

Inconsistency of Pancasila Cita (Law) for Natural Resources Management

Gatot Dwi Hendro Wibowo

Universitas Mataram, Jl. Majapahit No.62, Gomong, Kec. Selaparang, Kota Mataram, Nusa Tenggara Bar. 83115
gatot_dh_wibowo@yahoo.co.id

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ABSTRACT

This conceptual paper aims to shed light on the inconsistencies of Pancasila as nation's ideology for Indonesia and its implementation in natural resources management. By employing Pancasila as ground-norm, texts in the Constitutional Foundations are analyzed, such as 'controlled by the state' and 'prosperity of the people'. The paper concludes that there is an inconsistency of Pancasila both as ideology and law, from which 1945 Constitutional Foundation sprung, which results in mismanagement of natural resources. A proposed complete law is placed forward by integrating *Haq Allah* into natural resources management of Indonesia.

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1. Introduction

Globalization seems to go hand in hand with the destruction of natural resource ecosystems in several regions in Indonesia. The assumption underlying this paper is that human behavior depends on the mindset, while the mindset of a person depends on the ideals, outlook on life or ideology. Pancasila is the ideology of Indonesia, a rich country in terms of its biodiversity [1]. However, we have witnessed the destruction of natural resources of Indonesia [2] despite the noble values of Pancasila. This paper aims to shed light on the inconsistencies of Pancasila as ideology and its implementation to protect natural resources.

Factually, the condition of the environment and natural resources in Indonesia and in general are characterized by several conditions. First, there are different perceptions and perspectives on the environment and resources. The community understands that humans and the environment are an integral part (cosmological view of nature), so that everything that happens for the destruction of nature cannot be separated from its human responsibility; on the other hand the government uses a positivist and even instrumentalist approach which understands that the environment and natural resources are economic assets that must be controlled. Second, there is a decline in the quality of natural resources and the environment due to mismanagement in the interaction of central and regional relations due to the tug of authority. Third, the community still has the spirit and local wisdom to protect and preserve the environment. Local wisdom is shown by the attitude of the community that integrates with natural conditions, in certain respects the interaction of spirituality and culture of Sembahulun people, borrowing reception theory, is a manifestation of their religious spirit. Fourth, there is a paradox or inconsistency in natural resource management due to top policies down, do not consider the people's aspirations (bottom up) which ultimately affect the sustainability of environmental quality in the area.

This paper tries to explain in terms of legal studies by investigating indications of inconsistency in the management of natural resources and the environment between Pancasila as an ideology and ground norm foundation for the Indonesian nation as well as ideals Indonesian



national law, with the 1945 constitutional foundation as well as the rule of the game in the life of the nation and state society, along with its organic laws.

2. Method

Pancasila is employed as analysis tool for this paper. Indonesian law is the principle formally formulated in the Opening of the 1945 Constitution. Pancasila is constituted by four principles. In this paper we focus only on the first element or theme that reads, "The State is based on the Supreme Godhead on the basis of a just and civilized humanitarian policy, within the framework of nation unity".

The first phrase, which states "The State is based on the Supreme Godhead on the basis of a fair and civilized humanitarian principle" contains the ontological foundation of the country and the law of Indonesia. The true meaning of this formulation is that the whole universe and human existence within it are not merely incidental to history or the result of nature itself. The universe was created with a purpose, governed by a law and is the creation of the Beneficent, the Creator, the Power, the God.

Man is created by God in the best of creation [3]. He is equipped with the potential beyond any other being. God created man with the mandate to glorify him through his own human life. Such a mandate actually has meaning, so that people in their lives will always remember God for what they have been told. Man as created by God is expected to be capable of communicating with Him by remembering Him as Creator and all of His commandments. When man is intimately connected with God, man is automatically bound in his thoughts, feelings and actions to what God wants. Human life should echo the voice of God and the will of God as his guide, thought, feeling and action. Such relationships make human beings always controlled by religious norms. Likewise, a nation, which according to the human senses is a man-made institution, can never exist without God's approval. This is in line with what is contained in the 3rd act of the Opening of the Constitution of 1945 which states that "By the grace of Almighty God and by the indulgence of the noble desire for a free and national life ..."

As a consequence of the basis of such a state ontology, the state must be maintained and managed in accordance with its laws in the form of universal natural law. This is in line with the "third phrase" of the first main thought formulation, namely: within the framework of the unity of nation. This state of law (*rechtsidee*) unity is the paradigm of managing and maintaining a state that is in harmony with universal natural law. This is in accordance with the life of the universe, which is a single scheme of One Creator in which every thing that has its own place and role and between them there are interconnected and interdependent. This life has a purpose because in this universe there is a moral order and a moral law that controls the interdependence and interdependence of everything that exists [4]. In the context of the state too, Soepomo gives the meaning of the state as "an integral social order of all groups, all parts, all members are closely related to each other and constitute an organic community union".

Based on the above understanding, maintenance and management of this country, the essence is the maintenance of the conditions of integration through management that fosters integrative interactions, namely the state is concerned with the livelihood of the nation as a whole. The state does not favor one of the strongest or largest groups, does not consider one's interests as central, but the state guarantees the safety of the life of the nation as a whole that cannot be separated. Indonesian national law must be able to protect, preserve and develop the united state's ideals.

The second phrase is "according to a just and civilized basis of humanity". The phrase "just" refers to humans as individual beings, while the phrase "civilized" refers to humans as social beings. From this formulation it was revealed that the anthropological philosophical view contained in the ideals of Indonesian law, namely that humans are mono-dualist creatures, individual creatures simultaneously social beings. Besides social beings, humans also have an attachment to nature and the environment in which humans carry out their lives and lives, therefore we need another view that is in harmony with the environment, a view that emphasizes that humans are a unity with nature and the environment

3. Results and Discussion

Normally, Indonesia's environmental and natural resource management law is stated in Article 33 paragraph (3) of the 1945 Constitution, which states that: "The earth and water and natural resources contained in it are in the control of the nation and used for the greater prosperity of the people". This Article does not provide any material or material changes. The first, second, third, and fourth amendments of the 1945 Constitution did not question the provisions of Article 33 paragraph (3). The change or more precisely the addition is made by adding two additional paragraphs, paragraphs (4) and paragraph (5) of Chapter XIV on the National Economy and the Well-Being of the People.

The first phrase of Article 33 paragraph (3) of Article 45 reads: "Earth and water and the resources of nature contained therein". Summary In this article, the words "earth" are paired with "water." (Terminologically), the word "earth" is not parallel to "water," which is exactly "earth" to "heaven," while the word "water" is more precisely "earth", so the conclusion should be "earth" and the sky ... ". or "land and water ...",

From the above point of view, the preservation and management of this country, the principle is the preservation of the condition of integration through the management of the development of integrative interdependence, that is, the country is concerned with the livelihood of the nation as a whole. The country does not favor one or the most powerful group, does not regard one's interests as center, but the country guarantees the safety of the whole nation as an inseparable union. Indonesian national law must be able to protect, preserve and develop the unity of the state of unity.

The second phrase is "on the basis of a just and civilized humanitarian policy". The expression "just" refers to human beings as individual beings, while the expression "civilized" refers to human beings as social beings. From this formulation it is revealed that the view of the anthropological philosophy contained in the ideals of Indonesian law, is that man is a monodualist, individual being at the same time a social being. In addition to social beings, humans also have an affinity with nature and the environment in which they live and live, so it requires a different view of the environment, the view that humans are one with nature and environment[4].

The word "earth" has the meaning of the planet in which we live, the world or the universe or the surface of the world, the land. The word "land" itself has the meaning of the surface of the earth or the layers of the earth that are above all; the state of the earth somewhere; bounded surface of the earth. In the above definition, according to Munadjat Danusaputro, "earth" is equated with "world" the container of human life, which includes land, sea and air [5]. Thus, the notion of "land" is a part of the world with various contours, both in the form of a dense surface of the earth, land that is not flooded. Land or earth (as opposed to space); high ground (as opposed to low land on the beach); inland areas (as opposed to coastal areas). Thus, the meaning of "earth" by the constitution of the 1945 Constitution, is "land" and / or "land" along with the natural wealth contained therein. Apart from the difference in emphasis (accentuation) on each term, but in principle there is actually no difference in means between these terms. Based on the description above, to avoid extending the meaning (extensive) or inviting different interpretations of the 1945 Constitution, it is better to use the term "land" instead of "earth" in the formulation of paragraph (3).

Furthermore, the word "water" has a very broad understanding and scope, encompassing "water" in the sea and "water" on land, such as rivers, lakes, estuaries and all that is interpreted by inland waters. Therefore, for the formulation in the 1945 Constitution, it is better to use "sea" instead of "water", although it is realized that the notion of "water" is broader than "sea". The assertion of the word "sea" is based on consideration. First, the guarantee of legal certainty, that the explicit affirmation of "sea" in the 1945 Constitution can be a reference in the preparation of the rules under it. Second, factually based on its historical background, the Indonesian nation is a maritime nation, the identity of the Indonesian nation needs to be explicitly affirmed in the 1945 Constitution. Third, the "sea" has now come to the attention of various worlds, this is evidenced by the birth of international conventions on the sea Therefore, one of the implications of Agenda 21 Chapter 17 is the need to affirm the word "sea" in the 1945 Constitution as a basis for the regulation of marine management along with the biodiversity in it. Fourth, "sea" is an inseparable part from "land", therefore "sea" is "unifying" not "separator", so the right word to describe the geographical conditions of Indonesia, namely Java and Sumatra or between Lombok Island and

Sumbawa is not separated by the sea but united by the sea, and so on. As a wealth of priceless resources, the "sea" needs to be preserved and maintained.

The first phrase in paragraph (3) of the 1945 Constitution is considered by the founders of this Republic to be a very valuable asset or capital for the Indonesian people in the form of earth and water and natural resources contained therein, entrusted to the state to be allocated and used for equal - great for the prosperity of the people. Judging from the history of its formulation, paragraph (3) Article 33 does not actually stand alone, but is closely related to other verses as a constitutional translation of the national economic system that is oriented towards the welfare of the people of Indonesia.

The formulation of Article 33 paragraph (3) of the 1945 Constitution is not consistently followed up on its organic laws, such as Law Number 5 of 1960 concerning the UUPA. Article 2 paragraph (1) also mentions "earth and" water "subsequently added to" space ". More complete with the words: "earth", "water" and "space and natural resources contained therein".

According to Parlindungan [6], the addition of "space", in Article 2 paragraph 1 does not mean that Article 2 paragraph 1 of the UUPA adds something, or is constitutive, but merely declarative, which explains that it is certainly not possible for "water" and "earth" without "space", and "space" itself are included in the agrarian sense in the broadest sense. The definition of space or the term that is currently being developed, that is aero space, includes space above the earth and above waters whose height is unlimited, as long as our power and efforts to regulate it in regulation and can maintain it. This broad understanding, as a clear attitude, is that all three understandings are in integration and they should also be integrated in their arrangement and resolution.

In the perspective of Law Number 26 of 2007 concerning Spatial Planning, the notion of space includes land space, sea space, and air space including space in the earth as a unified territory, where humans and living things carry out activities and maintain their survival. Unlike the UUPA in the Spatial Planning Law, the notion of air space (airspace) is not the same as the definition of space (outer space). Space and its contents such as the moon and other celestial bodies are part of space, which is space outside of air space. When drafting this Article, the formation of the 1945 Constitution did not seem to take into account the importance of "air" (in the jurisdiction of the Unitary State of the Republic of Indonesia) as a very large and high value natural asset. On the other hand there is also frequent pollution and damage to the air environment such as smog in Sumatra and Kalimantan, which need to be regulated in the constitution, but in amending the 1945 Constitution, the term, meaning and importance of "air" have never been mentioned in various trials, so the results can be read in MPR Decrees.

Based on the description above, the formulation of the first phrase in paragraph Article 33 paragraph (3) of the 1945 Constitution is appropriate, both in terms of its ecological reality, language and meaning, as well as the consistency of future regulations, namely "Land, sea and air and natural resources which are contained therein.

Meaning of "Controlled by the State"

The words "controlled by the state" in Article 33 paragraph (3) are the basis for the concept of state control rights. As a concept, the right to control the state has yet to have a clear and clear understanding and meaning that can be accepted by all parties in relation to the management and utilization of national resources, thus inviting many interpretations that have implications for its implementation. This difference in implementation both in legislation and in its implementation by the relevant government departments / agencies. As a result, there are often conflicts or conflicts of interest and authority in the management and utilization of national natural resources.

The different interpretations of the meaning of the state's tenure rights from the two laws that are equally sourced from Article 33 of the 1945 Constitution, indicate the growing importance of the study of the state's tenure rights over the management and use of natural resources and a study of the constitution in particular Article 33 of the 1945 Constitution which does not provide formulations clear, especially regarding the meaning, substance, limits of power and involvement of the state / government in the management of natural resources.

Mohammad Hatta, formulated the notion of "being controlled by the state". He elucidated that "Being controlled by the state does not mean that the state itself is an entrepreneur. It is more

correct to say that state power lies in making regulations for the smooth running of the economy, regulations which also prohibit the exploitation of the weak by those who have capital".

The state is not the owner of natural resources, meaning that natural resources belong to God. In the Acehese tradition, ownership of natural resources is called *Haq Allah*, and when it has been managed by the Indonesian people, it becomes *Haq Adam*. *Haq Allah* is what must be "managed" by the state fairly and wisely. Thus, terminologically, the use of the word "managed" seems more appropriate as a substitute for the word "controlled". The term "controlled" is very problematic, both in terms of juridical and socio-political aspects.

First, in an intrinsic sense, there is no concept of "belonging" or "power" (either "controlling" or "controlled") in human beings let alone the state, because it can encourage the birth of an attitude of "arrogance" and "arbitrariness" of the state in resource management natural. A country whose concrete realization is carried out by the Government is only carrying out a "mandate". The state has a basic "obligation" to regulate, and carry out the designation, use, supply and maintenance of natural resources in accordance with the authority that has been given to them, fairly and wisely. Second, the term "controlled by the state" is not known in the concept of law. In the concept of law there is only the concept of authority, rights and obligations in relation to natural resource management. Third, sociologically-politically the elimination of the word "controlled by the state", in other words more appropriate, such as "managed", can prevent the disintegration of the nation and strengthen the unitary state of the Republic of Indonesia. For example, the upheaval that occurred in the regions in the form of demands to the Central Government, as carried out by the people of Aceh and Papua, and also in other regions in Indonesia, is essentially due to the attitude of the Central Government who was unfair in the allocation and distribution of natural resources. In addition, the Central Government often makes decisions without considering the aspirations of local (local) communities, so that in some cases making several other Central Government policies, it does not touch people's sense of justice, so naturally the Government becomes unpopular in the eyes of the people in the regions. Eliminating the word "controlled by the state" basically does not merely remove and then replace with a new term, because if so, it will become a mere formality because the substance actually depends on the political will of the Central Government.

In the history of its development, the relationship between the state's "control" of natural resources, various concepts are known, among others: Classical Liberal State Law Concepts; The Concept of the Socialist State of Law. Based on the weaknesses of the economic system in the two types of rule of law, Mohammad Hatta made a synthesis of the economic system which he called cooperative socialism system. This system contains three important elements, namely: (1) the ideals of Western Socialism which put forward the fairness of humanity with the implementation of democracy regarding political democracy; (2) Islamic teachings which put forward the foundations of justice and brotherhood as well as high judgment on personal human beings as creatures of God; (3) Mutual cooperation as the carrier of Original Indonesian society. Mohammad Hatta's idea of the economic system of cooperative socialism [7] was later outlined in Article 33 of the 1945 Constitution. This view, despite looking at natural resources from an economic perspective, the philosophy and spirit developed for natural resources, were not only of economic value, but also had religious, humanistic values and the value of local wisdom (indigenous knowledge), so that the concept of "mastery" ("management") of natural resources according to this concept, in essence is the implementation or elaboration of various noble ideals of the nation as listed in the Preamble of the 1945 Constitution.

Meaning of "Prosperity of the People"

The essence of the meaning of the formulation of the word "as much as the prosperity of the people", is a kind of balance between "objective" ("objective") and means ("instrument"). "The greatest prosperity of the people" is the goal, while "controlled (or managed) by the state" to "be used" as a means. The state has an obligation to manage natural resources as a logical and ethical consequence of the "control" given by the Constitution.

The provisions of Article 33 of the 1945 Constitution are not something that stands alone, but are related to social welfare. Therefore the aim of "control" ("management") by the state of natural resources is social justice and the greatest prosperity of the people. The management of natural

resources also have a religious dimension in addition to the economic dimension, therefore its use must also be able to meet both physical and mental needs. The use of the term "prosperous" or "prosperity" of the people is not enough to accommodate inner needs, such as "fair" so that one term and meaning is needed that can represent both physical and mental needs. In my opinion, the right term as a substitute for the word "prosperous" or "prosperity" is "prosperous" or "well-being" which has a physical and spiritual meaning, such as feeling safe, secure, happy and prosperous and fulfilling the needs of his life. That is why, the terminology and meaning of "people's welfare physically and mentally", is more precise than just "prosperity of the people". The term "welfare" is also in harmony with the concept of a "welfare state" as reflected in the Preamble to the 1945 Constitution paragraph IV.

The term "people" in Article 33 paragraph (3), is a further elaboration from Paragraph IV to the Preamble of the 1945 Constitution which states: "... promoting public welfare; eternal peace and social justice ... and realize social justice for all Indonesian people ... ". Besides the word "people" there are also the words "general" and "social". Hence, there are three words that are used interchangeably. The three words, although different, are included in the category of legal subjects, therefore to find the meaning of the term needs to be done in a framework related to legal subjects.

Etymologically, the people mean "the whole population of a country, as a counterpart to the government, the common people, ordinary people" Whereas according to the Black's Law Dictionary, the understanding of the people (citizens) is every person (one who) who by law is given rights and certain obligations; all people (all persons) born and obtain citizenship (America).

Based on the description above, an offer of a complete formulation regarding Article 33 paragraph (3) of the 1945 Constitution can be proposed:

"Land, sea and air as well as the natural resources contained therein are the *Haq of Allah*, Almighty God who must be managed by the State fairly and wisely, and be used for the greatest welfare of the people physically and mentally"

The formulation of such norms is philosophically in harmony with the noble ideals of the Indonesian people, as a religious nation. Sociologically it is in accordance with the fact that land, sea and air are a unity of place where humans carry out their lives and lives, and the normative juridical formulation above will facilitate the preparation of legal norms under it.

4. Conclusion

There are at least three things that can be concluded from this discussion. First, in a more macro context, the good and bad management of natural resources and the environment in Indonesia, is very dependent on the spirit of the state administrators. In the midst of limitations and weaknesses of legal products that arise from the 1945 Constitution to organic law as the implementation of the provisions of the 1945 Constitution; the spirit of "pro-environment" needs to be the mindset and attitude of policy makers, both in the executive and legislative branches, both at the national and regional levels. In short, it takes a new spirit or spirit to encourage the creation of a harmonious, harmonious and balanced environment and nature, both on land, sea and air. It is this new spirit or "nationalism" that is expected to encourage the birth of environmental law politics which places the environment as "mainstream" (mainstreaming) in development strategies in Indonesia in general and in Lombok in particular.

Secondly, on a micro scale, as stated by Koesnadi Hardjasoemantri [8], that in environmental problems, humans eventually have to deal with themselves, in a nature that is influenced by humans (man-made-nature), people who are influenced by nature (nature-made-man) , man finds himself. This means, in relation to nature, it must take into account other values, besides technical and economic values. This also means that the threat to nature cannot be accounted for by other parties, but to the attitude of humans themselves both as individuals and as members of society.

Third, socio-culturally, other values in the context of natural resource management and the environment are basically the values of local wisdom, which is the resultant of an intense interaction between the Indonesian archipelago and plural society. Unfortunately, in some cases, local wisdom and values are often ignored in decision making

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