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Environmental Jurisprudence Approach in *Maslahat*-Based Development

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Abstract. The progress of a country is marked by the rapid development. The impact will require a lot of land to support development. Lately there has been a widespread process of releasing forest land for the benefit of the company as one of the sectors supporting economic development. Making this need to be further investigated in terms of the benefit of nature and humanity for the survival of human life in the future. Environmental fiqh as an idea which regulates how humans are able to synergize with nature appropriately in accordance with Islamic laws and certainly will not neglect the interests of the State. So that by using this approach development will not be hampered, but also can be realized. This study uses the method of literature by analyzing using the fiqh and *usul ulh fiqh* principles which strengthen the argument about the importance of the environmental Jurisprudence approach to achieving *maslahat*-based development.

1. Introduction

In general, humans and nature cannot be separated from the environment where humans survive and develop. This, not only can be seen from the empirical side only, but can also be proven by the arguments of religious books in the world. Water, air and soil are important elements for human life. Pollution of water makes the quality of healthy water available today reduced. Especially if the water has been polluted by factory wastes around it. Like what was written by H. M. Thalhah and Achmad Mufid A.R. in his book, that big cities in Indonesia such as Jakarta, Semarang, Bandung, Medan, Surabaya, Yogyakarta, and others as a place to spread industrial waste to the environment has become a daily sight. In addition to Indonesia, the clean water crisis caused by pollution from industrial waste also occurs in other parts of the world such as contamination of Lake Erie in Canada, the Rijn River in Switzerland, and so on.

Soil pollution is the state of man-made chemicals entering and changing the natural soil environment. This pollution usually occurs because of: leakage of liquid waste or industrial chemicals or commercial facilities; pesticide use; entry of polluted surface water into the sub-surface layer; accidents involving vehicles carrying oil, chemicals or waste; wastewater from landfills and industrial waste that is discharged directly to the ground ineligible (illegal dumping). Damage from soil contamination has no small implications, namely the emergence of dioxin which is a deadly poison to the human body, which can cause birth defects, skin damage and miscarriage for women. Another result is the occurrence of Biological Diversity (biodiversity crisis) which certainly damages the environmental ecosystem.

In addition to water and soil pollution, air pollution also has an insignificant side to environmental safety. Air pollution occurs due to burning coal, fuel oil and other combustion, which have particulate



waste (aerosols, dust, fly ash, fog, smoke, soot), in addition to factory activities that do not meet environmental requirements. The effect of air pollution is air mixed with bacteria that result from the disposal of particulate waste, and also another well-known effect is the damage to the ozone layer of the earth's atmosphere. Whether we realize it or not, the ozone layer that has gradually been damaged and has bigger holes, which triggers so many diseases that might attack humans such as skin cancer and cataracts. Opening holes in ozone will increase ultraviolet radiation in areas that are no longer protected by the ozone layer.

All the consequences of the destruction of nature have an impact on humans themselves who are unable to maintain what is mandated as long as he lives on earth. The obligation to protect and preserve the environment is not only for humans individually, but also for humans as a whole. In this case the role of government becomes very important to maximize the role of each individual to protect the environment. It cannot be denied that the progress of development will involve the environment as one of its supporters. The current reality with reasons for the common interest and improving the economy and progress of a country sometimes ignores the impact afterwards. It can be seen as an example of an increase in the plantation sector, the green lands (forests) are changing functions to oil palm plantations which should be considered with the negative and positive impacts of the conversion.

Islam views everything in terms of benefits (*maslahat*), so in terms of state development it must be based on benefit too. So that development and progress not only ignores the environment as a place where development is based. Thus the importance of analyzing the environmental fiqh approach to achieving beneficial development is important for further research.

2. Environmental Fiqh Approach in Government Policy

Western philosophy and Islam, have the concept of caring for the environment which has long been the main doctrine, both about the teachings and philosophy of life. In Western philosophy, there are three theories of environmental ethics that have ever been known. First, Shallow Environmental Ethics or known as anthropocentrism; According to this theoretical view, humans and their various interests in life have a close relationship with how humans treat the environment as an ecosystem, including what actions are carried out on the surrounding environment. This view of anthropocentrism holds the view that moral values and principles only apply to humans, and humans have the right to use natural resources. Second, Intermediate Environmental Ethics or biosentrism; judging that ethics and morality are not only mandatory in humans but every biotic community. Every life on earth, according to this theory, is considered valuable in itself, so it has the same moral value, regardless of the calculation of profit and loss for human interests. Based on this theory also, that humans must look at the same biotic community, as he looked at fellow human beings, who have the right to life. Third, Deep Environmental Ethics or Ecocentrism; this theory extends the ethics of the biosentrism community to the ecological community as a whole. It is not only centered on ethics in biosentrism, but rather concentrates ethics on the whole ecological community, both living and dead.

The three environmental theories above received a response from Muslim intellectuals by developing the three theories into a theological perspective. Sayyed Hosein Nashr, one of the Muslim thinkers who paid serious attention to environmental ethics. Through its Scientia Sacra theory, the environment is like a book that contains fundamental values for human life, and humans themselves are a community that has a role in life. Thus, the main subject in bringing moral values and principles to himself and to his environment, is man himself. These moral values and principles, constitute sacred knowledge (*scientia sacra*), are sourced from Islamic theological concepts that are related to the concept of treating the environment. That is, protecting the environment is a form of high spirituality, as high as humans relate to their Lord.

The Islamic conception of protecting the environment develops into a theological perspective. This is as stated by Mujiyono Abdillah in his research work. One of the conclusions of his research is that Islamic environmental theology has developed the foundations of the faith pillars, including:

1. One's faith is imperfect if it does not care about the environment;
2. Care for the environment is part of faith;
3. Environmental destroyers are theological infidels;
4. Energy wasters are Satan's friends;

5. There are three pillars of the faith of development, namely believing that: (a) Development is a necessity, human image is determined by the results of its development; (b) Man is a creature of builders, a person's faith is imperfect if he does not struggle in development; and (c) The nature of development is a holistic integral development that is sustainable and sustainable.

This conception continues into the perspective of fiqh (Islamic law). Some scholars consider that the discourse of environmental jurisprudence (fiqh al-bi'ah) was first delivered by Yusuf al-Qaradlawi with his book *Ri'ayah al-Bi'ah fi Shari'ah al-Islamiyyah*. He argues that preserving the environment is in line with protecting the maqashid al-shari'ah. Imam Syatibi, according to the researchers, has formulated the maqashid al-shari'ah which was agreed upon by the majority of scholars. This concept says that the purpose of shari'ah is revealed by Allah is for the benefit of mankind, namely maintaining five essential things in religion namely preserving religion (hifzh ad-din), preserving the soul (hifzh an-nafs), preserving reason (hifzh al-'aql), maintaining offspring or nasab (hifzh an-nasab), and maintaining property (hifzh al-mal). All of this is known as al-Ahkam al-Khamsah or al-Kulliyat al-Khamsah. All of these components are placed in their respective priorities such as dlaruriyyat, hajiyyat and tahsiniyyat. In its development, some scholars made some modifications to the objectives of this shari'ah. Yusuf al-Qaradlawi believes that there are at least seven shari'ah purposes, including: (1) Improving the creed about the concept of God, religion and retribution; (2) Uphold human dignity and rights, especially weak people; (3) Inviting worship and piety to Allah; (4) Purifying human hearts and correcting morals; (5) Building a pious family and giving justice to women; (6) Building people who testify to humanity; and (7) Inviting humanity that is full of cooperation.

Islam always protects humans from various aspects of life, but unfortunately we ignore some important aspects that are considered not the priority scale, one of which is environmental problems. God entrusted the earth to humans to occupy but with the aim of being able to preserve and preserve it as best as possible. Sometimes we emphasize development by ignoring the environment of the building where the building is built, is it right or not? Resulting in damage and even threatening the survival of humanity itself due to lack of attention and calculation. In Islam *maslahah* is a goal that must be achieved in order to achieve a balance between one another, in terms of environmental sustainability too, the need for benefit-based development not for certain parties and groups is a top priority for the common good.

3. Land Opening and Environmental Impact Analysis

Indonesia is famous for its green land which is still very broad, so the potential for land clearing will continue to increase especially in areas that are still large such as Kalimantan and Sumatra. The opening of new land for farming for generations has been carried out by the ancestors for a long time by burning. This traditional method is still widely practiced today, as a result it produces problems for nature, one of which is the smog. The problem of haze is also not new, since the first haze disaster caused by forest fires is rife. Why in modern times is burning of forests with the aim of clearing land still used? The answer is because this is the most practical and cost-effective way. When compared to using modern equipment which costs a lot of money, burning of forests is still a top priority because it is only enough to provide approximately 5 liters of kerosene and lighters will be able to open new land as much as possible especially with the texture of peat soil and carried out in the dry season causing the easy burning of the forest.

Land clearing is usually done by burning the forest is not only done by traditional farmers, but also carried out by certain parties on behalf of the company. To respond to this, all the Indonesian governments require an Environmental Impact Assessment (AMDAL) so that each company is required to report its activities. The legal basis for AMDAL in Indonesia is Government Regulation No. 27 of 2012 concerning "Environmental Permit" which is a substitute for PP 27 of 1999 concerning Environmental Impact Assessments. Amdal has been carried out since 1982 in Indonesia. The function of AMDAL is: (a) Assist the decision making process regarding the environmental feasibility of the business plan and / or activity, (b) provide input for the preparation of a detailed technical design of the plan and / or activity, (c) Provide input for the preparation of a management plan and environmental monitoring, (d) Providing information to the community of the impacts arising from a business plan and / or activity, (e) Beginning of recommendations on business licenses, (f) As a Scientific Document and Legal Document and (g) Environmental Feasibility Permit.

One of the efforts made by the government is to minimize any actions that cause damage to the environment. Because the impact of environmental damage itself can threaten human life. As with burning forests that can cause smog and threaten the health of the surrounding community. In addition to the Government's role in anticipating environmental damage, it is also necessary to raise public awareness into something important.

4. Environmental Based Jurisprudence as an Alternative Government Policy in Protecting The Environment

In terminology, *maqashid al-shari'ah* is the meaning (*ma'aniy*), purpose (*ahdaf*), and wisdoms (*hikam*) that are of Shari's attention (Legislator: Allah SWT) when establishing laws. According to both the *maqashid al-shari'ah* are the most important part of these laws and are the secrets (*asrar*) contained therein [1]. The substance of *maqashid al-shari'ah* is benefit. Benefits in God's *Taklif* can take two forms. First in the intrinsic form, namely the direct benefit of causality. The second is in the form of *majazi*, which is the form which is the cause that leads to benefit. The benefit is divided into two points of view, namely:

First, *Maqashid asy-Shari* '(God's purpose). *Maqashid al-Shari'ah* in the sense of *Maqashid al-Shari* 'contains four aspects, namely:

- a. The initial purpose of the Shari'a is the benefit of humans in this world and the hereafter;
- b. Sharia as something that must be understood;
- c. Sharia as *taklif* law that must be done;
- d. The purpose of the Shari'a is to bring people under the auspices of the law.

Secondly, *Maqashid al-Mukallaf* (the purpose of the *mukallaf*), benefit as the substance of *Maqashid al-Shari'ah* can be realized if the five main elements can be realized and maintained. The five main elements are religion, soul, descent, intellect, and property. For the sake of maintaining and realizing the five main elements, *Maqashid al-Shari'ah* is divided into three levels, namely:

- a. *Maqashid adl-Dlaruriyat*, is intended to preserve the five basic elements in human life above;
- b. *Maqashid al-Hajjiyat*, intended to eliminate difficulties or make the maintenance of the five essential elements better;

Maqashid al-Tahsiniyat, is intended so that humans can do their best to perfect the maintenance of the five main elements [2]

Maqashid al-shari'ah have different categories and ranks. Al-Syathibiy divided *maqashid* into three categories, namely *dlaruriyyah*, *hajjiyyah* and *tahsiniyyah*. The categorization of *maqashid* is based on how big the role and function of *mashlahah* is for the life of beings. If a form of *mashlahah* has a very large function for beings, which if the form of *mashlahah* is not fulfilled then the benefit of beings in the world cannot run stable (*lam tajri mashalih al-dunya 'ala istiqamah*), then that goal is included in the category of *maqashid dlaruriyyah* [3].

Maqashid dlaruriyyah covers the maintenance of religion (*din*), soul (*nafs*), reason (*'aql*), descent (*nasab*), and treasure (*mal*). Guarding this category *maqashid* is done in two ways. First, by upholding its supporting pillars (*yuqim arkanaha*) and strengthening its foundations (*yutsbit qawa'idaha*) [4].

Maqashid hajjiyyah refers to the benefit in the form of spaciousness and flexibility in law (*tausi'ah wa raf 'al-dliq*) which is intended to avoid difficulties (*haraj*) and publicity, even though the referred community does not cause chaos. for more important benefit. An example of this type of *mashlahah* is the provision of *rukshah* (relief) in prayer for people who are sick or traveling [4].

The third category of *maqasid* is *tahsiniyyah*. *Maqashid* this category refers to supplementary benefits in the life of beings and with regard to ethical issues (*makarim al-akhlaq*) and aesthetics (*mahasin al-'adat*). Examples for this *maqashid* include covering up *aurat*, eliminating unclean, using good clothes when going to pray, and others [5].

The benefit of mankind both in this world and the hereafter is built on five basic benefits (*usul al-khamsah*) which are *dlaruriyyah* as mentioned above. If these five things are not maintained, the benefits needed by creatures, including those that are *hajjiyyah* and *tahsiniyyah*, will not be fulfilled. Viewed from the priority scale, the *maqashid dlaruriyyah* is at the first level, then followed by the *maqashid hajjiyyah* and *tahsiniyyah*. Therefore, if there is a contradiction between *maqashid* which is *dlaruriyyah*

and maqashid which is hajiyyah or tahsiniyyah then maqashid which is dlaruriyyah must take precedence [6].

It can be understood that the problems included in the Hajjiyyah category are actually part of the maintenance effort on the above Dlaruriyyah problems, as well as the problems of tahsiniyyah. Hajjiyyah is a consummation (mukmil) for dlaruriyyah, likewise tahsiniyyah is a consummation for hajiyyah. Something that perfects the perfection can be called a perfection too (wa al-mukmil li al-mukmil mukmil). So it can be said that hajiyyah and tahsiniyyah are branches (far ') while dlaruriyyah is the principal (a shl) [7].

If dlaruriyyah is an ashl for hajiyyah and tahsiniyyah so therefore the last two categories stand on dlaruriyyah issues, then if dlaruriyyah is automatically interrupted both the hajiyyah and tahsiniyyah will also experience the same thing. That is because interference with Ashl will affect far '. Different if the one who first gets the disturbance is far ', then it is not necessarily ashl, in this case dlaruriyyah, experiencing the same thing [8].

Even though dlaruriyyah determines two other categories of maqashid, it does not mean that the two categories, namely hajiyyah and tahsiniyyah, cannot have any impact on dlaruriyyah. Disorders that occur in maqashid hajiyyah or tahsiniyyah can sometimes threaten maqashid dlaruriyyah. A small and trivial disturbance can be the beginning for the emergence of a bigger disturbance, and does not rule out the possibility of attacking the main maqashid. Under these circumstances the disturbance to the perfecting is also a disturbance to what is perfected (al-mukhill bi ma huwa mukmil ka al-mukhill bi al-mukmal) [1].

Disturbances experienced by hajiyyah and tahsiniyyah sometimes cause interference with dlaruriyyah, the maintenance of the two types of maqashid becomes mandatory. Based on this it seems clear that the main focus or final goal in the maqashid al-shari'ah is actually the maintenance of problems that fall into the category of dlaruriyyah.

According to Ahmad Syafi'i, so far the most famous sources of Islamic law are three types, namely: the Koran, al-Sunnah and Ra'yu. Based on the above, various fiqh ideas were developed. Environmental fiqh must also refer to this source. It's just that this source is very limited because it only reaches the principles of the legal format. This principle is then considered very important to be developed in order to overcome contemporary environmental problems. Determination and development of legal products as well - by themselves - absolutely require a method [9].

The Companions of the Prophet followed what the Prophet Muhammad (PBUH) was doing making a nature reserve which in fiqh was called the concept of al-hima. A number of Caliphs also set up a number of Hima. Caliph Umar Ibn Khattab, for example, established the hima al-Syaraf and Hima al-Rabdah which were quite large near Dariyah. Caliph Uthman Ibn Affan, expanded the Hima al-Rabdah which was reported to be able to accommodate 1000 animals each year. A number of hima established in West Arabia have been planted with grass since the beginning of Islam and are considered by the United Nations Food and Agriculture Organization (FAO) as the longest-standing example of wise management of pasture in the world [10].

The mashlahah approach is one of the methods used in istinbath Islamic law regarding environmental fiqh issues. According to Ali Yafie, the mashlahah approach is intended as an integrative effort in building morals or ethics with an environmental perspective [11].

Islamic law states that at least mashlahah itself is divided into several types. The division can at least be seen from several angles, which include:

1. Mashlahah in terms of scope;
2. Mashlahah in terms of the impact on the existence of the community; and
3. Mashlahah in terms of reality [12].

Mashlahah seen from the reality or real and whether or not a benefit, then there are three characteristics. First, the benefits of the qathati, namely the benefit derived from the syar'i proposition which is qath'i (certain). Mashlahah qath'i can also mean a benefit that is supported by the propositions by means of the results of shari'ah research, such as the five primary benefits (al-dharuriyat al-khamsah), or the mashlahah qath'i also means a benefit that is according to reason will have a very large positive influence. Vice versa, if left will have a very big negative impact.

Second, *mashlahah dzanni*, the benefit derived from the *syar'i* proposition which is *dzanni*, or a benefit derived from the presumption of reason, and third, *mashlahah wahmi*, namely fictitious benefit. That is, in the benefit contained a very large negative impact, so it is not worthy of being called benefit. For example, like consuming DRUGS. People who consume Narcotics sometimes think that Narcotics are beneficial to them, even though Narcotics have a negative impact on their health, mentality and life [12].

Mashlahah above are forms of *mashlahah* that have links to the care and protection of the environment, and Ali Yafie lacks the elaboration in his book. For example, in *al-Kulliyah mashlahah*, namely the existence of forests is a form of *al-kulliyah mashlahah*, because forests have at least two functions, namely ecological and economic functions whose benefits can return to the entire community or majority group [12].

Qath'i mashlahah is in the context of the existence of the forest, then it is classified as the *Qath'i mashlahah*, because the existence of the forest will have a very large positive effect, and vice versa if the forest does not exist or is running low, it will have an enormous negative impact as well. In addition, the role of forests as described above can sustain the existence of *al-dharuriyat al-khamsah*. This is of course contrary to illegal logging, because illegal logging which has been considered by some people as a form of benefit, turns out to be basically a *wahh mashlahah* or fictitious benefit. Evidently the negative impact caused is greater than the benefits [12].

5. Conclusion

Preservation and protection of the environment in accordance with the teachings of Islam based on the Qur'an and sunnah. Like the placement of the position of leader as a position that is very important in maintaining and preventing damage from the environment. In addition, placing human position as caliph on earth does not mean excessive drainage of natural resources contained in the universe, but using it as well as possible for the benefit of all humans as well as possible.

Regarding environmental protection, the application of the concept of *sadd adz-dzari'ah* as a method of *istinbath* Islamic law in environmental fiqh needs to be considered. The author believes the maintenance of nature using this method is based on several things, namely:

- a. The method of anticipation in *Sadd Adz-Dhari'ah* is very relevant to the system of "early warning" in tackling existing environmental pollution and destruction.
- b. In accordance with the *sadd adz-dzari'ah* method, that everything that leads to damage (forbidden), then the law is also haram to do. Therefore, environmental maintenance must be the same. If environmental destruction is an act that is prohibited by religion, then the process or the path to that direction is also forbidden as well, such as water pollution is prohibited (haram) in Islamic law, then excessive exploitation of water is also prohibited because of excessive exploitation against water will cause damage to components of particles that are good in water and water is no longer suitable for consumption.
- c. Prevention of environmental damage in harmony with the object of the method of *sadd adz-dzari'ah* ie actions that lead to certain or may lead to prohibited acts (haram). In the context of environmental Jurisprudence, the object of this *istinbath* method is all actions that may or may bring harm to the environment.

The selection of the AMDAL system as an example of the application of *sadd adz-dzari'ah* is based on that in the AMDAL, the nature of prevention of environmental damage is in line with the nature of prevention which is owned by the method of *sadd adz-dzari'ah* in protecting the environment. In addition to the AMDAL, the author sees that there are a number of government regulations that are in line with this *sadd adz-dzari'ah* method, namely the ANDAL, PROKASIH, and BML programs in the environmental legislation system in Indonesia.

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