

GUEST EDITORIAL

Legislation study methods to save the environment**Tommy Hendra Purwaka**

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ABSTRACT

This paper provides an overview of the different methods available to critical analyse existing environmental laws and their potential for achieving genuine environmental change. It highlights how misinterpretation of the substance of laws and regulations, malfunction of legislation, disagreement among stakeholders in the application of available legal instruments and the absence of monitoring, control, and surveillance can result in inappropriate application of laws, contributing to misuse of natural resources and the environment decline. It outlines four methods of legal analysis to review the efficacies of existing laws to identify areas potential for legal reform these are; analysis of legal content, legal functions, legal instruments, and legal monitoring, control and surveillance.

ABSTRAK

Makalah ini memberikan gambaran umum tentang berbagai metode yang tersedia untuk menganalisis secara kritis undang-undang lingkungan yang ada dan potensinya untuk mencapai perubahan lingkungan asli. Tulisan ini menyoroti bagaimana salah tafsir substansi undang-undang dan peraturan, ketidak berfungsinya undang-undang, ketidak sepakatan di antara para pemangku kepentingan dalam penerapan instrumen hukum yang tersedia dan tidak adanya pemantauan, kontrol, serta pengawasan, yang dapat mengakibatkan penerapan undang-undang yang tidak tepat, berkontribusi pada penyalahgunaan sumber daya alam, dan penurunan kualitas lingkungan. Ini menguraikan empat metode analisis hukum untuk meninjau efektivitas hukum yang ada untuk mengidentifikasi bidang yang berpotensi untuk reformasi hukum; analisis muatan hukum, fungsi hukum, perangkat hukum, serta pemantauan hukum, kontrol dan *surveillance*.

Keywords: *Environmental law, study methods, legal instruments*

BACKGROUND

Legislation for the purposes of this paper consists of all written regulations, regulatory policies, and policies, including the ratified international conventions, that regulate natural resources and the environment. To analyse if a legislation can save the environment, the question must be posed 'how can legislation save the environment?'. To answer this four analytical methods were applied to identify which aspects of laws and regulations were being implemented, why legislation was being employed improperly, and how this can contribute to, rather than reduce environmental problems.

Firstly, incomplete interpretation of the content of the law results in incorrect application of the law, and so failing to meet its legal objectives. In this context, a legal content analysis used normative and empirical approaches to understand the legal interpretation, reasoning and argumentation of relevant legislations. Almost all of these aspects are not explicitly described in the existing legislation, so that requiring a further analysis of. By understanding the legal and institutional

aspects and the content of each legislation correctly, key stakeholders (e.g. government institutions, environmental managers, legal consultants, and law enforcers) will be able to apply the legislation appropriately as the legal basis for protecting the environment.

Secondly, the legislation is unable to function properly. This is because the content of legislation and its enactment does not reflect the current situation and conditions, such as political stability, existence of policies on economic efficiency, social prosperity, cultural value establishment, defense endurance, security pacification, and environmental sustainability, as well as legal public order, in an effort to save the environment. Understanding these factors can be used to develop recommendation to propose amendments to laws so they can be employed properly. Allowing for correct and/or improved application of the law to provide increased environmental protection.

Thirdly, different stakeholders will seek to apply environmental legislation with varying outcomes in accordance with their respective interests. The different missions of each stakeholders to comply with these

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legislations can also contribute to environmental problems. Therefore, alignment of stakeholder perceptions of this legislation is very important to form a common understanding in protecting the environment in accordance with their respective interests. Stakeholders must sit together, negotiate and agree a common understanding to harmonize their perceptions of the purpose of these legislations. In addition, this approach should be used to reach agreement on how to apply the legal instruments regulated under each legislation, and how best they can be applied to protect and preserve the environment.

Fourthly, lack of appropriate application as well as absence of monitoring, control, and surveillance (MCS) overseeing the implementation of various forms of laws and regulations can contribute to the increase of environmental problems. In particular, legislation and regulations for exploration, exploitation, management and conservation of natural resources and the environment. Environmental problems exacerbated by this absence include water depletion, forest fires, floods, acid rain, landslide, greenhouse effect and ozone depletion. Appropriate MCS, for example should provide assurance that any exploitation of natural resources is done so legally in accordance with the relevant regulations. With appropriate oversight in the application of relevant laws and regulations, environmental problems can be minimized or even prevented from happening.

LEGAL CONTENT ANALYSIS

Every law regarding natural resources and the environment has its purpose stated in its articles. The objectives will be achieved through a legal mandate for government agencies to apply the law through facilities and infrastructure provided by collaboration, coordination, and integration with other government agencies as well as with international, private, and non-government institutions. All of the articles in the legislation, should be carried out in accordance with legal mandate of each institution and are designed to support the meeting of the stated objectives. The process of achieving these objectives can be identified through understanding the legal interpretation, reasoning, and argumentation in each law. The legal and institutional aspects contained in a legislation consist of stated objectives, legal mandate, institutions, facilities and infrastructure, and collaborative institutional networks. Thus, each of these aspects must be addressed in advance when an institutional collaboration is expected.

To be affective the legal and institutional aspects of legislation must empowered stakeholders to carry out integrated management of natural resources and the environment. In this instance, the definition and meaning of 'natural resource management' has yet to be harmonized among stakeholders. Natural resource

management can be defined as the conscious decision-making process applied to determine the allocation of natural resources over a given space and time for the purpose of achieving stated goals sustainably. The decision-making process to determine a 'sustainable' allocation of these resources, must take into account recommendations from science and technology, law and institutions, and public and business administration. Normally, this decision-making takes place during the planning, organizing, directing and controlling (POAC) activities of natural resource management. POAC activities include, database development, resource assessment, resource exploration, calculation of potential carrying capacity and absorptive capacity, resource allocation, resource exploitation, resource conservation, production processes, product marketing, and monitoring and evaluation. Therefore these management activities including resource-based management, community-based management, and market-based management must be reflected in the law governing natural resource use.

Therefore understanding the quality of existing legal instruments and how they can be harmonized will be key to improving the legal basis for environmental protection efforts. Area of the legal framework where this could be applied include the implementation of the 3R strategy (reduce, reuse, recycle), use of natural resources, strategies to adjust climate change, strategies to preserve diversity biodiversity, strategies to reduce emissions from deforestation and forest degradation (REDD), strategies to save energy, strategies to save water, strategies to save electricity, strategies to reduce plastics, strategies to reduce fossil fuels, and strategies to increase green open space in every city. As such if analysis of legislation legal content is applied properly to harmonize the legal and institutional aspects of the law, alongside the components of management activities, it will be able to inform environmental efforts to a create new and improved understanding of ecological jurisprudence and ecological engineering.

LEGAL FUNCTION ANALYSIS

Legislation will function properly only if it is implemented to meet the objectives of private and public stakeholders. Private interests include, inter alia, legal protection of the interests of private entities such as individuals, private and state companies, cooperative entities, foundations, and non-governmental organizations, both as consumers, producers or mediators. The public interests are formed through the following processes, a) compromise between private entities, b) respect for personal interests sacrificed for public interests by private entities, and c) the equal distribution of benefits to related private entities for the formation of public interests. An imbalance between private and public interests can create difficulties for

stakeholders to develop institutional collaboration, coordination, and integration in implementing laws towards saving the environment.

Applying a legal function analysis will identify whether or not the legal substance of the legislation and its implementation is functioning properly. Conditions of a functioning legislation are as follows: a) From political point of view, the legislation must balance private and public interests equitably; b) From economic point of view, legislation must produce efficiencies in defending private and public interests; c) From social point of view, the legislation must regulate opportunities for private and public interests to generate prosperity; d) From cultural point of view, legislation must strengthen the ethical values of personal and public interests; e) From defense standpoint, the legislation must be encourage private and public interests to strengthen various aspects of social life; f) From security standpoint, the legislation must be able to promote security between private and public interests; g) From environmental perspective, legislation must be able to provide legal guarantees for the development of sustainable private and public interests; h) From legal point of view, the legislation must be able to improve public order in establishing and carrying out private and public interests. If the legislation can meet all the parameters of the legal function, it will be used as a legal basis that meets the requirements for protecting and preserving the environment.

LEGAL INSTRUMENT ANALYSIS

Effective legislation requires legal instruments to function properly, with facilities and infrastructure that is implicitly and/or explicitly regulated within the law. Legal instruments can be identified and derived from the legal substance of the legislation, therefore, the chosen legal instrument must be standardized through negotiations among stakeholders to be used as an agreed legal instrument in environmental protection.

The first and most important legal instrument is the acceptance of the legislation by stakeholders. To realize this acceptance, the results of legal interpretation, reasoning, argumentation, and harmonization must be clear and prevent misperceptions and/or multiple perceptions of the rule of law by stakeholders. Efforts to promote harmonious perception must consider that each stakeholder will have a differing interpretation of the legislation because of their varying interests. The government will always employ laws as social engineering tools that define the parameters for effective and efficient exploration, exploitation, management and conservation of natural resources and the environment. Private entities are encouraged to obey the law as long as they are able to generate profit. Community stakeholders will accept the law as long as it sits in accordance with their social values. Legal

practitioners will give their best efforts to find and build an effective and efficient legal basis for the benefit of their clients. Academics will try to develop legal basis that satisfies all stakeholders by employing legal interpretation, reasoning, argumentation, and harmonization. If the methods employed by legal academics are applied by all stakeholders, it will accelerate the efforts of stakeholders in developing harmonious perceptions as legal instruments to protect the environment.

The second most important legal instrument is the agreement of stakeholders regarding the application of the appropriate legal instruments to protect and preserve the environment. These legal instruments include environmental inventory, ecoregions, strategic environmental assessment, spatial planning, environmental impact assessment, environmental audit, and integrated natural resource and environmental management. In fact, this regulated legal instrument has been promulgated by the government and all stakeholders must comply.

If both of these important legal instruments are applied correctly, it can provide legal certainty to stakeholders to achieve the stated objectives with the articles of the law. If so, then the law will be functioning properly and efforts to protect the environment will be on the right track.

LEGAL MONITORING, CONTROL, AND SURVEILLANCE ANALYSIS

Implementation of the law must be accompanied by the ability to employ ongoing oversight if it is expected to be able to save the environment. Supervision and oversight can be employed using the monitoring, control, and surveillance (MCS) systems approach.

Monitoring focuses on measuring the physical relationship between humans and the environment. The objective of which is to determine the changes in the intensity natural resources and the environment are exploited and whether or not it this usage has reached a level that the environment can recover, it's 'carrying capacity'. If the intensity of exploitation has approaches that capacity, it inform the resource manager that usages must be stopped immediately or drastically reduced to aid natural recovery i.e. by closing the fisheries season early.

Control pays attention to the administrative relationship between humans and the environment. It aims to establish and check the legality of exploitation activities by, for example, observing their compliance with laws and regulations, and, in needed adjusting activities to fall within the legally permit conditions and conditions set for exploitation. Violations falling outside of legally permitted activities will be followed by warning letters and other forms of administrative sanctions.

Surveillance concentrates on the geographical relationship between humans and the environment. The objects of surveillance includes all activities and maneuvers, including the movement of environmental impacts on land and open water, at sea, and in the air. It is carried out by undertaking land, sea or sea and air patrols. Through surveillance, the time and location of violations of the law can be identified and mapped.

This brief explanation of integrated MCS implementation invites and enables the ability to make plans for the successful implementing of effective environmental legislation. Importantly, MCS can be a determining factor for the successful management of natural resources and the environment. It can to provide the evidence with certainty that efforts to save the environment are being carried out in accordance with the legislation. To be successful MCS activities and results must be periodically evaluated, to drive continual revision and improvements as it responds to changing environmental conditions. Because MCS oversight emphasizes the physical, administrative, and geographical relationships between people and the environment, it aligns to the permitting and environmental management system and can be considered as a useful tool for integrating management activities. As such MCS can also be applied to strengthen efforts to promote the harmonization of environmental law.

CONCLUSION

It is recommended that legislation studies to protect the environment should be carried out by applying the analysis of legal content, functions, instruments, and legal MCS. Analysis of legal content identified how and where the legal and institutional aspects and components of management activities can and should be harmonized. Analysis of the legal function contribute to the understanding the legal parameters by which identify whether or not the functions of the law are properly aligned or not. Analysis of legal instruments arises with the acceptance and agreement of stakeholders on applying selected legal instruments, the most important of which is if legal instruments are functioning and are harmonized properly. The legal MCS analysis provides the ability to oversee harmonious legislative functions and ensuring environmental protection efforts are accordance with the legislation. By making the best use of the results of these legislation studies and this approach, stakeholders will be able to develop integrated natural resource and environmental management for the purpose of protecting and conserving the environment.

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