
**JURIDICAL REVIEW OF THE WADAS VILLAGE DISPUTE BASED ON THE
LAW ON ENVIRONMENTAL CONSERVATION AND MANAGEMENT**

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ABSTRACT

The environment has an important role in human life because the environment supports the prosperity and welfare of human life both physically and mentally. Thus, development that has the potential to damage the environment can endanger human life not only in the present but also in the future, so it is important to maintain environmental sustainability. This study will try to describe how the right to a good and healthy environment is viewed from the provisions of Indonesian laws and regulations and whether andesite mining in Wadas Village has the potential to violate these constitutional rights. This research uses a normative juridical approach using secondary data in the form of library materials consisting of primary, secondary and tertiary legal materials. The results of this study indicate that the right to a good and healthy environment is a constitutional right of Indonesian citizens as outlined in the 1945 Constitution, the Law on Environmental Protection and Management and the MPR Decree No. XVII/MPR/1998 on Rights. Human Rights. Andesite mining in Wadas Village has the potential to damage the environment because the area is prone to landslides and is a water catchment area, so if the mining continues it can cause landslides and drought.

Keywords: Andesite mining, Wadas village, human rights, the right to a good and healthy environment.

I. PRELIMINARY

Economic activity in today's society is not only centered on the desire to save money. In meeting their daily needs, sometimes people need funds by borrowing money. Over time, a financial institution emerged which functions to collect funds from the public and channel funds to people in need.

The environment is one of the most critical issues in human life. The environment is an essential part of human life that must be maintained, cared for, and developed in such a way as to support life success, both physically and mentally. In the contemporary democratic period of the modern state, the movement of human rights constituting to a good and healthy environment is considered as a political, systemic, and huge legal movement to various countries.¹

The 1945 Constitution of the Republic of Indonesia clearly provides regulations regarding human rights the right to a good and healthy environment as stated in Article 28H paragraph (1). Furthermore, provisions about Article 28H paragraph (1) are regulated in Law no. 32 of 2009

¹ K. C. Wheare, *Modern Constitution*, London: Oxford University Press, 1975.

concerning the protection and management of the environment and Law Number 39 of 1999 concerning Human Rights. A country must be able to supply environmental protection arrangements, especially the right to live and a decent life and the right to a good and healthy environment. Good Environmental Governance supplies an understanding that the management of government affairs in the field of natural resources and the environment should be carried out based on the vision of protecting and preserving environmental functions in supporting sustainable development.²

Guarantees for the protection and fulfillment of citizens' rights need to be supported by government policies in implementing the basic norms in the 1945 Constitution. The National Strategic Project in Presidential Instruction no. 1 of 2016 concerning the acceleration of the implementation of National Strategic Projects that it mentions actions related to the duties, functions and authorities of each concerned official, resolving problems and obstacles, taking policies in the Acceleration of National Strategic Projects (PSN). In supplying support for the acceleration of this project, relevant officials can take discretion to address concrete and urgent problems; perfecting, revoking and or replacing, provisions of laws and regulations that do not support or hinder the acceleration of PSN.³

The purpose of implementing the National Strategic Program is a joint effort between the central government and regional governments in achieving the goals of state government through development programs, As for the Presidential Regulation of the Republic of Indonesia Number 3 of 2016 concerning Acceleration of Implementation of National Strategic Projects which stated that the regional heads in the Project Implementation program National Strategy has a big role so that if it is ignored, there will be the heaviest sanctions, namely administrative sanctions in the form of dismissal for regional heads who do not carry out what have been stated in national strategic programs.

Regional governments as an extension of the central government are given the broadest authority in the management of autonomous regional governments known as regional autonomy. In regional autonomy, they are given the authority to regulate their own household affairs, including the decision of making regional regulations. The granting of regional autonomy as broadly as possible is given thoroughly in the territory of Indonesia, including in Purworejo Regency, Central Java. In carrying out the acceleration of PSN, the local government of Purworejo Regency updated the regional regulation Number 27 of 2011 about the spatial planning of the Purworejo Regency in 2011-2031 through the Purworejo Regency Regional Regulation Number Purworejo Regency Regional Regulation Number 10 of 2021 concerning the Purworejo Regency Spatial Planning 2021-204. In the previous regional regulation, Wadas Village was classified as a landslide-prone area and not a suitable for mining area, but in order following PSN the local government of Purworejo Regency allowed andesite mining activities in Wadas Village, the reason was that the land acquisition was for the public interest. In this mining plan, there are many rejections from the local village community due to the existence of two land acquisition projects for the public interest with the aim of building

² Nopyandri, Hak atas Lingkungan hidup dan Kaitannya dengan Peran Serta dalam Pengelolaan Lingkungan Hidup dalam Perspektif Otononomi Daerah, Jurnal Inovatif Vol 7 No. IV, 2014, halman 33.

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a dam and mining the andesite stone used to build the dam project. Bener Dam is one of the National Strategic Projects which is planned to supply most of the water needs to Yogyakarta International Airport (YIA).⁴ The refusal of the residents of Wadas Village was not without reasons, but the government plan will cause damage to the surrounding environment, polluted living water and eliminate the livelihoods of residents, so there is a rejection of andesite mining activities in the village.⁵

A country must provide environmental protection regulations, specifically related to the right to a decent life and livelihood, specifically the right to a good and healthy environment. However, despite the protest from the community and the impact that may arise, to maintain investment growth to create business and employment, the government is committed to continuing the National Strategy Project.

The existence of an Andesite mining project in Wadas Village by drilling, dredging, and blasting using 5,300 tons of dynamite to a depth of 40 meters can destroy the landscape and is no different from forcing residents to live with ecosystem damage. If the mining continues, it has the potential to cause landslides and droughts that can threaten the welfare of the villagers because the livelihood of the residents is very dependent on plantation and agricultural products. Apart from what was mentioned above, the rejection of the mining plan in the area is also related to Wadas' function, a water catchment area that stores abundant water reserves for residents.⁶

Thus, the problems of this research are:

1. How is the constitutional rights related to the right to a good and healthy environment in the Indonesian laws and regulations?
2. Does andesite mining in Wadas have the potential to violate constitutional rights?

II. METHODS

The Research method is a flow of how one should research which is based on certain methods, systematics, and thoughts to solve a scientific problem.⁷ The research method used in this research is a normative juridical approach to find a rule of law, legal principles, and doctrines.⁸ By using secondary data in the form of library materials consisting of primary, secondary and tertiary legal materials. The data analysis used in this research is descriptive analysis, which is a discussion carried out by analyzing to provide an overview or explanation of the subject and object of research. With the aim of obtaining a disclosure regarding to the constitutional rights of Good and Healthy Environment of Wadas' people.

⁴ <https://www.cnnindonesia.com/nasional/20220211163721-20-758162/konflik-desa-wadas-jokowi-diminta-hentikan-psn-bermasalah/amp> diakses pada tanggal 18 April 2022 Pukul 14.20

⁵ Muhammad Zaky Adriansyah, Nur Adim Ana Silviana, Pengadaan Tanah bagi Pembangunan Bendungan Bener di Desa Wadas Kabupaten Purworejo (Tahap I) (Studi Kasus hambatan dalam Pengadaan Tanah di Desa Wadas) Semarang, Diponegoro Law Journal, Vol. 9, No. 1, 2020, halaman 138-154.

⁶ <https://nasional.kompas.com/read/2022/02/10/05400031/ancaman-kerusakan-lingkungan-hingga-hilangnya-mata-pencarian-warga-wadas?page=all> diakses pada 15 Mei 2022 pukul 13.41 WIB.

⁷ Peter Mahmud Marzuki, Penelitian Hukum, Jakarta: Kencana Prenada Media Group, halaman 35.

⁸ Peter Mahmud Marzuki, Penelitian Hukum, Jakarta: Kencana Prenada Media Group, halaman 35. dalam Moh. Hamzah Hisbulloh, Urgensi Rancangan Undang-Undang (RUU) Perlindungan Data Pribadi, Jurnal Hukum Unissula, Vol. 37, No. 2, Desember 2005, halaman 119-133.

III. RESULTS AND DISCUSSION

A. Constitutional Right to a Good and Healthy Environment in Indonesia

The international importance of the environment is mirrored at the local regulation. In fact, protection is all around us. While the specific number of states that legally safeguard environmental rights is difficult to quantify due to uncertainties produced by the language, positioning, and framing of constitutional clauses.⁹ However, almost 160 country across the world include substantive or procedural provisions relating to the protection of the environment.

Indonesia is such a constitutional state that relies on a constitution which has a relationship with people's sovereignty in carrying out democracy. A sovereign nation of the people is a democratic country whose power comes from the people, by the people, and for the people.¹⁰ Every citizen has the same position and position before the law who has the same rights and obligations. Article 27 to Article 34 of the 1945 Constitution has stated the rights and obligations of citizens which in Article 28H paragraph (1) 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 and has the right to get health services. Constitutional rights are rights of citizens guaranteed by the 1945 Constitution. Thus, environmental norms have been constitutionalized into the content of the constitution as the highest law, and therefore government policies in development must be based on these norms.

In fact, the history of the right to a good and healthy environment is stated in Article 28 of the Human Rights Charter (Article 28 Everyone has the right to a social and international order in which the rights and freedoms set forth in this Declaration can be fully implemented.) as an inseparable part of the MPR RI Decree No. XVII/MPR/1998 concerning Human Rights.

In addition, the United Nations Conference on the Human Environment, which was held in Stockholm in 1972, was the first conference that took place to discuss environmental issues. The follow-up to the conference was the establishment of the World Commission on Environment and Development (WCED).¹¹ This commission holds an integrated approach to environmental problems and sustainable development. The right to the environment (HAL) is access to natural resources that are intact, which allows humans to live and survive, including good ecological rights, ranging from the rights of certain species to the rights of individuals to enjoy and live in nature that is still good.¹²

Within the scope of national legal policy, obtaining the right to a good and healthy environment has become one of the constitutional rights of Indonesian citizens, where this right has been guaranteed in the 1945 Constitution of the Republic of Indonesia in Article 28H paragraph (1) which states that every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment and shall have the right to obtain medical care. The state has responsibility for the protection and management of the environment both human

⁹ Tim Hayward, *Constitutional Environmental Rights*, Oxford University Press, 2005, halaman 22.

¹⁰ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta, Konstitusi Press, 2005, halaman 141.

¹¹ Richard V. Was, *Perlindungan Hukum terhadap hak atas lingkungan Hidup Ditinjau dari Perspektif Hukum Internasional dan Hukum Nasional Indonesia*, Jurnal Sasi, Vol. 20, No. 1, Januari 2014, Halaman 81-91.

¹² M. Ridha Saleh, *Lingkungan Hidup Untuk Kehidupan Tidak Untuk Pembangunan*, dalam Hak atas Lingkungan Hidup (sebuah kajian Prinsip-Prinsip HAM dalam Instrumen Nasional), Jakarta, KOMNAS HAM, 2005.

resources, natural resources and cultural resources). Article 28H paragraph (1) reflects the right to the environment which is doctrinally a concept from the Third Generation of Human Rights into amendments and the existence of Chapter X on Human Rights indicates that the State recognizes, respects, and upholds human rights to the environment.

Law Number 39 of 1999 in Article 9 paragraph (3) states that everyone has the right to a good and healthy environment. The right to a good and healthy environment is closely related to human rights. Because understanding and acknowledging human rights also means protecting the environment in order to achieve sustainable development. The right to a good and healthy environment is also stated in Law no. 32 of 2009 concerning the Protection and Management of the Environment (UUPPLH) which in preamble letter state that a good and healthy environment is a human right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia. Generation The Third Human Rights focuses on rights to development that reflect collective rights, which are inclusive in the right to comprehensive development which means that the fulfillment of human rights is comprehensive, civil, economic, social and cultural.¹³ The right to the environment is one of the groups of collective rights included in the Third Generation of Human Rights.¹⁴

Based on Article 5 Paragraph (1) of the UUPPLH, everyone has the same rights to a good and healthy living environment, apart from having the right to a good and healthy environment, everyone also has the obligation to maintain the preservation of environmental functions and prevent and overcome pollution and destruction. Environment. Environmental problems are also human rights issues. According to Otto Soemarwotto, development can potentially cause environmental problems that reduce or even eliminate the benefits of development.¹⁵

Hence, from the legislation above it implies that the right to a good and healthy life is a human right of every citizen. Natural and environmental crimes are included in constitutional crimes because they are contrary to human rights to a good and healthy environment as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia. According to Heinhard Steiger C.S, the right to a good and healthy environment is a subjective right that has the broadest form of protection of a person.¹⁶ Environmental policies have a great influence on the right to life, the right to health, the right to work and education, the right to information and to get justice in the management of natural resources.¹⁷ This is in line with the United Nations Conference on the Universal Declaration of Human Rights which contains guidelines for the international community to respect the rights of all human beings to live, to obtain a decent living, to freedom and security, to freedom of opinion and expression and to participation, including aspects of the right to a good and healthy

¹³ Andrey Sujatmoko, *Hukum HAM dan Hukum Humaniter*, Cetakan Pertama, Jakarta: Raja Grafindo Persada, 2014, halaman 180

¹⁴ UN Conference on Human Environment di Stockholm, 5-16 Juni 1972 dihasilkan dari Deklarasi Stockholm Tahun 1972.

¹⁵ Otto Soemarwotto, *Ekologi Lingkungan dan Pembangunan*, Jakarta: Djembatan, 1997, halaman 9.

¹⁶ United Nations, *Declaration on the Human Environmental*, Annual Review of United Nations Affar, dalam Supriadi, *Hukum Lingkungan di Indonesia*, sebuah Pengantar, Jakarta: Sinar Grafika, 2005, halaman 185.

¹⁷ Iskandar, *Konsepsi dan Pengaturan Hak Atas Lingkungan Hidup yang Baik dan Sehat (Kajian Perspektif Hak Asasi Manusia dalam Pengelolaan Lingkungan Hidup)*.

environment. Considering to international practice, it is now clear that the right to a healthy environment must be understood as the right to have the environment used and preserved in the best possible way, with the goal of protecting, enhancing, and improving it, rather than the right to an environment with predetermined characteristics or an ideal environment.

Based on Article 5 paragraph (1) of the UUPPLH which is confirmed by Article 28H paragraph (1) of the 1945 Constitution, the results of the amendments have provided "fundamental-constitutional rights" in which the enactment of the right to a good and healthy environment (living) as "subjective rights" is a the most extensive form of legal protection which legally would provide a legal basis for lawsuits for individuals to realize their interests in a "*good and healthy environment*". Article 28H paragraph (1) of the 1945 Constitution and Article 28 of the Human Rights Charter (MPR-RI Decree No. XVII/MPR/1998) have legal implications as a very substantive legal basis for environmental lawsuits for the fulfillment of individual rights functions, either through court forums or through court forums out of court.¹⁸

B. Andesite Mining in Wadas Village Potentially Violates Constitutional Rights

The reforms in Indonesia brought about a change in the paradigm of governance at the regional level. Moreover, Regional governments are given the broadest authority in the form of granting regional autonomy to regions in developing their regions. The mining project in Wadas Village is a quarry mine or open pit mining (drilled without residue) which is planned to run for 30 months. The rock mining will be carried out by drilling, dredging and blasting using 5,300 tons of dynamite or 5,280,210 kg, to a depth of 40 meters. The andesite quarry mine in Wadas Village targets 15.53 million cubic meters of andesite rock material for the construction of the Bener Dam, with a production capacity of 400,000 cubic meters annually. If that happens, it will not only destroy the landscape but also it is no different from forcing people to live with the destruction of the ecosystem.¹⁹ As cited from CNBC Indonesia according to statement given by Fanny Tri Jamboree, WALHI's Mining and Energy Campaign Manager, said that land acquisition for the Bener Dam mine must start from the entire National Strategic Project (PSN) which must first be based on the Job Creation Law as seen in the Constitutional Court Decision number 91/PUU-XVIII /2020.²⁰

The mining, which will be carried out by blasting the ground with 5,300 tons of dynamite, can damage the environment around Wadas Village, making it prone to landslides. Mining will also displace community gardens which are a source of livelihood for residents, this will certainly threaten the future of Wadas Village residents and environmental sustainability. Not only these two things, Greenpeace Indonesia on its official website also reveals five threats to environmental sustainability if andesite mining activities in Wadas village continue to be carried out. These threats include: ²¹

¹⁸ Suparto Wijoyo, *Konstitusionalitas Hak Atas Lingkungan*, Surabaya: Airlangga University Press, 2019, halaman 1-2.

¹⁹ <https://www.walhi.or.id/sikap-walhi-atas-kekerasan-di-wadas-purworejo>. accessed on April 19th 2022 at 9.15 PM

²⁰ <https://www.cnbcindonesia.com/news/20220210135853-4-314380/desa-wadas-viral-ini-ternyata-harta-karun-di-dalamnya> accessed on Mei 16th 2022 at 10.00 PM

²¹ <https://www.greenpeace.org/indonesia/cerita/45996/ada-apa-dengan-desa-wadas-tambang-dan-bendungan-bener-rugikan-indonesia/> accessed on April 19th 2022 at 08.00 PM

1. The climate crisis
2. Wetlands and Damaged Beaches
3. Fish Populations are extinct
4. Heat and Dryness
5. Clean Water is Wasted

The first discussion has described that obtaining a good and healthy environment is a constitutional right of citizens that must be protected, so that all efforts that can cause these constitutional rights to be hampered or cannot be granted are included in the violation of the rights of citizens to obtain a good and healthy environment. There is potential in landscapes and forced residents to live with ecosystem damage. The mining continues to cause landslides and droughts which can threaten the welfare of the villagers because the livelihoods of the residents depend heavily on plantation and agricultural products, which will violate human rights in Wadas Village to obtain the right to a good and healthy environment as regulated in Article 28H Paragraph (1) which is a citizen's constitutional right. Furthermore, based on the Chairman of PP Muhammadiyah for Law, Human Rights and Public Policy, Busyro Muqoddas stated that the results of the analysis of environmental law and environmental jurisprudence studies after the case of violence carried out by police officers against Wadas Purworejo Village, stated that the andesite mining in Wadas Purworejo Village was not included in the National Strategic Project.²² In addition Busyro also stated that Wadas Village is one of the points of the National Strategic Project that does not involve a socio-ecological crisis, regarding the poor environmental security that has an impact on ecological disasters that weaken economic morale.

Indonesia has an obligation to be committed to ensuring the fulfillment of Human Rights for a healthy and clean environment as described in the Fourth Principle of the Rio Declaration which emphasizes that to achieve environmentally sustainable development, protection of the environment must be an integral part of the development process and cannot be considered separate from it. This of course must be considered by the government in making policies by paying attention to important and urgent environmental awareness.²³ The environment is a unit with the pattern and system of life built by humans themselves, therefore there is a close and integrated relationship between humans and the environment because they need each other. The existence of a good living environment will lead to a good living system for humans themselves.

Referring to Article 45 letter E of Regional Regulation Number 27 of 2011 concerning Planning and Spatial Planning of Purworejo Regency in 2011-2031, Bener District is a drought-prone area. According to kompas.com, rock mining in Wadas Village, which is a hilly area, will potentially lead to increased drought, while mining in Wadas area also endangers the

²² <https://www.suara.com/news/2022/04/26/091217/muhammadiyah-tambang-andesit-desa-wadas-terindikasi-bermasalah-hukum-sejak-perencanaan-hingga-pembebasan> accessed on Mei 16th 2022 pukul 08.33 PM

²³ Majda El Muhtaj, *Dimensi-dimensi HAM Menguarai Hak Ekonomi, Sosial, dan Budaya*, Jakarta: PT. Grafindo Persada, 2008, halaman 204-207.

surrounding community because the Wadas area is a water catchment area that stores abundant water reserves for residents.²⁴

Quoted from CNBC, the andesite mining in the Wadas Village area does not yet have a Mining Business Permit (IUP) from the central government. For instance, activities for PSN which are based on Law Number 11 of 2020 are suspended based on the Decision of the Constitutional Court Number 91/PUU-VXIII/2020.²⁵ Nevertheless, the government has a different opinion through the decision on T-178/MB.04/DJB.M/2021 regarding the Response to the request for Recommendation for the National Strategic Project (PSN) for the Bener Dam development it said in point b that the implementation of quarry material extraction activities for the construction of Bener Dam carried out by the Directorate General of Water Resources of the Ministry of Public Works and People's Works does not require a permit in the mineral and coal mining sector considering that the implementation of quarry material extraction activities does not include the criteria for parties who can be granted permits in the mining sector mineral mining sector as regulated in Law Number 3 of 2020 and is only used for its own interests and not for commercial purpose.²⁶ On the other hand Fanny Tri Jambore as Walhi's Mining and Energy Campaign manager gave an opinion on CNBC that quarry material extraction activities for the construction of Bener Dam does require a permit in the mineral and coal mining sector.²⁷ Director of Mineral and Coal Program Development, Ministry of Energy and Mineral Resources, Sunindy Suryo also agrees with Fanny's opinion that Mining activities, both mineral and coal, must have an IUP.²⁸

VI. Closing

In conclusion, according on the 1945 Constitution, the Law on Environmental Protection and Management, MPR Decree No. XVII/MPR/1998 concerning Human Rights, The right to a good and healthy environment is included in the constitutional rights guaranteed and protected by the state, so that in the implementation of government, especially in policies regarding development, environmental sustainability must be considered.

The Purworejo Regional Government needs to review the andesite mining project in Wadas Village, although the mining is carried out to support national strategic projects, the potential for environmental damage that can threaten the right to a good and healthy environment cannot be ruled out. The local government needs to pay attention and heard the voices of the Wadas' community in order to protect the right to have a good and healthy environment. Moreover, ignoring

²⁴ <https://nasional.kompas.com/read/2022/02/10/05400031/ancaman-kerusakan-lingkungan-hingga-hilangnya-mata-pencarian-warga-wadas?page=all> accessed on April 20th 2022 at 7.44 AM

²⁵ <https://www.cnbcindonesia.com/news/20220210153149-4-314444/terungkap-tambang-yang-viral-di-desa-wadas-tak-berizin-iup> accessed on May 24th 2022, 4.30 PM

²⁶ Point B on decision on T-178/MB.04/DJB.M/2021 regarding the Response to the request for Recommendation for the National Strategic Project (PSN) for the Bener Dam development.

²⁷ <https://www.cnbcindonesia.com/news/20220217153301-4-316219/menteri-esdm-ungkap-tambang-di-desa-wadas-tak-perlu-izin#:~:text=Ternyata%20Pemerintah%20Bebaskan%20Tambang%20Desa%20Wadas%20Tanpa%20Izin> accessed on May 24th 2022 at 5.09 PM

²⁸ <https://www.cnbcindonesia.com/news/20220210153149-4-314444/terungkap-tambang-yang-viral-di-desa-wadas-tak-berizin-iup> accessed on May 24th 2022 at 5.21 PM

the right to have a good and healthy environment violates the human rights because this right has been guaranteed in the 1945 Constitution of the Republic of Indonesia in Article 28H paragraph (1) which states that every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment and shall have the right to obtain medical care.

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