MEMBANGUN PERATURAN DAERAH BIDANG PERTAMBANGAN MINERAL DAN BATUBARA BERBASIS CITA HUKUM PANCASILA

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Abstract

Building the legal product of a regional regulation on mineral and coal mining is the authority of regional governments. In implementing their authority, they are required to apply Pancasila and embrace the 1945 Constitution of the Republic of Indonesia. Pancasila consisting of five precepts is a legal ideal that should be incarnated in the legal product of a regional regulation on mineral and coal mining. The incarnation of the legal ideal of Pancasila through the legal product of a regional regulation on mineral and coal mining will have the implication on mineral and coal mining management based on the legal ideal of Pancasila. Therefore, building the regional regulation on mineral and coal mining must be based on the normative-juridical aspect as the basis for the making of laws and the theoretical aspect based on the legal ideal of Pancasila.

Keywords : The Legal Ideal of Pancasila, Mining, Regional Regulation

Abstrak

Membangun produk hukum perturan daerah pertambangan mineral dan batubara merupakan kewenangan penyelenggara pemerintahan daerah, dalam menjalankan kewenangannya berkewajiban mengamalkan Pancasila dan memegang teguh UUD NRI Tahun1945. Pancasila yang terdiri dari kelima sila adalah merupakan cita hukum seharusnya dijabarkan dalam produk hukum perturan daerah pertambangan mineral dan batubara. Penjabaran cita hukum Pancasila melalui produk hukum pertambangan mineral dan batubara akan berimplikasi terhadap pengelolaan pertambangan mineral dan batubara berbasis cita hukum Pancasila, karena itu membangun peraturan daerah pertambangan mineral dan batubara harus didasarkan pada aspek yuridis normatif sebagai landasan pembuatan peraturan perundang-undangan, serta aspek teoritik berbasis cita hukum Pancasila.

Kata Kunci : Cita Hukum Pancasila, Pertambangan, Peraturan Daerah.

A. Pendahuluan

Lahirnya negara dan bangsa Indonesia para pendiri negara telah pula menyepakati Pancasila dan UUD 1945 sebagai dasar dan konstitusi negara.[1] Pancasila sebagai dasar negara yang jiwa dan esensinya dirumuskan dalam Pembukaan beserta seluruh substansi Undang-Undang Dasar 1945.Menjadi dasar yang memberikan tuntunan bagaimana penyelenggaraan negara dilaksanakan, dan arahan bagaimana tujuan negara serta tugas-tugas pemerintahan negara harus di capai.[2]

Soehino menyatakan bahwa, negara kesatuan republik Indonesia berdasarkan Pancasila dan UUD 1945 adalah Negara Hukum, yaitu negara yang segala aktivitasnya baik yang dilakukan oleh penguasa maupun oleh warga negara harus berdasarkan atas ketentuan-ketentuan hukum dan atau aturan-aturan hukum.[3] Hukum harus menjadi

[1] Dahlan Thaib, 2009, *Ketetanegaraan Indonesia Perspektif Konstitusional*, Yogyakarta, Total Media, hlm. 14.
[2] Bambang Kesowo, 2007, *Aktualisasi Kultur Hukum Dalam Sistem Hukum Pancasila*, *Makalah*, Disajikan Dalam Seminar Nasional, Universitas Gadja Mada, Yogyakarta,Fakultas Hukum dan KAGAMA, hlm. 3.
[3] Soehino, 2006, *Hukum Tata Negara Teknik Perundang-Undangan (Setelah Perubahan Pertama dan Perubahan Kedua Undang-Undang Dasar Negara Republik Indonesia Tahun 1945)*, Yogyakarta, BPFE, hlm.18.

dasar dan panduan bagi setiap penyelenggaraan pemerintahan negara.Didalam praktik penyelenggaraan pemerintahan negara dilakukan oleh aparat negara.[4]

Bernard Arief Sidharta berpendapatbahwa, negara Pancasila yang dicita-citakan adalah negara hukum yang berdasarkan asas kerakyatan bertujuan untuk mewujudkan kesejahteraan berkeadilan (keadilan sosial) bagi seluruh rakyat Indonesia serta perdamaian dunia.[5]Untuk mewujudkan tujuan negara Pancasila, salah satu instrumen yang dipergunakan oleh penyelenggara negara adalah melalui perangkat peraturan perundang-undangan sebagai payung dalam memberikan legitimasi pada berbagai tindakan dan atau perbuatan penyelenggara negara, maupun tindakan dan atau perbuatan warga negara. Karena itu penyelenggara negara diberikan kewenangan untuk membuat instrumen hukum berupa peraturan perundang-undangan, baik penyelenggara negara tingkat pusat maupun penyelenggara negara pada tingkat daerah provinsi dan daerah kabupaten kota.

Berkaitan dengan kewenangan penyelenggara pemerintahan daerah dalam membuat produk hukum peraturan daerah, yang salah satu diantaranya adalah membuat produk hukum yang sangat vital dan esensial sebab menyangkut hajat hidup orang banyak yakni, di bidangpengusahaan pengelolaan sumber daya alam berupa pertambangan mineral dan batubara.Karena itu dalam rangka pengaturan dan pendistribusiannya harus dapat mendatangkan kesejahteraan dan kemakmuran bagi rakyat Indonesia, sebagaimana diamanatkan dalam Pasal 33 ayat (3) UUD NRI Tahun 1945. Tulisan ini hendak mengkaji bagaimana membangun produk hukum peraturan daerah pertambangan pertambangan mineral dan batubara berbasis cita hukum Pancasila, sehingga dalam pengusahaan pengelolaan pertambangan mineral dan batubara tidak berbasis liberal kapitalistik.Dengan demikian dalam menyusun undang-undang, pembentuk undang-undang perlu dengan tepat menunjukkan nilai-nilai Pancasila, yang mendasari ketentuan undang-undang itu.Dengan demikian peraturan-peraturan hukum merupakan pelaksanaan undang-undang itu tidak boleh mengandung hal-hal yang bertentangan dengan Pancasila.[6]

B. Pembahasan

1. Cita Hukum Pancasila

Arief Hidayat mengemukakan dapat dipahami bahwa, Pancasila merupakan norma dasar negara Indonesia (*grundnorm*) dan juga merupakan cita hukum Indonesia (*rechtsidee*) sebagai kerangka keyakinan (*belief framework*) yang bersifat normatif dan konstitutif. Bersifat normatif karena berfungsi sebagai pangkal dan prasyarat ideal yang mendasari setiap hukum positif, dan bersifat konstitutif karena mengarahkan hukum pada tujuan yang hendak dicapai.[7]Moch. Mahfud MD, berpendapat bahwa, dari sudut hukum kedudukan Pancasila yang seperti itu melahirkan satu sistem hukum yang khas sebagai sistem hukum Indonesia yang umumnya disebut sebagai sistem hukum Pancasila. Sistem hukum Pancasila yang seperti itu memasang rambu-rambu dan kaidah penuntun dalam politik hukum nasional kita.Rambu yang paling umum adalah larangan bagi munculnya hukum yang bertentangan dengan nilai-nilai Pancasila.[8]

Pancasila sebagai cita hukum bangsa Indonesia, juga berkedudukan sebagai *staatsfundamentalnorm*. Abdul Ghofur Anshori, mengemukakan bahwa, Pembukaan UUD 1945 di dalamnya terkandung nilai-nilai religius, nilai hukum moral, nilai hukum kodrat dan nilai filosofis merupakan suatu sumber hukum material bagi hukum Indonesia. Pembukaan UUD 1945 menurut filsafat hukum dalam hierarki tata urutan perundang-undangan merupakan *staatsfundamentalnorm*, dalamsusunan yang

[4] Dahlan Thaib, *Op,Cit.*, hlm. 27.
[5] Bernard Arief Sidharta, 1996, *Refleksi Tentang Fundasi Dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia,Disertasi,* Bandung: Universitas Padjadjaran, hlm. 57-58.
[6] Barda Nawawi Arief, 2009, *Kumpulan Hasil Seminar Nasional Ke I S/D VIII Dan Konvensi Hukum Nasional 2008*, Semarang: Pustaka Magister, hlm. 30.
[7] Arief Hidayat dan Airlangga Surya Nagara, 2011, *Negara Hukum Pancasila Suatu Model Ideal Penyelenggaraan Negara Hukum*, Makalah, Disampaikan Pada Semiloka Pendidikan Pancasila dan Konstitusi, Jakarta, hlm. 7.
[8] Moch. Mahfud MD, 2010, *Konstitusi dan Hukum dalam Kontroversi Isu*, Jakarta:PT. Raja Grafindo Persada, hlm. 37-38.

hierarkis ini Pancasila menjamin keserasian atau tiadanya kontradiksi di antara berbagai peraturan perundang-undangan secara vertikal maupun horizontal.[9]

Pancasila yang merupakan cita hukum, maka nilai-nilai yang terdapat dalam Pancasila mempunyai fungsi konstitutif yang menentukan apakah tata hukum Indonesia merupakan tata hukum yang benar, dan disamping itu mempunyai fungsi regulatif yang menentukan apakah hukum posisitif yang berlaku di Indonesia merupakan hukum yang adil atau tidak.[10] Dengan demikian dapat dikatakan bahwa suatu produk hukum yang tidak sesuai dengan cita hukum Pancasila tidak akan melahirkan suatu tata hukum yang benar dan juga tidak akan melahirkan produk hukum yang adil. Cita hukum adalah pengertian atau konsep hukum menurut kita. Cita-cita hukum atau pengertian hukum kita kalau diikuti dengan seksama, bunyi penjelasan dari UUD kita sudah ditentukan oleh filsafat hukum kita yang dasarnya adalah Pancasila. Dengan begitu, apa yang disebut menurut hukum di Indonesia tidak dapat sama dengan pengerian hukum dari tata hukum lain.[11]

2. Membangun Produk Hukum Peraturan Daerah Pertambangan Mineral dan Batubara Berbasis Cita Hukum Pancasila

Peraturan daerah sebagai bagian dari peraturan perundang-undangan adalah merupakan produk hukum penyelenggara pemerintahan daerah yang dibuat oleh Pemerintah daerah bersama dengan Dewan Perwakilan Rakyat Daerah (DPRD), sesuai dengan tingkatannya. Pembentukan peraturan daerah adalah merupakan salah satu pelaksanaan tugas wewenang serta kewajiban penyelenggara pemerintahan daerah. Dalam melaksanakan tugas, wewenang serta kewajibannya penyelenggara pemerintahan daerah ditegaskan berkewajiban memegang teguh dan mengamalkan Pancasila. Kewajiban yang sama juga diberikan kepada anggota Dewan Perwakilan Rakyat Daerah (DPRD), untuk memegang teguh dan mengamalkan Pancasila dan melaksanakan UUD NRI Tahun 1945 serta menaati ketentuan peraturan perundang-undangan.

Kewajiban pokok yang melekat pada penyelenggara pemerintahan daerah secara normatif merupakan penuntun dalam melaksanakan tugas wewenang dan kewajibannya, termasuk dalam membuat dan atau membentuk produk hukum berupa peraturan daerah, karena itu dalam pembentukannya cita hukum Pancasila dan atau nilai-nilai Pancasila yang terdiri dari kelima sila dari Pancasila harus dituangkan dalam sebuah produk hukum berupa peraturan daerah.

Membangun sebuah peraturan perundang-undangan termasuk peraturan daerah secara yuridis normatif telah diatur dalam berbagai peraturan perundang-undangan baik yang terkait dengan perosedur pembentukannya, materi muatan yang harus diaturnya, maupun asas-asas yang harus termuat dalam sebuah peraturan perundang-undangan (Perda) tersebut. Namun demikian dalam membangun sebuah peraturan daerah yang merupakan salah satu bagian dari peraturan perundang-undangan bukan hanya dapat dilihat dari perspektif yuridis normatif-nya saja, tetapi juga harus di lihat dari perspektif teoritik.

Perspektif Yuridis Normatif,pembentukan undang-undang oleh badan pembantuk undang-undang adalah perbuatan hukum penguasa yang berwenang, oleh karena itu tata cara pembentukan undang-undang harus melalui tata cara yang telah ditentukan oleh peraturan perundang-undangan.[12] Peraturan daerah sebagai salah satu peraturan perundang-undangan dalam proses pembentukannya secara yuridis normatif diatur dalam Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan, yakni, dimulai tahap perencanaan, penyusunan, pembahasan, pengesahan rancangan atau penetapan, dan pengundangan, sebagaimana diatur Pasal 56 sampai dengan Pasal 62. Tahapan tersebut adalah merupakan sebuah prosedur dalam

[9] Abdul Ghofur Anshori, 2008, *Menggali Makna Sistem Hukum Dalam Rangka Pembangunan Ilmu Hukum dan Sistem Hukum Nasional*, Orasi Ilmiah Dies NatalisKe-62,Yogyakarta: Fakultas Hukum UGM, hlm. 14-15.
[10] A. Hamid S. Attamimi, dkk, 1991,*Pancasila Sebagai Ideologi Dalam Berbagai Bidang Kehidupan Bermasyarakat, Berbangsa Dan Bernegara*, Jakarta:BP-7 Pusat, hlm. 69.
[11] Satya Arinanto dan Ninuk Triyanti, 2009, *Memahami Hukum Dari Konstruksi Sampai Implenetasi*, ,Jakarta:PT. Raja Grafindo Persada, hlm. 98.
[12] Soehino, *Lot. Cit.*

membangun peraturan daerah dan sekaligus sebagai alat uji berkenaan dengan keabsahan peraturan daerah tersebut.

Terlepas dari prosedur pembentukan peraturan daerah sebagaimana yang dikemukakan diatas, sebuah peraturan perundang-undangan (Perda) harus berpedoman kepada asas-asas pembentukan peraturan perundang-undangan, sebagaimana diatur dalam (lihat Pasal 5 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan). Keseluruhan asas tersebut adalah merupakan cita hukum Pancasila.

Maka dengan demikian sebuah produk hukum utamanya produk hukum peraturan daerah berupa pertambangan mineral dan batubara harus mencerminkan asas-asas tersebut, dalam arti bahwa peraturan daerah di bidang pertambangan mineral dan batubara yang pengelolaannya dilakukan oleh badan usaha maupun perseorangan harus dapat mengayomi masyarakat uatamanya masyarakat setempat dan mampu memberikan rasa keadilan serta manfaat yang sebesar-besarnya untuk kesejahteraan dan kemakmuran rakyat.

Dalam perspektif teoritik membangun sebuah produk hukum peraturan perundang-undangan, termasuk produk hukum pemerintahan daerah berupa peraturan daerah, harus didasarkan pada Pancasila dan Undang-Undang Dasar NRI Tahun 1945. Oleh Khudzaifah Dimyati dikatakan bahwa, pembangunan dan pembinaan hukum di Indonesia didasarkan atas Pancasila dan Undang-Undang Dasar 1945. Paradigma yang dapat ditangkap dari Undang-Undang Dasar 1945 antara lain: a. Ketuhahanan Yang Maha Esa; b. Kemanusiaan; c.Persatuan; d. Kerakyatan; e. Keadilan sosial; f. Kekeluargaan; g. Harmoni; h. Musyawarah.[13]

Sebagai paradigma pembangunan hukum, Pancasila memiliki sekurang-kurangnya empat kaidah penuntun yang harus dijadikan pedoman dalam pembentukan dan penegakan hukum di Indonesia.*Pertama*, hukum harus melindungi segenap bangsa dan menjamin keutuhan bangsa dan karenanya tidak diperbolehkan ada hukum-hukum yang menanam benih disintegrasi.*Kedua*, hukum harus mampu menjamin keadilan sosial dengan memberikan proteksi khusus bagi golongan lemah agar tidak tereksploitasi dalam persaingan bebas melawan golongan yang kuat.*Ketiga*, hukum harus dibangun secara demokratis sekaligus membangun demokrasi sejalan dengan nomokrasi (negara hukum).*Keempat*, hukum tidak boleh diskriminatif berdasarkan ikatan primordial apa pun dan harus mendorong terciptanya toleransi beragama berdasarkan kemanusiaan dan keberadaban.[14]

Sejalan dengan uraian tersebut di atas Hasil Seminar Hukum Nasional IV tanggal 26-30 Februari 1979 dikatakan bahwa, Pancasila yang mengandung nilai-nilai kejiwaan bangsa Indonesia merupakan dasar tertib hukum Indonesia, pedoman dan penunjuk arah perkembangannya dengan sistem yang terbuka dan adalah batu ujian mengenai kepatutan dan perundang-undangan. Dalam menyusun undang-undang, pembentuk undang-undang perlu dengan tepat menunjukkan nilai-nilai Pancasila, yang mendasari ketentuan undang-undang itu.Dengan demikian peraturan-peraturan hukum merupakan merupakan pelaksanaan undang-undang itu tidak boleh mengandung hal-hal yang bertentangan dengan Pancasila.Pencerminan nilai-nilai Pancasila di dalam perundang-undangan merupakan hakekat pembentukan sistem hukum nasional.[15]

Berdasarkan uraian tersebut di atas menunjukkan bahwa dalam membangun sebuah produk hukum perturan perundang-undangan (Perda) nilai-nilai kejiwaan bangsa Indonesia, nilai-nilai Pancasila harus termuat dalam ketentuan peraturan perundang-undangan (Perda). Maka dengan demikian pemahaman terhadap Pancasila secara komprehensif baik terhadap asas-asas yang dikandungnya, nilai-nilainya, dan cita hukum yang terkandung didalam Pancasila mutlak harus dipahami oleh institusi pembuat hukum atau lembaga yang berwenang membuat hukum, lembaga penerap sanksi, maupun oleh pemegang peran. Pemahaman yang komprehensif mengenai hal tersebut maka produk hukum berupa peraturan perundang-undangan (Perda) akan melahirkan produk hukum

[13] Khudzaifah Dimyati, 2005, *Teorisasi Hukum Studi Tentang Perkembangan Pemikiran Hukum Di Indonesia 1945-1990*, Surakarta: Muhammadiyah University Press, hlm. 192.
[14] Moh. Mahfud MD, 2010,*Membangun Politik Hukum Menegakkan Konstitusi.* Jakarta: PT. Raja Grafindo Persada, hlm. 55.
[15] Barda Nawawi Arief, *Op. Cit*., hlm. 30-31.

peraturan perundang-undangan berbasis cita hukum Pancasila, yang sudah barang tentu jauh dari nilai-nilai seperti dianut dalam budaya hukum barat yang berciri liberal-individualistik.

Membangun produk hukum berupa peraturan perundang-undangan (Perda) berbasis cita hukum Pancasila harus berpijak kepada kerangka pembangunan hukum/politik hukum, berparadigma Pancasila yakni: ketuhanan, kemanusiaan, persatuan, kerakyatan dan keadilan dengan bertumpu kepada kelima sila-sila dari Pancasila serta asas-asas umum dari hukum nasional yakni: asas manfaat, asas usaha bersama dan kekeluargaan, asas demokrasi, asas adil dan merata, asas perikehidupan dalam keseimbangan, asas kesadaran hukum, asas kepatutan, dan asas kerukunan serta asas keselarasan. Dan asas-asas yang terkandung di dalam Undang-Undang Dasar NKRI 1945.

3. Konsep Ideal Dalam Membangunan Produk Hukum Peraturan Daerah Pertambangan Mineral Dan Batubara Berbasis Cita Hukum Pancasila

Membangun produk hukum berupa peraturan perundang-undangan (Perda) khususnya peraturan daerah pertambangan mineral dan batubara ada beberapa hal yang harus mendapat perhatian utama yakni: 1. Bahwa pertambangan mineral dan batubara adalah merupakan kekayaan alam Indonesia yang tidak terbarukan; dan merupakan karunia Tuhan Yang Maha Esa; 2. Bahwa pertambangan mineral dan batubara yang merupakan kekayaan alam Indonesia adalah merupakan kekayaan rakyat Indonesia; 3. Bahwa dalam pengelolaan pertambangan mineral dan batubara harus dapat mendatangkan kemanfaatan dan kemakmuran bagi rakyat Indonesia secara nyata; 4. Bahwa penguasaan negara terhadap sumber daya alam berupa pertambangan mineral dan batubara dalam pengertian pengaturan, pendistribusian dan pemanfaatannya tidak boleh dilakukan secara sewenang-wenang; 5. Bahwa pengusahaan pengelolaan pertambangan mineral dan batubara tidak boleh dikelola secara liberal-kapitalistik.

Kelima hal tersebut di atas dapat diwujudkan apabila instrumen hukum yang mengatur pengelolaan pertambangan mineral dan batubara didasarkan pada cita Hukum Pancasila yang untuk selanjutnya dijabarkan dalam Pasal 33 UUD NRI Tahun 1945. Berangkat dari pemahaman terhadap makna Pasal 33 tersebut dalam membangun produk hukum peraturan daerah pertambangan mineral dan batubara seharusnya diarahkan kepada, pembangunan produk hukum peraturan daerah pengelolaan pertambangan mineral dan batubara guna meningkatkan kemakmuran dan kesejahteraan rakyat pada umumnya utamanya masyarakat lokal, karenanya produk hukum peraturan daerah pertambangan mineral dan batubara tidak boleh mengandung unsur liberal-kapitalistik, dimana pengelolaannya harus dilakukan sebagai usaha bersama berdasarkan asas kekelurgaan, asas kebersamaan dan asas kegotong-royongan dalam bentuk koperasi.

Pada sisi yang samaproduk hukum peraturan daerah pertambangan mineral dan batubara harus mencerminkan nilai keadilan sosial, dimana dalam pengelolaannya tidak boleh merugikan kepentingan rakyat baik rakyat kedudukannya sebagai individu maupun kedudukannya sebagai anggota kelompok masyarakat. Dengan demikian membangun produk hukum berupa peraturan perundang-undangan termasuk peraturan daerah dalam berbagai bidang dengan mempergunakan paradigma Pancasila dan atau berbasis cita hukum Pancasila akan menghasilkan produk hukum yang sarat dengan nilai-nilai moral, ketuhanan, kemanusian, persatuan, kerakyatan dan keadilan sosial. Implikasinya hukum tidak bisa lagi dijadikan sebagai alat untuk melakukan penindasan, dan sebagai alat untuk melakukan eksploitasi.

C. Simpulan

Berdasarkan uraian yang telah dikemukakan di atas, maka dapat disimpulkan bahwa, dalam rangkamembangun produk hukum peraturan daerah pertambangan mineral dan batubara yang sesuai dengan cita hukum Pancasila, maka paradigma yang

harus dipergunakan adalah paradigma Pancasila.yakni: *Pertama*, bahwa produk hukum peraturan daerah pertambangan mineral dan batubara harus memuat nilai-nilai moral Ketuhanan Yang Maha Esa, artinya dalam pengelolaan pertambangan mineral dan batubara yang merupakan kekayaan alam yang diberikan oleh Tuhan Yang Maha Esa kepada bangsa Indonesia dalam pengusahaan dan pengelolaannya harus mendatangkan manfaat serta kemakmuran dan kesejahteraan bagi seluruh rakyat Indonesia.

Kedua, bahwa produk hukum pertambangan mineral dan batubara harus memuat nilai-nilai kemanusiaan, nilai-nilai keadilan dan nilai-nilai yang dapat mengangkat harkat dan martabat rakyat Indonesia, utamanya masyarakat lokal.*Ketiga*, bahwa produk hukum pertambangan mineral dan batubara harus memuat nilai-nilai persatuan dan kesatuan masyarakat, hal ini dapat diartikan bahwa dalam pengusahaan pengelolaan pertambangan mineral dan batubara harus mengedepankan kebersamaan, kerukunan dan keselaraan, serta kegotong-royongan.*Keempat*, bahwa produk hukum pertambangan mineral dan batubara harus memuat nilai-nilai kerakyatan, artinya bahwa produk hukum peraturan daerah harus mengandung nilai-nilai demokrasi.*Kelima*, bahwa produk hukum peraturan daerah pertambangan mineral dan batubara harus mencerminkan nilai-nilai keadilan sosial.

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A LEGAL ANALYSIS ON FOOD SECURITY UNDER INTERNATIONAL ENVIRONMENTAL LAW

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Abstract

Food security is a global issue and a concern of the international community . Food security is related to many aspects, such as economic, social , cultural , and environmental . Linkages with food security and environmental sustainability are closely inseparable . Balanced environment will help achieve sustainable food security . On the other hand , efforts to achieve food security must be environmentally sustainable . International environmental law governing food security in several instruments both " hard law" or " soft law " . Implementation of the present international environmental law can help to achieve sustainable food security.

Keywords : Food Security, Agriculture, International Environmental Law.

Abstrak

Ketahanan pangan merupakan permasalahan global dan menjadi perhatian masyarakat internasional. Ketahanan pangan terkait dengan banyak aspek di dalamnya, seperti ekonomi, sosial, budaya, dan lingkungan. Keterkaitan ketahanan pangan dengan kelestarian lingkungan sangat erat dan tidak terpisahkan. Lingkungan yang seimbang akan membantu tercapainya ketahanan pangan yang lestari. Di lain pihak, upaya pencapaian ketahanan pangan harus memperhatikan kelestarian lingkungan. Hukum lingkungan internasional mengatur tentang ketahanan pangan dalam beberapa instrumen baik yang bersifat "hard law" maupun "soft law". Pengimplementasian hukum lingkungan inetrnasional dapat membantu tercapainya ketahanan pangan yang lestari.

Kata kunci : Ketahanan Pangan , Pertanian , Hukum Lingkungan Internasional

A. Introduction

At the beginning of the 21st century, poverty was on the increase in many parts of the world and at the same time the degradation of the environment and the depletion of natural resources also continued. Within the next decade, the world will face a worse situation. When the environment becomes less valuable or damaged, environmental degradation is said to occur. There are many forms of environmental degradation. When habitats are destroyed, biodiversity is lost, or natural resources are depleted, the environment is hurt. Environmental degradation can occur naturally, or through human processes. The largest areas of concern at present are the loss of rain forests, air pollution and smog, ozone depletion, and the destruction of the marine environment. Pollution is occurring all over the world and poisoning the planet's oceans. Even in remote areas, the effects of marine degradation are obvious. In some areas, the natural environment has been exposed to hazardous waste. In other places, major disasters such as oil spills have ruined the local environment.

Environmental degradation will cause aggravation effect to human beings and create insecurity. The concept of human security has been change at the last decades. Before, threats always related to external threats. As a result, state security focused on the national security. Globalization in the

last decades of the 20th century changed the concept of human security to "internal threats". Human security has become more global and the focus has changed to humans themselves, not states. Issues like environmental degradation, poverty and hunger, and endemics like HIV/AIDS, are recognized as major threats to humans. The target of human security is to ensure the basic needs of humans and to enhance the quality of the environment[1]. Environmental degradation is a result of the dynamic inters play of socio-economic, institutional and technological activities. Environmental changes may be driven by many factors including economic growth, population growth, urbanization, intensification of agriculture, rising energy use and transportation. Poverty still remains a problem at the root of several environmental problems.

The rapid growth of world population is one factor that has created global problems. Large numbers of people around the world create social, economic and environmental problems. Technology and the increase in the number of industries also make these problems worse. Recently, environmental problems have affected almost all parts of the world. The environmental problems here refer to problems occurring transnational, creating a negative situation globally. Many environmental issues have become major topics of discussion in the international community. These show that people around the world are concerned about these issues, and, more importantly, they understand that we will face some threats within the next few years. The fact is, what considered as threats are not threats anymore, because they are happening now. Environmental problems become mutual consideration among states, then will creates mutual responsibility among them.

Environmental degradation and population growth could trigger a global food crisis in the next half century as countries struggle to find fertile land to grow crops and rear animals. To keep up with this population growth, more food will have to be produced in the next 50 years than has been produced over the past 10,000 years combined. In many countries however, a combination of poor farming practices and deforestation has been worsen by climate change will generate a degradation of soil fertility and leaving vast areas unsuitable for crops or grazing[2] Food is essential for human beings. Same as air and water, human beings could not live without food, then it make food as a basic right for every human. A food crisis, defined as a widespread shortage of food, is usually followed by malnutrition. In many countries, a food crisis is no longer a threat as it has become a reality, for example in African countries like Djibouti, Somalia, Kenya and Ethiopia. In the FAO news release January 2006, it was estimated that more than 11 million people in those countries will suffer as a result of famine. A food crisis could also be caused by the loss of biological diversity. The loss of biological diversity is one of the most important results of global warming. Food crisis is only can overcome by food security.

According to the UN's Food and Agriculture Program, 854 million people do not have sufficient food for an active and healthy life. Those people currently face hunger and malnutrition. Some 815 million of them live in economically developing countries, 76% in rural area. All available data and studies show that the number of hungry and malnourished people has increased in the last decade, even though enough food is produced globally to satisfy the needs of the world's population. Hunger and malnutrition today are not caused by food shortage, or scarcity: hunger is an issue of *access* to food, to an adequate income, or to productive resources that allow poor people to either produce or buy enough food. The inequitable distribution of food, land, and other productive resources are the main causes of hunger and malnutrition[3]. This article will discuss about food security under international environmental law and how is food security connected to the environmental protection. It will also discuss

[1] Loetan S, "Milenium Development Goals(MDG) Dan Program Pembangunan Nasional di Indonesia" ,in Indonesian Journal of International Law, Center for International Law Studies, Faculty of Law, Jakarta, University of Indonesia,Vol.1, No.1,Oct 2003.
[2] "Global Food Crisis Looms as Climate Change and Population Growth Strip Fertile Land", www.guardian.co.uk/ environment/2007.
[3] Widhfur M, Jonsen J, 2005, *Food Sovereignty: Towards Democracy in Localized Food System*, ITDG publishing, the Schumacher Centre for Technology and Development, Warwickshire ,CV23 9QZ, UK.

on the role of international environmental law in food security.

B. The Legal Analysis

1. The Nature of Food Security

Elements of food security and food system are Food Utilization, Food Availability and Food Access. Food Utilization is about nutritional value, social value and food safety. Utilization of food has a socioeconomic and biological aspect. If sufficient and nutritious food is available and accessible, a household has to make decisions about what food is to be consumed and how the food is allocated within the household. Appropriate food intake (balanced and micronutrient-rich food) for young children and mothers is very important for nutritional status. Utilization requires not only an adequate diet, but also a healthy physical environment, including safe drinking water and adequate sanitary facilities (to avoid disease) as well as an understanding of proper health care, food preparation and storage processes. In addition, health-care capacity, behaviors, and practices are equally important. Food Availability consists of food production, distribution and exchange. Food availability is meant by the physical existence of food either from own production or from the market. At the national level, food availability derives from the combination of domestic food stocks, commercial food imports, food aid and domestic food production. Food Access is dealing with affordability, allocation and preference[4]. Access to food is ensured when all households and all individuals within those households have sufficient resources to obtain appropriate food for a nutritious diet.

The term food security is used as a general term globally. It is used in many international instruments such as conventions, treaties, protocols and agreements. In a simple way food security means enough food for people to eat, produced from a sustainable food system[5]. The Food and Agricultural Organization (FAO) of the United Nations, described food security as "a situation that exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life".

From definition above it can be seen that sufficient of food does not automatically means food security, because the aspect not only about quantity but also quality. It should be a safe and nutritious food to meet people need and ensure their health. Another important aspect also in how we reach the food security. It mentioned above that it should be reached through sustainable food system. Sustainability need to be implemented on many levels. The term of sustainable development has dominated legal debates in the field of social and economic development and environment protection on the other side. Finally, in the report of the World Commission of Environment and Development (WCED) in 1987, known as "Our Common Future" or Brundtland Report, sustainable development described as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

2. The Interdependence of Food Security and Environmental Protection

Quality of the environment will influence food security. Environmental degradation impacts quality and quantity of food. Food security can achieved through agricultural activities. However, some agricultural activities are potential to harm the environment. There are some threats to environment caused by agricultural practices, such as: soil degradation, problems in water supply and water quality, air pollution, misuse of chemicals and biological diversity problems. Overusing of chemical fertilizers can cause degradation of soil quality, water and air pollution. Pesticides in agriculture are also bring negative impact because it kills not only unwanted pests but also important organisms, so it will cause biological diversity problem.

3. Food Security under International Environmental Law

International environmental law was formed because of the need to protect environment. At the

[4] Gregory P, *Food Security: Challenge to Science and Society*, public lecture, University of Nottingham, Malaysia, 29 July 2010
[5] Tansey G and Rajotte T, *The Future Control of Food: A Guide to International Negotiations and Rules on Intellectual Property, Biodiversity and Food Security*, Earthscan, UK, 2008, p 24.

end of 1960's following expression of scientific alarm, public consciousness became increasingly aware of the dangers threatening the earth[6]. Environmental protection is to be an integral part of the development process, and cannot be considered in isolation from it[7]. Moreover, peace, development, and environmental protection are interdependent and indivisible[8]. International environmental law challenges many fundamental concepts of traditional international law. It put new limits on State sovereignty, it intrudes into the domestic jurisdiction and territorial integrity of States, it creates greater responsibility for States, and it involves many non-States entities in the process of international law. The global nature of environment issues means that national action by itself, while important, may be insufficient, and that is why international cooperation is required[9]. Concern and awareness about the need for environmental protection has increased highly both in national and international level. One way of putting this concern into action is the law, being a means to structure and regulate behavior. International environmental law includes many treaties and declarations, a body of State practice and some compliance mechanisms[10].

As mentioned above in previous part, food security closely related with the environmental protection. Here are major instruments of international environmental law related to food security which are:

a. The FAO International Treaty on Plant Genetic Resources for Food and Agriculture, 2001.

   The Treaty is of vital importance to plant genetic resources for food and agriculture (PGRFA) and ultimately for food security. Its importance lies in the fact that it allows for the continued flow of the PGRFA most critical to the world's food security and for which countries are most interdependent. The Treaty also provides a comprehensive framework for the conservation and sustainable use of all PGRFA. The Treaty establishes a Multilateral System of Access and Benefit-sharing for PGRFA of crops important for food security as well as for the interdependence of countries on them.

b. Convention on Wetlands of International Importance (Ramsar) 1971.

   International protection for soil is recent, in spite of problems of soil degradation, erosion, flooding, and desertification. The agreement, which entered into force in 1975, now has nearly 100 parties. It required all countries to designate at least one protected wetland area, and it recognized the important role of wetlands in maintaining the ecological equilibrium.The Convention's mission is "the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world". The Convention uses a broad definition of the types of wetlands covered in its mission, including lakes and rivers, swamps and marshes, wet grasslands and peatlands, oases, estuaries, deltas and tidal flats, near-shore marine areas, mangroves and coral reefs, and human-made sites such as fish ponds, rice paddies, reservoirs, and salt pans. Then, farming and agricultural practices must be related to this convention.

c. United Nations Framework Convention on the Climate Change, Rio de Janeiro, 1992.

   Agriculture and climate change are strongly linked. Agriculture is part of the climate change problem, contributing about 13.5 percent of annual greenhouse gas (GHG) emissions (with forestry contributing an additional 19 percent), compared with 13.1 percent from transportation. Agriculture is, however, also part of the solution, offering promising opportunities for mitigating GHG emissions through carbon sequestration, soil and land use management, and biomass production[11].

   Climate change threatens agricultural production through higher and more variable temperatures, changes in precipitation patterns, and increased

[6] Kiss A and Shelton D, *International Environmental Law*, Transnational Publishers, New York, 1991, p 36.
[7] Principle 4 of Rio Declaration on Environment and Development, 1992.
[8] Principle 25 of Rio Declaration on Environment and Development, 1992.
[9] Dixon M, *Cases and Materials on International Law*, Blackstone Press, 2000, p 485.
[10] Birnie P and Boyle A, International Law and the Environment, Clarendon Press, Oxford, 1992.
[11] *Agriculture and Climate Change: An Agenda for Negotiation in Copenhagen*, International Food Policy Research Institute, May 009, www.ifpri.org.

occurrences of extreme events such as droughts and floods. In the Conference of Parties (COP)15 in Copenhagen, December 2009, agriculture had been taken into account among other sectors in the Convention. In that COP, some countries are grouped into an AdHoc Working Group of Long-term Co-operative Action (AWC-LCA). Technical papers, presentations and discussions from the workshop are inputs to inform parties of any role of agriculture under mitigation under the AWG-LCA.

d. Kyoto Protocol to the United Nations Conventions on the Climate Change, Kyoto 1997.

Agriculture under the Kyoto Protocol is mentioned in several articles, such as Article 2.1 which state that each party included in Annex I, in achieving its quantified emission limitation and reduction commitments, in order to promote sustainable development, shall do certain actions, includes in sub article (iii) promotion of sustainable form of agriculture in light of climate change consideration. In article 10 of the Protocol, all parties, based on the common but differentiated responsibilities, should have specific national and regional development priorities, objectives and circumstances that measures to mitigate climate change and facilitate adequate adaptation to climate change, and this also includes agriculture. In Annex A of the Protocol, sectors or sources categories includes agriculture, that contains of enteric fermentation, manure management, rice cultivation, agricultural soils, prescribed burning of savannas, field burning of agricultural residues and others.

e. United Nations Convention on Biological Diversity, Rio de Janeiro 1992.

The purpose of this convention is to protect the genetic pool of all species. It takes an integrated rather than sectoral approach to conservation and sustainability of biological diversity. The convention thus addresses conservation of biological resources, their sustainable use, access to genetic resources, sharing of benefits derived from the use of genetic material, and access to technology, including biotechnology. This convention introduce for the first time that biological diversity is a common concern of humanity. States must identify important components of biological diversity and priorities which may need special conservation measures, as well as identify and monitor processes and activities which may have significant adverse effects on biological diversity. They also must develop national strategies and plans, integrating conservation of biological diversity into relevant sectoral plans and programs and into national decision making. Sustainable use is a major theme of the convention. Parties agree to regulate or manage harvested biological resources, developing sustainable methods. This convention contains the general principles of international environmental law, such as responsibility for transfrontier damage[12], information[13], cooperation[14], repair and prevention[15].

f. Cartagena Protocol on Biosafety to the Convention of Biological Diversity, Cartagena 1996.

In the CBD 1992, biotechnology defined as any technological application that utilizes biological systems, living organisms, or derivation of them, to create or modify products or processes to a specific use. One of the most controversial subjects concerning this science is the potential hazards associated with the handling and introduction into the environment of genetically modified organisms (GMOs). The need to promote biosafety has centered on two related issues, first, the handling of GMOs at the laboratory level, in order to protect works and prevent the accidental liberation of such organisms into the surrounding ecosystem ("contained use"); second, the need for regulatory systems to govern the deliberate

[12] Article 3 of the CBD.
[13] Article 14 and 17 of the CBD.
[14] Article 5 of the CBD.
[15] Article 14 of the CBD.

release of GMOs into the environment, either for testing purpose or on commercial scale. In agriculture, research using GMOs is quite common. For example, research to introduce herbicide resistance into virtually all major crops as a means of making it easier to control weeds. Additionally, because of noxious effects of long-term pesticide use, genetic engineering of microorganisms has developed as an alternative strategy to improve pest control. Some 100 fungus species and many bacteria species are known to have insecticidal effects.

g. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, Nagoya 2010.

Delegates from more than 100 countries agreed the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the early hours of 29 October. The Nagoya Protocol sets terms on how countries will permit access to genetic resources, share the benefits arising from their use, and cooperate with one another in allegations of misuse. It will come into force 90 days after it has been ratified by at least 50 parties. The Protocol addresses issues that have pitted countries of the North and South against one other for decades. Its adoption should act as a balm on old wounds. It will help to create transparency and trust between countries, and trust is absolutely essential for countries to cooperate in using genetic resources in ways that promote food security and economic development. Some of the most contentious issues in the last stretch of negotiations included the measures that "user countries" would take to monitor and enforce compliance with the agreements that provide access to genetic resources from other countries; whether the scope of the Protocol would extend beyond genetic resources to biological resources more generally; and how the holders of traditional knowledge related to genetic resources would be involved in procedures of access to such knowledge. The Protocol recognizes pre-existing norms for access and benefit sharing established by the International Treaty on Plant Genetic Resources for Food and Agriculture. The Nagoya Protocol also explicitly creates space for the development of future specialized access and benefit sharing regimes that are consistent with the objectives of the Convention on Biological Diversity and the Protocol. This is good news because it seems likely that it will be important in the future for the international community to agree to multilateral access and benefit sharing norms for other genetic resources used in agriculture and not covered by the International Treaty, for example agricultural microbial genetic resources or farm animal genetic resources.

C. Conclusion

One important aspect to handle environmental problems is through an effective legal system in the three levels, which are bilateral, regional and international level. Then, the role of International Environmental Law is essential in this point. The weakness of the legal system in the International Environmental Law is because of the number of soft law instruments is as much as the hard law, or even more. The characteristic of soft law instruments is that it does not oblige state to implement the instrument, but it is more like a suggestion. Then, the word "should" is more likely to be used rather than the word "must". Other thing is that this kind of instrument has moral sanction and not a legal sanction, then it is more a morally binding instrument rather than legally bindings.

Food security and environmental protection are interdependent. Efforts to achieve food security should not be harmful to the environment, while at the same time environmental conservation is crucial to support food security. Sustainable agriculture is one of the solutions to reach food security without harming the environment. Sustainable agriculture is the ability of farmers to produce food for prolonged periods without causing environmental damage. Sustainable agriculture effects both the physical in ensuring sustainable agriculture.

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