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Rent Soil Theory Versus Sustainable Development Goals in Indonesia: Environment Law Perspective

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Abstract. Indonesia is known as a rich country with its forests and various biodiversity. In regard to the issue of forest use and management in Indonesia, there are always pros and cons in how to manage the forest properly. To support the economic sector in Indonesia, the government always optimizes forest functions and clearing forests for the business sector. In practice, Indonesia implements soil-rent theory, which triggers polemics because there is friction with sustainable development goals (SDG). This article is using normative research method. Later on, this article will discuss the gap between the rent soil theory and sustainable development goals (SDGs) with the comprehensively approach to environmental law.

Keywords: Rent-soil theory, sustainable developments goals (SDGs), environment law

1. Introduction

In its status as a natural resource, the issue of land use also raises various complex legal and environmental issues, especially when there is a change in the function of forest areas for plantation and mining activities. The characteristic of the forest, which is a very valuable resource, causes access to use and control of forest resources which often creates problems. Recent years, the structure of control of natural resources in Indonesia, including forest resources, has been dominated by big businessmen with capital power. They can control forest, land, and mining areas and exploit them up to millions of hectares with a concession period of tens of years. On the other hand, local people have lived relying on these land resources for generations, even before the founding of this country. This unfair distribution of control of natural resources is seen as the basis for real social conflicts that occur in society.[1]

Land-use policies that are intended for exploitative-oriented business activities also damage the social capital of the community, where national policies have not been based on balancing the four pillars of sustainable development, namely the preservation of natural capital, individual capital and artificial capital (physical capital). The impact to natural and social capital has reached a point where it leads to the destruction of artificial capital such as social and economic infrastructure.[2] Therefore, natural resources have only been treated as commodities and means of production, without paying attention to the socio-cultural sub-system which should be part of the natural and living system. Knowledge of the benefits and management of natural resources from the ecosystem to the genetic level is not reflected in natural resource management policies or in overall development. This is shown by the alienation of society from

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natural resources which are done by negating or simply ignoring the local concept of management rights in national law and especially in the implementation of development.[3]

The Production or cultivation areas should be managed in an ecologically sustainable manner, as part of conservation efforts. This effort was lost due to the perception that later strengthened in the community that in cultivated areas, conservation activities were no longer needed, on the other hand, in conservation areas or protected areas there was a perception that use was not allowed. As a result, human presence is not allowed in this area. The public's ignorance of conservation areas due to such perceptions has led to conflicts and damage to natural resources in areas that must be protected. This can be seen through the occurrence of deforestation and damage to forest ecosystems which are mainly caused by logging to obtain wood and conversion of forests for other uses, especially plantations, agriculture, and settlements, or for the purpose of building physical facilities such as dams, etc.[4]

This misconception is basically caused by an error in choosing the paradigm used to formulate forest management policy instruments that originate from the theory of land rent (Soil-Rent Theory). The development paradigm that has been used so far is wrong and has a very negate impact on the environment because it considers economic development with the main target of economic growth to be the only important and main thing in the development of the entire nation.

Almost all countries in the world today adopt Soil-rent theory, which was developed by Johann Christian Hundeshagen in the early 19th century. This theory which is now considered as a classical liberal economic theory has been successfully used to maximize the profits of an industry. In essence, a theory can be applied well if a number of assumptions are met. In this context, the most important assumption is that the forest is considered a "generic" and "given" factor of production. Whereas the forest or wood in the forest as a production factor is not a generic item, the owner understands the uses and limitations of the goods he owns and has the social freedom to use it according to his function.[5]

The 1945 Constitution of the Republic of Indonesia provides two forms of recognition of fundamental rights in the field of life management. First, subjective rights as stipulated in Article 28 H paragraph (1) which states that "everyone has the right to live in physical and mental well-being, to have a place to live, and to have a good and healthy living environment, and the right to obtain health services". Second, recognition of environmental insight is an important element in the national economy, as stated in Article 33 paragraph (4) "The national economy is organized based on economic democracy with the principles of togetherness, justice efficiency, sustainability, environmental awareness, independence, and by maintaining a balance of progress and national economic unity". At the normative level, the state control rights as stated in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia as well as those contained in Article 2 paragraph (3) of the UUPA, have been interpreted loosely, by positioning the state as the owner of natural wealth rather than merely controlling, so that in, in the end, it has reduced the community's right to benefit from these natural resources. The state in its position as an organization of power for all the people seems to have forgotten the purpose of this right.

In other hand, Article 10 of the Rio Declaration designs good environmental governance in the form of three access rights, namely the right to access information, the right to access to participation and the right to access to justice (access to information, access to public participation, and access to justice). These three access rights will be able to empower the community as long as there is a commitment from the state to guarantee the implementation of these rights.

2. Method

The current research has the basis on the law related to the rent soil theory and sustainable development goals in Indonesia with environment law approach. Specifically, the author utilizes Indonesian National law and other supported regulations (especially international instruments such as convention) to elaborates and understands the related between two issues above. Besides, the author also uses the secondary sources data such as legal writings that have interpreted the primary sources, including books, scientific paper, working paper and journals accessible online.

3. Result and Discussion

3.1. The Current Development of "Rent Soil" in Global Perspective and Indonesia Perspective

3.1.1. International Perspective on the Sustainable Use of Forest and Land

Sustainability on the use of land and forest has been the least promoted aspect in the economic development around the world. In 18th century Europe, society saw an increase of population and productivity in urban areas, and as a result, it increases the demand from the exploitation of natural resources, namely the land itself. At the time, forested areas suffered massive damage from the exploitation by human through unsustainable means, such as unselective logging and forest burning. The economic policy focused only on the fulfillment of supply and demand, without considering the rehabilitation of the forest and the land.[6]

The first use of the term 'sustainable development' was related to the use of forest and forestry. According to International Standard Industrial Classification of All Economic Activities (ISIC) used by the UN, the forest sector is composed by forestry, logging, and related service activities is grouped to sector A while processing is grouped to the manufacturing sector (sector C).[7] This classification of economic activities however, does not provide connection to sustainability impact. Therefore, FAO defined the sector as all economic activities that mostly depend on the production of goods and services from forest which includes timber production in all of its purpose, manufacturing of forest and tourism. All these economic activities have sustainability impact.

Sustainability impact is usually grouped into three kinds: Economic sustainability, which refers to the competitiveness of companies working on such sector. Aspect such as development of technology, management, and organization falls under this category;[8] Environmental sustainability, which includes the use of resources and its impact on biodiversity and ecology. This is the most prevalent aspect when considering forestry and the use of land, since in itself, forest is a part of the large group of biodiversity,[9] and; Social sustainability, which refers to the relationship between the forest and land with indigenous people. It also covers the protection of the human rights.

The forest sector itself falls under the SDG 15 *life on land*. Target 15.2 stated that "By 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests, and substantially increase afforestation and reforestation globally". The SDG specifically concern itself with the alarming amount of deforestation and the loss of biodiversity. However, the SDG does not exempt other terrestrial ecosystem.

SDG 15 promoted priorities that have been provided in conventions and agreements, such as the Convention on Biological Diversity (CBD) and its Aichi Biodiversity Targets and Nagoya Protocol, the UN Convention to Combat Desertification and the Convention on International Trade in Endangered Species.[10,11] In the prospect of fulfilling its goal, the SDG can be categorized into several purposes; Forest Cover and Management, Biodiversity, and Social Economic System

The fulfillment of SDG 15 can only be achieved by integration with other SDG. The growth of economies which is a major target of many other SDGs, will have major impacts on terrestrial ecosystem and biodiversity. Therefore, it will affect the fulfillment of the environment-oriented SDG such as SDG 15. Human populations will move, cities will grow, agricultural technologies will allow for producing more on less land.[12]

3.1.2. b. Current Practice in Indonesia

In the framework of Indonesian national law, the land or *soil* is under the powers of the State and shall be used to the greatest benefit of the people as provided in article 33(3) of the 1945 Constitution of Republic of Indonesia (Article 33(3) of the 1945 Constitution of Republic of Indonesia). While the article certainly concerns the national economy and welfare, it does not necessarily provide the sustainable development aspect. It is instead, provided in article 33(4) of the constitution, that "*the national economy shall be conducted on the basis of… ecological and sustainable development*," in which the article does not specifically concerns the utilization of the land.

Further, there are certain differences regarding the rights attached to the land as provided in 1960 Principal Agrarian Act and 1999 Forestry Act. Whereas the Agrarian Act provides that the rights of ownership of the land may attach to: 1) the State, 2) Individual and, 3) Indigenous People, the

Forestry Act provides that the rights to forest may only be given to the states and private sector[2] (Article 4 & 6 1999 Act No. 41 concerning Forestry.). It is further mentioned in the explanation of the act that the forest owned by indigenous people is under the control of the state.

This problem further affects the division between the interest of indigenous people and the interest of the state and/or private sector. According to the Principal Agrarian Act, proving the existence of indigenous people shall create the indigenous rights (*hak ulayat*), which is not only limited to the land, but all the resources within the area of the land with indigenous rights. However, this enjoyment is not properly fulfilled since if there exist forested area within the indigenous land, then according to the Forestry Act, it shall be governed under the State control. This certainly has an impact of fueling the conflict between the parties.[1]

As mentioned in the Constitution and also in the Principal Agrarian Act, State has powerful control on the management of the land, not only on the utilization of its resources, but also on managing the rights attached to the land. It is also provided in Principal Agrarian Act that State may utilize the land to serve its social function. As it turns out, the practice shows instead that such power may cause exploitation, either by the State itself or private sector. This exposes the indigenous land owned by indigenous people to the threat by the State under the guise of its *social function* and also private company which tend to exploit the resources of the land without the consideration of environmental and ecological sustainability aspect. The underlying principle of such practice is based on Rent Soil Theory. This practice is contrary to the principle under SDG 15, which promotes sustainable management of all types of forest. By using normative research method, this article aims to analyze the gap between the rent soil theory and sustainable development goals (SDGs) with the comprehensively approach to environmental law.

3.2. *The Rent Soil v. Sustainable Development Goals in Indonesia*

3.2.1. *a. The implication of Rent Soil in Environment Perspective*

Rent Soil Theory simply took form in a policy aims to increase state revenue through imposition of land rent including a plot where forest grows along with natural resources (wood, lumber, stable soil, etc.).[13] The government took on the role of landlord while business partners have agreed to rent specific area of exploitable land. This policy allows businessmen or enterprises to develop a plot of land and exploit its natural resources actualizing their business agendas under reciprocal agreement. Eventually, the government is entitled of a sum of rent collected under specific calculation that are excess revenue of land use and other expense than land (natural, financial, produced, human, and social capital) discharged to convert natural resources into goods or product.[14,15]

The government began to adopt this policy into Basic Agrarian Act no. 5/1960 on particular Article 2 (2) stated that "the right of control of the State referred to in paragraph (1) of this Article authorizes following actions: Regulate and administer the designation, use, supply and maintenance of the earth, water and space; Determine and regulate the legal relationships between people and earth, water and space, and; Determine and regulate legal relationships between people and legal actions concerning earth, water and space.

General Commentary II (2) of Basic Agrarian Act stressed that government is capable to grant a plot of land in question for individual or entity for particular and necessary purposes, for instances, property rights, cultivation rights, and building rights. This provision causes enterprises are obliged to pay tax revenue as a rental value on the basis Article 12, Article 30, and Article 50 of Government Regulation No. 40/1996.

Although land and forest have dependency, the fact that both are constitutionally distinguishable should not be overlooked. The Minister of Forestry may approve enterprises for *utilization* of forest resources particularly on timber products guaranteed under Article 28 Forestry Act 41/1999. Meanwhile, enterprises are obliged to pay non-tax revenue in return on the basis Government Regulation 24/2010 concerning Use of Forest Areas. On large scale, the amount of non-tax revenue that enterprises are obliged to pay will be calculated for every timber-based commodity, either per m^3 or per ton, 10% x benchmark price. This calculation does not include Business Permit Fee for Ecosystem Restoration Timber Forest Products (IUPHHK-RE) which calculate the amount of rent paid per hectare for each year. This provision applies to numerous provinces consist of Sumatera, Sulawesi,

Papua with IDR. 1,900; Borneo and Maluku Island with IDR. 2,500; and Nusa Tenggara with IDR.1,500.

Enterprises tend to choose the most fertile portion of land to boost the quality and quantity of agricultural cultivation and production. On one side, enterprises possibly collect huge profit if the production exceeds their initial capital, while government also benefit as the higher output lead to the higher revenue that must be paid by enterprises. This cycle will never cease on the basis of mutualism.

Several permissions granted by government to enterprises led to escalation of land exploration and resources exploitation. Enterprises force to meet a lot of demands for woods production on the belief that forests are renewable resource. Meanwhile, the soil where forests grow is non-renewable and limited resource but remain overexploited causing its quality decreases. This will also affect the quality of woods production. However, enterprises will keep continue and potentially abandon the fertility of the soil containing previous abundant nutrients, which will become barren due to excessive exploitation in order to meet or exceed production target.[16]

The exploitation of soil and forests resources will remain impacting human aspect over environment on specific indigenous people. Tendency of cooperation between governments with industrial enterprises implicates that indigenous people have less opportunity to utilize natural resources. Case study on the Dayak People clarified that industrial activities often violate government regulations by cutting down prohibited trees even trespassing into territory of the indigenous rattan farm. The enterprises and the government argued that rattan is a wild plant that is accidentally cut, meanwhile the Dayak people deliberately cultivate the rattan on former fields.[17]

Additional harm of industrial control over land and forest will deprive land tenure of indigenous people. The customary of Dayak People stressed that a certain family/lineage will control a forest area where plantation or agricultural products cultivated to meet their daily needs. However, since the arrival of industrial enterprise in forest area, land acquisition was necessary to build connecting roads or other additional facilities required. Enterprises often crosses indigenous farm, eliminating future crops which are important for the life of the Dayak community.

Another dispute was found between the Ammatoa Kajang, an indigenous community of Kajang Sub-district, Bulukumba, North Sulawesi, and PT London Sumatera. The Ammatoans had claimed the land tenure over its land territory since 1980 because PT London Sumatera had deprived their communal land rights by forcing them to leave the concession area where, in fact, both parties had been cultivating plantation for years. However, instead of defending the Ammatoans, the Bulukumba district government had once never considered their claim untill opression from NGOs and local community. The farmers from sub-district Kajang finally brought a case before national courts resulting in the judical decision that they are entitled to a substantial part of the disputed land.[18] These aforementioned cases was obviously not in conformity to the the application of SDG 15 (life on land) in which indigenous community hold a key role as one of its main beneficiary.

3.2.2. b. The Gap Matters Rent Soil v. SDG: Analyze in Area of Environment Law Perspective Both in International and National Legal Instruments

Cultivated or Production Forest has always been organized as a tool to process and produce raw materials. On the other hand, it should have been conserved to stabilize attached abundant nutrients in order to maintain productivity and fertility. However, most people believe that conserving production forest is no longer relevant, meanwhile in protected forest, exploration and utilization is prohibited from any human activities. This perception affirms that human is merely permitted to exploit production forest which, in fact, conversation is also necessary.[2]

Any sectorial approach to reduce adversary effects remains focused on natural resources seen as commodity not as integral part of environmental balance. This implicates that economic efficiency plays vital role rather than achieving neither equity nor justice. Sectorial approach also lacks of competency to harmonize economy growth, which is based on utilization of natural resources as commodity, and duty to maintain landscape function, although each sector has conducted conservation program.

These issues emerged under actual misconception of economy and ecology that both are separable subject. In fact, both are dealing with the term “eco” (house), while the former contained *nomos* or norm

which organizes an ideal framework of household life in a way to fulfill needs of its members. On the other hand, the latter contained the definition of *logos* in ecology which organize household where members live together in a way to keep it sustainable, unharmed, and genuine.[19]

Both subjects evidently denote a method of house holding with regard to the universe is a habitat where any living creatures live. However, the very broad scope of economy is reduced merely to study norms and as a guideline to fulfill human needs, while ecology aims to study relation and life management of all creatures of each habitat in order to be sustainable. Eventually, separation of economy away from ecology, including its principles, damages the sustainability of environment.

Presently, disharmony between economy and ecology are best described in national level where Article 28 H of the 1945 Constitution of the Republic of Indonesia (1) stated that "*everyone has the right... to obtain a good and healthy environment*." Secondly, recognition over ecologically sound established vital element in national economy, as stated in Article 33 (4) "*The national economy is conducted on the basis of economic democracy with the principles of... sustainability, ecologically sound, independence, and by maintaining a balance between progress and national economic unity*."

Further details concerning Article 33 (4), however, implicates it has not affirm that the national economy must be accorded to the principle of ecologically sustainable development as the word "sustainable" is separated away from "ecologically sound". Thus, ecologically sustainable development is yet to establish a complete concept.[20] The merging of various rights in one clause causes the recognition of constituent rights to be overlooked from neither public nor government concern.

The consequence of adoption of universal environmental norms on constitution implies that the principles of sustainable development and the necessity of an ecologically sound are absolute, in fact, required to be formulated into development policy. However, the fact that 2005–2025 National Long Term Development Plan Act 17/2007 does not clarify on definition of ecologically sustainable development along with absence of emphasizing on application of economic development, social benefits and ecosystem support capacity embodied inside vision and mission of Act 17/2007. As a result, economic rights, in particular the right to manage and utilize natural resources, which are the right to fulfill basic human, needs to sustain life, have disguised as a tool to create injustice for society.

State Tenure Rights contained in Article 33 (3) 1945 Constitution, have shifted to politic-legal concept affecting most issues relating to soil and natural resources where government has undeniably the highest rights prevailing other rights over land. Moreover, government has absolute capacity to decide and regulate legal relations between individual and collective with soil and attached natural resources, thereby causing problematic situation.

Local communities for numerous times are disadvantaged by government power to waive their rights to utilize natural resources on the basis of Article 33 (3) of 1945 Constitution and Article 2 (3) Basic Agrarian Act has been misinterpreted. Government acts as owner of any natural resources, not merely tenure, thereby decreasing rights of people for benefit from natural resources.

Article 10 of Rio Declaration had formulated "good environmental governance" in three specific rights covering access to information, access to public participation and access to justice. These aspects have high potential to empower community provided government commits to guarantee those rights will be implemented.

4. Conclusion

SDG 15 which mentions the life on land, is directly connected to the use of forest and other terrestrial biomes. However, the framework of Indonesian national law contains several differences regarding the rights attached to the land as provided by the law. The forest owned by indigenous people is under the control of the state, which severely reduced the enjoyment of the indigenous rights attached to it. The government is entitled to increase state revenue by cooperating with timber industries in accordance to Rent Soil Theory, but unfortunately, both parties remain neglecting the application of SDG 15. National law does not clearly emphasize the integration of sustainability and economic interest. This has caused adversary impact against natural resources and community which lives near industrial area. Fulfilment of SDG

15 can be achieved through integration with other SDG to prevent contradiction with more economic and human-centered SDG. Therefore, there is necessity for government cross-sectoral coordination and support for reform processes, to create an enabling environment for sustainable management of natural resources and business development.

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