Law enforcement against environmental damage using and environmental law approach

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Abstract. Damaging the environment is a serious violation for the sustainable life of humanity. This research aims at how the law enforcement against the environmental damage using Al-Qur’an and Environmental Law approach. This research using a normative legal study. The result of this research is showed that Al-Qur’an regulates several human behaviors which can damage or triggering environmental damage, such as: acts of human physically and human behavior that exceed the limit of religious and human norms. Environmental law regulates human behavior to preserve and prohibiting environmental damage.

1. Introduction

One proofs of power of the Almighty Allah SWT is earth. On the earth, there were various living creature that live by helping each other that make the earth beautiful. Those things show that Allah have created the earth and its creature in such way with all the beauty. In this case, human as caliph on earth are obligated to maintaining Allah’s creation. Taking care of earth means enforcing the legal provisions that is contained in the Al-Qur’an, especially those related to natural/environmental damage.

Al-Qur’an as the main source of sharia talks about law, Al-Qur’an placing the teaching of law in the most important part of the teaching it conveys. So that by itself, the law enforcement effort is placed as dynamic effort. The key to understanding the role of Al-Qur’an in the formulating the sharia is with appreciate that the Al-Qur’an is primarily concerned to establishing basic standard of the Islamic ummah rather than appreciating those standards as a rights and obligations [1]. There are four important concept that is need to be understood to build religious understanding (Islam) toward the ecology or environment namely taskhir (conquest), ‘abd (servitude), caliph (leader), and amanah (trustworthly). Four of them came from the concept of the goal of the creation of universe and human. A comprehensive view from those four concepts above will giving a better and balance view about the relation of human and environment related to the nature balance [2]. Human is part of universe (cosmos) that created by Allah SWT and as a servant. Human are given a power by god to utilize, processing, and protecting the nature potential that is made by him (khalifatullah). With nature, human also processing and gaining a knowledge from god. Therefore, discussing the relation between human, nature, and Allah SWT cannot be separated [3].

In the Law No. 32 of 2009 Concerning of Protection and Management of the Environment, it is explained that the management and protection of environment is a systematic effort and integrated that is done to preserve the function of environment and preventing environmental pollution and/or damage which include planning, utilization, controlling, supervision, and law enforcement. The characteristic of interdependence and holistic nature of the essence of environment has led to the consequences that
environmental management, including the supporting systems cannot stand alone, but it is integrated with all development implementation in various sector both at central and regional levels [4] the essence of the environmental problem is to find a ways that must be implemented to ensure and make the earth and surrounding environment as a habitable space for peace and prosperous life. Therefore, actions that polluting the environment is the same with killing the life [5].

The problem of environment is getting bigger, wider and more serious. It is like a rolling snowball, which getting bigger. The problem is not just on local or trans-local, but on regional, national, transnational, and global. The impact that happened on the environment is not only related on one or two side, but it its related each other as it is the characteristic of the environment which has the multi-link chains for relations which affecting each other subsystem. If one aspect on the environment is get a problem, then other aspect will also affect by those problem [6].

On the environment management, we are dealing with the law as a mean to fulfilling the interest. As a developing knowledge, most of the environmental law material is part of the administrative law (administratiefrecht). The environmental law, also contain civil law, criminal, tax, international, and spatial planning law so it cannot be classified into a classic law (public or private law). Hence, the substance of environmental law giving a rise to a division of administrative environmental law, civil environmental law, criminal environmental law [7].

The problem that arises from the law enforcement on environment damage through Al-Qur’an approach and environmental law is human still not fully maintaining the benefit of environment, even make a damage on environment that can endanger the life sustainability of human. The sustainability of human and environment are depending on the acts of human as khāalifah fī al-Arḍ (subject and maintainer) of earth. Therefore, with Al-Qur’an and environmental law approach it is expected to preserve the environment to maintain the sustainability of human and every exist creature. On other hand, damaging the environment in any form is a serious boomerang for the sustainability of life in nature with every creature in it, including human.

2. Research method
This research is a normative legal research. The legal material is collected through library research, namely a material from Al-Qur’an, environmental law, and document collection also laws and regulation. The legal material that described according to the main problem then systemized, explained, and then giving an argument to making a whole form unified and is logically relating each other.

3. Discussion
3.1. Enforcing Al-qur’an in handling environmental damage
Understanding Al-Qur’an is an effort that can made to be able understand the message contained in Al-Qur’an itself. This effort was made because human have a role to determine the direction of their own life goals. As Allah SWT said on QS. Ar-Ra’d [13]:11 “For each one there are successive angels before and behind, protecting them by Allah’s command. Indeed, Allah would never change a people’s state until they change their own state. And if it is Allah’s Will to torment a people, it can never be averted, nor can they find a protector other than Him”.

To determine their own life goals direction, human can take lessons from what Al-Qur’an have taught. According to Gusliyani, in Al-Qur’an there are a concept of knowledge that appears absolutely in its general meaning, and several verses on Al-Qur’an explicitly showed that knowledge is not only religious law [8] According to Fazlur Rahman, there are several groups of opinion regarding on the Al-Qur’an, such as: First, those who argue that Al-Qur’an is like a law book that is complete with article which covers all aspect of human life, in politics, economy, moral, culture, or science. Second, Al-Qur’an is a religious foundation for every life aspect. Therefore, Al-Qur’an is a life inspiration which leads on truth and goodness, giving a moral idea on every aspect of human life [9].

From two point above, there are important point that the authors need to underline which is Al-Qur’an as a complementary source of knowledge and religious foundation of every life aspect such as moral, from these two points, it is felt that preservation of nature can be realized by the existence of knowledge
based on religious foundations in life because of the cultivation of moral values in it. Currently, we can there were many people who are knowledgeable but didn’t have a strong religious foundation, so without any religious foundation within a person, then there is no instrument that can measure or controlling his actions, or can be said that this people are free to act without any limit in knowledge. Things like this are considered good because the damage of nature can be triggered with the existence of knowledge that doesn’t have a consciousness control in form of moral values. This can be triggering an exploitation of environment and damaging the environment because a knowledge that cannot be justified.

There are four important concept that need to be understanding to build an understanding on religion (Islam) toward the ecology or environment namely taskhir (conquest), 'abd (servitude), caliph (leader), and amanah (trustworthy). Four of them coming from a concept of the purpose of nature and human creation. A comprehensive view of the four concepts above with balance will provide a good view of the relationship between human and environment in relation to the balance of nature. What is meant by environment or nature in here is everything that is around human, such as animal, plants, even inanimate object. Generally, the moral that is taught by Al-Qur’an to the environment comes from the functions of human as caliph. As Allah SWT says in Al-Baqarah [2]:30 “when your Lord said to the angels, “I am going to place a successive authority on earth.” They asked, “Will You place in it someone who will spread corruption there and shed blood while we glorify Your praises and proclaim Your holiness?” Allah responded, “I know what you do not know.”

A caliphate contains the meaning of protection, maintenance, and guidance so that every creature can achieve the goal of its creation. Allah requires that the law is to maintain the benefit of mankind, as well as to avoid a damage (mafsadhah), both in world and in the hereafter. Every creature in this earth is depending on the environment, including human. This symbiotic relationship (interdependence) between human and environment around them greatly determines the continuity between the two.

In other words, the life sustainability (human and environment) is depending on the attitude and behavior of human as khâalifah ﬁ al-Ard (subject and maintainer) of earth. Even though as a subject of nature, human is not necessarily to treat nature as they want. The nature with environment will made a reaction (resist) toward human that resulting in extinction of human in earth. The role of human as a subject for nature doesn’t reducing human dependence on the environment. It means, preserving the environment is the same value with maintaining the sustainable of human life and everything that exist in nature. Otherwise, damaging the environment with all forms is a serious boomerang for the sustainable life in the nature and everything that exist in it, including human.

Al-Qur’an contains ideas that underline the behaviour of civilized society, such as tolerance, honesty, integrity, and how to apply it as religious ethics in Islam. Therefore, it can be said that Al-Qur’an is more than a law. So, Al-Qur’an is not a set of law but something that have an attraction for mankind to obey god’s law [1]. Related with law problem, especially about law enforcement there are three criteria that need to be understand by human, such as: First, legal material/content. Second, law structure, Third, legal culture. Three of them contain value or principle of justice, legal certainty, and utility.

3.2. Law enforcement on environmental damage with Al-qur’an and environmental law approach

Environmental law, in French called droit de l’environement, in German it called umweltrechts, in dutch it called milieurecht, in Malaysia it called hukum alam sekitar. Every term means to show a part of law that is related with physical environment (living environment) that can be applied to overcome pollution and destruction. The environmental law is regulating provisions regarding on human behavior in society to obey the environmental law. In other hand, society also have a right, obligation, and participate on managing living environment. According to Drupsteen, environmental law contains a principle about positive behavior of society toward environment, both directly and indirectly. Directly to the society, environmental law stated everything that is prohibited and everything that is permitted. Indirectly toward the society, giving the basis to the authority to giving a rule to society [10].

In environmental law enforcement it is already regulated every form of offense or crime, for the perpetrators whether done individually or institution with prevention effort as well as enforcement effort. For repressive action, there are several instruments that can be applied and its application is depend on
its necessity, as a consideration such as seeing the impact [11]. Al-Qur’an has explained that disasters that occur in nature are inseparable with the causality between god, nature, and human themselves. Natural disaster that occur between god and nature is inevitability. Because even though between god and nature have the same characteristics as Qadim, both have difference namely Qadim Azali which owned by god and Qadim Zamani which is owned by nature.

To differentiate both of them, it could be that gold melted the nature he created with a disaster as a proof that there is a difference between god and nature. And from here, the authors analyzed that there is a disaster that is not relating with human, this disaster is absolutely cause by the laws and regulation of Allah SWT to this realm such as tsunami. It can be seen and understand that there is no human can create tsunami, this indicated that disaster like this is absolutely coming right and provision from Allah SWT that is given to this world. Even if the role of human is existed, it lies before or after a natural disaster of this type, and how human utilize or managing the nature before or after a natural disaster. Talking about this type of disaster, it is obviously human doesn’t have any ability to prevent it. The characteristics that human can take is how to respond after the disaster.

After the disaster there is only relationship between god and nature. Then there also a disaster that happened from the relationship between nature and human. This kind of disaster will come with a causal pattern that showed a relationship between nature and human. Talking about this type of disaster, it is obviously that human have ability to prevent it. The characteristics that human can only do is to realize there were many provisions from Allah in Al-Qur’an that preventing human to do a damage in earth.

Beside from the existence of natural disasters that were manifested because of the relationship between human and nature, there also a natural disaster whose causes are relation between human. This natural disaster is categorized as psychological natural disaster or related with social. Based on understanding of Al-Qur’an verse that explain on human responsibility as a representative of god in this earth. There is a human obligation to unfortunate disaster and avoiding actions that can lead to the transmission of the disaster to human. It means to responding this, human must be aware that there is a disaster whose appearances is a test for human. Whereas in a disaster that appears to have something with human, then human must pay attention to what will be done because everything that is done by human, Allah SWT will give a punishment to these actions, and the disaster the disaster that happened cause by human is one of the punishments that Allah SWT give to awakening humans [12].

The law enforcement on the Law No. 32 of 2009 Concerning on Environmental Protection and Management can be classified into 3 (three) categories such as, state administrative law, civil law, and criminal law [13]. Related to environmental protection and management, of course it can’t be separated from the aspect of law enforcement. The law enforcement that is referred to is a law enforcement in the framework of the Law No. 32 of 2009 Concerning on Environmental Protection and Management. Conceptually, the essence and meaning of law enforcement is located on the activity to harmonized the relationship of values that are described in solid and embodied rules and attitude as a series of final-stage value descriptions, to create, maintain, and preserve a peaceful social life [14].

According to Hardjasoemantri (2012), criminal law enforcement is done as the implementation of environmental law norms through criminal justice decision [15]. This decision was preceded by investigators and prosecutions by the public prosecutor. Hence, from both views about environmental damage in Al-Qur’an and environmental law perspective it can be combined to create a law of justice with human awareness of its nature. A law of justice can be an effort to realize the idea and concept on the environmental law regarding environmental damage to become a reality, namely the idea of law of justice, sustainable, and environmentally friendly.

The correlation between Al-Qur’an and Environmental law is the environmental damage that happened is related with human act. Here there are causality between human behavior and natural disaster that happened in an environment. The environment damage that is related with the human behavior can be in a form of disaster on the social order in society. Hence, it needed a law enforcement that is integrated between Al-Qur’an and environmental law, to prevent an environment damage both in Indonesia and Internationally for sustainable life as Allah SWT creation.
4. Conclusion
The law enforcement against the environment damage with Al-Qur’an and environment law approach is that Al-Qur’an and Environmental law is a rule of law that regulate about human behavior in society to obey Al-Qur’an and environmental law. Al-Qur’an and Environmental law contain principle about positive behavior of society against the environment damage, both directly and indirectly. The enforcement of Al-Qur’an and environmental law is one of effort to realize the idea and concept in Al-Qur’an and environmental law to be a reality, which is an idea of a law of justice, sustainable, and environment friendly.

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