



THE RIGHT TO ENVIRONMENTAL HEALTH IN REGIONAL LEGAL POLICY TOWARDS A GREEN CITY

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Abstract: Indonesia is currently experiencing a heavy burden in all aspects of life due to successive crises and disasters. One of the aspects affected is health, including environmental health. Environmental health is a right for the community in an effort to achieve the highest possible level of health, because the level of health is greatly influenced by environmental factors. This paper aims to analyze environmental health in its dimensions as a right and its relevance to regional efforts through green cities. The results of the study show that A healthy environment is not only a right for every community, but also an obligation to maintain environmental quality. Regions based on their autonomy have roles and responsibilities in fulfilling the right to environmental health. The form of regional government authority in carrying out government affairs is through regional legal policies that are able to encourage all parties to maintain a healthy environment. The implementation of a Green City is an alternative policy that can be implemented by regions, with regional regulatory legal instruments as its legitimacy.

Keywords: environment health; green city; regional legal policy

I. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia guarantees that a good and healthy living environment is a human right and constitutional right for every Indonesian citizen. Article 28H paragraph (1) of the 1945 Constitution,¹ contains guarantees regarding a person's right to a good and healthy living environment. Therefore, the central government and regional governments are obliged to protect and manage the environment in the implementation of sustainable development so

¹ Article 28H paragraph (1) of the 1945 Constitution states that "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment."

that the environment can remain a source and support of life for the community and other living creatures.

In a good living environment, there is a harmonious and balanced interaction between environmental components. The stability of balance and harmony of interaction between environmental components depends on human efforts. This is because humans are the most dominant environmental component in influencing the environment, conversely the environment also influences humans. Therefore, there is a mutually influencing relationship between humans and their environment. This is an interaction between humans and the environment. This reciprocal situation must be accommodated in such a way that there is harmony, where humans can utilize the environment for a better life and also the environment can always be in good condition and maintained for the continuity of life.

The increase in population, especially in urban areas (urbanization) and the decline in the quality of the urban environment have brought various problematic consequences in Indonesia, including increasing rates of urban poverty, traffic jams, rising sea levels, unequal fulfillment of infrastructure needs, increasing numbers of slum environments, flooding, and other conditions that have a negative impact on both humans and the environment. This condition then requires that the development carried out must be in the corridor of sustainable development.

The concept of sustainable development in Indonesia is better known as environmentally sustainable development, which emphasizes development on environmental protection and management based on general environmental principles.² The pillars of sustainable development are economic sustainability, social sustainability and environmental sustainability, all three of which must develop in a balanced way; Otherwise development will be trapped in the conventional development model which emphasizes economic growth only and ignores social and environmental development.³

Spatial planning as a spatial dimension of city development is a tool for coordinating sustainable urban development.⁴ In line with the mandate for spatial planning

² Shafira Arizka Maulidyna, "Politik Hukum Lingkungan Dalam Kebijakan Pembangunan Berkelanjutan Berwawasan Lingkungan Di Indonesia", *Simbur Cahaya*, Vol. 29, No.2 (Desember 2022): 273-374.

³ Muhammad Suparmoko, "Konsep Pembangunan Berkelanjutan Dalam Perencanaan Pembangunan Nasional Dan Regional", *Jurnal Ekonomika dan Manajemen*, Vol. 9, No. 1 (April 2020): 41.

⁴ Eko Budihardjo & Djoko Sujarto, *Kota Yang Berkelanjutan*, Direktorat Jenderal Pendidikan Tinggi, Departemen Pendidikan Dan Kebudayaan, 1998.

regulations in Law Number 26 of 2007 as contained in Article 3, it is necessary to create a form of urban area development that harmonizes the natural and artificial environments. Efforts to raise public awareness and realize the sustainability of urban life can, among other things, be done in the form of realizing a Green City.

The Green City concept is a breakthrough urban concept in Indonesia that is pro-environment and can answer global challenges in the future. As an environmentally friendly city concept, this idea is also expected to have a positive impact on society by developing the resilience of residents and local government. City resilience in the Green City concept can also be linked to the context of mitigation and adaptation efforts to the challenges of climate change.⁵ The implementation of this Green City will not be separated from the role and responsibility of regional government.

Law Number 26 of 2007 concerning Spatial Planning also strictly mandates that a minimum of 30% of the city area be in the form of green open space (RTH) with a composition of 20% public RTH and 10% private RTH. The allocation of green open space is stipulated in regional regulations regarding district/city spatial planning. Although it needs to be realized that the implementation of the "green city" concept cannot be completely dependent on increasing the quantity of green open space but must be supported by changes towards community behavior and habits that reflect environmental friendliness.⁶

The existence of regional responsibility for the environment is due to decentralization. Regions in implementing decentralization are closely related to government affairs, especially concurrent government affairs which are government affairs that are divided between the central government, provincial regions and district/city regions. The division of concurrent government affairs between the center, provincial regions and district/city regions, even though the Government Affairs are the same, the differences will be visible in the scale or scope of the government affairs. One of the divisions of concurrent government affairs, one of which is government affairs in the environmental sector.

⁵ Parasati H, *Kebijakan Perkotaan Terkait Perubahan Iklim*, Bul Tata Ruang Badan Koord Penataan Ruang Nas 2012:15-8.

⁶ Fritz Akhmad Nuzir, "Menemukan Kembali Kota Sebagai Entitas Lingkungan yang Berkelanjutan", in Alvi Syahrin, et al, *Dinamika Hukum Lingkungan: Mengawal Spirit Konstitusi Hijau*, (Bandar Lampung: Indepth Publishing, 2015).

Basically, granting autonomy to regions is aimed at accelerating the realization of community welfare through improving services, empowerment and community participation in the implementation of government affairs. Through Law Number 23 of 2014 concerning Regional Government, it provides space for regions to develop their own regions based on the authority regulated in statutory regulations. Along with this authority, regions also have the authority to make policies in the implementation of government affairs within the scope of their authority. This paper will map out the relevance of guaranteeing the right to environmental health with regional responsibilities through the formation of environmentally friendly regional legal policies.

II. DISCUSSION

Environmental Health in the Legal Dimension

A healthy environment is one of the human rights that every human being has, in fact, according to Ramdan, it not only encourages respect for human rights related to the environment, but also encourages recognition of environmental rights themselves.⁷ Environmental Health as one of the health efforts is aimed at realizing healthy environmental quality, both physical, chemical, biological and social, which enables everyone to achieve the highest degree of health, as stated in Article 162 of Law Number 36 of 2009 concerning Health.

Environmental health is a medium for enjoying human rights comfortably. To comfortably enjoy human rights there is an obligation, namely maintaining environmental quality.⁸ Normatively, the definition of environmental health is “efforts to prevent disease and/or health disorders from environmental risk factors to create a healthy environmental quality both from physical, chemical, biological and social aspects.”

In the legal regime of regional government, as regulated in Law Number 23 of 2014 concerning Regional Government, Article 12 explicitly contains provisions that health sector affairs are mandatory government affairs relating to basic services and environmental affairs are mandatory government affairs that are not related to basic services. This law is a guideline for regional governments in implementing regional autonomy, so that health and environmental matters become part of mandatory government affairs which are the regional authority to implement..

⁷ Muhammad Ramdan A. G. Wibisana, “Antroposen dan Hukum: Hukum Lingkungan dalam Masa-masa Penuh Bahaya”, Inauguration Speech of Permanent Professor, Faculty of Law, University of Indonesia, April 10, 2021.

⁸ Arif Sumantri, *Kesehatan Lingkungan & Perspektif Islam*, (Jakarta: Kencana, 2010), p.vi

As for Law Number 36 of 2009 concerning Health, it is stated in Article 4 that “Everyone has the right to health.” Then Article 6 contains the provision that “Everyone has the right to a healthy environment for achieving a degree of health.” This law departs from health development efforts, with the aim of increasing awareness, will and ability to live healthily for everyone in order to achieve the highest level of public health, as an investment for the development of human resources that are socially and economically productive.

In particular, Chapter XI of Law Number 36 of 2009 concerning Health regulates environmental health. Article 163 paragraph (1) regulates that: “The government, regional government and the community guarantee the availability of a healthy environment that does not pose a negative risk to health.” Furthermore, Article 163 paragraph (2) states that a healthy environment includes residential environments, workplaces, recreation areas, as well as public places and facilities. Therefore, health development efforts are not only the responsibility of the government but also the community.

The role of the community is expressly regulated in Article 174 paragraph (1) of Law Number 36 of 2009 that: “The community participates, both individually and organized, in all forms and stages of health development in order to help accelerate the achievement of the highest level of public health. high.” It is this community participation that can guarantee dynamism in environmental protection and management so that it is able to answer challenges in environmental problems.⁹

Furthermore, Law Number 32 of 2009 concerning Environmental Protection and Management becomes a legal umbrella that contains policies in efforts to protect and manage the environment. Article 65 paragraph (1) in this law emphasizes the right to environmental health, namely that: “Everyone has the right to a good and healthy living environment as part of human rights.” Furthermore, Article 65 paragraph (2) contains the provision that: “Everyone has the right to receive environmental education, access to information, access to participation and access to justice in fulfilling the right to a good and healthy environment.” Article 3 of this law regulates that environmental protection and management aims:

- a. protect the territory of the Unitary State of the Republic of Indonesia from environmental pollution and/or damage;
- b. guarantee human safety, health and life;
- c. ensure the continuity of life of living creatures and the preservation of ecosystems;
- d. maintain the sustainability of environmental functions;

⁹ Risno Mina, “Desentralisasi Perlindungan dan Pengelolaan Lingkungan Hidup sebagai Alternatif Menyelesaikan Permasalahan Lingkungan Hidup”, *Jurnal Arena Hukum* Volume 9, Nomor 2, Agustus 2016.

- e. achieve environmental harmony, harmony and balance;
- f. guarantee the fulfillment of justice for present and future generations;
- g. guarantee the fulfillment and protection of environmental rights as part of human rights;
- h. controlling the wise use of natural resources;
- i. realizing sustainable development; And
- j. anticipating global environmental issues.

Apart from the statutory regulations described above, regulations regarding environmental health are also guaranteed in Government Regulation Number 66 of 2014 concerning Environmental Health, and Minister of Health Regulation Number 2 of 2023 concerning Implementing Regulations of Government Regulation Number 66 of 2014 concerning Environmental Health. Based on this regulation, it contains provisions that the authority and responsibility for administering environmental health is not only the central government, but also the authority and responsibility of regional governments. Article 3 Government Regulation Number 66 of 2014, regulates that the Government, provincial regional governments and district/city regional governments are responsible for:

- a. ensure the availability of a healthy environment to achieve the highest level of health in accordance with its authority;
- b. organize, develop and supervise the implementation of Environmental Health; And
- c. empower and encourage the active role of the community in implementing Environmental Health.

The implementing regulations for Government Regulation Number 66 of 2014 will only be published in 2023, which is almost 10 years old. However, the issuance of Minister of Health Regulation Number 2 of 2023 is strengthening and proof of the government's commitment to ensuring environmental health fulfillment. According to the author in previous research that: "to strengthen environmental protection, it is necessary to strengthen environmental regulations in the constitution (constitutionalization of environmental legal norms) in addition to providing strong legal guarantees for citizens to demand their rights, it also provides obligations to the state to realize these rights. This is so that the legislation under it (green legislation) can be in harmony and in accordance with the principles of sustainable development with an environmental perspective in accordance with the constitution."¹⁰ Therefore, in the legal dimension, existing laws and regulations

¹⁰ Malicia Evendia & Ade Arif Firmansyah, "Environmental Protection Post Establishment of Omnibus Law on Job Creation in the Perspective of Local Government Authority", *Progressive Law Review* Volume 5 No.1 April 2023.

regarding environmental health are a form of guarantee of the government's commitment to creating a good and healthy environment.

Based on the description above, the right to environmental health, as part of human rights, has guarantees regulated in various laws and regulations. Environmental health guarantees not only regulate rights, but also include obligations and responsibilities, especially for governments, both central and regional governments, to be able to provide environmental health.

Green City: Regional Legal Policy in Environmental Health Efforts

In line with the development of science and technology, the quality of the environment will also change. Changes in environmental quality will always occur, so that the environment is always in a dynamic state. Cities will increase, both in number and size. This will be accompanied by increased industrial growth in all fields.¹¹ Changes in environmental quality are a challenge for humans to be able to maintain the function of the environment. One strategy is through green cities.

A green city is an environmentally friendly city, which utilizes water and energy resources effectively and efficiently, reduces waste, implements an integrated information system, ensures environmental health, and synergizes the natural and artificial environment. A Green City is an environmentally friendly city that utilizes it based on urban planning and design in accordance with the principles of sustainable development.¹²

The Green City concept is a development of the sustainable city concept, which is based on the principles of sustainable development and real conditions of city development, so that it is able to answer real urban needs while responding to the global problem of climate change. The Green City Program's mission is not just to green urban spaces, but includes a larger and more comprehensive vision, namely creating an environmentally friendly city that uses energy and water resources efficiently and effectively, and reduces the amount of waste. This concept also integrates urban transportation systems, improves the quality of a healthy environment, and optimizes the natural and artificial environment based on the

¹¹ Juli Soemirat Slamet, *Kesehatan Lingkungan*, (Yogyakarta: Gadjah Mada University Press, 1994), p.19

¹² Yohanes Dicky Ekaputra & Margareta Maria Sudarwani, "Implikasi Program Pengembangan Kota Hijau Terhadap Pemenuhan Luasan Ruang Terbuka Hijau Perkotaan", Prosiding SNST Fakultas Teknik Universitas Wahid Hasyim Semarang, 2013.

principles of sustainable development in maintaining the balance of environmental, social and economic elements of the city.¹³

In a similar vein, the definition of a green city is a city that is well planned, characterized by being environmentally friendly, which is effectively able to utilize natural resources in a balanced manner in order to ensure the sustainability of the quality and carrying capacity of its natural resources.¹⁴ Currently, global environmental problems are related to increasing air pollution emitted into the air from the activities of people on earth. As a result of this air pollution, greenhouse gases are formed that cover the earth. A further consequence is the process of global warming and climate change. The contribution of these two processes occurs more heavily in urban areas.

This will cause various problems in urban areas such as environmental degradation, as well as social and economic problems. Therefore, responsive policies are needed that prioritize sustainable development so that better environmental quality can be achieved for now and future generations. One effort to improve and maintain environmental quality in the region is through Green Cities.

Green cities are part of the process of overcoming the problem of environmental degradation that occurs and maintaining the quality of the environment. To be able to implement the green city concept in the regions, there needs to be a regional policy that can provide legitimacy for both the regional government and the community to realize the Green City.

Implementation of the Green City concept as part of the city development and rejuvenation process. According to Ernawi, the concept of a green city has strategic meaning because it is motivated by several factors, including the rapid growth of cities and the implications for the emergence of various urban problems such as traffic jams, floods, slums, social inequality, and reduced areas of green open space.¹⁵

The concept of green cities in Indonesia is formulated in the Green City Development Program (P2KH). Since 2011, the Ministry of Public Works has developed P2KH as a form of elaboration of City/Regency Regional Spatial Planning by involving the active participation of stakeholders at the local level. The P2KH initiative is also one

¹³ M Fuady, "Konsep Kota Hijau dan Peningkatan Ketahanan Kota di Indonesia", *Jurnal Pembangunan Wilayah dan Perencanaan Partisipatif* Volume 16, Nomor 2, 2021.

¹⁴ Tim Penyusun, *Laporan Akhir Program Pengembangan Kota Hijau 2013: Langkah Menuju Kota Berkelanjutan*, Jakarta: Direktorat Jenderal Penataan Ruang Kementerian Pekerjaan Umum, 2014.

¹⁵ Ernawi IS, "Gerakan Kota Hijau: Merespon Perubahan Iklim dan Pelestarian Lingkungan", *Bulletin Tata Ruang*, (Januari-Februari 2012): p.4-7.

of the Government's efforts together with the Provincial Government and City/Regency Government to implement the mandate of Law Number 26 of 2007 concerning Spatial Planning, primarily to encourage the realization of 20% public green open space in city/urban area entities, as well as a form of adaptation. and mitigating climate change.¹⁶

In reality, the program that has been rolled out by the government has not yet been successfully implemented by every region. Regional governments as government administration entities at the regional level basically play a key role in realizing the fulfillment of the right to environmental health through environmentally friendly policies. According to Fuady, although the Green City concept has not yet been fully realized by city governments in Indonesia, improvements continue to be made on an ongoing basis. The synergy of government policy and the role of society systematically and consistently in implementing green attributes in the Green City concept has a positive impact on the resilience and sustainability of the city.¹⁷

Environmentally friendly policies in the context of regional autonomy contribute and influence environmental health. Soemarwoto explained that environmental protection and management in the context of regional autonomy will provide a way to realize good and healthy environmental governance for environmental renewal and improvement in the region.¹⁸

To provide direction, foundation and legal certainty to all parties involved in improving the quality of the environment, regional legal policies are needed as the basis for implementing a Green City. Regional policy as a form of regional authority cannot be separated from the autonomy that regions have to regulate and manage their own regions. Article 17 clearly states that: "Regions have the right to determine regional policies to carry out government affairs which fall under regional authority." The explanation states that what is meant by "regional policy" in this provision is Regional Regulations, Regional Head Regulations, and regional head decisions. Therefore, law is an important part of efforts to fulfill rights and carry out government responsibilities.

There are many reports about the importance of law and sustainable development. Law has developed and expanded rapidly where law is not only focused on protecting, controlling and ensuring society as an agent of stability, but law is now

¹⁶ Tim Penyusun, *Laporan Akhir Program Pengembangan Kota Hijau 2013: Langkah Menuju Kota Berkelanjutan*, Jakarta: Direktorat Jenderal Penataan Ruang Kementerian Pekerjaan Umum, 2014.

¹⁷ *Op.Cit.*, M Fuady.

¹⁸ Otto Soemarwoto, *Atur Diri Sendiri Paradigma Baru Pengelolaan Lingkungan Hidup*, (Yogyakarta: Gadjah Mada University Press, 2004), p.159.

more prominent in sustainable development, where law can be used as an agent of change in any changes that occur in the surrounding community.¹⁹ In the context of regional autonomy, M. Akib explained that: *“The actualisation of environmental law and policy in the course of implementing regional autonomy must include, as a minimum, the following: (i) establishing regional legislation based on ecological sustainability, (ii) strengthening regional environmental authority, (iii) increasing regional environmental institutional capacity, and (iv) developing inter-regional environmental cooperation. And then, the principles of eco-cracy should be integrated with the principles and objectives of regional autonomy. In so doing, it may be possible to realise both ecological sustainability and sustainable prosperity.”*²⁰ Thus, to realize a Green City as part of sustainable development efforts in environmental aspects cannot be separated from regional legal policies as a form of implementation of regional authority based on autonomy.

Regional policies which are then expressed in the form of regional legal products, hierarchically, will be stronger if they are regulated in regional regulations. The process of forming regional regulations is contained in Article 236 of Law Number 23 of 2014 concerning Regional Government, in this article it is determined that:

- (1) To implement Regional Autonomy and Assistant Duties, Regions form Regional Regulations.
- (2) The regional regulations as referred to in paragraph (1) are formed by the DPRD with the joint approval of the Regional Head.
- (3) The regional regulations as intended in paragraph (1) contain content material:
 - a. Implementation of Regional Autonomy and Content Tasks;
 - b. Further elaboration of the provisions of higher laws and regulations.
- (4) In addition to content material as intended in paragraph (3), the Regional Regulation may contain local content material in accordance with the provisions of statutory regulations.

One of the important instruments in implementing decentralization is regional regulations, which are a means of realizing social and democratic transformation

¹⁹ Astrid Epiney, “EU Environmental Law: Sources, Instruments and Enforcement, Reflections on Major Developments Over the Last 20 Years”, *EU Environmental Law: sources, Instruments and Enforcement*, Vol. 20, No. 3 (2013): 404. Sebagaimana dikutip dalam Anika Ni'matun Nisa, Suharno, "Penegakan Hukum Terhadap Permasalahan Lingkungan Hidup Untuk Mewujudkan Pembangunan Berkelanjutan (Studi Kasus Kebakaran Hutan Di Indonesia)", *Jurnal Bina Mulia Hukum*, Vol. 4, No. 2 (Maret 2020): p.305.

²⁰ Muhammad Akib, et al., “Environmental Law Policy as an Approach to Achieve Sustainable Development and Prosperity in an Era of Regional Autonomy”, *Jurnal Environmental Policy and Law* 49/1 Tahun 2019, p. 83-87

and reflecting the aspirations and characteristics of local communities.²¹ Thus, regional governments, in seeking to fulfill the right to environmental health through a Green City, need to form regional regulations to legitimize regional policies. This is also a manifestation of the authority given to regional governments within the framework of implementing regional autonomy.

III. CONCLUSION

Based on the analysis and discussion that has been described, it can be concluded that: Environmental health is an important thing that is guaranteed through various laws and regulations. Environmental health guarantees not only regulate rights, but also attach obligations and responsibilities, especially to governments, both central and regional governments. In realizing environmental health, local governments can establish regional policies through the application of the green city concept. Hierarchically, the legal instruments are strong in legitimizing regional policies through the formation of regional regulations as a form of regional authority in implementing autonomy.

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²¹ Firman Freaddy Busroh, Fatria Khairo & Putri Difa Zhafirah, "Harmonisasi Regulasi di Indonesia: Simplikasi dan Sinkronisasi untuk Peningkatan Efektifitas Hukum", *Jurnal Interpretasi Hukum*, Vol.4, No.3, 2023.

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