines the historical evolution of environmental law in Indonesia, from the colonial period to the post-independence era, with a focus on national regulatory formulation, law enforcement, and contemporary challenges. Key obstacles include low public awareness, weak inter-agency coordination, and corruption practices that undermine effective implementation. Using a normative juridical approach through literature review of primary, secondary, and tertiary legal materials, this research also discusses empirical approaches to assess law effectiveness in society. Findings highlight the need for an adaptive and progressive legal framework that balances written legal norms with social, economic, and cultural factors to achieve sustainable development. Emphasis is placed on the importance of public participation, the application of strict liability principles, and innovation in waste and pollution management to enhance environmental protection.

Keywords: Environmental law; Indonesia, History.

INTRODUCTION

Environmental law in Indonesia has undergone significant evolution, reflecting a paradigm shift from the traditional conservation approach towards more comprehensive regulation in natural resource management. This development includes not only aspects of legislation, but also the dynamics of law enforcement and court decisions that are adaptive to the complexity of contemporary environmental issues (Endri, 2022). This shift is driven by awareness of the impact of exploitative economic development and the need to integrate local wisdom in a holistic environmental protection framework (Jundiani, 2018). As part of this dynamic, environmental law enforcement efforts in Indonesia face various challenges, including the proliferation of regulations and corruption issues that hinder effective implementation (Mahoro & Samekto, 2021). These challenges are also exacerbated by limited human resources and adequate infrastructure, as seen from the difficulty of handling forest fire cases in several provinces (Akhmaddhian, 2020). These challenges are more complex considering that Indonesia is an archipelago with 70% of its territory is water, rich in natural resources such as forests, sea, freshwater, and abundant biodiversity (Mahoro & Samekto, 2021).

The history of environmental law in Indonesia cannot be separated from the influence of colonial policies that tended to be exploitative of natural resources, although some conservation efforts had begun in that period. However, post-independence, Indonesia began to formulate its own legal framework aimed at balancing economic development with environmental protection, along with the emergence of global awareness of the importance of sustainable development (Arifah et al., 2022). This awareness is increasing along with population growth and lifestyle changes that encourage overexploitation, resulting in environmental damage, environmental degradation, and global warming. (Asyharuddin et al.,

2020) This development reached its peak with the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management, which mandates the concept of sustainable development that includes efforts to prevent, mitigate, and restore environmental pollution (Nihaya et al., 2018). The adoption of this law marks a step forward in providing a more robust and comprehensive legal framework for environmental protection in Indonesia, replacing previous regulations such as Law No. 23 of 1987 on Basic Provisions for Environmental Management. This dynamic also includes a significant change in regulatory approach, from one based on Law No. 4/1982 on Basic Provisions of Environmental Management to a more integrated framework that is responsive to contemporary environmental issues (Amir et al., 2019).

Nonetheless, the implications of increasing population density, especially in urban areas, contribute significantly to environmental degradation through massive waste production and pollution caused by people's consumptive lifestyles. As an archipelago surrounded by oceans, Indonesia faces great challenges in managing its limited clean water resources, given that only about 27% of the total water on earth is fit for consumption, while 97% is seawater (Sefentry & Masriatini, 2020). This reality is exacerbated by the finding that nearly 68% of river water quality in Indonesia was heavily polluted as of May 2016, indicating an urgent environmental crisis (Faizal, 2021). In addition, pressure on the environment also arises from accelerated economic development that often ignores the principles of sustainability, triggering a polemic between the need for economic growth and environmental preservation (Hidjaz, 2019).

This problem is exacerbated by the shrinkage of green open spaces in cities due to increased population and economic activity, which disrupts the ecological functions of cities and worsens environmental quality and causes significant air pollution (Suratman & Darumurti, 2021). Environmental pollution, exacerbated by industrial activities that ignore sustainability and profit-oriented aspects, has become a crucial issue that impacts people's quality of life (Ayu & Supartoko, 2020). This issue is all the more urgent given the projected economic losses of 1.4 trillion dollars and 1.6 million deaths in 2015 due to air pollution, indicating serious impacts on public health and the economy (Kusuma et al., 2023). Thus, the issues to be discussed in this paper include how the history and dynamics of environmental law in Indonesia developed, as well as the challenges and opportunities faced in the effort to realize sustainable development.

This study aims to analyze the development of environmental law regulations in Indonesia from the colonial era to the present, examine the effectiveness of policy implementation, and identify factors that influence environmental law enforcement. This study will also explore how the concept of progressive law can be applied to overcome various challenges and obstacles in environmental law enforcement in Indonesia, especially with regard to the evolving motives and perpetrators of environmental crimes. This is important given that progressive law is a pro-justice and pro-people approach, seeking to realize social justice for all Indonesian people through optimal utilization of natural resources for common welfare, as mandated by the 1945 Constitution Article 33 paragraph (Alauddin et al., 2024). In addition, this research is expected to provide a comprehensive understanding of the challenges and opportunities in efforts to create sustainable development in Indonesia, especially through a legal framework that is adaptive and responsive to changing times.

LITERATURE REVIEW

1. Basic Concepts of Environmental Law

Environmental law seeks to integrate ecological, social, and economic principles to create a balance between the utilization and protection of the environment. The discussion of this basic concept includes definitions, objectives, main principles, and the scope of environmental law in national and international contexts. These principles include the polluter pays principle, the precautionary principle, and the principle of sustainable development, all of which form the basis for environmental regulations and policies (Rompas & Hayati, 2022). Environmental law in Indonesia also emphasizes the importance of community participation in environmental protection and management, making it a shared responsibility between the government, private sector, and local communities (Wibawa, 2019). These principles underlie the implementation of environmental law policies that are often faced with sociological and juridical complexities, especially in the context of progressive law enforcement oriented towards human values that ensure human welfare and happiness as the ultimate goal of law itself (Rahardjo, 2010).

2. History of Environmental Law Development in Indonesia

The development of environmental law in Indonesia cannot be separated from the influence of the underlying legal thinking, where the dominant legal epistemology has a crucial role in shaping the perspective on regulations and their implementation (Prasetyo et al., 2019). Historically, this evolution reflects a paradigm shift from an anthropocentric to an ecocentric approach, accommodating the increasing complexity of global and local environmental issues. This approach also reflects the Indonesian nation's efforts to achieve a balance between development and environmental conservation, in line with the values of Pancasila that emphasize harmony between humans, God, and nature (Firmansyah et al., 2016). The formation of environmental legislation in Indonesia has experienced significant dynamics, often characterized by complex interactions between social, economic and political factors, which shape the substance and direction of policies. The pre-independence period saw a lack of specific regulations governing comprehensive environmental protection, focusing more on the exploitation of natural resources for colonial interests (Pareke & Arisandi, 2020). Post-independence, especially since the New Order era, there has been an awareness of the importance of environmental management, although policy implementation is often still constrained by various factors, including weak law enforcement and low public legal awareness (Khairunnisa, 2022).

3. Dynamics of Environmental Law Policy

Environmental law reform has continued to date, demonstrating an adaptive response to contemporary challenges such as climate change and biodiversity degradation (Budiman & Zulfikar, 2020). This response includes the adoption of international legal instruments and the development of more comprehensive national regulatory frameworks, aimed at strengthening participatory and accountable environmental governance (Auria et al., 2024). This dynamic also involves synergy between the substance of the law, the policies adopted, and the legal culture of society to create an optimal system for solving complex environmental problems (Yulianto & Muhammad, 2021). One of the main challenges in implementing this policy is the low level of public legal awareness, which has an impact on frequent law violations and the difficulty of enforcing effective sanctions (Khairunnisa, 2022). This confirms that the environment is an essential component of human life, so the utilization of natural resources must always be based on an environmentally perspective approach (Mahfud, 2021). The importance of a deep understanding of environmental issues is increasingly crucial in the formulation of effective policies amid complex global and national dynamics ("Intelligence Perspective: Analysis of Facing the Challenges of Realizing SDGs in the Environmental Sector in Indonesia," 2023). In the context of national development, economic policies rolled out in Indonesia need to holistically consider

social and environmental aspects, in line with practices in developed countries that integrate sustainability considerations in policy formulation (Negara, 2008). This policy must be supported by transparent and accountable political mechanisms to ensure that every economic decision is in line with the principles of equitable and sustainable planning. Environmental pollution, especially that caused by the activities of multinational companies that tend to seek maximum profit, has become a crucial issue that requires legal certainty and effectiveness to address it in a targeted manner (Saleh, 1991). In addition, the rapid development of the global industrial sector, which more than a quarter of its practices involve the exploitation of natural resources, has also exacerbated environmental problems in Indonesia, triggering the emergence of various complex and urgent environmental pollution problems to be overcome (Ayu & Supartoko, 2020).

4. Theories and Approaches in Environmental Law

This phenomenon is exacerbated by the significant contribution of the manufacturing industry sector to the national economy, which at the same time causes substantial environmental damage due to operational activities and waste generated (Rozak, 2021). Waste arising from industrial operations can reduce environmental feasibility and present various challenges for the industry, including issues of natural resource scarcity and energy dependence that are vital to productivity (Noviriani et al., 2023). The rapid growth of the industrial sector, especially small-scale industries, has been identified as one of the significant economic drivers, but it also brings negative environmental implications through increased raw material use and waste production (Makalew et al., 2022). However, the lack of awareness from businesses, especially in the small-scale industry sector, on the importance of effective waste management, as well as the high cost and limited availability of land for waste treatment units have exacerbated the problem of non-biodegradable waste accumulation, such as synthetic waste derived from fabrics and plastics (Khasanah et al., 2021). This waste problem is also increasingly complex with the existence of various types of waste, ranging from biodegradable organic waste to hazardous waste such as batteries and syringes that can directly or indirectly damage the environment and human health (Khasanah et al., 2021). Therefore, inadequate waste handling can result in serious environmental pollution, which in turn requires strong law enforcement to claim compensation for the losses caused (Mulyati, 2017).

RESEARCH METHODS

This research uses the literature study method to analyze relevant data from various references, including books, scientific journals, dictionaries, and reliable sources from websites, in order to extract and link information to obtain a comprehensive description of the theme of the study (Walid et al., 2020) (Wati, 2022). This study seeks to identify the historical dynamics and development of environmental law policy in Indonesia, and analyze the factors that influence the effectiveness of its implementation. This qualitative approach allows in-depth exploration of the complexity of environmental law issues without being fixated on numerical analysis alone.

The data that has been collected is then analyzed using descriptive qualitative methods to get a clear picture of the problems and challenges in environmental law enforcement in Indonesia. This research also applies an evaluative approach to assess the effectiveness of existing policies and regulations in addressing contemporary environmental issues. The analysis will also explore the potential for innovation in waste management to transform problems into economic opportunities and added value for society and industry (Khasanah et al., 2021). Relevant secondary data is sourced from laws and regulations, research reports,

journal articles, and other publications related to the history and dynamics of environmental law in Indonesia, as well as case studies on the success or failure of environmental law enforcement in various contexts (Fauziah & Apriani, 2021).

The data were collected through systematic searches of academic databases and digital repositories, focusing on the relevance of the content to the research objectives (20 C.E.). Subsequently, the collected and organized data were qualitatively analysed using descriptive methods, where information was interpreted to identify patterns, themes and relationships between variables to build a coherent and comprehensive analytical narrative (Fauziah & Apriani, 2021). The analysis also included a comparative evaluation of environmental law approaches in other countries to identify best practices that could potentially be applied in Indonesia.

RESULTS AND DISCUSSION

1. History of Environmental Law Formation in Indonesia

In the pre-independence period, although there was no explicit formulation of environmental law, indigenous peoples in various parts of the archipelago had developed local wisdom and communal norms that reflected the principles of conservation and sustainable management of natural resources (Hoessein et al., 2020). These traditional practices, such as subak in Bali or sasi in Maluku, are tangible manifestations of a deep ecological awareness, although they have not been formalized within a modern legal framework (Nugroho, 2019). This research uses a normative juridical approach, with a literature study to obtain primary, secondary and tertiary legal materials as the basis for analysis (Azhar & Suhartoyo, 2015). This normative legal research method emphasizes secondary data analysis and statutory and conceptual approaches, which are relevant to reviewing policies and regulations related to environmental protection (Dhesinta, 2019). This approach focuses on the study of binding primary legal materials, secondary legal materials as explanatory, and tertiary legal materials as complementary (SEMBIRING, 2022). Analysis of legal materials is carried out using the content analysis method, which involves in-depth interpretation of legal events or legal products, to facilitate understanding in the discussion.

2. Development of Environmental Law Regulations from Time to Time

The formation of environmental law in Indonesia since the era of independence until now has undergone a significant evolution, marked by the establishment of various laws and regulations that reflect an increased awareness of the importance of environmental protection and management in a sustainable manner. These regulations not only cover aspects of preventing pollution and environmental damage, but also rehabilitation efforts and law enforcement for violators (Wajdi & Ramadhani, 2022). An important milestone in the development of environmental law can be seen from the birth of Law Number 4 of 1982 concerning Basic Provisions for Environmental Management, which became the initial foundation for comprehensive environmental regulation in Indonesia, introducing the basic concept of comprehensive environmental management in its time (Rompas & Hayati, 2022). This law was later enhanced by Law No. 23 of 1997 and then updated again through Law No. 32 of 2009 on Environmental Protection and Management (Nihaya et al., 2018). This law specifically introduces the principle of strict liability for perpetrators of environmental pollution, as stipulated in Article 88 of Law Number 32 of 2009, which aims to provide stronger protection to victims of environmental pollution in demanding liability from perpetrators (Faizal, 2021). The use of empirical legal research methods can also be used to analyze the effectiveness of legal implementation, the level of compliance with the law, and the role of legal institutions in enforcing environmental regulations in society (Yhuwana &

[Prananingtyas, 2022](#)). The normative juridical approach sees law as an independent system and is independent of social reality, so the focus is on written norms made by authorized officials ([Fauziah & Apriani, 2021](#)).

3. Dynamics of Environmental Law Implementation

The dynamics of environmental law implementation in Indonesia were also strengthened by the ratification of Law Number 32 of 2009 which replaced Law Number 23 of 1997 as an effort to increase efforts to improve environmental law enforcement ([Lazuardini, 2014](#)) ([Sa'diah, 2022](#)). This significant change aims to strengthen the existing legal framework, especially in handling environmental disputes and compensation mechanisms due to pollution ([Mulyati, 2017](#)). Law No. 32/2009 introduced an environmental dispute resolution mechanism, both in and out of court, which aims to facilitate comprehensive handling of the impacts of environmental damage ([Wibowo & Karim, 2023](#)). In addition, this law also emphasizes the importance of community participation in environmental monitoring and law enforcement, as reflected in Article 70 which regulates the right of the community to file a class action lawsuit ([Rahmawaty et al., 2019](#)). The main purpose of this revision is to increase the effectiveness of law enforcement against environmental crimes, as well as provide more comprehensive legal protection for victims of environmental crimes, in line with the needs of society and the development of environmental issues in the future ([Wahyuni, 2010](#)). These changes also highlight the importance of corporate liability in environmental crimes, complementing criminal provisions that previously focused only on individuals. Nonetheless, implementation challenges remain, particularly in relation to inter-agency coordination, law enforcement capacity, as well as public and corporate legal awareness. Nonetheless, normative legal research, which is based on logical and systematic truths from a normative perspective, remains relevant to examine the philosophical and doctrinal foundations of environmental legislation ([Denisanjaya & Mangesti, 2022](#)).

4. Challenges and Opportunities in Environmental Law Enforcement

These challenges include the positive legal framework that sometimes has not been able to accommodate social dynamics and demands for justice, especially if it is too fixated on the internal logic of the law without considering non-juridical factors, such as the development of legal needs and the growing aspirations of society ([Muchsin, 1999](#)). These non-juridical factors include political, economic, and socio-cultural aspects that often affect the effectiveness of legal implementation and enforcement in the field ([Rachmat, 2017](#)). The settlement of environmental cases is often faced with obstacles due to conflicts of interest, where law enforcement is sometimes strongly influenced by the judge's profile, such as his background, social, education, and character ([Haryono, 2019](#)). Such law enforcement tends to produce legal-formal justice, which is only based on the articles of the law, so that it does not describe substantial justice that is as fair as possible. This highlights the complexity of achieving substantial justice amidst various social dynamics and competing interests, and underscores the need for a more holistic approach to environmental law enforcement. The problem of law enforcement is exacerbated by the practice of corruption and bribery, especially in politics, which can massively damage the nation's mentality and hamper efforts to enforce clean laws ([Pande, 2011](#)). This challenge is further exacerbated by allegations of acts of obstruction of justice committed by various parties, including law enforcement officials, who attempt to obstruct the judicial process for corruption crimes, thus hindering the achievement of justice ([Saputra, 2021](#)).

CONCLUSION

Empirical legal studies allow in-depth analysis of the application of the law, the level of compliance, as well as the role of law enforcement agencies in the broader social context, providing a comprehensive picture of how the law functions in practice. This approach focuses on "law-in-action" and how the law interacts with socio-economic realities, which is essential for understanding the effectiveness of environmental regulations in the field ([Himawan, 2017](#)). In contrast, the normative juridical approach sees law as an independent system separate from social reality, focusing on written norms made by authorized officials ([Ariawan, 2013](#)). This method is particularly relevant for evaluating the consistency of environmental laws and regulations with higher legal principles and their philosophical basis, ensuring coherence within the legal system as a whole ([Benuf & Azhar, 2020](#)). This approach also examines the relationship between law and power, highlighting how legal rules are structured and enforced by state institutions ([Endang, 2020](#)). However, this normative legal approach is often faced with limitations in responding to social dynamics and significant economic inequality, as seen during the COVID-19 pandemic, which requires more inclusive and equitable regulation to achieve social justice ([Rasya & Triadi, 2024](#)). This suggestion includes optimizing the recovery of state financial losses, not only until the court decision, but also at the execution stage by the executor ([Ilmi et al., 2022](#)).

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