



# The Philosophy of Liability in Environmental Disputes

Janeman Jehezkiel Lanawaang<sup>(✉)</sup> and Lesza Leonardo Lombok

Law Study Program, Faculty of Social Sciences and Law, Manado State University,  
Tondano, Indonesia

yannylanawaang@gmail.com

**Abstract.** Ontology in philosophy is a philosophical perception related to what and how. Legal norms that affirm people's rights to a good and healthy environment as a form of state responsibility and obligation have basically been regulated in Article 28 (h) of the 1945 Constitution of the Republic of Indonesia. On the other hand, Environmental law is a functional field of law, which is a field of law that contains provisions of state administrative, criminal and civil law. Problems in the environment occur because of destruction and or pollution so that a good and healthy environment cannot be guaranteed anymore and causes losses to other parties. One option for resolving environmental disputes is to use civil law instruments where the application of civil law rules is primarily to provide more legal protection for the natural environment/forest as well as victims who suffer losses as a result of forest destruction. Therefore, this study aims to examine the philosophy of liability in an environmental dispute related to Indonesian Law.

**Keywords:** Liability · Environmental Law · Environmental Disputes

## 1 Introduction

Legal norms that affirm people's rights to a good and healthy environment as a form of state responsibility and obligation have basically been regulated in Article 28 (h) of the 1945 Constitution of the Republic of Indonesia. Quality. This is also an implication of the state's obligation to realize the prosperity of the people as regulated in Article 33 of the 1945 Constitution of the Republic of Indonesia. The state's obligation to realize the greatest prosperity of the people shows the people's right to benefit from the natural resources that exist in Indonesia and the position of the state is good in terms of both the concept of a state of law and the concept of a welfare state, have the obligation to regulate, manage and protect the rights to natural resources so that they can be utilized for the achievement of people's welfare which is one of the goals of the state contained in the Preamble to the 1945 Constitution of the Republic of Indonesia. The existence of the state's efforts to protect the environment which has implications for the necessity to formulate an integrated and comprehensive policy to maintain the survival of the Indonesian nation.

© The Author(s) 2023

R. Harold Elby Sendouw et al. (Eds.): UNICSSH 2022, ASSEHR 698, pp. 1963–1968, 2023.  
[https://doi.org/10.2991/978-2-494069-35-0\\_235](https://doi.org/10.2991/978-2-494069-35-0_235)

Regulations are made to accommodate all conditions and opportunities for the emergence of other conditions that cause harm to the community and provide regulations on what is mandatory and what cannot be done. The act of deviating from the provisions of the regulations that have been made then gives birth to accountability in the resolution of environmental disputes.

## **2 Research Method**

This research is a normativelegal research. This research will examine and analyze the philosophy of liability in an environmental dispute related to Indonesian Law.

## **3 Discussion**

### **3.1 Environmental Law Situation**

One option for resolving environmental disputes is to use civil law instruments where the application of civil law rules is primarily to provide more legal protection for the natural environment/forest as well as victims who suffer losses as a result of forest destruction. In addition to these functions, in relation to environmental issues, civil law has two other functions, namely through civil law, obedience to environmental law norms can be enforced, both private and public law. Civil law can provide the determination of norms in environmental issues 206.

The environment is a field that has special characteristics that are different from other fields so that environmental cases also have distinctive characteristics in their handling, especially because of the position of the right to the environment as a right recognized in the constitution. In addition, the existence of the environment as a field that has excesses and a large impact on society, the causes of environmental disputes that are multisource (many sources) and linkages with various scientific disciplines cause environmental cases to become one of the special and distinctive cases with characteristics. Different in their handling.

Environmental problems are very crucial problems and have their own characteristics that distinguish them from other problems. This has a relationship and is related to the problem of evidence at the time of the dispute. Environmental protection and management is a fundamental aspect of the sustainability and assurance of various types of human rights, such as the right to life, the right to a decent life, and the right to health and a clean environment. Therefore, the environment is seen as an instrumental variant of the general conception of human rights, namely that humans or citizens have the right to a healthy and clean environment. Legal protection of the environment (especially in Indonesia) is still based on human interests whose rights are recognized for a proper environment. Destruction and/or pollution of the environment is seen as something that is legally wrong because of the impact that violates human rights, not because it violates the rights of nature (the environment itself).

Environmental law is a functional field of law, which is a field of law that contains provisions of state administrative, criminal and civil law. Law No. 32 of 2009 is the main formal source of environmental law in Indonesia which contains legal provisions and

legal instruments as contained in the previous law plus the content of new legal norms and legal instruments. Law of Evidence in Environmental Disputes.

Problems in the environment occur because of destruction and or pollution so that a good and healthy environment cannot be guaranteed anymore and causes losses to other parties. From the case of environmental destruction and/or pollution, finally an environmental dispute ensued in which to fight for a good and healthy environment. Article 1 number 25 of the PPLH Law affirms that environmental disputes are disputes between two or more parties arising from activities that have the potential and or have an impact on the environment. Thus, the source of environmental disputes is the event of pollution and or environmental destruction.

### **3.2 Civil Law Procedures and Its Impact to Environmental Disputes**

The Civil Code gives a signal regarding the attachment of judges to valid evidence as previously stated that in a civil procedure process, it does not rely on the judge's belief but on the ability of the parties to present evidence. This is what causes a judge's decision-making in civil courts to be based on legal evidence according to law. To be able to realize the legal objectives in the form of justice, benefit and legal certainty, the legal protection of the rights of the community must really be able to accommodate any existing developments including the determination of evidence in environmental cases as previously stated regarding the many complexities in handling disputes. Environmental law.

Axiology comes from the Greek, namely *axios* which means value and *logos* which means knowledge. So axiology is a theory of value or in general it is stated that axiology is basically a theory of value related to the usefulness and knowledge gained.

Natural resources make a major contribution to development, but on the other hand, the sustainability of their availability is often neglected. Likewise, the rules that should be adhered to as a basis in carrying out the management of a business and or activities supporting the development of the economic sector are not given much attention. As a result, there is a tendency for a decrease in the carrying capacity of the environment and the depletion of the available natural resources as well as a decrease in the quality of the environment. Management of natural resources and the environment that is not carried out in accordance with their carrying capacity can lead to food, water, energy and environmental crises.

The problem of environmental damage and the consequences it causes is not a new thing. It is easy to know what types of environmental damage are and what the consequences are, for example, overexploitation of nature and excessive logging of forests can cause floods, landslides and scarcity of clean water, dumping industrial waste into rivers can cause fish deaths and damage habitat, the use of dynamite to catch fish can damage coral reefs and marine life and many more common causes and effects in the environment.

Environmental pollution is basically a condition of the entry of living things, substances, energy, and/or other components into the environment by human activities so that they exceed the established.

environmental quality standards. This can be seen in the general provisions in Article 1 of Law no. 32 of 2009. Environmental destruction is the act of a person causing

direct or indirect changes to the physical, chemical, and/or biological characteristics of the environment so that it exceeds the standard criteria for environmental damage. A decrease in the quantity and quality of the environment is a negative impact of a business or human activity, which is often known as environmental impact. This is also regulated in Article 1 of Law no. 32 of 2009.

The environment as a unitary space with all objects, state power, and living things, including humans and their behavior, which form an order in the form of an ecosystem is strongly influenced by human resources who have the privilege of science and technology (science and technology). The limitless exploitation by humans who armed with science and technology, this is the main goal of the PPLH Law, namely through integrated environmental management in its utilization, recovery and development.

Environmental pollution comes from various sources, both from natural activities or processes and human activities. Activities or natural processes include volcanic eruptions that emit dust particles that pollute the air. Nature can be a source of pollution but it is relatively rare and generally has local and transient impacts. The main environmental pollution is actually from various human activities such as household and individual activities, industry, agriculture, and transportation. The pollution continues and its impact continues to be felt, even some of them have a broad or global impact.

Environmental damage in Indonesia is getting more and more alarming day by day. In fact, it has endangered the life and life of every living being in and around it. Including the lives of future generations. This also has an impact on the emergence of natural imbalances that have a negative impact on human life and of course a disaster for the environment itself. For example the occurrence of floods, landslides, acid rain, soil pollution, river and sea pollution, forest damage, the earth's temperature is getting hotter due to the greenhouse effect that can cause global warming, as well as various diseases that can attack humans such as shortness of breath, cancer, lung, skin diseases, and various other diseases. With the promulgation of Law No. 32 of 2009 it can be said that the Constitution has placed a good and healthy environment as a guarantee of the human rights of citizens as regulated in Article 28H of the 1945 Constitution.

The causes of environmental damage cannot be separated from economic problems, especially with the unwise use of natural resources for business purposes. The absence of the responsibility of business actors to carry out unlimited exploitation of nature is the cause of the increasing number of pollution and/or environmental damage. Apart from economic motivation, environmental damage cannot be separated from the unwise use of technology. The things above show that nature has been used as a tool to satisfy human needs.

Utilization of nature wisely and responsibly and does not cause damage so that the use of nature is basically 2 (two), namely exploitation and constructive. Exploitation is the use of natural resources that is not followed by environmental preservation. While constructive is taking natural products wisely, namely the use of which is accompanied by efforts to preserve and renew. Taking into account its sustainability, it must be followed by renewing actions and behaviors that affect the presence of pollution problems and environmental sustainability.

Furthermore, it was also stated that various problems including erosion, flooding, abrasion of sea water, health problems as a result of various forms of pollution have

begun to be felt at this time. In the future, if there is no control and changes in people's attitudes, it can be expected that the problem will become more severe. In addition, the scarcity of natural resources has not yet been felt, and will probably be felt in the future. In rural communities, problems can come from pollution of the environment where they live and rivers because they have not cultivated a healthy lifestyle, pollution of water and soil by the use of pesticides and chemical fertilizers, erosion in upstream areas on critical land and sloping land without using terraces, shifting farming systems. And illegal logging.

### 3.3 The Environmental Disputes Philosophy

The problem of pollution and or damage in the harmony of environmental sustainability is also a problem in the national scope. This is due to the influence of activities regarding the success of sustainable national development, especially success in the long term, so that better welfare can also be enjoyed by future generations. The emergence of pollution and or environmental damage due to human activities or a group of humans will certainly deal with humans and other groups of humans who suffer losses due to such damage. This is where the emergence of a dispute in environmental issues, and in this dispute the aggrieved party asks for accountability from the adverse party. Sociologically, accountability in environmental disputes arises due to the emergence of conditions that do not carry out the responsibility of one party in maintaining the environment.

The description of the ontological, epistemological and axiological aspects associated with accountability in the settlement of civil disputes shows that in a philosophical view, humans are essentially what is in their conscience, then use their minds in living life to realize their happiness but they limit themselves in their freedom to give happiness to his life and to the lives of others.

The conclusion of the philosophy of accountability in this environmental dispute is that the philosophical aspect of accountability in environmental disputes is a right that is born because of the existence of humans as beings who are conscientious, intelligent, conscious and free who use their conscience, reason, awareness and freedom (ontological). Where the fulfillment is based on statutory regulations (epistemological) to realize justice, legal certainty and benefit (axiological).

## 4 Conclusion

The philosophy of accountability in environmental disputes is a right that is born because of the existence of humans as creatures who are conscientious, intelligent, conscious and free who use their conscience, reason, awareness and freedom (ontologically) where the fulfillment is based on laws and morals. (epistemological) to realize justice, legal certainty and benefit (axiological) that is sustainable.

**Acknowledgments.** Rector of Universitas Negeri Manado, Prof. Dr. Deitje A. Katuuk, M.Pd. Dean of Faculty of Social Sciences and Law, Dr. Apeles L. Lonto, M.Si.

**Authors' Contributions.** Janeman Jehezkiel Lanawaang: head of researcher, data conclusion, writer.

Lesza Leonardo Lombok: member of researchers, data compiler.

## Bibliography

1. Agus Yudha Hernoko, *Hukum Perjanjian, Asas Proporsionalitas Dalam Kontrak Komersial, Kencana Prenada Media Group, Jakarta, 2010*
2. Amsal Bachtiar, *Filsafat Ilmu*, Raja Grafindo Perkasa, Jakarta, 2012
3. Ghansham Anand dan Fiska Silvia Raden Roro, Problematika Upaya Hukum Peninjauan Kembali dalam Tata Hukum Acara Perdata Di Indonesia, *Jurnal Adhaper* Vol. 1 No. 1. Januari-Juni 2015
4. Frans Magnus Suseno, *Eudemonisme, Epikuros, dan Aristoteles*, Komunitas Salihara, Jakarta, 2001
5. Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-undang Dasar Negara Republik Indonesia 1945*, Raja Grafindo Persada, Jakarta
6. Jujun S. Sumantri, *Filsafat Ilmu: Sebuah Pengantar Populer*, Gramedia Jakarta, 2008
7. Moegni Djojodirjo, *Perbuatan Melawan Hukum*, Pradyna Paramita, Jakarta, 1999,
8. M. Khoidin, *Tanggung Gugat dalm Hukum Perdata*, Laksbang Justitia, Yogyakarta 2020
9. Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijaksanaan Lingkungan Nasional*, Universitas Airlangga, Surabaya, 2000
10. Suparto Wijoyo, *Sketsa Lingkungan dan Wajah Hukumnya*, Airlangga University Press, Surabaya, 2005

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

