

# *Development of Legal Principle to Overcoming Environmental Damage in West Java and East Java Province Indonesia*

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**Abstract-**Environmental damage in West Java and East Java Province is caused by many land-conversion factors that occur in some areas, especially in high altitude and protected areas. The problem formulation in this research what is policy to overcome environmental damage to realize sustainable development based on development legal principle in West Java and East Java Indonesia. The research is done by socio-legal method. By observing the social aspects and prevailing laws and regulations, this study gained research results that during this time there was an inconsistency of the regional government in maintaining the regional design as stipulated in the legislation and in particular the regional regulation. This is evidenced by the implementation and law enforcement in case of environmental crime that are still weak, so that criminal sanctions are considered appropriate to minimize environmental crime. The conclusion obtained is necessity to apply the *primum remedium* principle of criminal law on regulations in order to realize environment sustainability.

**Keywords-**Environment, Regulation, Sustainable Development

## I. INTRODUCTION

The development programs conducted by the Government whether regional governments, provincial governments and central government still prioritize spatial management as a benchmark for the benefit of land. Spatial management not only divides the territory into several areas for accelerating development and accelerating welfare for the community without seeing the legal and environmental aspects that cause changes on the environment sustainability.[1]

A long-term environmental development program implemented by the government has prioritizes spatial management as a reference for land use with the utilization of space as it is in accordance with Article 1 number 5 law number 26 of 2007 on spatial arrangement. Environmental management which not refers to spatial management can cause environmental damage, which will affect the ecosystem's balance. The cause of environment damage which includes the aspect of land, sea and air are caused by two factors, namely natural factors and human factors. Whereas the natural factors such as volcanic eruptions, earthquakes, landslide disasters, floods, global climate change, typhoon, long drought, and tsunamis. [2]

The environmental damage caused by human factors has more chronic and long-term impact, thus the impact

can be directly or indirectly. This proven by the study entitled "Environmental damage due to the functioning of the hilly land to plantation land in Ponorogo District (legal formulation policy study)" It obtained fact the converted land has a considerable impact on environmental damage. At 2018 about 28 resident houses were affected a landslide in hilly ginger. It because of the intensity of high rainfall that continues to agglomerate, then a landslide does not happen once but occurs several times the after slide. As for the impact of the landslide resulting from the functioning of the land is a deterioration of clean water sanitation to some villages because of the flow of clean water directly disconnected during a landslide, 2 deaths have been found, while the 28 victims were lost. A total of 300 people took refuge in the head of village and had the closest relatives safe from landslides and 35 houses were damaged by landslides [3]

This research aims to provide benefits and reference in adding science to natural resources and development to provide a proper understanding of environmental management and protection in accordance with applicable law. Especially on environmental law related to land function that does not comply with the utilization of spatial impact on environmental damage. Environmental damage not only impacts the socio-economic conditions of the community and the government itself but also the environment that materially counts its losses. Based on the background above, then the focus of the discussion is related to the policy of the Indonesia Government to overcome the environmental damage case' due to land function for the continuity of living beings. Thus, the problem formulation in this research what is policy to overcome environmental damage to realize sustainable-development based on development legal principle in West Java and East Java Indonesia.

## II. RESEARCH METHOD

The research used socio-legal method, which is a legal study that will forward the facts based on the symptoms and will see how law in the books in the community (law in action). The sampling technique in this study was purposive sampling. Researchers took two provinces, West Java and East Java Province. The characteristics from both provinces are they already has a regional regulation on the plan of spatial and territory, but weak in

its implementation, so it will answer the problem in the research.[4]

### III. FINDINGS AND DISCUSSION

#### 1. *Regulations and Contradiction in East Java Province*

Map of site plan listed in East Java Regulation Number 1 of 2012 about Spatial Plan and Territory year 2012-2032, land use in research area in the form of gardens, shrub, rice fields and settlements. Land located on the ground is used for pine tree land planted by "Indonesian Forestry General Company" of East Java province as the owner of land. Meanwhile, the area of the middle slope is a plantation owned by the residents with plants such as bamboo, onion and ginger. It can be seen if the plant in this field is not in suitable with the type of soil, so it raises the environmental damage and loss of land characteristics in the hilly area.[5]

The role of local government is indispensable in preventing the environmental damage, so that the environment is maintained and sustainable. Moreover, the long term development of sustainable development principle is meeting the nowadays needs without compromising the fulfillment of future generation needs. Due to its irreversible nature and the tendency towards the worse environmental rent, the process of land-function control should always be placed in a long-term planning perspective. Regional government seeks to balance the social economic aspects, sustainability of the long-term environment and also seeks to legalize the arrangement of the implemented space and in accordance with the guidelines of good spatial arrangement and quality in accordance with the purpose of development that is long term. [6]

In principle, the regional regulation of East Java Province Number 1 of 2012 on Spatial Plan and Territory year 2012-2032 was made for good and general benefit and environments. This goodness and benefit is expected to improve the welfare of the community, especially in economic terms. But there is an imbalance between supply and demand where limited offers while unlimited requests lead to land function. Many factors affecting land offerings are natural physical characteristics, economic factors, technological factors, and institutional factors. In addition, many factors affecting land demand are populations, technological developments, customs and traditions, education and culture, income and expenses, tastes and objectives, as well as changes in attitudes and values caused by development of time. [7]

The function of hilly land to plantation or agricultural land is not new event. With the increasing level of living and opening opportunities to create employment opportunities, marked by the increasing number of investors and the public and government in the development, it is also increasing the need for land. Another limited amount of land is cause the changing of

land use that should turn to non-agricultural use. In the activity over land function is closely related to land demand and supply. The contradiction of regulations has an impact on environment damage as a result from the functioning of hilly land into plantation land as follows: [8]

1. Continuous landslide potential
2. Difficulty getting clean water
3. Difficulty in reforestation
4. Loss of land characteristics
5. Efforts to restore difficult land function

#### 2. *Regulations and Contradiction in West Java Province*

As one of the metropolitan provinces in Java Island Indonesia, West Java has a vision of being a dignified city (clean, prosperous, obedient and friendly) for citizens and the environment. One of the missions of West Java Province is to improve the structuring of the city, which includes the maintenance and improvement of city infrastructure and facilities to fit the dynamics of city activities while observing the spatial and environmental. The challenges are the increasing both population growth and the land need for living in West Java. This caused the land that had been allocated as a protected area in the Regional Spatial Plan was forced to become a cultivation area. The Provincial Government was required to find solution before the land was freed and claimed to be green open space.[9]

In line with the growth of a well-controlled cultivation area, the economic sector of West Java Province also moves rapidly. The function of space and environment in West Java Province is the cause of difficulty to realize the fulfilment of green open space from a pre-determined proportion on regional regulation Number 27 of 2016 about Spatial Plan and Territory. The current area of green open space, which has not been in accordance with the target stipulated in spatial plan and territory, which is 10% area and also has not been able to comply with the provisions of Law Number 26 of 2007 on Spatial Arrangement that establishes the ideal area of green open space (RTHKP) is at least 30% consisting of 20% public green open space and 10% consist of a private open space of the areas. West Java Government did gradually develop the area of RTH. This was seen from the total percentage of the RTH area in 2007 which was 8.76% to 11.43% in 2011. [10]

This addition demonstrates a commitment to support environmental preservation. However, to meet the target of 20% of public RTH area, it looks heavy because it should increase the allocation of RTH as much as 18.6%. This means that the biggest donation of RTH in West Java Province is from the private RTH. The effort to find open space in West Java for example is seen along the border of the Cikapundung River at Bandung District, which is currently dominated by trade and housing areas. This is clearly contrary to the provisions of the legislation stating that along the boundary of the river goes into the RTH

Park which must be developed gradually. It means that the location is not intended for cultivation and the government's duty to restore the function of the area into a protected area.

**3. Implementation and Enforcement**

Declining environmental power due to land function that occurred in two provinces proved if provincial government are still weak in implementing and enforcing law, weak regulations are:

**TABLE 1. WEAK REGULATION**

No	Weak Regulations	Articles
1	Regional Regulation Number 1 of 2012 on Spatial Plan and Regency Region of Ponorogo in 2012-2032	Article 6 on the target of regional space arrangement, article 25 of the protected area, article 56 B of land area and article 58 about zoning Cultivation area
2	Regional Regulation Number 27 of 2016 about Spatial Plan and district Bandung in 2016-2036	article 6 on spatial Planning Policy, article 35 on Plan of Spatial Planning, article 60 on Land Use
3	Law Number 32 of 2009 on Environmental Protection and Management	article 19 on spatial Planning article 21 paragraph (3) on the quality standards of ecosystem damage, article 25 on AMDAL and article 26 of licensing.
4	Law Number 26 of 2007 on Spatial Planning of article 25 of the District Area Spatial Plan	article 33 on the utilization of space, article 34 on the utilization of regional spatial layout.

Regulations governing spatial arrangement and environmental management should be optimally applied (Afriansyah et al, 2018, p.329). The community must be forced to obey the rules, with the rules it will bring up the regularity and legal certainty in the community. The process of applying the law in the field of spatial and space utilization should not be intervened by any party. It aims to achieve fairness and achievement of community ideals. [11]

**4. Formulation Policy to Overcome Environmental Damage Based on Development Legal Principle**

In creating a legal product, the principle of togetherness should not be ruled out or forgotten the principle of togetherness will reach the word consensus before the legal product is passed. The responsive principle as expressed by Philip Nonet and Phillip Selznick is named as a principle that allows a legal order to endure and be able to capture the demands and desires of the communities that are fully scoped to a life Specific social. [12]

Mertokusumo argued that to raise awareness of the legal community can essentially be done through action or through education or training. The education is important

to improve the moral of society. The education is important to improve the moral of society. Morality is a thing that is indispensable in the manufacture of legal products related to spatial plans or land-over function. So policymakers are affected by a community mindset so as not to harm the community itself. The principle of morality seems to be explained earlier is very important as a filter of the whole substance policy plan and spatial governance to avoid always to the owners of larger interests namely businessmen. [13]

Mochtar Kusumaatmadja has stated that the objective of the law should be reduced to one thing only as a basic requirement for a regular society. The other purpose is the achievement of different fairness of content and size, according to the society and its era, then to achieve order is cultivated of legal certainty in the social association of people, because it is not possible human can develop the talents and abilities given by Almighty God to him optimally without the certainty of law and order. [14]

Policy formulation to overcome environmental damage to realize sustainable development in East Java and West Java Province Indonesia, which can be used as consideration based on the results of the research that was then processed with the theory of legal development Mochtar Kusumaatmadja. Refers to the principle of Good Governance, then to fulfil sustainable development in accordance with the order and regularity for the society and the government itself related to land function that does not damage the environment, is the need to reformulating local regulations in both provinces regarding the application of the basic primum remedium of criminal law in the field of environment for regulatory offenders, no longer the principle of ultimum remedium. Criminal law as a repressive means must be utilized simultaneously with prevention means. [15]

**IV. CONCLUSION**

The conclusions in this research is need to necessity to apply the primum remedium principle of criminal law in regulations. Some policies have been made to anticipate land conversion such as by setting regional regulation. However, two provinces already have regional still weak on implementation and enforcement. That is, government authorities still do not have a strong commitment to overcome it. So that the application primum remedium principle of criminal law on environmental regulations is appropriate to create long-term environmental development.

**REFERENCES**

[1] A. Fauzi & Alex Oxtavianus, *Pengukuran Pembangunan Berkelanjutan di Indonesia (Measurement of Sustainable Development in Indonesia)* Jurnal MIMBAR, 30(1), 2014.  
 [2] A. Afriansyah, A. Jayadi and Angela Vania, *Fighting the Giants: Efforts in Holding Corporation Responsible for Environmental Damages in Indonesia*, Hasanuddin Law Review, 4(3), 2018.  
 [3] Basuki, *The Implementation of Ultimum Remedium Principles in Law Enforcement of Criminal Act Illegal Mining*, Advances in

- Economics, Business and Management Research, Proceedings Atlantis Press, Volume 59, 2018.
- [4] D. Riskanita, *Kerusakan Lingkungan sebagai Akibat Alih Fungsi Lahan Perbukitan Menjadi Lahan Perkebunan di Kabupaten Ponorogo* (Environmental Damage as a Result of Transferring Function of Hilly to Plantation Land in Ponorogo District) Published Master Thesis, Universitas Muhammadiyah Yogyakarta, Yogyakarta, Indonesia, 2019.
- [5] E. Novianty, *Balancing Local Government Capacity for a Sustainable Peri-Urban Development: The Case of Karawang Regency*, *Jurnal Perencanaan Wilayah dan Kota*, 26(2), 2015.
- [6] F. Sasanpour, *Livable city one step towards sustainable development*, *International Journal of Contemporary Urban Affairs*, 1(3), 2017.
- [7] H. Hilmi, *Dinamika pengelolaan wakaf uang: studi sosio-legal perilaku pengelolaan wakaf uang pasca pemberlakuan UU No. 41 tahun 2004 tentang wakaf,( The dynamics of money waqf management: a socio-legal study of the behavior of money waqf management after the enactment of Law No. 41 of 2004 ,about waqf)*, *Jurnal Wacana Hukum Islam dan Kemanusiaan*, 12(2), 2012.
- [8] A. K. Jaelani, Haeratul and Soeleman Djaiz B, "Pengaturan Kepariwisata Halal di Nusa Tenggara Barat Pasca Putusan Mahkamah Konstitusi Nomor 137/PUU-XIII/2015", *Jurnal Hukum Jatiswara*, Vol.33, No. 3 November 2018.
- [9] J. McDonald, *Reforming Environmental Law for Responsiveness to Change Chapter: Essays in Contemporary Law Reform*, ANU Press, Australia, 2017.
- [10] M. A Mazzocco, *Environmental Regulations and Agricultural Lending*, *Journal of Agricultural Economics*, Oxford University Press, American, 1991.
- [11] M. Kusumaatmadja, *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional,( Function and Development of Law in National Development)*, Bandung; Bina Cipta, 1991.
- [12] Mulyadi, F. Siregar and I. A. Hasyim, *Environmental Pollution and Damage Control Through Management of Licensing at The Regional Level*, *Jurnal Hukum De'Rechtsstaat*, 4(2), 2018.
- [13] N. Puspawardani, Et.al., *Implementation of Sustainable Development Concept in Hotel A Surabaya*, *International Journal of Advances in Applied Sciences (IJAAAS)*, 4(1), 2015.
- [14] R. E. Bosco, *Hukum Responsif: Pilihan di Masa Transisi, (Responsive Law: Options during the Transition)*, Jakarta: HuMa, 2003.
- [15] S. Sahin and J. Mete, *Sustainable Development: Environmental, Economical, Social Well-Being for Today and Tomorrow*, *Jurnal Indonesia untuk Kajian Pendidikan*, 1(1), 2016.