

## SUSTAINABLE DEVELOPMENT AND THE LEGAL ENFORCEMENT TO COUNTERVAIL SOSIAL VALUE IN PRISMATIC BASED ON PANCASILA

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### ABSTRACT

*Sustainable development on the basis of environment is carried out by taking account of environmental, political, and economic aspects. Most matters occur in implementing sustainable development may range from destroying environment that leads no renovating action, injustice, and to instable prosperity among society. Moreover, the advantage allocation to the society is difficult to distribute because it is centered to certain people, if not, a little amount of people that dominate political source, economic source, and authority. To actualize the sustainable development which is in line with the values adopted in Indonesia society, the legal enforcement is centered to reach central value and based on Pancasila values as a neutral way to countervail social values in prismatic Indonesian society. Prismatic concept is centered to philosophical values of state principles, state fundamental norm, and national identity that differentiate Indonesians among other countries.*

**Keywords:** development, sustainable, prismatic society, Pancasila

### Introduction

Sustainable development is basically the implementation of Pancasila principles (sila) and constitution of Republic of Indonesia (UUD) 1945. It is mandated to reach fair and prosperous society that fundamentally belongs to the national goals.

Article 28C section (2) constitution of Republic of Indonesia 1945, stated that “Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/ her society, nation and state”. Then the article 28H section (1) stated that “Every person shall have the rights to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care”. Besides, article 33 section (3) stated that “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”.

Therefore, it is obvious that sustainable development on the basis of environment is as the principle of democratic economy as the foundation of state management. This development will not only be restricted to the environmental, economic, and social aspects but also to the global humanity and covers political, educational, and cultural etc. matters.

Development is one of the most concepts used as well as debated to advance and develop humans’ lives and it is in line with Sunaryati Hartono’s opinion that states:

“in the middle of development process, it is potential to have interest conflict due to needs charge and demand, social interest, and social point of view. In this regard, the legal is necessary to present in order to prevent such that matters, but if the conflict inevitably occurs in any of that matters, the legal should intervene and solve the conflict as fair and peace as possible. This is the way that the legal is a tools of security and orderliness. However, the legal is also functional to be the basis of national development in any kinds of field”<sup>2</sup>.

In accordance with Pancasila and the constitution of Republic of Indonesia 1945 mandate, the proprietary right and the management or supervision to the natural sources that is related to society should be exploited fairly and prevalently to reach national prosperity. In fact, so far the distribution and allocation benefit tends to stand for certain stakeholders (investors) that does not directly give wide impact to the social welfare and prosperity, that in turn will lead to trigger social, political, economic problems, and source deflation that will also impend national integration and unity. The unjustness in managing and developing natural resources governed by state is obviously a thread for national integration and unity, and interfere national stability. The unjustness and social dissatisfaction and incredulity is caused by the absence of accountability and less distributed or partial policy as stated in the section (sila) on just in Pancasila.

The mining production and exploration in Papua, Aceh, and Riau for instance, replaces local community to benefit such that sources that frequently causes a social conflict such as taking over lands and waste cycling as well as due to natural and environment resources exploration which is not centered to accomplish justness. The dissatisfaction leads to emerge a certain community in variety of rich lands (province/ city) to resist and secede from the Republic of Indonesia. Sustainable development concept as an integrated development system is always related to three main factors such as environment, economy, and group community. In fact, the sustainable development is always restricted to the rationality of economic factor only. As Sony Keraf

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<sup>2</sup> Sunaryati Hartono, 1994, Politik Pembaharuan Hukum Dalam Pembangunan Hukum Di Indonesia, Makalah Pada Forum Komunikasi Penelitian Bidang Hukum FH-UNDIP, Semarang, 5 Desember 1994, hal 1-2.

stated that the sustainable development is the result of political compromise among variety of interests which within the concept still remains to assert that the main point is the development of economic sector<sup>3</sup>.

Apart from that, AriefBudiman states that economic matters are about to increase capital investment since the backwardness is about lacking of capital<sup>4</sup>. The same opinion is also stated by JimlyAsshiddiqie that generally the concept of sustainable development tends to be highlighted or viewed from economic perspective only, and has not been viewed from the fundamental one that is about global humanity<sup>5</sup>. By only restricting to the economic sector, it is obvious to say that this development model is centered to purposive aspect and the aspect of legal power to be realized. The role of legal is only to support and compliment the economic sector while the legal is positioned as subordinate to the economic development. Therefore, the legal plays only as conservative role as justification of the implementation of the development<sup>6</sup>.

The development model above is the development model that emerges and bases on liberal thought. According to Soetandyo Wignjosoebroto that the legal which is employed in the perspective of liberal belongs to modern legal that is rooted to the positivistic, rational, and formal perspective. According to *Critical Jurisprudence*, legal formalization is only to legitimate domination and power of authoritative elites<sup>7</sup>. The legal exercise as a tools of development is an effort to advance and construct the legal itself where the legal is also an object that is necessary to be constructed before it applies its role in national development<sup>8</sup>. As Mahfud MD states that:

“the legal construction is basically a legal politics, the legal politics is *legal* policy that will be and has been applied national wide by government that includes; *first* the legal construction is centered to produce and reform legal materials that is appropriate with the requirement; *second*, the legal enforcement including the intelligibility of the function of legal institution and developing on all legal officers”<sup>9</sup>.

From the first provision, it can be drawn that the legal development which is centered to produce and reform legal materials can be appropriate with society of Indonesia that is fundamentally based on Pancasila values. This is intended to avoid inappropriate legal system since there are still a lot of legal products that is in contradiction with Indonesian values. As stated by Barda Nawawi:

“the development of our legal system still remains problems because there are still a lot of legal products of colonial inheritance applied up to now, that in fact it brought values that rooted and come from colonial experiences (Dutch) and way of life that has individual and liberal characteristics, not rooted and come from experience and way of life of Indonesians”<sup>10</sup>.

Individualism, colonialism, and liberalism are not the main factors in the sustainable development and in the construction of legal system in Indonesia because it goes forth out of the proclamation aspiration, the ideology, and the state foundation Pancasila, the purpose of NKRI, and the constitution of the Republic of Indonesia (UUD 1945). The constitution (UUD 1945) as it was formulated by the founders of NKRI did not recommend to adopt individualism, colonialism, and liberalism but rather recommending to adopt welfare state as it stated in the foundation and the ideology of Pancasila state, the purpose of NKRI, and the constitution of Republic of Indonesia (UUD 1945).

### Statement of Problem

Basing on the explanation above, it is necessary to conduct comprehensive study scientifically to draw scientific solutions in the implementation of the sustainable development in prismatic society on the basis of Pancasila. It is therefore the relevant matters to consider to be concerned are as follows;

1. What are the ideal normative measures of the implementation of sustainable development in the context of Indonesia?
2. How to construct legal environment in prismatic society on the basis of Pancasila?

### Finding and Discussion

#### 1. The ideal normative measures of the implementation of sustainable development in the context of Indonesia

In order to reach the greatest aspiration of this nation as it was stated in the opening of the constitution of Republic of Indonesia (UUD 1945), it deems to seek some efforts to advance all aspects of nation's life through national development. Such

<sup>3</sup> Sony Keraf, 2002, *Etika Lingkungan*, Penerbit Buku Kompas, Jakarta, hal 183.

<sup>4</sup> Arief Budiman, 1996, *Teori Pembangunan Dunia Ketiga*, Gramedia Pustaka Utama, Jakarta, hal 19.

<sup>5</sup> Jimly Asshiddiqie, 2009, *Green Constitutional*, Nuansa Hujau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Rajawali Press, Jakarta, hal 140.

<sup>6</sup> Rakhmat Bowo Suharto, 2003, *Pembangunan Ekonomi Indonesia (Sebuah Refleksi Teoritik Tentang Peran Ilmu Dan Hukum)*, Jurnal Hukum Vol. XIII, No. 2, Oktober 2003, FH Unisula, Semarang, hal 195.

<sup>7</sup> Soetandyo Wignjosoebroto, 2002, *Hukum: Paradigma, Metode Dan Dinamika Masalahnya*, Elsham dan Yayasan HuMa, Jakarta, hal 78

<sup>8</sup> Sunaryati Hartono, *Op Cit*, hal 3

<sup>9</sup> Moh. Mahfud MD, 1998, *Politik Hukum*, LP3ES, Jakarta, hal 9.

<sup>10</sup> Barda Nawawi Arief, 1994, *Beberapa Aspek Pengembangan Ilmu Hukum Pidana : Menyongsong Generasi Baru Hukum Pidana Indonesia*, Orasi Pengukuhan Guru Besar FH-UNDIP, Semarang, 25 Juni 1994, hal 11-12.

development needs to consider the harmony of physical and psychological aspects in accordance with Pancasila and the constitution of Republic of Indonesia (UUD 1945).

National development is an effort to advance and improve human quality and society that is conducted sustainably in accordance with national prosperity by exploiting advanced knowledge, science, and technology as well as considering the global challenging progress. The implementation of this effort should refer to national personality and the universal greatest values to actualize national independent, autonomous, just, prosperous, advanced life with well-behaved as well as being active in the international issues. In the article 3 the constitution of Republic of Indonesia no. 32 year 2009 on *Environmental Protection and Management* states that sustainable development is a realizing and planned effort that synchronizes environmental, social, economic aspects into national development strategy to assure the fulfillment of justice for the present and future generations.

Sustainable development first emerged in 1983 by *World Commission on Environment and Development (WCED)*, the agency formed by General Council of the United Nation. Some important principles underpinning the sustainable development:

- a. State sovereignty and responsibility principles
- b. State justness principle
- c. Justness principle to present generation
- d. Synchronization principle between environment protection and development
- e. Together responsibility principle yet distinctive
- f. Preventive measures principle
- g. Working together, well-neighboring and international partnership principle
- h. Carefulness principle
- i. Those who contaminate, should retribute principle
- j. Democracy and social participation principle<sup>11</sup>

The sustainable development model in Indonesia normatively has been applied since 1982 by issuing regulation no 4 year 1982 on Basic Provision of environment management. Then confirmed by the law no 23 year 1997 on environment management. Both regulations mandate to integrate the environment management in exercising development through development on the basis of environment.

The sustainable development model that is rooted to liberalism is a thread to the sustainable development in Indonesia. It should apply and implement democratic values in order the implementation of state and administration are likely to reach national and social prosperity including protecting social right to have an access to the clean and healthy environment as the part of human right. As JimlyAsshiddiqie stated that sooner or later the environmental and sustainable development matters are as important as human right in the future especially for global human life<sup>12</sup>.

Environmental matters usually emerge in the setting of city and district. Therefore, decentralization of the implementation of administration or government affair to local government by extending local autonomy and transparency and participation requirement in deciding the management of natural resources and environment has included in the government system in implementing all variety of managing natural resources and environment.

According to JimlyAsshiddiqie<sup>13</sup>, our awareness toward the importance of environment can be viewed from two factors:

“internal and external factors. The internal perspective views the environment as substantially the main thought or idea in the development, that is related to *the crux of the problem of sustainable development*. While the external perspective views that the environment matters are not only viewed as the matters of our surroundings, or one of sectors or aspects in the process of development, but also as a system of life in general. In short, it is not only dealing with environmentalism only but also ecologicalism.

From here we can draw the paradigm of national development of Indonesia is based on the constitution of Republic of Indonesia (UUD 1945) that one of the principle points is environmental consideration. If one of the concepts of sustainable development whether it is in central government or local government does not adopt this principle, it is in contradiction with the constitution of Republic of Indonesia.

According Oekan S. Abdoellah that the implementation of sustainable development that is based on the constitution include some points below:

1. The equality distribution of prosperity in the city and in the rural (village), Java or non-Java, east area and west area
2. The escalation of distribution and quantity and quantity improvement of infrastructure inter-area especially in the frontier areas
3. The enhancement of inhabitant access to the natural sources and environment as well as other sources
4. The development policy taking that considers sustainability of supporting environment potency and does not reduce the possibility or the opportunity for the next generation

<sup>11</sup> Takdir Rahmadi, 2015, *Hukum Lingkungan Di Indonesia*, PT Raja Grafindo Persada, Jakarta, hal 10-11

<sup>12</sup> JimlyAsshiddiqie, *Log Cit*, hal 141

<sup>13</sup> *Ibid*, hal 156

5. Rehabilitating the implementation quality of local autonomy and decentralization<sup>14</sup>

The normative exercise in implementing sustainable development is the sustainable development that assists NKRI, Pancasila, the constitution 1945, wawasan Nusantara as well as national tenacity. United states and republic states are reflected in the NKRI that generally is considered as one of national pillars namely Pancasila, the constitution 1945, Bhineka Tunggal Ika. Those pillars are final decisions that cannot be revised. The effort to understand and interpret Pancasila, the constitution 1945 by elites, government, scholars, and society are perceived to achieve national development that is hopefully able to contribute to the fulfilment of basic right of society as well as to construct strong development bases as the constitution 1945 implies "green constitution ideas"<sup>15</sup>.

In implementing sustainable development, the Nawacita concept should also be the orientation. One of the concepts inside is relevancy of that matter to make international relationship to resolve global problems that threaten human life. There are three agenda in the *Trisakti* such as sovereign in politics, autonomous in economy, and has good personality and cultured. As a state that has heterogeneous and prismatic society, it is important to center the management of inhabitant to be a focus to achieve the goals of sustainable development. Pancasila as the philosophy of Indonesia teach each Indonesian man to live well-balanced spiritually and socially, also to the environment and nature.

2. Constructing legal environment in prismatic society on the basis of Pancasila

Legal system of Indonesia is most influenced by Dutch legal system such as *Civil Law* and along with leading eras the legal system of Indonesia has been influenced by Common *Law*. Civil law is applied in Europe continent while the Common Law is applied in Anglo-America. According to Adji Sumekti, in the civil law, legislative role is central to make written regulations that are able to assure legal security. This character is inherently attached in concept of implementing legal states *rechstaat*<sup>16</sup>. While the common law system, judge is central when the legal is formulated. Along with leading eras, the role of judge is central where they are able to form integrated thought to seek for justice<sup>17</sup>.

The civil law system has great influence in Indonesia legal system in the context of legal findings because the system of legal findings utilizes heteronomy legal findings that leads to autonomy. It accepts heteronomy legal findings as long as the judge is bound to the regulations but these findings called autonomy because sometimes the judge should explain or complete the regulations based on his opinion.

Law has ideas and concepts which can be categorized as abstract things such as justice, worthiness, and legal security. There is an interrelated concept between reform on substantial and cultural components. The substantial components should be constructed based on cultural components of a given nation. As Robert B argues about "*The Law of Non-transferability of Law*" that

"law in a certain state could be transferred freely to another state. This is because the social and cultural structure where the law is applied are not the same. The same law is applied in the same character in other social structure will produce different law enforcement as well"<sup>18</sup>.

Dutch legal system that basically comes from Roman law is unlikely applied directly in Indonesia. The legal characteristic of Indonesia is reflected in Pancasila that basically contains morality and justice as stated in point (sila) 5 "social justice belongs to all Indonesians". Hans Helsen stated that justice means that cultivates positive law order through appropriate exercise that is in line with the roots and law order in the area<sup>19</sup>. While according to Immanuel Kant, justice is extreme liberty from those who are delimited to the liberty itself. Justice is a synthesis freedom and equality<sup>20</sup>.

Ulpianus describes justice as "*Justitia est constans et perpetua voluntas ius suum cuique tribuendi*" (justice is continual desire and let people to have their own rights in any kinds of matters) or "*tribuere cuique suum*" - "to give everybody his own", letting them to have their own rights<sup>21</sup>. Furthermore, Justinian describes justice in "*Corpus Juris Civilis*" the basic rule of law is to live

<sup>14</sup>Oekan S. Abdoellah, 2016, *Pembangunan Berkelanjutan Di Indonesia : Di Persimpangan Jalan*, Gramedia Pustaka Utama, Jakarta, hal 75-76

<sup>15</sup>Jimly Asshiddiqie, Log Cit, hal 142.

<sup>16</sup>Adji Samekto, 2015, *Pergeseran Pemikiran Hukum dari Era Yunani Menuju Postmodernisasi*, Konstitusi Press, Jakarta, hal 94

<sup>17</sup>Ibid, hal 96

<sup>18</sup>Lawrence M. Freidman, *The Legal Sistem A Social Perspective*, diterjemahkan oleh M. Khozim dengan judul *Sistem Hukum Perpektif Ilmu Sosial*, 2009, Nusa Media, Bandung, hal 12-19.

<sup>19</sup>Hans Kelsen, 2007, *General Theory Of Law And State* (Alih Bahasa Sumardi, *Teori Hukum Umum Dan Negara*, *Dasar Dasar Ilmu Hukum Normatif Sebagai Ilmu Deskriptif Imperatif*, BEE Media Indonesia, Jakarta, hal 16

<sup>20</sup>Abdullah, 2008, *Pertimbangan Hukum Putusan Pengadilan*, Program Pasca Sarjana Universitas Sunan Giri, Sidoarjo, hal 11.

<sup>21</sup>Agus Yudha Hernoko, 2008, *Hukum Perjanjian*, Azas Proporsionalitas Dalam Kontrak Komersial, Laks Bang Mediatama, Jogjakarta, hal 36.

properly, doesn't harm others, and give others what are really theirs. "*Juris praecepta sunt haec :honeste vivere, alterum non laedere, sum cutique tribuere*"<sup>22</sup>.

From those definitions, it can be concluded that justice is the main pillar of valid law that strictly recognizes each person among others and recognizes all theirs, and it applies reversely. Of course, the desiderated justice by society is substantial justice that has material, religious, and moral dimension. Therefore, justice has to be the starting point to construct legal system (law).

Indonesia society is well-known as plural society<sup>23</sup>. It is horizontally marked by the reality that they live socially based on different tribes, ethnic group, religion, and tradition and local wisdom, and vertically it is marked by the Indonesian structure that has diversity namely top-down vertical diversity and agrarian and industry. By those characteristics, the development of social life cannot be implemented simultaneously because some still live in agrarian culture while the other advance their life in industrial culture and information, that is why Fred W Riggs call for this condition as prismatic society<sup>24</sup>.

Prismatic concept identifies combinative alternatives on social association (*paguyuban*) and social (*patembayan*). According to Hoogvelt, there are two social values exist in the social community such as social association (*paguyuban*) that emphasizes on collective importance and social (*patembayan*) values that emphasizes private importance and freedom<sup>25</sup>. These two values are to be the foundation to construct the law that the explanation is likely to be adjusted to the stages of social-economy of the community.

In prismatic Indonesia society, the legal findings bases on prismatic law findings that is the synthesis of *civil law* and *common law* and well-known as Pancasila Legal System. In daily life, human is bound by law as Hans Kelsen call for this as law is as measure order of human beings. Order is a rule system not as common sense as a regulation (ordinance). So law is a set of rules that consist as an integral system<sup>26</sup>. According to Satjipto Rahardjo, law is one of institutions in the society that participates to make orderliness. The orderliness of law is a configuration of some institutions such as law and tradition<sup>27</sup>.

In a broader notion as Muchtar Kusuma Atmaja said that law is one of social theorems that is a reflection of valid values in the society, it is therefore the best law is the living law<sup>28</sup>.

Indonesia is a legal state where practically the doctrine and principle influence the implementation of state programs as legal state. According to Satjipto Rahardjo, rule of law is a liberal legalism. The liberal legalism concepts comprise ideas that justice can be served through the rule system making and the strict procedure is objective, fair (just), impersonal, and autonomic<sup>29</sup>. The presence of legal state in Indonesia is different from those in *rules of law* because there exist some concepts such as fatherhood, togetherness, balanced aptitude, and discussion (conference) that is necessary to include in the concept of legal state of Indonesia. Those values are roots culture of law in Indonesia that are reflected in the values of Pancasila. State is not contradistinguished to the society because the values accentuate togetherness, cooperation, and fatherhood.

As stated by Muhammad Hatta that Pancasila consists of fundament. First, moral fundament, namely believe in one God. Second, political fundament namely "civilized humanity, the unity of Indonesia, democracy and justice"<sup>30</sup>. By defining the moral fundament on that orders, this is hopefully able to serve strong fundament for those running government that in turn will only order the truth, justice, honesty as well as brotherhood. By utilizing government politics that bases on the greatest moral, it is hopefully able to implement all inspiration as stated in the preamble "social justice for all Indonesians".

Returning to the Pancasila in implementing sustainable development and construction legal system are the best solutions to encounter all state's problems because Pancasila is the central hierarchy of the overall sets of rules of existing Indonesia. It belongs to state's principles, ideology, and nation's philosophy as well as the major sources of all legal sources.

## Conclusion

Pancasila as the principles of Indonesia that have great values of Indonesian nation that needs to apply in the sustainable development including the development in the legal field. As the foundation and ideology of this state, thereby it should be a framework, value sources, and orientation in implementing the sustainable development and in constructing national legal system including all efforts to reform it.

<sup>22</sup> Jhoni Ibrahim, 2006, *Teori Dan Metodologi Penelitian Hukum Normatif*, Bayu Media, Malang, hal 3.

<sup>23</sup> Nasikun, 1974, *Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia*, Fakultas Ilmu Sosial Dan Politik UGM, Jogjakarta, hal 31

<sup>24</sup> Ronny Hanitjo Soemitro, 1985, *Studi Hukum Dan Masyarakat*, Alumni, Bandung, hal. 80.

<sup>25</sup> Ankie M. Hoogvelt, 1985, *Sosiologi Masyarakat Sedang Berkembang*, Rajawali Press, Jakarta, hal 87.

<sup>26</sup> Hans Kelsen, 2010, *Teori Umum Tentang Hukum Dan Negara (Terjemahan)*, Nusa Media, Bandung, hal 3-4.

<sup>27</sup> Satjipto Rahardjo, 1996, *Ilmu Hukum*, PT Citra Aditya Bakti, Bandung, hal 23.

<sup>28</sup> Muchtar Kusuma Atmdja, *Teori Hukum Pembangunan Eksistensi Dan Implikasi*, Epistema Institute, Epistama Dan Huma, Jakarta, TTH, hal 19.

<sup>29</sup> Satjipto Rahardjo, 2006, *Sisi Lain dari Hukum Di Indonesia*, Buku Kompas, Jakarta, hal 10

<sup>30</sup> Mohammad Hatta, 2008, *Demokrasi Kita, Pikiran-Pikiran Tentang Demokrasi Dan Kedaulatan Rakyat*, Segi Arsy, Bandung, hal 118.



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