

Environmental Legal Politics in Determining State Policies on Environmental Protection Instruments

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Abstract. *This study aims to analyze the influence of legal politics on the effectiveness of environmental protection instruments in Indonesia. The research focuses on how the orientation of legal politics determines the formulation, implementation, and enforcement of environmental regulations, particularly in the context of environmental licensing, supervision, and environmental economic instruments. This study employs a normative legal research method using statutory, conceptual, and policy approaches. Legal materials were obtained through library research, including legislation, scientific literature, and research findings related to environmental law and legal politics. The results of the study indicate that, normatively, Indonesia has established a relatively comprehensive regulatory framework for environmental protection. However, the effectiveness of the implementation of environmental protection instruments is still influenced by the orientation of legal politics, which tends to prioritize economic development and investment interests. This condition has led to the weakening of environmental protection instruments, which in practice are often reduced to mere administrative formalities. The novelty of this study lies in its systematic and integrative analysis of the relationship between the direction of legal politics and the effectiveness of environmental protection instruments. This study concludes that the effectiveness of environmental protection does not solely depend on the completeness of regulations but also on the consistency of legal politics in positioning sustainability principles as a priority in state policy.*

Keywords: *Environmental Law Instruments; Environmental Licensing; Environmental Protection; Legal Politics; Sustainable Development.*

1. Introduction

The concept of legal politics is essential to understanding the direction of state policy in the formulation and implementation of environmental law. Legal politics determines the model of environmental protection, the types of legal instruments employed, and the extent to which the state prioritizes environmental or economic interests. In practice, environmental legal politics in Indonesia reflects a persistent tension between environmental protection and the acceleration of economic development. The dominance of investment interests frequently influences the design of environmental policies, resulting in environmental protection being positioned as a secondary concern (Setyowati, 2021). In fact, environmental protection constitutes part of the fulfillment of human rights and the sustainability of ecosystems; therefore, the effectiveness of environmental law largely depends on the consistency between the normative objectives of regulations and the direction of the state's legal politics (Kotzé, L. J., & French, 2018).

Normatively, environmental legislation is designed to prioritize the principles of prevention, precaution, and sustainability. However, inconsistencies between these normative objectives and the practice of legal politics have become evident when environmental protection instruments are weakened, whether through weak enforcement of sanctions, the dominance of administrative approaches, or ineffective supervision of business compliance. Furthermore, the implementation of environmental legal instruments, such as Environmental Impact Assessments (EIA/AMDAL) and environmental licensing mechanisms, often faces obstacles, including weak supervision, low compliance, corruption, and a lack of political will, thereby hindering the optimal achievement of environmental protection goals (Zahroh, U. A., & Najicha, 2022). The inconsistency between the normative objectives of environmental legislation and the orientation of state legal politics is clearly reflected in various empirical facts of environmental degradation that have occurred over the past decade, particularly concerning deforestation. Although the legal framework has established preventive and precautionary principles, forestry licensing policies in practice still provide broad opportunities for forest conversion. This condition demonstrates the dominance of a development approach oriented toward economic growth, causing environmental legal instruments to lose their controlling function as tools for protecting forest ecosystems (FWI, 2018).

In addition to deforestation, water and marine pollution resulting from industrial waste and mining activities has also become a recurring and serious problem in various regions of Indonesia during the period 2009–2020. Cases of river and coastal pollution in industrial and mining areas, such as those in Java, Sulawesi, and other coastal regions, illustrate weak environmental supervision and ineffective law enforcement. In many pollution incidents, violations of environmental quality standards are not followed by sanctions that create deterrent effects or comprehensive environmental restoration obligations. Consequently, ecological and social losses, including the decline in clean water quality and disruptions to the health and livelihoods of local communities, persist over extended periods. This condition confirms that environmental legal politics still places administrative compliance as its primary

focus, while environmental protection and restoration have yet to become state policy priorities (Santosa, 2017).

Furthermore, ecosystem degradation caused by unsustainable natural resource exploitation over the past two decades indicates that environmental protection instruments have not functioned optimally as tools for controlling development. Land degradation, biodiversity loss, and damage to coastal and marine ecosystems in various regions of Indonesia, including mining and coastal areas, demonstrate that environmental law has not been fully utilized as an instrument of social engineering to direct development toward sustainability. This situation indicates structural problems in the design of environmental policy, in which the prevailing legal politics emphasizes regulatory flexibility and ease of business rather than ecological protection. Thus, environmental degradation occurring across various regions and time periods is not solely caused by weak law enforcement but is also influenced by the legal politics underlying the formulation and determination of environmental protection instruments that are not fully aligned with the normative objectives of environmental legislation (Boyd, 2018).

These facts raise fundamental questions regarding the consistency of legal politics in the formulation of environmental legislation. It becomes necessary to question whether the legal politics underlying the determination of environmental protection instruments truly aligns with the legislative objectives that position environmental protection as a primary priority. From the perspective of legal theory, inconsistencies between *das sollen* and *das sein* indicate problems in the formulation and implementation of legal policy. When legal politics is oriented toward short-term pragmatic interests, the law risks losing its function as an instrument of social engineering aimed at protecting long-term public interests. Several studies demonstrate that the dominance of economic and development interests in policymaking often distorts environmental interests and weakens the principle of sustainable development, which should serve as the primary orientation of environmental law (Maulidyna, 2022). Therefore, a deeper analysis of environmental legal politics in determining state policies regarding environmental protection instruments is necessary. Such analysis is crucial to reveal the extent to which state policies reflect the normative objectives of environmental legislation or instead deviate from the mandate of environmental protection.

2. Research Methods

This research is a normative legal study that focuses on examining legal norms, concepts, and state policies in the field of environmental protection. Normative legal research was chosen because this study aims to analyze environmental legal politics in determining environmental protection instruments, rather than examining community behavior or empirically assessing policy effectiveness. The approaches used in this research include the statutory approach and the conceptual approach. The data sources used in this study consist of secondary data, including primary legal materials, secondary legal materials, and tertiary legal materials. Data collection was conducted through documentation studies by gathering, reviewing, and analyzing legal documents and literature related to the research object. All legal materials

obtained were then systematically selected and classified according to the research focus. Data analysis was carried out using descriptive qualitative methods employing deductive - inductive reasoning. Deductive analysis was used to draw conclusions from general concepts and legal principles toward the specific issues under study, while inductive analysis was applied to formulate generalizations based on normative findings derived from legal materials. Through this method, it is expected that a comprehensive understanding of environmental legal politics in determining state policies concerning environmental protection instruments can be achieved.

3. Results and Discussion

3.1. Environmental Legal Politics in Determining State Policy

Legal politics is a fundamental concept in understanding the direction and objectives of lawmaking by the state. In the context of environmental law, legal politics not only determines how legal norms are formulated but also reflects the state's ideological choices in balancing economic development and environmental protection. Therefore, analyzing environmental legal politics is essential to assess the extent to which state policies are genuinely directed toward environmental protection as a public interest (Mahfud MD, 2017). Mahfud MD views legal politics as the basic policy of the state in determining which laws will be enacted or not enacted to achieve state objectives. This perspective emphasizes that law does not emerge in a vacuum but rather as a product of political configurations, economic interests, and dominant power orientations. In environmental law, legal politics determines whether environmental protection is positioned as a primary objective or merely as a supporting instrument of development.

Environmental legal politics should be grounded in the principles of sustainability and intergenerational justice as recognized in the concept of sustainable development (Ilić-Petković & Ilić-Krstić, 2016). Principles such as the precautionary principle and sustainable development require the state not only to pursue economic growth but also to ensure ecosystem sustainability. These principles emphasize that development policies must consider environmental risks and protect the interests of future generations (Sands, P., & Peel, 2018). At the national level, Indonesia's environmental legal politics cannot be separated from its constitutional framework. The 1945 Constitution affirms that a good and healthy environment is a fundamental right of every citizen, thereby positioning the state as the primary actor responsible for ensuring environmental protection through policy, regulation, and law enforcement (Asshiddiqie, 2016).

The direction of environmental legal politics is often influenced by development paradigms oriented toward economic growth. In policy practice, the environment is frequently perceived as a resource to support investment and industrialization, resulting in legal policies that tend to prioritize economic development over environmental protection (Wibisana, 2017). In this context, environmental legal politics may become compromising toward capital interests, particularly when development policies emphasize economic stability and investment growth (Resosudarmo, B. P., Ardiansyah, F., & Napitupulu, 2019). Environmental legal politics is also

reflected in the legislative process, which cannot be separated from the political interests of lawmakers. Consequently, legal norms often contain tensions between normative environmental protection objectives and practical interests being pursued (Maulidyna, 2022). This condition is evident in environmental regulations that tend to be administrative and procedural in nature, while substantive environmental protection receives less emphasis. Licensing instruments, for instance, are often used as tools for legitimizing business activities rather than functioning effectively as environmental control mechanisms (Safa'at, 2019).

Environmental law fundamentally serves as an instrument to control development so that economic activities remain aligned with sustainability principles. However, this function can only operate effectively when the underlying legal politics is consistent with environmental protection objectives. Various studies indicate that policy orientations prioritizing short-term economic development often weaken the effectiveness of environmental law as a development control instrument (Faure, M. G., & Partain, 2019). The phenomena of deregulation and licensing simplification further demonstrate how environmental legal politics is directed toward creating a more competitive investment climate, but potentially lowering environmental protection standards (Rahman, 2022). As a result, environmental protection instruments tend to shift from regulatory control mechanisms to administrative procedures that legitimize business activities. From the perspective of modern legal theory, environmental law should prioritize public interests, ecosystem sustainability, and human safety, rather than focusing solely on procedural compliance (Zahroh, U. A., & Najicha, 2022).

The failure of environmental legal politics to internalize environmental protection values directly impacts weak law enforcement. Various studies show that environmental law enforcement problems in Indonesia are not solely caused by law enforcement institutions but are also influenced by legal policy designs that do not fully support environmental protection effectiveness. These weaknesses are reflected in the continued dominance of administrative approaches, weak supervision of Environmental Impact Assessment (AMDAL) implementation, and suboptimal enforcement of sanctions against environmental violations, preventing the achievement of environmental protection goals (Maulidyna, 2022). Weak sanctions and limited political commitment in environmental law enforcement indicate that environmental protection has not become a primary state priority. Ambiguous legal politics results in ineffective environmental law enforcement (Santosa, 2017). Similar problems occur in other developing countries, where environmental law often becomes trapped between protection objectives and economic development pressures (Bedner, 2016). The successful implementation of environmental protection depends on the political will of the state to prioritize environmental protection (Grabosky, 2020). Thus, environmental legal politics not only determines the substance of legal norms but also influences the selection of environmental protection instruments. When legal politics becomes compromising toward economic interests, the resulting legal instruments risk losing their effectiveness in ensuring environmental protection (Wibisana, 2017).

Environmental degradation is directly linked to human rights violations. Therefore, environmental legal politics that fails to protect the environment essentially also fails to

protect fundamental human rights (Boyd, 2018). In Indonesia, recurring environmental damage demonstrates a gap between the normative objectives of environmental legislation and its implementation in practice. This gap cannot be separated from the legal political choices underlying environmental policy formulation and implementation (FWI, 2018). Inconsistent environmental legal politics also creates legal uncertainty. When regulations change according to political and economic dynamics, environmental protection becomes vulnerable to compromise and weakening. Therefore, analyzing environmental legal politics becomes an essential instrument to identify the root causes of environmental protection problems. Without reform at the level of legal politics, environmental law reform tends to be cosmetic and fails to address structural issues. Thus, environmental legal politics must be understood as the fundamental foundation in determining state policy direction toward environmental protection. Failure to formulate sustainability-oriented legal politics will directly weaken environmental protection instruments. This section demonstrates that the primary problem of environmental protection does not lie in the absence of regulation but rather in the direction of legal politics that is not fully aligned with environmental protection objectives. This condition ultimately affects the effectiveness of environmental protection instruments.

3.2. Implications of Environmental Protection Instruments

One of the primary instruments in environmental protection is the environmental licensing system, which is designed as a preventive mechanism to ensure that business activities or development do not cause significant negative environmental impacts. Through this instrument, the state holds a strategic position in controlling economic activities so that they remain aligned with the principles of sustainable development (Wibisana, 2017). Environmental Impact Assessment (EIA/AMDAL) constitutes an integral part of the environmental licensing system and functions as both a scientific and legal instrument to predict and assess environmental impacts before an activity is carried out. Within an ideal framework, AMDAL serves as the basis for rational decision-making oriented toward environmental protection (Zahroh, U. A., & Najicha, 2022). However, in policy practice, AMDAL often experiences a functional shift and tends to be treated merely as an administrative requirement to obtain business permits, thereby causing environmental protection instruments to risk losing their ecological substance due to policy orientations that emphasize investment facilitation (Rahman, 2022).

The implications of such legal politics are reflected in weakened environmental supervision. Supervision, which should function as a post-licensing control instrument, often fails to operate effectively due to limited institutional capacity, weak political commitment to enforcing environmental regulations, and potential conflicts of interest between regulators and business actors. Consequently, supervisory functions fail to ensure compliance with environmental protection standards (Wibisana, 2017). Weak environmental supervision and law enforcement are not merely technical issues but reflect legal policy designs that do not prioritize environmental protection. As a result, environmental law violations frequently do not lead to effective sanctions. Sanction instruments in environmental law administrative, civil,

and criminal are fundamentally designed to create deterrent effects. However, in practice, sanctions are often applied minimally and are disproportionate to the environmental damage caused. This condition weakens the coercive force of environmental law (Santosa, 2017). The weak implementation of environmental sanctions indicates the absence of state commitment toward environmental protection. Ambiguous legal politics results in sanction instruments not being maximally utilized as tools for ecosystem protection. In addition to conventional legal instruments, environmental law also recognizes economic instruments, such as the polluter pays principle. This principle emphasizes that polluters or environmental destroyers are obligated to bear the cost of environmental restoration. Economic instruments are intended to internalize environmental costs into economic activities (Ilić-Petković & Ilić-Krstić, 2016).

Nevertheless, the implementation of environmental economic instruments in Indonesia still faces various limitations. In many cases, the cost of environmental damage is not fully imposed on business actors, causing the state and society to bear the ecological and social consequences (Bedner, 2016). These limitations once again demonstrate that environmental protection instruments cannot be separated from the context of legal politics. Without strong political commitment, the implementation of environmental economic instruments risks becoming merely normative concepts without effective application. Studies on environmental economics indicate that the effectiveness of economic instruments is largely determined by the consistency of state policies, regulatory capacity, and government seriousness in integrating sustainability principles into development policies and natural resource management (Resosudarmo, B. P., Ardiansyah, F., & Napitupulu, 2019). Further implications of weak environmental protection instruments include increasing ecological and social losses. Environmental damage directly affects public health, eliminates livelihoods, and reduces quality of life. In this context, the environment is no longer viewed as a public asset that must be protected. Environmental degradation is closely related to human rights violations. When the state fails to protect the environment, it also fails to fulfill its obligation to protect the right to a good and healthy environment. From a constitutional perspective, the failure of environmental protection instruments signifies the failure of the state to fulfill the mandate of the 1945 Constitution. The right to a good and healthy environment cannot be realized without effective and consistent legal instruments.

Empirical facts demonstrate that recurring environmental damage continues to occur despite the existence of relatively comprehensive regulations. This indicates that the main problem lies in the effectiveness of environmental protection instruments rather than the absence of legal norms. Forest Watch Indonesia notes that deforestation and forest degradation continue even though various protection instruments have been implemented. This condition reveals a serious gap between the normative objectives of policy and its implementation in practice (FWI, 2018). This gap strengthens the argument that environmental protection instruments have been reduced to legal formalities. These instruments no longer function as tools for controlling development but rather as administrative legitimization for natural resource exploitation activities. This condition highlights the need to reorient environmental protection instruments so that they once again prioritize public interests. Law must not stop at procedural compliance but must ensure substantive environmental protection. Weak

environmental protection instruments in developing countries are often caused by the dominance of economic interests in policymaking processes. Existing legal instruments are not designed to effectively limit economic power (Bedner, 2016).

The importance of adopting a smart regulation approach lies in combining legal, economic, and social instruments. However, implementing this approach still requires clear and consistent legal political direction. Without changes in legal political orientation, strengthening environmental protection instruments will remain symbolic. Regulatory reforms that fail to address the root problems of legal politics risk repeating the same failures in environmental protection. Therefore, the primary implication of environmental protection instruments is the need for critical evaluation of environmental policy design. This evaluation must assess whether legal instruments genuinely function to protect the environment or instead facilitate exploitation. Reorientation of environmental protection instruments must place sustainability as the main principle. Legal instruments need to be strengthened substantively, including preventive, repressive, and restorative aspects. In this context, environmental legal politics oriented toward ecosystem protection and public interest becomes a fundamental prerequisite. Without strong political commitment, environmental protection instruments will not be able to function effectively. Thus, the implications of environmental protection instruments demonstrate that environmental problems cannot be resolved merely through the formation of regulations. Reform of environmental legal politics is necessary to ensure that legal instruments genuinely function as tools for environmental protection and national development control.

4. Conclusion

Based on the results of the analysis, this study confirms that the effectiveness of environmental protection in Indonesia is strongly influenced by the direction of legal politics underlying the formulation and implementation of environmental policies. The existence of relatively comprehensive environmental regulations does not automatically guarantee environmental protection if the legal political framework supporting them is inconsistent with environmental protection objectives. Normatively, environmental legal politics has positioned the environment as a public interest as well as a constitutional right of citizens. However, in practice, environmental legal politics remains dominated by economic development paradigms and investment interests, resulting in environmental protection often being placed as a secondary concern. This study demonstrates that such legal political orientation directly affects the weak effectiveness of environmental protection instruments, including preventive measures, supervision, and law enforcement, which in practice tend to be reduced to administrative formalities. The findings of this study indicate that the primary issue in environmental protection in Indonesia does not lie in the absence of regulations but rather in the inconsistency of legal political direction in integrating sustainability principles into national development policies. Therefore, a reorientation of environmental legal politics is required by prioritizing ecosystem protection and sustainable development principles as key state policy priorities. Without reform in the direction of legal politics, environmental protection

instruments will face significant challenges in functioning effectively to ensure environmental sustainability and the fulfillment of the right to a good and healthy environment.

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