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Reconciliation of Environmental Fiqh in Indonesia Legal System

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Abstract

This study demonstrates the issues reconciliation of environmental fiqh in Indonesian legal system through the qualitative research, normative-theological and sociological approach. The results of the substance of the Qur'an relating to environmental fiqh is placing humans as caliph in managing the biotic and abiotic environment, there are many verses related the earth and all its contents to preserve, benefit and it can be controlled by humans without exploration and destruction of this nature. In conclusion, the changes of paradigm in environmental fiqh can encourage awareness of society to put pressure to the environmental crisis.

Keywords: Reconciliation, Environmental Fiqh, Indonesian, System.

Conciliación de la Ley Ambiental en el Sistema Legal de Indonesia

Resumen

Este estudio demuestra los problemas de conciliación de las cuestiones ambientales en el sistema legal indonesio a través de la investigación cualitativa, y el enfoque normativo-teológico y sociológico. Los resultados de la sustancia del Corán relacionada con la fiqh ambiental es colocar a los humanos como califas en el manejo del medio ambiente biótico y abiótico, existen muchos versos

relacionados con la tierra y todos sus contenidos para preservar, beneficiar y puede ser controlado por humanos sin exploración y destrucción de esta naturaleza. En conclusión, los cambios de paradigma en la esfera ambiental pueden alentar la conciencia de la sociedad para presionar la crisis ambiental.

Palabras clave: Reconciliación, Fiqh Ambiental, Indonesio, Sistema.

1. INTRODUCTION

A few years ago, Indonesia was known as a rich country with abundant natural resources, such as dense and fertile forests, rivers with clean and clear water flow, fresh air, and success in agriculture and livestock. Indonesia is rich in spices, dwellings for various animals and an adequate supply of food. That is why Indonesia is struggling with European countries. As one of the reasons, Yundt (1979) explained that the expansion out by big countries, including the European countries that have produced natural resources, can effectively increase their country's savings. The reality is very much different from the modern life of Indonesian society today. Everywhere we can see bald forests and become a source of disaster. Excessive exploitation of natural resources caused damage to the environmental (Carraro, 1996). Some of these ideas are also assessed can give implications for the extent and nature of environmental control are considerable (Adebambo, et.al., 2014).

Various articles that describe the problems in research on environmental changes, which can affect this life include; 1) degradation of all soil types and reduce the quality of natural

ecosystems due to the deforested forest; 2) biodiversity is no longer enjoyed by all living things, and 3) air and water pollution occurs everywhere. Attention to environmental conservation (Alfatlawi, 2018). However, the existence of environmental fiqh is considered as a contemporary issue, because this issue is rarely studied in the classical fiqh book. The environment in various fiqhs is only studied in a generic context, not yet specified as a provision that has the legal power to obey. Besides that, the lack of attention of classical scholars is more due to the context of development in society at that time. Environmental damage can threaten the survival of all creatures in this universe. In the Qur'an many verses are found on the command of preservation and prohibition of damaging the environment. There are even four hundred and sixty-one verses in the Qur'an that mention the earth and it contains the command to preserve and utilize it, as well as warnings and so on (Gassing, 2007).

Islamic attention to the environment is very high, but not fully followed by adherents. The behavior of the majority Muslim community such as Indonesia is still less consciousness for environmental sustainability. The cleanest state nominations in the world rarely found from Islamic countries and Muslim-majority countries. There is irony in teachings of Islam, damaged environments accompanied by natural disasters such as forest fires, landslides, floods, hail, earthquakes and tornadoes, almost everywhere in Indonesia where the majority of Muslims live. Household and industrial waste have been difficult to overcome and can contaminate

ecosystems. The values of Islamic teachings are not only recognized, but they must also be implemented by every Muslim person in Indonesia, so this environmental fiqh study becomes a spirit to improve this nature. Returning to Indonesia as a prosperous country, free from disasters such as floods, landslides and pollution, in addition, through a healthy and safe environment can save many lives from the disaster. Thus, the Government of Indonesia has the policy to apply environmental fiqh through legislation. Interesting to be compared Thirasirikul (2017) through actions that can overcome the decline and encourage the strengthening of the nation from various complicated issues with the management of resources with the application of environmental fiqh. In other words, this environmental fiqh will enable the development of environmental and natural resource management knowledge, and the findings of this research can also be applied to formulate strategies for managing the environment and other local natural resources in the future. Therefore, this research tries to elaborate some problems in environmental fiqh that require a deeper response.

2. RESEARCH OBJECTIVE

This study aimed to explore the substance of environmental fiqh in Quran; reconciliation of environmental fiqh in the Indonesian legal system, and the changes of paradigm towards the application of environmental fiqh in Indonesia.

3. METHODOLOGY

This study is field research with a descriptive and qualitative approach. Qualitative research is intended to provide a detailed explanation of the environmental fiqh with the approach used; it is the normative-theological and sociological approach, and data source obtained from primary and secondary data. Primary data is empirical data sourced from informants and cases. A secondary source is from the classical kitab, books relating to the object of study. Data collection technique using triangulation method: observation, dept interview, and documentation. To support available data, we used interview instruments as a way to collect data by asking a few questions in a systematic and transparent method. The data analysis used is content analysis to describe systematically, factually and accurately the facts obtained. The analysis process begins by examining all available data from multiple sources. The obtained data from interviews are used to describe narrative research findings.

4. RESULTS AND DISCUSSIONS

The results are divided into three equations according to the researcher responses, as follow;

1. The Substance of an environmental Fiqh in Quran.
Environmental Fiqh is a form of environmental approach in the

religious dimension. The environmental fiqh is presented earlier by Yafie, a scholar and thinker of social problems in the Islamic paradigm through his monumental book pioneering the fiqh of Living Environment. Constitution of the Republic of Indonesia Number 2 of 1997 on Environmental Management, article 2 the environment is the unity of space with all things, power, circumstances and living creatures including humans and their behavior which affects the continuity of human life and welfare and other living organisms (Sunarso, 2005).

From an environmental aspect, the issues of attention today there are several things that have to be considered as crisis pressures that endanger human survival. Such as threats are used to fresh air and clean water sources, to the dangers of food substances (nutrients), to the continued productivity of natural resources, fauna and flora, and so on (Yafie, 1995). On the other hand, Sunarso (2005) pointed out that water from the canal has been heavily contaminated by industrial waste and letting all types of garbage flow in the river. Polluted water poses a direct threat to improving agricultural yields, despite the use of fertilizers and pesticides. The essence of environmental problems is the relationship between living creatures, especially humans, to their environment. The science of the mutual relationship of living creatures with their environment is called ecology.

Besides, Indonesia can be compared with Egypt with a research that was conducted by Abdou (2016). He reported that at the Nile

River in Egypt, there was pollution in the Stem, the drains in the Nile received wastewater disposal. Therefore, Information obtained from The Environmental Affairs Agency Egypt shows that surface water pollution in Cairo has threatened all biological systems and ecosystems. Through moral considerations, ecology is a science that is neutral, immoral (human moral), while environmental science is a moral consideration. Nature in ecology does not recognize the concept of right or wrong because nature is immoral. Environmental science is a moral measure, right or wrong. If a human action benefits other human beings or other living creatures, then it has true morality. If his actions incur losses, then it is morally wrong. An environment can be separated into two kinds of abiotic environment and biotic environment. The abiotic environment is a physical environment consisting of a lithospheric environment and a hydrosphere environment called the water environment, while atmospheric environments include air, gas, dust particles, ice, clouds and weather climatic processes. The biotic environment is the environment of flora, fauna, and humans. In other words, the biotic environment is called an organic environment (Gassing, 2007).

The concept of the Qur'an relating to environmental fiqh is placing humans as caliph in managing the biotic and abiotic environment. In the Qur'an there are many verses that the earth and all its contents are created by God in order for man to preserve and benefit from this universe. For example, QS. Al-Jatsiyah and He submit for you what is in the heavens and what is on earth all, (as mercy) from

Him. He Himself has created all things in the earth for you (or created everything on earth for you), God is the One who has made the sea submit to you so that you can sail by His command and can seek the provision of Allah (commerce) and be grateful. Therefore, nature and all its contents can be controlled by humans in order to manage well. Human beings should not act exploitatively or destroy this nature. The Qur'an shows the necessity of loving nature. Human controls this nature is a trust from Allah and will be accountable for his environment. A delegation of responsibility to man in total when a disaster occurs is balanced with the trust given by God to humans. The most important task of this khalifah's mandate is to preserve and prosper the earth and environment.

In addition, not a few hadith emphasized the importance of the use and preservation of the environment and prohibit damaging the environment. Hadith related to the preservation of the environment that can be done through reforestation, and the hadith about the prohibition of pollution as an effort to prevent environmental destruction. Thus the Qur'an puts environmental fiqh for humans in order to love this universe to preserve and forbids damaging the environment. Many natural disasters occur as the impact of environmental damage indicates that humans have forgotten the trust of Allah as caliph. In fact, it is not uncommon for this mandate to be used as a theological argument to gain pragmatic power. While the message prospered the universe and the environment seemed to be forgotten.

2. Reconciliation of Environmental Fiqh in the Indonesian legal system. Globally, the environment has become a very sad issue in Indonesia. The case of descending water in Lake Toba which is located in North Sumatra, caused by the Asahan project, decreased water in Lake Towuti in Malili and Lake Tempe, both in South Sulawesi. The case of Anthrax in West Java, the case of illegal logging in Kalimantan, Papua, South Sumatra, Jambi, sea pollution cases in Buyat Bay, the case of entering hazardous and toxic wastes on Galang island, and others required to be handled through legal action (Sunarso, 2005). The landslide caused several houses to be buried, inter-hamlet roads cut off in Pengkol Village, Nglipar, Kidul Mountain, Yogyakarta, occurred on Friday, June 14, 2013. The incident that occurred after heavy rain a day before the occurrence of land lonsor resulted in fifty families forced to evacuate. Land movement or landslide disaster in Indonesia is very frequent every year. Landslides that drowned hundreds of homes in Pangalengan and Banjarnegara occurred in hilly areas whose locations are unstable due to heavy rain. The most obvious consequence of a landslide disaster is to drown the village or community group living above or below a hill whose location is unstable. Hundreds of people buried in a landslide disaster in Banjarnegara and Pangalengan some time ago could at least be a warning to other people who live in a similar type of location, especially in Java. It took no more than ten minutes to drown a hamlet with over three hundred inhabitants in Banjarnegara, Central Java, such as the several pictures below;



Figure 1 Landslides in Banjarnegara, Central Java
Source: <https://www.voaindonesia.com/a/satu-dusun-tertimbun-di-banjarnegara>

Until now in 2018, forest fires are still common in Sumatra. In fact, the government has allocated a budget of Rp 57.7 billion. Forest and land fires in Sumatra cause pollution and damage to the air environment.



Figure 2 Forest and land fires in Sumatra
Source: <http://www.mongabay.co.id/tag/kebakaran-hutan-sumatera>

Some of these images, Indonesia emergency landslide, thus Indonesia absolutely make some legal regulations in improving the system manage and preserve the environment. Therefore, since ten years after the Stockholm convention in 1972 and 1982, Indonesia passed the Constitution of the Republic of Indonesia Number 4 of 1982 on the principles of environmental management (Sunarso, 2005). This law applies for everyone to realize the benefits of forests, not easy to cut trees to protect the environment in Indonesia. Even substantially, in Preamble of the 1945 Constitution of the Republic of Indonesia, everyone has the right to live a prosperous and spiritual life, to live, and to have a good and healthy environment and be entitled to health care. The earth and the water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people. As the preamble of the constitution, of course, it has regulated legal protection and the right to a healthy and healthy environment, aiming for effectiveness and efficiency in environmental protection in Indonesia.

Furthermore, in Government Regulation No. 29 of 1986, refined through Government Regulation No. 51 of 1993 on Environmental Impact Analysis, Indonesia is very serious in overcoming natural disasters compared to the USA as a developed country. Indonesia then made another Constitution of the Republic of Indonesia Number 23 of 1997 on Environmental Management, which aims to protect the people from pollution victims and the destruction of the environment. This law is a change from Constitution Number 4 of 1982. Through the

Constitution of the Republic of Indonesia Number 23 of 1997 and then strengthened by Constitution of the Republic of Indonesia Number 32 of 2009 on the protection and management of the environment. In the article: pollution control and/or environmental damage are carried out in the framework of the preservation of environmental functions. Pollution control and /or environmental damage as referred to in paragraph include prevention, mitigation and recovery. It can be compared in Thai law system and European law (Torpanycharn, 2016).

According to Antonietta et al. (2012), Budy (2012) the government made the law to require every company from the mining activities area that aims to protect and conserve forests. Clelia et al. (2014) also support the management of forest systems in protected areas using intensive monitoring tools. The vision is to create an active monitoring system that has integrated management as an action that aims to conserve and improve the ecology that is increasingly exposed to anthropic pressure and other pressures. Even the condition of Indonesia's forests as proposed by Frings (2011) the destruction of Indonesia's rainforests has greater consequences for both global climate and biodiversity. In its writing mentioned most areas of Indonesia are still covered by rainforests in 1966. At that time, Indonesia in the following year lost much rain forest cover and until deforestation occurred more quickly after 1998. Based on that data there are three million hectares of forest destroyed between 2000 and 2005 in Sumatra and Kalimantan.

In the perspective of environmental fiqh, the legal values contained in some regulations applied by the government are in accordance with the spirit of the teachings in the Qur'an and Hadith. Even Constitution of the Republic of Indonesia Number 32 of 2009, especially in article 13 which contains efforts to control pollution or environmental damage through prevention, prevention and recovery is part of efforts to implement the Islamic law code is reject the damage to take precedence over reaching the benefit. When related to the context of maqashid sharia (the purpose of Sharia) cannot be separated from the five things is to keep religion, protect the soul, keep the mind, keep the descent, and keep the property. All of these things cannot be achieved well without taking care of the environment and life. Thus, environmental issues should be prioritized in supporting the realization of maqashid Sharia (Bakri, 1996). With the concept of environmental fiqh, people in Indonesia are friendlier and love the environment and life so that the benefit of the environment is equally important in its management. The development of this theory in environmental fiqh is important to implement because the issue of environmental destruction is very sad and has reached millions of victims, both human and material. This shows that environmental fiqh gives greater attention to environmental conservation.

3. The Changes of Paradigm towards Application of Environmental Fiqh in Indonesia. Environmental fiqh is absolutely necessary to preserve this universe. The changes of paradigm in environmental fiqh can encourage awareness of

society to pressure the environmental crisis. Human action, such as industrial production, energy provision and traffic, emits substances which may be harmful to human health or the environment (Jochen, 2001). According to Gassing (2007), there are several factors that cause the environmental crisis, but the root cause of this problem is the human view of the natural environment and the scheme of approach in its management. The human view of the natural environment consists of two; 1) the traditional view of nature that considers nature as sacred, therefore nature is always worshiped and sanctified. As a result, humans are afraid to touch nature, except for subsistence needs, and 2) renaissance or secular views of nature. Nature is mercilessly exploited, for the sake of human interest, (similar to the ethics of homocentric), which despite the social responsibility of every individual, but its influence on the natural resources still remains a danger, because based on this ethic, natural resources may be exploited as much as possible, as long as the prosperity of society. That is why humans continue to spend nature and are exploited.

The classical fiqh books are seen as a collection of God's law, and since the God's law is the most correct and unchangeable law, the fiqh books are not only seen as religious products, but as religious books themselves. As a result, the problem of environmental fiqh that is not covered in the classical fiqh book is considered not a religious matter, so it is forgotten. Changes paradigm of environmental fiqh is

needed comprehensively and thematically speaking on environmental issues. Fiqh further explains the rules about the ecological behavior of the community, with the aim of achieving the welfare and preserving the environment. Environmental fiqh, because the classical fiqh is written by the Imam Mazhab only speaks of the matter of worship, muamalah, jinayah, munakahat, while the environmental fiqh is lacking a place of proportionality in the discourse of Classical Islam.

In the environmental Ethics, the action must be done is to do justice and ihsan to the environment in a way; 1) love the animals. Let it live in its habitat. Do not be disturbed, do not be persecuted, and do not be killed, except for the right needs; 2) love the plants. Gems plant and nurture, contribute to cut down and destroy, except for the right interests; 3) save water and do not pollute it; 4) save energy. Use electricity, gas, coal, kerosene, and firewood as efficiently as possible. Saving energy means saving money and also rewarding; 5) do not pollute the air. Wear motor and car worthy-environment. Manage factory waste before disposal into the air; 6) dispose of waste in place, or recycle as much as possible; 7) river and sea are not garbage cans. Both are God's creatures. Place them in a respectable position. Get them to achieve their goal of creation; 8) be fair and ihsan to the environment. Fair means to give as much as taken; ihsan means giving more than it takes. Cutting a tree, planting two trees means ihsan, and 9) Mahatma Gandhi's Message: Natural resources are not enough to satisfy one's greed, but enough to satisfy human needs (Gassing, 2007).

Through green growth efforts, it can be internationally recognized, but still encouraging sustainable economic growth, which has also been developed in Indonesia and South Asian countries. Therefore, efforts to save and protect the economy as well as green environmental growth are required to be implemented in Indonesia. The principle is green growth to maintain the environment, also to accelerate the development. Green growth and income growth should be driven by private and public investments that reduce pollution, increase resources and energy efficiency, and prevent loss of ecosystem services and biodiversity (Suzaul & Yangrong, 2018). Applying Environmental fiqh and legislation, every person is absolute to maintain the environment. They must conserve environmental in order to live in healthy environmental conditions.

5. CONCLUSION

The substance of the Qur'an relating to environmental fiqh is placing humans as caliph in managing the biotic and abiotic environment. In the Qur'an there are many verses that the earth and all its contents are created by God in order for man to preserve and benefit from this universe. Nature and all its contents can be controlled by humans in order to manage well. Human beings should not act exploitatively or destroy this nature. The Qur'an shows the necessity of loving nature. Human controls this nature is a trust from Allah and will be accountable for his environment. A delegation of responsibility to

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Environmental fiqh is absolutely necessary to preserve this universe. The changes of paradigm in environmental fiqh can encourage awareness of society to pressure the environmental crisis. Changes paradigm of environmental fiqh is needed comprehensively and thematically speaking on environmental issues. Fiqh further explains the rules about the ecological behavior of the community, with the aim of achieving the welfare and preserving the environment. Environmental fiqh, because the classical fiqh is written by the Imam Mazhab only speaks of the matter of worship, muamalah, jinayah, munakahat; while the environmental fiqh is lacking a place of proportionality in the discourse of Classical Islam.

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