

# CONCEPT OF JUSTICE IN THE MANAGEMENT OF NATURAL RESOURCES<sup>♦</sup>

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## Abstract

*The concept of justice which is formulated into a principle of justice in the laws of natural resources has not accommodate global principles, ethical view, and the values that live in the community. This study aims to find the concept of justice in the management of natural resources. The concept was excavated from the global principles of natural resource management, ethical views of society, and customary law. Method to find the concept of normative-legal approach research. The findings of the research, the concept of justice in the management of natural resources containing at least six basic principles, namely: intragenerational and intergenerational principle, the principle of the protection of human rights, gender equality, recognition of customary law community, proportionality obtaining benefits with recovery obligations, and balance gain access and results. The concept of justice is in line with the global principles of natural resource management, ethical view, and customary law.*

*Keywords: concept of justice, management, natural resources.*

## Abstrak

Konsep keadilan yang dirumuskan menjadi asas keadilan dalam undang-undang sumberdaya alam belum mengakomodasi prinsip-prinsip global, pandangan etis, dan nilai-nilai yang hidup dalam masyarakat. Penelitian ini bertujuan menemukan konsep keadilan dalam pengelolaan sumber daya alam. Konsep tersebut digali dari prinsip-prinsip global pengelolaan sumberdaya alam, pandangan etis masyarakat, dan hukum adat. Metode untuk menemukan konsep tersebut menggunakan pendekatan normative-legal research. Temuan penelitian, konsep keadilan dalam pengelolaan sumberdaya alam berisikan sekurang-kurangnya enam prinsip dasar, yaitu: prinsip intragenerasi dan antargenerasi, perlindungan hak asasi manusia, kesetaraan gender, pengakuan terhadap masyarakat hukum adat, kesebandingan perolehan manfaat dengan kewajiban pemulihan, dan keseimbangan mendapatkan akses dan hasil. Konsep keadilan ini telah sesuai dengan prinsip global pengelolaan sumber daya alam, pandangan etis, dan hukum adat.

Kata kunci: konsep keadilan, pengelolaan, sumberdaya alam

## Preface

The discussion on the principle or concept of justice has become an interesting study since the emergence of Greek philosophy. Natural law theories defend justice as law's crown.<sup>1</sup> Justice is morally an ideal truth condition about something.<sup>2</sup> Justice contain a universal moral values

and basic human rights throughout the world.<sup>3</sup> In general, justice is defined as an act or fair treatment. Fair means not biased or unbiased and only true pro. Justice was actually associated with a conscience.<sup>4</sup> Justice is not the result of reasoning but the product of conscience, becau-

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<sup>1</sup> Gustav Radbruch in Bernard L. Tanya, Yoan N. Simanjuntak, and Markus Y. Hage, 2010, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta: Genta Publishing, page 129.

<sup>2</sup> Liza Marina and Wien Sukarmini, "Perbedaan Perspektif Keadilan Tentang Pembagian Harta Warisan Menurut Hukum Islam, Hukum Perdata Barat dan Hukum Adat", *Jurnal Hukum Supremasi*, Vol. III No. 1, October 2009 -

March 2010 Edition, Jakarta: Pusat Studi Hukum Bisnis Fakultas Hukum Universitas Sahid, page 522.

<sup>3</sup> Fadhillah, "Refleksi Terhadap Makna Keadilan sebagai Fairness Menurut John Rawls dalam Perspektif Keindonesiaan", *Jurnal Madani*, II Edition, November 2007, Bekasi: Universitas Islam "45", page 35.

<sup>4</sup> Bambang Sutiyoso, "Mencari Format Ideal Keadilan Putusan Dalam Peradilan", *Jurnal Hukum*, No. 2, Vol. 17, April 2010 Edition, Yogyakarta: UII, page 221.

se of it justice must not conflict with conscience.

The justice term always opposed to injustice. Where there is a concept of justice so there was a concept of injustice.<sup>5</sup> The magnitude of the demand for justice that surfaced lately, actually a normative demands. The demand appeared at all levels of social life.<sup>6</sup> Justice is one of the principles in the management of natural resources. The concept of justice in natural resources legislation's rule formulated be a justice principles. The concept of fairness in natural resources legislation has not reflect the demands of ethical, values, and global principles of justice in natural resource management itself.

Indonesia currently have no concept of complete and comprehensive justice in natural resource management. Contrast with Law No. 32 of 2009 about the Protection and Management of the Life Environment (UUPPLH) which has formulated the principle of justice as well. Justice as a principle of law is not a concrete legal norms. Law principles should not be regarded as a concrete legal norm but as a general base (instructions) for the basic and applicable law (directions) in the formation of positive law. The principle of the law is the heart of the law rule and it is the most extensive foundation for the birth of the law rule.

The principle of the law will not be exhausted its power to bring forth concrete legal regulations. The principle of the law makes it law to live, grow, and it also pointed out that the law was not just a mere collection of rules. With the principle of law, that law contains the values and ethical demands. The principle of the law is a bridge between the rules of law to the ideals of social and ethical views of society. When viewed from an academic standpoint, the study aimed to find the concept of justice in the management of natural resources in accordance with the values and ethical views of society and the global principles of natural resource management, it's very interesting to be studied.

## Research Problem

Based on the background, research problems can be formulated as follows: how is the concept of justice in the management of natural resources? Based on the background, the study aims to find the concept of justice in the management of natural resources.

## Research Methods

This study is a normative law research using normative-legal research approach. In an effort to find a concept of justice: *first*, excavated the values of justice from a global perspective, such as the Rio Declaration, the Climate Change Convention, and the Convention on the Elimination of All Forms Discrimination Against Women (CEDAW); *second*, excavated the values of justice of the ethical public view; and third, excavated the values of justice from the perspective of indigenous peoples. The value of justice from that three perspectives is constructed again into a "concept of justice" natural resource management.

## Discussion

The concept of justice in the Legislations set in the principle of justice. This is in line with Article 6 paragraph (1) letter g Law No. 12 of 2011 on the Establishment of legislation, which states "the substance of the legislation contains the principle of justice". In the explanation what the principle of justice mean is "every substance of the legislation should reflect the justice proportionately for all citizens without exception". The explanation does not clearly define the meaning which contained in the principle of justice.

Legislators often include "justice" as one of the law principles implementation. The inclusion of the principle of justice was not followed by the ability to provide an adequate explanation especially satisfying about what is "fairness" meant by. Legislation which contains the principles of justice, such as Law No. 41 of 1999 and

<sup>5</sup> Inge Dwisvimiar, "Keadilan Dalam Perspektif Filsafat Ilmu Hukum", *Jurnal Dinamika Hukum*, Vol. 11, No. 3, September 2011, Purwokerto: Fakultas Hukum Universitas Jenderal Soedirman, page 503.

<sup>6</sup> Faturochman, *Keadilan Sosial: Suatu Tinjauan Psikologi*, *Buletin Psikologi*, VII Year, No.1, June 1999, Yogyakarta: UGM, page 13-27.

Law No. 27 of 2007 gives the definition of "justice principle" in the article description. However, not all legislations followed that pattern, for example, Law No. 4 of 2009 which did not give the definition of justice principle.

For legislation that have included and provide an explanation of the principle of justice was also not have a clear concept of justice principle. There are conceptualized justice principle to get the same chances and opportunities, adhering to the truth, not one-sided, non-partisan, and not arbitrary. Conception given merely to explain the meaning of the word "justice" and have not touched the concept of justice principle itself.

The principle of justice as a principle of law which is the heart of the law rule or the laws ratio legist, should contain the "concept of justice". That conception must be spelled out in the body of rules. It is not enough to simply give the meaning or definition of the word of justice.

Based on the study's results of the justice values which contained in the global principles of natural resource management, ethical views of society, and customary law community, "the concept of fairness in the management of natural resources" must contain at least six basic principles, namely: the principle of intrageneration and intergeneration, protection of human rights, gender equality, recognition of customary law community, proportionality obtaining benefits to the obligation of recovery, and the balance of access and outcomes.

### **Principles of Justice Intrageneration and Intergeneration**

Intrageneration fairness principle contained in the 5<sup>th</sup> and 6<sup>th</sup> Principles of the Rio Declaration. The 5<sup>th</sup> principle contains: "All state and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better needs of the majority of the people of the world". The 6<sup>th</sup> principle states, "The spe-

cial situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries". While the principle of intergenerational justice contained in the 3<sup>rd</sup> principle of the Rio Declaration, which states, "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations". The principle of justice in one generation is the principle which organizing the justice in a human generation, where the burden of environmental problems should be shouldered by the community in one generation.

The emergence of the intrageneration justice concept sourced from injustice. Natural resources and environmental injustice occurred in almost all society's level. Poor people tend to bear the burden of environmental problems bigger than the rich, because the rich have better access to financial resources, education, and decision-making.

Intrageneration justice principles setting in the management of natural resources can prevent injustice in the form of domination in certain groups, the owners of capital, and the elitist who has access to power and decision-makers to other groups within a single generation. The principle of Intergeneration justice implies that each generation of human generation the world have the right to receive and occupy the earth where is not in poor condition due to the actions of the previous generation. The principle of Intergeneration justice implies, that the use of natural resources and the environment by the present generation should not be sacrificing the interests or needs of future generations of natural resources and the environment. Intergeneration justice implies an obligation chain (chain of obligation) between the current generation and future generations who will come.<sup>7</sup>

According to Takdir Rahmadi, intergeneration equity principle also implies, that the current

<sup>7</sup> Marilang, "Keadilan Antargenerasi Dalam Pengelolaan Sumberdaya Alam Tambang", *Jurnal AL-FIKR*, Vol. 16,

No. 2, 2012 Edition, Makasar: Fakultas Ushuluddin dan Filsafat UIN Alauddin, page 2.

generation has an obligation to use natural resources sparingly and wisely and implement conservation of natural resources, so that natural resources still available in sufficient quality and quantity to be used by future generations.<sup>8</sup> The meaning which contained in intergeneration equity is each generation of human generation in the world has the right to accept and occupy the earth where is not in poor condition due to previous generations deeds. This principle asserts that natural resources are the heritage of the previous generation used by the current generation. As heritage, natural resources should not to be spent because in it there is the right of the next generation. It must be managed wisely and sustainably in order to be inherited again for the next generation.

The principle of intrageneration and intergeneration thus should be the basis and foundation in any natural resource management arrangements. Thinking construction that was built by this principle that the right to manage and utilized the natural resources not only belong to the present generation, but also the rights of future generations, so that future generations also have the right to feel and enjoy the natural resources.

### Principles for the Protection of Human Rights

After the amendment of the 1945 constitution, the laws of political management of the environment and natural resources in Indonesia is undergoing fundamental change. A fundamental change in question is through constitutionalism environmental legal norms in Article 28H paragraph (1), which incorporate the principles of human rights protection in environmental management. The addition of Article 28H paragraph (1) showed how strong desire of state leaders to assure the protection of the rights of citizens on good and healthy life environmental constitutionalism.

As well as environmental rights, rights to natural resources is also a human right. This right should be interpreted extensively as one of

the fundamental rights of a series of other human rights, such as political and civil rights, economic rights, social rights and cultural rights. The right to environment and natural resources should be interpreted as the right to get the good quality or condition of the environment and natural resources. However, the right to environment and natural resources should be also affirmed guarantees that includes respect, protection and fulfillment of the environment as legal subjects.

The right to environment and natural resources is a fundamental right that is inherent in human beings that are natural as a gift of God Almighty that should not be neglected, deprived, or disturbed by anyone. The rights are innate constantly attached and cannot be deprived from human life whether individually and collectively.

The right to environment and natural resources include structural and cultural dimensions. Structurally, the right to the environment and natural resources, emphasizing how important state's responsibility to provide a guarantee of respect, protection and fulfillment of the law enforcement and political will. While the cultural, environmental and natural resources rights, including the important values to maintain sustainability and social justice for today's environment and in the future.

Environmental management and the use of natural resources should be placed within the framework of the recognition, protection and fulfillment of human rights of every citizen. Recognition and realization of the right to environment and natural resources will be an important prerequisite for the protection and sustainability of life sources as fundamental human rights. Without respect for these rights, the enforcement to the environment and natural resources right as the rights of the people would be impossible.

### Principle of Gender Equality

<sup>8</sup> Takdir Rahmadi, 2011, *Hukum Lingkungan Di Indonesia*, Jakarta: PT. Raja Grafindo Persada, page 15.

Indonesia as a country that is based on Pancasila and the 1945 Constitution has guaranteed every citizen is standing before the law and government. Indonesia's commitment was confirmed by ratified the Convention on the Elimination of All Forms Discrimination Against Women (CEDAW) by Law No. 7 of 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW Convention affirms that all human beings are born free, has the inherent dignity and equal rights, therefore, countries are required to guarantee the equality of rights of men and women in the economic, social, cultural, civil, political, and includes in natural resources.<sup>9</sup>

According to Zaitunah Subhan, gender is a concept analysis which used to describe something that is based on the distinction of men and women due to socio-cultural construction.<sup>10</sup> Nasaruddin Umar defines gender as a cultural concept that is used to identify differences in the roles, behaviors and others among the men and women who thrive in a society based on social engineering.<sup>11</sup>

The principle of gender equality in natural resource management is defined as the policies, attitudes and measures that should reflect justice in access, participation, and control in the management of natural resources for every citizen, without exception. Every human being, whether male or female, basically have the same rights and the grace of God Almighty, which must be respected, upheld and protected by the state, law, and government for the honor and the protection of human dignity without discrimination.

Gender-based discrimination should be avoided in natural resource management. So it is necessary to develop gender mainstreaming.

Gender mainstreaming is a strategy that is built to integrate a gender perspective into the integral dimension of planning, budgeting, preparation, implementation, monitoring and evaluation of policies and programs of natural resource development.

### Recognition Principle against Indigenous/Local Peoples

Article 33 paragraph (3) of the 1945 Constitution if the substance is examined, the parties most concerned primarily on the management of natural resources is the community, including the communities surrounding natural resources. On that basis, in the management of natural resources, the recognition of the rights of indigenous and local communities cannot be ignored.<sup>12</sup>

Recognition of indigenous peoples is needed for the management of natural resources are often confronted with modern society, which makes helpless indigenous peoples in the terms of capital, technology, information, management capabilities, and so on. This causes the interests of their economy and culture become very vulnerable and threatened. In turn, would harm their existence as a group and as a human culture. Therefore, there should be a politically policy to ensure that their economic life, customs and culture and existence is protected.

Every person is obliged to conserve natural resources and the environment, maintain, and preserve it.<sup>13</sup> According to Zakaria,<sup>14</sup> every society has its own way to preserve and save natural resources and the environment. This way is known as cultural adaptation pattern or environmental wisdom, which is a knowledge of culture which is relate with models use and management of natural resources naturally.

<sup>9</sup> L.M. Gandhi Lopian, 2012, *Disiplin Hukum Yang Mewujudkan Kesetaraan dan Keadilan Gender*, Yayasan Obor Indonesia, Jakarta, page 38

<sup>10</sup> Zaitunah Subhan, "Gender Dalam Perspektif Islam", *Jurnal Akademika*, Vol. 06, No. 2, March 2006 Edition, Surabaya: Program Pascasarjana IAIN Sunan Ampel, page 128.

<sup>11</sup> Nasaruddin Umar, "Perspektif Gender dalam Islam", *Jurnal Paramadina*, Vol. 1. No. 1, July-December 1998 Edition, Jakarta: Yayasan Paramadina, page 99.

<sup>12</sup> Yanis Rinaldi, "Model Pendekatan Pengelolaan Lingkungan Di Era Otonomi Daerah", *Jurnal Rona Lingkungan*, Vol. 4 No. 1 March 2011 Edition, Banda Aceh: Badan

Pengendalian Dampak Lingkungan Provinsi Aceh, page 10.

<sup>13</sup> Marheini Rio Siombo, "Kearifan Lokal Dalam Perspektif Hukum Lingkungan", *Jurnal Hukum*, No. 3, Vol. 18, July 2011 Edition, Yogyakarta: Fakultas Hukum Universitas Islam Indonesia, page 429

<sup>14</sup> Yanis Rinaldi, "Pengelolaan Lingkungan Hidup Oleh Lembaga Adat Di Provinsi Nanggroe Aceh Darussalam", *Jurnal Rona Lingkungan*, Vol. 1 No. 1 September 2008 Edition, Banda Aceh: Badan Pengendalian Dampak Lingkungan Provinsi Aceh, page 50.

The principle of natural resource management should reflect the autonomies' atmosphere on local communities to control, manage, and use natural resources. This is a manifestation from the paradigm of natural resource management which community-based, as the divers of natural resource management based on the state /government.<sup>15</sup> Traditional institutions as local institutions believed to be effective in supporting the creation of sustainable natural resource management for several reasons, first, its appearance is based on local needs and conditions, second, sourced in culturally recognized authority, third, have the capacity to monitor and enforce rules independently.<sup>16</sup>

#### **Principle of Balance in Getting Access and Results**

Natural resource management has been carried out by giving authority to the government to assign property rights to natural resources. The tendency to give priority to investors and bureaucracy's cronies has led to imbalances mastery of natural resources. People who were more numerous and have lived a very large dependence on natural resources can only enjoy a bit of space to exploit natural resources. Meanwhile, the state-owned enterprises, private and foreign business entities enjoy the wider space and access. That fact should not be allowed to continue as opposed to the values and ethical views of society.

The principle of justice must be able to ensure that all people and communities get equal opportunity and access to participate in the management of natural resources and enjoy the results of the management of natural resources. This principle guarantees a balance between accesses for the results obtained. It means there can be no person or group of people who received preferential treatment from the state in the process of building, particularly in getting opportunities and access to natural resource management. Therefore, there should be no political monopoly of state power favorable

which supported certain groups in taking advantage of opportunities and access to natural resources. That opportunities and access should be open equally to all persons and communities.

According to A. Sonny Keraf, it is fair that there is a more benefit than others, as far as guaranteed that opportunity and equal access has been opened to all people and all communities.<sup>17</sup> Different benefits and burdens will be considered unfair if the opportunities and open access only to certain groups, but deliberately closed for another group. Furthermore, he added there should be affirmative action from the state to help people who do not have the same opportunities and access, as isolated, less infrastructure, less education, and so on.

The principle is about equal access for all people and communities in determining natural resource management policies, and participate in enjoying the use of natural resources. This principle is included in the political ecology, where the government is expected to open up opportunities and equal access for all people and communities in determining natural resource management policies. Including the principle that all people and communities should be proportionate burden caused by the destruction of natural resources.<sup>18</sup>

#### **The Principle of Proportionality between the Benefits of the Recovery Obligation**

The concept of justice in the perspective view of the ethical and customary law contains the principle of proportionality between the rights received as a benefit with the duty of responsibility. Regarding with the benefits and burdens derived from natural resources, there must be a proportionate treatment among different groups of people. Groups which get bigger benefit should bear a bigger burden in the recovery efforts, preservation, and maintenance. Similarly, the most vulnerable groups with fragile change in the ecosystem should receive extra attention that there is compensation that allows them not threatened their life, both in the

<sup>15</sup> *Ibid*, page 25.

<sup>16</sup> *Ibid*, page 27.

<sup>17</sup> A. Sonny Keraf, 2010, *Etika Lingkungan Hidup*, Jakarta: Kompas, page 203-204.

<sup>18</sup> *Ibid*, page 177.

terms of economy, culture, and existence. The principle of justice stressed, providing the same rights and obligations to each person who becomes their rights and obligations.<sup>19</sup>

According to Article 6 paragraph (1) letter g of Law No. 12 of 2011, the substance of the legislation should reflect the principle of justice. The principle of justice requires that the substance of the legislation reflects the proportional fairness for every citizen. This means that the norm of legislation must consider the interests of the various parties involved in the management of natural resources. These parties are not in the same position, both from a capital and business networks.

## Closing

## Conclusion

The fairness concept of natural resource management, which became the results of this study should contain at least six basic principles, namely: intrageneration and intergeneration principles, protection of human rights, gender equality, recognition of customary law community, proportionality obtaining benefits with recovery obligations, and balance of access and outcomes. These six principles are interrelated and reinforce each other. This concept of justice is in line with the global principles of natural resource management, ethical views, and customary law. It is recommended to the former of Act, in order to formulate the principle of justice based on the concept of justice is found in this study.

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<sup>19</sup> Ahmad Sudiro, "Konsep Keadilan dan Sistem Tanggung Jawab Keperdataan Dalam Hukum Udara", *Jurnal Hukum Ius Quia Iustum*, No. 3 Vol. 19 July 2012 Edition, Yogya-

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