

*The Role of Environmental Organizations in Protecting Human Rights and
Performing Social Justice in Indonesia*

Sri Wartini, Universitas Islam Indonesia, Indonesia

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Abstract

Mining activities carried out by Transnational Corporations (TNCs) may cause positive and negative impacts in developing countries, such as in Indonesia. The positive impacts of TNCs may enhance economic growth in Indonesia, on the other hand, the negative impacts of TNCs may cause environmental pollution and environmental degradation. The activities that have been done by the TNCs violate the right to enjoy healthy environment in Indonesia which has been recognised as the constitutional right and as part of human rights in Indonesia. The paper analyses comprehensively the role of environmental organizations in protecting human rights as well as performing social justice in Indonesia. Furthermore, it examines conceptually what are the challenges and opportunities of environmental organizations in protecting human rights as well as performing social justice in Indonesia. The paper is a normative research and the methodology employed in this paper is library research. While the approaches employed in the paper are statute approach and conceptual approach. The article is analysed qualitatively and presented descriptively. The research finds that the role of the environmental organisations in Indonesia in protecting of human rights as well as performing social justice is paramount.

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1. Introduction

Environmental Organizations in Indonesia have significant role in law enforcement especially in environmental cases. The environmental organizations are not directly protected the human right, but what have been done by the environmental organisations in protecting the environment¹ have indirect impacts of human right protection especially the right to enjoy healthy environment that has been recognized as constitutional right in Indonesia. Protection the right to enjoy healthy environment is one aspect to perform social justice in Indonesia. Social justice is one of the national objectives which is stipulated in Indonesian constitution.

One of the most outspoken environmental Non –Governmental Organization (hereinafter NGOs) to emerge since the establishment of the Ministry for the Environment is the Indonesian Forum for the Environment, known by its Indonesian acronym WALHI (Wahana Lingkungan Hidup Indonesia). Founded in 1980, WALHI is a Jakarta-based network of local and regional NGOs located throughout the Indonesian archipelago.² The organization concern a lot with the environmental protection in Indonesia. Most of the activities of WALHI reflect the objective of the organization.

Mining activities and the exploitation of the forest, such as the conversion of the forest into palm plantation may cause positive and negative impacts. The positive impacts of mining activities and exploitation of the forest may enhance the economic development in Indonesia. On the other hand, mining activities and exploitation of the forest may cause negative impacts to the environment such as cause pollution and environmental degradation which affect the right of healthy environment that has been recognized as part of human right as well as constitutional right in Indonesia. However, the government lacks of capacity to protect the right to enjoy healthy environment.

The research analyses comprehensively what are the role of environmental organisations in protecting human rights as well as performing social justice in Indonesia. *First*, it discusses the legal standing of environmental organisation in Indonesia. *Second*, it examines the social justice in Indonesia. *Third*, it discusses the right to enjoy healthy environment as part of human right and as constitutional right. *Fourth*, it analyses the role of environmental organization in protecting human rights as well as performing social justice in Indonesia. *Fifth*, it analyses the challenges and opportunities of environmental organizations in protecting human rights as well as performing social justice in Indonesia, and it followed by the conclusion.

² Joshua Gordon, “NGOs, the Environment and Political Pluralism in New Order Indonesia”, A Journal of the Southeast Asian Studies Student Association, Vol 2, No. 2 Fall 1998, <
<http://scholarspace.manoa.hawaii.edu/bitstream/10125/2544/1/NGOs,%20the%20Environment%20and%20Political%20Pluralism%20in%20New%20Order%20I.pdf> > Accessed 12 May 2016.

2. Problem Statements

Based on the background which is mentioned previously, the questioned are what are the role of environmental organizations in protecting human rights as well as performing social justice in Indonesia and what are the challenges and the opportunities of environmental organizations in protecting human rights as well as performing social justice in Indonesia.

3. Objective of the Research

The objectives of the research are to analyse comprehensively the role of environmental organisations in protecting human rights as well as performing social justice in Indonesia and to examine conceptually the challenges and the opportunities of environmental organizations in protecting human rights as well as performing social justice in Indonesia

4. Research Method

It is qualitative research. The methodology employed in this article is library-based research. It employes statury and conceptual approaches. While the main reseach materials used in the research are primary and secondary sources. The primary sources consist of Indonesian Constitution, Act No. 32 /2009, regarding Environmental Protection and Management, Act No.14/2008 regarding Public Information, Act No. 39 / 1999 on Human Rights. While the international instruments, such as Universal Declaration of Human Rights, Stockholm Declaration, and Rio Declaration, International Covenant on Economic, Social and Cultural Rights (ICESCR). The secondary sources consist of books, Journal, report and internet which are relevant to the subject matter.

5. Results/ Findings

Based on the research that has been carried out concerning the Role of Environmental Organizations in Protecting Human Rights and Performing Social Justice in Indonesia, there are some results that can be presented based on the analysis that has been determined in the objective of the research.

5.1 Legal Standing of Environmental Organisation

Legal standing can be defined as a right which is owned by individuals or groups/organisation to bring a case before the court as a plaintiffs in civil lawsuit (civil law procedure), without any legal interest. Thus, it can be simplified as a “right to sue”. While, conventionally right to sue only rooted in the principle of " no lawsuit without legal interest " (poit d' interest point d' action).³ The legal interest in question is the interest relating to the ownership (proprietary interest) or a material interest in the form of losses suffered directly injury. The development of the legal concept of right to sue conventionally grown rapidly as well as the legal developments concerning the interest of many people in which a person or group of people or

³ Erna Herlinda, “ Tinjauan Tentang Gugatan Class Actions Dan Legal Standing Di Peradilan Tata Usaha Negara Fakultas Hukum Universitas Sumatera Utara”, < <http://library.usu.ac.id/download/fh/fh-erna5.pdf>>. Accessed on 1 April 2016.

organisation can act as a plaintiff, even though they do not have legal interest directly, but based on the need to promote the interests of the wider community. It can be submitted that the legal standing of environmental organisation is the right to sue of the environmental organisation on behalf of environment⁴ which affect directly the interest of human being.

The opinion to recognise the legal standing of environmental organisation is based on the theory proposed by Christopher Stone which recognises legal rights of natural objects, such as forests, oceans, rivers, mountains as natural objects. Though, these objects do not have capability to speak. The theory it was written in his famous article in 1972, namely “*Should Trees Have Standing? Toward Legal Rights for Natural Objects*”.⁵ Based on the theory, the natural objects should have the legal rights, since the natural objects does have any capability to speak and to carry out legal action, so the entity which represent the interest of the environment is the environmental organisations. The milestone of recognizing the environmental organization in Indonesia was the success of WALHI recognized has a legal standing in the case of *WALHI vs PT Indorayon Utama* in Sentral Court Jakarta 1988.⁶ What had been conducted by the environmental organisations as the participation of the public to enforce the law is the obligation of all stake holders to be actively participate in the environmental law enforcement.⁷

Legal standing of environmental Organizations is regulated by Act No. 32 Year 2009 regarding Environmental Protection and Environmental Management on Article 92 states that :

(1) In the framework of executing responsibility for environmental protection and management, environmental organizations shall reserve a right to file lawsuit in the interest of environmental function conservation.

(2) The right to file lawsuit shall be limited to the implementation of certain measures without demand for compensation, except the real cost or expenditure.

(3) Environmental organizations may file lawsuit if the following requirements are fulfilled:

a. in the form of legal entity;

b. affirming in their memorandum of association that the organizations are established in the interest of environmental function conservation; and

c. already executing concrete activities in accordance with their memorandum of association for 2 (two) years at the minimum.

⁴ Paulus Effendi Lotulung, 1993, *Penegakan Hukum oleh Hakim Perdata*, PT. Citra Aditya Bakti, Bandung, at. 51.

⁵⁵ Christopher D. Stone, *Should Trees Have Standing? –Toward Legal Rights for Natural Objects*”, <<https://iseethics.files.wordpress.com/2013/02/stone-christopher-d-should-trees-have-standing.pdf>> Accessed on 20 May 2016.

⁶ Fajar Winarni, “Pergunaan Legal Standing Organisasi Lingkungan Hidup Dalam Kerangka Penegakan Hukum Lingkungan”, *Mimbar hukum*, Vol. 20, Februari 2008, 153, <<http://mimbar.hukum.ugm.ac.id/index.php/jmh/article/viewFile/229/84>> Accessed on 30 March 2016.

⁷ Koesnadi Hardja Soemantri, *Hukum Tata Lingkungan*, Cetakan ke-18, Edisi ke 8, Gadjah Mada University Press, Yogyakarta, 2000, at 398-399.

Based on the Article 92 Act No. 32 Year 2009 has an objective to preserve the environment with certain conditions. Any environmental organisations who are willing to protect the environment can presumably linked to the capacity of guardianship.⁸

5.2 Social Justice in Indonesia

Performing social justice in Indonesia is one of the mandates of Indonesian constitution. Consequently, it becomes the obligation of state how to achieve social justice in Indonesia. Definitely, social justice in Indonesia is stipulated in our Way of Live Pancasila, namely at the fifth Principle of Pancasila. Beside that, it is also stipulated in the Paragraph fourth of the Indonesian Constitution Preamble.⁹ In many cases, the public especially the affected communities are often unaware or even if realized, they do not have any capability to bring the case before the court, even they do not realise that their right to enjoy healthy environment has been violated.¹⁰ Therefore, in order to materialise social justice in Indonesia, the government has to be responsible to protect the right to enjoy healthy environment as the condition to perform social justice as well as protection of human right.

Thus, state serve as an instrument board and organiser of policies aimed at protecting and promoting human rights on the environment and also performing social justice. The notion of the rights to be controled by state over the various branches of production that are important for the state and the life of many people is legitimate to augment the prosperity of the citizens. The citizens's right, particularly in terms of access to natural resources and the environment should be used as the primary means and the ultimate goal of the right to enhance the social welfare under the control of state which is contemplated by Article 33 (3) of the 1945 Constitution.¹¹

Consequently, state has an obligation to manage natural resources to be used in improving the people's welfare and the pursuit of happiness of life based on Pancasila. Therefore, it is necessary to implement sustainable development principle based on the national policy by integrating the principle of sustainable development¹² in the development programmes taking also into account the needs of the present generation

⁸ Achmad Santosa dan Sulaeman Sembiring, *Hak Gugat Organisasi Lingkungan (Environmental Legal Standing)*, ICEL, 1997, at 19.

⁹ Jimly Asshiddiqie, *Konstitusi Bernegara Praksis Kenegaraan Bermartabat dan Demokratis*, Setara Press, Malang, 2015, at 102-103.

¹⁰ UNEP Background Paper . “ Asia-Pacific Roundtable on Environmental Rule of Law for Sustainable Development in Support to the Post-2015 Development Agenda”, <http://www.unep.org/roap/Portals/96/Ministerial%20Forum%20Agenda/V2_01%2005%202015%20Background%20Paper_Asia-Pacific%20Roundtable%20on%20E> Accessed on 8 April 2016.

¹¹ Article 33(3) Indonesian Constitution states : “The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people”.

¹² Cristina Voigt, *Legal Aspects of Sustainable Development as A Principle of International Law, Resolving Conflicts between Climate Measure and WTO Law*, Leiden-Boston: Martinus Nijhoff Publisher, 2009, h. 14. See, Philippe Sands, *Principles of International Environmental Law, Second Edition*, Cambridge University Press United Kingdom 2003, at .352. See also, David A. Wirth, “The Rio Declaration on Environment and Development: Two Steps Forward and One Back or Vice Versa?”, vol. 29 , *Ga. L. Rev*, Spring, 1995, at 601.

and the future generation by implementing the principle of inter-generational equity¹³ and intra-generational equity,¹⁴ in order to achieved social justice.

5.3 The Right to Enjoy Healthy Environment as Constitutional Right and Human Rights

The impacts of development to the environment cannot be avoided. Development is the right of every state, thus it is important to find solution how to harmonise the need of development and environmental protection at the same time. The United Nations Conference on Human and Environment in Stockholm, Sweden, on June 5 to 6, 1972, adopted the Stockholm Declaration.¹⁵ The Conference was a milestone of the international community awareness regarding the importance of environmental sustainability as a fundamental part for the fulfillment of human rights. It states in Principle 1 of the Stokholm Declaration:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Based on the principle, there is equality among people, every person has the same right to enjoy healthy environment, and each person has the responsibility to protect the environment.

The right to enjoy healthy environment includes "physical environment" and "social environment". In the International Covenant on Economic, Social and Cultural Rights (ICESCR) explicitly, stated the theme of "environment" in Article 12, which is one part of "the right of everyone to enjoy a standard of physical and mental health is the highest that can be achieved . In Indonesia, the environmental rights has been adopted in various regulations including the Indonesian Constitution in Article 28 H. The same protection also adopted in the Act No. 39 of 1999 on Human Rights and act No 32 Year 2009 concerning Protection of the Environment and Management. Similarly, according to Article 33 (4) of the Constitution, "the organization of the national economy shall be based on economic democracy that upholds the principles of solidarity and efficiency along with fairness, sustainability, keeping the environment in perspective, self-sufficiency and by maintaining the balance between development

¹³ M. Hadin Musjad, *Hukum Lingkungan Sebuah Pengantar untuk Kontek Indonesia*, Genta publishing, Yogyakarta, 2015, at 16.

¹⁴ Annika Oskarson, *Intergenerational Equity - Protecting Future Generations Through Domestic Action*, Narter Thesis, Faculty of Law, University of Lund
<<http://lup.lub.lu.se/luur/download?func=downloadFile&recordOID=1561052&fileOID=1565510>>
Accessed on 20 May 2016.

¹⁵ M.Fitzmaurice, "The Principle of Sustainable Development in International Development Law" <<http://www.eolss.net/sample-chapters/c13/e6-67-03-02.pdf>> Accessed on 20 May 2016.

and the unity of the national economy.”¹⁶ Therefore, the Indonesian Constitution 1945 can be said as green constitution.¹⁷

Thus, the right to enjoy healthy environment has been recognised as the constitutional right and as a human right. The right to enjoy healthy environment cannot be maintained without respecting to human rights, and human rights can not be obtained without a good environment. Therefore, human rights such as the right to life, the right to health is very dependent on the existence of a healthy environment.¹⁸ Respect, protection, enforcement and fulfillment of human rights are very dependent on a healthy environment. The obligation of the government are to respect, to protect and to fulfill¹⁹ the basic rights to enjoy healthy environment and to access to justice.

5.4 The Role of Environmental Organisation in Protecting Human Rights and Performing Social Justice in Indonesia

Non Governmental Organization (hereinafter NGO) began to be recognized in Indonesia in the early 1970s in line with the development activities carried out by the Soeharto government. Although the government was able to maintain high economic growth of 8% per year, widespread poverty and lack of community participation in development activities created room for NGOs to play a role in community based social and economic activities. The environmental organisations were involved in a wide variety of fields, either as a complementary provider or as an agent of government programs that could not reach the lowest strata of society. Their programs covered health services, nutrition, clean water and sanitation.²⁰ These environmental organisations started to carry out advocacy activities in support of those whose rights were violated by the regime, such as indigenous communities, people who are suffering from industrial activities, and also from the exploitation of forest by companies.²¹ Indeed, the role of the environmental organisations can be presented as followed :

First, the role of environmental Organization is important in protection of the environment and performing social justice as well as protecting the human rights, because the environmental organization is able to assist the society in protecting their rights. By protecting the environment at the same time also protecting the right to enjoy healthy environment as part of human right and as one of the conditions to

¹⁶The Indonesian Constitution was created in 1945 and has been amended four times. The First Amendment was made in 1999, the Second Amendment in 2000, the Third Amendment in 2001 and the Fourth Amendment in 2002.

¹⁷ Jymly Asshiddiqie, *Green Constitution, Nuansa Hijau Undang-Undang Dasar Republik Indonesia Tahun 1945*, Jakarta, Rajawali Pers, 2009, at. 90. The Provisions regarding the Environment adopted in Article 28(1) H and Article 33(4) of Indonesian Constitution.

¹⁸ Alan Boyle, “Human Rights or Environmental Rights? A Reassessment” *Fordham Environmental Law Review*, Vol. 18, 2007, h. 472-473.

¹⁹ Bagir Manan et.al, *Dimensi Dimensi Hukum Hak asasi Manusia*, Pusat Studi Kebijakan Negara Fakultas Hukum Universitas Padjadjaran, Bandung, 2009, 162-163.

²⁰ Hans Antlöv, Rustam Ibrahim and Peter van Tuijl, “NGO Governance and Accountability in Indonesia: Challenges In A Newly Democratizing Country” <http://www.icnl.org/research/library/files/Indonesia/Peter_NGO%20accountability%20in%20Indonesia%20July%2005%20version.pdf> Accessed on 20 May 2016.

²¹ William D Sunderlin and Ida Aju Prandnja Resosudarmo, “Rates and Causes of Deforestation in Indonesia: Towards a Resolution of the Ambiguities” <http://www.cifor.org/publications/pdf_files/OccPapers/OP-09n.pdf> Accessed on 23 April 2016.

perform social justice in Indonesia. Consequently, the existence of environmental organisations as the partner²² of the government to participate in protecting the environment is important.²³

Second, relating to the resources such, as river, forest and mining is under the control of state based on Indonesian constitution . The Control of resources has the legal implication that the state has the authority to issues policy regarding the exploitation of the resources and also the utilisation of the resources. However, state often ignores the obligation to maintain the sustainability of the resources, the state gives more priority to the economic growth rather than the protection of environment and respect the right to enjoy healthy environment. Thus, the environmental organisations also have the role to affect the changes and the innovation of the policy and also the changing of the bureaucracy of the government.

Third, the environmental organisations has the legal standing to represent the interest of the environment by representing the environment before the court, when the right of the environment is violated, such as industrial activities caused pollution or environmental damage in certain area in Indonesia. For example, WALHI believes that one of the main problem of the environmental problem in Indonesia is also not systematically touched, which is about the inequality of control of natural resources. WALHI actively watches over the activities of TNCs and other companies who conduct mining activities in Indonesia, since they often violate the right to enjoy healthy environment in Indonesia.

Fourth, the environmental organisations strengthen the capacity of people in building initiatives and sustain efforts to protect and to manage the environment and natural resources. Furthermore, the environmental organisations has the capability to interfere policies of the state as well as regional and global institutions that will affect the environment and people's livelihood.

Fifth, the environmental organisations are able to assist the government to solve the environmental problems, in order to protect the right to enjoy healthy environment. In the case, it can be proven by the activities that carried out by the environmental organisations, such as , various local and regional environmental organisations played a key role in the government's programmes. Providing pollution monitors and community organizers that the government could scarce afford.

Sixth, the environmental organisations also have the role to affect the behaviour of the society to enhance the awareness of the society regarding the protection of the environment. The capability of the environmental organisatios are supported by the global relationship between the environmental organisations with the international donor countries or international environmental organisations enable them to be the agent of change in the society to protect human right and to perform social justice in indonesia. Beside that, the environmental organisatios have the capability to

²²Barbara Gemmill and Abimbola Bamidele-Izu, “The Role of NGOs and Civil Society in Global Environmental Governance”, < <http://environment.yale.edu/publication-series/documents/downloads/a-g/gemmill.pdf>> Access on 21 May 2016.

²³Wahana Lingkungan Hidup Indonesia , <http://www.foei.org/member-groups/asia-pacific/indonesia>

empowering the society by utilising their programme to encourage the society to participate in the protection of the environment, such as the “BIO-Right”.²⁴

5.5 The Challenges and opportunities to Perform Social Justice and to Protect Human Right in Indonesia

The role of environmental organizations in protecting the right to enjoy healthy environment in order to perform social justice as well as human right protection that has been discussed previously are not an easy task. In performing the role of environmental organisations, there are many challenges that have to be overcome, however, there are also many opportunities that can be obtained. Based on the experiences and cases which occur in Indonesia, it can be presented the challenges and opportunities that are facing by the environmental organisations.

5.5.1 The Challenges of Environmental Organisations to Perform Social Justice and Human Rights Protection in Indonesia

First, the environmental organisations do not have capability to sufficiently protect the interest of the environment, if there is no support from the government. *Second*, the environmental organization often get some intimidation from the government if they frontally against the environmental policy of the government. *Third*, the environmental organisation lack of financial support, since the organization is an independent organization without any support of the government budget. Fourth, sometime the member of the organisation who directly against the project which are proposed by companies, their life are threaten

5.5.2 The Opportunities of Environmental Organisation in Protecting Human Rights and Performing Social Justice in Indonesia

In line with the ongoing democratisation process in Indonesia, perceptions of the government, the private sector and donors about the existence and role of civil society in general and Environmental organisations in particular have also changed. Except for some vocal NGOs working on human rights and environmental issues, the government seldom intervenes anymore directly in NGO activities. Therefore, the opportunities of the environmental organisations in protecting human right and performing social justice in Indonesia as followed :

First, there are indications of increasing appreciation of the role of environmental organisations, for example in the post-tsunami disaster and relief operations in Aceh. The government begins to see the need to create a new division of roles among stakeholders (government, private sector and NGOs) by giving opportunities to independent community initiatives, as well as encouraging them to actively participate in government programmes. According to government statements, it is hoped that a stronger, more democratic and more dynamic community will emerge through improved community capacity to solve their own problems.

²⁴ Bio-right is a mechanism of innovative financial support to overcome the environmental damage by providing soft loan to the society with certain condition if they are able and success to make conservation of the wetland, so the environmental organisation will let them not to repayment their loan, however, if they failed to conduct conservation, they have to pay back their loan.

Second, the government appreciates environmental organisations efforts in promoting good nonprofit governance, and in improving professionalism, transparency and accountability. The government also sees the need for a forum of environmental organisations. Thus, a strong networks and coalitions can provide capacity development support for organisations to improve their technical capabilities, introduce them to resources and sources of diverse funding. The cycle is self-sustaining, and that leads to sustainability²⁵

Third, the private sector primarily views environmental organisation as institutions with a capacity to influence corporate missions and motivate corporations to develop and improve their performance in corporate social responsibility. Environmental organisations can motivate changes in corporations' approach towards its social function from a charity-based to a community-empowerment approach. The environmental organisations are also viewed as being closer to the grass-roots community and therefore as having the potential to collaborate with corporations in developing better community development programmes.

6. Conclusion

There is close relationship between the protection of the right to enjoy healthy environment and the protection of the human right as well as performing social justice in Indonesia. When the right to enjoy healthy environment is violated, it will cause the violation of human right, and it also simultaneously affects the performing of social justice in Indonesia. Consequently, in order to perform the obligations of state in order to protect the human right and to perform social justice needs the active participation of environmental organisation as the partner of the government. Based on the previous explanation it can be concluded that the role of the environmental organisation is very important in protecting the right to enjoy healthy environment as part of human right as well as performing social justice in Indonesia. However, there are some challenges and opportunities of the environmental organisations in participating to the protection of human right and performing social justice in Indonesia.

²⁵ Megan McGlynn Scanlon and Tuti Alawiyah, "The NGO Sector in Indonesia: Context, Concepts and an Updated Profile", Prepared for the Department of Foreign Affairs and Trade. < [http://www.ksi-indonesia.org/files/1450223618\\$1\\$5JYTU3D\\$.pdf](http://www.ksi-indonesia.org/files/1450223618$1$5JYTU3D$.pdf)> Accessed on 12 May 2016.

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International Instrument

Rio Declaration on Environment and Development

Stockholm Declaration on Human and Environment

Universal declaration of Human Rights

International Covenant on Economic, Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights ((ICESCR)

National Regulations

The 1945 Constitution of Republic Indonesia.

Act No. 32 of 2009 Regarding Environmental Protection and Management.

Act No. 39 of 1999 on Human Rights International instruments,

Act, No. 14/ 2008 regarding the Openness of Public Information,