

Reframing Environmental Protection as a Core Human Right in National and International Law

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Abstract: Recent developments in environmental law demonstrate a clear shift from a purely resource-management approach toward one that is grounded in human rights. A healthy and safe environment is no longer seen merely as an object of government regulation, but as a fundamental right inherent to every human being. This study aims to investigate the role of environmental protection as a component of human rights within both the Indonesian legal system and international law, and to elucidate the normative and philosophical foundations for recognizing the right to a healthy environment as a fundamental human right. It also examines how this right is recognized in Indonesian national law and how the state is obligated to respect, protect, and fulfill it. This research adopts a normative juridical method using statutory, conceptual, and comparative approaches. The analysis is based on national legislation, international legal instruments, and relevant academic literature and journal articles. The findings show that the right to a healthy environment has received strong recognition in both international and Indonesian law, particularly through the 1945 Constitution and the Environmental Protection and Management Act. This right is considered a human right because it is closely linked to the right to life, the right to health, and the protection of human dignity. In this context, the state has an obligation to respect the right by avoiding policies that harm the environment, to protect it by regulating and sanctioning actors that cause environmental damage, and to fulfill it by adopting policies and public services that ensure a healthy and sustainable environment for society. Consequently, environmental protection forms an essential part of the human rights protection framework in a modern rule-of-law state.

Keywords: human rights, environment, state responsibility, environmental law, legal protection.

Introduction

The environment is the main foundation for human survival. The quality of the air we breathe, the water we use, and the soil and ecosystems that support social and economic activities directly determine the level of community welfare and health. However, in recent decades, environmental damage has occurred on an increasingly widespread and complex scale, due to the exploitation of natural resources, uncontrolled industrialization, and development policies that prioritize economic growth over sustainability. The impact of these conditions is not only felt in the form of ecosystem degradation but also manifests as humanitarian issues, such as increased disease, loss of livelihoods, and threats to the quality of life of communities, especially the most vulnerable groups.

In this context, the environment can no longer be understood merely as an object of state management or as a commodity of development. The environment is increasingly seen as part of basic human rights. Without a good and healthy environment, other rights such as the right to life, the right to health, and the right to welfare cannot be fully fulfilled. Therefore, a new approach in law and public policy has developed that positions environmental protection as part of the human rights regime.

This development is also reflected in Indonesian national law. The 1945 Constitution of the Republic of Indonesia explicitly recognizes that everyone has the right to a good and healthy environment. This recognition is further reinforced by the Environmental Protection and

Management Law, which places the right to the environment as part of human rights that must be guaranteed by the state. On this basis, the state not only acts as a manager of natural resources, but also as a party responsible for protecting the rights of citizens from the effects of pollution and environmental damage.

At the international level, the strengthening of the relationship between human rights and the environment has also become increasingly apparent. Various international legal instruments, both general and specific, have emphasized that environmental quality is an important prerequisite for the fulfillment of human rights. The right to clean water, the right to health, and the right to a decent life implicitly and explicitly depend on the existence of a healthy environment. Therefore, countries that are part of the international community have an obligation not only nationally but also globally to ensure that development policies and practices do not undermine basic human rights to the environment. Although normatively the recognition of the right to the environment is getting stronger, in practice there is still a gap between legal norms and reality. Various cases of pollution, conflicts over natural resources, and large-scale development projects often show that environmental protection has not been fully integrated into the protection of human rights. In many situations, economic interests and investment are prioritized over environmental safety and community welfare. This situation raises fundamental questions about the extent to which states are truly fulfilling their responsibility to respect, protect, and fulfill the right to a healthy environment.

Based on this background, this study is important to examine in greater depth the position of environmental protection as a human right. This study seeks to answer questions such as: what is the position of the right to the environment in the Indonesian legal system and international law; why can this right be classified as a human right; how is it recognized in national law; and what is the state's responsibility in ensuring that this right is truly protected? Through this study, it is hoped that a more comprehensive understanding can be gained of the role of the state in making environmental protection an integral part of the protection of human rights in a modern constitutional state.

Methods

The data analysis procedure in this study is conducted through a normative juridical analysis that is relevant to issues encountered in empirical field realities. This approach emphasizes the examination of legal norms, principles, and doctrines as regulated in statutory provisions, while simultaneously aligning them with factual conditions observed in practice. By doing so, the analysis can bridge the gap between *das sollen* (what ought to be according to the law) and *das sein* (what occurs in reality), ensuring that the legal assessment remains contextual, applicable, and responsive to actual conditions.

Furthermore, the analysis is supported by descriptive-normative observations that integrate statutory materials with data obtained from credible and authoritative sources. These sources include legislation, court decisions, official reports, and relevant academic literature. Such an approach ensures that the research is grounded in reliable legal data and systematically structured, enabling comprehensive interpretation and evaluation of legal issues based on established legal frameworks and trustworthy references.

Results and Discussion

The position of environmental protection as part of human rights in the Indonesian legal system and international law

The existence of environmental protection is no longer viewed as a separate ecological issue, but has become an integral and inseparable element of the human rights framework. This paradigm shift has been recognized legally, both through global consensus in international law and through constitutions and legislation at the national level. In the past, international law separated environmental law and human rights law. However, through various instruments (such as UN General Assembly Resolution 76/300), the international

community now recognizes the Right to a Good and Healthy Environment as a substantive human right. This means that countries around the world now have an international obligation to prevent damage to nature as a form of compliance with human rights.

In Indonesia, this concept is elaborated through what is known as Green Constitutionalism. This means that environmental protection values have been “upgraded” from mere government policy to constitutional rights of citizens protected by the highest law (the 1945 Constitution). Any development policy that damages the environment can be challenged as a violation of citizens' constitutional rights, and the state has a legal obligation to restore environmental damage in order to ensure the welfare of its people.¹

The status of environmental protection within the framework of human rights has undergone a fundamental transformation. Initially, protecting nature was seen only as a moral obligation or ethical appeal (soft law), but now it has mutated into positive legal rules that must be obeyed (hard law) and have legal consequences. This phenomenon of strengthening the legal position is referred to in legal terminology as Green Rights, which are widely recognized in domestic jurisdictions and the global order (Shelton, 2022).

At the international level, environmental protection has increasingly been recognized as an integral part of human rights through various legal instruments and resolutions. This right is no longer viewed merely as a collective or so-called “third-generation right,” but has evolved into an individual right that is legally enforceable. The recognition of a healthy environment as a human right began with environmental declarations and gradually developed within the framework of international human rights mechanisms under the United Nations system.

The early acknowledgment of environmental protection as a foundational element of human rights can be traced to the Stockholm Declaration on the Human Environment of 1972. Principle 1 of the Declaration affirms that human beings have a fundamental right to enjoy an environment of a quality that permits a life of dignity and well-being. Although the Declaration did not explicitly label environmental protection as a human right, it laid the normative groundwork by positioning environmental quality as essential to the fulfillment of human dignity and welfare (United Nations, 1972).

This recognition was further strengthened by the Rio Declaration on Environment and Development of 1992, which reinforced the linkage between environmental protection and human rights. Principle 1 of the Rio Declaration explicitly states that human beings are at the center of sustainable development and are entitled to a healthy and productive life in harmony with nature. The Rio Declaration thus marked a conceptual shift by embedding environmental rights within the broader framework of sustainable development and reaffirming their relevance to individual human well-being (United Nations, 1992).

A significant milestone occurred in 2021 when the United Nations Human Rights Council adopted a resolution that explicitly recognized the right to a clean, healthy, and sustainable environment as an inalienable human right. Supported by more than 100 states, this resolution emphasizes that the right encompasses access to environmental information, public participation in environmental decision-making, and access to environmental justice. This development signifies an evolution from implicit recognition to explicit legal acknowledgment, enabling international human rights bodies to address environmental harm within established human rights accountability mechanisms (United Nations Human Rights Council, 2021).

Within this framework, the right to a healthy environment is understood as being closely interconnected with other substantive human rights, such as the right to water, as recognized under the International Covenant on Economic, Social and Cultural Rights, and the

¹ Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (Jakarta: Rajawali Pers, 2009), hal. 115.

right to health, as affirmed in the Convention on the Rights of the Child. Boyd (2012) argues that this interconnectedness strengthens the legal basis for international environmental litigation, allowing individuals and communities to hold states accountable for environmental degradation that results in human rights violations.

In the Indonesian legal system, environmental protection is constitutionally recognized as part of human rights, as reflected in the 1945 Constitution and its implementing legislation. The right to a healthy environment is positioned as a constitutional right that can be enforced through national legal mechanisms, including judicial review before the Constitutional Court. This constitutional recognition demonstrates Indonesia's alignment with evolving international human rights standards.

Article 28H paragraph (1) of the 1945 Constitution explicitly guarantees that every person has the right to live in physical and spiritual prosperity, to reside in a good and healthy environment, and to receive health services. This provision elevates environmental protection to the status of a fundamental human right, thereby enabling constitutional challenges against state policies or legislation that undermine environmental sustainability (Asshiddiqie, 2015).

Furthermore, Law No. 32 of 2009 on Environmental Protection and Management integrates human rights principles into the national environmental governance framework. The law affirms that every person has the right to a good and healthy environment and imposes an obligation on the state to protect, manage, and preserve environmental quality. It also provides legal mechanisms for public participation, access to environmental information, and environmental justice, reflecting consistency with international environmental human rights norms (Santosa, 2018).

In practice, the enforcement of environmental rights in Indonesia has been reflected in several Constitutional Court decisions, including Decision No. 85/PUU-XI/2013, which reaffirmed the right to a healthy environment as a constitutionally protected human right. However, scholarly analyses indicate that implementation remains constrained by tensions between economic development priorities and environmental protection. Afif (2019) notes that environmental litigation in Indonesia increasingly employs a human rights-based approach to demand corporate accountability, yet structural and political challenges continue to impede effective enforcement.

Overall, the legal status of environmental protection as a human right at both international and national levels demonstrates a growing normative synergy, whereby international standards influence the development of domestic legal frameworks. Nonetheless, the primary challenge lies in effective implementation, particularly in addressing complex threats such as climate change and large-scale ecosystem degradation. The recognition of environmental protection as a human right reflects a dynamic and reciprocal relationship between global and domestic legal norms, although significant obstacles persist in translating normative commitments into tangible environmental justice outcomes.

Environmental Protection as a Human Right

Environmental protection can be classified as a human right because a good and healthy environment is a fundamental prerequisite for the fulfillment of basic human rights. Without a decent environment, the right to life, the right to health, the right to welfare, and the right to a decent standard of living cannot be effectively realized. Conceptually, human rights aim to protect human dignity. Environmental damage and pollution have a direct impact on the decline in the quality of human life, causing disease, scarcity of natural resources, ecological disasters, and structural poverty. These conditions not only threaten human survival but also reduce human dignity, making environmental protection an inherent part of the protection of human rights.

From a legal perspective, the recognition of the environment as a human right has gained legitimacy in national and international law. In Indonesia, Article 28H paragraph (1) of the

1945 Constitution of the Republic of Indonesia explicitly states that every person has the right to a good and healthy environment. At the international level, the United Nations has also recognized the right to a clean, healthy, and sustainable environment as part of the global human rights regime. This recognition demonstrates the development of third-generation human rights that place the environment as an object of rights protection. In addition, the state as a duty bearer has the responsibility to respect, protect, and fulfill the right to the environment.

The failure of the state to prevent pollution, environmental damage, or unsustainable exploitation of natural resources can be classified as a human rights violation, because the state does not guarantee environmental conditions that enable citizens to enjoy their basic rights. Environmental protection also reflects the principle of intergenerational justice. Human rights apply not only to the present generation, but also to future generations. Therefore, environmental management and protection are important instruments for ensuring the sustainability of human rights and welfare in the future. Thus, environmental protection can be classified as a human right because it is directly related to the fulfillment of basic rights, the protection of human dignity, the obligations of the state, and the sustainability of rights for future generations.

Law and Public Policy in Indonesia

Law and public policy in Indonesia, particularly in relation to human rights, are constitutionally grounded in the 1945 Constitution, which regulates human rights comprehensively under Articles 28A to 28J. Although these provisions do not always explicitly address environmental issues, the right to enjoy a healthy environment can be interpreted as an inseparable component of the right to life. This constitutional interpretation reflects the evolving understanding that environmental quality is a prerequisite for the realization of fundamental human rights.

In the field of environmental law, Law No. 32 of 2009 on Environmental Protection and Management demonstrates Indonesia's commitment to safeguarding human rights related to the environment. This law emphasizes active public participation in environmental governance, which constitutes a core element of environmental human rights enforcement. Article 1, paragraph (1) of the law defines the environment as a unified space encompassing all objects, forces, conditions, and living beings, including humans and their behavior, which interact and influence the sustainability of life. This definition indicates that the environment is not merely treated as an object of regulation, but as an entity intrinsically linked to human rights and human existence (Santosa, 2018).

In practice, however, efforts to uphold environmental rights in Indonesia frequently encounter significant challenges. A persistent issue lies in the conflict between economic development interests—particularly natural resource exploitation—and environmental preservation. Development projects aimed at accelerating economic growth often pose substantial risks of environmental pollution and degradation. Consequently, integrating environmental human rights considerations into every governmental regulation and public policy is imperative. Equally important is the role of public participation, as civil society organizations, local communities, and individuals play a crucial role in monitoring governmental and corporate activities, advocating for accountability, and ensuring that environmental rights are respected and protected. In this regard, the constitutional guarantees of freedom of expression and assembly under the 1945 Constitution serve as essential foundations for environmental advocacy (Asshiddiqie, 2015).

At the international level, a breakthrough occurred on 28 July 2022, when the United Nations General Assembly adopted a landmark resolution affirming the right of every individual to a clean, healthy, and sustainable environment. This resolution marked the culmination of prolonged international discourse on environmental human rights and

confirmed global consensus that environmental quality constitutes a fundamental human right. The General Assembly explicitly recognized environmental degradation and climate change as direct threats to human survival and emphasized that the recognition of environmental rights is essential to addressing the triple planetary crisis of pollution, climate change, and biodiversity loss (United Nations General Assembly, 2022).

According to the World Health Organization, approximately 13.7 million deaths per year—representing nearly 24% of all global deaths—are attributable to environmental risk factors such as chemical exposure and air pollution. In light of these alarming figures, the UN General Assembly resolution urges states to intensify efforts to ensure that their populations can enjoy a clean, healthy, and sustainable environment (World Health Organization, 2016). Over the past two decades, it has become increasingly evident that environmental protection and human rights are fundamentally interconnected. A clean and healthy environment is a necessary condition for the full enjoyment of human rights, while the effective exercise of human rights—such as access to information, participation in decision-making, and access to remedies—plays a vital role in environmental protection. This interdependence has been widely recognized across all levels of legal systems, from international treaties to national courts.

Before the General Assembly resolution, the United Nations Human Rights Council (UNHRC) had already acknowledged in October 2021 that access to a safe, clean, healthy, and sustainable environment constitutes a human right. The UNHRC underscored how environmental degradation undermines the full enjoyment of human rights and concluded that states bear obligations under international human rights law to protect individuals from environmental harm. The Council also mandated the appointment of a Special Rapporteur tasked with addressing the impacts of climate change on human rights (United Nations Human Rights Council, 2021).

Within the Indonesian context, scholars and practitioners have noted that Indonesia possesses a relatively advanced legal and policy framework for environmental human rights protection compared to many other UN member states. Dr. Wahyu Yun Santoso, a prominent environmental law expert from the Center for Environmental Studies at Universitas Gadjah Mada, has emphasized that Indonesia has constitutionally and legislatively recognized the right to a good and healthy environment. This recognition is firmly embedded in Article 28H paragraph (1) of the 1945 Constitution and Law No. 32 of 2009. Nevertheless, challenges persist in terms of implementation and enforcement, as demonstrated by recurring environmental disputes and governance failures.

One notable example is the air pollution case adjudicated by the Central Jakarta District Court in 2021, in which seven state officials—including the President of Indonesia and several ministers—were found negligent in fulfilling the right to a good and healthy environment. The court ordered the government to take concrete measures to improve air quality in Jakarta for the protection of public health. This case illustrates how environmental human rights can be judicially enforced, while simultaneously revealing structural shortcomings in environmental governance.

According to David R. Boyd, the United Nations Special Rapporteur on Human Rights and the Environment, the recognition of the right to a healthy environment by the UN General Assembly fundamentally reshapes the landscape of international human rights law. Boyd argues that this recognition transforms environmental protection from a matter of governmental discretion into a legal obligation, shifting public expectations from merely requesting environmental action to demanding enforceable state accountability (Boyd, 2022).

The State's Responsibility to Fulfill, Protect, and Respect the Right to a Healthy Environment

Environmental protection as an integral component of human rights has become a

central theme in both national and international legal discourse. The right to a good, healthy, clean, and sustainable environment extends beyond concerns over ecosystem quality alone, as it is closely connected to the fulfillment of fundamental and existential human rights, such as the right to life, the right to health, and the right to an adequate standard of living. In the Indonesian constitutional framework, every citizen is entitled to enjoy a good and healthy environment as well as access to services that support a dignified life. The obligation to guarantee this right is inherently linked to the role and responsibility of the state as the holder of sovereignty and the primary duty bearer in the protection of human rights.

The Republic of Indonesia explicitly recognizes the right to a good and healthy environment as part of human rights within the 1945 Constitution. Article 28H paragraph (1) stipulates that “every person has the right to live in physical and spiritual prosperity, to have a place of residence, and to enjoy a good and healthy environment, as well as to obtain health services.” This constitutional recognition signifies that the environment is not merely regarded as a technical aspect of development, but as an essential element of human dignity and quality of life. By incorporating environmental protection into the human rights regime, the Constitution places environmental protection as a fundamental state obligation that cannot be compromised solely for economic interests (Asshiddiqie, 2015).

This constitutional mandate is further reinforced and operationalized through Law No. 32 of 2009 on Environmental Protection and Management. The law explicitly affirms that every person has the right to a good and healthy environment as part of human rights. Consequently, the law functions not only as a technical instrument for environmental management but also as a human rights protection mechanism. The state, through both central and regional governments, is endowed with authority as well as responsibility to regulate, control, supervise, and enforce environmental law to ensure the public’s right to an adequate environmental quality. Accordingly, state negligence in preventing pollution, issuing permits without proper oversight, or allowing environmental degradation to persist may be construed as a violation of human rights (Santosa, 2018).

Beyond the environmental law regime, the strengthening of the right to a healthy environment is also embedded in Law No. 39 of 1999 on Human Rights. This law emphasizes that the government bears an obligation to respect, protect, fulfill, and promote human rights, including the right to a good and healthy environment. Article 9 paragraph (3) explicitly states that every person has the right to a good and healthy environment, indicating that the state must not adopt a passive stance but is required to take proactive measures to ensure that this right is effectively realized in practice (Marzuki, 2017).

Through the combined framework of the 1945 Constitution, Law No. 32 of 2009, and Law No. 39 of 1999, it is evident that the Indonesian legal system has established a relatively comprehensive normative structure for recognizing and protecting environmental rights as human rights. This framework demonstrates that the state functions not merely as a manager of natural resources, but as a guarantor of citizens’ constitutional rights to a viable environment. Accordingly, all development policies, investment decisions, and natural resource exploitation activities must be situated within a human rights-based approach, particularly with respect to the protection of the right to a good and healthy environment.

The State's Obligation to Respect the Right to a Healthy Environment

The first obligation of the state in relation to the right to a healthy environment is the obligation to respect that right. In principle, this obligation requires the state to refrain from any actions—whether direct or indirect—that may cause environmental degradation or hinder individuals from enjoying a healthy environment. Within the human rights framework, the duty to respect constitutes a preventive obligation, meaning that the state must ensure that its policies, decisions, and actions do not themselves become sources of environmental harm. Mere constitutional or statutory recognition of environmental rights is insufficient if

state conduct simultaneously undermines those rights in practice.

The obligation to respect requires the state to integrate environmental considerations into all public policies, development programs, licensing regimes, and sectoral regulations. The state must not adopt public policies or facilitate development initiatives that have the potential to damage the environment without first evaluating their impacts on environmental quality and human well-being. When the state ignores or underestimates environmental consequences, it effectively violates its obligation to respect the right to a healthy environment. Environmental law scholarship emphasizes that respect for environmental rights entails a negative obligation on the state to avoid creating ecological and social conditions that are detrimental to the population (Boyd, 2012).

In its implementation, the obligation to respect also demands that the government refrain from weakening existing environmental protection norms. Regulatory reforms that lower environmental quality standards or fiscal incentives that encourage excessive natural resource exploitation without adequate safeguards can directly impair the public's ability to enjoy a healthy environment. In this context, the state plays a central role as a policy-maker that must demonstrate a firm commitment to the principles of precaution and sustainability in all development planning processes (Sands et al., 2018).

A concrete example of a breach of this obligation occurs when the state or local governments grant permits for large-scale projects without conducting adequate Environmental Impact Assessments (AMDAL) or without comprehensively considering social and environmental dimensions. Such permits not only pose a serious risk to local ecosystems but also generate adverse effects on related human rights, including the right to health, the right to access clean water, and the right to an adequate standard of living for affected communities. In this regard, failure to respect environmental rights transcends administrative shortcomings and may be characterized as a violation of constitutionally and internationally recognized human rights (Santosa, 2018).

Accordingly, the state's obligation to respect the right to a healthy environment should not be regarded as a mere normative formality. Rather, it represents a moral and legal claim that must be reflected in every governmental policy and action. This obligation constitutes the foundational pillar for the subsequent duties to protect and fulfill environmental rights, as the absence of genuine respect at the initial stage significantly undermines the effectiveness of protection and fulfillment measures at the level of implementation.

Conclusion

Based on the results of discussions on environmental protection as a human right, it can be concluded that a good and healthy environment has undergone a significant shift in status, from merely an object of state management to a fundamental right of every human being. Both in international law and in the Indonesian legal system, the right to the environment has been recognized as a prerequisite for the fulfillment of other human rights, such as the right to life, the right to health, and the right to a dignified life. Therefore, environmental protection cannot be separated from the broader framework of human rights protection. In the Indonesian legal system, recognition of the right to a healthy environment is clearly reflected in the 1945 Constitution, particularly Article 28H paragraph (1), and is reinforced by the Law on Environmental Protection and Management. This regulation shows that the state has normatively placed the right to a healthy environment as a constitutional right of citizens. In addition, various principles of international environmental law that have been ratified and adopted into national law further strengthen the position of the right to the environment as part of Indonesia's legal commitment at the global level. The right to the environment can be qualified as a human right because its existence is directly and

inseparably linked to human survival, physical and mental health, and overall quality of life. Without a healthy environment, the fulfillment of other basic rights becomes impossible. Therefore, environmental protection is not merely a technical policy, but a moral, constitutional, and legal obligation of the state towards its people. In this context, the state has three main obligations, namely to respect, protect, and fulfill the right to a healthy environment. The obligation to respect requires the state not to issue policies or take actions that damage the environment. The obligation to protect requires the state to monitor and take action against third parties, including business actors, who pollute or destroy the environment. Meanwhile, the obligation to fulfill requires the state to actively provide policies, regulations, and public services that guarantee the realization of a decent and sustainable environment for the community.

Thus, environmental protection as a human right is not merely an idealistic concept, but a legal obligation that must be realized in practice in the administration of the state. The success of the state in fulfilling this obligation will greatly determine the quality of life of the community, the sustainability of development, and the long-term guarantee of human dignity.

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