



BOOK IV
ISLAMIC LAW AND GLOBALIZATION

PROCEEDING

THE 2017 INTERNATIONAL CONFERENCE ON GLOBALIZATION OF LAW AND LOCAL WISDOM

DOCTORAL DEGREE OF LAW STUDIES 2016
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Surakarta, Oktober, 14th-15th, 2017

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LOCAL WISDOM**

**Doctoral Degree Faculty Of Law 2016
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Theme

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THEME

"GLOBALIZATION OF LAW AND LOCAL WISDOM"

Organized by

Doctoral Degree of Law Studies 2016

Faculty of Law, Universitas Sebelas Maret

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PREFACE

The 2017 International Conference on Globalization of Law and Local Wisdom (IC-GLOW 2017) UNS, held in Surakarta from October 14-15 October 2017, with an overarching conference theme of "Globalization of Law and Local Wisdom". This theme was developed due to law condition nowadays that increasingly blurred in practice because there is a differences between state law and international law.

This proceedings from the conference provides multiple meanings of the term sustainability that divided into four panels, namely National Law and Globalization; Local Wisdom and Business Law in An Era of Globalization ; Penal Law and Globalization; Islamic Law and Globalization. There were two plenary sessions covering the difference areas of the conference : Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, S.H., M.M. (Universitas Sebelas Maret); Prof. Hikmahanto Juwana, S.H., L.L.M., Ph.D (Universitas Indonesia); Prof. David Keith Linnan (USC School of Law South California); Dr. Mohd. Iqbal bin Abdul Wahab (International Islamic University Malaysia, Malaysia); Prof. Dr. Thomas Schmitz (Universität Göttingen, Germany & the Hochschule des Bundes für öffentliche Verwaltung, Brühl, Germany); Prof. Seok Woo Lee (Inha University of Law South Korea); Prof. Dr. H. Abdul Mohaimin bin Noordin Ayus (University Islam Sultan Shahrir Ali, Brunei Darussalam); Christopher Cason, JD (Seattle Pacific, Washington DC-US & Universitas Islam Indonesia, Indonesia).

These public talks, respectively, were very accessible to general audience. The conference participants came from various background such as researcher, lecturer, practitioner, and college students as well. The first day before conference programme was started by a special gala dinner to honor all of distinguished guests, invitation, and participants.

The selected paper that were presented on the conference program formed the heart of the conference and provide ample opportunity for discussion. Of the total number of presented papers, all papers that split into four panels sub theme are included in this proceedings. We would like to thanks to the committee who were facing the challenge during the conference to achieve the aims of the events. All in all, the IC-GLOW 2017 was successful and we expect this proceeding could be useful for entire scholar.

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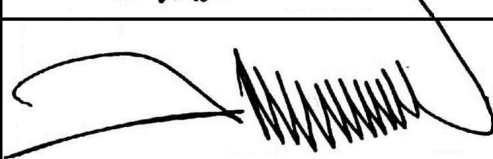
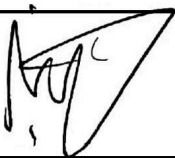

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The 2017 International Conference on Globalization of Law and Local Wisdom



Here the reviewer of paper on The 2017 International Conference on Globalization of Law and Local Wisdom event :

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3.	Prof. Seok-Woo Lee (Inha University Law School – South Korea)	
4.	Prof. David Keith Linnan (USC School of Law – South Carolina, USA)	
5.	Prof. Dr. Thomas Schmitz (University of Goettingen – Germany; Academy of Public Administration - Moldova)	
6.	Prof. Dr. H. Abdul Mohaimin bin Noordin Ayus (Universiti Islam Sultan Sharif Ali – Brunei Darussalam)	
7.	Dr. Mohd. Iqbal bin Abdul Wahab (International Islamic University Malaysia - Malaysia)	
8.	Christopher Cason, JD (Seattle Pasific – Washington DC; Universitas Islam Indonesia)	 Christopher Cason

COMPLIANCE OF ENVIRONMENTAL MANAGEMENT IN PERSPECTIVE OF ISLAMIC ENVIRONMENTAL LAW PHILOSOPHY

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Abstract

Utilizing the environment or more specifically the natural resources based on the functions and designation is one of the concept of environmental utilization in Islamic Shari'a. In an expanded conception, Islam teaches and commands that people make use of natural resources in accordance with the functions and benefits that He created. Allah created everything with its own functions and benefits, then take advantage of the natural resources as a favor from God based on what has been outlined. The problems in this paper are: first, how the concept of environmental management in the perspective of Islamic environmental law? and secondly, how is the effectiveness of stakeholder compliance in environmental management in the mining field of indigenous environmental law perspectives? The purpose of this study is to understand the concept of environmental management in the perspective of Islamic environmental law, and to provide new ideas related to the effectiveness of compliance stakeholders in environmental management in the field of mining the perspective of Islamic environmental law? The Research Method used is normative legal research, supported by empirical data. The indicator used in this study is first, the excessive exploitation of natural resources, so that people are only pursuing economic interests, the behavior is very distanced from Islamic values; secondly, the stakeholders, especially the government through its policy of not positioning itself as a khalifah on earth, so that the environmental damage, especially in the mining sector is increasingly widespread, and future generations are threatened; third, the current regulatory policy of mining through Law no. 4 of 2009 on Mineral and Coal Mining is very secularistic and does not based on the principles and philosophy of environmental management of Islamic perspective; fourth, the policy of environmental management in Indonesia still uses the Western-derived concept, while the majority of the population and the high adherence to Islamic values of Indonesian society, thus becoming inconsistent; and fifth, the utilization of natural resources is incompatible with its functions and allocations, such as excessive mining exploitation, disadvantaged communities, conflicts, and benefits gained only

between the state and the private sector. Some of these indicators, we will analyze by basing on the two formulation of the problem mentioned above.

Keywords: environmental management, Islamic environmental law, natural resources

I. INTRODUCTION

Countries that have natural resources are generally used for economic development activities of a country. Utilization of natural resources through development on the grounds in order to improve the welfare of society and the achievement of social justice. Natural resources in various sectors as one of the objects that are managed or exploited by state either through state or private companies often cause social conflict and environmental damage. It takes an alternative concept or approach different from what has been done by the state, namely the arrangement in the management of natural resources bersendikan Islamic values, or in other terms Islamic environmental law. The arrangement is sourced directly from the Qur'an as the holy book of Islam which also contains the knowledge of natural resources, as well as the commandments in managing or utilizing natural resources.

It should be noted that the issuance of MPR Decree Number IX / MPR / 2001 is based on the consideration of the existence of the awareness that natural resources are the gifts of the omnipotent God who become the national treasures to be grateful so that must be managed and utilized optimally for the present and future generations, realizing a just and prosperous society. The MPR, which has a constitutional duty to define the direction and basis for national development that can address various problems, poverty, inequality and socio-economic injustice of the people and the destruction of natural resources, the TAP MPR is published as a concrete effort of its constitutional duty.¹

The management of natural resources is closely linked to the results of the natural resource management. Just and sustainable management will

¹Ahmad Redi, *Natural Resources Law in the Forestry Sector*, Cet. I, Jakarta: SinarGrafika, 2014, p. 59.

produce the natural resources processed randomly and exploitatively, then it will produce natural resources that will be disastrous for mankind.² The legal configuration is strongly influenced by the legal configuration of the law's legal establishment. It becomes important that a regulatory system is needed which is a good and proper way of managing natural resources in accordance with the objectives of the regulation of natural resources. The norms collected in a legislation become the unity of will of the legislators in regulating how natural resource management should be in order that the natural resources are in accordance with the desired objectives. Therefore, it needs to be synthesized between the concept of state control over natural resources in managing for the sake of development and the livelihood of the people, with an alternative approach of natural resource management arrangement of Islamic values or the conception of Islamic environmental law derived from the holy book al- Qur'an.

II. PROBLEMS

Looking at the complexity of environmental law compliance in the context of natural resources that put forward western thinking, another perspective or a different approach, the Islamic environmental law, is required. The problems that will be discussed in this paper are: first, how the conception of control of natural resources by the state? and secondly, how is the concept of environmental management in the perspective of Islamic environmental law?

III. DISCUSSION

1. Conception of State Natural Resource Control

The elucidation of the 1945 Constitution of the part of the system of government affirms that Indonesia is a State of law, which can be categorized as a State of modern law. Constitutionally, the concept of the State of modern law is itself visible from the objectives of the State, as

²*Ibid.*, P. 56.

set forth in the fourth paragraph of the Preamble of the 1945 Constitution of the State of the Republic of Indonesia which reads: "to protect the whole Indonesian nation and the entire blood of Indonesia, to advance the common prosperity, the life of the nation and the realization of social justice ". While the normative, especially in efforts to promote the general welfare and social justice is set out in Article 33 of the 1945 Constitution which reads as follows:

- (1) The Indonesian economy is constituted as a joint effort based on the principle of kinship;
- (2) Production branches that are important to the State and which affect the livelihood of the public are owned by the State;
- (3) Earth and water and natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people;
- (4) The national economy is organized on the basis of economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by balancing the pluralism and unity of the Indonesian economy;
- (5) Further provisions concerning the implementation of this article shall be governed by law.

Based on the provisions of Article 33 of the 1945 Constitution, it is emphasized that the constitutional basis of state control over mining as a counterpart of the meaning of "controlled by the State" is based on paragraph (3). But to understand the notion of state control must be done etymologically. Controlled by the State is a passive sentence, with the equivalent of state control in the form of active sentences. According to the great dictionary of the Indonesian language, the notion of the word "master" is the dominion of (something), holding power over (something), while the notion of the word "mastery" is the process, way,

deed of mastering or cultivating.³ Of the two meanings, it turns out the notion of the word mastery is broader than the notion of the word master.

If the provisions of Article 33 of the 1945 Constitution as the constitutional basis of the right to control the State relating to the functions of the State as intended by W. Friedmann may be accepted with the following notes:⁴

- a. The state positioned itself as a regulator and guarantor of people's welfare. In this case the State may delegate its authority to certain business entities, through licensing mechanisms accompanied by clear regulation and supervision in the effort to realize the welfare of the people.
- b. The State can legitimize the management of natural resources in an effort to realize the welfare of its people.

Indonesia as a country that has diverse natural resources which is a gift of God Almighty, both natural and non biological resources are elements of the environment that is very important for the survival of the Indonesian nation. The importance of natural resources is explicitly mentioned in Article 33 Paragraph (3) of the 1945 Constitution, the Basic Agrarian Law, and Article 11 Paragraph (2a) of the 1966 International Treaty on Economic, Social and Cultural Rights.

Utilization of natural resources for the greatest prosperity of the people is also mentioned in UN Resolution no. 523 (XI) of 12 January 1952 which states "recognizing the right of every state to use natural resources for economic development", which is further reaffirmed in "sovereignty over natural resources" recognizes the right of domination

³Look: Big Indonesian Dictionary (Second Edition), Ministry of Education and Culture, Jakarta: BalaiPustaka, 1995, p. 533.

⁴AzmiFendri, *Regulation of Authority of Government and Local Government in Utilization of Mineral and Coal Resources*, Ed. I, Cet. I, Jakarta: RajawaliPers, 2016, p. 127.

under sovereign equality, followed by the Stockholm Declaration of the year 1972 which reads:⁵

'Principle 21 stockholm declaration, 1972; state have, in accordance with the principles of international law, the sovereign right to exploit their jurisdiction or control do not cause damage to the environmental of ther states or of areas beyond the limit of national jurisdiction "

The declaration essentially states that the sovereign state exploits its natural resources but is also responsible for the preservation of its environment in connection with the exploitation and exploration activities, as well as the state's right to extract its natural resources, as well as the State's obligation to preserve it.

The utilization of these natural resources is also mentioned in the TAP MPR RI No. IV / MPR / 1999 on the Guidelines of State Policy (GBHN) of 1999-2004, Chapter IV direction of policy letter H, natural resources and environment, namely:

- (1) Managing natural resources and maintaining carrying capacity to benefit the improvement of people's welfare from generation to generation;
- (2) Increasing the utilization of the potential of natural resources and the environment by conserving, rehabilitating, and saving the use, by applying environmentally friendly technologies;
- (3) Delegate gradually the authority of the central government to regional governments in the implementation of selective natural resource management and environmental maintenance so that the quality of the ecosystem is maintained, regulated by law;
- (4) To utilize natural resources to the greatest prosperity of the people by taking into account the preservation of environmental functions and balance, sustainable development, economic and cultural interests of

⁵Rudi M. Simamora, *Law of Oil and Gas*, Jakarta: Djambatan, 2000, p. 137.

local communities, as well as spatial arrangements whose operations are regulated by law.

In the context of state administration, in line with the demands of change by society through reforms that want democratization, regional economy, and good governance. These changes did not escape the utilization of the new foundation of the mining paradigm, the sustainable human development paradigm in the mining sector, whose essence was to create a social transformation toward intergenerational welfare.⁶ Thus, the purpose of management and utilization of natural resources in the context of regional autonomy is to create a social transformation to achieve the maximum welfare of the people as mandated by Article 33 paragraph (3) of the 1945 Constitution and GBHN.

The new paradigm of mining development is based on the mandate of the 1945 Constitution Article 33 paragraph (3) Chapter XIV social welfare stating that "the earth, and water, and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people", with orientation in the 1945 Constitution Article 1 paragraph (1), Article 18, 18A and 18B jo MPR TAP No. IV / MPR / 1999 on GBHN, chapter IV policy direction, natural and environmental resources H number 3 and 4, and TAP MPR No. XV / MPR / 1998 on the implementation of regional autonomy, regulation, distribution and utilization of national resources with justice, and the balance of central and regional finances within the framework of the Unitary State of the Republic of Indonesia.

The mandate of the constitutionality of the utilization of natural resources is oriented towards the welfare of the people, which means the goal of utilizing natural resources is not merely for economic growth, but more importantly for the welfare of mankind from generation to generation. This interpretation is in line with the meaning of sustainable

⁶RachmanWirosudarmo, Rudy S. G, Irwandi A, Ali Nurdin (et.all), *Mining Agenda for Sustainable Quality of Sustainable Development*, Agenda 21 Sectoral Project, Cooperation of the Office of the State Minister of Environment with UNDP, Jakarta, p. 16.

human development (sustainable human development), because during this development is only used to pursue economic growth alone, so that the rights of society and the welfare of the people so neglected.⁷

2. Concept of Environmental Management in Islamic Environmental Law Perspective

The basic philosophy of environmental management of Islamic environmental law perspective derives from the Qur'an, as Allah says, placing humans as a central point. The environment with all its contents is destined for the welfare of man in the world until the time limit specified, so that humans are always grateful and sanctified Him. The environment is created to be utilized as well as possible in order to meet the needs of human life. However, God forbids man to exploit the environment excessively, not according to its size (unsuitable for carrying capacity and designation), torture, and destructive. The pattern of environmental utilization based on the Qur'an is to satisfy the human need to live humanely, by treating the environment well, not exaggerated, not to glorify, according to the size and boundaries of the environment that God has set , and utilization shall be in accordance with its designation.⁸

Environmental management (utilization and maintenance) is implemented within the framework of worship. Management is solely for the blessing of God, not for the benefit of man (use oriented), not for the sake of the environment (environmental oriented) or for the benefit of generations to come. Environmental management must always pay attention to God's prohibitions and commandments.

In the framework of worship, man is commanded to take advantage of his created environment, as rizki and grace. Utilizing the environment to adequately meet the necessities of life is a human obligation, or in

⁷AzmiFendri, *op.cit.*, P. 182.

⁸Imamulhadi, *Alternative Environmental Law; Customary Law Law, Islamic Environmental Law*, Cet. 2, Yogyakarta: K-Media, 2016, p. 195.

other words not utilizing the environment to meet the needs of human life sufficiently is one form of human pride. As a form of gratitude to God, human beings must utilize the environment to meet the needs of daily life.

God has appointed man as the leader and representative of Allah (khalifah) on earth. As a consideration of human appointment as khalifah, because humans are given the gift of reason and mind. Reason is the superiority of man to other created beings of God. By reason, human beings are commanded to always understand His secrets, and with her soul, man is commanded to always glorify, and worship. Verily man is created to worship Allah "And I do not create jinn and men but that they may worship Me" (Surah Adz-Dzariyat: 56). Regarding his duties as caliph, God gave man the right to use the living environment as rizki. It also attaches great responsibility to protecting the environment from the danger of destruction and destruction. Humans are responsible for the preservation of the survival of other beings. Man is commanded to always do good to all things "Verily Allah obliges to do good to all things" (Muslim).

Based on the Qur'an and Hadith of Prophet Muhammad SAW, as can be drawn some principles or principles of Islamic environmental law such as the principle of worship, the principle of human rights over the environment, the principle of not exaggeration, the principle of justice across creatures, the principle of equitable welfare, the principle of optimal utilization, the principle of preserving, the common principle in the management of water, earth, and fire, the principle of utilization based on levels and designations.

In the context of environmental compliance of Islamic environmental law perspective, the simple behavior will have implications for the sustainable / sustainable use of the environment. Simple life saves the environment from the danger of damage and destruction. Simple human beings have a prudent tendency in exploiting

natural resources, on the contrary, people who love the world, tend to be greedy and destructive. Humans who live in luxury and exaggeration will not be content to exploit natural resources.

The State as one of the organs given authority by the constitution to manage natural resources in the framework of the interests of development with the aim of community welfare. This means that there are benefits or benefits from the management of natural resources to the community or the common good. In the perspective of the objectives of Islamic law, it can be termed *maqashidshari'ah*. "Maqashid" means intent or purpose, the syllable "qashada", which means to mean or to mean, "maqashid" means the things desired and intended.⁹ While *syari'ah* in language can be interpreted road to water source,¹⁰ can also mean walking towards the source of life.¹¹

Environmental law of Islam is very concerned about the management of natural resources and the creation of God where human beings as *khalifah* on earth must take care to safeguard it, amid utilization of natural resources for the sustainability of its life, including other living creatures. The goal of Islamic law (*maqashid al-syari'ah*) will be achieved if humans run the mandate to preserve and preserve the potential of natural resources, especially abundant mining in the earth of Indonesia to be managed towards prosperity.

In essence, the main purpose of law is directed to preserve the welfare and at the same time avoid mischief (damage), both in the world and in the hereafter. In the context of environmental and natural resources management, human beings are said to be ineligible if people exploit natural resources exploitatively, excessive to damage the environment, or natural resources that can not be renewed out leaving no

⁹Ahmad Qorib, *UshulFikih* 2, Cet. 2, Jakarta: PT NimasMultima, 1997, p. 170.

¹⁰Asafri Jaya, *In the Oral Book of al-'Arab*, Ibn Mansur al-Afriqi, Dar al-Sadr, t.th., VIII, p. 175.

¹¹FazlurRahman, *Islam*, Interpreting: Ahsin Muhammad, Bandung: Reader, 1994, p. 140.

for future generations. The purpose of Islamic law is the benefit of human life, both spiritual and physical, individual and social. All sorts of good legal cases explicitly regulated in the Qur'an and as-Sunnah and those produced through ijtiḥad, must begin from that objective. In the case of the law explicitly described in the two main sources, the benefit can be traced through the text. If it turns out the benefit is explained, then he (kemaslahatan) it should be the starting point of its legal determination. Such welfare is usually called al-maslahat al-mu'tabarāt.

IV. CONCLUSION

1. The State has the sovereignty to exploit its natural wealth guaranteed by the constitution and the provisions of legislation but is also responsible for the preservation of its environment in connection with the exploitation and exploration activities, in addition to the right of the state to extract its natural resources, there is also a state obligation to preserve it.
2. The concept of environmental compliance perspective of Islamic environmental law, simple behavior that will have implications on the sustainable use of the environment / sustainable. Environmental management that comes from the Qur'an places humans as objects and caliphs on earth to preserve or preserve them, it is said to be ineluctable if people exploit natural resources exploitatif, excessive to damage the environment, or natural resources that can not be updated not leaving for generations to come. Simple human life saves the environment from the dangers of destruction and destruction. Simple human beings have a prudent tendency in exploiting natural resources, on the contrary, people who love the world, tend to be greedy and destructive. Humans who live in luxury and exaggeration will not be content to exploit natural resources.

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