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Management of Natural Resources Contract in the Perspective of Pancasila

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Abstract

The Indonesian government is in a central position because it is in direct contact with the two types of contracts. If the contract only benefits a private contract then it is not uncommon as it is today, there are massive exploitation and exploration of natural resources for the benefit of the company. The position of the community will feel disadvantaged because the people affected namely pollution and environmental destruction which is a place to live and meet the needs of people's lives. The study aimed to explain the contract on natural resource management from the perspective of the Pancasila. The research method used was qualitative research that is by looking at its quality, especially regarding contracts relating to natural resource management based on Pancasila. The result of this study is that contracts related to natural resources based on Pancasila must be dimensioned to theological concepts, apply humanism values in contracting, that contracts also have the dimension of unity, contracts are understood as democratic ties, and aim for social justice for the entire ecosystem community.

INTRODUCTION

Natural Resource Management Contracts are always linked between human relations and nature. Humans enter into a binding agreement that makes natural resources as the object of the agreement. The contract was used as a base for humans to rule over nature. Contracts make human activity legitimate when humans make an "invasion" of nature. This means that when talking about Natural Resource Management contracts, there are three most important elements in them, namely human, natural resources, and contracts.

The traditional concept of mentioning human relations with nature is always seen to be partial. Human beings interpret themselves to meet all their needs. Nature is also positioned as a separate and independent entity. Humans to achieve their needs often think of themselves as rulers of nature. The human paradigm then results in humans subjecting, exploiting, exploiting, and exploring nature. This condition makes humans consider nature as an object of meeting human needs themselves.

The position of humans becomes central to nature so that humans can control nature according to their desires, or in other words called anthropocentrism. Anthropocentrism makes humans the center of the universal system. Humans and their interests are considered the most decisive in the ecosystem and policies have taken concerning nature, both directly and indirectly.¹ Humans and their needs are the highest value. Attention is always focused on humans. Humans put themselves as something that affects others. Nature is only a means for the fulfillment of all human interests. Humans take distance from nature, so humans place humans as absolute subjects who have power over nature which is considered as the weakest object.

Humans always meet the needs of his life, both through the relationship of individual human beings with nature, as well as human relations with other humans in the inter-subjective space and involve nature. The relationship between individual humans and nature can be seen through direct interaction between individual humans and the natural surroundings, both utilizing natural products to extend their lives in terms of farming, taking natural products such as cutting down trees, making homes using plants, making nature a place stay and others. Human relations with other human beings as inter-subjective involving nature can be exemplified by natural resource management contracts, where humans enter into an agreement and an agreement to make nature the object of the contract.

Contracts become a link for humans to agree on what they have agreed on. A contract can be a rule for those who make it. When the contract is made into written rules, the contract will not develop again. Contracts become stagnant, dead, or even become standard rules for the parties. This understanding is what makes the parties return to the traditional concept, namely releasing the contract from the interpretation of the conditions of values because the contract places itself as a positive law that is free from values and ethics. Kelsen said that pure legal theory is a positive legal theory. Law is understood by law as the law itself. Law is independent of other factors that influence law such as politics, ethics, psychology, and sociology. The law as a closed system of wraps outside the law.² The pure norm system must be separated from non-juridical matters. Kelsen also said that the law should not be interfered with by the issue of justice, because the problem of justice is a

¹ A. Sonny Keraf. *Etika Lingkungan*. (Jakarta: Kompas, 2002) 33.

² Hans Kelsen. *Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif*. Trans. Raisul Muttaqien, (Bandung: Nusa Media, 2011) 1.

problem of political science.³

The law of positivism will shape operationalism, that is, the law becomes a reproach of ways of doing things. Van Peursen said that operationalism was an absolute method of doing things (operations). Operationalism is also interpreted as a danger that transcends boundaries, which undermines something.⁴

The Understanding of contracts according to the law of positivism and traditional concepts is what causes contracts to manage natural resources to be far from values. If the contract overrides the values, the catastrophe arising from the impact of the contract is inevitable. The impact is pollution and damage to the environment, which not only gives risks to the parties who made the contract, but the impact is also felt by many people. Some cases of pollution and environmental damage based on contracts are the cases of Rio Tinto, Newcrest, Newmont, Freeport, PT Indo Muro, PT Meares Sopotan Meaning, PT Nusa Halmahera Mineral, and other companies. These companies not only add to the worsening investment conditions in Indonesia but also have an enormous impact on natural resources in Indonesia. The Government of Indonesia as the parties cannot do anything, the people of Indonesia who receive the impact.⁵

Companies that contract with the Indonesian government in which natural resources are the object of the contract are contracts in the private sense, namely privacy between the government and the company as the parties. Another interpretation is that the position of the Indonesian government is not only in the private sphere, but must be concerned with the public sphere, which is based on the Indonesian government's social contract with the community. The two types of contract, the private contract, and the social contract must be carried out in a balanced way as if a bird is flying, if a bird that uses only one wing, then the bird will not fly perfectly and will not arrive at its destination.

The Indonesian government in this case is in a central position because it is in direct contact with the two types of contracts. If the contract only benefits a private contract then it is not uncommon as it is today, there are massive exploitation and exploration of natural resources for the benefit of the company. The position of the community will feel disadvantaged because the people affected namely pollution and environmental destruction

³ Soetiksno. *Filsafat Hukum*. (Jakarta: Pradnya Paramita, 2008) 60.

⁴ Van Peursen. *Strategi Kebudayaan*. (Yogyakarta: Kanisius, 2013) 109.

⁵ Hengki Firmanda. *Tinjauan Yuridis Tentang Konsep Pembangunan Berkelanjutan Berwawasan Lingkungan Dalam Sektor Penanaman Modal Di Indonesia*. (Pekanbaru: Fakultas Hukum Universitas Riau, 2009) 7.

which is a place to live and meet the needs of people's lives.

Therefore, interactions are realized through dialogue, both in the realm of inter-subjective between humans, as well as between humans and their environment. This dialogue is very closely related to language. Saussure said that language is a sign system. The sign is a flowing interpretation. Through signs, humans look for order in this world, so that humans find meaning in the world and then apply it in their actions.⁶

Pines say that what semiotics does is to provide clarity to humans to describe the rules in life and bring people to awareness in life.⁷ When humans are aware of the meaning of their lives, humans will try to play their role in nature through the signs they obtain. Then humans try to systematize the signs into the norms and handle of their lives.

The norm is realized by humans in concrete rules as the implementation of human life. These rules are always associated with the context of human life; each life has its own rules by the rules of each game. The rules are packaged in such a way into a positive and neatly arranged language. In that rule, there is a language expression that is obtained from the signs of life and is also used as rules in life.

MANAGEMENT OF NATURAL RESOURCES CONTRACT IN THE PERSPECTIVE OF PANCASILA

1. Theological Dimension Contract

The first precept in Pancasila which reads "The Almighty God," is the existence of a religious state, namely the recognition of the existence of God. This is realized by the fact that all Indonesian people have confidence.⁸ This first precept is causal material namely the values contained in this Precepts reinforce human belief in a single power, as seen from the values that had existed in the Indonesian people from the past such as religious values and customs.

Kaelan said that God Almighty has the meaning that all aspects of state administration must be by values derived from God. The administration of the country is material and spiritual. Are spiritual, among others, the form of the state, the purpose of the state, the order of the state, the state system, while the spiritual or spiritual nature of the state

⁶ Kaelan. *Filsafat Bahasa, Semiotika, dan Hermeneutika*. (Yogyakarta: Paradigma, 2009) 159.

⁷ Ibid. 163.

⁸ Sudjito bin Atmoredjo, *Pancasila Sebagai Paradigma Ilmu Hukum Indonesia*, delivered at the Law and Constitution Seminar with the theme "Pancasila untuk Pengembangan dan Pengamalan Ilmu Hukum" di Universitas Gadjah Mada, 30 September-1 Oktober 2011. 22.

morals, the morals of state administrators, and others.⁹

The state elements in it include society and territory. A country without a society cannot be called a state, nor can a country without territory be difficult to be called a state with territorial power. A territory is an area that is controlled or territorial to sovereignty. The area inside there is natural resources that become sovereignty for the country. Within the country, societies are consisting of humans and territories are consisting of other living things and natural resources. All that becomes sovereignty for the country.

The meaning of the first precept makes God as a supreme trust so that every state affair in which there are people and territories will be God's affair. There is a correlation between God and the state, humans who form themselves in communities, other living things, and natural resources. All are part of all, not separated.

Natural Resource Management Contracts depart from all these elements, namely the state enters into promises with other parties, within which people are forming themselves in the community, there are other creatures such as animals and plants, and there are natural resources. If the Natural Resource Management contract is not based on Godly values, then the contract is only a contract that is bland from its foundation. The contract will be very far from the values, and it is not uncommon to find the contract as a legal or juridical basis in destroying, destroying humans, other creatures, and the natural resources themselves. The logical consequence is the contract as the creator of pollution and destruction of the human and natural order.

God as the creator of nature and its contents have no intention to create pollution and destruction of the existing order. These values must then exist when the state enters into a natural resource management contract. The state brings its people and territories directly, so that the state's duty to safeguard them all, the state is required to try to take and use the values of God.

The Precepts of Godhead emphasizes that in making contracts to manage Natural Resources, he must pay attention to and respect the instructions of God Almighty. Deviations from God's instructions indicate that the state runs away from the concept of God. This principle then becomes the highest value source for contract creation and implementation.

⁹ Kaelan. *Negara Kebangsaan Pancasila: Kultural, Historis, Filosofis, Yuridis, dan Aktualisasinya*. (Yogyakarta: Paradigma, 2013) 199.

2. Humanism in Contracting

The second precepts, namely humanity that is just and civilized, humans are recognized and treated according to their dignity and status as individuals and social beings, of the same degree, with the same rights and obligations, without discriminating against ethnicity, ancestry, religion and beliefs, sex, position social, skin color, and so on, Because of that, developed an arbitrary attitude towards others.

This second precept speaks more to humanist human culture. Bakker said that cultural philosophy views culture in terms of the realization of humanity. Culture in short is the creation, control, and processing of human values. The formal aspect of culture lies in the work of human minds that transforms data, facts, situations, and natural events that they face into values for humans. Values can only be read by the human mind. Budi is not the same as the reason or rational mind. Budi is a mind that joins closely with reality and whose sharpness is smoothed by subtle taste. Budi is the integrity of the human being and contains wealth that cannot be extracted in a lifetime, which can be refined in a refined manner again. The nature of culture can be said to be determined by values because without the existence of values there will be the possibility of deviations.¹⁰

Kusumohamidjojo stated about the triangle of people, nature, and culture. Humans as bio-psycho-social-transcendental beings, nature as basic drives and basic needs, and culture are placed as a result of human efforts towards nature. Humans in meeting their needs need nature as a place that is needed. Between humans and nature requires effective communication interactions so that both remain balanced in their position. The human position is the position that causes culture, which in creating culture, humans need nature as a place and as something to establish their culture.¹¹

The position of nature itself is a limitation of human freedom to act and act. Nature also positions itself as something that results in human freedom. Humans in the end always learn spontaneously to adjust to the situation that shapes it, so that the opportunity to produce value can be used.

Humans in culture recognize nature in the broadest sense as a complementary space to increasingly humanize them-selves, which is identical to natural culture. Humans are

¹⁰ J.W.M. Bakker. *Filsafat Kebudayaan, Sebuah Pengantar*. (Yogyakarta: Kanisius, 2005) 12, 20, 22.

¹¹ Budiono Kusumohamidjojo. *Filsafat Kebudayaan*. (Yogyakarta: Jalasutra, 2010) 59.

positioned not to master nature, but to know nature.¹² When humans are aware of their culture, it can be said that humans are actively thinking about and planning the direction that will be taken by human culture.¹³ Humans have the discipline to discipline nature, to discipline it, it is necessary to be wise.

Bakker¹⁴ said that to cultivate nature can be passed through 3 (three) stages, namely first, Exteriorisation, that is humans who exercise the mindset to bring order to nature cause external results, a product that stands alone as things, events, and physical objects. This stage of the contract on the management of natural resources is placed as an effort by the parties to carry out their cultural resources to manage nature carefully, rather than to make nature polluted and damaged. Second, communication, which is the result of individual intelligence available to be used by others in unity between subjects through dialogue by exchanging ideas to achieve more perfect and useful results. This effort Peursen called it an assessment effort using questions that were then dialogue to achieve a better culture. At least the contract on the management of natural resources must be a dialogue between the parties by not injuring the parties and harming the environment (natural). The discussion space between the parties is used to make improvements to realize noble humanity and humanize nature. Third, continuity, namely cultural work, continues and is a starting point for further development. Peursen called it the evaluation stage which is always evaluating culture. Natural resource management contracts also need to be evaluated so that contracts are beneficial to humans, not to plunge people further from values.

A natural resource management contract is a contract that provides a space for dialogue interaction between humans and nature, to realize human glory and humanize nature. Every natural resource management contract must be environmentally friendly, with attention to ecological humanism.

Ecological humanism sees humans only as part of a larger scheme of things, namely nature and the cosmos. Ecological humanism marks the return of a holistic view in which human philosophy and natural philosophy are aspects of one another. The merging of ecology with humanism is the result of the perception of the essential unity of the natural world with the human world. Ecological humanism requires an expansion of the concept of ecology to include human balance, then the natural world is given the same "value" as the human

¹² J.W.M. Bakker. *Filsafat Kebudayaan, Sebuah Pengantar*. (Yogyakarta: Kanisius, 2005) 14-15.

¹³ Van Peursen. *Strategi Kebudayaan*, (Yogyakarta: Kanisius, 2013). 15

¹⁴ J.W.M. Bakker. *Filsafat Kebudayaan, Sebuah Pengantar*. (Yogyakarta: Kanisius, 2005) 16

world.¹⁵

Natural Resource Management Contracts are based on fair and civilized human nature. Fair and civilized shows that humans have humanitarian consequences. Humanity is not only interpreted as humanizing human beings but also interpreted as humanizing nature. This is considered important to raise the harmony between humans and nature as Bakker said that cultural works not only humanize natural material but also need human-natural dialogue to be more humanized. Nature is a human partner in its efforts to achieve noble humanity and glorify nature.¹⁶

Natural Resource Management Contracts are the work of human culture, which makes nature the contents of the contract, and makes humans as followers of the contract after the contract is agreed upon so that the contract forms a new culture for humans in managing nature. So that the contract does not run away from values, the contract must get closer to humanism and human ecology.

3. Contract in the Dimension of Unity

The third precepts which read the Unity of Indonesia, which asserts that the fusion of all kinds of tribes, descendants, religions, beliefs, social positions, etc., becomes a unified whole to jointly achieve a goal. Another term is engraved in the national motto that is *Bhinneka Tunggal Ika*, which means unity in difference and difference in unity.

Unity discusses social solidarity, meaning that humanity must be built together so that social society has a spirit of solidarity. Ibn Khaldun in Issawi mentions social solidarity departing from blood ties that unite small communities, but he also cautiously said that blood ties are meaningless if they are not accompanied by the same closeness and way of life and that living together can also giving rise to social solidarity that is as strong as blood ties.¹⁷ Emile Durkheim argues that law is a reflection of social solidarity in society. Society in its structure there are 2 (two) types of mechanical solidarity and organic solidarity. Mechanical solidarity exists in a simple and homogeneous society, where the bonds of its citizens are based on personal relationships and the same goals. Organic solidarity exists in heterogeneous societies, where there is a complex division of labor. Community ties depend more on

¹⁵ Henryk Skolimowski, Henryk. *Filsafat Lingkungan*, trans. Saut Pasaribu, (Yogyakarta: Bentang, 2010) 34

¹⁶ J.W.M. Bakker. *Filsafat Kebudayaan, Sebuah Pengantar*. (Yogyakarta: Kanisius, 2005) 57.

¹⁷ Charless Issawi. *an Arab Philosophy of History (Selection from the Prolegmena of Ibn Khaldun of Tunis 1332-1406)*, Alih Bahasa Mukti Ali, (Jakarta: Tintamas, 1976) 14.

functional relationships between the elements produced by the division of labor. In simple terms, it can be said that social solidarity can be the main door in preventing pollution and environmental damage. This can be proven by the nature of the Indonesian people, namely religious-communal. There is no need for blood ties as a unifying but the same nature that should facilitate the implementation of prevention of pollution and environmental damage in Indonesia if it is the result of natural resource management contracts.¹⁸

4. Contract as a Popular Association

The fourth precept, which reads Population led by wisdom in consultation/representation, states the uniqueness in making a decision requires decision-making based on wisdom in deliberations for consensus.

This principle emphasizes that in a country there are people and there are leaders and representatives. Leaders and representatives are state administrators elected by the people, and they come from the people. The purpose of having leaders and representatives is to represent the people. Popular ties between leaders and representatives and the people are partner ties, not like superiors and subordinates.

This fourth precept does not employ social contracts such as the western concept conveyed by Thomas Hobbes, John Locke, and Jean Jacques Rousseau. They interpret the formation of the state because of agreements between individuals. One individual contracts with other individuals, and forms a state. Individual strength is very dominant in a country. Naturally, western countries are liberal, because they do emphasize the individual aspects of the state.

Western understanding then seeks to be used in Indonesia which has the philosophy of Pancasila. This is considered wrong because the formation of the Indonesian state was not an individual initiative, but a communal initiative. The concept of Indonesian state social contract is one community with another community, so that between communities form a binding commitment to establish the country. The basis of the Indonesian state is not individuals, but communities. When viewed historically, it can be proven that in the past, Indonesia's ancestors lived according to community values.

Countries whose implementation is represented by leaders and representatives, do not necessarily have full authority even though, the community surrenders its mandate to

¹⁸ Soekanto, *Pokok-Pokok Sosiologi Hukum*, (Jakarta: RajaGrafindo Persada, 2009) 103-104.

administer the state to state administrators. There is a very important element for state administrators, namely the existence of policies in carrying out social mandates or agreements.

When the government makes a contract to manage natural resources, the government is faced with a private contract, a contract between the government and a third party, but behind that, the government has a social contract to the community. The presence of a social contract is before the private contract of the state administrator so that the new contract cannot defeat the old contract if the old contract has not been abolished. Private contracts as new contracts made by state administrators must be based on social contracts, private contracts must not conflict with social contracts.

The strength of social contracts far precedes private contracts, because social contracts mean the formation of a state, whereas private contracts are only for the sake of profit. State administrators are highly demanded by their policies in understanding natural resource management contracts. Nature is the place where the social community lives, so the impact arising from the contract is the social community. State administrators must pay close attention to these contracts, which ones must take precedence and which ones must be forwarded.

Making a Natural Resource Management contract should prioritize the deliberation aspect because the contract involves a social contract. The government must not be clandestine in making contracts to manage natural resources. The government must make due diligence before ratifying the contract with the third party so that the contract is indeed by the wishes of the community. The fourth precept is the embodiment of popular sovereignty.

5. The goal of Contract at Social Justice

The fifth precept, Social justice for all Indonesians, emphasizes the effort to create equitable social justice based on cooperation (mutual assistance in social ties). These precepts are a unity with the precepts before. The Precepts of Social Justice will be realized if humans in managing Natural Resource Management contracts have a civilized attitude, must be one, then policies are concretized in the form of deliberations, then the goal of social justice can be created. Understanding the meaning of the fifth precepts must be interpreted with the precepts

before so that it concludes "one for all, all for one, all for all".¹⁹

The advantage when managing Natural Resource Management contracts should be given by its portion, not only the central government that benefits, not only certain groups benefit, not only certain religions, tribes, and races that benefit, but fair according to the portion. The central government must not be arbitrary in determining the sense of justice.

Social justice is not only meant as an advantage but should be attached to the impacts or consequences that arise. Social justice, as Kaelan said, is the right and obligation of every human being to fellow human beings, as well as from each party in living together, namely society, nation, and state. Rights and obligations are an element of social justice. The measure of social justice is the implementation of rights and obligations.²⁰

Natural Resource Management Contracts must contain rights and obligations, not only the rights and obligations of the parties in private but also the rights and obligations in a social contract. Behind the private contract between the government and other parties, there is a social contract between the government and its people. Natural Resource Management Contracts must be made up to the fulfillment of rights and obligations in the realm of social contracts, where there are humans, nature, and God as a form of our obedience to Him. If the state administrators are socially just, they will show the existence of justice before God.

CONCLUSION

The Natural Resource Management Contract in the perspective of the Pancasila philosophy is not only meant as a private contract, but there is a social contract space in it. A private contract is a commitment made between a state organizer and another party. A social contract is a binding agreement in forming a state, we're a community with another community enters into an agreement and forms a state, and mandates its rights in managing the state to the state administrators. Social contracts precede private contracts when state administrators enter into Natural Resource Management contracts. Private contracts must follow social contracts that were born first and still exist. Social contracts cannot be defeated by private contracts. If a private contract does not correspond to a social contract, then the private contract must be changed or written off. Natural Resource Management Contracts made privately and under the umbrella of social contracts in Indonesia must be in line with

¹⁹ Kaelan. *Negara Kebangsaan Pancasila: Kultural, Historis, Filosofis, Yuridis, dan Aktualisasinya*. (Yogyakarta: Paradigma, 2013) 426.

²⁰ *Ibid.* 419.

Pancasila as the nation's philosophy. Natural Resource Management Contracts are required to follow the foundation of the Pancasila, in which the contract of Natural Resource Management is based on God, Humanism, has the dimension of unity, has a bond of popular solidarity, and aims at social justice.

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