

# Natural resource management for sustainable development in managing

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## Natural resource management for sustainable development in managing environmental permit

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## Natural resource management for sustainable development in managing environmental permit

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**Abstract:** The instrument of permit in a natural resource management is a concrete form of State's control over natural resources. The permitting of natural resource management is expected to realize sustainable natural resource management. This research is a normative legal research, using legislation, conceptual, and comparative approaches. The results of the research indicate that permits as instruments of natural resource management as well as a mechanism of government control through the requirement of permit as determined. The arrangement of permit in natural resource management is intended as an effort to prevent environmental damage. Natural resource management is obliged to refer to the concept of sustainable development. Sustainable development is not a constant level of equality, but rather in the form of a process with the utilization of resources, investment, orientation of technology development, and institutional change that is consistent with the needs of the present and the future. Sustainable development can be realized through the right relationship between nature, socio-economic and culture.

### 1. Introduction

Certain natural resources must be considered as a common heritage of mankind such as water, sea, air, and forest. As an authority norm (*bevoegdheidsnorm*), Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia has attributed authority to legal subjects, in this case "State", to perform legal actions against natural resources (earth, water, and natural wealth contained therein). As a consequence of the principle, the government must be authorized by law to regulate, manage, organize and control the utilization, use and allocation of natural resources. The authority of government is in line with the principle of the "governing country" where the government as the personification of the State is obliged to build people welfare. However, for the government does not want to interpret *blanco mandate* Article 33 paragraph (3) of the 1945 Constitution, the authority must be based on fundamental principles of law, namely: State Liability; Principle of Legality; Principle of Sustainability; Principle of Benefit; and Principle of Subsidiarity [1].



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The five basic principles of policy in natural resource management must be able to be formulated into normative legal languages. In line with this, the main actors of development, and also its policy instruments are the *Government* and *Local Government* [1]. Hence, constitutionally the person in charge of natural resource management is the government, but in line with the principle of democracy, the government opens wide community involvement. The involvement of the community can arise through one of the instruments, i.e permit.

In fact, large companies must increasingly satisfy not only the conditions of their formal licences, but also the concerns and expectations of host communities and broader society. In view of Parsons et al [2], this has led to the emergence, particularly in the minerals industry, of the notion of “social licence”, an interdiscursive term whose meaning is rarely interrogated. For this reason, sustainable development in managing environmental permit can be realized with the establishment of a policy which is inseparable from the values prevailing in the society [3].

In principle, the natural resources management in Indonesia is performed by using permit instruments. The arrangement of permit in the field of natural resource management is intended for natural resource management can be done sustainably. This is very important because basically humans need natural resources to be processed and utilized in maintaining their lives. Although, the human usually excessive in exploiting natural resources so that the balance of the environment disrupted. The natural resources needed have limitations in many ways, namely the limitations of availability according to quantity, quality, space and time. Therefore, right and wise management of natural resources is needed. Natural resources and human life have a very close relationship, human life will not run without water, air, and forest products, and other natural resources. Likewise, water, air and others cannot be maintained and well preserved if humans do not use them wisely [4]. This paper will be assessing the natural resource management in Indonesia in managing environmental permit with the sustainable development-based approach.

## **2. Permit as legal instrument of environmental policy**

Permit is an agreement of the authorities based on laws or government regulations, in certain circumstances deviate from the provisions of the prohibition of legislation [5]. It means the possibility of someone or a party being closed unless permitted by the government. Therefore, the government binds its role in activities performed by the person or party concerned. Atmosoedirdjo [6] also argued same thing that “permits” basically moved from provisions that did not prohibit an act but to be able to do so required certain procedures must be passed. The authors agree that in principle permits do not start with “*prohibited something*” but begins with “*regulated something*.” This gives a different meaning, because in principle many activities are basically not prohibited but may not be performed freely so it must be regulated by “permit” instrument.

Therefore, permit becomes a form of government intervention to regulate community lives. It is an instrument in controlling community activities by influencing citizens to follow recommended ways to achieve a concrete goal. In addition, the authorities have motives or functions with the issuance of permits, namely, where the motives include: the desire to direct/control certain activities (such as building permits); preventing environmental dangerous (environmental permits); the desire to protect certain objects (logging permits); the desire to divide a small object (residential permit); direction by selecting people and activities

(permit based on “*Drank-en Horecawet*”, where they must fulfill certain conditions, such as SIM) [7].

The meaning of the permit arrangement is also aimed at the Natural Resources Management. Humans need natural resources to be processed and utilized in maintaining their lives. Although, the human usually excessive in exploiting natural resources so that the balance of the environment disrupted [4]. Even though in the constitution has been determined that the State controls natural resources for people’s welfare. Therefore, its utilization should not be done in exploitation without rehabilitation so that the natural resources will be depleted and damaged. The management of natural resources must be performed on a sustainable principle.

The arrangement of permit in relation to the environment is intended as an effort to prevent environmental damage through an environmental permit system policy. In the use of permits as a means of administration in the prevention of pollution in the environment, it must meet several aspects, namely:

- a. The purpose of issuing permits. Such purpose as an instrument in controlling community activities by influencing citizens to want to follow recommended ways to achieve a concrete goal.
- b. 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 a government action, permit which is a Decision of State Administrative must have a legal basis or legitimacy element in issuing permits, it is known as the *Principle of Legality*, it includes 3 (three) things i.e authority, substance and procedure.
- c. Legal conformity. The component of legal conformity has the existence of standard authority, both general standard for all types of authority and specific standards for certain types of authority. This standard is intended so that in the determination of permits, the government has guidelines and measures so that the government will not conduct action arbitrarily [7].

Currently, the arrangement of permit in the field of natural resource management is very large and quite comprehensive. Some of the laws and regulations have also outlined permits that can be made in terms of natural resource management in various fields. In Act No. 32 of 2009 on Environmental Protection and Management, regulates environmental permits.

The instrument of environmental permit has important meaning in the context of preventing environmental pollution and for assessing the performance of environmental management of a company. The requirement of environmental permit as contained in the permit documents are directives that must be followed by the permit holders. Agencies that are authorized to issue environmental permits formulate all operational aspects of industrial activities in the format of environmental permits. Provision of requirements for environmental permit must be performed carefully. Environmental permits issued do not target the interests of environmental protection if the required permit requirements are not specified, explicit, precise, directed, and measurable and can be implemented. Environmental permits and its requirements must be based on juridical measures that take into account the individual circumstances of industrial activities that have an impact on environmental management measures. The ability of authorized agencies to issue environmental permits to

determine permit requirements will influence and determine the success rate of environmental management and become an important factor for the development of “legal instruments of environmental policy” [8].

Environmental permit is important and fundamental permit. For example, in the case of business activities, environmental permit is a requirement for obtaining business permit and/or activities. In terms of permits in other fields, it is also common to make environmental permit as a requirement for obtaining certain permits. For example, to get a geothermal direct utilization permit, it must have obtained an environmental permit first. Therefore, permits as an instrument of government can play an important role in environmental policy in order to realize sustainable development.

Permit as an instrument for natural resources management as well as a mechanism of government control through the determined permit conditions. All activities of natural resource management, to obtain permit from the government or local government, then any person or business entity that will exploit natural resources is required to have an Environmental Impact Analysis (EIA). EIA is an activity study that is systematically and scientifically arranged using interdisciplinary and even multidisciplinary approaches, so the study must be arranged in a coherent and comprehensive-integrated manner [9]. In the permit system of mining activity, for example, the EIA is an absolute thing that must exist.

In the context of permit for natural resource management activities, the EIA will be a fundamental benchmark specifically related to the follow-up of mining permits. For this reason, the EIA for each type of natural resource management activity will also have different scientific analyzes. The EIA as a first basis for the permit system for natural resource management will greatly affect the environmental permits that will be issued by the government. Then, it will continue to business permits. It can be said that EIA is a main tap for the quality of environmental and activity permits.

EIA as legal evidence is intended that it is one of the legal instruments and become a part of the environmental legal framework. It will play a very central role in its implementation because it is a first opening tap related to permits for natural resource management activities. In its relation, the EIA with environmental permits, it will be seen the red thread of the two instruments in its implementation procedural. Conceptually, an environmental permit is a permit issued if the EIA has been issued. Hence, it means that environmental permits are an extension as well as the results of the EIA received. If the EIA is rejected, then the environmental permit will not be issued. It can also be understood indirectly that EIA is an instrument for the government to control and supervise the implementation of natural resource management.

Every permit for environmental management (environmental and activities permits) must not conflict with the provisions concerning the existing regional spatial plan. One thing that must be considered is related to guaranteeing the rights of affected people. Article 70 paragraph (1) of Act 32 of 2009 on Environmental Protection and Management provides the guarantee that it is stipulated that “the community has the same and broadest rights and opportunities to play an active role in the environmental protection and management.” It means that there is a legal guarantee given by the Environmental Protection and Management Acts in relation to the community right protection in terms of the active role of managing and protecting the environment. In the process of granting permit, community participation becomes important and determining factors, whether the community agrees or not. This step is a most important process, the government and the permit applicant must really

accommodate the suggestions, input, and demands of the community so that they can produce permit instruments that are truly agreed upon by the parties so that in the implementation, monitoring process and check and balances can be realized.

### 3. Natural resources management: Challenges and policy options

Natural resources management is inseparable from environmental problems where natural resource management must pay attention to the impact of its management on environmental protection. The right to a good and clean environment is a constitutional right of the people that must be protected. The environment can be referred to as the unity of space (*cosmos*) with all contents (physical, biological, and cultural elements) and conditions in it, in which humans in an individual and social terms become the dominant living things among all other living beings which are a unified system influence (*causality*) in one chain of interdependence in terms of existence and function [11]. Thus, it is clear that there is a strong correlation between humans and the environment. Natural resources management is an act of humans so that humans themselves are obliged to protect the environment.

Natural resource is utilized by humans to fulfill their needs, both directly and indirectly through the process of management and processing. Fulfilling the needs of each individual through the utilization and natural resources management is indeed a fundamental matter, however each individual in the framework of conducting natural resource management must also pay attention to the common welfare and maintain the environment around it because inside the environment has a value of life which is the right of all people.

Arrangement in terms of Agrarian Reform and Natural Resource Management stipulate 12 principles of agrarian reform and natural resource management. These principles should be a reference in the preparation of agrarian legislation and natural resource management. This has consequences for the need to re-examine and harmonize various sector laws and regulations relating to agrarian and natural resources. In essence, 12 principles of agrarian reform as mentioned, if summarized, they will come from three main principles, as follow:

- a. *Principle of democracy*, in the dimension of equality between the government and the people, community empowerment and the development of good governance in the control and use of agrarian resources.
- b. *Principle of justice*, in the dimension of philosophical both inter-generation and intra-generation justice in an effort to access agrarian resources.
- c. *Principle of sustainability*, in the dimension of sustainability of functions and benefits that are useful and successful [11].

The principles of agrarian reform and natural resources management as mentioned above are interrelated and cannot be separated. In the context of the problems faced by Indonesia today, democracy must be able to end and/or correct structural injustices in the control, ownership, use and utilization of natural resources [4]. In terms of human rights, this is a form of violation of civil, political, economic, social and cultural rights for the people of Indonesia who are marginalized by the laws and regulations and State's policies in the field of natural resources.

In Article 25 of the International Covenant on Economic, Social and Cultural Rights which has been ratified into Law No. 11 of 2005 concerning the ratification of the International Covenant on Economic, Social and Cultural Rights and in Article 47 of the International Covenant on Civil and Political Rights which has been ratified in Law No. 12 of

2005 concerning the ratification of the International Covenant on Civil and Political Rights affirmed that “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.”

Provision as mentioned above, in relation to the rights to control, ownership, use and utilization of natural resources, the implementation of recognition, respect and protection of civil, political, economic, social and cultural rights must not be interpreted as reducing the rights inherent in all societies to fully and freely enjoy their natural resources. Thus, the principles of democracy, justice, and sustainability must be the basis for efforts to restructure the natural resource management model.

Speaking about the principle of sustainability, sustainable development that contains the meaning of development that pays attention to and considers the dimensions of the environment in its implementation has become the topic of discussion in the 1972 Stockholm Conference (UN Conference on the Human Environment) which advocated that development be carried out with attention to environmental factors. The Stockholm Conference discusses environmental issues and solutions for development could be implemented by taking into account eco-development. The implementation of the conference was in line with the desire of the United Nations to overcome and repair environmental damage that occurred [11].

Sustainable development as a common term that is very popular in Western countries. It 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 key concepts, namely the priority to fulfill essential needs for the poor and the limited capacity of the environment to meet the needs of present and future generations. In sustainable development, there are three main pillars as focus of development, i.e social, economic and environmental. The three pillars are interrelated with each other where the focus of the environment is integrated in economic decision-making, especially in the assessment of environmental assets and the impact of development on the environment. The two pillars must be balanced with social development. The three pillars are not mutually exclusive, on the contrary they are multi-layered where the economy depends on social and environmental, while human and social existence depend and are in the environment [16].

Refers to the explanation, it is sure that natural resource management is obliged to refer to the concept of sustainable development. Sustainable development is not a constant level of harmony (equality), but rather in the form of a process with the utilization of resources, investment, orientation of technology development, and institutional change that is consistent with the needs of the present and future. Sustainable development can be realized through the right relationship between nature, socio-economic and culture aspects.

Prosperity in the framework of utilizing natural resources is not just a right of the present generation, but future generations also have the same right to enjoy prosperity from the utilization of available natural resources. Therefore, the prosperity that wants 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 and environmentally sound development.

The role of the government in the formulation of natural resource management policies must be optimized because natural resources are very important, especially in order to increase State' revenues through mechanism of tax, restitution, and fair profit sharing and protection from ecological disasters. In line with local autonomy, the gradual utilization of the authority of the central government to local governments in natural resource management

is intended to enhance the role of local communities, maintain the functioning of the environment and avoiding air pollution [12].

#### 4. Conclusion

Permit is a legal instrument in the natural resources management as one of the concrete forms of the State's right to control natural resources. In essential, the natural resources management in Indonesia refers to the control and utilization of natural resources as stipulated in the constitution, namely "for the greatest prosperity of the people." The meaning of these provisions implies that the community has the right to produce from these natural resources as managed by the State and the community itself. However, the natural resources management must be regulated by the government so that natural resource management can be performed continuously. Nowadays, the concept of development as used by almost all countries in the world is the concept of sustainable development that is environmentally sound. Certainly, it has implications for the process of natural resource management. Above all, it is enough to explain that all acts in the process of managing natural resources must hold on to sustainable and environmentally sound principles.

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