

Jurnal suistinble and development Q2 oktober 2023

by IZA RUMESTEN

Submission date: 19-Dec-2023 06:46AM (UTC+0700)

Submission ID: 2262233523

File name: journal_suistinble_and_development_Q2_Oktober_2023.pdf (442.43K)

Word count: 12769

Character count: 72377

PROTECTION OF HUMAN RIGHTS AGAINST THE ENVIRONMENT IN THE INDOONESIAN LEGAL SYSTEM

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ABSTRACT

Purpose: This research examines the relationship between human rights and environmental protection in the context of Indonesia's legal system.

Theoretical Reference: It refers to Indonesia's legal system and the 1945 Constitution to understand the regulation and implementation of human rights and environmental protection.

Method: The study employs the normative law method with philosophical and analytical approaches.

Results and Conclusion: Indonesia's constitution guarantees the right of every individual to a good and healthy environment; the enforcement and safety of these rights often face various challenges. The challenges include the imbalance between economic goals and environmental protection, weak law enforcement, and a need for more understanding of Human Rights and public participation in environmental issues.

Implications of Research: Through a deeper understanding of the relationship between human rights and environmental protection, it is expected that Indonesia's legal system can be more effective in ensuring a sustainable and habitable environment for all its citizens.

Originality/Value: This article suggests the importance of enhancing the integration of human rights and environmental protection within the framework of the Constitution and daily practices. Additionally, increasing awareness and compliance among all parties with existing regulations is highly necessary. Hopefully, these efforts will support achieving sustainable development goals in Indonesia, which encompass human rights and a healthy environment.

Keywords: human rights, environmental protection, Indonesian constitution.

Received: 24/07/2023

Accepted: 16/10/2023

DOI: <https://doi.org/10.55908/sdgs.v1i110.570>

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PROTEÇÃO DOS DIREITOS HUMANOS CONTRA O MEIO AMBIENTE NO SISTEMA JURÍDICO INDONÉSIO

RESUMO

Objectivo: Esta investigação examina a relação entre os direitos humanos e a protecção ambiental no contexto do sistema jurídico da Indonésia.

Referencial Teórico: Refere-se ao sistema jurídico da Indonésia e à Constituição de 1945 para compreender a regulamentação e implementação dos direitos humanos e da protecção ambiental.

Método: O estudo utiliza o método do direito normativo com abordagens filosóficas e analíticas.

Resultados e Conclusão: A constituição da indonésia garante o direito de cada indivíduo a um ambiente bom e saudável; a aplicação e a segurança destes direitos enfrentam frequentemente vários desafios. Os desafios incluem o desequilíbrio entre os objectivos económicos e a protecção ambiental, a fraca aplicação da lei e a necessidade de uma maior compreensão dos direitos humanos e da participação pública nas questões ambientais.

Implicações da Investigação: Através de uma compreensão mais profunda da relação entre os direitos humanos e a protecção ambiental, espera-se que o sistema jurídico da Indonésia possa ser mais eficaz na garantia de um ambiente sustentável e habitável para todos os seus cidadãos.

Originalidade/Valor: Este artigo sugere a importância de melhorar a integração dos direitos humanos e da protecção ambiental no âmbito da Constituição e das práticas quotidianas. Além disso, é altamente necessário aumentar a sensibilização e o cumprimento entre todas as partes das regulamentações existentes. Esperamos que estes esforços apoiem a consecução dos objectivos de desenvolvimento sustentável na Indonésia, que abrangem os direitos humanos e um ambiente saudável.

Palavras-chave: direitos humanos, protecção ambiental, constituição indonésia.

1 INTRODUCTION

An interesting sentence uttered by one of the thinkers who lived in the 6th century AD "Why do you enslave humans, when, really, their mothers gave birth to them in a state of freedom"(Pratama, 2022). Human rights have a lengthy and convoluted history of development across the globe. Every person, regardless of their background, creed, colour, or socioeconomic situation, is born with a set of rights known as human rights. All people everywhere have inherent, inalienable rights. Civil, political, economic, social, and cultural rights are all fundamental human entitlements protected by domestic and international law (Asshiddiqie & Constitution, 2010).

Human rights as individuals and as members of society are guaranteed by the Constitution of 1945 and are emphasised throughout Pancasila, from the first to the fifth precepts. The Indonesian Declaration of Human Rights seems to predate the United Nations' Declaration of Human Rights, which was adopted in 1948. This Law is founded



on Pancasila and the Constitution of 1945, and its content has been revised to reflect societal changes and the evolution of national law. Human rights concerns were first codified in Chapter X Articles 28A through 28J of the modified 1945 Constitution as a consequence of the 2000 Constitution's Second Amendment (Setiaji & Ibrahim, 2018). Human rights in Indonesia's constitution date back to 1947, three years before the 1948 UN statement on the subject. When compared to the constitutions of other nations, it represents a significant intellectual leap forward.

The Stockholm Declaration (1972) is the first international document that recognises the right to a healthy environment through 26 principles, and is reinforced by international environmental law, where the use of the term international environmental law stems from the development of the first United Nations Conference on the Human Environment. Article 28H Paragraph (1) and Article 33 Paragraph (4) of the 1945 Constitution, which provide protection for the environment, are examples of the constitution with a green tinge or the Green Constitution.

International conventions, both general and special, establish rules that are expressly recognised by the participating countries, and shall be applied by the court whose function it is to decide according to international law the disputes referred to it, as stated in Article 38 of the statute of the International Court of Justice. Subject to the provisions of Article 59, court decisions and teachings of the most highly qualified publicists of various nations as an additional means for the establishment of legal rules, b. custom international, as evidence of general practise accepted as Law; c. general principles of law recognised by civilised nations; d. The court's ruling is only binding between the parties and in this specific matter (Article 59). The court's ability to rule a matter *ex aequo et bono* with the agreement of the parties is not diminished by this clause.

Some legal scholars have complained that article 38 fails to acknowledge other sources of law, including resolutions of the United Nations General Assembly, *jus cogens*, soft law instruments like declarations, and judicial judgements. The author argues that *jus cogens*, such as the Principle of Non-Use of Force, the Principle of Non-Intervention in Article 2 of the UN Charter, and the principle of prohibition of *aggressio juris*, have been incorporated into many international agreements, while UN MU resolutions, such as UN MU Resolution No. 2625 of 1970 or soft law instruments like principles 21 of the 1972 Stockholm Declaration, can already become part of customary international law and general law principles.



Long before other governments, notably the United Nations (UN), recognised Human Rights and Environmental Protection as two of their top priorities, the State of Indonesia had already given them serious consideration.

According to Robyn Eckersley, ecocracy (also known as "Ecological Democracy") is the belief that all stakeholders who may be impacted by environmental risks and threats should have a voice in shaping environmental policy. (Eckersley, 2004) Ecocentrism, the concept that recognises humanity's inherent place in the natural world, provides the philosophical foundation for this philosophy (Kopnina et al., 2018), in order to ensure that human beings and the natural world are on equal footing. (Astriani, 2021) The idea of ecocentrism is a response to the anthropocentric belief that people exist in isolation from the natural world. (Steiner, 2010)

Although the intersection of human rights and environmental protection occurred millions of years ago, its significance in both the present and the future must be emphasised. In the same vein as the concept of sustainable development or "sustainable development" in Indonesian (Idris, 2013). There must be parity in the protection of human rights and the environment wherever the law is enforced. To ensure that no group is at a disadvantage with respect to the two key tenets of the evolution of domestic and international law.

In cases stretching back millions of years, the connection between human rights and the environment is undeniable and must be emphasised for continued progress in the present and the future. For example, in the application of the legislation, Human Rights and environmental protection must be treated equally, as in performance teori sustainable development (or sustainable development in Indonesian). To ensure that no group is at a disadvantage with respect to the two key tenets of the evolution of domestic and international law. (Idris, 2013)

Article 28H Paragraph (1) and Article 33 Paragraph (4) of the 1945 Constitution provide the legal foundation for environmental preservation and may be used while examining the Constitution's provisions for human rights and the environment. Paragraph one of Article 28H ensures that everyone has the right to material and spiritual well-being, a safe and secure place to call home, and enough food, clothing, and medical care. Because, as stated in Article 33, Paragraph 4, economic democracy is used to organise the national economy in accordance with the values of cooperation, efficiency with



fairness, sustainability, environmental consciousness, autonomy, and national economic unity.

Human rights and environmental protection have been difficult to put into practise in Indonesia for a number of reasons. The right to a healthy environment is guaranteed by the constitution, but this right is undermined by the widespread pollution and environmental degradation that continues to plague modern life (Zaid et al., 2023). Furthermore, current restrictions are frequently ineffectively administered, and law enforcement is inadequate (Hadiprayitno, 2011)

Human rights and environmental protection are two of the most contentious issues of our day. A major obstacle is the conflict between fostering economic growth and safeguarding the environment (Hadiprayitno, 2011). Policies for development tend to prioritise economic expansion above ecological sustainability. The ineffectiveness of the justice system is a problem that contributes to environmental degradation and human rights abuses (Hamzani, 2020).

A lack of public human rights awareness of the significance of a healthy environment and how a damaged environment might harm their rights is another difficulty encountered by those working to preserve and promote human rights and the environment in Indonesia. (Lestari et al., 2020) There is also a lack of community engagement and input into environmental policy and planning. In addition, the government, the commercial sector, and civil society must all be involved in order to effectively address climate change and other global concerns.

To achieve sustainable development in the future, Indonesia must make more efforts to include human rights and environmental protection into its constitutional framework and everyday practise, and to guarantee that all parties are familiar with and abide by these standards. Based on describe above, the problem of this research is :

1. How are human rights and the environment regulated in the Indonesian legal system?
2. How far is the implementation of human rights and the environment in practice in Indonesia?
3. What are the challenges faced in protecting and promoting human rights and the environment within the framework of the Indonesian legal system?



2 LITERATURE REVIEW

Human rights and environmental conservation are becoming key topics in research and writing. In this examination of the relevant literature, we will look at how this problem has been handled in the past, as well as the successes and failures that have occurred in the Indonesian setting.

Current methods for identifying and reducing the dangers of human environmental rights violations are discussed by Johnston (1995) (Johnston, 1995). He stresses the need of physical distance between people who live with the unpleasant effects and those who make the course of action in making immoral conduct socially accountable. In this vein, Wewerinke-Singh and Doebbler (2022) examine the use of State duties under international law to shield individuals from the harmful impacts of climate change (Wewerinke-Singh & Doebbler, 2022). The distribution and use of natural resources is a major topic in debates regarding human rights vs. markets, as David A. Taylor (2004) explains in his study of human rights and environmental challenges. In order for many sectors of society to actively react to the climate issue, it is crucial that civic space be preserved, as Patterson (2021) emphasises (Patterson, 2021).

The notion of compensating victims of climate change, as addressed by Chapman and Ahmed (2021), is novel in its attempt to address the injustices caused by climate change (Chapman & Ahmed, 2021). In the meanwhile, van Kalmthout et al. (2021) address how businesses should do legally required due diligence in regards to human rights and the environment (van Kalmthout et al., 2021). Heinämäki's contributions (2021, 2020) give a concise assessment of recent advancements and successes in the field of human rights and the environment. (Fauschald et al., 2010, p. 19) Kahl (2022) argues for individual human rights as a means of protecting the planet's environment, but she also highlights the dangers of human rights activism (Kahl, 2022).

Human rights and environmental conservation have been studied, according to Shelton, ever since the 1972 Stockholm Conference on the Human Environment (Shelton, 2006). (Pasapan, 2020) and (Sodikin, 2021) in their study elaborating on the ways in which Indonesian legislation protects the environment and human rights. Darmawan (2022) considers the possible tension between environmental protections and economic growth, and she stresses the need of striking a fair balance between the two (Darmawan, 2022).



That said, Chapman and Ahmed (2021) try to discuss the concept of climate reparations, which is based on the principles of human rights and accountability for human rights violations, and this literature demonstrates the difficulties inherent in protecting human rights and the environment under the Indonesian constitution (Chapman & Ahmed, 2021). They believe that this idea may help mitigate the unfair effects of climate change on a worldwide scale, and they want to do so by creating the worldwide Climate Reparations Fund. (Chapman & Ahmed, 2021)

Van Kalmthout et al. (2021) underline the significant legislative step taken by the European Union to require human rights and environmental concerns in commercial practises. Their proposed rulemaking on human rights and environmental due diligence is seen as a model for other areas to follow in their pursuit of environmental justice. The 2021 declaration by the United Nations Human Rights Council that access to a clean, healthy, and sustainable environment is a human right was noted as a significant new step. As was said before, Heinämäki predicted that this ruling will lead to further national and international lawsuits protecting people's right to a healthy environment. The difficulties of applying current human rights criteria to the issue of climate change are discussed; as well as the necessity for a distinct human right to climate protection, in Kahl's (2022) work. Human rights to climate protection, he says, may help meet fundamental needs and pave the way for more robust legal safeguards for people's rights.

Turning to Indonesia, research by (Pasapan, 2020) and (Sođikin, 2021) presents an overview of the Indonesian Constitution's protections for human rights and the environment. They stressed the importance of the constitutional guarantee of a safe and healthy natural environment. Given the tension between protecting the environment and promoting economic growth, research by (Darmawan, 2022) demonstrates that there are still development activities in Indonesia that pose risks to the environment. The possible clash between environmental rights and the right to growth is a problem that is brought up, for instance, by Darmawan (2022). The right of local populations to a safe and livable environment is frequently compromised by the construction of massive infrastructure projects like relocating the capital city to East Kalimantan Province. This demonstrates the need of striking a balance between development requirements and environmental conservation in giving effect to constitutional guarantees of human rights and environmental protection.



Based on the research and literature that has been examined, it is clear that safeguarding both human rights and the natural world is an intricate and multifaceted endeavour. Government, business, civic society, and the international community must all work together to find lasting solutions to today's complex problems. While there has been improvement, especially in terms of implementation and enforcement, several studies suggest that there is still a long way to go.

The right to growth must be balanced with the right to a healthy environment in the Indonesian setting. Policies and rules that are already in place need constant revision to account for new circumstances. Human rights and environmental protection need civil society's active engagement, effective monitoring, and demands for responsibility from those who cause environmental harm. Therefore, concerted action and unwavering dedication from all stakeholders are required to translate theoretical recognition into tangible progress towards protecting human rights and the environment.

3 RESEARCH METHODS

The concerns and/or concepts that were chosen as the basis for this study classify it as normative legal research. The research methodology is philosophical and analytic, emphasising the use of reasoned perspectives, critical analysis, and philosophy to arrive at conclusions that seek to provide fresh discoveries as solutions to the primary issues identified (Ishaq, 2017). It will also be analysed using descriptive analytical techniques, such as providing a summary of the relevant statutes, regulations, and legal theory, as well as examples of effective law enforcement policies and procedures (Mahmud Marzuki, 2011).

In light of this, the interpretation and consequences of the legal system for safeguarding the environment and human rights are discussed. The regulation's impact on existing legal practise and the issues it confronts will be discussed and evaluated using an analytical descriptive approach.

This study will examine the current legal theory and statutory rules in Indonesia to determine how far human rights and environmental rights are applied in practise there. The present implementation status will be described using descriptive analysis, including compliance rates, obstacles to enforcement, and social and environmental effects.

This study will take a philosophical approach to formulating and reviewing the logic that exists in present law and practise with regards to the difficulties encountered in



safeguarding and promoting human rights and the environment within the framework of the constitution. Human rights in enforcement of environmental legislation, interpretive and implementation constraints, and other potential obstacles arising from social, political, and economic dynamics will all be taken into account in this investigation.

This study's strategy and methodology are meant to shed light on the difficulties inherent in enforcing human rights and environmental protection within the context of the Indonesian system, while also yielding actionable insights for enhancing the efficacy of future legal practises and environmental protection.

4 DISCUSSION

4.1 REGULATION OF HUMAN RIGHTS AND THE ENVIRONMENT IN THE INDONESIAN LEGAL SYSTEM

4.1.1 Human Rights

The advancement of human rights across the world is intrinsically linked to the issues that have prompted it. The Arabi Human Rights Law, which was enacted in 1792 B.C., offers evidence of this. After conquering Mesopotamia, King Arab Human Rights of Babylon drew up Arab Human Rights Law to regulate the new, more diversified civilization. Several protections for nobility, such as freedom from arbitrary detention, are spelt out in this statute (Muabezi, 2017). Continuing Since then, three major events in the Western world (Europe)—the Magna Carta, the American Revolution, and the French Revolution—have shaped the growth of human rights. In 1215, King John of England and the English nobility signed a document called the Magna Charta. In it, the monarch promises certain privileges to the nobility and their offspring. The assurance was made in exchange for the aristocrats' previous financial support of the government. These protections have since developed and been included into the British constitution (Noorda, 2021).

From 1775 until 1783, the people of the United States fought a war of independence against British colonialism known as the American Revolution. The United States of America declared its independence from Great Britain on July 4, 1776, with the issuance of the Declaration of Independence. Principles of human rights such as equality, the right to life, freedom, and the pursuit of happiness are spelt out in this proclamation (Şimşek & Kara, 2023).



The French Revolution was a sort of popular uprising against the absolute rule of France's monarch at the time, Louis XVI. The Declaration des droits de l'homme et du citoyen (Declaration of the Rights of Man and Citizens) was released on August 26, 1789, as a consequence of the revolution that occurred in France from 1789 to 1799. Rights and freedoms (liberty), fairness (equality), and brotherhood (fraternite) were all included in this declaration) (Wege, 2023).

Human rights in Indonesia were characterised by the development of national movement organisations between 1908 and 1945. (Budi Oetomo) The petitions sent to the colonial authority and the articles published in the Goeroe Desa newspaper demonstrated the leaders' understanding of the importance of association and allowed them to voice their concerns.

Budi Oetomo popularised and implemented a model of human rights philosophy based on the dual freedoms of assembly and speech. (The Indonesian Group) The Indonesian Association, which is part of the national movement, places a premium on the freedom of choice for its members. The Indonesian Association movement shifted focus from being a social group to a political party. An official Indonesian Association Declaration was released in 1923 and printed in Men's Indian. The Indonesian Association's hopes for a whole new nation were laid forth in the Declaration.

Sarekat Islam is a group that fights for the rights of its members so that they may live a life free from persecution and prejudice. Sarekat Islam's fight stems from a commitment to upholding human rights as outlined in Islamic texts.

Additionally, the Indonesian National Party advocates for self-rule. The country's residents will be safe from repression and violations of human rights if it achieves independence. The Indonesian Ministry of Education The Indonesian government's education agency is a staunch supporter of citizens' legal protections. The freedom of speech, the right to choose one's own government, and the freedom to organise into political groups are all examples of political rights. This group also fights for the right to participate in governing the state and for equal treatment under the law (Gunakaya, 2019).

Indonesian independence day. Human Rights Ideas Up for Discussion In 1945, during a meeting of the Investigative Body for Preparatory Work for Indonesian Independence, issues of human rights were discussed in preparation for independence. Sockamo and Soepomo, on one side, and Moh Yamin and Moh Hatta, on the other, participated in the discussion. Human rights such as the right to be treated equally under



the law, the right to work, the freedom to adopt a religion and belief system, and the right to associate are at the centre of the session of the Investigative Body for Preparatory Efforts for Indonesian Independence. Soepomo believed that the Indonesian people had become one with their nation and that the government was no longer required to safeguard them from the government. But Moh Yamin and Moh Hatta had the complete opposite view (Moh, 2017).

The Investigative Body for Preparatory Efforts for Indonesian Independence Promulgates the 1945 Constitution during its Session. Several articles, including Article 28, can be seen to be related to the idea of Human Rights, and so it is explained that there is a reformation of the concept of Human Rights in it, although only a small part, can already represent a form of affirmation of a state's recognition of the sovereignty of Human Rights in Indonesia. Article 28 of the 1945 Constitution only determines matters concerning freedom of association and assembly and the freedom to express thoughts orally and in writing; it does not provide a direct and unequivocal constitutional guarantee regarding the existence of these rights for all citizens. According to Article 29 (2), "the state guarantees each resident the freedom to embrace their own religion and to worship according to their own religious and sincerely held beliefs," all residents have the right to practise their faith freely. In contrast, the remaining clauses deal only with the rights of citizens, often known as constitutional rights, and are in no way a formulation of human rights.

Citizens are the only individuals entitled to the protections of the Constitution; non-citizens have no such rights. In addition to many other articles, including Articles 30(a), 31(a), and 34(a). Although the phrase "Human Rights" does not appear in any of these articles, the rights and responsibilities of citizens do, and it is reasonable to infer that the rights at issue are Human Rights unique to the people of Indonesia. Human rights provisions were moved to their own chapter in the second amendment to the 1945 Constitution. This new Chapter XA contains ten articles and twenty-four paragraphs dedicated to protecting and enforcing citizens' rights to liberty and security. All of the internationally recognised facets of Human Rights are included in this formulation. The Constitution of 1945 allows for the limitation of all human rights guaranteed by Chapter XA. As the last provision of all rules regulating Human Rights, Article 28J has the potential to both restrict and enhance such rights (Handayani, 2014).



This exemplifies the 1945 Constitution, which has undergone several amendments since its inception, implicitly acknowledging that existing regulations must be updated based on current developments including human rights themselves, keeping in mind that in its implementation the development of the human rights system at the international level continues to move forward, so law in Indonesia must continue to adjust. In addition, the people of Indonesia have not reaped the blessings of justice under the existing legal system. The amount of unresolved cases of human rights breaches is indicative of this.

4.1.2 Environmental Law

Since environmental law may be found in many areas of preexisting law, it defies the traditional categorization of law into discrete fields. The Civil Aspect, the Criminal Aspect, and the Administrative Aspect make up the three facets of Environmental Law, which is a multidisciplinary field of law. Beginning with the birth of the revolution in 1899 and the various regulations that followed, the discussion of Environmental Law moves on to its historical development, which has contributed greatly to the development of Regional Environmental Law, which has developed quite significantly (Subekti et al., 2023). Meanwhile, it is first codified at the state level via the environmental law system. One of the nations that started it off was Indonesia. This is evident in the Constitution of 1945, particularly in a number of articles dealing with environmental issues, such as Article 28 H paragraph (1), which states that every citizen has the right to material and spiritual well-being, to a secure and pleasant place to live, and to a clean and healthy natural environment. If the phrase "controlled by the state" is solely understood as ownership in a civil (private) sense, then the provision in Article 33, paragraph 3, that states "earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people" would be rendered meaningless. Several more pieces go into further detail on topics expressly relevant to environmental law.

Only those with citizenship status are entitled to the protections afforded by the Constitution; noncitizens are not. In addition to many other articles, including Articles 30(a), 31(a), and 34(a). While the word "human rights" isn't used anywhere in these articles, the rights and responsibilities of citizens are, from which it may be deduced that the rights at issue are, in fact, Human Rights with which the people of Indonesia are uniquely concerned. Human rights law is codified in Chapter XA of the Second



Amendment Constitution of 1945, specifically Articles 28A through Article 28J, which establish Human Rights as a cornerstone of the rule of law and outline the procedures for enforcing them. All of the internationally recognised facets of Human Rights are included in this formulation. The Constitution of 1945 allows for the enforcement of all human rights enumerated in Chapter XA to be restricted. As the last item in the collection of human rights laws, item 28J reaffirms and expands the scope to which human rights may be curtailed (Sriyanti, 2023).

The recognition of environmental law at both the international and national levels does not have a significant impact on legal issues related to the environment in Indonesia, this is evidenced by the many environmental problems both individually and in groups that continue to damage the environment. Among them are polluted rivers, forest destruction, floods, air pollution, decreased biodiversity, soil pollution, garbage, damage to marine ecosystems to cases of opening new land to ongoing forest burning (DLHK, n.d.). Indicates that the existing environmental law is unable to provide a deterrent effect for actors who damage the environment.

Article 1 paragraph 3 of Indonesia's 1945 constitution establishes the country as a constitutional republic. An essential part of any democratic government is ensuring that all citizens are able to freely exercise their fundamental rights. The constitutional guarantee of a safe and healthy environment necessitates the execution of laws designed to conserve natural resources and maintain ecological balance. Due to the growing severity of the environmental catastrophe, studying environmental concerns in more detail is essential.

According to Mattias Finger, the current global environmental crisis is at least caused by a number of factors, including wrong and failed policies; inefficient technology that even tends to damage; low political commitment, ideas, and ideology that ultimately harm the environment; the actions and deviant behaviour of "stray" state actors, ranging from transnational corporations to CEOs; the spread of cultural patterns like consumerism and individualism; and individuals who disregard the environmental impact of their actions. After that, Finger believes that the best way to solve environmental issues is to improve policy making, develop innovative technologies, increase political and public commitment, develop a new environmental ideology (green thinking), deal with "misguided" actors, and alter cultural norms, individual behaviour, and consciousness (Sriyanti, 2023).



This means that protecting the environment must be a priority in any plan to ensure the continuation of life and improve people's standard of living in the long run. The Constitution of the Republic of Indonesia, among other national and international documents, recognises and protects the right to a decent and healthy environment within the framework of Human Rights.

Article 28H, section 1, of the Indonesian Constitution guarantees every citizen the opportunity to achieve material and spiritual fulfilment, a safe and secure place to call home, and a wholesome natural setting in which to raise one's children. This demonstrates that environmental rights have been included in the Indonesian constitution. Water pollution, deforestation, flooding, air pollution, decreased biodiversity, soil pollution, waste problems, damage to marine ecosystems, and cases of opening new land to burning forests are just a few of the environmental problems that occur in Indonesia, demonstrating a failure to implement environmental law and protect the right to a good and healthy environment. This demonstrates the severe difficulties encountered in Indonesia when attempting to administer and enforce environmental regulations.

Other complex issues, such as development policies that ignore environmental considerations, technologies that harm the environment, a lack of political commitment to protecting the environment, and harmful corporate and individual behaviour, also contribute to the difficulty of enforcing environmental laws. Better policies, environmentally friendly technologies, increased political and public commitment to the environment, action against polluting corporations and individuals, and shifts in cultural norms and individual behaviour are all necessary to meet this challenge head-on.

4.2 IMPLEMENTATION OF HUMAN RIGHTS AND THE ENVIRONMENT IN PRACTICE IN INDONESIA

There are many factors that make it hard to enforce environmental laws, including development policies that don't take the environment into account, harmful technologies, a lack of political commitment to protecting the environment, and harmful corporate and individual behaviour. To face this problem head-on, we need better regulations, ecologically friendly technology, a greater political and public commitment to protecting the environment, action against polluting firms and people, and a change in cultural norms and individual conduct (Mufidah & Habibi, 2019). The Constitution of 1945 serves as the supreme legal and political reference in the development, implementation, and



enforcement of environmental legislation, namely Article 28H and Article 33 paragraph (4) (Wartini & Ghafur, 2015). A right to the environment and the promotion of sustainable development are guaranteed under Article 28H and Paragraph 4 of Chapter 33 of the Constitution of 1945 (Wartini & Ghafur, 2015).

Article 65, paragraph (1) of Law 32 of 2009 on Environmental Protection and Management states that everyone has the right to a decent and healthy environment (Indrawati, 2022). The notion of human rights is internationally recognised as a basis for law, politics, and morality, and as a road map for developing civil society (Puluhulawa et al., 2022a). The right to the environment is affected in a way that cannot be minimised by the right's status as a human right (Mahardika, 2021). Human rights to a safe and healthy environment are being put into practise by laws, government activities, and development that are in line with these guarantees (Wartini & Ghafur, 2015).

Although the right to a clean and safe environment is not explicitly recognised in the Universal Declaration of Human Rights, such an environment is essential to the enjoyment of all other human rights (Puluhulawa et al., 2022a). Humans and their surroundings have a symbiotic interaction (Puluhulawa et al., 2022b). The right to the environment is intertwined with other development rights, such as the right to a decent standard of living (the right to adequate living conditions) and the right to a high-quality environment that allows for human flourishing and respect (the right to a high-quality environment that permits a life of well-being and dignity) (Syarif & Wibisana, 2013). Human existence is negatively affected by deteriorating environmental circumstances. Polluting the environment to the point that it's unhealthy and unpleasant for people to spend time in is a direct threat to their right to life (Wartini & Ghafur, 2015). Pollution and environmental destruction are two major factors that threaten human health and safety (Kahpi, 2013). An estimated 9 million lives are lost annually due to pollution (Deutsche Welle, 2022). In 2012, air pollution was responsible for the deaths of an estimated 210,800 individuals in Indonesia (Asean Ekologi dan Emansipasi Rakyat, 2017). If the environment is safeguarded, the right to the environment may be realised.

As the world's population rises, so do the demands placed on infrastructure, the volume of garbage produced, and the rate at which natural resources are being depleted (Najwan, 2020)., the accumulation of the points above results in degradation of environmental quality. The above conditions need to be handled with government intervention, so as not to cause more severe damage. The government has an obligation



to respect (to respect), fulfill (to fulfill), and protect (to protect) the right to a good and healthy environment (Indrawati, 2022), as the implementation of the provisions of the 1945 Constitution Article 28H. Government actions in the form of the use of authority in the form of legal instruments and policies are accompanied by an obligation to be accountable to citizens (Sugiartha & Widiati, 2020).

The right to the environment must be included into the government's development plans. The environment must be considered throughout the planning and construction phases of any project. According to Emil Salim, sustainable development necessitates the prudent and reasonable administration of natural resources (Salim, 1993).

Responsibility for environmental management is a mandatory matter for the government (Sutrisno, 2013) (both central and) regional. Unwise management of the environment has a negative impact on environmental quality degradation (Najwan, 2020). To put it simply, sustainable development is an approach to development that prioritises the conservation and management of the environment (Sugiartha & Widiati, 2020). Taking into consideration the local environment and spatial patterns, as well as the region's natural resources, is fundamental to the sustainable development process (Tay & Rusmiwari, 2019). Sustainable growth is incompatible with exploitative actions that degrade the environment.

The environment has limitations, development is continuously oriented towards increasing material welfare (Tay & Rusmiwari, 2019) Damaging the environment. At the implementation level, several policies in the environmental sector are less prioritized when compared to other sectors, such as the Law on Investment, the Law on Oil and Gas, and the Law on Mining (Asshiddiqie & Constitution, 2010). The law is the legal basis for the utilization of natural resources with an orientation towards economic gain.

Material-oriented development, especially for developing countries encourages exploitation of the environment. Perception that natural resources are assets which has commercial value, so that it can be used to obtain economic benefits (Mundzir, 2017). The aim of obtaining maximum economic profit encourages utilization towards exploitation of the environment, so that environmental protection is considered as a barrier to obtaining economic benefits (Wardana, 2012).

The idea of preserving the environment has not yet had a strong impact on the field of education. Protection of the environment may also be influenced by educational levels. According to research by Ronald Laura and Matthew Cotton, people are mostly



moulded by their formal schooling. The economic incentives of maximising natural resource use are the primary motivations of homo economicus (Sukoco, 2016). Long-term, the schooling system causes homo economicus to put profit above the environment, as shown in South Kalimantan where unlawful mining was carried out (Nyctis, 2020). To prevent further environmental degradation, we need an educational system that cultivates environmentally conscious individuals (Perkasa & Aznam, 2016).

Bad governance in government that leads to criminal practises, including corruption, also prevents effective implementation of environmental protection. Permits are corruptly awarded to firms by bribing the appropriate authorities in the environmental sector. In Buol, a firm paid the district chief to get permission to clear a section of forest (Rasad, 2018). Long-term, widespread environmental damage is caused by corruption in the environmental sector (Butar et al., 2020). Planning, execution, and oversight are all vulnerable points for corruption in the environmental industry. Administrative, civil, and criminal law enforcement are all necessary for successful environmental protection implementation (Fahmi, 2011). The success of environmental protection measures depends on everyone doing their part in conformity with the law (Susanto, 2020). The government's inability to provide enough funding for environmental protection measures is a major problem (Syarif & Wibisana, 2013). Because of financial constraints, environmental protection measures are often poorly executed (*Staf Ahli Menteri LH: Pembangunan Berkelanjutan Tidak Lepas Dari Pengelolaan Lingkungan Hidup, n.d.*).

4.3 CHALLENGES AND PROBLEMS OF PROTECTION TO PROMOTE HUMAN RIGHTS AND THE ENVIRONMENT WITHIN THE CONSTITUTIONAL FRAMEWORK

4.3.1 Legal Inequality

Human rights and environmental protection in Indonesia face serious obstacles due to legal inequity. Article 28H Paragraph (1) and Article 28G Paragraph (1) of the Constitution of the Republic of Indonesia from 1945 provide protections for certain rights, however their execution is frequently poor.

In addition, there are a number of laws and regulations designed to protect human rights and the environment, such as Article 9 paragraph (3) of Law Number 39 of 1999 concerning Human Rights and Article 65 of Law Number 32 of 2009 concerning Environmental Protection and Management. However, implementation and law



enforcement are often hampered by various factors, including weak law enforcement, corruption, and a lack of human rights understanding of human rights and environmental issues (Merkle, 2018).

Another obstacle to law enforcement is a lack of awareness of human rights and environmental concerns. In 2020/21, for instance, Amnesty International found that many Indonesian law enforcement officers did not understand or effectively implement international human rights norms, which might have an impact on the effectiveness of law enforcement in the country (Amnesty International, 2021).

Inequality in the law also has an impact on this strategy. This may make rural or indigenous groups more susceptible to issues like human rights abuses and environmental degradation, for example. Additionally, they may be under-represented in forums where decisions about their rights and the environment are being made. There is some cause for optimism, however. By way of example, some provisions of Law no. 41 of 1999 on Forestry that were harmful to indigenous peoples were repealed by Law no. 11 of 2020 regarding Job Creation. However, there are still significant obstacles to implementation, including inadequate law enforcement and unequal access to justice.

Efforts to increase legal education and environmental awareness, boost law enforcement, and promote equal representation of all groups in society in the policy-making process are some ways to address this issue. The judicial system must be fair to all citizens and operate in an impartial, open, and accountable manner. NGOs and NGOS also play a significant role in safeguarding human rights, protecting the environment, and advancing the cause of legal equality. They frequently join the ranks of those advocating for the rights of underrepresented communities.

This means that the government, society, and the corporate sector must work together to reduce legal inequality. Together, we have the power to build a more equitable and sustainable world. In conclusion, the fight to eliminate legal discrimination is protracted and calls for concerted effort. Nonetheless, we may aspire to establish an equitable society and a well-protected environment by persistent efforts and collaboration from all parties involved.

4.3.2 Environmental Human Rights Violations

Human rights violations in the environmental setting in Indonesia may take numerous forms and impact many different segments of society, from indigenous people



to the urban poor. Land clearance in Kalimantan and Sumatra for oil palm plantations is a prime instance of this. Many times, corporations have taken land from native peoples without giving them a chance to voice their concerns or provide appropriate compensation. There has been a history of violence and intimidation accompanying some of these land seizures. (Colchester & Chao, 2015) In addition, local populations' rights to a healthy and sustainable environment may be jeopardised by the destruction of forests and water supplies caused by oil palm plantations (Obidzinski et al., 2012).

The issue of air pollution in large urban centres like Jakarta is yet another case in point. The right to health is violated when people, particularly children and the elderly, are exposed to dangerous levels of air pollution (Aqil, 2020). The mining sector has been the source of some environmental damage. The right of local residents to safe drinking water and a pristine natural environment has been violated, for instance, in areas of Sulawesi and Papua where mining has contaminated water supplies and desecrated land (Freeport, 2020).

Human rights abuses in the environmental setting may manifest in a number of different ways and harm a wide range of individuals. To prevent and resolve these infractions, more enforcement and regulatory activities are required. Increasing financing and training for law enforcement and courts is part of the answer in the Unitary Republic of Indonesia in protecting human rights and the environment.

It is also crucial to ensure that the urban poor and indigenous populations have equal access to the legal system. The monitoring of human rights and environmental infractions, as well as the promotion of awareness and education about these rights, should be entrusted more to civil society and human rights organisations. However, increasing corporate openness and accountability, particularly in areas like palm oil and mining, may help avoid abuses and guarantee that those implicated in abuses are brought to justice. Indonesia may make significant progress towards greater safeguarding of human rights and environmental conditions with these initiatives.

4.3.3 Environmental Degradation

There are several facets to the problem of environmental preservation in Indonesia. The difficulty of safeguarding the environment and human rights in Indonesia is an important issue given the country's rich biodiversity and population of hundreds of millions of people. This situation is being exacerbated by issues such as air and water



pollution, deforestation, forest fires, and the effect of climate change, all of which are damaging ecosystems, harming human welfare and health, and perhaps breaching human rights (Purnomo et al., 2020).

The 1945 Constitution of the Republic of Indonesia places a premium on a clean and safe environment within the boundaries of the law. According to the first paragraph of Article 28H, everyone has the right to material and spiritual well-being, a safe and secure place to call home, and enough food, clothing, and medical care. However, there are several obstacles that prevent this essay from being put into practise. The environment and the rights of local populations are frequently sacrificed in the sake of economic growth that is not sustainable (MCCARTHY & CRAMB, n.d.).

There is a misalignment here between economic development and safeguarding natural resources and individual liberties. In addition to endangering Indonesia's capacity to maintain a healthy environment, this condition also poses a threat to the well-being and health of the population as a whole, particularly indigenous populations and the urban poor.

Indonesia's Constitution from 1945 laid the groundwork for modern environmental and human rights protections in the country. However, corruption, inadequate law enforcement ability, and people's lack of knowledge of their rights to a healthy environment frequently impede the application of these laws and regulations.

Improving the enforcement of current rules and regulations, such as Law No. 32 of 2009 on Environmental Protection and management, is crucial to overcoming this difficulty (M et al., 2017). Improving law enforcement's ability to do its job and the public's awareness of its human rights to a safe and healthy environment are equally crucial.

Indonesia's response to this problem might be to give the police, prosecutors, and courts more power and autonomy in prosecuting instances of human rights and environmental crimes. Improvements are also needed to environmental education and public awareness efforts. However, there is also a need to improve corporate accountability and transparency, particularly in polluting sectors like the palm oil and mining industries. Fundamentally, a concerted and cooperative effort on the part of the government, the community, and the corporate sector is required to establish successful environmental and Human Rights Protection in Indonesia. It is believed that by incorporating all of these groups, environmental conservation and respect for human



rights may be woven into the very fabric of Indonesian policy and practice, as required by the Constitution.

4.3.4 Corruption and Weakness of the Legal System

Corruption and a weak legal framework often stymie human rights and environmental protection efforts in Indonesia. Corruption has far-reaching effects, including on the administration of green policies and the criminal justice system. Flaws in the legal system, such as injustice in the judicial system and bribery, make it difficult for victims of human rights or environmental violations to get justice (Butt, 2011).

According to Article 28D paragraph (1) of the Constitution of 1945, everyone has the right to be treated with respect and dignity and to enjoy the protections and benefits of the law without discrimination. The application of this article, however, becomes a matter of human rights due to corruption and flaws in the legal system. Strengthening anti-corruption agencies like the Corruption Eradication Commission (KPK) is one tangible measure that may be done to address this issue and guarantee that claims of corruption in the environmental and human rights domains are dealt with in a timely and efficient manner (Butt, 2011). In addition, there should be a reform of the legal system to make sure that the judicial process is carried out in an open and fair way (S.T. Quah, 2011). In order to prevent and investigate corrupt activities, it is necessary to strengthen public monitoring systems for judicial proceedings and policy implementation.

Corruption and gaps in the legal system are the main obstacles to preserving human rights and the environment in Indonesia; fixing these problems would need a comprehensive approach. Corruption and inefficiencies in the legal system undermine the effectiveness of Article 28D paragraph (1) of the 1945 Constitution, which ensures the security and predictability of a fair law. More has to be done to combat these problems.

One feasible option is to increase the budget and staffing levels of the Corruption Eradication Commission (KPK). For the KPK to successfully combat corruption, especially in environmental and human rights-related fields, it needs unrestricted access to funding and power.

The judicial system likewise needs modernization. The objective is to have a more transparent and accountable judicial system that applies the law consistently and fairly. Increasing the quality of legal education and training would strengthen the dedication of law enforcement to protecting human rights and the environment. Finally, there is a need



to enhance public monitoring mechanisms in order to better detect and prevent corruption. Community oversight of policy implementation and law enforcement is an effective way to reduce corruption and improve protections for human rights, the environment, and other vulnerable populations. (Aspinall & Sukmajati, 2016)

4.3.5 Development and Exploitation of Natural Resources

Without proper forethought and management, the extraction and use of natural resources may spark wars and other conflicts that are bad for people and the planet. Ecosystems are damaged, local communities' livelihoods are threatened, and natural resources are at risk when people engage in activities like illegal logging, environmentally destructive mining, and the construction of illegal settlements in forest areas or customary territories. (Bakhtiar et al., 2019)

Human rights and environmental safeguards are both included in the Constitution of the Republic of Indonesia. Article 33 of the 1945 Constitution states that the state owns and manages all land, water, and natural resources for the benefit of the people. However, implementation of this article is frequently subpar, as seen by the unsustainable use of natural resources that is harmful to human rights and the environment (Purnomo et al., 2017).

Government, business, indigenous groups, and civil society all have a role to play in ensuring that natural resources are managed in a way that is equitable and sustainable. There should be stricter and more consistent punishment for those who engage in environmentally destructive illegal logging and mining, and the principles of sustainable natural resource management should be put into practise.

Protecting and promoting human rights and the environment in Indonesia face complicated concerns that call for a multifaceted strategy. In order to overcome this obstacle, the government, the commercial sector, civic society, and indigenous people will need to work together. More stringent law enforcement, more openness and accountability, and a focus on social and ecological justice are all necessary to accomplish this. Improved human rights and more efficient execution of human rights and environmental protection within Indonesia's constitutional framework are crucial to the country's progress towards sustainable and fair development.



4.3.6 Community Awareness and Participation

One of the most pressing problems that must be solved is getting more people involved in protecting human rights and the environment. There are still obstacles to involving the larger community in efforts to protect human rights and the environment, despite Article 28C paragraph (1) of the 1945 Constitution guaranteeing everyone the right to self-development through meeting their basic needs, obtaining education, and enjoying the benefits of science, technology, art, and participation in development.

Human rights and public awareness may both be strengthened via environmental and human rights education. This may be accomplished via formal educational programmes, informal education, or community outreach initiatives. School-based environmental education programmes, for instance, may teach kids about the value of maintaining a sustainable ecosystem and the impact they can have on it. Participation in one's local community is also crucial. Customary forest management projects are a prime illustration of the power of community action. Multiple regions of Indonesia, including Papua and Kalimantan.

On October 15, 2021, Dr. Johny Kamuru, the Bupati of the city of Sorong, Papua Barat, issued a decree recognising the ownership of 3,247 acres of land and native forest belonging to one of the Suku Moi villagers in the Sayosa District of Sorong. This decision is the local government's reaction to Sorong Regency Ordinance Number Ten of 2017 Concerning the Protection of Indigenous Peoples in Sorong Regency. This demonstrates the local government's dedication to protecting indigenous peoples' rights and responsibly managing natural resources. Adat community Moi Gelek Malak Klawilis Pasa demonstrates a conservative attitude against exploitation of kelp farms and a dedication to protecting native forests and grasslands. Yayasan Pusaka Bentala Rakyat applauded the decision, saying that it was in line with the hopes of the indigenous Moi community to preserve their land and forests (*Hak Masyarakat Hukum Adat di Sorong*, 2021).

Additionally, the Sungai Utik Customary Forest in West Kalimantan is an example of local knowledge in Indonesia that has been recognised as a form of sustainable forest management. It was the first customary forest in Indonesia to receive eco-label certification with sustainable forest management on August 7, 2008. This accreditation highlights the community's significant part in ensuring sustainably managed forests. The United Nations even presented the Sungai Utik Indigenous Forest with the Equator Prize for the ways in which its residents and their traditions have helped to preserve the local



ecosystem. Please refer to Sekar AR, G. (August 14, 2022). Sungai Utik Indigenous Forest, West Kalimantan - SMART FORESTATION: Conservation with a Twist of Local Wisdom (forestation.fkt, 2022).

The key to boosting community involvement is also open and transparent access to information. People's human rights and the state of the environment are improved by their ability to learn about and take part in decision-making processes. Sharing information on the state of our forests and air supplies, for instance, may educate and engage citizens in conservation activities. The government, commercial sector, civil society organisations, and community members must all work together on each of these tasks. Efforts to safeguard human rights and the environment, as well as promote sustainable and fair growth, may benefit from a more informed and engaged public.

Development and exploitation of natural resources, as well as public awareness and participation, are central issues in protecting human rights and the environment in Indonesia, given the six challenges and problems listed above, including legal inequality, human rights violations, environmental degradation, corruption, and weaknesses in the legal system. Human rights breaches and the excessive use of natural resources, both of which contribute to environmental degradation, are perpetuated in part due to corruption and legal inequity. The community's rights and responsibilities must be understood, and the law and rules must be enforced, if this problem is to be resolved. The struggle against legal injustice and environmental degradation might benefit from greater public knowledge and engagement in monitoring and safeguarding human rights and the environment. It is hoped that these efforts would lead to the establishment of a society characterised by environmental sustainability, human rights security, and legal parity.

5 CONCLUSIONS AND RECOMMENDATIONS

The Indonesian legal system and constitution place significant emphasis on protecting environmental human rights. The government should recognise, respect, and safeguard all human rights, including the right to a healthy and sustainable environment. There are still obstacles to enforcing these protections, such as legal inequality, human rights violations, environmental degradation, corruption and weaknesses in the legal system, development and exploitation of natural resources, and a lack of public awareness and participation, despite the existence of an adequate legal framework.



Human rights and environmental protection are hampered by legal inequality in Indonesia. Constitutional protections exist, but thus far they haven't been put into practise. Access to justice and indigenous groups' participation in policymaking are similarly impacted by legal inequality. Human rights violations in the environmental context may take many forms, such as unlawful oil palm farms or pollution in major cities' air supplies. Pollution, deforestation, forest fires, and global warming are all contributing factors to Indonesia's deteriorating environment. Enhanced transparency, corporate responsibility, and public engagement in monitoring, as well as better application of current rules and regulations, are required to safeguard the environment.

The preservation of human rights and the environment face serious challenges, chief among them corruption and a weak judicial system. Increasing legal education and public awareness, as well as strengthening anti-corruption agencies, are all necessary steps towards a solution. Natural resource development and extraction must be carried out with caution and respect for people and the planet. Sustainable natural resource management requires more policing, openness, and citizen input.

Help defend human rights and the environment by raising public knowledge and engagement via environmental and human rights education and open and accessible information. Indonesia's government, society, and the commercial sector must work together to protect human rights and the environment. To attain more effective protection aims, we need to strengthen law enforcement, change the legal system, educate, be transparent, include the community, and manage natural resources sustainably.



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