



## The Right for a Healthy Environment in Indonesia: Comparison of Global Laws

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### Abstract

Objective: The research purpose is to explain according the constitution every citizen has the right to obtain the constitutional guarantee to live and access the healthy environment. Method: The research methods is normative juridical method is conducted by examining literature material. Citizens also have the right to live in a good and healthy living environment for their growth and development. This is regulated in Article 28 on the Declaration of the Human Rights, the Stockholm Declaration, and the constitutions of countries in the international world. Results: Result of the research is the rights for a good and healthy environment brings a burden of responsibility for the state to protect and to sustain the living environment's supporting power for the sake of the future generations. Conclusion: The conclusion from this research is that the efforts to uphold these rights may be guaranteed by the constitution. Thus, every citizen may file a lawsuit to the court if the state does not fulfil this right

**Keywords:** *Right for the Environment, Global Law, Environmental Law.*

### Introduction

The growth of modern development has impacts towards the environmental and ecological conditions. These last few decades, the environmental problems have become a real threat towards the life of the human beings [1]. This is so, even though it is the humans' greed towards the nature and the living environment which becomes the biggest threat towards the environment compared to other organisms [2].

The humans' exploitative behaviour without caring about the sustainability of the environment causes the degradation and the destruction of the living environment and the ecosystem [3]. The prevention and the countermeasures against pollution and environmental destruction need teamwork and integrity. The roles of the government and the state are crucial in handling the environmental destruction for the sustainability of the environment, so that it may be enjoyed by the future generations [4].

The environmental laws have developed rapidly. The law has the role in protection, control, and in becoming the agent of stability, agent of development, or the agent of change [5]. The environmental problems grow from time to time. They become more extensive and more severe, just like the snowball effect, where the more it rolls, the bigger it becomes. The problems are not limited to local or trans-local ones. Yet, environmental problems reach regional, national, transnational, and global levels.

The impacts which happen to the environment do not only regard one or two aspects. Yet, they are interrelated just like the character of the environment, where there are multi-chain relations which impact each other in a subsystem. If there is a problem in one of the environmental aspects, the other aspects will also experience the impacts [6]. The Republic of Indonesia's 1945 Constitution Article 1 clearly states that the

sovereignty is in the hands of the people. Thus, the effort in saving the living environment in Indonesia is also in the hands of the people. Article 28H clause (1) of the 1945 Constitution stipulates that, "Every person has the right to live with physical and mental welfare. They have the right for a place to live, and to obtain a good and healthy living environment. They also have the right to obtain health services".

## Materials and Method

The research method used in this paper is the normative legal research method. It positions the law as a building of normative system [7] using the conceptual and the constitutional approaches [8]. The research normative juridical method is "conducted by examining literature material which is secondary data". This study combines three approaches namely the statutory approach, the conceptual approach and the historical approach. Literature material is carried out with literature and document studies and then analyzed by qualitative methods [9] to find the result.

## Results and Discussion

### Guarantee for the Good and Healthy Living Environment

The right for the good and healthy environment was initially regulated in Article 5 clause (1) of the Constitution No. 4 of 1982 regarding the Principle Stipulations on the Environmental Management. It states that, "Every person has the right for a good and healthy living environment." In this case, "every person" may refer individuals, groups of people, and even legal entities. After the Principle Stipulations on the Environmental Management was revoked, it is substituted with the Constitution No. 23 of 1997 regarding the Environmental Management.

The right for a good and healthy environment is regulated in Article 5 clause (1), "Every person has the same right for a good and healthy living environment." Then, this constitution on the Environmental Management was revoked, and substituted with the Constitution No. 32 of 2009 regarding the Environmental Protection and Management. Article 65 clause (1) states that, "Every person has the same right for a good and healthy living environment as part of the human rights." As part of the humans' rights for a good and healthy environment,

there are human rights principles which apply, which include, "The State of the Republic of Indonesia acknowledges and upholds the human rights and the human beings' fundamental freedom as an absolute right which is part of and is inseparable from the human beings. It must be protected, respected, and upheld to increase the humanity's honor, welfare, happiness, intelligence, and also justice (Article 2 of the Constitution No. 39 of 1990 regarding the Human Rights) [10]."

When carefully analysing the Constitution on the Environmental Protection and Management, it can be seen that the legal policies to protect and to manage the environment are aimed make the human beings develop according to their honour and dignity. Apart from that, this constitution states that the right to enjoy a good and healthy environment is a part of the basic human rights which must be upheld, which must have a position, and which must be protected by the state [11]. Regarding the good and healthy environment, it can be reviewed from the stipulations of the Constitution No. 40 of 2007 regarding Limited Company, where this law also regulates their social and environmental responsibilities.

In Article 74, it specifically states that, "The Company which carries out activities in the sector or in the sectors related to natural resources must carry out their social and environmental responsibilities." If reviewed from the contextual point of view, the companies which are burdened with social and environmental responsibilities are those whose aims and activities regard natural resource exploration. The forms of social responsibilities may be varied.

The most principal one is "saving" the natural resources in which their balance is depleting from time to time. The government starts to sense that as an urgent matter, considering that the impacts affect the lives of many people [12]. The right to live in an environment with quality is also written in Principle 1 of the Stockholm Declaration which states that, "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for

present and future generations". The right for the good and healthy environment is also regulated in Article 1 of the Legal Principle for Environmental Protection and Sustainable Development which is a result from the "Experts Group on Environmental Law of the World Commission on Environmental and Development" agreement, which stipulates that, "All human beings have the fundamental right to an environment adequate for their health and well-being" [13].

Initially, the 1945 Constitution recognizes the rights of the good and healthy environment. Then, on the second amendment of the 1945 Constitution which was ratified on August 18<sup>th</sup>, 2000, the rights for the good and healthy environment is regulated in Article 28H clause (1), which states that, "Every person has the right to live with physical and mental welfare. They have the right for a place to live, and to obtain a good and healthy living environment. They also have the right to

The rights of a good and healthy environment's position have an important and an absolute sense as the right of the citizens. In this case, the state as the authority must guarantee and protect the citizens' rights regarding the environment. If analysed profoundly, the constitution on the Environmental Protection and Management tends to position the right of the good and healthy environment on the basic philosophy in the new environmental law's change of formulation. Here, the right for the good and healthy environment is placed in the highest position, as the citizens' basic right, which must be guaranteed by the state [14]. Thus, there is a direct relation between the aspect of human rights protection and the environment.

The environment is an absolute part of the human's life. In other words, the environment is inseparable from the human life. The human beings look for food and drinks, and also fulfill other needs from the provision or the sources provided by the environment. The natural resource is the first and the most crucial source for the fulfilment of their needs. Because of this, there needs to be a high awareness of the society or the government which is in authority to maintain the good and healthy environment.

This is because this right is clearly guaranteed by the state's constitution [15]. According to Heinhard Steiger, the subjective right is the vastest form of one's protection [16]. The individual right is the most extensive form of protection, as it provides a basis for a lawsuit for an individual to achieve their interests on a good and healthy environment. This right or lawsuit may be carried out through the facility of courtly procedures [17].

Steiger states that the right or lawsuit mentioned has two different functions, which are:

(1) The function of defence (*Abwehrfunktion*), which is the right of the individual to defend himself against an interference with his environment which is to his disadvantage; (2) The function of performance (*Leistungsfunktion*), which is the right of the individual to demand the performance of an act in order to preserve, to restore or to improve his environment [17].

Every person's right regarding the good and healthy environment is a highly substantial legal argumentation for that person to file a lawsuit regarding the fulfilment of the two functions of the individual rights through the courtly forums [18].

### **Comparison of Rights for the Good and Healthy Environment in Other Countries**

In the United States, the right for the good and healthy environment is regulated in the National Environmental Protection Act of 1969 (NEPA 1969). In the Netherlands, the right for the good and healthy environment is regulated in Article 21 of the Dutch Environmental Constitution. Then, in Russia, the right for the good and healthy environment is regulated in Article 2 of the Russian Constitution.

In Spain, the right for the good and healthy environment is regulated in Article 45 of the Spanish Constitution. The right for the good and healthy environment in Portugal is stipulated in Article 66. In Japan, the right for the good and healthy environment is written in Article 3 of the Basic Environmental Law (Law no. 91 of 1993) which was applied since November 19<sup>th</sup>, 1993. In Thailand, it is regulated in Chapter III of the Thai Constitution, meanwhile in

the Philippines; it is regulated in Section 3 of the Philippine Environmental Policy.

In the USA, the right for the good and healthy environment is written in the National Environmental Protection Act of 1969 (NEPA 1969) which has been applied since January 1<sup>st</sup>, 1970. Based on Section 2 of NEPA 1969, the aim of this law is as follows:

“The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality” [19].

The right for the good and healthy environment stipulated in Section 101 (c) determines that, “The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation of the environment”.

The right for the good and healthy environment is also regulated in constitutions of some states, for example, the Constitution of Illinois. It is stated that, “Each person has the right to a healthful environment”; then, in the Constitution of Rhode Island, it stipulates that, “The rights to use and enjoyment of the natural resources of the state with due regard for the preservation of their values”; and, in the Constitution of Pennsylvania, it states that, “The people have a right to clean air, pure water and to preservation of the natural, scenic, historic, and aesthetic values of the environment” [20].

The rights for the good and healthy environment in the Netherlands are regulated in Article 21 of the Dutch Environmental Constitution, which states that, “It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment” [21].

These rights are accompanied with the obligation to maintain the environmental sustainability, which is stated in Article 58 on the Duty to Protect the Environment. It is said that, “Everyone is obliged to preserve

nature and the environment, and care for natural wealth” [22].

The Spanish Constitution gives the guarantee of rights to every person regarding the rights for the good and healthy environment. It is stipulated in Article 45 (Pedersen 2008). Article 45 clause (1) states that, “Everyone has the right to enjoy an environment suitable for development of the person as well as the duty to preserve it”.

The right for the good and healthy environment in the Portuguese Constitution is regulated in Article 66 [23]. Article 66 clause (1) states that, “Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it”.

Clause (2) stipulates:

“It is the duty of the State, acting through appropriate bodies and having resources to or taking support on popular initiatives, to: (a) Prevent and control pollution, its effects and harmful forms of erosion; (b) Order and promote regional planning aimed to achieving a proper location of activities, a balanced social and economic development, and resulting in biological balanced landscapes.”

The right for the good and healthy environment in France is regulated in the French National Assembly which is adopted from the Charter for the Environment on 2004. This charter is integrated in the Constitution of the French Fifth Republic [24]. The adoption of this Charter for the Environment is clearly seen in the Preamble of the French Constitution, which states that:

“[t]he French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to rights and duties as defined in the Charter for the Environment of 2004” [25].

The Charter for the Environment is further described in ten articles which contain various rights and obligations regarding environmental management. This Charter states that every person has the right for a healthy and balanced living environment (Article 1); the right for information on the

environment and also the right to be involved in the decision-making process (Article 7).

The adoption of the Charter for the Environment as part of the French Constitution is regarded as a developed step in the environmental management. With this Charter, France becomes one of the countries which include environmental protection in their constitution [26]. In Japan, the right for the good and healthy environment is written in Article 3 of the Basic Environmental Law (Law No.91 of 1993) which has been applied since November 19<sup>th</sup>, 1993. It states that:

“Environmental conservation shall be conducted appropriately to ensure that the present and future generations of human beings can enjoy the blessings of healthy and productive environment and that the environment as the foundation of human survival can be preserved into the future, in consideration that preserving the healthy and productive environment is indispensable for healthy and cultured living for people, and that the environment is maintained by a delicate balance of the ecosystem and form the foundation of human survival, which is finite in its carrying capacity and presently at risk of being damaged by the environmental load by human activities” [27].

Any project or activity which may seriously affect the quality of the environment shall not be permitted, unless its impacts on the quality of the environment have been studied and evaluated and opinions of an independent organization, consisting of representatives from private environmental organizations and from higher education institutions providing studies in the environmental field, have been obtained prior to the operation of such project or activity, as provided by law. The right of a person to sue a State agency, State enterprise, local government organization or other State authority to perform the duties as provided by law under paragraph one and paragraph two shall be protected [28].

In the Philippines, the right for the good and healthy environment is written in Section 3 of the Philippine Environmental Policy, which states that, “In furtherance of these goals and policies, the Government recognizes the right of the people to healthful environment. It shall be the duty and responsibility of each individual to contribute

to the preservation and enhancement of the Philippine environment” [29].

## Conclusion

The rights for the information on the environment are a consequence of the right of a good and healthy environment. With the provision of the information on the environmental management, the decision-making system will be more complete, especially regarding the aspects of environmental management for the people. This right is globally regulated in the Stockholm Declaration and the constitutions of some countries in the world.

They give the same right to the citizens to live in a good and healthy environment. The efforts to uphold these rights may be guaranteed by the constitution. Thus, every citizen may file a lawsuit to the court if the state does not fulfil this right. The fulfilment of the right of a good and healthy environment also gives the burden to the society to carry out their obligations in maintaining and sustaining the environment for the sake of the future generations, so that the supporting power of the natural resources may be continually maintained.

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