

Permitting for Sustainable Natural Resources Management in Indonesia

by Muhammad Ilham

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Permitting for Sustainable Natural Resources Management in Indonesia

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ABSTRACT

Permitting in natural resources management is a concrete form for the right of State to control natural resources. Permit is an instrument of natural resource management as well as a government control mechanism through the specified permit conditions. In the context of permitting for natural resource management, the environmental impact analysis will be a main benchmark related to the follow-up of the permit and can be a basis for determining the quality of environmental and activities permits. Synergy of permitting in natural resource management is very needed in order to support the concept of sustainable development.

Keywords: Permit, Management, Natural resources, Sustainable development

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INTRODUCTION

Humans need natural resources to be processed and utilized in maintaining their lives. Therefore, natural resources and human life have a very close relationship. Although, human sometimes exploit utilizes natural resources that causes disturbance of the environmental balance. As known that resources have limitations in many ways such as availability by quantity, quality, space and time.

The environment can be called as a cosmos with all its contents (physical, biological, and cultural elements) and the conditions in which human beings in the individual and social sense become the dominant living things among all other living things which all constitute a mutual system (causality) in a chain of interdependence in terms of existence and function. Thus, it is clear that there is a strong correlation between humans and the environment. Natural resources management is a human action so that they are obliged to protect and maintain the environment.

Natural resources are utilized by humans to fulfill their daily needs, both directly and indirectly through management process. Meeting the human needs through the natural resources utilization and management is indeed a fundamental thing, however, each individual in order to manage natural resources must also pay attention to the common welfare (the public interests) and maintain the surrounding environment because in the environment has a life-value that is the right of all people.

Regarding the future of the earth determined a state of conflict between the human and the natural entities in such a way that the maintaining of the ecological harmony was all of a sudden threatened. It means that under such circumstances, the necessity of the legal establishment of the right under discussion appeared, and the first steps left deep traces both within the constitutional provisions of many states and at the level of the strategies of the over-national organisms. Therefore, the regulation is needed to regulate matters relating to the limitations of the rights and obligations of each individual to manage natural resources.

Law that governing natural resource management and healthy environmental issues as a right has been contained in the highest law of the Indonesian state, namely the constitution. Article 28H paragraph (1) of the 1945

Constitution stipulates that ⁸ everyone has the right to live physically and mentally prosperous, to live, and to have a good and healthy environment and to obtain health services. Within the context where the ¹ ecological issues take shape more and more we may notice that the fundamental right to a healthy and ecologically harmonious environment does not protect only a particular common interest, but it is of interest to the humankind as a whole. Its exceptional value is underlined by the status of the environment as ¹ the common heritage of the humankind. That is why the right to a good and healthy environment must be regulated and guaranteed at the highest level of State law, namely the constitution.

We may also notice that the right to a healthy environment can be correlated ¹ to the general and negative obligation not to prejudice its components in such a way that a pronounced decrease of its capacity to regenerate the ecosystems would not occur and the state of the environment would not be endangered as a result of man's abusive interference. The right to a healthy environment also implies accomplishing certain obligations so that the environment should be protected. Because the fundamental rights represent the content of the relationships between the physical persons and the state, it means that the obligations correlated to these rights belong to the state that recognizes them and guarantees them. In this way, the obligations of the states to take the legal, administrative, and any other ¹ measures that are necessary for the implementation of the right to a healthy environment is provisioned. The measures ¹⁸ in discussion here have to have as a purpose the provenance of the degradation of the environment, the establishing of the necessary remedial and the settlement of the long-lasting employment of the natural resources.

In addition, the natural resources management in ³ Indonesia is based on the Indonesian constitution, namely Article 33 paragraph (3) which regulates that "the Earth, water, and natural resources contained therein are controlled by the State and utilized for the greatest prosperity of the people". Based on this article, the Government is authorized according to laws to regulate, manage, organize and control the utilization, use and allocation of natural resources. However, for the Government does not solely interpreting

blanco mandate the Article 33 paragraph (3) of the 1945 Constitution, the authority must be based on fundamental legal principles, as follows:

- a. Principle of State liability;
- b. Principle of legality, that giving guarantees for justice, certainty, and protection;
- c. Principle of sustainability that recognizes and realizes that resources are limited and that they can be enjoyed by present and future generations;
- d. Principle of benefits, both economically and socially; and
- e. Principle of subsidiarity, the granting of trust and authority to the lower government subunits through a democratic decentralization system.

The five basic principles of policy in the natural resources management must be able to be formulated in legal language that is normative (have a rule). In line with this, the main actors in development, including its policy instruments are the Central and Local Governments (through decentralization). Therefore, constitutionally the party responsible for managing natural resources is the Government but in line with the principles of democracy, the government is widely open for public involvement. Such community involvement can arise through the instruments of "permits", and "concessions" or "licenses".

Last but not least, the fundamental right to a healthy environment is a right that presupposes the following rights:

- a. To live in a non-polluted, not degraded environment;
- b. At a high level of health, unaffected by the degradation of the environment;
- c. To have access to the adequate resources of water and food;
- d. To a healthy work environment;
- e. To living conditions, or of using the fields, and to conditions of living within a healthy environment;
- f. Not to be exploited as a result of the developing of the environmental activities, except the justified cases and the right of those expropriated within the conditions established by the law, and to get the correspondingly redresses;
- g. To assistance in case of natural disasters or caused by humans;
- h. To benefit from exploiting nature and its resources for a long time;
- i. To the preservation of the representative elements of nature and so on.

Therefore, in practice, the State regulates, manages, organizes and controls the utilization, use and allocation of natural resources through various laws and regulations. Then, these laws and regulations place permits as instruments to manage natural resources for the community. However, many laws and regulations by sector that were issued in the framework of natural resource management has the potential to disharmonize the laws and regulations due to the differences of principles used in its creation which then have implications for permitting of natural resource management. The existing disharmony has an impact on the existence of legal gap that allow the deterioration of the quality of the environment, as result of

natural resources exploitation that is not in line with the principles of sustainable development. On this basis, the focus of this paper is to explore the concept of permitting for sustainable natural resource management in Indonesia.

EXAMINING OF PERMITTING FOR NATURAL RESOURCE MANAGEMENT

Mr. N.M. Spelt and Prof. Mr. J.B.J.M. ten Berge argued that a permit is an agreement from the authorities based on laws or government regulations, in certain circumstances can deviate from the provisions of the prohibition of laws. As what was argued by Spelt and ten Berge, in the permit it is understood that a party cannot do anything unless permitted. It means the possibility of a person or party is closed unless permitted by the government. Therefore, the government binds its role in the activities conducted by the person or party concerned. The opinion of Spelt and ten Berge becomes a general definition that is understood. However, this is quite different from the opinion of Van der Pot, who stressed that permits are decisions that allow for actions that are not prohibited in principle by regulators. PrajudiAtmosoedirdjo also stated the same thing that "permit" comes from provisions which basically do not prohibit an act but to be able to do require certain procedures to be passed.

Regarding the opinion of Van der Pot and PrajudiAtmosoedirdjo, the authors agree that in principle the permit is not preceded by "prohibited something" but starts with "something that needs to be regulated." This gives a different meaning, because in principle many activities are basically it is not prohibited but may not be done freely so it must be regulated by a "permit" instrument. This is considered to be in line with the provisions of Law Act No. 30 of 2014 concerning Government Administration which provides the meaning of a permit as a Decree of the Government Official in authority as a form of approval of the application of citizens in accordance with the provisions of the laws and regulation.

Therefore, permit is a form of government intervention to regulate people's lives. It is an instrument in controlling community activities by influencing citizens to follow the recommended ways to achieve a concrete goal. In addition, the authorities have motives or functions with the issuance of permits, where the motives include:

1. Desire to direct (control - sturen) certain activities (e.g building permits).
2. Prevent dangerous for environment (environmental permits).
3. Desire to protect certain objects (logging permit, permit to wreck monuments).
4. Will divide small objects (residential permit).
5. Direction by selecting people and activities (permit based on "Drank-en Horecawet").

Departing from the opinion of Van der Pot regarding permits, then the meaning of permitting arrangements is also aimed at managing natural resources. In case of the community is involved in natural resource management, there must be a control instrument to control community activities in managing natural resources. That is the function of the permit instrument. Its goal is clear, so that the

government is able to control natural resource management activities conducted by the community so that it remains in line with the principles of sustainable development. In other words, the community can manage natural resources but must be controlled through certain conditions as contained in the permit.

This becomes a shared awareness that humans need natural resources to be processed and utilized in maintaining their lives. Although, sometimes the humans exploits natural resources in excess that cause disturbance of environmental balance. Theoretically, natural resources are divided into 2 (two) namely renewable natural resources and non-renewable natural resources. Renewable natural resources, if experiencing scarcity due to over-exploitation, the balance of the ecosystem will be disrupted. While, non-renewable natural resources must be utilized as efficiently as possible because these renewable natural resources will be re-formed after millions of years later.

The Government's role in the formulation of natural resource management policies must be optimized because natural resources are very important, especially in the context of increasing State revenues through mechanisms for taxation, retribution, and clear and fair profit-sharing and protection from ecological disasters. In line with the local/regional autonomy through gradual utilization, the authority of the central government to local governments in the natural resources management is intended to enhance the role of local communities and maintain the preservation of environmental functions.

As studied by the author, it was found that the instrument of permit in natural resource management is a concrete form of the State right to control natural resources. Basically, to manage natural resources in Indonesia refers to the control and utilization of natural resources which should be contained in the constitution of each country. By containing it into the constitution, the State automatically guarantees the rights of its citizens to enjoy the results of these natural resources which are controlled by the State. The intervention of State can maximize the results of its natural resources.

The regulation of permit in relation to the environment is intended as an effort to prevent environmental damage through the environmental permit system policy. Utilization of natural resources must not be exploited without rehabilitation so that natural resources will be depleted and damaged, but the natural resources management must be carried out with sustainable principles. Environmental permits and their requirements must be made based on judicial measures that take into account the individual circumstances of industrial activities that have an impact on environmental management measures.

In the use of permits as an administrative tool in preventing pollution in the environmental field, it must meet several aspects, namely:

1. The purpose of issuing permits. The purpose of the permit is as an instrument in controlling community activities by influencing citizens to want to follow the recommended ways to achieve a concrete goal.
2. Legal basis/legitimacy which includes authority, substance, and procedure. Permit is one of the most widely

used instruments within the scope of administrative law. The government uses permits as a juridical means to regulate/control the behavior of people, therefore as an act of government permit as a Decree of State Administration must have a legal basis or legitimacy elements in issuing permits and it is well-known as the principle of validity which includes 3 things namely authority, substance and procedure.

3. Legal conformity. The component of legal conformity has a standard of authority, both a general standard for all types of authority and a special standard for certain types of authority. This standard is intended so that in the determination of permit, the government has guidelines and measures, so that the government will not take arbitrary actions.

The three things as mentioned above are conditions in issuing permits, because the decision to grant a permit will be directly or indirectly related to the community as the implementation of the permit. Furthermore, the provisions of permitting that have been contained in the laws and regulations must be implemented by the authorized official. Permit as a form of the Decree of State Administration as determined by the authorized official.

Permits issued in the context of natural resource management are inseparable from environmental problems where the natural resources management must consider the impact of their management on environmental protection. The right to a good and clean environment is a constitutional right of the people which must be protected. So that every person who has a permit must be monitored well to ensure the implementation of the permit as appropriate.

Therefore, with the permit instrument, the fulfillment of human needs through natural resource management can be achieved and implemented in accordance with the provisions and principles stipulated by the government, so that the guarantee of rights and arrangements regarding the environment as contained in the constitution can be realized and implemented properly.

11 PERMITTING TO ACHIEVE SUSTAINABLE NATURAL RESOURCES MANAGEMENT

Currently, arrangements in the field of natural resource management are very numerous and quite comprehensive and it contained in various laws and regulations. These laws and regulations contain provisions regarding permits that can be carried out in terms of natural resource management in accordance with their sector fields. In Indonesia, permits for natural resource management can at least be identified in 8 (eight) regulations related to natural resource management. Various laws and regulations by sector include Acts on Fisheries, Management of Coastal Areas and Small Islands, Minerals and Coal, Plantations, Oil and Gas, Forestry, Geothermal and Irrigation. In addition, there are also laws on Environmental Protection and Management, which are more general in nature which should be the main basis for environmental protection and management. Ideally, all laws and regulations by sector can be synergized with Act No. 32 of 2009 concerning Environmental Protection and Management.

Legal arrangements in Indonesia, in the fisheries sector, there are fisheries business permits, fishing permits, and fishing boat permits. In the management of the coastal areas and small islands, there are location and management permits. Each regulation by these sectors has regulated various permits. The type of permit for natural resource management as contained in various laws and regulations by sector is not contradictory but tends to stand alone. Should permits in the natural resources management can support one another, especially for environmental permits so that the natural resources management remain upholds the principle of sustainability.

At the level of implementation, all types of these permits must be in synergy with the Environmental Protection and Management Act that contains 2 (two) regulations regarding permits, namely the permit of environmental and dumping waste and/or materials to environmental media. Especially the environment, the instrument of environmental permit has a very important meaning in the context of preventing environmental pollution and to assess the performance of environmental management by the company. Environmental permit requirements contained in the permit document are directives that must be obeyed by the permit-holders. The competent authority to issue an environmental permit formulates all aspects of industrial operations in the format of an environmental permit. The stipulation of environmental permit requirements must be done carefully and carefully. The environmental permit issued is not about the target for the benefit of environmental protection (environment) if the required permitting requirements are not contained specifically, explicitly, precisely, directed, measured and can be implemented.

Environmental permits and their requirements must be made based on judicial measures that consider the individual circumstances of industrial activities that have an impact on environmental management measures. The ability of the authorized agency to issue environmental permits to determine permitting requirements will influence and determine the success rate of environmental management and be an important factor for the development of "legal instruments of environmental policy". Environmental permit is an important and fundamental permit, for example in the business activity; the environmental permit is a requirement to obtain a business permit. In the case of permits in other sectors it also generally makes environmental permits a requirement for obtaining certain permits. For example, to obtain a permit for direct utilization of geothermal energy, it must first have obtained an environmental permit.

In this context, synchronization with National and Regional Spatial Plan is needed. This will become a framework for a vision and mission in overseeing the implementation of environmental protection and management. After having a good Regional Spatial Plan, the implementation of permitting issues, including the issue of permitting for natural resource management will be linear in spirit. Every environmental management permit (location and activity permits) must not conflict with the provisions of the existing Regional Spatial Plan. A thing that must be

considered is related to guaranteeing the rights of affected communities.

In Indonesia, the guarantees of the rights of these affected communities are contained in Article 70 paragraph (1) of the PPLH Acts that stipulates "the communities have equal and broadest rights and opportunities to play an active role in environmental protection and management". This means that there is a legal guarantee given by the PPLH Acts related to the protection of community rights in terms of the active role of managing and protecting the environment. In the process of granting permits, community participation is important and determinant factors, whether the community agrees or not. This stage is the most important process, the government and the permit issuer must truly accommodate the suggestions, input and demands of the communities so that they can then produce the permit instruments that are truly agreed upon by the parties so that later in their implementation, the supervision process, and check and balances can be realized.

However, the synergy of permitting in natural resource management actually still needs to be studied so that the implementation level can be realized properly. Regulatory reform efforts are needed to examine permitting requirements in natural resource management. As explained previously that the types of permitting of natural resource management are in principle not conflicting but tend to stand alone. Permit of the natural resources management should strengthen one another, especially with regard to environmental permits so that natural resource management remain upholds the principle of sustainability so that future generations will continue to enjoy the availability of adequate natural resources.

On the other hand, there is still disharmony found in natural resource management policies, namely:

1. The differences between various relevant laws or regulations.
2. The differences between the statutory regulations and the policies of Government agencies (implementation instructions, technical instructions etc.).
3. The differences between statutory regulations and jurisprudence.
4. The differences between the central and regional government agencies.
5. Conflicts between the authorities of government agencies due to the division of authority are unsystematic and unclear.

The impacts of law inconsistencies by sector are:

1. Scarcity and decrease in the quality and quantity of natural resources;
2. Inequality in the structure of ownership, designation, use, and utilization of natural resources;
3. The emergence of various conflicts and disputes in the possession or ownership, and utilization of natural resources (inter-sectors, between sectors with the Customary Law Community, between investors and the Customary Law Community, between investors related to rights/permits for the utilization of natural resources).

As described above, the synergy of natural resource management policies is needed in order to avoid overlapping authority and differences in resolution

mechanisms. The synergy of permitting can be realized by adhering to general norms regarding environmental protection and management and then relegated to each sector. Thus, sustainable development with an environmental perspective can be realized.

In Indonesia, there are 12 (twelve) principles of agrarian reform and natural resource management. If summarized, the principles of agrarian reform will be contained in 3 (three) main principles, namely: Firstly, principle of democratic; in the dimension of equality between the government and the people, community empowerment and the development of good governance in the control and utilization of agrarian resources. Secondly, principle of justice; in the dimension of philosophical both inter- and between generational justices in effort to access agrarian resources. Thirdly, principle of sustainability; in the dimension of function and benefit sustainability that are efficient and effective.

The principles of agrarian reform and natural resources management as mentioned above are interrelated and cannot be separated. Democracy must be able to end and/or correct structural injustices in the control, possession, use and utilization of natural resources. In terms of human rights, this is a form of violation of civil, political, economic, social and cultural rights for the people of Indonesia which is marginalized by the laws and regulations of the State in the field of natural resources.

In Article 25 of the International Covenant on Economic, Social, and Cultural Rights as well as in Article 47 International Covenant on Civil and Political Rights ditegaskan bahwa "Nothing in the present covenant shall be interpreted as impairing the inherent rights of all peoples to enjoy and utilize fully and freely their natural wealth and resources." Based on these provisions, then in relation to the rights of ownership, possession, use and utilization of natural resources, the implementation of the recognition, respect and protection of civil, political, economic, social and cultural rights must not be interpreted as reducing rights inherent in the whole community to enjoy fully and freely of their natural resource wealth. Thus, the principles of democracy, justice and sustainability must be the basis for efforts to re-structure the model of natural resource management.

Sustainable development is defined as development aimed at fulfilling the needs of the present generation without compromising the ability of future generations to meet their own needs. The definition contains two (2) key concepts, namely the priority fulfilling the essential needs for the poor and the limited ability of the environment to meet the needs of present and future generations. In sustainable development, there are 3 (three) main pillars that are the focus of development, namely social, economic and environmental. The three pillars are interrelated each other where the focus of environmental is integrated in economic decision-making, especially in the valuation of environmental assets and the impact of development on the environment. The three pillars must be balanced with social development. The three pillars are not separate from each other, instead the three are multi-layered where the

economy depends on social and environment, while human and social existence depends and are in the environment.

Referring to the explanation earlier, then in the natural resources management is obliged to refer to the concept of sustainable development. Sustainable development is not an exact level of harmony, but rather a process of resource utilization, investment direction, technological development orientation, and institutional changes that are consistent with the needs of the future and the present. Sustainable development can be realized through the proper linkages between nature, socio-economic and culture aspects.

Today, the concept of development used in almost all countries in the world is the concept of sustainable development with an environmental perspective. Certainly, it has implication for the process of natural resource management. In Indonesia, the mandate of the 1945 constitutional in Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia explicitly explains that the national economy is based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental-sound, independence, and by maintaining the balance of national economic progress. This is sufficient to explain that all actions in the process of natural resource management must hold to the principle of sustainable and environmentally-sound principles. Thus, the Indonesian constitution can be said to have adopted the concept of sustainable development.

In the context of utilizing natural resources, the prosperity is not merely a right of the present-generation, but future generations also have the same right to enjoy the prosperity of the utilization of natural resources. Therefore, prosperity which is to be realized according to the Constitution is trans-generation and therefore the right to prosperity must be sustainable because this is in line with the concept of sustainable development and environmentally-sound principles.

CONCLUSION

The instrument of permit in the natural resources management is a concrete form for the right of State to control natural resources. The regulation of permit in relation to the environment is intended as an effort to prevent environmental damage. By this instrument, the fulfillment of human needs through natural resource management can be achieved and implemented in accordance with the provisions and principles set by the government, and also guarantees of rights and regulations regarding the environment as stipulated in the constitution can be realized and implemented properly.

In principle, the type of permitting for natural resource management as contained in various regulations by sector is contradictory but tends to stand alone. Permits in the natural resources management should support one another, especially for environmental permits so that the natural resource management remains upholds the principle of sustainability. Synergy of permitting is expected to realize the utilization of natural resources that are conducted properly (not exploitation) without rehabilitation that causes these natural resources will be depleted and damaged, but

these natural resources management must be conducted with sustainable principles.

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